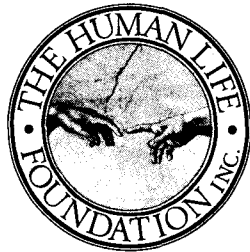


the HUMAN LIFE REVIEW



SUMMER 1978

Featured in this issue:

- Clare Boothe Luce on.The New Morality
Prof. Paul Cameron on. A Case Against
Homosexuality
M. J. Sobran on.The Established Irreligion
Janet E. Smith on.Abortion as a
Feminist Concern
Prof. Paul Ramsey on. . . .The Court's Bicentennial
Abortion Decision
John T. Noonan, Jr. on.Mohr on Abortion

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about THE HUMAN LIFE REVIEW

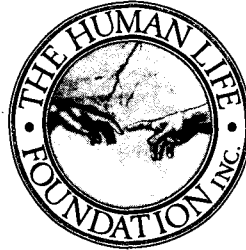
Herewith our 15th issue; one more and we will have completed four full years of publishing what we continue to believe is an unusual journal, but one designed for the times (even if it may be a little ahead of them!). New readers (and there are a goodly number with each successive issue) will find information about all previous issues — how to order, etc. — on the inside back cover. We still have supplies of *all* issues published to date, as well as bound volumes, fully-indexed, of the first three years.

In the issues to date we have had a variety of articles: some scholarly, some journalistic (with many in between); some quite long, others short. This issue — it just happened that way — is mainly a small group of middle-sized pieces (which, we think, fit together very well). With one exception. The last major “article” here is in fact the initial chapter of a new book, *Ethics at the Edges of Life*, by the well-known Prof. Paul Ramsey. Naturally, we publish the chapter here because we think it is important in itself. But it is only a part of what we consider one of the most important books to be published — certainly for anyone concerned about the “life” issues this journal is concerned with — since the U.S. Supreme Court’s 1973 abortion decisions.

Therefore we hope that the interested reader, after having whetted his appetite on the chapter here, will want to read the whole thing for himself. If you do, you will be rewarded with a great deal more: other chapters deal with abortion and conscience, the Edelin Case, euthanasia, and the growing “neglect” of defective infants (and Neonatal Infanticide), the Quinlan Case, the current craze for “Death with Dignity” legislation (in particular the prototype California Natural Death Act); in all, over 350 pages of impressive argumentation on what might be generally classified as medico/legal ethics, but on a very broad (and humane) scale. We repeat, it is an extremely important book for *anyone* on either side of our “life” issues. It may not be in your local bookstore, but can be ordered easily direct from the publisher (price: \$15). Address: Yale University Press, 92A Yale Station, New Haven, Connecticut, 06520. (Your local librarian and/or others may well want to know about it too.)

Finally, a word about manuscripts; the editors endeavor to read *all* material submitted (indeed, some of our best articles have come to us “over the transom”), and to return what in our judgment is unsuitable for the HLR with appropriate reasons why. But we are unable to answer the many requests for information as to what kind of articles we *might* be interested in. We are (as editors ought to be) interested in the kind of thing we publish, and believe that the close-to-a-million words of *that* already available provide the best guide to writers.

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INTRODUCTION

Once again we begin with an article by The Honorable Clare Boothe Luce. While just about everything Mrs. Luce writes turns out to be memorable, we think that our readers will find this one especially so. And we are especially glad to publish it, for it symbolizes the steady (if subtle) change that seems to have been going on in this journal since we began (almost four years ago), namely, a slow but steady shift from the “raw” issues — abortion, euthansia, *et al* — that originally confronted us, toward a more integrated sense of concern for the fundamental problems, symbolized by the obvious decline in the strength of the *family*.

Thus, Mrs. Luce writes: “Now the fact that mankind has instinctively sensed that there is a right and a wrong way of handling his procreative energies strongly suggests that there may be a universal *sexual* morality. And so there is. And when we examine it, we find that it is this very morality that has made all human progress, and what we call civilization, possible. It is the morality that protects and preserves that basic unit of society — the *family*. The family is the foundation on which mankind has built all his societies.” Exactly so. And as more and more of us come to realize these truths again (history is the record of the learning and re-learning of them), so we see more clearly that the individual problems that now plague us cannot be solved singly. Certainly, those who share this view will find Mrs. Luce’s article of great importance as a comprehensive statement of principles. Not to mention a delight to read, from beginning to end. (On occasion we have noted that we were particularly proud to publish a particular article or statement: never moreso than in this instance.)

What follows, we think, bears out in detail (quite a bit of it, too) what Mrs. Luce has to say in general. Certainly there can be little argument that Homosexuality is in direct contradiction to the ideal of family life. And that is exactly how Prof. Paul Cameron views it in the incisive and closely-argued article we present here. Crammed with facts and figures — mainly the product of Prof. Cameron’s own independent research — we think that the reader will find this article (despite its length and/or the considerable attention it demands) not only fascinating but also remarkably *different* from what is generally written on the subject nowadays. (As one of our copy-readers put it: “I’m not sure I don’t agree with him even about some things I know I don’t agree with him about”!) And if, after all that is here, you hunger for more, well, we hope to provide exactly that in future issues: Dr. Cameron assures us that he has more such studies in process, and we can hardly wait to see them.

The ever-faithful M.J. Sobran then weighs in with yet another marvelous essay (nobody we know does his kind of thing better), on another truth that is dawning on many Americans: that we in fact *do* have an “Established Religion,” and that, call it Secular Humanism or whatever, it is roughly the *opposite* (in its dogmas *re* matters both public and private) of our traditional religious beliefs. As usual, Sobran puts his case forcefully, e.g., “It may be replied that it is improper for the state to take a

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position in religious matters, and I for one find this a reasonable proposition in many respects. Yet when the claim is made that ir-religion must enjoy equal status with religion *as a constitutional imperative*, I must demur.”

And he concludes: “It is time for religious people to insist that ‘human rights’ includes not only the right to dissent, but the right to worship; and to insist that secularism be judged not by its profession of tolerance, but by its own international record. That record is a grisly one everywhere, and as the secularists prevail in the domestic abortion battle, the grisliness should come home to us irresistibly. The cheapening of life is not an abstraction; it is a systematic and present reality.” Given the fact that our “civic religion” is today generally treated with the reverence once reserved for other revelations, Sobran’s strong views may constitute a kind of public heresy — which will be most welcome to the orthodox. We are glad to provide the nail by which he fastens his theses to the door.

Next we have an unusual piece, by an unusual young woman, Janet Smith, a “feminist” who has very definite ideas about what that label *ought* to mean to women. And she is convinced that, in fact, most women should — and do — agree with her. She certainly writes well and persuasively (still in her early twenties, we expect to hear much more from Miss Smith in the future).

The last but by no means least of our major articles is the entire first chapter of what we consider a most important new book, *Ethics at the Edges of Life*, by the distinguished Professor of Religion at Princeton, Paul Ramsey. We might have picked *any* chapter — the whole work is uniformly excellent and (to use that much-overworked “modern” word) relevant to our concerns here. We picked this one because a) we hope it will inspire the reader to read the whole book for himself (see the inside front cover for details about how to get it) and b) this chapter puts considerable emphasis on how the High Court’s abortion rulings are affecting the family which, as we’ve explained, is our “signature tune” for this issue. We would expect just about anybody, from legal scholar to casual reader, to find what Professor Ramsey has to say of absorbing interest.

We conclude with a short commentary by Professor John T. Noonan, Jr., one of our most frequent contributors, on another new book, *Abortion in America*, by James C. Mohr. Actually we had expected to give three new books on abortion indepth reviews: Mohr’s; *The Ambivalence of Abortion*, by Linda Bird Francke; and *The Baby in the Bottle*, by Dr. William A. Nolen. All were widely reviewed in the major book media (e.g., the *New York Times*, etc.). But our own reviewers were uniformly negative as to the importance of any of them: the Francke book (which was “inspired” by the “No Room for a Baby” article that originally appeared in the *Times* — we reprinted it in our Summer, ’76 issue) is evidently an inferior version of the “personal interview” abortion book already done by Magda Denes (*Life and Death in an Abortion Hospital*, of which an excerpt appeared in our Winter ’77 issue); Nolen’s is merely a kind of popular rehash of the Edelin Case, with much gratuitous commentary, both on the case itself and the abortion “dilemma” in general, by the author; Mohr’s work seems to provide much less than the title promises, being in fact restricted to what the author thinks about how the 19th Century anti-abortion laws — which existed in every state until struck down by the Court in 1973 — came about. But Professor Noonan does draw several brief conclusions about what the book really shows, and we record them here (Appendix A). All in all, a meaty issue and, we hope, a most readable one too.

J. P. MCFADDEN
Editor

Is the New Morality Destroying America?

Clare Boothe Luce

I WAS HONORED — as who would not be? — by the invitation to address this Golden Circle of remarkable IBM achievers. But I confess I was somewhat floored by the subject your program producer assigned to me. He asked me to hold forth for a half-hour on the condition of morality in the United States, with special reference to the differences between America's traditional moral values and the values of the so-called "New Morality." Now even a theologian or a philosopher might hesitate to tackle so vast and complex a subject in just 30 minutes. So I suggested that he let me talk instead about, well, politics or foreign affairs, or the Press. But he insisted that your convention wanted to talk on a subject related to *morals*.

Well, the invitation reminded me of a story about Archbishop Sheen, who received a telegram inviting him to deliver an address to a convention on "The World, Peace, War, and the Churches." He replied: "Gentlemen, I am honored to address your great convention, but I would not want my style to be cramped by so narrow a subject. However, I would be glad to accept if you will widen the subject to include 'The Sun and the Moon and the Stars.'" So I finally agreed to talk if I could widen my subject to include, "The Traditional Morality, the New Morality, and the Universal Morality."

There's another trouble about talking about morals. It's a terribly serious subject. And a serious talk is just one step away from being a dull, not to say a soporific one. So I won't be offended if, before I finish, some of you leave. But please do so quietly, so as not to disturb those who may be sleeping.

The theme of this convention is "Involvement." Now there is one thing in which all Americans, including every one of us here, are already deeply involved. Every day of our lives, every hour of our waking days, we are all inescapably involved in making America either a more moral or a more immoral country.

So this morning, let's take a look at the direction in which we Americans are going. But first, we must begin by asking, "What are morals?"

Clare Boothe Luce is, as everybody knows, known to everybody for one or more of her many contributions to American life and letters. This article is what she describes as the "uncut version" of a speech she delivered to the recent IBM "Golden Circle Conference" in Honolulu.

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Morals, the dictionary tells us, are a set of principles of right action and behavior for the individual. The “traditional morality” of any given society is the *set of moral principles* to which the great majority of its members have subscribed over a good length of time. It is the *consensus* which any given society has reached on what right action and decent behavior are for everybody. It is the way that society expects a person to behave, *even when the law — the civil law — does not require him (or her)* to do so.*

One example will have to suffice. There is no law that requires a person to speak the truth, unless he is under oath to do so in a court proceeding. A person can, with legal impunity, be an habitual liar. The traditional morality of our society, however, takes a dim view of the habitual liar. Accordingly, society punishes him in the only way it can — by social ostracism.

The person who believes in the traditional principles of his society, and who also succeeds in regulating his conduct by them, is recognized by society as a “moral person.” But the person who believes in these principles — who knows the difference between “right and wrong” personal conduct, but who nevertheless habitually chooses to do what he himself believes to be wrong — is looked upon by his society as an “immoral person.”

But what about the person who does *not* believe in the traditional moral principles of his society, and who openly challenges them on grounds that he believes to be rational? Is such a person to be considered a moral or an immoral person?

Today there are many Americans who sincerely believe that many of our traditional moral values are “obsolete.” They hold that some of them go against the laws of human nature, that others are no longer relevant to the economic and political condition of our society, that this or that so-called “traditional moral value” contravenes the individual’s Constitutional freedoms and legitimate pursuit of happiness. Others believe that while a moral value system is necessary as a general guideline for societal behavior, it cannot, and should not, apply to everybody. Every person is unique; no two persons are ever in exactly the same situation or “moral bind”; circumstances alter moral cases. These persons believe, in other words, that all morals are “relative,” and all ethics are “situational.” They argue that what is wrong behavior for others is right behavior for me, because *my* circumstances are different. The new principles of right action and behavior which such persons have been advancing and practicing today have come to be called “the New Morality.”

But before we undertake to discuss the differences between the

*Where the words man, he, him, his are used, woman, she, hers and her are also meant.

traditional American morality and the so-called "New Morality," let us ask a most important question: Is there any such thing as a universal morality? Is there any set of moral principles which apply to *everybody* — everybody who has ever been born, and which has been accepted by the majority of mankind in all places and in all ages?

There is, indeed, a *universal morality*. It knows no race, no geographical boundaries, no time, and no particular religion. As John Ruskin, the English social reformer, wrote, "There are many religions, but there is only one morality." Immanuel Kant, the greatest of Germany philosophers, called it the Moral Law, which, he said, governs all mankind. Kant compared this Moral Law to the Sublime Law that rules the movement of the stars and the planets. "We are doomed to be moral and cannot help ourselves," said Dr. John Haynes Holmes, the Protestant theologian.

When we study the history of human thought, we discover a truly remarkable thing — all the great minds of the world have agreed on the marks of the moral person. In all civilizations, in all ages, they have hailed truthfulness as a mark of morality. "The aim of the superior man," said Confucius, "is Truth." Plato, the Greek philosopher, held that "Truth is the beginning of every good thing both in Heaven and on earth, and he who would be blessed and happy should be from the first a partaker of truth, for then he can be trusted." "Veracity," said Thomas Huxley, the English scientist, "is the heart of morality." In Judeo-Christian lore, the Devil's other name is "The Liar."

Another mark of the moral person is honesty. "An honest man is the noblest work of God," wrote Pope in his *Essay on Man*. "Every honest man will suppose honest acts to flow from honest principles," said Thomas Jefferson.

The moral person is just. "Justice is the firm and continuous desire to render to everyone that which is his due," wrote Justinian. Disraeli called Justice "Truth in action." The moral person is honorable. At whatever cost to himself — including, sometimes, his very life — he does his duty by his family, his job, his country. "To an honest man," wrote Plautus, the great Roman poet, "it is an honor to have minded his duty." Two thousand years later, Woodrow Wilson voiced the same conviction. "There is no question, what the Roll of Honor in America is." Wilson said: "The Roll of Honor consists of the names of men who have squared their conduct by ideals of duty."

If, in an hour of weakness, the moral man does a thing he knows to be wrong, he confesses it, and he "takes his punishment like a soldier." And, if he harms another, even inadvertently, he tries

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to make restitution. He takes responsibility for his own actions. And if they turn out badly for him, he does not put the blame on others. He does not, for example, yield to the post-Freudian moral cop-out of blaming his follies and failures, his weaknesses and vices, on the way his parents treated him in childhood. Here I cannot resist mentioning the case of Tom Hansen, of Boulder, Colorado, a 24-year old youth who is living on welfare relief funds. He is presently suing his parents for 350,000 dollars damages because, he claims, they are to blame for lousing up his life, and turning him into a failure. Adam was, of course, the first man to try to shift responsibility for his behavior onto someone else. As there was no Jewish mom to blame, he laid it on to his wife Eve.

“Absolute morality,” wrote the English philosopher, Herbert Spencer, “is the regulation of conduct in such a way that pain will not be inflicted.” The moral person is kind to the weak and compassionate with those who suffer.

Above all, he is courageous. Courage is the ladder on which all the other virtues mount. Plautus, a true nobleman of antiquity, wrote, “Courage stands before everything. It is what preserves our liberty, our lives, our homes, and our parents, our children, and our country. A man with courage has every blessing.”

There is also one moral precept that is common to all the great religions of history. It is called the Golden Rule — “Do unto others as you would have them do to you.” When Confucius was asked what he considered the single most important rule for right conduct, he replied, “Reciprocity.”

The “universal morality” is based on these virtues — truthfulness, honesty, duty, responsibility, unselfishness, loyalty, honor, compassion and courage. As Americans, we can say proudly that the traditional moral values of our society have been a reflection, however imperfect, of this universal morality. All of our great men, all of our heroes, have been exemplars of some, if not all, of these virtues.

To be sure, different cultures and civilizations have placed more emphasis on some of these virtues than on others. For example, the morality of the early Romans heavily stressed courage, honor, and duty. Even today we still call these the manly virtues, and we tend to associate them with another value we call “patriotism.” In contrast, the morality of the Judeo-Christian cultures of the West have placed their heaviest emphasis on altruism, kindness, and compassion. “Though I speak with the tongue of men and angels, and have not charity,” St. Paul wrote, “I am become as sounding brass or a tinkling symbol.” Americans, whose traditional morality reflects the

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Christian virtues of compassion, donated thirty billion dollars last year to charity. Americans also tend to consider compassion for the underprivileged a greater virtue in politicians than either honor or courage.

Now, if all these virtues do indeed represent the *universal morality*, then what do their *opposites* represent? Well, lying, dishonesty, dereliction of duty, irresponsibility, dishonorable conduct, disloyalty, selfishness, cowardice, cruelty and hypocrisy represent, of course, the universal *immorality*.

In passing, hypocrisy, which has been called "the compliment that vice pays to virtue," has been viewed as the height of immorality in all civilizations. "Of all villainy," cried Cicero, "there is none more base than that of the hypocrite, who at the moment he is most false, takes care to appear most virtuous." The English philosopher Henry Hazlitt called hypocrisy "the only vice that cannot be forgiven." Jesus cursed only one category of sinner, saying, "Oh woe to Ye, scribes and hypocrites!" Even the cynic and agnostic Voltaire, cried: "How inexpressible is the meanness of being a hypocrite!"

So now we are ready to ask: In what direction can we say that Americans are going? Are we, as a people, going on the high road of the universal morality or on the low road of the universal immorality?

The question is a crucial one for the future of our country. All history bears witness to the fact that *there can be no public virtue without private morality*. There cannot be good government except in a good society. And there cannot be a good society unless the majority of individuals in it are at least *trying* to be good people. This is especially true in a democracy, where leaders and representatives are chosen from the people, by the people. The character of a democratic government will never be better than the character of the people it governs. A nation that is travelling the low road is a nation that is self-destructing. It is doomed, sooner or later, to collapse from within, or to be destroyed from without. And not all its wealth, science and technology will be able to save it. On the contrary, a decadent society will use, or rather, misuse and abuse, these very advantages in such a way as to hasten its own destruction.

Let us then face up to some of the signs which suggest that America may be travelling the low road to its own destruction.

Campus surveys show that one-third of our college students say they would cheat if they were sure they would not be caught. Forty-five percent say that they do not think that it is necessary to lead a moral life in order to be happy or successful. Sociologists note the extraordinary increase in blue and white-collar dishonesty, such as sharp business practices, dishonest advertising, juggled books and

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accounts, concealment of profits, and the taking and giving of bribes. These are all practices which rip-off the buying public.

Unethical practices in the professions are becoming common. Honorable members of the Bar are today appalled at the increase of shysterism in the practice of law. A recent Congressional investigation of medical practices turned up the horrifying fact that American doctors, greedy for Medicare fees, are annually performing thousands of unnecessary operations. They are dishonoring their Hippocratic oath by inflicting unnecessary pain on helpless and trusting patients for profit. The public's increasing awareness of the lack of professional integrity in many lawyers and doctors is certainly what encouraged President Carter to make his recent attacks on these two professions.

According to the polls, the majority of our citizens think that politics — and, yes, post-Watergate politics — are riddled with graft, kick-backs, pay-offs, bribes and under-the-table deals. Polls also show that our people think that most politicians have no compunction about lying their heads off in order to get elected. A great number of Americans also question the accuracy and objectivity — in short, the integrity — of journalists. They think that far too many politicians and journalists are hypocrites — quick to expose the “immorality” of those who do not hold their own political views, but quicker by far to cover up the wrong-doing of those whose views they favor.

Addressing Harvard University's graduating class in June, Alexandre Solzhenitsyn said: “A decline in courage may be the most striking feature an outsider notices in the West. . . . such a decline in courage is particularly notable among the ruling groups and the intellectual elite, causing an impression of the loss of courage by the entire society. . . . Should one point out that from most ancient times a decline in courage has been considered the beginning of the end?”

A recent TV documentary about the morale of our volunteer army and our armed forces in Germany was a shocker. It revealed that one-third of our enlistees quit after a few months, finding service in the best-paid army on earth too hard on their heads or feet. One-third of our troops in Germany freely admit that they would beat it out of the forces as fast as they could the moment they thought a war was coming, and that a majority of them felt that they could not trust their comrades in battle. The officer who did the commentary on this documentary said, “What we're getting is an army of losers.” The Pentagon has recently told the Congress that quotas for the armed services cannot be filled unless more women are taken in,

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including into the combat forces. So much for the condition of the manly virtues of duty, honor, courage in America's volunteer army.

Now I am sure that we would all agree that a rise in the crime rate indicates a weakening of society's social fiber. The staggering increase in the crime rate, especially in the rate of violent — and often utterly senseless — crime among American youth is surely a significant sign of moral decay. An even more significant sign is the impotence of our courts to cope with the enormous volume of crimes being committed. For example, of the 100,000 felony arrests made in New York City each year 97,000 or more cases are either dismissed, diverted for some non-criminal disposition, or disposed of through plea-bargaining. The average criminal who *is* sentenced is generally back on the streets in very short order. Studies show that most defendants arrested for serious crimes — *including murder* — go free. A society indifferent to the pervasiveness of crime, or too weak or terrified to bring it under control, is a society in the process of moral disintegration.

There is one other phenomenon in our society which has historically made its appearance in *all* decaying societies — an obsession with sex.

Sex — the procreative urge — is a mighty force. Indeed, it is *the* mightiest force. It is the *life* force. But since the dawn of history, what has distinguished man from the beasts is that he has made *conscious efforts* to control his lustful impulses, and to regulate and direct them into social channels. There is no primitive society known to anthropologists, no civilization known to historians, which has ever willingly consented to give its members full reign — bestial reign — of their sexual impulses. Sex morals, mores and manners have varied enormously from age to age, and culture to culture. But sexual taboos and no-nos, sex prohibitions (and consequently, of course, inhibitions) are common to all human societies.

Now the fact that mankind has instinctively sensed that there is a right and a wrong way of handling his procreative energies strongly suggests that there may be a universal *sexual* morality. And so there is. And when we examine it, we find that it is this very morality that has made all human progress, and what we call civilization, possible. It is the morality that protects and preserves the basic unit of society — the *family*. The family is the foundation on which mankind has built all his societies. Jean Jacques Rousseau called the family “the most ancient of all societies,” and “the first model of political societies.”

Humans, like all animals, instinctively mate. And the male instinctively protects his mate and her offspring. If this were not true,

the human race would have long since perished. For in the entire animal kingdom, there is nothing more vulnerable than a pregnant human female, or a human female giving birth. The human female carries her fetus longer, and her young remain helpless longer, than the females and young of any other species. But although humans, like all animals, instinctively mate, or pair-bond, they are not instinctively sexually faithful. Both sexes are promiscuous by nature. They come together naturally, but they do not naturally stay together. Marriage is a man-made institution. We do not know — or at least I do not know — its origins. They are lost in the mists of time. Marriage probably evolved by trial and error, as the most satisfactory way of both controlling the promiscuous impulses of the sexes, and satisfying the procreative urge in an orderly, uninterrupted basis. Bernard Shaw wittily remarked, “Marriage offers the maximum of temptation, with the maximum of opportunity.” Marriage is also the enemy of man’s worst enemies — loneliness and lovelessness. In any event, marriage has been the most serviceable, perdurable and, on the whole, popular of all mankind’s institutions.

Thousands of years ago, the poet Homer spoke in praise of marriage: “And may the Gods accomplish your desire,” he sang to the unwed maidens of Greece. “A home, a husband and harmonious converse with him — the best thing in the world being a strong house held in serenity where man and wife agree.”

Marriage customs have varied greatly throughout history. But what we know about the ageless custom of marriage is this: Whether a man took unto himself one wife, or like King Solomon, 1,000 wives, whether he “courted” his bride, or bought her from her father like a head of cattle, once he took a woman to wife his society *expected* him to assume the primary responsibility for her welfare and the welfare of their children. The first principle of the universal sexual morality is that the husband should protect and provide for his wife and his minor offspring *as long as they need him*. In many cultures, the man has also been expected to assume responsibility for his illegitimate children, or bastards, and for the fatherless or motherless children of his near relatives.

The second principle of the universal sexual morality is, in the words of St. Augustine, that “They who are cared for obey — the women their husbands, the children their parents.” St. Augustine adds, however, that “in the family of the *just man* . . . even those who rule serve those they seem to command; for they rule not from a sense of power, but from a sense of the duty they owe to others; not because they are proud of authority, but because they love mercy.”

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In all human undertakings, responsibility and authority go — as they must go — hand in hand. In order for a husband and father to discharge his responsibilities, it was necessary for him to have some measure of authority — let us call it the final “say-so” — over his family. The patriarchal family has been, up to now, the family pattern of all of the world’s civilizations. It will remain so until the vast majority of women are completely self-supporting.

The third principle of universal sexual morality is that spouses should be faithful to one another. Certainly this principle has always been more honored in the breach than in the observance for the simple reason that the animal side of human nature *is* promiscuous. But the fact remains that the faithfulness of both spouses throughout time, has been considered the *ideal* of marital conduct.

You may search through all the great literature of the world and you will find no words extolling marital infidelities.

While it is true that the “sins of the flesh” have always been more readily forgiven to husbands than to wives, all human societies have taken a very harsh view of men who seduce — or rape — the wives or daughters of the men of their own society.

When the Trojan, Paris, ran off with Helen, wife of the Greek King Menaleus, Greece fought a seven-year war against Troy, to protest the seduction and abduction of Helen. King David’s abduction and seduction of Bathsheba, the wife of Uriah, the Hittite, scandalized his court. It also caused that God-fearing monarch great agonies of repentance. In passing, King David’s repentance produced some of the world’s greatest poetry — perhaps, an early proof of Sigmund Freud’s theory that all the creative works of man — all his art, poetry, architecture, even his proclivity for money-making, political power and Empire building, are *au fond*, sublimations of his consciously or subconsciously repressed sexual desires.

The fourth, and most important principle of the universal sexual morality is that moral parents, in addition to supplying the physical and emotional needs of their children should educate them to become moral adults.

“Train up the child in the way he should go; and when he is old he will not depart from it,” says the Bible. John Stuart Mill wrote, “The moral training of mankind will never be adapted to the conditions of life for which all other human progress is a preparation, until they practice *in the family* the same moral rule which is adapted to the moral constitution of human society.” In the universal family morality parents who neglect, abuse or desert their young or who fail to train them to become moral citizens are bad parents.

There are several other aspects of the universal sexual morality

which should be mentioned. Although incest is natural among all the lower animals, and has correspondingly also made its appearance in all human societies, none has ever considered incest moral. Even in most primitive societies incest is viewed with horror. The 3,000 year old story of Oedipus Rex is the tragic story of the "guilt complex" of a man who slept — albeit accidentally — with his own mother.

History does tell us, however, that sodomy, homosexuality, and Lesbianism — virtually unknown in the lower orders — have been widely practiced, though seldom condoned, in all civilizations. But history also tells us that wherever incest, perversion, or marital unfaithfulness have become rampant, and whenever sex becomes, as we would say today, "value-free," the family structure is invariably weakened; crimes of all sorts increase — especially among the neglected young; and then more or less rapidly all other social institutions begin to disintegrate, until finally the State itself collapses. Rome is perhaps the most famous example.

In the time of Christ, when Imperial Rome was at the very height of its wealth and power, when the brick structures of the old Roman Republic had all come to be faced with gleaming marble, Rome had become a city obsessed with the pursuit of sensual pleasures. The Emperor Augustus Caesar, seeing the breakdown of the Roman family that was consequently taking place, tried to shore up the institution of marriage by passing laws making divorce more difficult and increasing punishments for adulterers, rapists, and abortionists. It was already too late. Those monsters of inequity, perversion and violence, Caligula and Nero were already in the wings, impatiently waiting to succeed him, and to hasten the decline and fall of the Empire.

So now let us come to "sex" in America. There is no doubt that what most Americans mean when they speak of "the new morality" is the "new" *sexual* morality which holds that "anything goes" between consenting adults in private — and that almost anything also goes in public. The English critic, Malcolm Muggeridge had America muchly in mind when he wrote, "Sex is the *ersatz*, or substitute religion of the 20th Century."

The social results of this new American *ersatz* religion are best seen in statistics most of which you can find in your Almanac. Today 50% of all marriages end in divorce, separation, or desertion. The average length of a marriage is seven years. The marriage rate and the birthrate are falling. The numbers of one-parent families and one-child families is rising. More and more young people are living together without the benefit of marriage. Many view the benefit as dubious. Premarital and extra marital sex no longer raises parental or conjugal eyebrows. The practice of "swinging," or group sex,

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which the ancients called "orgies," has come even to middle-class suburbia.

Despite the availability of contraceptives, there has been an enormous increase in illegitimate births, especially among 13-15 year-olds. Half of the children born last year in Washington, the nation's capitol, were illegitimate. The incidence of venereal diseases is increasing. Since the Supreme Court decision made abortion on demand legal, women have killed more than six million of their unborn, unwanted children. The rate of *reported* incest, child-molestation, rape, and child and wife abuse, is steadily mounting. (Many more of these sex connected acts of violence, while known to the police, are never brought into court, because the victims are certain that their perpetrators will not be convicted.) Run-away children, teen-age prostitution, youthful drug-addiction and alcoholism have become great, ugly, new phenomena.

The relief rolls are groaning with women who have been divorced or deserted, together with their children. The mental-homes and rest-homes are crowded with destitute or unwanted old mothers. These two facts alone seem to suggest that American men are becoming less responsible, less moral, and certainly less manly.

Homosexuality and Lesbianism are increasingly accepted as natural and alternative "life styles." "MS," the official Women's Lib publication, has proclaimed that "until all women are Lesbians, there will be no true political revolution." By the same token, of course, until all men are homosexuals, the revolution will be only *half* a revolution. In passing, the success of the Lesbian-Gay revolution would end all revolutions — by ending the birth of children.

But the most obscene American phenomenon of all is the growth of commercialized sex and hard and soft-core pornography. In the last decade, hard-core film and print porn, which features perversion, sadism and masochism, has become a billion dollar business. It is a business which is not only tolerated, but defended by the press in the sacred name of "freedom of the press." One would find it easier to believe in this noble reason for defending the filth that is flooding the nation if the newspapers did not reap such handsome profits from advertising and reviewing porn. In my view, newspaper publishers who carry X-rated ads are no better than pimps for the porn merchants. Billy Graham may have been exaggerating when he said "America has a greater obsession with sex than Rome ever had." But he was not exaggerating very much.

Now when we examine the "new" sexual morality, what do we discover? We discover that the new sexual morality comes perilously close to being the old universal sexual immorality, whose appearance

has again and again portended the decline and fall of past civilizations. Jane Addams once said, "The essence of immorality is the tendency to make an exception of myself." The principle on which the new sexual morality is based is sexual selfishness, self-indulgence, and self-gratification. Its credo is I-I-I, Me-Me-Me, and to hell with what others call sex morals.

In the 1976 Presidential campaign — *for the first time in American history* — the moral condition of the American family became a political issue. Candidate Jimmy Carter gave the problem particular stress.

"I find people deeply concerned about the loss . . . of moral values in our lives," he said. And like Augustus Caesar, 2,000 years before him, he fingered the cause quite correctly: "The root of this problem is the steady erosion and weakening of our families," he said. "The breakdown of the family has reached dangerous proportions." Candidate Carter also saw the relation between good government and weakened families. "If we want less government, we must have stronger families, for government steps in by necessity when families have failed . . . It is clear that the national government should have a strong pro-family policy, but the fact is that our government has no family policy, and that is the same thing as an anti-family policy."

It is far too late in the day to review the curious ideas Mr. Carter put forth in 1976 for the steps the Federal Government might take to strengthen the American family, except to say that they largely consisted in programs for *more* rather than less government assumption of marital and parental responsibilities. In any event, very little has since come of Carter's promise "to construct an administration that will reverse the trends we have seen toward the breakdown of the family in our country." The truth is that very little *can* be done by government to shore up the family, although a great deal can be done and has been done to hasten its collapse.

But the real cause of the breakdown is the abandonment, by millions of people, beginning with husbands, wives and parents of their *interior* devotion to the principles of the universal morality. To ask what can be done to reverse the trend is to ask, what can the individual members of society do? The answer is — everything.

When Goethe, the great German poet, lay on his deathbed, an old friend asked him what farewell message he had to give to the world. Goethe replied, "Let every man keep his own household clean and soon the whole world will be clean."

If not every American, but just every other American man and woman were to begin today to keep their own households clean, this process of moral decay would *immediately* be halted.

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It is certainly not too late to hope that this will happen. There are still millions of good people in America who try, try, try to remain faithful to the American version of the universal morality, and who also bring up their children to remain faithful. These Americans constitute the true *Golden Circle* of our country. If they will try to strengthen and enlarge *that* circle, by only so much as one virtuous act a day, a strong and happy America will make it safely into the 21st Century.

A Case Against Homosexuality

Paul Cameron

IN SOME segments of the mass media, the homosexuality issue takes on the appearance of a struggle between orange juice peddlers and bathhouse owners. At a different level individual rights vs. the interests of society provide the conflict. Some argue that adult homosexuals ought to be allowed to do what they want behind closed doors. Others, often seeing the issue in terms of rights, honesty, and overpopulation, seek to grant homosexuality equal status with heterosexuality. The school system of San Francisco, apparently resonating with the latter tack, is offering a course including "homosexual life-styles." Liberals attempt to shame as unenlightened all who oppose complete equality as vigorously as conservative Bible-thumpers threaten wrath from above.

No known human society has ever granted equal status to homo- and heterosexuality. What information do those who desire social equivalence for these two sexual orientations possess that assures them that this new venture in human social organization is called for at this time? Have the cultures of the past practiced discrimination against homosexuality out of a mere prejudice, or was there substance to their bias? At the risk of seeming rather out of step with the academic community, no new information has surfaced that would lead me to discount the social policies of the past. On the contrary, the policies of the past in regard to homosexuality appear generally wise, and considerable discrimination against homosexuality and for heterosexuality, marriage and parenthood appears needful for the social good.

Discrimination

Discrimination is something all humans and all human communities do. Individually we discriminate for certain things and against others, e.g., movies over T.V. Collectively we discriminate for and against selected: 1) acts (pleasantries, sharing vs. murder, robbery), 2) traits (generous, kind vs. whiny, hostile) and 3) life-styles (independent, productive vs. gambling, indolent). Prejudice is un-

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warranted discrimination. The issue is not whether discrimination should exist — for human society to exist, it must. The issues are always: 1) is discrimination called for? and 2) how much is necessary? Reasonable people can and do disagree on what ought to be discriminated for and against, to what degree, and even if discrimination is prejudicial rather than called for. But reasoned opinion *can* hold that homosexuality and homosexuals ought to be discriminated against.

What are we talking about?

The first question in consideration of any issue is “what is it?” Full-fledged homosexuality features: 1) a person, 2) who knows what homosexuality and heterosexuality are, 3) who prefers homosexuality, and 4) acts in concert with another person or persons to achieve homosexual pleasure. The sexual fumbblings of children or even of younger teenagers are typically too uninformed to constitute either full-fledged heterosexuality or homosexuality. Informed knowledgeable persons, on the other hand, can choose one, the other, or both. Animal sexuality is beside the point. While some younger animals may, at times, engage in “parahomosexual” activity, none have been known to systematically practice homosexual actions with another of its sex. What this “parahomosexuality” means sexually to the animals involved is, at best, obscure, and is apparently confined to males of infrahuman species, the “lesbian animal” has yet to be noted. Wanting, desiring, or imagining homosexual coupling is not the same thing as doing it. Just as wanting to be intelligent is not the same thing as acting intelligently. A person may, for money or other considerations, perform a homosexual or heterosexual act, but if the motivation is pecuniary, or to save one’s life the act is not a full-fledged sexual one. If a married person can only perform coitus when imagining doing it with a person of the same sex, his coital activity is “suspect.” Only when desire and activity mesh are we talking about the genuine article.

How Much Homosexuality/How Many Homosexuals?

The Kinsey studies seem an obvious place to begin in answering this question. However, the Kinsey reports of incidence are flawed in at least three important respects: 1) Kinsey’s 7-point scale mixed intent and activities in some unknown fashion, 2) his samples were far from representative of the general population, and 3) the sexual explorations of childhood were accorded the same status as the acts of adults in many of the calculations. Kinsey claimed that 37% of the male and 20% of the female population had some actual homo-

sexual experience in the course of their lives and that 10% of American males were “more or less exclusively homosexual” for three or more years of their lives beyond the age of 15. But Karlen (1971) reports that William Simon, who was associated with the Kinsey Institute, suggested that about 2 to 3% of the male population has a long-term homosexual pattern, while another 7 to 8% have some sort of homosexual experience. Bieber (1962) suggested that 1 to 2% of male adults are homosexual and another 3 to 4% bisexual.

Homosexuals probably more frequently reside in San Francisco, New York and other urban areas than in the rest of the U.S. Two large scale polls of sexual preference have been run in the past decade. In 1972, the Playboy Foundation (Hunt, 1974) sponsored a survey of 2026 Americans in 24 cities (the rejection rate in this survey was greater than 21%). While not completely representative of the general population, the sample was respectably “decent.” One percent of the males and .5% of the females classified themselves as “mainly” or “totally” homosexual while equivalent numbers chose to rate themselves as “equally heterosexual and homosexual.” Over 1976-78 I conducted a probability survey involving 1520 persons in three locations, (rural St. Mary’s County, Md., urban Pasadena, Calif., and suburban Orange County — about 23% refused to cooperate). They were asked “How would you rate your sexual interest? 1) I am only sexually interested in and attracted to members of the opposite sex, 2) I am generally attracted to members of the opposite sex, but sometimes am attracted to members of my sex, 3) I am equally attracted sexually to members of my sex and the opposite sex, 4) I am generally sexually attracted to members of my sex, but sometimes am interested in and attracted to members of the opposite sex.” Note that we inquired only regarding intent or interest, and only at the time of the administration of the questionnaire. We did not ask for acts, nor if the respondent had “ever” been of a different sexual suasion. As with the *Playboy* effort, our sample is probably respectable. Since all three locations provided essentially identical results, combining them seems reasonable. For males, 91% chose to identify with exclusive heterosexuality, 4% with general heterosexuality, 2% with bisexuality, 1% with general homosexuality, and 1% with exclusive homosexuality. For females the corresponding figures were 90%, 5%, 2%, 1%, and 1%.

As noted, Kinsey’s rating system was ambiguous in that it mixed intent and activity in some unknown proportions. This ambiguity probably resulted in over- rather than under-estimation of homosexuality’s incidence (since intent and activity do not completely overlap, adding together one and the other yields a higher total).

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The *Playboy* poll item was also somewhat ambiguous in that it did not specify whether intent and/or behavior was involved in the subject's self-ratings; whether this resulted in over- or underestimation is unclear. Our item focused on intent/desire, and as many desires do not reach fruition, probably overestimated the incidence of homosexuality. The Kinsey sample was heavily skewed toward over-representing deviants of all stripes, while the *Playboy* and my samples would tend to under-represent deviants (our samples did not include those jailed or otherwise incarcerated, nor those without relatively stable residences). Further, surveys were cross-sectional and did not "add in" or "adjust" for "ever having done something homosexual."

On their face the surveys compare:

Comparison of Homosexuality's Incidence						
	Kinsey (at age 30) late 1940s		Playboy 1972		Cameron 1976-8	
	males	females	males	females	males	females
mainly/totally hetero	90.5%	96%	98%	99%	95%	96%
bisexual	2.1%	(about 1%)	1%	.5%	2%	2%
mainly/totally homo	6.9%	(about 1%)	1%	.5%	2%	2%

Whether homosexuality has grown, declined, or stayed constant over the last few decades cannot be determined. First, because of the apparently low incidence of the phenomenon, a series of well-drawn samples of around 20,000 people would be required to reliably index any change. The magnitude of such an undertaking effectively squelches its doing. Secondly, the questionnaire in such an effort should index both intent/desire and activity. Any population change in sexual orientation ought to show up first in desire and later on in actual behavior. Further, as questionnaire information is what people *claim* and not necessarily what they *do*, somewhere down the line some assessment of sexual activity vs. claims is in order. Even though William Simon, one of the Kinsey researchers, thought the Kinsey survey indicated a slight generational increase in homosexuality (in Karlen, 1971), it appears fairest to conclude that no firm conclusion is possible regarding either the growth or decline of homosexuality at this time.

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Media Treatment of Homosexuality

My investigation of homosexual pornography suggests that it has grown in the 1970s but at a more modest rate than the appearance and treatment of homosexuality in the mass media over the last half century. David Oeschger and I made a complete survey of articles indexed in *Readers' Guide to Periodical Literature* for 1922 through 1971. We counted the words in the articles, and rated the "tone" of each as being "encouraging/positive" (which we scored as a "1"), "in-between 1 and 3," "neutral" (which we scored as a "3"), "in-between 3 and 5," or "discouraging/negative" (which was scored as a "5"). The growth in numbers of pieces about homosexuality has traced an accelerating curve. In the first decade of our survey (1922-31) only 2 articles on homosexuality were indexed, the next decade there were 5, then 18, then 35, and for the last (1962-71) 132! The number of words devoted to the topic increased in a like fashion from 450/year in the 1920s, to 1,735/year in the 1940s, to 24,556/year in the 1960s. The tone of the articles changed also. "Discouraging" (5) was the median tone for the articles in the 1920s through 30s, "in-between 3 and 5" for the 1940s and 50s, to a solid "neutral" in the 1960s. My impression, as yet unbuttressed by systematic indexing, is that the 70s to-date, feature an "in-between 1 and 3." Most of the rest of the mass media defy satisfactory indexing (movies are generally preserved, but most newspapers and TV programs, and almost all radio programming, evaporate in the rush of time). But those who contributed the literature indexed in *Readers' Guide* also contributed and/or resonated with the literature in the rest of the mass media. Thus though the incidence of homosexuality today may approximate that of 50 years ago, the populace is experiencing something like a 50-fold increase in exposure to homosexuality. That exposure is tilted decidedly "pro" (even "neutral" presentation is "pro" relative to past condemnation — just as a dispassionate "so 6 million Jews were killed by Hitler" by an American president would be).

Public Opinion Regarding Appropriate Social Policy Toward Homosexuality

Unfortunately public opinion pollsters have generally contented themselves with pithy, and therefore obscure and ambiguous, questions regarding opinions about homosexuality. For instance, the 1972 *Playboy* effort asked whether a respondent thought "homosexuality should be legal? yes, no, or no comment." Almost half of their sample chose "yes," and a little less than half chose "no." Did the people who chose "yes" believe that consenting adults should be allowed freedom to do as they wanted behind closed doors, fear

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that if they chose “no” they would be believed to want to execute homosexuals, or that homosexuality ought to be granted equal status with heterosexuality? Similarly, a 1969 Harris poll reported that 63% of his sample check “agree” to “homosexuals are harmful to American life.” Answers to ambiguous questions such as these provide little information regarding public opinion about homosexuality (and there were other questions also — for instance about half of the *Playboy* respondents chose “agree” to “there is some homosexuality in all of us” for whatever *that* means). Pollsters’ success with two party elections has apparently persuaded them that “yes/no” can be applied to just any topic.

Somewhat greater sophistication attended the Institute for Sex Research’s (Klassen and Levitt) poll of 3,018 U.S. adults. Indulging in the penchant for overinterpretation that seems to be the pollsters’ quirk, they noted that “two-thirds of our respondents regard homosexuality as ‘very much obscene and vulgar,’ and less than 8% endorse the view that it is ‘not at all obscene and vulgar’” (quoted in Weinberg and Williams, 1974). What they actually had was over two-thirds of their respondents choosing “very much” and about 8% “not at all” to the statement “homosexuality is obscene and vulgar” — the 8% might have disagreed with the “obscene” and/or the “vulgar” and it takes more than a flight of fancy to construe their choice of responses as indicating that homosexuality “. . . is not at all obscene and vulgar,” or that the two-thirds “regard homosexuality as very much” the case. Given a list of occupations for which most respondents would allow homosexuals participation, “permission” was “granted” for artsy-craftsy occupations such as beauticians and musicians, but not for judges, teachers, or M.D.s.

In 1976-78 our poll of 1,520 respondents, did not differ by age, sex, or Coast in their choices regarding the following: “In your opinion, how should homosexuality be dealt with?”

It should be discriminated against both legally and socially, so that homosexuals would be jailed if discovered and generally shunned	9%
It should be legally discriminated against (homosexuals should not be allowed to teach or hold jobs involving children, etc.) and barely tolerated socially	21%
It should be legally discriminated against but tolerated socially	7%
It should be legally accepted and barely tolerated socially	10%
It should be legally accepted and tolerated socially	18%
It should be accepted legally and socially	17%
It should be accepted legally and socially to the same degree as society accepts heterosexuality	17%

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It should be accepted legally and promoted socially as being better than heterosexuality	1%
It should be promoted as the best kind of sexual expression	1%

While one cannot just read off the choices and predict how the Dade County or St. Paul votes would come out, clearly about a third of our respondents would discriminate rather vigorously against homosexuals, and, depending somewhat on how you interpret the figures, close to another third endorse some discrimination against them. Only 16% chose the response that would equate homo and heterosexuality. Circa the mid 1970s, assuming our bi-coastal sample is reasonably representative of the populace, the U.S. has far from accepted homosexuality as an alternative way of life (and by about a 2 to 1 majority).

The Case Against Homosexuality/Wisdom of the Ages

No contemporary society accords homosexuality equivalent status with heterosexuality. No known society has accorded equivalent status in the past (Karlen, 1971). No current or ancient religion of any consequence has failed to teach discrimination against homosexuality. The Judeo-Christian tradition is no exception to this rule. The Old Testament made homosexuality a capital offense, and while the New Testament writers failed to invoke capital punishment for any offense, they did manage to consign homosexuals to eternal hell for the practice. Church fathers and traditions have stayed in line with this position until recently. To the degree that tradition and agreed-upon social policy ought to carry weight in our thinking about issues, the weight of tradition is preponderately on the side of discrimination. The same is true if we "poll" famous thinkers of the past: Plato, for instance, who at one time of his life provided some endorsement of homosexuality, but switched to a strongly negative vote by the end of his career. Aristotle simply considered homosexuality a depravity and Plutarch noted that "no wise father would permit a notable Greek philosopher near his sons." St. Augustine condemned homosexuality and St. Thomas Aquinas ranked homosexuality just a rung above bestiality.

While it is somewhat fashionable to claim that the ancient Greeks legalized and practiced homosexuality, it rather appears that this was, at most, true for only a short time, and only for the leisure class (Karlen, 1971). Similarly, while a number of American Indian societies had a place for the homosexual, it was, all in all, a rather unpleasant one (the Mohave interchanged the word for "coward" and "queer"). Most of the anthropological information that alludes to

common practicing of homosexuality among males of various tribes neglects to note that the members of the tribe didn't consider what they were doing sexual, much less homosexual (various touching customs among males featured no erections, etc). Further, the common anti-female bias of the Greeks and other philosophic systems is not fairly construed as homosexuality. Aristotle claimed that the best forms of friendship and love were found "between men," but condemned homosexuality. One can be pro-male without necessitating elimination of copulation between the sexes. It is quite possible to keep love and sex, or friendship and sex, almost completely separate.

While one cannot carry the "wisdom of the ages" argument too far — just because all peoples up to a certain point in time believed something does not necessarily mean that it was so — yet it appears more than a little injudicious to cast it aside as merely "quaint." Probably no issue has occupied man's collective attentions more than successful living together. That such unanimity of opinion and practice should exist must give one pause. Certainly such congruance "puts the ball in the changer's court." As in so many spheres of human endeavor, when we know that we can get on in a particular way, the burden of proof that we can get on as well or better by following a different custom falls upon those seeking the change. The "fallacy of the ages" is that we "got here because we did X" (we might have gotten here just as well, thank you, by doing K) but that we are regarding fallacy rather than wisdom must still be *proven* by those seeking change.

To date, those seeking change have not been flush with scientific evidence that homosexuality is not socially disruptive. On the contrary, the arguments that have been advanced have been little more than "people ought not to be discriminated against; homosexuals are people; ergo homosexuals ought not to be discriminated against" shouted larger and louder. No one to my knowledge has ever claimed that homosexuals were not people, and one would have to be a dunce to believe that being a person qualifies one, *ipso facto*, for non-discrimination. Aside from this argument repeated in endless variations and *ad nauseam*, the evidence is simply not there. I'll admit to a charm in residing in a society undergoing dramatic change. You get to stand at the end of the tunnel of history and help dig a new hole (something that particularly excites the modern scholar and local news team). But let us be sure we are not digging new holes just for our amusement. Meddling with procreation and heterosexuality is considerably more than a parlor game in which the stakes are but a trifle. Because what we are about is so very serious, if

anything, an even better set of evidence needs to be produced by those seeking change, not, as is the case today, mere syllogistic flatus.

**Homosociality Coupled With Increasing Self-Centeredness
Could Lead to Widespread Homosexuality**

Recently, Jimmy Carter said: “I don’t see homosexuality as a threat to the family” (*Washington Post*, June 19, 1977). His sentiments probably echo those of the educated class of our society. They trust that “only deviants” are really into homosexuality anyway, and, more importantly, that “mother nature” will come through in the last analysis. Biology, they assume, has a great deal to do with sexuality and sexual attraction, and millions of years of heterosexuality has firmly engraved itself on the genetic code.

Such thinking betrays a lack of appreciation of the enormous component of learning that goes into human sexuality. The point that anthropology has made over the past hundred years is the *tremendous diversity of human social organization*. Marvelously varied are the ways man rears his young, honors his dead, plays the game of procreation, or practices dental hygiene. While the onset of the events of puberty vary relatively little from one society to another, the onset of copulation varies over a full quarter of the life-span — from 5 or 6 years of age to mid-20s. While three-spine sticklebacks predictably go into paroxysms of delight over a given colored shape, the object of man’s sexual desires varies from car mufflers, to animals, to various ages, and sexes of his own kind. Many mammals practice sex for only a few days or weeks in the year, but man varies from untrammelled lust to studied virginity. While I have enumerated my reasons more fully elsewhere (Cameron, 1977), I believe that the most reasonable construal of the evidence to date suggests that *human sexuality is totally learned*.

There are really only three ways for human sexuality to develop. Humans are among, if not *the*, most gregarious creatures. We are reared by our kind, schooled with and by our kind, and just generally like to be around other humans (my research into the contents of consciousness suggests that, world-wide, *the* most frequent topic of thought is other humans). We prefer to do just about anything with one or more other humans. We prefer to eat with another human, we would rather go to the movies, picnic, take walks with another, etc. We are firmly gregarious. The same is true for sexuality. For all but the kinkiest of us, we would rather “do it” with another human. Bestiality, necrophilia, vacuum cleaners, dolls, you name it, none of these sexual aberrations will ever become modal sex — they will always appeal to only a few. Since modal human sexuality must

needs be confined to other humans, the three ways to “fly” are obvious modes: heterosexuality, homosexuality, or bisexuality. Because human sexuality is totally learned, humans must be pointed in the “right” direction, and taught how and with whom to perform. And there’s the rub. Homosexuality and heterosexuality do not start off on the same footing. *Au contraire*, one gets a number of important boosts in the scheme of things. In our society the developmental process is decidedly *tilted toward the adoption of homosexuality!*

Part of the homosexual tilt is the extreme homosociality of children starting around the age of 5. As everyone is aware, boys want to play with boys and girls with girls, and they do so with a vengeance. It’s quite reasonable, on their part. First, boys’ and girls’ bodies are different and they are aware that their bodies-to-be will differ still more. In part because of this the games, sports and skills they practice differ. As if in anticipation of the differing roles they will have, their interests and proclivities differ. Even if they try, few girls can do as well as most boys at “boy things” and few boys can do as well as girls at “girl things.” They almost inhabit different worlds. Not surprisingly for members of two different “races,” poles apart psychologically, socially, and physically, they “stick to their own kind.” They are homophyllous. Since our society generally informs children that they are sexless, most children are. But around puberty, as children gain in stature or more closely approximate adult appearance, they are sensitized to their sexual potential. And at this choice-point comes a key social-developmental task: retaining homosociality, which by now is as “natural” as apple pie, but adding heterosexuality. Quite a task, as our children are allowed to practice homosociality full-bore, but are generally only permitted *anticipatory* practice runs for heterosexuality. How easily homosociality could lead to homosexuality. A teenager’s lover could, if of the same sex, do the kinds of things they both found fun, know the kinds of information both considered valuable, plan toward mutually shared schemes — in short be the perfect companion, plus provide the novelty of sex. Well did Freud, noting the strength of homosociality, decree that one of the most important developmental tasks lay in “not missing the opposite sex” (1925). If sexuality starts before the appropriate time, society generally does not have the opposite sex “revved up” to complement his interest, and his homosociality readily adds sexuality. There is some evidence (Tripp, 1975) that sexually precocious boys are more apt to become homosexuals.

Homophily (attraction to others similar to oneself) and its counterpart, xenophobia (hostility toward those different from

oneself), are important concepts when dealing with children. One of the hallmarks of the loss of social innocence is homophyly. Pre-adolescents display age homophyly (play pretty much with those of the same age), sex homophyly (befriend almost only those of their sex), and numerous other homophylies — religious, racial, social class, etc. Discrimination for one's kind necessitates discrimination against not-one's-kind. And so children not only band together, they pick on different others. The boys "just naturally" team up against the girls, the older "just naturally" exclude the younger. There is often some envy associated with some of the xenophobic displays (the younger often wish that they *could* associate with the older and seem only to forbid the kind of age intercourse which is impossible given the edicts from "above"). But even more frequently there *is* genuine hostility toward the non-us-guys. Girls often *do* hate boys at this age — a piece of one's identity is purchased by excluding the non-us-guys.

Does the attainment of adulthood abolish the homophyly-xenophobic mechanism and usher in the "all men are my brethren" of the Declaration of Independence? Not at all. Homophyly is not the province of children — rather it is one of the most powerful glues and separators of adulthood. The magnitude of homophyly's influence on adult life is pointed up in the largest and most inclusive study of intimacy patterns across the life-span in our society. Over the years 1975-77, 1,385 persons aged 10 to 94 across the U.S. were asked to report on all those with whom they felt an intimate interpersonal bond. Most people reported an average of three to six intimates. The degree of age homophyly in nomination of intimates was large indeed. Among intimates who were friends or neighbors, two-thirds were from the same cohort (within six years of the age of the respondent). Marital status homophyly in choice of friends was also pronounced, with well over two-thirds of friends having the same status (those married twice or more were over five times more likely to find and befriend one of similar status than those who were married for the first time were to befriend a re-married person). The same powerful homophylic force exhibited itself in social class of friends. In the relatively "free choice" situation of friendship, about 3/4 of the intimate friends of females and 2/3 of those of males were of their sex. Sexual homophyly was influential even within the family with males more frequently nominating a father, brother, or uncle, rather than a mother, aunt, or sister as an intimate. Just the opposite obtained for females. Homosexuals are similarly homophylitic—in the Weinberg-Williams survey of 1,117 homosexual males, over 61%

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chose to indicate that they had “mostly homosexuals as friends.” We are a nation of homosocial/homophylic people.

Adults are also xenophobic. Probably part of the fuel that fires the anti-homosexual majority is sheer “they ain’t us, ergo they is bad.” Aristotle’s “love and friendship are found most and in their best form between men” rings nicely anti-female. Even lovers of women frequently accord her faint praise. Gautier had a character note:

I consider woman, after the manner of the ancients, as a beautiful slave designed for our pleasure. Christianity has not rehabilitated her in my eyes. To me she is still something dissimilar and inferior that we worship and play with, a toy that is more intelligent than if it were of ivory or gold, and which gets up of itself if we let it fall. I have been told, in consequence of this, that I think badly of women; I consider, on the contrary, that it is thinking very well of them.

Maupin gloried in the female body, but coolly considered man’s mind far the more estimable. If this be “chauvinist pig” talk, then the disparaging commentary of homosexuals as they decry the bulbous chests and flabby hips of women is well calculated to annoy. As numerous observers at homosexual bars have noted, one of male homosexuals’ favorite topics is the gross inferiority and ugliness of women while lesbians extol the tender virtues of women and denigrate the brutal drive of men. The most flagrant published example of homosexuals’ xenophobia to come to my attention is *Heterosexual* by Davis and Graubert (1975). Along with some mis-mash about Marxism it proclaims that “. . . the most important task facing humanity is the destruction of heterosexuality. . . . Homosexuality. . . is qualitatively superior to heterosexuality [and] must destroy heterosexuality. . .”

When choosing a mate, people tend to select those who look like them (physiognomic similarity appears to account for about 1% of date/mate selection). Blue-eyed persons tend disproportionately to select blue-eyed mates, persons with large, strangely shaped noses often manage to find a mate with a similar proboscis. Similarly, people chose others whose political and/or religious orientation is like theirs, *ad infinitum*. Seldom does homophily stop there, but it often goes on to xenophobia. Infrequently do Jews, or Christians, or Mormons or what have you, “just” adopt their philosophy as one of many. Rather non-Jews are gentiles and thereby unchosen/inferior; non-Christians are unsaved and Hell-bound, etc. One is often a socialist because capitalism is wrong, a democrat because republicans are mistaken, a John Bircher because everybody else is crazy. We are a xenophobic people.

There are three other components that contribute to the homo-

sexual tilt. First, on the average in our society, males are considerably more taken with sex than females are. In my 1975 survey of 818 persons on the east coast of the U.S., respondents were asked to rate the degree of pleasure they obtained from 22 activities including "being with one's family," "listening to music," "being out in nature," "housework," and "sexual activity." Between the late teens through middle age, sexual activity topped the male list as the "most pleasurable activity." It did manage to rank as high as fifth place for young adult women (aged 18 to 25), but, overall for the female life span, was outscored by almost everything including "housework" (which, incidentally ranked dead last among males). Throughout both the scientific and lay literature, the rule is "twice as many males" when it comes to sex. They commit adultery more frequently and more of them do it; they buy more pornography and commit more sex crimes. In short, in every conceivable way males advertise their sexiness.

How well suited are "hot" males to "cool" females? Not very. One of (if not *the*) most common problems in marital counseling is sexual incompatibility. *Females pay sex as the price of love/companionship and males pay love for sex.* While this is rather too aphoristic to capture all that goes on in the male-female struggle, there is a great deal of truth to it. Even among homosexuals, the males probably out sex lesbians by a factor of 5 to 1 (see Tripp's sympathetic treatment for elaboration on this theme). Where is a male most apt to find his counterpart, among maledom or femaledom? If he wants hot, dripping sex, what better place to find it than with another of similar bent? If she wants tender companionship, which sex is most apt to provide the partner? The answers are obvious.

The second part of the homosexual tilt derives from the fact that *homosexual encounter offers better sex, on the average, than heterosexual sex.* If pleasure is what you are after, who better to fulfill you than a partner who has a body and predilections like yours? One of the things that both the male homosexual and lesbian societies advertise is that "they satisfy." The Greek literature of yore also contains the "better sex" claim of homosexuals. And why not? A male, who has the same basic equipment and rhythms is most able to satisfy — particularly initially (heterosexual "one nite stands" are frequently exciting, but just as frequently lacking in sexual satisfaction for both participants — not so homosexual "one niters"). Who better to understand "what you need" than someone whose needs are as your own? From a sexual standpoint, a female can offer little extra orifice as compensation for her: ignorance, timidity, desire for companionship first, etc. Further, sex between members of a sex assures that there will be no pregnancy problems further on down the line.

Another developmental boost for homosexuality comes from the self-servingness/egocentricity of the young. Humans are born with, at best, rudimentary consciousness. Then, over time and experience, they learn to differentiate themselves from the environment. From about the age of 5 or 6 onward for the next decade or so of life, they are engrossed in themselves, in the service of themselves, their pleasures, their interests, their ways. Reciprocity of interaction is rendered begrudgingly, certainly far from spontaneously. My research, involving the interviewing of over 8,000 respondents from the U.S. and five other nations, in which we asked persons to tell us: 1) whose interests they had just been thinking about serving — their own or another's or others' and 2) whether they had just been thinking about themselves, things, or other people, indicated that younger persons more frequently reported themselves in a self-serving attitude and thinking about themselves than adults did. In the U.S., adults of both sexes typically reported themselves in an other-serving attitude. But U.S. males "switched" from self-servingness to other-servingness around age 26 while for females the switch occurred in the middle teens. If one is after self-fulfillment, pleasure for self, which sexual orientation "fits" better? Homosexuality, obviously. One can have his homosociality and sex too. One can comfortably neglect the painful transformation from self-interest to other-interest. Me and mine to the fore.

Which kind of sexuality is the more compelling? The one that can say "come, sex my way and I will show you a life of complexity. Of children and responsibility. Of getting on with 'that other kind.' I will offer you poorer sex initially, and, who knows, perhaps you will just have to satisfy yourself with poorer sex permanently. But you will be able to 'glimpse immortality in your children' (Plato)." Or "come, sex my way and I will give it to you straight and hot. Pleasures of the best quality, almost on demand, with persons with whom you already share a great deal, and I will enable you to share more. It will not be difficult, in fact, it will be fun. You will not have to change or adapt your personality style or your egocentric orientation. You'll fit right in immediately. None of this hemming and hawing — you'll get what you want when you want it. Motto? Pleasure — now. The future? Who knows, but the present is going to be a dilly." Which kind of sexuality is the more compelling? Does anyone doubt which way most youth would turn if equivalent social status attended homosexuality and heterosexuality? Those in doubt should turn to the tobacco or dangerous-drug literature. Teenagers don't start smoking because they are unaware of its longterm hazards. They are aware "so I take 6 months off the end of my life, big deal." The social

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rewards that accompany smoking, drinking, drugging, etc., are generally more than adequate compensation for some untoward thing that might occur in the distant future.

As if the developmental tilt favoring homosexuality were not enough, our culture has been heading in a self-serving direction for some period of time. Allport published a study of college students in 10 nations, including the U.S. in 1955. Students were asked to project their lives over the next 50 years. He found American students' stories disproportionately filled with self-gratification while the students of other nations wrote more frequently of service to others and the collective welfare. The rise of self-fulfillment literature, coupled with theories of marriage and psychic health based upon personal happiness and self-love, testify to a culture turning ever more toward individual as opposed to collective betterment. A cultural setting more commodious to the growth and nourishment of individualism, and therefore homosexuality, could undoubtedly be designed. But until it surfaces, ours will serve the purpose well enough.

The myths about love and romance that grace our society have been almost 100% heterosexual. From children's readers to tube fare, heterosexuality has been the "only game in town." Tom and Jane live with their parents Dick and Sue, *not* Tim and Jim. Dagwood has Blondie, and the odd couple is squarely heterosexual. Yet even in the glare of the massive efforts of religions, customs, laws, and example, about 2% of the citizenry fail to accomplish the mental gymnastic of separating sexual object from social object. They go the developmentally "easy way," and add sexuality to homosociality. What if society offered an honest to goodness *choice* between the two sexual orientations? The current lock on the myth-making, image-providing process by heterosexuality may be an instance of overkill. Perhaps an 80/20 hetero-homosexuality split would still result in 96% heterosexuality. Maybe even a 60/40 split would. But we've got 2% now with something like a 99/1 split, and somewhere up the line, growth in homosexual mythology and literature *has* to have an effect (unless one can seriously believe that that to which people are exposed does not influence them).

It appears that once a solid choice for either homo or heterosexuality is made, the "other way" becomes unlikely, and, in fact, disgusting. True, with the current pro-heterosexual bias in the psychiatric community, about a third of homosexuals in treatment can, with considerable effort, be "switched." But as "even-stein" literature grows and becomes incorporated into the psychiatric community's consciousness, the attempt to convert will be made less

frequently. Tripp's *The Homosexual Matrix* is a well-received work that melds the myths of love, sex, homo and heterosexuality. It certainly constitutes a solid start toward "even-steven" in myth-making. The resolutions of the American Psychiatric and American Psychological Associations calling for equality or near equality of treatment of professionals and clients with either homo or hetero orientations, further movement toward equality of the sexual orientations. Pre-teens and teens are the battle ground. With the exception of the San Francisco school system, students' official fare is still 100% heterosexual. In my opinion, heterosexuality "needs all the help it can get," and these current developments portend a much more homosexual future.

Heterosexuality is a Valuable Social Resource

Converts to either sexual orientation must come from heterosexual efforts. Obviously homosexuals can sex until blue and not add to the race. But heterosexuality is not merely "the only way to reproduce." Because heterosexuality involves a human "fallout," its social value extends far beyond mere reproduction. *Heterosexuality and its fallout* provides one of, if not *the most, potent socially cohesive forces in our society.*

Three social psychological systems appear to be involved in social cohesion and fragmentation: friendship, lover relationships, and relative relationships. Friendship is largely based upon homophily (attraction to those like myself) and propinquity. Homophily, since it leads rather naturally to xenophobia, generally acts *against* overall social cohesion — particularly in heterogeneous societies as our own. Lover relationships are similarly based upon homophily and propinquity. But heterosexual lover relationships tend to be associated with a human fallout. A component of the ego of the lovers becomes invested in the progeny they produce, and relative relationships are generated. Parents "own" and have ego investments in their children. Children reciprocate these toward their parents. Relatives have muted obligations and ego investments in both. Contemporary heterosexuality generates child-fallout, past heterosexuality generated sibling-, kin-, and grandparent-fallout. The cohesive power of relative relationships as compared to friendship is pointed up in our extensive study of intimacy patterns. Take, for instance, degree of social class homophily. For our sample-as-a-whole, 57% of intimates were of the same social class as the respondent. But the degree of social class homophily for intimate friends was 63%, while that for intimate relatives (excluding spouse) was 28%. The same general relationship was obtained with marital status homophily. It

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was 71% for intimate friends and 34% for intimate relatives. Age homophily was 68% for intimate friends, and 29% for intimate relatives. Were it not for the fallout of heterosexuality, our society would be far more divided than it currently is. If friendship were the only social glue, our society could be divided more easily into disparate age-groups, social classes, marital statuses, etc. It is not the status of being a heterosexual, but the practice of progeny-producing heterosexuality that brings about the degree of cohesion exhibited in these statistical comparisons. Family-making not only replenishes the race, it glues it together. Because parents are involved with their children, they interact with and are tied to another cohort. Ditto for children and their grandparents. Parents have kin, who have varying social and marital statuses, and partially “because they are there, and must be interacted with,” some non-homophyllous social and/or marital status intimate bonds are established. Certainly far from all kin are included in the “circle of intimates.” Not all lovers, spouses, children, mothers, fathers, sisters, etc. “make it” either. Just a few. But those that do, exhibit a much higher degree of non-homophily than that characteristic of friendships. About *twice as much* non-homophylic social “glue” is associated with kin-relations as compared to friendship. Friendship is too homophyllous to join the relatively disparate parts of our heterogeneous society with bonds of intimacy. Heterosexual family-production, though involved in only about a third of intimacy bonds, accounts for more than half the intimacy “glue” that unites our social system.

From a broader perspective, heterosexuality affords a different kind of social cohesive. As noted above, in our survey of 818 persons regarding the pleasure they obtained from various activities, males indicated considerably greater sexual interest. Looking at our survey of intimacy patterns with this in mind reveals an interesting set of relationships. First, females are more sexually homophyllous than males are in our society — that is, while both sexes more frequently nominated members of their sex as intimates, females did so more frequently than males did. Secondly, and most interestingly, the weakest degree of sexual homophily for females existed in young adulthood, which also was the period of life when sexual activity scored the highest for females. In like manner, sexual homophily for males was weakest in the late teens and young adulthood, the same period of life when sexual pleasure scored the highest for males. The almost perfect inverse coincidence of heterosexual proclivity and the course of sexual homophily across the life span suggests that *heterosexual attraction “bends” two otherwise disinterested sexes toward each other*. As a consequence of this attraction, human

fallout is produced which continues the “binding/bending” process. Friendship formation, which is primarily homophyllous, exerts a force against this bonding, and “wins” both before intense heterosexuality hits the life span, and after the intensity wanes (and, of course, with females, it only fails to “win as big”). As persons age and head toward withdrawal from society, homophily regains the saddle, and the process of social fragmentation advances.

What if the heterosexual bias were not maintained? What if the tremendous sexual energies of males and females were not marshalled to unite these otherwise rather disinterested “races”? Perhaps “something else would turn up” to make it right in the end. And of course there may be a tooth fairy.

Heterosexuality is sexually more difficult than homosexuality. Per amount of time spent, the sensual rewards are fewer. The same amount of sexual satisfaction takes considerably more time. First, and most time consuming, the social psychological gap between the sexes must be bridged. Countless hours of chit-chat and philosophizing are required to create the kind of psychological environment to make physical intimacy possible. When physical intimacy is achieved, the battle is far from won. Different bodies, rhythms, and tastes must be melded, muted, and accommodated. Time to a generally mutually successful product is measured in months or even years. Further, as all of us change over time, heterosexuals typically can not rest on their laurels. Continued adjustment and accommodation is the rule.

The amount of time and effort expended pursuing the heterosexual carrot is, from society’s point of view, well spent. Not only are otherwise disparate elements of society directed toward each other during the chase, but also during the attempt to elaborate and hold the carrot. As importantly, or even more importantly, the participants in this activity “have a lot of explaining to do.” Because they have voluntarily expanded so much to get the carrot, they are compelled to justify their expenditures, both to themselves and to others. Of such justification is social cohesion and myth-creation made. The “heterosexual mystique,” the “superlative advantages of the opposite sex” are convenient myths into which to buy. To justify such effort to himself, the heterosexual often magnifies the good and/or suppresses the bad. All the while, of course, the heterosexual helps to propagate the mythology of heterosexuality. Society fares quite well in all of this, since all the while the heterosexual is *a living example of social cohesion*.

The same social psychological process is exhibited in child rearing. My research, with over 300 mothers and 100 fathers, indicated that in

a multi-child family, the oldest was most often nominated as the “one loved most” by both parents. The eldest was also the hardest to raise. The principle operative here appears to be “affection/devotion attends voluntary effort.” If a girl can get a boy to swim a mountain and climb a river to win her love, he will probably adore her. If she is gotten “easily,” she stands every chance of being discarded readily. Even though first children do not plan to be the most difficult to raise, they generally are, and consequently reap the benefits thereof (and the parents get compensated: research suggests that the oldest child is the most likely to claim the greatest affection and respect for his parents). The effort of heterosexuality is to society’s benefit. Because it is so much easier, homosexuality does a poor job of bonding society together: its lovers are not as highly esteemed, nor do the conquerors bask in the same degree of reflected esteem. *The* point of homosexuality is individual gratification. The myth of heterosexuality proclaims the same, but there’s a rub. Lustful heterosexuals end up family-building and enhancing social cohesion. When the homosexual tires of his lover, he departs to find another. But by the time the heterosexual tires, he is trapped in honey of his own making.

It does appear that non-sexual homophily exerts a more muted force in some homosexual relationships. Male homosexuals’ bathhouses and “tea rooms” feature extreme non-homophily (sexual homophily excepted). However, it is difficult to grant much “cohesive credit” for involvements that seldom even feature the exchange of names! Almost all commentators on lesbian relationships claim to have noted extreme social class homophily in “date” or “lover” relationships. Further, since homosexual males appear to feature such low levels of interpersonal involvement, the degree of “cohesive credit” to be granted must be modest. Bathhouses and “tea rooms” exemplify one end of the involvement continuum. That two-thirds of Weinberg and Williams’ 1,117 homosexuals answered “no” to the question of whether the respondent and another were currently “. . . limiting your sexual relationships primarily to each other?”, and, further, that only a third of their respondents claimed that they had “ever” been involved in such a relationship, suggests that there isn’t much extension to the other end of the continuum.

**A Cluster of Undesirable Traits is Disproportionately
Associated with Homosexuality**

Though some may shriek that “my personality traits are my business,” let us acknowledge that some traits are society’s business. A person’s traits can lead to actions which affect the collectivity. Megalomania often proves socially disruptive, and sometimes, as in

the case of Hitler, leads to incredible human destruction. It is obviously in society's interest to encourage those social roles and traits that tend to social cohesion and betterment. Similarly, it is in the social interest to discourage those that tend to produce disruption and harm. Any life-style that leads to, or is more frequently associated with, undesirable personality traits suitably receives discouragement. Most traits, e.g. intelligence, appear unsystematically related to either homo or heterosexuality, but those that are systematically related are socially important.

It would be as silly to contend that each of the following traits is associated with each homosexual as to argue that none of these appear in heterosexuals (or even worse, that the obverse of these traits always accompanies heterosexuality). However, for social policy formulation, it is enough to demonstrate disproportionate "loading" of undesirable traits within a given subgroup or subculture to justify social discrimination.

The Egocentric/Supercilious/Narcissistic/Self-Oriented/Hostile Complex

This cluster of traits appears to "go together" with homosexuality (and led in part, in the recent past, to homosexuals being labeled "sick" by the psychiatric community). A person who, in part, seeks more of himself in his lover, is more apt to remain in the egocentric/self-centered orientation of youth. Such a person is more apt to gravitate toward those kinds of professions in which he can be a "star" and be noticed. In part, this accounts for the greater proportion of homosexuals in those professions involving exhibition such as acting, stripping, or modeling. The ego of such a person is more desirous of "worship" and control of others. Being the center of attention — almost no matter how — is highly attractive. The garish costumes and make-up of the drag queens tie in with this cluster, and the men they attract thereby get a "piece of the action" by standing in the queen's glare. Ditto the elaborate affectations of those homosexuals that play an effeminate social role. The hypermasculine homosexual, as a function of his exaggeration of the masculine theme, attracts attention, albeit in a considerably less garish way. The hypermasculine "Mr. Universe" type of homosexual also garners attention via exaggeration on a theme.

The "star" lives for gratification of self. *My way* is his motto. This, in part, accounts for the homosexual's disproportionately frequent attraction to the young. (The Rev. Troy Perry has been pleased to note that most child molestation reported to the L.A. Police involves heterosexuals. Almost 6 of every 7 cases, in fact. But when no more than 3 to 5% of the L.A. population is homosexual and accounts for

about 15% of the molestation “action”. . .) A younger person can be charmed and controlled with far less effort than an older one. Candy and treats will serve to bend the will of the very young, and even for the older youth far less reciprocity is required than if one were dealing with an adult. The young more frequently have not established their sexual tastes, and the “star” can “have it his way” far more readily than when an adult is involved. Further, he can dispense pleasure without the fear that his efforts will pale in comparison with the standards set by previous lovers. His star status is unassailable. The ancient Greek homosexuals were “stars” by virtue of their ruling class status and by being philosophers of note. Virgin boys made good psychological sense — even if a boy complained or denigrated the efforts of one of the worthies, he was, after all, a child — and what is a child’s opinion really worth? The star need not accommodate himself to the needs of others to the same degree as most folk. If a current love is “not working out” he can be discarded and a more suitable one found. The “perfect lover” is the one who accepts and loves you for what you are. At any point in time there is always a “Mr. or Ms. Right” to be found. This accounts in part for the more frequent partner-changing among homosexuals. A star deserves the very best, or something close thereto.

Superciliousness — an attitude of aloof, hostile disdain — is also consonant with the egocentric person. If you will not realize his marvelous qualities and pay homage, he still has you one down. After all he treated you with contempt *first*. Even if you become hostile, his preceded yours. I am well aware that much of what I have written frequently applies to notable Hollywood and Broadway actors. Adoration-seekers disproportionately frequently make poor models for marriages. As the columnists often put it, “there was too much ego to go around.”

The possessor of this trait packet is much more apt to go through swings of mood and morale. When you find the “perfect person” your job is unbounded. Wow, neat, super, etc. But when it crashes, and it almost certainly will, gloom, doom and *gruk*. Many homosexuals are shy, retiring persons, and don’t at all seem to “fit the packet.” But even as “the ugly girl harbors the handsomest prince in her dreams,” many of these shy sorts have only to be scratched to reveal all or parts of the packet. Often a possessor of the packet is wont to test himself or prove his superiority. Even as the teenager, who in his natural development in our society, tends to buy into the packet, does a number of daring deeds, rides the wildest amusement, takes the longest and most hazardous hike, makes the *most* important play, etc., so with the packet possessor. Bathhouses in which

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a person might be sexually involved with twenty others in an hour's time exist for the homosexual. Heights of pleasure, coupled with lack of threat to the ego, lots of variety, and a sense of the daring, thrill through the whole operation. Walter Mitty to the fore. If only people *knew* what I just did, boy would they realize just how *daring* I was.

The greater component of the childish "I want it my way" associated with homosexuality stems, in part, from the greater ease connected with homosexual attachments. Developmentally, both hetero and homosexuals want things "their way." But the kinds of accommodations and adjustment necessary for successful heterosexuality assure participants that it won't be all their way. Just because so much of the time things don't work out perfectly in the face of such effort helps wean one from the coddled security of childhood. Parents and the rest of society work to "make the world nice" for children. Every childhood painting is worthy of note, as is every musical note. But adulthood is strewn with disappointments. Heterosexuality is a "maturing" sexual orientation.

Many psychiatrists and psychologists have commented on the personality structure of the homosexual. Some have been extremely condemnatory and inclusive in what they have had to say. Bergler, for instance, cites a sextet of traits which he feels is possessed by every homosexual, to wit:

1. Masochistic provocation and injustice-collecting;
2. Defensive malice;
3. Flippancy covering depression and guilt;
4. Hypernarcissism and hypersuperciliousness;
5. Refusal to acknowledge accepted standards in non-sexual matters, on the assumption that the right to cut moral corners is due homosexuals as compensation for their "suffering."
6. General unreliability, also of a more or less psychopathic nature.

My experience with a considerably more modest number of homosexuals would not lead me to be quite as all-inclusive. But I almost always can detect some of these traits in a given homosexual. How much of my detection is "knowing what to look for" and how much is due to a set on my part to "expect it" I really can't say. This is the continual plight of clinical impression. How much is really there and how much does the clinician add on? Somerset Maugham (a homosexual himself) commented on the homosexuals' personality as featuring ". . . a narrower outlook on the world . . . a lack of deep seriousness . . . inane flippancy . . . and cynicism." Bieber has characterized homosexuals as angry, bitter people with low feelings of responsibility. It appears to me that homosexuality leads to a shallower

commitment to society and its betterment. Such shallowness comes about both because of a lack of children and the ease of sexual gratification. The *effort* involved in being heterosexual, the *effort* expended in being a parent — these are denied the homosexual. As he *has* less responsibility and commitment, so he *is* or becomes less responsible and committed. It is difficult to develop personality characteristics that fail to resonate with one's environment. While we are not totally creatures of our environment, it is far easier to "swim with the tide."

It is difficult to find anything like "hard" scientific evidence to substantiate the notion that homosexuals are on the average, less responsible/trustworthy than heterosexuals. The Weinberg and Williams sample of homosexuals was asked a question that bears upon the issue. Do you agree or disagree with the statement "most people can be trusted?" To a degree, since a person cannot know "most people" it appears reasonable to assume that he might project his own personality onto "most people" and/or assume that those people with whom he comes in contact are like "most people." While 77% of a reasonably representative sample of the U.S. population chose "agree," only 47% of the homosexuals ticked the same response. Because of the ambiguity of such items, I would not make too much of the difference. But it could suggest that homosexuals are less trustworthy.

Homosexuality is Associated with Personal Lethality

One of the more troubling traits associated with homosexuality is personal lethality. Extending back in time to classical Greece, a lethal theme shines through. In Greece, if historical sources are to be believed, companies of homosexual warriors were assembled because it was believed that they made better killers. The same pattern appears to be repeated in history. Ernst Roehm reportedly had disproportionate numbers of homosexuals in his storm troopers. Likewise the *Capos* in the German concentration camps were apparently disproportionately homosexual. As Beiber and others have noted, when a really gory murder is committed, police experience suggests that disproportionately frequently it is a homosexual killing. Further, for various reasons, it appears probable that homosexuals are disproportionately involved in both suicide and homicide. The narcissistic homosexual is apparently better suited to take human life — whether his own or another's.

Why should this be? The psychological mechanisms involved are not all that mysterious. The period of youth, when neither attachments to parents, nor new attachments to children have been formed,

is the lethal time of life. Obviously not every young person is a killer, but each is powerful enough to wreak damage, and unattached enough to be less restrained. The excesses of youth are not confined to sexual activities, but extend to lethality as well. Young men populate our armies and their female counterparts sacrifice their issue on abortion tables. Social cohesiveness is no where near as important in management of the old as it is for control of the young. Some involvements attend childhood, and social memberships, but fundamentally, the ego of the young adult is housed almost totally within.

A self-contained person is a dangerous being. Perform a mental experiment. The person has been informed some months ago that he is dying of cancer. He is now on his deathbed. Beside him, just within reach is a button. If pushed, a thousand bombs simultaneously go off and blow the whole world to smithereens. He's breathing his last. Will he hit the button? Analogous situations exist in our society daily. The SAC bombers are always in the air, loaded for bear. A bomber crew could "take the world with them." At all hours our highways are filled with drivers who could take a piece of the world with them. Going back to our button, who, based on our knowledge of driving habits, accidents, and carelessness, would be the most apt to "hit it"? The egocentric person. Take for example Hitler, whose very sustenance depended upon the German people. The German people had, in his opinion, produced the best art, the best thinking, the best everything. Yet when everybody knew the jig was up and the war lost, did he decide to surrender and save priceless German life? Most certainly not. Rather he issued decrees that every single German was to die with him. That which he loved most, must end its existence with him. That Germans should survive while He, the *center of the world* be gone, was intolerable. It's just too unjust for most self-centered people to take. The psychological autopsies of many accidents on the highway suggest that just this kind of event occurs. The young lover has been *rejected*, his world is come apart, *he is upset*. Damn the world, damn the rest of humanity, if others who occupy the highway don't realize that this catastrophic event has occurred in his life, then their own insensitivity means that they deserve what they get. Who have our militarists chosen to man the SAC bombers? Family men — married, childed, invested in the continuance of humanity. Who do they choose to man fighter planes? Young, unattached types, filled with daring and lethal desire. In our society the childless are more apt to suicide and childless couples are more apt to be involved in homicide. Further, both suicide and homicide accompany divorce and separation disproportionately frequently. Social cohesion needs to be developed and maintained for optimum personal and social

health. Had Hitler children, the course of history might well have been different.

Homosexuality is associated with childlessness, and childlessness is associated with greater lethality. A study my associates and I conducted in Maryland in 1975 bears on this issue: 325 adults were interviewed regarding their driving habits and claimed willingness to risk their life for another. When asked to rate themselves regarding "how often do you drive carelessly?" 82% of parents vs. 56% of the non-parents claimed "almost never or never" (there were no age or sex differences on this item). On its face, the finding would be just an interesting questionnaire difference. But there was a decided tendency for fathers to report fewer tickets than non-fathers, and most importantly, fathers reported only a *third the number of accidents* compared to non-fathers. When asked what kinds of events had induced them to drive more carefully, *75% of parents said having a child* steered them in this socially desirable direction.

This attitude of care for the young is socially valuable. Now our results could have come about because those who remain childless are frequently more selfish and/or becoming parents "delethalizes" people, or both. Since we asked people what did delethalize their driving habits and they specifically nominated having had a child, the possibility that children do delethalize is enhanced. Certainly our evidence "fits" into the Judeo-Christian thinking about the virtues of childbearing (Rabbi Caro said that those who lived and did not procreate were worse than murderers, and the Catholic tradition has decreed parenthood a blessing). Society has an interest in developing "ego spread" on the part of the young. Bearing children is the single best mechanism around for pulling ego out of one's skin. When part of *you* resides in a separate, younger body; when part of *you* will survive the tanning and decay of your own skin, an entirely different perspective on life and death emerges. What is to be said of the lifestyle and sexual orientation that produces no children, and, in fact, caters to and reinforces a "skin-housed ego"?

Direct empirical comparisons between homosexuals and heterosexuals along the dimension of lethality are meagre. First, as noted above, as a class, homosexuals more frequently commit suicide and homicide as compared to heterosexuals (some of this difference may well be partially the result of social discrimination). The "lessons of history" suggest that at least some homosexuals have been considerably more lethal than most heterosexuals. Another line of evidence has surfaced in our four-wave study of 1,520 persons. In the first and fourth waves of the study those females who claimed to have obtained an abortion (12% of our sample) five times more

frequently than non-aborters claimed a less-than-exclusively-heterosexual orientation. In the third and fourth waves of the study, males who claimed that they had killed or participated in killing other humans (20% of our sample) four times more frequently claimed a less-than-exclusively-heterosexual orientation. As the taking of human life is such a vital part of any ethic, the social interest may be sufficiently involved to suppress homosexuality on this count alone.

Heterosexuality Provides The Most Desirable Model Of Love

Myths are created not only by storytellers but by people living within the myth. Almost all (95% or so) heterosexuals get married, and 75%-80% stay married to their original partner till death. To be sure, there are marriage “hogs” within the heterosexual camp who play serial monogamy and assure that a third of all marriages end in divorce. Further, about half of all married men and about a third of all married women admit to one or more infidelities over the duration of their marriage (probably the greater bulk of the “cheaters” come from the serial monogamy camp). While heterosexuality’s colors are far from simon pure, the relationship heterosexuality spawns is among, if not *the*, most enduring of human bonds. Acquaintances are added and discarded, friends are chosen more carefully and released less readily, but compared to the marriage bond friendship is “miserly.” The average length of membership in communes is two months — even the life of communes is measured in months. “Shack-ups” or “live-togethers” seldom last over a year — much as college roommates usually fail to room together again the next year. Sheer propinquity is not a very sticky social glue, and even the addition of some philosophic camaraderie increases cohesion only a bit. Heterosexual marriage shines as the most durable of voluntary human institutions.

Homosexuality offers no comparison in durability. While “slam, bam, thank you ma’am” occurs in heterosexuality, few heterosexuals could more than fantasize about what occurs in homosexual bathhouses or tearooms. As Weinberg and Williams note, the homosexual community typically features “sex for sex’s sake.” Their survey in which two thirds of their respondents chose to respond “no” to whether they had limited their “. . .sexual relationships primarily to (another)” is telling. Names and banter are typically neglected in bathhouses. Such extremity of impersonality is seldom approximated by either swingers or the prostitute relationship. The norm of heterosexuality is the rather sexually staid, personally intense, monogamous relationship — and even heterosexuality’s seamier side frequently features a fair component of interpersonal interaction.

But as Tripp and others have noted, homosexuals frequently carefully separate their friends and lovers, fearing that sex might “contaminate” the friend relationship. While sexual intimacy and personal intimacy can be and frequently are separated, wisdom seems on the side that attempts to weld rather than divide the two.

When people are merely “getting their jollies,” and fantasizing perfection while doing so, reduced communication is an asset. If you discover that your beautiful lover holds political views antithetical to your own, how can you really enjoy him/her? The “less known the better” is fantasy sex. Communicating, mutually knowledgeable people often have to “work it out” before attempts at sex can even occur. But while typically short on durability, some homosexual relationships are more lasting. The quality of even these is often questionably desirable. Part of the problem lies in the lack of commitment that follows lower effort in the homosexual pairing. Tripp, for instance, opines that part “. . . of the reason many homosexual relationships do not survive the first serious quarrel is that one or both partners simply find it much easier to remarket themselves than work out conflicts (p. 155).” In heterosexuality, no matter how similar the participants, there is always a considerable gap between them. To stay together takes great effort, and the expenditure of this effort prompts both personal and social commitment to the partner.

Persons who feast on perfection have rather little protein in their life. Once beyond the first stage of “in loveness” the heterosexual is quite aware that he has a constant battle on his hands. Human relationships, to the degree that they follow the marital model, don’t “come naturally,” they must be worked at constantly. Smoothing over, compromise, ignoring, and “white lying” have to be learned and utilized for a successful go at it. People trying to live in perfection are always close to a hairtrigger split. Because the heterosexual partners are so dissimilar, accommodation and adjustment are their key strategies. Because mutually satisfying heterosexual sexing takes so long and so much effort, both participants have to “hang in there” long after “sane people” would have toddled off in frustration. *We become the way we act. The heterosexual relationship places a premium on “getting on” and thus provides a model to smooth countless other human interactions.* The homosexual model is a considerably less satisfactory one upon which to build a civilization. Note Tripp again (p. 167): “. . . the problems encountered in balancing heterosexual and homosexual relationships are strikingly different. *The heterosexual blend tends to be rich in stimulating contrasts and short on rapport* — so much so that popular marriage counseling literature incessantly hammers home the advice that

couples should develop common interests and dissolve their conflicts by increasing their 'communication.' By comparison, homosexual relationships are overclose, fatigue-prone, and are often adjusted to such narrow, trigger-sensitive tolerances that a mere whisper of disrapport can jolt the partners into making repairs, or into conflict."

Loving your neighbor as yourself is difficult in homogeneous society. A heterogeneous society compounds the difficulty. In a civilization as heterogeneous as ours, we need as many models of divergent people "getting on" as we can get. Heterosexuality provides a considerably better model than homosexuality.

Our social system also features large components of delay of gratification. The heterosexual "carrot" is hard to get and requires a lot of input before successful outcome is achieved. The homosexual model is too immediate and influences people to expect instant results. "Openness" and "candor" enable quick shopping and discarding until the "right one" is found. But restraint and face-saving coupled with conventionality of manners provide the kind of framework that breeds social harmony. No matter how open and frank the heterosexuals, at best they will find a suitable mate *for that time period* in their life. But people change, and seldom in parallel harmony. In the long run the heterosexual will find ample need for those social skills that lie on the other side of the "openness" chasm. Openness appeals to the young — it makes life far more simple. Brutal candor enables sifting of people. "Getting on" is difficult. "Hanging in there," awaiting better things and exercising the kinds of restraint that allow relationships to endure are also difficult. Heterosexuality provides a far better model for all of these valuable social skills.

In short, heterosexuality is effortful, durable, and demands delay of gratification. While any human relationship takes effort, homosexuality pales in comparison to heterosexuality on each count. Heterosexuality assures a supply of fresh human talent. While artificial insemination or some other device might fulfill the bare requirements in this regard, only heterosexual marriage provides models for the two sexes after whom the child might model himself and learn regarding getting on and sticking to. Children reared by one parent are at a disadvantage. In my investigations of the wantedness of children, in which over 150 parents were interviewed, only one child had both parents claim they "wouldn't have him again," but 18 others had one of their parents make such a claim. Two persons, of the opposite sex, provide variety of models and experience for the child.

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No one is rich enough, powerful enough, or attractive enough to guarantee himself personal happiness. Incredibly wealthy, fabulously beautiful people have taken their lives in despair. *Nothing* guarantees happiness. On the other hand, extremely poor, grotesquely ugly people have achieved personal life-satisfaction. So it can likewise be said that nothing guarantees misery. More than any other single factor, happiness or life-satisfaction is an *achievement*. (The greatest “secret” to happiness is a dogged determination to wrest happiness from the cards life deals.)

Both degree of determination to be happy and the stage upon which happiness is pursued are influential in life-satisfaction. Since the stage is important, the prudent person attempts to include “props” that aid rather than hinder his pursuit of happiness. From the prudent perspective, it is foolish to neglect one’s body or engage in needlessly hazardous pursuits. Similarly, it is wise to seek sufficient wherewithal to be free of nagging financial concern. From the prudent standpoint, homosexuality is an obstacle in the pursuit of happiness.

The best evidence on the question of homosexuals’ happiness is, like most of what is known about homosexuality, not the best. But it is “fair” evidence from a social science standpoint. In their survey of 1,117 homosexuals, Weinberg & Williams asked respondents to answer “yes” or “no” to “I am a happy person.” In an earlier poll of over 3,000 citizens, 92.8% had chosen “yes” to this question, but only 68.8% of the homosexuals did the same. Now I would not argue that 92.8% of Americans are “happy persons” because they chose “yes” rather than “no” to this kind of item — such questions probably can be used to suggest differences between groups of persons, but hardly deserve to be considered precise. Answering such questions is rather like being asked “do you like ice cream, yes or no?” Both the person who LOVES ice cream and those who merely think its “OK” probably check “yes” rather than “no.” And those who HATE ice cream check “no” along with those who just feel indifferent to it. But even with this caveat, and it’s an important one, the way the responses fell suggests that homosexuals *are* less happy, on-the-average, than heterosexuals are. My educated guess is that most homosexuals are “happy” with life, just as most heterosexuals are. It probably works both ways — that is, unhappy people may be attracted to homosexuality and/or homosexuality may be a “negative prop” on the “life-satisfaction stage.” But, either way, evidence such as Weinberg and Williams report cannot just be tossed aside. Even if their findings only mean that homosexuality attracts unhappy, less cheery sorts of people, a person “buying into” homo-

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sexuality is going to have to run his "happiness play" on a stage disproportionately filled with "unhappy props." Being around people who are "down" is a "downer" (which is part of the reason psychologists and psychiatrists charge so much, it takes a lot of mental effort to rise above dealing with "sick" people). In my research comparing 144 handicapped persons' happiness with the happiness of 150 normals, the handicapped claimed to enjoy life as much as normals. But the handicapped also felt that their lives were more difficult. Achieving happiness for a handicapped person appears to require more effort. Since happiness is a decided achievement under the best circumstances, a prudent person would attempt to avoid becoming handicapped. Similarly, it appears prudent to avoid acquiring a sexual orientation that appears to make life-satisfaction more difficult to attain.

Does homosexuality make being happy more difficult? In the Weinberg and Williams study, homosexuals were asked to respond "yes" or "no" to the statement "no one cares what happens to you." While a general population sample had chosen "yes" 23% of the time, 34% of homosexuals chose "yes." One of the important components in life-satisfaction for most people is having others care about you. Heterosexuality with its bindingness and production of children and grandchildren gives one a solid start toward generating players on one's "happiness stage" who really *do* care about you. Homosexuality, with its emphasis upon self-gratification, does little to generate others who care about you. The Terman group of gifted children is now entering its old age. They have been followed now for over 50 years (Sears, 1977) and given all kinds of questionnaires and psychological tests. While the sample is biased, and the questionnaire can always be faulted, the most highly-rated set of "satisfiers" was "family life." That is, in competition with friendship, occupation, and "richness of cultural life," overall, this group of intellectually endowed people ranked the satisfaction that they received from "family life" higher than they rated anything else! In a related vein, my associates and I interviewed almost 7,000 U.S. persons regarding what two things they valued most in life. For the life-span as-a-whole, family values were the most frequently nominated. Personal happiness was nominated as a value only a third as frequently as family values. In fact, family-related values outstripped #2 (health) *two to one!* Heterosexuality helps generate the very kinds of props and reasons that contribute toward making life-satisfaction more possible. *In the long run*, heterosexuality has a lot more to offer as a life-style than homosexuality.

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Humanity needs people who feel a commitment to what happens *after* they expire. Even as he benefited from those who preceded him, so he must care to benefit those who come after. The easiest way for this to be accomplished is, of course, to invest some of one's ego in one's children. Both the singleton and the homosexual (and frequently they are one and the same) are not just less desirable for humanity, but also often represent human material that has failed to reach its potential. It is psychologically inefficacious for these persons to brood about their shortcomings — they have to achieve their happiness with “what they've got.” But the homosexual orientation always presents the personally nagging question of “what might have been” with considerably more force.

Homosexuality is Part of a Growing Lethal Complex

Around the mid-1950s, the social sciences began to “discover” death and dying (Kastenbaum and Costa, 1977). Most colleges today offer courses on death and dying, and the popular literature abounds with death-related material. From modest beginnings, death research and theorizing has flowered into a competitor with sexuality for popular and professional attentions. Recently one wag opined that “death is in, sex is out.”

Social policy changes regarding death have accompanied the “popularization of death” movement. In the 1960s the U.S. started switching social policy regarding a number of death-dealing or life-inhibiting phenomena. Life-inhibiting social policy was keyed by the pill. Use of this life-inhibiting drug was increasingly promoted among the young. For a time, the only medication the poor could count on getting without charge was the pill. Even today the use of the pill is the only component of sex education certain to be included in the curriculum in public school programs. In the late 1960s a number of states led the way in adding abortion as a “final solution” to pregnancy and in 1973 the U.S. Supreme Court legalized it nation-wide. The older end of the life-cycle is not being neglected. In the 1950s various groups had begun “talking up” euthanasia. In 1973 the *American Humanist Association* adopted a manifesto of rights that their literature highlights as the “right to birth control, abortion, and divorce; the right to die with dignity, including euthanasia and the right to suicide.” The Federal Council on the Aging prepared a “bicentennial bill of rights for older Americans” in which the 10th right was “death with dignity” whereby the individual can “permit or deny the use of extraordinary life support systems” (note the absence of “request”). By the end of the bicentennial, the largest state, California, became the first to enact a death with dignity/

euthanasia law. The early 1970s also featured the “talking up” of infanticide legislation and practice and questioning laws making suicide a crime.

These phenomena have an underlying communality — population trimming. In Western society, as the technologic component of production has grown, the requirement for people has declined. The extent of this decline is illustrated by the U.S. where in 1850 33% of the population was involved in direct production (farming, manufacturing, mining, utilities, transportation) as compared to 12% in 1975. I have characterized this set of social policies as a lethal complex (Cameron, 1977).

The most ominous feature of the lethal complex is that in its haste to rid our society of “too many” humans, it turns against the very existence of man. Many of the utterances of Zero Population Growth and environmental groups extol the virtues of man-destroying phenomena. “The problem with the world is man himself” is a frequent accompaniment of drumming for the complex. War, famine, blight — all are being recast in a new light — as *saviors*. The “trim the population” kind of thinking has developed to such a degree that almost *anything* that gets rid of people is cast as beneficial. “Fewer, smaller, better” are the key concepts of this thrust. The potential value of individual humans pales beside their possible elimination. Misanthropy is ceasing to be a bad word and instead is taking on a rosy hue.

“Liberation of homosexuals” fits rather nicely into the lethal complex by being life-inhibiting. While even “be-pilled” heterosexuality might result in human issue, no such danger attends the practice of homosexuality. Further, homosexuality makes misanthropy even more attractive and expands the possibilities of man-destroying social policy. At best, homosexuality ties one only to that half of the race represented by one’s own sex. Further, since a person seldom has sexual commerce with but a part of the people traveling the life-span, homosexuality, to the degree it becomes prevalent, has the potential of separating the human race into many rather disinterested camps. Lethal social policy has a much better chance of playing on a stage filled with relatively disinterested groupings of people. Liberating homosexuality is thus not merely a symptom, but apt to become a cause of the expansion of the lethal complex.

Summary

In sum, there are a number of reasons why homosexuality is best treated as a deviant sexual mode. I do not believe that homosexuality ought to be placed on an even-keel with heterosexuality. Further,

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homosexuals ought not, in my opinion, to be permitted to openly ply their sexual orientation and retain influential positions in the social system. Thus teachers, or pastors who "come out," ought, in my opinion, to lose their claim to the roles they occupy.

Reasonable people can and do differ on the degree and kind of discrimination that is to be laid against undesirable life-styles. There are a number of issues that appear substantive and weigh against the liberalization of social policy toward homosexuality. The burden of proof always justly falls upon those who would change the social system. If the homosexual community and/or those who endorse the liberalization of social policy toward homosexuality have evidence that bears upon these points, by all means bring it forward and let us reason together. But mere cries of "we are being discriminated against" are not evidence. The collection of decent evidence takes organized time and effort. I am weary of those who feel that a case has been made just because they have gotten blisters on the streets or their voices are louder.

REFERENCES

- Allport, G.W. *The Person in Psychology*. NY: Beacon, 1961.
- Atkins, J. *Sex in Literature*. NY: Grove Press, 1970.
- Bergler, E. *Homosexuality: Disease or Way of Life?* NY: Macmillan, 1956.
- Bieber, I. *Homosexuality: a Psychoanalytic Study*. NY: Basic Books, 1962.
- Cameron, P. "Immolations to the Juggernaut," *Linacre Quarterly*, 1977, 44, 64-74.
- Cameron, P. *The Life-Cycle: Perspectives and Commentary*. NY: General Health, 1977.
- Cameron, P. & Oeschger, D. "Homosexuality in the Mass Media as Indexed by Magazine Literature over the past Half Century in the U.S." Paper presented at Eastern Psychological Association Convention, New York, April 4, 1975.
- Davis, N. & Graubert, J. *Heterosexual*. NY: Vantage Press, 1975.
- Freud, S. "Three Contributions to Sexual Theory," *Nervous and Mental Disease Monograph Series*, 1925, 7.
- Gubrium, J.F. "Being Single in Old Age," *International Journal of Aging and Human Development*, 1975, 6, 29-41.
- Hunt, M. *Sexual Behavior in the 1970s*. Chicago: Playboy Press, 1974.
- Karlen, A. *Sexuality and Homosexuality*. NY: Norton, 1971.
- Kastenbaum, R.J. & Costa, P.T. "Psychological Perspectives on Death," *Annual Review of Psychology*, 1977, 28, 225-49.
- Maugham, S. *El Greco*. NY: Doubleday, 1950.
- Sears, R.R. "Sources of Life Satisfaction of the Terman Gifted Man," *American Psychologist*, 1977, 32, 119-128.
- Tripp, C.A. *The Homosexual Matrix*. NY: McGraw-Hill, 1975.
- Weinberg, M.S. & Williams, C.J. *Male Homosexuals: their Problems and Adaptations*. NY: Oxford University Press, 1974.

The Established Irreligion

M. J. Sobran

IN THE MINDS of many enlightened Americans, race and religion are twin atavisms in whose names the worst infamies of history have been committed. They are improper bases of discrimination; they exist to be transcended, even repudiated. A nation that prides itself on its novelty and innocence can hardly fail to harbor a suspicion of notions that imply sin and even human limitation. The devil-figure of race is incontestably Hitler. The devil-figure of religion is less distinct, but the most frequently invoked symbols of religious evil are the Inquisition and the Salem witch trials. Recent popular revisionism practically began with the attempt to link traditional religion with racism, notably by charging Pope Pius XII with silent complicity in Hitler's crimes, and more generally by implying that religious missionaries virtually invented racism.

Racism has now become the cardinal sin in America; not only because it is evil, but because it affronts the American etiquette, according to which no man is to be charged with any fault or defect that he did not incur individually. Ethnic slurs are little blasphemies against individualism. Accordingly, minorities on the make now adopt the ethnic model, and claim the shelter of anti-discrimination measures. Feminists and homosexuals stress analogies with persecuted Jews and blacks.

The meaning of religion has been similarly stretched. It used to mean the worship of God, principally in the Judaeo-Christian modes of response to divine revelation, though the American impatience with inherited sin and a kind of truth not equally available to all has resulted in variant and secularized forms like Unitarianism and Universalism, now widely espoused as models for more traditional faiths. In fact the old-time religion has become disreputable in several ways. Usually the unfolding revelations of science are cited as the great subverters of naive faith, though it is less often noticed that Darwin is as blighting to belief in the uniqueness of the individual as to the literal interpretation of Genesis. In fact it is faith in the individual that has crowded out doctrines that require the individual to abase himself before his Maker, and to accept the mediation of his Savior and perhaps the Church too. As modes of behavior that used to be condemned as depraved have been transfigured into

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“valid life-styles” of quasi-religious dignity, the kind of religion that refuses to sanction them becomes an un-American activity.

As recently as 1952, Justice William O. Douglas, the liberal’s liberal, could opine that “We are a religious people, whose institutions presuppose a Supreme Being.” Since then, however, belief about religion, including negative belief, has supplanted religious belief itself as the object of our tenderest institutional mercies. The courts, including the Supreme Court, have shown themselves less solicitous for religion than for the sensibilities of non-believers. They have struck down prayer in public schools and a variety of community religious observances, including a governor’s plan to lower state flags on Good Friday.

It may be replied that it is improper for the state to take a position in religious matters, and I for one find this a reasonable proposition in many respects. Yet when the claim is made that irreligion must enjoy equal status with religion *as a constitutional imperative*, I must demur.

Until very recently, Justice Douglas’ words would have found no argument. The Declaration of Independence makes explicit the Founders’ belief that the Creator, a.k.a. Nature’s God, endows men with unalienable rights. The original settlers of the country were mostly religious men, and many of their settlements were religious communities. The Pilgrims’ flight from religious persecution was piously recounted as not only an historical fact but a model for generations. The First Amendment reflected not only the horror of religious persecution, but the special status of religion itself.

This last point needs emphasis. If it had been merely persecution in the name of religion that the Framers of the Constitution had wanted to avert, they might have simply forbidden the new Federal government to establish an official state church. If they had wanted to guarantee equality of status for non-belief, they might have said so plainly. But in fact they forbade the Congress to make any law “respecting” the establishment of religion, thus leaving the states free to do so (as several of them did); and they explicitly forbade the Congress to abridge “the free exercise” of religion, thus giving actual religious observance a rhetorical emphasis that fully accords with the special concern we know they had for religion. It takes a special ingenuity to wring out of this a governmental indifference to religion, let alone an aggressive secularism. Yet there are those who insist that the First Amendment actually proscribes governmental partiality not only to any single religion, but to religion as such; so that tax exemption for churches is now thought to be unconstitutional. It is startling to consider that a clause clearly protecting religion can

be construed as requiring that it be denied a status routinely granted to educational and charitable enterprises, which have no overt constitutional protection. Far from *equalizing* unbelief, secularism has succeeded in virtually *establishing* it.

We are by now used to hearing it asserted that the same First Amendment mandates the press as a check on governmental power. Almost nobody denies the special constitutional status of the press, at least in some sense. Why else should it have been singled out for mention? Of course the Constitution does not require us to read, any more than it requires us to worship. But to erect these negative freedoms into positive constitutional rights is quite a different matter. So far the press has not encountered its Madalyn Murray; indeed one would gather, from the generous encomiums it bestows on itself, that we are a literate people whose institutions presuppose a James Reston.

Still, one can imagine a sane and perhaps reasonable man of reactionary views who thought that the total impact of the press on the nation was for the worse; so Plato felt of writing. And though he might concede that it was capable of being put to good uses, he might nonetheless insist that the present-day press, by taking the nation in a liberal direction, was on the whole a bad thing; and that he ought not to be compelled to support it.

Now if this gentleman were to approach the First Amendment in a certain spirit, he might construe "the freedom . . . of the press" as meaning that one had the right equally to read, or not to read, the products of the press; and he might conclude that the state was therefore not to be partial one way or the other. The upshot being that he might sue to stop the government from showing any favor to the press; on grounds that the provision establishing press freedom forbade the government to allow the press (say) special postal rates. In short, he might contend, with all the plausibility of our secularists, that for the government to encourage the press in any way, however indirect, however slight, was an infringement of his First Amendment right not only to refuse to read, but to have his government refrain from taking sides in any matter touching the press. For the freedom of the press, on this view, includes the rights of non-readers as much as those of publishers and readers. To protect both equally, the government must give no advantage to either.

As it happens, the First Amendment, though it must not be construed facilely as conferring "preferred" freedoms, does confer a certain positive respect on religion (but not on irreligion), on freedom of speech (but not all speech), and on literacy (but not on illiteracy or obscurantism). It presumes that these three things are enlightened

(though the competing claims of their contraries may also be entitled to a certain consideration, as the Ninth Amendment implies). The original national commitment is clear. Only the contemporary prejudices against religion and in favor of free expression have blinded us to this simple and patent truth.

The exaltation of the press over religion is largely the work of the press itself. In fact the press seems to be supplanting religion as the authoritative force in American life today. When it was discovered that the CIA had covertly made use of journalists as intelligence sources and even as propaganda agents abroad, the pitch of indignation bespoke not so much the abuse of a good thing as the defilement of a sacred thing. Under no circumstances must the integrity of the press be compromised. No superior good can claim its deference. It is the organ, not merely of information, advertising, amusements, opinions, speculations, and judgments, but of truth. The oracular tone of editorial pages supports this self-portrait. One would never guess, from the accents in which the press discusses itself, that the average newspaper includes baseball scores, comic strips, grocery coupons, horoscopes, and purported cures for baldness.

The media generally do indeed mediate. They take over much of the burden of ethical and ritual guidance formerly assigned to priests and prophets. They serve as a collective bureau of weights and measures for opinion, subtly telling us, in orotund booms of disembodied omniscience, which points of view are authoritative, which respectable, which merely eccentric, and which simply beyond the pale. In matters of religion they do not presume to say which doctrines are true and which are false. With ironic modesty, they treat the whole area of sacredness as irrelevant, with the persistent and systematic suggestion that the sacred has no bearing on public affairs, and ought to be kept out of them. It is generally kept out of the news, except when a news agency thinks it is obtruding itself improperly. Let me offer two illustrations.

A recent edition of *CBS Reports* considered "The Politics of Abortion." The show consisted largely of scrutiny of Catholics, not only protesting abortion, but in their worship, with all the paraphernalia and raiment best calculated to make them look strange in public (which is partly why, after all, these are reserved for sacred places and occasions). The burden of the show was that opponents of abortion are injecting religion into public affairs, and (implicitly) that opposition to abortion is inherently "theological." Narrator Bill Moyers, summing up, suggested that the attempt to make abortion illegal again represents a threat to the separation of church and state.

A few days later, NBC's *Today* reported the repeal of a homosexual rights ordinance in St. Paul by showing a film clip of the leaders of the repeal movement, the members of a Baptist church, singing hymns. The clear suggestion was that a sectarian principle had improperly, or at least dubiously, invaded what should be the secular no-man's-land of law. There was no mention of non-Baptist or even pragmatic opposition to the ordinance: it was not noted, for instance, that the Big Brothers of America had been found in violation of the ordinance for trying to reject homosexual applicants; that when they had been compelled to accept homosexuals, they had been found in further violation for tipping off a single mother that her young son was to be escorted by a homosexual "brother"; or that the Court, in punishing the organization, had suggested that it actually take out recruiting ads in homosexual publications! Two days later *Today* invited comment from Bruce Voeller of the National Gay Rights Coalition. No opponent of the ordinance was asked to speak. (Newspaper accounts of the vote similarly concentrated on the religious issue, to the same effect.) Voeller, by the way, asserted that the rights of blacks, Catholics, and Jews, if put to a vote, might be similarly defeated, thus implying that white Protestants are massively bigoted against all minorities (unless he meant that all groups are mutually bigoted against each other). Interviewer Tom Brokaw did not challenge this remark.

I may as well add a third illustration, a special favorite of mine. Recently the *New York Times* ran a story on the proliferation of private, mostly religious schools, and their harassment by the states' accrediting agencies. Given the jealous monopoly of the public schools, reinforced by teachers and other educationalist lobbies, it is not surprising that these schools should be under fire; though it is ironical that it is *their* standards that are called in question, when the very reason parents resort to them is not to flee standards, but to find them. It is the state-run schools that are dissolving into irrelevance and even chaos; while one religious high school (described as "narrow" by the reporter) had no locks on its students' lockers, its youth evidently trusting in each other as well as in the Lord — a form of belief no longer tenable in most public schools. The best part, however, was that all this was introduced by the headline: "Private Schools Provoking Church-State Conflict."

Religion, in short, is coming to be regarded as a disreputable category, and religious people themselves are being taught to internalize the secularist contempt under the guise of separating church and state. Any activity by religious people that threatens state hegemony in any area is blamed on religion: it "provokes church-

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state conflict,” a conflict that could be avoided by the simple expedient of prostrating the interests of the church before the high altar of the state. We are now, it seems, a secular society, whose institutions presuppose our civic willingness to give every outward appearance of being agnostics. It is irreligion that now claims a preferred status.

But the irreligion is not that of a Madalyn Murray — that crusading, old-time irreligion, which is as offensive to most secularists as are the convulsions of Holy Rollers. The current style is a low-key skepticism that despairs of certainty in supernatural matters, and so ignores them, and wishes that everyone else would ignore them too. In any point touching religion, we are expected to agree to disagree, and let it go at that. As in a parody of the Protestant principle, we are to leave it to “individual conscience” whether abortion, say, involves killing a human being. Yet most of those who would consider it an infringement of somebody or other’s convictions to give a parochial student a publicly-funded bus ride, textbook, or hot lunch have no such scruples about the public funding of abortion. That, somehow, is not thought to be a religiously “divisive” state policy. It is only the institutional repudiation of religion, and not the avoidance of institutional offense to religion, that is demanded by the secularist forces.

Not that the secularist position lacks plausibility. Otherwise there would be fewer secularists, and even fewer religious people deferring to them. Religion is a matter of personal faith, and Christians especially, who are taught not to scandalize unbelievers, hesitate to “provoke conflict”: that is part of their religion (though it is no part of secularism). On the one hand they are to bear witness to their faith; on the other they are not to affront others needlessly in their professions and practice. And it would seem that they can fulfill both obligations by some such formula as saying that they “personally” object to abortion, but refuse to “impose” their “beliefs” on others. This makes it sound as if not getting an abortion oneself were a sort of sectarian observance, while allowing and even helping others to do so were an act of pluralistic tolerance. To the extent that abortion *is* a religious issue, it would seem that the state should neither prevent *nor* subsidize it. (Of course no wall of separation has been erected between abortion and the Treasury.)

But the simple fact is that the secularist position is false. It rests on a confusion of categories. It assumes that because a religious belief may not be formally imposed on others, it may not be acted on with reference to anyone but the believer himself. And this, in turn, rests on a deeper prejudice about the nature of religious belief:

namely, that such belief is eccentric and nugatory. The consequence is that the believer is expected to behave as if he didn't believe: he is to treat his own belief as if it were false, simply because others can't be expected to treat it as if it were true. This is absurd, not only with respect to religious belief, but to any belief.

Of course it is always true that a man who is privy to some truth or fact must take into account the position of others who are not so privy. If I am the only witness to a crime, it is my duty to try to persuade others that I saw it. But if I can't convince the community, the prosecutor, or the jurors, I can't blame them for doubting that it happened, or for acquitting the criminal. Nor is it my desire to "impose" my knowledge on them. I simply tell what I know, and hope to share it in such a way that it will make a difference. At the same time, I am under no obligation to disregard what I know, even if others do: I need not treat the criminal as if he were innocent. And I would be irresponsible toward the very people who disbelieved me if, supposing the criminal ran for office, I were to vote for him myself. However I know, I *know*, and it matters that I know.

All religion implies a divine communication that is true and authoritative. It may be natural or supernatural, inferred by one's own reason or revealed from above. In either case, it embodies not only truths about the universe, but personal obligations, explicit or derivative. If murder and adultery are intrinsically wrong (and not merely ritually proscribed), then not only am I forbidden to commit them, I must do my best to see that society forbids them, or appropriately discourages them. If men are created equal, with certain unalienable rights, I must respect those rights myself, and do my part to see that government is organized with due reference to them. The application of even a simple principle may be very complicated, but the obligation to apply it intelligently is not on that account lessened. One of my duties is to persuade others. If I fail in that, I still have the duty to respect the rights myself, to continue trying to persuade, and to use my personal influence on behalf of the rights.

Let me use an illustration of a rather extreme kind. Grant the secularist idea of religion as merely personal and mystical experience. Imagine a man, then, in the deep South in the year 1820, who one night receives a direct and solitary revelation from God, to the effect that slavery is wrong. The man is peaceable and reasonable; he has always lived in harmony with his neighbors, accepting their customs and notions, including their belief that the Negro is somehow lacking in the full faculties and capacities of white men. He knows that there are abolitionists elsewhere, but he thinks of them as fanatical

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Yankees who hate the South unappeasably. He is not a speculative man, and he hasn't the slightest idea how to go about abolishing slavery or convincing his neighbors that they ought to free their slaves. Nevertheless, the conviction comes to him by the unmistakable voice of God that it is evil for one man to own another. And like Socrates, he knows only that he must obey; somehow.

He fully realizes that if he sets out in the morning to tell his slave-owning neighbor to manumit all his bondsmen at once, he won't be taken seriously. Frank will think he is joking. When it dawns on Frank that he really means it, Frank will be perturbed, and demand to know what brought this eccentric notion on. If he replies that he has received a direct message from God, he will be laughed at. If he persists, his friendship with Frank will be at an end, and Frank will spread the word to their other neighbors that he has taken a ridiculous fancy into his head; and he will gain only the reputation of a crank, without in the least affecting the laws, or improving the condition of the slaves.

He can't blame them. He has no way of knowing that history is on his side; he would in fact be crushed if he could foresee the dreadful consequences to the way of life he loves of history's ultimate verdict. But he nearly despairs. The South now appears to him hopelessly corrupt, and he sees neither a prospect of reform, nor any possible way of reform that would not be terribly dislocative. His neighbors aren't wicked men; they are much like himself, and have inherited their way of life as he has, without the special insight he has been vouchsafed: an insight that to him is less an advantage than a burden. Besides, the slaves have been unfitted for immediate freedom by the whole history of slavery itself: would they be better off if they were freed at once? God has not confided such details to him. For that matter, wouldn't a sudden justice to the slaves be a kind of injustice to the masters, who have always lived, as virtuously as they knew how, on the assumption that it is appropriate for white men to rule black ones? He respects circumstance; he knows that the slave system didn't spring up overnight. If only he had never received this awful, undeniable truth! Far from priding himself on having been favored with it, he is soon tempted to curse God for afflicting him with a unique and baffling duty.

He may be a well-spoken man. Still, he does not even know how to set about persuading his neighbors. He is not at all inclined to mount his high horse, and to affront them by styling himself a prophet. He is even too polite to want to contradict their conventional belief with his own flat and unsupported contradiction. *He* owns no slaves. He will seem to be demanding that his own individual

speculations be taken by them as requiring that they make a sacrifice not only of their property, but of their self-respect.

So for a while he must live a double life: knowing that he is surrounded by an evil system, even that he is part of it, that it is in effect his parent; but knowing also that he can't simply rest in its present state. God did not give him this truth merely as information: it is after all a divine truth, to be acted on, to guide his life from now on.

And if the day comes when something he says will make a difference, he must say what he knows. He must, as we say, vote his conscience; staking his character, perhaps, on his neighbors' inclination to respect or despise his conviction. They will differ with him, not as men disagree on abstract opinions, but in things touching their lives and impugning their self-respect, as I have said. His words will strike them as a kind of threat to some deep level of their being. His old friends may hate him. They may ostracize him, and worse. It may nonetheless be his responsibility to take the risk of speaking the truth. That, if religion means anything, is his duty.

If they, being reasonable men, reply that they see no reason to agree with his strange notion, they tell him no more than he knows. The difference is irreducible. But if they go further than telling him that *they* are not bound to act on what he thinks *he* knows — if they go on to say that *he* must not act on it either, and that God's will in this matter is either in favor of slavery, or simply impossible to know — then they are virtually telling him that he must live not by his own convictions, but by theirs. If they tell him that *he* may choose conscientiously not to own slaves, with their respect, but that *they* will continue, in perfect conscience, in the disposition of what is their own, then he must tell them that the primary point is not what the master believes, no matter how sincerely, but the dignity of the slave himself. Thinking it is right can never make it right. He need only respect them as conscientious men; he owes no respect to what their consciences wrongly tell them. And if they object that the nature of the Negro has long been in dispute (which was true in 1820), and that many learned men have held that the Negro is not fully human (which was also true in 1820), all he can reply is that his own mind is settled, whatever criteria of "full humanity" others may hold, even others deeper and more brilliant than himself. And if they tell him that for all they can see, his opinion on the matter is merely religious, he must ask in reply what they mean by *merely*.

That is the position in which religious people now find themselves. Their religion is *mere* religion. A religious conviction is now a second-class conviction, expected to step deferentially to the back of the secular bus, and not to get uppity about it. The taint of religious

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association is even used to discredit opinions that may be held on secular grounds, if they contradict the secularist consensus. It is of course true that there are religions of a merely ritual character, in which propitiations are offered to idols with perfect indifference to the existence of slavery and other enormities: human sacrifice and cannibalism have even been part of many cults' rites. It is curious to find Christianity and Judaism called on to behave as if they were only ritualistic in character; or not so curious, considering the annoyance they have given to secular powers, from the Roman Empire to the Soviet Union. We may note, by the way, that almost none of the media coverage of human rights problems abroad has to do with the persecution of religion, which is a grim fact of life throughout the Communist and in much of the Third World. Christians particularly have been astonishingly derelict about publicizing the plight of their co-religionists around the world, thereby passively supporting the secularist portrait of religion rather as an imminent threat to freedom than an endangered and violated thing.

Let us assume that there were not perfectly intelligible earthly reasons for opposing abortion, homosexuality, and other evils. Let us suppose that the only conceivable reasons were religious: in what sense would it be obligatory on a religious man to act without reference to them? If he really thought that abortion was wrong because God had told him so personally (as in the secularist's uncomprehending caricature of religious experience), he would certainly be derelict if he did not act against abortion, the more so *because* God told him to — albeit with full consideration of those who did not share his knowledge, and who could not be blamed for their ignorance. If religious views were simply of the character of private revelations, it would still be as pointless to ask people to treat their visions as hallucinations as it would be for a blind man to ask others to disregard the evidence of their eyes. Of course those who have eyes have the advantage over the blind man. It may be unfair, but the advantage is real, and it would be foolish to rule out ocular evidence on grounds that it is not equally available to all.

Of course the real (and undiscussed) question is whether religious people are seeing anything that is hidden from non-religious people. Understandably, the militantly non-religious — the secularists — believe not. Just as understandably, they would like the religious to set aside their putative advantages in moral insight; and they have worked doggedly to require them to do so, even inventing a fake constitutional principle to *require* them to do so. But again the very idea of religion involves a divine communication that must not be disregarded. And America began with the idea that religion is in

principle a valid mode of cognition, a way of *knowing*, worthy of special and explicit state protection. It was for the sake of religion primarily that the Framers forbade the new Federal government to presume to give one religion favor over others, or to prohibit religious observances. In doing this they left men free to act on their deepest beliefs: they even made American politics a kind of free market of religious competition. The religion clauses, whatever they mean precisely, no more signify a commitment to “neutrality” as between religion and non-religion, let alone a preference for the latter, than the press clause implies neutrality about whether men should learn to read.

The Framers’ attitude was very far from that of the modern secularist, whose reference to “imposing the beliefs of a minority” is a code-phrase for anti-Catholic and, more generally, anti-religious bogeyism. The suggestion is that if people act on their religious beliefs in the public arena, religious persecution is just down the road. What else can “imposing beliefs” rationally mean but punishing people for their credal professions? Irreligious people are free to act on their beliefs without incurring this charge, even when their actions profoundly affront religious people. Religious people may of course cite their religion in support of causes — peace, welfare programs — that already enjoy the benison of the diffuse secularist hierarchy. But when their religion leads them to moral positions that affront secular liberalism, they become a threat; and the same people who damn Pius XII for his alleged silence on the mass murder of Jews damn Catholics for speaking out on the wanton killing of the unborn.

Religion has sensitized men’s consciences far more often than it has made them fanatics. And democracy is based on conscience. The very idea of a vote is that a man commits his whole being one way or the other, on the basis of his own personal sense of urgency, though he may not be able to explain this to his fellow citizens’ satisfaction. He steps into the voting booth to decide, not to persuade, nor even to reason. The very institution of the vote is based on respect for the dignity of even an inarticulate decision.

The distinction is important. A religious ground for a decision may be persuasive only to those who share the religion. The power of the enthymeme depends upon an implicit consensus concerning the unspoken major premise. But religious people have the same right to decide as everyone else, on whatever motives move them; and the possibility that their distinctively religious premises will not be shared by others is no reason for them to alter their own commitments. What the secularists are increasingly demanding, in their disingenuous way, is that religious people, when they act politically,

act only on secularist grounds. They are trying to equate *acting* on religion with *establishing* religion. And — I repeat — the consequence of such logic is really to establish secularism. It is, in fact, to force the religious to internalize the major premise of secularism: that religion has no proper bearing on public affairs. This is a way of ghettoizing religion, and instilling the ghetto mentality in the religious.

If the Framers meant to set up a dogmatically secularist state, all one can say is that they made a botched job of it. Many other nations have done it better, from Robespierre's France to Lenin's Soviet "republic" with its numerous spawn. It is worth the notice of religious people that the secularist regimes have not set a record of tolerance that American secularists can point to with pride, or that religious Americans can regard with much complacency. The point is oddly unmentioned in our public discussions — not surprisingly, since those discussions are dominated (by the sufferance of the religious) by secularists themselves, and they are generally anxious to give their brethren abroad the benefit of every possible doubt. "Religious persecution" generally means persecution by religion, not of it; it is still the Inquisition and the Salem witch trials that we hear about, even though these claimed scanty numbers of victims compared with the crimes of secularism.

It is time for religious people to insist that "human rights" includes not only the right to dissent, but the right to worship; and to insist that secularism be judged not by its professions of tolerance, but by its own international record. That record is a grisly one everywhere, and as the secularists prevail in the domestic abortion battle, the grisliness should come home to us irresistibly. The cheapening of life is not an abstraction; it is a systematic and present reality. Naturally the enemies of religion will continue denying either that the evil is occurring, or that it is evil, or that anything can be done about it. Most of all they will deny, quite sincerely in most cases, that the evil is of a piece: they will deny that the abolition of religion in China has anything to do with mass purges in China, even as they plead for "understanding" toward China. They will keep their eyes fixed in horror on wrongs committed centuries ago, because, as a friend of mine puts it, they haven't noticed the twentieth century. But that century is one of mass murder, genocide, and institutionalized terrorism, the fruits of that phantom faith in the secular state that persists in promising "liberation" even as it attacks the most fundamental human attachments.

Abortion as a Feminist Concern

Janet E. Smith

FOR THE MOST part abortion has been included in a package of “women’s issues” and as one of the “rights” or even “goods” which women have been denied. Indeed, the U.S. Supreme Court based, at least in part, its opinion of January 1973 on what it perceived as a woman’s right to privacy. I argue that such a view is a fundamental misunderstanding of women’s rights and, even more importantly, that behind pro-abortion thought there lies a confusion about what it means to be a woman. I argue that abortion is an act which will, on analysis, prove to be harmful to the woman.

Rather than being a “right” of women, abortion is a great disservice to women, one which reflects both a growing lack of appreciation among women for those powers and capacities which are distinctly theirs as women and a growing despair that women are willing and able to be full participants in society and to make the sometimes noble sacrifices demanded of individuals for the good of society. Seeing abortion as solely a matter of women’s rights assumes that the fetus has no rights or that the rights of the woman are unquestionably superior. But abortion, no matter where it fits into the scheme of the rights for women, is a violation of the right to life for another human being.

You may be surprised to learn that, in our law, although the fetus is currently without the right to life, it does have some rights. For instance, under civil law the unborn child has the right to inherit part of his father’s estate should his father die before he is born, and he has the right to sue his mother, or a doctor, for injuries sustained while in the womb.¹ In fact, before 1973, when the Supreme Court declared unconstitutional the laws forbidding abortion in the states, the law had given ever more protection to unborn human beings. Such increased legal protection reflected the medical scientists’ growing knowledge that the care a fetus receives — or doesn’t receive — affects the developing child. It may also be surprising to learn that there is precedent in law for respecting the rights of the fetus *over* those of the mother. In 1964 the New Jersey Supreme Court ruled that a woman who had religious objections to

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blood transfusion must submit to such a procedure for the well-being of her unborn child.² We might ask why such legislation exists, why such decisions were made. Clearly because life and hence certain rights do not begin at birth. As biology tells us, life begins at conception. It is information well-known to anti-abortionists though perhaps news to the general public, that the fetal heart begins to beat 18-25 days after conception — that is, before a woman even knows she is pregnant; that brain waves have been recorded as early as 40 days, and that at 12 weeks all organs are present and functioning. From this point fetal development is largely a matter of growth in size and sophistication. This information is not hard to come by, but many are genuinely ignorant of it; others evidently choose to ignore it.

What then excludes the fetus from the right to life granted to other humans? Its size? Its stage of development? The fact that it receives its food and oxygen in a manner different from the rest of us? Or is it its inability to defend itself? What rights of a mother or a father or even the state, for that matter, can supersede the right of another human being to life?

I once gave a talk to seventh graders (who had no trouble at all in perceiving that abortion was the killing of a baby); a youngster asked: “If all that you say is true, how could our government permit abortions?” I asked myself “How *does* one account for seven men of the Supreme Court trivializing a value basic to Western civilization — the right to life for all men regardless of race, color, creed, and, might I add, size and age?” It seemed to me that her question amounted to wondering why mankind does evil. I responded that mankind in general, our society in particular, seems inclined to choose the easier way. It is difficult to be loving and caring. It is challenging, demanding, exhausting, and expensive to provide the care and support needed by women in distress. It is much easier, quicker, and cheaper to send a woman to an abortionist. Unfortunately our society seems to be so insensitive and materialistic that we would rather kill life than find the means to support it.

But we are not concerned here with the reasons why the Supreme Court and the society which it guides permit abortions, but with another even more perplexing question. So abortion is killing, so that killing is now legal. Still, why are over a *million* women a year in the U.S. aborting their own children? And given the fact that they *are* doing this, what does it tell us about the conception which women have of themselves? Is it a true view of what it is to be a woman?

Some would have us believe that the women who are having these abortions are poor and uneducated, and/or that their health is

threatened by childbirth. But such claims are demonstrably false, for most are young and healthy, and childbirth has never been safer. Furthermore, a large portion of women having abortions are college-educated and have greater prospects for attaining material success and "self-fulfillment" in this world than their parents and grandparents ever dreamed of. True, most of the women getting abortions are unmarried, but the stigma attached to single parenthood and even that of unwed parenthood has very nearly disappeared. And never before have there been so many couples waiting to adopt children; but what are their chances when in some communities the number of abortions has already surpassed live births? And at the risk of promoting what is an appalling possibility, I can inform you that a woman could sell the baby that she chooses to abort for \$15,000 on the black market. So the situation today is that an unmarried pregnant woman has unparalleled access to assistance and considerable assurance of acceptance by society should she choose to bear her child; she could be an unknown but willing benefactor to a couple who desperately want to adopt a child; or, if she were willing to deal with the syndicate, she could be rich.

If women are getting abortions for reasons other than poverty, shame, and lack of alternatives, what are their reasons? What accounts for the epidemic of abortions in the U.S. since 1973? Several explanations come to mind. A complete analysis would require a lengthy critique of our culture, of the values of our society. I prefer, though, to use a technique employed by my favorite teacher; that of parables and subsequent analysis. I shall begin with the biblical story of Solomon whose fame as a wise man, for most of us, is best known through the story demonstrating his understanding of women.

Solomon made his judgment based upon his recognition of a certain "instinct" in women. You know the story: two prostitutes bore children at the same time. One woman's child died and she laid claim to the other woman's baby. This case of disputed motherhood was brought before Solomon, the wisest of judges. Since he had no means of establishing who was the rightful mother, he offered to cut the baby in half. He depended upon the love of the real mother for her child. He was proven right: the real mother, willing to lose her child to save its life, begged Solomon to give the child to the other woman. Now, these women were not pillars of virtue; they were prostitutes. Even so, Solomon was sure he could depend upon the maternal instinct to determine who the real mother was. Would Solomon be able to use the same method today? Are today's women women?

Do women today have this maternal feeling, this “instinct” or tendency — or whatever term one wishes to apply to this special love for their children? Possibly I should phrase the question differently. For indeed, if it is an instinct or tendency inherent in all women, today’s women *must* have it. But since even naturally-good tendencies and talents need to be developed and nourished, perhaps the question should be: are today’s women and the society in which they live failing to encourage and foster this tendency in women? Or has it been weakened by those “modern” ideologies which argue for “self-fulfillment”? Do we want, as women, as we pursue other goals, to sacrifice anything — even our children — for these goals? Do we want to lose the ability to be mothers and motherly? It does seem that women today have such an underdeveloped or diminished maternal instinct that they are not only unwilling to make sacrifices for their children but are also willing to kill them.

Certain conversations which I have had with women recently have made me realize that women today are indeed gravely confused about what it means to be a woman. These conversations have convinced me that behind women’s demands for unlimited access to abortion lies a profound displeasure with the way in which a woman’s body works and hence a rejection of the value of being a woman. Whereas one might hope that the women’s movement would be based on the assertion that it is great to be a woman and that women would endeavor to promote the powers and qualities which are theirs, the popularity of abortion indicates quite the opposite. Abortion is a denigration of women, a denial of one of the defining features of being a woman — her ability to bear children. Now some may deny that this is a defining characteristic of women. But is there any more certain criterion? A woman is a woman because she can bear children.

Traditionally, the most admirable qualities have been associated with motherhood. Throughout the ages good women, both mothers and non-mothers, have been portrayed as warm, sensitive, loving, and generous. The source of these qualities is the love for one’s children — and those whom a woman succeeds in some way in viewing as her children. These qualities are allied with a woman’s willingness to make loving sacrifices in behalf of both her physical and adopted children.

I should like to relate four recent encounters I’ve had with women which I consider vivid illustrations of the fact that we are losing the view of women which enabled Solomon to demonstrate his wisdom. To me, they reveal that some women have a distressing lack of appreciation for being women. I realize that the women in these stories hold fairly extreme and certainly not altogether representative views.

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But that which is normal or usual, “the middle way,” can best be ascertained by looking at the extremes. Women who are willing to die for their children are an extreme of goodness; women who kill their children so that they might obtain a certain self-centered “lifestyle” are another extreme. The following conversations should help any woman to locate herself on the spectrum.

The first woman would surely have robbed Solomon of his title as a wise man. She was certainly very different from the usual characterization that pro-abortionists provide of the women seeking an abortion. Attractive, healthy, college-educated, about 20, she approached me one day (at a university) to argue that women had a “right” to abortion. I countered, as usual, with information about prenatal life, to demonstrate that the fetus is in fact a living human being. I chose this line of argument because I like to believe that people who support abortion do not believe that it is the taking of a human life — thus, perhaps, a demonstration of the humanity of the unborn would be sufficient to change their views. But this girl cut me short; she readily agreed that the fetus was a human being; she demanded the right to abort anyway. Such an admission, sad to say, seems common now among those who argue for abortion. I then proceeded to ask what reasons she considered legitimate for taking another’s life. We went through a series of the usual reasons. With some success I argued that killing babies is not a good solution to the supposed population crisis; that it’s better to want the unwanted than to kill them. I even managed to argue, again with some success, that the child whose father is a rapist has no fewer rights than one whose father is a loving man. But then she stumped me. She said: “Well, everything you say is all right, but if I became pregnant I would have an abortion. I don’t want stretch marks.” I repeated: “Stretch marks?” She answered: “Yes. If I carried the child to term I might get stretch marks and then I could not wear a bikini.” And then — would you believe? — she said: “Vanity is a very important part of my life.” She agreed that she would be killing a baby were she to have an abortion but she was still willing to do so simply because of her vanity. On reflection, I realized that her case fell in the most extreme category used to justify abortion — that of abortion to save the life of the mother. Now I do not mean her biological life (a medical necessity doctors tell us is quite rare) but her life in a perverted sense. To her, to be a woman is to be a sex object. As a self-admitted sex object she had been completely drawn in by the modern hedonistic philosophy which tells us that unless you are young, beautiful, slim, and without stretch marks your life is not worth living. Pregnancy was a threat to her “life,” perceived as the

possession of an attractive body. This young woman was not a freak, but simply a very frank product of our times.

One indication that the cries for abortion are the cries of those who view women as sex objects is the fact the *Playboy* magazine contributes generously to the pro-abortion lobbies. Nor has this connection gone unnoticed. John T. Matthews (in *The Human Life Review*, Winter '76) observed: "To state the paradox — if it is one — the same ladies who protest so vehemently that men should stop treating them as 'sex objects' also demand abortion: which can only be required, one would imagine, if in fact they are sex objects."³ The young girl so concerned about stretch marks is an extreme example: she saw a baby as a hindrance to her desire for self-fulfillment — i.e., being a desirable sex object. *Nothing*, today, is supposed to stand in the way of devotion to the newly-enshrined god (or is it goddess?) of "self-fulfillment," not even babies. But isn't it true that women have the potential to bear children, and to fulfill one's potentials is fulfillment? The vague and elusive dreams of self-fulfillment seem to have gained precedence over the more basic, immediate and literal fulfillment of childbirth. Beware the exhortation to self-fulfillment! Women must make certain that in trying to find themselves they do not *lose* themselves — in a sense quite contrary to the Biblical injunction to lose one's self in order to find one's self.

Abortion is a denial of one of those powers which make women women. Child-bearing is basic to them. We might expect that deliberate and violent denial of such a potential may be devastating. Some women argue that the fetus (be it a human being or not) is a part of their bodies and that they may do with it what they will. In one sense — a very different sense — the argument is true. Pregnancy and childbearing are perfectly normal conditions for women, and hence a part of her physical and psychological make-up. To have an abortion is to destroy part of one's self. It is normal for a woman to carry the children she conceives to term. To remove that child forcibly interrupts and harms the healthy functioning of her body. To put it bluntly, an abortion amounts to a mutilation of the woman's body and to a denial of her nature. Studies documenting the frightening physical and psychological dangers of abortion corroborate this interpretation that abortion does violence to the woman. The physical dangers include increased chances of sterility, of subsequent spontaneous abortion and an inability to carry future pregnancies to term (with the attendant increased likelihood of retarded or handicapped children).⁴ These dangers are not insignificant. Moreover, statistics always do represent *actual women*. That

means us. In the psychological sphere percentages are harder to compute, but studies⁵ have found that among the psychological after-effects are recurrent nightmares about the fetus, even a feeling of repulsion for sex and for children. Both physically and psychologically one's "femininity" has been impaired. If the young lady so concerned about her attractive body ever has an abortion, she may well avoid stretch marks, but she will not retain her appealing womanhood; she will be less of a woman.

The second young woman told me that as long as there is no 100% effective form of birth control, abortions must be available as a "back-up." Now, many people are appalled at the notion of abortion as a means of birth control, but, of course, for those who really believe abortion is only the removal of extraneous tissue, such abhorrence is irrational. Abortion is indeed being used not only as a "back-up" to failed birth-control but *instead of* birth control. The Badgley Report, a government study in Canada,⁶ reported that 85% of the women who had abortions in 1975 were "contraceptively experienced." They had full knowledge of birth control but chose not to use it, for a variety of reasons: too dangerous, too unaesthetic, or simply a hindrance to spontaneity. Abortion could always "take care of" any unwanted pregnancies.

To this woman who argued that abortion is necessary as long as methods of birth control are imperfect, I answered that there is one infallible means of birth control — abstinence, either total or periodic. To this she laughed. Our society has taught us that sexual activity is essential to our happiness. The principle that one should engage in an act only when one is willing to accept all consequences of that act is unpopular with our irresponsible age. Yet the demand for abortion as a "back-up" for birth control is a residue of the "daddy will fix it" attitude. If something has gone wrong (how twisted we have become: "going wrong" now means that one has conceived a child) then it must be fixed.

Many of those who have been involved in the anti-abortion movement for a long time maintain that there are definite links between the attitudes fostered by birth-control and the current popularity of abortion. If man (and I use the term generically) has done all that he can to prevent conception, any conception which happens is by definition an accident, not a blessing from God, as in Judeo-Christian teaching. The use of contraception implies that man can control conception; that he can "plan" parenthood. I argue that the phrase "planned parenthood" is misleading. One can only create conditions favorable or unfavorable to conception but one cannot *plan* a preg-

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nancy. There are too many women who have been trying to conceive for years without success, and too many women who have conceived contrary to their intentions to make any talk of “planned parenthood” accurate.

There are those who say that more and better birth control will eliminate the “need” for abortions. But surely there have never been so many abortions as in the last 15 years when birth control has been vastly improved and made widely available. In fact, all the evidence shows that the increased use of contraceptives corresponds to the increased numbers of abortions; failure of contraception, you see, produces that fearsome “unwanted” child. Studies tell us that in England in 1949, couples who used contraception had 8.7 times the number of abortions as other couples and “in Sweden after contraception had been fully sanctioned by law, legal abortions increased from 703 in 1943 to 6,328 in 1951.”⁷ When man feels he has control over creation he believes that he has the right to destruction also. A far cry from the consoling thought “Only God can give life, only God can take it away.”

Yet back to my interlocutor. Her argument for the imperative of a perfect means of birth control or a “back-up” had another disturbing twist. She argued that as long as men could engage in sex without the “danger” of becoming pregnant, women should have this “right” also: otherwise the sexes would not be equal. Thus women should go to the extreme of killing their offspring in order to gain so-called “equality” with men. It seems to me that feminists should find this a very “unliberated” attitude. At root this argument suggests that the manner in which a male’s body functions is better than that of a woman. The argument amounts to an admission that a woman would rather be a man and that she is willing to tamper with her natural body chemistry to have sex on a man’s terms, not on a woman’s.

Now, while abortion and birth control are on very different moral planes (one is the taking of a human life already begun, the other is preventing life from beginning), they are alike in that they interfere with the natural functioning of a woman’s body. Some women apparently consider their bodies imperfect in that they, on occasion, are able to conceive. A woman who uses birth control rejects this ability, which is evidently considered to be an imperfection. In seeking to correct this imperfection, a woman takes measures which are customarily prescribed only for illness or defect. But can a woman who is able to conceive be said to be in need of medicine or corrective devices? Is not her body operating as a woman’s body ought to operate? In using birth control, women render useless one of the properties which defines their womanhood. In a sense, these women

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become more men than women, since they now operate like men; they can engage in intercourse without the possibility of conceiving.

You will not be surprised to hear that many in the women's movement are disturbed about the way in which the most "popular" forms of birth control work, and the effects they have on women. Recently, in Winnipeg, where I spoke at a feminist conference, I had the pleasure of being entertained by Germaine Greer. She, perhaps the most famous of feminists, spoke adamantly against birth control. She argued that women are relatively infertile creatures — fertile for only a short period each month, which is, in fact, easily calculable. Thus, she argued, it is foolish for women to put lethal devices into their bodies or to take massive doses of drugs (all the dangerous side-effects of which remain unknown) to combat a condition — fertility — which is not a disease. She also maintained that present methods of birth control are not suitable for "liberated" women. Birth control makes women more open to exploitation by men — they can't say "no" so easily. More importantly, the use of contraceptives fails to acknowledge the difference between the sources of female and male sexual satisfaction. So in her view, once again, women are ruining themselves; they are interfering with their natural body chemistry, for the sake of the pleasure of men.

Ms. Greer has even advanced the startling suggestion that women actually *refuse* to engage in intercourse if better contraceptives are not devised. I make a simpler suggestion; that is, that women "make love" only to men whom they love and with whom they are willing to share responsibility for any "products" of that love.

All this suggests that women ought to reconsider their acceptance of the pill as the great "liberator." They must reflect upon what it does to their bodies, to their relation to men and to their status as women. Moreover, if the use of contraceptives makes women and society more receptive to abortion, not to say insistent upon it, we ought to be extremely wary of considering birth control as a good. To consider it as an *answer* to abortion becomes positively ludicrous.

The third woman with whom I spoke reinforced my impression that our age puts a very low value on human life, that we now value our feelings above the good of others, and that women, in asking for abortion, reveal that they wish to place their own desires above the good of society. Instead of being the transmitters of life and a warm source of love and generosity, women now are willing to kill life growing within them in order to spare themselves some real or imagined pain, physical or psychological.

In my speaking tours of high schools I have found increasing numbers of students who do not grant immediate assent to the notion

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that all human life is valuable and deserving of protection. A perplexing question from a young lady reveals in a striking way this growing indifference to life.

During one particular session I completed a lengthy presentation about pre-natal life and abortion in which I had been careful both to enumerate the alternatives to abortion and to praise the nobility of those women who have the courage and generosity to carry a child to term and then to give it up for adoption. A girl then asked a question which threw me. She asked, "What really is the difference between having an abortion and giving a child up for adoption?" At first I missed her point and answered that most fundamentally the difference was between a dead and a live baby, the difference between a couple which is able to adopt a child and one which can not. She repeated again, "I still don't see the difference." She was referring, you see, to the difference for herself; either way she was without the child. It made no difference to her whether it was dead or alive. Only with the aid of a philosopher friend could I discover the root of her confusion. He reminded me that we live in a society in which man is considered to be a combination of chemicals, differing only from rocks, plants and other animals in his chemical make-up. Hence one should be able to dispense with any combination of chemicals as easily as with another. Ours is, after all, the disposable society. When something displeases us we simply dispose of it. We can't, as of yet, legally dispose of all other humans who annoy us, but I begin to think this is only because they may protest. The unborn babies can hardly cry foul. The social contract into which most of us enter — I will respect your rights and life if you will respect mine — is denied the aborted baby. We are living in a society which is not generous enough to extend such rights to the unborn (or, increasingly, to the "unwanted" of any age). For some the "might" of the born makes "right" over the unborn. Thereby all of our rights are less secure since all humans are not granted the right to life, only those who have qualified. Presently this means all those who are born; but we all know we only need a mad man like Hitler to come along and insist on further qualifications.

My philosopher friend helped me further. He maintained that unless we view man as being made in the image of God we might well ask why we respect human life. Unless the right to life is inherent and possessed by all, our hold on it is tenuous. Viewing children as a gift from God is not a silly sentimental view. It happens to be the one view which *requires* that we respect another's gift of life — because it is God's will that the person live; *we* are not empowered to decide otherwise.

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A woman who sets her rights, the supposed right to privacy or right over her own body, above the life of another human being is saying that a woman's rights are superior to human rights. She has put herself above the human race, she has made herself the executor over life and death. *Is that a woman's right?*

In refusing to see the difference between an abortion and putting a child up for adoption, my young friend had effectively removed herself from society. The only will she needed to consider was her own; not the baby's, not her lover's, not society's, not God's. She had become a unit, an island unto herself. She holds a view I have heard other women expound. Many girls have told me that they could not live with the memory that they had given up a child for adoption. They would always wonder what had happened to that child. They prefer the finality of abortion. One needn't be reminded of one's past, or leave reminders of former mistakes. Yet women fail to realize that one cannot "unconceive." A woman is a mother at the moment she conceives. She cannot erase the fact that new life has begun in her. She either allows that life to continue or she "terminates" it. Psychologists tell us that some women, even if they do not physically carry their children to term in their wombs, carry their children to term in their heads. A woman will most likely be aware of the projected due date for her child and may be as aware as a mother who has given her child up for adoption of the age her child would be over the years. The difference between abortion and adoption for the woman herself is *not* that one action allows her to forget her pregnancy and the other does not. After abortion she must live with the fact that she has asserted her will over the life of another; in giving the child up for adoption she respects the life of another; she recognizes rights beyond her own.

Although some believe that it is easier to live with an abortion than with giving up a child for adoption, increasing numbers argue that abortion is always an agonizing, bitter experience. One woman poignantly revealed to me the nagging sorrow which women can feel. She came and stood quietly by the side of the "pro-life" table I was tending. Her eyes clouded with tears, she whispered: "I am certainly glad to see you here. I had an abortion 20 years ago and have regretted it ever since. I do not want young girls to go through what I have." You may say that this is only one woman's response, that many women can be found who think the abortion they had was the "right thing to do." I do not doubt that such women can be found. But I ask: What ought to be the response of a woman to her action of destroying life growing within her? Is the apparent ability of some women to go through abortion without regret indicative of a certain

callousness? Is it possible that the woman who experiences intense and lingering sorrow over an abortion is having the correct response? At least those women who are sorry can be forgiven — what is our response to those who kill and experience no sorrow?

Let us beware, lest we think feeling sorrow excuses the action. Magda Denes, in her book *In Necessity and Sorrow*,⁸ records her visits to an abortion clinic and the terrible effects which the endless killing has on doctors, nurses, and the “patients” too. The author has had an abortion herself, and argues that abortion is necessary but that it should be done in sorrow. You see, she admits that abortion is killing but she claims that it is necessary and suggests that the sorrow felt in some way excuses the killing. First, I ask, necessary for what? Certainly not for the well-being of the child. Then for the well-being of the mother? But if pregnancy is not a disease (though the U.S. Center for Disease Control in Atlanta has classified unwanted pregnancy as a *venereal disease*) but rather is perfectly normal for a woman’s body, how can the surgical procedure of abortion be said to be necessary? Surgery is properly used to correct malformations, or imperfections, and, as a branch of medicine, is supposed to heal. So if there is no healing to be done, how can abortion be necessary? But if Ms. Denes is correct, why should the “necessary” treatment of abortion need to be done in sorrow? I suppose that I can hardly disagree with her that killing should be done in sorrow, but, truly, isn’t it rather that killing of the innocent ought not to be done at all? As with any other killing, do we not think that the killer is harmed as well as the victim? Those who kill, whether justifiably (as in war) or not, suffer from the act of killing. Do we not think that in a sense the “humanity” of killers is lessened? Have we not argued for ages that war is dehumanizing? And since a woman, by nature, is a giver of life, isn’t the killing of life — especially of the life growing within her — isn’t it bound to cause a severe diminishing of her “humanity” or more specifically her “womanhood”?

As a member of the human genus, a woman who aborts her child has committed a violation of a fundamental human right. She has taken a human life. As a member of the female sex, she has violated her own nature; she has snuffed out that marvelous maternal instinct of which all of us were once beneficiaries. A woman does society great harm, and herself as well, in having an abortion.

The fourth and final woman about whom I am going to speak did meet the “usual” description given by pro-abortionists. She was in her sixth month of pregnancy with her second child. She was twenty-seven, mother of a four-year-old, divorced, abandoned by the father of the second child — and trying to finish her college education. As

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we spoke she told me that absolutely everyone who knew she was pregnant had advised her to have an abortion: her doctor, the nurse, her friends. They all told her that it was irresponsible for her to bring another child into this world. She was poor, unmarried, and still unemployed and untrained. Others had told her that it took a great deal of money to raise a child. Her answer was that no one had handed her a check as she emerged from the womb.

This woman was resolute in her determination to have her child. She said that since she had borne one child there was no chance of her having an abortion — no one could convince her to kill what she knew was life. She said she knew it would be hard but why should the child pay with its life for her mistake? Here was a woman willing to assume her responsibilities but who was being told that she was irresponsible. How many women could withstand such pressure? More important, why did her friends respond in such a fashion? Why was it *assumed* that she should not have the child? Why, instead of asking how they might help her keep her child, did her friends urge her to commit an act she knew to be killing? The answer, it seems to me, is based on two primary assumptions: that happiness depends upon a certain present and potential financial status, and that a mere woman could not cope with such adversity, i.e. we no longer believe that old maxim “love will find a way.” I reject both assumptions.

To holders of the first assumption, I address the question: Are the poor necessarily unhappy? Furthermore, should we *kill* the poor rather than help them? It is popular nowadays in the U.S. to point out how costly it would be for the taxpayer to support the babies of welfare women if we do not pay for their abortions. So life does indeed have a price tag. And is our society really so impoverished that we are not able to assist the poor — that we would prefer that they abort their offspring rather than strain our pocketbooks? What kind of people have we become? Do we value human life so little, and, more in keeping with my argument here, why do we underrate our women so?

As to the second assumption: Why is it that we assume women are incapable of dealing with the adversity of an unwanted pregnancy by any other means than that of destroying life? Is this a flattering view of women? Is this a true view of women? Are women so weak psychologically that they cannot deal with what I so often hear referred to as the “trauma” of an unwanted pregnancy? I argue that by allowing women to abort their unwanted pregnancies we are telling them that we have a very low opinion of them. Isn't a mark of a mature and responsible person the ability to face problems squarely? Does not the mature person have the ability and the desire

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to consider the well-being of all those who are involved in a situation which presents problems — not just herself?

In fact, I take the legalization of abortion to be an indication that as a society we expect less of our women than we do of our men. After all, society has traditionally in times of war asked men to risk their own lives. But we are unwilling to ask women to offer a few months of their lives in order to give life. Why is it that we expect men to be able to risk their lives for the well-being of us all, while we do not ask a woman to give a few months to protect a life she is responsible for creating?

In this day of unparalleled opportunities for women, when women pride themselves on their ability to fend for themselves, when many agencies are designed for helping women in distress — why do we assume that women who become pregnant when inconvenient for them are not resourceful enough to find a way to nourish the life they have conceived? Or is it not a lack of resourcefulness — but a lack of love? And, as I have been arguing, a lack of love not only for the unborn child in whose creation the woman has played a part — but also of love for oneself for what she is; that is, a lack of love for being a woman and for the power which belongs exclusively to women, that of bearing children.

A popular saying in the women's movement claims that "women hold up half the sky." I would like to take the sentiment further and suggest that *only* women can hold up one particular half of the sky and thus it is necessary that women remain women. We cannot deny one important fact; women are the bearers of life, and thus it follows that they are entrusted with the protection and care of life, which, we might say, is their half of the sky. One of my male friends is fond of saying that his pregnant wife considers him merely a donor. In a very real sense, the future of humanity is in the hands of women, or, more specifically, in their wombs. We ought not, as women, to be demanding a world in which we may destroy freely the life we are capable of creating. Rather we ought to demand and work toward the goal of a world where life is safe for all.

NOTES

1. *Swain v. Bowers*, 91, Ind. 307, N.E. 598, 1927, and *Torrigan v. Watertown News Co.* 352 Mass. 446, 225 N.S. 2nd 926, 1967.
2. *Fitkin v. Anderson*, 421, 201 A. 2nd 537, 1964.
3. John T. Matthews, "Reflections on Abortion," *The Human Life Review*, Winter 1976, Vol. II, No. 1.
4. For further information on the physical dangers see Dr. and Mrs. J.C. Willke's *Handbook on Abortion*, revised edition citing the *Nursing Times*, London, 1971, pp. 90-97, and *Spontaneous and Induced Abortion*, report of World Health Organization Scientific Group, Technical Report Series

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No. 461, p. 37. See also by M. and A. Wynn, *Some Consequences of Induced Abortion to Children Born Subsequently*, London Foundation for Education and Research in Childbearing.

5. For psychological dangers see a study by L.K. Gluckman, "Some Unanticipated Complications of Therapeutic Abortion," *New Zealand Medical Journal*, August 1971.

6. *Badgley Report*, p. 341.

7. John T. Noonan, Jr., *Contraception*. (Belknap Press: Cambridge Press, 1966), p. 519.

8. Magda Denes, *In Necessity and Sorrow: Life and Death in an Abortion Hospital*. (Basic Books, Inc., 1976). Excerpt in *The Human Life Review*, Winter 1977, Vol. III, No. 1.

Can the 1973 Abortion Decisions Be Justly Hedged?

Paul Ramsey

ON JULY 1, 1976 the United States Supreme Court gave us its bicentennial abortion decision. The next day it announced its ruling on the constitutionality of capital punishment. In the matter of the death penalty, the several opinions of the justices depended heavily on the fact that numerous state legislatures had recently adopted revised provisions for capital punishment. This fact, they argued, demonstrates that capital punishment is not widely regarded as per se "cruel and unusual punishment."¹ In the abortion decision,² however, the Court extended its use of "substantive due process" reasoning to overrule the judgment of the legislature of the state of Missouri in a statute³ carefully crafted to mesh with the parameters of the Court's 1973 decisions.⁴

The landmark abortion decision of the Supreme Court was sparsely, and for that reason alone misleadingly, reported by even our best newspapers. Often it was portrayed as a "victory" for unlimited abortion, calling for decent silence from those opposed to its arguments. I propose to analyze the arguments as well as the rulings of the Court and dissenting opinions, quoting extensively from what the justices said. This is not only proper; it is a civic duty — if ever a greater measure of reason is to be introduced into advocacy. The Court would simply issue *rulings* if it did not intend its written *opinions* to be taken seriously.

My purpose is to use this decision as a magnifying glass held up to the moral fabric of this nation, through which we can see clearly what is happening (or what *has* happened) to us as a people. From this perspective Justice Blackmun's opinion for the Court manifests who and where we are; the dissent manifests what might have been; and the vacancy that remains points to tasks of recovery yet to come. The

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Court is not to be blamed; it shares with many the pity that needs to be cried over Jerusalem.

We went on that week to a glorious celebration of our Declaration of Independence. In that spirit it can be suggested that he remains a slave who is unwilling to dissent from the “hierarchical magisterium” of the judicial branch of government. Indeed, the claim must surely be made that, as with the church, no hierarchical magisterium can function properly and wisely without vocal — if measured — dissent. Better decisions should come from those who, by office and calling, speak for us and for the Constitution as a living document that binds us together as one people. A fair comment on the Court’s decision cannot fail to note commendable clarifications and interpretations of the law which might not have been forthcoming had the challenged statute never been enacted by the state of Missouri. That same process must continue through statutes enacted in any or all of the states.

A Definition of Viability

The Missouri statute defined viability as “that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.” That definition was upheld. In doing so, however, the Court observed that “it is not the proper function of the legislature *or the courts to place viability*” (italics added). Placing or locating viability is not the same as defining viability, whose location is then left to the discretion or reasonable medical judgment of physicians. The constitutionality of the Missouri definition had been challenged because it conflicted with the measure of trimesters used in *Wade*. The Court therefore drew back from the latter. Physicians are generally agreed, I gather, that the Court’s use of trimester language and its location of viability at twenty-eight or even twenty-four weeks were “bad medicine” and bad fetal physiology, even in 1973.

The Missouri definition was also challenged because of its use of the expression “continued *indefinitely* outside the womb” (italics added). Here the Court observed that, if anything, the statute’s words “continued indefinitely” favor rather than disfavor physicians’ judgments, since “arguably, the point when life can be ‘continued indefinitely outside the womb’” by natural or artificial life-supportive systems “may well occur later in pregnancy than the point where the fetus is ‘potentially able to live outside the mother’s womb’” (the language of *Wade*).

In his concurring opinion, Justice Stewart (joined by Justice Powell) observed that “the critical consideration is that the statutory

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definition has almost no operative significance”; it merely requires the physician to *certify* that the fetus to be aborted is not viable; he saw no “chilling” effect.

But a statutory definition may have more “operative significance” than Stewart and Powell suppose — even when not combined with its displacement of trimester language from center stage. The justices may not realize the lacunae and the confusion left by *Wade* in the public’s mind and in physicians’ practice. Here it is pertinent to quote from a statement issued by the executive board of the prestigious American College of Obstetricians and Gynecologists:

The College further recognizes that the United States Supreme Court and the several states have never clarified the issues raised by the delivery of live infants, whether pre-viable or viable, resulting from legal abortion procedures. This lack of clarification places physicians in legal jeopardy. The College recognizes that issues of life and death are properly the province of courts and legislatures, but the College asserts also that if the state’s compelling interest in the quality of medical care of its citizens is to be served, the laws must be clear on the issues at stake.⁵

Not unnaturally, the Court supposed that “issues of life and death” are covered constitutionally by the Fourteenth Amendment (where also it found the woman’s right of privacy, on which was grounded her and her physician’s liberty to abort) and — as we shall see — also covered by the existing criminal law of the states.

Nevertheless, by upholding Missouri’s definition of viability, the Court has helped to clear up confusion left by *Wade* concerning the state’s continuing and undiminished interest in the protection of a possibly viable infant. Another “operative significance” or side effect of the definition of viability may be a greater understanding that a woman’s lawful right to an abortion means no more than her right to have her pregnancy terminated; and it in no way means her right to have the procedure produce a dead baby. To my amazement, in discussion groups throughout this land, I have found that many people suppose that the moral and legal issues this raises can be settled by asking abortion counselors to tell us what women expect. That would imply an extension of a woman’s right over her body and control over her reproductive capacities that, until now, everyone should have known to be unlawful⁶ and wholly immoral.

The Woman’s Written Consent

The Missouri statute required, even in the case of an abortion during the first twelve weeks of pregnancy, that the woman certify in writing her consent to the procedure and “that her consent is informed and freely given and is not the result of coercion.” That was

challenged as “overboard and vague” and in conflict with *Bolton’s* prohibition of layers of state regulation between a woman and her physician in first trimester abortions. The Supreme Court upheld the provision. Precisely because a decision to abort is an important and often stressful one, a state may act to insure a woman’s awareness of the decision and its significance by requiring prior written consent.

The noteworthy aspect of the Court’s decision on this point is that in so ruling it did not ask whether consents required in Missouri do or do not single out the abortion procedure. It did not require that abortion consents be the same as in the case of all other operative procedures. To the contrary, the Court said, “We see no constitutional defect in requiring [prior written consent, certified to be informed and uncoerced] only for some types of surgery as, for example, an intracardiac procedure, or where the surgical risk is elevated above a specified mortality rate, or, *for that matter, for abortions*” (italics added).

The Spouse’s Consent

Here we reach the first point of disagreement among the justices. The Missouri statute required prior written consent of the spouse of the woman seeking an abortion during the first twelve weeks of pregnancy, unless “the abortion is certified by a licensed physician to be necessary to preserve the life of the mother.” In *Wade* and *Bolton* the Court had reserved opinion on the question of spousal consent. Now *Planned Parenthood v. Danforth* holds a requirement to be unconstitutional.

Here, too, we reach a point where the Court’s reasoning mirrors the present moral fabric of our society and the assumptions concerning the nature of the community of marriage prevalent today. Attorney General John C. Danforth rested his case for the people of Missouri on the state’s long-standing interest in “marriage as an institution, the nature of which places limitations on the absolute individualism of its members.” The physician-appellants, Danforth said in his brief, “see marriage as the cohabitation of two individuals, each of whom possesses separate *individual* rights which may be in conflict. . . . Abortion is a purely personal right of the woman, and the *status of marriage* can place no limitations on personal rights” (italics added). Here was a conflict of world views, between the state’s claimed interest in *the bond* of marriage, and marriage as a contract between individuals who remain as atomistic as before. In support of a state’s legitimate interest in “marriage as an institution,” a number of other “joint consent” requirements were cited in Missouri law and in the laws of other states: joint consent to allow the adoption of a

child born out of wedlock; joint consent to artificial insemination and as a condition for the legitimacy of children so conceived; spousal consent for voluntary sterilization. Indeed, it is hard to see why the Court's reasoning in striking down spousal consent to abortion should not also undermine some or all of the other joint consent requirements; all are blanket spousal (or natural father) consent requirements.

However, the Court sided with the physician-appellants, who argued that this provision was obviously designed to afford the husband the right unilaterally to prevent or veto an abortion; and moreover whether or not he was the father of the fetus. Perhaps that was the right ruling to hand down, given the present realities of marriage and the prevalent understanding of the marriage covenant. Still, we may ask why there was not (except in note II of the opinion) a shadow of the suggestion (as in the case of parental consent, discussed below) that a softer claim in behalf of a husband might withstand constitutional scrutiny — insuring, for example, that he be informed and that he be given an opportunity for consultation in a matter of such possible importance to him and to the marriage. Instead, the Court simply *praised* mutual agreement as the *ideal* for marriage.

A discerning reader of the Court's opinion cannot fail to notice — on first reading, and before getting to the dissent — the oddity of the majority's reason for finding no room for spousal consent. The state cannot "*delegate* to a spouse a veto power which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy" (italics added). The state has "no constitutional authority to *give* the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy when the State itself lacks that right" (italics added). Noting that "no marriage may be viewed as harmonious or successful if the marriage partners are fundamentally divided on so important and vital an issue," the Court pointed out that "*giving* the husband a veto power exercisable for any reason whatsoever or for no reason at all" (italics added) was unlikely to foster "mutuality of decisions vital to the marriage relation . . . even if the State had the ability to *delegate* to the husband a power it itself could not exercise" (italics added).⁷

In short, the husband was construed as entirely a "delegate" of the state. In *Wade* and *Bolton* the Court acknowledged or recognized a woman's right to private decision making with her physician, free from state constraints during the first twelve weeks of pregnancy. A right said to be *hers* was described, circumscribed, legitimated, and given effect in a legal decision. A newly recognized right was pro-

tected. She was “given” or “delegated” nothing — except from a narrowly positivistic and indefensible view of the law.

When, however, a claim to spousal rights was made, such rights (the Court said) would have to be “given” or “delegated” to a husband from some nonexistent fund of state powers. None was *acknowledged* to belong to a spouse because of his role and relationship in marriage as an institution or covenant, in which the partners might not remain individuals alone, with none of their former rights or expectations “alienated” to the marriage bond. May not a spouse intervene in unilateral marital decisions when the state cannot? Was not construing a husband to be no more than a state agency the reason the majority of the Court found no basis for suggesting that a husband may have *some* legally protectable right to participate in an abortion decision even in a less-than-ideal marriage?

Perhaps no decisive objection can be lodged against the Court’s *practical* wisdom when it recognized that a woman who obtains an abortion without the approval of her husband is also “acting unilaterally,” but that “since it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, *as between the two the balance weighs in her favor*” (italics added). That, indeed, is a paramount reason for not allowing blanket spousal veto; and that was facially or literally, the statute before the Court. Also, the Court was making law for a world of broken-down marriages — or as Christians say, for a fallen world. So it could not mandate the ideal. But these considerations also imply that there might be a more nuanced adjudication of rights in a bent and conflicted world. It is to be hoped that state legislatures will not be deterred, by the present flat rejection of spousal right, from enacting more nuanced statutes, and that there will be a legal passageway for such statutes to come before the Supreme Court for review (as was invited by the Court in declaring blanket parental veto to be unconstitutional).

Philosophically, we need to go deeper than the surface, practical level (which itself may have been sufficient ground for the ruling) and get at the contemporary understanding of marriage that was reflected in the Court’s opinion. I have already spoken of the spouse’s having only such rights and privileges or responsibilities as the state “gives” him in the matter of abortion. However, there is more to be said. Seemingly gone from our law is any notion of the marriage bond or the state’s long-standing interest in “marriage as an institution.” In marriage today, the woman remains *la femme seule*. The husband remains *l’homme seul*.

I add here (in connection with the next ruling) that in the family,

children are *les enfants seuls* — to be protected as separate entities by a possible *future* decision of the Supreme Court from some of the consequences of an abortion decision made *without* the knowledge of or possible guidance from the best state agency yet devised to do that — parents. Young women’s interests as *les enfants seuls* is the Court’s focus of attention, not the state’s interest in the parental-filial or family bond as such.

Likewise, Missouri’s interest in the marriage bond was no longer acknowledged when the Court flatly ruled out its requirement of spousal consent. A spouse was treated as if he were still *l’homme seul*, and not *le mari*. This is the devastating consequence of atomistic individualism, mentioned by Danforth in his brief as a viewpoint the state of Missouri had no interest in promoting.

Evidence of this philosophy is already manifest in the rapid movement in recent years to divorce by “mutual agreement,” to the exclusion of any operationally effective state interest in the bond of marriage. Who can deny that more frequently than not it is the husband who simply says “I divorce thee” (as in traditionally Islamic lands) when he testifies that the marriage is “irreconcilable?” The state’s sole remaining concern is the children, whose interests despairing domestic court judges do their best patchwork job to protect—often in the face of a father with additional children from a second marriage to support. Perhaps it is the fate of all the industrialized, urbanized, secular societies to *complete* the movement from status to contract in *every* human relation.⁸ One can only regret the fact that the Court found no way (perhaps it could not) to lend support to the “holding action” of the people of Missouri — against the day when may come in God’s time a sea-change in the silent moral assumptions of people generally, who now live under conditions (some law-made) that daily assault the moral fabric remaining in our society and impair the *humanum* of humankind.

Some readers may well protest that I am exaggerating the philosophical and societal assumptions that undergirded the Court’s opinion in *Planned Parenthood*, following the “substantive due process” reasoning and the judicial activism that led it, in *Wade* and *Bolton*, to take from the people the power to determine the limits of protectable human community at the first of life.⁹ The Court’s assumptions in its Bicentennial abortion decision are essentially those of Rousseau — that upon entering every relation a human individual remains as free as before, that no one can or should will today what he shall will tomorrow. Individuals remain atoms, none bound; moments of decision remain atoms, none binding or con-

tinuous in force. At least, not so far as appeal may be made to the state's interest.

Those societal and philosophical assumptions stem from and are expressed in an extreme notion of the right of privacy that in recent years has raced throughout American law. Rousseau's notion of freedom is at the heart of our current view of privacy. His contrasting notion of self-enslavement has become our notion of all societal and intersubjective bonding. The state's interest in radical individualism, instead of in marriage as a limiting bond of indefeasible responsibility (with rights and dues pertaining thereto), is expressed even in one of the earliest and most eloquent expressions of the right of privacy:

We deal with a right of privacy older than the Bill of Rights — older than our political system, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.¹⁰

That statement from *Griswold* may have been needed to nullify Connecticut's law against the use of contraceptives, with its threat of state inspectors in the marriage chamber. Still it says more than was necessary and jettisons a view of marriage that is also older than the Bill of Rights, older than our political system. Marriage is not yet a mere "association," a "harmony of living" only, a "coming together, hopefully enduring, and intimate to the degree of being sacred." Every marriage in the eyes of the law is entered by parties who — before a civil magistrate and even for the seventh time — promise one another a permanent union, "till death us do part."

It is also still assumed that the parties convey to one another — in the language of an earlier age — rights to acts of loving sexual intercourse that nourish and strengthen the marriage union. The married do not retain *absolute* rights over their own bodies or in that respect remain as free as before. Of course, they should work out the manner and time and circumstances as a harmonious expression of their bilateral loyalty to one another, and doubtless when that conveyal is unilaterally withdrawn the marriage is at an end. However, given consensual divorce, we are no longer likely to have divorce proceedings that will say that such a unilateral decision to withhold bodily intercourse is a violation of the just expectations of one's partner in marriage. In any case, the privacy of those communications in marriage free from state intrusion, and not the privacy of individuals in indeterminate association, would have been an equally firm foundation for the *Griswold* ruling.

Moreover, *Eisenstadt*¹¹ could have taken the marriage union to be in some sense an “independent entity” in the eyes of the law, since a cognizable relation needing privacy and protection need not have “a mind and heart of its own.” Here again we can discern the omnivorous influence of a personalistic, individualistic notion of privacy. Nothing, it would appear, that has not a mind or heart of its own seems to qualify as matter in whose protection, and protection from state intrusion, the state has an interest. Surely it was not necessary for the Court to say, in that case, that “if the right of privacy means anything, it is the right of the individual . . . to be free from unwarranted government intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.” Likewise it was unnecessary for the Court in its present decision to underline the word *individual*. Cannot there be a right of privacy within marriage as an institution, a right of a marriage’s privacy? Or, if the language of rights is inappropriate to use, can we not say simply that marriage should be free from heavy-handed state intrusion? And that the state has an interest in protecting the marriage bond? Still, if a corporation can be deemed to be a “person” in the eyes of the law and be treated as if it had a mind and heart of its own, I don’t see why marriage cannot be similarly understood. The sole obstacle to such a conception — and one that erodes the view of marriage which shaped our law — is our current atomistic individualistic notion of privacy.

Finally — and to return to what philosophically was at stake in spousal consent — it has been the law’s assumption that marriage entails the conveyal to one’s partner of access to the possibility of having children of one’s own. Reproductive capabilities are not withheld, as may rightfully be done so long as persons remain *la femme seule* or *l’homme seul*. These powers are given over not so much to the other party as to the marriage union itself. Nonetheless, as *Eisenstadt* maintained, the two individuals remain individuals — each with a “separate intellect and emotional makeup.” That is their actuality as persons; and respect for the irreducible and irreplaceable otherness of one’s partner has always been the ideal in marriage. From the pinnacle of their personhood and in mutual respect for the other’s individual privacy, presumably a couple ideally makes joint decisions concerning the timing of procreation and the number or spacing of children to be conceived. Still, “separate intellect and emotional makeup” is not the matter of marriage; that does not define the “specific difference” between marriage and any other relationship in which there also should be genuine respect for the distance, the inviolability, the privacy, and the dignity of another

individual. Mutual bodily lovemaking and access to the possibility of a fruit of that union are the constituent elements of marriage; these are its specific differences from all other interpersonal relations.¹² That understanding is still extant, as the people of Missouri said through their representatives in the legislature; and it shall remain so even though, given consensual divorce, the law may no longer state that unilateral withholding of access to progeny of the marriage is a violation of a natural right in marriage and of the legitimate expectations of either party within the union.

Most of the foregoing points were grasped and forcefully expressed in the dissenting opinion in *Planned Parenthood* written by Justice White, joined by Chief Justice Burger and Justice Rehnquist.¹³ The dissenters began by saying that “the task of policing [the] limitation on state police power is and will be a continuing venture in substantive due process” begun by *Wade*. But even accepting the *Wade* decision they saw no reason for invalidating five of the provisions of the Missouri statute.

To any reasonable mind, it seems to me, the dissent destroyed the argument about the state *delegating* to a spouse a right it did not have. The issue is not that he was delegated “the power to vindicate the State’s interest in the future of the fetus.” Instead, the issue should be seen to be one of “*recognizing that the husband has an interest of his own* in the life of the fetus which should not be extinguished by the unilateral decision of the wife” (italics added). The question was whether to give effect to that recognizable right. A mother’s interest in deciding whether or not to terminate her pregnancy “outweighs the State’s interest in the potential life of the fetus” during the first twelve weeks of pregnancy. But it does not logically follow that “the husband’s interest is also outweighed” or that his right “may not be protected by the state.” “A father’s interest in having a child — perhaps his only child — may be unmatched by any other interest in his life.” Thus with the concurring opinion of Justices Stewart and Powell, the three dissenters elevated the issue into one of conflict of rights. The dissent did not venture to decide (as did the Court and also the Stewart/Powell concurrence) which of these rights or interests outweighs the other. “These are matters which a State should be able to decide free from the suffocating power of the federal judge, purporting to act in the name of the Constitution.”

Justice Blackmun, speaking for the Court, makes reference to “the dissenting opinion of our Brother White.” His comment clearly is in no way pertinent to the main thrust of the dissenters’ argument (or to a ruling that might have been forthcoming if a majority had joined them). Their argument led straight to the conclusion that in a

genuine conflict of recognizable rights and interests the Court's judgment ought not to be presumed better than that of a state legislature. Instead of addressing this issue, Brother Blackmun reminded Brother White that the section in dispute between them "does much more than insure that the husband *participate in the decision* whether his wife should have an abortion."

It is important, here, that it was Blackmun, speaking for the Court, who raised the softer claim of the spouse's *participation*. Thus, it is to be hoped that state legislatures will take this to be an invitation to formulate different statutes that cannot be construed to mean blanket spousal veto but that insure spousal foreknowledge and participation in abortion as a marital decision. It is also to be hoped that legislatures will not be barred from doing so by the fact that judges in state and district courts may routinely read and apply *Planned Parenthood v. Danforth*.

Another important reason we need more nuanced statutes (however complex the task of legislative draftsmanship) is that in such conflicts of recognizable rights it is not only the husband's interest that need to be given some effect. The wife also may need protection from undue pressure from her spouse to have an abortion. Is prior written consent certifying that her decision is informed and uncoerced likely to be sufficient? May not state legislatures endeavor to enter this entanglement of needs and rights if the Court can enter it and decide the issue one way?

Parental Consent

The Missouri state required the consent of one parent or person *in loco parentis* to a first trimester abortion of an unmarried girl under eighteen years of age unless the abortion was certified by a licensed physician to be necessary in order to preserve the life of the mother. Attorney General Danforth in his brief contended that this was "a reasonable means of furthering the State's long-standing interest in protecting minors, supporting parents in the discharge of their responsibilities and promoting the stability of the family unit." He cited Missouri laws "replete with provisions" reflecting these combined state interests. The Court ruled this requirement also to be unconstitutional.

It said, "the State may not impose a blanket provision"; and it used precisely the same reasoning in this instance as when it struck down the spousal consent requirement. "Just as with the requirement of consent from the spouse, so here, the State does not have the constitutional authority to *give* a third party an absolute, and possibly arbitrary, veto . . ." (italics added).

In reference to the state's interest in "safeguarding the family unit," the Court said two things. 1) It equalized parental interest and the minor's interest, and atomized the family bond. "Any independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to have become pregnant." Apart from distributing the family bond to individual *seuls* having possibly conflicting and equally weighty interests or rights, that seems a strange definition of maturity! 2) The Court disagreed with and supplanted the state legislature's judgment concerning what will actually serve to strengthen the family unity. (That is called "substantive due process" with consequent judicial activism.)

At the end, however, the Court suggested a better understanding of maturity. "We emphasize," it said, "that our holding that [this section] is invalid does not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy." That practically invites the Missouri legislature to bring forward another statute that may orchestrate parental direction and guidance with a minor's consent but which does not make parental consent an absolute prerequisite. We shall return to this point in connection with the Massachusetts decision handed down on the same day.

The Stewart/Powell concurring opinion stressed the alternative of a possibly constitutional parental consent or parental participation provision. It stressed that the constitutional deficiency of the Missouri statute lay strictly in its "imposition of an absolute limitation on a minor's right to obtain an abortion." If the Court were presented with "a provision requiring parental consent or consultation in most cases," and allowing for judicial resolution of any disagreement between parent and minor, or for judicial determination that the minor is mature enough to give an informed consent without parental concurrence, such a statute would present "materially different constitutional issue[s]." Justices Stewart and Powell also emphasized that "there can be little doubt that the State furthers a constitutional end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child." Finally they brought up a point that was part of Missouri's brief and not mentioned in Blackmun's opinion (which does cite the ten- and eleven-year-old cases) — namely, that "it seems unlikely that [a minor] will obtain adequate counsel and support from the attending physician at an abortion clinic. . . ." The Court seems to assume throughout that the minor girl will have a personal physician.

The three dissenting justices again homed in on the notion of the state having no constitutional authority to “give” a parent rights it does not have. They criticize the Court’s opinion for rejecting the notion that “the *State* has an interest in strengthening the family unit,” and for its individualistic concept of a parent’s “independent interest.” The purpose of Missouri’s parental consent requirement was “not merely to vindicate any interest of the parent or of the State.” That purpose was rather to vindicate the very right given effect by *Wade* — namely, the right of the pregnant woman to decide “whether *or not* to terminate her pregnancy” (the dissent’s emphasis).

Since, however, the Court had not actually rejected the notion that “the State has an interest in strengthening the family unit,” the disagreement in practical outcome lies elsewhere. The dissenters respected “the traditional way by which States have sought to protect children from their own immature and improvident decisions.” In contrast, the majority of the Court preempted that judgment and itself determined what would or would not strengthen the family unit or protect minors from improvident decisions. Of course, the Court’s distribution of equal and independent interests lay beneath its resort to substantive due process.

Justice Stevens devoted almost the entirety of his “partly” dissenting opinion to argument in favor of Missouri’s parental consent requirement. (That adds up to four Justices who would have upheld.) It is true that Stevens interpreted the Missouri provision broadly to mean parental participation and advice. Nevertheless, his arguments in favor of that construction and in favor of upholding are worthy of note. Since “the Court recognizes that the State may insist that the decision not be made without the benefit of medical advice,” and “since the most serious consequences of the decision are not medical in character,” Stevens saw no reason why a state could not with equal legitimacy insist that there be other appropriate counsel as well. There is, indeed, a logical issue here. The requirement of a physician’s concurrence and a requirement of parental concurrence both facially grant blanket vetos. The Court must have thought physicians as a class would be permissive and parents adamant as a class. But if physicians are always permissive and never veto or refuse their concurrence, then *Wade* inaugurated a national medical policy of abortion upon request. That is the popular understanding, but the Court did not say that — as Burger expressly pointed out in his concurrence. Its notion was that medical judgment in consultation with women seeking abortions be freed from state intrusion for the first twelve weeks of pregnancy. This is expressed verbally in the requirement that a woman’s decision not be made without benefit of

medical advice and consent.¹⁴ Why, then, may not parental counsel be freed from state interference by exactly the same sort of requirement? Why is the one a blanket veto power and the other not? Or better, why is one potential veto constitutionally permissible and the other not? The only answer I can think of is that the Court wanted minor women to be able to run from their family unit as readily as they can run from one doctor to another; to choose her “parents” (her principal counselors) as freely as she chooses a physician. Again, the family unit was atomized.

Justice Stevens also criticized the Court’s opinion for assuming that “every parent-child relationship is either (a) so perfect that communication and accord will take place routinely or (b) so imperfect that the absence of communication reflects the child’s correct prediction that the parent will exercise his or her veto arbitrarily to further a selfish interest rather than the child’s interest.” In between those two extremes, there is the pedagogical and indeed constraining function of the law to promote the stability of the family unit. Stevens saw no reason why a state legislature may not, in their wisdom or lack of it, impose “a parental consent requirement as an appropriate method of giving the parents an opportunity to foster [a minor’s] welfare by helping a pregnant distressed child to make and implement a correct decision.” The state has an interest in that — not in “the impact the parental consent requirement may have on the total number of abortions that may take place.”

Here, implicitly, is a new note — namely, that such required parental involvement may have either no impact or a restraining impact, or for that matter it may serve to increase the number of abortions sought by minors. Indeed, another reason for statutes more nuanced than the one before the Court is that minor women may need some protection (if such can be devised) from parents who insist they abort. A young woman’s certification that she was not coerced may often need backing by her (and the general public’s) awareness that, in the last resort, a court stands ready to protect her from some modern parents.

Finally, Stevens criticized the Court for its assumption that “the capacity to conceive a child and the judgment of the physician are the only constitutionally permissible yardsticks for determining whether a young woman can independently make the abortion decision.” He doubted the Court’s “empirical judgment.” Even if the Court were correct, Stevens said, in its judgment concerning a young woman’s privacy and the advent of her competence to use it wisely, the states have traditionally selected a chronological age as a standard; and he saw no sufficient grounds in the nature of an

abortion decision to preempt states' rights to do the same in that case also.¹⁵

A full and fair appraisal of the Court's ruling against Missouri's parental consent requirement cannot be made without reference to two Massachusetts cases joined and decided the same day *Planned Parenthood v. Danforth* was handed down.¹⁶ These cases were class actions — on one side, an uncertain number of "Mary Moes," pregnant minors wishing to terminate their pregnancies, and on the other side, Jane Hunerwadel, a parent of an unmarried female of childbearing age. They came to court, each petitioning for justice for themselves and those similarly situated under a 1974 Massachusetts statute which states: "If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary." That is the act's central section.

Thus, the issue of parental consent seemed squarely joined, but in a context that allowed prompt appeal beyond parental refusal of consent. The "Mary Moes" wanted the act declared unconstitutional for reasons remarkably similar to those we have reviewed in the Court's opinion in *Planned Parenthood v. Danforth*. Mrs. Hunerwadel, however, asked only that the district court "refrain from deciding any issue in this case" because the act "was susceptible of a construction by the state courts that would avoid or modify any alleged federal constitutional question." That was the way the Supreme Court went, as we shall see. So we do not yet have a definitive ruling, nor do we know what room will be found for guaranteeing parental involvement in the abortion decision of a minor child or for promoting the stability of the family.

The district court had declared the act to be unconstitutional in a two-to-one decision,¹⁷ for reasons that are by now familiar to the reader. The act gave parents not only consultative rights but a veto; in this case it gave parents *or a court* the veto: ". . . the minor's consent *must* be supplemented *in every case*, either by the consent of both parents, or by a court order." So far as parental consent was concerned, the issue came down to the question of whether "parents possess, apart from right to counsel and guide, *competing* rights of their own" (*italics added*). Concerning the provision for resort to court orders, the district court held that the state cannot control a minor's abortion decision in the first trimester *any more* than it can control that of an adult. If that ruling had been upheld by the U.S. Supreme Court, along with the district court's view of "competing

rights” and parental “veto,” any parental “right to counsel and guide” would also have been given no effect. We would have been left with an astonishing and indefensible understanding of the state’s interest in protecting minors and of the role of law in directing society to a common good.

The Supreme Court did not so rule — Justice Blackmun again delivering the opinion for the Court. It vacated the district court’s ruling of unconstitutionality and remanded the case to Massachusetts for further interpretation of the statute. Thus the Supreme Court did not face squarely the issue of a constitutionally permissible parental consent requirement qualified as in the Massachusetts statute. In a sense the issue was avoided — but in an entirely proper judicial manner, one which (we shall see) the dissenters in *Planned Parenthood v. Danforth* appealed to in their opinion on a provision of the Missouri statute we have yet to discuss.

Upon appeal from the district court, the Supreme Court was confronted by adversaries who gave widely divergent interpretations of the meaning and effects of the Massachusetts law, which need not be rehearsed here. The Court, therefore, needed to “go no further than the claim that the District Court should have abstained pending a construction of the statute by the Massachusetts courts.” There was *prima facie* reason to believe that adoption by the Massachusetts courts of the appellants’ interpretation would “at least materially change the nature of the problem.” “It is sufficient that the statute is susceptible of [that] interpretation . . . and we so find, and that such an interpretation would avoid or substantially modify the federal constitutional challenge to the statute, as it clearly would. Indeed, in the absence of authoritative construction, it is impossible to define precisely the constitutional question presented.” So the district court erred in not certifying to the Supreme Judicial Court of Massachusetts appropriate questions concerning the meaning of the statute and the procedures it imposes.

The Court said much the same thing concerning another relevant matter that had arisen. The state of Massachusetts enacted, subsequent to the district court’s opinion, a statute governing the consent of minors undergoing other medical procedures. Any distinction between those procedures and abortion was challenged before the Supreme Court. Concerning that, the Court said that “the constitutional issue cannot now be defined . . . for the degree of distinction between the consent procedure for abortion and the consent for other medical procedures cannot be established until the nature of the consent required for abortion is established.” The Court did point out, however, that “as we hold today in *Planned Parenthood* . . .

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not all distinction between abortion and other procedures is forbidden." Finally, the Court expressed confidence that "in the light of our disapproval of a 'parental veto' today in *Planned Parenthood*, . . . the lower Massachusetts courts, if called upon to enforce the statute pending interpretation by the Supreme Judicial Court, will not impose this most serious barrier."

So that is where we are at the moment of this writing. The Supreme Court never issues promissory notes. Nevertheless — and because hope springs eternal — it may be worthwhile to summarize the construction of the Massachusetts act which, the Court said, would clearly avoid or modify any constitutional challenge to the statute. By that favorable construction: parental consent may not be refused on the basis of concerns exclusively of the parent; sections of the statute other than the one quoted above insured that it preserves the "mature minor" rule in Massachusetts, under which a child determined by a court to be capable of giving informed consent will be allowed to do so; a "mature minor" could obtain such a court certification *regardless* of whether the parents had been consulted or had withheld consent; the procedures involved would be speedy and nonburdensome and would ensure anonymity; and, finally, a judge of the superior court could permit an abortion without parental consent for a minor incapable of rendering informed consent, for "good cause shown." On that view, the statute "prefers" parental consultation and consent. Such a statute, the Court said at the conclusion of the foregoing summary, "as thus read, would be fundamentally different from a statute that creates a 'parental veto.'" No promissory notes, as I said.

Again this is where we are in the people's effort, through their representatives, to contain the adverse impact of the 1973 abortion decisions upon the family unit. After these decisions, the predominance of those seeking abortions switched from married to unmarried women, a large proportion of whom are teenagers. Strange that the hierarchical judicial magisterium has come to have such power over our lives and over the basic human community from which all government arises; strange that courts have begun to believe that the primary rights of the family have to be "delegated" or "given" from a fund of state powers already declared to be deposited nowhere. Nevertheless, there is hope — in the diversity of opinions the justices expressed and which we have reviewed; in the cogency and force of the argument of the dissent, joined in this instance by Justice Stevens; in the closeness of state legislators to the actualities that families must endure; in the legislature's lack of immunity from arousable public opinion; and in the degree to which the Court's

opinion invites the states to frame more nuanced statutes that may yet pass constitutional scrutiny. Eternal vigilance is the price public conscience must pay for law that sustains and does not further erode the moral fabric of this nation. In this context, the medical profession needs to realize that insofar as abortion becomes a matter of “family practice,” the solution it offers, while arguably helpful individual case by individual case, also tends to produce more cases to be given the same treatment.

Saline Amniocentesis

The Missouri statute prohibited abortion by withdrawal of amniotic fluid and injection of “a saline or other fluid” into the sac *after* the first twelve weeks of pregnancy. Here we have an attempt by that state to fence *Wade* by availing itself of that decision’s provision that in midsemester abortions (unlike the first twelve weeks) the state “may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.” The Court, however, ruled that an “outright legislative prohibition of saline” is unconstitutional because it is not a “reasonable” prohibition due to the unavailability of the preferred procedure (prostaglandin injection) in Missouri at the time of the trial and of the appeals. Straightaway one may ask, How else than by an “outright” (or a “flat”) prohibition was the state going to protect maternal health if the legislature judged (as did the district court following factual evidence) that both prostaglandin injection and mechanical means of abortion were safer than saline in midsemester abortions?

The Court argued that the words “saline or other fluid” were ambiguous enough to include “the intra-amniotic injection of prostaglandin itself” (one method of its administration) and to prohibit future possible abortion procedures. It pointed to “the anomaly” of prohibiting one method and not also others that are “many times more likely to result in maternal death.”¹⁸ The ruling turned, however, neither on vagueness nor argument. It rested rather on the Court’s own findings as to the facts, which it presumed to substitute for the findings of fact at all stages below, where the matter had been more fully investigated and argued. That is to say, the Court’s ruling rested on its belief that, during the period of time relevant to its decision, 70 percent of midsemester abortions in the United States were by saline injection and that the availability of prostaglandin technique was especially limited in Missouri. It concluded that the Missouri statute was an unreasonable and arbitrary regulation “*designed to inhibit, and having the effect of inhibiting, the vast majority of abortions after the first 12 weeks*” (italics added).

One may ask whether it is not unusual, not to say unjudicial, for the Supreme Court to presume “bad faith” on the legislature’s part in enacting this provision? As we shall see, there was another and quite different reading of its “designs.”

Justice White’s dissenting opinion, joined by Burger and Rehnquist, came down most forcefully against this overruling and the design ascribed to the legislature. The dissent asserted that the majority relied (a) on the testimony of one doctor and (b) on citation of *another* case,¹⁹ in which “a different court concluded that the record in its case showed the prostaglandin method to be unavailable in *another* State — Kentucky — *two years ago*” (italics added). On the positive side, the dissent itself cited one doctor who in the record “quite sensibly testified that if the saline method were banned, hospitals would quickly shift to the prostaglandin method,” and it cited the chief of obstetrics at Yale University, who suggested that “physicians should be liable for malpractice if they choose saline over prostaglandin after having been given all the facts on both methods.”

Justice White affirmed that “without such evidence [of unavailability] and without any factual finding [to that effect] by the court below, this Court cannot properly strike down a statute passed by one of the States. Of course, there is no burden on a State to establish the constitutionality of one of its laws. . . . I am not yet prepared to accept the notion that normal rules of law, procedure, and constitutional adjudication suddenly become irrelevant because a case touches on the subject of abortion.”

Justice White’s dissenting opinion gave the favorable reading of the legislature’s “designs.” In any event, he wrote, “the point of [this section] is to change the practice under which most abortions are performed under the saline amniocentesis method and to make the safer prostaglandin method generally available.” That would be desirable; or, at least, the legislature could so view it. “That should conclude our inquiry, unless we purport to be not only the country’s continuous constitutional convention but also its *ex officio* medical board.”

Justice Stewart, joined by Justice Powell, in his concurring opinion, however, stated simply that he agreed fully with Justice Stevens on the unconstitutionality of a prohibition of the saline method. That was the concurring part of Justice Stevens’s opinion (by far the larger part was dissent from the Court’s overruling of the parental consent requirement). Stevens agreed with the Court’s basis for its decision in its finding of facts. Not unimportantly however, he wanted to point out that, in his view, “the United States Constitution would not prevent the State legislature from outlawing

the one [procedure] it found to be the less safe even though its conclusion might not reflect a unanimous consensus of informed medical opinion.”

May it be presumed from their silence on the point, that Justices Stewart and Powell agreed with the Court’s imputing to the Missouri legislature a design to prevent post-twelve-week abortions rather than the intent to protect maternal health? Perhaps not, since we ought to think the best of everyone. But then the Court should have thought better of the state legislators.

It is appropriate at this place to introduce a different perspective on the issue — one that should come up in future efforts to humanize medical practice again up to the level, say, of the medical ethics expressed in the 1975 statement of the executive board of the American College of Obstetricians and Gynecologists.²⁰

The point is that use of prostaglandin is also *better for the fetus*. Prostaglandin and saline both produce “labor,” but saline first scorches and destroys the unborn life. The widening use of the prostaglandin method is liable to make more visibly evident the fact that abortion is a “severance procedure,” by producing a not insignificant number (one is significant enough) of possibly viable infants from late abortions.

The medical ethical question (and the moral issue for any human being) is whether prostaglandin should be the preferred procedure *also* for this reason. The American College of Obstetricians and Gynecologists stated that its fellows have “traditionally been responsible for the welfare of the pregnant woman and her fetus.” It acknowledged the legal and ethical incongruity or conflict of responsibilities introduced where there is justification for inducing abortion. Still it concluded that “the physician does not view the destruction of the fetus as the primary purpose of abortion.” It further concluded that “the College consequently recognizes a continuing obligation on the part of the physician towards the survival of a possibly viable fetus where this obligation can be discharged without additional hazard to the health of the mother.”

That wording should be carefully noted. The moral issue for a physician (and for anyone involved in abortion — the woman, abortion counselors, etc.) is, Does that continuing obligation “reach back” to include a possibly viable fetus *in utero* and not only a possibly viable abortus? Does it reach back as an obligation bearing upon the choice among alternative abortion procedures? The answer seems obvious if that obligation toward the welfare of the fetus “can be discharged without additional hazard to the health of the mother.” Even if — in a suppositive case contrary to fact — prostaglandin

afforded *no greater* benefit to the welfare of the mother than alternative procedures, the answer to the ethical question of its preferred use should certainly be the same.

The *legal* question is similar, although the answer is constitutionally in grave doubt. Why may not conscientious legislators advance these considerations *also* as good reasons for prohibiting saline abortion in mid-pregnancy? The legal problem, of course, arises from the “bad medicine” of *Wade’s* trimester language, with the rulings affixed thereto, and from the Court’s steadfast refusal to acknowledge the correct grey area of “possible viability.” In the 1973 abortion decisions the Court allowed that after the first twelve weeks the state “may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.” The American College states that medical ethics requires physicians, even in an abortion procedure, to recognize their continuing obligation toward the survival of a possibly viable fetus “where this obligation can be discharged without additional hazard to the health of the mother.” That already is significantly different language with different impacts on practice. The Court has now ruled unconstitutional the effort of one state legislature to give effect to the plain language of *Wade* concerning the protection of maternal health. It seems unlikely, then, that the Court will allow reference to be made to the welfare of the fetus when maternal life and health are not a competing interest.

However, there is at least a small opening to be discerned, beginning with language elsewhere in *Wade* and joined by the constitutional permissibility of the *definition* of “viability” in *Planned Parenthood v. Danforth*. In *Wade*, the Court recognized a growing state interest in “protecting the potentiality of human life” alongside its interest in protecting the health of the pregnant woman. These are “separate and distinct” interests. Insuring a woman’s health becomes after twelve weeks an interest to which the state can begin to give effect. Meantime, the other interest is also growing “in substantiality as the woman approaches term” — not exactly in tandem, however. Still there comes an indeterminate point during pregnancy when each becomes “compelling” — one from twelve weeks, the other later. What is the latter point? Notably, *Wade* does *not* say from twenty-four weeks. Here the Court did not use trimester language.²¹ It said instead that the “compelling” point is at “viability.”

Thereupon *Wade* pronounced: “If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period except when it is necessary to preserve

the life and health of the mother.” Some “pro-life” people unaccustomed to reading legal decisions have regarded the hypothetical “if” and “may” as expressions of the Court’s callousness toward unborn life even late in pregnancy. That is not correct. It is rather an open invitation to the states to fill the vacancy left by the effect of *Wade* in striking down both the long-standing and the newly enacted state laws governing abortion.

Again, I think, language is important. *Wade* did not say that the state may give effect to its compelling interest in potential human life provided there remains a reasonable relation to maternal health. That was its language for an earlier span of time (from twelve weeks until, presumably, viability) when the interest in maternal health alone could be given effect. Nor did *Wade* say, in the words of the American College, that the state’s interest in potential life may be given effect provided that it can be discharged “without additional hazard to the health of the mother.” It said rather, “except when [abortion] is necessary to preserve the life and health of the mother.” “Necessary to preserve” seems a significantly stronger statement than “no additional hazard,” although I allow that the expressions overlap to define a grey area in which a physician’s discretion must come into play. Still, both legally and morally, it would seem, a fellow of the college could fulfill his responsibility both to the welfare of the pregnant woman and to her fetus in some abortions.

Right ethical reasoning cannot be kept from reaching back and affecting a physician’s choice of an abortion procedure in borderline cases, or even his choice to correct for his possible error in estimating gestational age or for his ignorance of the strength or weakness of a particular fetus until it is delivered. Logically, the answer to the legal question must be the same. I suggest that any reasonable person must conclude that if a state can “go so far as to proscribe” abortion after viability, it may, if it chooses, prohibit saline abortion, or in some manner favor prostaglandin, in order also to give effect to its compelling interest in the potentiality of life from some point in mid-semester abortion — unless, for example, the physician certifies that there is reasonable certainty that the fetus is nonviable. The choice of prostaglandin over saline rarely (almost certainly never) imposes any additional hazard to the welfare of the mother. If there are such cases, the physician could be required and allowed to so certify.

Among an indeterminate number of other possible statutes that the people of the United States should construct in order justly to hedge the 1973 abortion decisions, this is a modest suggestion concerning choice of modes of abortion that seek to protect potential human life. The Court in its present decision left standing a pro-

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vision of the Missouri law which reads: “No abortion not necessary to preserve the life or health of the mother shall be performed unless the attending physician first certifies with reasonable medical certainty that the fetus is not viable.” In view of this, a parallel statute might be promptly enacted to read: No abortion shall be performed by saline amniocentesis unless. . . .²²

If the Missouri legislature had explicitly stated its compelling interest in potential human life without diminishing its interest in the welfare of the pregnant woman (and without placing its interest in potential life to be operative from twelve weeks), the Supreme Court could hardly have said nay to this without lawmaking that would clearly surpass *Wade*. Some such legislative attempt would have had the further benefit of perhaps raising the moral level of medical practice — which, it cannot be denied, often falls far short of the medical ethics recalled to mind by the statement of the American College of Obstetricians and Gynecologists. In any case, carefully drafted legislative trials of many sorts are only ways of finding out what the law means or what the Court means (or intends to mean). Such efforts are always constitutionally in order. They serve to teach the Court what it should teach this nation, at least in the sense of enabling it to refine the meaning and application of its rulings and possibly to modify them. Our Constitution and the federal system do not work merely by decisions from on high, people being only compliant.

Some degree of reaching back, in the alternatives among abortion procedures, to give effect to the state’s interest in potential human life would seem to be entirely constitutional — until one reads what the Court said about the remaining provision of the Missouri statute significant enough to discuss here.

Standard of Care

The statute further provided:

No person who performs or induces an abortion shall fail to exercise that degree of professional skill, care and diligence to preserve the life and health of the fetus which such person would be required to exercise to preserve the life and health of any fetus intended to be born and not aborted. Any physician or person assisting in the abortion who shall fail to take such measures to encourage or to sustain the life of the child, and the death of the child results, shall be deemed guilty of manslaughter.²³

Before going on, a reader may profitably give himself a little test. Reread those two sentences. Does the second say anything more or other than the first? The first, of course, expresses the positive duty of a physician, and the second describes his failure — adding, of

course, a criminal category. Reread the two sentences again. Is not the same thing said in two different ways? Also, taking both sentences together, is not the obligation expressed in that paragraph precisely the medical ethics in the statement of the College of Obstetricians and Gynecologists which we have been considering?

Here the Court agreed with the district court, holding the first sentence to be “unconstitutionally overboard because it failed to exclude from its reach the stage of pregnancy prior to viability,” and because the first sentence reads “fetus” while the second reads “child.” That meant that the first sentence reached back in establishing a standard of care (or at least was vague about how far back); the second did not.

Attorney General Danforth had argued that the first sentence states a standard of care while the second describes the circumstances when that standard applies. Despite its use of the term *fetus*, the first sentence, he said, has no application until a live birth occurs. He further argued that *nothing* in the legislative history of this section supported the view that the first sentence was intended to have any effect other than the second was intended to have. Finally, he pleaded that *if* the Court agreed with the unanimous opinion of the district court not to take into account the legislature’s debates, and if it deemed his construction to be a “sophisticated” one, and if it was therefore inclined to declare the first sentence facially unconstitutional, the Court should leave the second sentence standing under the act’s “severability” provision.

The Court held that the section “must stand or fall as a unit. Its provisions are inextricably bound together.” The criminal category imposed by the second sentence and its use of the word *child* simply do not modify the duty imposed by the previous sentence — and that “impermissibly requires the physician to preserve the life and health of the fetus, whatever the stage of pregnancy.”

Before consulting other opinions filed, one has reason to wonder how a state legislature in the fourth year of our era A. W. (after *Wade*) could possibly have imagined they could get away with *that* interpretation. Earlier the Court ascribed to the legislators a disingenuous “design” to prohibit all post-twelve-week abortions; now it seemed to impute stupidity to them. A fair comment, however, must allow that the first sentence is vague about whether that standard of care need be applied only after the stage of viability.²⁴ We need also to ask whether the Court does not often or ordinarily take into account the legislative history of statutes in assessing their constitutionality.

In any case I must say that it is a pity that the Court did not invoke the “severability” provision of the act, as Danforth urged, and de-

clare only the first sentence to be unconstitutional. Those two provisions — if such they were — are not “inextricably bound together” if the first is not there. By striking down the entire section, the Court left a gap in our law that the state legislature attempted to fill; or at least it left standing a popular misunderstanding of the law when presented with an opportunity to correct it.

The reason the Court seemed serenely unconcerned with these consequences of its ruling are important to note. It remarked almost in passing, that “a physician’s or other person’s criminal failure to protect a live born infant surely will be subject to prosecution in Missouri under the State’s criminal statutes.” In short, the entire section seemed constitutionally redundant to the Court. To which a proper citizen’s response is, Has the Court never heard of the Edelin case and of the viewpoint widely expressed by some of the most liberal and informed opinion in this country to the effect that, even *supposing* the physician in that case did what he was accused of doing in an abortion procedure, he should not be declared guilty or punished *retroactively* for an action not clearly criminal when done at the conclusion of an abortion procedure? Has the Court also not heard of the announced practice of medical neglect of defective newborns by physicians who, because their patients are babies and are defective and a burden to parents and to society, do not seem to believe that their practice is or may well be deemed to be “negligent manslaughter”? Has the Court not noted the petition for clarification of the responsibilities of physicians from the prestigious American College of Obstetricians and Gynecologists? There seems to be an amazing insularity on the part of the Court, which imperially does not hesitate to strike down laws enacted by those less insulated. Redundant laws may sometimes be needed. Missouri should promptly reenact the same statute or one quite like it, without the first sentence, and find out what then the Court will say.

In doing so, Missouri (or any other state) should retain one important element from the first sentence. Although flawed by its use of the word *fetus*, that provision contained the standard of care to be legally and morally imposed, in the words “exercise that degree of professional skill, care and diligence to preserve the life and health . . . which such person would be required to exercise to preserve the life and health of any . . . intended to be born. . . .” That was the substantive standard of care imposed by the words *such measures* in the second sentence. The standard is *equal care*.

Precisely that standard was recently enacted by the California legislature and signed into law by Governor Brown in September 1976. Assembly Bill no. 2346 adding sec. 25955.9 to the Health and

Safety Code of California provides that “the rights to medical care [are] the same for an infant prematurely born alive in the course of an abortion as for a premature infant of similar medical status who is born spontaneously.” A fetus would be considered a live-born person if, outside the womb, it manifests a sustained heart beat, umbilical pulsation, spontaneous respiration, and movement of voluntary muscles. Given those manifestations of life, who would say that morally or legally a physician’s standard of care should be different because the live-born person resulted from premature birth or from spontaneous or induced abortion? The cases are similar in all morally relevant respects. Whether our law of negligent or reckless homicide will be weakened by the 1973 abortion decisions depends very much upon the outcome of any constitutional challenge to the California law.

Postponing a bit longer a look at the dissenting opinion on the standard-of-care provision in the Missouri statute, sound ethical reasoning may be advanced and the proper legal standard may be clarified by a brief parenthetical analysis of an earlier version of the California statute, corrected before passage. The penultimate version read:

Whenever an abortion procedure results in a live-born person, the physician or physicians performing the abortion procedure shall take all reasonable steps, *except extraordinary means*, in accordance with good medical practice, to preserve the life and health of the live-born person. Nothing in this subdivision shall be construed as requiring a physician to give higher priority for life-saving medical treatment of the live-born person than to the mother.²⁵
[Italics added]

I have emphasized the questionable stipulation in the proposed statute; those words highlight the merit of the first sentence of the Missouri provision when viewed as setting a standard of care for the “possibly viable infant” in utero or ex utero. For, surely, an ethical physician should treat one preemie the same as any other, whether delivered into his hands by induced abortion or by spontaneous abortion/premature birth. Such infants are equally fragile and — if deemed to be possibly viable — equally deserve *extraordinary* care; but the proposed California statute seemed to exclude that in the case of action to preserve the life and health of a live-born person following induced abortion. Surely the legislature meant to say all along what it finally enacted in a statute requiring that the same care should be taken of live-born persons having similar medical status — whether “wanted” or “unwanted.” If “unusual” efforts are exerted following premature birth or spontaneous abortion, the same efforts should be made in behalf of a live-born

“abortus” (unless, *in either case*, there are medical counterindications).²⁶

The sentence in the Missouri statute which we are discussing, when viewed as setting a standard for medical care, would clearly require a physician to exercise *that degree* of professional skill, care, and diligence to preserve the life and health of the live-born individual following abortion which such a physician would be required to exercise in the case of any possibly viable infant intended to be born and not aborted.²⁷ The first sentence of the Missouri statute ought to be revised, as I have just done in a paraphrase of its first sentence, and promptly reenacted. The constitutionally fatal word was *fetus*. Viewed as setting a standard of care, to which the next sentence gives effect, the first sentence is by no means a “sophisticated” or tendentious requirement. When articulated, it instead simply expresses the common moral intuition that “similar cases are to be treated similarly” by anyone wishing to do the right thing — induced abortion notwithstanding. To fulfill that continuing obligation may require “extraordinary means.”

Of course, such a revised statute might not be wise even if it proved constitutional. It might not be wise for this reason alone: it could be counterproductive, by encouraging physicians to choose methods of abortion that most certainly will destroy fetal life in midpregnancy. The standard of care would have to be coupled with a prohibition, for example, of saline abortions in midpregnancy. That, in turn, seems likely to pass constitutional scrutiny only if the Court recognizes a grey area of possible and uncertain viability, and if it can be convinced that there is a *state* interest in giving effect to possible fetal viability, not just a medical ethical obligation.

We can now rapidly conclude by looking at what the dissent said about the points made by the Court. The three dissenting justices read that first sentence to set a standard of care, with the meaning I have just tried to clarify. “If this section is read in any way other than through a microscope,” Justice White wrote, “it is plainly intended to require that, where a ‘fetus . . . [may have] the capability of meaningful life outside the mother’s womb’ [citing *Wade*], the abortion be handled in a way which is designed to preserve that life notwithstanding the mother’s desire to terminate it.”

Indeed, “even looked at through a microscope the statute seems to go no further. It requires a physician to exercise ‘*that degree of professional skill . . . to preserve the fetus*’ which he would be required to exercise if the mother wanted a live child” (the dissent’s emphasis). Then the dissent, rather cunningly I think, supported that reading by pointing out that during an abortion performed when there is no

chance of fetal viability outside the womb, the physician would be at liberty to exercise no care or skill at all to preserve the life of the fetus “no matter what the mother desires.” It is possible fetal viability that counts, not the initiation of an abortion procedure or the woman’s expectations. I may add that in a similar case of premature delivery of a clearly nonviable baby where birth and long life had been in view, the physician would similarly be at liberty to exercise no care or skill at all to preserve that baby’s life—again, “no matter what” the mother (and the physician) desires or what she had hoped.

Plainly, the statute was intended “to operate only in the grey area after the fetus *might* be viable but while the physician is still unable to certify ‘with reasonable certainty that the fetus is not viable.’”²⁸ Because the dissent recognized there to be such a “grey area” in the nature of fetal development and in the uncertainty and fallibility of fetal development and in the uncertainty and fallibility of physicians’ judgments, and only because it did so, the dissenting justices would have upheld the statute. To the extent of such a “grey area” and only to that extent, I judge, the dissenters would have given legal effect to a physician’s obligation reaching back to a “possibly viable infant.” Because the majority did not recognize such a grey area, and only because it did not do so, the Court struck down the statute; and for the same reason it would permit no legal formulation of a physician’s obligation to choose an appropriate abortion method for a possibly viable infant — encompassing the time, however brief, before the physician can certify with reasonable certainty that the fetus is not viable. That was “bad medicine,” bad law, and at this point a touching faith in the omniscience of physicians’ judgments or in the uniformly high level of their ethical practice.

“Incredibly,” the dissenting opinion goes on to say, “the Court reads the statute to require ‘the physician to preserve the life and health of the fetus, whatever the stage of pregnancy.’” Or, as I said above, the Court imputed stupidity to the state legislators. In more restrained language, the dissent says only that the Court thereby attributed to the Missouri legislature “the strange intention of passing a statute with absolutely no chance of surviving constitutional challenge under *Roe v. Wade*.”

The question whether a constitutional provision of state law is severable from an unconstitutional provision was, in the dissenters’ opinion, “*entirely* a question of the intent of the state legislature.” “At worst,” that first sentence was ambiguous. Therefore, the dissent would have ruled that the district court erred in deciding the constitutional question: it should have abstained “until a construction may be had from the state courts.” “Under no circum-

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stances,” said the dissent, should the Court have declared that section of the Missouri statute unconstitutional “at this point” — before hearing that state’s courts’ construction of its meaning and effects. Interestingly enough, this was precisely the way the Court — that same day — dealt with the Massachusetts statute providing for parental consent. To abstain or not to abstain, that is the question; and again, it seems, the Court does whichever it pleases.

Finally, the dissenting opinion drops a footnote which, to my amazement and delight, reads as follows:

The majority’s construction of state law is, of course, not binding on the Missouri courts. If they should disagree with the majority’s reading of state law on one or both of the points treated by the majority, the State could validly enforce the relevant parts of the statute — at least against all those people not parties to this case.

I like that. The state of Missouri may have some recourse besides drafting a new statute and waiting to see. That’s what we need — a little judicial rebellion among the fellowship.

If the opinion dissenting from the Court’s Bicentennial abortion decision does not, in future years, come to be regarded as one of the great dissents in the history of the United States Supreme Court, then our children and our children’s children will not even have been cognizant of the fact that they have journeyed on into the setting sun of Western law and morality, not seeing the shadows. We may even now be living “between the evenings” (a beautiful — and, I believe, Jewish — expression for “twilight”). That’s the sum of it.

NOTES

1. *Woodson v. North Carolina*, 428 U.S. 280 (1976); excerpt and analysis in *The New York Times*, July 3, 1976.

2. *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976). Justice Blackmun delivered the opinion of the Court, in which Justices Brennan, Stewart, Marshall, and Powell joined. Justice Stevens joined also in part but dissented in parts joined by Chief Justice Burger and Justices White and Rehnquist. Justice Stewart filed a concurring opinion in which Justice Powell joined. Justice White filed an opinion concurring in part and dissenting in part, in which Chief Justice Burger and Justice Rehnquist joined. Justice Stevens filed an opinion concurring in part and dissenting in part. These divisions as well as the substance of the opinions to be examined below demonstrate that the citizens and legislatures of the several states should continue to exercise their constitutional function in enacting legislation that will test the meaning and limits of *Wade* and *Bolton*. Indeed, as we will see, the Court practically invites this.

3. H.C.S. House Bill no. 1211, appended to the *Planned Parenthood v. Danforth* decision.

4. *Roe v. Wade*, 410 U.S. 113 (1973), and *Doe v. Bolton*, 410 U.S. 179 (1973). Historically the phrase “due process of law” that appears in the Fifth and Fourteenth amendments to the U.S. Constitution referred solely to procedures, to the notion that government could not move against a citizen without observing traditional procedure — in the judicial process, for example, indictment by grand jury and trial by jury. Beginning in the 1850s, however, a very different idea began to grow onto the older notion. This new concept implied that there were certain things that government could not do to a citizen *regardless* of procedural niceties.

The principal context in which this new doctrine developed was that of protection of private property.

PAUL RAMSEY

Thus Chief Justice Roger Brooke Taney invoked it in the Dred Scott case, 19 How. 393 (1857), to place the slaveholder's right to property in the slave over the slave's right to liberty or even to access to the federal courts to determine which right should prevail. It was not, however, until the generation after the Civil War that substantive due process became firmly embedded in American constitutional law.

The most important substantive right protected was one intimately connected with industrialization and commerce — freedom of contract. This right modern jurisprudential jargon might call one of the “penumbral” inferences from the right to hold property. Speaking for the Supreme Court in 1905, Justice Rufus Peckham could correctly hold that in terms of substantive due process state efforts to establish maximum working hours were an abridgement of the sacred rights of both worker and owner to negotiate as equals; so the regulations constituted “mere meddlesome interferences with the rights of the individual . . .” (*Lochner v. New York*, 198 U.S. 45). Two decades later, George Sutherland, again speaking for the Court, summed up the rule regarding a manager's and a worker's right to agree on less than the minimum wage: “freedom of contract is, nevertheless, the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances” (*Adkins v. Children's Hospital*, 261 U.S. 525 [1923]).

It was this doctrine that the Nine Old Men used to strike down “progressive” state legislation. The enactment of a federal income tax by the U.S. Congress (i.e., by proper procedural due process) did not withstand constitutional scrutiny in face of the Court's “substantive due process” (*Pollock v. Farmer's Loan and Trust Co.*, 157 U.S. 429, rehearing, 158 U.S. 601 [1895]). This can only be read as the Court's legislation of its own policy wisdom in place of the deliberations and law of the Congress. After the great battle between FDR and the Court over the constitutionality of New Deal legislation, the justices began denouncing substantive due process; and, in economic regulation at least, the Court has abandoned the doctrine. But beginning in the 1920s, the justices — prodded by Holmes and Brandeis and later by Stone and Cardozo and Hughes — began to admit that the logic of substantive due process would include certain other fundamental rights such as those protected by the First Amendment. Thus these were included in the rights that the due process clause of the Fourteenth Amendment guarded against state encroachment. Later, of course, liberal judges found that the due process clause was a shorthand way of saying that states had to respect most of the rights listed in or implied by the Bill of Rights.

As late as 1963, however, the Court purported to sound the death knell for the doctrine of substantive due process. In *Ferguson v. Skrupa*, 372 U.S. 726, 730, Mr. Justice Black's opinion for the Court said: “We have returned to the original constitutional position that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.” Barely two years later, however, the right of privacy received the blessing of substantive due process (*Griswold v. Connecticut*, 381 U.S. 479 [1965]).

In incorporating provisions of the Bill of Rights into the Fourteenth Amendment's due process clause, including the “penumbral” right of privacy, the justices have obviously been applying a re-baptized version of substantive due process. For ideological rather than logical reasons, however, they become incensed when someone points out that they are still following the doctrine forcefully rejected in *Skrupa*. In *Wade*, only Mr. Justice Stewart, concurring, was forthright on this point — and plunged ahead. Stewart wrote: “As so understood, *Griswold* stands as one in a long line of pre-*Skrupa* cases [i.e., cases protecting property from the reach of legislation] decided under the doctrine of substantive due process, and I now accept it as such.”

In this chapter we examine yet another case in which the Court substitutes its social and medical beliefs for the judgment of the Missouri legislators, who were elected to pass laws. “The competing arguments on these issues [spousal and parental consent] make it clear . . . that the Court is acting very much like a legislative body by arguing what is best for society, rather than what is constitutionally required” (George J. Annas, “Abortion and the Supreme Court: Round Two,” *Hasings Center Report* 6, no. 5 [October 1976] : 16).

5. “Some Ethical Considerations on Abortion,” approved by the executive board of the American College of Obstetricians and Gynecologists, October 27, 1975, as amended December 12, 1975. The above quotation follows a noteworthy statement of professional ethics in the practice of medicine by fellows of the college, who have “traditionally been responsible for the welfare of the pregnant woman and her fetus. . . . The College affirms that the resolution of such conflict [in cases justifying induced abortion] in no way implies that the physician has an adversary relationship towards the fetus, and therefore, the physician does not view the destruction of the fetus as the primary purpose for abortion. The College consequently recognizes a continuing obligation on the part of the physician towards the survival of a possibly viable fetus where this obligation can be discharged without additional hazard to the health of the mother” (italics added). That is as clear a statement as could be made of the fact that, in medical ethics, abortion is a severance procedure (a termination of pregnancy) and that a woman has no fundamental need for or right to a dead fetus although its death may often be tragically unavoidable.

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6. In granting the physician-appellants “standing” to challenge the constitutionality of Missouri’s statute, the Court agreed with them that if, for example, the definition of viability threatened them, “they should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.” But at that point (in note 2), the Court observed: “This is not so, however, with respect to § 7 of the Act pertaining to state wardship of a live born infant” resulting from an abortion. Indeed, the physician-appellants did not contend that this section of the act threatened to incriminate them. That section abrogated maternal and paternal rights (if the husband consented to the abortion) and declared a “live born infant” following an abortion procedure to be “an abandoned ward of the state.” That withstood constitutional scrutiny. Below we shall consider a similar bill recently enacted by the California legislature.

7. At this point the reader should note the “logic” which the Court must now follow — so long as the right to abortion remains an absolute not to be accommodated to other rights, roles, and relations. Having rested *Wade* upon the state’s powerlessness to intervene between a woman and her physician, the Court seems now impelled to find “state action” abounding almost everywhere. Thus, as we shall see in chapter 2, “conscience clauses” (enacted by proper procedural due process of Congress or the states) are likely to fall rapidly before the doctrine that the state cannot delegate to consciences a power it, the state, does not have.

8. Only not quite *complete* that movement, since where only contractual relations are the web of life there is anarchy, no society. There will remain the naked power of government over an aggregation of individuals, and the accoutrements of power — including that of the hierarchical magisterium of a Supreme Court that sometimes respects the moral fabric of our society, sometimes not, and whose rulings all fear to reverse.

9. *Vide* the decisive defeat of liberalized abortion by popular vote in both Michigan and North Dakota (culturally diverse states) shortly before the 1973 decisions; and see also my testimony before the Senate subcommittee considering proposed constitutional amendments, “Protecting the Unborn,” *Commonweal* May 31, 1973, pp. 308—14.

10. *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965), quoted in the *Planned Parenthood* decision, note 10.

11. *Eisenstadt v. Baird*, 405 U.S. 453: “The marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted government intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child” (Blackmun’s emphasis in the present opinion, note 11).

12. Statutory law at some future date may attempt to give legal backing to marriage agreements in which the parties have *expressly excluded* having children. It is difficult to say *how* the law could do this, in an age when marriages in general have ceased to be enforceable and divorce is granted on grounds of irreconcilability. It is enough to say here that if and when that happens, marriage will have become — what it now is not — a contract in which the parties draw up the stipulation; and the law of domestic relations will presumably be taught in law schools as the second semester of the law of contracts. To understand what was at stake in the question of spousal consent in *Planned Parenthood v. Danforth* it is sufficient to ask, What now is the law’s understanding of marriages from which having children has *not* been expressly excluded by the “contracting” parties? What still is the meaning of the role and relationship into which they are presumed by the law to have entered? I suppose the legal way of asking these questions is: What is the common-law meaning of marriage? In that, Missouri by statute expressed a long-standing state interest.

The foregoing is also background for saying that only by a category-mistake, with consequent other definitional confusions, could a state give legal status to homosexual *marriages*. Something of the same confusion would result — with consequent weakening of the moral fabric of our society — from defining marriage as “taking one another for a while.” To say this is *not* to say in either case that the state has any interest in intruding upon such informal relationships between consenting adults, be they transient or enduring in intention. Holding fixed the meaning of *contract* (i.e., an arrangement conditionally entered into whose nature is entirely a creation of the parties), I also do not exclude the possibility that the state could be persuaded that some sorts of contracts between homosexuals, or contracts between heterosexual partners specifically limited in duration and by other conditions, are of such importance in themselves and to others that the state should require fiduciary loyalty of the contracting parties and enforce the contract by penalizing the offending party by fines or imprisonment. But since even marriages are no longer enforceable, it is hard to imagine the state taking an interest in such purely private arrangements. Since “privacy” has so far eroded the meaning of marriage, it has destroyed the social worth of its simulations as well. Can there be a status symbol where there is no status? Perhaps to gain favorable tax status? Then “marriage” will have become what Marx said it was:

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a bourgeois commercial arrangement. (For a proposal for "marriage" contracts limited as to time, see Paul Ramsey, "Marriage Law and Biblical Covenant," in *Religion and the Public Order* 1963, ed. Donald A. Giannella [Chicago: University of Chicago Press, 1964] pp.41—77.)

In any case, a category-mistake is still a category-mistake. A relation having constituent elements which the law simply recognizes ought not to be interchanged with relations whose constituent elements are altogether the creation of the autonomous will of the contracting parties. A relation *entered* is not the same as a relation *made up*. These are distinctions in kind, not of degree only. Clear thinking calls for us not to imagine that using the term "marriage" provides a real bridge between the two. Lapses in language usage lead rather to mistakes in thought. Such a slippage in language (or category-mistake) led *Griswold* to define marriage as an "association," a "harmony," a "coming together . . . intimate to the degree of being sacred" — a definition consistent with its individualistic notion of privacy.

13. Justice Stewart, joined by Justice Powell, in his concurring opinion said only that "whether the State may constitutionally recognize and give effect to a right on [a husband's] part to participate in the decision to abort a jointly conceived child . . . seems to me a rather more difficult problem than the Court acknowledges." That statement elevates the problem into a conflict of *rights*, and it softens the claim of spousal right to one of participation in the decision. Thus the reasoning of the concurring opinion was different in important respects from that of the Court's opinion. But, having said so, Stewart and Powell agreed on balance with the Court's ruling. Still, their reasoning invites a more nuanced statute from Missouri.

14. See pp. 58-61 below. Here I may draw attention to an additional odd result of *Planned Parenthood*. It seems obvious that *Wade* directly and immediately withdrew from states as *parens patriae* any power to deny abortions to female wards. Yet this conclusion — in Connecticut, at least — was drawn instead from *Planned Parenthood*. That state's Department of Children and Youth Services had denied the operation to eleven teenagers. The Legal Aid Society of Hartford County sued in their behalf; the United States District Court ordered the abortions. The decision of the justices was based on *Planned Parenthood's* denial that real parents have any say in the abortion decisions of their teenage daughters because the state has no say. Thus, what the state cannot do as *parens patriae* in the case of minors who are wards of the state followed from what parents cannot do in Missouri in the case of their children, which followed from what the state cannot do (see *Wade*) (*New York Times*, October 3, 1976). Moreover the court in the Connecticut case did not wait for the outcome of the remanded Massachusetts cases to determine to what extent parents as such may still remain the court's model for *parens patriae*.

It is not irrelevant to add that in upholding a constitutional right to give one's children a religious education (*Pierce v. Society of Sisters*, 268 U.S. 510 [1925]), the United States Supreme Court said, "Those who nurture [the child] and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for [religious and moral] obligations." When now a most serious moral decision comes into view, parents are stripped of the right and high duty to direct a child's destiny in that matter — unless the outcome in Massachusetts and the fate of more nuanced statutes from Missouri and other states prove to be different from *Planned Parenthood*, or unless this decision is reversed. Indeed, a contradiction at the very heart of the legal notion of privacy can be demonstrated by the words of one of its most stalwart proponents. Concurring in *Bolton*, Justice Douglas listed among the elements of privacy: "freedom of choice, . . . respecting marriage, divorce, procreation, contraception, and *the education and upbringing of children*" (italics added). If the latter belongs to parents' right of privacy, then *Planned Parenthood* makes clear that privacies conflict. That called for adjudication, not the annulment of one by the other.

15. Eighteen years does seem unwise, though the age a state picks should be deemed constitutional. Just as eighteen is too old an age in our society to light upon in defining "statutory rape," so also legislators could recognize the generally greater maturity of young women today in enacting statutes protecting them within the family unit in the matter of abortion. Many states have the category of "mature minor" (see below).

16. *Bellotti v. Baird*, 428 U.S. 132 (1976).

17. *Baird v. Bellotti*, 393 F. Supp. 847 (D. Mass. 1975).

18. The Court also brought up an "argument" that no student of elementary logic would invoke, namely, that "the maternal mortality rate in childbirth does, indeed, exceed the mortality where saline amniocentesis is used." On that score, if the state has an overriding interest in protecting the health of its female citizens it ought to prohibit *pregnancy*, or make abortion compulsory because most methods are "safer" than continuing a pregnancy.

19. *Wolfe v. Schroering*, 388 F. Supp. 631 (W. D. Ky. 1974), modified, 541 F.2d 523 (6th Cir. 1976). Round and round the precedent-setting goes. The United States Court of Appeals for the Sixth District "stayed deciding the appeal [from the Kentucky case] on October 31, 1975, pending the Supreme Court decision in *Planned Parenthood*." Citing *Planned Parenthood*, the appellate court upheld the lower

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court in declaring unconstitutional the provision in Kentucky's statute prohibiting the saline method of abortion. But that ruling by the district court for the western district of Kentucky had in turn already been cited by the lower court in *Planned Parenthood* as its chief authority for ruling unconstitutional Missouri's statute prohibiting the saline method!

In the Kentucky case, the United States Court of Appeals for the Sixth District also followed *Planned Parenthood* in *upholding* the woman's written consent (also a twenty-four hour waiting period) and in *striking down* spousal or parental consent. The state, the appellate court reasoned, "cannot constitutionally authorize spouses, parents or guardians to 'veto,' for no reason or an impermissible reason, *to wit*, other than protecting maternal health, such as [impermissibly] protecting an unrecognized interest in fetal life." Here was an additional stress. Since the state's interest in the potentiality of life begins only at viability, a husband's interest can also only begin at that point. He can have no more interest than the state; his possible "agency" begins precisely where the state's agency begins! *Wolfe v. Schroering* goes on to say, "We refrain from deciding whether a more narrowly drafted requirement of spousal consent, permitting the husband father to 'veto' a post-viability abortion not necessary 'for the preservation of the life or health of the mother,' would pass constitutional muster in light of the recognizable [i.e., the state's recognized] post-viability interest in fetal life." The court also observed that such a statute would be redundant since Kentucky already has a statute prohibiting postviability abortions as invited by *Wade*. This opinion comes up again, in chapter 2, in connection with the conscience clauses.

20. See n. 5 above.

21. Our courts do seem laggard in understanding where viability may now be placed by an acceptable constitutional definition of it. They still often say twenty-eight weeks or possibly twenty-four! Our National Commission, however, located a category of "possibly viable infants" of between twenty and twenty-four weeks gestational age and between five hundred and 600 grams in weight (*Research on the Fetus*, Report and Recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, DHEW Publication no. [OS] 76-127, 1975). These standards were accepted by the Secretary of HEW (*Federal Register* 40, no. 154 [August 8, 1975]: 33552). If we really mean to protect possibly viable infants, we shall have to begin to promote their survival upon a provisional estimate of twenty weeks gestational age of fetuses in utero and five hundred gram weight for live-born abortuses — until such judgments are revised in the light of signs of evident nonviability.

22. LeRoy Walters, Director of the Center for Bioethics, Kennedy Institute, at Georgetown University, put the argument as follows: "Let us suppose that at seven and one half months of pregnancy immediate termination is medically indicated. Let us suppose, further, that two alternative methods of delivery exist, one of which increases the chances of infant survival but entails higher risk to the pregnant woman, the other of which decreases both the risk to the woman and the probability of infant survival. In my view, the law should not require moral heroism of the pregnant woman in this case by asking her to place her own life at higher risk for the sake of the viable fetus, just as the law should not *require* parents to rescue their children from burning buildings. If the above example is changed, however, to pose a choice between two alternative methods of termination, one of which has a lower risk for *both* pregnant woman and fetus, then the legislature could appropriately decide that the rights of a clearly viable fetus are sufficiently strong to justify requiring use of the safer method. . . ."

Walters applies the same reasoning to the "possibly viable infant" of twenty to twenty-eight weeks gestational age. "If a method of abortion became available which demonstrably entails lower risks both to the pregnant woman and to the fetus (possibly prostaglandins), then assuming the general availability of the safer technique, the legislature might wish to require the use of that technique in abortions beyond the nineteenth week of gestation (except in cases where use of the technique is medically counter-indicated). The dual justification for such a requirement would be the enhancement of maternal health and the protection of fetuses which may have crossed the viability threshold" ("The Unwanted Child: Caring for the Fetus Born Alive after an Abortion," *Hastings Center Report* 6, no. 5 [October 1976]: 14-15).

23. This was the sole provision, out of sixteen sections of the Missouri law, that the district court held to be unconstitutional.

24. Still, we can ask whether the states may take into account the degree of unremovable uncertainty and the fallibility of physicians' judgments about viability in setting a standard of care that aims to give effect to its compelling interest in potential human life. The Supreme Court seems inflexibly dis-cognizant of grey area or borderline problems. Unless states can enter this area to protect possibly viable human life, the criminal law will eventually become by no means so sturdy a protection as the Court seems to believe it is.

25. Assembly Bill no. 2346, California Legislature, 1975-76 Regular Session, as amended in assembly through January 5, 1976.

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26. LeRoy Walters (in "The Unwanted Child," p. 14) presented written testimony on the California bill. He proposed that "the legislature adopt a formal-equality principle: All newborn infants should be treated equally, without regard to the circumstances of their delivery. . . . If a hospital's neonatal intensive care unit would normally attempt to save the life of a spontaneously delivered infant of the same health status, age, and weight, then the equality principle would require identical treatment of the hysterotomy survivor. . . . The formal-equality principle does not specify what treatment should be given. . . . It merely requires that this infant receive the same treatment as a similar, spontaneously delivered infant." This standard of care "does not recommend compensatory, especially vigorous, or maximal treatment for the survivors of abortion. A simple equality of treatment is enough." Nor would the principle entail omitting extraordinary measures, if needed. Again, simple equality of treatment is the measure. On the other hand, "if the mother or both parents request that the surviving infant be allowed to die, this request should be denied if it conflicts with the equality principle." In short, abortion has nothing at all to do with the rights of a live-born person, and laws may have to be passed to make that clear.

Extrapolating from studies limited to New York State and City, Walters estimates that, in the nation as a whole, there may have been 84 live deliveries following saline abortions in 1974, 25 live deliveries following hysterotomies, and 87 following prostaglandin abortions — a total of 196 nationwide. He acknowledges the weak data base and the tentativity of these projections; and, of course, he knows that physician discretion would in many of these cases correctly judge the infants to be unsalvageable and that many may not medically qualify as live-born persons under our negligent manslaughter statutes.

Still, "we have to set aside as irrelevant the fact that such births are rare," as Sissela Bok writes in the same symposium on the statute. "This fact does not eliminate the moral dilemma which exists whether there is one victim or ten thousand."

Bok agreed with Walters' equality principle, although she recommended that a time limit after which elective abortion is prohibited would be better than statutory standards of care. Moreover, Bok stressed a point that needs to prevail in public consciousness — namely, that "while a woman does have a right to an abortion in the sense of the termination of pregnancy, she does not have a right to the death of the fetus" ("The Unwanted Child," pp. 10—15).

27. In connection with the issues to be raised in chapters 5 and 6, below, it should be observed that neither statute says anything about whether the live-born person was born defective or not. And in striking down the Missouri statute the Court suggested that it was redundant; all questions about a legal obligation to preserve the lives of possibly viable infants are already — the Court supposed everybody knew — covered by the criminal law.

28. Here the dissent cites the undisputed section of the Missouri statute *prohibiting* abortion without such certification except to promote the mother's life and safety.

APPENDIX A

[Earlier this year a new book, *Abortion in America: The Origins and Evolution of National Policy, 1800-1900*, by James C. Mohr (Oxford University Press, New York), received considerable (and generally favorable) attention from book reviewers. We therefore asked Prof. Noonan to review it for us. However, he did not find the book of major importance, and therefore he comments only briefly on a few salient points. -- Ed.]

Dispelling Two Legends: Mohr on Abortion in Nineteenth Century America

John T. Noonan, Jr.

One of the favorite stories of the pro-abortion party has been that abortion laws were invented to protect the child-bearer or *gravida* from harm at the hands of the surgeon. The story was endorsed by Judge Charles Breitel in the New York Court of Appeals;¹ it was put to the Supreme Court in the argument of *Roe v. Wade*;² and it was transmitted by Justice Blackmun in his opinion in that case.³ The story served the function of persuading doubters that no very big break from the past was involved in approving abortion. If the old rationale for the laws was the safety of the child-bearer, it was now safer to abort than to bear. The old laws had become obsolete. This tidy account of why abortion statutes were made has been doubted before. In a massive way historian James C. Mohr's *Abortion in America*⁴ now demonstrates that the story is untenable.

With quotation after quotation Mohr shows that abortion was as safe as other forms of surgery throughout the nineteenth century.⁵ Indeed, the most stringent laws against abortion were enacted in the late nineteenth century at a time when antiseptic procedures had made all surgery notably safer.⁶ There was no reason to single out abortion for a special prohibition unless life distinct from the mother's was seen to be involved.

In fact, at the heart of "the physicians' crusade" to stamp out abortion was a strong sense by doctors that they were defending human life. "From the first moment of conception, there is a living creature," declared the New York Medical Society memorializing the legislature in 1868, "...the intentional arrest of this living process...is consequently murder."⁷ The perceptions, language and arguments of the physicians who sponsored the statutes were not different in kind from the perceptions, language and arguments of opponents of abortion today.

The second story destroyed is that these laws were made by men to oppress women. How dear to NOW is this myth! How glibly the feminist extremists talk of "compulsory pregnancy laws!" In fact, as Mohr shows with abundant citation, their own nineteenth century predecessors were in the vanguard of the movement to strengthen the abortion laws. In their view, abortion was one more result of "the degradation of women" brought about by irresponsible males.⁸ As Matilda Gage put it, "this crime of 'child murder,' 'abortion,' 'infanticide' lies at the door of the male sex."⁹ For most feminists the answer to unwanted pregnancies was

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abstinence. Advised by men to abort their children, their "Womanhood rose up in withering condemnation."¹⁰ The leading feminist journal, *Revolution*, edited by Elizabeth Cady Stanton, in 1869 "condemned the practice as a threat to and exploitation of women, and noted with approval the efforts of the New York state legislature that year to proscribe it more vigorously."¹¹ Clearly, these pioneers of women's rights were far closer to Clare Boothe Luce than to Bella Abzug.

Salutary as Mohr's book is, it has one trap to deceive the unwary. "In 1800," his Preface begins, "no jurisdiction in the United States had enacted any statutes whatsoever on the subject of abortion..." He goes on to say that he will examine how a "dramatic shift occurred."¹² What he does not point out is that in 1800 many crimes in the United States were not banned by statute. They were banned by common law. Abortion was one such crime. The improvement of the common law by statute was no "shift," but a tightening of existing law in the light of better biological information as to when life begins.

Mohr's weakness here was exploited by Stephanie Shelton in a CBS Radio interview with Mohr. The tape as edited gave the impression that "no laws" of any kind existed against abortion before the benighted nineteenth century. In fact, Mohr's work meticulously documents the continuation of a defense of life in Anglo-American law which is as old as Bracton.

NOTES

1. *Byrn v. New York City Health and Hospitals Corporation* 31 N.Y. 2d 144, 286 N.E. 887 (1972).
2. See *Roe v. Wade* 410 U.S. 112 at 148-149.
3. *Idem*.
4. Mohr, James C. *Abortion in America: The Origins and Evolution of National Policy, 1800-1900*. (New York: Oxford University Press, 1978).
5. *Ibid.*, 18-19; 30-31; 65; 173-174.
6. *Ibid.*, 239-240.
7. *Ibid.*, 216.
8. *Ibid.*, 111.
9. *Ibid.*, 112.
10. *Ibid.*, 111.
11. *Ibid.*, 113.
12. *Ibid.*, vii.

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