



◆ FEATURED IN THIS ISSUE ◆

Rubén Díaz on
LET'S KEEP UP THE FIGHT

Micheal Flaherty on
THE LEGACY OF MARGARET SANGER

William Murchison on
LOWER COURTS REIN IN *ROE*

◆ SPECIAL SECTION: LIES VS. VIDEOTAPE ◆

Matthew Hennessey on
RAISING A DISABLED CHILD

Lauren Squillante on
GROWING UP WITH A DISABLED SIBLING

J. Antonio Juarez on
LOOKING FOR SISTER'S GHOST

Michael Tenaglia on
THE MEANING OF MARRIAGE

◆ ALSO IN THIS ISSUE ◆

UNNATURAL SELECTION IN BRITAIN: AN INTERVIEW WITH DR. HELEN WATT

**Booknotes: Susannah Black reviews
Charles Camosy's *Beyond the Abortion Wars***

. . . the first GOP debate of the 2016 campaign took place just days before our press deadline; for the first time—at least as far I can remember—the inevitable abortion question didn't haunt the stage like Banquo's ghost. When the subject came up, the candidates addressed it with confidence. And, in the case of you know who, gusto: "I am very, very proud to say that I am pro-life," declared Donald Trump. (Though he subsequently backtracked on defunding Planned Parenthood.) What has changed? Quite possibly, *everything* has changed, though it will take time to assess the true impact of David Daleiden's conscience-rocking revelations. Daleiden is the young prolifer who outwitted the country's abortion giant. Instead of running a handful of *Appendices* in this issue, our editor suggested one long montage of quotes, plucked from the reams of commentary Mr. Daleiden's fetal-parts-trafficking exposé continues to generate ("Lies vs. Videotape: Inside Planned Parenthood's Slaughterhouses," page 15). Links to excerpted pieces can be found on our website (www.humanlifereview.com).

Also accessible online is the entire text of Michael Tenaglia's two-part article ("Dignity, Dystopia, and the Meaning of Marriage," Part One, page 66). Mr. Tenaglia, who is new to the *Review*, wrote just before the June Supreme Court ruling legalizing same-sex marriage. He is preparing a Postscript that will appear with Part Two of the article in our Fall edition.

There are other first-time contributors to acknowledge: Rubén Díaz—one of this year's Great Defenders of Life—is a longtime New York State Senator and ordained minister ("Let's Keep Up the Fight," page 5). Lauren Squillante (Student Spotlight: "My Sister, an Angel," page 45) is a senior at St. Peter's University in New Jersey. And J. Antonio Juarez ("Looking for Sister's Ghost," page 61) is a freelance writer in Minnesota and the father of five. Welcome all.

And welcome back, Micheal Flaherty, this year's other Great Defender of Life and author of the 1993 article featured in *From the Archives* ("Norplant and Margaret Sanger's Legacy," page 24). Mr. Flaherty is a co-founder of Walden Media and producer of important films like *The Giver* and *Amazing Grace*.

Dr. Helen Watt, a Senior Research Fellow at the Anscombe Bioethics Centre in Oxford, England, is yet another new voice in these pages ("Unnatural Selection in Britain," page 31). While our attention these past few weeks has been concentrated on baby destruction, Dr. Watt, in an interview with *Review* contributor John Grondelski, describes alarming—and now legal—new forms of baby *construction*, some involving more than two "parents." Our thanks to Dr. Grondelski for undertaking a series of interviews for us (see also Summer 2014, Spring 2015).

And, as always, thanks to Nick Downes, whose cartoons, whenever we have room for them, provide a healthy dose of humor amidst ongoing upset.



the HUMAN LIFE REVIEW

Summer 2015

Vol. XLI, No. 3

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Published by THE HUMAN LIFE FOUNDATION, Inc. Editorial Office, 353 Lexington Avenue, Suite 802, New York, N.Y. 10016. Phone: (212) 685-5210. The editors will consider all manuscripts submitted, but assume no responsibility for unsolicited material. Editorial and subscription inquiries, and requests for reprint permission should be sent directly to our editorial office. Subscription price: \$40 per year; Canada and other foreign countries: \$50 (U.S. currency). ISSN 0097-9783.

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<i>Introduction</i>	2
Maria McFadden Maffucci	
<i>Let's Keep Up the Fight</i>	5
Rubén Díaz	
<i>Karma Rules: Lower Courts Rein in Roe</i>	9
William Murchison	
<i>Lies vs. Videotape: Inside Planned Parenthood's Slaughterhouses</i>	
15	
<i>From the Archives:</i>	
<i>Norplant & Margaret Sanger's Legacy</i>	24
Micheal Flaherty	
<i>HLR Interview</i>	31
Helen Watt & John Grondelski	
<i>The Challenges & the Graces:</i>	
<i>Learning to Speak Honestly About the Good and the Bad of Raising a Disabled Child</i>	37
Matthew Hennessey	
<i>Student Spotlight:</i>	
<i>My Sister, an Angel</i>	45
Lauren Squillante	
<i>Booknotes</i>	54
Susannah Black reviews Charles Camosy's <i>Beyond the Abortion Wars</i>	
<i>Looking for Sister's Ghost</i>	
J. Antonio Juarez	
61	
<i>Dignity, Dystopia, and the Meaning of Marriage (Part One)</i>	
66	
Michael Tenaglia	

INTRODUCTION

I write this in the middle of an historic summer for the pro-life movement. I refer of course to the series of videos still being released by the Center for Medical Progress, and the resulting furor over Planned Parenthood's grisly trafficking in baby body parts. At issue, legally, is whether Planned Parenthood is breaking the law by 1) profiting from selling fetal "tissue," 2) performing partial-birth abortions or delivering infants alive who are then slaughtered for their organs, and 3) altering abortion procedures to better harvest viable (hence valuable) fetal organs. But it's the *legal* part of what they do that is the most shocking, because we *see* the tiny victims of the abortions, mangled and treated like . . . well, products for profit, giving a whole new meaning to the euphemism "products of conception."

We are pleased to provide for the record a special section, "Lies vs. Videotape: Inside Planned Parenthood's Slaughterhouses." Managing Editor Anne Conlon tells the story of the undercover video releases by deftly stringing together headlines and excerpts from key news stories and editorials. We will no doubt follow with more in the next issue. In the meantime, I encourage you to visit our website at www.humanlifereview.com, where you can find up-to-date news, commentary, and valuable links to keep you informed in these remarkable times.

We lead this issue with "Let's Keep Up the Fight" by Reverend Senator Rubén Díaz, who is a maverick—a pro-life Democrat in New York! ("Maverick" is derived from a Welsh surname meaning "valiant hero.") In his article here, Díaz invites fellow Democrats to "go back to our roots and defend the most vulnerable members of society," and recounts the legislative struggles he has weathered in the NY State Senate against abortion—most recently defeating Governor Andrew Cuomo's horrific abortion expansion law (the Women's Equality Act). New Yorkers, take note: Díaz also warns us about several lesser known but terribly dangerous "involuntary euthanasia" bills that have also been pushed back—for now, but he says we "need to remain vigilant." We are proud to be honoring him as a Great Defender of Life at our gala dinner on October 22nd.

Senior Editor William Murchison wrote before the release of the Planned Parenthood videos but it is as if he knew they were coming! In "Karma Rules: Lower Courts Rein in *Roe*," Murchison applauds the unrelenting wave of abortion restrictions being passed by state legislatures, citing a *New York Times* editorial which gripes that such laws are part of an "intensifying nationwide effort to make getting an abortion as difficult as possible." To which he answers: "Duh." That is the point, and they have it coming, because "ever since Jesus, in the garden of Gethsemane, put forth the observation, 'all they that take the sword' have found themselves regarding nervously that weapon's sharp and shiny business end."

You may remember that in C.S. Lewis' *The Chronicles of Narnia* series, Aslan the Lion created seven magic swords to be used to protect Narnia from evil. I mention this because Micheal Flaherty, who co-founded Walden Media and

produced the three recent *Narnia* movies, will be honored as a Great Defender of Life this fall along with Rev. Senator Díaz. Before his career in film, Flaherty was an educator and a *Review* contributor. “Norplant and Margaret Sanger’s Legacy,” which we reprint here from our archives, is a timely reminder of who the founder of Planned Parenthood was and what she stood for. In 1993, as Flaherty writes, several states proposed legislation that would offer financial incentives to young minority women if they would agree to the long-lasting (five year) Norplant contraceptive implants. Critics, including the National Organization for Women, said such laws were not only coercive but dangerous, as Norplant provided no protection from AIDS and STD’s. But Planned Parenthood strongly supported the idea; no surprise, because Sanger was an unabashed racist and eugenicist, openly preaching that the “unfit,” which included the poor and non-Aryan races, should not be allowed to “breed.”

The United Kingdom (where Sanger also spent much quality time) has embraced the abortion mentality with little resistance, and may be ahead of us in Aldous Huxley-like biotechnology, specifically the so-called “three-parent embryo” (mitochondrial donation). This is one subject discussed in a fascinating interview—conducted for the *Review* by contributor John Grondelski—with Dr. Helen Watt, Senior Research Fellow at the Anscombe Bioethics Centre in Oxford. Also covered are attempts to criminalize sex-selection abortions in Britain (unsuccessful) as well as the much more successful campaign against assisted suicide and euthanasia—that’s the one area in which Britain leads America in a pro-life way.

“**E**ffective witness is authentic” says J.D. Flynn, the father of a disabled child. Flynn is interviewed by Matthew Hennessey in our next article, “The Challenges and the Graces: Learning to Speak Honestly about the Good and the Bad of Raising a Disabled Child.” A paradox of our time is that while the disabled are valued and greatly aided by society in many ways, the eugenic mindset has so infiltrated the medical culture that many children, especially those with Down syndrome, never make it out of the womb alive. Hennessey shares his personal conundrum in writing about his daughter Magdalena—if he includes the rough parts about raising a daughter with Down syndrome, he’s “terrified of unintentionally contributing to an abortion.” Yet he concludes here that honesty is best. What shines through is the unique love and life that Matthew’s daughter brings to his family.

Such is the case as well with our next article, by newcomer Laura Squillante, “My Sister, an Angel.” In her candid reflection, Squillante tells her family’s story: Her sister Gabbi was born with a rare and severely debilitating neuro-genetic disorder, Angelman Syndrome. Squillante courageously reveals her own challenges and admits to fears of the future, but also can’t imagine her world without her older sister—just as she is. “To this day, I do not think there is anything inherently wrong with her,” she writes. “Why would I, or anyone, want to change her?”

Susannah Black returns to our pages in Booknotes with a thoughtful review essay on *Beyond the Abortion Wars: A Way Forward for a New Generation*, by

INTRODUCTION

Charles Camosy, an associate professor of theological and social ethics at Fordham University. Black tells us that Camosy focuses primarily on showing “that the positions of many Americans are not as polarized, not as black-and-white, as they are often portrayed—and that in general, the American public is more anti-abortion, more in favor of restrictions than current laws reflect.” He proposes a law called The Mother and Prenatal Child Protection Act, which would “restrict abortion almost completely”—the *almost* being the sticking point, Black writes, because it would include an exception for rape, allowing the use of RU486 in cases of rape victims for up to 8 weeks. Though Black sees Camosy’s defense of the rape exception as “very shaky,” she does find his overall approach quite promising: “he vigorously calls progressives to account for neglecting unborn children,” she writes, and “parts of this book could be rallying cries for a progressive pro-life platform.”

And now for something almost completely different: a children’s story. “Looking for Sister’s Ghost,” by newcomer to the *Review* J. Antonio Juarez, is a clever tale written in response to the 2014 self-described pro-choice e-book, *Sister Apple, Sister Pig*, by Mary Walling Blackburn. Blackburn wrote about a little boy whose father helps him understand that his older sister, aborted because they didn’t have the time or the money for her, is now a “happy ghost” who is anywhere and everywhere. Juarez enters into the indulgent book’s own world with his witty and poignant counter-story, which resonates with truth.

Finally, we close this issue with Part One of a major discourse about another historical event this summer: the *Obergefell v. Hodges* Supreme Court decision legalizing same-sex marriage. While attorney Michael Tenaglia—also new to our pages—wrote this article before the decision (Part 2, in our Fall issue, will include an update), we editors have read no better treatment on the history, meaning and probable consequences of this new instance of judicial activism. (“A truly magnificent article,” wrote Judge James L. Buckley after we sent it to him for a preview.) Tenaglia writes with startling grace, compassion, and reason about marriage, and about why the crucial issue is *not* that homosexuals have the right to be happy, but that the traditional understanding of marriage is important for *children*. Marriage is about “confirming, as far as possible, through legal and social standing, the biological fact that brought us into existence as people.” Throwing that out will result in the “weakening of the biological bounds not only between generations, but also among siblings.” This is a rich piece and I am only mentioning a tiny part—please take your time and read it all.

Tenaglia also gives us wise and hopeful advice for going forward, making the obvious parallel to advocacy after *Roe*. Perseverance is key. Time will tell if this summer’s Planned Parenthood earthquake will unleash the tsunami needed to wake Americans up to the senseless slaughter happening every day. May the rumblings continue!

MARIA MCFADDEN MAFFUCCI
EDITOR

Let's Keep Up the Fight

Rubén Díaz

You should know that anyone who passes by my district office in the South Bronx can see two signs that say “Democrats for Life” in the windows. As an Advisory Board Member for the New York Chapter of Democrats for Life, I let people know that issues involving the protection of all human life shouldn't be something exclusive to just one political party—we all need to take them seriously.

It's important for Democrats to go back to our roots and defend the most vulnerable members of society. These include workers and immigrants and the less fortunate. In my view, and in the view of many pro-life Democrats (and there are more of us than you might think), the most vulnerable members of our society, who are the unborn, also deserve to be protected. The Democratic Party says that there is room in the tent for pro-lifers, so let's keep them to their word.

During my tenure in the New York State Senate, there have been many opportunities to demonstrate my stand as a Pro-Life Democrat. My efforts to provide affordable housing, education, and social services for senior citizens and families—especially Black and Hispanic families who are often left out of too many Budget negotiations—are among those challenges. So are my efforts to protect innocent unborn children and their mothers.

In 2008, when my Democratic Party introduced legislation known as the Reproductive Health Act, I declared that it was one of the most dangerous and radical pieces of proposed legislation in New York State that I had ever seen. Those who supported it insisted that it would help abortion to become “safe and rare.” When I first opposed this bill, I was told by some of my colleagues in government that I had been misled and that I did not understand the language of the bill. Oh really?

That bill would have permitted partial-birth abortions in New York State for any reason; it would have permitted any health care provider—including dentists, podiatrists, and social workers—to perform abortions; and it would have permitted abortions for minors without parental consent. In other words, any 12-year-old girl could have an abortion performed by an under-qualified medical practitioner, and her parents didn't even need to know about it.

Rubén Díaz has represented the 32nd District (South Bronx) in the New York State Senate since 2002. An ordained minister of the Church of God, Reverend Senator Díaz is also the President of the New York Hispanic Clergy Organization. He will be honored as a Great Defender of Life at the Human Life Foundation's annual dinner on October 22nd.

Additionally, it would have forced hospitals and health care providers who oppose abortion because of religious beliefs to perform abortions.

My dear reader, there is no doubt in my mind that if it had passed in both houses of the State Legislature and been signed into law, the Reproductive Health Act would have presented dangerous health and safety risks to New York's women.

In 2014, when a bill similar to the Reproductive Health Act resurfaced as part of the Women's Equality Act, we worked very hard in the Senate to pass all the other parts of the Act, which included equal pay for equal work and an end to human trafficking. The abortion section of that bill was defeated by my efforts along with the efforts of my Democratic colleague Senator Simcha Felder. Senator Felder told me that he would not vote for it because he fears the Lord. Me, too.

There is no doubt in my mind that the abortion section of the Women's Equality Act will be back in 2016. I have to remain hopeful that New Yorkers will pay closer attention and raise their voices and contact their legislators to let them know that precious human life needs to be protected and nourished instead of destroyed.

In 2011, I had the opportunity to meet Sean Fieler and Greg Pfundstein, the leaders of the Chiaroscuro Foundation. Their organization carefully documents the alarming abortion rates in New York City. At the time, they showed that in New York City, 41 percent of all pregnancies ended in abortion. In the Bronx, 48 percent of all pregnancies were aborted. None of these figures included abortions that resulted from the use of the non-surgical abortifacients such as Plan B, which, if reported, would swell the percentages of aborted babies even further.

What is even more disturbing was the higher percentage of aborted pregnancies for Black and Hispanic women. The data compiled by the Chiaroscuro Foundation from the New York City Office of Vital Records showed that among Hispanic women, 49 percent of their pregnancies end in abortion, and among Black women, almost 60 percent of their pregnancies end in abortion. Hispanic women don't deserve this. Black women don't deserve this. Nobody does.

Black and Hispanic women facing crisis pregnancies are clearly being targeted by the abortion industry, which is killing our children. Too many Black and Hispanic women are being encouraged to see their children as burdens instead of the treasures they truly are.

As a society, we need to work very hard to welcome and celebrate the lives of all of our children so that no woman ever feels she doesn't have the

choice to let her child live. This includes providing affordable housing, quality education, job opportunities, and medical and social services. It also includes doing whatever we can to strengthen the family structure.

As you know, innocent human beings at the other end of life are also facing legal threats today. As the Ranking Member of the New York State Senate Committee on Aging, I am deeply troubled by efforts not only to promote assisted suicide, but also to legally deny treatment for those least able to defend themselves. Our senior citizens deserve every protection and consideration we can provide for them. Their lives should be respected, and they should never be made to feel compelled to make any quality of life decisions that would cause the premature end of their natural lives.

Thanks to the efforts made by the National Right to Life Committee and the Long Island Coalition for Life, the involuntary euthanasia proposals that recently crept into the Senate Health Committee were not a major part of this past Senate Session.

These bills include: Senate Bill 4796, related to Do Not Resuscitate (DNR) orders; Senate Bill 4794, related to starvation and dehydration of a patient; Senate Bill 4795, related to overriding family direction for treatment; and Senate Bill 4791, related to parental notice before a minor child is denied treatment.

If Senate Bill 4796 were enacted into law, it would allow physicians to disregard the patient's or family wishes in seeking to impose a DNR order. If Senate Bill 4794 were enacted into law, it would allow health care providers to decide to starve and dehydrate patients based on judgments by the health care provider, even if the provider does not know the patient's wishes. If Senate Bill 4795 were enacted into law, it could permit the denial of life-preserving treatment if a surrogate is awaiting a pending transfer or judicial review. Senate Bill 4791 would add language to the current law to require only that a hospital "make diligent efforts" to notify a parent of an emancipated minor before withholding or withdrawing life-sustaining treatment.

These quality of life proposals amend New York State laws that protect the quality of life for patients who deserve every medical benefit that is available. If these four pieces of legislation become law, they will make it possible under certain circumstances to disallow life-sustaining treatment—including food and water—leaving many to starve to death or die of dehydration, often against their own wishes or the wishes of their families.

Again, we need to remain vigilant about these bills and any similar pieces of legislation that may be introduced in 2016 or any time in the future that do not protect the dignity of all human life.

As a life-long Democrat, my advice to my fellow Pro-Life Democrats is to

RUBÉN DÍAZ

keep up the fight and not to switch parties. We must not give up defending threatened human life and attempting to restore both our party and our nation to consistent pro-life principles.

I am State Senator Reverend Rubén Díaz, and this is what you should know.



Karma Rules:

Lower Courts Rein in Roe

William Murchison

... for all they that take the sword shall perish with the sword.

Matthew 26:52

Now just a minute. I'm not attempting to spin the latest chapter of the abortion struggle as biblical justice visited on the authors of the depredations we oppose. (You might see it that way, but I don't insist on the point.)

You will likely have noticed, gentle reader, the uproar among pro-choicers over state lawmakers working hard to narrow stringently the scope of options available to mothers seeking abortions and doctors seeking to accommodate their wishes.

The most notable instance as of this writing dated from June. Here is the story, from the *New York Times*: "A federal appellate court upheld some of the toughest provisions of a Texas abortion law on Tuesday, putting about half of the state's remaining abortion clinics at risk of permanently shutting their doors and leaving the nation's second-most populous state with fewer than a dozen clinics across its more than 267,000 square miles. There were 41 when the law was passed."

Whereat the *Times*' editorial writers fell into high dudgeon: "The Texas law is only one part of the intensifying nationwide effort to make getting an abortion as difficult as possible . . . In 26 states, women must wait for a period of time, usually 24 to 48 hours, before going through with the procedure . . . These laws are often paired with a two-visit requirement, making abortions that much more unattainable for women who cannot take the time off from work, especially if they must travel long distances multiple times . . . for millions of women across Texas and the rest of the country, particularly those who are poor or live in rural areas, reproductive freedom is more elusive now than at any time since before *Roe v. Wade* was decided in 1973."

I suggest the proper response is: Duh.

Duh, because ever since Jesus, in the Garden of Gethsemane, put forth the observation, "all they that take the sword" have found themselves regarding nervously that weapon's sharp and shiny business end. That's to say, when

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

you bypass the moral discourse essential to peaceful change, enlisting government to do the dirty work, you more than risk backlash: You provoke it. Often enough, too, as with the *Roe* backlash, you deserve it.

These are somewhat spacious terms in which to speak. Just because the editorial is from the *New York Times* it doesn't follow that the *Times* misappraises the state of women who view themselves as victims in the legal war over their claimed entitlement. I can testify to the size of Texas. You could drive from Dallas to the Rio Grande in a day, but you really wouldn't want to. The state law in question does inconvenience, potentially at least, women with no easy geographical access to a clinic that meets the law's specifications. These include (in the *Times*' summation) "the same building, equipment and staff standards as ambulatory surgical centers—a costly and medically unnecessary standard. It also requires doctors who perform abortions to have admitting privileges at a hospital within 30 miles of the clinic. Neither of these rules provides any benefit to women's health or safety . . ."

A three-judge panel of the U.S. Fifth Circuit Court of Appeals, when weighing such contentions, begged to differ. The judges wrote: "Texas' stated purpose for enacting H.B. 2 was to provide the highest quality of care to women seeking abortions and to protect the health and welfare of women seeking abortions. There is no question that this is a legitimate purpose that supports regulating physicians and the facilities in which they perform abortions." The Supreme Court standard for regulating abortions deflects any state's intention to impose an "undue burden" on abortion-seekers. But, then, what is "undue"? Is it not a little bit like Justice John Marshall Harlan II's characterization, in *Cohen v. California* (1971), of an anti-draft vulgarism a student displayed on his T-shirt? Said Harlan, speaking for the Court majority that backed the student: "One man's vulgarity is another's lyric." We live in an age much given to subjectivity in viewpoint. May not a state legislature differ subjectively with abortion advocates as to the meaning of a word all admit to be (under existing case law) central to the decision process?

The point to bear in mind here is that the case is not really about word games. It is about something far graver. In the two *Roe* cases that speedily followed *Cohen*, advocates of an essentially untrammled right to abortion executed a *coup d'état* with the cooperation of the highest court in all the land.

I do not think the point receives anything like the emphasis it deserves as we contemplate the still-unfolding consequences of *Roe v. Wade*. Let us consider.

In 1973, the great majority of U.S. states had statutes that restricted or

outlawed abortion. Off the table and onto the floor the Supreme Court swept each and every one of these statutes. Gone! That was all it took—a finding by seven jurists that protection of unborn life was no longer (whatever it once might have been) a governmental duty trumping the right to an abortion. The right to an abortion now trumped the protection of unborn life.

Such was the case at least in the minds of the justices and their intended beneficiaries. Many Americans disagreed strongly—and pushed back: trying this, trying that, until May 2015, when the *New York Times* reported that “37 new [abortion-restrictive] rules in 11 states are part of a strategy accelerated by abortion opponents in 2011, when provisions restricting abortion access began sweeping state legislatures. More than 200 such laws have passed in the last four years . . . This year, more than 300 regulations were proposed in 45 states.” Among these statutes was the one enacted by Texas and upheld by the U.S. Fifth Circuit Court, overruling a lower-court judgment.

In all these recalcitrant states, to paraphrase Mr. Justice Harlan, one woman’s constitutional right was another woman’s—or man’s—offense against the moral law.

What was I saying? Duh.

Nothing else, really, was to be expected than persistent and pointed opposition, given the depth and width of the civilizational conviction that unborn life merits the protection of the laws. It is not enough to say: Oh, we got over all that! Seven Supreme Court justices certainly did “get over it” (or maybe never had it to begin with), along with a large cadre of women seeking emancipation from childbearing and child-nurture, totally and forever, or when the moment arrived at an inconvenient passage in life.

The United States of America might have been regarded in 1973 as the world’s foremost democracy, but there was nothing democratic about the technique used to replace protection of the unborn with abortion pretty much on demand. The so-called pro-choice movement saw a quick way around the democratic duty of changing hearts and minds in order to win. A visit to the Supreme Court could do the job.

The Supreme Court’s writ ran—everywhere. No state law could withstand the gale-force winds that the justices could muster up when they were of a mind to do so (and enjoyed the backing, more or less, of the federal government’s other two branches).

The Founding Fathers had never completely defined, or even tried to define, a vision of what the nation’s highest court was supposed to do. The Court was left with the duty of figuring out the matter for itself—a duty that Chief Justice John Marshall was happy to embrace by means of an energetic

jurisprudence. Among other things the great Marshall did in behalf of this aim was declare the right to pronounce on a particular law's or government action's compatibility with the Constitution.

This was inevitably a subjective duty. There were no judicial compasses for measuring a law's proximity, or lack of same, to the constitutional North Star. A good judge, and there have been many such, could bring off a persuasive measurement, but acceptance of his finding had to depend on the general sense of How Things Should Be. Even in *Brown v. Board of Education*—in some ways the most momentous and for a short time politically divisive Supreme Court decision in history—the justices paddled alongside general public sentiment. The public—witness Jackie Robinson, *Intruder in the Dust*, Harry Truman's integration of the armed forces, the reaction to the Holocaust—was readying itself to embrace the ideal, if not every discrete consequence, of formal racial equality. The times, as Mr. Dylan would note, were a-changing.

They kept right on changing, with, inter alia, the resurgence of feminism in the late 1960s: more ambitious, more sharp-edged than in times past. Women began to want things they never before had generally enjoyed, such as job opportunities outside the home, such as the diminution of male authority over them. Some burned bras to symbolize their fed-upness with the state of things. A growing number sought and demanded the right to abortion. For many, such a claim corresponded to the right, in the case of blacks, to equal enjoyment of the privileges of citizenship, embedded in the Constitution's 13th, 14th, and 15th Amendments. The "liberation" of women, however, was a goal not easy to locate in the constitutional text as a historic objective of American government. To overcome this limitation, one of two things was wanted: patient reconstruction of the public conscience or a constitutional coup, begun at the top tier of government and imposed on the bottom.

It was this second strategy that the pro-choice movement adopted. Yes, repeal or modification of anti-abortion laws at the state level might have worked—theoretically. That would have been the democratic expedient: the people's lawmakers buying into the overall plan for female empowerment, declaring after democratic debate that the old restrictive order had to go and the new order would be—whatever; certainly a construction offering choice in some large and liberating degree.

There were attempts at this approach. In California, in 1967, Gov. Ronald Reagan, noted subsequently—and rightly—for his resplendent pro-life credentials, signed the Therapeutic Abortion Act in response to pleas that the state's 1850 statute was encouraging back-alley abortions. The bill Reagan signed—which he feared would become law over any veto he might

impose—allowed for abortions meant to avert physical or mental harm to a patient, and also in cases of rape or incest. As matters turned out, the number of California abortions swelled dramatically under the permissive attentions of hospital committees charged with assessing a woman’s suitability for the operation. Reagan admitted to having misjudged the situation. In any case, here was an instance of cooperation by the apostles of change with established procedures for change.

Two years later there was another such attempt in Texas, whence originated those appeals that led to the *Roe* decision. I covered as a newsman the House hearing on the Texas bill; it lasted until past 2 a.m. in a chamber packed with interested parties on both sides. There was touching testimony as to the need for looser limitations on the right to abortion in the interest of helping women and extending mercy to damaged babies. If the bill never came to a vote, dying in committee, that was how it goes in the legislative process. You win some, you lose some. You come home and reorganize. Once more unto the breach, dear friends . . .!

But no. Democracy in this instance wouldn’t do—not for organized interests that knew what they wanted and wanted it that very moment. Such was the tenor of those awful times, I might add. Students were marching and burning draft cards and occupying deans’ offices, in assertion of their self-identified prerogatives. The whole country seemed to be aflame with desire and demand.

And, well, look how it worked out. The highest court in all the land said, in effect, damn your eyes to states that had chosen to protect unborn life and meant, unless corrected by the voters, to go on doing so. *Roe v. Wade* knocked the props from beneath these states. They were wrong! The Court and the plaintiffs alone were right! This was how it was going to be henceforth. *It is so ordered* . . .

Ordered but not thoroughly accepted; not accepted at all in many quarters of society. How did the pro-choice lobby like those apples? Not very much once it became clear that there was going to be pushback. As there was—honorable, peaceful pushback against an assertion of judicial supremacy in moral matters. Shock spread around the nation whose highest court had promulgated the notion that the constitutional rights of an unborn child must yield, prior to the last trimester of pregnancy, and maybe not even then, to those of its mother.

It didn’t have to be this way. A debate at the state level over existing laws and demand for their modification or repeal would have left the issue at the retail-politics level. Which isn’t to say—hear me!—that however the debate came out would have been just fine, so long as the result was democratic.

Even a thing as respectable as the democratic process is capable of error. Lives—infant lives—might have been saved, nonetheless, through negotiations leading at the legislative level to compromise over opposed objectives. The cases for both sides would have received the airings consonant with democratic action as distinguished from the interventions of the elite.

The way of the pro-choice lobby was instead the way of the sword that slices through all difficulties, all obstructions. How ironic at this point in abortion history to find sword and shield and buckler in the hands of the supposed enemy, who uses courts to squeeze the air out of pro-choice arguments for making abortion as available and affordable as corn flakes.

Great is the discombobulation of society's pro-choice elements at seeing the law—a tool belonging supposedly to themselves—used actually to narrow the scope of choice. Didn't the Supreme Court elevate choice higher than competing considerations? Maybe not. The strategy of lawmakers and courts is to batter away at claims that "choice" is the value to which our government and society are bound most tightly, most enduringly.

This stuff could have been worked out at the legislative level in the beginning. The Supreme Court's foreclosure of that possibility is the factor that keeps the political and judicial processes busy in spite of it all: investigating every interpretive possibility for restoring to the unborn some sense of entitlement amid all the other entitlements modern folk claim for themselves.

The thing is remarkable when you think about it. *Roe v. Wade* happened 42, going on 43, years ago. It's middle-aged, with a beer-and-ice cream gut. Yet the tensions continue: the elite continually astounded at the persistence of people who want merely to ask other people what they think about the boundaries of human life, and the obligations pertaining thereto.

The pro-choice establishment is getting exactly what it deserves in view of its weaponry choices: the clash of sword against shield, shield against sword.

[Editor's Note: The Texas abortion restrictions upheld by a federal appellate court which are noted on page nine of this article were subsequently temporarily blocked by the Supreme Court, after abortion activists requested an emergency stay.]

Lies vs. Videotape:

Inside Planned Parenthood's Slaughterhouses

Compiled by Anne Conlon

At 8:00 a.m. on Tuesday morning, a pro-life group released two videos showing Planned Parenthood executive Deborah Nucatola munching on a salad and sipping red wine while discussing the harvesting of organs from babies killed by abortion. One was a nearly nine-minute edited video of the nearly three-hour discussion. The other was the unedited discussion.

Because of the graphic nature of the discussion—Nucatola specifically discusses altering abortion procedures to procure hearts, brains, lungs, and livers from the babies whose lives Planned Parenthood ends by abortion—the video immediately lit up social media. Unlike most significant stories about major hot-button social issues, however, no major media reported on the news until 4:30 p.m. that afternoon. Some are still working on (or working on hiding) their coverage of the story.

Mollie Hemingway, The Federalist.com, July 16

Changing how and where “to crush,” trying to “change the presentation,” and using “ultrasound guidance” in order for abortionists to “know where they’re putting their forceps” looks like an admission of altering abortion practice with the specific intent of harvesting organs. And altering the timing or procedures of an abortion in order to harvest organs is clearly and unambiguously against federal law.

The 1993 National Institutes of Health Revitalization Act states that human fetal tissue may be obtained from an abortion only if “no alteration of the timing, method or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue” and the “abortion was performed in accordance with applicable state law.” At least some states have similar rules, too.

Mark Antonio Wright, National Review Online, July 17

Planned Parenthood's response to the video has focused on clarifying that no parts are sold for profit. The organization's affiliates only seek to recoup the cost of doing business. President Cecile Richards also has apologized for Nucatola's tone.

But let's clarify further.

Eventually, profits will be made—perhaps with medications enabled by research on a 24-week-old fetus' brain stem. Just think: No unwanted baby; no burden to society; plus treatment for someone's dementia—a perfect trifecta, made in hell.

And tone isn't the issue. The issue is that we're commodifying human fetuses and harvesting parts for distribution in the marketplace, using rationalizations that can justify anything.

Kathleen Parker, Washington Post, July 17

In a now-infamous video, Nucatola discusses—over lunch in a Los Angeles restaurant—how Planned Parenthood facilitates trafficking in fetal organs and tissue. She discusses prices and confesses that Planned Parenthood’s doctors are happy to alter care in order to further the organization’s organ harvesting, for example using ultrasound where they ordinarily wouldn’t, in order to prevent damage to valuable organs. In her own words:

So then you’re just kind of cognizant of where you put your graspers, you try to intentionally go above and below the thorax, so that, you know, we’ve been very good at getting heart, lung, liver, because we know that, so I’m not gonna crush that part, I’m going to basically crush below, I’m gonna crush above, and I’m gonna see if I can get it all intact. And with the calvarium, in general, some people will actually try to change the presentation so that it’s not vertex, because when it’s vertex presentation, you never have enough dilation at the beginning of the case, unless you have real, huge amount of dilation to deliver an intact calvarium.

“Calvarium” is the sterile way of saying “head.” “Vertex presentation” means head-first delivery, i.e. the normal presentation. What she’s talking about here is repositioning the baby in the womb to enable more effective organ harvesting.

Planned Parenthood CEO Cecile Richards is the daughter of the late Texas governor Ann Richards, whose dedication to the cause of dismembering unborn children was absolute. Richards says that Planned Parenthood regrets the “tone” of Nucatola’s lunch-table conversation. But that blasé tone is not alien to the organization: A former Planned Parenthood clinic director tells of being mystified that in her clinic various keypads and passwords were set to 2229 — “Spells out ‘BABY,’” a staffer helpfully informed her. The garbage truck that hauled away the clinic’s “products of conception”—human scraps—was mockingly referred to by staffers as “the nursery.” **Kevin J. Williamson, National Review Online, July 19**

Here are the 38 companies that have directly funded Planned Parenthood: Adobe; American Cancer Society; American Express; AT&T; Avon; Bank of America; Bath & Body Works; Ben & Jerry’s; Clorox; Converse; Deutsche Bank; Dockers; Energizer; Expedia; ExxonMobil; Fannie Mae; Groupon; Intuit; Johnson & Johnson; La Senza; Levi Strauss; Liberty Mutual; Macy’s; March of Dimes; Microsoft; Morgan Stanley; Nike; Oracle; PepsiCo; Pfizer; Progressive; Starbucks, Susan G. Komen; Tostitos; Unilever; United Way; Verizon; Wells Fargo.

Melissa Quinn, The Daily Signal, July 21

I wonder if gay activists realize that their slobbering devotion to pro-abortion political organizations, and the multi-million dollar abortion industry itself, may ultimately lead to the destruction of LGBT babies before they are born within my lifetime. It truly is Sophie’s Choice for the progressive gay activists; thus far, they wave off the question with derision.

In the novels of dystopian futures, there is always a “Benevolent” central authority who decides which humans are allowed to think, thrive or survive at all. Do

the progressive LGBT activists want Planned Parenthood to decide which gays are born or destroyed? **Bruce Carroll, IJ Review, July 24**

And the problem these videos create for Planned Parenthood isn't just a generalized queasiness at surgery and blood.

It's a very specific disgust, informed by reason and experience—the reasoning that notes that it's precisely a fetus's humanity that makes its organs valuable, and the experience of recognizing one's own children, on the ultrasound monitor and after, as something more than just “products of conception” or tissue for the knife.

That's why Planned Parenthood's apologists have fallen back on complaints about “deceptive editing” (though full videos were released in both cases), or else simply asked people to look away. And it's why many of my colleagues in the press seem uncomfortable reporting on the actual content of the videos.

Because dwelling on that content gets you uncomfortably close to . . . that moment when you start pondering the possibility that an institution at the heart of respectable liberal society is dedicated to a practice that deserves to be called barbarism. **Ross Douthat, New York Times, July 25**

For more than a century, abortion has created tremendous wealth for providers in the United States. That continues today . . . **Anne Hendershott, Crisis, July 27**

The congressional and state investigators should examine what medical researchers are doing with fetal organs—whether obtained from Planned Parenthood or elsewhere. A chilling example is Ganogen, Inc. of Redwood City, Calif.

Last February, Eugene Gu of Ganogen noted his transplant of human fetal kidneys into rats. He said the “organs not only grew larger but also sustained the life of the rats long-term.”

But rats apparently are too small for ideal use. Gu suggested that pigs can do the job. “Our goal,” he said, “is to use this method to grow human fetal kidneys, hearts, lungs, livers, and pancreas in pigs for future transplantation into human patients.”

A brief but startling YouTube video, posted by Ganogen, Inc., shows a human fetal heart that is beating in a rat. This is the world we live in today.

Mary Meehan, meehanreports.com, July 27

In the taped expose of Planned Parenthood's methods, the pro-life movement has uncovered its Uncle Tom's Cabin. It won't start a war, but it will start a battle. And this may be one it can win. **Noemie Emery, Washington Examiner, July 27**

My entire professional career as a pediatric neurosurgeon was dedicated to saving the lives of children and promoting their long-term welfare, as I took the Hippocratic Oath to “First, do no harm.” Protecting innocent life is a duty consistent with that solemn oath. Destroying or butchering them is particularly offensive

to someone like myself who has operated on babies while they were still in utero . . . When we reach a point where we are so callous that we kill innocent little babies, what else won't we do? Is there a limit to our barbarism?

Dr. Ben Carson, CNN.com, July 28

At the 10:22 mark of the Center for Medical Progress's latest video, released today, there is a picture of a hand. By the curve of the thumb and the articulation of the fingers, one can see that it is a right hand. It was formerly the right hand of an 11.6-week-old fetus; it is now part of the various organic odds and ends being sifted through on a plate in the pathology lab of a Planned Parenthood clinic.

*In his 1834 volume *The Hand; Its Mechanism and Vital Endowments, as Evincing Design*, Sir Charles Bell noted: "The human hand is so beautifully formed, every effort of the will is answered so instantly, as if the hand itself were the seat of that will, that the very perfection of the instrument makes us insensible to its use." Or, as neurologist Frank R. Wilson has written: "We notice our hands [only] when we are washing them, when our fingernails need to be trimmed, or when little brown spots and wrinkles crop up and begin to annoy us."*

By contrast, a small hand, severed, on a dish, cannot go unnoticed.

Ian Tuttle, National Review Online, July 28

One of the largest public relations firms in Washington D.C. circulated a memo Monday night urging members of the media to refrain from airing damning videos of Planned Parenthood officials discussing the sale of organs and tissue of aborted fetuses. Politico is reporting that Planned Parenthood hired SKDKnickerbocker to help manage blowback from the videos, which were produced by the pro-life Center for Medical Progress . . . As Politico notes, SKDKnickerbocker is in a perfect position to handle the abortion group's media outreach. The firm is closely aligned with Democratic interests. Its managing director is Hilary Rosen, a long-time Democratic mouthpiece who is an ardent supporter of Hillary Clinton. Rosen has long contributed to CNN.

Chuck Ross, The Daily Caller, July 28

So there's a concerted effort from Planned Parenthood and its allies to "discourage [media outlets] from airing the undercover videos"? The deuce, you say? That would certainly go a long way towards explaining why so many left-leaning media outlets refused to cover the second video, which captured a senior Planned Parenthood executive noting that she needed a good deal on aborted baby organs because, "I want a Lamborghini."

BuzzFeed, for example, still does not have a single story on its website noting Planned Parenthood's aborted baby organs-for-Lambos scheme . . . Neither does Huffington Post. Neither does Vox. The story was trending on Facebook and Twitter, yet three sites that specialize in amplifying trending and viral content refused to print a single thing about the stories. Now we know why: Planned Parenthood likely told them not to.

Sean Davis, The Federalist, July 28

For the past two hundred years, atheists have been loudly asserting that the dismissal of God will lead to human liberation. I would strenuously argue precisely the contrary. Once the human being is untethered from God, he becomes, in very short order, an object among objects, and hence susceptible to the grossest manipulation by the powerful and self-interested. In the measure that people still speak of the irreducible dignity of the individual, they are, whether they know it or not, standing upon Biblical foundations. When those foundations are shaken—they increasingly are today—a culture of death will follow as surely as night follows day. If there is no God, then human beings are dispensable—so why not trade the organs of infants for a nice Lamborghini?

Fr. Robert Barron, WordonFire.org, July 28

As I say, the third video, let's go to the audio sound bites. We have some excerpts of it here. From the Center for Medical Progress website, Holly O'Donnell.

O'DONNELL: Whatever we could procure, then we'd get a certain percentage. The main nurse was always trying to make sure that we got our specimens. No one else really cared, but the main nurse did because she knew that Planned Parenthood was getting compensated. The harder and the more valuable the tissue, the more money you get. So if you can somehow procure a brain or a heart, you're gonna get more money.

RUSH: "If you could somehow procure a brain or a heart . . ." How . . .? What has to happen in order for there to be a brain and a heart to "procure"? What in the world has to happen? Well, first there has to be a baby, and then it has to be killed. There's no other way you can do this! Now, Holly O'Donnell's being portrayed here as a whistleblower, so you can imagine that once Planned Parenthood gets its ducks in a row here, they'll be making a move against her, attempt to discredit her and so forth. Here's the next excerpt from the video . . .

O'DONNELL: I've never had anxiety before this at all. So I'm looking, and I don't know what's going on. I had no idea this is what's gonna happen . . . especially my first day. Literally she has tweezers and she's like, "Okay, well, this is the head, this is the arm, this is a leg." She hands them over, "Oh, here you go. Can you show me some of the parts I just showed you?" The moment I took the tweezers I put 'em in the dish, I remember grabbing a leg. And I said, "This is a leg," and the moment I picked it up I could just feel, like, death and pain. I never felt like that before, like shoot up through my body, and I started to . . . I blacked out.

RUSH: You realize these are the people doing this, running around claiming, "Black lives matter," "All lives matter"? These are the people running around ostensibly opposed to any kind of death for anyone. Capital punishment, you name it, they're opposed to any kind of it. These are people that supposedly abhor death, and here they are merchants of it.

Rush Limbaugh Show transcript, July 28

NETS COVERED CECIL THE LION MORE IN ONE DAY THAN ABORTION VIDEOS IN 2 WEEKS

Headline, NewsBusters.org, July 29

Now let me give you a recent example of the persisting insularity of liberal thought in the media. When the first secret Planned Parenthood video was released in mid-July, anyone who looks only at liberal media was kept totally in the dark about it, even after the second video was released. But the videos were being run nonstop all over conservative talk shows on radio and television. It was a huge and disturbing story, but there was total silence in the liberal media. That kind of censorship was shockingly unprofessional. The liberal major media were trying to bury the story by ignoring it. Now I am a former member of Planned Parenthood and a strong supporter of unconstrained reproductive rights. But I was horrified and disgusted by those videos and immediately felt there were serious breaches of medical ethics in the conduct of Planned Parenthood officials. But here's my point: It is everyone's obligation, whatever your political views, to look at both liberal and conservative news sources every single day. You need a full range of viewpoints to understand what is going on in the world. **Camille Paglia, Salon, July 29**

The surprise of today's Republican press conference on Planned Parenthood came when one of the freshman class's stars praised Hillary Clinton. Sen. Joni Ernst (R-Iowa) described how undercover videos had found the family planning group's executives coldly discussing the sale of fetal body parts, and said that even Democrats were recoiling.

"The American people, Republicans and Democrats alike, are horrified by the utter lack of compassion showed by Planned Parenthood for these women and their babies," said Ernst. "In fact, now, Hillary Clinton is calling these Planned Parenthood images disturbing, and I agree."

That line had the intended effect. It rattled abortion rights supporters, reminding them that the Democratic frontrunner for president had hedged on their issue.

David Weigel, Washington Post, July 29

HILLARY CLINTON CRITICIZES PROPOSALS TO DEFUND PLANNED PARENTHOOD

Headline, Time magazine (time.com), July 30

The people who in the videos merrily describe the prices they can obtain for this or that body part may one day be old and as helpless as the infants they have dismembered. Then they will be in the care of men like themselves. And on that far day these young—then old—may want water. On what grounds will they demand it? On what basis will they ask for care, love or compassion?

Perhaps the ultimate argument for the belief in God is history's lesson that we have no reason to expect mercy from men. Our sole hope, illogical as it may seem, in betting that God will have mercy on us is the certainty that Planned Parenthood won't.

Richard Fernandez, Belmont Club (pjmedia.com), July, 30

In partial-birth abortion a near-term baby is pulled by the legs almost out of the birth canal, until the base of the skull is exposed so the abortionist can suck out its

contents. During Senate debates on this procedure, three Democrats were asked: Suppose a baby's head slips out of the birth canal—the baby is born—before the abortionist can kill it. Does the baby then have a right to live? Two of the Democrats refused to answer. The third said the baby acquires a right to life when it leaves the hospital.

The nonnegotiable tenet in today's Democratic-party catechism is not opposition to the Keystone XL pipeline or support for a \$15 minimum wage. These are evanescent fevers. As the decades roll by, the single unshakable commitment is opposition to any restriction on the right to inflict violence on pre-born babies. So today there is a limitless right to kill, and distribute fragments of, babies that intrauterine medicine can increasingly treat as patients.

George Will, *Washington Post*, Aug. 1

The Catholic Church comes to this issue from a perspective rooted in experience. Catholic charitable agencies and pregnancy help centers have helped countless pregnant women find life-affirming alternatives to abortion. Our hospitals and other health facilities are second to none in providing quality health care for women.

We support the legislative proposal to reallocate federal funding, so that women can obtain their health care from providers who do not promote abortion. It is my sincere hope that you will be able to help advance this goal by supporting S. 1881.

Sean Cardinal O'Malley, Archbishop of Boston and Chairman, Committee on Pro-Life Activities, USCCB, letter to U.S. Senators, Aug. 3

DEMOCRATIC SENATOR JOE MANCHIN WILL VOTE TO DEFUND PLANNED PARENTHOOD

Headline, *weeklstandard.com*, Aug. 3

It is important that religious people learn to argue against the manifest evil of abortion on purely secular, rational grounds. We must take care to explain the medical and scientific fact that embryos and fetuses are human beings and the necessity of recognizing the intrinsic value of all human life. We must also provide real support to women and children so that unplanned pregnancies can be faced without the fear and desperation that leads to the abortionist's office. Yet perhaps what we most need to do now is to proclaim a truth that is unavoidably, unapologetically religious: Every single human being, from the moment of his or her conception, is known, loved, and named. It's not the rational arguments that make me feel sick watching the videos of abortion doctors munching salad and sipping wine while talking about crushing skulls, or that make me weep at the sight of that "tissue." It's that I see those little ones just as Jimmy Kimmel sees Cecil, or just as I see Cecil for that matter. I see them as known and loved.

Molly Oshatz, *firstthings.com*, Aug. 3

LOUISIANA GOV. BOBBY JINDAL CANCELS PLANNED PARENTHOOD CONTRACT IN WAKE OF VIDEOS

Headline, *Washington Times*, Aug. 3

. . . Stop for a moment and consider the intellectual consequences of this foundational belief that humanity can be “planned.” Such a belief means that humans can be edited and arranged, by contract if necessary. To be editable, people, particularly children, must become objects rather than subjects.

Once they become objects, children can be treated as dehumanized products in multiple ways, all bad. They can be disposed of, like integrated waste, when they are not convenient or not proceeding according to plan. Just as we recycle cans of Diet Coke and milk cartons, we can try to limit the wastefulness of our garbage by recycling the broken-down parts of people: their livers, hearts, lungs, and brains. All of this is management of objects, which costs money, so who is to say that there shouldn't be some remuneration? Why not reimburse the people who are stuck with this waste for the cost of transporting and recycling it? Why not pay them a salary and make the salary attractive so that qualified professionals are indeed willing to take on such a ghoulish task?

Robert Oscar Lopez, Public Discourse, Aug. 4

The Center for Medical Progress has released its latest video, and—brace yourself—it's brutal. Much of the video is dedicated to discussions of the higher prices of “intact” fetuses, which are in higher demand. Melissa Farrell, director of research for Planned Parenthood Gulf Coast, notes that Planned Parenthood is able to “alter our process” to obtain “intact fetal cadavers” and says, “It's all just a matter of line items.”

David French, National Review Online, Aug. 4

In an interview with the Center for Medical Progress' David Daleiden, CNN's New Day host Alisyn Camerota asked the activist behind the undercover Planned Parenthood videos to respond to criticism he was a “violent extremist.” **CNN.com, Aug. 4**

The Democratic Party shilling for barbarism—whether by politicians, liberal media outlets, union officials or unrestricted abortion advocates—is not likely to be viewed favorably by future generations. These Democrats will be remembered for demonizing the activists who lifted the veil on a previously sanitized process and for seeking restraining orders to silence truth tellers. They will be remembered for publishing dehumanizing decrees—as The New Republic did—that people stop criticizing Planned Parenthood because as a medical matter, “The term baby . . . doesn't apply until birth” (that thing on your sonogram is nothing more than a “product of conception”). And they will be remembered for demanding investigations into citizen journalists for meticulously exposing atrocities in our midst.

Kirsten Powers, USA Today, Aug. 5

OBAMA TELLS AFRICANS THAT KILLING ALBINOS TO HARVEST ORGANS IS “CRAZINESS” AND “CRUEL” AS PLANNED PARENTHOOD CONTROVERSY SWIRLS

Headline, Christian Post, Aug. 5

The vast majority of Americans—a whopping 70 percent—have heard little to nothing about videos showing the involvement of Planned Parenthood in the harvesting and trafficking of human fetal organs. The revelations from the videos have led to federal and state investigations, calls to end the \$530 million a year in taxpayer funding, and questions from human rights activists about the propriety of the practice.

Yet the media have so struggled to cover the story, much less cover it well, that one third of the public has heard literally nothing about them while another 38 percent have heard only a little. Democrats are particularly uninformed on the videos, with more than three out of four reporting they have heard little to nothing about the videos.

Of those who had heard at least a little about the videos, only 45 percent had seen any video, or even a clip from the video. But since only 68 percent of the population had even heard of the video, that means that relatively few Americans—30.6 percent—had been exposed to even a portion of the video by the media. Again, Democrats were the least informed about the videos, with fewer than one in four—23 percent—having been exposed by the media to any of the full videos, the edited videos, or even clips from the videos.

Even though so few people have even heard about the Planned Parenthood videos, and even fewer had witnessed any portion of them, pollsters have already seen a five percentage point drop in favorability for the group compared to prior to the first video's release on July 14. **Mollie Hemingway, The Federalist, Aug. 5**

* * *

A lot of people are talking about defunding Planned Parenthood, as if that's a huge game changer. I think it's time to do something even more bold. I think the next president ought to invoke the 5th and 14th Amendments to the Constitution, now that we clearly know that that baby inside the mother's womb is a person at the moment of conception. The reason we know that it is is because of the DNA schedule that we now have clear scientific evidence on. And this notion that we just continue to ignore the personhood of the individual is a violation of that unborn child's 5th and 14th Amendment rights for due process and equal protection under the law. It's time that we recognize the Supreme Court is not the supreme being, and we change the policy to be pro-life and protect children instead of rip up their body parts and sell them like they're parts of a Buick. **Mike Huckabee, GOP Debate, Aug. 6**

FOX'S GOP DEBATE WAS WATCHED BY 24 MILLION VIEWERS ON THURSDAY NIGHT, ACCORDING TO NIELSON DATA, MAKING IT THE HIGHEST-RATED PRIMARY DEBATE IN TELEVISION HISTORY

Headline, CNN Money, Aug. 7

Norplant and Margaret Sanger's Legacy (1993)

Micheal Flaherty

As everybody knows, it is “politically correct”—indeed, mandatory—to despise David Duke, the erstwhile Klansman and neo-Nazi who alarmed all good Americans by almost becoming governor of Louisiana and then having the effrontery to run for president. Mr. Duke has now been run out of politics, but one of his worst ideas remains with us.

In 1990, Duke sponsored a bill in the Louisiana legislature to provide financial “incentives” to poor women if they would use Norplant, the contraceptive implant that supposedly gives “protection” against pregnancy for up to five years. It was a modest bill: Duke proposed only an additional \$100 annually for women on welfare. And nothing came of it—the bill died in committee.

But the notion of bribing women to use Norplant is far from dead. The Alan Guttmacher Institute (Planned Parenthood’s “research” arm) reports that legislators in 13 states have proposed nearly two dozen bills similar to Duke’s. Many of these bills are actually far more enticing, providing up to five times the financial incentive offered in Duke’s legislation.

Of the 13 states that currently have legislation pending, Maryland seems to be the most enthusiastic about Norplant. Governor Donald Schaefer considers it a crucial step in reforming welfare. Following his lead, the Paquin School in working-class Baltimore became the first high school in the nation to offer the matchstick-sized contraceptive to its students. And, as I write, the state’s House of Delegates is considering a plan to hand out a *million* condoms and provide Norplant to thousands of “poor” women—all “free” (i.e., paid for by taxpayers)—a House subcommittee has already approved the plan unanimously!

The rationale behind such proposals is ostensibly straightforward: preventing women—especially young, urban poor women—from having children will “liberate” them from the burden of unplanned pregnancies and spare future generations of children the pain of growing up in poverty. The intended result is a substantial reduction of both the underclass and the amount of taxpayer money committed to welfare payments.

The problem is, this simple “solution” to a complex problem may well do

Micheal Flaherty is an educator and co-founder of Walden Media, a film production company whose releases include *The Chronicles of Narnia*, *The Giver*, and *Amazing Grace*. He will be honored as a Great Defender of Life at the Human Life Foundation’s annual dinner on October 22nd. This article first appeared in the Summer 1993 issue of the *Human Life Review*.

nothing but *intensify* the misery of the urban poor and augment membership in the underclass. The immediate drawbacks are glaringly obvious: Increasing welfare payments for women will provide yet another incentive for women to stay on welfare, and entice *more* women to go on the public dole. The “savings” projected could prove to be marginal at best.

The moral consequences of such a misguided public policy are far more troubling. Norplant will in effect give women a license for sexual promiscuity—but *no* protection against sexually transmitted diseases, including HIV, the virus believed to cause AIDS. A dramatic increase in such diseases among the urban poor presents much more of a threat to the health of the community than early motherhood.

Most alarming is the possibility that “voluntary promotion” of Norplant could quickly lead to involuntary coercion. Already, judges in both California and Texas have ordered female defendants convicted of child abuse to have Norplant inserted. Few people will shed a tear at forcing a convicted child abuser to use Norplant. But if child abusers and drug users can be forced to take Norplant, could other categories of women—namely poor and minority women—be next?

This is one issue on which organizations that usually find themselves on opposite sides of public policy involving birth control agree. Vigorous proponents of birth control like the National Organization for Women (NOW) and the National Black Women’s Health Project have joined Gary Bauer’s Family Research Council in opposing legislation that would provide financial incentives to women who take Norplant. They agree that a policy which crudely assesses human lives in terms of their cost to society places far too much authority in the hands of the government, opening the door for further government intervention in the reproductive choices of poor women.

Planned Parenthood, however, has refused to join NOW and has publicly endorsed Norplant legislation pioneered by the “racist” Mr. Duke. Such an alliance is not as unusual as most observers might think. The motivating philosophy behind Planned Parenthood’s promotion of birth control in the inner city has been historically racist and classist in nature. Originally outspoken supporters of eugenics, Planned Parenthood has stopped focusing on certain races and classes of people in word—but *not* in deed. Of the more than 100 school-based clinics offering birth control that have opened nationwide in the last decade, none have been at all-white or suburban middle-class schools. All have been at black, minority, or ethnic schools (Baltimore’s Paquin School is 90 percent black).

Teenage pregnancy presents the same problems to poor white women, but Planned Parenthood has never set its sights on poor school districts in the

Rust Belt or the rural Midwest. Why promote Norplant almost exclusively among minority women? The question cannot be answered without a look at the history of Planned Parenthood and its founder, Margaret Sanger.

A pioneer in the feminist movement, Mrs. Sanger went on to become the founder and first president of Planned Parenthood, now the largest abortion provider in the country. It is only natural that she should find herself the pro-choicers' patron saint. Unlike other dead and buried feminists, however, Sanger's popularity continues to increase posthumously. Some recent accolades include being inducted into Arizona's Hall of Fame (space was not a problem) and being named by *Life* magazine in 1990 as one of "the 100 most important Americans of the 20th century." Her spirit is constantly invoked at pro-choice gatherings. Patricia Ireland, NOW's president, considers herself a kindred spirit, claiming that she acts "in the tradition of Margaret Sanger."

More recently, Mrs. Sanger was the subject of a particularly adoring biography by Ellen Chesler. The book received the ultimate literary reward—a gushing endorsement on the front page of the *New York Times Book Review*. It has become required reading among the cultural elite. Hollywood seductress Kathleen Turner enjoyed the book so much that she read excerpts from it at a fundraiser for Planned Parenthood at Martha Stewart's postcard-perfect Long Island estate. The cocktail party, reported in the *Times*' ultra-chic "Chronicle" section last June, had fashion mogul Calvin Klein, superstar model Christie Brinkley, *Rolling Stone* founder Jann Wenner, and screenwriter Nora Ephron as just four of the 700 Manhattan elite raising a glass in memory of the fiery activist.

However, not a single one of the toasts offered, nor a single page in Ms. Chesler's book, mentioned Sanger's guiding philosophy—eugenics. Perhaps Christie Brinkley and some of her fellow revelers just don't *know* that the driving force behind Margaret Sanger's activism was not the desire to improve the lives of her fellow sisters and empower them with choice. On the contrary, Sanger believed that the government should be the ultimate arbiter of "choice," and that women who had children against the government's wishes should be either penalized or sterilized involuntarily.

Sanger's radical beliefs were not stage-whispered among a small coterie of friends. Rather, they were explained in vivid detail in several of her books, as well as in *Birth Control Review*, a magazine she also founded. In *Pivot of Civilization*, first published in 1922, she described her objectives: "More children from the fit, less from the unfit—that is the chief aim of birth control." The people Sanger considered unfit were "all non-Aryan people." She estimated that these people—the "dysgenic races"—comprised 70 percent

of the American population. Sanger believed that this “great biological menace to the future of civilization . . . deserved to be treated like criminals.” She proposed to “segregate morons who are increasing and multiplying.” Mrs. Sanger was certain that successful implementation of her proposals would result in “a race of thoroughbreds.”

It is no coincidence that Margaret Sanger’s contempt for those people she considered “dysgenic races” sounded suspiciously similar to the Nazis’ hatred for those people they considered *Untermenschen* (subhuman). Indeed, Mrs. Sanger’s enthusiasm for eugenics rivaled that of Nazi Germany. As George Grant points out in his book, *Grand Illusions: The Legacy of Planned Parenthood*, Sanger devoted the entire April 1933 issue of *Birth Control Review* to eugenics. One of the articles, “Eugenic Sterilization: An Urgent Need,” was written by Ernst Rudin, Hitler’s director of genetic sterilization and a founder of the Nazi Society for Racial Hygiene.

Sanger did not restrict her ethnic hatreds to “non-Aryan” whites. Mirroring the nativist anxiety of her day, Sanger tried to formulate a plan to stem what she perceived as a rising tide of black Americans. In 1939, she initiated the “Negro Project” to popularize birth control and sterilization within the black community. Enlisting the support of prominent black ministers and political leaders, she mused: “The most successful educational approach to the Negro is through a religious appeal. We do not want the word to get out that we want to exterminate the Negro population, and the minister is the man who can straighten out that idea if it occurs to any of their more rebellious members.”

Although Sanger has been dead for decades, her racial and class hatreds have been institutionalized in Planned Parenthood. Today, 70 percent of the clinics operated by Planned Parenthood in the United States are in black and Hispanic neighborhoods. Such a dramatically increased presence has not brought a decrease in the number of pregnancies. It has, however, produced a frightening increase in the number of abortions among black women. For every three black babies born, two are aborted. Blacks account for 43 percent of all abortions performed in the United States, a startling percentage considering that they comprise only about 12 percent of the total population. This is hardly a matter of their own “choice.” In a poll taken in 1988 by the National Opinion Research Center, 62 percent of all blacks said that abortion should be illegal in all circumstances, a fact ignored by patronizing whites who cite “poor blacks” as constituents for whose abortion rights they are fighting.

Given Margaret Sanger’s outspoken support for eugenics and its alarming correlation to the demographic reality of birth control and abortion today, it seems incredible that black civil-rights leaders are not up in arms. More

incredible is the looking-glass logic that has actually enshrined abortion as a “civil right.” Perhaps if little mention was made of Sanger this would be more understandable. However, abortion proponents have actually taken every opportunity to eulogize her and align themselves with her ghoulish vision of an “ethnically-cleansed” country. Consider the words of three of her successors in Planned Parenthood. The late Dr. Alan Guttmacher, her immediate successor, boasted that Planned Parenthood is “merely walking down the path that Ms. Sanger carved out for us.” Faye Wattleton, the first black president of Planned Parenthood, who was named *Ms. Magazine’s* 1989 Woman of the Year for her work in that capacity, said that she was “proud” to be “walking in the footsteps of Margaret Sanger.”

Most admiring is Alexander Sanger, Margaret’s thoroughbred grandson and president of Planned Parenthood of New York City, the largest of 170 affiliates nationwide. Sanger spoke chillingly of his desire to continue the family tradition in an interview with the *New York Times*: “With all her success, my grandmother left some unfinished business, and I intend to finish it.”

Much of Margaret Sanger’s success has been accomplished by her followers through masterful revisionist history. Sanger has been reinvented as an egalitarian social reformer. Her successors’ ability to praise her unapologetically in spite of her overtly racist views has been a public relations coup. Equally impressive (and ironic) has been their success in presenting themselves as devoted friends of the poor and minorities. That is why it is so difficult to believe the current Planned Parenthood leaders when they categorically deny that their policies are based on class and racial prejudice—and deny that they *ever* were. Nevertheless, for the sake of argument, let us assume that Planned Parenthood is motivated only by the best intentions. How successful have they been in helping the poor and underprivileged?

Birth control has been promoted not only as the answer to unplanned pregnancies, but also for collateral “benefits”—e.g., a decrease in child abuse and an expansion of opportunities for women—but it has failed on all counts. The proliferation of birth-control clinics in the inner cities has not led to fewer pregnancies. In fact, it has contributed to *more* pregnancies through promotion of the sexual revolution and the idea that sex is little more than recreation. And the rate of child abuse has increased steadily despite the propaganda campaign to “make every child a wanted child.” Nor is there any empirical evidence to prove a relationship between an increase in the availability of birth control and an increase in upward mobility for women.

Birth-control advocates attribute their failures to carelessness by birth-control users rather than to an ineffective public policy. This is partially true. For instance, the annual failure rate among low income single women using

a diaphragm is more than three times higher than among older and wealthier users. The failure rate with condoms is also three times greater among low-income single women under 24 and their partners. That is why advocates of Norplant—heralding it as “teenager-proof”—have rallied around the new contraceptive. It only has to be inserted once and it “protects” women against unexpected pregnancies for five years with no additional responsibilities. But will teenagers rush to the clinics to have it inserted?

In an article in *The American Spectator*, Tom Bethell argues that a lack of competent use of various types of birth control is not the only reason poor urban teenagers become pregnant. Bethell mentions *Washington Post* reporter Leon Dash’s 1989 book, *When Children Want Children*, based on months of research in the Washington ghetto. One 16-year-old woman, Tauscha Vaughn, spoke of the complicated reality ignored by birth control advocates: “Mr. Dash, will you please stop asking me about birth control? There’s too many birth control pills out here. All of them know about it. When they are twelve, they know what it is. Girls out here get pregnant because they want to have babies.” Dash also writes about four pregnant teenagers in one family he interviewed who “wanted children for a variety of reasons—to achieve something tangible, to prove something to their peers, to be considered an adult, to get their mother’s attention, and to keep up with an older brother or sister.”

Norplant has forced Planned Parenthood into a rather interesting contradiction. A few years ago, they argued that the immediate threat presented by AIDS mandated that all teenagers be given the “facts” about protecting themselves against HIV. Because they were purported to be the best way to prevent the spread of AIDS, condoms were not only to be encouraged but made free and readily available in the schools. They piously insisted that failure to provide teenagers with information and condoms would be both unrealistic and irresponsible. Almost overnight, the goal became not *prevention* but “safe sex.”

Yet if sex with condoms is “safe,” it logically follows that the converse—sex without condoms—is “dangerous.” But isn’t this what Planned Parenthood is promoting with its embrace of Norplant? Surely any increase in the number of women using Norplant will mean a decrease in the number of men using condoms—leaving Norplant users exposed to all the sexually transmitted diseases condoms are supposed to prevent. Call it “risk homeostasis”—the theory that reducing risks in one area (pregnancy) usually results in increased risks in a separate area (disease).

Risk homeostasis is certainly not a foreign concept or an alarmist conservative theory. Malcolm Gladwell, a reporter who once covered AIDS

for the *Washington Post*, calls it “a well-described concept in the social sciences.” Certainly the social engineers of Planned Parenthood are quite familiar with it. Why are these “safe sex” advocates rallying behind a policy that promises an *increase* in AIDS among women of the poor and primarily black underclass? Moreover, as the Alan Guttmacher Institute itself recently pointed out, the rate of other sexually transmitted diseases—venereal diseases, chlamydia, herpes—is alarmingly high in the U.S. These STDs are more easily transmitted than HIV and, while not fatal, can cause infertility, permanent scarring, and birth defects. Giving Norplant to teens makes it even *more* likely that they will acquire and transmit these diseases. One can only surmise that Planned Parenthood considers preventing motherhood more important than preventing STDs and AIDS among poor and minority women. Many words come to mind to describe such a reckless policy advocated by a group with such a frightening history: hypocritical, classist, racist. Planned Parenthood, however, likes to describe it as compassion.

The biggest danger of Norplant legislation, however, is its ability to masquerade as a *solution* to the real problems of the inner cities. One can only think of the advice the demon Screwtape gives to a younger devil in C.S. Lewis’ *The Screwtape Letters*: “Always have them focusing on the wrong thing. Keep them distracted. If there’s a flood, have them reaching for the fire hoses.” Norplant is the latest fire hose liberals are reaching for to stop the flood of scourges in the inner cities.

Inserting contraceptives in the arms of poor women will not stop the escalation of violence that imprisons urban residents in their own homes. It will not improve substandard housing or the hopelessly dismal quality of education in the inner cities. True, it may decrease the number of accidental pregnancies, but not without perpetuating the idea that the young can have no control over their sexual lives, and not without placing women who use it at a much greater risk to contract AIDS and other sexually transmitted diseases. More than 20 years ago, Carl Rowan, the black syndicated columnist, recognized the failure of birth control initiatives to address these problems: “The challenge is to illustrate every day that rats, roaches, and hunger pains are viewed by all society as more of a menace than an accidental pregnancy.” Norplant can only mislead impressionable teenagers into believing that sex has no consequences other than pregnancy. It has already led to troubling calculations of the cost poor children present to society and public policies designed to encourage poor women not to have children. The truth is, Norplant is *not* a panacea that will bring happiness and opportunity to the underclass. It is a Trojan horse filled with *more* problems, and more false hopes.

Unnatural Selection in Britain:

An Interview with Helen Watt

Abortion involves a radical devaluing of the female power to nurture new lives. So perhaps we should not be surprised when women are twice devalued: the pregnant woman herself, and her unborn child whose femininity is rejected even to the point of taking her life because she is female. —Dr. Helen Watt

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HUMAN LIFE REVIEW (HLR): In early 2015, Parliament approved legislation to permit mitochondrial donation, presented in some circles as “three parent” babies. Can you explain this process (and legislation) in layman’s terms and what it implies?

DR. HELEN WATT (HW): Parliament has approved several “mitochondrial donation” techniques, some of which would make “three parent” babies though supporters deny this. Other techniques would instead make “no parent” babies: clones of embryos used for spare parts, though this too is denied.

One kind of technique begins with two unfertilized eggs. One egg is taken from a donor and the other from a woman who wants a baby but is afraid of passing on abnormal “mitochondrial” DNA outside the nucleus of her eggs. Only the nucleus from her egg is put in the egg from the donor woman who contributes the rest of the material (apart from the egg’s removed nucleus). A baby with two mothers would be created if this “combination” egg were fertilized successfully.

The other kind of technique begins with two IVF embryos. One healthy embryo is “donated” by a woman and the other embryo is created by fertilizing the egg of the woman at risk of passing on mitochondrial disease. Both embryos are destroyed for spare parts—their nuclear material is removed. The nuclear material from the would-be mother’s embryo is then transferred into the “gutted” remains of the donor embryo to create a third embryo: the

one who may eventually be born.

The aim is to provide this new third embryo with nuclear DNA from the original embryo of the woman who wants a baby—even though the rest of the new embryo would come from the “guttled” donor embryo. That would allow the woman to feel related genetically to the child to whom she would give birth, despite the fact that this would not be her own genetic child, but rather a clone of her own destroyed embryo.

HLR: In short, why is it unethical to create babies from three DNA sources or from two embryos?

HW: It is medically risky to create genetically modified babies: risky for the child born and for her own descendants. “Mitochondrial donation” techniques create new lives; they do not *treat* existing people. And the risk is not just passed on as with natural conception but is actively created by extremely radical, unprecedented new ways of conceiving.

A woman carrying mitochondrial disease has the option of pursuing ethical choices like adoption if she does not want to take the risk of natural conception. In any case, any child conceived should be “received” in a human way: from an act of love between two unreservedly committed human beings. That conduces to the child’s secure sense of identity, and the parents’ unconditional, loving acceptance. Children should not be “pieced together” in laboratories like subhuman products, as in standard IVF. Significantly worse, though, is deriving them from several rival claimants for motherhood, or worse still, from the remains of embryos killed to create them.

HLR: If we are at this point, where could things go from here?

HW: Now that Britain has in effect legalized cloning “for birth”—so-called reproductive cloning, though the copied individual is a one-cell embryo—perhaps in the future we will legalize cloning for birth where the person copied is an adult. There is also the possibility of same-sex couples combining their genetic material to create children, and generally of society opening the way to risky “germ-line” genetic interventions (i.e., those affecting future generations) for social and/or medical reasons.

HLR: Some might argue that Britain has been particularly permissive in areas of reproductive technologies, including experimentation with mixing human sperm and eggs with non-human species, creation of chimera and hybrids, etc. Some critics have even suggested that the only thing prohibited in the UK is what is done before it is done “in pursuance of a license.” Why does such a *laissez-faire* climate exist in Britain on the life issues?

HW: Britain is not a religious society, and prides itself on its pragmatism.

The media is ignorant, admiring, and uncritical when it comes to “scientific progress.” Controversies are presented as “religion versus science,” press releases are blindly reproduced, and sob stories used instead of arguments. Many people have no idea how to think about ethical issues; doctors, for example, will assume that ethics should be left to regulatory bodies and/or ethics committees. These may take a stance of radical libertarianism or utilitarianism or a naïve “pick and mix” approach; human nature and flourishing, and virtues centered on them, do not get the focus they deserve.

HLR: In February 2015, the House of Commons voted down a bill to “clarify the law relating to abortion on the basis of sex selection.” Please tell us something more about the bill and what that Parliamentary vote said about the state of abortion in the UK.

HW: The Bill’s defeat is said to have been heavily influenced by Labour Party pressure. However, it is a measure of the sad state of the country that the Bill was so easily defeated. It sought to outlaw abortions on the grounds of gender, which some were claiming were already illegal; others, including the British Medical Association and abortion provider BPAS, claimed they were legal or potentially legal.

HLR: M.P. Fiona Bruce said that her bill banning sex-selection abortions was intended to “clarify” the UK Abortion Act 1967: She contended that the Act never intended to allow abortion for such reasons and has been perverted in its interpretation to do so. Why can’t the Government simply clarify the interpretation?

HW: The Health Department did say that sex-selection abortions are illegal. That said, if interpreted strictly the law would not allow the social abortions so often performed in Britain on spurious mental health grounds. Some may see this as a danger if action is taken on sex-selection abortions, and the Crown Prosecution Service has certainly been reluctant to prosecute.

HLR: So what is the situation in the United Kingdom: Is it that sex-selection abortions are a “dirty little secret” to which abortionists admit only by winks and nods, or a public policy that is broadly accepted or at least tolerated?

HW: The abortion industry tends to deny that sex selection is common, while resisting all limitations on abortion and claiming that they “trust women” (as if women always make free, completely well-informed and morally faultless decisions). The newspaper sting operation which (unethically, if understandably) “tempted” doctors to offer sex-selection abortions did reveal that these abortions were on offer, although the doctors were not prosecuted—supposedly because this was not in the public interest. Guidance from medical

bodies on which the Crown Prosecution Service relies is vague and permissive such that a woman can be said to have a mental health risk in terms of stress if she is not given what is in reality a social abortion.

HLR: Fiona Bruce introduced her bill along with eleven other female members of the House of Commons, yet some women—especially in the media, like the *Guardian*'s Sarah Dithum—insist no abortion, under any circumstances, for any reason, should be subject to any restriction save the decision of the pregnant woman. Is *that* kind of abortion absolutism compatible with the letter or spirit of the Abortion Act 1967?

HW: No—that view is particularly extreme. The Abortion Act gives no right to abortion, though abortions are certainly being “mis-certified” with the mental health ground used to provide abortion on demand during the first 24 weeks. There is no evidence that abortion promotes women’s mental health, and indeed the opposite is all too often true, according to researchers such as Priscilla Coleman, David Fergusson, and others.

HLR: How do you see the paradox that abortion—presented as a *conditio sine qua non* to the liberation of women—is, in the case of sex-selection abortion, being primarily used to discriminate against and destroy women?

HW: Abortion involves a radical devaluing of the female power to nurture new lives. So perhaps we should not be surprised when women are twice devalued: the pregnant woman herself, and her unborn child whose femininity is rejected even to the point of taking her life because she is female.

HLR: Certain societies, especially in East Asia (e.g., India), have a preference for male children. In last November’s Parliamentary debate, MP Bruce mentioned a “Rupinder” (not her real name) choosing to abort her child because she was a girl. Britain has lots of such ethnic enclaves as a result of its colonial past. Is sex-selection abortion a broad issue in British society or a particular scourge in certain communities?

HW: The former medical director of BPAS, Britain’s biggest abortion provider, has said he believes sex selection is fairly widespread and happens in all communities though it is more common among some ethnic communities (the doctor will often not know the woman’s real reason for asking for an abortion after a scan or blood test to find out the sex). There have been conflicting results when studies were done to try to find out the extent of the problem, bearing in mind that sometimes women will go on trying to have a male child without recourse to abortion, and that some couples will have a preference for girls over boys.

HLR: In 2013 the European Parliament also condemned “gendercide.” Do

you see opposition at least to sex-selection abortion gaining traction within Europe, a continent that—with few exceptions (Poland, Ireland)—has largely been indulgent of liberalized abortion?

HW: I hope so! Hungary has also recently tightened its abortion law and there are other signs of hope—in the midst of much pro-abortion activity unfortunately, including at the European Parliament.

HLR: The Abortion Act 1967 did not include Northern Ireland. Is the abortion debate in Ulster different from that in the rest of the United Kingdom?

HW: Yes: Northern Ireland has been commendably resistant to liberalizing the law, though sadly there are now moves to make abortion legal in cases of lethal disability. Of course, these are cases where the grieving parents should be offered real support throughout their baby's short life, as in the "perinatal hospice" approach.

HLR: In some quarters, there seems to be a real effort to eliminate disability by eliminating the disabled. Church of England clergyperson Joanna Jepson has challenged the number of abortions done for such "disabilities" as cleft palate or club foot. How much of a eugenicist undercurrent is there in Britain's abortion regime?

HW: Ann Farmer has written about the eugenicist origins of Britain's abortion movement in her book *By Their Fruits*. Abortion is now legal up to birth in Britain in cases of "serious" disability, while prenatal tests are freely pressed on pregnant women. There has been a recent rise in abortion for disability thanks to the advent of new non-invasive tests (though these often have to be supplemented with more invasive tests carrying the risk of miscarriage). A shocking number of Down syndrome babies, for example, are being aborted. Women are invited to reject their children lethally for being disabled, or at least to withhold full acceptance until tests provide an "all clear." This harms the woman who may lose her baby, not least because a late eugenic abortion is especially wrenching and traumatic.

HLR: Americans generally regard Europe as more accepting of legal abortion than the United States: 40 years after *Roe v. Wade* imposed abortion on demand in the United States, the issue remains one of ongoing tension. What is the situation of the pro-life movement in Great Britain?

HW: America has been much more successful than Britain in combating abortion. Although there have occasionally been victories in the courts, and liberal abortion laws have at least been kept out of Northern Ireland, there is little support in Britain for tightening the law. With euthanasia and assisted suicide there has been more success: At least in their "active" forms, these

are still illegal across the United Kingdom despite repeated attempts at legalization. Palliative care groups, religious groups, and pro-life groups are working well together on this.

Some UK pro-life groups lobby in Europe and at the UN and also brief those overseas who are facing threats to their own laws. Some groups are involved in grassroots work such as helping pregnant women, doing prayer vigils outside abortion clinics, or giving talks in schools. There are some staffing and funding difficulties (for example, the pool of volunteers who can afford to forgo paid work has diminished in recent years, and students active at university then disappear into paid jobs). All that said, pro-life work continues—with sometimes more, sometimes less success—on various fronts, including the research front. Even modestly resourced small organizations (like the Anscombe Bioethics Centre!) can sometimes make an impact, at least in clarifying debates, briefing parliamentarians, and so on. There's certainly enough work to go round.



“Remember the good old days, when it was all just ‘Arabia?’”

The Challenges and the Graces:

Learning to Speak Honestly about the Good and the Bad of Raising a Disabled Child

“**M**y daughter Magdalena has Down syndrome.”

I’ve lost track of the number of times I’ve written or said that. In any conversations lasting more than a minute, the time comes when I need to alert the person I’m talking to—if they are unaware—about Magdalena’s Down syndrome. If I don’t mention it, certain questions naturally present themselves:

What do you mean “it’s a little complicated” for you and Mrs. Hennessey to get a baby sitter?

“Well, you see, my daughter Magdalena has Down syndrome, and she can be a handful at bed time for anyone apart from a few preferred people.”

Why is your grocery cart filled with jars of apple sauce?

“Well, you see, my daughter Magdalena has Down syndrome, and she has trouble swallowing thin liquids so we have to thicken her drinks.”

How come you never invite us over to your house?

“Well, you see, my daughter Magdalena has Down syndrome, and she has a hard time sharing space with people. The sound of sudden laughter, singing, shouting, or whispering makes her crazy. She’s basically allergic to parties.”

Why are you following her around the playground like a parole officer?

“Well, you see, my daughter Magdalena has Down syndrome and playing with what we call ‘typical’ kids can leave her feeling frustrated fast. You won’t be cracking wise about parole officers when she takes your little sweet pea to the ground with what is known in our house as a too-tight hug.”

I don’t mean to imply that Magdalena is a terror, or that raising her is an agony of vigilance—quite the opposite—and I also realize that not everyone with Down syndrome exhibits these behaviors. Magdalena is an individual and Down syndrome is just a part of who she is, which is true for anyone living with any kind of intellectual or physical disability. But if I just tell you that she aspirates liquids, or that she doesn’t like parties, or that she’s not too respectful of physical boundaries, you might not get the full picture. And something inside me needs you to get the full picture.

She’s nine now, but when Magdalena was very little, I’d look for ways to

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bring her Down syndrome up. I figured the sooner the person I was talking to knew where I was coming from the better for us both. After a few years, I started to relax. I figured out it wasn't so necessary to jam this little bit of personal information into my first chat with a new colleague or the guy sitting next to me on the train. I learned to wait until the subject came up naturally—or didn't.

The impulse to put the Down syndrome card on the table remains in my work, however. I've written frequently about the experience of raising Magdalena. At a certain point in any essay, I know I must alert the reader about Magdalena's Down syndrome. Some of the essays I've written have been "advocacy" pieces arguing for the right of people like Magdalena to be born. I have written a few such pieces for the *Human Life Review*. The whole issue of abortion is so supercharged with politics and emotion that I've found it best simply to give readers the full-disclosure treatment. I do not argue these issues from a standpoint of detached neutrality. I am a partisan. I have declared my interests.

Some of my essays have been calls for a general change in public attitudes toward people living with disability. When Magdalena was born, we inadvertently joined a large community of other families whose children had been diagnosed in utero with chromosomal abnormalities like Down syndrome and Trisomy 18, as well as other physical and mental disabilities ranging from autism spectrum disorders to cerebral palsy. Some of my essays have merely been reflections on the silly things Magdalena says, the way she fits into our family, or the challenges she's overcome.

All of these stories have had one thing in common: Unlike the opening paragraphs of this essay, they have been upbeat and positive, focused mainly on the ways Magdalena is the same as other kids her age and not on the ways she is different. This has been more by accident than design. I never set out to write a deliberately upbeat piece or to minimize the difficulties of raising a child with serious cognitive and physical challenges. It just sort of happened that way. Or did it?

Permanence is the defining characteristic of writing in the digital age. These essays I've written live online forever, lingering—in some cases, malingering—in quiet corners of the World Wide Web, waiting for expectant couples who have just received a prenatal diagnosis of Down syndrome to stumble upon them, study them, and incorporate their claims and conclusions into a series of decisions that could potentially culminate in an abortion. It's a frightening prospect. I take the responsibility seriously. Consciously or not, it informs my writing.

What if I wrote something about Magdalena in the spirit of honesty and

transparency that made raising a child with Down syndrome seem too difficult for that hypothetical couple to contemplate? What if, for instance, I wrote honestly about Magdalena's behavior problems, by which I principally mean her propensity to lash out physically when frustrated? What if I wrote an essay called, "My Daughter Sometimes Pulls Hair," or noted that at the age of nine she's still not entirely potty trained? Not only does she have to wear a diaper at night, she (almost) never goes to the bathroom without prompting. We have to tell her it's time to go, take her in there, and stay the entire time. She doesn't like it one bit. It takes a lot of cajoling. It's time-consuming and completely irrational—she'd feel so much better and her behavior would improve if she just went to the bathroom—but, still, that's where we are. What if I wrote about that?

My greatest fear when setting pen to paper is that a couple who have recently been given a diagnosis of Down syndrome might read an article under my byline and conclude that potty training a nine-year-old is trial beyond their capacity to endure. Not that I'd ever know it if it happened, but I'm terrified of unintentionally contributing to an abortion.

To get a sense of whether my fear is justified, or if I'm alone in this, I reached out to some friends, guys I know and admire who are raising children with special needs and who have public platforms with which to share their experiences. My first call was to Eric Brown, a Nashville-based photographer whose daughter Pearl Joy was diagnosed in utero with alobar holoprosencephaly (HPE), a condition in which the two lobes of the brain don't divide sufficiently.

On the twin continuums of physical and intellectual disability, Down syndrome is probably somewhere on the "high functioning" side in terms of the severity of its effects; HPE is on the other side. It's the type of thing that prenatal caregivers—in all their tone-deaf wisdom—like to call "incompatible with life." The doctor who delivered the diagnosis to Eric and his wife Ruth was particularly insensitive, insisting that they abort Pearl, going so far as to show them graphic pictures of what kids with HPE look like.

Evil exists. Don't ever doubt it.

When the shocked and confused Browns expressed their absolute unwillingness to abort, the doctor refused to continue caring for them and referred them to another physician. Many told Eric and Ruth that if Pearl survived the womb, she would likely live for only a few hours. They were wrong. Pearl turned three this summer, and while she needs constant care, the Browns—thanks to a luminous and unshakeable faith in God's grace—have never regretted their decision.

Before Pearl was born, Eric enjoyed fairly steady work photographing Nashville musicians for publicity shots and album covers. Often he'd go on tour with his clients. While he didn't love hitting the road and spending time away from Ruth and his two older children, Brennan and Abbey, the work was stimulating and it paid well enough to justify the long absences. Pearl's birth disrupted that lifestyle and, for a brief time, caused Eric's career to stall out. He started an Instagram account (@ebrown_photo) as a way to network and promote himself, but he soon found the personal and professional melding in ways that forced him to take stock.

The Browns were living in their own, intense reality: Pearl's constant seizures and late-night trips to the hospital existed alongside moments of indescribable beauty. Their home was a quasi-medical environment, stocked with oxygen tanks and feeding pumps. It was a self-contained universe, with its own weird rhythms and a sometimes perverse logic. Nothing about the Browns' life was the same after Pearl was born. Outside, however, the world went on as usual. Everyone in their universe—friends, colleagues, members of their church—seemed to be living in a different reality, one where nobody stayed up all night, every night, wondering whether their child's screaming required a trip to the emergency room, or spent the afternoon cleaning up after an exploding diaper incident. Each day presented the Browns with a challenge: how to make it seem like they were living in the same world as everyone else.

In his professional life, Eric fought to keep up a façade of normalcy. He worried that pulling back the veil and letting the world peek in on his personal life would drive away the very people who might employ him. Nashville is a dream-factory, the Hollywood of the American South, where aspiring artists go to shed their blasé suburban backgrounds and reinvent themselves as suntanned cow-maids, gun-slinging outlaws, or whatever combination of down-home glossy sexpot cornpone happens to be the flavor of country music's month. In such an environment, Eric feared that Pearl's disability would come across as all-too-real. He feared it would cause people to turn their heads.

"I started the Instagram as a way to market my work shooting album covers for bands, but then I was like, 'Why am I trying to create another story for my life?'" he says. Tentatively, he posted some photos of life in the Browns' world: Pearl, head wrapped like a mummy, hooked up to hospital wires during a 48-hour electroencephalogram; Ruth concentrating as she changes a leaky gastrostomy tube that connects to Pearl's stomach directly through her abdomen; Brennan and Abbey in touching poses of loving embrace with their sister; the paperwork from a panicked and disoriented 911 call made by

a homecare nurse who fell asleep while she was supposed to be caring for Pearl.

Along with these photos, Eric posted short descriptions of the Browns' reality. His posts directly addressed the exhaustion, the fear, the grace, and the transcendence of living with—and loving—Pearl. Eric is an artist, and the simple power of his words matched the elegant composition of his photos. The more Eric opened up, the more followers he gained. The more he posted online, the more connections he made with other HPE families. The more he revealed, the better he felt.

And then, something unexpected happened—the exact opposite of what he'd worried about. “All of a sudden, I started getting work like crazy,” he says. “I realized I had to stop trying to create another story for my life. The beauty and importance of sharing Pearl's story had been lost on me there for a little while.” Eric was afraid that being brutally honest about his experience raising Pearl would drive people away. Instead, it drew them in.

Still, Eric admits that talking even with well-meaning friends about raising Pearl is difficult. “People say, ‘Howya doing?’ and I'm like, ‘I don't know how to tell you in 15 minutes and if you don't get it, I'm going to get frustrated.’” When I ask if he ever sugarcoats it, or pulls back like I do, out of fear that he might play a part in someone's decision to have an abortion, he seems genuinely confused. “To be honest, the question was never on my radar,” he says. “I want to paint a real picture. I want to help people see how wonderful this life is *alongside* how difficult it is. It's messy, and it's hard. I can't tell you how frustrating it is when for weeks she screams, endlessly, and there's nothing you can do to soothe her. But it's beautiful, too. Life is a trump card. I'll die on that hill.”

Ill die on that hill, too, right alongside Eric Brown. I'm pretty sure J.D. Flynn would as well. J.D. and his wife Kate are the parents of two children, Max and Pia. Both children are adopted. Both have Down syndrome. It wasn't planned. It just happened that way. “After years of infertility and miscarriages, God called my wife Kate and me to adopt—and he chose our children for us,” J.D. wrote in a recent essay for a book titled *Special Children, Blessed Fathers*.

J.D. works for the Roman Catholic diocese of Lincoln, Nebraska, as a special assistant to Bishop James D. Conley, who over the last few years has been one of the American Church's most eloquent voices for life. I've never met J.D. or Kate, but through his articles on the websites of publications such as *First Things* and *Patheos*, I feel like I've known both of them for a long time. I've also kept up with developments in the Flynn household through

their funny photos and irreverent posts on social media.

It's well known among families like ours that children with Down syndrome have a high risk of developing leukemia. Shortly after Pia was born and adopted by the Flynns, she was diagnosed with transient leukemia, common in newborns with Down syndrome and so-called because in 80 percent of cases it disappears, as Pia's did, of its own accord. At the age of one, however, Pia was diagnosed with a different, less-benign form of blood cancer: acute myeloid leukemia, or AML. The Flynns began the harrowing journey through the world of pediatric oncology that every parent dreads. After several rounds of treatment and months of hospital stays, Pia's AML went into remission. Now, at two-and-a-half years old, she's been cancer free for a year. AML comes with a high risk of relapse, so Pia likely faces monthly blood tests for the rest of her life.

J.D. is an elegant and precise writer. I've never found a stray word or infelicitous phrase in anything he's written. I put the same question to J.D. that I did to Eric Brown: Do you ever pull back from telling the whole truth about raising your children? Do you leave things out of your public writings—about disease, about disability—that, if encountered out of context, might get twisted into a rationale for abortion?

"I do worry if something we say could be misconstrued," he says. J.D. is a canon lawyer, so his sentences are sprinkled with phrases like "the grace of redemptive suffering," but, like me, he's an Irish American guy from New Jersey, so we connect on another level. When he says, "I wonder if we romanticize it a bit sometimes, but that's mainly because I'm neurotic," I know what he means. J.D. talks fast—faster than I can write.

Ultimately, though, J.D. comes down less on my side of the question than he does on Eric Brown's. The Flynns are living out their faith in a God who has placed his signature on the soul of every human life and they are intent on sharing their true experience raising Pia and Max in a thoughtful, dignified way. Through that expression, they hope to inspire others to lives of holiness and happiness. In other words, lying is not an option, and leaving something out is a little bit like lying. Actually, it's exactly like lying.

"Authenticity is really important," J.D. tells me. "Our families are called to witness to the dignity of a certain kind of life that is in danger. We have to talk about the challenges as well as the graces." I like that sentence. In fact, I love it. But I can't help but wonder why. Why do we have to talk about the challenges? The lives of our children—and children like them, the unborn ones—are in danger precisely because certain elements in our self-obsessed, achievement-oriented, family-unfriendly society have deemed them unworthy of love based on how much trouble they (allegedly) are to raise and, let's be

honest, the potential financial cost they pose to society. If I contribute to the perception that kids with disabilities are a burden or that it takes saintly patience to raise them, won't I be adding to the danger, not reducing it?

"Effective witness is authentic," J.D. counsels. "It usually occurs in real relationships, not in the abstract. And in real relationships you can't leave out the bad stuff. Not that you define your family's reality as some melodramatic sob story. It has to be both—the challenges as well as the graces."

That makes sense to me. Leaving out the bad stuff is a lie, and very few people can tell a lie without having it come back to haunt them. I certainly can't. Honesty is the best policy, though honesty, too, comes with its downside. One can't afford to be too honest when asked to affirm, say, the unmatched beauty of a close cousin's newborn baby, for instance. There's no profit in honesty when manners demand a lie.

Balance is the key; when talking about or writing about our disabled children, we have to give equal time, as J.D. put it, to the challenges *and* the graces. Having one without the other is, well, not the full picture. And, as I said at the outset, something inside me needs you to get the full picture.

"I want to paint a real picture, and help people see how wonderful this life is alongside how difficult it is," says Eric Brown. I can sign my name to that statement: It *is* difficult, but it's wonderful, too. There are challenges, but there are graces as well.

Since at the start of this article I gave several examples of the challenges of raising Magdalena, let me offer up one of the graces. Magdalena has an iPad loaded with educational apps and her favorite music. When she has a particularly good day, her reward is to be allowed to retreat to her bedroom, shut the door, and listen to music on her iPad. At some point every afternoon, she starts interrogating her parents: "Will I be allowed to use the iPad today?"

"I don't know Magdalena, do you think you did a good job following instructions and being nice to your brother and sisters?" I'll ask. The answer is always the same.

"Yes."

"Actually, Magdalena, I had to give you several reminders to put away your toys and when I called your name at the park, you didn't answer me, you just kept on playing," I say, sternly. "I'm not sure you earned the iPad today."

"Daddy," she says, "I thought you loved me?"

There's a thing you do as a parent when you're in "discipline mode" but know there is a high degree of likelihood that you are about to break out

MATTHEW HENNESSEY

laughing. It involves looking away, biting your lip, half-covering your face, and hoping that your credibility as an authority figure in the family doesn't evaporate in one tremendous guffaw. It happens a lot with Magdalena. It's without a doubt one of the great graces of raising her. We knew at the beginning that parenting Magdalena would be a challenge. We never could have guessed how much we'd laugh.

The possibility will always exist that something I've written in a moment of honesty—or pain, or confusion—is taken, twisted, and used to justify an abortion. That can't be helped. But authentic witness to the dignity of Magdalena's life requires leaving in the hard stuff.

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My Sister, an Angel

Lauren Squillante

What do you get a 25-year-old for her birthday?

This is the question my family is currently debating. My oldest sister Gabrielle will celebrate her 25th birthday at the end of June. My mother wants to buy her a bracelet, something with pink pearls. Pearls, of course, are the June birthstone and pink is soft and feminine, as is my sister. I agree that it is logical, but I do not think this is the right gift for Gabbi—I know her track record with jewelry and it is not very good. Let us say we get her a relatively inexpensive bracelet, to make up for the fact that it may get lost; invariably, it would wind up broken. However, if we chose an expensive, virtually indestructible piece, it would be all the more tragic when she loses it! I told my mother this, but, as my mother, she has the prerogative to absolutely ignore my opinion.

Instead of a bracelet, I suggested a Barbie doll. Gabbi collects Barbies. And there are really nice collectors' dolls: Scarlett O'Hara in her gown made out of curtains, Carol Burnett in *her* gown made out of curtains; my sister doesn't yet have a Barbie that looks like Cher. We could find one in a sequined Bob Mackie get-up, where her headdress is longer than her hemline! My mother insists that Barbies should be given only as Christmas presents to make it more special and less commonplace.

So, we're still left with the question: What do you get a 25-year-old for her birthday? Jewelry, yes, but what else? Maybe a gift card to her favorite clothing store, or nail salon, or to a nice restaurant where she could take her friends . . . or Sophie the Giraffe—arguably, the world's softest and definitely the world's cutest teether.

Sophie is already on the list of gifts we will be getting Gabbi.

My sister Gabbi, you see, has the mentality of a child between 10 and 24 months old. She cannot walk; she cannot talk. She does not cry. She still wears diapers, which need to be changed, and with the exception of French fries and corn on the cob, she cannot feed herself. She has Angelman's Syndrome.

I have been explaining this—using these words or a slight variation—to countless people since I was very young. I am used to it. I suppose I have

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always thought of my sister as normal. Growing up, I never considered my family different. I mean, I did not go around thinking everyone in the world had a handicapped sibling, but I did not think my family was extraordinary either. I have never thought of Gabbi as extraordinary. She is just my sister. I am younger than she is so she has been disabled my whole life as well as hers.

When I was in third grade, a classmate who lived down the block happened to see Gabbi. The next day in school he asked, innocently enough, “What’s wrong with your sister?” I became very defensive. “Nothing is *wrong* with my sister!” I yelled. He blushed and said, “Well, she’s in a wheelchair and she doesn’t talk. I just wanted to know if she was some kind of retarded or something.” I do not remember what I said to him, but nine-year-old-me was pretty miffed, and I imagine I was not too kind. Looking back now, I feel terrible about the way I treated him, but I was incensed! How would he have felt if I had asked him if something were *wrong* with his *normal* brother? But I hadn’t, because there was nothing wrong with his brother; this little boy was only asking me because my sister *wasn’t* “normal.” She was, and still is, different.

Angelman Syndrome is a neuro-genetic disorder, caused by a mutation on the fifteenth chromosome. The disorder causes severe developmental delay and other neurological complications, including epilepsy. The condition was first observed in 1965 by Dr. Harry Angelman, a British pediatrician. He had three patients visit his clinic at different times, all with what were considered different disabilities. Dr. Angelman, however, believed there was a common cause for the three children’s maladies because of their similar symptoms, which included severe intellectual delay, lack of speech, motor disabilities, and happy demeanors. Because genetic research was not as advanced at that time, there was no way for the doctor to find out if there was a common link among these three children.

While on vacation in Verona, Italy, Dr. Angelman saw a painting by the Renaissance artist Giovanni Francesco Caroto called *Boy with a Puppet*. “The boy’s laughing face,” the doctor later recalled, “and the fact that my patients exhibited jerky movements gave me the idea of writing an article about the three children with a title of ‘Puppet Children.’” This is what gave the disorder its original name, Happy Puppet Syndrome. It was later renamed Angelman Syndrome out of deference to the families of children diagnosed with this disorder.

The severity of disability associated with Angelman Syndrome varies. Symptoms, or as I prefer to say, characteristics, of people diagnosed with the condition include a stiff gait in those who are able to walk, ataxia, or lack of

muscle control; and floppy and jerky movements of the arms and hands. The disorder results in severe mental retardation and developmental delay; the inability to speak or cry; epilepsy, and hyperactivity. Physical characteristics of people with Angelman's Syndrome include fair skin and hair—the mutation on the chromosome that causes the disorder is believed to have something to do with pigmentation. They also have large, open-mouthed expressions, and protruding tongues. As Dr. Angelman observed, children and adults with this disorder are always smiling; they always have a happy demeanor.

Children who exhibit these symptoms are often diagnosed with cerebral palsy, as Gabbi initially was. She developed typically during her first eight months or so, although she rarely cried as most babies her age do; nor was she beginning to sit upright or crawl. When my parents expressed concern to her pediatrician, he reassured them that she would soon do these things and that there was most likely nothing to worry about. Then she began to have what my mother refers to as “episodes” where she would seem startled for no reason. When they mentioned this new occurrence to her pediatrician he referred them to a physiatrist who specialized in diagnosing children's disorders. He explained that Gabbi was having seizures and, after performing various tests, diagnosed her with cerebral palsy.

My parents were then referred to a neurologist, who implied Gabbi was suffering from Fetal Alcohol Syndrome, which was blatantly untrue. A second neurologist diagnosed Gabbi with Lennox-Gastaut Syndrome, a form of early childhood epilepsy. My parents weren't convinced—not all of Gabbi's symptoms matched this diagnosis—but they agreed to try anticonvulsant medications. Some of the drugs prescribed made the seizures worse; others kept her awake for days; one she could not even keep down long enough to see if it would help. Felbatol, the only medication that seemed to be helping—during the time Gabbi was taking it, she was actually beginning to try to stand—was recalled for causing liver failure.

It was by chance that an astute daycare worker at a facility for disabled children that Gabbi was attending gave my mother a pamphlet on Angelman Syndrome, suggesting my parents look into it as a possible explanation for Gabbi's condition. Upon reading it, my mother was certain this was the answer for which they had been searching. She and my father found a geneticist who agreed to perform the necessary tests.

Angelman Syndrome is diagnosed by a blood test to determine if there is an abnormality on the fifteenth chromosome; however, in order for this test to be effective, doctors have to know what they are looking for. In this case, they would be trying to prove that a patient who exhibits the aforementioned characteristics has Angelman Syndrome. This is how my sister was diagnosed.

I am not sure one can say there is a “prognosis” for Angelman Syndrome patients; they will have the disorder for the rest of their lives, but they have a normal life span and they are not any more susceptible to diseases just because they have it. The only complications and restrictions people will have are those that the disorder creates; they will not be able to talk nor in some cases to walk, and they may have trouble sleeping due to hyperactivity. People may be treated for their seizures with medication, but Angelman Syndrome itself has no “cure.”

During the time my parents were searching for answers to Gabbi’s medical issues, they had my sister Andrea, or as we call her, Andi. At the time, Gabbi’s prognosis was not known. People asked my parents why they would risk having another disabled child. While they knew they were taking a risk, they also knew they wanted more children. They loved Gabbi despite her unknown illness and they were open and willing to love Andi, even if she, too, were handicapped. By the time I was born, my parents knew Gabbi had Angelman Syndrome and they knew Andi did not. Casually, in conversation one day, my parents mentioned that they had me for two basic reasons: so Andi would have a playmate, and so she would have another sibling to help her care for Gabbi in the future. I guess that makes me my sisters’ keeper in a way. I have accepted this role; I suppose if one is born into a position of caregiving, it is easier to accept than if one falls into it later in life.

I accepted the role of playmate more willingly than my sister Andi accepted it! There is a very funny photograph of the two of us that my mother took right after I was brought home from the hospital; I am content lying in Andi’s lap and she is less than content with my being there. She grew out of that quickly though, and since Gabbi is not discriminating in her playmates, the three of us quickly became very close. We are each two years apart, so there was a period of time when all three of us were being fed in highchairs; of course, Gabbi would always be fed by someone. There are photos of a small conga-line of little girls crawling through the living room: baby Lauren with my jet black hair in the front, little toddler Andi with her blonde pigtails, and big sister Gabbi with her taupe bob as the caboose. People were always surprised at how much we three looked alike, although our coloring was so very different.

As we got older, Andi and I became much closer and we had a more difficult time relating to Gabbi. We still loved her, but we played together in the backyard while my mom or dad stayed with Gabbi inside. Games came more in the two-person variety than in the three, because Gabbi simply could not do the things we could.

I have written essays in the past about Gabbi, and in every one I have said that I do not feel as though I missed out on anything in my childhood due to her disabilities. That is not true. My family never went on vacations like other families. Any family outings needed to be planned weeks in advance. There was a long checklist, which included whether or not a place was wheelchair accessible; if we would be stopping to eat and whether or not the timing would fit with a rigid medication schedule; whether it would be too hot for my sister or too cold; whether or not my father could get a day off from work so he could carry her downstairs out of the house and back up the stairs when we returned home. Family vacations were often limited to day trips to and from doctors' offices on a weekday afternoon in the summer. School functions yielded a meagre attendance on the part of my family. Someone would always be there to show their support when I participated in a school play or an award ceremony, but while other students brought the whole family—including Great Aunt Tilly in her Sunday best and Derby hat—I would get quieter support from Andi and either my mom or dad, while the other stayed at home with Gabbi. When Gabbi was able to attend these functions, the rigmarole of getting her out of the house would take place. Going out with my friends revolved around someone else's schedule; my plans depended on whether or not I would have a ride or whether or not I needed to be home to help take care of Gabbi.

Looking back it seems like there were so many missed opportunities, and I remember the times when I felt resentful or upset because I couldn't do what every other child could do. But I was blessed in ways other children were not. I remember those "day trips" to Gabbi's doctors. Mom and Dad would be with her in the office, and Andi and I would be alone in the waiting room. Somehow, we would always wind up in fits of giggles, silently doing something we thought rebellious while appearing well behaved to the receptionist. (Often we would rearrange the pamphlets on the coffee tables, but we made sure they were in neat piles; to those not privy to our joke nothing would seem awry, but we knew the truth: "How to Cope with Your Diagnosis" was originally on the left, not next to "How to Prepare for an EEG"!)

Moreover, those busy days always ended with us eating out at a restaurant where, invariably, I could order a molten chocolate lava cake for dessert. School functions, though my family wasn't the largest in attendance, always felt extra special to me. I knew that having two members of my family present meant more than twelve of another child's family because it was harder for mine to get there. When Gabbi came, that pride magnified because it took even more effort. Plus, since Gabbi was in a wheelchair, my family always sat up front at these events. As for going out with my friends, I still

have to be considerate when making plans to ensure someone will always be home to assist with taking care of Gabbi, but now I appreciate this. I never have to think of an excuse when everyone wants to go out on a Friday night and all I want to do is curl up with a good book; I tell them I have to stay with my sister that evening, and Gabbi laughs, along with my parents, when I attempt to read to them from some literary tome none of us understands.

I have always known that one day I, along with Andi, would be responsible for my eldest sister's care. This is where things get foggy. My parents still insist that we should have our own futures; we should finish school, get good, fulfilling jobs, find nice men, get married, and start families of our own. Andi is certain that she will do this. She recently graduated from college with a degree in psychology. She is working in a program helping mentally and physically disabled persons learn life skills and find jobs. Plus, she is dating a wonderful young man.

I am different. I was diagnosed with a panic disorder and agoraphobia when I was sixteen years old, although my parents and I are certain that I have had both since I was a child. When I was a little girl, I cried whenever my mother would leave the house to run errands, and she thought maybe it was just separation anxiety. It went beyond that though. I hardly ever wanted to leave home and often would get sick when my parents took me to restaurants, the park, the movies, the store, or pretty much anywhere else. Starting kindergarten was a nightmare. I would get sick every day before school, without fail. It got to the point where my mother sent me to school with a change of clothes just in case (and a stuffed animal to comfort me while I was away from home). This continued for two years, but then I was okay to go to school and my parents believed I had grown out of it. I would still have occasional episodes of anxiety when I was out somewhere, but I kept them hidden. I stopped saying I was having them because other people were okay to be out and about, and I was embarrassed and scared that I was different. Only my mother knew the truth, and that was that I hated to go places. I never went to my friends' birthday parties, especially not sleepovers, or to the mall, the movies, or anywhere else with them; guiltily, my mother and I would come up with various reasons why I couldn't attend because it was easier than explaining that I was too afraid.

Then, in high school, I started to have terrible panic attacks, seemingly without cause. I would have dozens in a day, beginning as soon as I woke up in the morning. They wouldn't even end at night; sometimes I would wake up from a sound sleep having one. I missed nearly thirty days of school my junior year, and at least another thirty I spent either in the nurse's office or leaving school early because of my anxiety.

Again, my parents had to bring a daughter to doctor after doctor. I went to a neurologist who, because of my dizziness and headaches, said it was migraines. He put me on a medication that made me zombie-like, so we stopped that and tried an endocrinologist. She said that many of my symptoms—loss of appetite, weight loss, headaches, upset stomach, feeling warm constantly, dizziness, and even the panic attacks—were classic signs of hyperthyroidism; however tests revealed I was predisposed to *hypothyroidism*. She suggested that something else was causing my anxiety and recommended I see another doctor. At this point my mother decided we should try a psychiatrist. He asked me pointed questions about when and where I felt anxious, and asked my mother about my history of anxiety. He diagnosed me with a panic disorder and agoraphobia and gave me a mild medication. While the medication does not prevent all panic attacks, it helps with what the doctor called “anticipatory anxiety,” which is the constant worrying about having a panic attack, thus creating continual anxiety which causes a panic attack. It seems to have helped for the past five years. Although I know that it is not only the medication, but the continual love from my family, unselfish acceptance from my friends, and unflinching support from my teachers, then and now, which helps me to cope with my anxiety.

I am not ambitious. Maybe I could blame that on my diagnosis. Or I could just say I am lazy. Maybe it is a combination of both. I am still in university; I will graduate next spring with a bachelor’s degree in history. I do not have a job, and most of the careers I am looking to pursue in the future require more schooling, which I probably will not be able to afford for quite some time. I have no boyfriend; I never have had one. My mother thinks that I am too picky, but I think it has more to do with my outlook on the future. I know that I will be responsible for Gabbi someday. Andi does, too, but she is more ambitious and she is more optimistic. She is determined to have a career, a family, and to take care of our sister, and she knows she will do it. I do not think that way. The way I see it, why would anyone want to marry me, knowing that I am a package deal? How can I have a job during the day, and take care of a family *and* Gabbi? I joke that Gabbi and I will live in Andi’s basement. I can take care of her during the day, and then Andi can take care of her at night; I will become the night watchman at a museum, like Ben Stiller in that movie where all the exhibits come to life. You see, jokes are easy. Then, I do not have to think about what will really happen in the future. I do not have to think about whether or not life will be difficult. Then, everything will be okay. I want to be an archivist. It sounds silly to some, but the idea of being surrounded by items and documents from the past, all with their own stories—some mysterious, some melancholy, some inspirational, some joyful, some

completely uneventful, even boring, yet all personal—seems so exhilarating to me. I have always loved reading old documents such as censuses, news articles, oral history interviews, and both personal and non-personal correspondence, as well as looking at old photographs. Maybe even this fascination with history is a way to keep myself from thinking about the future.

I decided to be candid when writing this article, so, to my chagrin, I will honestly say that I do not like thinking about the future. I would much rather think about what is happening now, otherwise I begin to worry. I do not know what the future holds, but I do know one thing, which I discovered at a school reunion last week.

It was a small gathering the nuns were having at my high school. Since my graduation a few years ago, the school has had to shut down due to insufficient funding. The building, however, has not sold yet, and the sisters wanted to have a last get-together before they have to move out of the convent. During this dinner and retreat, we did a small activity designed to show what was important to us. We were given a sheet of paper with a drawing on it of a heart made up of puzzle pieces. Three puzzle pieces held the names of the people about whom we cared most; I cheated and wrote “Mom and Dad” in one piece, and then put my sisters’ names in the other two. Three pieces were activities we enjoyed, so I wrote sleeping, reading, and spending time with my family. Two pieces held positive characteristics about myself; I refrained from writing “gorgeous” and “hilarious,” and instead wrote “compassionate” and “caring.” The last two pieces held our hopes, dreams, aspirations, wishes—anything we truly wanted. In these pieces I wrote that I never wanted to lose my loved ones and that in the future everything would be okay.

Then, we were supposed to pretend we were on a trip to Prague (actually, it was a trip *anywhere* we really wanted to go, and I just so happened to choose Prague), and to start crossing out puzzle pieces because we had to trade the pieces for plane tickets, lodging in a hotel, directions to attractions, and other things! Well, if I had known going to Prague would cost all of these things I cared about, I would have told the nun conducting the activity that I did not want to go! But, the activity would supposedly tell us what our priorities are. It was a way of quick discernment, less thorough than prayer and meditation, but a start. I was a bit afraid to find out my priorities. (Was sleeping really that important to me? Why had I written that and why couldn’t I take it back now that I knew what kind of game this was?!)

Toward the end, I was left with three pieces—my parents and my two sisters. I had even crossed out “in the future everything will be okay” because

I figured if I still had my family, things *would* be okay. Then, sister told us to cross out a piece because we had to take a flight back home from Prague. Hesitantly, I crossed off the piece with my parents names on it. I justified this by telling myself that eventually I would not have my parents, but I would still have my sisters. Suddenly, she told us to give our paper to the person to our right so she could cross off a piece. I was more than reluctant, I was downright worried about having someone cross off my sisters' names. Metaphorically, they were all I had left in the world!

When I got my paper back, the only piece left was "Gabbi." I smiled to myself. Somehow, I knew that would be so. I do not doubt that during that seemingly meaningless activity, God was reminding me of the responsibility I have to my sister, but I also believe that He was letting me know that even if it does not seem as such on the surface, everything will be okay.

Researchers are looking into different types of gene therapy and genetic engineering to see if they can find a cure for Angelman Syndrome, but so far have come up with nothing. I question this though—why does my sister have to be cured? To this day, I do not think there is anything inherently wrong with her. It would be wonderful if she could walk, talk, feed herself, go to school, and have a career and family. But her quality of life is not bad; she has a family that loves her and takes care of her unconditionally. Why would I, or anyone, want to change her? I learned some of the most important life lessons from having Gabbi as a sister. I learned acceptance, patience, understanding, responsibility, and persistence long before my peers. While some may say my childhood was not exactly carefree or unburdened, they can never say it was not full of joy and love. I know I speak for everyone in my home when I say we are truly blessed to have such a special angel among us.

So, there it is: a happy childhood, an uncertain future, and we still have no idea what to get Gabbi for her birthday. Whatever it is, she will probably enjoy tearing the wrapping paper more than the actual gift anyway. And she gets so excited when we turn off the lights, light the candles on the cake, and sing during birthday parties. I'm not quite sure why she enjoys it so much, but she laughs and laughs! And for now, we will all be there laughing with her—my parents, my grandmother, Andi and her boyfriend, and me.

Happy birthday, Gabbi. I love you.

BOOKNOTES

BEYOND THE ABORTION WARS: A WAY FORWARD FOR A NEW GENERATION

Charles Camosy

(Wm. B. Eerdmans Publishing Co., 207 pp., 2015, \$22)

Review essay by Susannah Black

Recently, after a too-expensive trip to the Strand bookstore on 12th Street, I was making my way to the subway when I noticed a protest going on two blocks away in Union Square Park. This is standard: Union Square is one of New York City's unofficially designated places of public speech, like Speaker's Corner in London's Hyde Park.

Several men and women dressed in white shirts and pants—with red paint splashed on their crotches and down their legs—stood in a line, holding signs and passing a microphone so each could speak his or her mind. After a while, the voices sorted themselves out in a unified chant:

“Without this basic right, women can't be free. Abortion on demand and without apology.”

Apparently, I'd come towards the end of the protest, for pretty soon everyone started packing up. But some protestors remained, standing around in little groups talking and exchanging fliers. I lingered, too, swaying back and forth on the balls of my feet, eventually drifting into the orbit of two middle-aged women and a man—members of my parents' generation.

Irresolution must have been written on my face. One of the women—petite, short hair—noticed me and said, “You look like you're thinking you want to do more, that this isn't enough.”

“Well, I—at first I couldn't tell which side the protest was on,” I explained. “With the pants and the paint . . . I mean, it could've gone either way.”

“Yeah, some college students here earlier had the same reaction,” said the guy, who was gray-haired and good natured-looking. Under his arm he had a bundle of copies of *Revolution*, the newspaper of the Revolutionary Communist Party which, along with a group called Stop Patriarchy, had helped organize the protest. He and the other two were wearing RCP tee-shirts—the woman who hadn't spoken yet had beautiful white hair pulled into a relaxed chignon.

On its website, Stop Patriarchy warns that

Christian fascist woman-haters are violently hacking away at abortion rights and even birth control, slamming women backwards. Violent porn and rape culture is right now indoctrinating innocent young boys to become the next generation of rapists. Women are being killed by abusers and locked in cages when they defend themselves. Women and girls everywhere are being shamed, blamed, disrespected, hurt, belittled, and abused.

None of this will stop unless we—in our millions—put ourselves on the line to STOP IT. . . . Women are NOT: bitches, hos, punching bags, sex objects, or breeders. Women are FULL HUMAN BEINGS! Forced Motherhood is Female Enslavement. End Pornography and Patriarchy; The Enslavement and Degradation of Women!”

That’s what these three were doing: putting themselves on the line to stop what they perceived to be the most urgent of wrongs perpetrated against half the human race. It’s a worldview with which I’m pretty familiar; I remember at one time having similar thoughts.

“The thing is,” I explained to the RCP members, “—well, I’m pro-life, and I didn’t grow up that way, and I guess I was just kind of hoping to talk to some people, face to face, without the hostility that you get on the internet or whatever. I try not to get involved in internet debates about abortion because it gets so acrimonious . . . but I feel like we ought to be able to talk about this.”

I’d already committed to reviewing *Beyond the Abortion Wars* and the book was very much on my mind. This seemed like as good a case as any for testing Charles Camosy’s proposal for finding areas of agreement that might actually serve as the basis for a change in abortion law.

“What made you change your mind?” asked the short-haired woman.

“Well, it just seemed apparent to me that, you know, these were babies, and there wasn’t a significant moral difference between aborting them and killing them on the outside, you know? It was hard. I didn’t want to think that. Pretty much everyone I knew was pro-choice.”

“But,” said the man, “they’re not babies. They’re fetuses.”

“Well, let’s work backwards,” I said. “Is it okay to kill a baby when it’s five minutes old?”

“No,” said the short-haired woman, “because it’s becoming a person by that point.”

“It’s not already a person?”

Her companions were looking at her attentively, as if they didn’t know how she was going to answer.

“Well, the brain is still developing . . . but the brain develops really fast, it’s beginning to interact . . . but a newborn, there’s not much going on, you know?”

“So, do you agree with Peter Singer, then? He’s this ethicist who thinks

that babies don't become persons until they're able to choose, or are wanted, or something . . ."

There was a pause. "Oh, no, I don't believe that. You can't kill them after they're born," she said. Her friends looked relieved.

"But then why can you kill them before they are born? It's the same person. I mean, that was you, when you were inside your mom." I addressed the guy: "You were male, back then, you were a different gender from your mom."

"I was a fetus, and if my mom had decided she didn't want a baby, it would have been her right to abort me."

"Look, c'mon, you've seen ultrasounds—that's a baby. I'm telling you . . . I mean, just imagine for a second that I was right, that you agreed with me, that you thought these were babies. What would you think about abortion then?"

"It's not a question of belief," he said, "it's a question of science. Science says they're fetuses. Look," he went on, "this is a mind game. Being anti-abortion is not about babies, it's about controlling women—just listen to the way that some of these guys, like that head of Focus on the Family, talk. It's all a part of having women submit to men."

"I know a lot of people in the pro-life movement, and obviously I know myself best, and I know that's not why I care about this . . . if I didn't think they were babies, it wouldn't matter, all of your arguments would be valid. But—what if I'm right?"

They were done packing up and had to go. But not before we had introduced ourselves, and the woman with the long white hair, who had a gentle, pre-Parkinsonian tremor, gave me a hug.

Was that it? Was that getting beyond the abortion wars, as Camosy urges us to do, as he believes is possible?

I post-gamed our conversation, as one does: How do we get beyond the question of semantics? "A fetus is not a newborn," I imagined myself saying. "Fetus is a word like newborn or toddler or teenager or elder; it's a word that describes a developmental stage of a human being's life." But if someone doesn't understand this—it seems so obvious—how can we show them? We have astonishing technology. We have—good grief, we have 3-D ultrasound photos of "fetuses" sucking their thumbs; we have research affirming that born children recognize, and show preference for, voices and songs they first heard while in the womb . . . what else can we say?

I don't know. I'm baffled. I can only imagine how hard and frightening it must be to feel oneself, as a pro-choice person, pulled towards the inexorable reality of the pro-life position. It was hard enough when I was changing my

own mind, and I had no abortions in my past, no real entrenched history of pro-choice activism. To the people I met in Union Square, I would only say this: The relief that comes from accepting an unborn child as “one of us” is profound, and can heal a kind of alienation from oneself and from reality that one may not even have realized was there.

Camosy doesn’t focus primarily on convincing people that abortion is wrong. Rather, he attempts to show that the positions of many Americans are not as polarized, not as black-and-white, as they are often portrayed—and that, in general, the American public is more anti-abortion, more in favor of restrictions, than current laws reflect. It is also the case that most Americans—what Camosy calls “an overwhelming majority”—favor the right to abortion when a pregnancy is caused by rape or incest, and an even more overwhelming majority favor it when a woman’s life is in danger.

Camosy’s “way forward”—the book is subtitled “A Way Forward for a New Generation”—encompasses all of these points of agreement. In his last chapter, he describes how this agreement could be fashioned into a law he calls the Mother and Prenatal Child Protection Act, federal legislation that would restrict abortion almost completely, and provide, simultaneously, for a strong network of social services designed to support women and children.

Almost completely. Camosy makes an exception for cases where the life of the mother is threatened, which is fairly inarguable. He also makes—and this is what is most controversial about his proposal—an exception for rape, for which he offers a very shaky defense.

A woman who chooses to have sex, Camosy argues, by that gesture of her body—whether she intends to become pregnant or not—has uttered a morally relevant “Yes” to the possibility of new life. She has invited a child into her womb, an invitation that cannot be un-made. Whereas in a pregnancy issuing from rape, a woman has made no such bodily gesture of acceptance. It’s as if she had been violently kidnapped and made to provide a home in her womb for an alien creature sired by her attacker.

This argument in favor of a rape exception treads dangerously close to the notion that abortion is right or wrong based on how the mother got pregnant, which, for those of us who believe in the dignity, value, and personhood of the baby, is impossible to entertain. This isn’t the way Camosy thinks. Like the rest of us, he wants to stop the killing of babies, not punish women for getting pregnant. But does his argument for an abortion exception based on a woman’s not having said “Yes” with her body to new life stand up? I don’t think so.

He shores up—and limits—this rape exception by saying that the only morally acceptable “remedy” open to a woman who has been raped is RU-

486, the so-called “abortion pill,” which alters the hormones in the body of a woman whose embryo has already implanted, leading to a medication-induced abortion in pregnancies that are not far along. His reasoning here is deeply problematic; he makes use of a distinction between deliberate aggression against a fetus by performing a surgical abortion, and “refusing to aid” it by creating a hormonally hostile environment in which it can’t remain implanted and thus receive the nutrients it needs to continue to develop.

There may in fact be two problems: First, the ethical distinction involved in “refusal to help” seems very dubious, especially in the case of a person who is in a unique position to help and who has a special relationship towards the person who is the object of that help. Second, does RU-486 constitute “refusal to help” rather than direct aggression, in a way that surgical abortion doesn’t, really? How, exactly, would that distinction work? It’s not a surgical technique, but that seems like a very odd place to draw the line.

Even if we can’t support his rape exception, can the rest of Camosy’s approach in some way point a way forward? Absolutely. He vigorously calls progressives to account for neglecting unborn children, who, as a vulnerable population, should be natural subjects of concern to the modern progressive movement (and, Camosy would argue, to the Democratic Party); parts of this book could be rallying cries for a progressive pro-life platform. He likewise calls on pro-lifers to put political muscle behind extending care of the unborn to a holistic protection of, well, all humans, especially mothers and children.

He also throws in language to attract 18th-century-style liberals, rather oddly identifying as “civil rights” not being aborted (if you are a baby) and being supported in raising your child (if you are a mother). Our communities, he writes, must recognize

[the] full and equal value [of women and children,] and that means equal protection of the law on all levels. This is not only necessary for political equality but also to unleash the power of the law as moral teacher to push for full social equality as well (p.132).

The basic view of the human person Camosy propounds throughout his book, however, is the Christian one that sees man as a child of God, not as a ward of the state. This brings me to what I most love and most fear about this book.

Sometime after I started learning about the history of natural law thinking, I began to question the idea of “rights” as we speak of them today. My unease has sharpened over the years, but I’ve avoided saying much—because it feels profoundly dangerous to get away from speaking of a “right to life.” Indeed, if thinking about abortion can’t be formulated in terms of the “rights” of the baby, and if we can’t say that abortion is wrong because “my right to punch you in the nose ends where your nose begins,” then how can we say it is wrong at all?

It seems to me that the Union Square woman's belief that abortion was okay, and her implication that even infanticide might be okay, stem from a "capacities" model of what it means to be a person. To have rights, in this sense, means to have desires; to have and to be able to exercise a power of choosing; and to have a subjective self-awareness that is sufficiently developed to experience itself as having these rights. This way of thinking is associated with the Princeton University philosopher and defender of infanticide, Peter Singer.

At heart, Christians do not think it is wrong to kill because every human person has a secularly determined "right to life." They think it is wrong to kill because, being made in the image of God, every human person is sacred. Here is Camosy recounting Peter Singer's observations about Christianity:

. . . [before] Christianity started to dominate the Western world, we didn't believe that all human life was sacred. The only human lives that mattered had developed certain traits. Singer argues that rationality and self-awareness is what mattered to the ancient Greeks and Romans, which is why they permitted not only abortion but also infanticide. No prenatal child is rational and self-aware but neither is any newborn child. Neither of them was considered a person, notes Singer, until Christianity became the dominant cultural force in the West. And as our culture becomes more secular, we have seen a return to this way of thinking (p. 47).

It may be that there's a secular case to be made against abortion and infanticide on the basis of individual rights. But if I were secular and knew in my bones that these were wrong, I would hesitate—even as a secular person, I would hesitate—to embrace completely the Enlightenment based individual-rights discourse that much anti-abortion argumentation has relied on. If I were horrified by the Roman practice of exposure—the idea that a Roman father had the right of life and death over his newborn—I hope I would let that horror teach me something.

What might it teach me? For one thing, that rights are inherently combative: To speak of a woman's right to choose and a baby's right to life "pits," as Camosy says, "women against their own offspring in a way that is not only morally offensive but psychologically and politically destructive" (p. 116). It's a way of speaking that simply doesn't reflect the way we experience our lives when we are most fully ourselves, and that should make us suspicious.

But there's more. Rights-talk frames political society primarily as a space in which people assert their rights against a state that wants to take those rights away. That's the paradigmatic moment—when someone says to a political authority with a gun, "you have no right to make me stop talking, because I have a right to free speech," and the political authority is forced to acknowledge that the person is correct. All political and legal interactions, in

rights-world, boil down to this drama, in the way that in Freudian psychology all personal development boils down to the drama of the family romance.

Throughout *Beyond the Abortion Wars*, Camosy looks to the law as a teacher. Natural law never changes, but positive law, as many in the pro-life movement (particularly Hadley Arkes and Robert P. George) have emphasized, is a cultural product that shapes our minds, forms our desires. If (as Shelley told us) poets are the unacknowledged legislators of the world, we must also consider that legislators may be the world's unacknowledged poets who can move our hearts.

The law, however, has more to relate than a story about individual rights. Even if I were a secular person, I would know that we have moral duties that we do not choose, and that this is a good thing, a rich thing—it parallels our experience of being born into families we did not choose, of having bodies we did not make, and living on a planet whose fruitful soil we did not invent. The law, in speaking to these realities, can teach us about Right, not just rights: about the good writ large. Indeed, unless the law teaches about a larger, communal good, it will lose soon enough even its ability to teach about individual rights.

So what of Camosy's way forward? What his careful language does is point to what he believes to be a genuine political possibility. I want him to be right. But if, say, something akin to his Mother and Prenatal Child Protection Act were actually passed, I would then want to be sure that in shifting the balance towards a more Christian understanding of the wrong of abortion, we did not lose the crucial truth contained in the best instincts of the liberal tradition. "Persons are not things or objects," Camosy says, agreeing heartily with Kant, "with merely contingent value based on how we use them. Persons are beings with irreducible value that should not be used as mere objects. It is therefore wrong to radically reduce a person's dignity to a mere means to some other end, with killing a person being the most egregious example of this kind of reduction" (p. 60).

What we have to do is treasure this personalist truth, and treasure the parallel truth that these irreducibly valuable persons are, also, irreducibly communal, and are called into an eternal community. Because in the last analysis, that community is the only way forward.

—*Susannah Black is a writer and native New Yorker. She lives in Queens.*

Looking for Sister's Ghost

J. Antonio Juarez

Dedicated to Little Joe and all the other souls who were told they couldn't stay with us. Now they wait in peace till the Last Day, when they will ask us to explain why.

And to M.W.B, who said she wanted to "play chicken with anti-choice people," as well as Commander Bart Mancuso, who said, "The hard part about playing chicken is knowing when to flinch."

In the end, life always wins out—if not in this world, then in the next. For Life itself has already "overcome the world," and He doesn't flinch.

Tristan is a curious and energetic little boy who has come to the park with his mom and dad to play hide and go seek with his sister—if he can find her, if she will show herself. When they get there his mom puts in her ear buds and sits beside a tree to listen to some music to cheer herself up because she is tired and a little blue. She is often tired and blue, especially on this day each year, so she sits alone with her thoughts and listens to a song about flying away in the arms of an angel. Tristan's dad follows along as Tristan, in a hurry to find his sister, races ahead into the park.

Tristan runs over to a large tree where he sees a squirrel scampering along the ground and then up the trunk. He looks up at the squirrel where it has stopped about half-way and appears to be looking down at him.

He turns to his dad and asks, "Is that my sister?"

His father lays his hand gently on Tristan's shoulder and says, "Do you want it to be?"

"Maybe. She would be safe up there and it's so high up she could watch me play and run around."

A small group of kids are playing near the tree. They are laughing and rolling around in the autumn leaves. One of them, a young boy, notices Tristan and walks over to see what he's looking at.

"What do you see up there?"

"I'm looking for my sister, she's a ghost and she's hiding from me."

The young boy looks up into the tree and sees the squirrel. He turns back to Tristan and with a compassionate voice says, "She's a ghost? I'm sorry to hear that."

Tristan stares up at the squirrel as he continues, "She used to live with us, inside my mom, but she couldn't stay with us."

J. Antonio Juarez, the father of five children, is a freelance writer who lives in the St. Paul area in Minnesota. This story, his first published work, was inspired by his reaction to the self-described pro-choice children's book, *Sister Apple, Sister Pig*, written in 2014 by Mary Walling Blackburn, and available online for free on the publishing platform e-flux.

The rest of the kids, two boys and two girls, stop playing and come over to Tristan and the boy so they can hear what he is saying.

“If she did, mommy would be tired and unhappy or even get mad because my sister and I would be too noisy and wild for her, maybe we would even fight.”

The kids listen to Tristan’s words, looking at both him and the squirrel, but they are a little unsure of what he’s talking about. The oldest of them, a boy about 14, replies:

“Well, we’re kids, that’s what we’re supposed to be like, sometimes at least. Well, okay, maybe most of the time, but when we get too loud at home our parents just tell us to go read or clean our rooms. If we get into a fight with one of our brothers or sisters, like Avigail and Joshua are always doing, we can just go play with one of the others till we make up.”

Tristan is only half listening as he gazes intently up at the squirrel. The squirrel notices him and scurries off into the top branches and out of sight. Tristan turns to his dad and says, “I don’t think that squirrel is my sister, I think she would be the kind of ghost who would come to me when I wanted to play.”

His dad ruffles his hair and says, “Maybe she was too busy to play right now. There’s so much to do here, so why don’t we keep looking.”

The two of them wander off further into the park as the kids shrug their shoulders and go back to playing in the leaves. All except the 12-year-old, a girl, who waves a leaf at them as she calls out, “May your sister’s memory be a blessing to you.”

Tristan continues walking until he sees a lake at the bottom of a hill, so he heads in that direction. He comes upon some more kids with their parents watching nearby. He walks over to the edge of the water and his dad says, “Not too close, Tristan, you don’t know how to swim yet.”

There are two older boys with fishing poles, and two younger girls who are watching over a smaller boy and girl playing in the water. The smallest boy comes over to Tristan and smiles.

“Hi, I’m Tristan. I’m looking for my sister.”

One of the older girls replies, “That’s Kong, he’s four years old. He doesn’t talk much but he’s just saying hi.”

The other girl asks, “Did you lose your sister? Where did she go? What does she look like?”

“She looks like me,” Tristan replies, “but you can’t see her. She used to live inside my mom but mommy was afraid she couldn’t buy enough food for us, so my sister had to leave. Now mommy says she’s a ghost, but a happy one!”

The older girls and boys look at each other uneasily. Finally one of the older boys says, "Well, we grow most of our own food and raise some pigs on our farm, plus we love to fish! So our parents don't spend much on food."

Tristan starts eyeing some fish swimming in the water and says, "So do we. We grow kale and lots of other veggies and we have apple trees and some pigs too."

The oldest girl looks puzzled and asks, "Then what's the problem? There are six of us and we all have enough to eat, so why would your mom and dad not be able to feed only two of you?"

The oldest boy reels in his line and turns to Tristan. "Hey, kid, it's like this, you only got one mouth to eat with but two hands to make and do stuff. One hand is for yourself and the other is to help others out. That's what a family is all about."

Again Tristan is only half listening as he spots a big fish and starts to step into the water for a closer look. His dad reminds him, "Be careful, you can't swim."

One of the girls points to the two kids in the water and says, "Neither can Kong or Boua, but that's why we're here, to watch over them because we can. We can watch Tristan too."

Tristan stares at the fish and asks, "Is that my sister?" as he wades a step or two into the water.

Kong holds out his hand to steady Tristan, but his dad comes over and picks him up. "I don't think your mom would like you getting all wet. Besides, you don't want that fish to be your sister. Someone might catch her and eat her."

As Tristan is carried away by his dad, the oldest boy says to the others, "I'm thinking his sister's ghost isn't all that happy. They sent her away before and now they don't even know where she is. I'm guessing she's pretty lonely."

After a bit Tristan's dad puts him down so he can run around again. Tristan spots some wooden play sets at the far end of the park and runs toward them. There he sees a bunch of kids all racing around and climbing on the play sets and shouting out to one another. Some of them are dressed in costumes and carry various toy weapons: swords, bows, spears, and one boy even has a quarterstaff. They look like they are having a lot of fun as they shoot or club various stuffed monsters that they have set up around the play area.

Tristan approaches this joyful jumble of heroic-acting kids and looks around. A boy comes over and says, "Hi, I'm Basil, do you want to play with us?"

Tristan looks around and tells him, "I'm looking for my sister, she's a ghost, and she's playing hide and go seek with me."

“Well, we’re playing *The Princess and the Goblin*, at least our version of it. The goblins have just overrun the castle and are looking for Princess Irene. You can be one of the castle guards if you want.”

Tristan replies, “I don’t know the story.”

Basil pokes his wooden sword at one of the stuffed monsters. “That’s okay, all you have to do is chop at the goblins’ feet. I’ll get you a weapon to use.”

The kids on the play set stop playing and look down at the two of them as Basil hands Tristan a wooden battle-axe. A small girl pokes her head over the top of a wall and says, “What’s going on, are you guys still playing? You’re not gonna let the goblins get me are you?”

Tristan looks up at the girl and asks, “Who’s that?”

Basil nods at her and replies, “That’s our sister Lily, she’s playing Princess Irene.”

Tristan squints at her and says, “What’s wrong with her, why does her face look so funny?”

The other kids stop what they are doing, and stare at Tristan with their eyes and mouths wide open. A girl who is holding a bow hops down next to Tristan and looks him over.

“That’s not a very nice thing to say. There’s nothing **WRONG** with her, she’s a Down girl and has special needs, that’s all, and as you may have noticed since we aren’t laughing at her, we don’t think there’s anything funny about that.”

Although it is obvious from his expression that he has no clue what the girl is talking about, Tristan nevertheless exclaims, “Special needs? That sounds like a lot of work. That’s why my sister doesn’t live with us. She used to live inside my mom but mommy knew that if she kept her, she wouldn’t have enough time to do things with me like reading or playing. So she sent her away.”

The kids continue to bore a hole into Tristan with their eyes as they hear him say this. Lily descends from her position by the top of the wall and comes over to look at Tristan. She smiles and waves but says nothing.

Tristan looks at all the other kids and says, “I like to play with my sister too. She is the kind of ghost who likes to have fun and she will come and play with me when I call to her.”

One of the girls asks him, “So your sister will come when you call?”

Tristan swells with pride. “Of course, she’s my sister.”

The boy with the quarterstaff gives Tristan a knowing smile and asks, “Okay, then what’s her name?”

Tristan’s own smile slowly fades as he searches for something to say, but

can't quite seem to find the right words. Finally he mutters, "I don't know . . . I mean . . . well . . . my dad says there are many good reasons for me not to have a sister right now. Someday I might get another one when my mom and dad have more time and money."

One of the other girls says, "Well, our parents only needed one reason to keep Lily or any of us and that's because we're a family. And loving her is free, you know, like the grace of God. So playing with her doesn't cost anything."

Tristan asks, "You are all her brothers and sisters? All seven of you?"

A boy with a plastic sword who'd been listening to Tristan snapped back, "All eight! We try not to lose track of each other."

Tristan looks at all of them. Lily is still smiling, but the others, who are standing behind her, glare grimly at him. He begins to feel a little uncomfortable.

The oldest girl, who is about 12, finally speaks up: "I think we'll go play somewhere else. All those in favor of a new game that includes a good story with Lily in it, raise your hand."

The kids all raise their hands.

"All those who want to include this kid's sad story in that game, raise your hand."

Not a single hand rises.

Now Tristan's dad comes forward and grabs him by the hand. "Well, I think it's time to go, your mom will be wondering where we are. Bye-bye kids, you all look so nice with your toys and monsters and all. Maybe we will meet up again some time. Maybe."

He leads Tristan away and as they walk back to where his mom is sitting, Tristan spies a small furry animal lying on the ground. He starts to say, "Is that my sis . . . ?"

But his dad cuts him off, saying "Hush Tristan, your sister's fine, don't look at that. We have to find your mom and leave!"

Just then a crow flies down, stands over the unmoving animal, and begins to peck at it.

Tristan and his parents leave that day and never return to that park. But every time his mom and dad drive by it, Tristan looks longingly out the window and tries to see if he can spot the kids he met. He never does, so he just settles back into his seat. The space next to him remains empty. And it will always remain empty, because no matter how many parks Tristan visits and no matter how hard he tries, he still can't find his sister's ghost.

Dignity, Dystopia, and the Meaning of Marriage

Michael Tenaglia

Part One

Prologue

A while ago I had the pleasure of taking one of our younger family members to a party at the home of a girl she knew from school. I had some notice that the girl's family was not a "traditional family structure" as we, with our orthodox Christian sensibilities, would see it. Despite this, I was glad for the opportunity to see this diversity in the backgrounds of her friends, and perhaps glad even for the healthy challenge it posed for our preconceptions.

And a challenge it is. There was no denying that her friend is a well-brought-up young lady, ensconced in a loving family. Seeing the care and concern showered on her, it struck me how insensitive and wrong it would be to form public policy in a way that demeaned their experience, or tried to belittle the strength of their affection. Was there something wrong in my belief that, loving as this family was, it would be problematic to recognize it in law on a par with the traditional concept of a marriage as a union uniquely between a man and a woman?

Moreover, deep down, I could not truly assure myself that my concerns about the *civil* status of such arrangements were not heavily influenced by my *religious* convictions on the nature of marriage. As much as I understand and internalize personally the profound nuptial meaning of marriage in Christian theology, and the unique manifestation of it in the one-flesh, one man-one woman union that has historically underpinned marriage in the Western world, this understanding has not always reigned unchallenged. Whether we look at practice in the ancient world, or at the latest trends of today, family structures like this girl's have been recognized, informally if not formally, at various times. "One man and one woman" has not always been the case, and isn't always the case now, yet the sky has not fallen.

Thinking further on the manifest strengths of this family, though, I also saw that many of them did not necessarily depend on, or necessitate co-opting, the traditional definition of marriage. The ability to unite people in larger bonds of association, promoting mutual reliance, care, and concern, is

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a hallmark not only of traditional marriage, but of more general bonds of kinship, even of friendship. Aristotle viewed true friendship as a higher form of *agape* than marriage. Now, Aristotle did not embrace the full meaning of marriage in its spiritual dimension, and indeed his praise of perfect friendship over marriage reflected some downright misogynistic overtones in his undervaluing of the male-female relationship.¹ Yet these failings do not detract from his fundamental point that friendship may be a very undervalued concept. Likewise with kinship. I recalled my own experience growing up of having a close-knit extended family. This included a grandfather and two unmarried aunts who formed a household characterized by great love and concern. To see the way my aunts cared for my grandfather in his old age, or to have the certainty, which I did, that if anything had ever happened to my own parents, this same household would have raised and cared for me with all the love it could muster, made me realize that they, like the untraditional family of my daughter's friend, deserved support and recognition in some way.

Would it demean them to deny them the status of marriage? Only, it seemed, if one took a supremacist view of marriage that deemed it, not only *contra* Aristotle, but *contra* common sense, as the only praiseworthy human relationship. Bonds of kinship, such as elderly siblings caring for each other, or extended families, or even bonds of friendship, are all special in their own way. It does not demean them to say that they are different in form from procreative marriage; it rather just states a biological fact.

Yet this girl's family also contained biological bonds. Why should it be the case that all parents, or members of a recognized "marriage," have to have biological bonds to all the children of that marriage? Certainly many excellent parents have none—one need only look at the many adoptions where children are blessed to find families with *no* biological connection to them. In families like this girl's, the non-biological parents play an important role in the overall upbringing of the children—perhaps more attention, help, and love, from wherever it comes, is always better. And most importantly, if it is really all about the children, as defenders of traditional marriage claim it is, then shouldn't this girl be entitled to have her family honored as any traditional family would be, with access to civil marriage? Doesn't the failure to provide such access serve only to shame and humiliate this girl and thousands like her?

Thinking about this girl's caring family, I realized that as much as we should want to honor it, and honor all the other forms of committed, caring relationships, it is simply not true to call them *the same* as traditional marriage. Only traditional marriage reflects the truth of our human person that we are created through the unique relationship between a man and a woman.

Marriage—at least for the last couple of millennia in the Western world—has been about confirming, as far as possible, through legal and social standing, the biological fact that brought us into existence as people. That fact is the hopefully loving but in any event unavoidably sexual and complementary union of one man and one woman. Humans are begotten by humans, not produced; marriage cements the linkage of that begetting process to its human roots and protects against the alienation of procreation from its biological basis in a one-man-one-woman union.

Talk of the “meaning” of marriage can of course have more than a passing whiff of the theological, raising the concern that it is not something that in our pluralistic societies should be legislated, or perhaps even can be *constitutionally* legislated. But the fact that there are developed religious views that place theological importance on one-man-one-woman marriage does not therefore rule out analogous secular concerns, any more than the fact that the explicitly religious framework of Martin Luther King’s *Letter from Birmingham Jail* somehow delegitimizes the secular rationale for racial equality. As in the case of the struggle for racial equality, the insights and wisdom of various religious world views, like any philosophical system, can illuminate and undergird secular conclusions. This came to seem, more and more, to be the case with this girl’s family: Though it should clearly be honored and given some civil protections to support the evident bonds of solidarity they shared, changing the concept of marriage—and it would be a change—to include this structure would move marriage beyond the biological reality that it takes one man and one woman to bring forth new life. Its introduction of other parties extrinsic to the creation of that child into the heart of the marriage would unavoidably undercut the ability of that child to see as a unique intimacy that act that caused her coming into being. The act of her creation becomes something not unique and special to her own mother and father. Among the consequences that flow from that are the weakening of the biological bonds not only between generations, but also among siblings, as that unity one otherwise shares with a sibling—this brother or sister of mine shares the same flesh and blood; this is someone who has the same mother and father I do—becomes impossible. As do broader kinship bonds, which play a vital anthropological role in society.

Of course, even in religious terms, the spiritual bonds of parenthood may be present even absent a biological connection—and we can see this where those in a marriage open their family to children who are orphaned, or the victims of abusive households. But one can value and honor these situations of spiritual parenthood—grace-filled responses to particular tragic situations—without going to the extreme of an almost Manichean rejection

of the general norm of biological parenthood. Rejecting as irrational even a general, symbolic preference for such biological norms would have profound consequences indeed for our society, including the premise of our laws that, for custodial rights and much else, biological links are at least relevant to a parent-child relationship.

Yet, in the last few years we have moved to a point where an article in *Time* prominently features family structures like that of my daughter's friend, and suggests that their historic disfavor is on the cusp of breaking down. I found myself feeling both a real desire to honor this type of family with protection against unreasonable discrimination, yet also a real concern that its complete recognition throughout the United States and the West as *identical* to traditional marriage, and the elimination of any special solicitude for one-man-one-woman marriage, would carry negative consequences for society. Certainly, it would be shameful to subject family members like this girl's to discrimination in the workplace, in the military, in the broader culture. Yet, if marriage itself were redefined to include this kind of family, at the risk of invoking the proverbial slippery slope, how could one deny marriage to other forms of association: to extended family members taking care of each other, to committed groups of friends, perhaps with children, and ultimately to such a variety of broad but caring associations that "marriage" loses its distinct meaning? And in another matter of particular political resonance today, how could one then justify denying marriage to the many loving, committed, and monogamous same-sex couples that have children by adoption or technological means?

Oh, yes: The *Time* story is from August 6, 2012 (not the cover story of April 8, 2013), the girl's family was from a Middle Eastern country, and the family structure in question, very much alive today, is polygamy.

I. Summary

The recent Supreme Court oral argument in *Obergefell v. Hodges* signals the approach of a long-awaited climax to the constitutional litigation around same-sex marriage (SSM). This showdown, anticipated in the summer of 2013 with the *Hollingsworth v. Perry* case, but deferred, is now coming to an expected conclusion in a matter of days. Despite the undeniable electoral and popular opinion gains for SSM in the U.S., and its advance in Europe almost exclusively by legislation—or even, by Ireland's recent dramatic example, by popular referendum—it is this *constitutional litigation* that SSM proponents in the United States are relying on to redefine marriage. As anticipated, oral argument revealed that Anthony Kennedy will likely be the decisive vote on the question of whether the federal Constitution requires all

states to redefine marriage to include same-sex couples. Oral argument also crystalized what two of the core themes are in the deliberation of this issue: (1) whether laws limiting marriage to a man and a woman can be consistent with the dignity interests of same-sex couples and the not-insignificant number of children that are raised by them, and (2) whether there is a rational basis for such laws, i.e., whether they plausibly serve any valid government interest, rather than just being designed to harm gays. These are indeed right questions to ask. Any law motivated by a “bare desire to harm” a particular group, whatever the constitutional complexities of the appropriate standard of review, should come with a heavy presumption against it as both a policy and moral matter. And a law that can be seen to serve *no* valid purpose, but which has a discriminatory effect on a class of persons, similarly must be viewed with suspicion. While these are the right questions, however, the oral argument on April 28 revealed that the answers to these questions are quite different from the ones that the dominant media narrative would suggest. None of the lawyers for SSM could effectively explain, despite repeated questioning, how traditional marriage laws impair the dignity of same-sex couples *in a way distinct from that of many other groups that could reasonably lay claim to having an association built on mutual care and support*. Likewise, they were unable to establish any plausible rationales for why, should marriage be *constitutionally required* to be extended to same-sex couples, it shouldn’t be further extended far more broadly. SSM advocates, and many federal judges, are fond of asking: “How does gay marriage harm your heterosexual marriage?,” often as if the question were rhetorical and the answer obvious. Yet as became clear in oral argument, that question proves either too little or too much. One can just as easily ask, “How does polygamy harm your monogamous marriage?”—yet this does not constitute (or at least SSM advocates are not prepared to publicly admit *today* that it constitutes) an argument for the constitutional right to polygamous marriage. More fundamentally, this question, by focusing on the “trees” (the impacts of SSM on particular heterosexual marriages) rather misses the “forest” (the broader social and anthropological impact of severing marriage and procreation in the collective consciousness).

Conversely, the lawyers defending traditional state marriage laws asserted a rationale for their limitation to one man and one woman, one that was by no means “proven,” and one open to significant debate, but hardly an *irrational* one: that over time, and over the general population, if the paradigm of marriage were changed from having some connection to biological procreation to having most emphatically none (and no clearer way could be thought to do this than to expand marriage to a grouping that by its nature

has *no* capability for biological procreation), then marriage would cease to be seen as a necessary concomitant of procreation and child rearing. The ascendance of a new paradigm, seeing marriage as a support structure and badge for a primarily personal emotional/romantic relationship rather than an intergenerational and social bond, would further distance marriage from the symbolic meaning it retains, thus contributing to the ills already wrought by changes like no-fault divorce. This is true *not* because of any lesser fidelity those in a SSM would have to each other, or any lesser devotion to raising children, any more than concern over similar risks posed by authorizing polygamous marriages would infer the lesser devotion of those in such arrangements. Rather, the risks are occasioned by the paradigm shift under which marriage becomes an ever broader arrangement that it is irrational to think of as necessarily linked to raising the children uniquely begotten by the marriage partners.

The oral argument was intriguing for at times suggesting that not only Justice Kennedy but perhaps also Chief Justice Roberts and Justice Breyer were struggling with the tension between the demand of dignity for same-sex couples and the lack of a clear mandate to undertake, outside the democratic process, so sweeping a change in the definition of marriage: one that has obtained, in the phrasing of several Justices, for “millennia.” Such a redefinition by judicial fiat would indeed be a bold step, and as such, would have to be based on the conclusions both that traditional marriage, as we have understood it, *necessarily* diminishes the dignity of same-sex couples as a group, and that the limitation of marriage to one man and one woman is not reasonably related to *any* legitimate government interest. Not only is neither conclusion justified; as will be shown, the consequences of such a *constitutional* redefinition would hardly be limited to the rights of a relatively small number of gays wishing to marry. Rather, the logic of such a redefinition would progress to change the fundamental role and structure of the family in society—something the most candid SSM advocates admit and indeed urge. Moreover, of concern to readers of this journal, such a redefinition would also ultimately change our society’s understanding of human life. This far-reaching impact of SSM was more honestly engaged in the debates around passage of SSM in France, where opposition to that law involved, besides the traditional religious and conservative elements, significant elements of the Left, often concerned (invoking the anthropology of Claude Levy-Strauss) that obliterating the common biological inheritance of a mother and father would undercut the universalism of French democracy and ultimately humanity.² As we shall see, the soothing reassurances that SSM can’t possibly do anything to opposite-sex marriages, or to the broader society, are undercut

by even the most cursory reading of leading SSM activists and sympathetic officials, let alone by the already growing track record of *actual* harassment and suppression of religious adoption agencies, among others.

Indeed, although counsel defending traditional marriage rightly invoked the valid state interest of maximizing the chance that a child will be born to and raised by his wedded biological parents, if anything they failed to fully describe the social ramifications of a fundamental shift away from biological parenting as at least the paradigm of family: a dystopian future where commercial surrogacy, with the confusion and economic exploitation that accompanies it, is a fully normative means of reproduction; an accelerated attenuation of the social value and legal protection afforded the bonds of motherhood and fatherhood; and most ominously, *an unavoidably aggrandized role for the government* in determining the structure of the family, including parental rights that will be increasingly seen neither as “natural” nor even as presumptively correlated with biological relations, but as totally redefinable however the law chooses. Avoiding this descent into dystopia by retaining the normative ideal of biological reproduction as at least a symbolic aspect of marriage, especially when added to more immediate benefits for children in the present, is hardly an irrational basis for traditional marriage laws. Moreover, neither is such a descent required to duly recognize the legitimate dignity interests of gays or children being raised by them. It is certainly not so required *any more than* it would be required to protect the dignity interest of children being raised lovingly in polygamous or polyandrous marriages, or by extended family or other broader associations. Instead, a grand compromise can be envisioned where all of these legitimate concerns are addressed. And perhaps a plausible constitutional framework for that compromise might be found in a—to some—surprising place: Justice Kennedy’s opinion in *United States v. Windsor*.

While his opinion has been criticized by many as vague (even “legal argle barge” by certain highly critical dissenting Justices), a charitable reading of *Windsor* reveals a more nuanced approach that considers both the dignity interests of gays and the children being raised by them, as well as the federalism interests in protecting the states’ traditional prerogatives in defining marriage. There is nothing in *Windsor* specifically dismissing the legitimacy of a state’s interest in protecting biological procreation and child rearing through marriage law. But, as *Windsor* correctly held, Congress has no constitutional business substituting its judgment on such matters, which are reserved to the states. The state can balance the interests of gays and its legitimate interest in preserving biological families and be entitled to constitutional deference, *because it has the retained sovereignty to assert*

such preservation as a state interest; by contrast Congress has *no* federal interest in preserving certain family structures, and certainly no constitutional authority to actively oppose an interest that a state has articulated, leaving its attempt to do so more vulnerable to a suspicion of animus. Moreover, there is no inconsistency between the “dignity prong” and “federalism prong” of *Windsor*; they work together to provide a balancing test. Correctly interpreted, *Windsor*, while prohibiting Congress from imposing burdens on SSM for its own policy reasons, should allow states to continue to limit marriage by the traditional definition of a man and a woman. Yet even here, the dignity prong of *Windsor* has meaning, for only in protecting a valid interest like preserving biological marriage does the state have the authority to distinguish among classes of people in a way that prejudices them. If other measures would serve the dignity interests at stake, such as civil unions and certain anti-discrimination provisions, and they would not impede the state interest in preserving biological parentage and marriage, these might well be, if not constitutionally required, at least so suggestive of a lack of animus as to be constitutionally relevant to upholding a traditional marriage scheme. It is along these lines that *Windsor* may offer an opportunity going forward for meaningful dialogue and compromise, suggesting a solution that protects the legal interests not only of same-sex couples but of all extended groups that put their lot together and perhaps raise children, while allowing the state to continue endorsing the special significance of traditional marriage and biological parenting. Indeed, dialogue along these lines could lead to *more inclusion* and *more diversity*, in the groups entitled to civil support as they live their shared lives together, than that offered by the approach advanced by the plaintiffs in *Obergefell*. Such diversity would be won not by stretching the definition of marriage to the breaking point, but rather by recognizing that marriage, while critical to protecting the place of biological procreation, need not monopolize *all* the state’s solicitude.

This reading of *Windsor* would most faithfully accommodate the interests at stake and our federal and democratic form of government. Yet, we have to be prepared for the possibility of a majority of the Court, and even *Windsor*’s author, in the coming days expanding *Windsor* to impose SSM as a constitutional right. Against that possibility, defenders of traditional marriage must prepare to extend the constitutional arguments for the rationality of traditional marriage to the political and also the cultural sphere, to explain to a new generation why traditional marriage most effectively reflects our humanity and resists the ever-growing commoditizing of that humanity, doing the job that should have been done better long ago. No better example of that kind of long campaign will be found, no better source of encouragement

both strategic and spiritual, than the efforts waged over four decades by many associated with this journal in defense of human life.

II. The Road to the Supreme Court

The Court's upcoming decision will rightly dominate analysis of the SSM debate for months and years to come. Yet even as the nation awaits that decision, it is still revealing to review the underlying political and judicial dynamics of how the SSM movement came to focus on a constitutional solution. Such a review reveals the unique standards applied by many federal judges to strike down traditional marriage law, suggesting a rush to judgment that was more politically motivated, more concerned to be "on the right side of history" than to follow established norms of constitutional interpretation. It also reveals what some of the implications of a final decision imposing SSM on all 50 states might be.

(1) The Dismissal of *Perry*

In *Hollingsworth v. Perry*, the Court was to consider appeals from lower federal court decisions that had struck down as unconstitutional California's Proposition 8 ("Prop 8"). Prop 8, a California state constitutional amendment passed by popular initiative referendum, was the people's response to a California Supreme Court decision that had declared California law's limitation of marriage to one man and one woman violative of the California constitution. Prop 8 was intended—and did—restore the law in California to what it had been before the state Supreme Court's decision. After a challenge to Prop 8 itself on state constitutional grounds was rejected by the California Supreme Court, the federal litigation was commenced. In his opinion finding Prop 8 unconstitutional, District Judge Vaughn Walker wrote not only that gender, the presence of a mother and father, and the biological basis of procreation were *irrelevant* to the question of marriage and child rearing, but that it was indeed *irrational*, from a constitutional perspective, to think they were relevant. With Judge Walker relying heavily on contested social science evidence in reaching this conclusion, the decision's logic carried far beyond the question of marriage. Immediately and inescapably, new human life is removed from treatment as a member of the human family with biological links to—and claims of right on—a mother and father, and instead becomes the object of the asserted rights of unrelated adults. The historic understanding of family law that considered, at least as a *prima facie* matter, biological links to the child, is now seen as irrational. Walker made it very clear that this was really where he is going, giving complete credence to the position of Prop 8 opponents that there is no evidence of any benefit to a

child through being raised by his or her own mother and father, even as a general matter.

After Prop 8 was struck down by Walker, the litigation was complicated on appeal by the refusal of the governor and attorney general of California to defend the state constitutional amendment, despite its having been validly passed by the people. At this point the proponents of Prop 8 stepped forward to appeal the district court decision. Walker's opinion was affirmed by a divided panel of the Ninth Circuit, which, perhaps itself skeptical of the breadth of Walker's rationale, ignored almost all of his detailed findings and, not basing its affirmance on a right to SSM *per se*, based it on the narrower ground that the "change in law" worked by Prop 8 targeted gays without a sufficient basis other than animus. At this point, certiorari was granted by the U.S. Supreme Court. Thus it was that a significant procedural question arose of the standing of those proponents to maintain the appeal. In the much-anticipated Supreme Court decision on *Perry*, a 5-4 majority of the Court held that the group of Prop 8 supporters who had stepped in to defend their initiative lacked the requisite interest, or showing of specific harm, required to have standing in federal court. The standing decision made for interesting alliances. Chief Justice Roberts and Justice Scalia were clearly unsympathetic to the claims of SSM supporters, as shown by their dissenting opinions in *Windsor*; striking down the constitutionality of Section 3 of DOMA, released just the day before the decision in *Perry*. Yet notwithstanding these views, they had little sympathy for the standing rights of the Californians opposed to SSM who worked tirelessly through the political process to put Prop 8 on the ballot. As interestingly, they shared this view with Justices Ginsburg, Breyer, and Kagan, who were in the equally ironic position of being generally supportive of SSM (again, as shown by their majority votes in *Windsor*) yet ultimately responsible, by their votes on the standing issue, for avoiding a decision that might otherwise have made SSM the law of the land in 2013.³

Indeed, Justice Ginsburg's diminished enthusiasm for a broad ruling in *Perry* stood out in oral argument in March 2013. Ginsburg openly questioned whether it might be "premature" for a ruling mandating SSM. What is more, she suggested, as it turned out quite controversially for many liberals,⁴ that the reason the abortion debate has dragged on for so long was that *Roe* cut off the natural political evolution towards a pro-choice position, hardening opposition because of a heavy judicial hand. Might not a lesson learned be that it would be better to allow the seemingly inexorable political gains of the SSM movement to carry the day, and avoid the charge of judicial activism that could engender a backlash? Coming from another angle, Justice Kennedy,

a must-have vote for those seeking a broad ruling, seemed to embrace a go-slow approach by noting that SSM had been around for only about 5 years, and that needed to be weighed against thousands of years of social experience with traditional marriage. And from the surprising direction of Justice Sotomayor came a question that many defenders of traditional marriage ask: “Mr. Olson . . . if you say that marriage is a fundamental right, what state restrictions could ever exist? Meaning, what state restrictions with respect to the number of people, with respect to . . . the incest laws . . . what’s left?”

Between these misgivings about a sweeping ruling and new concerns about the standing requirement being met in the case, it was clear that the Supreme Court had come to regret the *Perry* case having been taken by the federal courts. Lacking a consensus either to clearly uphold Prop 8 or to strike it down on sweeping constitutional grounds, the Court went on to duck the issue, dismissing the writ of certiorari as improvidently granted, avoiding any Supreme Court view on the merits.

(2) Next Steps for SSM: Democratic Engagement or Litigation?

The conclusion that might reasonably have been drawn from this diminished enthusiasm for a sweeping ruling in *Perry* is that such a ruling would indeed be not only premature, but *unfounded*, and unfounded for the same reasons that *Roe* was unfounded. As to the Due Process/fundamental rights prong of the argument, a right cannot be “implicit in the scheme of ordered liberty”—which it must be to be ascribed a fundamental right—when it is not present in the text or history of the Constitution, is *counter-indicated* by the unbroken historical practice of the American people from colonial times until 2004, and was rather the quite recent invention of activist judges. Without the heightened scrutiny afforded curtailments of fundamental rights, traditional marriage laws need only meet a rational basis test, and the preference for children to be raised by their biological mother and father in an intact family, and the relatedness of traditional marriage toward that goal, would hardly seem irrational, unless all human societies throughout history before the Netherlands in 2001 were irrational—a daring claim. Moreover, the recent moves by additional states to allow gay marriage, far from bolstering a constitutional case *to require* gay marriage, indeed cut against it, showing that supporters of gay marriage are quite able to successfully utilize the political process, thus undercutting the Equal Protection component of any challenge.⁵

However, the lesson that Justice Ginsburg seems to have drawn instead was a rather different one: that if the Court is going to impose a sweeping ruling, it had best wait until more than a mere dozen states have SSM. That

could be a purely tactical consideration, with a view to avoiding a *Roe*-type backlash. But in fairness, there is a substantive, constitutional rationale potentially at work as well. If the Court waited, and over time a great majority of states came to see SSM rights as critical parts of the modern understanding of marriage and changed their laws accordingly, a point might be reached where it could arguably be seen as “implicit in the scheme of ordered liberty” through the evolving traditions of the American people. This kind of dynamic would create a more plausible basis in fundamental rights jurisprudence, as well as being far less open to charges of judicial activism. Some commentators noted at the time that the mere dozen or so states with SSM at the time of oral argument in *Perry* compared unfavorably with the status of anti-miscegenation statutes at the time of *Loving v. Virginia*, when only 14 states *had* such race-based restrictions. But the *Loving* comparison was wrong for two reasons, one of which was apparent at the time, and one of which has become apparent now. First, *Loving* was right regardless of how many states had anti-miscegenation statutes because it was based on the central purpose of the Civil War Amendments (certainly of the Equal Protection Clause) to eliminate the legal infrastructure of White Supremacy, and on the consequent well-established precedent subjecting race-based classifications to the highest levels of strict scrutiny, a concern totally lacking in *Perry*. Second, it’s only reasonable to refer to changing state laws as evidence of evolving standards of fundamental rights when it is actually the American people, through our democracy, doing the changing. That well over half of the 36 states that now have SSM have it only because of federal judicial decisions imposing that result obviously distinguishes the current situation from *Loving*.

In light of these considerations, one must ask what accounted for the change in Justice Ginsburg’s view, from believing in 2013 that the time was not right for a sweeping constitutional decision to apparently, as we shall see, believing now—a mere two years later—that it is time. Perhaps she thinks that the *superficial* equivalence of the number of states now with legal SSM to those with no racial restrictions at the time of *Loving* gives the Court an *optical* defense to the charge of activism that is good enough, despite the increase having come almost wholly through judicial imposition. Still, given constantly rising poll numbers for SSM, the basis for optimism in the go-slow approach, of achieving the desired end *democratically* and thus without the *Roe*-type backlash she feared, would have seemed considerable. In the 2012 elections, SSM cracked its uninterrupted losing streak in popular referenda by winning all three on the ballot—in Maryland, Maine, and Washington State. Rhode Island, Delaware, and Minnesota followed suit by legislative action in 2013. Similar efforts prevailed after some resistance in

Illinois. With all of this, with a media narrative, best represented by the *Time* cover story noted above, crowing about the inevitable victory of SSM, with politically so much seemingly on the side of SSM advocates, why the rather sudden abandonment of the push to win democratically at the state level? Perhaps it is a view motivated by justice: that if you believe SSM is a fundamental right now being denied, any delay works a serious harm (though certainly that was equally true in 2013). Why, then, the refocus of effort on constitutional litigation, conveniently coinciding with a flip-flop by justices who now think the time for a sweeping ruling is ripe? Could there be an alternative explanation both for the change in SSM advocates' strategy and for the willingness of justices previously sensitive to charges of activism to now charge ahead?

(3) Can SSM Be Secured without the Court's Intervention?

Shortly after *Perry*, numbers whiz Nate Silver in the *New York Times* helpfully explained how, if then-current trends continued, by 2016 or certainly 2020 SSM would be winning referenda in a majority of states, eventually taking all but the Deep South. A good statistician, Silver caveated that this assumed current trends continued, and also that there was not some other factor, such as a religious revival among young voters, that would counter this trend.

Given that these successes made the political process seemingly so promising for SSM, the ambivalence of many activists towards a longer-term political engagement is telling: Was there something to be feared in a more robust and ongoing dialogue about the role of marriage and family, a dialogue that would inevitably force defenders of traditional marriage to improve their to-date woefully inadequate job of articulating the rationales for giving social preference to the biologically-based parenting model underlying traditional marriage?

It turns out that the "inevitability" of an onward progression toward acceptance of SSM might not have been that bought-into by its own advocates; they may not have been quite as assured as the Board of *Time* that traditional marriage supporters are on the wrong side of history. You could hear it a bit in the hesitation even of such sanguine prognosticators of SSM victory as Frank Bruni in the *New York Times*, when he noted in 2013 the reality "that while the count of states with same-sex marriage has risen fleetly, dozens of states expressly prohibit same-sex marriage, with bans on it written into their constitutions in many cases, and there may soon come a point when the tally I mentioned earlier abruptly stops increasing."⁶ Linda Greenhouse was even more explicit, defending *Roe* as an absolute necessity, disparaging the hopes

of Ginsburg and others that abortion rights might have gradually been secured by a political strategy. Indeed, Greenhouse observed that political conflict over abortion was *escalating* before the *Roe* decision, and that state progress on decriminalization “had reached a standstill in the face of opposition from the Roman Catholic Church.” Was there a fear that after such initial success, a more effective movement could do the same with SSM?

Silver may have conditioned his prediction of ultimate SSM victory in a majority of states on current trends continuing, but couldn’t one safely assume that those trends *will* continue? After all, polls have shown increasing support for SSM—why wouldn’t they continue? While it may be forgotten now in the most recent polling advances for SSM, in 2013, some liberals were worried that such trends *had already ceased to continue*, with one striking exception. This from Charles Blow in the *Times*:

Much has been made of the growing acceptance of same-sex marriage in this country, but a Pew poll last month found that the change is driven mainly by millennials. Theirs was the only generation in which a majority (70 percent) supported same-sex marriage; theirs was also the only generation even more likely to be in favor of it in 2013 than in 2012, as support in the other generations ticked down. The longer-term picture is even more telling. Support for same sex-marriage among Generation X is the same in 2013 as it was in 2001 (49 percent). But among millennials, support is up 40 percent since 2003, the first year they were included in the survey.⁷

Of course, some change could be expected given the well-funded and executed grass roots education efforts by SSM advocates, undertaken in connection with various elections, enjoying a roughly 5:1 spending advantage over traditional marriage defenders. Pew data suggesting that acceptance of gay marriage had hit some resistance among voters over 30, while surging among millennials, may also reflect the particular focus on efforts to turn out usually low-propensity millennial voters.

Into 2014 and 2015, polling data continued to be ambiguous, some indicating continued gains for SSM, including a Gallup poll just out this May showing support for SSM at an all-time high of 60 percent and an AP-GfK poll out just days before the Supreme Court argument in *Obergefell* showing support at 48 percent, both increases from previous surveys, but Pew, in September 2014, finding a statistically significant 5 percent decrease in support from 54 percent to 49 percent. The most recent Pew survey this month, however, showed an increase in this Boomer cohort as well. With regard to age cohorts, all confirmed the critical role of millennials in driving support for SSM. At first blush, this might seem an enviable position for the SSM cause. Have they not “won the future” by capturing an outsized proportion of the youngest voters? One reason for caution, however, is that a

movement that turns on changing attitudes about what marriage means is in fact making disproportionate progress with the groups that *have the least experience of marriage*.

While the most recent polling data may be more optimistic for SSM supporters, there were certainly reasons to think that Blow and other liberals could have been onto something in worrying, in the immediate aftermath of *Perry* and *Windsor*, about whether we could be at a high-water mark for SSM support, one brought on by a combination of a woefully inadequate public engagement by defenders of traditional marriage, a spectacularly unlevel financial playing field, and a popular culture and academic and media elite working efficiently to build a superficially appealing case for SSM while stigmatizing rival views. What would happen if there were a sustained, coherent presentation of a persuasive philosophy of marriage, defending the traditional contours of sexual complementariness, and stripped of the unworthy, homophobic attitudes that one must admit have intruded into the parlance of many opponents of SSM. We will turn to this possibility in the final section, but it suffices here to say that there is good reason to believe that the judicial and political partisans of SSM did not switch to a litigation strategy just because they thought the “country was ready” for a sweeping judicial opinion, but also because they concluded there would be no other way to achieve their goals.

(4) The Reversion to Litigation

Despite what seemed technically like a non-decision on SSM in *Perry*, the social, media, and political discussion surrounding *Perry* and *Windsor* drove the manner in which the “marriage debate” was framed over the ensuing months. For the reasons above, or other reasons, SSM advocates moved quickly from their promising democratic strategy to a litigation strategy, and have been to all appearances vindicated in that choice by the courts. The lower federal courts to consider state marriage laws post-*Windsor* have pretty much unanimously ruled in the same way as *Perry*, and in doing so, they have adopted most of *Perry*’s flaws.

The cases divide into those striking down traditional marriage laws under strict scrutiny and those purporting to apply a rational basis test. In almost all the cases the result was the same, and for the most part, a statement that a court was applying a mere rational basis test was belied by actual application. Take *Bishop v. United States ex rel. Holder*, one of the first federal cases to be decided post-*Windsor*. Although Judge Terence Kern of the U.S. District Court for Oklahoma found sexual orientation not to be a suspect class in the Tenth Circuit and hence applied no heightened scrutiny but merely a rational

basis test, he went on to find that the rationality of the Oklahoma constitutional provision's exclusion of same-sex couples as a means to support natural procreation was undercut by its "failure to impose the classification on other similarly situated groups (here, other non-procreative couples)." But surely this imposes a level of narrow tailoring that goes well beyond what is traditionally required in a "rational basis" test. As seen with Judge Walker's opinion in *Perry*, the eagerness to find that traditional marriage laws were *not even rational* led to the creation of a special kind of rational basis test that was heightened scrutiny in everything but name. If a law uses the male-female complementarity as a proxy for procreative reproduction, traditional rational basis would look at whether that proxy is reasonably correlated with the goal being sought. It should be more than enough under this analysis that (1) the vast majority of male-female couples are very likely capable of reproduction at some point, (2) absolutely *no* same-sex couples are capable of reproduction, (3) inquiries into willingness to procreate could be rationally omitted both owing to unreliability and so as not to invade marital privacy, and perhaps most importantly, (4) a small number of non-procreative couples being allowed to marry does far less to undermine the paradigm of marriage as a symbolic support and encouragement for natural procreation than does a declaration that it is irrational to treat marriage as if *procreation and gender were even relevant to it*, which is of course exactly what these courts were doing.

Likewise, Senior Judge Bernard Friedman of the Eastern District of Michigan allegedly was applying a deferential rational basis standard in *DeBoer v. Snyder*, yet incredibly thought it fatally undermined the rationality of Michigan's traditional marriage law that it did not provide in the licensing process a requirement to show the prospect of achieving certain outcomes for childhood success, nor provide for annulment in the case of inability to have children or of poor academic outcome. Indeed, the court, thinking that it was destroying the state's case, said its purported rationale of promoting optimal child welfare should lead it to conclude that "only rich, educated, suburban-dwelling married Asians may marry," which would be crazy. In fact, all the court destroyed with this reverie was any cover that it was really applying a rational basis test. All that a state need show on a rational basis test, with regard to this one (among several) justifications for that law, is that a child being raised by its own biological parents is arguably preferable as a general matter to a child being separated from one or more of its biological parents. Failure to narrowly tailor the law so only breeders of super-children may marry hardly then bars states from having other criteria that correlate well, if not perfectly, with asserted goals.

Justice Orlando Garcia of the Western District of Texas fretted in *De Leon v. Perry* that Texas' procreation rationale "threatens the legitimacy of marriages involving post-menopausal women . . .," yet again showing how the eagerness to invalidate traditional marriage law led these courts to import notions of narrow tailoring wholly inappropriate to a rational basis test.

But one gets the idea. There was little serious attempt to apply traditional rational basis analysis, and much enthusiasm to reach the result that a universal practice of human societies for millennia, with a strong basis in the social and indeed existential need to regulate procreation, with nary a thought of animus against homosexuals, was after all irrational. Indeed, what is striking is the degree to which so many decisions, purportedly applying rational basis review, got into detailed examinations of social science evidence, critiques of the methodologies of various studies, and even the academic pedigrees of researchers, as if the role of a federal court in such matters were to review *de novo* the public policy decisions of the legislature. Its role is nothing of the kind. Perhaps the legal defenders of traditional marriage could be faulted for being too ready to be dragged into this debate, often basing their defense on studies purporting to show the superior academic achievements, lower delinquency rates, etc., of children raised in households with their married biological mother and father. If that is the constitutional criterion of family policy, and courts are free to consult the best "social science" and make their own policy determinations under the premise of enforcing constitutional "Due Process," then it is not clear why they would limit themselves to such a narrow band of choices as traditional marriage and SSM. There might be as much reason to look sympathetically at Plato's *Republic*, and give a hearing to raising children (or at least the best children) communally by a group of the most virtuous citizens.⁸ Or perhaps the advantages of raising children by assignment to appropriate families, as portrayed in the book and movie *The Giver* by Lois Lowry, should be considered, *if* judges find such open-ended second-guessing of legislative policy appropriate as part of constitutional review. Then again, if constitutional review of marriage and parenting regimes turns on successful outcomes as defined by whatever social science judges like to consider, then it is not clear why there are any legal rights of a biological parent to have *prima facie* custody of their biological children. Certainly studies would (or could be designed to) show that removing children from "disadvantaged" parents in infancy and transferring them to wealthy adopters—heterosexual or gay, couples or singles, or communes—would result in those children performing better on standardized tests and having superior career prospects.

The point of indulging these ideas, ideas that one hopes are—for the time

being at least—absurdities, is to recognize how far off the rails these so-called rational basis reviews of traditional marriage laws went, and how at times even the defenders of traditional marriage fell into the trap of conceding that the case should be about which social science school of child raising is “correct,” as if the court should have the last word on that. At least under rational basis review, it is enough to say: So long as our society accords certain prima facie rights and duties to biological parents as it now does, then it is presumptively rational for society to wish to channel procreation and child rearing preferentially toward biological parents. To serve this end, a marriage regime that privileges the one-man-one-woman couple as the norm of parenting is manifestly reasonable. Only the one-man-one-woman model will reinforce the normative nature of biological parenting and will obviate the need for government to get involved, as a regular matter, in complex decisions about custody. Conversely, any other marriage structure will inevitably draw the government to get more involved in intimate family decisions, whether through the machinery of adoption, the civil enforcement of surrogacy, or artificial sperm donation contracts. And this will be done not as the exceptional case, but increasingly as a norm of how typical families should be composed. Only the male-female union organically unites the two parties that have these natural biological relationships and, under existing law, natural rights with respect to their offspring. Only the male-female union can, as a general matter, avoid the need for government intervention to change rights established by virtue of that biological connection. By contrast, same-sex unions by their nature cannot avoid that need for government intervention, for by definition they always and everywhere require the termination of rights established by biological relationship. Minimizing the need for government to get deeper into these family decisions is a valid rationale in itself for wishing to promote, facilitate, and extol the one-man-one-woman marriage model.

It must be stressed, however, that noting the rationality for due process purposes of promoting traditional marriage need not and should not conflict with providing some analogous means of support for non-traditional family structures with children. The plaintiffs in *DeBoer* are moving examples of this. By all accounts, April DeBoer and Jayne Rowse are excellent, indeed heroic, adoptive parents, who have taken upon themselves the care of special needs children. All of them were born into tragic situations—one to a mother who was a drug-addicted prostitute—from which they were rescued by DeBoer and Rowse. The biological mothers whom traditional marriage advocates extol were dysfunctional people all too happy to give up their children to DeBoer and Rowse, and what a blessing for those children that they did. Should such heroic adoptive parents be forbidden from adopting in

such a tragic case? The answer should be a resounding no. And quite interestingly, the DeBoer litigation started with plaintiffs' challenge not to the Michigan Marriage Amendment, but rather to the adoption statute, which, while allowing single people to adopt, precluded unmarried people from adopting each other's children. It was only when Judge Friedman "suggested" to the plaintiffs that their injury was not traceable to enforcement of the adoption restriction but rather to their inability to be married that plaintiffs amended their complaint to attack the marriage law itself. What strange advice: The adoption restriction was clearly the most direct and immediate source of plaintiffs' injury. One can be forgiven for wondering whether Friedman's suggestion was meant to perfect the celebrated case that it has obviously become.

Yet, the critical point here is that while denying heroic caregivers like DeBoer and Rowse the right to adopt may indeed seem irrational, it would seem *no more irrational* than denying that right to any other loving, competent person or persons willing to step into this tragic situation to raise these children. It would seem as irrational to deny such adoption by the polygamous family noted in the prologue. It would seem as irrational to deny such adoption by two maiden aunts of the biological mother who were living together as a household. It would seem as irrational to deny such adoption by any number of individuals or groups who might demonstrate the level of responsibility and stability and determination to raise these children, yet do any of those situations require the state to therefore concede that all of these individuals or groups must be allowed *to be married*? Such a view would adopt what we have already described as a "supremacist" view of marriage that seems to say two (or more) people can't do anything socially worthy together without having to be able to "tie the knot." This view fundamentally misunderstands the purpose of marriage, at least as a civil matter. It is not to "monopolize the field" of worthy collective endeavor, which it can't, nor to provide metaphysical or spiritual ennoblement, which a secular state should leave to religious or cultural celebrations of marriage rather than civil recognitions, but rather, far more modestly, to channel biological parentage into the one structure that minimizes *rather than creates* conflicting claims on the child, conflicts that inevitably require more government intervention to resolve.

The courts applying rational basis review erred by second-guessing legislative judgments that should have been left to the democratic process. Likewise, the courts purporting to justify a *higher level* of scrutiny were also so keen on their goal as to ignore the basics. In *Bostic v. Schaefer*, Judge Arenda Wright Allen of U.S. District Court for the Eastern District of Virginia applied strict scrutiny to Virginia's marriage law after finding that it denied

homosexuals the “fundamental right to marry.” Allen cites the Supreme Court’s opinion in *Washington v. Glucksberg* for the general rule that courts will uphold regulations rationally related to a legitimate state interest, and then goes on to say that, nonetheless, strict scrutiny is applied when fundamental rights are involved. So far so good, until she then finds that since “marriage” is a fundamental right, therefore the exclusion of same-sex couples must meet strict scrutiny. This is incredible, for she never even applies the test mandated by the Supreme Court in *Glucksberg* itself to determine at what level of generality the alleged fundamental right must be defined. Any fair reading of *Glucksberg* would recognize that the right to marry, which indeed is a fundamental right, cannot be read to include more broadly the right to marry anyone you want, given not only the long-standing reservation of marriage to male-female couples, but the many other restrictions on marriage, such as bans on marrying one already married to another person, bans based on consanguinity, age, etc. Indeed, Allen’s judicial activism seems to have been exactly the sort against which *Glucksberg* warned:

“Our Nation’s history, legal traditions, and practices thus provide the crucial guideposts for responsible decisionmaking that direct and restrain [judicial] exposition of the Due Process Clause.” . . . Second, identification of fundamental rights “require[s] . . . a careful description of the asserted fundamental liberty interest.” . . . These principles are intentionally strict, for “extending constitutional protection to an asserted right or liberty interest . . . to a great extent, place[s] the matter outside the arena of public debate and legislative action” and may thus “pretermitt other responsible solutions being considered in Congress and state legislatures.” citing *District Att’y’s Office v. Osborne*, 557 U.S. 52, 73 (2009). . . Courts “must therefore exercise the utmost care whenever . . . asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed *into the policy preferences*” of judges. *Glucksberg*, 521 U.S. at 720 (internal quotation omitted and emphasis added).

It is hard to know if Judge Allen’s ignoring of *Glucksberg* was based on true ignorance of the applicable test for defining fundamental rights or just the understandable time pressure she was under. You see, February 14 was approaching, and the publicity factor of getting the opinion issued on Valentine’s Day was clearly paramount. Playing fast and loose with the fundamental rights analysis was not the only flaw chalked up to Valentine haste; *Bostic* was also the opinion where a federal judge confused the Constitution and the Declaration of Independence in invoking the phrase “all men are created equal.”⁹

(5) Moving to the Appellate Level

The district court decisions wound their way to the appeals courts through the course of 2014. Decisions in most federal circuits struck down state

marriage laws that excluded SSM. It was in response to this situation that Justice Ginsburg continued, even in mid-2014, to see no “need” for the Supreme Court to rush in, and joined presumably with other liberals and at least one conservative to deny review of these pro-SSM appellate decisions. One could see why this approach would appeal to Justice Ginsburg. After all, if federal appellate courts continued to strike down traditional state marriage laws, the Supreme Court, merely by denying *certiorari*, could serenely watch the number of states allowing SSM grow quickly, and put off its own intervention until the number of remaining traditional states had become so small that a Supreme Court sweeping decision could be seen more as a ratification of the status quo than a radical decision. Of course, such a strategy just ratified the same radical approach at a lower level of the federal judiciary.

And the appellate level supplied the desired result. When the *Bostic* case reached the Fourth Circuit, that panel could not ignore *Glucksberg* as obviously as Judge Wright had done, so they ignored it more cleverly. Circuit Judge Floyd, writing for a divided panel, said: “We do not dispute that states have refused to permit same-sex marriages for most of our country’s history. However, this fact is irrelevant in this case because *Glucksberg’s* analysis applies only when courts consider whether to recognize new fundamental rights Because we conclude that the fundamental right to marry encompasses the right to same-sex marriage, *Glucksberg’s* analysis is inapplicable here.” That’s a very clever but ultimately circular way to dispense with *Glucksberg’s* requirement: Just redefine marriage to mean the right to marry anyone you want, despite the fact that *that* has never been a part of the definition of marriage, and then conclude that because the fundamental right to marriage includes the right to same-sex marriage, the requirement to test whether that narrower right to same-sex marriage is “deeply rooted in the Nation’s history” now doesn’t apply. Presto! Indeed, the majority’s attempt to justify looking at the fundamental right in question as the right to marry *broadly defined* convicts itself in the three cases it chooses: *Loving*, *Zablocki*, and *Turner*. If it had cited a case that invalidated a restriction that had previously been a long-standing part of the definition of marriage, such as the limitation to two partners or restrictions on consanguinity, perhaps the court might have broken the circularity of its argument. But of course all three cases were about *impediments on the long-understood definition of marriage as between one man and one woman*, not about mere loyalty to those long-standing definitions. *Loving*, as noted above, was first and foremost driven by the race-based nature of the restriction that was thus rightly subjected to strict scrutiny and invalidated. *Zablocki* and *Turner* involved statutes that

denied marriage licenses (again, traditionally understood) to men with unpaid child support obligations or to prisoners, respectively. Invoking these cases to justify ignoring *Glucksberg*'s requirement is facetious.

As Circuit Judge Niemeyer correctly noted in dissent, the majority “declares, *ipse dixit*, that ‘the fundamental right to marry encompasses the right to same-sex marriage’ . . . [a]nd in doing so, it explicitly bypasses the relevant constitutional analysis required by . . . *Glucksberg* . . . stating that a *Glucksberg* analysis is not necessary because no *new* fundamental right is being recognized.” Yet his dissent exposes another fundamental flaw with the majority’s opinion. The plaintiffs and the majority, Niemeyer notes, “ignore the problem with their position that if the fundamental right to marriage is based on ‘the constitutional liberty to select the partner of one’s choice,’ as they contend, then that liberty would also extend to individuals seeking state recognition of other types of relationships that States currently restrict, such as polygamous or incestuous relationships.” The very reason for *Glucksberg*'s requirement for a narrow definition of any right being asserted as fundamental and the risks of defining it too broadly are shown clearly in this case.

Meanwhile, the celebrated Circuit Judge Richard Posner in the Seventh Circuit was similarly caught up in applying a heightened scrutiny to state marriage laws without any effort to justify it in terms of Supreme Court precedent. To his credit, he does not try to find a fundamental right and thus avoids the need to confront *Glucksberg*. His approach is through Equal Protection and a finding of animus, meaning in effect he is finding gays to be a suspect class, something the Supreme Court has not done. In a learned discussion, which would have been quite appropriate for a legislator considering the matter, or even more so for a public policy class, Posner cites Gary Gates on LGBT parenting, Stephanie Coontz’s work on “How Love Conquered Marriage,” and of course the obligatory references to John Stuart Mill in explaining why society has no business interfering in anyone marrying anyone unless it causes “tangible, secular, material” harm. What he does *not* do during this exegesis is discuss at any length *any* Supreme Court precedents applying equal protection law, save a one-line reference to *Loving*. He dismisses as implausible the multiple state interests asserted in defense of traditional marriage law, clearly applying heightened scrutiny (although he is also quick to point out that the proffered justifications are not rational anyway). Discussing Indiana’s asserted interest in channeling potentially procreative sex into marriage, Posner finds the state has been underinclusive, since it doesn’t require marriage licenses to expire when one of the couple becomes infertile. Again, his is an application of the wrong

standard of review, but more fundamentally, a failure to consider both the ways in which the role of biological parenting continues to be played out as a symbolic model even beyond the period of fertility.

Only at the very end of his sociological lecture does Posner, almost as an afterthought, try to bring it within the framework of Supreme Court precedent. “For completeness . . . we note the ultimate convergence of our simplified four-step analysis with the more familiar, but also more complex, approach found in many cases.” And how many of those many Supreme Court cases does he analyze? One. *Windsor*. More precisely, he follows only a Ninth Circuit reading of *Windsor* to find that it requires subjecting discrimination based on sexual orientation to heightened scrutiny. However, Posner, as well as the Ninth Circuit, ignores the very emphasis that the *Windsor* passages relied on placed on the fact that there is no permissible *federal* interest sufficient to justify the purpose and effect of the law “to disparage and injure those whom the State, by its marriage laws, sought to protect in personhood and dignity.” Posner would turn the federalism prong of *Windsor* on its head. Noting that the Court had said DOMA would treat state-recognized same-sex marriages as “second class marriages for purposes of federal law,” Posner reasons “[but] a second class marriage would be a lot better than the cohabitation to which Indiana and Wisconsin have consigned same-sex couples.” One can agree of course with his statement as a matter of policy, but Posner has fallen into the judicial hubris of *constitutionalizing* that policy question, with the effect of *constraining* the state’s authority in marriage, and all based on a decision meant to *defend* state authority against federal encroachment.

Although *Baskin* is notable for its lack of even an attempt to apply Supreme Court precedent, it actually bears closer reading for a more fundamental reason. Perhaps the most cited passage of Posner’s opinion, having fun with an admittedly incomplete answer by the lawyer representing Indiana, is as follows:

[The] government thinks that straight couples tend to be sexually irresponsible, producing unwanted children by the carload, and so must be pressured (in the form of government encouragement of marriage through a combination of sticks and carrots) to marry, but that gay couples, unable as they are to produce children wanted or unwanted, are model parents—model citizens really—so have no need for marriage. Heterosexuals get drunk and pregnant, producing unwanted children; their reward is to be allowed to marry. Homosexual couples do not produce unwanted children; their reward is to be denied the right to marry. Go figure.

This is undeniably effective rhetorically; however, the underlying assumption shows much about how Posner has misread the real issue at stake. Homosexual couples are hardly the only group “rewarded” by being

denied the right to marry. Broader family arrangements, like the girl's polygamous family noted in the prologue, those connected by a certain degree of blood relationship, older same-sex siblings living together, indeed, many other groupings and associations, all of which may be both very good at raising children *and* unlikely to produce unwanted children, are not allowed to marry. In fact, polygamous groups could be very good at raising children *and somewhat likely* to produce unwanted children, seemingly meeting not one but *two* of the state's asserted rationales for allowing marriage, and yet still are not allowed to marry. Is that unconstitutionally irrational? At first blush, taking seriously the state's asserted interests, a ban on polygamy seems far *more* irrational than a ban on SSM, since at least polygamy does foster keeping a child with his or her biological parents. Does that mean we can't take as a serious policy goal trying to steer into marriage the one kind of relationship that *does* produce children, and at the same time seeks to unite its children's *two and only two biological parents*? Is it an invidious and hypocritical discrimination to say that these other groupings may be very appropriate structures for raising children, and especially may be great blessings for children that, for whatever reason, cannot be raised by their biological parents, but that the state still wishes to provide some special encouragement to the kinds of relationships that *exclusively* have the possibility to bring that life into being? That other things being equal, we should try to sustain a relationship between a child and his or her biological parents? Only if you believe that there is absolutely no preference to be given, even as a general matter, to biological parentage.

And that is the most disturbing part of Posner's opinion: He really doesn't think there is any such preference. This comes out in several ways. First, one cannot read Posner's discussion of Mill—the state has no justification in pursuing any moral vision other than avoiding “secular harm”—without concluding that he would be a pretty sure vote to invalidate bans on polygamy; clearly SSM will be just one step on the path to eliminating any preference for biological parenting if Posner's framework prevails. But Posner's elevation of his legal theory over reality is exemplified by his singling out Wisconsin's refusal to allow same-sex domestic partners to adopt jointly as “its most arbitrary feature.” The refusal, he says, harms children “by telling them they don't have two parents.” But of course it is not the refusal of joint adoption that tells them any such thing: The fact will be apparent to any child of a SSM household that they do not have at least one of their biological parents. It is not rank bigotry and prejudice that will tell them this fact, but rather the biological reality of human reproduction. One can want to ensure a same-sex couple providing a home to adopted children every legal support to

facilitate that, without feeling it necessary to try, futilely in any event, to obscure that at least one of their natural parents, one of the people who brought them into being, is not there. And neither is it an “arbitrary” decision to allow opposite-sex couples to adopt jointly, since in such a case, obfuscation of the adoptive children’s natural parents is not, unlike with same-sex couples, futile. Even in these opposite-sex adoptions, though, the natural desire of children at some point to find out about where they came from, perhaps out of existential curiosity, perhaps because of the practical need to know of medical and genetic histories, perhaps to reestablish some form of bond, is well known. It is reflected in the fact that 43 states maintain some kind of registry or other forum for bridging adoptive children and their natural parents. Yet for Posner, these biological bonds are utter irrelevancies. Then again, this should not be so surprising for a judge who 1) argued in his 1992 *Sex and Reason* that prostitution was an economically more efficient “substitute for marriage,” 2) has a habit of reducing most aspects of humanity and morality to his Law and Economics analysis, and 3) lionized Oliver Wendell Holmes as “the American Nietzsche,” as if that were a good thing.¹⁰

Besides the Fourth and Seventh Circuits, appellate courts in the Ninth (no surprise given its previous decision in the *Perry* case) and Tenth Circuits also upheld district court decisions. The Eighth Circuit had a case pending, though it had previously issued a decision upholding SSM bans in its circuit, suggesting that a circuit split might already have existed. But any doubt was removed in November: The Sixth Circuit broke the string of SSM appellate victories, and upheld a series of state laws in that circuit as constitutional. Issued by Circuit Judge Sutton, the opinion finally created the clear circuit split that forced the hand of those Supreme Court justices that might have been willing to let the appeals courts do the work of imposing SSM.

DeBoer v. Snyder, involving an appeal from a district court decision striking down Michigan’s traditional marriage law, was consolidated with appeals from similar invalidations of Ohio, Kentucky, and Tennessee laws, and heard before Circuit Judges Sutton, Cook, and Daughtrey. From the very beginning of his majority opinion, Judge Sutton expressed little doubt that American law would change to accept SSM. Rather, the case was about the process, within the American constitutional system, by which that would happen. Sutton for one illustrates a *properly* applied rational basis review: “So long as judges can conceive of some “plausible” reason for the law—*any* plausible reason, even one that did not motivate the legislators who enacted it—the law must stand, no matter how unfair, unjust or unwise the judges may consider it as citizens. *Heller v. Doe*, 509 U.S. 312, 330 (1993), *Nordlinger v. Hahn*, 505 U.S. 1, 11, 17-18 (1992).” He finds two rational bases at least

that satisfy this low bar. First, performing a thought experiment:

Imagine a society without marriage. It does not take long to envision problems that might result from an absence of rules about how to handle the natural effects of male-female intercourse: children. May men and women follow their procreative urges wherever they take them? Who is responsible for the children that result? How many mates may an individual have? How does one decide which set of mates is responsible for which set of children? That we rarely think about these questions nowadays shows only how far we have come and how relatively stable our society is, not that States have no explanation for creating such rules in the first place.

To be sure, Sutton acknowledges, people do not think about marriage today only in terms of children. Many or perhaps even most now think of marriage as primarily about solemnizing relationships between adults based on love and affection. And all of this may well support the policy argument accepted by many states that marriage laws should be extended to gay couples. Yet, and this is key, it “does not show that the States, circa 2014, suddenly must look at this policy issue in one way on pain of violating the Constitution.” Why? Because “rational basis review does not permit courts to invalidate laws every time a new and allegedly better way of addressing a policy emerges, even a better way supported by evidence . . . does not empower federal courts to ‘subject’ legislative line drawing to ‘courtroom’ fact-finding designed to show that legislatures have done too much or too little.”

Sutton is fully aware of the “foolish, sometime insensitive” inconsistencies: loveless marriages, abused children, “monogamists who do not ‘monog.’” He understands the plaintiffs’ question: “how . . . could *anyone* possibly be unworthy of this civil institution?” Let alone gays who in individual cases may be far more faithful to the ideals of traditional marriage than its so-called proponents.

All of this, however, proves much too much. History is replete with examples of love, sex, and marriage tainted by hypocrisy. Without it, half of the world’s literature, and three-quarters of its woe, would disappear. Throughout, we have never leveraged these inconsistencies about deeply personal, sometimes existential, views of marriage into a ground for constitutionalizing the field. Instead, we have allowed state democratic forces to fix the problems as they emerge and as evolving community mores show they should be fixed.

Moreover, Sutton notes, the plaintiffs’ theory is subject to “line drawing problems of its own” that are as bad as or worse than the states’ position.

Their definition fails to account for plural marriages, where there is no reason to think that three or four adults, whether gay, bisexual or straight, lack the capacity to share love, affection and commitment, or for that matter lack the capacity to be capable (and more plentiful) parents to boot. If it is unconstitutionally irrational to stand by the man-woman definition of marriage, it must be unconstitutionally irrational to

stand by the monogamous definition of marriage. Plaintiffs have no answer to the point. What they might say they cannot: They might say that tradition or community mores provide a rational basis for States to stand by the monogamy definition of marriage, but they cannot say that for that is exactly what they claim is illegitimate about the States' male-female definition of marriage. The predicament does not end there. No State is free of marriage policies that go too far in some directions and not far enough in others, making all of them vulnerable—if the claimants' theory of rational basis review prevails.

It is hard to find in Circuit Judge Daughtrey's dissent any direct refutation of the constitutional analysis offered by the majority. In the face of the substantial Supreme Court precedent cited by Sutton to the effect that judges cannot premise a finding of unconstitutionality merely on "factual findings by one federal judge that favor a different policy" than one adopted by the legislature, she proceeds to do *exactly that*: pages of discussion about the trial testimony of clinical psychologists, historians of marriage, sociologists, yet when it comes to the legal analysis one would expect, this interesting approach:

Is a thorough explication of the legal basis for such a result appropriate? It is, of course. Is it necessary? In my judgment, it is not, given the excellent—even eloquent—opinion in [the district court opinion in] *DeBoer* and in the opinions that have come from four other circuits in the last few months that have addressed the same issues involved here . . . These four cases provide a rich mine of responses to every rationale raised by defendants . . ."

That they may, but Daughtrey doesn't tell us what those responses are, or how they apply to the cases she is impaneled to review. She certainly doesn't explain how they rebut the majority's showing that the plaintiffs' position suffers from worse over-inclusion and under-inclusion than the traditional marriage regimes themselves. Her opinion is embarrassingly lacking in any original jurisprudential analysis to support such a radical departure from traditional rational basis analysis as to find the heretofore universal definition of marriage constitutionally irrational. The section of her opinion entitled "Rational Basis Review" might have led one to believe that at last Daughtrey would have something original to say about why the statutes at issue *in the case before her* were irrational, but instead she merely notes that the majority's argument is one "that an eminent jurist has described as being 'so full of holes that it cannot be taken seriously.' *Baskin*, 766 F.3d at 656 (Posner, J.)." We have critiqued Posner's approach in *Baskin* above, but at least he did the litigants the favor of writing his own opinion, based on his analysis of the case before him, something Daughtrey seems to have lacked the confidence to do.

But two things Daughtrey's opinion does accomplish require a little focus before leaving *DeBoer*: The by-now ritualistic invocation of *Loving* and her

treatment of the “social science” evidence adduced by the district court.

Daughtrey dismisses Sutton’s original intent argument—that the adopters of the Fourteenth Amendment never understood it to require the States to change the definition of marriage—by saying “they undoubtedly did not understand that it would also require . . . the end of miscegenation laws across the country . . . culminating in the *Loving* decision in 1967.” Undoubtedly? It would appear Judge Daughtrey should reconsult *Loving* itself. Chief Justice Warren commented extensively on the history of debates in the Thirty-ninth Congress about the Fourteenth Amendment and other race-related legislation. Although Judge Sutton is correct, as even Judge Daughtrey must concede, that *none* of those framers thought marriage would have to be *redefined* to include SSM, Chief Justice Warren thought the debates “inconclusive” about what the effects would be on issues like miscegenation statutes. The more zealous proponents of the Amendments, certainly the Radical Republicans, almost certainly would have thought the Amendments barred anti-miscegenation laws. (Indeed, one recalls the vitriol D.W. Griffith’s *Birth of a Nation* pours on the Northern Republican architects of Reconstruction precisely for this reason: The character of Austin Stoneman, based on Thaddeus Stevens, intent on promoting miscegenation and destroying the White South, suggests that at least some of the framers of the Civil War Amendments would have intended exactly the outcome in *Loving*.) Diehard Confederate sympathizers, who may have ratified it only as the price for re-entering the Union and ending Reconstruction, would have wanted to give it the most grudging and narrow interpretation. In the event, though, Warren had no need in *Loving* to read the minds of individual framers of the Amendment, because the Supreme Court of Appeals of Virginia itself, in *Loving*, cast the justification for the anti-miscegenation law as maintaining “racial pride” and preventing “mongrelization of the races.” Given that the Supreme Court had held, starting in the *Slaughter-House Cases* handed down a mere five years after adoption of the Fourteenth Amendment, that the “clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination . . .,” there could be no doubt that a measure, in Warren’s words, “designed to maintain White Supremacy” would fail scrutiny under the Equal Protection Clause. Indeed, Warren concluded, “restricting the freedom to marry *solely because of racial classification* violates the *central meaning* of the Equal Protection Clause.” (Emphases added.) The claim that traditional marriage laws’ limitation to one man and one woman—the universal practice of and meaning of marriage for millennia in the West—violates the central meaning of the Equal Protection Clause in anything remotely like the way that anti-miscegenation laws do is

simply an attempt to anachronistically graft modern gender theory onto the opinions of parties who, on *either* side of the Civil War animosities, would have seen it as a mockery of what they were fighting for.

Finally, with respect to *DeBoer*, it is worth noting the rather partial—one might even say biased—view that Judge Daughtrey has of “bias” in social science studies proffered by litigants in the case. Daughtrey restates favorably and at length the testimony of social scientists David Brodzinsky, Nancy Cott, and Michael Rosenfeld, all for the view that there is no difference in child well-being and adjustment between children raised in SSM households and those raised by their biological mother and father. She then critiques studies introduced by the states to rebut these, specifically three studies by Mark Regnerus, Douglas Allen, and Loren Marks. There has been much criticism of the Regnerus study methodology, but another damning problem for Regnerus in Daughtrey’s view was that his study “had been funded by the Witherspoon Institute, a conservative ‘think tank’ opposed to same-sex marriage.” Let us assume that taking funding from a partisan group working for one side of an issue does impair one’s ability to be unbiased. But what of Allen? For Daughtrey, here was the key problem: “Allen provided evidence of the bias *inherent in his study* by admitting that he believed that engaging in homosexual acts ‘means eternal separation from God, in other words[,] going to hell.’” (Emphasis added.) And as for Loren Marks: “he revealed his own bias by acknowledging that he was a lay clergyman in the Church of Jesus Christ of Latter Day Saints (LDS) and that the LDS directive [supporting male-female marriage and child raising] remains in force.” So, if we read this correctly, Daughtrey is saying that no one who is a traditional Christian or Orthodox Jew or Muslim, i.e., no one that happens to believe that homosexual conduct is sinful, is competent to do a methodological study on the impacts of family structure on children. They are disqualified, it would seem, as a matter of law, from being considered objective. Keep in mind, Marks and Allen were not coming into the court as Bible-thumping preachers leading with their views on the immorality of homosexual sex. Their testimony over several hours, and under cross-examination by plaintiffs’ attorney Carole Stanyar, focused on questions of study methodology; only when Stanyar at the close of her cross-examination asked if they believed in certain tenets of their faith, and they responded in the affirmative, did this come out. This must come as quite a blow to the many SSM supporters among religious groups—growing numbers even among evangelical Protestants and church-attending Catholics, polling suggests—who may personally find homosexual conduct to be sinful, but who have come to agree that as to civil marriage, they should not “impose their views” on others. It seems that Judge Daughtrey

does not reciprocate their magnanimity. She believes *their personal religious views would disqualify them* from testifying about study methodologies. When Joseph Potchen, attorney for Michigan, objected during testimony to Stanyar's questioning Marks about his faith, Judge Friedman to his credit sustained the objection, noting:

THE COURT: I will sustain. He already testified that he is a person of faith and so forth. I don't think we have to go into the specific teachings of any faith. And he also talked already about the biases and so forth.

MR. POTCHEN: Thank you.

THE COURT: We are going too far.

Judge Daughtrey apparently thinks it is not "too far" to question people on their personal religious views and then disqualify them from consideration if those views adhere in material ways to what has been the mainstream teaching of Judaism and Christianity for millennia. This is not a juror in a capital murder case being dismissed because he admits his religious opposition to the death penalty would make him unable to impose it. This is a social scientist being told his religious beliefs on the immorality of homosexual acts make him per se disqualified from giving expert testimony on survey methodology. One can't help but note that if testifying in federal court were an Office or Public Trust under the United States, Judge Daughtrey's views would be exactly the kind of "religious test" forbidden by Article VI of the Constitution: Catholics and Baptists need not apply. Incredible as this bias is, at least it seems that it only goes one way. She found no problem of bias at all with the expert testimony of David Brodzinsky, even though his resume reveals funding for *his* studies by groups like The Rainbow Endowment and the David Bohnett Foundation, both groups strongly supporting an LGBT rights agenda.¹¹ One is left to assume that some biases are more biased than others.

And so it was that under a lopsided ledger of federal courts finding traditional marriage law unconstitutional, but at least one federal appeals court upholding such laws in its circuit, the stage was set for SSM's return to the Supreme Court.

NOTES

1. See, Nicomachean Ethics, Book VIII (husband-wife friendship not perfect friendship due to inequality between partners).
2. See interview with Camille Robcis in *Jacobin*, December 8, 2014, at <https://www.jacobinmag.com/2014/12/gender-trouble-in-france/>
3. And yet another irony: Justice Kennedy, writing a dissent joined by Justices Thomas, Alito, and Sotomayor, bemoaned the majority's standing decision with a paean to the democratic values of California's referendum process, and a tribute to the time and passion invested by Prop 8 supporters, a tribute more than a bit surprising in light of Kennedy's harsh rejection in *Windsor* of analogous arguments underlying Congressional policy denying gay marriage equal recognition

- in DOMA as mere “animus” against gays.
4. <http://www.nytimes.com/2013/04/03/opinion/justice-ginsburgs-misdirection-ahead-of-the-gay-marriage-rulings.html>; <http://takingnote.blogs.nytimes.com/2013/05/13/ginsburgs-roe-v-wade-blindspot/>
 5. If SSM proponents have shown anything, it is that they are far from insular and powerless, and certainly far from poor. Pro-SSM causes have attracted enormous amounts of money from hedge fund titans, Hollywood stars, and technology giants. New York State’s passage of SSM in 2011 owed as much to the massive financial backing from Mayor Bloomberg, Peter Singer, and other billionaires as to the admitted political skills of Governor Andrew Cuomo. The three referenda decided in November 2012 all saw massively lopsided spending advantages for the proponents of SSM, ranging from 4:1 to over 6:1. Given that kind of financial advantage, and the fact that the states in question were solidly Democratic, perhaps the most striking thing about the results is that the margins were all in the single digits. Indeed, pro-SSM forces have become so powerful and well financed that for a time it actually cut against the litigation strategy. In *Sevcik v. Sandoval*, a U.S. district judge for Nevada, writing weeks after the November 2012 elections, rejected a federal equal protection challenge to Nevada’s state constitutional ban on SSM. In rejecting a claim that gays are a suspect class deserving heightened scrutiny, he specifically referenced their electoral successes. “The question of ‘powerlessness’ under an equal protection analysis requires that the group’s chances of democratic success be virtually hopeless, not simply that its path to success is difficult or challenging because of democratic forces.” In the case of proponents of gay marriage, that showing had clearly not been made.
 6. <http://bruni.blogs.nytimes.com/2013/05/15/i-do-and-the-aclu/>
 7. <http://www.nytimes.com/2013/04/06/opinion/blow-the-young-are-the-restless.html>
 8. See, Republic, Book V, 449a-472a.
 9. <http://abcnews.go.com/blogs/politics/2014/02/oops-va-judge-confuses-constitution-declaration-of-independence-in-gay-marriage-ruling/>
 10. Richard A. Posner, ed.; Introduction to The Essential Holmes: Selections from the Letters, Speeches, Judicial Opinions and Other Writings of Oliver Wendell Holmes, Jr., at xxviii (1992).
 11. <http://www.aclu-il.org/wp-content/uploads/2011/07/CV-David-Brodzinsky.pdf>

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