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# HER CHOICE, HER PROBLEM: HOW HAVING A CHOICE CAN DIMINISH FAMILY SOLIDARITY

*Richard Stith*<sup>1</sup>

## ABSTRACT

This article explores a little-noticed dimension of abortion and assisted suicide (or voluntary euthanasia): how choosing to reject those options can have a negative impact on the legally authorized choosers. Women who refuse abortion may be blamed for their choice by boyfriends, neighbors, employers, and others. Similarly, infirm or dying persons may find family and other caregivers upset by their refusal to agree to assisted suicide when voluntary death seems the sensible option. Finally, the author questions whether a life chosen as an option can ever have the dignity of a life simply accepted—that is, whether the child a mother once chose not to abort suffers from her having been able to choose otherwise, and whether the severely disabled but suicide-rejecting person suffers from having to justify her continued existence.

## I. INTRODUCTION

Society sometimes limits choice in order to preclude a choice harmful to the chooser. We might not permit people to sell their organs, for example, in part because we fear they might seriously harm themselves by preferring money to health. But there is a second kind of harm that could befall voluntary organ vendors, one that results not from what they choose but from their having been able to choose in the first place. Simply because they had a choice, they may lose support among friends, family, and employers. Compare the plight of someone who needs expensive and time-consuming special care because of an operation forced on her by an illness—say, cancer surgery—with the same

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health needs resulting from her free and deliberate choice to excise and sell part of her body. (Assume that she was not driven by extreme economic necessity, for if she were so driven, some might well feel she had no real choice, and the two cases would seem virtually the same.) Help for the voluntary seller will be less forthcoming, for her sad situation will be said to be her own fault. It is this sort of harm, the loss of a measure of solidarity as a consequence of having had a choice, that is the topic of this essay—*not* the harm of making a bad choice.

In fact, the harm addressed in this essay is to an important degree independent of any evaluation of which choices are good and which are bad. If the sale of one's organs were legal, someone who *refused* to sell them could also be blamed—now for her own voluntary impoverishment. (“Don’t ask me for a loan. You could have a lot more money if you wouldn’t insist on keeping both your kidneys!” some friends or relatives might say.) She incurs this blame simply because she has or had a choice; if organ sale had remained illegal, others would have been more sympathetic to her economic needs. Even if she made a wise choice in not selling a kidney, her having a choice to sell or not to sell may make some people less sympathetic to her financial plight. Note the irrelevance here of the usual arguments for and against the paternalistic notion that society should intervene to save people from making unwise choices. Here we (society, the law) cause her a certain harm simply by leaving this choice open. She may be blamed by some no matter what she does with the choice we have left to her. In economic terms and in our culture, someone who has been given a choice may be held accountable for *any* foreseen externalities caused by that choice.

This essay’s neutrality among the results of choice is important to emphasize, because it attempts to deal with effects on the family of the highly controversial rights to abortion, assisted suicide, and euthanasia without saying how one should exercise such rights. For example, it takes no position on whether abortion or birth is better in itself, seeking only to highlight the parental consequences of leaving this choice up to one individual. It is not anti-abortion but rather anti-choice (though it also considers ways to keep choice intact while mitigating its negative effects). It is not about how choice may harm life, but rather about how choice may harm the quality of life. Indeed, partly to make as clear as possible that this essay is not just another argument purporting to show that abortion or voluntarily chosen death is itself wrong, the focus here is exclusively on how having a choice diminishes the quality of life of those who use their freedom to *reject* abortion, suicide, or euthanasia. My hope, therefore, is that those on both sides of these

substantive debates will find the essay's arguments to be new, not ones they have already considered.<sup>2</sup>

## II. AUTONOMY VS. SOLIDARITY

Both autonomy, defined simply as choosing one's own aims and acting alone, and solidarity, defined in contrast as sharing in the aims of others and acting in concert,<sup>3</sup> are essential to human flourishing. But there are times when they seem nearly to exclude one another. This essay concerns two of those times.

Care for the most vulnerable among us, those at the beginning of life and those who may be nearing the end of life, requires solidarity. Truly "single" parenting is nearly impossible; the help of others is needed to bear and raise a child, and solidarity with the child is needed as well. Likewise, the afflictions of age and illness are often too much to bear without family or friends standing in solidarity.

Yet autonomous choices are now being proposed for human life in its initial and final stages. Those choices concern the existence of life itself: "Should I choose abortion or birth?" and "Should I choose assisted suicide?" This essay argues that individual autonomy (or others' opinions of an individual's autonomy) may here undercut family solidarity. Paradoxically, the ability to choose life—to refuse abortion or suicide—may isolate the chooser, may leave her without the solidarity she needs in order to implement her choices.

The essay has four main parts: The first (denominated part III) concerns the effect of letting someone choose who in fact has no choice, that is, the effect of granting *de jure* autonomy to someone who is *de facto* oppressed—a

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<sup>2</sup> As indicated in the text, the article eschews a discussion of the status of the fetus in order to avoid the usual abortion debates and so to concentrate on certain overlooked effects of the choice to give birth. However, for those readers who might be interested, my own considered views of that status may be found in a prior article: Richard Stith, *The Priority of Respect: How Our Common Humanity Can Ground Our Individual Dignity*, 44 INT'L PHIL. Q. 165, 179–80 (2004) [hereinafter Stith, *Priority of Respect*]. A slightly revised and clarified version is available as *La prioridad del respeto: Cómo nuestra humanidad común puede fundamentar nuestra dignidad individual*, 62 PERSONA Y DERECHO 181, 202–04 (María Carolina Pereira trans., 2010).

<sup>3</sup> Sharing in the aims of others and acting in concert is the core of solidarity, of the shift from "I" to "we," from individual subjectivity to co-subjectivity. This straightforward definition could easily be amplified to include a discussion of the multiple facets and varieties of family or human solidarity, but such a discussion would distract attention from the central contention of this essay, which is that having a choice undermines solidarity's very core.

situation where a false appearance of autonomy may help cover up actual subordination to another. But this sort of harm is not central to this essay; it is briefly discussed primarily in order to clarify that it is being put aside. The core of the essay concerns, instead, the negative effects of true autonomy, of real freedom to choose.

The second section (part IV) discusses how a woman's free choice for life may diminish what is called here the *causal* basis of solidarity, relieving a father of his erstwhile responsibility for bringing about a birth. The third section (part V) turns to the *sympathetic* basis of solidarity between parents (and with others) with regard to the burdens of child care, examining how compassion is significantly lessened by a belief that the mother voluntarily chose to be in her plight; similarly, the debilitated grandmother may receive less sympathy if she appears for no convincing reason to reject assisted suicide or voluntary euthanasia. Possible remedies, or at least ways to diminish harm, will be pondered next (part VI); making some choices illegal is only one of the remedies discussed. Finally, it will be argued in part VII that choosing to let someone exist (or continue to exist) tends to reduce that someone (who may even be oneself) to a thing, thus sharply undercutting the *personal* basis of solidarity with a newborn child or with an aged parent.

Note that this essay does not claim that making life the object of choice undermines all sources of parental or family solidarity. A husband, for example, may feel solidarity with his overburdened wife because of his marriage vow to stand with her for better or for worse, even if he thinks her blameworthy for choosing perversely to bear a child—or merely because he loves her despite her every foible. A man could even feel a responsibility for a child conceived with his sperm, but without his permission, simply because he is now biologically the child's father. Likewise, a parent or a child may shoulder the other's burdens simply because of their ties of blood or of love, even when one feels the other's life to be a net negative value, something that should not really have been chosen to continue. But choice does sharply diminish causal, sympathetic, and personal solidarity, all three of which ordinarily tie family members (and others as well) together.

### III. THE EFFECT OF HAVING A CHOICE ON THE OPPRESSED

It is possible for the law overtly to grant autonomous power to the strong over the weak. If the law gives adult or healthy family members the right to choose between life and death for developing or ailing family members (for example, permission for infanticide or other nonvoluntary, or even involuntary, euthanasia), that grant of power obviously may harm the object of choice. This

essay is not about such situations, however, but rather about the harm that legal autonomy may bring to the official chooser herself.

The simplest case in which this latter harm can occur is that in which the *de jure* chooser is not the *de facto* chooser, so that the law's attempted empowerment of the nominal right holder has the unsought effect of really empowering someone else. When someone is in subjection, any legal liberty for her will be exercised by the person who actually controls her life. While the conferral of a new legal right may appear on the surface to be a gift to her, in reality it will give him an additional option—and thus augment rather than diminish his power over her.

Examples abound: A laborer's "right to work" (that is, to be employed without having to pay dues to a union) does not empower her but rather her employer, if the latter controls the terms of the contract. Similarly, although a "right to do sex work" may well liberate some educated adults, for vulnerable young girls and boys it empowers bad parents and pimps instead.

More directly related to the topic of this essay would be a legal "right to abortion" (or a "right to assisted suicide" or a "right to voluntary euthanasia," as discussed in the next paragraph). Wherever men make women's sexual decisions for them, the option of abortion will be a man's choice, regardless of how the law may label it. To the degree that a culture embodies male dominance, the legalization of elective abortion can make women relatively worse off by giving men another weapon to use to manipulate women.<sup>4</sup> For example, insofar as an economy employs only men, leaving women dependent on economic handouts, women may be unlikely to resist pressures to make use of (or to refuse)<sup>5</sup> abortion according to male preferences.

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<sup>4</sup> "[A]bortion facilitates women's heterosexual availability. In other words, under conditions of gender inequality, sexual liberation ... does not free women; it frees male sexual aggression. ... The Playboy Foundation has supported abortion rights from day one ... . [Roe's] right to privacy looks like an injury got up as a gift. ... Virtually every ounce of control that women won out of this legalization has gone directly into the hands of men ... ." Catherine MacKinnon, *Privacy vs. Equality: Beyond Roe v. Wade*, in *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 93, 99–101 (1987). MacKinnon's concern is about more than males directly forcing abortions on women; she objects to various ways in which abortion facilitates male domination over sexual relations, something discussed in part IV of this paper. Her solution, however, is to make women equal rather than to make abortion illegal.

<sup>5</sup> Note that male domination is furthered here by the right to abortion regardless of whether it is exercised for or against abortion. The harm in question results simply from a woman being given an option that a man will in fact exercise. However, it does seem probable that, with legalization, a dominant man will force a woman to abort more often than he will force her to give birth. Quite apart from any important differences between male and female sexual and parental desires, if abortion is available, a woman who

Much of the resistance to the legalization of assisted suicide and voluntary euthanasia comes no doubt from the recognition of a similar coercive effect. Granting some sufferers an escape through death may at the same time cause others to die against their will, and this in two ways: Insofar as the very old and the very ill are weak in body or mind, they may be pushed or tricked by family or other caregivers into choosing death, or perhaps merely into appearing in some casual remark to choose death, even though they really wish to live. And a right to die also provides one more defense for actual murderers, for those who straightforwardly take the lives of victims known to be unwilling and then claim falsely to have assisted a suicide or to have provided requested euthanasia. (Adding any new justification for homicide creates new possibilities for deception, but this risk is especially great here, where the new justification is the consent of a peculiarly isolated victim.)

The tension between the liberating and the enslaving sides of the rights to abortion and to assisted suicide can, of course, be mitigated by empowering the potential victims either individually or collectively. If campus housing is provided for undergraduate parents and their children, a female student will be less easily pushed into abortion by a boyfriend.<sup>6</sup> If workers are able to form a strong union despite a “right to work,” they may well resist many forms of exploitation.

Yet while domestic violence can certainly be curbed and women made stronger through education and good jobs, the greater physical strength of men, the dynamics of sex and sexual competition, and the limited possibilities of intimate collective action (that is, of some sort of women’s union setting down the rules for sex) may mean that women’s rights to abortion never become completely their own.

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wishes an abortion may obtain one secretly before an objecting father ever realizes she is pregnant, while a woman who wishes to give birth will find it hard to hide her advancing pregnancy from an objecting father. For further analysis and citations concerning male domination and abortion, see the extensive study by Clarke D. Forsythe & Stephan B. Presser, *The Tragic Failure of Roe v. Wade: Why Abortion Should Be Returned to the States*, 10 TEX. REV. L. & POL. 85, 124–26 (2005).

<sup>6</sup> The hope for women’s empowerment, as a way to help women resist men who seek to push them into abortion, may be undercut by a too-facile assumption of autonomy in the abortion choice. The campus housing that a student might otherwise need in order to resist a boyfriend’s pressure to abort may seem less necessary if she is imagined to be already fully autonomous, already able to choose to do whatever she wishes. We are more inclined to grant a benefit (here the benefit of housing) to help someone escape male oppression than we are to grant the same benefit just to increase a woman’s range of options.

Even less likely must be the achievement of true, de facto autonomy for the medically dependent and disabled. While persons with disabilities have found some strength in unity, coming together (in groups such as “Not Dead Yet”)<sup>7</sup> in order to call attention to the dangers inherent in any legal right to die,<sup>8</sup> those speaking up must necessarily be those less imminently endangered. It is hard to see how the most helpless among us could ever be made strong enough to protect themselves in a world where they were given the option of death. Their nominal autonomy would sometimes both serve and mask their actual compelled extinction.

However, none of the arguments outlined in the above paragraphs show any conflict between genuine autonomy and real solidarity. They do no more than emphasize the obvious point that a false or merely nominal autonomy may well be harmful to those who are already weak and humanly isolated. Few may disagree that policy planners ought to be careful in granting liberties to the oppressed (or to the potentially oppressed) wherever the causes of their vulnerability are not yet, and possibly cannot ever be, undone—for then the new autonomy will empower the oppressors.

More surprising may be the central claim of this essay, that even having a non-coerced (and non-pressured) choice can in some ways be harmful to the chooser (by depriving her of the support of others).

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<sup>7</sup> “Not Dead Yet [NDY] was founded on April 27, 1996, shortly after Jack Kevorkian was acquitted in the assisted suicides of two women with non-terminal disabilities. In a 1997 Supreme Court rally, the outcry of 500 people with disabilities chanting ‘Not Dead Yet’ was heard around the world. Since then, eleven other national disability rights groups have joined NDY in opposing legalized assisted suicide, chapters have taken action in over 30 states, and we helped put Jack Kevorkian behind bars in 1999. In the 2003–2005 fight to save Terri Schiavo, twenty-five national disability groups joined Not Dead Yet in opposing her guardian’s right to starve and dehydrate her to death.” Stephen Drake, *About Not Dead Yet*, <http://notdeadyetnewscommentary.blogspot.com/>

<sup>8</sup> See Dominic Lawson, *Why the Disabled Fear Assisted Suicide*, INDEPENDENT, June 14, 2011, available at <http://www.independent.co.uk/opinion/commentators/dominic-lawson/dominic-lawson-why-the-disabled-fear-assisted-suicide-2297116.html>. See the collection of essays on the theme of assisted suicide in 3 DISABILITY & HEALTH J. 1–70 (2010). See also the recent national survey by Scope, a British association of persons with cerebral palsy, showing that 70% of disabled people are concerned about “pressure being placed on other disabled people to end their lives prematurely” if assisted suicide were legalized. For persons 18–24 years of age, the percentage was seventy-seven. Scope NDPP Survey February–March 2011, Table 19/1 & 19/3 Question 13 (pp. 58 & 60), at [http://www.comres.co.uk/polls/DPP\\_Assisted\\_suicide\\_tables\\_March\\_2011.pdf](http://www.comres.co.uk/polls/DPP_Assisted_suicide_tables_March_2011.pdf)



#### IV. THE EFFECT OF HAVING A CHOICE ON THE CAUSAL BASIS OF SOLIDARITY

Causation is a fundamental source of human solidarity. We feel a duty to help someone meet her needs when we have caused her to have them, when we are responsible for her plight. Even when the harm we caused was wholly unforeseeable, we are reluctant just to hit and run, and public law backs up our sense of responsibility to stop and help. This sense of responsibility is an element of solidarity as that term is defined above,<sup>9</sup> for it leads to acting in concert, in this case with the victim, and to sharing the aims of the victim by assisting her recovery.

That this felt obligation arises from causation and not just from proximity can be demonstrated by a simple mental test: Suppose someone chasing a soccer ball darts unforeseeably out onto a street and into the path of a carefully driven car. His foot is run over by the vehicle. Although others in the car may reassure the driver that there was no way he could have avoided the accident, he will feel a desire and even an obligation to get out and aid the victim. Someone sitting in the passenger seat of the vehicle will no doubt also feel a like impulse (because sympathy is another source of solidarity, a point to which we return below), but not to the same degree as the driver, despite their equal proximity to the accident.

When the harm was a foreseeable possibility and, nevertheless, a choice was made to engage in the act of driving that caused it, the actor will be under a still-stronger moral and legal duty to provide succor to the victim, even to the point of compensating fully for the harm. Here choice reinforces and augments the solidarity produced by causation alone.

But choice can also diminish or eliminate solidarity. Suppose an x-ray discloses a break in the victim's foot remediable by a low-cost operation with a near-certain likelihood of success. If our soccer player decides to refuse that simple surgery and, as a result, becomes crippled for life, even the driver will begin to distance himself, no longer feeling so responsible for the victim's plight. He will likely think that he caused the initial break, but that the victim caused that break to develop into a permanent and serious burden by his subsequent decision to refuse treatment. (Our legal language would say that the soccer player failed to mitigate damages, and that a tortfeasor is not ordinarily bound to pay for the avoidable consequences of his injurious act.) Generally speaking, our laws and our morals hold us responsible for the

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<sup>9</sup> *Supra* note 3.

damage we cause only insofar as those harmed by us have no choice afterwards to avoid or to mitigate that damage.

The impact of abortion choice on parental solidarity is similar and dramatic. A man's impregnation of a woman will cause her to give birth to a child, unless she chooses to undergo the surgery called abortion. Just as the soccer player had a surgical option available by which he could avoid severe damage, she has a surgical option by which she can avoid the damage called "unwanted motherhood." The man indeed causes her pregnancy (just as the driver causes the soccer player's initial foot injury), but the woman is the person who decides to let the fetus mature and be born (just as the soccer player decides to let his injury develop into a lifelong handicap).

In other words, insofar as free access to elective abortion<sup>10</sup> is available, fertilization of a female ovum by a male sperm cannot be a sufficient cause of birth. Fertilization may cause pregnancy, but pregnancy results in birth only if the abortion option is not exercised. And it is the mother alone who makes the latter choice.

Under these circumstances, the man's causation-based duty to raise or support his child is greatly attenuated. Especially if he favored an abortion, and offered to pay for it, the father may think quite reasonably that the mother is the real cause of the child coming into this world. The baby is "her fault." Just as the driver is much less responsible for the avoidable consequences of his injurious act if later orthopedic surgery is refused, so, too, the father is much less responsible for the avoidable consequences of pregnancy if subsequent abortion surgery is refused.

Her choice, her problem.<sup>11</sup> Because the woman's choice of abortion would avoid every later parental burden, the father can feel himself to be nearly off the hook, morally speaking, for we generally think that the one who finally gets to choose bears the greatest blame and responsibility for the

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<sup>10</sup> The words *elective abortion* and *abortion option* refer, in this essay, to free access (or at least apparently free access) to abortion on request, not just to its legality. Although legality may often be identical to free access, and illegality to non-access, neither actually entails the other. For example, abortion could be fully legal but still not a real option for many because of financial or geographic constraints. Or abortion might be legally restricted to cases in which the woman's health is at risk, but in fact be easily accessible for any reason. Nevertheless, *legal abortion* and like terms will, for the sake of simplicity, be used herein to mean abortion that seems fairly accessible, while terms like *accessible abortion* will mean abortion that is also legal.

<sup>11</sup> *Her Choice, Her Problem: How Abortion Empowers Men* was the title of a brief version of this article that appeared in *FIRST THINGS*, August–September 2009, at pp. 7–9. That earlier essay unfortunately confused and conflated two of the arguments in the present work, and failed to address several more here presented.

consequences of her choice. The solidarity of joint parenthood is thus vitiated by the presence of abortion as a woman's option.

Furthermore, there is a problem of fairness here. Joint causation ordinarily entails joint responsibility, both morally and legally. It is unfair wholly to exempt one of two tortfeasors. A woman's right to choose gives her an unequal escape from the natural consequences of conceiving a child. If consenting to sex does not entail consenting to act as a mother, why should it entail consenting to act as a father? It seems right on its face that he be able to escape responsibility as long as she can do so.<sup>12</sup>

Paternity laws may now seem to him irrational and wrong. Sharing her burdens financially may appear quite unjust, and he may resist compliance with his legal duties. (His resistance may be overcome owing to his blood tie to the child,<sup>13</sup> but this reflects solidarity not with the mother but directly with his child.)

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<sup>12</sup> Melanie G. McCulley, *The Male Abortion: The Putative Father's Right to Terminate His Interests In and Obligations To the Unborn Child*, 7 J.L. & POL'Y 1, 4 (1998), states:

When a female determines she is pregnant, she has the freedom to decide if she has the maturity level to undertake the responsibilities of motherhood, if she is financially able to support a child, if she is at a place in her career to take the time to have a child, or if she has other concerns precluding her from carrying the child to term. After weighing her options, the female may choose abortion. Once she aborts the fetus, the female's interests in and obligations to the child are terminated. In stark contrast, the unwed father has no options. His responsibilities to the child begin at conception and can only be terminated with the female's decision to abort the fetus or with the mother's decision to give the child up for adoption. Thus, he must rely on the decisions of the female to determine his future. The putative father does not have the luxury, after the fact of conception, to decide that he is not ready for fatherhood. Unlike the female, he has no escape route.

Courts have rejected such arguments against paternal responsibility—*see, e.g.*, *N. E. v. Hedges*, 391 F.3d 832, 835 (6th Cir. 2004) and *Dubay v. Wells*, 506 F.3d 422 (6th Cir. 2007)—but this legal rejection does not show that they do not affect male behavior.

Of course, the fairness argument can also cut another way, in favor of making the mother as responsible as the father by taking the abortion choice away from her.

If a father is willing to legally commit to supporting and raising the child himself, why should a woman be able to end a pregnancy that she knew was a possibility of consensual sex? Why couldn't I make the same claim—that I am going to keep the baby regardless of whether she wants it or not? ... The bottom line is that if we want to make fathers relevant, they need rights, too. If a father is willing to legally commit to raising a child with no help from the mother he should be able to obtain an injunction against the abortion of the fetus he helped create.

Dalton Conley, *A Man's Right to Choose*, NEW YORK TIMES, Dec. 1, 2005, at A33.

<sup>13</sup> Even this tie to his child may be weakened by the presence of the abortion option. Post-abortion counselor Victoria Thorn suggests that fathers are told "You have no rights. ... you were a sperm donor; now be on your way. Now, on the other hand, if she wants this baby, then we'll be after you for child support. But in the meantime, we won't let you

Even if he gallantly offers to help with the baby, she may refuse. It is one thing to accept aid when one is involuntarily in need and something quite different when one has had an alternative. She may feel selfish letting her boyfriend add on a second job when she could have entirely avoided being in need by opting for abortion.

The attenuation of the causal basis of solidarity post-birth may also have anticipatory effects. Where men are not responsible for the birth of babies, their sexual behavior may change. Thinking “at least she has a way out if the unlikely happens and pregnancy occurs,” men may be more inclined to take chances, and to insist on taking chances, with sex.

I once met a clever female undergraduate, living with her boyfriend, who thought she had solved this problem. When asked whether she was for or against abortion, she answered: “I’m pro-choice, but you can bet I tell him I’m pro-life!” She reasoned that, in light of her warning, he would be careful not to fool around in ways likely to lead to pregnancy.

However, this white lie would not provide protection for every young woman in her situation. She is correct that a lover who thought abortion an open option for his female partner might be more likely to risk a pregnancy. But if she says she is “pro-life,” so that he thinks abortion is not an option for her, he might just decide to keep her from getting pregnant by leaving her for another woman, someone more open to abortion, a woman who does not insist, for example, on him using the partial protection of a condom. In other words, the general availability of abortion may reduce her competitive sexual attractiveness, if she rejects abortion as an option for herself *ex ante*. Even though she is a tough and clever bargainer, the presence (in the informal campus “sexual marketplace”) of women willing to have an abortion reduces her bargaining power. As a result, in order not to lose her guy, she may be pushed by these “market” forces into doing precisely what she does not want to do—that is, have unprotected sex, then an unwanted pregnancy, then the “voluntary” abortion she had all along been trying to avoid.

Even though this abortion may in one sense be truly autonomously chosen, that is, not done under force or pressure from her boyfriend, it is in an important sense imposed upon her by the availability of choice. And far from alleviating her overall situation, it returns her to the same sexual pressures, perhaps made worse by a new assurance to her boyfriend that she is willing to take care of any further problem pregnancy.

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bond, because there’s always this chance she’s gonna do away with this baby.” Mary Meehan, *Why Liberals Should Defend the Unborn*, 37 HUMAN LIFE REVIEW 15, 23 (2011). See generally George Dent, *Families We Choose? Visions of a World Without Blood Ties*, 2 INT’L J. JURISPRUDENCE FAM. 13 (2011).

Note that this problem arises from choice itself, not from *machismo*. Having abortion available creates a situation in which even fairly well-intentioned men may harm women. Even a relatively decent lover, someone who would never knowingly harm or even pressure his girlfriend, stops worrying about imposing involuntary motherhood upon her once involuntary motherhood has become impossible. Or, if her bearing a child remains a danger because she is pro-life, he may act (at least in part) out of a concern for her well-being in seeking his sexual satisfaction elsewhere.

Arguments like those above are fundamentally normative rather than empirical. While the logic of choice cuts men loose from a causal source of moral responsibility for their offspring, and so tells us of tendencies for which to watch, the ultimate effects on male behavior are hard to quantify and depend on many other cultural, legal, and economic factors. For example, were paternity laws strictly enforced, the attenuation of felt paternal moral responsibility might have little effect on a father's behavior.

Economists have nevertheless found empirical evidence of these sorts of negative consequences of the right to choose abortion. For example, prior to the legalization of abortion in the United States, it was commonly understood that a man should offer a woman marriage in case of pregnancy after intercourse, and many did so. But with the legalization of abortion, the custom of "shotgun marriages" began to change. Thus, in gaining the option of abortion, many women may have lost the option of marriage.<sup>14</sup> In this way abortion

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<sup>14</sup> It is nevertheless difficult to isolate abortion from other causes of the increased contemporary male refusal to marry, and even more difficult to measure the precise strength of the normative logic of male non-causation of birth. Discussing reasons for the "feminization of poverty," Akerlof et al. note that:

[u]ntil the early 1970s it was the norm in premarital sexual relations that the partners would marry in the event of pregnancy. The disappearance of this custom has been a major contributor to the increase in the out-of-wedlock birth ratio for both whites and blacks. ... For whites the shotgun marriage ratio began its decline at almost the same time as the advent of female contraception for unmarried women and the legalization of abortion. In the late 1960s and very early 1970s, many major states including New York and California clarified their laws regarding abortion (significantly prior to *Roe v. Wade* in January 1973).

George A. Akerlof, Janet L. Yellen & Michael L. Katz, *An Analysis of Out-of-Wedlock Childbearing in the United States*, 111 Q. J. ECON. 277, 279 (1996) (abstract). Regrettably, the authors do not isolate the effects of abortion as opposed to contraception, focusing primarily on the fact that both make it harder for women to demand commitment in exchange for sex. They do at one point make a hypothesis strikingly similar to the theory of this essay:

The sexual revolution, by making the birth of the child the physical choice of the mother, makes marriage and child support a social choice of the father. ... The logic of this model corresponds to what one contributor to the Internet wrote to the Dads' Rights Newsgroup:

may have contributed to the growth in the number of families that are headed by single individuals, with all the economic and parenting consequences so entailed.<sup>15</sup>

With regard to the contemporary sexual marketplace, empirical studies have likewise confirmed that easy access to abortion among young people has increased male expectation of sexual intercourse and has decreased male expectation of a need for protection against pregnancy—making it more difficult for a woman to deny sex or unprotected sex to a man without losing him—thus increasing both pregnancies and sexually transmitted diseases.<sup>16</sup>

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“Since the decision to have the child is solely up to the mother (see *Roe v. Wade*) I don’t see how both parents have responsibility to that child. ... When one person has the decision making power, they alone have the responsibility to provide and care for that decision.”

*Id.* at 281. But, though these authors found some evidence that this logic is having an effect, they also report a survey of University of California at Berkeley students concerning out-of-wedlock births indicating that, while the mother’s refusal of abortion may have diminished the sense of male responsibility for her plight, fathers were nevertheless expected to care for their biological children. (Indeed, marriage to the mother was rejected by some students precisely because they deemed “shotgun marriage” to be bad for the child because it might lead to incompatible couplings and thence to divorce.) *Id.* at 311–312.

<sup>15</sup> See generally Andrea J. Sedlak et al., *Fourth National Incidence Study of Child Abuse and Neglect (NIS-4): Report to Congress* (Administration for Children and Families, U.S. Dept. of Health and Human Services, January, 2010) at 5-19 & 5-20, available at [http://www.acf.hhs.gov/programs/opre/abuse\\_neglect/natl\\_incid/reports/natl\\_incid/natl\\_incid\\_title.html](http://www.acf.hhs.gov/programs/opre/abuse_neglect/natl_incid/reports/natl_incid/natl_incid_title.html)

<sup>16</sup> “[A]bortion effectively serves an insurance function. That is, if unintended pregnancy is viewed as a risk of sex, having the option to abort the pregnancy lowers the cost of engaging in the sex.” Jonathan Klick & Thomas Stratmann, *Abortion Access and Risky Sex Among Teens: Parental Involvement Laws and Sexually Transmitted Diseases*, 24 J.L. ECON. & ORG. 2, 3 (2008). Using STD rates as rough indicators of the rate of risky (e.g., non-condom) sex, and comparing the STD rates of states that legalized abortion at different times, these researchers found “that abortion legalization led to an increase of sexually transmitted diseases; this result is robust to a wide range of time periods and covariates and is constant across the sexes. The point estimates indicate that legalization caused an increase in the gonorrhea and syphilis rates potentially as large as 25 percent.” Jonathan Klick & Thomas Stratmann, *The Effect of Abortion Legalization on Sexual Behavior: Evidence from Sexually Transmitted Diseases*, 32 J. LEGAL STUD. 407, 431 (2003) (citations omitted). “In essence, Klick and Stratmann’s result indicates an increase in risky sex but that increase is a pooled effect of more sex in the aggregate, and a replacement of safe sex for unsafe sex.” Jonathan Klick, *Econometric Analysis of U.S. Abortion Policy: A Critical Review*, 31 FORDHAM URBAN L. J. 751, 772, 761 (2004). Most recently, Klick and others confirmed this result in an examination of data from forty-one North American, European, and Central Asian countries over the period 1980–2000, concluding, “[c]onsistent with our theoretical prediction and consistent with the

The option of abortion, perhaps at first sight seeming a simple liberation, thus opens a Pandora's Box. Throughout human history, children have been known to be the consequence of sexual relations between men and women. Both sexes knew they were equally responsible for their children. The advent of contraception did not fundamentally change this dynamic. Contraception makes fertilization and birth less likely, but mother and father are equally responsible if fertilization and birth nevertheless occur (unless one of them has chosen to deceive the other with regard to the use of contraception). Elective abortion changes everything. Abortion absolutely prevents the birth of a child. A woman's free choice for *or against* abortion breaks the causal link between conception and birth. It matters little what or who caused conception. It matters little that the man involved may have insisted on having unprotected intercourse when the woman did not want it. It is she and she alone who finally decides whether the child is to be born.

A similar analysis may be applied in the area of assisted suicide and euthanasia. Because actions or omissions that cause illness or injury may give rise to duties, wherever mistreatment of a dependent family member (for example, failure to supply nutrition or proper medical care) causes her serious suffering, a duty to help her cope may be created. However, the availability of assisted suicide or voluntary euthanasia<sup>17</sup> as an escape from the harm so caused will tend toward a diminishment of this responsibility and thus of family solidarity. ("Maybe Grandfather has suffered through our neglect, but if he now refuses a simple and painless exit from his troubles, any further suffering becomes his own fault.") And, in the same way that the availability of abortion may increase male pressure to engage in risky sex, the availability

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results of Klick and Stratmann (2003, 2008), we find that compared to legislation that only permits abortion to save the woman's life or her physical health, less restrictive abortion policies lead to significantly higher reported gonorrhea incidence." Jonathan Klick, Sven Neelsen & Thomas Stratmann, *The Effect of Abortion Liberalization on Sexual Behavior: International Evidence*, U. of Penn. Inst. for Law & Econ. Research Paper No. 09-23; U. of Penn. Law School, Public Law Research Paper No. 09-20, at 15–16 (July 15, 2009), abstract available at <http://ssrn.com/abstract=1434600>

<sup>17</sup> As was assumed in regard to abortion (*supra* note 10), in order to inquire into the logic of choice, I am assuming in this essay that both assisted suicide and voluntary euthanasia are fully legal and fully available to everyone for the choosing. When the choice of death is available only to those who are severely disabled or terminally ill, there is a serious additional harm done to the authorized choosers: They are told in effect that they are uniquely expendable, that others who suffer are not given the option of death because their lives matter in ways that the lives of the disabled or dying do not. This harm to the latter class of persons, however, is not discussed in this essay because our focus here is on the damage choice itself causes, not on the insult inherent in unequal legal permission to choose.

of assisted suicide may encourage families to risk future harm to vulnerable members—because they will have voluntary death as an escape. Similarly, social policy planners may reason that the option of voluntary death diminishes any public duty to regulate toxic industries, or even to secure health insurance benefits, in order to decrease the risk of suffering. Even if governmental acts or omissions cause suffering, it may be thought, no duty of solidarity arises where the victim has refused an accessible option of suicide.

Much more widely important at the end of life, however, is the “sympathetic” source of solidarity, to which we turn next. As in our examination of the causal source of solidarity, we will look first at how the sympathetic source of solidarity is diminished by the availability of choice at the beginning of life and then turn to see how it is similarly affected by the availability of choice at the end of life.

#### V. THE EFFECT OF HAVING A CHOICE ON THE SYMPATHETIC BASIS OF SOLIDARITY

Sympathy, compassion, means “suffering with,” undergoing an affliction together with someone else. This solidarity in another’s distress is a natural human reaction to the pain of those nearest us, especially that of family members, but also that of friend or neighbor. We naturally share their aim to diminish suffering and act with them to lessen their pain.

However, *pathos* and *passion*, the roots of *sympathy* and *compassion*, do not at bottom refer only to pain, but also to harm received or experienced, to a passive reception of an onslaught of trouble. The focal meaning of sympathy and compassion thus includes standing with the sufferer against misfortunes he is undergoing, rather than against any he might deliberately choose.

Avoidable pain does not have quite the same effect on us. Recall how the option of selling one’s organs could diminish sympathy both for the physical distress of someone who exercised that option and for the financial plight of someone who refused to exercise it.

Or recall again our soccer player. Why should others go to any trouble to help him when the simplest and cheapest road to relief would be (or would have been) for him just to say yes to the foot operation? We no longer feel as much solidarity with him if he refuses the surgery, precisely because he has only himself to blame. (If his pain were necessary for the sake of what we recognized as a good or noble cause, for example, saving the money for a medical need of his spouse, that pain would seem less an open choice and so might more fully evoke our sympathy and solidarity.)



When the birth of a baby was the result of a risk taken in the heat of romantic passion, and then of bad luck, many friends could sympathize with a young woman who was going to need help with her baby. If money or a place to live were necessary for her to stay in school, a sense of solidarity would beckon. But now that continuing a pregnancy to birth is the result neither of passion nor of luck, but rather of deliberate choice, some of those who would have helped may have second thoughts. After all, she could have avoided all her problems just by opting for abortion. Since she decided to take those difficulties on, she must want them or at least think she can handle them. Some may also feel she has behaved irresponsibly in choosing to give birth, so she should suffer the consequences as a punishment and as a deterrent to people being irresponsible with their reproductive choices in the future.

The mother is even worse off if, during pregnancy, tests show that the child will have a disability: Her doctors may press for abortion in order to be sure that she does not later blame and sue them for the costs of raising her special child. The father and many others may think it irrational and wrong for her to give birth to a handicapped infant. Her friends and neighbors may make her feel guilty or ashamed of not choosing to abort her child.<sup>18</sup>

Some may suggest that healthcare insurance provide no post-birth coverage for a handicapped child whose mother has knowingly refused an abortion (especially if the abortion would have been covered by the insurance). If she does not abort, after all, she is willfully responsible for the costs and the alleged burdens that this kind of child brings for the father and for society. Why should the rest of us help her out?<sup>19</sup>

An employer or university may likewise react negatively to maternal needs where abortion has been made available. If the company or the school (or the government) pays for abortions, it may feel less obligated to shape its practices to the needs of pregnant women and women with child-care responsibilities, since they have been provided a way to avoid them. If maternity causes problems with work routines or study schedules, they may well be considered private or personal problems, ones that female employees or students brought

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<sup>18</sup> See, e.g., Elizabeth Schlitz, *Living in the Shadow of Mönchberg: Prenatal Testing and Genetic Abortion*, in THE COST OF "CHOICE": WOMEN EVALUATE THE IMPACT OF ABORTION 44–47 (Erika Bachiochi ed., 2004) (describing how doctors and others let women know they should not give birth to handicapped children).

<sup>19</sup> Women may be told, in essence, "*You knew about this condition before the baby was born. You could have prevented this baby from being born. You chose not to. Since you made that decision, you can find a way to pay for it.*" (*Id.* at 45–46) (italics in original), citing as an example of such thinking Erik Rakowski, *Who Should Pay for Bad Genes?* 90 CALIF. L. REV. 1345 (2002)).

upon themselves by deliberately refusing abortion. The availability of abortion makes women's claims for better work and study conditions lose a measure of felt legitimacy.<sup>20</sup>

She may agree that her plight merits little sympathy, thinking "After all, it was my own choice." In this way the availability of abortion may vitiate solidarity by undermining the willingness of the person in need to seek or accept assistance.

The availability of assisted suicide or voluntary euthanasia may, in a similar way, diminish the sympathy-based solidarity felt by family and society for chronically medically dependent persons and others with severe disabilities, as well as for the terminally ill. Putting aside the (grave) danger that a false autonomy might simply provide a cover under which these vulnerable people might be put to death involuntarily, a danger discussed briefly at the beginning of this essay, there is also a threat of greater isolation, of a diminished quality of life, for those who choose freely to continue to live. As the American Catholic bishops recently pointed out, "Their worst suffering is often not physical pain, which can be alleviated with competent medical care, but feelings of isolation and hopelessness. The realization that others—or society as a whole—may see their death as an acceptable or even desirable solution to their problems can only magnify this kind of suffering."<sup>21</sup>

When choosing to die is not seen as an option, we are able to imagine those who battle to the end against serious illness or injury to be heroes struggling against an implacable fate. Their lives and their deaths are full of meaning. If an ailing grandmother fights to live on, despite her pain and her

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<sup>20</sup> Robin West summarizes this effect in these words:

By giving pregnant women the choice to opt *out* of parenting by purchasing an abortion, ... her consent legitimates the parental burden to which *she* has consented. ... If she "chooses" to parent a special needs child, she will have little assistance for the extraordinary educational, health, and care needs of her child. If she chooses to parent without a partner while she herself lives in poverty, she likewise has so chosen. The choice-based arguments for abortion rights strengthen the impulse to simply leave her with the consequences of her bargain. She has chosen this route, so it is hers to travel alone. To presume otherwise would be paternalistic. The woman's "choice" mutes any attempt to make her claims for assistance cognizable.

*From Choice to Reproductive Justice: De-Constitutionalizing Abortion Rights*, 118 YALE L.J. 1394, 1411 (2009) (italics in original).

<sup>21</sup> U.S. Conference of Catholic Bishops, *To Live Each Day with Dignity: A Statement on Physician-Assisted Suicide* (June 16, 2011) at 5, available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/assisted-suicide/to-live-each-day/upload/bishops-statement-physician-assisted-suicide-to-live-each-day.pdf>. This document is cited at various points in this article because of its perspicuity and potential social impact, not because of any religious authority it may have for Roman Catholic readers.

disabilities, she may so inspire her family that they feel privileged to share in some of her burdens as they care for her. At the least, she can be the object of sympathy in her misfortunes, and all can feel solidarity with her and with each other as they fight back at her side. Friends and the wider society around her can have similar experiences, though probably to a lesser degree. Insurance or governmental aid may also seem to be well-deserved. When death finally comes, her last experiences and the lasting memories of her friends and family can well be of a community bound together through her.

Of course, counter-tendencies already exist. Unlike past ages and other cultures, America today does not often tell the dependent aged that they are entitled to care from their children.<sup>22</sup> Indeed, our adulation of autonomy makes many feel guilty for asking for any sort of family help, in terms of time, space, or money: “I don’t want to be a burden” is a common refrain. But only with the arrival of voluntary euthanasia or assisted suicide can they be guilty of imposing simply by remaining alive, simply because their continued existence itself imposes burdens on the rest of the family or on others. Not impersonal fate but personal choice, the choice to live, weighs them all down.

A grandmother’s right to assisted suicide or voluntary euthanasia means that she has been given a way out and so her suffering seems no longer to call for as much family compassion or social support.<sup>23</sup> “Her choice, her

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<sup>22</sup> Terrance A. Kline finds:

In modern times, filial responsibility laws have been viewed as archaic, not suitable for enforcement in a contemporary American society that has been thought to have assumed public responsibility for the care of its indigent elderly. The growth of the American welfare state, combined with changing attitudes toward the elderly, has curtailed the effectiveness of filial responsibility laws to the point where no state now appears to enforce them. Moreover, the number of states with filial responsibility statutes has fallen from as many as forty-five states in the 1950s to twenty-eight states in 1992. Legal commentators have encouraged the remaining states to repeal their filial responsibility laws because they believe that the laws are destructive to families, distasteful, ineffective, and unconstitutional.

*A Rational Role for Filial Responsibility Laws in Modern Society?* 26 FAM. L.Q. 195, 196 (1992) (footnotes omitted). See Allison E. Ross, *Taking Care of Our Caretakers: Using Filial Responsibility Laws to Support the Elderly Beyond the Government’s Assistance*, 16 ELDER L. J. 167 (2008) (identifying twenty-eight states with parental responsibility laws and stating that “only a few states actively enforce the laws and eleven states have never enforced them” (*Id.* at 174) and noting the cultural attitude that “society ultimately bears the responsibility” as one of the “barriers to enforcement” (*Id.* at 192)).

<sup>23</sup> Dr. Ezekiel Emanuel, a cancer specialist later appointed by President Barack Obama to be healthcare advisor to the Office of Management and Budget, explains:

Broad legalization of physician-assisted suicide and euthanasia would have the paradoxical effect of making patients seem to be responsible for their own suffering. Rather than being seen primarily as the victims of pain and suffering caused by disease, patients would be

problem,” many will think, just as they do regarding the mother who knowingly gives birth to a child with Down syndrome. If the grandmother chooses to go on living, her suffering becomes her own fault. Assuming she is not abandoned, she may be helped only grudgingly, blamed for any costs her continued existence imposes on other family members or on society.<sup>24</sup>

It does no good to invoke compassion for extreme cases here, for their extremity serves only to diminish the sympathy they induce. “In fact, the better the reason that those who were assisted had for killing themselves—and, thereby, the better the reason physicians had for assisting them—the more unreasonable relevantly similar individuals ... would be if they persist in not wanting to kill themselves.”<sup>25</sup>

In choosing to continue living in great dependency, a grandmother may be felt to be deeply selfish, preferring to benefit herself at a heavy cost to her family. As the benefit she receives grows smaller in their eyes—as she nears death or becomes more laden with pains or disabilities—her seeming selfishness increases; she prefers an ever-smaller benefit to herself in exchange for that great cost to the family. If she soldiers on to the point where her caregivers judge her life to be a cost to her<sup>26</sup> as well as to them, she becomes

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seen as having the power to end their suffering by agreeing to an injection or taking some pills; refusing would mean that living through the pain was the patient’s decision, the patient’s responsibility. Placing the blame on the patient would reduce the motivation of caregivers to provide the extra care that might be required, and would ease guilt if the care fell short. Such an easy, thoughtless shift of responsibility is probably what makes most hospice workers so deeply opposed to physician-assisted suicide and euthanasia.

*Whose Right to Die?* ATLANTIC MONTHLY 73, 79 (March, 1997).

<sup>24</sup> Lawson, *supra* note 8, reports:

Andy, [at a] cerebral palsy meeting, told how when he was recently hospitalised, a doctor walked up to his bed and said, “I think we should seriously consider your future.” Andy argued that “we are already pressurised not to demand proper medical care, and the pressure would become even greater if assisted suicide were legalised. It could be a case of ‘You should have yourself killed, mate. Then we won’t have to pay your disability living allowance.’”

The American Catholic bishops comment: “Studies indicate that untreated pain among terminally ill patients may increase and development of hospice care can stagnate after assisted suicide is legalized. Government programs and private insurers may even limit support for care that could extend life, while emphasizing the ‘cost-effective’ solution of a doctor-proscribed death.” U.S. Conference of Catholic Bishops, *supra* note 21, at 5.

<sup>25</sup> Thomas A. Cavanaugh, *The Instability of the Standard Justification for Physician-Assisted Suicide*, 10 CAMBRIDGE Q. HEALTHCARE ETHICS, 103, 108 (2001).

<sup>26</sup> Their judgment may be significantly more negative than her own, as regards her life satisfaction:

The Life Domain Satisfaction Measures and Semantic Differential Scale of General Affect ... were used to survey 82 ventilator-assisted individuals with Duchenne muscular

for them irrational as well as selfish.<sup>27</sup> Her right to choose thus brings with it a cruel paradox, if she insists on living: As her misery and consequent need for help increase, her family's sympathy decreases. ("What an absolute waste of the college money!")<sup>28</sup>

Internalizing this criticism, a loving grandmother will constantly wonder whether she is being too imposing even in continuing to eat, when the money could have been saved for her grandchildren's education. Agonized by guilt, she may sense herself drowning in a sea of resentment, and she may well be remembered as selfish to the end.

We need not suppose mean or stingy families. Let us in fact presume that the vast majority of families would provide decent care and would seek to hide any thoughts they had that caring for Grandmother is an inefficient use of their time or money. But if, in fact, her basic care contributed little to the well-being of herself or others, and a painless death were inexpensive and

dystrophy (DMD) and 273 physically intact health care professionals. A third instrument was devised to study the relative undesirability of dependence on mechanical ventilation. ... The health care professionals significantly underestimated the patients' scores in the life satisfaction and general affect instruments and significantly overestimated the patients' assessment of the relative hardship associated with ventilator dependence.

John R. Bach, Denise I. Campagnolo & Shirley Hoeman, *Life Satisfaction of Individuals With Duchenne Muscular Dystrophy Using Long-Term Mechanical Ventilatory Support*, 70 AM. J. PHYSICAL MED. & REHABILITATION 129 (1991) (abstract), available at [http://journals.lww.com/ajpmr/Abstract/1991/06000/Life\\_Satisfaction\\_of\\_Individuals\\_With\\_Duchenne.4.aspx](http://journals.lww.com/ajpmr/Abstract/1991/06000/Life_Satisfaction_of_Individuals_With_Duchenne.4.aspx)

<sup>27</sup> "Those who choose to live may ... be seen as selfish or irrational, as a needless burden on others, and even be encouraged to view themselves that way," argue the Catholic bishops. U.S. Conference of Catholic Bishops, *supra* note 21, at 3. The bishops focus, however, on how officially offering death only to certain persons (e.g., the severely disabled) lowers their sense of their worth as compared to others. This essay contends more widely that an unequal negative effect would attend a right to die even if that right were legally extended to everyone. Those whose lives looked relatively more worthless to others would seem more selfish, and perhaps even irrational, if they nevertheless insisted on living.

<sup>28</sup> Leading legal theorist Ronald Dworkin writes: "We are distressed by, even disapprove of, someone ... who neglects or sacrifices the independence we think dignity requires." For Dworkin, a person who chooses to live on in great dependence denies that he is someone "whose life is important for its own sake." RONALD DWORIN, *LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM* 235–237 (1993). So, too, Friedrich Nietzsche states: "To go on vegetating in cowardly dependence on physicians and machinations, after the meaning of life, the right to life, has been lost, that ought to prompt a profound contempt in society." Friedrich Nietzsche, *Twilight of the Idols*, in 16 THE COMPLETE WORKS OF FRIEDRICH NIETZSCHE 88 (Oscar Levy ed., Anthony M. Ludovici trans., 1909–1911; 1964 ed.).

commonplace, how could she or they think otherwise? Simply by remaining alive, she really would be using up funds that could be more beneficially spent elsewhere.<sup>29</sup>

It might be said that this sort of calculus is already being used even where there is no legal option of death: In deciding whether to spend money to give her an expensive heart operation, Grandmother and her family may well balance its benefits to her against the future benefits of college to the children. But here, even if the decision turns out to be against the operation, it is education rather than death that has been chosen. No one has opted to eliminate Grandmother. No one will feel that the decision has been thwarted if she somehow survives with her old heart. Acceptance of her existence as one of the starting points for decision remains intact, even though an investment will be made in the children's future rather than in hers.

In sum, the normative foundations of family solidarity are undermined by individual autonomy over life, by its removal of their causal and sympathetic supports. Making life optional harms even those who choose and affirm it, for its very optionality means that someone's life is no longer a necessity that all must accept as a given, but rather a contingency that might have been avoided by the legally empowered chooser. The chooser is thus to blame for that life's burdens.

The only logically possible way to undo this blame is to reconvert contingency into some form of necessity. Here at least two possibilities exist.

## VI. TWO WAYS TO RECOVER THE CAUSAL AND SYMPATHETIC BASES OF SOLIDARITY

One possibility would be to restrict legal choice itself. If assisted suicide or euthanasia were not permitted for everyone, for example, but only for those whose suffering were extreme, or who had only a very short time to live, then those who were not quite so sick or so near to death could not be blamed for continuing to live and to need help. After all, they would have no other choice—at least not yet.

This strategy has the unfortunate side effect of increasing the pressure on those whose death has thus been officially authorized. For example, if only

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<sup>29</sup> Lawson, *supra* note 8, refers to a letter to the *London Times* from ninety-year-old Margaret White in which she wrote:

I am happy here in the nursing home with no wish to die, but were voluntary euthanasia to be made legal I would feel it my absolute duty to ask for it as I now have 19 descendants who need my legacy. I am sure I am not alone in this resolution.

those with six months to live were permitted to die by assisted suicide, having this short time to live would be publicly certified as indicating a life is no longer so valuable as other lives, thus making those who choose to go on living feel less equal, less rational, and more selfish. But it is true that those who still had more than six months left would not yet be blamed for remaining alive.

However, the “not yet” could itself pose a problem. If six months were the dividing line, it is hard to see how that line would not already influence patient and family attitudes, as well as decisions about treatment and care, when Grandmother still had, say, seven months to live. Again, if the permission line were somewhat vague as to the degree of suffering or disability required, a patient and her caregivers might have assisted suicide already in mind long before that line were crossed and might feel themselves perversely conflicted. If much help were given to her, her burdensome life might be extended, while if less were given, full release through death could come sooner. A life-or-death option could thus already inform decisions long before assisted suicide were legally permitted. Grandmother might be blamed for choosing helpful treatments now that make her less likely to choose death in the future. Otherwise-beneficial care might be withheld from her in order to provide her with a subsequent incentive to choose death. Suspicion and a sense of rejection on Grandmother’s part could end up accompanying many a decision against treatment. Only full exclusion of recourse to death as a choice in the future would restore the unquestioned givenness of life as a source of solidarity in combating suffering, allowing treatment be provided or withheld according to its benefit to the patient’s remaining life, however long that might turn out to be, as balanced in charity and justice against other family needs.

Restriction of choice with regard to new life might work a bit better, simply because there is normally no progression from ordinary pregnancy to hardship pregnancy (unlike the inexorable march toward disability and death at the other end of life’s spectrum). So if, say, abortion were permitted only in cases of Down syndrome, a mother could not be blamed for giving birth to a child without this syndrome, because she would have had no other choice. Even if abortion were permitted for some vaguer condition, such as “serious genetic defect,” most mothers would have no option to abort and so would be freed of moral responsibility for continuing a pregnancy (and while a mother might be blamed for bringing a defective child to term, she would not, during the pregnancy, be tempted to withhold prenatal care, nor would others be tempted to withhold it, except in those unusual instances in which withholding care might increase the severity of the defect and thus qualify the

pregnancy for abortion). If abortion only for rare reasons were the rule, mothers would not be solely responsible for normal births. The status of most fathers as a responsible co-cause of their offspring, and the sympathy of friends and neighbors, would be preserved.

Perhaps even more dramatically, substantially restricting abortion (provided, of course, that the restrictions were rigorously enforced) could entail the virtual elimination of the tendency of legal abortion to increase the sexual exploitation of women (as discussed above). If abortion were available only in uncommon situations, both bad men and good men would have reason to treat women with greater care, for the possibility of abortion would no longer be always in the background. Men who dominate women would have had one of their options removed; they could not count on being able to push their partners into abortion. The relatively decent lover should become more careful, too, in order to avoid accidentally impregnating his partner and, as a consequence, imposing involuntary motherhood upon her. Furthermore, a woman's sexual competitors could no longer make their openness to elective abortion a way to attract her man away from her, because elective abortion would not be available to them, either. If abortion were available only rarely, the direct connection between sexual relations and (most) births would be restored, with all that follows with regard to equal sexual responsibility.<sup>30</sup>

There is another way, however, to restore an element of solidarity with those who choose life. Instead of legally restricting choice, society could emphasize negative aspects of the choice against life. If that choice were considered quite bad or risky, the choice of life would seem much more expectable and much less blameworthy.

Such was long the case with (unassisted) suicide and attempted suicide. Suicide was available and unpunished by criminal law, yet not considered justifiable. It was excused by the law but was not understood to be a

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<sup>30</sup> Akerlof suggests without proof that "Humpty Dumpty cannot be put back together again." Akerlof et al., *supra* note 14, at 282. It may well be the case that the old regime of "shotgun marriage" cannot easily be restored, but without any abortion option a man should feel himself to be the direct cause of birth more than he does now, and there is good reason to think that without the availability of abortion many births would be prevented by choices to avoid risky sex. Klick and Stratmann's works, *supra* note 16, certainly support this prediction. See also Michael New, *Analyzing the Effect of Anti-Abortion U.S. State Legislation in the Post-Casey Era*, 11 ST. POL. AND POL'Y Q. 28 (2011) (showing how merely restricting abortion funding, or requiring parental involvement or informed consent of the pregnant woman, can have a significant negative effect on the number of abortions). For an extensive discussion of the complexities of precise prediction here, see generally Forsythe & Presser, *supra* note 5, and PHILLIP B. LEVINE, *SEX AND CONSEQUENCES* (2004).



reasonable or decent choice. Perhaps aspects of our laws (for example, the permission to rescue someone about to jump to his death, without thereby becoming liable for battery) and of our religions (for example, the belief that someone who deliberately committed suicide went to hell), and other factors, made suicide nearly unthinkable as a rational option. No one could be blamed for not exercising a legally available option that was wrong or irrational even to consider.

Another example: The availability of adoption does not seem to cause much blame or resentment against mothers, even single mothers, who choose not to surrender their children. This is true even though they are as much responsible for the ensuing burdens upon themselves and others as are women who refuse abortion. Although fully permissible, the choice to surrender one's child for adoption seems to have enough negativity associated with it that those who refuse to go through with it receive little blame.

Could similar attitudes develop with regard to abortion or assisted suicide? Could they be fully legal and yet become not expectable, so that there would be sympathy rather than blame for those who refused them? Could their rejection seem reasonable because their burdens were felt to be greater than the burdens of life?

Apart from any afterlife, death is incommensurable—there is no way to say being dead is twice or ten times worse (or better, for that matter) than being alive, mainly because the dead person is not “being” at all—so it is very hard to argue against suicide in the usual manner of comparing consequences for the chooser. It is a category confusion to attempt to balance modes of existence against existence or against nonexistence. Nevertheless, it certainly could help for society to emphasize strongly the frequent subjective fear of choosing death, especially for someone who believes that he would be condemning himself to hell. Such an emphasis might help mitigate any conscious or unconscious blame received by those who refuse an otherwise open option to end their costly existence. Likewise, if the harm caused by abortion were perceived by society to be frequently worse than any harm caused by giving birth, women would be blamed less (if at all) by their men for not choosing abortion. Even if some of their peers and lovers thought abortion, though harmful, still the better option, women who refused abortion would become relatively less blameworthy as long as the net harm perceived to be caused by refusing abortion were lessened by an increased awareness of the fact that abortion has negative effects. Many lovers would become more careful not accidentally to cause a pregnancy, for they would know in advance that they could end up imposing on their partners at least the

substantial burdens of abortion surgery (even if those burdens were thought to be less than the burdens of giving birth).

Increased public acknowledgment of the harmful, or potentially harmful, aspects of abortion would thus benefit women at many stages of their lives, from their choices of sex partners and practices, to their choices regarding abortion, to the greater solidarity they would receive from fathers and others should they choose to give birth.

It might at first seem that this say-how-bad-abortion-is remedy (remedy for the isolation suffered by many women who choose birth) would be something upon which all could agree. After all, “pro-life” people (those who oppose abortion) often emphasize the suffering abortion is reported to cause,<sup>31</sup> no doubt in order to bolster their case for its illegality. Meanwhile, “pro-choice” people (those who defend abortion) often insist that choosing abortion is seldom easy for women. Now (using for simplicity a cost-benefit model for decision making), if choosing abortion is not easy, whether it would bring about a net positive result must be unclear or uncertain. Even for those who end up choosing abortion, the benefits of abortion must seem almost outweighed by the apparent costs it entails. After all, this is what makes any choice hard. If abortion clearly caused much less harm than giving birth, choosing it would be easy. If we could just publicize this apparent consensus as to abortion’s costs, that is, make known the *reasons* why abortion is so hard to choose, fathers and others might learn not to expect it of pregnant women.

However, many or most pro-choice advocates also reject the proposition that abortion threatens significant harm. Why is this? What keeps them from proclaiming convincingly the reasons why women cannot be expected easily to choose abortion when faced with an unplanned pregnancy or an unfavorable prenatal diagnosis?

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<sup>31</sup> The articles in Bachiochi, *supra* note 18, discuss these harms and provide citations. See also Forsythe & Presser, *supra* note 5, especially their note 16 and discussion at 108–123. Among more recent studies, one of the most important is David M. Fergusson, L. John Horwood & Joseph M. Boden, *Abortion and Mental Health Disorders: Evidence from a 30-Year Longitudinal Study*, 193 BRIT. J. PSYCHIATRY 444 (2008).

The substantial literature on whether abortion is of overall net benefit to women is not further cited and evaluated in this essay because further discussion would distract from the point here, which is not that abortion’s harm is easy or hard to discern, but rather that a widespread public opinion that abortion has at least some important negative effects would be good for women, inasmuch as it would make abortion less expectable by others (thus reducing the demand for sex acts that risk pregnancy as well as reducing post-birth blame for those who reject abortion and choose to carry a pregnancy to term).

The barrier here must be largely political. As long as pro-life forces are ready to use any evidence of the negative aspects of abortion as a weapon in their campaign to make abortion illegal, defenders of abortion will be tempted to deny or hide from such evidence—saying in effect something self-contradictory like “abortion is a very difficult choice, though it has few if any downsides.” However, though politically understandable, the practical result of this impasse is most unfortunate. Young lovers may be led wrongly to think risking abortion no big deal, and new mothers may be quite unjustifiably blamed by fathers and others for not simply opting for abortion.

There may be a pro-choice alternative. Pro-choice forces could concede this much: that the reasons for and against (or the costs and benefits of) abortion are often closely balanced. But they could make this a reason to keep abortion legal, arguing that precisely this uncertainty requires individualized, rather than legislative, judgment. At the same time, publicity and a resulting social consensus affirming strong arguments against abortion would keep it from appearing as an option that a pregnant woman could easily be faulted for not choosing.<sup>32</sup> (If the result were a substantial reduction in the incidence of abortion, many pro-life people might also be satisfied, and abortion might cease to be so divisive a political issue.)

Another strategy might be to stop asking only whether and how abortion is (or is not) harmful in general. Instead, abortion might be shown to be a special risk for certain sorts of women. Lovers, fathers, and neighbors could not blame a woman who refused abortion if they did not know her risk category; she might have had no real choice but to choose birth, for all they know.

For example, just as an individual may reject suicide out of fear of hell, even if we observers think hell does not really exist, so, too, an individual may reject abortion out of a reluctance to destroy her (unborn) child, even if we observers think that her child does not really exist. Indeed, quite a few Catholics and others believe their lives began when their parents conceived them. Subjectively, for such persons, an abortion is in simple logic a lethal betrayal of one’s own child, an act which must be a hard choice with heavy psychological consequences, quite independent of its true ontological nature (whatever that may be). Women with such a subjective belief could not be expected by men or society normally or easily to go through with abortion.

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<sup>32</sup> Legally required informed consent and waiting periods, while they may tend to militate against choosing abortion, are not enough here. If the goal is to have society as a whole see the negative effects of abortion, just educating the individual pregnant woman at the last moment about its downsides is clearly insufficient.

Perhaps a public shift away from a debate concerning only the alleged objective harms of abortion and toward an additional emphasis on its subjectively perceived harms could be a way out of the political impasse that would be helpful to women.<sup>33</sup>

#### VII. THE EFFECT OF HAVING A CHOICE ON THE PERSONAL BASIS OF SOLIDARITY<sup>34</sup>

Thus far we have focused on the negative effects that choice has on solidarity with those who bear the burdens of children, of suffering, or of disability. But choice may also have a negative effect on an underlying characteristic of all solidarity: the sense of joint agency, the recognition of others as fellow subjects rather than as mere objects of planning or pity.

A foundation and reinforcement of all human solidarity is an acceptance of the other as a principle, as a given reality, as an unquestionable starting point for reflection on possible joint aims and actions. By making someone's existence the object of choice, we remove him, at least temporarily and in our imaginations, from this unquestioned human community. The right to choose life may thus cut off the chooser, not only from solidarity with her erstwhile co-causer and sympathizers, but also from solidarity with the life that now appears merely optional—her child, in the case of deciding about abortion, and her own self in the case of deciding about assisted suicide or euthanasia.

In other words, people's aims and needs are the normal starting point for discussions of concerted action; the things of the world are then evaluated according to their ability to satisfy those aims and needs. To consider satisfying those aims and needs by eliminating one or more of the persons

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<sup>33</sup> Helping women in these ways, however, would seem to mean abandoning the radical project of using abortion to equalize male-female public contributions. This project requires that women think of abortion as an easy option—because if women thought negatively of abortion they would often avoid it, choosing to be mothers rather than child-free stateswomen or other public figures. But see the questioning of the radical project (of achieving equality via abortion) found in Erika Bachiochi, *Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights*, 34 HARV. J. L. & PUB. POL'Y 896 (2011) (arguing that the project actually harms female equality by making the wombless male body the norm, thus discouraging social support for women who wish to parent while holding a public position). Similarly, Robin West, *supra* note 20, at 1411, has argued that constitutionalizing the right to choose abortion “legitimizes ... the lack of public support given parents in fulfilling their caregiving obligations.”

<sup>34</sup> The two articles by Stith cited in note 2, *supra*, contain a more extensive discussion of many of the points made in this section.

who have them would be to reduce such persons to the status of things that might or might not be needed.

This fact was brought home to me a long time ago when I spoke to a meeting of parents of children with mental disabilities. During my speech, I had gingerly expressed sympathy for the “burdens” of such children. Afterwards a number of parents came up to me to say that they did not think of their children as burdens, just as their children, although the children carried burdens that others did not. Their children had problems, but were not themselves problems. Rather, the children were a given, lives simply accepted—and once accepted, also delighted in. To take them as givens let them become sources of joy by providing them the space to be appreciated as persons.

There surely are some parents who resent their children as burdens, regardless of whether they have disabilities. But the advent of choice makes resentment more likely. There is little point in thinking about impossible choices. (We do not ordinarily resent not being able to fly like birds. Instead, we find happiness in walking or running. But if we could have wings but did not, we might feel weighted down.) Where there is no occasion to compare a child’s existence with its nonexistence, one does not so easily come up with the feeling that the child should not be here.

Making choice possible brings about a profound change. Choosing to let a being live confirms a radical domination over that being, like the upraised thumb of a Roman emperor in the Coliseum, and so makes the chooser actually less likely to respect the object of choice as an equal co-subject and to stand in solidarity with her or him.<sup>35</sup>

That is to say, even if someone (upon inspection) ends up being evaluated so highly that one would never choose her death, something has been lost.

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<sup>35</sup> Ronald Dworkin has argued that choosing to permit a fetus to live, where that choice is followed up with a substantial investment in its nurture, actually makes us more likely to value it, in *LIFE’S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM* (1993). *But see* Richard Stith, *On Death and Dworkin: A Critique of His Theory of Inviolability*, 56 MD. L. REV. 289 (1997). Nurturing any sort of animal (or plant) may express and encourage valuing it without necessarily leading to respect for it as a fellow person. Many things are valued, even highly valued, without thereby being respected as equals, for valuing is a kind of pricing, while persons are said to be priceless. Karl Mannheim noted long ago that “the fact that we speak about social and cultural life in terms of values is itself an attitude peculiar to our time. The notion of ‘value’ arose and was diffused from economics . . . . This idea of value was later transferred to the ethical, aesthetic, and religious spheres, which brought about a distortion in the description of the real behavior of the human being in these spheres.” *Ideology and Utopia*, 1 COLLECTED WORKS OF KARL MANNHEIM 73 (1936). That there is a fundamental difference between valuing and respecting is a central thesis of Stith, *Priority of Respect*, *supra* note 2.

Indeed, even to speak of my child (or any person) as “valuable” seems to demean her, not only because of a connotation of instrumental value, but because the very idea of evaluating her seems to reduce her to a good or commodity that I declare to be worth having. I appear in some way to have set myself above her being, rather than unselfconsciously accepting her as part of my world. (If anything, it sounds more inappropriate to eschew instrumentalism and say haughtily, “I consider my child to have great intrinsic value.”)

Making it optional to bring about other people’s deaths thus fundamentally alters the way they are conceptualized as well as the nature of deliberations about their needs. For example, suppose that one socially approved method of fighting poverty were to eliminate poor persons. The shock and seeming absurdity of such a policy is a demonstration of the radical shift it would bring about. Individual poor persons would no longer be ends in themselves but rather something to be used in an effort to get rid of an abstraction called “poverty.”

Barbara Katz Rothman has described the parallel process of combating genetic defects by eliminating those fetuses that have them. She shows how choice over life changes a pregnant woman’s idea of the being in her womb, focusing in particular on the abortion of wanted children as a result of genetic testing in late pregnancy. She writes that “if it is healthy, if it is genetically acceptable, then it is a person, her baby. If it is not, then it is just a fetus. ...”<sup>36</sup> That is, in order to be able to abort, a woman typically turns the being she carries into an object, according to Rothman. Yet, if she chooses life (which some do even after disappointing test results)<sup>37</sup> the woman will imagine her commitment to be unconditional: “if the fetus is to be her child, if she has chosen to have this baby ... then she considers that fetus to be a person” because “[p]arenthood demands such total acceptance from us.”<sup>38</sup>

Two points are of interest here. The first is that it appears to be difficult for women to choose to destroy an entity that they consider a person. Only after a radical status reduction does the lethal harm of abortion become easier.<sup>39</sup>

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<sup>36</sup> BARBARA KATZ ROTHMAN, *THE TENTATIVE PREGNANCY* 6 (1993).

<sup>37</sup> *Id.* at 7.

<sup>38</sup> *Id.* at 5–6.

<sup>39</sup> Some consider the fetus to be a person and nevertheless seek to justify abortion as a benefit (rather than any sort of harm) to a child who would otherwise have had a sad life. The problems of this line of thought are those of nonvoluntary euthanasia. Nonvoluntary euthanasia is beyond the scope of the present essay, which covers only certain effects of abortion and of voluntary euthanasia. However, it can be said that choosing to take one’s child’s life by nonvoluntary euthanasia depersonalizes that child in ways similar to those discussed below in regard to choosing to take one’s own life by voluntary euthanasia. It

There is evidence that this is a typical human response to many forms of killing: Farm children are said to find it more difficult to eat animals they have named. Enemy casualties are more tolerable if they are expressed only in numbers. The judgment that someone is only a “vegetable” frequently accompanies the decision to cut off her food and water. And, of course, the great genocides of the nineteenth and twentieth centuries first dehumanized those they made ready to kill.<sup>40</sup>

The second point is a question: Is prior domination over life compatible with posterior total acceptance, for the chooser and for the society around her? Can a child be treated as an unconditional given if the continued being of that child was once only an option?<sup>41</sup> There could be times when a mother might wonder whether she had made a mistake in allowing him to be born, and her child (if he came to know that his mother had once considered eliminating him) might worry about such maternal thoughts.<sup>42</sup> Neighbors may think that a genetically handicapped child really should not be here,<sup>43</sup> or that the last few children born in a large family should not exist.

Some have hoped that birth could demarcate a change in kind. The objectifying force of choice would be spent at that point, and family and society would give the child full acceptance. The humanly important event of

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contains all the contradictions of the claim to eliminate suffering by eliminating the sufferer—to improve life by destroying it—while in addition ignoring the child’s own lack of choice.

<sup>40</sup> WILLIAM BRENNAN, *DEHUMANIZING THE VULNERABLE: WHEN WORD GAMES TAKE LIVES* 43–61 (1993).

<sup>41</sup> E. Christian Brugger suggests that this shift could occur only if the reasons are rejected that led to the original dehumanizing judgment: “If parents move from treating their children as conditionally worthy of respect to treating them as unconditionally worthy, without rejecting the nest of reasons that convinced them originally that it was acceptable to treat their children conditionally, those reasons would continue to characterize their wider framework for viewing their children.” E-mail from E. Christian Brugger to Richard Stith, May 19, 2011 (on file with author). But perhaps a parent who once considered abortion could put the matter behind her with the thought, “If I could have known my child as I now do, I could never under any circumstances have considered abortion.”

<sup>42</sup> See generally Philip G. Ney, *Post-Abortion Survivor’s Syndrome*, 38 *CANADIAN JOURNAL OF PSYCHIATRY/REVUE CANADIENNE DE PSYCHIATRIE* 577 (1993).

<sup>43</sup> Patricia E. Bauer writes of her daughter who has Down syndrome: “To [many], Margaret falls into the category of avoidable human suffering. At best, a tragic mistake. At worst, a living embodiment of the pro-life movement. Less than human. A drain on society. That someone I love is regarded this way is unspeakably painful to me.” Patricia E. Bauer, *The Abortion Debate No One Wants to Have*, *WASHINGTON POST*, Oct. 18, 2005, at A25 (editorial). Solidarity toward both child and mother is lacking here.

birth, seeing and holding the child for the first time, surely does tend to increase the child's stature in our eyes. Yet, we all know that birth is really only a change in location, rather than in being, so that if the child were really only some non-personal entity prior to birth, it would remain the same sort of entity at least for some considerable time after birth, and there would be nothing intrinsically wrong with choosing infanticide.<sup>44</sup> Indeed, pro-choice philosophers have long argued for the moral permissibility of infanticide, often founding their arguments on the permissibility of abortion.<sup>45</sup> The point here is not that infanticide is likely to be officially permitted in countries that legalize abortion (although that might occur), but rather that the birth line may not be capable of fully defining and delimiting the less-than-human status of the fetus. Newborn and older babies may come to seem more like things, and less like persons, because of the existence of the abortion option.

Thus the option to destroy another being tends to depersonalize that being. Perhaps surprisingly, however, this objectification is not entirely<sup>46</sup> dependent on the destruction being nonvoluntary. If, in addition to material aid after its great earthquake, we sent to Haiti "voluntary suicide clinics," we would be publicly making the judgment that Haitians are expendable and would be enabling them so to regard themselves. Our estimates of future aid requirements would be reduced by the numbers we could expect our clinics to eliminate, and judgments of efficiency might lead us to emphasize one or the other. In short, we would no longer be acting in solidarity with all the Haitian people. We would no longer be working with each individual to carry her heavy burdens but would have begun to treat Haitians themselves as burdens in our struggle to mitigate Haitian poverty.<sup>47</sup>

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<sup>44</sup> Richard Stith, *Location and Life: How Stenberg v. Carhart Undercut Roe v. Wade*, 9 WM. & MARY J. WOMEN & L. 255 (2003).

<sup>45</sup> For example, JONATHAN GLOVER, CAUSING DEATH AND SAVING LIVES 137–169 (1977), Ronald M. Green, *Conferred Rights and the Fetus*, 2 J. RELIGIOUS ETHICS 55 (1974), Peter Singer, *Killing Babies Isn't Always Wrong*, THE SPECTATOR, Sept. 16, 1995, at 20–22, and Michael Tooley, *Abortion and Infanticide*, 2 PHIL. & PUB. AFF. 37 (1972).

<sup>46</sup> The depersonalizing character of euthanasia is, however, partially dependent on whether it is voluntary, as explained in the second paragraph in the text, below.

<sup>47</sup> This anti-people thrust may be a dark side to any sort of population control. Even sending down birth control clinics to Haiti might send a message that we really do not want too many Haitians. However, there is a qualitative difference between wishing not to bring (still unnamable and unpersonalizable) people into existence, and wishing to do away with (named and personalized) people who already exist. Future generations are not yet concrete persons, not yet individual instances of the idea of humanity. Contraception does not prevent any identifiable individual from being born; thus, promoting voluntary contraception is no threat to any known individual. Nonvoluntary or voluntary euthana-



The option of life or death in assisted suicide or voluntary euthanasia involves a project parallel to that of sending down suicide clinics to relieve Haitian poverty: eliminating suffering by eliminating those who suffer.<sup>48</sup> It may be less potentially dehumanizing than the option of abortion, because here the object of choice is also the chooser, and because, unlike the fetus, the older person who may choose death for himself has already achieved public status as a person. On the other hand, unlike the abortion option, the suicide/euthanasia option never expires. There is no point like birth after which one can hope to re-imagine life to be inherently inviolable. Indeed, a choice for death may become more expectable as time passes.

When someone is given the choice of life or death for himself, he becomes both an agent and an object. This is the reason that voluntary euthanasia is not as depersonalizing as is nonvoluntary euthanasia. As an agent, the person having the choice to live or die remains someone accepted as a given, someone with whom others may join in solidarity (at least until he is felt to have made the wrong choice, for which he may be blamed and abandoned, as discussed above). But as an object, his life is evaluated to see if it is really worth the trouble to live it.

Some (perhaps the chooser himself) may use a sort of metaphysical dualism to imagine what is going on here, conceiving a disembodied mind to be judging the value of a merely material body. Others may envision an alienation of self from life, separating the person who is doing the choosing from the person's *life*, which is the thing being chosen or rejected.

Yet a person's body or life is his very being and cannot be separated from his person. Life is not something added to or produced by human or animal organisms, it is those bodily organisms themselves; they *are* forms of life. Nor can life simply be taken from a person, as a possession can be taken away, leaving that person intact. Hamlet said it well when he first contemplated ending his own life: "To be or not to be, that is the question."<sup>49</sup> To have life is simply to be; to lose one's life is not to be. We are our lives. To reduce Hamlet's life to the status of an evaluated thing is to reduce Hamlet

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sia, by contrast, eliminates existing persons, lowering them, at least in part, to the status of expendable things.

<sup>48</sup> The American Catholic bishops argue (in U.S. Conference of Catholic Bishops, *supra* note 21, at 4), by contrast, that "[t]rue compassion alleviates suffering while maintaining solidarity with those who suffer. It does not put lethal drugs in their hands and abandon them to their suicidal impulses, or to the self-serving motives of others who may want them dead. It helps vulnerable people with their problems instead of treating them as problems."

<sup>49</sup> WILLIAM SHAKESPEARE, *HAMLET* act 3, sc 1, l 58 (Compact ed., Clarendon Press, 1988).

himself to that status. If Hamlet's life no longer has value, his existence has no value, and he himself has no value.

Recall that the main point of this essay is not that (with euthanasia available) many persons might be argued and pressured into death, though that might well occur. It is not life, but quality of life, that is our theme. The claim here made is that many of those who choose to stay alive will exist with much lessened dignity.

Nor is the central point of this essay that the opportunity of assisted suicide or voluntary euthanasia might lead someone mistakenly to conclude that he had little or no value and, therefore, to feel selfish or irrational in continuing to live. Rather, it is that the option itself costs him his personal status as a principle or starting point of our life together, no matter what his conclusions about his own value might finally be. Instead of being a given, a beginning, a stable marker as we chart our path, he becomes something that might be in the way. Choice turns a person into a problem.

Reducing this argument to a single word: the option of death means that a person's existence, his very being, he himself, must for the first time be *justified*. As long as there are any costs to living (and there always are, in terms of personal sufferings and impositions on others), the option to die leads him and those near him to ask whether his remaining alive is worth those costs.<sup>50</sup> We may, in fact, conclude that he should choose (or should have chosen) death. But even if he and we conclude that his existence easily passes the test, that he is a valuable fellow to have around, he has been degraded from a subject to an object, from someone totally accepted to something that can in principle be rejected.

Once the availability of death makes a justification for staying alive necessary, moreover, that justification may be inherently hard to come by. Once told to choose, many dependent persons may (perhaps spurred on by rising resentment in their caregivers) find it hard to deny that the good they

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<sup>50</sup> Of course, it is common for older persons to wonder whether they are still much good to anyone, perhaps musing in puzzlement, "I can't figure out why God is keeping me alive." But imagining God to be a great utilitarian need not be disquieting. After all, the fact that God has found the puzzler's life still to be worthwhile ought to silence the justification question in everyone else's mind. Even without the reference to God, as long as death is not a legal option, there is little interpersonal threat of rejection in such speculation about one's worth to others. The person so speculating knows that his equal dignity, his givenness, his ability to keep on living without inspiring resentment for his refusal to commit suicide, remains unaffected by his possible lack of instrumental value.

are doing for themselves and others is no longer worth the cost and imposition.<sup>51</sup>

Indeed, once the gates have been opened, once the option of death has been introduced, once the necessary taboo against killing is removed, not just a few but most or all of us may sometime be unable to justify our existence in human terms.<sup>52</sup> Do we really think that no one could find a better use to which the costs of our upkeep could be put? Are we so important as to be provably indispensable? The world will probably get along pretty well without us. That is what happens, after all, when almost anyone dies.

Moreover, we may not even be able to remember or imagine how society could once have thought voluntary suicide to be wrong. That is, once we have decided that only justified lives should be lived, we can search high and low for what people used to think was so valuable about each and every human

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<sup>51</sup> The Catholic bishops draw the further conclusion that nonvoluntary killing will ensue: “[O]ne cannot uphold human freedom and dignity by devaluing human life. ... Thus in countries that have used the idea of personal autonomy to justify voluntary assisted suicide and euthanasia, physicians have moved on to take the lives of adults who never asked to die, and newborn children who have no choice in the matter.” U.S. Conference of Catholic Bishops, *supra* note 21, at 4. In like manner, Dr. Emanuel draws upon the Dutch experience to conclude:

Once legalized, physician-assisted suicide and euthanasia would become routine. Over time doctors would become comfortable giving injections to end life and Americans would become comfortable having euthanasia as an option. Comfort would make us want to extend the option to others who, in society’s view, are suffering and leading purposeless lives. The ethical arguments for physician-assisted suicide and euthanasia, advocates of euthanasia have maintained, do not apply to euthanasia only when it is voluntary; they can also be used to justify some kinds of nonvoluntary euthanasia of the incompetent. Euthanasia would come to be seen as “one end of a spectrum of caring for dying patients,” as the philosopher and euthanasia defender Dan Brock writes. “When viewed in this way,” he goes on, “it will be difficult to deny euthanasia to a patient for whom it is seen as the best or most appropriate form of care simply because that patient is now incompetent and cannot request it.”

Emanuel, *supra* note 23, at 79. Emanuel, like the Catholic bishops, notes the key role played by the reduction of persons to “burdens,” writing, “The confluence of ethical arguments, medical practice, demographic and budgetary pressures, and a social ethos that views the old and sick as burdens would seem capable of overwhelming any barriers against euthanasia for incompetent patients.” *Id.*

<sup>52</sup> According to U.S. Conference of Catholic Bishops, *supra* note 21, at 4:

Dutch doctors, who once limited euthanasia to terminally ill patients, now provide lethal drugs to people with chronic illnesses and disabilities, mental illness, and even melancholy. Once they were convinced that ending a short life can be an act of compassion, it was morbidly logical to conclude that ending a longer life may show even more compassion.

life and we will not find it (for it was never needed). Our ethicists will explain that “formerly all the world was mad,” and blink.<sup>53</sup>

The reason for our future frustration is simply that principles are beginnings. Ends in themselves function to give meaning and structure to our life together; they cannot be fully reconstituted as mere means. If someone refuses to do kind acts unless they can be shown useful, he will never fully learn kindness. Those who refuse understanding except when it empowers them will know the world only as a resource, not as something with its own character and beauty. Principles and axioms cannot be argued for.<sup>54</sup> (Or, if they can, then they lose their status as principles or axioms.) If every principle must be justified, reason itself is undone.

Just so: Our judgments of usefulness begin with the givenness of the members of our community. The inherent dignity and inviolability of each human person functions as the principle or starting point in deciding, in solidarity, what is useful (and just) for the human community. If persons are to go on existing only when shown to be useful, we have lost the very measure of usefulness. None may now qualify as useful, for every argument that someone is useful to another can be countered with “But what is the use of that other?” Unless existing humans need not be justified, all we are or do loses justification. Without the principle of inherent human dignity, neither Grandmother’s nor anyone else’s life may have meaning.

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Individual autonomy over life can weaken the foundations of family and human solidarity. It can sever a thick root of paternal responsibility. It can partially block the reach of sympathy. It can turn our dependents and even ourselves into options whose benefits will be weighed and found wanting.

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<sup>53</sup> So speak and blink the “last men” (“*die letzten Menschen*”): “*Ehemals war alle Welt irre.*” Friedrich Nietzsche, *Zarathustra’s Vorrede (Unterabteilung 5)*, *ALSO SPRACH ZARATHUSTRA: EIN BUCH FUER ALLE UND KEINEN* 14. 6 *NIETZSCHE WERKE* (Giorgio Colli andazzino Montinari eds., 1968) (1883).

<sup>54</sup> In Stith, *Priority of Respect*, *supra* note 2, I do attempt to discern a phenomenological foundation for respect for individual human dignity. I seek to show it, however, not to argue for it.

