



# Life Matters Journal

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## The Promise and Pitfalls of the International Court of Justice Judgment on Gaza

A Stalemate Is the Best Option:  
The Future of the Ukraine War

"All My Son Knew Was Love": Parents Who Carry Terminally Ill Children to Term

# LETTER FROM THE EDITOR

Dear Reader,

This April issue of *Life Matters Journal* truly illustrates the range of the Consistent Life Ethic. As our staff writers cover everything from the Israeli-Palestinian conflict, to abortion, to the death penalty, to mass shootings, I am reminded of our interconnectedness and the responsibility we bear towards one another.



In these pages, you'll find John Whitehead analyzing the complexity of the International Court of Justice judgment on Gaza and the ongoing Ukraine War; Sophie Trist bringing attention to the Biden administration's hypocrisy on the death penalty; Sarah Terzo sharing powerful narratives of parents who choose to carry terminally ill children to term, offering profound insights into love, resilience, and the sanctity of life; and finally, Jack Champagne covering the case of a school shooter whose mother was charged with involuntary manslaughter.

Each of these topics underscores the intricate web of relationships that bind us together. In the face of war, we recognize the collective duty to seek peace and protect vulnerable populations. The debate surrounding the death penalty forces us to reflect on what it means to heal a community and prevent future violence. Similarly, mass shootings compel us to confront societal shortcomings and remind us of our responsibility to care for one another. And in the face of abortion, the interconnectedness of human beings is brought into sharp clarity as we reflect on the relationship between parents and their young children. If you take away anything from this issue of *Life Matters Journal*, I hope it is this: we need each other, and we need to protect one another.

For peace and life,

**Maria Oswalt**

This journal is dedicated to the aborted, the bombed, the executed, the euthanized, the abused, the raped, and all other victims of violence, whether that violence is legal or illegal.

We have been told by our society and our culture wars that those of us who oppose these acts of violence must be divided. We have been told to take a lukewarm, halfway attitude toward the victims of violence. We have been told to embrace some with love while endorsing the killing of others.

We reject that conventional attitude, whether it's called Left or Right, and instead embrace a consistent ethic of life toward all victims of violence. We are *Life Matters Journal*, and we are here because politics kills.

#### Disclaimer

The views presented in this journal do not necessarily represent the views of all members, contributors, or donors. We exist to present a forum for discussion within the Consistent Life Ethic, to promote discourse and present an opportunity for peer-review and dialogue.

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# Life Matters Journal

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# The Promise and Pitfalls of the International Court of Justice Judgment on Gaza

By John Whitehead

The International Court of Justice made a significant ruling on the Gaza war earlier this year. The ruling was in response to an appeal from South Africa to judge Israeli conduct in Gaza as violating the international Convention on the Prevention and Punishment of the Crime of Genocide. The South African appeal also urged the Court to order Israel to stop its military campaign in Gaza.<sup>1</sup>

The Court issued its preliminary ruling on January 26. While the ruling reached no conclusion on whether Israel had violated the Genocide Convention — the Court will likely take years to decide that point — it did order Israel to prevent further killing or other harm to Palestinians in Gaza.<sup>2</sup>

This ruling is a notable step forward for efforts to end the Gaza war. However, peace activists should be careful not to overestimate its importance. We also should not over-emphasize the specific charge of genocide at the expense of a more general concern for protecting Palestinian lives.

## The Genocide Convention and the Court's Judgment

The Convention on the Prevention and Punishment of the Crime of Genocide was approved by the United Nations General Assembly in 1948. To date, 153 countries, including Israel, have adopted the Convention.<sup>3</sup>

The Convention makes genocide a crime in international law. Genocide, as defined in the Convention, consists of one or more of the following acts:

1. Killing members of a national, ethnic, religious, or racial group
2. Causing serious bodily or mental harm to members of the group
3. Deliberately inflicting on the group conditions of life

calculated to bring about its physical destruction in whole or in part

4. Imposing measures intended to prevent births within the group

5. Forcibly transferring children of the group to another group

These acts can constitute genocide if they are “committed with intent to destroy, in whole or in part” the targeted group (Genocide Convention, Articles I-II).<sup>4</sup>

The Convention obliges states that have adopted it “to prevent and to punish” the crime of genocide and allows them to appeal to the United Nations to prevent genocide. Disputes among states about applications of the Convention may be submitted to the International Court of Justice (Genocide Convention, Articles I, VIII-IX).<sup>5</sup>

This was the legal context in which South Africa made its appeal to the Court. South Africa alleged Israel had violated its obligations under the Genocide Convention and must cease all actions that could kill Palestinians, cause serious bodily or mental harm to Palestinians, or inflict on Palestinians conditions meant to destroy them in whole or in part. More specifically, South Africa called on Israel to “immediately suspend its military operations in and against Gaza.”<sup>6</sup>

Israel, for its part, disputed South Africa’s appeal both on technical legal grounds and because the intent to destroy Palestinians in whole or in part has not been proven. Israeli representatives claimed attempts to mitigate civilian harm and to enable humanitarian aid to reach Gaza show no such intent is present. Israel called on the Court to reject South Africa’s request for an end to the Gaza war.<sup>7</sup>

The Court, in its January 26 judgment, reviewed various relevant legal issues, the current humanitarian situation in Gaza, and

statements by Israeli officials such as Defense Minister Yoav Gallant that dehumanize Palestinians and seem to promise an indiscriminate military campaign.<sup>8</sup>

The judgment then stated, in a crucial passage,

In the Court's view, the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts. . . and the right of South Africa to seek Israel's compliance with the latter's obligations under the Convention.<sup>9</sup>

As noted above, the Court was not yet making any judgment about whether Israel had violated the Genocide Convention. Rather the Court was essentially saying that claims of such violations were plausible enough to justify provisional measures to protect Palestinians.

Given this and the urgent humanitarian situation in Gaza, the Court provisionally ordered Israel to "take all measures within its power to prevent the commission" of acts against Palestinians in Gaza prohibited under the Convention: killing, causing serious harm, inflicting conditions meant to cause physical destruction, and trying to prevent births. The Court also ordered Israel to preserve evidence relevant to the ongoing case to determine genocide in Gaza.<sup>10</sup>

This judgment has drawn varying reactions. Riad Malki, the Palestinian Authority foreign minister, stated the judgment meant "States now have clear legal obligations to stop Israel's genocidal war on the Palestinian people in Gaza and to make sure that they are not complicit." Israeli Prime Minister Benjamin Netanyahu stated, "The very notion that Israel is perpetrating genocide is not only false, it is outrageous, and the court's willingness to discuss it is a mark of shame that will last for generations."<sup>11</sup>

The US State Department issued a statement, saying, "We continue to believe that allegations of genocide are unfounded and note the court did not make a finding about genocide or call for a ceasefire in its ruling."<sup>12</sup>

## The Judgment's Benefits, Limitations, and Dangers

The Court judgment is valuable because it focuses international attention on the Gaza war and its human costs. Further, by pursuing South Africa's appeal and explicitly ordering Israel to refrain from genocidal acts, the Court is giving the Israeli government notice that it will be legally judged for its actions in Gaza.

The ongoing case may help increase global condemnation of the Gaza war and heighten pressure on Israel to end its military campaign. The case may also aid in compiling an official record of the suffering and human rights violations Palestinians have endured because of the campaign. The preliminary judgment, for example, contained powerful testimony from a UN official about how "A public health disaster is unfolding" in Gaza and "Famine is around the corner."<sup>13</sup>

Nevertheless, the judgment has limitations. A final decision about whether Israel has violated the Genocide Convention is a long way off. More importantly, the Court has no power to en-

force its judgments: Israel can and almost certainly will ignore the Court's provisional orders and will likely ignore any final Court decision that conflicts with Israeli government policy.<sup>14</sup>

The judgment also refrained from explicitly ordering Israel to stop the Gaza campaign. Arguably stopping the military campaign was implicit in the provisional order not to kill or harm Palestinians, but that is apparently not how the judgment is being interpreted. Muhammad Shehada, an activist in Gaza, commented ironically "It talks like genocide & walks like genocide. No need to stop the genocidal war though! All good?"<sup>15</sup>

The judgment also presents a danger for peace activists and others concerned with ending the Gaza war. As rhetorically powerful as the term "genocide" is, we should be careful not to become fixated on whether Israeli actions in Gaza constitute genocide.

If we over-emphasize the genocide question, we risk getting bogged down in legal and definitional quibbling about whether the Gaza war qualifies. Moreover, the resolution of the International Court of Justice case may eventually disappoint: perhaps the Court will find Israeli forces have technically not committed "genocide" in a legal sense.

The Gaza war has taken a ghastly toll: at the end of February, the Gaza Health Ministry estimated more than 30,000 people have been killed, the majority of them women and children.<sup>16</sup> The reliability of these kinds of estimates is fiercely disputed, but almost certainly huge numbers of civilians have died. The war has also caused unspeakable suffering to innumerable civilians in Gaza. Whether or not the Israeli campaign is "genocide," it is certainly unjust and deeply tragic. This is the crucial point for peace activists.

The recent Court judgment is an encouraging sign but should not distract from other efforts to stop the Gaza war. Above all, it should not distract from efforts to end support for the war from Israel's most important ally, the United States.

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# The Federal Government Seeks the Death Penalty for a Mass Shooter, Breaking President Biden’s Campaign Promise

By Sophie Trist

**D**uring his 2020 presidential campaign, President Joe Biden promised to take concrete steps to abolish the federal death penalty and to urge states to do the same.<sup>1</sup> Biden’s rhetoric gave hope to anti-death penalty and whole-life advocates that, at long last, America would catch up with the vast majority of other countries and do away with this brutal, inhumane practice.

Under Biden, the Justice Department has put a moratorium on federal executions but has done little else to support abolition.<sup>2</sup> In fact, the administration has even gone so far as to defend capital punishment in international forums. In December 2022, the UN overwhelmingly passed a resolution calling for a global moratorium on executions with a view toward abolishing the death penalty, but the United States voted against it.<sup>3</sup>

The federal government is pressing to uphold the death sentences of mass killers convicted under previous administrations, such as the Boston Marathon bomber Dzhokhar Tsarnaev.<sup>4</sup> And in January 2024, the US Department of Justice announced that it will seek the death penalty for Payton Gendron, the white supremacist who murdered ten Black people at a Buffalo grocery store.<sup>5</sup> This marks the first time the Biden administration has sought the death penalty in a new case. The White House claims that the president’s position on capital punishment hasn’t changed, but he takes no issue with the Justice Department making independent sentencing decisions on capital cases.<sup>6</sup>

The death penalty is never justice, but only vengeance. It cannot bring any of Gendron’s victims back. Furthermore, the death penalty is completely unnecessary in his case because he has already been sentenced to life imprisonment without parole after pleading guilty to state murder charges.

As I wrote in a previous blog post opposing the death penalty for Tsarnaev, the lives of mass killers are not easy to advocate for.<sup>7</sup> Payton Gendron’s hate crime is horrific beyond imagining and has shattered the life of an entire community. He absolutely deserves to spend the rest of his life in prison. But killing him by legal proceed-

ings and “approved” methods doesn’t make his murder any more justifiable than those of his ten victims. Two wrongs will never make a right.

President Biden’s passivity is enabling capital punishment to continue and even expand in America. By supporting capital punishment at the United Nations and not speaking out against executions and death sentences at home, he is ensuring that these gratuitous cruelties will continue.

I understand that President Biden feels the need to respect his Justice Department’s independence, but he could be more forceful about using his influence to work toward abolition. In the wake of President Trump’s abhorrent federal execution spree, President Biden is squandering an opportunity to take serious steps toward a restorative justice system that values every human life.

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# A Stalemate Is the Best Option: The Future of the Ukraine War

By John Whitehead

**T**he Russian invasion of Ukraine has now entered its third year. The war currently seems to be a stalemate. However, either the Russians or Ukrainians might have a breakthrough and rapidly gain ground, potentially leading to a crisis for the losing side.

The risk also remains of the war escalating into a broader conflict between Russia and NATO. Statements by officials on both sides suggest such an escalation is a serious possibility.

A just and lasting diplomatic solution to the war is currently unlikely. The best option to avoid further bloodshed and a larger conflict is to maintain the present stalemate: Ukraine should defend itself from further Russian conquest of its territory but not seek to gain back the occupied territory. The war can be tacitly understood as a “frozen conflict” that at least avoids a larger, more costly war.

## A Bloody Stand-Off

The initiative has shifted back and forth between Russia and Ukraine over the last two years. Russia threatened the Ukrainian capital Kyiv in the early months of the invasion but was forced to draw back from the capital in 2022. Ukraine achieved considerable success in September–November 2022, pushing the Russians back and retaking territory. In 2023, despite fierce fighting, including from another Ukrainian counter-offensive, the battle lines largely did not move.<sup>1</sup>

Russia still controls a swath of territory in eastern Ukraine. A

large portion of this territory, including the Crimean Peninsula, was under Russian or pro-Russian separatist control prior to Russia’s 2022 invasion of Ukraine. The Russians have to date not been able to significantly expand their modest gains in the invasion, but the Ukrainians have to date not been able to expel the Russians from their country either.<sup>2</sup>

With the frontlines moving slowly, if at all, both sides are also fighting with longer-range means. Russia continues to bomb Ukraine, while Ukraine has carried out various drone strikes or raids on Russia and Russian-held territory.<sup>3</sup>

Precisely how many people have been killed and wounded in the war is unknown. The question is a highly political one, and both Ukraine and Russia are probably not giving accurate casualty information. A plausible guess, based on various estimates, is that tens of thousands of military personnel have been killed and perhaps hundreds of thousands injured on each side. Further, the United Nations Human Rights Monitoring Mission in Ukraine has recorded, as of January 2024, 10,191 Ukrainian civilians killed and 19,139 injured (and these numbers may well be an under-estimate).<sup>4</sup> Whatever the exact numbers, the war has had a devastating toll.

## Nuclear Threats from Russia

This war that has pitted Russia against the United States and other NATO nations has always had the specter of nuclear war

looming over it. In theory, Russia would not resort to nuclear weapons to defeat Ukraine: official Russian nuclear policy is to use nuclear weapons only in response either to a nuclear attack or an attack on Russia with “conventional weapons when the very existence of the state is in jeopardy.”<sup>5</sup> Nevertheless, since the war began, Russian President Vladimir Putin and other notable Russians have made statements implicitly or explicitly suggesting nuclear weapons’ possible use.

When the invasion began, Putin warned that anyone threatening Russia “must know that Russia will respond immediately, and the consequences will be such as you have never seen in your entire history.”<sup>6</sup> Soon after, Putin claimed Russian nuclear forces were on “special combat readiness” (although whether such steps were actually taken is unclear).<sup>7</sup> Russian Foreign Minister Sergei Lavrov similarly warned in April 2022 that the conflict between Russia and the West meant the danger of nuclear war was “serious, real. And we must not underestimate it.”<sup>8</sup>

During the Ukrainian counter-offensive of fall 2022, when Russia suffered its most serious defeats, Putin seems to have expanded the parameters for when Russia might use nuclear weapons. On September 21, he said “In the event of a threat to the territorial integrity of our country and to defend Russia and our people, we will certainly make use of all weapon systems available to us. This is not a bluff.”<sup>9</sup> No longer was a nuclear attack or existential threat to Russia necessary to resort to nuclear weapons, Putin apparently was saying: general threats to Russian territory or citizens could also prompt nuclear responses.

Putin seemed to double down on this new policy on September 30. Announcing the annexation of part of eastern Ukraine, he declared that the people in the annexed regions “have become our citizens, forever” and added “We will defend our land with all the forces and resources we have.”<sup>10</sup> In the context of Russia’s battlefield setbacks, the message seemed to be that Putin would resort to nuclear weapons rather than be driven out of Ukraine altogether.<sup>11</sup>

Granted, the Russian government seemed to back away from nuclear threats later in 2022. In November, the Foreign Ministry issued a statement affirming the narrower understanding of Russian nuclear policy and emphasizing that “a nuclear war cannot be won and must never be fought.”<sup>12</sup>

Nevertheless, others continue to send alarming messages. Former Russian President Dmitry Medvedev, who currently serves as deputy secretary of Russia’s Security Council, has made various bellicose comments. For example, in July 2023, Medvedev said that if “the NATO-supported [Ukrainian] offensive turned out successful, and they took away a part of our land: then we would have to . . . use the nuclear weapon.”<sup>13</sup> In January 2024, Medvedev warned that if “thick-headed warriors” in Ukraine try to strike Russian territory with long-range missiles, such action would be “a direct and obvious basis for our use of nuclear weapons against such a state.”<sup>14</sup>

In January 2023, Vyacheslav Volodin, the chairman of Russia’s lower house of parliament, warned western policymakers against giving Ukraine weapons that could kill Russian civilians or strike

Russian territory. Such politicians “need to understand that this could end in a global tragedy that will destroy their countries,” Volodin said.<sup>15</sup>

Russian media personalities and public intellectuals have also rattled the nuclear saber. Margarita Simonyan, editor-in-chief of the RT television network, declared “Either we win in the way we consider our victory, or there will be World War III, sooner or later.”<sup>16</sup> Sergei Karaganov, a Russian think tank head, has repeatedly advocated the use or threatened use of nuclear weapons.<sup>17</sup> A 2023 report Karaganov co-authored under the auspices of the Foreign Ministry recommended openly discussing, “a possible conflict escalation” with the west, “including through political or even — in extreme cases — direct use of the nuclear factor.”<sup>18</sup>

Karaganov raised the nuclear question with Putin at an October 2023 conference. In perhaps a staged “good cop-bad cop” exchange, Karaganov asked whether Russia should be more willing to use nuclear weapons to intimidate the west. Putin demurred and, in contrast to his September 2022 statements, endorsed the official, narrow interpretation of Russian nuclear policy.<sup>19</sup>

Beyond verbal threats, Russia also adopted a more aggressive nuclear posture in December 2023, when it completed plans to station nuclear weapons in neighboring Belarus.<sup>20</sup>

## Talk of War from the West

While perhaps less aggressive, rhetoric from western nations is similarly alarming. Top officials are openly speaking of possible war with Russia. French President Emmanuel Macron raised alarms on February 26 when he suggested NATO troops might fight directly in Ukraine (the French later walked back the suggestion).<sup>21</sup> Macron’s comments are only the most recent of various worrying comments from western officials, however.

Admiral Rob Bauer, NATO’s military committee chief, said in January that NATO must “expect the unexpected” and are hedging against Russian attack by “preparing for a conflict with Russia.”<sup>22</sup>

Also in January, German Defense Minister Oscar Pistorius said “We hear threats from the Kremlin almost every day. . . so we have to take into account that Vladimir Putin might even attack a NATO country one day.” Pistorius added “Our experts expect a period of five to eight years in which [a Russian attack] could be possible.”<sup>23</sup>

NATO nations are matching such rhetoric with actions. NATO is currently engaged in Steadfast Defender 24, its largest military exercise since the Cold War. Steadfast Defender, which will continue into the spring, involves 90,000 troops from 32 nations operating across Europe to practice defense against an attacker. The exercise aims to demonstrate “NATO’s ability to defend every inch of its territory.”<sup>24</sup> Further, in a parallel move to Russia stationing nuclear weapons in Belarus, the United States is apparently planning to station nuclear weapons in the United Kingdom.<sup>25</sup>

These western statements and actions may be intended defensively, but they risk being interpreted by the Russians as a further escalation of the east-west confrontation. Predictions Russia will attack the west and preparations to prevent that may be treated as

In the context of Russia’s battlefield setbacks, the message seemed to be that Putin would resort to nuclear weapons rather than be driven out of Ukraine altogether.

provocations and thus become self-fulfilling prophecies.

## Maintaining the Stalemate

Policymakers should never completely give up on diplomacy, but given the players and stakes involved, a resolution to the Ukraine war seems unlikely anytime soon. If Putin now considers eastern Ukraine part of Russia — and thus possibly worth defending with nuclear weapons — then the Russians are unlikely to withdraw from this territory voluntarily. Ukraine, however, cannot be expected to accept the loss of its own land. Even if President Volodymyr Zelenskyy wanted to cede territory to Russia, such a concession may well be politically fatal.

If diplomacy is unlikely to resolve the conflict, seeking a military resolution would be even worse. If Ukraine achieves another great victory, as in 2022, this might provoke a Russian escalation, perhaps even the previously threatened use of nuclear weapons. If Russia achieves a great victory, then Ukraine would lose even more territory. Or, worse still, NATO, as Macron suggested, might intervene on Ukraine's behalf, finally bringing about the larger war western officials have warned of. Yet another possibility is that neither side can achieve victories and continuing to seek them will only sacrifice thousands more to a futile war.

The least bad option is to maintain the current stalemate, in which Ukraine retains control of most of its territory but Russia retains control of what it has occupied to date. Ukraine should shift to a purely defensive stance against future Russian attack. Western aid to Ukraine should be oriented toward defense and even conditioned on Ukraine taking a defensive posture.

Such an outcome would be deeply disappointing. Yet it would at least keep Ukraine independent, reduce the loss of life, and avoid a larger war. Ukrainian and western policymakers should pursue this strategy.

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# "All My Son Knew Was Love": Parents Who Carry Terminally Ill Children to Term

By Sarah Terzo

Pro-abortion activists often say that when someone is pregnant with a baby expected to die, abortion is the compassionate answer. For example, when criticizing various pro-life initiatives, Jessica Valenti wrote:

The activists that decimated abortion rights have quietly rolled out a new initiative to pressure and force American women to carry doomed pregnancies to term.

It's difficult to articulate the scale and cruelty of their vision. . .<sup>1</sup>

When pro-lifers encourage people pregnant with terminally ill babies to give birth rather than abort, are we being cruel? Not if you look at research. Study after study shows that parents of terminally ill babies who give birth do better psychologically than those who abort.

Post-abortive parents wrestle with guilt and don't have the closure of meeting their children and saying goodbye.

In a study in *The Journal of Clinical Ethics*, researchers asked parents who chose birth for dying babies if they had regrets: 97.5% percent said no.<sup>2</sup>

The researchers wrote:

Parents valued the baby as a part of their family and had opportunities to love, hold, meet, and cherish their child. . .

Although emotionally difficult, parents articulated an empowering, transformative experience. . .

Some comments from the parents include:

"All my son knew was love."

"I will always cherish the time I had with her."

"We would not trade those six hours for anything in the world."

"I got to hold my baby for an hour. . .no regrets."

"I got the chance to see her, hold her and honor her sweet life."<sup>3</sup>

Another study, in the *Journal of Prenatal and Perinatal Psychology and Health*, found similar results.

Researchers found that, "After the birth, and at the time of the baby's death, parents expressed thankfulness that they were able to spend as much time with their baby as was possible."

One woman says spending time with her baby was "wonderful" and that she was "gloriously happy" when she got to introduce her child to her loved ones. Another mother says, "I wasn't sad for hours. . .I just basked in his angel glow."

Another mother described her husband carrying their baby's casket at the funeral. She says, "He showed more strength and love and sacrifice in that moment than I have ever seen. As awful as it was, there was beauty at that moment."<sup>4</sup>

Authors of another study in the *Journal of Palliative Medicine* were "surprised to find that the majority of parents were so happy to meet their baby, even joyful and at peace, even if he/she was stillborn or died within a few hours."

They wrote:

One surprising finding was that many couples felt that their baby's birth was joyful, even if the baby was stillborn or died shortly after birth. . .We were impressed by the parents' resiliency and ability to find something positive to offer, even in the presence of their grief.

The authors noted their findings were "consistent with" the results of other studies.<sup>5</sup>

These parents grieved the loss of their children. But they found comfort in meeting and loving them. This stands in contrast to the findings of studies of women who aborted terminally ill babies.

In one, researchers wrote that women found abortion "traumatic, regardless of the prenatal test revealing the fetal impairment or stage in pregnancy in which the termination occurred."

These researchers wrote:

The strategies women used to reconcile conflicts engendered by selective termination — denying the personhood of the baby, limiting the information they sought about the baby, transferring agency for choice to others, adopting a stance of moral relativity, avoiding disclosing or selectively

disclosing the event to others — worked briefly, but the women ultimately felt as if they were betraying themselves and their babies.<sup>6</sup>

Another study in Prenatal Diagnosis compared women who aborted terminally ill children to women who carried to term.

The study found those who aborted "reported significantly more despair. . . avoidance. . .and depression than women who continued the pregnancy."

The study's authors wrote:

Pregnancy continuation was also associated with less psychiatric distress in women. . . [W]omen who continued reported significantly less despair, avoidance, and depression than women who terminated. . .

[I]tems related to guilt were significantly associated with termination in women. The active choice involved in termination does appear to increase the likelihood that guilt will be experienced, even in the case of lethal fetal anomalies.<sup>7</sup>

Australian mother Teresa Streckfuss lost two children to anencephaly, Benedict and Charlotte. Streckfuss rejected abortion and held her babies while they were still alive. She says she wouldn't trade her time with them for anything.

Saying goodbye to her children, Streckfuss says, was the most painful thing she ever endured, but also "the most beautiful."

She says of Benedict, "He cried out, made facial expressions. . .His face was so sweet; he looked just like our other children at birth. . .We marveled at how perfect he was."

Streckfuss has no guilt. She says, "Benedict spent his whole life in the arms of people who loved him; who could ask for a better life?"

After Benedict died, someone asked Streckfuss if giving birth to him had been worth it. She replied:

Oh, yes! For the chance to hold him and see him, and love him before letting him go. For the chance for our children to see that we would never stop loving them, regardless of their imperfections? For the chance to give him everything we could?<sup>8</sup>

Finally, it's always possible that doctors are wrong. Mothers have been told that their babies would die at birth, only to have them survive.

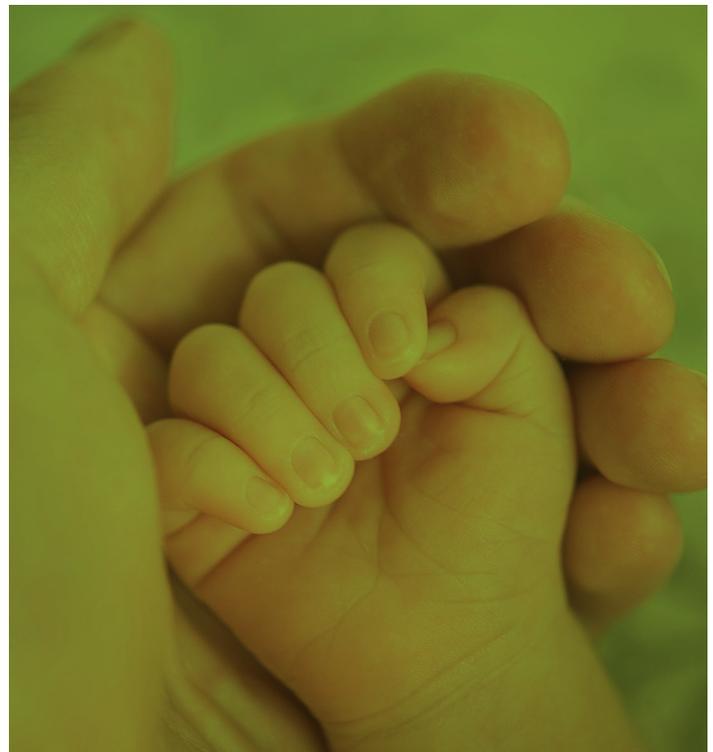
Kim Parry was told her daughter Esmay would die at birth, but she survived. Parry says, "She is beautiful — she has a beautiful personality and a great big smile. She lights up the room and makes everyone laugh."<sup>9</sup>

Gemma-Sarah McCusker was also told her daughter would die, but she's now three and, Gemma-Sarah says, "bright as a button." According to her mother, Karlie's favorite things are "Peppa Pig and cheesy pasta 'noo-noos."<sup>10</sup>

Doctors are sometimes wrong, but abortion destroys all hope.

## Notes

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# Jennifer Crumbley and the Question of Who Should Be Held Accountable in Mass Shootings

By Jack Champagne

For anyone who grew up in the '90s, the defining event of random, mass acts of gun violence was the shooting at Columbine High School in 1999. Two high schoolers — Eric Harris and Dylan Klebold — took a small arsenal into their school, killing 13 people and injuring 24 before taking their own lives. Until 2018, it was the deadliest school shooting in history, and it held a gravity that defined American culture in its attempts to explain what exactly had happened.

Popular mythology assigns blame in a multitude of directions. Harris and Klebold have been posthumously subjected to a variety of armchair diagnoses, the well-known account by journalist David Cullen suggesting, based on circumstantial evidence, that the former was a psychopath and the latter a depressive.<sup>1</sup>

A common element of Columbine lore is that the boys were avenging themselves against bullies, despite not clearly targeting any particular group or individual. Others have taken Klebold's mother to task for what is believed to be her excessively permissive and negligent parenting. Others blamed video games, rock music, alternative subcultures or whatever else is at hand.

Despite the infamous subtitle of Cullen's article ("At Last We Know Why the Columbine Killers Did It"), we do not know exactly why the Columbine shooters did what they did, and attempts to reduce the shooting to a single cause are emblematic of little more than the human need to find meaning in great tragedy. Assigning blame is a part of our grieving process.

Of course, assigning blame is also a principle of the maintenance of a social order. The great criminal law professor George P. Fletcher said of his subject that it is "a species of political and moral philosophy."<sup>2</sup> Further, assigning criminal blame is a different beast entirely from the casual blame game played around dinner tables, an act not only of declaring conduct morally blameworthy, but declaring it so worthy of censure that it justifies the use of state power to stop the conduct or punish its perpetrators. To do so is a responsibility few treat with the appropriate gravity.

To say someone is responsible for a tragedy is a fundamentally different and less profound statement than to say that someone is criminally responsible for a tragedy. The demands of fairness and government restraint place all sorts of restrictions on the assignment of criminal responsibility for that very reason.

On November 30, 2021, Ethan Crumbley began shooting into the hallways of Oxford High School in Detroit, Michigan, killing 4 people and injuring 7 more. Two years later, he was sentenced to life in prison without parole. This story is not about Ethan, however. This is about his parents, James and Jennifer Crumbley, the latter of whom was convicted of involuntary manslaughter on February 6, 2024.

The case is unique; parents being held criminally responsible for the acts of school shooters is exceedingly rare. Even Sue Klebold, widely pilloried in the public consciousness for her perceived inaction in preventing Columbine, never faced criminal charges.

The motivations for bringing the charges were complex. In part they were motivated by public outrage at the increasing frequency and deadliness of school shootings. Between Columbine and Oxford, 785 school shootings have taken place. The year of the Oxford shooting saw 188 school shootings, equal to nearly a quarter of the number that had taken place in the roughly two decades prior.<sup>3</sup> The time period since Columbine has included the Stoneman Douglas High School shooting — which dethroned Columbine as the deadliest of all time — and the 2022 Robb Elementary School shooting in Uvalde, which shattered public confidence in law enforcement as a safeguard against such shootings.

A desire for more lasting change has been coupled with an increasing demand for accountability. The facts of this case are also somewhat singular in pointing to the responsibility of the parents.

The weekend prior to the shooting, Ethan had purchased the gun he used in the shooting, and his mother Jennifer took him out to the shooting range to practice with it the next day. The day prior to the shooting, Ethan had been caught searching for ammunition online at school, to which Jennifer had responded, “You have to learn not to get caught.” The day of the shooting, Jennifer had been informed by the school about violent imagery and prose in Ethan’s math homework — in hindsight, a mental rehearsal for the shooting he would commit hours later — but she refused to intervene, ultimately leading to tragic consequences later in the day. Neither she nor her husband made any effort to secure the gun or prevent Ethan’s access to it. Jennifer’s conduct in the days leading up to the shooting was deemed sufficient to charge her with — and later convict her of — involuntary manslaughter.<sup>4</sup>

Professor Fletcher’s summation of criminal homicide encapsulates not only its jurisprudential reality but the very human reaction to it:

In the law of homicide, the focal point is neither the act nor the intent, but the fact of death. This overpowering fact is the point at which the law begins to draw the radius of liability. From this central point, the perspective is: who can be held accountable, and in what way, for the desecration of the human and divine realms?<sup>5</sup>

Involuntary manslaughter is a common law crime that throws this into sharp relief. Unlike murder, which requires evil intent, and voluntary manslaughter, which requires you to have done the act of killing yourself, involuntary manslaughter is a crime of taking or ignoring unacceptable risks to the lives of others, a definition that invites the subjectivity of the adjudicator.

There’s hardly a question that Ethan Crumbley should be held responsible for the deaths of the people he himself gunned down, but the question asked of the jury in Jennifer Crumbley’s case is how far in time and space should that responsibility extend?

By Crumbley’s own admission, she could have stopped the shooting and was prevented from doing so only by her own lack of attention to her son and ignorance of what the weapon he bought

was capable of. Her lawyers argued that bad parenting is not a crime and that Jennifer was being used as a scapegoat. Prosecutors argued that evidence that she could have foreseen and prevented the crime but didn’t is worthy of criminal blame. The latter was persuasive to a jury.

We are at a moment in history when the fatigue and disgust at having to endure the spectacle of preventable mass murder of children is causing a societal craving to hold more people responsible for these deaths. Much of the commentary around the Crumbley verdict was rooted in fears that it would “open the floodgates” of

liability, a slippery slope argument that is familiar to anyone with knowledge or experience in litigation.

But the question of whether the verdict sets a dangerous precedent must be qualified with the recognition that the verdict represents a very real and increasingly urgent moral need. A society which accepts, or gives the appearance of accepting, that school shootings are a simple fact of life is one that regards violent death as a mere mundanity. Far from a desecra-

tion, as Professor Fletcher calls it, violent death becomes merely a figure in a grim political calculation of acceptable losses and unaccountable costs.

Our willingness to ask ourselves the same questions asked of the jury in the Crumbley case will be determinative of our collective ability to say “no” to a culture that treats the violent death of children as simply another headline.

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