



Anna Mycek-Wodecki

The Facts of Life

by Thomas Fleming

*"Birth, copulation, and death.
That's all the facts,
when you come to brass tacks."*

Eliot's three facts of natural life have always been circumscribed with such custom and ceremony as to become social and cultural facts. Birth, copulation, and death may be virtually the same everywhere, when you come to brass tacks, but being born, getting married, and dying are experiences that vary from culture to culture and more resemble forms of art than facts of life. There are some societies in which expectant fathers experience the pangs of birth and many more in which men regularly name their day of death.

The facts of life are everywhere regulated by custom and law, but the regulatory agency is typically the force of precedent and the pressure of shame rather than the policeman's club or the judge's gavel. Human societies have always taken an interest in marriage, but the paraphernalia of licenses and permits are an outgrowth of the church's moral authority, transmogrified by state bureaucracy. The medieval church specified within what degrees of kinship who could marry whom and gave or denied last rites and Christian burial. In the later Middle Ages the church went so far as to sanctify marriages that had been entered into without the consent of the parents of both parties. While at first sight this benevolent indulgence seems to extend the sphere of personal autonomy and individual liberty, the real effect was to strengthen the hand of the ecclesiastical hierarchy at the expense of families.

One of Martin Luther's first orders of business was to reestablish the family as the most honorable and privileged social institution. Luther not only compelled his clergy to undergo the rigors of marriage; he also attempted—without complete success—to restore the parental veto on their

children's marriages. But where the church was relaxing its power, secular authority was already picking up the slack, and although it is difficult not to agree with Luther's attack on the newly acquired privileges of the church, one of the long-term effects of the Reformation was to transfer social authority from clergymen to administrators.

In a unified Christian society, the moral and social authority of the church makes a great deal of sense, even when—as in the years preceding the Reformation—it is most subject to abuse. But in a secular and pluralist society of the sort imagined by American propagandists, such moral regulation becomes a powerful weapon of state despotism. The state's moral authority is all the more dangerous, because it is the most wholesome and religious elements that demand laws on divorce, abortion, and euthanasia. At the same time as churches are fighting off the government's concerted attack on religious freedom, religious people are campaigning for constitutional amendments on school prayer and the "right to life."

The ethical and political confusion surrounding these issues is nowhere more evident than in recent Supreme Court rulings on abortion and euthanasia. Upholding parental consent for abortion in Minnesota and Ohio, while at the same time upholding Missouri's refusal to allow a young woman to die, might seem to reflect a consistent states' rights outlook, but the Rehnquist court—any more than the Burger court or the Warren court—is not a supporter of states' rights except in cases where a decision strengthens the hand either of the Court itself or of government in general.

In both cases the best thing the Court could do is take

itself out of the picture by declaring itself—and its predecessors—incompetent to approve or condemn social regulations that are within the purview of state governments. At times Justice Scalia seems to be alone in understanding that the Court is limited in the good it can seek to accomplish. In his concurrent opinion on the parental consent decision, Scalia reviewed the confusing course of judicial reasoning on abortion, concluding that “the tools for this job are not to be found in the lawyer’s—and hence not the judge’s” toolbox. I continue to dissent from this enterprise of devising an Abortion Code, and from the illusion that we have authority to do so.”

Justice Scalia’s scruples may have more to do with his theology than with judicial restraint, but it is a good sign that he also insisted in the Cruzan “right to die” case that “the Federal Courts have no business in this field.” We can only hope that his skepticism will spread to the other “conservatives” on the Court. The left has no monopoly on judicial activism (Chief Justice Rehnquist has been almost as zealous in the service of government as Earl Warren), and while Rehnquist’s political views are vastly more wholesome than his two predecessors, he ought to recollect, from time to time, that he is not a legislative or executive official. If the justices wish to govern Missouri or Minnesota, let them resign their positions and repair to the hinterland where they can run for office with all the tricks of honest chicanery for which American politics is celebrated.

The debate over abortion and euthanasia has been cast in the predictable form of conflicting rights: the right to die vs. the right to life in Missouri, where the parents of Nancy Cruzan—lying hopelessly in a coma—have decided to put an end to the medical profession’s arrogation of the power of life and death; and in the Minnesota and Ohio parental consent cases, a woman’s right to an abortion vs. the parents’ rights vs. the rights of the unborn. However, neither ruling took much account of the family per se as a basic social institution. For the Court, it is individuals that matter, and when a person is incapable of making rational decisions (because of age or condition), responsibility may be delegated to family members or friends. The contested point in Missouri was not over who had the power—state or family—to make the decision to cut off life support, but over how explicitly Miss Cruzan had stated her wishes. (Even where patients have made their intentions plain, they may still be kept alive artificially, as in the Edward Winter case commented on in the *July Chronicles*.) In the parental consent decisions a great deal of time has been wasted—as Justice Scalia pointed out—in discussing whether it was possible or preferable, where a pregnant minor’s parents were divorced, to require two-parent as opposed to one-parent notification.

But while the family is a legal institution, it cannot be made or unmade by law. That responsibility lies in the hands of nature, which compels us to mate and rear children, and of God, who has given us clear instructions in Scripture and in the teachings of the church. A friend, no matter how dear, is not the same thing as a parent, and while it might be useful to permit us in some cases to delegate a life-and-death decision to some trusted friend, the presumptive human authority must always reside in the family, the ultimate basis both for human society and for government.

What is at stake in both these cases is really family autonomy. Who better than family can decide on a question like abortion or the removal of life support? Judges? Social workers? Policemen? In fact, neither the Minnesota nor Ohio laws go far enough: neither actually gives families an absolute veto power over abortions; they only require parental notification, and even then, it is possible to get around even this minimal requirement, if a girl can show some plausible reason why her parents should not be informed.

The main question facing the Court is not the sanctity of life or individual rights but the liberty of the family to make its own decisions without interference. A similar point lies at the heart of the cases of parents who, out of religious scruples, refuse to seek professional medical attention for their sick children. No one would want to countenance child neglect, but no one in his right mind would want to turn over life-and-death decisions to the American Medical Association. What are the odds, today, of surviving to 70 for people who don’t go to doctors as opposed to people who do? In individual cases, of course, physicians save countless lives, but if one can believe the physicians themselves, a large proportion of life-threatening operations performed are absolutely unnecessary. We do know that when doctors and hospitals go on strike, the death rate falls.

Still, what if it could be established that the child mortality rate is much higher among religious groups that eschew medical treatment? One study published in the *Journal of the American Medical Association* (September 22-29, 1989) compared Christian Science college graduates with a control group. The authors concluded that Christian Scientists do, indeed, have a lower life expectancy and, what is worse, die from cancer at a rate that is twice the national average. Still, a man’s health is his own business. As a general principle, however, it would be preferable to attack the problem directly by discouraging the spread of religions that sacrifice children. The Romans outlawed the Druids, because they practiced human sacrifice, and it is time for these United States to do something about Santeria. If—and I do say if—a plausible case can be made to include Christian Science or the Jehovah’s Witnesses, then it is better to outlaw a religious sect than to allow the state to intrude further into the family.

Family autonomy is the only solid foundation for a free society, and the status of the family as a primary social institution was an established fact both of ancient law and of the major philosophical systems of antiquity and the Middle Ages. In America, these ancient views of the family, already embedded in the Common Law, took on new life as this continent was settled by small household groups that constituted virtually independent republics.

The social history of America, as it has been written by professional historians, has concentrated far too much on the East, particularly the Northeast. In fact it has been the unsettled and half-settled areas of the frontier, the backcountry, and the backwaters of Middle America that have determined the national character. And this story—like so much social history—has been better told in fiction and memoirs than in monographs and dissertations. To get a flavor of what life was like for the free American families, you can turn to writers like Ole Rølvaag and Willa Cather,

or to the works of a redoubtable mother-daughter team of Laura Ingalls Wilder and Rose Wilder Lane.

Free Land is the title of a Rose Wilder Lane novel dedicated to the American farmers who pulled up stakes and took advantage of the western lands made available under Homestead legislation. The title is richly suggestive. There was nothing “free” about land that men and women earned by the sweat of their brow, and Mrs. Lane drew upon the memory of her father, Almanzo Wilder, for this portrayal of grinding poverty, blistering drought, and blizzards that could be more devastating to human life than a tornado or major hurricane. But in a deeper sense, these prairie lands were free, because the families who settled them were free. No one knew this better than Laura’s daughter Rose, who moved from the farm to the big city and who in her career as journalist went from being a fashionable leftist to a life of protest as an anti-government, anti-war, anti-tax anarcho-libertarian.

Reading the firsthand accounts of the families who settled the frontier, “the land vaguely realizing westward,” I am always struck not so much by the hardship as by the resilience of the settlers. Years ago Robert Hine (in *Community on the Frontier*) showed with what determination the women, when there were women, set about establishing the norms of family life under the most adverse conditions. Men were the leaders and organizers, but women were indispensable both for their labors and because they conveyed, in their very persons, the lares and penates of domestic life and human society. Sarah Royce observed that the rough miners of California were aware of how deeply they had sunk into barbarism: “Even in their intercourse with each other, they often alluded to this feeling, and in the presence of women, then so unusual, most of them showed it in a very marked manner.”

In heading west into a country without law, many of the settlers apparently were afraid of encountering the anarchy and violence that has been portrayed in fiction, film, and television in our own century. John Mack Faragher (*Women and Men on the Overland Trail*) quotes one woman pioneer’s realization that “when we set foot on the right bank of the Missouri River we were outside the pale of civil law.” But, as Faragher points out, the threat of anarchy rarely materialized. Settlers quickly organized themselves either into wagon trains or, even more frequently, into parties of kinfolk. Fights there were, as there always are when people—many of them previously strangers—are put under severe physical and moral strain, but order did not break down in the absence of official constraints. Far from it.

Then, as now, it is not police and courts that keep people from killing and robbing each other. Wherever an extensive police force is required, it is a sign of a social dissolution so hopeless that no penal system can prevail against it. In my neighborhood, you hardly need police, and where they are needed—in the projects of Washington, New York, and Chicago—the police are virtually powerless.

Read through the *Little House* books, and you will find few mentions of law or police. Even where the institutions of law and order existed in rural and frontier America, they were never the primary mechanisms of social control. Families minded their own business, quite literally, and when they had cause to quarrel with a neighbor, it was rarely

the cause of a suit or action. What government there was had no authority to interfere within households, where a father’s word was law. A man had not only legal but economic control over his wife and children down to the middle of the century, and even when the various Married Women’s Acts were passed, giving wives the right to make contracts and wills, the man of the family remained in fact the lord and master in his own home.

Feminists and men not worthy of the name like to speak of “the patriarchy” as an oppressive tyranny from which we are only just beginning to liberate ourselves. In one sense they are right. Despite the vicissitudes that male dominance has undergone in history—relatively low in imperial Rome and high in England under the Tudors and Stuarts—adult males have been in control since the days of Adam or, if you prefer, of *Homo erectus*. Feminists are also probably right in their contention that Western civilization, when compared with many savage and barbarous cultures, has been remarkably patriarchal. I say remarkably rather than uniquely, because all great civilizations have shared this quality.

While it is dangerous to compare the experiences of different peoples at different stages of their development, a brief glance at Western man’s record as patriarch is suggestive. Homer’s *Odyssey* is, to a great extent, fiction, but it does portray a society in which women like Penelope and Arete (Queen of the Phaeacians) exercise enormous influence, while in Periclean Athens women were rigidly supervised and segregated from most male activities. Contrast democratic Athens with royal and oligarchic Sparta, where the women were, proverbially, indulged to the point of license. The Republican Rome that defeated the child-murdering Carthaginians allowed household heads full enjoyment of the *patria potestas*, the power of life and death over their dependents, but the Roman law of Diocletian’s day—when most citizens had become wards of the imperial state—generously protected the rights of women and children. In our own history, that is in the history of Britain and America, it is a cliché that patriarchal power was strengthened in the 17th century and remained strong down into the Victorian era.

For those of us who think that history has lessons to teach, it would seem that patriarchal power tends to be stronger in societies that emphasize personal liberty and self-government, weaker under regimes, like Sparta and later Rome, in which the state exercises great power over private life. This should not be surprising, since the only alternative to paternal supremacy is government supremacy. A man’s children, even when they are grown, could never by themselves represent a threat to his power, and the same holds true for his wife, whose “rights” have almost always been protected primarily by her male relatives—fathers, brothers, and husbands.

Today, women’s rights are the subject of legislation and judicial fiats. Whenever you hear the word “rights,” it is time to release the safety on your Browning, because you know that some politician somewhere is planning to make himself richer and more powerful at your expense. This is not a new insight. Aristotle, in his discussion of tyranny, observed that it was the habit of tyrants to champion the cause of women and social inferiors. This is not a question

of power going to the head. What all irresponsible authority fears is honest merit, the proud aristocrat, the uncompromising intellectual, the statesman who cannot be bought. Such men are dangerous and must either be eliminated in purges or else be forced to endure the constant humiliation of seeing their dependents liberated and set above them.


Among the many ironies of intellectual history is the association of the term "patriarchy" with political absolutism. This is largely due to the influence of Sir Robert Filmer, the author of *Patriarca*, a work that defended the royal prerogatives of Charles I against the rights of Parliament or people or even law. While much of Filmer's reasoning is inextricably bound to the circumstances and quarrels of his own time, there is a core of insight that retains its vitality, now that the fruit of monarchy is withered and rotted. What Filmer realized—and so few political thinkers since have grasped—is that the authority of government can never be based on consent alone, because consent always comes down to voting majorities which will assume the right to do exactly as they please with minorities.

Such assumption of power, whether it comes from a despot or a democracy, can never be legitimate, and even though Filmer went to extreme lengths in defending the royal prerogative, Charles I went to his death insisting that, as a defender of his own and the people's traditional liberties, he was "a martyr of the people." Comparing Charles' record of petty oppressions with the vast tyranny of Cromwell, it is hard to escape the conclusion that he was telling the truth. This is not to say that monarchy is a better form of government than a republic or a democracy, because political systems cannot be compared in the abstract. Most people were freer, in their private life at least, in monarchical England than they were in the oligarchic republic of Venice, and in many ways, our ancestors who fought to liberate themselves from the yoke of a half-mad king and a venal Parliament were already freer than we their descendants will ever be.

Americans did not achieve their liberties either by fighting a revolution or by making a constitution. They wrested it from an unfamiliar land and under strange skies, minding their own affairs in their own households, cooperating freely with their neighbors, and settling their own problems with little recourse to soldiery, constabulary, or judiciary. The kinfolk of Sir Robert Filmer who settled in Virginia did not transmit Sir Robert's regard for royal authority; however, they did bring with them that country gentleman's independence and self-reliance, and it is no irony that the great patriarchalist's blood flowed in the veins of many Virginians who led the American fight for independence.

The democratic habits of self-reliance and cooperation (but not communalism) were handed down from one generation of farmers and independent tradesmen to another. They also infected the Germans, Scandinavians, and other settlers of the frontier. I sometimes wonder if the real conflict in America is not so much between old stock and new stock as between the people whose families braved the wilderness and busted the sod and those whose ancestors clung to the safe apron-fringe of the continent and never sank roots into the soil of America. I know that I have more

in common with a Finlander working a dairy farm near Lake Superior than I do with an English-born banker in New York. Individuals are forgetful, but families have memories. What else explains the peculiarly American philosophy of Josiah Royce, with its concern both for individualism and for local community and provincialism? I was never able to appreciate Royce until I looked into his mother Sarah's account of her experiences as a pioneer.

If you really want to understand America as it once was and might, impossibly, be again, go visit, sometime, the little towns of Missouri and Wisconsin. Get off the interstate and drive, as we did last summer, to De Smet, South Dakota, a town named in honor of the heroic Belgian Jesuit who missionized the Plains Indians. There you will find the simple relics of the Ingalls family, whose period of residence there Laura in later years referred to as "these happy golden years." Consider the lives of these decent plain folk who spent their life in labor without asking or expecting anything from government, and you will begin to understand why Rose Wilder turned to anarchism as the only sensible response to the mess we have allowed our masters to make of this country. 

Mussels

by William M. Galbraith

There were those times the sea sighed down.
The rocks were thickly blossomed and shone
still wet with the clones of clustered shells
rooted with hairy feet and full of smells
of deep-krilled brine and brined flesh.
The sea-salt stir . . . There was the thresh,
the surge, the scurry, the mouths, the frilled sperm
that flustered out, a wash of amazing worm—
a spew of toothy children, voyagers
that early once, that ride the tide's course
as if intention caught a minnow's tail
and rode it home, part of the vast exhale
of that astonishing womb. The serried ranks
stood shoulder tight along the ocean's banks.
You'd think so many could be heard, the click
of opening and closing, the soft suck
of their breathing; or could they cry the knife
that prized them up, a pearl-crustled life,
to bait another, dangled on the green wave . . .
The singleness of death . . . Enormousness can save
the hurt of that torn valve and the yawn
of fishes' mouths eat small of such a spawn.