

Sorry Jill Filipovic, Pro-Life Laws Do Not Aid Abusers

Joe Kral, M.A.
President, Society of St. Sebastian

Recently, a study was published in the journal, *Health Affairs*.ⁱ This study purported that pro-life laws had led to an increase in violence against women between the ages of ten and forty-four. Naturally, much of the mainstream media had grabbed onto the study and reported it as fact without any serious investigation of the study itself. Thankfully, Dr. Michael New, of the Catholic University of America, found serious flaws within the study after a mere cursory review.ⁱⁱ Even after Dr. New's evaluation much of the mainstream media and other pro-abortion pundits kept on with the diatribe that pro-life laws harm women. These are serious allegations against pro-life laws. They also show a deep bias and misunderstanding of the virtue of justice and how law is interrelated to justice. Certainly, serious ethical questions arise when it comes to such allegations. Questions such as how is law related to behavior? Are these laws contrary to justice? As a result, one must look at the very nature of what is meant by law. Something the media and pro-abortion pundits refused to do.

The media assumed, incorrectly, that pro-life laws are somehow the cause of immoral behavior. While the media made wide general accusations regarding pro-life laws and alleged abuse, the study only focused on what was referred to as Targeted Restrictions on Abortion Providers (TRAP laws). These laws usually deal with abortion clinic regulations. In essence, this study did not review parental involvement laws, informed consent laws, or even Abortion Bans. Yet, the media would have its audience think that this study, and pro-life laws in general, are inherently unjust. So wide was this accusation regarding all pro-life laws, Jill Filipovic, went on to say, "The way abortion bans are designed and written allows for all kinds of horrors: women losing their organs, women bleeding out without help, women losing their lives. But they're also written to empower abusive men. After all, the very foundation of an abortion ban is an assumption that a woman's body does not belong to her. Abusive men agree."ⁱⁱⁱ Not only does Ms. Filipovic argue these laws create an environment of abuse but continues the tired and debunked argument that women will lose their lives when it comes to Abortion Bans. However, this is still a serious indictment of these pro-life laws. This essay will explore Ms. Filipovic's arguments and discuss just how they lead to an incorrect understanding of the law itself.

While Ms. Filipovic may agree generally with the idea that law can influence behavior, it is clear that she does not have a very deep knowledge of what law is and what it is meant to do. Furthermore, she seems to lack an even basic metaphysical understanding of what the human person is. So, for example, she makes the following claim,

The ideology that underlies this abuse is both insidious and common – and it underlies the anti-abortion movement more broadly. The idea seems to be that, by impregnating a woman, a man has laid claim to her body, and has ownership over it. Should she remove the pregnancy, she hasn't made a choice that involves her and a fetus or embryo, but she has violated his rights – his right to have her body used for the end he desires. This is the logic of the anti-abortion movement, of every rapist everywhere, of every abusive man. And so it's no wonder that the anti-abortion movement is going to legal bat for these abusers, as they write abortion laws without rape exceptions and use the law not to protect children, but to punish women.^{iv}

Here, in this small paragraph, one can ascertain a few things. Firstly, the pro-life movement has been quite clear throughout the decades that the unborn child is a separate human person from the mother. Pro-Life Abortion Bans are certainly written with that intention. For example, one could look at the Texas law which is entitled the Human Life Protection Act. One clear indicator that the law's purpose is to protect human life, not to give ownership. Furthermore, one can see that the law uses the term "unborn child" which makes it clear that the law is speaking about the unborn human person. The law defines it as "an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development."^v The law is quite clear that it is illegal to perform an abortion on the unborn child, not the property of the biological father. Nor does the law state that it is illegal to perform an abortion because the mother is the property of the child's biological father. What makes Filipovic's claim even more absurd is the fact that Texas has a Prenatal Protection Act, which recognizes the unborn child as a victim of crimes perpetrated by third parties.^{vi} This law allows prosecutors to charge those who harm or kill the unborn child, such as drunk drivers, on behalf of the unborn child. The laws are consistent within Texas and the fact is, they recognize the unborn child as a distinct person protected under the law. Again, to say there is an inference or implication of ownership is beyond a stretch, it is simply a legal fiction. It is clear that Texas' pro-life Abortion Ban is designed to stop the injustice of abortion being perpetrated upon unborn human persons.

Secondly, Ms. Filipovic's article shows a gross misunderstanding of what the human person actually is. It's not just a legal problem for her, but rather a metaphysical problem. Ms. Filipovic takes an ableist position regarding the unborn child. She simply does not believe that the unborn child should have any legal status as a person. As she stated in another article, "There are many obvious ways in which deeming an embryo a person under the law is deeply silly, especially when that "person" is kept in cold storage (it is generally not recommended to deep-freeze children)." ^{vii} But why exactly is this a problem? The truth is that she simply does not understand what is meant by the nature of a human person. It is clear that she does not afford the unborn child the status of a full person. For example, she contends,

I don't mean to sound insensitive or like frozen embryos are nothing—they are genetically unique, they are forms of life, they are hope and potential, if things work out they will eventually become children, and their existence is often deeply meaningful to the people whose DNA created them. But they are also not born children. That doesn't make them worthless. It does make them a different, very early form of human life. And the law should reflect that. ^{viii}

In this paragraph alone, one can see the implication that while the unborn child is human it is 1) not born, 2) not a child yet, 3) not a person, and 4) the law should follow this "reality". Filipovic follows the philosophically debunked trope that the unborn child is some sort of thing that does not achieve personhood until it is physically born into the world. Otherwise, it should be classified as a sub-person. This is not to say she is saying they are not human; she clearly does, as stated in the above-mentioned quote. This is to say she recognizes this unborn being as not being a person. That its essence is not of a person. As she puts it "they are forms of life." But it is a "form of life" that does not enjoy personhood in her view.

Of course, this lends itself to problems as has every philosophical outlook that reduces some class of human beings as sub-persons. As such, these sub-persons simply do not enjoy rights or freedom and are treated as less than human under the law. Only persons may enjoy these. And as such, abuses of the sub-persons inevitably arise. This is why it is important to have a consistent notion of what is meant by "person". As Thomas Aquinas states, "Therefore also the individuals of the rational nature have a special name even among other substances; and this name

is ‘person.’”^x Now, it is important to understand that things just don’t change their nature. A dog will always remain a dog because its nature is that of a dog. While some may argue that there is a difference between a puppy and a fully mature dog, they still are dogs. The state of “puppyhood” merely describes an accident of the dog. Something can change about the dog but will not change the nature of the dog. So, when a human being is conceived, at the earliest stage it may not have the capacity to use the intellect, but that still does not change the reality that the human conceptus is a rational creature. The fact is that the unborn child does not radically change when the child is born. Nothing about the substance of the child is altered other than the literal geographical placement of the child. One moment before the child was within the womb, now it is not. As a result, since nature does not change, the human conceptus is a human person. Being a person entitles this being to certain rights such as the right to life.

Seeing that Ms. Filipovic misunderstands the human person, it becomes easy to see why she gets into another area that she seems to misunderstand, and that is the area of rights and what is a right in general. Ms. Filipovic tends to believe in rights in a way that only deals with desires, not corresponding duties. An example,

Compared to women who were able to end their pregnancies, women who were turned away from abortion services and had babies they did not want to have wound up more likely to stay stuck in poverty, more likely to be trapped in abusive relationships, more likely to have long-term health issues, less likely to feel hopeful about the future, and more likely to have serious physical complications from their pregnancies, including death. The children of women who are denied abortions — the children a woman already had, and the child she was forced to have — also end up worse off than the preexisting children of women who were able to end the pregnancies.^x

Here she expresses the desire to have an abortion, because of circumstances such as poverty or even a possible future. She mentions nothing of duties. The idea of duties is completely ignored. In essence, her idea of rights seems to be an ability to do this or that because of a desire.

Unfortunately, for Ms. Filipovic, this is not how rights actually work. For example, it would be an absurdity to claim that a person has a right to have sex whenever they want to. Why? Because it implies, in the most extreme of cases, that a person would have the right to rape. This is why passions or desires can be problematic as a basis for rights. If there is no duty for others then it merely becomes the will of the strong that turns into the “right”. It is also the only basis that abortion “rights” advocates can make to justify abortion. Again, why? Because if rights are based on duties, then there is a big problem that Ms. Filipovic and her confreres must face.

This, of course, is where a basic explanation of rights needs to begin. The idea of a right is the moral ability to do this or that which is based upon a moral duty. What is meant here? The idea basically asserts that since human persons (regardless of stage of development) are intellectual and social creatures, they: 1) have the ability to know the moral law (Natural Law), 2) as such they are able to understand their moral responsibilities not only to themselves but towards others (justice), and 3) it is because we have duties to one another that this ability to do this or that arises (rights). As a result of this, rights cannot be contrary to justice since they are derived from justice. So, if we are obligated to not unjustly harm one another, then: 1) One has the duty not to unjustly harm the other and 2) the other derives the ability to have his right to life.

It is precisely because of this idea of rights that abortion becomes an absurdity. Since human beings have the duty not to harm others, or it can be put another way, to protect innocent life, no one has the right to murder. Since murder is immoral, societies have made laws that prohibit the killing of innocent persons. Since abortion is the intentional and deliberate taking of an innocent human person’s life, in this case, an unborn child, it is a violation of the duty not to harm others unjustly. As such, it is immoral and could not be a right since it violates justice.

Ms. Filipovic tries to paint abortion “rights” in these terms, “Fundamental rights – and it doesn’t get more fundamental than sovereignty over one’s own body – should not be up for a vote, even if the righteous side is likely to win.” This is where her idea of rights slips into an idea of autonomy. The simple fact remains, reality has certainly taught that one does not have an absolute right to bodily autonomy. For example, when it comes to patient care, if someone is in the hospital, you may actually have the duty to remain stationary for the recuperation process. One does not necessarily have the right to get up and move around at that time unless you

have the doctor's permission.^{xi} Many states have prostitution laws that certainly prohibit the practice of using one's body for sex in exchange for money or other goods. Not to forget that there are laws that prohibit one from consuming too much alcohol before he or she drives. Morality and the law recognize that absolute sovereignty over one's own body can lead to injustices. As such, when the cries that abortion is freedom are made, one can understand that these are people who simply do not see the interconnectedness between morality, freedom, and the law.

It is clear that Ms. Filipovic confuses freedom with autonomy, particularly when it comes to abortion. Typically, "autonomy" means the ability to do whatever one wants, and it is certainly in this context that it seems that Ms. Filipovic uses the term. But it is not freedom. Freedom is directed to the good, not just any end that one is seeking. Freedom is the ability to do what one ought to do. One can say that he is free to choose whichever college he would like to attend. That does not mean one will get into it, but that one is certainly free to apply. One is not free to murder. One may choose to murder, but morality, and certainly the law here, dictates murder is a wrong choice and one that comes with consequences since it not only violates the nature of the human being as a social and rational creature but also violates the right of the other which is due to him. Ms. Filipovic's legal philosophy has some problems here. If obtaining an abortion is an act of freedom, then one can easily say that rape is freedom as well since it is clear that violence toward the other is acceptable as a practice since it is all about fulfilling one's desire for one's body. Her logic dictates that bodily autonomy is absolute and as such one's body has precedence over the other person's body. Hence, the ethic of the strong over the weak. Again, she would likely argue that the unborn is not a person, so in this case, the mother who is a person has the right to bodily autonomy over the fetus or embryo. However, Ms. Filipovic must deal not only with logic but also with scientific facts. It is a scientific fact that the human conceptus is a new, individual member of the species *homo sapiens*. It is not a cucumber, it is not a whale, it is human. It is known that one species does not turn into another species. Dogs remain dogs from the moment of conception just as humans remain human. Ultimately, she must contend with the scientific fact that the newborn child is not biologically different from the child it was twenty minutes before birth. Birth does not change the nature or biology of the child. It may mark the transition from being in the womb to being outside of the womb, but again that describes an accident of the child much along the lines of the day before the ten-year-old child's birthday when he was nine. It did not change the substance of the being. These are realities that are glossed over. As such it hampers Ms. Filipovic's argumentation and shows the glaring weakness of the argument.

Ultimately, her idea of autonomy, as mentioned above, is more akin to a reality where the strong can will their power over the weak. For all her posturing that men will control women when it comes to pro-life laws, she is the one advocating for the strong over the weak. Certainly, our legal system does not encourage this sort of activity unless one resides in a state where abortion is permissible. The law frowns upon the idea that the strong should have power over the weak. Ms. Filipovic seems to also forget the fact that laws already exist that prohibit the abuse of women. No man, under the law, has the right to beat his wife and if caught he is likely to be charged and prosecuted in any state. Some states have even taken the extra step to ensure that women cannot be coerced into abortions by threats of physical, financial, or emotional harm. Again, these are laws that she fails to mention within her argumentation. As such, to go to a true idea of freedom, no one is free to unjustly harm the other. To unjustly harm the other is not a practice of freedom because it is not directed to the good of the self or the other. In some ways, former President Bush may have said it best when signing the Texas Parental Notification Act into law when he was still governor, "I believe that life is valuable, even when it is unwanted, even when it is physically imperfect. I believe our society has a responsibility to defend the vulnerable and the weak. And I believe our nation should set a goal: that unborn children should be welcomed in life and protected in law. This is the ideal: a generous society that values every life."^{xii} Why should people welcome every human life? Because every human life is inherently good since human beings have the capacity to know and do good. Ms. Filipovic simply does not hold the view that every human life is good. In fact, it would seem that the goodness of the unborn depends on the woman's will to determine if she wants the child. Or, in the case of IVF, whether the parents want them or not. It comes down to the will and in this case, it is the will that determines the goodness or not. If at any point the mother decides not to want the unborn child anymore, then it is simply no longer a good in Ms. Filipovic's philosophy.

Reality informs mankind that true freedom simply does not encompass the ability to murder at will. Ultimately, since Ms. Filipovic has such a distorted view of rights and freedom, she has a distorted vision of the law itself. Take for example her quote regarding IVF mentioned earlier. She states, "But they are also not born children. That doesn't make them worthless. It does make them a different, very early form of human life. And the law should reflect that."^{xiii} Also, take into consideration again the following, "And so it's no wonder that the anti-abortion movement is going to legal bat for these abusers, as they write abortion laws without rape exceptions and use the law not to protect children, but to punish women."^{xiv} She places a hefty charge on the pro-life movement by accusing them of making laws

for the abusers. But is this the case and furthermore does her analysis of how the law should reflect on the IVF embryonic child hold up?

To answer this, one must go back to a fundamental understanding of what law is. Again, one can look to Aquinas for direction as he defines law simply as, “Thus from the four preceding articles, the definition of law may be gathered; and it is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”^{xv} Law for Aquinas encompasses the Eternal Law, the Divine Law, the Natural Law, and Human Law. For purposes of brevity, this article will briefly assume that the reader understands how the Natural Law and Human Law are interconnected. What can be said is Ms. Filipovic does not hold to this theory. In contrast, she holds more of a legal positivist view since she places so much emphasis on the will of the person over the moral duty of the person.

Since man is a rational and social creature, and since mankind can understand their moral duties, human laws are meant to reflect that reality. Human laws are meant to be congruent with human nature and help mankind act according to his human nature. Law is meant to help man to act virtuously. So, for example, laws that prohibit the physical abuse of another would be a way to stifle the urge to act contrary to the virtue of temperance. Furthermore, it would also help one act justly to the other since the person is giving their due to the other by not harming them, even if it is a tense situation.

While the law is meant to help people achieve some level of virtue, Aquinas is well aware of the fact that sometimes people only behave according to the law because of fear of the consequence, “It is not always through perfect goodness of virtue that one obeys the law, but sometimes it is through fear of punishment, and sometimes from the mere dictates of reason, which is a beginning of virtue, as stated above (I-II:63:1).”^{xvi} While it is true that even at times, fear does not always stop a criminal from doing a criminal act, the truth of the matter is that it is clear that most people follow the law. Even as Aquinas notes, this fear, or even the smallest idea that one could get into trouble is the beginning of virtue. It is also a reminder that those who are prone to vice may fear the consequences of the law once caught.

Here is the stark contrast between Aquinas and Filipovic. While she may agree that laws should be enforceable, she seems to forget, or willfully ignores, the reality of the connection between morality and the law. As stated above she tends towards legal positivism, as a result, she must deal with the logical problems that arise within her philosophy. As such, she does not seem to grasp what legalized abortion on demand does towards the virtue of a nation. When legalized, abortion directs the nation towards vicious behavior. The law, as a teacher in that instance, tells the community that not all human life is to be respected. As a result, if some human life can be abused with impunity, why not all human life? If one can legally kill another in order to continue with their way of life, then why can't they just cause harm to anyone who might affect the way they live? It is, after all, a version of the strong willing their power over the weak. Legalized abortion has not made any abortionists or abortion advocates a symbol of virtue. Quite the opposite. It has created an environment where advocates and abortionists do not even want to follow the simplest of pro-life laws such as clinic regulations. It has created an environment where Kermit Gosnell was able to get away with the abuse of women, in a variety of forms, for years in Pennsylvania. Want to know how vicious the abortion industry is? One may merely read *Lime 5* by Mark Crutcher or Abby Johnson's *Unplanned*. The promotion of violence under the law only makes a nation indifferent to violence.

The truth is, Ms. Filipovic has an oppressive view of the law. As such, she completely misunderstands what it is, likewise so does the media. Pundits profusely argue in favor of abortion. Abortion was never a right. It is not meant to be protected under the law. This is why Associate Supreme Court Justice Clarence Thomas said, "That 50 years have passed since Roe and abortion advocates still cannot coherently articulate the right (or rights) at stake proves the obvious: The right to abortion is ultimately a policy goal in desperate search of a constitutional justification."^{xvii} To get what they want they are willing to spread misinformation. As mentioned, Dr. Michael New easily debunked the study within days of its publication. Did the mainstream media or the abortion pundits stop the misinformation after the publication of Dr. New's article? Of course not. They merely ignored it because it blew up their narrative. In this case, if there can be a conclusion drawn about the habits that either become virtues or vice, one can easily see that those who continually promote a vice like abortion are willing to continue to spread more misinformation, which is simply another vice, in order to get what they want. Their pontifications regarding what should be law, in all honesty, should be ignored by reasonable people since they refuse to act reasonably. When one consistently promotes vice as a virtue, they simply do not have a firm grasp of human nature. In turn, it corrupts their view of freedom and the law.

-
- ⁱ Wallace, Maeve, et al, “States’ Abortion Laws Associated with Intimate Partner Violence – Related Homicide of Women and Girls in the US, 2014-20,” *Health Affairs*, Vol. 43, No. 5, May 2024.
- ⁱⁱ New, Michael J., “No, Pro-Life Laws Do Not Increase Intimate-Partner Violence,” *National Review*, May 21, 2024.
- ⁱⁱⁱ Filipovic, Jill, “Abortion Bans are Empowering Abusive Men – And Prominent ‘Pro-Life’ Activists are Representing Them,” *Ms.*, May 8, 2024.
- ^{iv} Ibid.
- ^v See Texas Health and Safety Code Chapter 170a, Section 170a.001, subsection 5, <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.170A.htm>, retrieved on August 5, 2024.
- ^{vi} This law passed in 2003.
- ^{vii} Filipovic, Jill, “The Anti-Abortion Movement Is Coming for Fertility Treatments,” *Ms.*, February 20, 2024.
- ^{viii} Ibid.
- ^{ix} Aquinas, Thomas, *Summa Theologica*, I, Q. 29, A. 1.
- ^x Filipovic, Jill, “A Man’s Right to Choose,” *Substack*, November 9, 2021, <https://jill.substack.com/p/a-mans-right-to-choose>, retrieved on August 6, 2024.
- ^{xi} See Kral, Joe, “Bodily Autonomy Doesn’t Justify Killing Babies in Abortion,” *LifeNews.com*, October 22, 2022.
- ^{xii} Please see <https://texasrighttolife.com/pro-life-quotes-4/>.
- ^{xiii} Filipovic, Jill, “The Anti-Abortion Movement Is Coming for Fertility Treatments,” *Ms.*, February 20, 2024.
- ^{xiv} Filipovic, Jill, “Abortion Bans are Empowering Abusive Men – And Prominent ‘Pro-Life’ Activists are Representing Them,” *Ms.*, May 8, 2024.
- ^{xv} Aquinas, Thomas, *Summa Theologica*, I-II, Q. 90, A. 4.
- ^{xvi} Aquinas, Thomas, *Summa Theologica*, I-II, Q. 92, A. 1.
- ^{xvii} *Dobbs v Jackson Women’s Health Organization*, No. 19 – 1392, 597 US ____ (2022), Thomas, J. concurring at page 5.