

„BOOK REVIEW: PILAR
ZAMBRANO AND
WILLIAM L. SAUNDERS
(EDS), UNBORN HUMAN
LIFE AND FUNDAMENTAL
RIGHTS: LEADING
CONSTITUTIONAL CASES
UNDER SCRUTINY (PETER
LANG 2019)”

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Nation has established abortion as a legal right through a truly democratic process. International comparative law studies on legalization of abortion have long suggested this notion, and the book *Unborn Human Life and Fundamental Rights: Leading constitutional cases under scrutiny*, seems to confirm it¹. The book exposes judicial activism and manipulation of legislative processes to illegitimately create and promote abortion rights in eleven Western democracies, involving European, Latin American, and common law jurisdictions: the United States, Canada, Italy, Spain, Poland, Ireland, Argentina, Chile, Costa Rica, Mexico, and Peru.

The book's co-editor, international human rights scholar William L. Saunders, Director of the M.A. in Human Rights program at The Catholic University of America², describes American law and the prenatal right to life to an international audience, explaining the consequences of the U.S. Supreme Court's ruling in *Roe v. Wade* both in the context of abortion and artificial reproductive technologies. The twelve-essay compendium is also edited by University of

¹ See book abstract and link to Peter Lang publishers in Institute for Human Ecology, Catholic University of America <<https://ihe.catholic.edu/publications/#UNBORNHUMANLIFE>> accessed 27 June 2020.

² See author's biography at Master of Arts in Human Rights, Catholic University of America <<https://ihe.catholic.edu/mahumanrights/>> accessed 27 June 2020.

Navarra's Professor of Human Rights and Political Thought, Pilar Zambrano, who describes three Argentinian constitutional cases on abortion.

A very prestigious group of legal philosophy and human rights professors are involved in this work, including Gerard V. Bradley of Notre Dame Law School, Salvatore Amato of University of Catania (Italy), Alejandro Miranda and Sebastián Contreras of University of Los Andes (Chile), and Hugo S. Ramírez García of Universidad Panamericana (Mexico). The authors describe how high courts, such as national supreme courts or constitutional tribunals of Italy, Spain, and the United States, and sometimes a single judge as in the case of Canada, had single-handedly created the concept of a legal right to abortion or outright declared its existence, contrary to existing abortion statutes.

The compendium also illustrates contrasts among jurisdictions. Notably, Polish Supreme Court Judge Aleksander Stępkowski, co-author of the essay on Poland's abortion law, describes how Poland's Constitutional Tribunal, in judgment K 26/96, affirmed a person's right to life from the moment of conception, which had previously been denied during the Nazi and Soviet regimes³. In addition, where legalized, abortion has not always been elevated to the status of a constitutional right in every country of the Western hemisphere, as indicated by Austin Institute Assistant Director Marianna Orlandi⁴. Criminal bans for some late-term abortions and feticide are classified under the laws in Western Europe and North America, creating great inconsistencies in constitutional protection of the right to life of unborn children and in the concept of human dignity.

Where legal or constitutional abortion rights have been created in jurisdictions studied in this book, the process has, without exception, avoided true democratic scrutiny and jurisprudential rules of constitutional interpretation, as pointed out by John Finnis, Professor of Law and Legal Philosophy at Oxford University. Even where democratic processes have been formally invoked—such as in the case of Ireland's referendum to repeal the constitutional recognition of the unborn child's right to life—political organizations and even seemingly independent bodies have interfered with attaining truly democratic outcomes. Former Irish Human Rights Commissioner William Binchy's essay is particularly revealing in this aspect, as it describes how the European Court of Human Rights and the U.N. Human Rights Committee exerted enormous pressure on the country to repeal its constitutional right to prenatal life, which determined the organization and formulation of the referendum itself.

The book combines natural law and positivist critiques of international abortion laws by eminent scholars and raises the bar for future publications on the subject. Although it is not a comprehensive

3 See chapter 6 of the book at p. 116.

4 M Orlandi, 'L'aborto in Occidente. Riflessioni a margine di un recente volume' <<https://l-jus.it/laborto-in-occidente-riflessioni-a-margine-di-un-recente-volume/>> accessed 27 June 2020.

treatise of legalization of abortion in the West, it sets a solid foundation for further analysis of the creation of abortion rights in international human rights law.

SŁOWA KLUCZOWE:

Prawo rzymskie, leges regiae, ciąża, poród, inspectio ventris, custodia, dziecko poczęte

KEYWORDS:

inspectio ventris, custodia, leges regiae, Roman law, pregnancy, conceived child, childbirth