Kairos and Safe Havens: The Timing and Calamity of Unwanted Birth

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ABSTRACT

It is impossible to know the number of infants killed or illegally abandoned at birth. No official reporting requirements exist, but conservative estimates claim that in the United States, 150-300 infants are killed within twenty-four hours of life and that over 100 infants are illegally abandoned. Beginning in 1999, in an effort to stem the problem of neonaticide and illegal abandonment, states began enacting laws to legalize abandonment. By 2008, all fifty states had enacted safe haven laws, which allow parents to anonymously abandon newborns by delivering them to designated providers, such as hospitals.

This article provides a practical and theoretical framework to discuss safe haven laws, which have come under attack by various adoption groups and legal scholars who claim the laws are ineffective. This article demonstrates that those unjustified attacks fail to recognize that increased usage of safe haven laws in states with strong public awareness programs has effectively reduced the number of infant deaths in those states. Additionally, this article contrasts American safe haven laws with models in other countries, including anonymous birth in France and baby flaps in Germany. Finally, this article considers the rhetoric of legalized abandonment and suggests that the rhetoric of kairos, or right-timing, offers a pragmatic and feminist lens through which to view safe havens as one effective option for women facing the crisis of unwanted pregnancy.

PROLOGUE: CELLULAR MEMORY

In an interview on NPR’s Diane Rehm show, Andrea Barrett discussed her novel, The Air We Breathe, about a tuberculosis (TB)
sanitarium in the early twentieth century. 1 Diane Rehm asked Barrett whether the novel’s story of a baby scalded by bathwater was something from Barrett’s experience. 2 Barrett explained that she was not aware when she wrote her novel, but she later learned that her great-grandmother had accidentally scalded her baby son, who died. 3

In the interview, Barrett agreed with Rehm that “it couldn’t be an accident that [she] wrote this novel.” 4 Not only was Barrett unaware of this “terrible story,” but she was also unaware that her maternal grandmother had been in a TB sanitarium. 5 In response to a listener’s question about this phenomenon of “cellular memory,” Barrett remarked that in other stories she had written, this same phenomenon of a writer’s intuition had allowed her to “tap into stories that we are not aware that we know,” but that “at some level, we do know.” 6

My research in infanticide has likewise been influenced by this phenomenon. I began researching and thinking about infanticide eight or nine years ago when I first assigned the novel Beloved, 7 about a slave-mother who tried to kill her children, in my law and literature classes. Even though students complained about the difficulty of the book (due to its nonlinear and multivocal form), I kept assigning it because I wanted to re-read it. Finally, I decided to write an article about infanticide. When that piece was published, 8 I remember thinking, “Whew! I’m glad I got that subject out of my system.” But, I hadn’t. Moreover, strangely enough, my mother was one of the biggest supporters of my research. She would send me articles about mothers who had killed their children and would ask me if I had interviewed Andrea Yates.

One day, about two years ago, we were having lunch, and my mother asked me how my “book” was coming along. I responded, “I’m taking a break from it. It’s so depressing and difficult to work

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2. Id. See also Michelle Oberman, Judging Vanessa: Norm Setting and Deviance in the Law of Motherhood, 15 WM. & MARY J. WOMEN & L., pts. I, III(c) (forthcoming 2009) (discussing recently labeled phenomenon of the “potty-training burn” in connection with interview of mother who scalded her toddler).
3. The Diane Rehm Show, supra note 1.
4. Id.
5. Id.
6. Id.
on.” She reminded me it was important work. That is when she told me that she tried to kill me and my sister. This was a story I had never heard. I had no idea, and probably the only reason she told me is that she forgot it was a secret. Nonetheless, I tried to feign indifference so she would tell me the whole story. She said that when her father died, she had a nervous breakdown. I had always known this. I was twelve and my sister was eight. What I did not know was that my mother had decided to kill herself. So, while my father was at work and my sister and I were at school, my mother, who was on leave from teaching her class of second graders, taught herself how to shoot a gun. After she became adept at hitting a target — in her bedroom, I might add — she decided that she was ready. But, she reasoned (in her mentally ill state) that if she killed herself, no one would be able to raise her children as well as she could, even though she believed my father was an excellent parent. She decided that she would have to kill us as well.

Fortunately, one night before she was able to carry out her plan, she bragged to my father that she had taught herself to shoot a gun. He did not believe her until she pointed out bullet holes in their bedroom walls. When he asked, “What were you thinking?” she told him the rest of her plans. He hid the gun, which relieved her because she thought, “Now I do not have to kill myself.” He had her hospitalized, not realizing that she was suffering from psychosis, which typically waxes and wanes, making it difficult for family members to detect. While she was hospitalized, she received shock therapy and recovered fairly quickly. She never had another psychotic episode, even after she went off her medication years later. Her experience, however, made her very sympathetic to mothers who kill their children.

Hearing her story somehow relieved me (“ah, so this is why I am obsessed with infanticide”), and it also gave me impetus to continue my research. I look at it as cellular memory’s influence on my scholarship. My desire to understand why women kill or abandon their children is consciously and unconsciously motivated. This cellular memory underlies my curiosity and drive to understand a legal and social problem by examining narratives about infanticide and neonaticide, effects of postpartum psychosis and depression, and the effectiveness and rhetoric of legalized abandonment.

9. She sometimes forgets what is secret because of emergency brain surgery several years ago that resulted in some frontal lobe deficits.
10. See Cheryl L. Meyer & Margaret G. Spinelli, Medical and Legal Dilemmas of Postpartum Psychiatric Disorders, in INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL 167, 169 (Margaret G. Spinelli ed., 2003) (noting that “[b]ecause moments of complete lucidity are followed by frightening psychosis for the new mother, the illness may go unrecognized and untreated”).
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EPilogue

INTRODUCTION

The number of infants killed or abandoned annually is minuscule in comparison to the total number of births in the United States, which has reached over four million. An estimated 150-300 neonaticides, or newborns killed within the first twenty-four hours of life, occur per year in the United States. This is considered to be a low estimate because no official reporting requirements exist, and

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many cases are never discovered.\textsuperscript{15} It is also estimated that over 100 infants are discarded (or publicly abandoned with an intent to dispose of the infant) each year.\textsuperscript{16} This is also considered to be a low estimate for the same reasons stated above,\textsuperscript{17} for example, some sources estimate there are 100 abandoned just in Texas each year.\textsuperscript{18} A 1998 national study indicated that about one third of those abandoned nationwide were found dead.\textsuperscript{19}

In an attempt to solve the problem of neonaticide and discarded newborns, states began passing laws legalizing abandonment. Texas passed the first law in 1999.\textsuperscript{20} In other states such as New York, individuals such as Tim Jaccard (a medic with the Nassau County, N.Y. police department), actively worked to pass laws legalizing abandonment.\textsuperscript{21} Today, all states have these laws — generally called safe haven laws.\textsuperscript{22} In Texas the law is called the Baby Moses law in allusion to the biblical story of Moses, who was sent down the river by his mother in an attempt to save him.\textsuperscript{23} Alaska and Nebraska were the last two states to enact safe haven legislation in 2008.\textsuperscript{24}

\begin{quotation}
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\textsuperscript{15} MEYER ET AL., supra note 13, at 46.
\textsuperscript{16} See CWLA REPORT, supra note 14, at 12 (stating that the U.S. Department of Health and Human Services tabulated 108 reports of baby abandonments in 1998). The report also discusses the confusion over different uses of the word “abandoned.” \textit{Id.} at 1. For instance, under the Abandoned Infants Assistance Act, abandoned infants are infants born in hospitals that do not go home because of drug abuse by the parents or other “child protection issues.” \textit{See id.} These newborns are also called “boarder babies.” Stephanie M. Gruss, Is Safe Haven Legislation an Efficacious Policy Response to Infant Abandonment: A Biopsychosocial Profile of the Target Population 14 (Aug. 15, 2006) (unpublished Ph.D. dissertation, Virginia Commonwealth University Center for Public Policy), available at https://digarchive.library.vcu.edu/bitstream/10156/2022/1/grusssm.phd.pdf.
\textsuperscript{17} CWLA REPORT, supra note 14, at 2.
\textsuperscript{18} Adam Pertman & Georgia Deoudes, Comment: Evan B. Donaldson Adoption Institute Response, 13 CHILD MALTREATMENT 98, 99 (2008); Baby Moses Dallas, Homepage, http://www.babymosesdallas.org/ (last visited Sept. 29, 2008) (noting that “[o]f the over 100 babies who are abandoned each year in Texas, about sixteen will be found dead”).
\textsuperscript{19} See CWLA REPORT, supra note 14, at 2 (stating that thirty-three of 108 reported abandoned babies in 1998 died).
\textsuperscript{20} Gruss, supra note 16, at 12; \textit{see also} TEX. FAM. CODE ANN. §§ 262.301-.302 (Vernon Supp. 2008); discussion infra Part II.B.
\textsuperscript{21} Thomas Fields-Meyer et al., Home Safe, PEOPLE, Mar. 17, 2003, at 95, 97.
\textsuperscript{24} See ALASKA STAT. § 11.81.500 (Westlaw through legislation passed Sept. 23, 2008) (noting an effective date of May 11, 2008); 2008 Neb. Laws 157 (noting approval of the law by the governor on Feb. 13, 2008). The fiasco that occurred after the Nebraska law was passed is discussed below. \textit{See infra} note 25.
\end{quotation}
The laws vary but generally cover infants born within seventy-two hours, one week, thirty days (the majority), sixty days, and, in one state (North Dakota), one year of abandonment. The laws provide that mothers or parents can anonymously hand newborns over to various agencies — such as fire departments, emergency medical personnel, hospitals, police departments, and in some cases, churches. Parents can act anonymously without fear of prosecution when they abandon infants who do not show signs of physical abuse. Some states have provisions for the right of the parents to re-claim the infant within a short window, and a handful of states provide that a father can seek parental rights. The legally abandoned newborns are placed for adoption relatively quickly. Moreover, many states have provisions that allow the providers to ask the parent for health and medical history.

The primary question this Article addresses is whether legalized abandonment is a solution, or maybe part of the solution, to the problem of neonaticide and abandonment of newborns. In other

25. CHILD WELFARE INFORMATION GATEWAY, INFANT SAFE HAVEN LAWS 2 & n.4 (2007), available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/safehaven.pdf; Gruss, supra note 16, at 16. Additionally, initially Nebraska had no age limit. See 2008 Neb. Laws 157 (referring only to “a child”). However, after thirty-five older children (and no infants) were relinquished, the legislature amended the law to apply only to infants up to thirty days old. See Zach Pluhacek, Teen Dropped Off in Kimball; California Mother Leaves 14-year-old in Final Moments of Old Safe Haven Law, LINCOLN J. STAR (Neb.), Nov. 23, 2008, at A, available at 2008 WLNR 22457614. Before the amendment, one father left nine of his ten children at a Nebraska safe haven, and other parents arrived from out of state to legally abandon older children. See Nicholas Riccardi, Parents’ Despair Is Left at Nebraska’s Doorstep, L.A. TIMES, Nov. 21, 2008, at 1, available at 2008 WLNR 22233580.


27. See CHILD WELFARE INFORMATION GATEWAY, supra note 25, at 4 (noting that in some states safe relinquishment is an affirmative defense to prosecution, while in the majority of states, parents are immune from prosecution).

28. See id. at 5 (noting that four states require a check of the putative father database before parental rights are terminated); Gruss, supra note 16, at 17-18 (noting efforts in some states to allow either parents generally or fathers specifically to reclaim parental rights).


30. Id. at 8, 18.
words, is legalized abandonment effective — or is it so ineffective that it merely contributes to efforts to overturn Roe v. Wade? The latter is an argument Carol Sanger develops in a 2006 Columbia Law Review article. Sanger claims that safe haven laws have not proven effective, but rather reinforce “anti-abortion sentiment, by connecting infanticide to abortion” and thus, they “may also contribute to the primary political goal of the culture of life: the recriminalization of abortion through the reversal of Roe.” She views the message of safe haven laws as encouraging a mother to unselfishly and morally abandon an unwanted newborn rather than to terminate a pregnancy. Sanger’s conclusion describing safe havens as “stealth symbolism” is couched in strong terms:

I suggest, however, that Safe Haven laws succeed on a different calculus, at the level of what we might think of as stealth symbolism. While their explicit purpose is to save infants from dumpsters, their rhetorical effect encompasses lifesaving as that term is understood within the culture of life: the salvation of unborn life. Safe Havens’ more enduring and subtle achievement is therefore less criminological than cultural: the vindication and further extension into public consciousness of the view that abortion is murder.

Work in the area of legalized abandonment — both scholarship and grass-root efforts — becomes highly charged once abortion is brought into the picture. The temptation is for pro-choice and pro-life camps to divide on the issue. Moreover, on a practical level, concerns about the effectiveness of legalized abandonment are difficult to assess because the majority of states are not required to keep track of legal abandonments.

33. Id. at 809.
34. See id. at 785, 815 (arguing that the enactment of safe haven laws resulted from an anti-abortion sentiment that makes the moral insinuation, “Is this too much to ask? No one is asking the mother to raise the baby, just not to destroy it.”).
35. Id. at 829.
36. See LAURENCE H. TRIBE, ABORTION: THE CLASH OF ABSOLUTES 8, 238 (W.W. Norton & Co. 1991) (discussing the “mutual distrust” between the pro-life and pro-choice camps); see also KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD 244 (1984) (noting that antagonism between the pro-life and pro-choice movements makes civil discourse difficult); Josephine McDonagh, Infanticide and the Nation: The Case of Caroline Beale, 32 NEW FORMATIONS 11, 16-17 (1997) (pointing out that debates surrounding infanticide “are familiar to us today from debates over abortion”).
37. See Gruss, supra note 16, at 25 (noting that only eight states require reporting to the appropriate family services agency).
Other concerns are equally difficult to assess. For instance, some adoption groups doubt whether the laws reach the targeted audience. These groups question whether women who would otherwise kill or unsafely abandon a newborn are the women who are actually using safe havens. It is difficult to answer this question because legalized abandonment is anonymous; however, such critics assert that the "right women" are not using safe havens. Some adoption groups also oppose safe haven laws because abandoned infants do not have access to their family and medical histories. Proponents of safe haven laws counter that "the logical response to this criticism is that there are no medical records for any of the babies abandoned in public places, such as trash dumpsters or alleys."

Another concern is whether safe haven laws protect the rights of fathers when infants are legally abandoned. For instance, Jeffrey


39. EVAN B. DONALDSON ADOPTION INSTITUTE, supra note 38, at 5, 7.

40. See id. at 4-5 (noting that anonymity provisions of safe haven laws make collection of data concerning whether the parents using safe havens would otherwise "unsafely desert their newborns" difficult). Other adoption organizations, such as the National Council for Adoption, support safe haven laws. See Thomas C. Atwood, Comment: National Council for Adoption's Response to the Texas Safe Haven Study, 13 CHILD MALTREATMENT 96, 97 (2008) (asserting that some of the over 1,000 newborns who have been safely relinquished under safe haven laws would have been victims of infanticide or abandonment without such laws). This article does not address the question of whether the "right women" are using safe haven laws; however, it should be noted that a recent study by Stephanie Gruss concluded that safe haven laws were targeting the profile of women who would unsafely abandon a newborn. Gruss, supra note 16, at 73.

41. See EVAN B. DONALDSON ADOPTION INSTITUTE, supra note 38, at 8 ("The anonymity provisions, coupled with the failure of almost all safe haven laws to require that vital family information be obtained, run counter to current child welfare research and practice about the importance of collecting medical and genetic histories.... Safe haven adoptees, on the other hand, are precluded from accessing such information because it does not exist."); see also GREINER, supra note 38, at 1 ("We furthermore believe that the very existence of these laws is an attack on adoptee rights and open records activism.... The laws endanger the right of identity for all adopted persons, not just those who have been abandoned as babies, and are nothing but a tactic to perpetuate the sealed records/secret adoption system.").


Parness expresses concern about the rights of genetic fathers, because typically it is genetic mothers who abandon infants to safe havens, and the mothers do not need to show any "evidence of abuse or neglect" or to show that the "lost fathers [are] . . . alleged rapists, unwilling parents, or bad parents." Parness argues that the rhetoric of safe havens is part of the "culture of motherhood" because mothers have primary control over the decision about whether to abandon their newborn — in denial of fathers’ rights.

Whereas Parness highlights the laws’ focus on motherhood, and Sanger emphasizes the laws’ focus on pro-life or culture of life views, I propose a third focus of kairos, or right-timing, in relation to safe haven laws. As explained below, kairos is a concept of the pre-Socratic philosophers, which combines right-timing and due measure or propriety. My point in this Article is that just as possible responses to unwanted pregnancy are kairic, or along a continuum, safe haven legislation itself is kairic, in the sense that safe havens should not be viewed as the only solution to the problem of concealed pregnancies and dumpster babies, but as one possible solution.

Before considering safe haven legislation in the United States, it is informative to consider options in several other countries. Accordingly, the second part of this Article will describe models and rhetorics of abandonment in England, France, and Germany. The third part turns to the United States’ model of anonymous abandonment.
and considers whether it is effective. Setting aside the question of whether safe haven laws target the intended audience, this part will explore the impact of public awareness campaigns and mandatory education requirements on the effectiveness of safe havens. The fourth part of this Article proposes a rhetoric of kairos as a way to theoretically and culturally incorporate safe havens into the array of choices available for women. This Article ends with an epilogue detailing the story of abandonment by a college woman, a story that exemplifies the need to expand women’s choices for unwanted births.

I. MODELS OF ABANDONMENT IN OTHER COUNTRIES

A. England: Reunite Mothers with Abandoned Newborns Because “An idyllic view of biological mother love underpins English attitudes”

About thirty newborns are killed in England each year, and sixty newborns are abandoned. Abandonment is illegal; however, a mother is generally not prosecuted when she abandons a newborn unless the child is found dead. Rather, when an abandoned infant is found, law enforcement sends out a general alert expressing concern for the mother’s welfare, and attempts to reunite the mother with the baby. For example, in December of 2005, mothers of two abandoned children—both left outdoors in freezing temperatures—were reunited within a short time after police investigations began. In both cases, the police expressed primary concern for the mother’s welfare. Likewise, when a woman abandoned a newborn on a

48. The question of fathers’ rights, while important, is not the focus of this Article, though it is addressed briefly in the fifth part of the Article.
49. O’Donovan, supra note 47, at 358.
51. Id.; see also O’Donovan, supra note 47, at 357 (noting that mothers who abandoned their babies in 19th century England were not necessarily prosecuted if the infants survived).
52. Storrar, supra note 50; see also O’Donovan, supra note 47, at 357 (noting that “the police view of the abandonment of infants is that this is a welfare rather than a criminal law issue”).
54. See Lakeman, supra note 53; Gardham, supra note 53 (quoting a hospital spokesperson saying, “The first priority was to get the mum to hospital, check her out and make sure she is all right. The police and social services will be working with us in the coming days to determine what the next course of action should be.”).
Birmingham doorstep in October 2007, "police repeated calls for the mother to come forward in a bid to reunite the pair." Two months later, the mother came forward. Surprisingly, most English mothers are reunited with the abandoned infant — in 1997, there were 65 abandonments, and mothers came forward in 52 cases. Mothers who come forward are given social services support if they decide to keep the child.

This model focuses on the natural bond between a mother and child. As Katherine O'Donovan explains, the English system is based on the view that no healthy mother would abandon her baby. This social construction also appears in media reports. For instance, in an article about abandoned twins, one woman, who had herself been abandoned, stated, "[t]he thought of abandoning two babies is almost too terrible to contemplate and I do find it hard to believe that women who abandon their babies do not feel any bond with them at all." This article also observes that "[t]o most mothers the idea of abandoning a child goes against their very nature." 

The view of the natural bond between the mother and child was also a primary impetus for English reform of child cruelty laws in the early twentieth century. Indeed, unlike the other countries discussed below — Germany, France, and the United States — only England has an infanticide statute, which reduces the penalty for a mother who kills her child from murder to manslaughter if she can show the killing was a result of "a postpartum mental disturbance."

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56. Id.
57. See O'Donovan, supra note 47, at 359; see also Storrar, supra, note 50 (noting that "the majority of women later respond to police appeals for them to come forward," and that of the approximately 60 abandoned babies in Britain each year, there are about 12 mothers who do not come forward). But see Gillian Bowditch, Abandoned Babies Need Us to Adopt the Old Ways, SUNDAY TIMES (U.K.), Mar. 18, 2001, available at 2001 WLNR 3181058 (indicating that two-thirds of mothers do not come forward).
58. Storrar, supra note 50; see also O'Donovan, supra note 47, at 358 (noting that "[i]nstead of a criminal charge, the public effort is to persuade the woman to learn to mother.").
59. See O'Donovan, supra note 47, at 358.
60. Id. at 358-59.
62. Id.
63. See O'Donovan, supra note 47, at 358 (noting that most prosecutions for abandonment have occurred under a 1933 child cruelty law).
64. Michelle Oberman, A Brief History of Infanticide and the Law, in INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL, supra note 10, at 3, 9.
About thirty newborns are killed in England each year. Mothers sentenced under the Infanticide Act generally serve no prison time, but rather, receive probation and counseling. Similarly, under this view of the natural mother-child bond, the mother who abandons a newborn must be ill, and needs help, not punishment. When she is well, she will naturally want to be reunited with her baby.

Because England considers its response as that of a civilized country, it views other approaches to abandonment as barbaric. For instance, one commentator described Germany’s system of legalized abandonment, in which mothers can secretly and anonymously abandon newborns, as “madness disguised as Teutonic efficiency” and characterized Germany’s model as the “logical conclusion” of a “disposable society.” Whereas some English researchers, such as Kate Adie, the BBC correspondent and author of Nobody’s Child, believe that England should implement legalized abandonment, others believe legalized abandonment is unworkable or uncivilized. As one clinical psychologist commented, “The problem with these schemes is they assume that abandoning a child is a premeditated act done by someone who is thinking rationally and I do not think

66. Oberman, supra note 64, at 9.
67. See Oberman, supra note 64, at 9 (noting that “the vast majority of women convicted of infanticide receive sentences” reduced as a result of “postpartum mental ‘disturbance’”); O’Donovan, supra note 47, at 358-59 (exploring the English belief that “[a] sane woman will not abandon her child.”). In a survey of forty-nine women convicted under the Infanticide Act from 1989-2000, “only two were jailed; the rest were given probation, supervision or hospital orders.” Maxine Frith, Scrap Outdated Infanticide Law, Stay Judges, INDEP. (U.K.), May 4, 2005, at 8, available at 2005 WLNR 6965330.
68. See O’Donovan, supra note 47, at 358-59 (noting that in 1997, fifty-two of the sixty-five abandonment cases resulted in reunion).
69. England similarly considers it barbaric to punish infanticide as murder. An example of this is the Caroline Beale case. Caroline Beale, an Englishwoman, came to New York, where she killed her newborn and then attempted to carry the baby’s body on an airplane back to Britain for burial. McDonagh, supra note 36, at 12-13. The English were outraged that she was being tried in America for murder. See id. at 16 (noting that her father accused the American system of “‘tortur[ing]’ his daughter through its ‘cruel and medieval,’ ‘barbaric and uncivilised’” laws).
70. See Bowditch, supra note 57 (claiming that “[w]e recognise barbarism when we see it and invariably it has a foreign accent”). Note that England also views it as barbaric to punish mothers for infanticide under general murder statutes. See Josephine McDonagh, Child-Murder Narratives in George Eliot’s Adam Bede: Embedded Histories and Fictional Representation, 56 NINETEENTH-CENTURY LITERATURE 228, 241 (2001) (stating that eighteenth-century England viewed such treatment as “inhumane”).
71. See Fionnuala Bourke, Fear that Drives Desperate Mums to Abandon Babies; Kate Adie Demands Change in the Law, SUNDAY MERCURY (Birmingham, U.K.), Dec. 11, 2005, at 8, available at 2005 WLNR 19939897.
72. See Carless & Ilsley, supra note 61 (expressing the pain and trauma that foundlings experience as a result of their abandonments).
that is the case. Most women who do this are desperate and their thinking is extremely irrational." 73 To date, England has not considered implementing a legalized abandonment model. 74

B. German Babyklappen: "A Matter of Necessity" 75

Germany and a handful of other European countries such as Italy, Switzerland, and Czechoslovakia, allow women to anonymously abandon infants. 76 The German model differs from that of the United States because the mother places the newborn in a babyklappe or "babyflap," an incubator built into the wall of a building (usually a hospital), which can be opened from the outside and inside. 77

Although Germany was the first European country to institute babyflaps in modern times, the concept goes back to 1198, when the first foundling home was established in Rome. 78 Medieval foundling wheels were built into the walls of foundling homes or hospitals, and women could leave babies in a hatch in the wheel. 79 They spread to Italy, France, Spain, and Portugal in the fifteenth and sixteenth

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73. Id. (quoting Dr. Lorraine Sherr).
74. See O'Donovan, supra note 47, at 360 (commenting that while there is no research on abandonment in England other than historical accounts of foundling hospitals, "[t]he evidence is that abandonment is not a matter of public or social concern and that the current legal position is considered satisfactory").
75. See id.
76. See Elisabetta Povoledo, In Rome, Foundlings Find a Haven, Hospital Welcomes Unwanted Babies, INT'L HERALD TRIB., Feb. 28, 2007, at 2, available at 2007 WLNR 3861375. Italy also allows anonymous births and Germany has debated such legislation. See Frances D'Emilio, Europe Tries to Save Babies: Abandonments Spur Innovative Drop-off Ideas, CHI. TRIB., Nov. 16, 2006, at 8, available at 2005 WLNR 23398624 (describing the options for legal abandonment); Jane Paulick, Germany Debates Ethics of Anonymous Birth, DEUTSCHE WELLE, Dec. 5, 2006, http://www.dw-world.de/dw/article/0,2144,2016368,00.html (discussing Germany's consideration of the propriety of "babyklappen"). The babyflaps were not legislatively mandated, but instituted by private organizations. See Baby-Box Death in Germany Blamed on Wrong Instruction, DPA INT'L SERVIN ENG., Jan. 9, 2008, available at 1/9/08 INTSERV 20:39:25 (Westlaw) [hereinafter Baby-Box Death]; Paulick, supra.
77. See D'Emilio, supra note 76 (noting that the incubator-like hatch is called different names in different countries, such as babyfenster ("baby window") in Switzerland and "babybox" in the Czech Republic).
79. KERTZER, supra note 78, at 103-104. The wheels were "called la ruota in Italy, le tour in France, and the roda in Portugal." Id. at 103. Additionally, "not all ... foundling homes had [wheels]." Id. at 104-05; All Things Considered (NPR radio broadcast Mar. 7, 2007), transcript available at 2007 WLNR 4343084 (Westlaw).
centuries. By the mid-nineteenth century, “more than 100,000 babies were being abandoned every year in Europe.” Infant abandonment was widespread primarily in Catholic countries, but was “largely unknown” in Protestant countries. Historian David Kertzer explains this difference as a result of the Catholic Church’s disapproval of illegitimacy: the Church wanted to remove these children from mothers “lest raising the child create a sense of tolerance toward sinful behavior and encourage other women to do the same.”

Thus, the Catholic Church, which was interested in protecting women’s honor, encouraged that illegitimate births be kept secret. Single women were under surveillance by midwives and priests, who looked for signs of pregnancy. Kertzer’s study, which focuses on Italy, describes the typical outcome of illegitimate births as follows. When a single mother gave birth, the midwife took the newborn to a foundling hospital, and if the mother could not pay the required fee for the child’s admittance, the mother had to serve as a wet nurse for other children. Indeed, in some cases by the late nineteenth century, pregnant single women who did not have families to support them were taken to deplorable maternity hospitals, or even to prisons, where the jail warden was responsible for taking the newborn and the mother (as a wet nurse) to a foundling home.

80. KERTZER, supra note 78, at 9-10.
81. Id. at 10.
82. See id. at 10, 16 (noting that the following Catholic countries had foundling homes and high numbers of abandonment: Ireland, Poland, Austria, France, Belgium, Spain, Portugal, and Italy).
83. Id. In the early to mid-eighteenth century, English reformers became concerned with the seemingly large number of abandoned infants and this led Thomas Coram to establish a foundling hospital in London. KATE ADIE, NOBODY’S CHILD 86-88 (2005). Established by royal charter in 1739, the foundling hospitals “continued into the twentieth century.” Id. at 88-90. Like other countries, a high percentage of children did not survive. Id. at 92-94. Faced with increasingly high numbers of foundlings, the English system limited admission to healthy illegitimate children of “repentant” mothers. Id. at 94-97.
84. See KERTZER, supra note 78, at 18-19.
85. See id. at 26-28 (noting that a woman’s honor was protected through sexual relations within marriage or with a promise of marriage).
86. See id. at 38-39, 50 (explaining that midwives policed women in the seventeenth and eighteenth centuries, and priests in both Italy and France policed women in the nineteenth century).
87. See id. at 40-41 (removing the child to a foundling home was required by law in Italy, but was also the practice in France; midwives were under penalty for losing their licenses if they did not comply).
88. See id. at 40-42.
89. Id. at 42-43, 45 (noting that she would usually serve for one year and could not nurse her own child).
90. See id. at 46-47 (noting the poor condition of many maternity hospitals).
91. See id. at 47-48 (describing these practices in Bologna).
Most children in foundling homes did not survive, primarily because there were not enough wet nurses. By 1875, most of the wheels in Europe closed, and "[b]y the century's end, Italy, Spain, and Greece were the only European countries with wheels still in operation." The wheels closed because the system was tremendously costly, and because reformers were outraged that legitimate infants were being abandoned in foundling wheels. According to Kertzer, some regions had greater numbers of abandoned legitimate offspring because some hospitals and foundling homes were willing to take them (whereas others monitored the wheels to protect against the abandonment of legitimate children). Thus, "[t]his willingness [by some foundling hospitals] in itself affected urban working-class culture, so that leaving a baby at the wheel began to be seen not as a misdeed or a crime, but simply as a right, a new benefit provided by the state."

While critics of safe havens find it ironic that a system that failed by the nineteenth century is being resurrected, proponents see the resurrection as a pragmatic solution to a modern problem. Thus, Germany's first babyklappe opened in Hamburg in 2000. When a baby is placed inside, it triggers an alarm after several minutes (to allow the mother time to leave undetected), and a worker in

92. See id. at 117-18, 138-39 (noting that "in many places and in many times, only a small fraction of the foundlings survived early childhood"). In France, one-quarter died in the first few days at the foundling home, and "up to three-quarters died before their first birthday." Id. at 138. Kertzer also notes that although the infant mortality rate was higher then, foundlings were twice as likely to die. Id. at 139.

93. See id. at 135. Wet nurses were needed in high numbers because milk was not pasteurized until the late nineteenth century. See id. at 45.

94. See id. at 159.

95. See id. at 69-70 (noting the costliness of the foundling system and the massive public debt of Italy).

96. See id. at 154-55, 161.

97. See id. at 155 (noting the trend to have "stricter controls on infant admission" to prevent married people from abandoning babies). Also, many wheels were closed in the late nineteenth century in order to prevent the abandonment of legitimate children because without a wheel to deposit newborns in, children had to be taken to an admissions office. See id. at 161 (noting the great impact of closing wheels in areas where there was a high rate of legitimate infant abandonment).

98. Id. at 179-80. In some regions, such as Milan and Florence, it was more common to abandon and later reclaim legitimate infants. Id. at 116-17. Kertzer points out that "early industrialization in most other societies produced no large-scale abandonment of babies." Id. at 173; see also id. at 178 (noting that "[l]egitimate newborns were being abandoned in enormous numbers in nineteenth-century Milan, but not in London or Manchester").

99. See, e.g., Nina Bernstein, Cultures of Abandonment: The New Foundling Movements in Germany and America, BERLIN J., Fall 2002, at 30, 31 (questioning why countries would revive "a solution that was resoundingly rejected as a failure in the late nineteenth century").

another part of the building retrieves the infant. The babyflaps are located away from public view, but in a well-signed area. Inside the babyflap is an envelope which informs the mother that she can retrieve the baby within eight weeks and that she can leave medical and personal information for the child. After eight weeks, the baby is placed for adoption.

Before Germany introduced babyflaps, it had about sixty abandoned infants per year (most of whom died), and about thirty-four to thirty-nine infants killed per year. It now has about 80 babyflaps. Like the United States, Germany does not keep national statistics, but news reports indicate that from 2000 to 2007, one hundred and forty-three infants were legally abandoned. In Hamburg alone, from 2000 to 2005, twenty-two babies were left in the babyflaps and seven were reclaimed by their mothers; during the same period, four infants were found illegally abandoned, and of these, three were dead. In Berlin, a babyflap was established in 2003, and over the following four years, six babies were legally abandoned.

Interestingly, Japan, which has about 200 babies deserted per year, also instituted this system based on Germany's model. However, the first child put into a Japanese "Stork's Cradle" was a 3-year-old preschooler left by his father; over the next six months, 

102. See id. (stating that drop-offs are often hidden by trees and away from security cameras); Williams, supra note 100.
103. O'Donovan, supra note 47, at 368.
105. See ADIE, supra note 83, at 306 (stating that "[i]n the 1990s, over sixty children a year were known to be abandoned in Germany"); How the 'Hatch' Works, MALAY MAIL, Sept. 19, 2005, available at 2005 WLNR 14716629 (stating that there are about 50 babies reported abandoned in Germany).
106. See O'Donovan, supra note 47, at 371 (reporting thirty-four infanticides in 1999 and thirty-nine infanticides in 2000).
107. See Baby-Box Death, supra note 76. Germany also has maternity homes for pregnant women. See O'Donovan, supra note 47, at 372 (noting Germany has established five safe houses for pregnant women).
110. D'Emilio, supra note 76.
111. Boyes, supra note 101.
113. See id. (stating that staff from a Japanese hospital were sent to Germany to study their system).
114. Justin McCurry, Three-Year-Old Dumped in Baby Hatch Stokes Row in Japan,
eight infants were legally abandoned. Apparently, a unique problem in Japan is the stigma against adoption due to Confucianism's emphasis on blood ties.

The basis for the German system is that of pragmatism: while "a woman's right to dignity, autonomy, and privacy" prevail in the balance "[against] the child's rights to [know his/her] roots and heritage," the overriding consideration is preventing illegal abandonment. The rhetoric "is not framed in terms of rights but in that of protection." For instance, the head of Hamburg's child and family welfare department said that prosecuting mothers who abandon babies was an important objective; nonetheless, the city had "'come to the conclusion that we want to do everything to save the baby.'"

Thus, in Germany, legal abandonment is not viewed as "a matter of the woman's choice or rights, but a matter of necessity."

Additionally, just as England views its model as civilized, so does Germany. Proponents of babyflaps view this model as more advanced, in contrast to other countries that do not allow legalized abandonment or anonymous birth. For example, Dr. Juergen Moysich, the chair of the group that initiated babyflaps in Hamburg, stated, "It is a scandal that in a civilized land mothers must bring their children into the world in train station toilets and bathtubs because they are too afraid to go to a hospital . . . ."

C. Anonymous Birth in France: "The mater semper certa est rule has not found acceptance in French law."

Like other European countries in the seventeenth century, France allowed public abandonment of newborns in tours, or revolving baby boxes. Saint Vincent de Paul established the first Parisian

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117. See O'Donovan, supra note 47, at 366.
118. Id. at 372.
120. O'Donovan, supra note 47, at 372.
121. See D'Emilio, supra note 76.
123. See KERTZER, supra note 78, at 104-05 (discussing the history of French tours
Foundlings Home in 1638; however, France led Europe in closing the wheels, and by the mid-nineteenth century all the country’s tours were closed because too many infants were being abandoned. What accounted for the soaring use of tours in part were Napoleonic laws prohibiting paternity suits and laws denying government assistance to single mothers. In the latter part of the nineteenth century and the early twentieth century, France again reformed its laws to allow government assistance to single mothers and to establish maternity homes for anonymous births. Then, by the middle of the twentieth century, hospitals began admitting women who wanted to give birth anonymously.

This practice of legal abandonment through anonymous birth still exists in France. It is a right considered to have been granted in 1793 by the National Convention, but was not codified until modern times. Under the practice of anonymous birth, known as accouchement sous X, women who have unwanted pregnancies may give birth secretly and anonymously in the hospital and then abandon the newborn. The mother is recorded on the birth certificate as “X,” and comparing them to Italian ruota); Odière, 2003-III Eur. Ct. H.R. at 61 (describing “an ancient tradition in France that enables newborn babies to be abandoned”).

124. See Odière, 2003-III Eur. Ct. H.R. at 61 (noting that “the tour [was] a sort of revolving crib housed in the wall of a charitable institution. The mother would place the child in the crib and ring a bell. On that signal someone on the other side of the wall would cause the tour to pivot and collect the infant.”).

125. See Nadine Lefaucheur, The French “Tradition” of Anonymous Birth: The Lines of Argument, 18 INT'L J.L. POLY & FAM. 319, 321 (stating that the last tour was officially closed by 1860).

126. Id. at 320. Assistance was available to mothers during the Revolution-era reforms in 1793. See Odière, 2003-III Eur. Ct. H.R. at 61.


129. Odière, 2003-III Eur. Ct. H.R. at 62. As noted above, Italy also allows mothers to abandon newborns through anonymous birth and Germany has debated such legislation. D'Emilio, supra note 76; see also How the 'Hatch' Works, supra note 105 (“German hospitals are increasingly allowing the option of nameless child-bearing”); Paullick, supra note 76. German hospitals allow women to give birth anonymously, but the hospitals are subject to criminal prosecution because anonymous birth laws have not yet been enacted. See O'Donovan, supra note 47, at 371 (noting the necessity for new legislation in Germany to clarify the legality of anonymous births).

130. See O'Donovan, supra note 47, at 360-61; see also Odière, 2003-III Eur. Ct. H.R. at 61-62 (noting that the tradition created by the Convention provision led to the eventual adoption of legislation); Lefaucheur, supra note 125, at 320-22 (noting that although the National Convention decreed the right to give birth anonymously, the “free delivery homes were not actually created” until later).

131. See Odière, 2003-III Eur. Ct. H.R. at 62. Unlike “boarder babies” in the United States, which remain in the hospital after birth because of their mothers’ drug use or HIV infection (and are considered “abandoned”), the French babies “born under X” are voluntarily abandoned by their mothers, who remain anonymous on the birth certificates. Id.
the child is considered "born under X."

The mother has up to one month to change her mind; after that time, the child may be placed for adoption. Identifying information about the child's origin is confidential. Today, about 600 children a year are "born under X." According to media reports, there are about fifty to one hundred cases of infanticide a year in France. In addition to anonymous birth, France also allows parents to abandon children who are less than a year old "to the Child Welfare Service and request that their identity be kept secret ... ."

Several other countries allow anonymous birth, including Italy and Luxembourg. Germany and Belgium have debated such legislation, and Hungary allows mothers to anonymously abandon newborns "in a special, unsupervised room in the hospital." As the European Court of Human Rights in Odièvre noted, "[t]he current trend in certain countries is towards the acceptance, if not of a right to give birth anonymously, then at least of a right to give birth 'discreetly.'"

One legal consequence of anonymous birth is that children are unable to discover their origins. Thus, under the French Civil Code provisions, a child born under X cannot file a maternity suit to discover his/her origins, because "there [is] no mother in the legal sense of the word." After laws were passed requiring open access to government records in 1978, adoption groups began fighting for the right to access birth information. Public debate rose to a lively level, and several government studies in the 1990s suggested the reform or abolition of anonymous birth. On one side, organizations composed of children born under X claimed that not knowing one's

132. See Lefaucheur, supra note 125, at 327-28 (discussing accouchement sous X and criticisms of this practice).
133. See id. at 322-28 (noting this time period has changed over the years).
135. According to Willenbacher, there are 1,000 per year. Barbara Willenbacher, Legal Transfer of French Traditions? German and Austrian Initiatives to Introduce Anonymous Birth, 18 INT'L J.L. POL'Y & FAM. 343, 347 (2004). In contrast, O'Donovan estimates there are 600 per year. O'Donovan, supra note 47, at 361.
138. Id. at 68.
139. See id. at 68. Austria also lifted a ban on anonymous births in 2001. See id. at 77.
140. Id. at 69.
141. Id. at 68.
142. Id. at 62.
143. See Lefaucheur, supra note 125, at 322-23.
144. See Odièvre, 2003-III Eur. Ct. H.R. at 63-64; see also Lefaucheur, supra note 125, at 323 (discussing government reports proposing reforms to the anonymous birth system).
origins caused "great psychological problems" and "moral suffering." Proponents of anonymous birth responded to the claim that not knowing one's origins caused psychological problems by reasoning that mothers might choose to have an abortion if anonymous birth were not available: "'if the child's right [to know his origins] prevails over the mother's right [to secrecy], the child will never exist; then we have to choose the mother's right.' Others, such as child psychiatrists, responded by pointing out that knowing the truth could be more painful than ignorance, and that adopted children should "renounce their search for their birth parents, just as everybody has to 'mourn' the romance that all children imagine about their 'true parents.'" Feminists viewed the anonymous birth law as a way to protect a woman's decision not to be a mother, especially when it was too late to have an abortion. Finally, other theorists supported anonymous birth based on a postmodern view of the family as socially constructed, rather than based on blood ties. Under this view, the emphasis on blood ties and knowing one's origins has the effect of stigmatizing adoptive children and children born through assisted reproduction using donor gametes, thus anonymous birth should not be a cause for concern.

145. See Lefaucheur, supra note 125, at 327.
146. See id. at 329-30 (various deputies made different arguments; the National Academy of Medicine stressed "sav[ing] children").
147. See id. at 330 (quoting Jean-Francois Mattéi, Seminar on Secrecy At the Faculty of Medicine, Marseilles, Fr. (Apr. 2000)). This was the argument made by Jean-Francois Mattéi and by some family law professors.
148. See id. at 332 (pointing out that this position was shared by disparate factions such as adoptive parents groups, academics, and politicians, and that it was articulated "by different reasons, at different levels, that are not so easy to disentangle").
149. Id. at 330.
150. See id. at 331. France allows abortions only during the first trimester of pregnancy. Almost All Abortions in France Performed in First Trimester: Almost Six in 10 to Married Women, 6 INT'L FAMILY PLANNING PERSPECTIVES 40 (1980).
151. See Lefaucheur, supra note 125, at 332; see also Susan Ayres, The Hand That Rocks the Cradle: How Children's Literature Reflects Motherhood, Identity, and International Adoption, 10 TEX. WESLEYAN L. REV. 315, 319-21 (2004) (discussing "family" as a social construct through the lens of Are You My Mother?).
152. See O'Donovan, supra note 47, at 369 (arguing that "[t]he plurality and diversity of family forms, as well as advances in medically assisted conception in the 21st century, cause us to question the notion that a 'real' parent is necessarily a biological parent"); see also id. at 373 ("The emphasis on genetic ties contained in this discourse not only stigmatizes those who cannot conform to the ideal of a 'normal family,' but it is out of touch with the myriad of family forms today.").
When the French Civil Code was amended in 2001 after considerable debate, the amendments did not abolish anonymous birth or allow abandoned children to have automatic access to information about their origins when they turned eighteen; rather, the amendments required that an anonymous birth mother be informed of the importance of knowing one’s origins and history, and that she must be given the option of leaving identifying information in a sealed envelope which the child can access when he/she turns eighteen if the mother waives her confidentiality. Anonymous mothers must also receive counseling about services available to raise their children and be encouraged to keep their children. A child born under X may request non-identifying information even if a birth mother refuses to waive confidentiality. Rhetorically, the French view is unlike the English or German view. Rather than linking motherhood with natural bonds (as does England) or viewing anonymous birth as a pragmatic solution to the problem of abandonment (as does Germany), the French emphasis is on a woman’s “rights, autonomy, and privacy.” Like German babyflaps, anonymous birth contains a pragmatic concern with saving lives; however, the emphasis of anonymous birth is on the rights of the mother. Thus, “all women enjoyed [the freedom] to decline their role as mother or to assume responsibility for the child.” In a study of X mothers, Catherine Bonnet described the women as “not only victims but also autonomous agents with rights,” and viewed their decision as a “gesture of love” because they believed adoption was best for the child.

153. Lefaucheur, supra note 125, at 325; see also Odièvre v. France, 2003-III Eur. Ct. H.R. at 51, 63 (discussing a proposal for similar changes to the law in 1998); O’Donovan, supra note 47, at 364 (discussing these reforms and the Minister for Family and Children’s stated rationale for the changes).
155. Id.
156. O’Donovan, supra note 47, at 362.
157. Odièvre, 2003-III Eur. Ct. H.R. at 76 (“[T]he system took both the mother’s and the child’s health into account and pursued a public-health objective, which, by protecting the mother’s private life, enabled the rights and freedoms of others to be preserved. It enabled the mother to benefit from proper medical facilities and the child to receive all necessary care. Furthermore, the fact that the child was taken into care as a result meant that it could be adopted without delay.”).
158. Id.
159. See O’Donovan, supra note 47, at 370 (discussing the results of the Bonnet study). O’Donovan also discusses the results of Lefaucheur’s 1999 study, which emphasized a lack of autonomy: “To Lefaucheur, it is precisely because the X women lack autonomy that they seek anonymity and the consequent adopting out of their child. For Bonnet, however, such action is a mark of choice and freedom, and is a woman’s right.” Id. at 371. O’Donovan points out that “[b]oth use the word autonomy but come up with different definitions.” Id.
This privileging of the woman’s rights can also be seen in the case of *Odière v. France*, which involved a legal challenge to anonymous births before the European Court of Human Rights. In this case, Pascale Odière, who was born under X in 1965 and placed for adoption when she was four years old, claimed the law violated her Article 8 Convention right to respect for her private and family life because it prevented her from “obtain[ing] identifying information about her natural family and [she] had thereby been prevented from finding out her personal history.” Although she had obtained non-identifying information about her parents and had learned they had two other sons, she was not able to obtain identifying information so that she could contact her natural brothers. She claimed this denied her Article 8 right to her identity and personal development.

While the Government and the Court agreed that the right to respect private life could include information about a person’s identity, the Court observed that the Article 8 rights applied to both the child and the mother: “On the one hand, people have a right to know their origins . . . . On the other hand, a woman’s interest in remaining anonymous in order to protect her health by giving birth in appropriate medical conditions cannot be denied.”

Other important interests recognized by the Court included the adoptive family’s right to privacy, the father’s and other family members’ rights to privacy, and also the government’s interest in respecting life, “a higher-ranking value guaranteed by the Convention.” The court observed that anonymous birth furthered this government

161. *Id.* at 57, 59, 70. Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that

> “Everyone has the right to respect for his private and family life [and there] shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security . . . for the protection of health or morals, or for the protection of the rights and freedoms of others.”

*Id.* at 71. See also O’Donovan, *supra* note 47, at 352 (noting that Article 8 arose in response to the efforts of the Argentinian mothers and grandmothers who fought to reestablish blood ties of the women and children who “disappeared” from 1975-1983).

162. *See Odière*, 2003-III Eur. Ct. H.R. at 72. The information she obtained indicated that her father was married to another woman and “refuse[d] to have anything to do with Pascale and . . . cannot take on this new burden.” *Id.* at 60. One of her natural brothers was born before her and one after. *Id.*

163. *Id.* at 72.

164. *See id.* at 72-73 (noting that “[m]atters of relevance to personal development include details of a person’s identity as a human being and the vital interest protected by the Convention in obtaining information necessary to discover the truth concerning important aspects of one’s personal identity, such as the identity of one’s [birth] parents”).

165. *Id.* at 79-80.

166. *Id.* at 80.
interest by protecting the mother’s health during pregnancy and avoiding illegal abandonments and abortions (especially illegal abortions).  

In upholding the anonymous birth laws, the court gave great deference to the government and concluded, in a split decision, that France had balanced the competing interests proportionately. The concurring opinion of Justice Greve reasoned that, ideally, every adopted child should learn his or her origins, however, this is not always possible, and thus, the mother’s right to anonymous birth should prevail:

[Ideally, a woman] should be able to give birth under circumstances that ensure her and her baby’s safety and make it possible for the child to know the mother’s identity, even if it is immediately adopted by a new family. When, however, a woman for whatever reason finds that this is not an option in her case . . . human rights should nonetheless militate in favour of her being able to give birth under circumstances that ensure her and her baby’s safety, even if she insists on remaining anonymous vis-à-vis the child. It would be plainly inhumane to invoke human rights to force a woman in this situation to choose between abortion or a clandestine birth . . . .

The French justification for anonymous birth can be viewed as consistent with its justification for punishing child murder. Unlike England, France has no Infanticide Act but punishes infanticide and neonaticide as murder, with sentences ranging from thirty years to life. This can be seen as consistent with the French emphasis on a woman’s autonomy and privacy — she is a responsible agent who should be given options such as abortion, adoption, and anonymous birth, but who should be held criminally responsible if she kills a

167. Id.
168. See Odièvre, 2003-III Eur. Ct. H.R. at 81 (noting that “[i]n the light not only of the diversity of practice to be found among the legal systems and traditions but also of the fact that various means are being resorted to for abandoning children, the Court concludes that States must be afforded a margin of appreciation to decide which measures are apt to ensure that the rights guaranteed by the Convention are secured to everyone within their jurisdiction”).
169. Id. at 81.
170. Id. at 89 (Greve, J., concurring).
171. See id. at 92-93. The criticism that “[i]t would be plainly inhumane” provides an illustration of the rhetoric of civilized nations, as seen above regarding Germany and England.
newborn. The case of Odiève reiterated this by rejecting the applicant's view that "giving birth anonymously was not a woman's right, but an admission of failure," and instead upholding the government's view that a woman has a right to reject her maternity.

II. EFFECTIVENESS OF LEGALIZED ABANDONMENT IN THE UNITED STATES

Of these different models ranging from prohibitions against abandonment in England, to anonymous birth in France and babyflaps in Germany, the United States most closely resembles Germany. As mentioned above, all fifty states have passed laws allowing anonymous abandonment of newborns, and most often, the legislation was spurred by a rash of neonaticides or illegal abandonments. Unlike the French impetus for anonymous birth — to preserve women's autonomy — the impetus for safe haven legislation in the United States was similar to Germany's pragmatic motivation to prevent infant deaths. However, unlike the German model, in which the mother can leave the infant in a babyflap without being seen or without having to approach another person, in the United States, the mother/parent must generally hand the infant over to a designated provider. As noted above, the laws in the United States vary concerning where the newborn can be abandoned, who can abandon the newborn, how old the newborn can be, procedures for reclaiming an abandoned newborn, and legal protections for fathers.

173. Baby-Box Death, supra note 76. Although Germany also prosecutes infanticide as murder, when it instituted babyflaps, it viewed protecting babies as the primary motivation. See O'Donovan, supra note 47, at 349; supra discussion at Part I.B. Thus, like the United States, in Germany the pragmatic emphasis was to save children, rather than to protect women's autonomy.
174. See Odiève, 2003-III Eur. Ct. H.R. at 73 (stating that the failure was "a lack of autonomy, problems related to youth, difficulties in gaining access to the job market, the isolation and financial predicament of single-parent families and domestic violence.").
175. Id. at 76, 78 (noting the French government's view that maternity is "an aspect of private life").
176. See supra notes 20-24 and accompanying text.
177. Sanger, supra note 32, at 774.
178. A few states, including Arizona, New Hampshire, and South Carolina, allow a parent to abandon their child at a church. ARIZ. REV. STAT. ANN. § 13-3623.01 (Westlaw through 48th Legislature, 2d Reg. Sess. (2008)); N.H. REV. STAT. ANN. § 132-A (Westlaw through 2009 Reg. & Special Sess.); S.C. CODE ANN. § 20-7-85 (Westlaw through 2007 legislation). Although it would be difficult to measure, an interesting question is whether the German system is more effective because it does not require the parent to approach a person, but is more completely anonymous.
In this part of the Article, I address the criticism that safe haven laws are not effective. This criticism is voiced by scholars, adoption organizations, and the media. As one reporter asked, "Is legal abandonment effective or just well-intentioned?" Others, such as Carol Sanger, might rephrase this question to ask, is legal abandonment effective or just covertly-intentioned to support pro-life campaigns to overturn Roe v. Wade?

In analyzing effectiveness, the first question that comes to mind is what do we mean by "effective?" Are the laws effective only if they prevent all illegal abandonments? Proponents of these laws claim they would be effective if they saved the life of even one newborn. That sentiment is almost impossible to disagree with — i.e., who would prefer a dead baby in a trash can? Surprisingly, critics have garnered evidence to support their claims that safe haven laws are ineffective. For example, the report by a national adoption organization, the Evan B. Donaldson Organization, concluded that the laws are ineffective. However, the conclusion relied on overall numbers of abandonment in a handful of states without breaking down the numbers into a timeframe showing incremental change. Moreover, this report was based on data collected "when only three states had safe havens," and at a time when only a short track record existed to show how a particular state's law was faring.

My argument is that a more accurate measure of effectiveness requires a longer track record, and that it might be too early, even now, to determine the effectiveness of safe haven programs instituted


182. See, e.g., Sanger, supra note 32, at 789 (observing this measure of effectiveness); Patricia Wen, 'Safe Haven' Law has Doubters, but Backers Say it is Saving Lives, BOSTON GLOBE, Oct. 31, 2004 at B1, available at 2004 WLNR 4518321 (quoting the statement of Mass. Rep. Barry R. Finegold that "'if we can save one life, the law will be worth it'").

183. EVAN B. DONALDSON ADOPTION INSTITUTE, supra note 38 at 6-7.

184. See id. at 6 (noting about 100 illegal abandonments in Texas over the past two years and only five safe abandonments and eight illegal and two safe abandonments); see also Sanger, supra note 32, at 789 (noting three abandonments at safe havens in Alabama, eighteen in Illinois, and three in South Carolina).

185. ABC Top Priority (ABC News radio broadcast Feb. 2, 2007), transcript available at 2007 WLNR 1999012; see also Jennifer R. Racine, Dangerous Place for Society and Its Troubled Young Women: A Call for an End to Newborn Safe Haven Laws in Wisconsin and Beyond, 20 WIS. WOMEN'S L.J. 243, 252-53 (2005) (extrapolating national statistics and also looking at other states to support claim that laws have not completely prevented illegal abandonments).
less than ten years ago. I also argue that a correlation exists between increased public awareness of safe havens and increased use of safe havens — an observation made by several proponents of safe haven laws. This point is illustrated by the experience of Louisiana, which enacted a safe haven law in 2000, but did not have any safe abandonments “until the state began a public awareness campaign in 2004.”

Despite the obvious need for public awareness of the laws, only a minority of state or municipal legislatures allocated any funding for implementation or public awareness efforts. Examples of states that did allocate funding include New Jersey, New York, Michigan, and California, which have spearheaded efforts to publicize safe haven laws and to study the problem of abandonment and the effectiveness of safe haven laws. In other states, such as Florida, Illinois, and Massachusetts, volunteer-based nonprofit organizations have provided training and public awareness campaigns, have collected data, and have lobbied for funding or mandatory education about safe havens.

186. See CWLA REPORT, supra note 14, at 14 (“For safe havens to be effective, people must know they exist.”); see also Carol A. Docan, She Could Have Safely and Anonymously Surrendered Her Newborn Infant Under California Law — Did She Know That?, 4 J. LEGAL ADVOC. & PRAC. 15, 24-25 (2002) (citing an example of New Jersey’s public awareness campaign to show that the law was more effective when there was a vigorous public awareness campaign). Proponents such as Dawn Geras and Tim Jaccard agree that there is a need for funding for publicity of safe havens and that effectiveness is tied to increased awareness. See Black, supra note 181; see also Buckley, supra note 180. But see Sanger, supra note 32, at 795 (pointing to “disturbing rates of infant abandonment” even in states with publicity efforts and citing Annette Appell who observed that “New Jersey, which appears to have one of the best safe haven public relation campaigns ... has had at least half as many babies abandoned in unsafe places as have been relinquished in safe havens”) (alteration in original). However, Appell’s argument was based on the first one or two years of statistics for New Jersey. See Annette R. Appell, Safe Havens to Abandon Babies, Part III: The Effects, 6(1) ADOPTION Q. 67, 67-69 (2002) [hereinafter Appell, Part III]. And, even Appell acknowledges that the laws are meaningless without public awareness efforts. See Annette R. Appell, Safe Havens to Abandon Babies, Part II: The Fit, 6(1) ADOPTION Q. 61, 65-66 (2002) [hereinafter Appell, Part II].


188. See Appell, Part II, supra note 186, at 65 (noting that “[l]ess than one half of the statutes provide for ... education”); Gruss, supra note 16, at 19-20 (counting twenty states that fund education initiatives).


190. See infra Part II.A. (discussing activities of nonprofit organizations in Illinois and Florida); see also Baby Safe Haven New England, If You Can’t Keep Your Baby, You Can Keep Your Baby Safe, http://babsafehavennewengland.com (last visited Sept. 30, 2008) (describing some of the activities of Massachusetts’s nonprofit organization). One of the most dedicated individuals has been Tim Jaccard, a New York medic who worked to pass the state’s safe haven law and started a nonprofit organization, AMT Children of Hope Foundation, which counsels women facing unwanted pregnancy, publicizes the safe haven law, and buries abandoned newborns found dead. See Bob Meadows et al., A Final Home for Forgotten Babies, PEOPLE, Mar. 27, 2006, at 139, 140.
While the following analysis shows a correlation between public awareness efforts and increased effectiveness of safe haven laws, Michelle Oberman postulates that because of the anonymity provision, we can never be completely certain whether these laws are effective.\footnote{191}{Michelle Oberman, \textit{Comment: Infant Abandonment in Texas}, 13 \textsc{Child Maltreatment} 94, 94 (2008).} Oberman makes the following observations:

A decrease in the number of infants found unsafely abandoned... could not readily be attributed to these laws without concomitant evidence that pregnant women who might otherwise have abandoned their newborns unsafely made other choices as a result of the laws. Likewise, an increase in the number of newborns relinquished to safe havens need not indicate that the laws were successful, even if accompanied by a relative decrease in the number of infants found unsafely abandoned. To know whether safe haven laws decrease unsafe infant abandonment, one must know whether the women who place their children with safe havens are those who would otherwise have abandoned them unsafely rather than those who might have placed their children via the traditional adoption system or perhaps have elected to raise them on their own. In short, one must know their secrets.\footnote{192}{\textit{Id.}; accord Pertman & Deoudes, \textit{supra} note 18, at 99 (noting that “it remains unclear whether the adults who left infants at safe havens would have otherwise abandoned them unsafely”).}

The observation that we can never be certain of whether safe havens work because we cannot know “the secrets” of mothers who abandon their newborns is related to the question about whether the right women, \textit{i.e.}, the women who would otherwise unsafely abandon or kill their newborns, are the ones using safe haven laws. This separate question of whether the safe haven laws are targeting the intended audience is outside the scope of this Article. However, a recent study has concluded that safe haven laws indeed reach the intended audience.\footnote{193}{See Gruss, \textit{supra} note 16, at 73-74 (finding similarities between profiles of women likely to abandon babies and women likely to use safe havens).} Moreover, even though we cannot know the secrets of women who safely abandon their newborns, the analysis below provides a compelling argument that the laws prove effective in states conducting aggressive public awareness campaigns.

\textbf{A. Examples of Programs Having Strong Public Awareness Efforts}

A review of several states or counties with increased public awareness efforts suggests that the laws have become increasingly
effective. Two of the states reviewed have government agencies responsible for promoting the laws; the other two states have private, nonprofit organizations responsible for promoting the laws.

1. California

Los Angeles County has been especially aggressive in studying and promoting California's law, which was enacted in 2001. The California Safely Surrendered Baby Law (or safe haven law) provides that a parent may surrender an infant who is seventy-two hours old or younger to a hospital emergency room or to a designated provider. The California law requires that an identification bracelet be placed on the infant and offered to the parent. The parent is also given a medical form to fill out (which is voluntary) and has fourteen days to reclaim the newborn.

When the California safe haven law was initially enacted, as in most other states, there was no provision for funding. Apparently, Planned Parenthood of California, which supported the California safe haven law, criticized the legislation on the ground that it lacked provisions for mandatory secondary education programs or for a public awareness campaign. After the law was enacted and newborns continued to be illegally abandoned, the Los Angeles Board of Supervisors requested recommendations about how to implement the law more effectively. Based on similar concerns, the author of the bill proposed amendments to provide funding for a "social marketing campaign." This appropriations bill, although passed practically unanimously by the legislature, was vetoed by Governor Gray Davis because approving it would have exceeded the state's budget for that year.

194. Los Angeles County includes numerous cities, and the City of Los Angeles is the county seat. See Los Angeles County Chief Executive Office, Cities Within the County of Los Angeles (2007), available at http://ceo.lacounty.gov/forms/09-10%20Cities %20Alpha.pdf.
196. Id.
198. Id.
199. See Docan, supra note 186, at 17 (providing a history of the early years after the law was passed).
200. See id. at 20.
201. Id. at 19.
202. Id. 20.
203. Id. at 22.
Subsequently, during the 2007-2008 legislative session, Governor Schwarzenegger vetoed a bill to provide $5,000,000 in funding for safe haven awareness because the bill would have extended the time period in which an infant can be abandoned from seventy-two hours to seven days. Governor Schwarzenegger feared that extending this time period would leave infants in unsafe environments for a longer period of time.

Although direct appropriations for safe haven awareness were vetoed by Governor Schwarzenegger, indirect funding for these efforts has helped build a successful marketing campaign in California. Because the state would not provide funding for publicizing the safe haven law, state agencies formed a task force to evaluate how to inform the public about the safe haven laws. Based on the results, the California Department of Social Services, which is funded with public grants, initiated a comprehensive plan to increase public awareness of California’s safe haven law. As the 2005 report to the legislature indicates, in 2003, the campaign included radio and television spots, movie theater announcements, newspaper coverage, brochures, posters, and wallet cards. Each county in California also received a support kit that included public service announcements and training materials. The 2005 report also indicates that public service announcements in 2003 “reached more than 4.5 million California households.” This marketing campaign was made possible in part by a $1,000,000 grant from the First 5 California organization and a $250,000 grant from the Children’s Trust Fund. A 2008 report by the California State Auditor recommended that the legislature amend the law to require a specific agency to administer the law and to make funding available for continuing public awareness efforts.

205. Id. Governor Schwarzenegger subsequently vetoed a third bill to extend the time period to seven days in October 2008. See Ben Aguirre, Jr., Governor Vetoes Torrico’s Latest Safe Surrender Bill, THE ARGUS (Fremont-Newark, Cal.), Oct. 1, 2008, available at 2008 WLNR 18647803.

206. Id.


209. CAL. DEPT. OF SOC. SERV., supra note 207, at 4 (discussing phase two of campaign).

210. Id. at 8.

211. Id.

212. Id.

213. Id.

214. See CAL. STATE AUDITOR, supra note 204, at 26. The report contains other recommendations regarding matters such as managing data, and it also provides an overall audit of the California safe haven law.
In addition to the statewide task force, Los Angeles County has separately focused on the issue of infant abandonment.\textsuperscript{215} The county board formed its own task force, which discovered that a broad spectrum of women abandoned infants; accordingly, it designed a public information campaign to reach a broad spectrum of groups.\textsuperscript{216} Los Angeles County has a comprehensive website, including updated statistics on abandonments, training materials, information about the law, and task force reports.\textsuperscript{217} It has also produced a three-minute video entitled \textit{Georgia's Story}, which is available on YouTube and as a link on other sites.\textsuperscript{218} \textit{Georgia's Story} dramatizes a teenager who gives birth to a baby in a subway station, and then drops the baby into a dumpster.\textsuperscript{219} The video then “rewinds” to show her deliver the baby to a firefighter instead.\textsuperscript{220}

These varied measures to reach the public seem to have had a noticeably positive impact on abandonments.\textsuperscript{221} By June 2008, the State of California reported 251 legal abandonments.\textsuperscript{222} As the chart below indicates, Los Angeles County — the county that has most actively promoted the law — has had about nine legal abandonments a year (although the number increased to fifteen in 2007) since the enactment of the Safely Surrendered Baby Law.\textsuperscript{223} However, the number of illegal abandonments has decreased each year, so that in 2002 there were thirteen, and by 2007 there were three.\textsuperscript{224} One county supervisor’s stated goal is to have no illegal abandonments in Los Angeles County.\textsuperscript{225}

\textsuperscript{215.} See Docan, supra note 186, at 27 (noting that Los Angeles County is “the only county in the state that is taking a proactive approach” to implementing the safe haven laws).


\textsuperscript{217.} County of Los Angeles, supra note 216.

\textsuperscript{218.} YouTube: Georgia’s Story (Los Angeles County Safe Haven Task Force), http://www.youtube.com/watch?v=RaGAaCwKQ14; see also Baby Safe Haven New England, Homepage, http://babysafehavennewengland.com/ (linking to Georgia’s Story).

\textsuperscript{219.} YouTube: Georgia’s Story, supra note 218.

\textsuperscript{220.} Id.

\textsuperscript{221.} See CAL. STATE AUDITOR, supra note 204, at 10 (noting that the increased number of safely surrendered infants could not be explained by a single factor, but by a range of factors including media campaign efforts and changes in the law making it easier to abandon infants).


\textsuperscript{223.} Docan, supra note 186, at 27.


\textsuperscript{225.} Id.

\textsuperscript{226.} Press Release, Los Angeles County Supervisor Don Knabe, Newborn Safely
Abandonments in Los Angeles County: 1999 - 2007

2. New Jersey

New Jersey enacted its safe haven law in August of 2000. It provides that a parent or designee can anonymously abandon an infant up to thirty days old to any hospital emergency room or police station so long as the infant does not appear to have been abused or neglected. The parent or designee is provided with the safe haven hotline phone number, and the hotline is notified of the child’s abandonment. The provider taking custody of the infant offers information about medical services available to the mother and stresses that the anonymity guaranteed by the law will not be compromised if the person utilizes those services. A provider does not ask the mother any questions; however, if information is volunteered to the provider, then that information is written down in a manner that will maintain the mother’s anonymity. The person abandoning the infant is also given a self-addressed, stamped postcard that contains a medical questionnaire.

New Jersey is one of the few states that funds public awareness of the law, and the state legislature has provided at least $500,000 annually to promote the law. The state developed and publicized the slogan, “No Shame. No Blame. No Names,” which has been adopted by other states. It has also advertised the law on television and radio announcements, on buses, and on the rail system.


228. Id.
231. Id.
232. SAFE HAVEN AWARENESS PROMOTION TASK FORCE, supra note 187, at 4.
233. Id. at 1.
234. Id. at 3. The slogan was subsequently adopted by other states. Id.
235. Id. at 4-5.
The Department of Children and Family's outreach efforts have included information kits for volunteers and teachers, brochures, and posters, which are available on the safe haven web site. Unlike California, which publicizes safe abandonments as they occur, New Jersey does not publicize safe abandonments when they occur because it believes that would possibly destroy the anonymity provision. The state has also distributed $10,000 annual grants to each county for outreach efforts and similar grants to community-based organizations. Additionally, the state publicizes a safe haven hotline, which has received an increasing number of calls. According to 2007 poll results, thirty percent of those surveyed were aware of the law, and eighty percent of those surveyed approved of the law.

As the chart below indicates, the number of both safe and unsafe abandonments remained fairly steady until 2006, when the number of safe abandonments increased. The Task Force Report attributed the 2006 increase to the distribution of local grants and outreach. The report concluded that based on the comparison of safe and unsafe abandonments, there was "still . . . work to do" in terms of public outreach, and that the law would probably never be 100 percent effective because it would not be used by a woman who was concealing her pregnancy and was in denial. Nonetheless, the task force concluded the law was successful based on the fact that "[t]he rate of unsafe infant abandonment has dropped since the enactment of the Safe Haven law. Six babies were abandoned unsafely in the first

236. Id. at 4. Volunteers and agency representatives have distributed materials at "countless resource fairs and conferences, meetings, teachers' conferences and conventions." Id. at 5.

237. See id. at 5 (describing the rationale for New Jersey's practice). Florida's website also publicizes safe abandonments when they occur. See A Safe Haven for Newborns, Babies Saved Since July, 2000, http://www.asafehavenfornewborns.com/babiessaved.asp (last visited Oct. 7, 2008). The question of whether safe abandonments should be publicized is something states should consciously consider in order to develop consistent policy. On one hand, reports of safe abandonments raise public awareness of the laws, but on the other hand, reports of safe abandonments have the potential to disclose a woman's identity and defeat the promise of anonymity.

238. See SAFE HAVEN AWARENESS PROMOTION TASK FORCE, supra note 187, at 5 (noting that fiscal year 2008 grants will be $10,000).

239. Id. at 10. The hotline received 500 calls in 2007, which was "more than twice the number in Fiscal Year 2006 and more calls than in any prior year, including the first fiscal year that it went into operation." Id.

240. Id. at 8 (stating that the institute which conducted the poll reported that a thirty percent public awareness statistic was "a reasonably good baseline of knowledge for a public policy or program").

241. Id. at 2. The data for 2000 was from August through December; the data for 2007 was from January through August. Id.

242. See id. at 5 (reporting that the state decided to increase the local grant amounts for the following year).

243. See id. at 6-7.
seven months of 2000 before the law was enacted.\textsuperscript{244} Since the passage of the act in mid-2000, "New Jersey has seen no more than five [unsafely] abandoned babies in any full year since the program started."\textsuperscript{245}

### Abandonments in New Jersey: 2000 - 2007

![Abandonments in New Jersey: 2000 - 2007](image)

#### 3. Illinois

Illinois exemplifies a program which has strong public awareness efforts initiated by a nonprofit organization rather than a state or municipal government. The Illinois safe haven law was enacted in 2001.\textsuperscript{246} It provides that parents may legally abandon newborns up to seven days old at hospitals, fire stations, police stations, and emergency care facilities.\textsuperscript{247} Parents who abandon newborns are offered a packet containing information about adoption, counseling, and a medical and family history questionnaire, which the parent may fill out and mail in anonymously.\textsuperscript{248} The Illinois safe haven law provides that parents may reclaim the newborn within sixty days.\textsuperscript{249}

The Illinois law was enacted primarily as a result of the grassroots efforts of a volunteer group called Save Abandoned Babies.

\textsuperscript{244} Id. at 2.

\textsuperscript{245} Id.


\textsuperscript{247} See 325 ILL. COMP. STAT. ANN. 2/10 (West, Westlaw through P.A. 95-1000 of the 2008 Reg. Sess.) (defining “newborn infant” to mean a child who is 7 days old or less and is not “an abused or neglected child”); 325 ILL. COMP. STAT. ANN. 2/25 (West, Westlaw through P.A. 95-1000 of the 2008 Reg. Sess.) (creating immunity for relinquishment of a newborn infant to a specified institution).

\textsuperscript{248} 325 ILL. COMP. STAT. ANN. 2/35 (West, Westlaw through P.A. 95-1000 of the 2008 Reg. Sess.).

\textsuperscript{249} See id. (establishing a sixty-day waiting period before proceedings to terminate parental rights and placement for adoption begin).
Foundation. Although the group does not have an executive director, Dawn Geras is a prominent spokesperson and founder of the foundation. After the law was enacted, the foundation began efforts to raise public awareness by working with the Department of Children and Family Services, the governor's office (which annually proclaims a Save Abandoned Babies Day in April), and various groups around the state. The foundation developed brochures, posters, and other materials, successfully lobbied to require that permanent signs indicating safe haven locations be posted statewide, and that the law be taught in high school health education classes throughout the state.

After receiving a Board of Education grant, the foundation developed and distributed an educator's packet. The foundation also subscribes to the national hotline available through the National Safe Haven Alliance, an organization that publicizes safe haven laws and provides support and resources to states.

As the chart below indicates, safe abandonments in Illinois have risen over the past five years, while illegal abandonments have decreased. In 2006, the year that illegal abandonments began to decrease and legal abandonments began to increase, the safe haven law was amended to require that signs be posted at safe haven sites in Chicago, that the school health education curriculum include


251. Telephone Interview with Dawn Geras, Founder, Save Abandoned Babies Foundation (Feb. 5, 2008).

252. Id.; see also Department of Children and Family Services Celebrate Anniversary of Illinois' Safe Haven Law, U.S. STATE NEWS, Nov. 14, 2006, available at 2006 WLNR 19817279 (indicating that the Department of Children and Family Services and the Foundation had distributed "over 800,000 brochures, posters and bus cards").

253. See Save Abandoned Babies Foundation, supra note 250; New Signs Point out Safe Havens for Newborns, CHI. TRIB., May 19, 2006, at 6, available at 2006 WLNR 8613951 [hereinafter New Signs]; see also Wynn Koebel Foster, Police Station to Add "Safe Haven" Signage, NORRIDGE NEWS, Mar. 15, 2007, available at 2007 WLNR 5204930 (indicating that as of January 2007, there had been 150 signs ordered). The signs were initially posted in Chicago by city ordinance and later in other large Illinois cities. Id. Geras stated that "I think the confusion is people don't know that safe havens exist and what they are . . . . If people knew about it, we wouldn't continue to find babies illegally abandoned." Id. New Signs, supra.

254. See Save Abandoned Babies Foundation, supra note 250 (noting that state law was changed in 2006 to require that information about the save haven law be taught in health education classes); New Signs, supra note 253 (noting Geras's belief in the importance of education initiatives). The educator's packet was sent to every school in the state and is available on the Save Abandoned Babies Foundation's website.

255. See E-mail from Dawn Geras to Susan Ayres (Aug. 4, 2008, 16:32 CST) (on file with author); National Safe Haven Alliance, Homepage, http://www.nationalsafehavenalliance.org (last visited Nov. 23, 2008).

256. Data for the chart come from Save Abandoned Baby Foundation, supra note 250, as well as E-mail from Dawn Geras, supra note 255.
information about safe haven laws, and that newborns up to seven
days old could be legally abandoned.\textsuperscript{257}

\textbf{Abandonments in Illinois: 2001 - 2007}

\begin{tabular}{|c|c|c|c|c|}
\hline
Year & 2001 & 2003 & 2005 & 2007 \\
\hline
Number & 15 & 10 & 5 & 0 \\
\hline
\end{tabular}

\begin{itemize}
\item \textbf{Illegal}
\item \textbf{Legal}
\end{itemize}

\textbf{4. Florida}

Florida also has an active nonprofit effort to disseminate informa-
tion about safe haven laws. Enacted in 2000, the Florida safe
haven law provides that parents may anonymously abandon new-
borns up to seven days old at a hospital, fire station, or emergency
medical service station.\textsuperscript{258} The parent may reclaim the newborn until
a court judgment terminates parental rights, which generally occurs
within thirty days.\textsuperscript{259} A nonprofit organization, the Gloria M. Silverio
Foundation, initiated A Safe Haven for Newborns shortly after the
safe haven law was enacted.\textsuperscript{260} The organization developed a com-
prehensive website\textsuperscript{261} and a hotline (operated in three languages).\textsuperscript{262} It
also worked with various agencies to increase public awareness about
the Florida law.\textsuperscript{263} Although the organization did not successfully

\begin{itemize}
\item \textsuperscript{257} See Save Abandoned Babies Foundation, \textit{supra} note 250. Note that in 2007, the
legislature required that signs be posted at sites statewide. \textit{Id.} Moreover, in 2005, two
of the twelve illegal abandonments were twins, left in the vestibule of a church, which
is not a designated safe haven under Illinois law. Mario Bartoletti, \textit{Church Collecting for
Abandoned Babies}, PALATINE COUNTRYSIDE, at 5, Jan. 12, 2006, \textit{available} at 2006 WLNR
5806632. This might have occurred as a result of confusion about different states' laws.
See \textit{supra} note 26 (discussing a case of such confusion in Washington).
\item \textsuperscript{258} FLA. STAT. ANN. § 383.50 (2007).
\item \textsuperscript{259} \textit{Id.;} see also A Safe Haven for Newborns, Frequently Asked Questions, http://
\item \textsuperscript{261} A Safe Haven for Newborns, Homepage, http://www.asafehavenfornewborns.com/ (last visited Sept. 30, 2008). The website provides statistics for abandonment by county and keeps a running tab of the dates and circumstances for illegal abandonments. \textit{Id.}
\item \textsuperscript{262} \textit{Id.} (noting that the three languages are English, Spanish, and Creole).
\item \textsuperscript{263} See A Safe Haven for Newborns, Safe Haven Community Resources, http://www.asafehavenfornewborns.com/materials.htm (last visited Sept. 30, 2008) (providing free

persuade the state legislature to mandate safe haven education in the public school curriculum, it did convince the Catholic diocese to do so.\textsuperscript{264} Resources, including public service announcements, training materials, news releases, and data are available on the website.\textsuperscript{265}

As the chart below indicates, the number of illegal abandonments has remained fairly steady, while the number of safe surrenders in Florida has increased.\textsuperscript{266} Although critics argue that the law is not reaching the targeted audience, but rather is encouraging women who would otherwise place children for adoption to take the “easier route” of legally abandoning their newborns,\textsuperscript{267} this argument disregards the fact that while the number of illegal abandonments might be stable, the number of overall births has increased.\textsuperscript{268} Thus, the overall rate of illegal abandonments has decreased. Moreover, just as there is no real way of knowing whether women who safely abandoned newborns would otherwise have placed their children for adoption, there is also no way of knowing whether women who safely abandoned newborns would otherwise have illegally abandoned or killed them. However, as noted above, in a recent statistical study, Stephanie Gruss determined that the profile of the woman who unsafely abandoned a newborn was similar to the profile of the woman who sought out safe haven information.\textsuperscript{269} Thus, she concluded there was “no promotional materials).


\textsuperscript{265} See A Safe Haven for Newborns, supra note 263.


\textsuperscript{267} See ABC Top Priority, supra note 185 (noting that based on a report made when only three states had laws, Pertman concluded that, “the number of unsafely abandoned infants is not falling. That’s true across the country. At the same time, the number of children being left at safe haven is rising, in fact . . . [T]he evidences that the women who are leaving the children at those safe havens would never have harmed those kids. So these are not kids being saved . . . They are kids who . . . are being abandoned who would have never been abandoned before.”).


\textsuperscript{269} The study by Gruss relied on datasets to compare the profiles of mothers who safely and unsafely abandon newborns. See Gruss, supra note 16. One dataset was a
difference between these groups," and the “safe haven legislation is well intended in its efforts to target women appropriately.”

Abandonments in Florida: 2000 - 2008

![Graph showing number of abandonments in Florida from 2000 to 2008.]

5. Summary of States Promoting Awareness of Safe Haven Laws

As the New Jersey Task Force concluded, states such as California and Florida, which have greater outreach efforts, have shown greater success. Indeed, compelling statistics illustrate that states with increased public awareness campaigns are much more successful than states such as Texas that lack these efforts, as the next section of this Article demonstrates.

While one cannot be certain that the laws are reaching the intended audience of women, the speculation that women who are safely abandoning their newborns are “those who might have placed their children via the traditional adoption system or perhaps [would]

sample of the callers to the Newborn Lifeline Network — a national hotline linked to 3,000 agencies and used by a several states for the safe haven hotline — who had completed a survey of crisis pregnancy, including the option of safe havens; the second dataset was the National Center for Health Statistics’ “Linked Birth and Infant Death” dataset. Id. at 47-57. Gruss concluded that the two groups had a similar profile. Id. at 73.

270. Id.
271. Id. at 76.
272. See SAFE HAVEN AWARENESS PROMOTION TASK FORCE, supra note 187, at 14 (noting that California’s Department of Social Services has received more than $1 million and that the private nonprofit organization in Florida “works extensively to promote awareness of the Safe Haven law”); see also Docan, supra note 186, at 24-25 (noting that before marketing campaigns, the New Jersey hotline received only 15-20 calls per month; however, after implementing the awareness campaign, the hotline received 70-80 calls per month); Karen Vassilian, A Band-Aid or a Solution? Child Abandonment Laws in California, 32 McGeorge L. Rev. 752, 762-63 (2001) (contrasting the early success of Alabama with the poor success of Texas but attributing the difference to immunity from prosecution in Alabama rather than publicity of program).
273. See Oberman, supra note 191, at 94 (raising the issue).
have elected to raise them on their own" is misplaced if the intended goal is to prevent neonaticide or illegal abandonment. Moreover, this speculation provides a weak public policy argument to abolish safe havens, which could easily be the last resort for women concealing an unwanted pregnancy. Rather, safe haven laws can be viewed as serving the important government interest of preventing the death or child abuse of newborns. Thus, as Part III of this Article argues, safe haven laws should continue to be one of the choices available to women facing unwanted pregnancies because, as one proponent urges, "[c]onsider the alternative if we do not advise the public: more abandoned infants and mothers doing time." 275

B. Texas: A Program Lacking an Aggressive Public Awareness Campaign

Opponents of safe haven laws often cite Texas as an example of an ineffective program. Noting that Texas was the first state to enact a safe haven law, critics point out the high number of illegal abandonments that continue to plague the state. Indeed, when a baby is found dead, Texas media reports question whether the Baby Moses law is working. For example, when a newborn was recently found dead in a dryer at a halfway house in San Antonio, the local news reported, "News 4 has learned there aren't many people using [the safe haven] law, which is meant to help prevent the deaths of young babies." 279

Determining effectiveness of the Texas Baby Moses law proves impossible, especially since no official statistics have been kept for infants abandoned in Texas, and no organization has consistently collected unofficial statistics. The Texas Baby Moses law was enacted in 1999 when a pediatrician, Dr. John Richardson, and a state

274. Id.
276. See EVAN B. DONALDSON ADOPTION INSTITUTE, supra note 38, at 6 (citing Grossman stating that "[t]he rate of illegal abandonment in this first state to enact a safe haven law [Texas] shows no sign of abating despite the fact that Texas has devoted resources to informing the public about it, including an extensive advertising campaign").
277. See, e.g., Pertman & Deoudes, supra note 18, at 98-99 (citing research that suggests illegal abandonment has not decreased in Texas).
278. See, e.g., Wendy Grossman, Rock-A-Baby Bye-Bye: A State Program was Supposed to Give Moms a Safe Place to Drop Off Unwanted Newborns. Then Why are So Many Babies Still Ending Up in the Trash?, HOUSTON PRESS, Apr. 25, 2002, available at 2002 WLNR 11566486 (noting that "[a]lready, the law wasn't working.... Nearly a year after the law was passed, no mothers had taken advantage of it").
representative, Geanie Morrison, collaborated on the legislation after thirteen infants were unsafely abandoned in Houston in one year. The current law provides that a parent can abandon an infant who appears to be sixty days old or younger at a designated emergency medical services provider, a hospital, or a licensed child-placing agency that qualifies as a safe haven location under the law by physically delivering the infant to the designated provider. The safe haven provider does not have any obligation to request information from the abandoning parent; however, the parent may be given a medical history questionnaire that can be completed anonymously.

The Texas law also benefits a mother who abandons her child and later changes her mind. If she changes her mind after surrendering her child, she is entitled to have genetic testing to prove that the baby is hers at any time before the parent-child relationship is terminated by court order. In other words, after the child is abandoned, proceedings are commenced to terminate parental rights, and there is a presumption that the mother consents to termination of her rights. However, this presumption is rebuttable at any time before the parent-child relationship is terminated by court order.

Not long after the enactment of the Baby Moses law, Representative Morrison and state Land Commissioner David Dewhurst organized the nonprofit Baby Moses Foundation and campaigned to educate the public about the laws through public service announcements. Other cities such as Houston also began to publicize the law, and one San Antonio woman continued operating a toll-free helpline.

Like most other states, the Texas legislature did not pass any appropriations to promote public awareness of the law. By 2004,

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282. Id.
284. Id.
285. Id.; see also Dreyer, supra note 23, at 182 (discussing the rebuttable presumption in Texas House Bill 706).
287. See Magnusen, supra note 42, at 14; see also Grossman, supra note 278 (indicating that "Dewhurst donated more than $100,000 of his personal funds").
there was concern that the law was not effective because the public did not know about it. For instance, a spokesperson for the Baby Moses Project stated, “‘Right now, our biggest challenge is getting the word out there that the law exists . . . ’.” Lack of awareness continues to be a problem. Not only is the general public unaware of the Baby Moses Law, but many police officers reportedly are not aware of the existence or requirements of the law. This is also true for some firefighters. For instance, when an infant wrapped in a towel was left outside a Houston-area fire station in the fall of 2007, a news article stated that the fire chief was unaware the law required a mother to deliver the baby “to a person, not a building, to qualify as a Baby Moses case.” The news also reported that “very few of the newborns abandoned in Texas meet the Baby Moses qualifications . . . .” Similarly, another infant wrapped in a blanket was left outside a fire station door in the town of San Marcos — about thirty miles south of Austin, Texas — and the news account incorrectly reported that “this is the first time a child has been left with San Marcos Fire Rescue under the Texas Baby Moses Law . . . .”

Thus, from law enforcement authorities to news reporters to the general public, awareness of the existence or requirements of the Baby Moses law continues to be a problem in Texas.

In addition to lack of awareness about the Baby Moses law, the public in Texas may also be confused by the similarity between “Safe Place” signs for youth facing an emergency and “Safe Baby Site” signs for the Baby Moses law. As shown below, the signs are confusingly similar, and while a public bus or gasoline station might be a safe place for “youth in crisis or at risk,” neither is a designated

290. Id.
291. See Terri Langford, Baby Moses Law Confusing for Many / Recent Case Puts Spotlight on the Criteria Parents Have to Follow, HOUS. CHRON., Nov. 14, 2007, at B1, available at 2007 WLNR 22555823 (according to one official, “[i]t was shocking how many police officers are not aware of the law”); see also Advocates Differ over Success of States’ Abandoned-baby Laws, AUGUSTA CHRON., Mar. 6, 2004, at A07, available at 2004 WLNR 1416504 [hereinafter Advocates Differ] (noting that the Port Neches Police Chief admitted “I wasn’t even aware of all the details of the Baby Moses law, to be honest with you,” after he arrested a fifteen-year-old when a baby was found dead in her duffle bag).
292. Langford, supra note 291 (noting that the baby survived, but suffered hypothermia).
293. Id.
294. See Digest: Baby Left at Fire House in San Marcos, AUSTIN AM. STATESMAN, June 15, 2008, at B2. This incident did not qualify as a legal abandonment under the Baby Moses law because the infant was not handed over to a firefighter, but was left on the doorstep. See TEX. FAM. CODE ANN. § 262.302 (Vernon Supp. 2008).
295. See National Safe Place, Homepage, http://www.nationalsafeplace.org (last visited Oct. 5, 2008). The image of the Safe Baby Site sign is from Baby Moses Dallas, Homepage, supra note 18. The image of the bus was taken by Keri Ward, research assistant to Professor Susan Ayres, in downtown Ft. Worth, Tex. in April 2008.
Baby Moses location.\textsuperscript{296} The third illustration shows a fire station that has both signs posted.\textsuperscript{297}

\begin{figure}
\centering
\includegraphics[width=0.5\textwidth]{safesigns.jpg}
\caption{Signs for Baby Moses and Safe Haven locations.}
\end{figure}

\begin{figure}
\centering
\includegraphics[width=0.7\textwidth]{babymoses.jpg}
\caption{Photo of a fire station in Dallas, Tex. in 2008.}
\end{figure}

\textsuperscript{296} I have heard that even safety professionals have been confused by the similarity of the signs. Indeed, my law students have also been confused. In fact, several of my law students took photos of safe place locations wondering if they were Baby Moses locations, including photos of gas stations and the bus photo shown above. To add to the confusion, in the Dallas-Fort Worth area, domestic violence agencies of Tarrant County have reorganized under the name of Safe Haven of Tarrant County.

\textsuperscript{297} This photo was taken by Patricia Summey, Project Coordinator of Baby Moses Dallas, of a fire station in Dallas, Tex. in 2008.
Aside from the problem of confusing signs, Texas does not have a good track record of efforts to educate the public about legalized abandonment. For instance, as of 2007, the Baby Moses Project website was not always updated in a timely manner.298 While Dallas,299 San Antonio,300 and Austin,301 all larger Texas cities,302 had non-profit organizations that promoted the law, other large Texas cities, such as El Paso, apparently did not. In the Houston area, a Baby Abandonment Task Force was established in 2002 by Congresswoman Sheila Jackson Lee to publicize the law on Houston billboards and

298. See Pertman & Deoudes, supra note 18, at 99 (noting that the public awareness and data collection phone number listed on the Baby Moses Project website actually reaches Representative Morrison's campaign office).

299. See Baby Moses Dallas, supra note 18, 295.


to establish a hotline in Houston. 303 Although the hotline continues to operate, it is not well-utilized. 304 Of the larger cities in Texas, Baby Moses Dallas was the most active nonprofit organization in the state for legalized abandonment as of 2007. Baby Moses Dallas was founded by Alan Elliott, a biostatistician at the University of Texas-Southwestern Medical Center, when he realized that no organization in Dallas was promoting the law. 305 Baby Moses Dallas collects data, issues reports, provides training materials and public awareness materials, has trained some nurses and firefighters about the law, has worked with the Dallas County Emergency Nurses Association to increase public awareness in public schools and at professional meetings, and is also teaming up with a marketing internship program to study the profile of mothers who abandon their infants in order to create a more appropriate public awareness campaign. 306

Despite the obvious need for greater public awareness in Texas, I am not aware of any plans for a statewide hotline or statewide agency or nonprofit organization to promote the law or to collect data. 307 Moreover, the various organizations that promote the law do not collaborate or have an established communication network. 308 The law's sponsor, Representative Morrison, commented that it was "best to leave it up to individual communities to decide how they want to promote the Baby Moses Law." 309 This attitude might be viewed as one of benign neglect by those who believe that "[s]tate governments and legislatures must take responsibility for not only

303. See Grossman, supra note 278.
304. See E-mail from Estella Olguin, Public Information Officer, Child Protective Services, Harris County, to Susan Ayres (July 31, 2008, 17:44 CST) (on file with author) (noting that in 2007, there were only 63 calls made to the hotline in comparison to over 800 during the period from December 1999 to November 2003).
305. See Loyd Brumfield, City Joins Abandoned Baby Network, TODAY CEDAR HILL, July 14, 2005, at 1; Margarita Martin-Hidalgo, Baby Moses Law Hasn't Stopped Abandonments: Few Women with Unwanted Babies Give Them to Medical Staff, DALLAS MORNING NEWS, July 8, 2006, at 1B, available at 2006 WLNR 11860009 ("Mr. Elliott said he made it his mission to spread the word after learning that no local group was doing it.").
307. This is also the perception shared by the Texas Department of Family and Protective Services, as indicated by Katie Olse, the External Relations Lead. E-mail from Katie Olse, External Relations Lead, Texas Department of Family and Protective Services, to Susan Ayres (Mar. 18, 2008, 16:54 CST) (on file with author) (stating that "we are not aware of any active or formal collaborations around this issue").
308. E-mail from Patricia Summey, supra note 306 (indicating that attempts to collaborate have not been successful because other groups are not presently active).
309. Walsh, supra note 279.
passing Safe Haven laws, but ensuring that the public is informed of them.\textsuperscript{319}

Given the lack of a centralized nonprofit organization or state agency responsible for promoting the law, determining statistics for legal and illegal abandonments is nearly impossible. Thus, the bar chart and table below, pieced together from various indicated sources is hopelessly inaccurate.\textsuperscript{311} According to one news report, a child protective services investigator stated that "'[o]ver one hundred babies are abandoned in Texas every year [and] of these [fifteen] to [twenty] are found dead.'"\textsuperscript{312} A similar statistic appears on the Baby Moses Dallas organization website.\textsuperscript{313} Yet, figures stated in media reports or unofficially given out by the Department of Family and Protective Services rarely indicate one hundred illegal abandonments.\textsuperscript{314}

My attempt to determine the number of legal and illegal abandonments has been fraught with inconsistencies. For instance, one Associated Press article stated that from 1999 to 2003, there were fifteen legal abandonments according to the Baby Moses Project, and 214 illegal abandonments (number found alive), according to the Texas Department of Family and Protective Services.\textsuperscript{315} On the other hand, in a study based solely on newspaper reports of legal and illegal abandonments, Sandi Pruitt discovered six reported legal abandonments (in contrast to fifteen reported by the Baby Moses Project) and forty-five illegal abandonments (in contrast with the state's estimate of 214).\textsuperscript{316}

\textsuperscript{310} Atwood, supra note 40, at 97.

\textsuperscript{311} The chart is based on information from various articles and from Department of Family and Protective Services information for years 2006-2008. See infra notes 324-348; see also Liz Austin, 15 Babies Given up Through Law: Woman's Conviction Brings Attention to Baby Moses Rule, CORPUS CHRISTI CALLER TIMES, Feb. 29, 2004, at A9, available at 2004 WLNR 16922996 (providing information for 2003); Hill, supra note 289 (providing information for 1999-2002). For 2003 information, I subtracted the previous totals from a summary including 2003.

\textsuperscript{312} See Crystal Kobza, Baby Moses Law, KETK NEWS, Nov. 18, 2007, http://www.ketknbc.com/home/ticker/11557181.html. Another report states that according to the Department of Protective and Regulatory Services, there were 170 infants abandoned from 1999-2002, and according to the office of Rep. Morrison, there were eleven infants abandoned to safe havens during that time period. Hill, supra note 289.

\textsuperscript{313} See Baby Moses Dallas, supra note 18, 295 ("Of the over 100 babies who are abandoned each year in Texas, about 16 will be found dead.").

\textsuperscript{314} See E-mail from Katie Olse, supra note 307 (indicating five to twenty-two illegal abandonments per year).

\textsuperscript{315} Austin, supra note 311; see also Advocates Differ, supra note 291 (reporting 182 illegally abandoned infants found alive during this period).

\textsuperscript{316} Sandi L. Pruitt, The Number of Illegally Abandoned and Legally Surrendered Newborns in the State of Texas, Estimated from News Stories, 1996-2006, 13 CHILD MALTREATMENT 89, 89-91 (2008); see also Austin, supra note 311 (citing statistics from Baby Moses Project and the Texas Department of Family and Protective Services).
Inconsistency likewise exists for the years from 1996 to 2006. Pruitt found that there were eighty-two illegal abandonments reported and eleven legal abandonments reported. However, during a similar timeframe, the Save Abandoned Babies Foundation listed approximately thirty-six legal abandonments in Texas based on news reports, and a news article indicated that Representative Morrison stated there had been forty legal abandonments.

For 2006 and 2007, the Department of Family and Protective Services estimated five legal abandonments in 2006 and three in 2007. In contrast to the Department’s 2007 count, according to Baby Moses Dallas, there were at least four legal abandonments in 2007 just in the Dallas-Fort Worth metroplex and two others statewide, bringing the total to at least six. The Department of Family and Protective Services estimated twenty-two illegal abandonments in 2006 and sixteen in 2007. For the first half of 2008, media reports indicate an estimated ten legal abandonments. These inconsistencies show the importance of requiring states to collect data about legal and illegal abandonments. These reports also demonstrate the impossibility of charting statistics in Texas. Below, I have attempted to graph abandonments and have also included a table detailing the inconsistencies.

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**Details of Abandonments in Texas: 1998-2008**

<table>
<thead>
<tr>
<th>Year</th>
<th>Safe Surrenders</th>
<th>Illegal Abandonments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>NA</td>
<td>80(^{324})</td>
</tr>
<tr>
<td>1999</td>
<td>NA</td>
<td>16(^{325})</td>
</tr>
<tr>
<td>2000</td>
<td>2(^{326})</td>
<td>9(^{327})</td>
</tr>
<tr>
<td>2001</td>
<td>2(^{328})</td>
<td>5(^{329})</td>
</tr>
<tr>
<td>2002</td>
<td>0(^{330})</td>
<td>9(^{331})</td>
</tr>
<tr>
<td>1999-2002</td>
<td>4(^{332})</td>
<td>39(^{333})</td>
</tr>
<tr>
<td></td>
<td>11(^{334})</td>
<td>170(^{335})</td>
</tr>
<tr>
<td>2003</td>
<td>2(^{336})</td>
<td>6(^{337})</td>
</tr>
<tr>
<td></td>
<td>6-15 from 1999-2003(^{338})</td>
<td>44 estimated (found alive)(^{339})</td>
</tr>
<tr>
<td></td>
<td></td>
<td>214 from 1999-2003(^{340})</td>
</tr>
<tr>
<td>2004</td>
<td>4(^{341})</td>
<td>5(^{342})</td>
</tr>
<tr>
<td>2005</td>
<td>1(^{343})</td>
<td>5(^{344})</td>
</tr>
<tr>
<td>2006</td>
<td>5(^{345})</td>
<td>22(^{346})</td>
</tr>
<tr>
<td>2007</td>
<td>3(^{347})</td>
<td>16(^{348})</td>
</tr>
<tr>
<td>2008</td>
<td>5 (as of March 8)(^{349})</td>
<td>5 (as of March 8)(^{350})</td>
</tr>
<tr>
<td></td>
<td>10 (as of May 13)(^{351})</td>
<td></td>
</tr>
</tbody>
</table>

While these statistics are far from certain, Texas appears to have a poorer success rate than the states discussed above that have more...

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326. *Id.*
327. *Id.*
328. *Id.*
329. *Id.*
330. *Id.*
331. *Id.*
332. *See id.*
333. *See id.*
334. E-mail from Patricia Summey, *supra* note 306.
337. *Id.*
338. Figure based on sums of the above numbers.
339. The author calculated this number from various sources.
342. *Id.*
343. *Id.*
344. *Id.*
345. *See E-mail from Katie Olse, supra* note 307.
346. *Id.*
347. *Id.; Walsh, supra* note 279.
349. *See E-mail from Katie Olse, supra* note 307.
350. *Id.*
351. *See Walsh, supra* note 279.
aggressive campaigns to inform the public of the laws, to provide hot-lines, and to require mandatory education. In her study, Sandy Pruitt concluded that the “law has not caused a dramatic increase or decrease in the number of illegally abandoned infants in Texas.”\(^3\)\(^5\)\(^2\) Despite criticism of the Baby Moses law, proponents of the law continue to claim the law is effective even “if it saves one newborn.”\(^3\)\(^5\)\(^3\) While this may be true, there is certainly room for improvement in states such as Texas that have high numbers of illegally abandoned infants and concurrently lack any statewide effort to publicize the safe haven laws.

C. Education Efforts

Options for unwanted pregnancies should be widely known, but unfortunately, sometimes are not. For instance, an eighteen-year-old high school honor student in Michigan who illegally abandoned

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\(^3\)\(^5\)\(^2\) See Pruitt, supra note 316, at 93. Pruitt concludes elsewhere that [b]ased on the current study, it appears that the Safe Haven law does not seem to have caused any harm; in other words, it does not appear to have caused a dramatic rise in the number of illegally abandoned infants or a noticeable excess of legally surrendered infants. However, illegal abandonments did continue following passage of the law.

\(\text{Id. at 92.}\) Adam Pertman responded to her conclusion by making the argument that [i]f the number of such abandonments has not decreased and an additional number of infants are also being legally abandoned as a consequence of these laws, then they are increasing the total number of abandonments, suggesting these laws are not being used by the women for whom they were intended — those who would otherwise unsafely discard their babies.

Pertman & Deoudes, supra note 18, at 98. Of course, it is impossible to know which women are using the Baby Moses laws in Texas or elsewhere. The issue of whether the right women are using the law is outside the scope of this Article; however, recent studies indicate that safe havens are targeting the intended audience of women who would otherwise unsafely abandon their newborns. See Gruss, supra note 16, at 73-76 (concluding that the profile of women who abandon babies illegally is similar to the profile of women who use baby safe havens).

\(^3\)\(^5\)\(^3\) See Hill, supra note 289 (quoting statement of Baby Moses Project’s spokesperson); see also Advocates Differ, supra note 291, available at 2004 WLN 1416504 (quoting Dr. Richardson’s statement that “[i]f we’ve saved one baby then my efforts have been worthwhile”). Additionally, the president of the National Council for Adoption responded to criticism of the Texas Baby Moses law with the following argument:

More than 1,000 newborns have been placed safely under Safe Haven laws, and this number includes only the documented cases in 36 of the 48 states that have passed Safe Haven laws. Clearly, some of these children would have suffered abandonment or infanticide, and their parents’ lives ruined, if not for Safe Haven laws. There is no way of knowing how many newborns have been saved. But the National Council for Adoption and the National Safe Haven Alliance ask the question, just how many lives have to be saved to make these laws worthwhile?

Atwood, supra note 40, at 97.
her newborn claimed that she wished she had known her options.\textsuperscript{354} She had delivered a newborn at home and kept him with her over a long weekend without her family's knowledge.\textsuperscript{355} On her way to school the next day she panicked and left the baby at a car wash "hop[ing] somebody would find him there."\textsuperscript{356} This young woman later stated,

"There is so much stuff I have learned in the last two to three weeks, . . . I would have done so many things differently today. If you are going to teach kids about safe sex also teach them about their options in case they become pregnant. None of this would have happened. None of it."\textsuperscript{357}

A similar sentiment was expressed by Kelli Moye, a teenager who abandoned her newborn in Illinois before the safe haven law was enacted.\textsuperscript{358} After she served a two-year sentence for involuntary manslaughter, she helped promote the safe haven law because "[s]he did not want anyone to go through what [she] went through because they're scared."\textsuperscript{359}

One obvious way to educate the public about safe haven laws is to require that public schools include information about the laws in their health education curriculum.\textsuperscript{360} Studies have shown that the


\textsuperscript{355.} Verlinden, supra note 354, at 77.

\textsuperscript{356.} See id. at 76-77. The baby was discovered, and the woman entered a plea agreement: "The County Prosecutor was satisfied with the plea agreement because [she] had taken care of the child and had not thrown him out in the trash; she cared what happened to him, but made a very bad decision." Id. at 77 (footnotes omitted).

\textsuperscript{357.} See id. (alterations in original).

\textsuperscript{358.} See Fields-Meyer et al., supra note 21.

\textsuperscript{359.} Id. In contrast, Twyana Davis, a college student who placed her newborn in a dumpster, later said that she probably would not have safely abandoned her newborn had she known about safe haven laws because she was not thinking rationally at the time. See Morning Edition: Newborn "Safe Haven" Laws Questioned (NPR radio broadcast July 14, 2003), available at http://www.npr.org/templates/story/story.php?storyId=1335825.

\textsuperscript{360.} See SAFE HAVEN AWARENESS PROMOTION TASK FORCE, supra note 187, at 8 (reporting results of a poll that found that seventy-seven percent of respondents thought that information about safe haven laws should be taught in sex education classes); see also CWLA REPORT, supra note 14, at 22-23 (recommending that information about safe haven laws be provided by "schools and communities . . . [as part of] comprehensive sexuality education to all youths and families").
median age of mothers who abandon newborns is fifteen to twenty-four; thus, information about safe havens should also be widely available on college campuses. Additionally, information about the laws should be available at doctors’ offices, hospitals, and clinics, as well as readily available on websites.

However, society is reluctant to educate young women about safe haven laws for the same reason it opposes sex education: that it might encourage promiscuity. Nonetheless, as mentioned above, several states amended their education laws to require that information about safe haven laws be included in curricula for high schools and middle schools. These include Illinois, California, North Carolina, and Montana. Additionally, in 2007 the Colorado Senate issued a joint resolution urging students and faculty in high schools and colleges to initiate peer-to-peer education about the safe haven law, provide counseling about the law, and display safe haven signage around campuses. Similarly, New Jersey requires that pamphlets and posters about safe havens be distributed in middle and high schools. New Jersey has also proposed bills to require mandatory education about safe havens in the health curriculum. Finally,

361. See Gruss, supra note 16, at 73.
363. See id. at 8-12 (listing recommendations for public awareness); see also Gruss, supra note 16, at 39 (citing a study recommending that information be available at “family planning and prenatal clinics”).
364. See Christine Contillo, Soapbox: The Most Vulnerable, N.Y. TIMES, Jan. 29, 2006 at 13, available at 2006 WLNR 1583816 (describing how New Jersey school administrators and “many adults in positions of authority are ambivalent about throwing their support behind [the Safe Haven law], fearing that they will be seen as encouraging promiscuity”); see also J. Shoshanna Ehrlich, From Age of Consent Laws to the “Silver Ring Thing”: The Regulation of Adolescent Female Sexuality, 16 HEALTH MATRIX 151, 172 (2006) (tracing federal reform of sex education to abstinence-only programs); Editorial, Don’t Promote Leaving Babies; Wrong Plan for Safe-Haven Law, DENVER ROCKY MOUNTAIN NEWS, July 18, 2004 at 7E, available at 2004 WLNR 1264290 (opining that an advertising “campaign would be tantamount to promoting abandonment as a legitimate, even favored option”).
367. 2007-126 N.C. Adv. Legis. Serv. 1 (LexisNexis) (amending N.C. GEN. STAT. § 115C-47 to require that public schools provide information about legal abandonment and that the same information be available for use in non-public schools also).
368. 2001 Mont. Laws 1298.
371. See SAFE HAVEN AWARENESS PROMOTION TASK FORCE, supra note 187, at 15.
Florida's parochial schools provide information about safe haven laws.\textsuperscript{372}

No doubt, with the recent statistics concerning the rise of births to teens for the first time in fifteen years,\textsuperscript{373} policy-makers are questioning the effectiveness of abstinence-only education,\textsuperscript{374} a program that has been criticized by numerous medical agencies, such as the American Psychological Association,\textsuperscript{375} the American Medical Association,\textsuperscript{376} and the National Association of School Psychologists.\textsuperscript{377} Although abstinence-only education continues to be funded by federal grant money, with restrictions that grant recipients cannot provide any information on contraception,\textsuperscript{378} only seventeen states have refused the grant money.\textsuperscript{379} Additionally, even though education about safe haven laws would not violate the grant restrictions, states have been reluctant to incorporate safe haven information into classes that focus on preventing pregnancy by abstinence.\textsuperscript{380} The current curriculum typically does not discuss any options for prevention or unwanted pregnancy.

However, if the recent rise in teen births compels changes to the abstinence-only education curriculum, information about safe haven laws could be incorporated into the curriculum either directly by

\textsuperscript{372} A Safe Haven for Newborns, supra note 263.
\textsuperscript{378} See Hampton, supra note 374, at 2013 (stating that the 2009 proposed budget allocates $204 million in grant money for programs promoting abstinence); see also Katy Vine, Faith, Hope, and Chastity: Is There Any Good Way to Teach Your Kids About Sex?, TEXAS MONTHLY, May 1, 2008, at 136, 247 available at http://www.texasmonthly.com/2008-05-01/feature2-1.php (describing the origins of the federal Community-Based Abstinence Education program).
\textsuperscript{379} Hampton, supra note 374, at 2014.
\textsuperscript{380} See Ehrlich, supra note 364, at 174 (noting that "recipients of federal funding must have as their 'exclusive purpose' the teaching of the 'social, psychological, and health gains to be realized by abstaining from sexual activity.' ")). For instance, the Fort Worth, Texas Independent School District utilizes this abstinence-only approach. Telephone Interview with Georgie Roberts, Fort Worth, Tex. Independent School District (Jan. 2008).
mandatory requirements, or indirectly by informal workshops about safe haven laws. An example of the indirect approach occurs when various outside groups make school presentations about domestic violence or child abuse and incorporate information about safe haven laws into their presentations.\(^3\)

States could also consider legislation mandating that information about safe haven laws be included in the school curriculum. For instance, while Texas does not require that information about Baby Moses laws be presented in schools, it has mandated that beginning in the fall of 2008, a program entitled Parenting and Paternity Awareness (P.A.P.A.) be incorporated into the high school health curriculum.\(^2\) The program, which is a joint venture between the Office of the Attorney General and the Board of Education, aims to teach students their legal rights as parents and to show them the difficulties of being parents.\(^3\) P.A.P.A. includes information about paternity establishment, father involvement, challenges of parenting, benefits of postponing parenthood, and the impact of parental conflict on children.\(^4\) The bill could be easily amended to require that information about legal abandonment of newborns be presented as part of the P.A.P.A. curriculum.

\[D. \text{Conclusion}\]

Thus, in terms of effectiveness, it appears that increased public awareness strongly correlates with increased effectiveness of these laws. While it is unlikely that safe haven laws will prevent all illegal abandonments and neonaticides, that is not a compelling reason to abolish the legislation.\(^5\) Rather, as Part III argues, safe haven laws should continue to be included in the spectrum of choices facing unwanted pregnancy.

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381. This is currently occurring in some north Texas school districts. Interview with Julie Evans, Assoc. Director, Fort Worth Alliance for Children (June 27, 2008); Telephone Interview with Patricia Summey, Project Coordinator, Baby Moses Dallas (July 2008).

382. Karen Ayres Smith, State Curriculum on Legalities of Parenting Coming to Texas High Schools This Fall, DALLAS MORNING NEWS, May 23, 2008, http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/052208dnmetparentskul.3aa0298.html (noting that the program had been used by some school districts in their classes for teen-age parents and have reported success in conveying information).

383. Id.


385. A sponsor of the Connecticut safe haven bill, Pamela Sawyer, stated that “the program need not save every baby to make it a good law. ‘What law helps every person in every case? What we’re trying to do is take a very imperfect situation and offer the best options available.’” Docan, supra note 186, at 31 (footnotes omitted).
III. THE RHETORIC OF KAIROS: REJECTING BINARY OPPOSITIONS AND THE EITHER-OR THINKING OF PRO-CHOICE OR PRO-LIFE

I argue in this part that we should reject binary oppositions of pro-choice/pro-life rhetoric and approach the issue of legalized abandonment and unwanted pregnancy through a rhetoric of kairos, or right-timing. This means that rather than adopting Sanger's view that safe haven laws' primary rhetorical impact is reversing Roe v. Wade,386 we should view safe haven laws through the lens of kairos as providing women with another choice in their continuum of decision-making for unwanted pregnancies. Kairos offers a pragmatic and feminist lens through which to view safe haven laws.

What is kairos, anyway? Kairos is a concept of the pre-Socratic philosophers, such as Isocrates and Gorgias, which has been rediscovered and re-emphasized in the field of modern rhetoric.387 Kairos combines right-timing and due measure or propriety.388 Right-timing is not linear time or the absolute time of chronos, but qualitative time, as in the "right time to" do something.389 For instance, a classic example of kairos is the right time to harvest grapes or to allow wine to mature.390

Isocrates (436-338 BCE) made the concept of kairos the cornerstone for his educational system which had the goal of turning out responsible citizens — instead of the Socratic sensibility of "Know thyself," the pre-Socratic ethic was "Know the opportunity."391 The emphasis was on being flexible and using pragmatic wisdom (phronesis) to solve contingencies.392 John Poulakos, a contemporary rhetorician, characterizes kairos as a rhetoric of possibility — kairos seeks to make us aware of our possibilities.393

386. See Sanger, supra note 32, at 829.
387. See James L. Kinneavy, Kairos in Classical and Modern Rhetorical Theory, in RHETORIC AND KAIROS 58, 58-60 (Phillip Sipiora & James S. Baumlins eds., 2002) (tracing Isocrates's views) (describing modern scholars' rediscovery and re-emphasis of the ancient notion of kairos); Augusto Rostagni, A New Chapter in the History of Rhetoric and Sophistry, in RHETORIC AND KAIROS, supra, at 23, 28-30 (tracing Gorgias's views); Phillip Sipiora, Introduction: The Ancient Concept of Kairos, in RHETORIC AND KAIROS, supra, at 1, 7-15.
389. See John E. Smith, Time and Qualitative Time, in RHETORIC AND KAIROS, supra note 387, at 46, 52.
390. See id. at 48.
391. Kinneavy, supra note 387, at 59 (quoting Doro Levi, Il kairos attraverso la letterature greca, in RV 32 RENDICONTI DELLA REALE ACADEMIA NAZIONALE DEI LINCEI CLASSE DI SCIENZIA MORALI 275 (1923) (Italy)).
Another contemporary rhetorician, John Smith, explains that one of the meanings of kairos is "a time of tension and conflict, a time of crisis implying that the course of events poses a problem that calls for a decision at that time, which is to say that no generalized solution or response supposedly valid at any or every time will suffice." This suggests an ethical element to kairos, as Amélie Frost Benedikt points out:

A concern for kairos signals an interest in being "on time" chronologically speaking, which leads to being "on time" ethically speaking. What this means is that the right action at the wrong time is not kairic. Neither is the wrong action at the right time kairic. An action that is morally right at the present moment may not be so in the next. The ethical component of kairos means that "judging the right moment for an action" requires that we "take stock . . . of the entire situational context." Unwanted pregnancies, like other psychological crises, are an example of kairos and contain a continuum of kairic points of possible decision, as the diagram below shows: first, the acknowledgment early on that one is pregnant, and a decision to terminate the pregnancy, to make an adoption plan, to abandon the infant, or to parent the infant. In some cases there is an inability to accept the pregnancy, and the woman experiences denial. However, there may then be later acceptance of the pregnancy and selection of a plan — or the continuing denial of the pregnancy. Finally, at delivery, a woman may continue to deny the existence of the newborn or she may have the ability at that point to make (or have made) a plan.

394. Smith, supra note 389, at 52 (explaining that the three features of kairos are right-timing, a time of crisis, and a time of opportunity).
396. Id. at 229.
398. See Susan Ayres, Who Is to Shame? Narratives of Neonaticide, 14 WM. & MARY J. WOMEN & L. 55, 58 (2007). Denial of pregnancy can also be viewed as an example of kairos, as shown by Caroline Lundquist's point concerning denial: "the primary question for physicians and psychiatrists vis-à-vis denied pregnancy should not be 'Why do women deny pregnancies?' but rather 'Why does this woman with this partner at this time in this situation deny this pregnancy?'" See Caroline Lundquist, Being Torn: Toward a Phenomenology of Unwanted Pregnancy, HYPTAIA, Fall 2008, at 136, 150.
At each point of the unwanted pregnancy, the moment might be auspicious for a woman to take stock of her psychological crisis and choose to "'do the right thing at the right time.'"\(^{399}\)

**Unwanted Pregnancy: Continuum of Possible Decisions**

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<th>1st trimester</th>
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<th>3rd trimester</th>
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<td>Discovery: Acknowledge Options or Denial</td>
<td>Exercise Options or Denial</td>
<td>At delivery: Dissociation or Options</td>
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Under this *kairic* view of unwanted pregnancy, the timing for decision and the exercise of choice exists along a continuum. One consequence of this is that safe haven laws should not be viewed as the *only* solution, or as the *100% effective* solution to neonaticide or illegal abandonments. Even with public awareness of the law, neonaticide and abandonment will not be completely eliminated because some women may still discard or kill newborns; other women may experience true denial when they conceal their pregnancies, and thus not realize that the law even applies to them.\(^{400}\)

The argument that safe havens are a bad option, that they are completely ineffective,\(^{401}\) or that they encourage abandonment and

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400. See Oberman, *supra* note 191, at 95 (stating that "[n]eonaticide tends to be committed by relatively young, socially immature, and isolated girls and women who are in denial about their pregnancies"). Not all health care professionals agree that this is the standard profile. See Dreyer, *supra* note 23, at 187-88 (analyzing a French study to support the argument that in France, the majority of women with concealed pregnancies chose to deliver anonymously, while only a minority of the women studied completely denied their pregnancy and ended up committing neonaticide); see also Catherine Bonnet, *Adoption at Birth: Prevention Against Abandonment or Neonaticide*, 17 CHILD ABUSE & NEGLECT 501, 505 (1993) (stating that studies indicate that true or pervasive denial is much more rare than affective denial, in which the woman realizes she is pregnant, but conceals the fact from others).
401. See Parness, *A Different View of Safe Haven Laws*, *supra* note 43, at 94 (suggesting abolishing them or allowing legalized abandonment only when both parents appear together to abandon a newborn); see also Racine, *supra* note 185, at 261 (claiming that safe haven laws ignore the needs of women and because they have many unintended consequences, they should be repealed: "Neonaticide and reckless abandonment of newborns are problems worthy of a true solution. A proper solution, however, should not include safe haven laws. Instead, the solution needs to address the problems specific to women
should be abolished,\footnote{See ABC Top Priority, supra note 185 (quoting Adam Pertman).} can be seen as a position that is “absolute, universal, and objective.”\footnote{Benedikt, supra note 395, at 226.} Moreover, this view posits women as desperate victims who cannot take advantage of safe haven laws or who are too selfish and irresponsible to place their newborns in the traditional adoption system.\footnote{This view constructs women similarly to the views held by opponents of abortion. See Sanger, supra note 32, at 785 (noting that safe haven laws “provide a clever conceptual bridge between abandonment and abortion”); see also Sally Sheldon, “Who is the Mother to Make the Judgment?: The Constructions of Woman in English Abortion Law, 1 FEMINIST LEGAL STUDIES 3,7-11 (1993) (detailing the English debates).} \footnote{Benedikt, supra note 395, at 226.}

In contrast, the view of kairos set forth in this Article sees the problem of unwanted and concealed pregnancies as “interpretive, situational, and . . . ‘subjective’”\footnote{See Sheldon, supra note 404, at 7-11 (detailing the English debates).} because the problem does not have one solution. Rather, an array of solutions should be available for a problem which has many contingencies and many different kairic moments of crisis and possible resolution. The kairic view posits women as autonomous and rational agents who have the ability to weigh their choices and to make the correct decision for themselves at that moment. This view can thus be seen as feminist because it empowers women as autonomous agents. It reflects Sally Sheldon’s argument concerning the legal construction of women in the English debate over abortion laws.\footnote{Sheldon cautions that we should be mindful of how the law constructs women and of the implications of different constructions. Sheldon further argues that an empowering view of a woman is one that “construct[s] . . . [her] as rational, self-determining, responsible and mature; as the person best placed to consider the needs of herself and the foetus, and to make the correct decision . . . .” A kairic view of safe haven laws similarly empowers women.} Sheldon cautions that we should be mindful of how the law constructs women and of the implications of different constructions. Sheldon further argues that an empowering view of a woman is one that “construct[s] . . . [her] as rational, self-determining, responsible and mature; as the person best placed to consider the needs of herself and the foetus, and to make the correct decision . . . .” Sheldon further argues that a kairic view of safe haven laws similarly empowers women.

Thus, as correlative of this kairic view, not only should safe haven laws be viewed as one option for women, but also, states should provide solutions that are comprehensive, holistic, and integrated and include “preventing pregnancy or providing services and counseling to women experiencing unwanted pregnancies,” as recommended in denial of their pregnancies, which will in turn protect the newborns at risk. A comprehensive solution that addresses all facets of the problem will better serve the women and children at risk, as well as society as a whole.”\footnote{See CWLA REPORT, supra note 14, at 6; see also Tanya Amber Gee, Comment, South Carolina’s Safe Haven for Abandoned Infants Act: A “Band-Aid” Remedy for the Baby-Dumping Epidemic,” 53 S.C. L. REV. 151, 163-64 (2001) (arguing that safe haven laws are not the solution).}
by the Child Welfare League\textsuperscript{410} and other researchers.\textsuperscript{411} For instance, the view that the problem of infanticide and abandonment cannot be solved solely by safe haven laws has also been asserted by several founders of crisis hotlines, such as Debbie Magnusen, the founder of Project Cuddle, a toll-free crisis line started in 1994, which also provides education materials for mandatory safe haven education in California.\textsuperscript{412} Hotlines such as that set up by Tim Jaccard in New York\textsuperscript{413} and Project Cuddle provide assistance by helping women find housing, encouraging prenatal care and delivery services or coaching them through delivery, informing them about safe haven laws, and referring them to adoption agencies.\textsuperscript{414} Magnusen has conceded:

Safe haven laws are probably a good idea. Any attempt to encourage mothers to hand their babies over to a responsible caregiver, rather than abandoning them and leaving them to die, is a positive step in curbing baby abandonment. However, the safe haven legislation needs to be part of a larger plan to enhance

\footnotesize{legislation is ineffective and that more effective measures for the problem of unwanted newborns would include education aimed at promoting contraception, information about adoption, and information about social services available for women who decide to parent these children). Other opponents of safe haven laws, such as Adam Pertman and Georgia Deoudes of the Evan B. Donaldson Adoption Institute, likewise urge that "target populations should be educated about such services as family planning, crisis intervention therapy, medical and financial support, and confidential, nondirective pregnancy options counseling." Pertman & Deoudes, supra note 18, at 100; see also Appell, supra note 186, at 66 (commenting that "more responsive solutions" to the problem of illegal abandonment "might include involving schools through provision of sex education and access to trusted adults, encouraging doctors to speak to teenagers alone and to discuss pregnancy with them, and providing better access to abortion for women and teenagers").


411. See Lisa Black, Babies Get 2nd Chance: Safe-Haven Laws Make it Legal for Moms Who Aren't Ready to Have Kids to Give Them Away, CHI. TRIB., Aug. 9, 2006, at 1 (commenting that researchers Marcia E. Herman-Giddens and Melissa Breger view safe havens as part of the solution to unwanted birth); see also Gruss, supra note 16, at 77 (policy recommendations include that "[s]tates should also encourage broad-based education efforts to teenagers, college students, teachers, guidance counselors, parents, clergy and social workers on pregnancy planning, warning signs of pregnancy-related depression, supportive resources, and on alternative placements options . . . . Education on the existence, location, and legal ramifications of safe havens should be included as well.").

412. See Project Cuddle, About Project Cuddle, http://www.projectcuddle.org/about.asp (claiming that the primary goal is to prevent abandonment of newborns, and that the project "has saved over 600 of [sic] babies across the country and into Canada"). Additionally, those who are critical of safe haven laws often support hotlines as a better solution to the problems of unwanted pregnancy. See, e.g., Racine, supra note 185, at 258-59 (discussing Project Cuddle hotline).


414. See Magnusen, supra note 42, at 26-27 (noting that about sixty-three percent of the women choose to raise their infants and about thirty-two percent make an adoption plan); see also Meadows et al., supra note 190, at 139, 140 (discussing Jaccard's organization).}
services for at-risk women and increase accessibility to counseling programs to encourage confidential private adoptions. . . . The safe haven laws might help in saving babies and their birth mothers. However, a stumbling block currently exists: legislation that provides no education and no assistance for distressed mothers.415

Likewise, Oberman, who has also questioned whether we can determine the effectiveness of safe haven laws, has conceded that from a pragmatic view, safe haven laws might help prevent illegal abandonments because “the best chance of preventing neonaticide lies in intervention . . . . If widely publicized, safe haven laws could place others on notice of the possibility that someone in their lives might be concealing a pregnancy.”416

One problem today is that as a result of the binary and polarized pro-life/pro-choice views, integration has been impeded — and this deprives women of the opportunity to grasp the kairic moment. For instance, although pro-choice organizations often supported the enactment of safe haven legislation,417 as Planned Parenthood did in Alaska recently,418 once the safe haven laws are in place, pro-choice organizations seem to turn a blind eye to safe havens.419 And while pro-life organizations sometimes opposed safe havens,420 once the laws were in place, the laws may have become more aligned with

415. Magnusen, supra note 42, at 25. Magnusen’s position regarding safe havens is somewhat ambiguous. For instance, she states that “[m]others-to-be should not be educated on how to abandon their babies, but how to not abandon their babies.” Id. at 28. Moreover, when California was debating the safe haven bill, Project Cuddle questioned the effectiveness of the law because it was doubtful that teens who concealed their pregnancies would make use of safe haven laws: “If they’ve hidden their pregnancy from friends and family, it is a big fallacy to believe that they’ll waltz into a police station (or a hospital) and voluntarily give the baby up.” Docan, supra note 186, at 29.

416. See Oberman, supra note 191, at 95. While Sanger views this result of surveillance as invading women’s privacy, many health professionals consider the need for surveillance especially important in the case of denied and concealed pregnancy.

417. Sanger, supra note 32, at 779; see also Racine, supra note 185, at 247 (noting that both Planned Parenthood of Wisconsin and Wisconsin Right to Life supported the Wisconsin bill); supra pp. 29-30 (noting that Planned Parenthood supported the California law, but warned it needed funding for public awareness efforts).

418. E-mail from Suzanne Hancock, Chief of Staff for Representative Gabrielle LeDoux, to Susan Ayres (Feb. 11, 2008, 11:24 CST) (on file with author).

419. An example of the polarized views is given in the Epilogue of this Article.

420. Adie, supra note 83, at 290 (explaining the experience of Tim Jaccard in New York, who found that some pro-lifers opposed safe haven laws because of “fundamentalist attitudes to single parenthood”). Adie further noted that the experience of reformers in New England was similar; however, the expected opposition from the Catholic church was deflected by the child abuse scandal facing several priests. The Boston reformers received “a message from the Boston Cardinal’s staff. The hierarchy were engaged upon a different battle and did not have the resources to fight on two fronts . . . .” Id. at 288.
pro-life sentiment, indefinitely possibly in part because pro-choice organizations failed to publicize or acknowledge safe havens and possibly in part because feminist critics failed to construct safe havens as a legal option for women to exercise autonomy to reject motherhood. Sheldon warns that "law operates through constructing its own image of the legal subject which it seeks to regulate" and that as feminists, we must be cautious of the feminist subject we construct. O'Donovan reiterates this argument when she discusses the construction of women in terms of legalized abandonment:

Constructions of maternity, biology, identity, and love are influenced by many factors, including laws and institutional policies... Women who successfully give up a child through abandonment rarely explain their reasons; they remain silent as they act in secret, and they seek anonymity. It is others who construct their own identities, and it is perhaps these others who call on their own conceptions of what they believe to be natural, both in the genetic sense and in how a "natural" woman behaves on giving birth. Yet people may also construct such women as autonomous agents who make choices in taking control of their lives, as in France.

Undoubtedly, the issue of effectiveness "will... continue to be debated" and safe haven laws themselves will continue to be amended to deal with new issues and possibilities. However, from a feminist perspective, it enhances a woman's choices to include safe havens for unwanted pregnancy. According to Tim Jaccard, the

421. See Sanger, supra note 32, at 785, 787 (discussing how pro-life rhetoric might be applied to safe haven legislation).
422. Sheldon, supra note 404, at 20.
423. O'Donovan, supra note 47, at 369.
424. See Docan, supra note 186, at 30 ("The question of effectiveness in saving infant's [sic] lives will likely continue to be debated."). Docan also quotes William L. Pierce, the President of the U.S. Committee of the International Association of Voluntary Adoption Agencies and NGO's: "Many of these [safe haven] laws are like the Model T and are a long way from today's Ford Thunderbird. They will be tweaked and fine-tuned." Id. (alteration in original).
425. One possible large-scale change is to adopt the German babyflap model and thus increase anonymity; a minor change is to reconsider the age at which infants can be left — while most states provide for abandonment of infants up to thirty days old, some critics challenge the need to allow for abandonment of infants over seventy-two hours old. See, e.g., Sanger, supra note 32, at 768.
426. While some nonprofit organizations that support safe havens seem to be more aligned with the Catholic Church, others, such as the New York organization and the Dallas organization officially claim not to align with either pro-life or pro-choice positions. Telephone Interview with Alan Elliott, Executive Director, Baby Moses Dallas (June 24, 2008); see also AMT Children of Hope Foundation, supra note 413. Moreover, as Tim Jaccard has explained, in New York, The Children of Hope Foundation walked a fine line between pro-life and pro-choice views in pushing through the safe haven legislation. See ADIE, supra note 83, at 290.
founder of New York's Children of Hope Foundation, it is crucial to acknowledge a woman's choices for late-term unwanted pregnancies: "'Over the years we've realised that you have to have three sce-

narios: a parenting plan, an adoption plan, or a final relinquishing 

plan . . . . And you can fluctuate from one plan to another . . . . We 

want the mothers to realise they have options — and what they say 

initially can be changed.'" This flexibility exemplifies kairos and 

constructs women as autonomous agents.

While outside the scope of this Article, the rhetoric of kairos 

could also be harnessed to solve other criticisms of legalized aban-

donment. For instance, the concern that fathers' rights are being vio-

lated by these laws can be addressed without the urgency to abolish 

safe haven legislation, as some advocate. Protecting a father's 

rights is a concern that generally arises after a newborn has been 

abandoned. More study is needed to determine how best to protect 

a father's rights when an infant is abandoned — whether this is 

through constructive notice by publication, searches of putative 

father registries, DNA testing, or other means. And while Parness 

may be correct that current laws favor a rhetoric of motherhood and 

mothers' rights, a rhetoric of kairos provides a pragmatic lens for 

resolving the tension between these rights.

A kairic approach could also address the concerns of adoption 

groups by emphasizing the need to integrate services and to inform 

women of all of their options as well as the need for safe haven pro-

viders to consistently give mothers medical forms to fill out and re-

turn by mail. Another practical solution might be to suggest that safe 

haven providers create a life book for abandoned children, as Scottish 

officials did when infant Gary Holyrood was abandoned.

427. See ADIE, supra note 83, at 295 (quoting Jaccard).
428. See Parness, A Different View of Safe Haven Laws, supra note 43, at 94; Racine, 
supra note 185, at 261. Some respond to the concern about father's rights by pointing 
out that the impact on fathers' rights is no different than under existing practice. For 
example, Vassilian argues that "[c]urrently, a mother who conceals her pregnancy from 
the biological father and then illegally abandons their child or gives the child up for 
adoPTION without correctly identifying the father, effectively circumvents the father's 
parental rights." Vassilian, supra note 272, at 760.
429. See Dreyer, supra note 23, at 181-82 (discussing proposed modifications to Texas's 
Baby Moses law aimed at protecting fathers' rights); Nolan, supra note 43, at 317-18 
(grouping safe haven laws into three categories with regard to paternal rights); Cooper, 
supra note 43, at 895-96 (arguing that only a handful of states adequately protect fathers' 
rights and, thus, provide due process).
430. Others might argue that the current laws favor a rhetoric of children's rights or 
of pragmatism. See O'Donovan, supra note 47, at 367-71 (contrasting the pragmatism 
of Germany's babylaps with the stress on women's autonomy in France's laws allowing 
amnonyMous birth).
431. Steven Henry, How a Fingernail Could Help Solve the Mystery of Abandoned 
Baby, DAILY MAIL (U.K), Dec. 22, 2005 available at 2005 WLNR 20937828. In addition
EPILOGUE

As I explain in the Prologue, my interest in the problem of infanticide, neonaticide, and unwanted pregnancies stems from my own intuition or cellular memory about my mother's plan to commit suicide and infanticide. While I was working on this Article, my research agenda took unexpected forays to determine what my community was actually doing to educate women about safe haven/Baby Moses laws.

Thus, evidence of the polarized approach to abandonment is personal and anecdotal—simple searches on Planned Parenthood's website bear out the observation that this pro-choice organization does not provide information about legalized abandonment, although it does provide information about adoption. The website for Planned Parenthood Federation of America contains a link to health topics, including pregnancy, which states: "If you are pregnant, you have three options to think about — abortion, adoption, and parenting." The website cautions women to "beware of so-called 'crisis pregnancy centers.' These are fake clinics run by people who are anti-abortion. They often don't give women all their options." As someone who has always been pro-choice, I worried that Planned Parenthood did not give a woman all of her options, either.

When I began this research, I initially called North Texas Planned Parenthood about the problem of abandoned newborns and Baby Moses laws. I was told that I had not called the right organization because it did not have anything to do with the law — and it was suggested that I contact the Department of Family and Protective Services. Then I read the trial transcript of a 26-year-old Texas college student who put her newborn in a dumpster in November of 2003 and this inspired me to question Planned Parenthood's response.

to making a life book (a sort of scrapbook of available information) for the infant, officials also conducted forensic tests to determine the infant's heritage. Id.


434. Id. (emphasis added).

435. My calls to the national Planned Parenthood Foundation were not returned.


437. Although I attempted to speak with a director of this regional Planned Parenthood affiliate several times, my calls were not returned. However, an e-mail response from this organization to my research assistant, Shivani Naicker, indicates that "Planned Parenthood of North Texas clinics do not participate in Infant Safe Haven law programs and do not offer this information to family planning clients." E-mail from Planned Parenthood of North Texas to Shivani Naicker, research assistant to Professor Susan Ayres (Aug. 4, 2008, 11:12 CST).
It was only later that I learned that some Planned Parenthood affiliates, such as in Illinois and New Jersey, do provide information about safe haven laws.438

This college student I read about, Dana Wilson, had researched her options for an unwanted pregnancy on the Internet and had gone to both Planned Parenthood and her primary care doctor.439 Her pregnancy was too far along for an abortion, but she was told that she had the option of placing the baby for adoption.440 She felt this was not an option for her — perhaps because she was concealing her pregnancy from her mother.441 After Dana delivered her baby at home with her mother in the next room, she put the baby in a garbage bag, and then drove to a nearby outdoor mall, where she put the bag in a dumpster.442 She then drove herself to college and delivered the placenta in the bathroom before class.443 She mentioned to one of her classmates that she had just had a baby at home, and said the baby was in the hospital.444 The classmate convinced her to go home and rest.445 The baby was later found still alive, and after her conviction of attempted capital murder, Dana Wilson is now serving a twenty year sentence,446 which is relatively merciful for Texas juries.

In her trial for attempted capital murder, Dana raised the insanity defense, which was rejected by the jury.447 However, it is clear

438. Telephone interview with Dawn Geras, supra note 251; E-mail from Jackie Cornell, Field Director, Planned Parenthood Affiliates of New Jersey, to Shivani Naicker, research assistant to Professor Susan Ayres (Aug. 6, 2008, 11:28 CST) (on file with author).

439. See Transcript of Record, Vol. 1 at 120, 188, Wilson v. State, No. 0912216D (Tex. Crim. Dist. Ct. No. 3, Tarrant County) (noting that the items seized from house included literature from a Parenting Center and printout along with receipt of doctor’s visit and that while Planned Parenthood information was seized, no Baby Moses information was found); Transcript of Record, supra, Vol. 5 at 145, 164, (noting that her mother had noticed “the little pouch” and scheduled an examination with her doctor; however, the doctor made no referral, so her mother dismissed suspicions that Dana was pregnant).

440. See Transcript of Record, supra note 439, Vol. 5 at 244-45 (noting that Dana knew her options by the fifth month of her pregnancy, but decided they were not options for her; instead, she focused on her own survival).

441. See id., Vol. 5 at 244-45, Vol. 6 at 61. The court appointed psychologist who interviewed Wilson testified that “I believe that she felt so trapped psychologically that . . . she felt that what she was doing was right and possibly the only real option that was available to her, because of fear of what would happen that she would be booted out of the house, that she would have to go alone, and that she wouldn’t be able to do that if her mother found out about it.” Id., Vol. 5 at 216-217.


443. Transcript of Record, supra note 439, Vol. 6 at 70-71.

444. Id., Vol. 5 at 65-67.

445. Id., Vol. 5 at 68.

446. Wilson, 2006 WL 2773812, at *1.

447. Transcript of Record, supra note 439, Vol. 7 at 33 (finding Dana guilty of attempted capital murder).
from the trial transcript that she suffered from a serious mental illness and had borderline intelligence.\footnote{448} Her pregnancy was the result of a one-night stand with a man she met on-line.\footnote{449} She told a court appointed psychiatrist that she did not like the baby and wanted to get rid of it — that that was “[her] choice.”\footnote{450}

The trial transcript did not mention whether Dana was aware of the Baby Moses laws. She had gone to Planned Parenthood and was told that she was too late for an abortion but could consider adoption. Her Internet research on Planned Parenthood materials seized by detectives did not include any information about Texas’s Baby Moses law, which was enacted about four years before her pregnancy. She did not testify at trial. None of the psychiatrists who testified mentioned whether she knew about Baby Moses laws. When I asked her appellate attorney, he said he did not know, either.

After reading Dana Wilson’s trial transcript I decided to make more phone calls to determine whether other local agencies provided information about the Baby Moses law. When I called a local well-known private abortion provider in the Dallas area that receives referrals from Planned Parenthood, the director said that when young women choosing to end a pregnancy are counseled about other options, they are only told about adoption and organizations that assist in parenting — this is true even if it is too late for an abortion. The women are not told about the Baby Moses law.\footnote{451} When I wondered whether the organization could tell women about the law, the director asked, “Why?”

After I told the director the story about Dana Wilson, she paused and agreed that maybe the agency should include information about Baby Moses laws. She asked me to send her a website link, which

\footnote{448} \textit{Id.}, Vol. 5 at 195-210 (detailing the results of an IQ test performed on Dana).
\footnote{449} \textit{Id.}, Vol. 6 at 48-54.
\footnote{450} \textit{Id.}, Vol. 5 at 221, 240.
\footnote{451} Under the Woman’s Right to Know Act of 2003, a woman who elects an abortion is required to read information regarding options other than abortion, such as medical assistance during pregnancy and child support if she decides to raise the child. \textit{See} Texas Department of State Health Services, Woman’s Right to Know (Dec. 17, 2007), \url{http://www.dshs.state.tx.us/wrkt/default.shtm}. The booklet contains the following paragraph about the Baby Moses law, though the paragraph is not highlighted by a separate title or bold print:

You should know that, if you choose to have your baby and find yourself weighed down by the job of being a parent, Texas has the 'Baby Moses/Safe Haven' law. The law allows you or the baby’s father to leave a baby under 60 days old in a safe place and not return for the baby without fear of being charged with a crime, if the baby is not hurt. Safe places are hospitals, fire stations, emergency clinics or licensed child-placing agencies.

\textit{Id.} So, since 2003, women seeking abortions are “told” about the Baby Moses Law, assuming that they wade through the fine print in the information booklet.
I did. The flexibility and pragmatism shown by this private agency is an example of the rhetoric of *kairos*, the rhetoric of possibility. Like the movement in Germany which led to babyflaps, it shows pragmatic wisdom in a situational crisis. Rather than “stealth symbolism” — leading to the reversal of *Roe v. Wade* — this *kairic* approach empowers women in their array of choices, of possibilities. As I have argued in this Article, data supports the common-sense conclusion that safe haven laws prove effective when they are promoted by active public awareness campaigns. States and non-profit agencies should increase efforts to educate the public about safe haven laws as one option of many for unwanted pregnancy. Like the European models of babyflaps and anonymous birth discussed in this Article, safe haven laws provide women another option to exercise their autonomy and to do the right thing at the right time.

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452. I do not know whether that private abortion provider is providing information about Baby Moses laws from the Baby Moses Dallas website.

453. Planned Parenthood affiliates that inform women about safe haven laws likewise show a pragmatic or *kairic* wisdom.


455. See Benedikt, *supra* note 395, at 226-27 (discussing the links between *kairos* and ethics, and pointing out the “the right action at the wrong time is not *kairic*. . . . An action that is morally right at the present moment may not be so in the next.”).