

# the HUMAN LIFE REVIEW



WINTER 2013

*Featured in this issue:*

William Murchison on . . . . . Rape and Electoral Rout  
Laura Echevarria on . . . Planned Parenthood's Media Blitz  
Matthew Hennessey on . . . Testing Down Syndrome to Death  
Christopher White on . . . . . The 40-Year March for Life

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**HLR's 2012 GREAT DEFENDER OF LIFE DINNER**

JAMES L. BUCKLEY • KELLIE FIDOREK

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Mathew Lu on . . . . . Defusing the Violinist Analogy  
Wesley J. Smith on . . . . . Backdoor Euthanasia  
Alan Sears & Craig Osten . . . . . The ACLU vs. Human Life

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**BOOKNOTES**

RICHARD HURZELER • TYLER O'NEIL • JOHN M. GRONDELSKI

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*Also in this issue:*

Anthony Esolen • Jon A. Shields • Daniel K. Williams  
Leslie Fain • Lynn Bateman • Ursula Hennessey

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. . . “upward of half a million people” joined a cold and snowy March for Life this year, reports Christopher White in “Forty Years After *Roe*: Onward We March” (page 31). White, who takes the reader on a fascinating tour of four decades of swelling marches, has a book about to come out: *Beyond the Catholic Culture Wars* (Encounter Books). Surely a timely subject, as the culture wars returned with unanticipated vengeance during the last election season—both William Murchison (“Of Rape and Electoral Rout,” page 7) and Laura Echevarria (“Planned Parenthood’s Media Blitz,” page 14) analyze the onslaught mounted by proudly pro-abortion forces—and the wreckage they visited on some pro-life candidates.

Back in October when we hosted our 10th annual Great Defender of Life dinner, hopes were still high that the Obama regime would be turned out—alas. We include here (page 39) speeches by our honorees, Judge James L. Buckley and Kellie Fiedorek (representing Advocates for Life). Those who wish to see the entire event may call us (212-685-5210) and order a DVD. (N.B.: This year’s dinner, honoring bestselling author Eric Metaxas and his wife Susanne—who runs a crisis pregnancy center—will be held on September 26, 2013).

What a difference an election (reelection) makes. Indeed, four years into the tenure of the most committed abortion advocate ever to occupy the White House, the acolytes of “choice” are unabashedly bullish on death. Which makes Matthew Hennessey’s concerns about new, non-invasive tests for Down syndrome just coming on the market even more urgent (“Testing Down Syndrome to Death,” page 23). Routine administration of these tests, he says, will make his discussion here of how infants with Down syndrome are actually being aborted these days “moot.” Mr. Hennessey and his wife, Ursula, who is new to these pages (“Welcome to Sparta,” page 126), have a six-year-old daughter with Down syndrome.

Mathew Lu is an assistant professor of philosophy at the University of St. Thomas (St. Paul, MN). “Defusing the Violinist Analogy” (page 46), in which he painstakingly refutes Judith Jarvis Thomson’s enduring (at least in the dorms) argument in favor of abortion, is his first article for us. Other newcomers include Tyler O’Neil (Booknotes, page 74), an intern at the *Washington Free Beacon*, and Alan Sears and Craig Osten (“The ACLU vs. Human Life,” page 81). Mr. Sears is president of the Alliance Defending Freedom; Mr. Osten is the group’s senior director of research and grant writing. Welcome all.

Along with Mrs. Hennessey, the other authors of this issue’s appendices also are appearing here for the first time. Thanks to reprint their work goes to *Crisis.com* (Anthony Esolen), *First Things* (Jon A. Shields), *ThePublicDiscourse.com* (Daniel K. Williams), *Catholic World Report* (Leslie Fain) and *Ricochet.com* (Lynn Bateman).

Finally, I am happy to tell you that the Foundation has just published a companion volume to *The Debate Since Roe*. To learn more about *The Reach of Roe: Eugenics, Euthanasia, and Other Assaults on the Dignity of Human Life*, be sure to have a look at our advertisement on page 104.

ANNE CONLON  
MANAGING EDITOR



# the HUMAN LIFE REVIEW

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## INTRODUCTION

In this issue's lead article, "Of Rape and Electoral Rout," senior editor William Murchison asks what we can make of the "mess" of the fall elections from the pro-life perspective. "The first need," he writes, "is to look around and inquire whether anyone got the number of the truck that hit us. Or, possibly, the one under which some of us apparently threw ourselves?" Murchison refers here to Republican senatorial candidates Todd Akin and Richard Mourdock's politically suicidal blunders in speaking about rape, and how the situation led some commentators to call for Republicans to back off on the "social issues." "I really don't think so," writes Murchison; instead, why not move forward with a more *intelligent*, educated approach, one that articulates that:

Undermining the legitimacy of abortion in no way entails the necessity of talking about "legitimate" rape. The contrary, really. What is rape if not the barbarous violation both of a woman's body and her integrity? It is in a sense all of a piece—violation of a woman by rape, violation of an unborn infant through abortion.

"The Akin and Mourdock catastrophes," he continues, are an indication of "how vast are the challenges facing pro-life folk," but not the whole story. Women, and especially single women, are a special challenge for Republicans; Akin and Mourdock's perceived callousness just provided more impetus to the massively successful "war on women" tsunami which drowned out the real cries for justice for the unborn. In our next article, contributor Laura Echevarria (in "Planned Parenthood's Media Blitz") demonstrates with painful clarity how clever and successful Planned Parenthood was in using TV ads and social media to seed their message (which was "short on accuracy and long on alarmist language") that Mitt Romney wanted to "turn back the clock" on women. "Any man who stands up and says no to the ever-lengthening Planned Parenthood 'wish list,'" she writes, "apparently fits Planned Parenthood's definition of a misogynist." Echevarria says the pro-life movement *must* keep the focus on abortion, and make better use of "the latest technology to reach voters." And, she makes the same crucial suggestion as Murchison: Potential pro-life candidates must be intensively trained "to deal with the abortion issue in a direct, unapologetic, and genuinely sympathetic manner."

Turning now to another "message" in the abortion debate: the oft-quoted statistic that 90 percent of unborn babies with Down syndrome are aborted. Matthew Hennessey, the father of 6-year-old Magdalena, who has Down syndrome, sets out to verify its accuracy, because, though it is a shocking statistic that "rarely fails to get people's attention," he came across a column (by Amy Julia Becker, author of a book on pre-natal testing and Down syndrome) that said it is "patently untrue." What? You'll read why, and how the truth he finds may be more dangerous for the future of children with Down syndrome. We are pleased to welcome, in *Appendix F*, Ursula Hennessey as well, wife of Matthew and mother of Magdalena, who

writes about the human repercussions of our culture's "Spartan" pre-birth selection.

This past January 22nd marked the 40th anniversary of *Roe v. Wade*; this year, the theme of the annual March for Life, writes Christopher White (in "Forty Years After *Roe*: Onward We March") was "hauntingly simple: 40=55m; 40 years under *Roe* have eliminated 55 million children." (Talk about a shocking statistic.) White's engaging report traces the history of the March for Life from its beginnings (quoting from *Human Life Review* founder J.P. McFadden's reporting in the anti-abortion newsletter, *Lifeletter*) up to present-day. With the death of March founder Nellie Gray in August 2012, the 2013 March had at its helm the "newly minted" Jeanne Monahan (born the very year *Roe* was handed down). White writes that Monahan "has worked tirelessly to continue Gray's legacy while modernizing," debuting a new website and having, for the first time, social media play a "vital role," which garnered the March a *bit* of major-media attention. For some further reporting on the traditional and egregious non-reporting of the March in the press, go to *Appendix A*, Anthony Esolen's appropriately titled "Stupid Press, Stupid People: Non-Reporting the March for Life" (reprinted from *Crisis.com*). And for more on *Roe*'s legacy, see *Appendix B*, from *First Things*: Jon A. Shields' "*Roe*'s Pro-Life Legacy" and, in response, Daniel K. Williams "The Real Reason to Criticize *Roe*," originally in the Public Discourse.

**W**e shift now to philosophy—specifically, the philosophical arguments used to justify abortion. Mathew Lu, assistant professor of philosophy at the University of St. Thomas in St. Paul, writes from his teaching experience about a particularly famous argument for abortion, the 1971 "Defense of Abortion" published by Judith Jarvis Thomson, known as the "violinist analogy." ("The woman, through no fault of her own, wakes up attached to a famous violinist who needs to be plugged into her blood supply for nine months or he will die.") While Lu admits that Thomson's arguments are "intuitively powerful," he shows, in an immensely satisfying exercise in true logical thinking, that "closer inspection" reveals "her pro-abortion conclusions are not nearly as formidable as they initially appear, and that the pro-life position can certainly be vindicated on non-religious grounds."

For a discussion of real-life situations of humans dependent on medical intervention, we turn next to Wesley Smith, and his "Liverpool Care Pathway: The Road to Backdoor Euthanasia." Smith explains how the Liverpool protocol—a program of palliative sedation—was created as a result of legitimate complaints from families in the U.K. that their family members were dying in agony. However, "as so often happens in centralized systems, the bureaucratic remedy for one problem led to even worse trouble down the line." The palliative sedation protocol has, in practice, too often been applied as "terminal sedation"—a form of "backdoor euthanasia"—which has also been implicated in the deaths of patients who are *not* terminally ill. As this is the kind of "treatment" looming on the horizon due to Obamacare, we should be forewarned.

Our final article, "The ACLU vs. Human Life" by Alan Sears & Craig Osten, is

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a chapter reprinted from the 2005 book, *The ACLU vs America, Exposing the Agenda to Redefine Moral Values* (the authors have included a postscript with an update for our readers). Sears and Osten cover the many assaults on human life—partial-birth abortion, eugenics and abortion, infanticide, free speech for pro-life advocates, and euthanasia—in which the ACLU has consistently fought for the wrong side, ignoring the rights of the unborn, and the vulnerable, and the conscience rights of all Americans. For an organization created to protect human liberties, in fact the ACLU’s “position on human life, whether at the beginning or the end . . . is dangerous to all individuals.”

On page 38, you will find our special section on last fall’s 10th annual Great Defender of Life dinner, honoring Judge James L. Buckley. We have the text of his remarks, as well as those of Kellie Fiedorek, who accepted the award for Advocates for Life, an organization she co-founded. We also include excerpts from our other speakers and photos. (Those of you who’d like to see or hear the whole thing can! DVD’s of the dinner will be available soon; please check our website for information, at [www.humanlifereview.com](http://www.humanlifereview.com), or call us at 212-685-5210.)

This issue also features a special Booknotes section, with brief reviews of: *More Glimpses of Heaven*, by Trudy Harris, R.N. (Richard Hurzeler); *Abandoned: The Untold Story of the Abortion Wars*, by Monica Migliorino Miller (Tyler O’Neil); and *Abortion under State Constitutions: A State by State Analysis* by Paul Benjamin Linton (John M. Grondelski). In addition to the appendices mentioned above, we include (*Appendix D*) Leslie Fain on “Atheist, Secular and Pro-life” from *Catholic World Report*, and the moving “Having the Baby Instead of Aborting” (*Appendix E*) by Lynn Bateman, which originally appeared on Ricochet.com. And as always we sprinkle our pages with the offbeat and hilarious cartoons of Nick Downes.

\* \* \* \* \*

As I write this, the *Human Life Review* is seeing an unprecedented amount of public reaction to a single article in our last issue: Mario H. Lopez’s “Hijacking Immigration?” Several conservative and pro-life groups have reported on it favorably and/or shared it (such as the American Principles Project and *World* magazine); some contributors to *National Review Online* have vehemently opposed it (Ramesh Ponnuru said we ought to be “embarrassed” to have run it); a few individuals in the organizations Lopez writes about have written angry letters and blog posts accusing us of being “scurrilous” and “outrageous.”

Some thoughts: First, as I wrote in my response on The Corner on NRO (“The *Human Life Review*, Immigration Opponents, and Transparency,” <http://tinyurl.com/b78xz9z>), *HLR* does not take a position on immigration policy. We do, however, have a great interest in, and have published many articles throughout our 38 year history on the population-control movement—the roots it has in eugenics, and how it has played a powerful role in the promotion of abortion and birth control, here and overseas. The ideology of eugenics (that people are not equal); and that of population control (that people—either too many or the “wrong” kind—are the

problem) are antithetical to the values of the pro-life movement.

The question is not whether or not pro-lifers can disagree on immigration policies—of course they can and do. The question of interest to us is how much *influence* those whose opposition to immigration stems from the belief that population ruins the environment, or that there will be a (yet unexploded) “population bomb,” or that certain races of people should not be encouraged to breed, have in current debates.

The connections highlighted in Mr. Lopez’s article are easily verified with simple web searches. And this is not the first time that John Tanton, former president of Zero Population Growth, has been singled out as the mastermind behind the anti-immigration movement (see “The Anti-Immigration Crusader,” Jason DeParle, *New York Times*, April 17, 2011).

So I would say, answering our critics, that it’s not the facts about the organizations that are at issue here. For those individuals who work for these organizations, who feel unfairly tarnished by the population-control connections—see Mr. Lopez’s comments below. The salient point about the information in Mr. Lopez’s article is: *Do these connections matter?* I would say yes; but that is not at all the same as saying that one can’t be pro-life and pro-immigration restriction. I will say that those who are pro-life might think twice about supporting organizations heavily influenced by environmentalist and population-control ideologies.

MARIA MCFADDEN MAFFUCCI  
EDITOR

(Statement from Mario H. Lopez)

My article has caused a stir since it was printed and appeared online. There has been much pushback, not from a pro-life perspective, but rather from folks who disagree with *what they assume* is my stance on immigration. As of this writing the accusations and assumptions are coming at a rapid pace. But since immigration policy is not the thrust of this journal nor of my article, I will leave those debates for other venues.

The important takeaway from these reactions is that no one has yet countered the evidence presented in my piece. John Tanton, and others who have beliefs diametrically opposed to the defense of the sanctity of life, established the Federation for American Immigration Reform, NumbersUSA, and the Center for Immigration Studies. Tanton and his colleagues purposefully established these groups to provide cover for their agenda and to take on all forms of immigration as it was, and is, the main source of American population growth. In a 2001 letter to current NumbersUSA Chairman C. Gary Gerst, Tanton spells out his intention to propagandize on Capitol Hill. “The goal,” Tanton wrote, “is to change Republicans’ perception of immigration so that when they encounter the word ‘immigrant,’ their reaction is ‘Democrat.’”

To me, it’s tragic that some pro-life leaders and elected officials have allowed

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perfectly valid concerns about illegal immigration to lead them to seek counsel from the population-control movement. Refusing to examine the evidence about the purpose of these organizations just makes it worse.

It is also worth noting briefly that adherents to the population-control mantra are simply substantively incorrect. History has proven both Thomas Malthus and Paul Ehrlich to be spectacularly wrong on issues of “overpopulation” and resources. Even earth’s current population of roughly seven billion people is not as scary as it sounds. The pro-life Population Research Institute lays out the current case against alarmism about population growth with a simple calculation: “given an average four person family, every family would have a 66' x 66' plot of land, which would comfortably provide a single family home and yard—and all of them fit on a landmass the size of Texas.”

If there is one point that fell short in the piece, it is that my assertions commingled current staff members of the organizations I highlighted with the founders and donors of those same organizations. Certainly, it is possible that there are individuals who have sincerely held pro-life views that work for these groups. Not accounting for that is my responsibility alone.

To these folks I make the same respectful appeal as I do with anyone else: Look at the evidence for yourselves to understand what the purposes of these organizations are and what the motivations were of the founders and past and current donors. Surely this is incompatible with a pro-life worldview. Once again, this is not to say that one cannot hold restrictionist immigration views and at the same time be pro-life. The issue has always been these specific organizations and their reason for existing.

What remains amidst the controversy and emotional reactions that “Hijacking Immigration?” has stirred up is the simple truth that the population-control agenda is in fundamental opposition to defense of the sanctity of life. For pro-life leaders, elected officials, and activists who have been targeted and perhaps deceived by believers in population control, this may be a harsh reality, but it is an inescapable reality nonetheless. The sooner those who seek to defend the sanctity of life disassociate themselves from FAIR, NumbersUSA, the Center for Immigration Studies and others, the better off they will be in terms of staying true to their own pro-life principles.

—*Mario H. Lopez*



# Of Rape and Electoral Rout

*William Murchison*

**W**hat a mess! I think many might agree with that characterization of our politics and public life since the electoral rout last November 6. By “we” I mean proponents of the view that human life—a blessed gift from God—is entitled to strict protection under the laws of society. You could call us, in contemporary parlance, nut cases whom the voters rightly pelted with abuse and derision.

No wonder we’re not feeling up to snuff right now, we pro-life nut jobs. Not a whole lot really went right from a pro-life standpoint. “I claim we took a hell of a beating,” Vinegar Joe Stilwell said, memorably, following the Allied expulsion from Burma in 1942. That’s no bad way of expressing and assessing the state of things, electorally speaking, since Election Day. Structurally, numerically, as we acknowledge, things are more or less where they were before the election—a resolutely pro-choice president in control at the White House, Congress divided, as before, between the two parties, the prospects for friendlier attention to unborn life somewhere between nil and go-away-don’t-bother-me. And that’s not the end of it. Increasingly worrisome is the post-election patter centered on the supposed need for a Republican makeover in ways not exactly favorable to long-term pro-life commitments.

I will come back to this urgent point in a few moments. The first need is to look around and inquire whether anyone got the number of the truck that hit us. Or, possibly, the one under which some of us apparently threw ourselves? That might be the relevant query in Missouri, whose U.S. senatorial race epitomizes the pro-life agonies of 2012. A good man did a bad thing, politically speaking. In fact, the nicest way of putting it might be that Republican Congressman Todd Akin, in seeking to dislodge Democrat Claire McCaskill from her seat, accidentally committed suicide.

Akin, in a TV interview, had meant to state his disagreement with the idea of permitting abortions for rape victims. As he expressed it, “First of all, from what I understand from doctors, [pregnancy from rape is] really rare.”

Then: “If it’s a legitimate rape . . . .” With that memorable intro, the Akin campaign for Senate may be seen in retrospect to have blown itself to smithereens.

“If it’s a legitimate rape, the female body has ways to try to shut that

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**William Murchison** writes from Dallas for Creators Syndicate and is a senior editor of the *Human Life Review*. The author of *Mortal Follies: Episcopalians and the Crisis of Mainline Christianity* (Encounter Books), he is working on a book about the moral collapse of secularism.

whole thing down. But let's assume that didn't work or something. I think there should be some punishment, but the punishment ought to be on the rapist, and not attacking the child."

"Legitimate rape." "Ways to try to shut the whole thing down." Whatever light Congressman Akin had imagined he was shedding on the matter, the immediate surroundings went pitch-black dark. Women, far from all of them employed as flacks by NARAL Pro-Choice America, tore apart Akin's remark, and his subsequent apology, blowing the shreds back in his face. Mitt Romney, in pure self-defense, assailed the Akin medical diagnosis as "insulting, inexcusable, and, frankly, wrong." That was not the whole of the damage. With every good intention in the world, I expect, Congressman Akin exposed his own cause to ridicule—the deadliest poison on the market; guaranteed to put the conversation out of rhetorical reach.

I want to get this dreadful narrative—with which we're all familiar—out of the way as quickly as possible, so as not to imply that Todd Akin, with naïve if entirely honorable intentions, brought down the temple upon his own cause and party, sort of like Victor Mature playing Samson to George Sanders' Philistine king. I don't think he did that. For one thing, a fellow Republican Senate candidate in Indiana, Richard Mourdock, came near duplicating Akin's feat of self-destruction. Asked about abortion in a debate, Mourdock—who had unseated Indiana's long-serving senior senator, Richard Lugar—hedged not: He was against it except when necessary to save the mother's life. He decided, unwisely, to amplify: "[E]ven when life begins in that horrible situation of rape, that is something God intended to happen." Again, Democrats pounced. Again, Romney skittered backwards. In the end, Mourdock lost to generally pro-life (standard exceptions for rape, incest, and protection of the mother's life) Democrat Joe Donnelly.

The Akin and Mourdock catastrophes indicate how vast are the challenges facing pro-life folk in the Age of Obama. Let us count the ways.

To begin, women voters are increasingly hard for Republicans to keep on the reservation—in defiance of the Victorian novelist George Meredith's dictum that "Women are, by nature, our strongest Conservatives"—to be looked on "as the Bulwarks of Society." (He may have had in mind the likes of Maggie Smith's redoubtable Dowager Countess of Grantham.)

In fact, single women—67 percent of whom voted for Barack Obama in 2012—are the special challenge. Conservatism stems not merely from analysis and instinct but from connection to those institutions—chiefly church and family—that embody the good sense of the race. To be intentionally single these days is intentionally to stand aside (much of the time—not all) from participation in the ancient rituals of life, founded on the joining in

matrimony of a man and a woman. A woman uninterested in “tying” herself to a man, far less their children, cannot be called susceptible to arguments against regarding her womb as anything but private property. Single women, not unaccountably, tend to value personal independence, and don’t like to view it as compromised by theological doctrine or edict of government. A single woman, I would imagine (not being one, last time I looked), is particularly put off by remarks such as Akin’s and Mourdock’s, which speak didactically, and from a male perspective, concerning violation of the body.

Another point of acute sensitivity for single women and also, apparently, for a large number of married ones, touches contraception. Perceived (male) attempts to narrow access to birth control raise more than just hackles; they raise money for Democrats and Democratic candidates. Emily’s List, which raises money for pro-abortion Democratic women candidates, cagily went bananas over Akin’s solecisms. An email in behalf of his conveniently female rival, Sen. McCaskill, brought in \$2.3 million. The pitch: “Now more than ever we need to fight to send Claire back to Congress so she can stand up for women and families.” Mourdock’s milder comment concerning rape bagged within 24 hours \$631,000 for the List and its candidates. Just prior to the election, the *Wall Street Journal* reported that “Emily’s List had collected \$36 million through mid-October, run millions of dollars of ads in Senate races, and has directed more than \$10 million of bundled donations from members, earmarked for specific Democrats, such as Senate hopeful Elizabeth Warren in Massachusetts.”

Not that Democrats seeking a gusher of female votes weren’t working other slot machines. The furor over Susan G. Komen for the Cure’s aborted (as it were) plan for cutting off funding to Planned Parenthood lived on. Indeed, it still lives; donations to Komen and participation in its Runs for the Cure are down sharply since the furor commenced. Planned Parenthood—which has affluent supporters in both parties—has evidently become for Americans a kind of household god. Another *Wall Street Journal* report, from Loudon County, Virginia—a fair distance from the Upper East Side of Manhattan—found women divided sharply over whether to accord the social issues higher priority than the economic ones. (Ultimately, Loudon went for Obama, 9,715 to 7,767.)

Erin Abernethy, 36, the mother of four, and a Bush voter four years earlier, told reporter Laura Meckler: “I’m not pro-abortion. I am pro-choice.” One committed supporter of Romney with whom Meckler spoke said that although concerned about the economy, “she agreed with Mr. Obama on Planned Parenthood and abortion rights.”

The *New York Times* editorial page predictably chimed in with the news that “A Romney-Ryan victory could result in recriminalizing abortion in much of America.” The columnist Thomas Friedman was equally helpful, advertising the desire of the “ever-more-assertive far-right Republican base . . . to overturn the mainstream consensus in America on [abortion].” Ah—the mainstream consensus! We’re there: no turning back now! Any wonder the “radicals” of Middle America are restless?

Came Election Day, Nov. 6. Events pretty much fulfilled the glum expectations of many pro-life strategists. The voters returned to office the most pro-choice president in the country’s history, affording him the right to ignore for four more years any and all arguments for tolerance of an imputed right to be born. In Missouri, Sen. McCaskill won handily. The *New York Times* reported exit polls saying that 64 percent of Missouri voters believed Akin’s words and manner to be “either the most important factor or one of several important factors in the race.” In Indiana, Mourdock had spoken more guardedly. It gained him, at that, only 44 percent of the vote, against Democrat Donnelly’s 50 percent. (A Libertarian candidate got the rest: not that Libertarian voters would have broken for a candidate with restrictive views as to womb privileges.)

Straightway electoral post mortems piled up to the ceiling. Mitt Romney came in for a share of blame equal in size and weight to the praise accorded the Obama campaign’s high-tech ground game. The “social issues”—including abortion—drew especially extensive analysis. As *New York Times* letter-writers saw it, Republicans had gotten what they deserved: “The control of a woman’s body remains properly in her hands”; “at long last Election Day efforts to legislate religious beliefs met with failure throughout the country”; “churchgoers may not impose their dogma on others.”

The pros and semi-pros weighed in as well: Karl Rove in the *Wall Street Journal* said, “Offensive [GOP] comments about rape . . . gave the media an excuse to put social issues at the election’s center in a way that badly hurt the entire party, as well as costing Republicans two Senate seats.” To Rove this meant Republicans, without jettisoning “their principles . . . must avoid appearing judgmental and callous on social issues.” Whether Mourdock’s mention of God qualified as callous was a point left unexcavated. From casino owner Sheldon Adelson, who gave Romney’s super PAC \$20 million, and donated another \$50 million to various conservative groups, came the “marketing guy” judgment that the GOP needs to shut up about social issues, such as abortion and stem-cell research. “We’re pro-abortion rights, pro-stem cell research,” Adelson said.

One ingredient in this vast and malodorous farrago requires fast attention.

It is the “s” at the end of “social issues.” The category is plural. It needs to be acknowledged as such. The field of battle, to employ another trope, is extensive in ways little anticipated at the time of *Roe v. Wade*, or slightly before that, when much of the talk from “religious conservatives” centered on Supreme Court decisions disallowing “official” prayer in public schools. *New York Times* reader Meredith Schultz, a self-designated mainline Protestant living in Boca Raton, Florida, described her state of mind to the editors: “As an educated person, I find myself alienated by the anti-woman and anti-science sentiments espoused by the G.O.P. Its ‘take back America from the undesirables’ message nakedly exploits and encourages people’s prejudices against undocumented immigrants, gays, single mothers, and minorities. I wouldn’t allow such hateful talk at my dinner table; I certainly don’t want to send it to Washington.” A California political scientist, speaking before the election, made similar points in faulting Republicans for their conservatism on abortion, immigration, the environment, and gay rights. “They’re just blind to the future,” she said. “We’re passing the tipping point now, and they are not realizing that.”

The ascent of gay rights to something approaching preeminence on the scale of “social issues” is among the possibly unanticipated consequences of the 2012 elections. It is one to which we must carefully attend. Gay rights in and of itself is a “human life” issue—dealing with the purposes for which human beings were created by God and therefore possessing revolutionary implications. That Americans might not understand homosexuality and lesbianism as conditions deserving of full protection under the Constitution and laws of the land is a proposition that liberals find nearly as abhorrent as the thesis that no inherent human right exists to snatch from an unborn human the gift of life. Gay rights has been a while in coming to this eminence as an issue. I have neither space nor desire to unearth here the arguments against that standing. I merely, for the moment, remark how quickly the issue has caught up with abortion: maybe making ready to surpass it, maybe ahead of it already. The two aspirations fit together neatly: having to do with what you want to do, free of hindrances by the institutions of society. Consider a letter to the *Wall Street Journal* from Joseph J. Kondalski of Toledo, Ohio: “It is time for conservatives to reconcile themselves with acceptance of gay marriage. I have, because one of my relatives is gay . . . . Inclusion is what the Republican Party should be about, not exclusion. Conservatism needs to evolve with the times, while maintaining its core values.”

“Evolve with the times”—into what? Apparently we’ll find out when we get there. Freedom of action in moral matters, broadly speaking, seems to be the desideratum—the freedom to love and marry whomever you like, and to

regulate the biological consequences of that love. Prior to the rise of the counterculture in the mid-1960s, a network of responsibilities, sponsored by the old culture, imposed certain inhibitions upon choice. Chop the network apart, dig up and discard the old assumptions regarding what's owed others and you have—well, what we have now, circa 2013.

Other issues fit into the picture, as we have seen on the testimony of Meredith Schultz and such like. Loosened immigration is one: the right, basically, to the hospitality of whatever country (generally the United States) you might choose to make your own. “Environmentalism” is a social issue of a different character so far—less an assertion of individual rights than a Bronx cheer delivered to capitalism. Abortion, gay rights, immigration, environmentalism—the four blend into unassailable doctrine. Maybe government healthcare, too. Sheldon Adelson, who could probably afford an Advil if he needed it, declares himself “in favor of socialized-like health care.”

**W**hat to do becomes the question—what to do from the perspective of faith in a higher order of priorities than plain old human desire, as electorally attractive as that feature of the human character may have proved itself in 2012. “Social issue” politics didn’t go well for the Republicans in 2012 and may not do any more for them in 2014 and 2016. You could call that an argument for spiking the guns, leaving campfires blazing, and stealing away to the hills, to fight no more forever; at most, perhaps, to conduct occasional raids against the forces of Occupy America. Such a strategy would leave “progressives” in possession of the field, jubilantly so; viewing calls to downplay or boycott “social issues” as testimony to the futility of standing up to the liberal juggernaut. The calls, the exhortations, have a certain cold coherence. “We have a significant problem with female voters,” says John Weaver, who once ran John McCain’s presidential campaign. The Akin and Mourdock comments, Weaver says, “did not seem foreign to our party. They seemed representative of our party.”

In substance or at the level of rhetoric? What if a—hmmm, cooler? graver?—candidate than Akin had set out to make the case against abortion? Might not that have been worth the labor and risk, inasmuch as studious avoidance of the issue would have given the impression of the candidate’s indifference toward the extinction of unborn life?

A favorite piece of folk wisdom has to do with the numerous ways available to whoever wants to skin a cat. Undermining the legitimacy of abortion in no way entails the necessity of talking about “legitimate” rape. The contrary, really. What is rape if not the barbarous violation both of a woman’s body and of her integrity? It is in a sense all of a piece—violation of a woman

by rape, violation of an unborn infant through abortion. Can the two considerations so readily be separated in the minds of voters or anyone else?

*There's More to Life Than Politics* is the title that an editor once stuck on a book of my more culturally oriented newspaper columns. I remain unable to contest—why would I want to?—the thesis that other goods exist besides the accumulation of political power in the interest of serving political ends. If other worthwhile ends exist, is it our business to figure out which ones the electorate wants, then commence the hard-sell? Or is our business to figure out the worthiest ends, irrespective of popularity: making them popular by hard work and persistence (not to mention, maybe, a spot of divine intervention)?

We can all see Karl Rove's point, can we not?—the fruitlessness and folly, the harm and injury consequent on bad word choices or on the appearance of callousness and indifference toward the suffering. No less unfortunate, possibly, are attempts to clean up damage through empathy that comes off as patronizing, haughty, uncaring. Political things, from whatever perspective of belief, must be done in at least marginally political ways, else they won't get done at all.

There seems to me, in the end, no fundamental contradiction between the ideals of political victory on the one hand and political integrity on the other. What conservative candidates need more than instruction from the *New York Times* is some strategically developed sense of the best—therefore the kindest, most compassionate—arguments in behalf of the understandings native to Judeo-Christian civilization. The Judeo-Christian position is more—much, much more—than mere attitude; the quick kiss-off; a dismissive snarl in the general direction of uncomprehending critics. Its shape is the shape of the great design for humanity, received and handed down from the very start of things. It makes no sense to apologize for upholding and teaching the design—any more than it makes sense to teach with foot encased in mouth.

Teach. Teach well and intelligently. There might be, from certain perspectives, no better lesson to pick up from the 2012 campaigns. But button the lip and change the subject? Hand over “the social issues” to fate and fortune? I really don't think so.

# Planned Parenthood's Media Blitz

Laura Echevarria

I couldn't get away.

My television shows were being invaded during commercial breaks by political diatribes and deceptive messages. My other source for watching favorite television programs, Hulu, was also assaulting my political sensibilities in a disquieting and unsettling way by customizing ads to my IP address. I live in Virginia, and in the 2012 election, the Commonwealth was a swing state for only the second time in recent history. Political ads, designed to sway voter opinion, were aimed at undecided and "soft" Republican voters in crucial states like Virginia. They not only ran through the traditional route of local television, cable channels, and radio, but also popped up on a variety of websites. The largest purveyor of this morass of misinformation? Planned Parenthood.

Planned Parenthood's ads were short on accuracy and long on alarmist language. They were clearly geared toward scaring women into thinking that presidential candidate Mitt Romney was the latest in a long line of Republican misogynists set upon treating women as second-class citizens and undermining their rights. Of course, "women's rights" to Planned Parenthood means abortion on demand, contraception coverage by insurance companies that don't charge a co-pay, and continued federal funding of Planned Parenthood. *Any* man who stands up and says no to the ever-lengthening Planned Parenthood "wish list" apparently fits Planned Parenthood's definition of a misogynist.

One Planned Parenthood television ad specifically claimed that Mitt Romney would "turn back the clock" on women:

**Voice-over:** Mitt Romney would turn back the clock for women.

**Mitt Romney:** Do I believe the Supreme Court should overturn *Roe v. Wade*? Yes.

**Romney:** Planned Parenthood, going to get rid of that.

**Voice-over:** Today, millions of women rely on Planned Parenthood health centers for basic health care, including life-saving cancer screenings, and millions more know we should be making our personal medical decisions, not Mitt Romney.

**Tagline:** Planned Parenthood Votes is responsible for the content of this advertising because Mitt Romney is wrong for women's health.<sup>1</sup>

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**Laura Echevarria** was the director of media relations and a spokesperson for the National Right to Life Committee from 1997 to 2004. Now a writer living in Virginia, she teaches composition at a small college while working on her master's in English Education. She continues to host her own blog at [www.lauraechevarria.com](http://www.lauraechevarria.com).



Planned Parenthood's ad left the viewer with the impression that Mitt Romney's desire to overturn *Roe v. Wade* would take the form of "turning back the clock" by banning abortion. And the quote from Mitt Romney ("Planned Parenthood, going to get rid of that") gave the uninformed—or misinformed—viewer the idea that a Romney administration would dismantle Planned Parenthood.

Even the *New York Times* found that a reach:

That statement can be misleading. Mr. Romney was answering a question about what federal funding he would target for elimination or reductions if he is elected. His campaign has said he wants to end federal funding of Planned Parenthood, not the organization itself.<sup>2</sup>

But when asked about the deceptive language, ". . . [O]fficials at the Planned Parenthood Action Fund said women understand the context of his remarks."<sup>3</sup>

Then there was the voice-over in a radio ad that ran in October: "Mitt Romney will put critical healthcare for women and families at risk and will let politicians interfere in your most private, personal medical decisions."<sup>4</sup>

And in still another television ad, the presidential candidate was accused of wanting insurance companies to charge women "more."

**Voice-over:** Mitt Romney sure has been talking a lot, but all that talk can't hide Romney's real agenda that hurts women.

**Mitt Romney:** The actions I'll take immediately are to remove funding for Planned Parenthood.

**Romney:** Do I believe the Supreme Court should overturn *Roe v. Wade*? Yes.

**Voice-over:** And Mitt Romney would go back to letting insurance companies charge women more.

**Tagline:** Planned Parenthood Votes is responsible for the content of this advertising because no matter how much he talks around his record, Mitt Romney is wrong for women's health.

By "more," Planned Parenthood means that women would have to contribute a co-pay for their contraception, but this kind of arrangement isn't unusual. Many health insurance policies require a co-pay for covered prescriptions; however, for Planned Parenthood, this is an undue burden. During the debate over the creation of the Patient Protection and Affordable Care Act, Planned Parenthood Federation of America (PPFA) and its pro-abortion allies were successful in demanding that contraception be fully covered by the act, including the so-called "morning after" pill. They also opposed any legislation or amendments that would allow employers religious exemptions. The organization saw the advantage of using comments made by Mr. Romney—when taken out of context—to advance the pro-abortion

agenda. These ads began running at a crucial time. As CNN reported in September 2012:

The ad comes as Romney struggles to narrow the gender gap between him and President Barack Obama, who sees strong support among women compared to the Republican nominee.

Fifty-nine percent of likely voters consider the president to be more in touch with problems faced by women, while 34% feel the same about Romney, according to a CNN/ORC International poll released earlier this month.

Recent polls also revealed Romney behind Obama in the crucial swing state of Virginia, where the ad airs beginning Tuesday. According to CNN's Poll of Polls, which averages three polls of likely voters from the state, Obama has a six point advantage over Romney, 50%-44%.<sup>6</sup>

These ads, and the deliberate hysterical language, were designed to drive a wedge between female voters and the Republican nominee. And by running them for months rather than weeks, and increasing the intensity of the campaign through a stepped-up ad rotation, likely voters were deluged with misinformation on a grand scale. A sympathetic media did nothing to ameliorate this situation.

#### **Planned Parenthood's Research**

Looking back after the campaign dust cleared, in December the *Washington Post* reported: "Planned Parenthood Action Fund earned an honor this campaign cycle that had nothing to do with women's health: It was the most effective political group in the 2012 election."<sup>7</sup>

According to the *Post*, Planned Parenthood pollsters and research companies like Greenberg Quinlan Rosner (GQR) pursued a technologically sophisticated approach to designing the ads and their content:

Planned Parenthood got an inkling that reproductive health could be a much bigger issue than abortion back in February, when a heated fight broke out over the health-care law's requirement that all employers include contraceptive coverage in their insurance.

"This would be an election where we could seize the opportunity," says Anna Greenberg of Greenberg Quinlan Rosner, who worked for the group.

Greenberg began tracking how much women's issues came up at various points in the campaign. She kept seeing spikes in interest happening over and over again.<sup>8</sup>

Greenberg used data to track Internet traffic on what were considered "women's issues" over the weeks and months of the campaign as various controversies appeared in the news. Social analytics companies such as General Sentiment do this by tracking the "buzz" generated by:

product launches, ad campaigns, PR events, earnings reports, a single consumer's product experience and many other triggers, even scandals. General Sentiment scours

and analyzes more than 30 million sources of content, “listening” in real time to the opinions expressed regarding brands, products, politicians, celebrities, companies and more.<sup>9</sup>

Greenberg was able to track issues of pro-abortion concern; Planned Parenthood, along with other pro-abortion groups, then used these results to wage its own war on the Republican Party, show its support for Barack Obama, and create its own narrative regarding the “war on women.” Greenberg notes:

Throughout the campaign, the Democratic Party clearly championed women’s rights, especially reproductive rights, in a full-throated, unprecedented way. The Obama campaign ran ads defending a woman’s right to choose and Planned Parenthood, in battleground states and nearly every competitive race against a Tea Party candidate down the ballot, invoked the GOP’s “war on women.” This approach was clear, a moral imperative given the level of misogyny coming out of the Republican Party, but also an effective campaign strategy; in Democracy Corps’ post-election research, for example, defending Planned Parenthood was in the top tier of reasons to support President Obama, especially among women voters.<sup>10</sup>

Analysts point to how Planned Parenthood approached their strategy as the key to the ad campaign success. First, they used the candidates’ own words against them. As David N. O’Steen, Ph.D., executive director for the National Right to Life Committee, wrote,

A determined, one-sided media together with a sequence of most unfortunate statements by candidates created a “perfect storm” that played into and greatly augmented the pro-abortion narrative in this election. This effectively neutralized the usual pro-life advantage.<sup>11</sup>

Writing in *Human Events* a week after the election, former presidential candidate Gary Bauer noted:

The media consensus seems to be that the election was a vindication of the left’s attacks on Republicans’ so-called “war on women.” But the election wasn’t a repudiation of the pro-life position, but rather a repudiation of conservatives who talk about abortion ineptly.

The view that all human life is sacred wasn’t what made headlines during the campaign. It was stupid comments about “legitimate rape” and offensive references to a young abortion activist as a “slut” and a “prostitute.”

The relevant issues—forcing taxpayers to pay for abortions; Obamacare’s coercion of religious institutions into paying for abortion drugs—could have been political winners for Romney and other Republicans, if they hadn’t allowed the Democrats to frame any attempt to limit abortion as part of a broader “war on women.”<sup>12</sup>

Twitter activity after some of these comments clearly indicated to pollsters and analysts where women’s sentiment rested—and how it could be tapped and manipulated into votes.

Planned Parenthood began in the spring before the election with focus groups, using these to determine what voters knew and did not know about the Republican candidate's stance on "women's health issues."

In March, when Greenberg Quinlan Rosner began the research into what would sway voters to move away from Mitt Romney, the research showed significant support for Republican candidates. The key findings in a March 7, 2012, executive summary noted:

Access to birth control has the potential to impact actual races. As a starting point, in this battleground, a generic Republican leads a generic Democrat by 5 point[s]. In a generic informed match-up between a Democrat and a Republican given to half the sample, the Democrat trails. The other half sample received the same information with language about birth control, and the candidates are tied.<sup>13</sup>

The *Washington Post* interviewed pollster Molly O'Rourke of the Democratic polling company Hart Research, who said, "Women did not know about Romney's position on women's health. To the extent they made a guess, there were a lot of wrong assumptions. They knew him as a businessman and not particularly strong on these issues."<sup>14</sup>

After that, Hart Research and Molly O'Rourke went to work to find out what ad messages worked well at painting Romney as a candidate bent on tearing down women's rights. Testing began with ads using personal messages and moved to ads that used the Planned Parenthood brand. However,

[w]hat worked best, it turns out, were using Romney's words themselves. The debates from the Republican primary gave them a number of options to choose from, including, "I'll cut off funding for Planned Parenthood. We're going to get rid of that," and remarks that he would be "delighted" to sign legislation that would overturn *Roe v. Wade*.<sup>15</sup>

But once Planned Parenthood had its message, it needed its target. Advertising money is best used when spent on those most receptive to the message. For that, Planned Parenthood resorted to a marketing technique called micro-targeting:

[C]ampaigns have begun identifying potential voters literally one by one, even if they live in areas dominated by the opposition party. Using surveys and modeling and consumer and political data, the parties convert the electorate into subgroups that turnout specialists call by names like "Flag and Family Republicans," "Education-Focused Democrats" and "Older Suburban Newshounds."

This is known as microtargeting, and it turns traditional political mobilizing on its head by giving campaigns the opportunity to create virtual precincts of voters and poach on the opponent's turf.<sup>16</sup>

Using micro-targeting, Planned Parenthood was able to identify one million female voters who would be receptive to messages supporting abortion on demand and the new health-care law mandating coverage for contraception.

Once these women were identified, they were heavily targeted with a massive ad campaign that began in June:

If you were among the women in that group who lived in Virginia, you received five pieces of direct mail and dozens of phone calls. You would get visits from canvassers, who might hand you a folded-up brochure, styled to look like a pocketbook, that told you Mitt Romney could cost you \$407,000 over your lifetime by not supporting co-pay birth control or equal pay legislation.<sup>17</sup>

With significant money in hand, pro-abortion groups and Democrats were able to run ads during the general election while Republicans focused ads on the primaries. In the end, the pervasive ad campaign defined the abortion issue early as a “women’s health” issue that included contraception. This message was propagated by a campaign that influenced voters into believing that Mr. Romney would single-handedly defund Planned Parenthood out of existence, place poor women in the untenable position of not having adequate Ob/Gyn care, overturn *Roe v. Wade* and, by extension, outlaw abortion nationwide. Facts didn’t matter, only the Planned Parenthood goal of re-electing Barack Obama.

No matter what.

### **The Money**

In May 2012 came the report that Planned Parenthood would be spending \$1.4 million in targeted advertising in Des Moines, Iowa; West Palm Beach, Florida; and the suburbs of Northern Virginia.<sup>18</sup> By Election Day, advertising expenditures by Planned Parenthood-affiliated organizations had soared to \$15 million, more than three times what the organization spent in 2008. According to an analysis by the *Non-Profit Quarterly*, the money spent by Planned Parenthood Votes and Planned Parenthood Action Fund was money well invested by the organization—Planned Parenthood had a 98 percent return on their investment.<sup>19</sup>

According to the *Non-Profit Quarterly*,

Overall, campaigns and outside groups reportedly spent \$39 million on abortion-related ads this election cycle but the Democrats ran six times as many as Republicans and while Republican ads on abortion ran mostly during the primaries, Democrats aired theirs as the general election neared, suggesting that there was some understanding of a changing tide.<sup>20</sup>

On the Sunlight Foundation’s website, a check of Planned Parenthood Votes and Planned Parenthood Action Fund, along with their affiliated groups across the country, shows millions of dollars spent in supporting pro-abortion Democrats. The Foundation’s entry for Planned Parenthood Votes shows not a single independent expenditure in favor of any Republican candidate.<sup>21</sup>

## Conclusion

The problem pro-lifers will face in the future with this kind of political machinery will be a reluctance by pro-life candidates to say anything on the abortion issue for fear it will be taken out of context. Republican strategists may look at the overall results of this campaign and argue that the abortion issue hurts pro-life candidates. In addition, Planned Parenthood and other like-minded organizations will seek to repeat the successes of the 2012 campaign by targeting candidates and their messages very early. The power and influence money was able to buy in this campaign was phenomenal. Still, it took money, and a great deal of it, to redirect and manipulate the issues—effectively minimizing the abortion issue by turning “women’s rights” into a referendum on contraception.

As David N. O’Steen observed:

Early on, the Obama campaign and their allies at Planned Parenthood, EMILY’s List, and NARAL sought to define the abortion issue as a “war on women” and link it to contraception and family planning. This effort was assisted by the media furor that surrounded the campaign to defund Planned Parenthood in Congress.<sup>22</sup>

Planned Parenthood succeeded largely by redefining Mitt Romney and focusing on contraception, not abortion. After spending \$39 million on abortion-related messages, the pro-abortion movement and its allies only managed to nullify the pro-life advantage. And then there are the three million evangelicals who voted in 2008 but did not vote in 2012—they could have changed the outcome of the election. As Gary Bauer notes:

An under-examined reason why Romney and other Republican candidates lost had to do with the three million white evangelical voters who cast a ballot in 2008 but didn’t vote this year. In an election decided by fewer than three million votes, they would have been pivotal. And I think it’s safe to assume they didn’t stay home because Mitt Romney wasn’t liberal enough on social issues.<sup>23</sup>

If the pro-life movement keeps the focus on abortion, public sympathy is with the pro-life message—regardless of how much money is involved. Polls show that, even after the election, a majority of Americans still reject abortion on demand.

Future challenges for the movement will include finding a cost-effective way of using the latest technology to reach voters while staying within the limited financial means of the pro-life movement. As social media evolves, so too must the pro-life movement. Issues are defined in moments in today’s light-speed world of information and the groundwork to deal with issues needs to be in place very early in the election cycle—earlier than we have probably seen before.

Market research and social media monitoring will allow pro-lifers to tailor messages and provide for an early definition and, more likely, redirection of the issues.

More important, potential pro-life candidates need to be trained intensively to deal with the abortion issue in a direct, unapologetic, and genuinely sympathetic manner. Our candidates need to know the issues involved as well as they know any other issue, such as foreign policy or economics. Doing so will go far in curbing the ability of Planned Parenthood and other pro-abortion groups to define both the candidate and his or her message. As we saw in this campaign, candidates cannot underestimate the importance of defining themselves and the issues as soon as possible.

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THE LAST OF THE MOHICANS.



# Testing Down Syndrome to Death

*Matthew Hennessey*

At one time or another, all of us have fallen for a lie that we wanted to believe. Have you heard that nine out of ten babies with Down syndrome are aborted? I first came across this shocking statistic in a *New York Times* article published in May 2007, just two months after my daughter Magdalena, who has Down syndrome, celebrated her first birthday. In the years since, I have seen it repeated in countless articles in respected publications, in blog posts and in interviews, in every corner of the ever-expanding media universe. The influential conservative writer George Will referenced the claim last year in a lovely piece about his son John's 40th birthday. The *New York Times* columnist Ross Douthat also used it last year in an article about eugenics. The claim shows up all the time in social media. I have used it myself.

But is it true? Winston Churchill said that a lie gets halfway around the world before the truth has a chance to put its pants on, and this 90 percent claim has certainly done some impressive travelling.

As someone who is functionally innumerate, I am rarely inclined to question the veracity of percentages and statistics when I encounter them in print. But if decades of watching disingenuous ideologues arguing on cable television have taught me anything, it's that statistics are routinely manipulated to support the partisan preferences of those who wield them. There are, as they say, lies, damned lies, and statistics. Those of us who feel called to change hearts and minds on issues of great personal and societal importance are obliged to reach for a higher standard than mere reliance upon statistical claims of dubious provenance. We just might profit from examining and upending our assumptions now and then to see if they are indeed sound. We just might want to do this even if it leads us to question those claims that we hold dearest—the ones that we think we really need to be true.

The claim that 90 percent of children with Down syndrome are aborted has served the pro-life movement well. It is so shocking that it rarely fails to get people's attention. If true, it surely ranks as one of the most horrifying statistics ever calculated. If true, we should shout it from mountaintops and, if need be, send it halfway around the world.

But only if it's true.

I put blind faith in the 90 percent statistic because it was useful to me, and

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it was useful precisely because it was so shocking. If it's not true, where does that leave those who have come to believe in its symbolic value and rhetorical power? Where does it leave me?

"The 90 percent number is only shocking if you're the kind of person who thinks babies with Down syndrome should be born," says Amy Julia Becker, author of the just-released e-book on prenatal testing and Down syndrome, *What Every Woman Needs to Know About Prenatal Testing: Insights from a Mom Who Has Been There*. I sought her opinion on the 90 percent statistic because a column she wrote last year on the subject got my attention. In it she observed, "The number gets thrown about all the time: 90 percent of babies with a prenatal diagnosis of Down syndrome are aborted. Often it's reported in shorthand, 90 percent of babies with Down syndrome are aborted. The latter statement is patently untrue. The former is somewhat inaccurate."<sup>1</sup> Inaccurate? Patently untrue? To someone who has traded on this statistic as often as I have, reading this was bad news indeed. I decided to do my best to get to the bottom of this 90 percent business.

Like it or not, the Pulitzer Prize-winning website Politifact.com has established itself in recent years as the first port-of-call for those seeking to establish the veracity of controversial claims made in the public square. So that's where I turned.

In 2011, Politifact's fact checkers gave a "true" rating to Florida Republican state representative Richard Corcoran's claim, made during a debate over abortion legislation, that "90 percent of babies with Down syndrome are aborted."<sup>2</sup> However, it only gave a "half true" rating to former Senator Rick Santorum in 2012, when the Republican presidential candidate told CBS's Bob Schieffer that "90 percent of Down syndrome children in America are aborted."<sup>3</sup> Why did the latter claim merit only a "half true"? Because, as it turns out, there has never been a comprehensive national study done on the rate of abortion in the United States due to a prenatal diagnosis of Down syndrome. Santorum's addition of the words "in America" to the 90 percent claim, in Politifact's eyes, made it somewhat less true.

I began sorting through some of the scientific literature provided to me by Dr. Brian Skotko, co-director of the Down Syndrome Program at Massachusetts General Hospital. A medical geneticist by training, Skotko is beloved by those in what is sometimes called "the Down syndrome community" because, unlike many of the cold-hearted clinicians that we frequently encounter, he is not only what you might call *sympatico*, he is in fact one of us; Skotko's sister Kristin has Down syndrome.

The good doctor began by referring me to a 2011 study by James F.X. Egan, a now-deceased obstetrician from the University of Connecticut who

compared the expected number of Down syndrome births in various demographic groups in the United States to the actual number of such births.<sup>4</sup> While Egan's model predicted that 122,519 children with Down syndrome should have been born in the United States between 1989 and 2006, only 65,492 of those children actually were born. Egan graphed the divergence of the expected birth and actual birth trend lines along with the dates when certain prenatal tests were introduced.

Over time, the number of expected births of babies with Down syndrome has risen sharply. This is due, in part, to the well-understood role of maternal age in determining whether a fetus with Down syndrome will be conceived.

As Egan explained, "[t]he child-bearing population in the United States has become progressively older over the past 25 to 30 years," leading to an overall increase in the absolute number of children born with Down syndrome. Simply put, for a variety of reasons, more and more women are putting off having children until their mid-to-late thirties or even their early forties. This trend has dramatically expanded the population at high risk of conceiving a child with Down syndrome. Despite this expansion, however, the number of actual live births of babies with Down syndrome has declined modestly, opening up a yawning gap in the graph representing the children with Down syndrome who should have been born over the last 25 years but weren't.

**W**here are all those kids? Why weren't they born? Sadly, the questions answer themselves. Thousands upon thousands of babies with Down syndrome were aborted between the late 1980s and 2006. And the abortions increased at an increasing rate as new and more accurate screening instruments became available.

"As new prenatal tests were introduced, more women found out about the diagnosis prenatally and therefore more women had the option of deciding whether or not to continue a pregnancy. And more women chose to take the option of elective termination," Skotko told me.

I want you to hold that thought.

The Egan paper established an important precedent in my search for the truth regarding the 90 percent stat: It is verifiably true that a monstrous number of abortions are being performed on women who have been told that the fetus they have conceived and are carrying has Down syndrome. Exactly how many abortions have been performed is probably impossible to know, as record-keeping requirements vary from state to state and change over time. As a result, I realized to my dismay that the rate at which these abortions are performed is also probably impossible to know, though several limited studies have been performed in an attempt to find out the answer.

The 90 percent claim was given life in 1999 by a literature review conducted by Caroline Mansfield and her coauthors at the Psychology and Genetics Research Group at King's College in London.<sup>5</sup> The review considered the results of 20 other studies measuring abortion rates in countries around the world between 1980 and 1998 and concluded that an average of 92 percent of women who received a prenatal diagnosis of Down syndrome chose to have an abortion. Indeed, this is the study that Politifact referenced when giving its “true” rating to Florida State Rep. Richard Corcoran.

I was initially relieved to discover that the 90 percent stat could be traced to a legitimate, non-ideological, and scientific study. However, a close examination of the Mansfield paper revealed certain obvious limitations—obvious even to this untrained author's eye. Although the authors reviewed fully 20 single-country studies, most of these were conducted using what can only be called extremely small sample sizes. For example, the results of one study reviewed by Mansfield purported to show an 80 percent rate of abortion of fetuses with Down syndrome in Singapore. In reality, however, the researchers examined a mere five cases of women who had received a positive Down syndrome diagnosis. Four of these chose to abort, hence the rate of 80 percent. A 1995 French study recorded that 76 out of 76 women who received the diagnosis aborted their babies. That's 100 percent, but in a nation of 65 million people, how much can we really extrapolate from the experiences of 76 people?

Mansfield only looked at three studies from the United States. The largest of these, conducted in 1980, followed 2,500 second-trimester amniocenteses, 19 of which resulted in a positive diagnosis of Trisomy 21, the clinical name for the condition known as Down syndrome. Of those 19 women receiving the positive Down syndrome diagnosis, 18 chose to abort their babies, a rate of 95 percent. A second U.S. study, from 1985, saw 42 out of 43 women abort and a third, from 1988, recorded 13 abortions out of 15 positive diagnoses. Each of these studies suffered from what Mansfield called a lack of “sufficiently large sample sizes to enable reliable estimations of termination rates.”

But Mansfield also reviewed a 1998 paper by D. Mutton, et al. analyzing trends in England and Wales—a paper that stands out both for the size of the sample it examined and the scope of years it covered. Between 1989 and 1997, Mutton tallied 4,438 abortions out of a total of 4,824 confirmed prenatal Down syndrome diagnoses for a rate of 92 percent. These numbers dwarf those in any of the other studies looked at by Mansfield and provide a significantly more reliable basis for extrapolating conclusions.

More recently, Jaime Natoli, et al. reviewed seven population-based studies conducted in California, Hawaii, and Maine between 1995 and 2011.<sup>6</sup> (The term “population-based” means simply that the researchers attempted to study as representative a cohort as possible.) According to Skotko, a population-based study attempting to determine rates of abortion due to Down syndrome must account for the reality that a mere 2 percent of all pregnant women undergo either amniocentesis or CVS (chorionic villus sampling), the only definitive diagnostic tests for Down syndrome currently available.

“It’s not a question of ‘What do all women do?’ because 98 percent of expectant mothers do not get any sort of definitive invasive testing,” says Skotko. “Only a portion of the 2 percent who opt for testing will be told that their fetus has Down syndrome. The question really is: What percentage of *those* will go on to terminate their pregnancies?” The answer, according to the studies reviewed by Natoli, is between 61 and 93 percent, with the average at 74 percent.

So here we have our first real, concrete statistical divergence from the oft-cited 90 percent statistic. The question that immediately leaps to mind is: Should we simply revise downward the 90 percent rhetoric to say that 74 percent of babies with Down syndrome are aborted? Not so fast.

Natoli also looked at nine “hospital based” studies conducted in six states (CA, CT, MA, MI, NY, SC) and the District of Columbia between 1995 and 2011. As the authors note, hospital-based studies can show great variation depending on various demographic factors that make comparisons difficult. For instance, the authors write, “The number of pregnancies with a prenatal diagnosis of Down syndrome ranged from ten pregnancies over a 2-year period at Georgetown University Hospital (2002–04) to 449 pregnancies over a 20-year period at the University of California at San Francisco (1983–2003).” The rate of abortion due to Down syndrome observed by these studies ranged between 60 and 90 percent, with the average at 85 percent.

I began to suspect that my initial reservations about tangling with numbers and figures were not unfounded. A decidedly non-Churchillian warning came to mind: Mess with the bull—get the horns. The further I dug into these studies, the messier the picture got. I was looking for one number—90 percent—and ended up with at least three that I had to take seriously—74, 85, and 92 percent. Which was the real statistic? Which was the answer I was looking for? My time spent with the scientific literature on the subject seemed to confirm nothing more dramatic than the less-than-useful claim that the rate of abortion due to a prenatal Down syndrome diagnosis, depending on where you live, is somewhere between 61 and 100 percent.

While my faith in the 90 percent claim was quashed, what replaced it was

an even more troubling insight about the future of Down syndrome, prenatal testing, and abortion. As someone who has lived the bulk of his life in the progressive bastion of the Northeastern United States, with only a brief detour to the progressive bastion of Southern California, experience tells me that abortion has become a socially acceptable response to a prenatal diagnosis of Down syndrome and other genetic disorders. It's not just that there's no stigma attached to the notion. In certain circles, having an abortion because you've been told your child will have Down syndrome is not a matter that should prompt even the most routine ethical reflection. It's just what you do.

So Amy Julia Becker is probably right. The claim that 90 percent of babies with Down syndrome are aborted is shocking only if you think babies with Down syndrome should be born. If you don't accept that premise, no percentage or statistic, no matter how gaudy, is likely to shock you. If you believe that abortion is always justified so long as it is the free choice of the mother, why would you pause to raise an eyebrow at the number of babies with Down syndrome who are aborted? I can't think of a single reason.

**S**o who exactly are we trying to shock when we repeat the claim that 90 percent of babies with Down syndrome are aborted? Who exactly have I been trying to shock? Those who already believe, as I do, that all life is precious? Am I trying to shock myself? Why? What good will that do? My heart and mind have already been changed. Becker has concluded that the people we should be talking to—the people we should be trying to convince to join us in the quest to reduce the number of abortions due to a prenatal diagnosis of Down syndrome—are precisely that large cohort of women who, for one reason or another, have given birth to a child with Down syndrome without having received a prenatal diagnosis. As Becker told me:

For people who have categorically decided that they want prenatal testing for the purposes of selective abortion, I certainly want to have a conversation in which I argue for the value of children with disabilities, but I recognize that it's a hard argument to make given our different presuppositions. And for women who wouldn't abort under any circumstances, I also want to offer encouragement, support, and hope. But it's that large middle group—the women who don't know what they should do or would do—that I most want to address. And it is those women who need to know that there is not one prevailing attitude or choice when it comes to prenatal diagnosis and Down syndrome in this country.

This cohort seems ripe for conversion to the pro-life cause. These mothers may have been pro-choice before their children were born. They may still think of themselves as pro-choice. But odds are that they are now more sympathetic to the argument that a child should not be killed in utero simply

because that child has Down syndrome than they were before they became the parents of beautiful, charming, and unambiguously human children.

Becker, also the parent of a daughter with Down syndrome, surmises that about half of all children conceived with Down syndrome actually make it to a live birth. This includes babies born to mothers who know their baby will have Down syndrome as well as babies born to mothers who, for one reason or another, don't know. But just as with the 90 percent claim, this 50 percent claim may or may not be true. As noted earlier—it's almost impossible to get accurate and useful information on the number and rate of abortions in this country. It's even harder to get information on precisely why a woman had an abortion.

"This is an area where we just don't have a lot of accurate data," concedes Skotko. "The best we can do is to look at the studies that have been done well and say, 'This is what we know. This is what we don't know.' And in the realm of what we don't know, everyone can make their own educated guesses about how to fill in the blanks."

Which is not as easy as or as satisfying as it seems. My motivation for launching this investigation in the first place was to try to get beyond the habit of making educated guesses—often informed by little more than my own biases—and get closer to something approaching the truth. For the sake of clarity, let me restate my bias: The claim that 90 percent of babies with Down syndrome are aborted sounds about right to me. But I have reluctantly accepted that it is unsupportable. The vast majority of women in this country who give birth to a baby with Down syndrome have not received a definitive prenatal diagnosis of their baby's condition, either because they opted out of the screening process or because the screening process failed to recommend invasive testing. Recall that only 2 percent of all pregnant women undergo amniocentesis or CVS in the first place, and these are the only tests currently available which can give a definitive prenatal diagnosis of Down syndrome. The tests just aren't administered widely enough to come anywhere close to identifying nine out of ten babies with Down syndrome.

Let me rephrase that: They aren't administered widely enough *yet*. Remember when I asked you to hold that thought about all the "missing" kids with Down syndrome? This is why: Four noninvasive and highly accurate prenatal tests for Down syndrome that can be given as early as the tenth week of pregnancy have recently come on the market. These tests are only available on a limited basis now, but they will soon take their place in the standard battery of routine blood tests and ordinary lab work that a woman in the early stages of pregnancy undergoes as a simple matter of course. When they do, they will render this entire discussion moot.

In the current environment, where only 2 percent of pregnant women are given a definitive diagnostic test, it may be accurate to say that 50 percent of babies conceived with Down syndrome are born. But the current environment will shortly be transformed beyond recognition. Soon, any woman who wants to know, will know. Even women who don't want to know will probably end up knowing because of the entirely human tendency to go along with doctor-recommended testing without any real consideration of the possible consequences. And the available evidence, such as it is, points to only one conclusion: An astonishing percentage—probably well north of 75 percent—of women who find out that their baby has Down syndrome abort that baby. The more women who know, the more will abort.

The only percentage that should matter at all in the context of Down syndrome and the abortion debate is the one that provides an answer to the following question: How many women *who know they are going to have a baby with Down syndrome* choose abortion? For we can reasonably expect that when doctors begin offering pregnant women highly accurate and noninvasive tests on a large scale there will no longer be any surprises. There will no longer be a large cohort of women who found out only after delivery that their babies had Down syndrome. There will no longer be an identifiable group of pro-choice parents who unexpectedly found themselves falling in love with a child conceived with an extra copy of the 21st chromosome and so are ripe for conversion to the pro-life cause. These new tests will eliminate 100 percent of such families.

And that's a statistic you can put some serious faith in.

## NOTES

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# Forty Years after *Roe*: Onward We March

Christopher White

“No issue in U.S. history has produced such an impressive and sustained outpouring of citizens protesting a single evil (in both numbers and timespan, for instance, it dwarfs the media-favored anti-war demonstrations of yesteryear),” wrote James P. McFadden in the January 16, 1981, issue of his feisty pro-life newsletter *Lifeletter*. *Lifeletter*, which appeared from 1974 to 1992, was the politically activist and pugnacious complement to the *Human Life Review* that he also founded. Published by the Ad Hoc Committee in Defense of Life, *Lifeletter* covered the full range of abortion issue news, but with special emphasis on the efforts of pro-life politicians and lobbyists to contain and ultimately outlaw the evils unleashed by *Roe*. And that meant, from the very first anniversary of *Roe*, emphasizing the critical role played by the January March for Life in Washington, D.C.

McFadden’s words were penned a mere eight years after the Supreme Court’s decision to legalize abortion in *Roe v. Wade* and in anticipation of the seventh annual March for Life. At the time—though the authors and readers of *Lifeletter* may not have fully realized it—the March for Life and the pro-life cause it promoted were still in their infancy. The 1981 March gathered an impressive crowd of almost 100,000 and hopes for a Human Life Amendment were still high. Today, 40 years after *Roe*, expectations for any such amendment are practically forgotten, though the pro-life cause is arguably stronger than ever. Central to its momentum is the March for Life, which now draws upward of half a million people to Washington, D.C. each year in the cold winter weather to mark *Roe*’s anniversary. While pro-lifers may at times feel battle fatigue after 40 years of struggle, we have achieved important political, cultural, and spiritual gains—many directly related to the March for Life. These should spur us on and give us hope that our fight is not in vain.

## Political Gains

“Good news at last from Washington: the long awaited U.S. Senate hearings on anti-abortion constitutional amendments have finally been scheduled” read the headline on the February 1974 issue of *Lifeletter*. Pro-lifers

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understood this as a victory directly related to the first-ever March for Life that had taken place a few weeks earlier. The same issue of the newsletter went on to note that “the Senate hearings would have been further delayed—possibly indefinitely postponed—if the January 22 Capitol Hill demonstrations had not been held, or even if they had not been so impressive.”

In the first incarnation of the March for Life, crowd estimates hit 15,000 to 20,000, with most of the marchers hailing from the East Coast. Their focus? Legislative lobbying, primarily directed toward a Human Life Amendment, but also toward influencing legislators who had yet to declare their position on *Roe*. Marchers hand-delivered over 19,000 roses to members of Congress to remind them of the fragile gift of life, leading one reporter to remark that “not a single fresh rose was available in the eastern U.S.”

The March achieved another first-time victory in the court of public opinion. While the major media outlets had ignored the push for a constitutional amendment to protect human life, the large crowds at the first March for Life were covered by *Time*, *Newsweek*, *U.S. News*, and other national press. James McFadden summed up the coverage in these words: “[W]hile the January 22 march was too big to ignore, it was badly reported if not grossly distorted.” Not for the last time!

By 1978, March for Life founder Nellie Gray—who organized every March until her death in 2012—had extended her efforts to include legislators alongside everyday citizens in their opposition to abortion. *Lifeletter* reported that “many more Congressmen were out to greet them,” and that the crowd had grown to over 50,000. Moreover, just five years after *Roe*, the energy fueling the pro-life cause had spread throughout the United States, manifesting itself in local marches, state and city legislative measures, and the election of politicians. *Lifeletter* presciently observed that abortion had become a defining issue in United States politics, largely fueled by the enthusiasm displayed at and engendered by the March. McFadden captured the growing sentiment in these terms:

Abortion is no longer a single issue concerning a few thousand “fanatics” focusing on Washington. Rather, it now concerns millions; it has spread to every state legislature (and even city councils!) and has become inextricably merged into many other issues as well . . . . In effect, Monday’s March is competing with hundreds of state and local demonstrations, meetings, dinners, etc. “commemorating” what now seems to many Americans another “Day of Infamy” comparable only to the *Dred Scott* decision. So observers on both sides anxiously await the net impact of the March and its local counterparts—and the kind of media coverage they generate—as key indicators of the publicly perceived strength of the anti-abortion movement.

By the 1981 March for Life, pro-lifers were nursing hopes that the end of *Roe* was in sight. Fresh off the election of Ronald Reagan (who had ardently

decried the Court's ruling in *Roe*), pro-lifers hoped that the turning political tide would lead to the passing of the Human Life Amendment. Official estimates recorded over 60,000 attendees at the 1981 March. And this year marked an additional reason for marchers to celebrate: After the conclusion, President Reagan met with a delegation of pro-life leaders and legislators. Even the *New York Times* reported that "the one-hour meeting was Mr. Reagan's first visit at the White House with a public organization, and he took the occasion to praise the groups for their work."

For the tenth anniversary of *Roe*, Nellie Gray pulled out all the stops and again broke records for turnout. Before setting out for Constitution Avenue, supporters were greeted with a public reading of a letter from President Reagan, who welcomed "all those gathered from across the land for this historic 'March for Life.'" The President also used the occasion to publicly boost pro-life legislation, stating that "I am especially pleased to see that [Henry Hyde's] Respect Human Life Act has already been introduced in this Congress." Reagan concluded: "[M]ay this march prove a hallmark in the struggle to correct a great wrong and may God bless your efforts in the future." *Newsweek* summed up the media coverage with the headline "The Issue that Won't Go Away."

The following year, 1984, saw marchers rallying in support of the reelection of President Reagan—quite successfully, as it turned out. In 1985, the newly reelected President joined marchers by loudspeaker from the Oval Office and called for the nation to "rededicate ourselves to ending the terrible national tragedy of abortion." Again the March broke its own records, with over 70,000 attendees. Jack Fowler described the scene in the February edition of *Lifefletter* as "a panoramic variety of colorful signs and banners (many toted by people on crutches, in wheelchairs, and kids in strollers)—streamed in a dense 15-block long 'human river' up Constitution Avenue to the Supreme Court and the House and Senate offices, where they 'lobbied' the new Congress."

The crowds reached well over 100,000 in 1989, as marchers turned their focus on the newly elected President George H.W. Bush to pressure him to continue in his predecessor's footsteps by supporting both the March for Life and the pro-life cause. The President acquiesced with a hearty welcome by loudspeaker from the Oval Office—a tradition that he would continue for the remainder of his single term in office.

Even as the Clinton era of 1992-2000 gave full-throttled support for abortion rights here and abroad, the March continued to grow in size and vitality. The 1992 Supreme Court decision of *Planned Parenthood v. Casey* shocked many pro-lifers who had seen the case as a chance to overturn *Roe*. Yet despite such setbacks, as pro-lifers turned the corner on a new millennium

and as George W. Bush was squeaking past Al Gore in the 2000 presidential election, the March for Life crowds were topping 300,000 people a year.

The younger President Bush resumed the Reagan-Bush Sr. practice of speaking to supporters by telephone each year at the March, urging them to press onward in the cause of life. In 2006, he offered the following words of encouragement:

You believe, as I do, that every human life has value, that the strong have a duty to protect the weak, and that the self-evident truths of the Declaration of Independence apply to everyone, not just to those considered healthy or wanted or convenient . . . . These principles call us to defend the sick and the dying, persons with disabilities and birth defects, and all who are weak and vulnerable, especially unborn children.

Just weeks after this message, Samuel Alito, Bush's appointee to the Supreme Court, won a hard-fought confirmation battle in the Senate, and even the *New York Times* cited the momentum of the March as a likely contributor to the confirmation.

In 2008, the ardently pro-abortion Barack Obama prevailed against John McCain at the polls. Mere days after his inauguration, undaunted crowds for the 2009 March again posted record-high numbers. Declining Nellie Gray's invitation to address the crowd, President Obama released a statement supporting abortion rights, claiming that "government should not intrude on our most private family matters."

Obama's push for expanded abortion "rights" became increasingly aggressive throughout the first four years of his presidency, culminating in the HHS mandate that requires pro-life businesses and institutions to include mandated contraception and abortifacients in their health insurance plans for employees. Pro-life activism has ratcheted up in response to the increased threat levels to the unborn. During Obama's first term, a few media outlets actually sat up and took (appalled) notice of the overwhelmingly youthful makeup of the mammoth March crowds winding from the Mall to the Supreme Court.

Such an injection of youthful optimism and enthusiasm helped fire up the 2013 crowds for the 40-year anniversary of *Roe*. Although the March took place just days after Obama's triumphal second inauguration, over 500,000 pro-lifers—the overwhelming majority of them young people—made their way to Washington. There, even though the HHS mandate's egregious violation of conscience rights featured prominently in the rallies, the mood was surprisingly upbeat. In a January 2013 op-ed in the *Washington Times*, newly minted March for Life President Jeanne Monahan summed up some of the hopeful signs by noting that "Since the 2010 elections, pro-life activity in the states has moved into overdrive. In 2010, close to 400 pro-life bills

were introduced with roughly 100 passed. In 2011, 80 were passed and in 2012, more than 30.” This is, indeed, real change and reason to continue marching.

### **Cultural and Spiritual Gains**

While the March’s influence on politics has been significant, political outcomes will never fully succeed in changing hearts and minds. Creating a “culture of life” therefore must be the ultimate goal of pro-life efforts, although the legal and political components are part of that too. Significant cultural change, however, can be even more difficult than political victories—though we are finding that it is achievable.

Let’s compare two stories in *Time* magazine. The November 25, 1974, issue strongly endorsed abortion rights, arguing that “there seems to be a growing—if reluctant—acceptance of the fact that in a changing society, such measures are necessary.” Yet just weeks before the 40th anniversary of *Roe*, the magazine was reporting a different message. To the delight of pro-lifers everywhere, *Time*’s cover ran this headline: “40 years ago, abortion-rights activists won an epic victory with *Roe v. Wade*. They’ve been losing ever since.”

Public polling also indicates that Americans are becoming more pro-life. According to results released by Gallup in May 2012, the percentage of Americans identifying themselves as “pro-choice” is now one point below the previous low recorded by Gallup in May 2009. Fifty percent of Americans now identify themselves as “pro-life”—only one point below the record high. This is welcome news for pro-life advocates: While there is still work to be done, the cause is gaining momentum.

Consider, too, how abortion is now being treated by the entertainment industry. Several years ago, films such as *Bella* and *Juno* began giving voice to the reality that even unintended pregnancies can produce joy for the mother, the family, and the community as a whole. Recent years have seen celebrities such as teen pop star Justin Bieber and sports figure Tim Tebow speak openly and confidently about their pro-life stances. Indeed, being pro-life can be considered “the new normal” among American teenagers and young adults. Evidence for this shift is obvious to anyone who attends the March—in fact, Jeanne Monahan estimates that over 80 percent of attendees at the 2013 March were under the age of 20.

In the spiritual sphere, the March for Life has been an important part of ecumenical opposition against abortion. When the High Court decided *Roe*, tensions between Protestants and Catholics were significant. Yet, confronted by a common enemy, many Protestants and Catholics began to form a united

front on opposition to abortion, along with Jews and Muslims. Just five years after *Roe*, *Lifeletter* captured this sentiment in describing the 1978 March:

Nobody watching these exhilarated people troop past for hours on end could seriously argue that they fit the Media's image: they came in all sizes and types . . . plainly a cross-section of all of us, but most especially those "middle Americans" we hear so much about (but see so little of). Indeed, "middle" was the word: the big battalions seemed to come from that belt stretching from St. Louis across the "heartland" into New York—the populous states that can make or break presidential candidates—and to include many church related groups—both Protestant and Catholic, no matter what the Media reports (the Marchers also included many other Media "no-no" types—Blacks, Hispanics, Orientals—in a word, everybody).

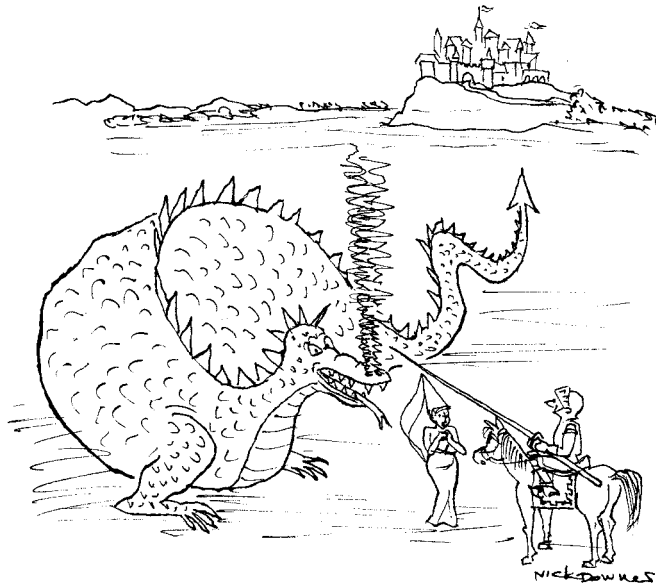
### **The Continued March for Life**

When March for Life founder Nellie Gray died at 88 in August 2012, the March's board members turned to the young Jeanne Monahan, naming her as president in November 2012. Monahan—who was born the very year the Supreme Court heard arguments in *Roe*—has worked tirelessly to continue Gray's legacy while modernizing the March. Just weeks beforehand, a new website was launched with videos and other interactive features to educate participants on pro-life issues. For the first time social media played a vital role in the March, connecting to those who couldn't physically be present—and eliciting further media attention, including messages of support from politicians, celebrities, and even Pope Benedict. And while major media outlets largely ignored the March over the past decade, this year stories appeared in the *New York Times*, the *Washington Post*, *USA Today*, and many other major news sites throughout the country.

The theme of this year's March was hauntingly simple: "40=55m": 40 years under *Roe* have eliminated 55 million children. The "might-have-beens" prompted by thoughts of this lost cohort of young Americans linger long after the March's conclusion. Because of this loss, and those still to come under legalized abortion, we continue to march.

While *Roe* has yielded 40 years of disappointment for pro-lifers, there is a significant victory in the cause's continued resilience and growing strength. J.P. McFadden's greatest fear (and, correspondingly, the pro-abortionists' greatest hope) was that with time the crowds of marchers would dwindle and the passionate outcry against abortion would die off, as shocked opposition was succeeded by grudging acceptance and the shift of energy and emotion to other, more promising issues and causes. But this has not happened. We must not forget that it took the Civil Rights movement 58 years to progress from *Plessy v. Ferguson* ("separate but equal") to *Brown v. Board of Education* (which struck down segregated schools). Such victories

against great moral evils, as history evidences, are hard fights, but with faithful persistence they can be won. On the Mall in D.C. and in the many social gatherings that take place around the March each year, I find a growing but realistic sense of optimism, grounded in the reality of more work to be done, more hearts and minds to be changed, and more lives to save. Until then, onward we march.



*“Do be careful—he had jalapeño chilaquiles for lunch.”*

THURSDAY, OCTOBER 18, 2012 . . .

## THE HUMAN LIFE FOUNDATION'S 10TH GREAT DEFENDER OF LIFE DINNER . . .

### **Jack Fowler:**



*“One thing that really bothered me was—I used to be National Review’s Congressional reporter and before that I was working for Jim McFadden in Washington—was that when former Senator Buckley was nominated for the court, it was not a unanimous vote—a number of his former colleagues voted against him, and, I think, slighted him greatly. But he prevailed, and prevailed in many senses, because at the end of his term as an active judge on the United States District Court of Appeals for Washington, D.C., the most highly regarded, highly rated judge was James L. Buckley . . .”*

### **George Marlin:**

*“On the 30th anniversary of the attempt to assassinate President Reagan, I was watching the news and Rudy Giuliani appears, and they said to Giuliani, ‘Where were you when Ronald Reagan was shot?’ And he said, ‘I was in Mike Uhlmann’s office in the White House,’ and I was like, What was that all about?”*



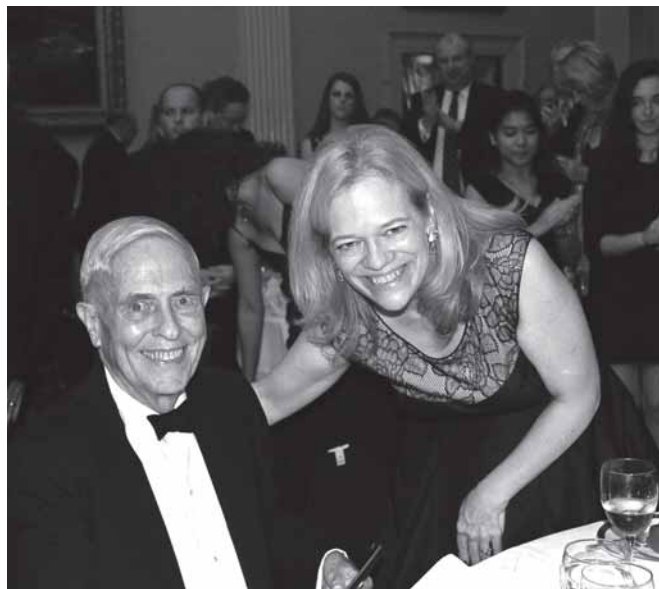
### **Michael Uhlmann:**

*“The senator, as you might imagine, was not always loved by his colleagues . . . But he was always the teacher. I never saw him once flinch from an occasion when there was an argument in which politics and principle were at war. You knew—and one of the pleasures of working for him reminded you of it—you knew at every turn the issue of principle would always prevail. This wasn’t always popular with the political mechanics who surrounded him, but, my God, it made us admire and love him even more and this was nowhere more true than on the subject of saving babies’ lives . . .”*





## 2012 GREAT DEFENDER OF LIFE



### THE HONORABLE JAMES L. BUCKLEY

**MR. BUCKLEY:** Thank you all. I am deeply touched by the honor you are conferring on me tonight, but I am truly undeserving and I say that sincerely. On a few occasions I have been in a position to speak out against the abomination of abortion, but so many others have done so much more to champion the pro-life cause over the almost four decades that have passed since *Roe v. Wade*. To cite just one example, consider the members of the remarkable McFadden family. The Human Life Foundation's founder, founding father Jim, his extraordinary wife and collaborator, Faith, and now their daughter Maria; how for 37 years their journal has provided the moral and intellectual ammunition that has sustained the tens of thousands who have been manning the human life barricades year in and year out. And their cause is gaining strength.

But as you insist on honoring me tonight, I just wanted to inform you that Mike Uhlmann, who gave me that gracious introduction, is the one who deserves primary credit for crafting the language of both our Human Life Amendment, and the statement I delivered on the floor of the Senate, which

had the honor of later been reprinted as the lead article in the first edition of the *Human Life Review*. Mike is now an adjunct professor in California, informing young minds in basic truths. Forty years ago, however, he was a key member of my Senate staff. After I decided to introduce an amendment to protect life, Mike consulted with a medical ethicist at Georgetown, and came up with language that would protect not only the unborn, but the aged and dysfunctional as well. This was required because the Supreme Court had adopted a purely utilitarian standard for determining what life was entitled to legal protection. It justified abortion on the basis that its victims are not persons “in the whole sense” and that they lack capabilities for “a meaningful life”; phrases that can be applied with equal force to all helpless human beings whether in or out of the womb.

In short, the Court had discovered, had *adopted*, a definition of life that turns a respect for its sanctity on its head; a utilitarian view that today tolerates the advocacy of infanticide at Princeton, and the legalization of medically assisted suicide in three states (and depending on what happens in Massachusetts this coming election, perhaps a fourth). If unopposed, this concept of life will lead inevitably to an acceptance, here in the country, of Dutch-type involuntary euthanasia as well. And given how we handle things these days, no doubt, in a committee consisting of 15 bureaucrats who will be given absolute authority as to determine who it is that will be put to rest.

Nevertheless, the news on the abortion front is enormously encouraging these days; if you don’t believe me just ask Planned Parenthood, which is now diverting extraordinary amounts of money from its abortion clinics in order to fight and try to revoke a torrent of new state laws that place roadblocks in the way of abortions. Better still, just read the article by William Murchison in the current issue of the *Review*. It lists the many ways that state legislators across the country are requiring women to pause; to inform themselves and to reflect before they proceed to order the destruction of the life they carry within them. And their initiatives—which an indignant *New York Times* recently described as a “state by state assault on women’s rights and the Constitution” —are now saving lives.

Also, what’s happening in the country today came to the attention of *The Economist*; and let me read just one paragraph—this came out just two or three weeks ago—

According to the Guttmacher institute, an abortion rights advocacy group, in 2011, state legislatures enacted 92 provisions restricting access to abortion services; nearly three times the previous record of 34 in 2005. That trend has continued this year. The proposed restrictions take a variety of forms—six states have enacted laws allocating funds for services designed to encourage women not to have abortions; three states

have banned all abortions after 20 weeks, four states have banned the legal exchanges (to be created under Obamacare) from financing abortions, three states have banned doctors from prescribing abortifacient medicine remotely, as it is often done in rural areas; such prescriptions now account for one in five of non-hospitalized abortions in America. Last year Virginia enacted a law requiring abortion clinics to meet the same building, parking, and record-keeping requirements as hospitals.

So what the legislators are doing to abortion factories is more or less comparable to what government is doing to business. But the most effective of these laws, which was not described in what I just read to you from *The Economist*, consists of those 21 states that have now enacted legislation requiring that women have sonograms of their unborn children before they have them destroyed. And this brings me back to Mike Uhlmann. While we were working on our amendment, he often stated that if women's bellies were transparent, abortion would be unthinkable. Well, thanks to modern technology, more and more women are able to see the realities of a developing, unique human being, and are coming to that same conclusion. And this is undoubtedly responsible for the fact that a majority of Americans now describe themselves as pro-life, and that an overwhelming majority of them reject abortion for any of the reasons that most women now give for having one.

And so today, 25 states are listed by the Guttmacher Institute as hostile to abortion as opposed to just 13, ten years ago. That is extraordinary progress. Unfortunately, thanks to the Supreme Court, it will take more than a public revulsion to close our abortion clinics. It is romantic at this stage to believe that a Human Life Amendment could secure the support of the two-thirds majorities in both houses of Congress, and the three-fourths of support of the states that would be required to adopt one. It isn't too late, however, for the Supreme Court to come to its senses. The avalanche of new restraints on abortion are leading to legal challenges, and Federal courts are finding at least some of them to be constitutional. So it seems inevitable that at least one of these challenges will reach the Supreme Court sooner rather than later, and the Court may have the occasion to review, once again, its holdings in *Roe*.

Now, the last time the Court did so was in 1992, in the case of *Planned Parenthood v. Casey*. It upheld *Roe* in a convoluted plurality opinion signed by three justices that seemed to say that it was more important in a case of this significance, that the Court be seen as consistent than that it be right, even in a case literally of life and death. And it also seemed to be lecturing the pro-life forces—advising them to grow up; to accept the fact that *Roe* was law; to fold their tents and quietly leave the scene. But the pro-life forces have declined the invitation; they haven't folded their tents, and they won't go away. And year after year the question of abortion remains a burning

political issue, and efforts to constrain it now have the momentum in state legislatures. So it is not at all romantic to believe that the Court could screw up the courage to acknowledge its terrible mistake. Contrary to the expectations of the *Casey* Court the issue has not gone away; it continues to dominate America's conscience, and with two of the three justices who signed the *Casey* opinion now retired, there is no reason to believe that that could not in fact happen. And for this evening, and for all that we in this room stand for, we have to continue to work and to pray. Thank you for the honor you provided me, and God bless you all.



***Maria McFadden Maffucci (second from left):***

*“Before I go on I’d like to recognize our small but mighty staff, women who make many sacrifices for the cause by working at a small non-profit. Our financial manager, Rose Flynn DeMaio [left above], our managing editor, Anne Conlon [second from right], our production manager and desktop publishing wiz, Christina Angelopoulos, who is also my sister [middle] and our very special volunteer, Pat O’Brien [right] . . .”*

## 2012 GREAT DEFENDER OF LIFE AWARD



### ADVOCATES FOR LIFE

**KELLIE FIEDOREK:**

It's an incredible honor and a privilege to be with all of you this evening and to receive this award on behalf of Advocates for Life, particularly to accept an award where Judge Buckley is being honored.

In preparing for tonight, I came across one of Senator Buckley's floor speeches and was struck in particular by these lines:

"To enter the world of abortion on request is to enter a world that is upside down: It is a world in which black becomes white, and right wrong, a world in which the powerful are authorized to destroy the weak and defenseless, a world in which the child's natural protector, his own mother, becomes the very agent of his destruction."

Many of you here tonight have been in the trenches for years in this currently upside down world . . . but you have been more than that—you have been lights—beacons of hope—witnesses for what is just for a generation that has grown up never knowing what it was like to live in a country where abortion-on-demand was not the law of the land.

In a wilderness of death and loss and woundedness, you have courageously been fighting to end the destruction of innocent human life and to heal the

lives of the countless men and women touched by abortion.

And what a privilege to be a light—to be a spokesperson of the truth that all human life—no matter how or when it’s conceived, no matter how disabled, or handicapped, or feeble . . . every human life, as Fr. Neuhaus once said, should be welcomed in life and protected in law.

Continuing in this spirit, three years ago friends of mine from the Alliance Defending Freedom’s Blackstone Legal Fellowship—Tyson Marx, James Olson, Catherine Foster, Brandon Smith, and Jon Berry, who’s with us this evening—came together, concerned about just how “upside down” the legal academy often is when it comes to the dignity of the human person. It is indeed a place where black often becomes white, what is unjust is deemed just because someone created a right out of a penumbra.

However, within these muddled legal institutions, we saw an opportunity to start planting seeds of truth on law school campuses about why we defend human life—to fortify those law students who were already pro-life, and to convert the hearts and minds of others.

Advocates for Life was thus born, and taken under the wing of Americans United for Life, to engage, educate, and train future members of our legal community—our future judges, policy makers, politicians—to live up to their noble calling as lawyers . . . counselors . . . advocates . . . advocates to defend life.

For the past three years, we have been working with future lawyers to support one another and to be unafraid to speak out—to defend life because there is nothing more important to protect.

I’ve been reading Jonah Goldberg’s latest book, *The Tyranny of Clichés: How Liberals Cheat in the War of Ideas*, and he brought to my attention something very appropriate I think to our time here together tonight.

Many of us are likely familiar with the quote, “All that is necessary for evil to triumph is for good men to do nothing.” Edmund Burke is often given credit for saying this. But what Goldberg points out is that there is no record of Burke ever having said this. What Burke did say, however, is far more powerful:

“When bad men combine, the good must associate; else they will fall one by one, an unpitied sacrifice in a contemptible struggle.”

Countless heroes—including Judge Buckley, Maria McFadden and her whole team at the Human Life Foundation—have sacrificed and remained dedicated to defending human life and restoring the sanctity of all human life.

And they are not alone . . . the “good continue to associate” as the younger generation is vibrant and active and eager to fight to defend human life.

So, tonight, I am very grateful to be with all of you. We will not fall in a contemptible struggle because we have God, we have truth, and we have each other on our side. And this is why we will win.

Let us continue together to speak boldly and courageously, but with love and compassion, to defend life. And may we soon rise victorious in this fight—the greatest human rights struggle of our time.



MC Jack Fowler of *National Review* introduces Mary Meehan to Christopher White.



Wendy Long, who ran for U.S. Senate against Kirsten Gillibrand in New York.



Fr. George Rutler with Anne Manice.

***Father George Rutler:***

*“The other day a headline in one of our newspapers caught my eye. It read “Giants Challenge Cardinals.” As a clergyman, I thought this might be significant. And then I realized it was on the sports page. I do sports. But I know nothing about spectator sports, which very term is a contradiction like, oh, spectator dining. But there have always been those who thought they were giants challenging the saints themselves, and anyone who defends the sanctity of human life. And they’ve been wrong.”*

# Defusing the Violinist Analogy

*Mathew Lu*

**J**udith Jarvis Thomson's "A Defense of Abortion" (1971)<sup>1</sup> is surely the most influential philosophical article ever published on abortion. The framework she sets up has largely shaped the philosophical discussion since, by offering the then-novel observation that the status of the child<sup>2</sup> as a person is largely irrelevant to the question of whether a woman has the right to procure an abortion.<sup>3</sup> In teaching this article to undergraduates I have seen pro-abortion students positively giddy at having their preconceptions given such apparently strong support, and pro-life students unfortunately quick to retrench into a religiously grounded position. Indeed, Thomson's arguments are intuitively powerful, particularly her justly famous "violinist analogy." At the same time, however, closer inspection reveals that her pro-abortion conclusions are not nearly as formidable as they initially appear, and that the pro-life position can certainly be vindicated on non-religious grounds. In what follows I will examine Thomson's arguments closely and at length to show not only exactly why they fail, but also how her entire approach to the question of abortion is misguided.<sup>4</sup>

Thomson begins by granting the premise that the child is a person with a "right to life" identical to any other (innocent) person's right to life,<sup>5</sup> but she argues that establishing the child's right to life does not directly establish that abortion is impermissible. Even if the child possesses a right to life, such a right does not impose on its mother an obligation to carry it to term. This is such an intuitively powerful argument, because it sidesteps the highly contested issue of whether the child is a person and instead provides a justification for abortion founded on a woman's putatively uncontested "right to decide what happens in and to her body" (54).<sup>6</sup> Indeed, Thomson thinks that opposition to abortion is predicated on a misunderstanding of precisely what the right of bodily control entails. In short, Thomson's overarching argument in favor of the permissibility of abortion essentially has two planks: first, a defensive plank against the pro-life position denying that the child's right to life entails its right to the use of the woman's body; and second, an offensive plank in favor of the pro-abortion position arguing that the woman's "right to decide what happens in and to her body" includes the woman's right to procure an abortion. Answering Thomson fully requires refuting both planks.

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**Mathew Lu** is assistant professor of philosophy at the University of St. Thomas in St. Paul, Minnesota, where he lives with his wife and sons.



**Thomson's Defensive Plank: the Violinist Analogy**

Let us begin with the first plank, because it has become perhaps the single most effective argumentative strategy against the pro-life position. It is based on the construction of a powerful analogy, which I think the vast majority of people find intuitively compelling on first hearing. Thomson asks those who think that a child's right to life directly entails the impermissibility of abortion to imagine the following case:

You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you—we would never have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you have to *accede* to it? . . . "All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous . . . (48-9).

Thomson thinks it is practically self-evident that anyone in such a situation would have a right to "unplug" himself from the violinist, despite the fact that the violinist is clearly a person with the right to life, and that unplugging will foreseeably result in the violinist's death. Obviously, Thomson is offering this as an analogy to a pregnancy resulting from rape, with the dependency of the innocent person (whether violinist or child) arising from an act of violence for which the innocent is not culpable.<sup>6</sup> Since it is obvious (at least to Thomson) that you have the right to insist that the violinist be unplugged, so similarly a woman has a right to insist that the child be "unplugged" even if the result is its foreseeable death. If Thomson is correct that the two cases are morally similar, then what is permissible in the case of the violinist is permissible in the case of pregnancy; in each case, one person's right to life does not entail a right to use another's body without her consent.

It is worth noting that many abortion proponents who broadly endorse Thomson's conclusions seem to miss a point that, to her credit, Thomson herself does not: that even if the analogy goes through, it only entails a right to be "unplugged," not a right to secure the death of the child. In the same way that a right to be unplugged from the violinist does not license slitting

his throat, so a putative right to abortion does not entail a right to kill the child. This is significant because it would in fact mean that by Thomson's own lights most actual abortions, which *directly* aim at the death of the child, are illegitimate. Therefore, even if the analogy had succeeded, it would only have entailed a right to the removal of the child, not a right to secure its death.<sup>7</sup>

There are two basic pro-life responses to Thomson's analogy. The first is to accept that the analogy applies (i.e., that the proper moral analysis of the two cases is basically the same), but deny that one is permitted to unplug oneself in either case. David Oderberg, adopting a Double-Effect analysis, goes in this direction.<sup>8</sup> He essentially argues that because the evil suffered by the violinist (death) is so much graver than the evil suffered by the victim (considerable inconvenience), demanding to be unplugged is not a proportionate response. While those who accept the Double-Effect tradition will likely agree with his analysis, I fear his conclusions will strike most readers as deeply implausible. Most people will intuitively agree with Thomson that you would have the right to insist on being unplugged given that you did not agree to be attached in the first place. Therefore, since we are interested in persuading those who do not already accept the framework of Double-Effect reasoning, I think a better approach is to attack the analogy and deny that the two cases should be analyzed in the same way (which is nonetheless consistent with accepting Oderberg's conclusions about the violinist case if we so choose).

Of course, the point of drawing analogies in moral reasoning is to suggest that what applies in the putatively clear case also applies in the controversial case. Therefore, an analogy is apt only to the extent that the two cases are relevantly similar. If we can show that the two cases should not be analyzed in the same way, then whatever conclusions might apply in the one case will not necessarily apply in the other.

While there are certainly similarities between the two cases, further reflection will clearly show that there are important, morally relevant, differences. We may begin by noticing that although it might be *possible* for one person's kidneys to "extract poisons" from another person's blood, there is no sense in which that is a normal part of the operation of those organs. That is, there is no sense in which my kidneys are *for* filtering the blood of another person, even if they can be made to do so in extreme circumstances. However, there is a clear and obvious sense in which a woman's reproductive organs are *for* the gestation and protection of a child.<sup>9</sup> Therefore, what might apply in the case of the clearly extrinsic usage of the kidneys in the violinist case will not necessarily apply to the intrinsic activity of woman's reproductive organs.

A related difference between the two cases is revealed when we reflect on Thomson's description of the act of "unplugging." It is precisely because the violinist case involves the extrinsic use of the victim's kidneys in a non-natural way that the intuitive notion of "unplugging" applies. There is both conceptual and imaginative clarity in this notion of "unplugging." Plugs are by their nature impermanent; they are meant to be removed by external force. We might even say that plugs have an intrinsic (or intended) capacity to be unplugged. Lamps are plugged into the wall because they are meant to be moveable; wall sconces are wired in because they are not.

Consider how this differs from pregnancy. While it is true that pregnancy is impermanent, the end of pregnancy is built into the nature of the process itself. A normal pregnancy, by its own nature, ends in birth. The woman's body, like that of every other female mammal, is specifically and uniquely equipped by nature to give birth.<sup>10</sup> In other words, the embedding of the early embryo into the uterine lining is not a "plugging in"—there is no equivalent external agent that does the plugging. Rather it is the natural, organic activity of the symbiotic system of embryo and mother.

In contrast, in the violinist case the Society of Music Lovers' assault is a violent imposition that consists of "plugging in" the violinist to the victim's circulatory system. In that case, and unlike the pregnancy case, the "unplugging" is properly *restorative* of normal, organic function. This is in line with our normal expectations not only of medicine, but also of a significant aspect of justice. Just as medicine seeks to repair trauma or compensate for illness that displaces normal function, so part of justice involves the attempt to restore a semblance of the *status quo ante* to the unjust act. If someone steals something I own, one of the proper functions of justice is to restore that property to me if possible (or provide compensatory damages if not). So part of our thinking about justice naturally involves a kind of restoration, similar in some important ways to the restorative activity of medicine. In the violinist case, the "unplugging" is a restoration of the *status quo ante* as a response to an act of violence the purpose of which was the imposition of this unnatural state (i.e., "plugging in" the violinist).

In the rape case, on the other hand, the proper description of the violent act is not the impregnation, but the rape.<sup>11</sup> The impregnation is a generally unforeseen and unintended consequence of the assault, while the "plugging in" is the whole point of the Society of Music Lovers' assault. Therefore, the violent act in the violinist case largely *consists in* the "plugging in." In the rape case, however, the violent act largely *consists in* the assault on the woman's bodily integrity. Any pregnancy that contingently results is extraneous to the proper description of the violation. Therefore, the *restorative*

intuitions that apply in the violinist case simply do not apply in the rape case.

It might be argued that the rape victim wants to restore the *status quo ante* as “the state of not being pregnant,” but while such a desire on her part would be understandable, achieving that state does not license a second immoral act.<sup>12</sup> More importantly, however, this is *not* the proper description of the relevant *status quo ante*. The actual *status quo ante* is not “the state of not being pregnant” but rather “the state of not having been raped,” and obviously the killing of the child will do nothing to restore that state.<sup>13</sup> In such cases when restoration is impossible (e.g., rape, murder, etc.), then generally the best that we can do is to impose justice in a political context (e.g., imprisonment).

Once we recognize the proper nature of the violent act, then it should be clear that the intuitions driving Thomson’s analysis in the violinist case simply do not apply in the pregnancy case. In the violinist case, the restoration is both conceptually and imaginatively clear—just pull the plug. In the rape case, however, real restoration (i.e., the state of not having been raped) is impossible. It is precisely because the “plugging in” is extrinsic that the “unplugging” is similarly extrinsic. Conversely, abortion involves a violent assault on the intrinsic functioning of the woman’s body.<sup>14</sup> In other words, a child cannot be “unplugged” because it was never “plugged in” in the first place. Rather its embedding in the uterine wall is exactly its proper activity at that stage of its life-cycle, and the woman’s sheltering of it is exactly the proper natural activity of that stage of *her* life-cycle, even if it does not happen to cohere with her present intentions or desires.

There is a powerful *imaginative* clarity to Thomson’s description of being able to “reach around to your back and unplug yourself” (52), but that imaginative clarity is illusory in the abortion case. In later-term abortions the fetus is physically dismembered, and even in early (e.g., chemical) abortions, the death of the child is directly intended. Once we recognize that any abortion (even a very early one) involves an act of violence against the proper natural functioning of both the child and the woman’s reproductive organs, then the entire foundation of the “unplugging” intuition simply falls apart. In short, while unplugging the violinist *restores*, aborting the child *destroys*.

At this point, we should be able to see that the violinist analogy lacks force because the two cases are fundamentally dissimilar. Thus, whatever you think about the violinist case—whether you agree with Thomson or Oderberg—provides no direct insight into the rape case. We should recall, however, that Thomson’s point in offering the analogy was to frustrate the

inference from a person's right to life to that person's right to use of another's body. While Thomson's analogy does not work, the pro-life position is still not vindicated, because she is actually correct that a right to life does not directly entail the right to use another person's body. If the pro-life position required that the child have a *right* to use its mother's body against her wishes, then it would still be necessary to provide an argument for it.

Whether such an argument is available, I think it is a mistake to accept Thomson's framework of a contest of competing rights claims in the first place. While what I have labeled Thomson's "defensive plank" is defused by seeing that the cases are disanalogous, that does not mean that we must straightforwardly endorse the implicit pro-life argument that she was criticizing (from the child's right to life to the impermissibility of abortion).<sup>15</sup> Instead, below I will propose a different approach that gives us the resources to see that a woman can have an obligation to the child independent of the question of whether the child has a legitimate rights claim against its mother. Before we can do that, however, we still have to address Thomson's positive plank.

#### **Thomson's Positive Plank: Bodily Self-Ownership**

The violinist analogy is a defensive move intended to refute Thomson's pro-life opponent's inference from a right to life to the right to the use of another's body. Beyond that, however, Thomson thinks that a *positive* argument for abortion can be constructed by showing that the putatively uncontroversial claim that a woman has a "right to decide what happens in and to her body" entails a right to abort her child. She takes it for granted that her pro-life opponents accept this right of bodily self-control, but she thinks that they "do not take seriously what is done in granting it" (54). So her positive plank is aimed at showing that her pro-life opponents do not realize that a premise they readily grant entails a right to abortion. As such she thinks that her pro-life opponents hold straightforwardly inconsistent views in granting that a woman has a right to control her own body but also denying that abortion is permissible.

Thomson's thinking here is explained by her largely undefended conviction that a woman's "right to decide what happens in and to her body" is tantamount to bodily self-ownership. At one point she compares a pregnant woman's body to a house jointly occupied by mother and child and pointedly insists that we remember: "the mother *owns* the house" (53, emphasis in the original). So just as the owner of a house has the right to evict an unwanted guest, the woman, as owner of her body, has the right to evict the unwanted child.

Much like the violinist analogy considered above, this analogy to property

ownership is superficially plausible but breaks down on closer inspection. Somewhat ironically, we should note that much as a right to life does not *by itself* entail a right to the use of another's body, so the right to decide what happens in and to my body does not *by itself* entail that I own my body. Counter-examples are readily available: If I am renting a piece of property I have certain exclusive rights of use, but that obviously does not mean I own it. The right of use does not, as such, directly entail ownership.

Furthermore, a right of use is not necessarily unlimited. Even unambiguous ownership does not give me unlimited right to dispose of my property in any way I may happen to desire. For example, I cannot unilaterally convert the house I own into a garbage dump against the wishes of my neighbors whose property will be significantly devalued. While my owning something normally gives me many rights of use and disposal, those rights are not unlimited.

Let us return to Thomson. She claims that, in affirming a woman's right to control her own body but denying her right to an abortion, her pro-life opponents hold inconsistent views. However, Thomson's claim only follows if we add in two further premises: (i) the right to control one's body is tantamount to self-ownership (i.e., one's body is one's private property), and (ii) if a woman owns her body as private property she has the right to dispose of it as she sees fit, including the right to eject her unborn child. Therefore, Thomson's charge of inconsistency can be successfully resisted without denying that a woman has a "right to decide what happens in and to her body" if we find grounds for denying either (i) or (ii). As it happens, I think we have good grounds to reject both.

Consider a house that I own. Even if we accept that I do not have the right of unlimited disposability (e.g., the garbage dump example), nonetheless I do normally have the right to substantially alter it: to add or remove rooms, change the layout, etc. I can sell off the appliances in my kitchen, or demolish the house altogether (though even these kinds of changes are often highly regulated by building codes, historical preservation laws, deed restrictions, etc.). It should be immediately obvious that the analogy to my body quickly breaks down.

Most people accept that, unlike my refrigerator, I am not at liberty to sell one of my kidneys, nor can I give away my heart (say, to a dying loved one). I also think most would agree that I am not free to cut off my limbs to satisfy an amputee fetish. Further, I am not at liberty to rent my body in prostitution or sell myself into slavery. Finally, though there is less agreement on this, I do not have a straightforward right to suicide.<sup>16</sup> In short, the right to control one's body is very much not an unlimited right, but one highly circumscribed by the demands of human dignity. Thus many of the kinds of things I can do

to my house—substantially alter it, rent it, sell it, demolish it—I cannot legitimately do to my body. This ought to lead us to recognize that a right to control one’s body is not based on the fact that one’s body is one’s private property. Thus, (i) fails and Thomson’s pro-life opponents can affirm that women (and men) have a *limited* “right to decide what happens in and to” their bodies, without that fact entailing that they own their bodies. Accordingly her pro-life opponents are not guilty of inconsistency so long as the properly *limited* right of bodily self-control does not extend to the permissibility of abortion.

For reasons we have already discussed, the inference from self-ownership to a right to abortion (i.e., (ii) above) also fails. Even if (for the sake of argument) we were to accept bodily self-ownership, we can still recognize that society properly sets limits on what I can do with my property, even against my wishes. If what I plan to do with my property will materially damage my neighbors, I can be legitimately prevented from implementing that plan. Since we do not have unlimited rights to dispose of our property in any way we see fit, even if women did own their bodies as private property, it would not *directly* follow that they therefore have a right to abortion.

Of course this line of argument does not prove the impermissibility of abortion. All that we have done in this section is to demonstrate that accepting a woman’s *limited* “right to decide what happens in and to her body” does not require us to accept that she thereby has a right to procure an abortion. We need a separate pro-life argument to show that abortion does in fact lie outside the legitimate limits of bodily self-control. In other words, we need a separate positive argument to show that abortion is analogous to an illegitimate use of the body, like selling oneself into slavery, rather than to a legitimate (if perhaps unsavory) use of the body, like extensive tattooing or piercing.

### **The Positive Pro-Life Argument**

As I suggested earlier, demonstrating that Thomson’s violinist analogy fails does not mean that we necessarily want to endorse the implicit pro-life argument her analogy was originally constructed to attack. In fact, I think she is correct in claiming that *by itself* a right to life does not entail a right to the use of another person’s body. This follows from a more general proposition: A right to life does not entail a right to the means to life.

This is immediately clear in cases of scarcity. So, for instance, if I require an extremely expensive medical treatment to preserve my life, my unambiguous right to life does not generate an unambiguous right to be given that treatment at public expense, or to take matters into my own hands and procure

it by theft or illegitimate coercion. Or in a case in which there are only a limited number of treatments available, my right to life does not entail my right to forcibly dispossess someone else of the treatment.<sup>17</sup>

Insofar as the idea of a right to life is useful at all, I suspect that Thomson is largely correct when she notes that “the right to life consists not in the right not to be killed, but rather in the right not to be killed unjustly” (57). In other words, properly understood, the right to life is what is sometimes labeled a “negative right”: a defensive right against interference from others. It is not a “positive” or “welfare” right to be given some benefit. The right to life protects me from being directly killed by unjust means.<sup>18</sup> It does not ensure me any and all means necessary to sustain my life.

This is because a right to life is conceptually isomorphic with a right not to be murdered. Surely the claim on my fellows not to murder me is conceptually distinct from any claim on them to provide me with the means of survival (food, shelter, etc.). Of course this does not mean I may not *also* have welfare rights, but any welfare rights I possess are conceptually distinct from, and therefore not entailed by, my negative right to life.<sup>19</sup>

As we have already noted, the child’s right to life similarly precludes its being directly killed, which is of course what happens in most abortions now performed. Thus, even the bare acceptance of the child’s right to life would actually rule out most abortions now performed; however, it would not by itself affect the legitimacy of surgically removing the fetus whole and allowing it to die, much as in a premature miscarriage.<sup>20</sup> Therefore, recognizing that the child possesses a right to life does not by itself require one to affirm that its mother is obligated to carry it to term (or even to viability). Furthermore, the existence of the child’s right to life might even still be thought to leave open the possibility of abortions that are conceived as falling under the woman’s right of self-defense.<sup>21</sup>

Taken together, these considerations support Thomson’s larger claim that the right to life does *not* include “having a right to be given at least the bare minimum one needs for continued life” (55). Therefore, I think Thomson is correct that the child’s right to life does not directly and obviously make removal of the child impermissible. So while Thomson is wrong to conclude that the violinist analogy justifies abortion, she does not actually need the analogy to show that the pro-life argument she is criticizing is not sound. If these were the only grounds for the pro-life position, it would be in trouble. Fortunately, that is not the case, and an alternative positive argument against abortion is available that does not proceed from the child’s right to life, but instead from the woman’s obligation to protect the vulnerable.

I indicated above that one of the biggest problems with Thomson’s



framework is her implicit conviction that the way to settle the abortion question is to adjudicate between conflicting rights claims—the child’s right to life vs. the woman’s right to control her own body. Thomson thinks it is possible to affirm the child’s right to life without affirming its right to the use of the woman’s body. She further thinks that it is not possible to affirm the woman’s right to bodily self-control without affirming her right to abortion. Based upon these two conclusions, she thinks that affirming a woman’s right to bodily self-control logically requires one to affirm a right to abortion, regardless of whether one also affirms the child’s right to life.<sup>22</sup> While I have already demonstrated the fallacy of her argument that the relevant limited right of bodily self-control entails a right to abortion, what matters most here is seeing how she conceptualizes the abortion question as a contest between conflicting rights claims. Since the woman’s right to bodily self-control entails the right to abortion, but the child’s right to life does not entail the right not to be aborted, the woman’s right to abortion trumps. In other words, Thomson thinks that the right to abortion is a genuine right that straightforwardly follows from the uncontroversial right of bodily self-control; in contrast, she thinks there is no genuine right not to be aborted. Accordingly, in Thomson’s view, justice requires affirming the genuine right to abortion, while denying the spurious right not to be aborted.

However, Thomson’s rights-contest view is a radically incomplete understanding of justice. While rights claims obviously play a role in the adjudication of legal claims and in questions about the scope of positive law (for example, whether the Constitution guarantees a right to privacy, etc.), there are genuine moral obligations that are *not* best understood as corresponding rights claims.

The rights-contest model posits that any obligation to do X which I may have with respect to another person exists because that person has a rights claim against me that I do X. What I want to suggest is that there are entire classes of obligations that do not proceed from a corresponding rights claim. In other words, I can have an obligation to do X without there being any other person who has the right to demand that I do X.

Examples of such obligations include an obligation not to abuse (unowned) animals; an obligation to protect the environment; an obligation to preserve culturally or artistically valuable art or artifacts from needless destruction (even if they are my private property). In none of these cases is the obligation to protect or preserve necessarily founded on a corresponding rights claim. We need not hold that the animal has a rights claim against me in order to see that I have an obligation not to abuse it, or that Nature has a right not to be spoiled, or that the painting has a right not to be destroyed. A much better

explanation is simply that my obligation to preserve and protect them is founded on the fact of their vulnerability (and my relative strength).<sup>23</sup>

Let us consider a competing analogy, which cuts to the heart of the matter. Suppose you live in a cabin far out in the wilderness, cut off from civilization by extreme distance and weather for much of the year, say, nine months. You have provisions for yourself, but no large excess of stores. One day you return to the cabin to discover that an infant has been left at the door without explanation. You have done nothing to invite its presence, and certainly you have not given somebody permission to abandon it on your doorstep. Do you have an obligation to care for the infant, who will surely die if you do not take it in?<sup>24</sup>

It seems to me that to ask the question is to answer it. If you refuse to take in the child on the grounds that it does not have a right to the use of your private property, you prove yourself a moral monster. The child's right (or lack of right) to your shelter and provisions is, in my view, entirely beside the point. Of course the claim readily extends. I have an obligation to rescue a toddler wandering into a busy street or a child unable to swim who has fallen into my neighbor's pool, even at considerable inconvenience to me. I cannot simply sit idly by and comfort myself with the thought that the children in question have no specific rights claims against me. The mere fact that I am in a position to rescue the vulnerable generates an obligation that I do so.

Of course, this obligation is not unlimited. While I think that I do have the obligation to ruin my expensive suit to rescue the child in the pool, it is not clear that I have an obligation to throw myself into the Niagara River just above the Falls in an attempt to save a child who has fallen in. Similarly, while I ought to risk my own car to save the toddler in traffic, I do not have the obligation to risk my own children in doing so.

So while the obligation is real, it is not unlimited. I do not here propose to determine how one might decide one's obligations in any given case. Indeed, since this will always involve the exercise of prudence (*phronesis*), it is not possible to give a general rule. For our purposes here, all we need is the recognition that the infant on the doorstep case clearly falls into the category where I am required to help. Given that the infant is utterly helpless and a refusal to take it in is tantamount to its death, the inconvenience I suffer in taking it in must be borne, even if doing so will radically impinge upon my time and resources.

In our example, however, the obligation is not unlimited. We might legitimately ask if the moral situation would change if the obligation were more extensive than nine months, or if taking in the child would result in a very real risk of your own starvation.<sup>25</sup> However, none of those issues come

into play in the imagined case. Just as in most normal pregnancies, what is relevant is the tradeoff between nine months of inconvenience and the life of the child. Put that way, my ownership of my cabin and its stores—including my unambiguous right to dispose of them as I see fit—is utterly irrelevant to my obligation to care for the foundling. And if that is true for the child on the doorstep, it is just as true for the child in utero.

Some people might be inclined to agree that there is an obligation to care for the child, but seek to explain that obligation in terms of the child's rights. This seems implausible to me, because in the case I have sketched out there is no sense in which the child has any obvious claim to my property. I have done nothing to invite its presence. Nonetheless, the obligation to care for it is real. Therefore, I think it is unhelpful to attempt to ground the obligation in the child's right to the use of my property (and labor).<sup>26</sup>

We have now finally arrived at a positive argument for the impermissibility of abortion that is not built upon the child's right to life. Whether or not the child has a right to life, the mother has an obligation to care for it. This is not because the child has a straightforward right to be cared for, but because the mother, like any other person, has an obligation to care for the vulnerable, even at considerable personal inconvenience. It is the fact of the child's vulnerability, not its right to life, that generates this obligation, and it is one we readily accept in most other contexts, as I have argued.<sup>27</sup>

Thomson is not wholly indifferent to some of the issues I have discussed here. In fact, she discusses the case of the Good Samaritan, but essentially claims that while caring for the injured man is commendable, it is not morally obligatory. The reason for this is her conviction that “[s]urely we do not have any such ‘special responsibility’ for a person unless we have assumed it, explicitly or implicitly” (65). However, the cases I have discussed seem like clear counter-examples to this claim. We *do* have a responsibility for the vulnerable that we contingently encounter, and if we cannot account for that responsibility in terms of rights claims, that is more of a reason to reject the applicability of the rights framework than a reason to reject that responsibility.<sup>28</sup>

## Conclusion

In this article I have offered numerous criticisms of Judith Jarvis Thomson's seminal “Defense of Abortion.” In particular, I have shown how her celebrated violinist analogy fails as an analogy to pregnancy by rape. I have also shown that her putative positive argument in favor of abortion proceeding from a woman's right to bodily self-control fails as well. Finally, I have criticized her entire framing of the issue in terms of a contest of rights, and have

attempted to offer a pro-life argument proceeding from a more accurate analogy to unexpected pregnancy.

The success of Thomson's arguments on abortion, particularly in the popular sphere, is largely predicated on the superficial plausibility of her analogies, which fall apart upon closer inspection. A pregnancy is not a case of "plugging in" and a human body is not private property, even the private property of the person of whom it forms a part. Once we see this, we can recognize the hollowness of the pro-abortion case founded on the claim of the woman's "right to decide what happens in and to her body." Once we recognize that we have a general obligation to protect the vulnerable, and a special obligation towards those we contingently encounter, then the case for the pro-life position is overwhelming.

### NOTES

1. Judith Jarvis Thomson. "A Defense of Abortion." *Philosophy and Public Affairs* 1 (1971): 47-66.
2. Finding the proper term to refer to the organism that comes into existence at conception and both develops and subsists through various biological stages—zygote, blastocyst, embryo, fetus, infant, etc.—is difficult and highly contested. I will simply use "child" to refer to this numerically identical organism through all of its stages of development.
3. Although Thomson grants the personhood of the child for the purposes of argument, she makes it clear: "I think that . . . the fetus is not a person from the moment of conception. A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree" (48). Unfortunately, this is a deeply inept thing to say which commits more or less the same error as evinced in the claim that a toddler is not a human being because she is not an adult. An acorn is an immature stage of the life cycle of the kind of biological organism whose mature stage is an oak tree, just as zygote, blastocyst, embryo, fetus, infant, toddler, adolescent, teenager, etc., are immature stages of the life cycle of the kind of biological organism whose mature stage is an adult.

Metaphysically speaking there is nothing else that the "newly fertilized ovum" could be except a human being, numerically identical with all its later stages of development. Some might object that not all human beings are persons and so have a ground for denying the personhood of the zygote, etc., but Thomson's claim does not even rise to the level of that error. Fortunately, however, this is all beside the point, as her following discussion is predicated on the hypothetical (for her) conditional that the child is a person, until at the very end where she again allows herself the reflexive dismissal: "[W]e have only been pretending throughout that the fetus is a human being from the moment of conception. A very early abortion is surely not the killing of a person, and so is not dealt with by anything I have said here" (66).

4. I will not attempt to consider the large secondary literature that Thomson's article has spawned, because I really want to focus our attention on what makes her central violinist analogy and positive argument for abortion so intuitively powerful. Of course, further refinements of her general position have been offered, which certainly merit separate discussion (see especially David Boonin's *A Defense of Abortion* (Cambridge: Cambridge UP, 2003). Nonetheless, I think the general import of the arguments I offer here is not really affected by these further developments.
5. Though she grants the proposition for the sake of argument, she does make clear at the end that "we have only been pretending throughout that the fetus is a human being from the moment of conception. A very early abortion is surely not the killing of a person" (66).
6. To maintain consistency between the cases it is important that the violinist did not conspire with the Society of Music Lovers. If the violinist somehow masterminded the plan, then the victim's response would presumably fall under the putative right of self-defense.
7. This is analogous to the classic Double-Effect analysis of the proper response to an ectopic

pregnancy, which holds that it is permissible to *remove* the child intact by surgical means, but not to dismember it or secure its death by chemical means. Therefore, even if Thomson's analogy were apt, the analysis would still rule out the vast majority of actual abortions (obviously barring further, independent justification), though not the vast majority of deaths from removing the child from the uterus, given the current inability of most of those aborted to survive outside it.

Furthermore, Thomson's position is consistent with a defeasible obligation to provide alternate means to secure the child's survival if available (e.g., an artificial womb once technologically feasible). Such an obligation would be analogous to the obligation to provide medical care for the indigent sick, but would be defeasible precisely because the obligation to provide for the care of others is not unlimited and can be legitimately limited by factors like cost.

8. See Chapter 1, "Abortion" in David S. Oderberg. *Applied Ethics: A Non-Consequentialist Approach* (Cambridge: Blackwell, 2000). Double-Effect reasoning is popular especially among Catholic moral philosophers, deriving as it does from St. Thomas. Proceeding from the basic moral principle that one must always aim at doing good and avoiding evil, on a Double-Effect analysis an act is permissible only insofar as it meets two conditions: (1) the directly intended object of the act must be morally permissible, and (2) the unintended but foreseen evil side effects of the act must be "proportionate" to the good aimed at in (1). This is radically oversimplified because many questions can be raised about the nature of the agent's intentions and the proper description of the act. Nonetheless, in the present case Oderberg argues that the directly intended object—the unplugging—is morally permissible, but the good so obtained (freedom from the inconvenience of being connected to the violinist), while a real good, is not proportionate to the much worse evil that the violinist will foreseeably suffer (death). Therefore, while unplugging meets condition (1), it does not meet condition (2), and thus you may not legitimately unplug yourself from the violinist.

Unfortunately, Double-Effect reasoning is not popular outside of the Catholic/Natural Law community and so will not persuade most professional moral theorists. An attempt to answer Thomson that relies upon such an analysis depends on grounds that are as controversial, if not more so, than the proposition under discussion in the first place. Thus, even if Oderberg's analysis is a correct application of Double-Effect reasoning, it is not likely to persuade most abortion proponents. Of course this is more a sociological fact than a philosophical argument, but since the ultimate goal of the pro-life movement is to persuade, we must employ arguments that abortion proponents will find plausible, even if the Double-Effect account is ultimately the correct analysis.

9. We might say that the woman's body has among its characteristics the *innate* capacity to gestate another human life that is part of its normal and proper functioning. This of course does not mean that gestating a child is its only or most important function. But if the heart can be said to have a function of pumping blood, or the lungs of oxygenating it, then by the same token a healthy woman's reproductive organs have the function of gestating and protecting her children. There is no sense in which her kidneys have the *innate* function of filtering the violinist's blood. Philosophers of an Aristotelian predilection describe this natural function as *teleological*, and regard it as innate to the nature of the body independent of an agent's desires or intentions. Perhaps needless to say, Thomson and most other academic philosophers working today do not accept this sort of normativity built into nature. For our purposes here, however, it is not necessary to accept the entire apparatus of normative teleology to recognize the clear disanalogy between the *extrinsic* use of the victim's kidneys in the violinist case and the *intrinsic* activity of the woman's reproductive organs in the pregnancy case.
10. Of course the fact that women are equipped by nature to give birth does not mean that some women are not infertile or that external medical assistance is not sometimes needed. However, that assistance is precisely like any other kind of medical intervention—it becomes necessary insofar as the natural processes are frustrated by injury, malformation, etc. Medicine is properly restorative; but restoration is conceptually dependent on normal, proper function.
11. It is extremely unlikely that the assailant intends to impregnate the victim, but whether or not some given rapist might intend the pregnancy, the proper description of the violent act consists not in the impregnation, but in the assault on the woman's bodily integrity. We can see this by noting that a rapist who did intend to impregnate his victim but failed to do so for whatever reason would still obviously be guilty of rape. In other words, his intention to impregnate is irrelevant to the proper description of the violation.

12. Consider the analogy to Native Americans who seek the restoration of land that had been historically seized from their ancestors. It would not be reasonable for the government to simply seize the property from the present legal owners without any kind of compensation, particularly if the present legal owners were in no way connected with the historical injustice. Obviously, like rape, this is a hard case, but one unjust act (the rape or the historical seizure of land) does not morally license another unjust act against an innocent third party (the child or the present legal property owner), even when the larger goal is some kind of restoration.
13. The reason for this is that the relevant status quo ante is determined by the nature of the unjust act, not its contingent consequences. Since the unjust act is the rape, not the impregnation, then the relevant status quo ante must be understood in terms of the rape, not the pregnancy. We can see this clearly if we consider a rape that does *not* result in a pregnancy; surely in that case we would not say that the status quo ante is restored because the victim is not pregnant.
14. The fact that the woman desires the abortion does not, in itself, keep it from being a violent act against the normal intrinsic functioning of her body. Consider someone with the intention to commit suicide that is shot in the head by a sniper just after he steps off the ledge. This is still murder—an act of violence against the victim—despite the victim’s desire to die.
15. It is worth noting that Thomson does not actually quote anybody making this supposed pro-life argument, or even fully construct it herself before criticizing it. Presumably, the pro-life argument she has in mind is supposed to go something like this:
  - (1) The child has a right to life.
  - (2) The right to life entails a “right to be given at least the bare minimum one needs for continued life.”
  - (3) Abortion denies the child what it “needs for continued life.”
  - (4) Therefore, abortion violates the child’s right to life.
  - (5) It is wrong to violate anyone’s right to life.
  - (6) Therefore, abortion is wrong.

By denying (2) she shows that neither (4) nor (6) follows. However, demonstrating that one argument purporting to show X fails does not thereby prove that there are no other arguments for X. In this case, even if Thomson is correct that (2) is false, some other argument or arguments for the impermissibility of abortion might be given.
16. Leon Kass has powerfully argued against bodily self-ownership along the same lines in denying a right to suicide in “Is there a Right to Die?” *Hastings Center Report* 23, no. 1 (1993): 34-43. His conclusion is not only that we do not own our bodies, but also that human bodies are simply not the sort of thing that can be owned; they are “inalienable.” Thomas Sullivan has also shown the conceptual confusion at the heart of a supposed right to suicide in that it would entail an exception to the prohibition on the intentional killing of an innocent person (Thomas D. Sullivan. “Assisted Suicide and Assisted Torture,” *Logos: A Journal of Catholic Thought and Culture* 2, no. 3 [1999]: 77-95). In other words, suicide would properly be an instance of self-murder, and the fact that the murderer and the victim are the same person does not absolve him of the moral opprobrium that properly applies to any murder.
17. In such a case perhaps the fairest allocation would be some sort of lottery, but the point remains that if I happened to lose the lottery my right to life would not license my attempt to steal the treatment from one of the winners. Each of these cases illustrates the point that the right to life does not directly generate a right to the means of life.
18. It is important to note that the right to life is a right against being *murdered*—that is, killed for *unjust* reasons; it may be possible for me to forfeit my right to life (e.g., by committing murder myself or engaging in unjust war). In such a case, my killing would not be a case of murder, because my killing would not be itself unjust.
19. It may turn out that the grounds of my right to life are ultimately the same as the grounds of my welfare rights, e.g., some contentful conception of human dignity. However, even if that is the case, this would only show that both a right to life and a right to the means of life both follow from some underlying grounds, not that the right to the means of life follows from the right to life.
20. Even if a woman possessed the right to have her fetus removed, this would not mean that she had the right to ensure the child’s death. If we accept that we have an obligation to offer emergency life-saving care to all people, then similarly we would be required to provide emergency care for the removed fetus as we do for premature births. Of course, this testifies to the monstrousness of a society that needs the Born-Alive Infants Protection Act and the insanity of

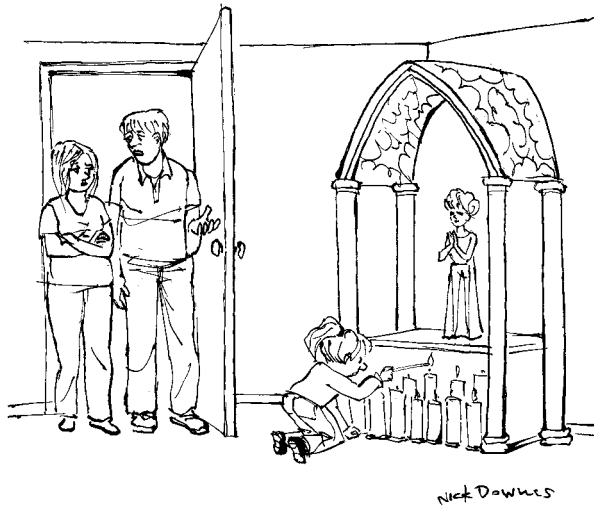
- contemporary American law on abortion.
21. It is not necessary for us to discuss this at length, but I find appeals to self-defense in pregnancy cases implausible because the paradigm cases of self-defense involve warding off an illegitimate attacker. So the woman could certainly defend herself against her would-be rapist, but that is precisely because in assaulting her the rapist has forfeited his own right not to be harmed. In other words, the right to harm the attacker follows from the illegitimacy of his attack (thus I do not have a right of self-defense against a police officer making a legitimate arrest). On the other hand, the child is entirely innocent and in no way culpable for its father's attack. The right of self-defense does not entail a right to harm innocent bystanders, but only to fend off attackers. In a pregnancy-by-rape case, killing the child would be no more a case of self-defense than killing one of the rapist's other (already born) children who had nothing to do with the attack.
  22. In other words, Thomson's positive argument for the putative right to abortion does not *require* its adherents to affirm the child's right to life, but it does *allow* them to do so. That is why it seems like such an effective argument—her conclusion is putatively binding on anyone who accepts the right to bodily self-control, whatever their position on the personhood of the child. However, since she is wrong that the limited right of bodily self-control entails bodily self-ownership, she is also wrong that the limited right of bodily self-control entails a right to abortion.
  23. John Hacker-Wright has further defended this conception of justice as requiring protecting the vulnerable in "Moral Status in Virtue Ethics." *Philosophy: The Journal of the Royal Institute of Philosophy* 82, no. 321 (2007): 449-473. Hacker-Wright notes that he draws this conception of justice from Simone Weil. Following his lead, I have also developed this idea of obligations not based on rights claims in "Explaining the Wrongness of Cannibalism." *American Catholic Philosophical Quarterly* 87, no. 3 (2013) (forthcoming).
  24. Francis Beckwith offers a similar analogy to this in his *Defending Life* (Cambridge: Cambridge UP, 2007). Notice that, unlike in Thomson's violinist analogy, in this case the obligation to care for the child is properly separated from the violent attack the rape represents. This reflects the point I offered above, that the impregnation is a contingent consequence of the rapist's attack and not (in the vast majority of cases) part of his intention or the proper description of the assault. In other words, to properly understand the pregnancy-by-rape case, we must absolutely distinguish between the evil done in the rape and the good that is the child's conception. The sins of the father are not the sins of the child.
  25. In my judgment one would still be obligated to take in the child even if it was necessary to care for it until it had reached maturity or even if your own stores would be stretched very thin. However, neither is remotely comparable in the case of a normal pregnancy in our society. Furthermore, as my colleague Matthews Grant pointed out to me, in the vast majority of cases caring for an infant for nine months is vastly more difficult than carrying a child in utero for nine months. In the rare exception cases (e.g., where a pregnancy threatens the life of the mother), different considerations might be relevant, but such cases are sufficiently rare that they cannot form a central part of our reflections on the morality of abortion any more than rare cases like the child falling into the Niagara River ought to play a central role in our reflections on our obligations to help children in danger.
  26. As it happens, I am deeply suspicious of the reality of subjective moral rights in general for the same reason Alasdair MacIntyre gives: "The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches . . . every attempt to give good reasons for believing that there *are* such rights has failed" (*After Virtue: Second Edition*. [Notre Dame: Univ of Notre Dame Press, 1984], 69). Of course, there are real rights in positive law, such as my right to operate a motor vehicle on the roads of the state in which I live, but these rights are simply explained by the laws of that state. The real issue is whether there are pre-political or natural rights independent of the positive law. Since we can have moral obligations without corresponding rights claims, and it is extremely difficult to account for any putative subjective rights, parsimony suggests that we can do well enough without them. That said, absence of evidence is not evidence of absence and if some compelling account of subjective rights were available, that would do nothing to change the argument I have offered here. Considerations like these are why, philosophically speaking, I do not favor emphasizing the right to life in the abortion debate. That said, appeals to the child's putative right to life may be necessary in the context of a contemporary political discourse saturated in talk of rights.

27. A formally valid version of this argument would run something as follows:
- (1) Everyone has a (limited) obligation to care for the vulnerable that they encounter.
  - (2) An unborn child is vulnerable.
  - (3) Therefore, the child's mother has a moral obligation to care for it.
  - (4) A direct abortion violates the moral obligation to care for the unborn child.
  - (5) Therefore, direct abortion violates the mother's moral obligations.

This would potentially leave room for things like the indirect killing of the child in such cases as the intact removal of the fetus in an ectopic pregnancy. Of course so-called "spontaneous abortion" (i.e., miscarriage) would not be at issue, as it does not involve a direct act on the part of the woman.

The issue of the abortionist's culpability for performing an abortion is a separate consideration from the mother's obligation to care for her child. In my view, the abortionist is simply guilty of murder—the direct killing of an innocent person. For our purposes here, however, I think we do better to focus simply on the woman's obligations, because that is really what is at issue in these cases.

28. I suspect, fully played out, such a libertarian denial of responsibility would undermine claims to welfare rights in general. Thomson and others would likely attempt to avoid this consequence by playing on the distinction between individual "special responsibility" and a more general "social responsibility." My own feeling is that such a distinction is *ad hoc* and ultimately unavailing, but that would obviously require an extensive further argument.



*"There's a Saint Barbie?"*



## Liverpool Care Pathway:

# The Road to Backdoor Euthanasia

Wesley J. Smith

Several years ago, bureaucrats at the United Kingdom's National Health Service—a socialized system in which hospitals are funded and operated by the state—reacted to legitimate and widespread complaints from family members that their loved ones were dying in agony in NHS hospitals. In response, well-meaning pain-control experts created a protocol—known as the Liverpool Care Pathway—which, among other provisions, informed doctors when to apply a legitimate medical palliative intervention known as palliative sedation. The protocol was recommended for adoption by the National Institute on Clinical Excellence (NICE)—the NHS's rationing and quality oversight board—and there you go; problem solved.<sup>1</sup>

Except it wasn't. Indeed, as so often happens in centralized systems, the bureaucratic remedy for one problem led to even worse trouble down the line. The LCP's palliative sedation protocol has, in practice, too often been applied as "terminal sedation"—a form of backdoor euthanasia. Understanding how and why that happened serves as an important cautionary tale about potent dangers of centralized healthcare.

### "Palliative" Versus "Terminal" Sedation

In order to understand what went so badly wrong in the implementation of the LCP—and why it is important—we must first detail the crucial moral and factual distinctions between the legitimate pain-controlling medical treatment known as palliative sedation (PS) and a slow-motion method of euthanasia sometimes called "terminal sedation" (TS). The two are too often conflated, particularly by euthanasia advocates seeking to blur moral distinctions and definitions.

A very good article published in the *Journal of Pain & Palliative Care Pharmacotherapy* clearly distinguishes between sedation applied to control pain and sedation used as a method of killing.<sup>2</sup> First, author Michael P. Hahn, a respiratory therapist with Loma Linda University, notes that palliative sedation applies the least amount of sedative to obtain the needed relief:

Ideally, the level of palliative sedation is provided in a fashion that is titrated to a

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minimal level that permits the patient to tolerate unbearable symptoms, yet the patient can continue to periodically communicate.<sup>3</sup>

PS employs varying degrees of sedation and time under that sedation level, depending on the circumstances:

The three most common levels of providing PS include mild, intermediate, and deep. When mild sedation is used, the patient is awake and the level of consciousness is lowered to a somnolent state, with verbal or nonverbal communication still possible. With intermediate sedation, the patient is asleep or stuporous and can still be awakened to communicate briefly. The third level is deep sedation, which refers to the patient being near or in complete unconsciousness and does not communicate verbally or nonverbally. Besides regulating the degree of sedation, palliative sedation may also be provided intermittently or continuously.<sup>4</sup>

In other words, palliative sedation is a *medical treatment* applied when necessary to relieve intense suffering; it offers *individualized* relief from pain and suffering (caused by conditions such as severe agitation) *as the situation may warrant*. It is *not directed at ending the patient's life*. Death is not the goal. If the patient dies, it is usually from the underlying condition or as an unwanted side effect, which can happen with any medical treatment. In other words, PS is no more euthanasia if a patient dies from complications than if a patient dies during heart surgery.

In contrast, terminal sedation *intends to kill* by putting the person into a permanent artificial coma and withholding food and fluids. TS-caused deaths usually are caused by dehydration over a period of about two weeks. In this sense, Hahn notes, palliative sedation and terminal sedation are mirror opposites (my emphasis below):

Palliative sedation is not a euphemism that is morally equivalent to euthanasia, nor is it "slow euthanasia" [e.g., terminal sedation], or physician-assisted suicide (PAS). There is a sharp distinction between euthanasia and PS or PAS and PS, the distinction between the three can be ascertained by recognizing the primary intention and outcome of each measure. Although PAS and euthanasia are intended to relieve suffering, *it is accomplished by causing death*, whereas *PS is provided in a proportionate manner without an intention of causing death . . . .*

Slow euthanasia and PAS specifically *involve the intent to end life deliberately with lethal (nontherapeutic) doses of drugs*, or with rapid administration of drugs, that exceed the amount needed to alleviate the symptoms. When death unintentionally occurs following a proportionate administration of drugs in PS, the patient dies from the underlying illness and the death certificate does not list the cause of death as "drug overdose."<sup>5</sup>

The National Hospice and Palliative Care Organization supports the application of palliative sedation in "rare" cases for "the limited number of imminently dying patients who have pain and suffering that is (a) unresponsive

to other palliative interventions less suppressive of consciousness and (b) intolerable.” Again, the Position Statement of the NHPCO specifically notes that neither death nor unconsciousness is the goal of the intervention:

The goal of palliative sedation is to provide relief from symptoms that are otherwise intolerable and intractable. Since the goal is symptom relief (and not unconsciousness per se), sedation should be titrated to the minimum level of consciousness reduction necessary to render symptoms tolerable. For some patients, this may be total unconsciousness. For most, however, it will be less than total unconsciousness, allowing the patient to rest comfortably but to be aroused.<sup>6</sup>

In summary, while both palliative sedation and terminal sedation involve the use of consciousness-altering drugs, they are apples and oranges:

- PS is individualized and the level of sedation varied according to the patient’s present medical condition. In contrast, TS places the patient in a deep artificial coma until death.
- The purpose of PS is to treat the patient’s pain and symptoms while simultaneously offering the best possible quality of life, whereas the explicit goal of TS is making the patient dead.
- Patients who die while undergoing PS usually expire from their underlying physical condition, whereas most patients undergoing TS die of dehydration. (Hence, Hahn’s use of the term “slow euthanasia.”)
- PS is a legitimate and ethical medical treatment. TS is slow euthanasia, which is not legal or ethical in most countries.

With the above in mind, we now turn to the Liverpool Care Pathway and what went wrong.

### **The Liverpool Care Pathway Only Authorized Palliative Sedation**

It is clear from the terms of the policy that the LCP’s authors never intended it to become a form of terminal sedation. For example, an educational document prepared for healthcare professionals by the Marie Curie Palliative Care Institute (Liverpool)—under which auspices the Pathway was created—notes that the specific “aim” of the Pathway is to “improve care of the dying in the last hours or days of life.<sup>7</sup> It also stated unequivocally that:

- “The LCP neither hastens nor postpones death;”
- “The LCP does not recommend the use of continuous deep sedation;”
- “The LCP does not preclude the use of artificial hydration;”
- “The LCP supports continuous reassessment.”<sup>8</sup>

It is also important to reiterate that the LCP was designed to be applied in a patient-specific and nuanced manner. Thus, as the educational document notes:

A blanket policy of clinically assisted (artificial) nutrition or of no clinically assisted (artificial) hydration is ethically indefensible and in the case of patients lacking capacity prohibited under the Mental Capacities Act (2005).<sup>9</sup>

Indeed, an early audit of 4000 dying patients found that only 4 percent needed deep levels of sedation to control pain and distressing symptoms at the very end of life.<sup>10</sup>

### **Backdoor Euthanasia**

Alas, that is not how the LCP has been carried out in many NHS hospitals and nursing homes. The trouble began when NICE urged hospitals to adopt the Pathway as a means of caring for dying patients. Perhaps because it came to be perceived as a bureaucratic order rather than a guideline encouraging individualized patient care, deep sedation apparently came to be seen as the norm in some institutions—to the point that at least in some cases, the LCP became a means of backdoor euthanasia, threatening a full-blown medical scandal.

The serious problems with the Pathway first came to light in 2009 when the *Telegraph* published an open letter signed by palliative physicians and other pain-control experts. It complained that hospital personnel were applying the LCP in a “tick-box” manner that threatened the lives of patients who did not need sedation based on their medical conditions:

Just as, in the financial world, so-called algorithmic banking has caused problems by blindly following a computer model, so a similar tick-box approach to the management of death is causing a national crisis in care. The government is rolling out a new treatment pattern of palliative care into hospitals, nursing homes, and residential homes. It is based on experience in a Liverpool hospice. If you tick all the right boxes in the Liverpool Care Pathway, the inevitable outcome of the consequent treatment is death.

This, the letter writers warned, had resulted in some patients who were not actively dying—a core requirement for application of the LCP—being sedated:

As a result, a nationwide wave of discontent is building up, as family and friends witness the denial of fluids and food to patients. Syringe drivers are being used to give continuous terminal sedation, without regard to the fact that the diagnosis could be wrong . . . . Experienced doctors know that sometimes, when all but essential drugs are stopped, “dying” patients get better.<sup>11</sup>

A concurrent *Telegraph* story reported that an alarming 16.5 percent of patients who died in 2007-08 expired while under “continuous deep sedation.”

Tellingly, the *Telegraph* reported that twice as many patients in the U.K. died while under deep sedation as in the Netherlands—a country where terminal sedation sometimes serves as a substitute for active euthanasia.<sup>12</sup> (It is worth noting that the use of TS as a means of euthanasia has increased in the Netherlands in the intervening years. A recent study found that 12.3 percent of Dutch deaths now result from sedation and dehydration—which is still below the rate in the UK!)<sup>13</sup>

Soon, disturbing stories in the press added credence to the open letter writers' fears. Again, the *Telegraph* led the way, reporting Rosemary Munkenbeck's claim that her father, hospitalized with a stroke, was quickly deprived of fluids and medications. She further claimed that doctors wanted to sedate him under the Pathway protocols until he died. The family refused, but not before Munkenbeck's father went five days without sustenance.<sup>14</sup>

The *Sunday Times* of London soon reported another case, headlined, "Daughter Saves Mother, 80, Left by Doctors to Starve":

An 80-year-old grandmother who doctors identified as terminally ill and left to starve to death has recovered after her outraged daughter intervened. Hazel Fenton, from East Sussex, is alive nine months after medics ruled she had only days to live, withdrew her antibiotics and denied her artificial feeding. The former school matron had been placed on a controversial care plan intended to ease the last days of dying patients. Doctors say Fenton is an example of patients who have been condemned to death on the Liverpool Care Pathway plan. They argue that while it is suitable for patients who do have only days to live, it is being used more widely in the NHS, denying treatment to elderly patients who are not dying.<sup>15</sup>

Fenton lived to tell the tale. Not so 76-year-old Jack Jones. As reported by the *Daily Mail*, Jones was hospitalized in the belief that his previous cancer had recurred and was now terminal. The family claimed he was soon denied food and water and put into deep sedation. But his autopsy showed that *he did not have cancer at all*, but actually had a treatable infection. The hospice denied wrongdoing but paid £18,000 to Jones's widow.<sup>16</sup>

As time progressed, it became abundantly clear that despite the LCP's intent that the protocol not be applied in a blanket manner, precisely such unthinking applications were happening in actual clinical practice. Another story in the *Telegraph* reported that two-thirds of NHS hospitals were receiving financial incentives from the government to place patients on the LCP:

The majority of NHS hospitals in England are being given financial rewards for placing terminally-ill patients on a controversial 'pathway' to death, it can be disclosed. The figures, obtained under the Freedom of Information Act, reveal the full scale of financial inducements for the first time. They suggest that about 85 per cent of trusts have now adopted the regime, which can involve the removal of hydration and nutrition from dying patients. More than six out of 10 of those trusts—just over

half of the total—have received or are due to receive financial rewards for doing so amounting to at least £12million.

And the statistics show that the Pathway has indeed become backdoor euthanasia:

At many hospitals more than 50 per cent of all patients who died had been placed on the pathway and in one case the proportion of foreseeable deaths on the pathway was almost nine out of ten.<sup>17</sup>

Not only that, but the *Telegraph* published news that while some hospitals applied the LCP in a professional manner, others offered little training to staff and applied the protocol as a checklist item “to be done” to terminal patients.<sup>18</sup> Clearly, this was not what the authors of the LCP had intended.

### **Bureaucratic “Death Targets”**

This article cannot determine the full nature and extent of the problems with the LCP, a still unfolding story and the subject of multiple investigations and inquiries. But we can come to some preliminary conclusions as to why a clearly well-intentioned, appropriately defined, and medically ethical guidance instrument came to be used, at least in some cases, to kill.

The prime suspect seems to be the nature of bureaucracy. Jacqueline Laing, a senior lecturer in law at London Metropolitan University, points to the problem of “managerialized death targets” that were apparently established by the NHS’s centralized bureaucracy:

Part of the difficulty is that, where a patient is diagnosed as terminal and imminently dying, the combination of morphine and dehydration is likely to undermine a patient’s capacity. Persistent dehydration of even the fittest sedated patient will kill him. This was the problem with the Pathway from the very outset. It reversed the burden of proof, on the strength of a diagnosis that is not always certain, so that an increasingly incapacitated patient would have to speak on his own behalf in favour of water. Even assuming he was healthy enough, in an environment in which the Pathway is normal his pleas may not be heard.<sup>19</sup>

To put it another way, doctors applying the LCP ceased to treat patients as individuals, but instead yielded to bureaucratic imperatives—precisely the approach that the Marie Curie Palliative Care Institute stated should not happen.

Laing also warned cogently that more trouble lay ahead unless medical personnel applied the LCP in a patient-specific manner:

Recent revelations of financial incentives and staggering compliance in rolling out the managerial programme radically alter the debate. Diagnostic concerns in the context of arguably self-fulfilling sedation-dehydration regimes and overarching financial and political pressure to implement the Pathway, suggest that the regime may have acquired a lethal power of its own. This lethal character is almost certainly

one that exists independently of the best intentions of those who formulated or apply it. Some of history's most important lessons highlight the problems of institutionalising programmes that invite homicide and reverse burdens of proof in ways that undermine the vulnerable.

In other words, the bureaucratic imperative transformed a benign and beneficial medical treatment into a method of intentionally causing death—without necessarily intending that lethal outcome.

### **The LCP and the Affordable Care Act**

There is a warning here for the United States under the Affordable Care Act (ACA), by which the federal government centralized management of the American health-care system. While the ACA does not create a socialized system akin to the UK's NHS, it does establish a centralized federal bureaucracy authorized to give incentives to doctors and medical institutions to follow pre-defined approaches of providing "excellence." Indeed, many of the architects and implementers of the ACA have stated that they hope to emulate NICE-style cost containment/quality care methods—the very approach that subverted proper application of the LCP.

The greatest potential danger of managerializing healthcare (to borrow Laing's term) may be posed by the soon-to-be-implemented Medicare Independent Payment Advisory Board. IPAB is not a garden-variety "advisory" commission like so many seen in government these days. Rather, the unique "fast track authority" granted to IPAB authorizes it to *impose* its "recommendations" into law. Specifically:

- By January 15 each year, the Independent Payment Advisory Board must submit a proposal to Congress and the president for reaching Medicare savings targets in the coming year. The majority leaders in the House and Senate must introduce bills incorporating the board's proposal the day they receive it.
- Congress cannot "consider any bill, resolution, amendment, or conference report . . . that would repeal or otherwise change the recommendations of the board" if such changes fail to meet the board's budgetary target.
- By April 1, the committees of jurisdiction must complete their consideration of the proposal. Any committee that fails to meet the deadline is barred from further considering the bill.
- The secretary of health and human services must implement the Independent Payment Advisory Board's proposal, as passed by Congress and signed by the president, on August 15 of the year in which the proposal is submitted.

- If Congress does not pass the proposal or a substitute plan meeting the Independent Payment Advisory Board's financial target before August/15, or if the president vetoes the proposal passed by Congress, the original Independent Payment Advisory Board recommendations automatically take effect.

Further demonstrating the Star Chamber-like powers of the Independent Payment Advisory Board, Congress cannot consider any bill or amendment that would repeal or change this fast-track congressional consideration process without a three-fifths vote (60) in the Senate. Not only that, but the implementation of the board's remedy is exempted from administrative or judicial review.<sup>20</sup>

IPAB defenders claim that the IPAB's iron fist is necessary to ensure cost containment. They also note that the board does not have a completely free hand. For example, as it pursues its mission of frugality, it is not currently allowed to recommend health care rationing, changes in Medicare benefits, or revision of eligibility standards.

That is hardly reassuring. Before IPAB is even up and running, powerful voices began calling for IPAB to be granted expanded powers—including explicit NICE-style powers of health care rationing. Thus, Christina D. Romer, former chairwoman of President Barack Obama's *Council of Economic Advisers*, wrote in the *New York Times*: “Once the payment advisory board has a track record . . . it could be *empowered to suggest changes in benefits* or in how Medicare services are provided—say, along the lines of successful demonstration projects.”<sup>21</sup>

Even more explicitly, former Obama Treasury Department adviser and New York Times columnist Steven Rattner wrote, “We need death panels,” urging that IPAB be transformed into a rationing board. “No one wants to lose an aging parent,” he wrote. But the cost of caring extensively for the elderly “imposes an enormous societal cost that few other nations have been willing to bear,” and so we too must jump into the rationing pool:

Take Britain, which provides universal coverage with spending at proportionately almost half of American levels. Its National Institute for Health and Clinical Excellence uses a complex quality-adjusted life year system to put an explicit value (up to about \$48,000 per year) on a treatment's ability to extend life. At the least, the Independent Payment Advisory Board should be allowed to offer changes in services and costs. We may shrink from such stomach-wrenching choices, but they are inescapable.<sup>22</sup>

Similarly, the *New England Journal of Medicine* (NEJM)—an explicit supporter of NICE-style health care rationing—has opined that “strengthening of IPAB is of critical importance.”<sup>23</sup> Moreover, the NEJM has supported a system of rationing utilized by NICE based on the discriminatory quality



of life year (QALY), which judges healthier, younger, and more able-bodied lives as having greater value than those on life's edges. For example, an editorial favoring using QALYs in the context of the ACA argued:

As the country searches for ways to curb health care spending, consideration of the cost-effectiveness of health interventions will unavoidably be part of the health care debate, alongside considerations of possible payment- and delivery-system reforms. The use of explicit, standard metrics such as cost-per-QALY ratios has the advantage of transparency and can help direct our resources toward the greatest health gains.<sup>24</sup>

Such thinking demonstrates how centralized healthcare management practices unleash broad technocratic impulses. Rather than reinforcing standards of professional excellence in medicine, health care instead comes to be dominated by the bureaucratic imperatives, in turn leading to connect-the-dots medicine.

Indeed, because the Liverpool Care Pathway often has been perceived through a *distorting bureaucratic prism*, it has become a pronounced threat to the most weak and vulnerable patients precisely when they are at their most weak and vulnerable. We ignore that lesson in the United States at our own peril.

#### NOTES

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# BOOKNOTES

## **MORE GLIMPSES OF HEAVEN**

by Trudy Harris, R.N.

(Revell, 208 pp., 2010, \$13.99)

*Reviewed by Richard Hurzeler*

This is a powerful book. Written as a sequel to Harris's original *Glimpses of Heaven*, her new work goes farther and deeper. She describes many cases of dying souls seeing loved ones at their bedsides, and others that speak of seeing angels or even Jesus nearby. But perhaps as moving are the many, many stories of persons experiencing inner peace as they prepare to cross to the other side.

The original *Glimpses of Heaven* related the experiences of nurse Trudy Harris as she assisted patients in making their final journey. The thoughts and feelings of the dying in that book and their caretaker's support were well received by more than 200,000 readers. Within a few years' time, a number of hospice nurses approached the author with their own accounts of witnessing comparable happenings. So this book includes many of their testimonies as well as more of Trudy's. Several of the main author's accounts come across as even more personal and penetrating in this round than in the first.

Some of the dying she describes are nourished by strong religious beliefs. Some are very young, like David, a 12-year-old African American who staves off death so he can protect his mother. They live in a tough neighborhood where drugs and looting threaten. He is ready to die when he knows that everything is in order. Then there is the three-year-old whose faith startles adults and whose voice sounds like an angel.

Compassionate hospice nurses help patients achieve perspective as they prepare for final roll calls. These staff workers bolster one another in the weary world of tired bodies and frustrated families.

Perhaps the most beautiful accounts are about people who become reconciled to their families and their God before they die. Some hang on courageously, surprising the medical staff, as they patiently wait for a distant family member to return to the fold. In other cases we see lonely souls whose loved ones are gone but who gain some sense of "family" through interacting with nurses and other helpers. Then there is the 93-year-old Jewish atheist who maintains that God cannot exist because there is too much suffering. Somehow out of the bottom of his well of unbelief he offers a prayer for a little boy, who miraculously gets well. And somehow at the eleventh hour

the non-believer believes. After he dies, among his belongings they find writings debating the existence of God. Apparently he had struggled with the subject for years, but finally won through to belief.

The message that emerges from this marvelous book is that every person counts. The woman who has faced a bitter life of hard work and misery finally achieves peace as she forgives an unfaithful husband. The homeless man battered by neglect is adopted by nurses and smiles like a baby. These are statements of the sacredness of human life.

Each person has his or her origins in the Divine and a destiny that is incomplete without Him. Some people spend lifetimes in anguish but in their final days find bliss. Others live years and years surrounded by kindness and radiate hope at the end. Mysteriously, life is our preparation for death—and beyond that new life. Life is a choice we make every day—often with the help of others along the way.

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## **ABANDONED: THE UNTOLD STORY OF THE ABORTION WARS**

By Monica Migliorino Miller

(St. Benedict Press, 408 pp., 2012, \$26.95)

*Reviewed by Tyler O'Neil*

Car chases. Arrests. Prison sentences. Funerals. In her book *Abandoned: The Untold Story of the Abortion Wars*, Monica Migliorino Miller draws on the dramatic and often shocking events of her decades defending unborn life to provide a new perspective on abortion. She highlights Christian charity as well as dedication to one of the more overlooked corporal works of mercy in an epic struggle to save and honor the most vulnerable among us.

The first page opens with an epigraph from Sophocles' play *Antigone*:

*Creon has ordered  
That none shall bury him or mourn for him;  
He must be left to lie unwept, unburied  
For hungry birds of prey to swoop and feast  
On his poor body . . .  
No one shall say I failed him! I will bury  
My brother—and yours too, if you will not.*

In Sophocles' play, King Creon forbids anyone to bury Antigone's rebellious brother Polyneices. The heroine disobeys this law—in defense of a higher, divine law—and suffers imprisonment for burying her brother.

Like Antigone, Miller disobeys the law to defend the ostracized. Unlike Antigone, however, she defends the innocent.

In her testimony before the court, Miller said, “[T]hat baby still deserves to be treated like a human being, to be loved, to be defended, to be given an act of love in this world before [he or she] die[s].” For this reason, she engaged in nonviolent protest against abortion.

At the Forest Park Oasis overpass in Illinois, Miller led a group of protestors in handcuffing themselves to a car, blocking the doors to Wendy's, and sitting down in front of a police escort to bring an abortionist to his clinic. She also took part in numerous abortion clinic “blitzes”—storming in with protestors, who would chain themselves to the machines to prevent the killing of unborn children. She even led a group of more than 20 pro-lifers who blockaded an abortionist's driveway.

For keeping this “doctor” from going to work, Miller faced a prison sentence. Miller argued that she could disobey the law in this case because of the “defense of necessity.” This legal exception allows citizens to break laws in order to save lives. However, the court rejected the application of the plea here. “Defendants' acts were intended to protect nonexistent rights and prevent the exercise of rights guaranteed by the Constitution,” said the lawyers of Concord, Illinois.

Prosecutor Jeffrey Kremers mocked Miller, saying “She's the only one that is so righteously committed to her cause that she can do whatever she wants to do and she shouldn't have to suffer any penalties for it, regardless of what the law in this country is.”

Miller defended a higher law, and spent time behind bars.

Other prisoners could tell she didn't belong. Olivia, a young woman also in prison, told her, “I want you to know how much I respect you for what you did. I'm in here for messin' up, but you're in here for doin' somethin' good.”

Even in prison, Miller advised other inmates against abortion. She discussed abortion with a former clinic worker named Randie. Reticent at first, Randie started reading the Bible and turned around. Another ex-abortion worker, Patrice, testified against her abortion clinic. The “doctor” in charge “did the abortions so fast that often there was not enough time for the anesthetic to take effect.”

Miller's first sentence cut her honeymoon short, and the second kept her from her four-month-old son. “The greatest weapon pro-lifers possess,” she writes, “is living a life of nonviolent self-sacrifice according to . . . Christ's Beatitudes.”

That self-sacrifice extended beyond protest, however. While fighting to secure the right to life for the unborn, she also buried those who had already been lost to abortion.

Miller recounts many midnight “rescues.” The very first chapter describes one evening at 30 South Michigan in downtown Chicago. “We climbed onto the loading dock, lifted the dumpster lids, and began to sift through the trash,” Miller writes.

After a while, they found “a small, heavy cardboard box, about the size of two shoe boxes, sealed in duct tape.” In a friend’s garage, she and other pro-life activists sorted through the contents of the box.

“I had been staring at arms but did not see arms,” Miller writes. “They were the dismembered limbs of a completely torn and mutilated body and, up until that day, my eyes had never been confronted with such a reality.”

She vividly remembers “a boy . . . at least six months gestational age . . . aborted by the dilation and evacuation, or D&E, method. His body was well-formed, and his red and purple veins were visible through his translucent skin.”

Over a period of two months, they found over 600 bodies.

After a press conference during which Miller showed the bodies, she began a campaign for public burials. “We believed nothing we could have done would have been a greater witness to the world to the humanity of these children, and the national tragedy they represent could be mourned by all,” she wrote in a letter to a Cardinal, asking for ground in his cemetery.

During this campaign, she ran across a pet cemetery that cremated the aborted babies along with the carcasses of dogs and cats. “Pet Haven” cemetery marketed itself as a means to honor animals, while secretly dishonoring unborn human children.

“The burning of the babies is an intrinsic part of the abortion ethic,” Miller explains, “compounded by the added insult of burning them with dogs and cats and parrots.”

The denigration of human life experienced in abortion shows itself in such secret crematoriums. Miller exposed this cemetery, but she also buried the babies herself.

After years of hard work, Miller finally achieved the goal of a public burial for these human lives denied any dignity or human solidarity in their deaths. “On this warm summer day everything was perfect,” she explains. “The caskets seemed suitable for royalty, and most important, the burial was public, and there were hundreds of people in attendance.”

One gravestone reads:

“A voice was heard in Rama . . .  
Rachel weeping for her children.” (Mt. 2:18)

HOLY INNOCENTS  
Preborn Children of God  
Feb. 28-April 25, 1987.

“A return to true Christian charity: this is what will end abortion,” Miller wrote. Moving from event to event like an ancient epic, her book resounds with that charity, and now is the time to listen.

*Tyler O’Neil, a Hillsdale College graduate, is a National Journalism Center intern with the Washington Free Beacon.*

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**ABORTION UNDER STATE CONSTITUTIONS:  
A STATE-BY-STATE ANALYSIS** Second Edition

by Paul Benjamin Linton

(Carolina Academic Press, 703 pp., 2012, \$85.00)

*Reviewed by John M. Grondelski*

America’s abortion regime is largely the work of the federal judiciary. In 1973, the Supreme Court discovered a right to kill unborn children, a right that could be seen to be “founded,” Justice Harry Blackman wrote for the majority in *Roe v. Wade*, either “in the Fourteenth Amendment’s conception of personal liberty,” or “in the Ninth Amendment’s reservation of rights to the people. . . .” This abortion right, the Court determined, was derived from a Constitutional “right to privacy,” a right the Supremes had discovered eight years earlier in *Griswold v. Connecticut*, a case concerning whether states could ban contraceptive use among married couples. No, they could not, the Court found, as that would be a violation of the “right to marital privacy.” Despite its vague origins, the privacy right has provided amazingly broad and specific guidance to the federal courts, allowing them to ponder questions such as how far a child must emerge from his mother to be deemed born (and thus Constitutionally protected). Indeed, the right to abortion has been even asserted to entail—in the words of Justice Anthony Kennedy in *Planned Parenthood v. Casey*, the 1992 case upholding *Roe v. Wade*—a right to one’s “own concept of existence, of meaning, of the universe, and of the mystery of human life.”

While the federal courts have affixed the right to abortion to the U.S. Constitution, one must also remember that each state also has its own

constitution, with rights analogous to their federal counterparts. The track record of state courts finding a right to abortion in state constitutions is mixed. A few (e.g., New Jersey) have gone where no federal court has gone before (or since), expanding the protection of abortion even beyond what the federal judiciary has required (especially in the area of states paying for abortions for indigent women under Medicaid). Some states have avoided creating state “rights to abortion.” Given the proclivity of abortionists to protect their trade and litigate their opposition to state laws protecting the unborn in federal courts, most state supreme courts have simply not addressed the issue.

For those interested in seeing how abortion has played out in state courts, this book is a must. Paul Linton, Special Counsel for the Thomas More Society and former general counsel for Americans United for Life, offers a state-by-state analysis that is measured, balanced, and careful.

Linton notes that state constitutions typically have a bill of rights comparable to their federal counterpart. The question is: How do we interpret them? The author maintains that there are two “principled” approaches to such exegesis: “lockstep”—state constitutional rights provisions should be interpreted in “lockstep” with their federal counterpart—and “independent state constitutionalism”—state constitutional rights are independent of their federal counterpart, and can be construed more broadly, narrowly, or exactly. What Linton calls “not principled” is a blending of these two criteria: Federal interpretation establishes the “floor” for understanding what a *state* provision means, but not a “ceiling”—state courts can go beyond what their federal counterparts have decreed. While advocates of originalism and strict constructionism often focus their attention on the federal courts (especially when it comes to evaluating judicial nominees for the likelihood of their becoming legislators from the bench), it might be a fascinating study to see how state constitutionalism philosophies have been used to win at the state level what was lost at the federal. Such a study, of course, would transcend the abortion issue, likely also encompassing other neuralgic issues like euthanasia, same-sex “marriage” and expansive homosexual rights, search and seizure, criminal defendant “rights,” etc.

According to Linton, more than 35 state supreme courts have not weighed in on abortion. Part of the reason is that most abortion litigation has taken place in federal courts, which in most instances have been sympathetic to expanding the abortion liberty. Indeed, since *Roe* and its *Casey* reconstruction, the federal jurists have promoted abortion except in two significant instances: They did not require funding of abortions for Medicaid recipients, and they eventually accepted some restrictions on partial-birth abortion.

*Maher v. Roe* was the first major loss for abortionists following *Roe*. Up



until that decision, the abortion establishment pushed to have it both ways (much like in contemporary debates over Obamacare and Planned Parenthood funding): Abortion was a “private” choice, but the public was to be complicit in it by funding indigent women who wanted to end their pregnancies. In that worldview, there could be no other moral or policy evaluation of abortion except that of the pregnant woman: The community could not express its own social conscience (or protect the conscience of taxpayers), much less express its disapproval by refusing to fund abortions.

*Maier* represented a significant setback in the federal courts. After the decision, there was hope that cutting off the public-funding stream would reduce the number of abortions, and several states enacted their own Medicaid funding restrictions. Having lost their Constitutional club for fighting such restrictions, abortionists suddenly discovered state courts as alternate venues for achieving what they could not in the federal courts. Thus the California Supreme Court, continuing its jurisprudence of “procreative choice,” struck down funding restrictions, while Garden State restrictions fell when the New Jersey Supreme Court declared that the “right to choose . . . is a *fundamental* right of all pregnant women.” The Massachusetts Supreme Judicial Court found that state due-process provisions protected privacy rights to “a greater degree . . . than does the Federal Constitution” and thereby imposed state funding of abortion. Alaska’s Supreme Court used the gutting of public conscience rights as its vehicle to create a state right to abortion. Alaska had permitted public hospitals to decline to provide abortion services, but in *Valley Hospital Association v. Mat-Su Coalition for Choice*, the Court found a state Constitutional “right to privacy” which invalidated the state’s policy.

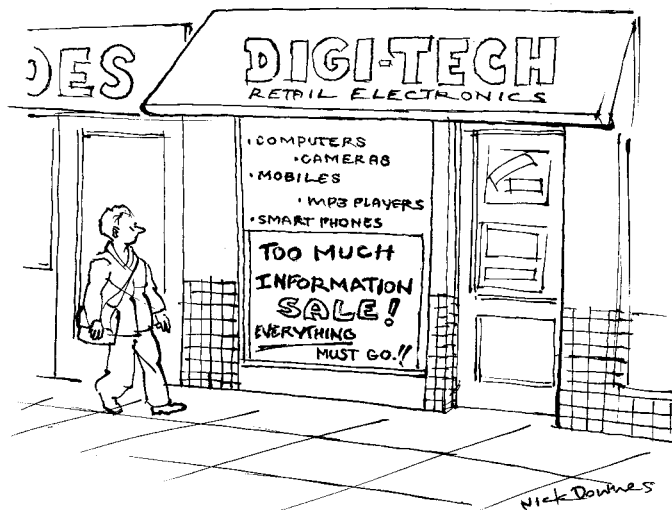
Other state supreme courts, such as those in Florida and Mississippi, have used parental consent and parental notification restrictions (already significantly circumscribed in the federal courts) as vehicles to expand state abortion rights. In total, twelve state supreme courts—Alaska, California, Florida, Massachusetts, Minnesota, Mississippi, Montana, New Jersey, New Mexico, New York, Tennessee, and Vermont—have recognized legal abortion rights in their state constitutions. Linton analyzes judicial precedent in each state, generally concluding that it precludes the possibility of restricting abortion in any of them—even if *Roe* were modified or reversed.

In the 38 states in which the state courts have not yet definitively addressed abortion “rights” issues, Linton’s approach is different. Here he considers the usual Constitutional provisions onto which abortionists generally try to graft abortion rights (e.g., due process/equal protection, religious freedom, reserved or unenumerated rights, protection against search and seizure, etc.), and examines trends in state jurisprudence to argue whether past precedent

does or (usually) does not provide a basis to establish a state-constitution-grounded right to abortion. Linton's arguments are persuasive, though one must always remember that when courts have decided to declare abortion rights, their creative ability to torture Constitutional texts to serve their own ends rarely finds limits. The problem, of course, is that in such instances there is no principled legal basis on which to decide how a court might reach its conclusions: As Justice Byron White first noted in his *Roe* dissent, abortion jurisprudence often depends simply on "raw judicial power."

*Abortion under State Constitutions* meets a variety of readers' needs. Legal practitioners obviously can benefit from Linton's research. Right-to-life activists have a good survey of their own state's jurisprudence (including its potential for becoming the next home of "abortion rights"). And a general pro-life audience can find an interesting, nationwide survey of theoretical abortion rights at the state level. Highly recommended.

*John M. Grondelski is former associate dean of the School of Theology at Seton Hall University, South Orange, New Jersey.*



# The ACLU vs. Human Life

Alan Sears & Craig Osten

*“We must change the climate overall from one where abortion providers are vilified and assaulted to one where they are honored and upheld as the heroes that they are.”*<sup>1</sup>—ACLU Press Release

*“At this point, I would rather have a right-wing Christian decide my fate than an ACLU attorney.”*<sup>2</sup>—Eleanor Smith, a self-described liberal agnostic who is confined to a wheelchair because of polio.

*“In all our wars combined 651,000 courageous Americans have died. But forty-six million Americans, seventy-one times as many, have died from court approved surgical abortion. That’s fourteen million more Americans than the entire population of Canada.”*<sup>3</sup>—Alan Sears, National Day of Prayer

(Warning: This chapter contains graphic material.)

**O**n March 21, 1996, Brenda Pratt Shafer, a registered nurse from Ohio, was called to testify before a subcommittee of the U.S. House of Representatives. This was not ordinary testimony. Shafer had come to Capitol Hill that day to testify about a procedure called partial-birth abortion. She testified to the following:

In September 1993, [my employer] asked me to accept an assignment at the Women’s Medical Center, which is operated by Dr. Martin Haskell. I readily accepted the assignment because at the time I was very pro-choice. I had even told my teenage daughters that if one of them ever got pregnant at a young age, I would make them get an abortion . . .

So because of the strong pro-choice views that I held at that time, I thought the assignment would be no problem for me.

But I was wrong. I stood at the doctor’s table as he performed the partial-birth abortion procedure—and what I saw is branded forever on my mind . . .

On the first day, we assisted in some first-trimester abortions, which is all I’d expected to be involved in . . . On the second day, I saw Dr. Haskell do a second-trimester procedure that is called a D&E (dilation and evacuation). He used ultrasound to examine the fetus. Then he used forceps to pull apart the baby inside the uterus, bringing it out piece by piece, throwing the pieces into a pan . . .

On the third day, Dr. Haskell ordered me to observe as he performed several of the procedures that are the subject of this hearing. Although I was in that clinic on

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assignment of the agency, Dr. Haskell was interested in hiring me full time, and I was being given orientation in the entire range of procedures provided at that facility . . .

The mother was six months pregnant . . . A doctor told her that the baby had Down's Syndrome and she decided to have an abortion . . . Dr. Haskell brought the ultrasound in and hooked it up so that he could see the baby. On the ultrasound, I could see the heart beating . . .

Dr. Haskell went in with the forceps and grabbed the baby's legs and pulled them down into the birth canal. Then he delivered the baby's body and arms—everything but the head. The doctor kept the baby's head just inside the uterus.

The baby's little fingers were clasping and unclasping, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startled reaction, like a baby does when he thinks he might fall.

The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp. I was completely unprepared for what I was seeing. I almost threw up as I watched the doctor do these things . . .

Dr. Haskell delivered the baby's head. He cut the umbilical cord and delivered the placenta. He threw that baby back into the pan, along with the placenta and the instruments he'd used. I saw the baby move in the pan. I asked another nurse and she said it was just "reflexes." I have been a nurse for a long time and I have seen a lot of death—people maimed in auto accidents, gunshot wounds, you name it. I have seen surgical procedures of every sort. But in all my professional years, I have never witnessed anything like this.

The woman wanted to see her baby, so they cleaned up the baby and put it in a blanket and handed the baby to her. She cried the whole time, and she kept saying, "I'm so sorry, please forgive me!" I was crying too. I couldn't take it. That baby boy had the most perfect angelic face I have ever seen . . .

Mr. Chairman, these people who say I didn't see what I saw—I wish they were right. I wish I hadn't seen it, and I will never be able to forget it. That baby boy was only inches, seconds away from being entirely born, when he was killed. What I saw done to that little boy, and those other babies, should not be allowed in this country.<sup>4</sup>

Unfortunately, this graphic and cruel procedure continues to happen "legally" on a daily basis in America, mainly because of the legal efforts of the ACLU and its abortion provider allies (which despite its claims of altruism makes tens of millions in profits each year)<sup>5\*</sup> that have legally challenged *any* restriction on abortion, regardless of how barbaric or unhealthy the abortion procedure or who it's designed to protect. In addition, the ACLU and its allies have had a cooperative Supreme Court majority, which has agreed to most of their demands to keep all forms of abortion—no matter how cruel—legal. Before President George W. Bush signed legislation<sup>6</sup> barring what Shafer described above, the ACLU promised to sue to overturn the proposed law, stating: "This bill is nothing more than a political power play by anti-choice lawmakers who are unabashed about endangering

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\* Planned Parenthood earned an estimated \$104 million from its surgical abortion business alone in 2004. See <http://www.discoverthenetworks.org>

women's health in the pursuit of their extreme agenda."<sup>7</sup>

Yet, according to a 2003 Gallup poll, 68 percent of the public supported this "extreme agenda" (as the ACLU called the ban on partial-birth abortion in a press release) because this 68 percent supported a partial-birth abortion ban.<sup>8</sup> But again, the ACLU seldom has regard for the will of the people.

When President Bush finally signed legislation in 2003 that outlawed partial-birth abortion, the ACLU immediately promised to file a lawsuit to challenge the law.<sup>9</sup> And on June 1, 2004,<sup>10</sup> August 26, 2004,<sup>11</sup> and September 8, 2004,<sup>12</sup> they were successful because they found federal court judges in San Francisco,<sup>13</sup> New York,<sup>14</sup> and Nebraska<sup>15</sup> willing to strike down the ban. The final outcome on appeal is pending as this book goes to press.

But this is not surprising. Mary Meehan, who regards herself as a liberal, writing in the *Human Life Review*, put it best when she stated, "When it comes to one group of victims, the ACLU fails to live up to this self-image. In its long and relentless campaign against the right to life of unborn children, it has violated its own traditions and principles in a radical way . . . The defender of free speech helps ensure that millions of human beings will never have the chance to speak."<sup>16</sup>

Former ACLU board member Nat Hentoff, a self-proclaimed atheist who became pro-life after he witnessed first-hand the extremism of the ACLU and its allies on this issue, wrote: "For years [ACLU] affiliates around the country invited me to speak at their fundraising Bill of Rights dinners. But once I declared myself a pro-lifer, the invitations stopped. They know I agree with them on most ACLU policies, but that no longer matters. I am now no better than Jesse Helms [former U.S. Senator from North Carolina]. Free speech, after all, has its limits."<sup>17</sup>

### **The History of the ACLU and Abortion**

The ACLU has a long history of advancing unrestricted access to abortion, right up to the moment of live birth. It played an influential role in *Griswold v. Connecticut* (filing friend-of-the-court briefs and other activities),\* *Doe v. Bolton*, and *Roe v. Wade*.<sup>18</sup> The ACLU stated in 1980, "Our litigation strategy has been to challenge every statute restricting reproductive freedom. . . . *In states where there are no lawyers willing to undertake these controversial cases, the entire litigation is conducted from the national office.*"<sup>19</sup>

On its website, the ACLU trumpets other victories against life. For instance,

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\* In an ADF prayer letter, Alan [Sears] wrote: "The justice who 'discovered' this 'right to privacy' [used in *Griswold*] said it existed in the 'emanations' from the 'penumbra' mystically hidden in the 3rd and 4th Amendments to the Constitution and between the 9th and 10th Amendments. Seriously! So what's a penumbra? A cloudy shadow over the moon! The court invoked this phony vibrating moonshadow 'right' in cases leading up to the infamous *Roe v. Wade* decision."

here is how the ACLU described its “victory” in *U.S. v. Vuitch*, a key case in its legal battle to legalize abortion: “1971: *U.S. v. Vuitch*: The Court’s first abortion-rights case, involving a doctor’s appeal of his conviction for performing an illegal abortion. The Court upheld the constitutionality of the statute used to convict, but expanded the ‘life and health of the woman’ concept to include psychological well-being, and ruled that the prosecution must prove that abortion was not necessary for a woman’s physical or mental health.”<sup>20</sup>

*Vuitch* was a pivotal case because it gave the ACLU and its pro-abortion allies the legal wording that has been used for the past thirty years to either strike down or weaken any law that would stop the most horrific forms of abortion, such as partial-birth abortion. In almost every case challenging partial-birth-abortion laws, the ACLU trots out the “health of the mother” argument, which the Court expanded in concept far beyond physical health to the almost undefinable concept of mental health. Therefore, any legal restriction, no matter how reasonable or proper, on abortion is rendered almost meaningless if health-of-the-mother language is inserted. No concern is ever shown for the health of the affected child. That is why the ACLU or its allies file a lawsuit almost immediately when virtually every new law is passed, citing the health of the mother, because they know it will undermine the implementation or impact of the law.

This decision would be strengthened two years later in *Doe v. Bolton*, another case in which the ACLU participated. The Court ruled, in the ACLU’s words, “that whether an abortion is ‘necessary’ is the attending physician’s call, to be made in light of all factors relevant to a woman’s well-being.”<sup>21</sup>

Among the “movers and shakers” behind the ACLU’s unwavering support of abortion was Harriet Pilpel, a lawyer who was a devoted proponent of birth control and population control.<sup>22</sup> In a 1964 paper, Pilpel wrote that restrictions on birth control and abortion encouraged “multiplication of births among low income groups.”<sup>23</sup> Like many of ACLU founder Roger Baldwin’s friends and fellows years earlier, Pilpel demonstrated interest in eugenics, which is an effort to breed a “better human race” by suppressing the birthrate of the handicapped, the poor, and minorities.<sup>24</sup>

Testifying on behalf of the New York Civil Liberties Union, Pilpel said that severely restricting abortion would place “an enormous economic burden on the country.”<sup>25</sup> In 1969, Pilpel wrote an article titled “The Right of Abortion” in *The Atlantic Monthly*. She decried the lack of sterilization, especially among poor women. She wrote, “Little is done to make sterilization easily available on a voluntary basis, particularly to the poor and underprivileged.”<sup>26</sup>

Mary Meehan said with regard to Pilpel’s statements and example of ACLU duplicity, “Ironically, at the very time she said this, the ACLU was deeply

involved in the civil rights movement, defending the rights of low-income African Americans.”<sup>27</sup>

Following in the ACLU’s strategy of using misinformation to advance its agenda, Pilpel used allegedly highly inflated numbers of “back alley” abortions and deaths, which helped sway public opinion toward the legalization of abortion. For instance, in a 1965 paper used by the ACLU to determine its abortion policy, Pilpel (and her coauthor William Kopit) said there were between 1 to 1.5 million abortions in the United States and more than 8,000 maternal deaths from those abortions each year.<sup>28</sup> Later research found that the numbers of abortions ranged from 39,000 in 1950 to 210,000 in 1961.<sup>29</sup> Government figures showed there were actually 197, not 8,000—meaning she exaggerated by more than 700 percent—possible maternal deaths from illegal abortions in 1965, when Pilpel and Kopit wrote their paper.<sup>30</sup>

Dr. Bernard Nathanson, a former abortionist and advocate, said: “I confess that I knew the figures were totally false, and I suppose the others did too if they stopped to think about it. But in the morality of our revolution, it was a useful figure, widely accepted, so why go out of our way to correct it with honest statistics?”<sup>31</sup>

Apparently, this falsity did not matter to the ACLU’s allies and those who advocated legalization of abortion. They continue to use some version of these false numbers to this day to defend practices such as partial-birth abortion.

Let’s return to Pilpel. After Alan [Sears] appeared on William F. Buckley’s *Firing Line* in the 1980s, he traveled across Manhattan in a Town Car with Pilpel, who had appeared on the program with him. Over a couple hours’ conversation, Alan was amazed at the pride she took in what she had accomplished. She asserted herself as the “godmother” of abortion and told Alan that the facts of the *Griswold v. Connecticut* case were a setup. She continued to dismiss those who opposed the abortion agenda as “intellectual inferiors.”

In 1968, the ACLU adopted its abortion policy, which remains virtually unchanged. Today’s policy reads in part: “The ACLU asserts that a woman has a right to have an abortion—that is, a termination of pregnancy prior to the viability of the fetus—and that a licensed physician has a right to perform an abortion, without the threat of criminal sanctions. In pursuit of this right the Union asks that state legislatures abolish all laws imposing criminal penalties for abortions. The effect of this step would be that any woman could ask a doctor to terminate a pregnancy at any time.”<sup>32\*</sup>

As usual, there is duplicity in that statement. On one hand, the ACLU states abortions should occur only before viability. But on the other hand, it

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\* Despite the fact that most fetuses are viable by twenty-eight weeks, the ACLU advocates their death until they fully emerge from the birth canal.

states if criminal penalties for abortions are abolished, a woman is free to get an abortion at any time. Over the past thirty years, the ACLU has fought numerous attempts to restrict abortion after the time of viability, therefore contradicting the first part of its policy and demonstrating where it really stands: abortion anytime, anywhere, for any reason.

The statement continues: “The discriminatory effect of the prohibition of abortion involves another area of civil liberties interest, that of equality. The rich can circumvent or violate the law with impunity, but the poor are at the law’s mercy.”<sup>33</sup>

This last statement, which has no more factual basis than many other ACLU claims, is of interest considering the eugenics past of Pilpel and others whose efforts contributed to formulating this policy. As we discussed in the first chapter, the ACLU often uses the poor as pawns to advance its agenda, while demonstrating veiled contempt for them. For instance, in *Doe v. Bolton*, the ACLU argued that the Georgia law that restricted abortion resulted in 408 Caucasian women having hospital abortions, compared with 53 African American women.<sup>34</sup> Thus, taking the ACLU’s argument to its logical conclusion, the problem was that not enough African American women were having abortions. In the 1969 article from *The Atlantic Monthly*, Pilpel bemoaned the fact that only rich, white women could afford to have abortions.<sup>35</sup>

In addition, the ACLU’s math assumed an automatic economic disparity between Caucasian and African American women. It did not take into account faith-based or other reasons why African American women would choose not to abort their children.

Mary Meehan wrote, “The eugenicists and population controllers must have been delighted to see the ACLU put the gloss of rights and freedom on abortion. It made their effort to suppress the birthrates of poor people and minorities so much easier. Did ACLU leaders know or care about that kind of agenda? Aryeh Neier, executive director of the ACLU from 1970 to 1978, later referred to some African Americans’ feeling that there were whites eager to eliminate or limit the number of welfare mother babies out of an anti-black feeling and that’s why they were supporting abortion.”<sup>36</sup>

Meehan cited a statement by Neier that backs this up. Neier said in a 1979 interview: “There’s no question that I dealt with some supporters of abortion who are very much in favor of abortion for exactly that reason.”<sup>37</sup>

Meehan continued: “Taking chutzpah to new heights, ACLU activists suggested that the ones who were really anti-poor were the defenders of the unborn poor.”<sup>38</sup> She referred to an ACLU fundraising letter that suggested that financing abortions for the poor was far less expensive than paying the cost of childbirth and welfare support.<sup>39</sup> This is basically saying that it’s



good financial stewardship to allow the government to pay for the killing of unborn children, especially minorities, rather than paying for their upbringing.

Armed with this new policy, the ACLU went to work to push for the legalization of abortion. In a December 1967 memo, ACLU staff member Eleanor Holmes Norton (who has most recently served as a representative to Congress from Washington D.C.) wrote, “I think we should get hot on abortion.”<sup>40</sup> The ACLU quickly filed several lawsuits. It first undermined the District of Columbia’s abortion law. And while it did not singularly lead the charge for *Roe v. Wade*, it helped establish the legal climate for it. *Roe* severely limited the ability of states to regulate abortion, even in the final trimester.

In 1985, the ACLU revisited its abortion policy to make it even more radical, conforming to the *Roe v. Wade* standard.<sup>41</sup> One member of the ACLU committee on “reproductive rights” was worried about late-term abortions, but others stated that a woman had the “right to an abortion right up to the moment of live birth.” According to ACLU committee minutes, Dr. Warren Hern, a notorious late-term abortionist, argued that a woman had a right to a “dead fetus.”<sup>42</sup> Eventually, the committee recommended that every woman has a “right” to have an abortion at any time during her pregnancy—by any method—with no viability restrictions.

The ACLU’s contempt for human life goes *even further*. In his book, *The Politics of the American Civil Liberties Union*, William Donohue wrote:

There are some officials in the ACLU who not only believe that the unborn lack rights but regard the unborn as “stuff”—the kind of stuff that is sold at an auction. In June 1977, the Louisiana affiliate offered an abortion at its annual fundraising auction. The price: \$30 . . . The state director of the affiliate, Martha Roeder, said she was surprised by the critical reaction to the abortion auction. “Abortions, after all, are legal, and it’s as legitimate, in my perspective, for a woman to get an abortion as it is for someone to get a divorce or to bid on a legal defense of a D.W.I [driving while intoxicated] or any other professional services we offer.”<sup>43</sup>

In 1978, the ACLU challenged the policies of American Cyanamid, which did some work with toxic chemicals. The policy prohibited women in childbearing years from working in areas that would expose them to these chemicals. This was a common sense prohibition to protect the health of any female employees’ future children. The ACLU filed a lawsuit against the company, stating that the policy was discriminatory. William Donohue wrote, “The ACLU read the policy and saw sexism clear and simple. It did not, or perhaps could not, see that the policy was designed to protect the future rights of children. No conflict of rights here, for the ACLU has no sympathy for such policies and chooses to write them off by employing quotation marks to indicate its position on ‘fetal vulnerability.’”<sup>44</sup>

The ACLU's crusade against the unborn child even goes as far as spying on pro-life elected officials, even to the point of violating the very civil liberties it swears it fights so hard to protect! Donohue wrote:

In its passion for legalized abortions, the ACLU has violated the civil liberties of those who do not share its position. A case in point involves the efforts of Representative Henry J. Hyde . . . [who] authored a bill to restrict the federal financing of abortions. When he began his efforts in the late 1970s, the Union was alarmed. One of the Union's main contentions was that the law amounted to the enactment of Roman Catholic "dogma and doctrine" into law . . . To gather evidence for its case, the ACLU dispatched an agent to spy on Hyde's leisure-time activities. What the agent found was that Mr. Hyde went to church on Sundays—a Catholic church no less—where, as the report noted, "pregnant women and children" bore "gifts for life"; the same people, including Hyde, were said to have prayed and gone to Holy Communion . . . When Norman C. Miller broke this story in December 1978, he accused the ACLU of engaging in anti-Catholic bigotry. Ira Glasser, the head of the ACLU, responded by defending the Union's policy on abortion and labeled the bigotry charge "unsophisticated"; he never addressed the spy activity.<sup>45</sup>

Hyde said this about the ACLU's spying, "I suppose the Nazis did that—observed Jews going to synagogues in Hitler's Germany—but I had hoped that we would have gotten past that kind of fascist tactic."<sup>46</sup> When the ACLU demanded to read Hyde's mail, he complied. According to Donohue, the ACLU wanted to find out if Hyde's opposition to abortion was "religiously based." Hyde reported, "Interestingly enough, I am told the young lady at the ACLU had a big chart, and whenever some citizen would close a letter to me saying "God bless you," the ACLU representative would put a little check by the word "God," thus indicating the evil, nefarious religious influence that was molding my approach to this subject."<sup>47\*</sup>

And then to top it off, the ACLU (along with its allies) have encouraged Americans to salute the "courage" of those who kill unborn children. In a promotion for "National Day of Appreciation for Abortion Providers," the ACLU wrote:

On this day, stand up with your abortion services providers and say: "Thank you for your heroism, perseverance, courage, and commitment to women." Organize local appreciation day events. Praise clinic staff and doctors with certificates of appreciation. Write your local newspaper and call talk shows to express support. Place ads in local newspapers and newsletters. Ask your local [abortion] provider how you can help. Become a volunteer clinic escort. Use your imagination, creativity, and dedication to help create a climate at clinics where women, doctors, and staff can hold their heads high and receive support instead of harassment. We must change the climate overall from one where abortion providers are vilified and assaulted to one where they are honored and upheld as the heroes they are."<sup>48</sup>

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\* During the Attorney General's Commission on Pornography, ACLU-affiliated students demanded to read and review Alan [Sear's] mail on several occasions.

### Moving Toward Infanticide

But the ACLU's anti-life agenda does not stop at abortion. It has progressively moved toward infanticide. Nat Hentoff realized this when he was involved in the infamous "Baby Doe" cases. One of these cases involved a couple in Bloomington, Indiana, who gave birth to a Down's syndrome infant with a defective digestive system that could have been corrected by routine surgery, but the baby died of starvation on order of the parents.<sup>49</sup>

In fact, these cases, and the ACLU's position concerning them, led to Hentoff's splitting from the ACLU. As other similar stories occurred, Hentoff noticed the ACLU repeatedly stood on the side of protecting the "privacy" rights of parents to kill their children. He wrote: "In Baby Doe cases, after the whistle has been blown by a nurse or a right-to-life organization, not once has an ACLU affiliate spoken for the infant's right to due process and equal protection under the law. Indeed, when the ACLU has become involved, it has fought resolutely for the parents' right to privacy. Baby Doe's own awful privacy, as he or she lies dying, is also thereby protected."<sup>50</sup>

Hentoff also shared the following incident: "And then I heard the head of the Reproductive Freedom Rights unit of the ACLU saying . . . at a forum: "I don't know what all this fuss is about. Dealing with these handicapped infants is really an extension of women's reproductive freedom rights, women's right to control their own bodies."<sup>51</sup>

He continued, "That stopped me. It seemed to me we were not talking about *Roe v. Wade*. These infants were born. And having been born, as persons under the Constitution, they were entitled to at least have the same rights as people on death row—due process, equal protection under the law."<sup>52</sup>

Other ACLU members have been dismayed by the organization's defense of what can only be called infanticide. Hentoff has shared about a letter he received from Barry Nakell, one of the founders of the North Carolina chapter of the ACLU. Nakell told Hentoff he gave a speech at the 1985 annual meeting of the North Carolina chapter. Hentoff recounts:

He reminded the members that the principle of respect for the dignity of life was the basis for the paramount issue on the North Carolina Civil Liberties agenda since its founding. That group was founded because of the opposition to capital punishment. Yet, he said, [in] supporting *Roe v. Wade*, these civil libertarians were agreeing that the Constitution protects the right to take life. This situation is a little backward, Nakell told his brothers and sisters. In the classical position, the Constitution would be interpreted to protect the right to life, and pro-abortion advocates would be pressing to relax that constitutional guarantee. In *Roe v. Wade*, the Supreme Court turned that position upside down and the ACLU went along, taking the decidedly odd civil libertarian position that some lives are less worthy of protection than other lives.<sup>53</sup>

The ACLU has also fought fervently against the Unborn Victims of

Violence Act (signed into law by President Bush),<sup>54</sup> which allowed for charges to be brought against an attacker of a pregnant woman if the unborn child she was carrying was injured or killed in the attack. Although the bill clearly stated that nothing in the legislation “shall be construed to permit the prosecution for conduct relating to abortion for which the consent of the pregnant woman . . . has been obtained,”<sup>55</sup> the ACLU staged its usual campaign of misinformation, intimidation, and fear to defeat the legislation.

In a statement, the ACLU said the bill was “a cunning attempt to separate the fetus from the mother in the eyes of the law and in the court of public opinion.”<sup>56</sup> To which Hentoff replied: “The ACLU might be surprised to learn that according to a standard medical text, ‘The Unborn Patient: The Art and Science of Fetal Development,’ . . . the fetus is an individual patient, and to be considered as such ‘as much a patient as any other patient.’”<sup>57</sup>

In fact, in the ACLU’s viewpoint, abortion is a better alternative than carrying a child to term. In a “reproductive rights” update, the ACLU wrote: “Today, abortion is one of the most commonly performed surgical procedures and is ten times safer than carrying a pregnancy to term.”<sup>58</sup> We again challenge the ACLU’s medical “data” to prove its claim.

### **What Free Speech?**

Meanwhile, the ACLU, the great defender of free speech, has either been silent, or has actively sought to silence the free speech rights of those who believe in and wish to advocate for the right to life. These actions have even given pause to hard-core ACLU activists like Robyn Blumner, who is no friend of the pro-life, pro-family cause. She noted that the ACLU had backed Nazis, a college student who posted rape fantasies on the Internet, and Ku Klux Klan members but had decided that pro-lifers are such pariahs that their right to free speech is to be denied. Blumner wrote:

The ACLU, a group for which I proudly worked as executive director of the Florida and Utah affiliates for more than 10 years, has developed a blind spot when it comes to defending anti-abortion protestors. The organization that once defended the right of a neo-Nazi group to demonstrate in heavily Jewish Skokie, Ill., now cheers a Portland, Ore., jury that charged a group of anti-abortion activists with \$107 million in damages for expressing their views. Gushed the ACLU’s press release: “We view the jury’s verdict as a clarion call to remove violence and the threat of violence from the political debate over abortion . . .”

None of the anti-abortion group’s intimidating writings explicitly threatened violence. Still, the ACLU of Oregon refused to support the defendant’s First Amendment claims . . .”<sup>59</sup>

While we want to make it very clear that we decry any form of violence against those who advocate abortion—or anyone we disagree with—this

silence toward, or active litigation against, the right of pro-life speech and peaceful advocacy is another example of the duplicity of the ACLU.

In 1997, the ACLU filed a friend-of-the-court brief in support of an injunction that required pro-life advocates to stay at least fifteen feet away from the entrances and driveways of abortion clinics. The injunction also provided a fifteen-foot “bubble zone” around each woman who came to the clinic. In effect, this court order created a zone that prohibited free speech directed at pro-life advocates. The ACLU brief stated the injunction creating this zone was consistent with the First Amendment. Three ACLU chapters (including Blumner’s) disagreed. An ACLU attorney in Ohio saw through the organization’s duplicity, saying, “There are people I consider to be civil libertarians who believe in an abortion exception to the First Amendment. I think that’s outrageous.”<sup>60</sup>

The ACLU also supported the use of the 1871 Ku Klux Klan Act against peaceful pro-life protestors who blocked access to abortion clinics.<sup>61</sup> In 1994, the ACLU was in favor of legislation titled the Freedom of Access to Clinic Entrances or FACE. FACE bars peaceful pro-life activism such as sit-ins (which the ACLU supports on other issues).<sup>62</sup> When pro-life advocates went to court to defend their First Amendment rights to protest abortion, the ACLU filed a friend-of-the-court brief against them.<sup>63</sup>

In 1970, Congress passed the Racketeer Influenced and Corrupt Organizations statute (RICO) to use as a tool against organized crime.<sup>64</sup> RICO awards triple damages for those who are found to be victims of certain organized crime activity. It was never intended to be used against peaceful pro-life advocates, or peaceful advocates of any free speech. But that is exactly what happened, when abortion supporters in the mid-1980s started to use these laws to bankrupt pro-life demonstrators.<sup>65</sup> Meanwhile, the great defender of free speech, the ACLU, which opposed the use of RICO by the U.S. Justice Department against distributors of obscenity, stood on the sidelines—or, in the case of its Reproductive Freedom Project, published a booklet suggesting that abortion clinics could use the RICO statutes against pro-life advocates.<sup>66</sup>

John Leo of *U.S. News and World Report* pointed out this hypocrisy: “The [ACLU] has had a hard time coping with RICO. It came out against the law early, then waffled for years in response to abortion-rights lobbying both outside and inside its structure. Harvey Silverglate, a board member of the Massachusetts ACLU, said sympathy for abortion rights caused the ACLU to drop its guard on a serious violation of political freedom.”

Leo recalled a conversation he had with Lynn Paltrow of the ACLU’s Reproductive Freedom Project, who said, “It’s ACLU policy to oppose application of RICO, but there are those on staff who feel that as long as RICO exists,

this kind of behavior [aggressive abortion protests] does sort of fit.”<sup>67</sup>

To be fair in our reporting on the ACLU’s stance on this issue, we must note that it has flip-flopped regarding application of RICO against pro-life advocates. It has either encouraged the use of RICO against pro-life advocates, remained silent when other pro-abortion groups tried to use RICO to bankrupt pro-life groups, or unenthusiastically discouraged the use of RICO against pro-lifers.<sup>68</sup> This waffling is demonstrative of the ACLU’s internal conflict between those who claim all speech should be protected even if they privately disagree and those who are so zealous in the promotion of abortion that any First Amendment considerations for pro-life advocates are cast aside.

### **The ACLU and Euthanasia**

Just as the ACLU is dedicated to ending life at its very beginning, so it also seems to be as equally dedicated to hastening death as well.

In 1990, twenty-six-year-old Terri Schiavo went into cardiac arrest for unknown reasons (which one medical professional—along with Terri’s relatives—claims may be the result of being beaten and otherwise injured) in her Florida home.<sup>69</sup> Her heart stopped beating and the lack of oxygen to her brain resulted in some serious brain damage.

Although Terri remained bedridden, many of her bodily functions were normal. Her parents and a priest said she could recognize voices and vocalize sounds. She could communicate. This was documented on a video that both authors watched and was verified as an accurate description by attorneys funded by ADF [Alliance Defending Freedom]. However, she could not feed herself and had food and water provided through a tube. She faced no danger of death.

Eight years after her collapse, Terri’s husband, Michael Schiavo, living with another woman,<sup>70</sup> went to court to have her feeding tube removed, which would result in starvation and her eventual death. Terri’s father and mother wanted to keep their daughter alive and went to court, with the help of ADF funding, to defend her right to life.

Terri’s father, Robert Schindler, wrote to ADF: “One of the miracles God has provided for our family is the funds that have made it possible for ADF to compensate our attorneys over the past few years. The compensation they receive is certainly not as much as they have legitimately earned or deserve, but it has enabled our case to continue in various courtrooms from Pinellas County here in Florida to the halls of the Florida Supreme Court and now even to the United States Supreme Court. Every day that our case continues is another day that our daughter Terri is able to live and we are able to enjoy each other as family.”<sup>71</sup>

After several legal battles, Terri's feeding tube was removed by court order.<sup>72</sup> Then the Florida legislature stepped in and passed a law (signed by Florida governor Jeb Bush) that empowered the governor to prevent the withholding of her feeding tube.<sup>73</sup>

There were no extraordinary means or artificial life support. Terri's only assistance was with eating and drinking, which some experts believe she could have learned to do on her own with proper therapy.\*

Who jumped into the legal battle against Terri's parents and her right to life? None other than the ACLU, which joined the case as legal counsel.<sup>74</sup> Howard Simon, executive director of the ACLU of Florida said, "This dangerous abuse of power by the Governor and Florida lawmakers concerns everyone who may face difficult and agonizing decisions involving the medical condition of a family member. Based on the precedent of this case, meddling politicians could set aside court orders they don't agree with."<sup>75</sup>

In another startling case of ACLU duplicity, it stated Governor Bush had set a precedent that would enable public officials to write laws changing any court decision that they wish.<sup>76</sup> However, it was the ACLU—in the legal battle over same-sex "marriage" in San Francisco and elsewhere—that encouraged public officials to take the law into their own hands, defying clearly written state law and ordering same-sex "marriages."<sup>77</sup>

Terri's parents were outraged by the ACLU's actions. Their spokesperson, Pamela Hennessey, said, "I've been contacting the ACLU since the beginning of my involvement in this case to have them speak out against what's going on with Terri. It's going on against her will. She's had her religious freedoms stripped from her. She's had her civil liberties stripped from her. And they're defending her husband?"<sup>78</sup>

The ACLU's involvement also troubled individuals with disabilities. Joe Ford, an undergraduate student at Harvard University who suffers from severe cerebral palsy, said, "A close examination of the facts of the Schiavo case reveals not a case of difficult decisions but a basic test of this country's decency."<sup>79</sup>

Eleanor Smith, a self-described "liberal, agnostic lesbian," who is confined to a wheelchair because of childhood polio, added, "At this point I'd rather have a right-wing Christian decide my fate than an ACLU member."<sup>80</sup>

The ACLU's decision to intervene again caught the attention of Nat Hentoff, who had witnessed the ACLU's promotion of abortion and euthanasia for years. He also questioned the motives of Terri's husband in the case:

So intent is Michael Schiavo on having his wife die of starvation that one of his

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\* Alan [Sears] has been involved on a personal and professional level with several difficult end-of-life decision-making processes. Despite the media confusion, Terri's case was dissimilar to those that Alan has experienced.

lawyers, after the governor's order to reconnect the feeding tube, faxed doctors in the county where the life-saving procedure was about to take place, threatening to sue any physician who reinserted a feeding tube. The husband had immediately gone to court [with the help of the ACLU] to get a judge to revoke what the legislature and the governor had done.

The husband claims that he is honoring his marriage vows by carrying out the wishes of his wife that she not be kept alive by "artificial means." As I shall show, this hearsay "evidence" by the husband has been contradicted. The purportedly devoted husband, moreover, has been living with another woman since 1995. They have a child, with another on the way. Was that part of his marital vows?

Ignoring the facts of the case, the American Civil Liberties Union—to my disgust, but not my surprise in view of the long-term distrust of the ACLU by disability rights activists—has marched to support the husband despite his grave conflicts of interest in this life-or-death case. The ACLU claims the governor and legislature of Florida unconstitutionally overruled the courts, which continued to declare the husband the lawful guardian. On the other hand, the ACLU cheered when Governor George Ryan of Illinois substituted his judgment for that of the courts by removing many prisoners from death row.<sup>81</sup>

Hentoff also stated that neurologists told him that if given proper therapy, which she had been denied by her husband, "she could learn to eat by herself and become more responsive."<sup>82\*</sup> Terri's brother said that she appeared to laugh and react to her surroundings: "I know she sees and hears us. I see her response. It is not wishful thinking. Terri isn't brain dead. She's disabled."<sup>83</sup>

Nevertheless, the ACLU continued to battle against Terri's right to life.<sup>84</sup> On August 31, 2004, the Florida Supreme Court heard oral arguments in her case, with the ACLU standing firmly on the side of terminating Terri's life.<sup>85</sup> ADF funded a brief for our ally, the Family Research Council, defending Terri's right to life in that case.

On September 23, 2004, the Florida Supreme Court held that the law that reinserted Terri's feeding tube violated the state Constitution. The system, the laws, designed to safeguard her right to life, had been turned against Terri and her family's efforts to keep her alive. In effect, the Florida Supreme Court, with the help of the ACLU, issued a death sentence to Terri.<sup>86</sup>

After the decision was announced, Randall Marshall, legal director of the Florida ACLU chapter, said, "Today's thoughtful and careful opinion will be very important in the history of Florida because it is a strong rebuke to politicians who attempt to negate court decisions . . . simply because they disagree with the outcome."<sup>87</sup> We wonder if the ACLU would have the same

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\*In another column, Hentoff openly speculated that Terri's husband may have beaten her, which led to her brain damaged condition. According to Hentoff, Dr. Michael Baden, former chief medical examiner of New York City, found that Terri had endured significant head trauma as well as injuries to her ribs, thoracic vertebrae, ankles, and knees. See Nat Hentoff, "Was Terri Schiavo Beaten in 1990?," *Village Voice*, November 14, 2003.



message for the mayor of San Francisco? We doubt it.

The legal battle continued on in early 2005, as Terri's relatives sought to find some legal recourse to keep their daughter alive, with the ACLU and activist judges fighting them at every turn. Eventually, the U.S. Congress and President Bush both tried, valiantly but ultimately unsuccessfully, to keep Terri alive, despite the efforts of Michael Schiavo and the ACLU to deny her right to life.

Sadly, on March 31, 2005, thirteen days after her feeding tube was removed, Terri Schiavo died.

Just a few days before her death, Nat Hentoff wrote perhaps the best piece on this latest outrage by the ACLU, as Terri was dying a slow and painful death of dehydration and starvation. Hentoff wrote:

In dread fact, Terri faces a horrific death from dehydration. In covering previous cases when feeding tubes have been removed, I've found out how terribly painful this way of dying is for someone like Terri who is not in a persistent vegetative state and can feel; by the eighth day, without water, her liver, spleen, kidneys, stomach, esophagus, tongue, and eyeballs will swell and start to crack.

All of her body's organs by her ninth and tenth day will have split and cracked. Not long after this agonizing ordeal, she will die.

Complicit in this egregious denial to Terri of due process and equal protection of the law has been the American Civil Liberties Union . . . The ACLU has supported Michael Schiavo's insistence on putting Terri to death. It has not shown any awareness of her husband's blatant conflicts of interest with such results as his withdrawal of therapy and rehabilitation for her. However, the ACLU would insist that a death-row inmate receive vastly more civil liberties than Terri Schiavo has from the Florida courts.<sup>88</sup>

John Leo wrote about the future ramifications of the ACLU's actions in support of Michael Schiavo, writing, "The Schiavo case is a breakthrough for persuading the public to lower the bar on moral constraints. Once we had a very bright line between pulling the plug on patients kept alive by life-support systems and killing people like Terri Schiavo who are not on life support but merely being fed through a tube. Requiring clear evidence of consent is no longer required . . . The killing of [Terri] Schiavo is a scandal successfully redefined as unexceptional and therefore moral."<sup>89</sup>

Nevertheless, the ACLU could not help but crow about its involvement in securing Terri's death. In a statement issued after one of the many failed attempts to save Terri's life, ACLU of Florida Executive Director Howard Simon said, "Decisions about whether to continue or discontinue extraordinary or even life-sustaining measures are part of a basic privacy . . . President [Bush], no doubt, will continue to talk about a 'culture of life,' but what [the] Judge . . . did in his decision was to defend the 'culture of freedom' that each of us has to exercise control over our lives, and the circumstances of our death."<sup>90</sup>

What Mr. Simon fails to point out is that Terri had no control over her life, the decisions made about her future, or the circumstances of her death.

The ACLU has also been at the forefront of pushing euthanasia (or “assisted suicide”) in other states as well. In Michigan, the ACLU supported the efforts of “Dr. Death,” Dr. Jack Kevorkian, who continually defied the law and euthanized individuals.<sup>91</sup> In another example of duplicity, the ACLU of Michigan, claiming that it was the will of the people to allow physician-assisted suicide,<sup>92</sup> fought for this “right” by asking the state’s Supreme Court to set aside the state’s ban on assisted suicide, including euthanasia.<sup>93</sup> (But when it comes to same-sex “marriage” and other issues, the ACLU believes the will of the people should be ignored and they should not have the right to vote on the matter.<sup>94</sup>)

Wendy Wagenheim, the legislative affairs director of the Michigan ACLU, said, “Kevorkian has forced the people of Michigan to take a good hard look at this issue, but this issue is far bigger than Kevorkian. The people of Michigan should have the opportunity to vote on this. . . . A competent terminally ill adult should control the circumstances of his or her own death and should have a right to have someone help them.”<sup>95</sup>

Howard Simon, former executive director of the Michigan ACLU, in a poor calculation of the public mood, said, “It’s now clear that the public has made up its mind. It’s not whether people should have the right [to die], it’s under what conditions. The way out of the morass is for the medical establishment and Legislature to do what is clear the public wants done, which is to make physician-assisted suicide part of accepted medical practice.”<sup>96</sup>

Simon was correct on one thing: The Michigan electorate did make up its mind. It voted 71 percent to 29 percent to reject the ACLU’s position and the legalization of assisted suicide in the state.<sup>97</sup>

The ACLU also filed a friend-of-the-court brief in support of legalizing euthanasia in the cases *Vacco v. Quill* (which challenged New York’s ban on assisted suicide) and *Glucksberg v. Washington* (which challenged the state’s ban on assisted suicide).<sup>98</sup> The ACLU and its allies\* were hoping that these cases would be the *Roe v. Wade* of euthanasia and were counting on the support of its former general counsel, Supreme Court Associate Justice Ruth Bader Ginsburg, to discover yet another new constitutional right to be euthanized. ADF awarded a series of substantial grants (the largest in our history at that time) and turned much of the allied organizational focus on

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\* Other supporters of the effort to convince the Supreme Court to find a “right” to assisted suicide were the Hemlock Society USA and the Euthanasia Research Guidance Organization. See *Vacco v. Quill*, 521 U.S. 793 (1997).

these two cases, to help stop the demands of the ACLU and its allies.

ADF and its allies were ecstatic when the Supreme Court ruled, 9-0, including Justice Ginsburg in both cases, that there was no “new right” discovered for assisted suicide.<sup>99</sup>

But as they always do, the ACLU and its allies refuse to give up. The assisted-suicide forces, defeated at the U.S. Supreme Court level, then engaged in a strategy to undermine this decision. The ACLU and its allies are convinced that even though the Supreme Court ruled against them, they can still find support in the state supreme courts, on independent state constitutional grounds. This is what the pro-abortion forces had done in a few states in the days leading up to and since the *Roe v. Wade* decision. Therefore, the assisted-suicide advocates pursued cases at the state level in Florida<sup>100</sup> and Michigan,<sup>101</sup> which they hoped would lead to a broadening of the “right to die” in individual states, despite the federal constitutional loss. They lost both challenges.

Where does this lead? Nat Hentoff again pointed out the danger of Kevorkian’s and the ACLU’s pro-euthanasia advocacy, by examining how legalized euthanasia has played out in the Netherlands:

Not all of Dr. Kevorkian’s patients were terminally ill, and not all of the people euthanized in the Netherlands in recent years have been terminally ill or in intractable pain. Some have been severely depressed. During the Nazi occupation of the Netherlands, that country’s physicians rebelled against the culture of death by refusing to cooperate with the killing of patients.

But now, their changed attitude reminds me of an October 17, 1933, *New York Times* report from Berlin that the German Ministry of Justice intended to authorize physicians to “end the suffering of incurable patients, upon request, in the interests of true humanity.”

Before the gas chambers, before the Holocaust, German doctors euthanized not only the “incurable” but also mentally defective patients on the principle that some lives are unworthy of living. . . . At last, have we learned nothing from the Holocaust?”<sup>102</sup>

In its brief in the *Vacco* and *Glucksberg* cases, the ACLU wrote,

In opposition to this right, Washington and New York invoke interests in preserving human life, precluding undue influence or mistake, safeguarding the integrity of the medical profession and a concern over the ‘slippery slope’—i.e., that line-drawing in this area will prove impossible. These interests and concerns, however legitimate, do not justify an absolute ban on physician aid in dying for terminally ill persons and should not outweigh the recognized right of a competent, terminally ill individual to end his or her suffering.<sup>103</sup>

In other words, we should push aside the slippery-slope concern that led to horrors such as the Holocaust, in which more and more justification was

found for the taking of innocent human life. Hentoff is right—the ACLU has not learned from history. The ACLU’s position on human life, whether at the beginning or end of life, is dangerous to *all* individuals, no matter what stage in life.

For those who believe in the sanctity of human life, the words of Titus Brandsma, who was martyred at the Dachau concentration camp of Adolf Hitler, are important to remember: “He who wants to win the world for Christ must have the courage to come in conflict with it.”<sup>104</sup>

It is going to take many legal battles in many courts to turn back the ACLU’s anti-life agenda and to protect the right to life for future generations. But there have been victories, and we are confident of more in the future. *Roe v. Wade* will be overturned. ADF has successfully helped defend parental consent laws and hold back the legal advance of physician-assisted suicide, and we will continue the legal battle to stop the horrific practice of partial-birth abortion. We will continue—through coordination of legal strategy, the training of attorneys, funding, and direct litigation—to fight for the right to life for all Americans.

The cost of not fighting this battle is far too high. We have already seen the premature deaths of more than 46 million unborn children<sup>105</sup> (more than the population of Canada or the state of California and rising), thanks to the work of the ACLU and its allies.

For many who have grown weary, this battle has already gone on too long. It has been more than thirty years since *Roe v. Wade*. However, we cannot surrender. The tide is turning against the anti-life agenda of the ACLU and its allies and towards the affirmation of the sanctity of human life. More and more Americans are saying they are pro-life<sup>106</sup> as ultrasound technology continues to advance and show, without question, that it is a life, and not a “blob of tissue” as some would call it, developing in the womb.

We can look to the great British statesman William Wilberforce as a source of inspiration. Wilberforce, a Christian, fought tirelessly for twenty years for the abolishment of slavery in Great Britain. He was mocked for years, but his persistence, along with God’s grace, eventually moved hearts and minds and led to the British Parliament’s voting 287-16 to halt the British slave trade. That victory, in turn, led to the abolishment of slavery in all the British colonies.<sup>107</sup>

Years later, one of Wilberforce’s biographers noted that Abraham Lincoln recalled Wilberforce’s name as the person responsible for halting the slave trade but could not remember one man who wanted to keep it alive.<sup>108</sup> We hope that future leaders will remember those who fought hard to preserve the right to life, and the ACLU and its anti-life allies will be forgotten.

NOTES

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5. "Planned Parenthood of America, Reported Clinic Income, Estimated Abortion Income," STOPP International; [http://www.all.org/stop/ab\\_cl\\_in.pdf](http://www.all.org/stop/ab_cl_in.pdf).
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## POSTSCRIPT

In the nine years since we wrote *The ACLU vs. America*, the ACLU has continued its assault on human life, freedom of speech, and the rights of conscience of those they disagree with.

For instance, the ACLU has vigorously challenged the right of pro-life pharmacists and other health professionals to follow their conscience by declining to dispense abortion-inducing drugs or participate in abortion procedures. In its pro-abortion zeal, the ACLU urged abortion advocates:

If you or someone you know faces a refusal at your local pharmacy, there is something that can be done about it. There are pharmacy boards in all 50 states and the District of Columbia that have complaint procedures for consumers who are treated unfairly by their pharmacist or pharmacy. The person who faced the refusal in the pharmacy can file a complaint and the pharmacist or pharmacy may be disciplined for acting unprofessionally . . . . The refusals of pharmacies . . . should not be tolerated.<sup>1</sup>

In 2006, the New York Civil Liberties Union filed a complaint against three pharmacists who refused to fill prescriptions for abortion-inducing drugs, calling for the three to be disciplined.<sup>2</sup> The ACLU also joined a lawsuit involving a pro-life pharmacist in Washington State who declined to stock or dispense the “morning-after” pill and in consequence faced physical and regulatory harassment. Attorneys allied with the Alliance Defense Fund joined the Becket Fund for Religious Liberty in representing the pharmacists.<sup>3</sup>

In early 2012, a federal court in Washington State determined that the state board of pharmacy could not force pharmacists to stock or dispense medications that take or endanger human life if the pharmacists have a religious, moral, or ethical objection to endangering that life. Instead, the court ruled that pharmacists should do what they were always willing to do: refer patients seeking such medications to other pharmacists or pharmacies.<sup>4</sup>

In 2008, while American pro-lifers mourned the 35th anniversary of the infamous *Roe v. Wade* decision, the ACLU “celebrated” with an online video promoting its efforts to kill unborn children. Louise Melling, the Director of the ACLU Reproductive Freedom Project, presented what we might call the pro-choice version of a “seamless garment,” weaving abortion into the rest of their current-day causes:

The ability to control when and whether to have children is absolutely essential for women to be able to participate equally in society. So much of the ACLU’s work—from racial justice to lesbian and gay rights to women’s and immigrants’ rights—is tied together by a belief that everyone has a right to make a personal decision about their intimate relationships free of government interference.<sup>5</sup>

Matt Coles, Director of the ACLU’s “Lesbian Gay Bisexual Transgender Project,” added:

*Roe* takes a concept of individual liberty that was very conventional and moves it past the conventional into something that very much focuses on individuals, and empowers individuals. The Constitution had already said that you have the right to think what you want, to have your own views of the world. What *Roe* did was to say, “And you have the right to live your life that way, without government interference. You have the right to decide what you think is good, what makes for a good life, and to live it.”

Ironically, however, while the ACLU clamors for people’s right to make “personal decisions” free of “government interference” and defends their “right to think what you want, and to have your own views of the world,” the organization simultaneously demands that government punish people who make the “wrong” kinds of (constitutionally protected) personal decisions—such as pro-life nurses and pharmacists.

A few years after our book came out, the ACLU endorsed legislation by Congresswoman Carolyn Maloney of New York to strip away the free speech rights of pregnancy resource centers, an action that provoked some past and present ACLU board members to protest. Congresswoman Maloney’s bill, titled the “Stop Deceptive Advertising for Women’s Services Act,” called on the Federal Trade



Commission to issue rules such as forbidding pregnancy resource centers to be listed under “abortion” or “clinics” in phone books, on the grounds that the centers do not perform abortions. The ACLU’s press release heralding the legislation further exposed the organization’s skewed agenda of defending free speech primarily for those who share its views.

In response, former ACLU board member Nat Hentoff wrote: “What about the First Amendment? When you have the state, with its power, deciding what is deceptive on something as thoroughly controversial as this, it goes against the very core, it seems to me, of the First Amendment.”<sup>6</sup>

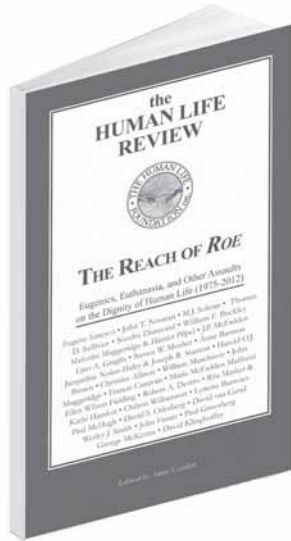
ACLU board member Wendy Kaminer agreed with Hentoff: “I find it quite appalling that the ACLU is actively supporting this. I think this is precisely the kind of legislation we should be opposing, not supporting.”<sup>7</sup> Chastised for their hypocrisy, the ACLU backed down on supporting the legislation, but then attempted to alter its own policies to silence public dissent by Board members against ACLU positions.<sup>8</sup> Once again, the ACLU’s pro-abortion zeal trumped its so-called devotion to freedom of speech.

As we originally wrote in 2004, the ACLU’s relentless attacks on the sanctity of human life expose the depths of its duplicity. Alliance Defending Freedom will continue opposing the ACLU and its allies as they seek to censor the free speech of pro-life advocates while promoting the unrestricted slaughter of millions of unborn children who are denied the right to see the light of day thanks in part to the work of the ACLU.

—Craig Osten  
December, 17, 2012

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## ***The Reach of Roe: Eugenics, Euthanasia, and Other Assaults on the Dignity of Human Life***

**A** companion volume to *The Debate Since Roe*, this new collection of essays from the *Human Life Review* focuses on culture—specifically, how profoundly the 40-year-old *Roe v. Wade* decision has permeated—and perverted—our nation’s institutions: legal, medical, scientific, religious, educational. While essays on euthanasia and physician-assisted suicide—along with in vitro fertilization, cloning, and embryo-destructive research—predominate, the reader will also find considerations of subjects as seemingly diverse as pornography, the U.S. Constitution, and the “inhumanity” that can attend being fired from a job in corporate America today. John Noonan, Lino Graglia, Harold O.J. Brown, Rita Marker, John Muggeridge, Ellen Wilson Fielding, Maria McFadden Maffucci, Wesley J. Smith, John Finnis, and David Klinghoffer are just some of the many committed pro-life writers whose important work is featured here. To order copies of *The Reach of Roe* and/or *The Debate Since Roe* (\$14.95 each or \$24.95 for the set; bulk pricing is available) call (212) 685-5210 or visit the “Bookstore” on our website at:

***[www.humanlifereview.com](http://www.humanlifereview.com)***

**N.B.:** *Those in the New York Metropolitan area may wish to attend a reception for The Reach of Roe being hosted by First Things magazine on May 15, 2013. Anne Conlon, the book’s editor, and George McKenna, a contributor, will speak. RSVP is required: [www.firstthings.com/rsvp.php](http://www.firstthings.com/rsvp.php)*

## APPENDIX A

[Anthony Esolen teaches Renaissance English Literature and the Development of Western Civilization at Providence College. A senior editor for Touchstone: A Journal of Mere Christianity, he is the author of several books, including *The Politically Incorrect Guide to Western Civilization* (Regnery Press, 2008). The following commentary appeared on *Crisismagazine.com* on January 29, 2013, and is reprinted with permission.]

### **Stupid Press, Stupid People: Non-Reporting the March for Life**

*Anthony Esolen*

When George Orwell wrote *Nineteen Eighty-Four*, the novel describing a dystopia of mass stupidity and surveillance, he wasn't making a prediction. He was describing what he actually saw in England. His protagonist, Winston Smith, works at the Ministry of Truth, whose enterprise is to engage in massive lying, altering history by sending documents down the Memory Hole, where they will be lost forever. One of his colleagues, Syme, is a linguist with a passionate love for Newspeak, the official language of the regime. The purpose of Newspeak is to deracinate language so badly that *crimethought*, the *doubleplusungood* rebellion of mind against the regime, will be impossible. No one will be able to think of crimes, because nobody will be able to think.

Orwell modeled his Ministry of Truth after the British Broadcasting Corporation, where he worked.

When Ray Bradbury wrote *Fahrenheit 451*, another novel describing a dystopia of mass stupidity and surveillance, he wasn't making a prediction. He was describing what he actually saw in America. His protagonist, Guy Montag, is a "fireman"—note, denizens of the *novus ordo saeculorum*, not a "firefighter," since his job is to set fires, not to put them out. He's a book burner. Bradbury insisted that his novel was not about censorship, but about how contemporary media have made people shallow and inattentive, squandering their cultural heritage. Shortly after he wrote the novel, colleges all over the country held their own bonfires, gutting their curricula, so that now a graduate of Harvard is far more likely to have listened vacantly to a hundred "songs" devoid of melody or sense, than to have read a single line of Dante.

Our founders believed that a free press was essential for a free society. We believe we have a free press. But what good is nominal freedom—the government does not censor our newspapers—if the writers are liars, or are ill-educated, or feed the populace a lot of claptrap, or ignore important events because they don't like the people involved or the cause? What happens, if the "teaching" of three hundred million Americans is in the hands of people who give headlines to a football player with a fictional girlfriend, or to the sleazy habits of a porn girl turned celebrity, or to "scientific" studies about when your "relationship" is going to end, rather than to anything of substance, anything that requires learning, listening, investigating, and thought? What happens, particularly, if the only stories about faith come from the category, "Benighted Believers"?

What happens is what we got for non-reportage on this year's March for Life in

Washington. One would think that a colorful and peaceful demonstration, of between 500,000 and 650,000 people, the large majority of them quite young, braving the freezing weather in the capital in January, marching to uphold the sanctity of life rather than to secure material advantage to themselves, would warrant a little attention. If ten thousand of these people thronged the Basilica of the Immaculate Conception for Mass on the evening before, many with sleeping bags for spending the night on the floor of the chapel, you would think that some reporter would notice, and would ask them a question or two. If thousands of people *from other parts of the world* arrived to join in, at great personal expense and in bad weather, you would think that that would warrant admiration, if for nothing else than their sacrifice.

But the Ministries of Truth mostly ignored it. What they didn't ignore, they belittled or distorted. In doing so, however, they revealed their own ignorance. Here is the AP story, in News-speak, with my comments in brackets:

*Thousands of anti-abortion demonstrators*

[That's a lie, right there. If 650 people show up at a town meeting, and the reporter says that "several" people showed up, that reporter is a liar, and should be fired. If 6,500 people show up at the State House to protest a bill, and the reporter says that "dozens" showed up, he's a liar, and should be fired. If a crowd fills the Rose Bowl, and the reporter calls them "hundreds," he should be fired. The March for Life is, year after year, the largest peaceful assembly of people in the nation. To know this, and to fail to report it, is to be a liar. Not to know this is to be a moron; no third possibility exists. Meanwhile, a gun control protest was held in the same place a few days later, and "thousands" were reported to have taken part in it, when the actual number was about 1,000. The two stories together show an exaggeration of 50,000 to 65,000 percent, in favor of what the reporter favors.]

*marched through Washington to the steps of the U.S. Supreme Court on Friday to protest the landmark decision that legalized abortion.*

[Ignorance on display. Abortion was legal in many states before the decision. The Court struck down every state law that placed some restrictions upon it.]

*The annual event took on added significance for many in the crowd since it coincided with the 40th anniversary of Roe v. Wade, the Supreme Court decision that created a constitutional right to abortion in some circumstances.*

[Another lie. "Some circumstances"? Exactly which have been ruled out? The decision made abortion on demand the law of the whole nation. But the writer is too inattentive or too dumb to notice that he's given the ballgame away. For the Court can, in justice, only *recognize* a constitutional right. This Court *created one*.]

*The demonstrators, carrying signs with messages such as "Defend Life" and "Defund Planned Parenthood," shouted chants including [sic] "Hey, Hey, Ho, Ho, Roe v. Wade has got to go." They packed the National Mall and surrounding streets for the March of [sic] Life.*

[Why the insertion of Planned Parenthood? Why include *that* chant? No other signs? No more powerful messages? Indeed there were many others. Some people sang songs, like *God Bless America* and, audaciously, *John Brown's Body*. The writer simply chooses what's easiest for him and his readers to dismiss.]

*"I just felt this 40th year marked a huge anniversary for the law," said one demonstrator, Pam Tino, 52, of Easton, Mass, who also participated several years ago. "Forty is a very important year in the Bible as well, in terms of years in the desert. And I just felt like maybe this year that was going to be something miraculous that might happen. We might see something going forward with the cause."*

*With the re-election of President Barack Obama, she added, "we just have our walking papers. Now we just feel like we have to keep the battle up."*

[Get that ineffectual Bible allusion in there, to let your readers know that they needn't think. Make sure you don't speak to a doctor or a professor or a priest.]

*The large turnout reflected the ongoing relevance [sic] of the abortion debate four decades after the decision.*

[Relevant to what? I'd say to the collapse of public morality, but the writer isn't thinking about what his words mean. All he wants to say is that people still argue about abortion.]

*It remains a divisive issue with no dramatic shift in viewpoint on either side; a new Pew Research Center poll finds 63 percent of U.S. adults opposed to overturning Roe, compared to [sic] 60 percent in 1992.*

[Another lie. You choose the poll you like, and report on it. You don't report that more than half of Americans agree with rather severe restrictions on abortion, which effectively means that they oppose the Roe decision, although many of them are so ill-informed that they are unaware of it.]

*Earlier this week, abortion opponents marked the anniversary with workshops, prayers and calls for more limits on abortion rights [sic].*

[Another lie. There are no limits on legal abortion in the United States. And the protestors do not say they wish to limit anybody's rights. They deny that the right exists. That is the issue. To use the phrase "abortion rights" is to beg the question. The sentence is also vague. What really would be impressive would be to note that thousands of the protestors came to Washington a day or two early, to pray in local churches.]

*And even as Obama [sic] this week reaffirmed his commitment to "reproductive freedom," state legislatures continue to consider varied [sic] restrictions on a woman's ability [sic; ability is not the issue; permissibility is] to receive an abortion. [sic; "May I present you, Tina, with this lovely abortion?]*

APPENDIX A

*Among the speakers at Friday's rally was Rick Santorum, the former Pennsylvania senator and staunch abortion opponent who last year unsuccessfully sought the Republican presidential nomination.*

*He recalled the love and support the country showed for his young daughter, Bella, who was born with a serious genetic condition and whose illness led him to take some time off from the campaign trail.*

[Another lie. Some time off? It caused him to suspend the campaign altogether. In other words, no political ambition of his was more important than his daughter.]

*He cited his daughter's life—"she is joyful, she is sweet, she is all about love"—as a reason to discourage abortion even in instances when women are told that it would be "better" for their unborn children to have one. [sic; it is hard to imagine an unborn child having an abortion!]*

*"We all know that death is never better—never better. Really what it's about is saying is it [sic] would be easier for us, not better for her," he said. "And I'm here to tell you . . . Bella is better for us and we are better because of Bella."*

*He said the anti-abortion cause was made up of people [sic] who every day advocate for their position [not, surely, for a position, but for lives] outside abortion clinics and at crisis pregnancy centers.*

*"This movement is not a bunch of moralizers standing on their mountaintop preaching what is right," Santorum said.*

*One demonstrator, Mark Fedarko, 44, of Cleveland, said he regularly stands outside of abortion clinics in hopes of discouraging women from going inside.*

*"There's God's law and man's law," he said. But I follow God's law first. Like it says right here, thou shall not kill. That's the end of the story. We need to protect these children."*

[There were no other speakers? No mention of the huge numbers of young people in attendance? No mention of the whole culture of life? No mention of anti-euthanasia sentiment? All the arguments are proof-texts from the Bible? Why was Rick Santorum chosen as representative? Because the readers could equate him with the slanderous portrait the media had already painted of him, as an extremist. No mention was made of the young black man who was conceived after a rape? No mention of women who regretted their abortions?]

The irony is that it is easier than ever to do the job of a reporter, yet we rely on a couple of paragraphs of gabble and mendacity from a couple of wire services, and that's it. A free people require a free press. What sort of people settle for a stupid press?

## APPENDIX B

[Jon A. Shields is associate professor of government at Claremont McKenna College and author of *The Democratic Virtues of the Christian Right*. The following article appeared in the January 2013 issue of *First Things* and is reprinted with the magazine's permission.]

### **Roe's Pro-Life Legacy**

*Jon A. Shields*

*Roe v. Wade* did far more than create a constitutional right to abortion—it crippled the pro-choice and energized the pro-life movement, creating one of the largest campaigns of moral suasion in American history. Even while nationalizing abortion politics, the Supreme Court's decision also localized and personalized the issue by pushing it almost entirely out of legislatures, giving an unexpected opening to the pro-life movement to affect the culture, and in turn the wider political debate, in ways no one expected.

Before *Roe*, the pro-choice movement was truly a *movement*: It organized letter-writing campaigns, subverted restrictive abortion laws through underground networks of clergy and doctors, and eagerly sought opportunities to debate pro-life advocates. After *Roe*, obviated by its near-total victory, the movement almost collapsed. It has never fully recovered its former strength and energy.

Sarah Weddington, the lawyer who famously argued *Roe* itself, confessed that she “missed the energy of our pre-*Roe* crusade.” After *Roe*, “our energy and contributions sagged and we seemed only to plod forward. . . . When we talked about the importance of organizing and pro-choice voting, people tended to think, ‘Now, really, I’m so busy. And after all, *Roe versus Wade* decided the matter.’”

When *Roe* was threatened in the late 1980s, the pro-choice movement did rebound modestly, as it has done occasionally since in response to nominations of conservative judges to the Supreme Court. Yet these sporadic legal battles and confirmation struggles never demanded anything like the sustained, grassroots mobilization that characterized the pre-*Roe* campaign. In a few instances, pro-choice citizens did participate in large national marches, but such protests primarily offered a reminder to the nation—and pro-life opponents—that the movement could flex a bit of muscle, if it ever actually needed to do so.

The pro-choice campaign is now a largely conservative one defending the status quo. Pro-choice activists have become so cautious and conservative that they are often reluctant even simply to debate right-to-lifers. The Pro-Choice Action Network has said: “Along with most other pro-choice groups, we do not engage in debates with the anti-choice.” The movement was never so reluctant in the pre-*Roe* years, when it was desperate to change public opinion and revolutionize abortion policy.

While *Roe* bred apathy and conservatism in pro-choice ranks, it energized many pro-lifers. With the Supreme Court having removed abortion from the political process and deprived pro-lifers of normal avenues of political influence, some decided to blockade abortion clinics instead. Between 1977 and 1993, pro-life radicals orchestrated some six hundred blockades, leading to more than 33,000 arrests.

## APPENDIX B

Most pro-life activists, however, dedicated their lives to changing the hearts and minds of their fellow citizens, rather than simply obstructing them from procuring abortions. The more Americans who opposed abortion on moral grounds or were offered practical alternatives to abortion, such activists reasoned, the fewer abortions, whatever the laws of the land. These pro-life advocates quietly began countless conversations with ordinary citizens and continue to do so in great numbers.

Some target college students. Groups such as Justice for All and the Center for Bio-Ethical Reform have reached students at more than one hundred college campuses across the country. Campus activists use large graphic images of aborted embryos and fetuses to provoke philosophical discussions over the moral status of the embryo.

They further draw on well-honed arguments developed by pro-life intellectuals, such as Robert George and Patrick Lee. In this way, the divide between the academy and Christian activists is not always as large as elites on both sides of the culture wars assume.

I observed many such conversations at a Justice For All outreach event at the University of Colorado at Denver. Pro-life activists frequently pointed curious students to an exhibit panel that showed human life at various stages of development from conception to birth.

The students were then asked at what point human organisms acquire rights. When students ventured various answers, the activists would ask why such development markers were significant enough to distinguish rights-bearing humans from disposable ones. Through such conversations they elevate abortion politics above the shallow sloganeering that many presume are all the culture wars offer us.

Campus activists also help puncture the popular myth that pro-lifers offend the norms of a deliberative democracy by defending abortion on religious grounds. In fact, they generally seek just the opposite goal: They highlight the philosophical case against abortion so that the pro-life position is not dismissed as merely a religious issue. Pro-choice activists insist that the abortion question is inherently a religious one, and therefore safely beyond serious philosophical reflection or public debate.

Other groups focused on moral suasion take a more practical approach, suited to the needs of working-class citizens. Today, some three thousand pregnancy help centers, with tens of thousands of staffers and volunteers, provide over 2.3 million women in difficult pregnancies with alternatives to abortion by offering them resources and moral support. Pregnancy help centers are now more numerous than abortion clinics.

Thanks to the first systematic survey of these centers, by Laura Hussey of the University of Maryland, we know a lot more than we used to.

These pro-life centers are heavily dependent on volunteers: The average center has about one employee for every six volunteers. Though centers do not ask any financial contributions from their clients, many do expect them to participate in at least one class on parenting, health, or budgeting.



The women they serve are overwhelmingly poor and without full-time jobs, and so centers devote much energy and many resources to meeting the economic needs of their clients. The vast majority of centers provide clothing, car seats, strollers, and other baby items for new mothers and children. Some even provide resources for children older than five. Nearly all centers also help connect clients with welfare services by collaborating with departments of health and social services. In some cases, social workers even hold office hours in pregnancy help centers.

Pregnancy centers do especially important work at a time when the cultural divide between middle- and working-class America has widened. And they remind us that the culture wars do not merely address the interests and needs of the high-minded middle class by centering politics on symbols, values, and lifestyles. They address the material needs and aspirations of the poor, too.

The impressive efforts of pro-life citizens suggest that *Roe* did not render them powerless, as both liberals and conservatives sometimes assert. Yes, *Roe* effectively disenfranchised pro-life citizens by denying them the right to vote over the basic contours of abortion policy. But it also decimated the pro-choice movement and cleared the way for a massive campaign of moral suasion. Much like women in the nineteenth century, pro-life activists have found ways to shape our culture and politics without the franchise.

Skeptics might reasonably question the influence of the pro-life movement, especially since abortion opinion has hardly changed since *Roe* was decided. That fact alone, however, may indicate the power—not the weakness—of the pro-life movement.

While the country has become far more socially liberal on a large range of questions since *Roe*, abortion opinion has remained a strange outlier. In fact, pro-choice sentiment stopped increasing after *Roe* altogether, even though it had grown dramatically in years prior. *Roe* represented an end to the rapid liberalization of abortion attitudes, perhaps in part because of the utter collapse of the pro-choice movement. Recent surveys find that young Americans are less pro-choice than their elders, even though they are more secular and more likely to support same-sex marriage.

Abortion rates, meanwhile, have steadily declined by nearly a third since peaking in the early 1980s. Those rates would almost certainly have been higher absent the pro-life movement's massive campaign of moral suasion.

With even more certainty we can conclude that the countless conversations cultivated by pro-lifers in front of abortion clinics, on college campuses, and in pregnancy centers were far more inclusive and democratic than the pre-*Roe* debates in state legislatures between lobbyists and elected representatives. The creation of these many islands of democracy below the level of the state itself has been especially welcome in an era in which partisans of all stripes have lamented the erosion of civic and democratic life.

And they should remind us that *Roe* did not simply nationalize the abortion controversy by moving it from state capitols to the Supreme Court. After all, the

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most popular varieties of pro-life activism happen in face-to-face relationships in ordinary American communities, rather than in the corridors of Washington or in state capitols.

Many pro-life activists fervently pray for *Roe's* reversal. Yet *Roe's* reversal would hardly represent a decisive victory for the pro-life movement. In fact, it would almost certainly revitalize a genuine movement for abortion rights. Pro-lifers need not make peace with *Roe* to recognize it has brought certain benefits.



## APPENDIX C

[Daniel K. Williams is an associate professor of history at the University of West Georgia. He is the author of *God's Own Party: The Making of the Christian Right*, and is currently writing a history of the pro-life movement. The following commentary, part of *The Public Discourse's* "Roe at 40," symposium, ran January 24, 2013 ([www.thepublicdiscourse.com](http://www.thepublicdiscourse.com)) and is reprinted with permission.]

### **The Real Reason to Criticize *Roe***

*Daniel K. Williams*

On the fortieth anniversary of *Roe v. Wade*, it has suddenly become fashionable in certain circles to suggest that the controversial Supreme Court decision was actually a blessing in disguise for pro-lifers, because it breathed new life into a fledgling right-to-life movement and put the abortion rights movement permanently on the defensive. Pro-choice activists have been "losing ever since" *Roe*, a *Time* magazine cover story proclaimed this month. Jon Shields pushed this argument even further in the January issue of *First Things*, declaring that *Roe* "crippled the pro-choice and energized the pro-life movement, creating one of the largest campaigns of moral suasion in American history."

Unfortunately, most pro-lifers are unprepared to respond to claims like these, because for years pro-lifers have not really understood what *Roe* did. They have too often accepted the myth that neither legal abortion nor an organized pro-life movement existed prior to *Roe*. Although they have denounced *Roe* vociferously, they have justified doing so with the erroneous argument that *Roe* was the primary cause of the nation's high rate of legal abortion, as though legal abortion did not exist in the United States before 1973.

Actually, *Roe* did not introduce legal abortion to the United States; it did something even worse. Prior to *Roe*, legal abortion existed, but so did a large, vigorous pro-life movement, and that movement was beginning to win the public debate on abortion. *Roe* deprived the pro-life movement of its legal victories and allowed abortion to become more available to poor and minority women. It subverted the democratic process and led to a partisan polarization that only grew worse with time. Perhaps worst of all, it nullified the pro-life movement's constitutional arguments and enshrined in case law a constitutional interpretation that deprived the unborn of any constitutional rights.

Contrary to popular belief, legal abortion was widely available in the United States prior to *Roe*. Legal abortion for limited reasons had been introduced in Colorado and California in 1967. Abortion on demand (that is, legal abortion for any reason) was introduced to the United States in 1970, three years before *Roe*, when New York and three other states began permitting unrestricted abortions up to the twentieth or twenty-fourth week of pregnancy. Because New York and California's abortion laws lacked a residency requirement, some abortion providers began offering travel packages for women to fly to New York or Los Angeles to terminate their pregnancies. Hundreds of thousands of American women did so; in

1972, the year before *Roe v. Wade*, there were 586,760 legal abortions performed in the United States.

But prior to *Roe*, there was also a large, well-organized pro-life movement that was beginning to turn back the tide against abortion legalization. After losing numerous state legislative debates over abortion policy between 1967 and 1970, pro-lifers reorganized, and beginning in 1971, they experienced a string of uninterrupted legislative victories. By using fetal photographs to convince the public of the evils of abortion, and by making Protestants, Jews, and women the spokespersons for their movement in order to avoid charges of sectarianism or chauvinism, pro-lifers gained a hearing for their cause.

In the spring of 1971, pro-lifers defeated abortion legalization bills in all twenty-five of the state legislatures that considered them. The next year, their record was almost as successful: Only one state liberalized its abortion law, and it did so only under court order. Pro-lifers were equally successful at the ballot box. When Michigan and North Dakota introduced voter initiatives to legalize abortion in 1972, pro-lifers defeated both measures by wide margins. By the end of 1972, pro-lifers thought that they were probably within only one year of repealing New York's permissive abortion law, and the director of Planned Parenthood's Western Region division worried that pro-lifers would soon make abortion illegal in California too. "In the West we view '73 as a difficult year for abortion," he confided to a colleague in the summer of 1972.

*Roe* stopped a victorious pro-life movement in its tracks and deprived it of its gains through the democratic process. It forced dozens of states to legalize the procedure against the will of their citizens. When *Roe* was issued, only nineteen states had adopted liberalized abortion laws, and only four of those states had laws on the books that allowed abortion on demand. *Roe* required every state to allow abortion on demand.

In 1973, the first year after the *Roe* decision was issued, there were approximately 750,000 legal abortions performed in the United States—a 28-percent increase over the previous year. By 1980, after abortion clinics had been built across the nation, the annual abortion rate had doubled to 1.5 million.

*Roe* also made abortion more available to poor women, as the number of clinics quickly expanded after the decision. State and federal governments also funded abortions for poor women through Medicaid, prior to the Hyde Amendment. This availability led to higher abortion rates among poor and minority women. By 2008, 55 percent of the country's legal abortions were performed on black or Hispanic women, while only 36 percent were performed on non-Hispanic whites. Forty-two percent of women who obtained abortions in 2008 were living below the poverty line. In 1973, by contrast, 75 percent of the women who obtained legal abortions were white. Many pro-lifers view this shift of abortion services to the poor and minorities as a sign that society has refused to offer substantive solutions to the problems that impoverished women face, and has instead simply encouraged them to terminate their pregnancies.

But what really made *Roe* an egregious decision, in the view of pro-lifers, was that it deprived a class of people of their constitutional rights by declaring them non-persons, something they thought the Supreme Court had not done since *Dred Scott v. Sandford* in 1857. Prior to *Roe*, pro-life lawyers had found a receptive audience in some state and federal courts for their argument that the Fifth and Fourteenth Amendments' due process clauses protected fetal life, and that the legalization of abortion on demand was therefore unconstitutional. As the Fifth Amendment states, under the Constitution no person can "be deprived of life, liberty, or property without due process of law." If fetuses were human persons, then their lives were constitutionally protected.

Pro-life lawyers believed that case law supported their argument that fetuses were indeed human persons, and that they therefore enjoyed the constitutionally protected right to life. Already, they pointed out, several courts had recognized fetal personhood in prenatal damage cases. In *Smith v. Brennan* (1960), for instance, the New Jersey state supreme court declared that because "medical authority recognizes that an unborn child is a distinct biological entity from the time of conception," parents of an unborn child whose life was terminated in an accident had the right to sue for compensation for the loss of their child's life. Similarly, in *O'Neill v. Morse* (1971), the Michigan state supreme court declared that the fetus was a "person" with an existence separate from the mother, and that "the phenomenon of birth is not the beginning of life; it is merely a change in the form of life."

If fetuses were declared to be persons for the sake of prenatal damage claims, then the law could not deprive them of personhood in abortion cases, pro-life lawyers argued. Some courts accepted this argument. In 1967, for instance, the New Jersey state supreme court ruled in *Gleitman v. Cosgrove* that fetal birth defects caused by rubella did not constitute grounds for an abortion, because "the right to life is inalienable in our society."

But the legal tide began turning against the pro-life movement in the late 1960s and early 1970s because of courts' increasingly broad interpretations of the "right to privacy." In 1965 the Supreme Court declared in *Griswold v. Connecticut* that the right to privacy gave married couples the right to use birth control without state interference. Citing that ruling, the California state supreme court declared in *People v. Belous* (1969) that "the fundamental right of the woman to choose whether to bear children" made restrictive abortion laws unconstitutional. Other state supreme courts adopted *Belous's* reasoning. In 1972, courts in Florida, New Jersey, and other states struck down restrictive abortion laws.

*Roe* codified this new interpretation of the right to privacy in constitutional case law and prevented pro-life lawyers from ever again gaining a legal hearing for their argument that the Fifth and Fourteenth Amendments protect fetal life. By a vote of seven members, the Court deprived the unborn of the most basic rights of personhood and made it legal to terminate their existence. "The horrible truth is, the Court's decision put our nation officially in favor of *killing by law*," pro-life

activist J. P. McFadden declared in *National Review*.

When the Supreme Court rejected their constitutional argument, pro-lifers dedicated their efforts to passing a Human Life Amendment (HLA) that would enshrine the protection of the fetus's right to life in the Constitution. When the HLA failed to pass in Congress, after more than a decade of repeated attempts to bring it to a floor vote, pro-lifers began a campaign to reverse *Roe* by changing the composition of the Supreme Court. That campaign polarized the nation's political parties, making each judicial nomination a battleground over abortion. After working for thirty years to change the composition of the Supreme Court, pro-lifers have not yet been able to find the five judicial votes needed to reverse *Roe*.

If *Roe* is overturned someday, its reversal will not end legal abortion in the United States, nor will it likely have an immediate impact on the abortion rate, because the states that are the largest providers of abortion have already signaled that they will continue to permit unrestricted abortion in the event that *Roe* is overturned. Nor would *Roe*'s reversal end the nation's debate over abortion; in fact, Jon Shields is probably right to argue that the reversal would result in a pro-choice backlash.

Yet if *Roe* is reversed, no state legislature or lower court will ever again have to accept abortion as a sacrosanct constitutional right, and pro-lifers will once again have the freedom to argue, without fear of contempt or ridicule, that the Constitution protects the right to life of the unborn child. *Roe* cut off public discussion of these questions; the reversal of *Roe* would open it up again.

Surely all pro-lifers can agree that *Roe* is a travesty of justice against the unborn child's right to life. Still, they need to make the right criticism of *Roe*. The decision neither started legal abortion nor hurt pro-choice momentum, but instead set back a trajectory of pro-life progress that is still reviving after forty years.

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### **Atheist, Secular, and Pro-Life**

*Leslie Fain*

“Could it be true?” Marco Rossi asks in the September/October 2012 issue of *The Humanist*. “Is there really such a thing as a pro-life atheist? What’s next, Intelligent Design Agnostics? How about Secularists for Sharia Law?”

Although Rossi seems to think his analogies are comical and highly effective, they are actually inapt. Pro-life atheists do not claim God created prenatal children, that he endowed them with souls, or that he even exists. Instead, pro-life atheists, agnostics, and secular people argue that prenatal children are human beings who have rights, and that to abort them is wrong.

Kelsey Hazzard is a 24-year-old, pro-life University of Miami alumna and recent graduate of the University of Virginia School of Law. She was raised in the United Methodist Church, but as an adult began having doubts about God.

“I took a break from religion for a while, and soon realized that it had no impact whatsoever on my morals,” she said. She now describes herself as an “apatheist,” meaning she does not care whether God exists or not, although she says she finds God’s existence “highly unlikely.”

“I was pro-life the instant I learned what abortion was,” said Hazzard, who is a legal fellow at Americans United for Life. “But my position became much stronger in college, when I took a course on prenatal development.”

In 2009, Hazzard founded Secular ProLife (SPL), a group whose vision is “a world in which abortion is unthinkable, for people of every faith and no faith.” Hazzard, SPL’s president, created the group in part to attract non-religious people to the pro-life movement.

“The first time I attended a March for Life, I was struck by all the religious imagery,” she explained. “I thought ‘Wow, if this were an atheist’s first impression of the pro-life movement, she would never come back!’ And from there, it was a case of ‘build it and they will come.’”

Hazzard points to opinion polls showing the US becoming less religious but more pro-life as compelling reasons to use secular arguments to support the pro-life position. SPL, with a membership made up predominately of college-aged students, has participated in the annual March for Life and the Students for Life of America Conference. Last year, SPL attended the American Atheist Convention in Washington, DC, which included Richard Dawkins among the attendees. SPL also sent a representative to the Texas Freethought Convention last year.

According to SPL member Julie Thielen, who identifies as a gnostic antitheist atheist, the best ways to reach secular people with the pro-life message are through biology and an appeal to human rights.

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“When the sperm meets the egg, a genetically complete human being is formed, and all that is required for maturation is time and nutrition,” Thielen said. “As complete human beings in the most vulnerable stages, there should be protections afforded. As a society we are judged by how we treat the most vulnerable—the young, the aged, the infirm, those who can’t speak for themselves. The unborn belong here.”

For many, the historical argument for human equality is the strongest secular argument in favor of life.

“History has many lessons about human beings who were not legal ‘persons,’” said Hazzard. “What seems like common sense to one generation—‘Of course Negroes aren’t real people’—is horrific to the next. What criteria can we set that will prevent this from happening? Every criterion proposed to exclude the unborn can also be used to exclude others. Consciousness? Then it’s fine to kill someone in a temporary coma; they merely have ‘potential.’ Physical independence? So much for conjoined twins. Human appearance? Discrimination based on appearance has been some of the most insidious of all. Birth? Totally arbitrary; there is no ‘personhood fairy’ residing in the birth canal, conferring rights upon exit. At the end of the day, human rights are for all humans. If we don’t protect them for the weakest among us, they’re rather worthless.”

Some pro-choice atheists have expressed skepticism about Secular ProLife, pointing to an old article in the *Miami Hurricane*, the University of Miami’s college newspaper, in which the student pro-life group was featured and Hazzard misidentified as Catholic. “I understand their skepticism, but I’m not Catholic and never have been,” Hazzard said.

The idea of a pro-life atheist is not new, as Doris Gordon’s story proves. For Gordon, a Jewish, atheist libertarian and former elementary school teacher, it all began in 1959 when she read *Atlas Shrugged* by Ayn Rand. Ironically, although Rand and her associates were adamantly pro-abortion, reading Rand set Gordon on the path to becoming a fervent pro-lifer. This novel introduced her to Rand’s philosophy, objectivism. Interested by what she read, Gordon was eager to learn more. In 1960, she took the 20-lecture course “The Basic Principles of Objectivism” by Rand’s then-closest associate, Nathaniel Branden.

Things began to unravel in 1967, however, when Gordon attended a talk titled “Certainty v. Omniscience” at an objectivism conference. The talk was given by Leonard Peikoff, a member of Rand’s inner circle and the sole heir to her estate when she died.

“Following the talk, during a Q&A period, a questioner angrily challenged [Peikoff] about abortion, and a big debate broke out among the audience and the conference speakers on the topic. One point of disagreement was on when the new human being begins to exist,” Gordon said.

“That word ‘exist’ really struck me,” she continued. “Rand’s philosophy begins with the axiom ‘existence exists’; A is A. Nothing can pre-exist existence. I am something concrete; I didn’t exist 100 years ago but today I do. When did my existence begin?”



“Well, Rand taught us to think for ourselves, so when I went home, I began to do so. My studying objectivism taught me something about logical reasoning,” Gordon said.

She asked herself if there was any essential difference between the moment before she was born and the moment immediately after. She could not think of any. What about at the junction between the eighth and ninth months? No. From there, she worked her way back, month by month, to see if she could find any essential difference. She could not, until she got to the point of fertilization, where something essentially different occurs: the sperm meets the oocyte, then growth and development can begin.

“It has long been settled by science that in sexual reproduction, the new human organism, a human being, begins to exist and to grow and mature into an adult. On the other hand, individually, neither a sperm nor an oocyte has the capacity to do the same. Logically, therefore, the human zygote is already a living human being,” she said.

Gordon went on to wonder whether the new human being has rights. Though Rand and Gordon have different ideas on the definition of “human being,” Gordon came to conclude, “If all human beings have rights, as Ayn Rand held, then so must this new human being.”

But there was a problem: “What about the mother’s right to control her own body, her unalienable right to liberty?” The child’s right not to be killed seemed to conflict with the mother’s right to control her own body. In 1973, Gordon wrote a letter that was published in *Reason*, which stated that unwanted pregnancy presented an insoluble conflict of rights between woman and child. She argued that “the unfortunate child was unaware of what was happening, and after all, the mother was in existence first.” For nine years, Gordon remained on the “abortion-choice” side of the debate.

Then one day she thought back on an article by Branden she read in *The Objectivist Newsletter*, titled, “What are the respective obligations of parents to children, and children to parents?” In a response to a reader’s question, Branden stated that, like it or not, parents have the obligation to take care of their children. “The key to understanding the nature of parental obligation,” he wrote, “lies in the moral principle that human beings must assume responsibility for the consequences of their actions.” He insisted that the basic necessities of food, clothing, and so forth are the child’s “by right.” This helped Gordon begin to see why there is no conflict of rights between mother and child.

“A woman’s right to control her own body does not trump a child’s right not to be killed,” she said. “Given parental obligation, even in unwanted pregnancy, it is the child’s right to parental support and protection from harm that is trump. Parents have no right to intentionally or negligently destroy their children, nor do they have a right to evict their children from the crib or the womb and let them die.”

In an article she wrote years later, “Abortion and Rights: Applying Libertarian Principles Correctly,” Gordon reasoned: “A child’s creation and presence in the womb are caused by biological forces independent and beyond the control of the

child; they are brought into play by the acts of the parents. The cause and effect relationship between heterosexual intercourse and pregnancy is well-known.”

“The parent-child situation is unique,” she continues. “It is the only human relationship that begins by one side bringing the other into existence. This fact of parental agency refutes any assertion that the child is a trespasser, a parasite, or an aggressor of any sort. Prenatal children have the right under justice to be in the mother’s body, and both parents owe them support and protection from harm.”

Gordon understood Branden’s argument for parental obligation was about born children only, but she wrote to him to ask whether it could apply, in principle, to children before they are born. He wrote back saying it can’t because they are not yet human beings. She wrote back to Branden asking him for his definition of “human being,” but he never replied.

Gordon, a member of the Association of Libertarian Feminists (ALF), agreed to handle publicity for a panel discussion the group was planning for the 1976 Libertarian Convention. By the time the convention rolled around, Gordon had become a pro-lifer, and tried to talk about abortion and her move to the “other side” to Sharon Presley, one of ALF’s founders and a pro-choicer. Presley, who was setting up an exhibit table, brushed Gordon off, claiming she was tired and had not given much thought to the debate, which shocked Gordon. Presley suggested Gordon talk to her expert on the topic, Lucinda Cisler, who was one of the organizers of the New York chapter of NARAL, originally the National Association for the Repeal of Abortion Laws. “That was Strike One,” Gordon said.

Then Gordon saw Branden at the convention, approached him, and mentioned her letters to him. “I asked him again how he would define ‘human being,’” she remembers. “Instead of defining the term, he said, ‘How would you feel if your 15-year-old daughter got pregnant?’ He evaded my question. One of the most evil things you can do in objectivism is evade the question. And he added further remarks that made me feel as if he had taken everything he had taught me and thrown it out the window. That was Strike Two.”

Later that day, Gordon attended an ALF panel at which Cisler defended unrestricted abortion. Gordon recalls: “When it ended, I ran after her and asked if she could please answer one question for me. She stopped and turned to me. ‘Is a fetus a human being?’ I asked. She said, ‘Yes,’ and walked on. Strike Three.”

The experience inspired Gordon to join with other like-minded libertarians to form Libertarians for Life (LFL). “LFL was different from other pro-life organizations in that we seemed to be alone in focusing on why the so-called woman’s right to control her own body is false,” she said of her group.

Another person who proves that being pro-life is not just for the religious is Nat Hentoff. Hentoff, a Jewish, atheist liberal, is a veteran journalist of 60 years, having written for the *Village Voice* and the *Washington Post*. He changed his mind about abortion while writing a news story many years ago.

“I was doing a story about a very young child in Long Island who had spina bifida, and the parents decided they would not treat her anymore, because she would not recognize them and would never be able to communicate with them,” he said.

The ACLU and the prominent media figures agreed with the parents' decision not to allow further surgeries for the child or use shunts to drain fluid from her brain so she could continue living. "I said, 'Wait a minute. Anytime everyone agrees with something, I am automatically suspicious,'" Hentoff remembers. He found several doctors who were neonatal experts on spina bifida, and they told him, "No, it will take care, but the worst thing that would happen is she would need a wheelchair," and that spina bifida "would not affect the brain."

Hentoff said he read books by physicians who treat babies and their mothers at the same time and—although they did not specifically use the term "pro-life"—it was clear the authors held that a living human organism should be recognized as a human being.

"That made me pro-life," he says.

Hentoff encourages anyone who wants to find secular information to support the pro-life argument to read works written by doctors who operate on babies in utero. "Read them in terms of what they do—surgeons who deal with the child before the child is actually a child, *according to the law*," he said.

Being an atheist pro-lifer often can have its costs. Hentoff has lost lecture-circuit jobs and the opportunity to have a journalism school named after him and was delayed in getting a Lifetime Achievement Award from the National Press Foundation because of his pro-life views. "Being pro-life has cost me a lot, but these are losses I am proud of," he said.

According to some atheist and secular pro-lifers on the Internet, not all Christians have welcomed their collaboration. Some believers have even urged them to "go get their own events." This type of response does not help advance the cause of the pro-life movement, according to Dr. Francis Beckwith, who teaches philosophy and church-state studies at Baylor University. In 2007, Beckwith wrote *Defending Life: A Moral and Legal Case Against Abortion Choice*, which is widely regarded as one of the strongest books defending the pro-life position. According to Beckwith, Christians should work with all people of goodwill who are pro-life.

"We are instructed by the Church, and by Scripture, to advance the good of our neighbor. The fact that we are not in ecclesial communion with those who want to cooperate with us in advancing that good should not matter," explained Beckwith. "This is so commonsensical that it is a mystery why we would even have to ask the question when it comes to the sanctity of life. Consider an example outside of the abortion debate. Suppose you discovered that the chef who prepares the food for the soup kitchen is an atheist. Would it even cross your mind not to take the food he prepares? Of course not."

Beckwith said there are three reasons using secular arguments to defend the pro-life position is important. "First, we want to show respect for those who do not share our faith. One way of doing that is to try to persuade based on reasoning that those outside of our communities are more apt to find convincing. Second, these rational and secular arguments are part of the reservoir of the Church's intellectual tradition, which maintains that faith and reason are not rival understandings, but complimentary ways of acquiring truth. So, when we are employing these arguments

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we are actually being good Catholics, as well as setting an example to those within the Church and the wider pro-life community on how to engage those with whom we disagree. And third, because these arguments are good arguments, we have an obligation to use them.”

This is not to say we cannot make appeals to religion or Church teaching. “Having said that, there is nothing wrong in principle with employing religious arguments,” Beckwith said. “But we have to know our audience. Take, for example, St. Paul’s encounter with his Gentile and Jewish critics on Mars Hill (Acts 17). When dealing with the Greeks and the Romans, St. Paul did not appeal to the Torah. On the other hand, when St. Paul engaged his Hebrew audience, he did not cite Roman and Greek philosophers.”

Beckwith added, “The Church has a long and noble history of supporting its views by appealing to the deliverances of rational argument.”



*“The time will come, son, when you will move out of the basement and into a basement apartment of your own.”*

## APPENDIX E

*[Lynn Bateman is founder and Managing Director of Government Counselling LTD, an organization that monitors statutory, policy, and regulatory issues related to U.S. Federal government contracting. She is also a member of Ricochet, a content-based social network where individuals may publish and engage in civil conversation about meaningful intellectual, political, and cultural topics (<http://ricochet.com>). The following appeared on Ricochet on Jan. 21, 2013, and is reprinted with permission.]*

### **Having the Baby Instead of Aborting**

*Lynn Bateman*

With all the arguments in the news these days, here's my \$.02 on the subject.

After mother died, my father married my wicked stepmother and she had the locks changed on our house so that I couldn't get in unless she was at home. After her rebuke I moved out rather than disturb my Dad's new bride. My education wasn't finished and my new secretary job allowed only a one-room, third-floor walk-up, studio apartment. When my brother witnessed my stepmother closing the door in my face on Thanksgiving, he and his wife invited me to live with them in Connecticut. They had three little children and the plan was for me to help out with the kids; get a job; and contribute to household chores and expenses.

Because my sister-in-law thought that the boy a few doors down was "cute," she invited him to come and help me babysit on New Year's Eve. He brought liquor and champagne, so we got drunk and I got pregnant.

After three months, when it became apparent that I was getting "puffy," I decided to get an abortion. I really didn't understand abortion, and in those days before ultrasound people said the fetus was just a "blob of tissue." One of my co-workers put me in touch with a local doc known for abortion and his receptionist gave me an appointment, stressing that I would need to bring \$500. In cash.

At a bus stop on the way to the abortionist, there was a sign for an OB/Gyn and, since pregnancy hadn't been diagnosed, I went in and the doctor examined me. He confirmed my pregnancy, guessing it was a New Year's Eve conception, and told me that my baby was due at the end of September. The doctor, with an Italian name, started telling me about pre-natal vitamins and exercise and I stopped his instruction, telling him I was on my way to the abortuary. Becoming very distressed, the doctor emphatically told me that abortion "is murder!" "Don't do it," he warned. "You'll regret it the rest of your life. Go and see this lady and she'll take care of you." He handed me his business card with a phone number and address on the back.

Confused and afraid to the point of being paralyzed, I took the card to the address and arrived at St. Agnes Home in West Hartford. Tiny little Sister Damien answered the door and invited me to sit down in her office where she fixed me a cup of tea. I was in tears of shame and Sister handed me a box of tissues. Full of compassionate humor, Sister told me "no one is here because of a headache" and there were about 25 girls in my condition. Gently advising that just because I had made a mistake with a boy, my life wasn't over. When I told her that I had no money, she said

“Don’t worry. God has lots of money.”

Living at St. Agnes was perfect to prepare for childbirth. The Sisters of Mercy cooked three nutritious meals every day and made sure that we walked at least two miles after dinner to ensure adequate exercise. In those days, the Sisters of Mercy were a teaching and nursing order, with several M.D.s at the home in addition to the R.N.s in crisp white habits.

We were offered Mass every day, but it wasn’t forced, and Father was always available to us. I later learned that the priest was also a psychologist. Even the Protestant and Jewish girls bonded with our gentle and holy priest.

On September 27th my beautiful, perfect little girl arrived. She was exquisite and I can still feel her tiny fingers grasping mine when I held her during her Baptism. I named her Bernadette Lucy which was my mother’s name. Sure that Mom was in heaven with God, I wanted my baby to always have her own, personal patron saint.

Because years of wisdom resided at St. Agnes with the nuns, they counseled us all during our pregnancy about the inevitable decision—to keep my baby or surrender her for adoption. Since I had literally nothing to offer a child, I decided on adoption. My self-esteem was non-existent. Locked out of my own home, a brother very disappointed that I would get “knocked up,” and my career prospects looking bleak, I was despairing for myself, and didn’t want to take my beautiful baby into what I felt would be a life of desperation. But had I not signed the adoption authorization several months before her birth, I would have kept my wonderful child throwing pragmatism to the wind. The nuns understood a mother’s love and anticipated a young woman’s emotions trumping logic.

But when the day came for me to give my baby into the arms of a social worker, my heart felt as if it was being stabbed with a dull knife. I can still feel the pain when I think of her angelic face and tiny lips as I kissed her goodbye—forever.

My life turned out to be what most would call successful. Moving to Boston and interning with a seasoned newspaperman/publisher, I finished schooling and had my first byline published about a year after my child was born. But every night I would pray that little Bernadette Lucy was OK and adopted by a loving family. I tried not to dwell on her face and the way she felt in my arms, since crying myself to sleep every night was very unproductive. What was done, was done.

But after about ten years, I hired an investigator to find her. Of course, it was a fruitless investigation because records were “sealed.”

Still remorseful about surrendering my own child into the arms of a stranger, memories haunted me. It wasn’t until I returned to my Faith and spoke to a priest in Confession that I reconciled what I had done. Father assured me that I had taken the proper action and that my job was to forgive myself and pray assiduously for the child. He reminded me that the Blessed Mother had given Jesus to the world and He was killed in a horrific act of deicide. I should be at peace with the fact that my baby was living in a good home with a loving family.

But when my third brother was diagnosed with the same colon cancer that killed our mother and two uncles, my doctor advised that our family could be predisposed

to get the disease. I wrote to Catholic Family Services in Connecticut asking that they inform my daughter. Although she may be susceptible to the deadly cancer, she could avoid it with diet and lifestyle. I expressed concern that I did not intend to intrude on her life, but wanted her to know.

About three months passed, I received a call from a social worker who informed me that my daughter wanted to contact me. I gave permission and in less than two months she and her husband brought my grandchildren to visit me in Virginia.

When Bernadette (who had a new name from her adoptive parents), walked in my front door and hugged me, I could feel the dull knife come out of my heart and the wound healed immediately.

The years in between saying goodbye and hello to my child were always tinged with sadness, but seeing her happily married to a solid, good provider erased the sadness.

And when I saw those beautiful grandchildren, tears, of joy this time, were more than welcome. They were GLORIOUS!

Giving birth under difficult circumstances is a challenge and can be a heartache as it was for me. But it was worth every minute to know that I didn't kill my baby and a lot of people are happy that she is alive. Her devoted husband, her many friends and brilliant children, just to name a few.

Including me!

## APPENDIX F

[A former sports writer for the *New York Post* and *Associated Press*, Ursula Hennessey now writes about life issues, including *Down syndrome* and *abortion*. She also blogs at *Ricochet.com* and at *OntheCulture.com*. The following is an original piece.]

### Welcome to Sparta

*Ursula Hennessey*

I used to teach fourth grade at a school for boys. One of my favorite lessons was about ancient Sparta.

The boys loved it, too. Spartans were soldiers. They prized strength. They celebrated those who could withstand great pain and survive harsh conditions. Spartan boys began training for war at age seven, but the process of weeding out weaklings began at birth.

The Spartans would put the puniest babies on the mountainside to die. They didn't want weak men, so weak babies were exterminated.

My students would initially decide that the idea made sense. Eventually, however, they'd notice a problem.

"The biggest and the strongest don't always have the best ideas," one would point out. "You'd also want smart people to help make battle plans."

The Spartans sacrificed their unwanted children because they thought it would make them stronger. Even fourth graders could see the mistake.

\* \* \*

I don't teach boys anymore. Now, I'm a full-time, stay-at-home mom of four, one of whom—my six-year-old daughter—has Down syndrome.

There's a fellow mom I enjoy seeing around town from time to time. I also can't help but envy her. She's beautiful, sporty, friendly, and warm. She remembers people's names. Her children are lovely and well behaved. I, on the other hand, am always a half step away from total chaos, and I can't recall the last time I brushed my hair.

One day recently this mom approached me at the park. We made small talk. She commented on how well my daughter seemed to be doing. Then she locked eyes with me.

"You know, I had a daughter with Down syndrome, too. Well . . . I mean, I was pregnant, but she passed away a month before my due date."

"Oh my goodness," I said. "I'm so sorry."

She nodded and went on. "I used to be a teacher. I've had a few students with Down syndrome . . . I was so excited . . . so ready for her. She would have been the same age as your daughter . . ."

Tears pooled in her eyes. I stood stunned, as much by the information as by her sudden confession of it.

"Every time I look at your daughter," she said, looking at me, "I imagine they would have been friends."



At this, the tears rolled down her face. She smiled quickly and wiped them away. I could tell she was embarrassed.

"I'm so sorry! I haven't talked about it in a while." She brightened up as she beamed at my daughter.

I, too, had tears in my eyes.

I envied this woman because she seemed to have everything that I lacked. In fact, she wanted what I had. She wanted the kind of baby that the Spartans would have left on the hillside to die. She wanted it more than anything.

\* \* \*

When you have a child with a disability, someone will invariably send you an essay written by Emily Perl Kingsley called "Welcome to Holland." It has helped hundreds of thousands of new parents adjust to the confusing news that their newborn child faces unexpected developmental or physical challenges.

"When you're going to have a baby, it's like planning a fabulous vacation trip—to Italy," Kingsley writes. "After months of eager anticipation, the day finally arrives. You pack your bags and off you go. Several hours later, the plane lands. The stewardess comes in and says, 'Welcome to Holland.'"

Most travelers would be justifiably angry at such a mix-up, and most parents go through a period of despair at learning they will spend their lives in Holland rather than Italy. But Kingsley explains:

The important thing is that they haven't taken you to a horrible, disgusting, filthy place, full of pestilence, famine and disease. It's just a different place.

. . . It's slower-paced than Italy, less flashy . . . But after you've been there for a while and you catch your breath, you look around. . . and you begin to notice that Holland has windmills. . . and Holland has tulips. Holland even has Rembrandts.

Things have changed a lot since Kingsley's essay first appeared in 1987. With advances in prenatal testing, the presence of a third copy of the 21st chromosome—the cause of Down syndrome—can be spotted earlier and less invasively. As a result, flights to Italy are no longer unexpectedly redirected to Holland. Instead, the captain offers passengers a choice: Holland or home. Most choose home.

But not all.

I used to be part of an e-mail support group for moms of children with Down syndrome. There I learned of an expectant mother in her mid-40s. In her third trimester she found out that her unborn baby had Down syndrome. But, she wrote to us, after countless miscarriages and considering her advanced age, she was unfazed. In fact, she was overjoyed to have made it far enough in the pregnancy to be on the verge of welcoming "a healthy baby."

Those were her exact words: A healthy baby. She didn't think something had gone wrong. She didn't care that her plane had been redirected to Holland. She was just happy to have it land safely.

I followed this expectant mother's story with interest. Her family and friends

APPENDIX F

lived overseas, so some of the moms planned a virtual baby shower for her. Folks arranged for baby items to be sent to her apartment and offered to help in the earliest days after delivery.

Then, the unthinkable—she lost the baby. She went to the hospital on her due date thinking the decreased movement meant the baby’s birth was imminent. It wasn’t. The baby was dead.

The group now sought volunteers to collect the items from the baby shower. The sight of the new stroller in the entranceway was ripping her apart.

\* \* \*

I used to send my fourth grade students home with an assignment after our talks about Sparta. “Find out your birth weight and write it down,” I told them. “Don’t share it with anyone, but bring in your paper tomorrow for an experiment.”

Invariably, it would turn out that those who had been preemies or had spent the first weeks of life in the ICU because of low birth weight and underdeveloped organs ended up among the biggest, strongest boys in the class.

They were stunned at this. They loved it. What a discovery!

“What would have happened to you guys in Sparta?” I’d ask.

And so we learned. What the Spartans wanted—strength, power, superiority—they ultimately sabotaged. Their priorities were all wrong. They sacrificed the most vulnerable because they thought it would make them more powerful. But it had the opposite effect. It made them weaker.

\* \* \*

Welcome to Sparta.

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