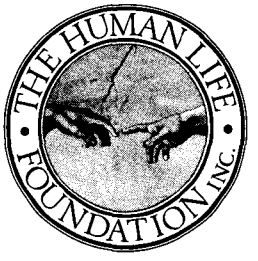
the HUMAN LIFE REVIEW



FALL 1980

Featured in this issue:

Also in this issue:

The Wall Street Journal's "Healthy Ambivalence" examined • Abortion reaches *The New Yorker*, and Dallas/Fort Worth too • Is elective abortion a cause of child abuse? • Also the text of Cardinal Medeiros' statement (with commentary by Joseph Sobran)

Published by:

The Human Life Foundation, Inc.

New York, N.Y.

Vol. VI No. 4 $3.00 a copy

. . . FROM THE PUBLISHER

This is our 24th issue to date, completing six years of publishing. Here again, our main emphasis is on family issues, abortion, and other "usual" concerns. But you will find the article on Phillip Becker something unusual. We hope to have more on this important case in future issues.

Also as usual, we use material from several original sources in this issue. The *Wall Street Journal* and the *New Yorker* are well known (and easily available); for those not familiar with the *Catholic Mind* (in which Miss Decter's article appeared), it is published by the American Press, 106 West 56 Street, New York City 10019; "D" magazine is published by Dallas Southwest Media Corporation, 1925 San Jacinto, Dallas, Texas 75201.

In our last issue we regretted the demise of *Harper's Magazine* which — at the moment of writing, had just announced that it was suspending publication; shortly thereafter, as everybody knows, *Harper's* found new owners, and will continue to appear.

On September 11, we suffered a very real loss: Mr. Thomas M. McMurray died (after surgery at Johns Hopkins hospital in Baltimore); he was only forty, but he accomplished a great many things in his too-short lifetime: he worked in Governor Ronald Reagan's administration in California; he worked for several years on Capitol Hill in Washington. It was there that we met him and, from the earliest days of this review, he gave us his support and encouragement — gave it as he did everything, with insight, enthusiasm, and humor. Our prayers go to his wife, Joanne, and their six children.

A final note: bound volumes of our 1980 issues (Volume VI) should be available early next year. For full information *re* how to obtain previous volumes, back issues, etc., see the inside back cover.

EDWARD A. CAPANO
Publisher

THE HUMAN LIFE REVIEW

FALL 1980

Published by THE HUMAN LIFE FOUNDATION, INC. Editorial Office, Room 540, 150 East 35th St., New York, N.Y. 10016. The editors will consider all manuscripts submitted, but assume no responsibility for unsolicited material. All editorial and subscription inquiries (and all requests for reprints and permission) should be sent directly to the editorial office. Subscription price: $12 per year; single copy, $3. Bulk prices on request.

Vol. VI, No. 4 ©1980 by THE HUMAN LIFE FOUNDATION, INC. Printed in the U.S.A.

INTRODUCTION

"ALL THESE SUBJECTS with which I have dealt here are interrelated. Pornography, for profit, creates a climate in which sexual callousness is encouraged. Irresponsible sex education leads to the pregnancies which abortion destroys, and encourages attitudes that undermine the prospects of stable marriage. Through all these things runs a deep feeling of contempt for objective morality and a preference for subjectively-determined attitudes strongly influenced by hedonism and personal convenience which both undermine any shared notion of what is right and wrong in society, and encourage a deep-rooted selfishness and cynicism which are damaging to any genuine kindness and compassion. Not until society can again find an objective morality which carries general consent, and which recognizes the sacrosanct nature of human life, will it again stand a chance of genuinely providing for the health, the happiness, and the fulfillment of the millions of human beings who compose it."

It may seem strange to begin with the entire concluding paragraph of our lead article, but at least two reasons make us do so. The first is that we cannot think of a better way to make sure that you will read Mr. Ronald Butt for yourself (instantly, we trust), and we very much want you to do exactly that, for his article is a rare treat. The second: for a journal such as this one, which issue after issue publishes articles that *seem* to be about a multitude of subjects and concerns, from viewpoints varied and not infrequently conflicting, it is also rare to have, in a *single* article, so convincing a demonstration of what we have always held — that in reality the issues that we deal with are so closely intertwined as to comprise a single whole.

The effect is greatly enhanced by Mr. Butt's *style* (to be expected, no doubt, from an editor of the *London Sunday Times*). He ranges widely, giving you what seems like a panoramic survey of contemporary problems, but the total effect is a lucid unity.

Similar praises might be heaped upon our second article, by Miss Midge Decter, a formidable American social critic. Indeed, very similar problems are addressed, and while the conclusion here is not as sweeping, it seems to

us a parallel one — or the *same* one, viewed from the other end of the telescope (i.e., the picture only *looks* smaller). For what she calls for is the re-application of those once-shared values: ". . . this is the time for those of us who are the elders at long last to assert to our children the value of our own lives as parents, as ordinary people and as mortals. And in so doing to teach them the true enduring value of their own lives, and especially of the grandchildren and great-grandchildren they owe to themselves and to us."

Heady stuff, after which we hope you will be ready to plunge back into the fray. For we switch abruptly to Professor Basile Uddo's commentary on the Supreme Court's Hyde Amendment decision (of last June 30). Our regular readers will recall that Mr. Uddo was one of the anti-abortion legal experts who produced the historic *Amicus Curiae* brief that, many believe, had a profound influence on what the Court ruled (even though the Court itself never mentioned it! — but it was signed by over 250 members of the U. S. Congress, and thus a statement that could not be ignored in the Court's *deliberations* — the entire text was printed in Appendix C of our Spring issue). Here he concentrates not so much on the logic of the majority (with which he agrees — except that he would *extend* that logic considerably) but on what he judges to be the dangerous "logic" of the dissenters; given the fact that the decision was as close as could be (five to four), these arguments are of considerable importance for the future.

Next we return to a continuing concern, the family. Mr. Allan Carlson (whose earlier article on the same general subject ran in our Summer issue) returns to point up the very specific problems being caused by the most *un*specific current definition of what a family *is*, i. e., the view that a family is no more than a grotesque parody of the Gospel's phrase "wherever two or three are gathered together," but with no further regard for the purpose (if any) involved. Cutting straight through such cant, Carlson argues that the family has not changed, however much its "definition" may have been altered, and/or bogus definitions of *other* entities added. The trouble is, ridiculous or not, such verbal tampering with reality has terrible consequences: the family *qua* family will survive, but not necessarily *our* families (or, in consequence, *our* society).

As if he had set out to buttress Mr. Carlson's arguments, the redoubtable Professor James Hitchcock (our frequent contributor and valued colleague) weighs in with a first-hand report on the recent White House Conference on Families (to which he was a delegate, by appointment of the Governor of Missouri). This subject too we have covered before (e. g., see Mr. Tom Bethell's article in our Summer issue), but the more one reads of what actually went on under the rubric of "How to Help the Family" the more incredible it all seems. For instance, as Hitchcock reports in detail, the "leaders" of the conference (actually its *organizers*, who were in no way representative of anybody but themselves, and their own point of

view) in effect *refused* to define what a family is, while including in their non-definition all the definitions Mr. Carlson describes. As we say, these two articles are naturally joined together, just as we present them.

Then our Ellen Wilson provides a pellucid (even for her) essay on Love and what it means in — and to — the family. As does Mr. Butt before, she here manages to conjoin *all* the themes that run through the current controversy into an overview (in fact a kind of "inside" overview, a contradiction in terms that she manages anyway) of what it all means: the point is incarnational — it all comes down to, and back to, mother and child.

Have you heard of Phillip Becker? A great many people now have, in large part because of a column written by Mr. George Will (in *Newsweek*, April 14); we regret that we are unable to provide that column for you — especially because we are unable to summarize the case in a brief introduction — but what we *were* able to do is call upon Messers. Robert Destro (another frequent contributor) and William Moeller, who have provided what we hope is both a description and an analysis of what may well become a landmark case, not only in American jurisprudence, but also in the growing — mushrooming — controversy *re* court intrusions into what used to be the sacred precincts of family integrity. In this regard the Becker Case is especially illuminating, because it is paradoxical —perhaps an exception that proves the rule. We have no doubt that you will be hearing more about Phillip Becker (alive as he yet is, or dead as he may soon be unless the judicial decision described herein is reversed).

We conclude our articles section with an offering that is not, strictly speaking, an article at all. Nor would we ourselves have thought of printing it, except for a note, some months back, from Mrs. Clare Boothe Luce (who has graced our pages on several past occasions), who informed us (as only she can) that there was a lot of good stuff on "our issues" appearing in Letters-to-the-Editor pages in newspapers nationwide. While we pondered how to go about acting on that good suggestion, the *Wall Street Journal* (last July 2) published an editorial on abortion. It struck us as near-totally out of character for that highly-respectable paper. While pondering *that*, we spied a response from our good friend, Mr. William Gavin (which the *Journal* published in part). A few days later we received a copy of another letter, from another friend, Mr. Michael Uhlmann (who was an original member of our editorial board). Not exactly what Mrs. Luce had *meant*, true, but a remarkable example of the potential she *saw*, we decided —and so we got permission all around to print it all.

And there's more. In Appendix A you will find what we think is another fascinating item. Here in New York, it is generally assumed that, when something makes it into the august *New Yorker*'s "Talk of the Town" column, it has "arrived" as a Real Issue. Well, recently we spied a "My Abortion" story — another *genre* we have published numerous examples

of in these pages — as the lead story in that bellwether column. (Amazingly, even though abortion is hardly a likely subject for the treatment, the whole thing ends up fitting exactly into the *New Yorker*'s usual editorial gloss: it starts with a strong — powerful, in this instance — fix-the-reader opening, then slowly dissolves into a distracted lull. But in its way it says a great deal, and to what we would think is an unusual — and previously untapped — audience.) Appendix B is in some ways similar: most large metropolitan areas now have "city" magazines (different from, but originally inspired by, the *New Yorker*) which exist primarily to boost, not attack, their localities. A prime (and highly successful) example is "D" magazine, published for the Dallas/Fort Worth area. But it too has discovered abortion, and, amidst the opulent four-color ads and glossy paper, what it says stood out, we think, all the more starkly, so we wanted to add it to our "publication of record" archives.

Appendix C is an article from the magazine *Sexual Medicine Today*, which we think speaks for itself, and certainly in its own way (those who do not normally read medical publications may well find the writing style unusual — we'd say it is typical). Keep in mind, as you read it, that the prevention of "child abuse" is *very* frequently cited as one of the benefits abortion produces.

Finally we include here (Appendix D) the full text of the remarkable statement issued in September by Boston's Humberto Cardinal Madeiros. It came just days before local primary elections that would (among other things) decide who would replace Rev. Robert Drinan, S.J., in the Congress. It caused a great stir not only locally (the pro-abortionist won, by the way) but also nationally: up to then, no other American Catholic prelate had ever issued so uncompromising an anti-abortion statement. We think it deserves inclusion here, if only because a) although it got wide press coverage, the actual *text* was rarely reprinted, or accurately reported; and b) while it seemed to be related to the immediate electoral situation, it will undoubtedly have long-term repercussions as well. If that prediction is correct, then we assume that many — all fair-minded people, certainly — will want to repair to the original text (which they will know resides in our pages, along with so much else of value). And to provide a contemporary view of what it all meant at the time, we have added a column written by our old friend Joseph Sobran, just days after the Cardinal's statement.

That concludes this issue, as well as our first six years of publication. But we will begin our seventh before long, God willing, and with, among others, a fine essay by the same Mr. Sobran on "Sex Education" and what *that* all means (nobody but Sobran could or would undertake such an explanation). Be ready.

J. P. McFadden
Editor

Values Commonly Held

Ronald Butt

AT FIRST SIGHT, it may seem strange that the exceptionally rapid change in social and ethical attitudes that is characteristic of our time should be so lacking in philosophers able to give coherence to the new morality. In fact, there is no paradox. The characteristic philosophies of the twentieth century, the intellectual constructions of the logical positivists and the linguistic philosophers, have tended, in their hostility to metaphysical propositions, to regard moral statements (being metaphysical) as nonsense. Likewise, Marxism, with its roots in the belief that man's material needs are the sole engine of history and in economic determinism, leaves little room, in its theory, for moral concepts — except to the extent that behavior calculated to advance the class struggle (the outcome of which, however, is already pre-determined) is presented as having the force of something like morality. Of course, traditional moral and religious values are far from dead in countries where Communism is established. Indeed, their survival against a background of political hostility (they sometimes seem to flourish there more vigorously than they do in our easier Western society) testifies to their intrinsic strength. Nevertheless, in the West, the influence of the anti-metaphysical philosophers, of the Marxists, and of the behaviorists have all, taken together, tended to fragment moral concepts into little more than human preferences.

The influence of the behaviorists, who observe "scientifically" what men and women do, and often seem to see no meaningful distinction between what they calculate the average behavior of mankind to be, and what ought to be done, has been particularly strong. The work of much sociology also tends towards establishing the opinion that all "morality" is merely a function of good and bad social conditions. What has conventionally been regarded as "bad"

Ronald Butt is Assistant Editor (Government and Politics) of the *Sunday Times* of London, and also writes a weekly column on public affairs in the (London) *Times*. He is married with four children. Educated at Oxford, he is the author of the *Power of Parliament*, an evolutionary study of the House of Commons in British politics (published in the United States by Walker and Company, 1967) and is currently engaged in writing a new History of the British Parliament.

behavior is seen as little more than a consequence of social deprivation and disadvantage, while the quality of "goodness" is hardly recognized as having any meaning in the sociologists' vocabulary — except to the extent that a "good" society is one in which the law imposes provisions that are designed to correct disadvantage towards a notional norm.

All this has assisted the destruction of *commonly held* objective values about the nature of human life, its obligations and what is owed to it. I emphasize "commonly held" because I do not wish to suggest that there are not strong individual opinions about the nature of man and the proper ordering of society which are held with all the force of an objective truth. Indeed, one of the most bizarre, if least recognized, contradictions within our society is that some of those who hold most passionately that pornography, for instance, must not be inhibited because every individual has the right to do what he likes, and who therefore believe that all "censorship" is wrong, maintain their conviction with a strength and rigidity that can only come from an inner belief that "no censorship" has the force of an absolute principle. The same, of course, is true of those who argue that the only criterion that is of material concern when an abortion is contemplated is the wish of the mother, and her "right" to have control over her own fertility — which is likewise often presented as an absolute right.

The consequence of all these influences is to create an intellectual climate in which the necessary condition for a proposition (or for teaching) to be intellectually respectable is that it should be, on the face of it, value-free. This reduces most human decisions to the level of individual choices, and it assumes that one course of action is as good as another — with the proviso that it ought not to harm somebody else. However, the decision whether it does or does not harm somebody else is usually, it seems, to be left to the performer of the action, who may well not be able, without objective criteria to guide him, to judge his conduct objectively and without regard to his own wishes. (A great deal of sex education which is given to young people in schools adopts this attitude, rigorously eschewing any general principles of guidance, which hardly makes it easy for anyone in the grip of a strong immediate sexual drive, to bring himself to recognize that what he wants now is likely to cause emotional harm in the longer run to somebody else.)

On this sort of criterion, the Beatles, if you think so, are as good

as Beethoven, and "Punk Rock" as acceptable as Bach. Pornography, if that is your choice, is as good for you as Plato would be for someone else. One sexual "preference" is as "good" as another, and abortion, if that is your "need," is not morally worse than birth. However, in this last case, something like a defensive doubt seems to creep in, for most people who take this position admit that it would be better if such a choice did not have to be made, and if pregnancy had been prevented by contraception. (It is rare for it to be argued, from such an intellectual position, that it might be avoided by abstention from sexual intercourse.)

To put it another way, it is usually admitted by pro-abortionists that if an abortion is the preferred outcome of an unwanted pregnancy, then it would be better if that pregnancy had not occurred. What is interesting about this admission is that it is not usually based on medical arguments, since it is usually insisted that abortion is, medically, "safer" than childbirth. It seems rather to rest on some kind of half-suppressed acknowledgement that abortion, *per se*, is not a purely neutral procedure. This feeling is presumably grounded in the human instinct that the destruction of unborn life is wrong.

Still, the broad intellectual consensus of the new intellectual establishment (no longer so very new: it has now flourished for the past 20 years) is that absolute and objective convictions such as those that have sustained past societies are no longer credible, and that moral decisions must be largely subjective. To this, however, there is one exception to which I have already drawn attention: an individual preference, it is usually conceded, ought not to be acted on if it is of a kind that harms others.

The question arises, therefore, what is meant by harm, and how can harm be measured. Here we see a clear collective preference in current intellectual fashion for strong action against certain sorts of "harm," coupled with a distinctly weak response to other sorts. Thus "harm" done by what is called racism, and by sexual and even economic inequality, is regarded as so heinous as to require strong interventionist action by the government. The creation of a society in which differences of "race" either do not exist or are refused recognition has, for instance, been so important in Britain that even old conceptions of nationality have been subordinated to it. Since the war, the United Kingdom (plainly against the wishes of the indigenous population) have had to accept a massive immigration from Asia, the West Indies and Africa on a scale quite unlike any-

thing else in its history. This has brought millions of people of profoundly different cultural and religious traditions (the official figures greatly understate its true dimensions) and this, as was easily predictable, has created great social tensions, since its rapidity has destroyed the homogeneity of social life and cultural attitudes, which is bound to be of particular importance in a small country. Every attempt to modify this inflow has been met by the wholly erroneous argument that to stop it was either unnecessary because the numbers were really very few, or impermissible because it would be racist to do so — or, finally, that nothing could be done because the fact was now accomplished. Thus the problem of racialism was created by those who most condemned it, whereas a more moderate level of immigration would have been accepted without leading to such tensions.

Now that we have the social problems that were so easily predictable, the preferred solution of those who most adamantly rejected any effective immigration control as racist is to try to solve them by a law against discrimination which creates more bad feeling than it removes, and which encourages litigiousness. Similar laws have been imposed to promote equality between the sexes, which often reduce to absurdity the cause they seek to serve. School books are combed to see if they contain "sexual stereotypes" (a boy helping his father in the garden while his sister helps her mother bake a cake) which are said to discourage equality of opportunity. Every female truck driver or male midwife represents a triumph for equality, while the newspapers record for our entertainment such cases as a woman who uses the prescribed channels of appeal to protest against not being given a job in a tailor's shop which involves measuring a man for his trousers. Boys' schools which want a male teacher have to use such code language as "ability to coach football an advantage" in their advertisements for staff.

These, then, are the lengths to which we now go by the use of state intervention to impose certain sorts of value, and to protect people against the sort of harm that can be identified as inequality. Significantly, such intervention is concerned largely with questions of material well-being. In other respects, however, we operate on the principle that, provided there has been no *measurable* harm of a physical sort, conduct is purely a matter of individual choice. Here, anything so vague as the concept of inequality that operates elsewhere would be laughed out of court. This is particularly the case in

questions of morality involving sexual activity. It is the dominant ethic in relation to abortion, sex education and pornography. But again, how is "harm" to be measured?

It is convenient to start with pornography, since the British government is now faced with the need to make a decision on a report by an officially appointed committee, which has taken its stand on precisely the question whether or not pornography can be shown, statistically, to do measurable "harm." The recent history of the law on pornography in Britain can be briefly summarized for the present purpose. In 1959, the previously fairly stringent rules governing what might be called obscene material were drastically modified in the direction of greater freedom. The declared purpose was to remove the inhibitions on material for which some artistic and literary merit could be claimed, even though it arguably had an erotic or obscene element. The new law was not intended as a license for pornography. Previously, obscenity offenses rested on the common law, and on judgments built up in cases in the courts. In other words, the law had been flexibly constructed, and can be said to have reflected what society as a whole was prepared and not prepared to tolerate. However, the 1959 Obscene Publications Act created, for the first time, the statutory offense of publishing an obscene article — and in doing so actually created the conditions in which such articles could be freely published. It took as its basis a nineteenth century judgment which had made the "tendency to deprave and corrupt" the test of obscenity, and the new Act provided that an article was obscene "if its effect . . . is, if taken as a whole, such as to deprave and corrupt" persons likely to read or see or hear it.

There then followed a series of test cases in which the intention of the law was undermined in the courts by the clever manipulation of its wording. In the first place, the "tendency to deprave and corrupt" test was used by the defense to obtain acquittals by what one of our most distinguished judges, Lord Denning, has called "this piece of sophistry." "If the likely readers are those who are already depraved and corrupt, this item will not make them more so; but if the likely readers are just ordinary sort of folk, they will be so revolted that they will be turned away from it. It is so plausible," Lord Denning observed, "that the Courts have held that, when raised by the defense, it must be put to the jury. If it is not put, the conviction may be quashed." And so, in a progression of cases, prosecuted obscenity

escaped conviction, and increasingly it began to seem useless to prosecute.

But this was not all. Against the risk that the hardest and cruelest kind of pornography might not escape by this sophistry, the defense in such cases learned to exploit another loophole in the Act which provides that publication is justified not only if it is in the interests of science, literature and art ("experts" being brought in to testify to this effect) but also where it is in the public good. Using this plea, the defense in the most sadistic cases have employed a circus of doctors and others, self-appointed "experts" in sex problems, to testify that all kinds of sadistic material are in the public good because they have a therapeutic value for their patients in encouraging masturbation.

The government now has before it the report of an official Committee, under the chairmanship of Professor Bernard Williams, which was asked to study the whole question of pornography. Predictably, this Committee came up with an answer that was wholly compatible with the libertarian fashion which I have already discussed. It took as its criterion for action the "harm" condition, and then set about establishing that there was no evidence that pornography does any harm — measuring harm by acts of violence against the person. "We unhesitatingly reject the suggestion that the available statistical information for England and Wales lends any support at all to the argument that pornography acts as a stimulus to the commission of sexual violence," declares the Committee emphatically. It acknowledged that some special importance attached to the question whether people were more likely to be sexually assaulted as a result of the circulation of pornography, but it then proceeded to show that the statistics showed nothing.

Thus, while conceding that we have detailed information about the number of sexual offenses reported to the police over a long period, the report went on to argue that, since we do not know how many people decide not to go to the police to report the offense, we cannot be sure how many offenses were committed. Any possibility that the number not reporting such offenses might be constant was rejected on the grounds that attitudes change. The report then turned to the other side of the correlation, the availability of pornography, and while not denying that there was more of it about, insisted that this was not measurable since, for instance, changing attitudes towards more explicitness about sex meant that it was arguable what

would and would not be considered pornographic at any particular time.

Then, having established its opinion that the rise of pornography could not be quantified (with the implication, therefore, that significance could not be read into the figures) and that the rise in sexual crimes was likewise not statistically provable, the Committee made assurance doubly sure by asserting that, "even if it is possible to provide an accurate measure of two variables, the existence of a correlation between the two of them is certainly no proof that one is influenced by the other." The Committee thus came to a conclusion satisfactory to the climate of "liberal" opinion which has been predominant for several decades, and also presumably to the instincts of the dominant group of its own members. Having decided that there was no "harm" in pornography, as harm is ordinarily understood, it declared that the use of such terms as "obscene" or "deprave and corrupt" should be swept away. It was, however, obliged to depart sufficiently from its own basic non-interventionary premise to recommend that only material involving the exploitation of under-age children or where actual physical harm is inflicted should be prohibited. For the rest, the only "harm" it perceived was that the visibility of pornography was offensive to people who did not wish to see it. The report therefore recommended that the sale of such material should be restricted to particular premises, with no external display, to which people under 18 were not admitted.

Now this, of course, offers no safeguard to protect children from reading such material (which, under the report's recommendations, could include sadism and bestiality) once it has been purchased from the approved shops. It could then circulate freely in the community among children — but since the Williams Committee obviously found nothing intrinsically wrong with pornography for those who liked it, no doubt it would assume that this would do children no serious, or measurable, harm! And the assumption behind the report is that what cannot be statistically "proved" cannot be a matter for concern.

This brings me to the wider question of the "sex education" that is now increasingly given to children in schools, where "experts" also dominate attitudes, demanding that children must be taught, in the most explicit way, the mechanics of sex and contraception. Such teaching very often carries the clear inbuilt assumption that children are likely to make use of the information that they are given, even

below the legal age of consent for sexual intercourse, and that if this is their preference, there can be no moral objection. Children are encouraged to handle contraceptives, and repeated reference is made to their use by "girls" and "boys" rather than men and women, and, of course, in terms of girlfriends and boyfriends, rather than husbands and wives. The sex educators lard their instruction with a few blanket generalities about responsibility and caring relationships — but purvey the assumption that, provided children do not get pregnant, there is no moral objection to intercourse if that is their choice and decision. Such sex education is given in classes to children in all stages of development (because, after all, children of the same age can differ greatly in their maturity) on the grounds that some are already "sexually active." On this plea, the others too have to listen to instruction which clearly carries the implicit message that sexual relations between children are quite normal. Another feature of this kind of teaching is the encouragement given by such sex educators to the use of the language in which (allegedly) the children "feel comfortable" — in other words, four-letter words. Yet I doubt very much whether most ordinary children, however much they are prepared to use this type of language in swearing, are really comfortable in applying it, in the classroom, to discussions about sex, particularly in mixed company. This, indeed, is an instance of the patronizing and talking-down attitude commonly struck by the sex educators, many of whom seem to be talking themselves out of their own obsession with sex.

Characteristic of this approach was the publication recently by a feminist organization of a sex manual for children called *Make It Happy*, which is quite the filthiest book of its kind that I have ever seen, in its flippancy, obscene terminology, and nastiness. It even instructs children in the details of such subjects as bestiality (even to the extent of telling them what kind of bestiality is technically inside the law and outside it) and it plays down any objections to incest, thus: "Incest . . . is considered to be a serious crime . . . Incest is not particularly uncommon — especially between brothers and sisters, which can be a loving relationship." Yet this book was recently given an award by a panel of educationalists and writers, including a head teacher, and the sex educators rose to arms when a Member of Parliament attempted to change the law so that parents would have the right to know what sort of sex education their children were given, and to withdraw them from it if they disapproved.

This book, and many others favored by the sex educators, profess to give factual information responsibly, which enables the children to make their own decisions. In fact, although claiming to be neutral and non-moralizing, it actually carries a clear message likely to encourage at least some children to sexual activity which they would otherwise have refrained from. Emphasis is laid on contraception to avoid pregnancies, but of course no contraception is certain, which is recognized by the trouble taken in such instruction to provide names and addresses where abortions can be obtained.

And so we come full-circle to abortion itself — an action which, for 2,000 years of Christian civilization has been regarded as the gravest of moral offenses, but which is now an everyday "right" of the mother. Here also we have a classic instance of the way in which changes in the law can change behavior because of the common confusion between legality and morality. Of course, it is true that all law has a certain basis in morality, but morality is wider and deeper than anything the law can provide for. Some kinds of morality plainly cannot be the subject of legislation: it is not possible, for instance, even if it were desirable, to legislate against adultery. But it has always been thought right to legislate in such a way as to express the conscience of the community in matters affecting the life of the human being — which is why the law protects people from murder, from euthanasia, and from infanticide. Once it protected the unborn also from death. When an abortion was done to save the life of the mother, or to prevent the consequences of rape, the doctors involved were conscious that they were taking a grave moral responsibility. They did not take it lightly.

Now, however, if a woman goes to a doctor whose professional opinion is that a woman needs an abortion if she thinks she needs one, then legal abortion is available to her. As with the sophistry which enables the pornographers to escape the intentions of the law, so abortions for convenience are available in Britain by exploiting the letter of the law — which states that an abortion is permissible where the continuance of the pregnancy involves risks greater than abortion. This can be used to allow almost any abortion by the specious use of statistics which show that early abortions are less dangerous than childbirth. But, of course, this is naturally so, since early abortions are mostly on young healthy women, while statistics of ill-health or death from childbirth include women who are already unhealthy when they conceive children.

For many people, the change in the abortion law was conveniently taken as a signal that the morality of abortion had also changed. The result has been a huge rise in abortions, the marshalling of a formidable pro-abortion lobby (which has its roots well-planted inside government departments) every time an attempt is made to amend the law, and a great deal of sophistry about the question of viability. The preferred question is always: could this baby, when aborted, have survived? The criterion proposed is that it should be aborted *before* it has a *chance* of survival — which is a curious kind of moral reasoning seeing that the same unborn child, given a week or two more in the womb, would be viable. Thus its survival depends not on any intrinsic circumstances, but on the timing of the act of destruction. Abortion is now a lucrative profession, and many abuses have been revealed from time to time. But every serious attempt to deal with abuses is bitterly resisted because, although the proposals are, for the most part, extremely cautious, and would only act in marginal cases, the pro-abortionists detest any amending bill because its success would be tantamount to a statement by Parliament that it is disturbed by the new morality, and that it, and the public recognize every abortion to be a grave question of fundamental morality, and not simply a matter of amoral social convenience.

This is something that stirs the pro-abortionists to something very like personal hatred of their opponents. They insist, above all, on what they call "the woman's right to choose." Yet a woman can have no such absolute right. She is not allowed to destroy a child on delivery by exposing it on a hillside; and nobody, so far, is suggesting that she should have this right. She may not destroy a fetus of 35 to 40 weeks. The question is only, therefore, where the line should be drawn, and it is a frivolous kind of "morality" which draws the line on some highly notional concept of viability measured on a time-scale, instead of according to a properly-grave concept of the need for the abortion, recognizing that every abortion must be, if human life is of any intrinsic value, a matter of the utmost gravity.

To the abortionists, the rights of the unborn child are immaterial. They are concerned only that the child should be "wanted." They pretend to argue that it is for the interest of the child that he should be wanted, regardless of the fact that it would be difficult to find any normal person, "wanted" or not, who seriously would wish not to have been born. In other words, they argue the interest of the child on roughly the same criteria that they would use to determine the

question whether or not a domestic animal should be put down for its own comfort; they reduce the having of children to the decision to take a pet into the house or to preserve its life. If it is not convenient to have a child this year, it is always possible to get rid of it and have one next. The unique and objective importance of each individual life is of no moment to them when they consider the human being before birth, despite the incontrovertible fact that all his essential characteristics are determined at conception.

All these subjects with which I have dealt here are interrelated. Pornography, for profit, creates a climate in which sexual callousness is encouraged. Irresponsible sex education leads to the pregnancies which abortion destroys, and encourages attitudes that undermine the prospects of stable marriage. Through all these things runs a deep feeling of contempt for objective morality and a preference for subjectively-determined attitudes strongly influenced by hedonism and personal convenience which both undermine any shared notion of what is right and wrong in society, and encourage a deep-rooted selfishness and cynicism which are damaging to any genuine kindness and compassion. Not until society can again find an objective morality which carries general consent, and which recognizes the sacrosanct nature of human life, will it again stand a chance of genuinely providing for the health, the happiness, and the fulfillment of the millions of human beings who compose it.

In Love with the New Sterility

Midge Decter

CAN THERE EVER HAVE BEEN an age so preoccupied — so obsessed — as our own with the condition of the young? To be sure, for every generation, children betoken the future: They are its emblems and its guarantee. But in our time, the problem of what to make of the young, in both senses of that phrase, has taken on a new, perhaps a unique, intensity. Partly, I suppose, this is because for contemporary man the future itself has become a new kind of idea: No longer an orderly continuation of the present, no longer merely a promise that the world will survive us and thus lend some consoling importance to our troubled sojourn here — the future speaks to us now of unimaginable possibilities, of alien and radical alterations, a condition in which we are likely not to feel at home. We look at those now being born and suppose that they are vouchsafed experiences undreamed of in our philosophy.

And in a more mundane sense, perhaps our fixation on our children is the result, too, of our being an immigrant society: In the United States of America how common must be the experience of parents having sent their offspring out into the streets and schools, the community and culture, of a strange new society — a society whose language and ways and even geography they might never fully master. Whatever the reason for it, there is no question that it has become a kind of national habit to keep a close and watchful eye on what is going on with the children.

And this is a habit, I am afraid, which has in the last decade or two rewarded us with considerable anxiety. If parental attention were enough to guarantee well-being — as certain once-fashionable theories of child rearing used to maintain — we should now be boasting a country full of robust, healthy, cheerful and independent young people.

And so many among us did profess to believe, not so very long

---

Midge Decter is a well-known author and a former senior editor at Basic Books who now heads the Committee for the Free World, an international organization of intellectuals and writers. This article is the text of a John Courtney Murray Forum lecture she delivered last May at the Harvard Club in New York City. It also appeared in the September 1980 issue of *Catholic Mind*, and is reprinted here with permission ().

ago, in the late 1960's and early 1970's, when we were informed that the country's young were the brightest, freest, most loving people the world had ever seen. We were told, and we told ourselves, that the years of unprecedented watchfulness over our children — attending to every cry, responding to every threat of unhappiness, preemptively offering our anxious assistance at every suggestion of difficulty — had paid off. We were told, and we told ourselves, that somehow, with the aid of new scientific insights (and, of course, given our own undeniable superiority to the timebound, tradition-bound constrictedness of our own parents), we had managed to create a new breed of offspring.

The very tendencies among this new breed that might have seemed troubling to us — so we said and professed to believe — were, on the contrary, achievements to be celebrated. The ceaseless electronic din in which they enveloped themselves from morning till night, for instance, was the sign that they were embarked on the creation of a new — a new order of — art. Their refusal to remain in school, or, remaining in school, their disinclination to accept its teachings, even to the point of setting fire to its plant and equipment — so we said and professed to believe — was the mark of their spiritual and social advancement. It tokened the fact that they were seeking new ways of life — new ways of life in which there would be no more of our own heartless pushing, scrambling, competing, no more of our own tendency to ulcers, no more being trod on and, above all, no more treading on others in a mindless, obedient round of serving the purposes of a cruel economy and spirit-denying society. And their drugs — the drugs that in an alcohol-soaked hypocrisy many of their elders sought to deny them — their drugs represented an effort on their part to bring about a new easy relationship to themselves and to the universe. Their use of drugs — so we said and professed to believe — was nothing less than an effort to alter and expand human consciousness, to explore the qualities of outer and inner life in a way their parents had not the courage to do.

All this we were told, and told ourselves. Yet those among us who lived in daily contact with them, as parents, teachers, neighbors, elders, knew better about the young of the late 1960's and early 1970's. As the country celebrated them and humbled itself before them, we watched them grow ever more pale and sickly. We witnessed their ever escalating gestures of defiance, toward us and toward the lives that in the normal course of things might have been

awaiting them, and knew deep down that far from declaring some to-be-admired measure of independence, they were clinging to us, depending on the approval we were so heedlessly meting out to them, and demanding our unending support, moral, emotional and — not least significant — financial. We watched, too, as they commenced, literally, to commit suicide at a rate which quadrupled in the course of a decade.

We understood that both the nature and the decibel level of their music had little to do with the creation of new art forms and everything to do with a threatening inability to endure solitude, quiet contemplation — in short, to be for a moment without some kind of full-scale external stimulus. We understood that their leaving school, or their demand for some radical alteration in the modes and standards of education had little to do with the creation of a new kind of society and everything to do with a fear, and refusal, of difficulty. And somewhere, even if vaguely, confusedly, we understood that their use of drugs had little to do with expanding consciousness and everything to do with a desire to be administered exactly what the term "drugs" has always meant, namely, medicine: medicine to feel good every minute of the day, medicine that would replace the leading object and symbol of their infant care — the pacifier — that would, like the pacifier, still their cries and provide instantaneous solace for their discontents. The doctors and therapists concerned with the field of child development have given a brilliantly descriptive name to a certain mysterious condition found among some infants. It is a term I wish to borrow for what it was we saw in our young. This condition they have named simply "failure to thrive." We stood by, knowing better but professing to believe that all would be well, as a generation of the best fed and most gingerly treated young people the world had ever seen "failed to thrive."

How and why we should have done this is not to the point this evening. I do not tell this sad tale of the late 1960's and early 1970's in order to engage in retroactive recrimination, or even in order to set the record straight. I tell it because while things have changed considerably among the young, they are as yet far from being out of trouble. The atmosphere with which they surround themselves has quieted — *they* have quieted. They are back in school and serious about it. They are preparing themselves for a future — particularly future careers — in society. And while the use of drugs does not appear to have abated very much, if at all, we hear less and less

about the moral and psychic superiority of those who use them. Yet, while the color has come back into their cheeks somewhat, they cannot even so be said to be thriving. In fact, in some respects they are as a generation perhaps even more threatened. Thus the question for those of us who are their elders is: Will we sit by once again — or still — saying and professing to believe that they embody some new alternative future possibility as we watch them failing to thrive?

What is this new threat to the well being of the young? If in the 1960's they were seized by a fear (Jimmy Carter would say an inordinate fear) of adult life — and they were — somewhere in the 1970's they began to give evidence that that fear was turning to hatred. For they began to extol the virtues of, and may now be said to have reached the point of worshiping, sterility.

I use the term "worship" in full consciousness, for the issue here is, of course, in the first and last instance a religious one, touching the question of the very meaning of human existence. The Bible tells us that God commanded — it is the very first of His commandments — "Be fruitful and multiply." This commandment is a statement of the imperative that a life lived on this earth, any life, must be connected in some vital way to the generations that come after, that man must be both a part of the natural order, and thus mortal, and at the same time part of the spiritual order by being implicated in a future one will never see but must still care about. The worship of sterility now spreading and finding ardent converts among the young bespeaks precisely a hatred for this eternal and universal apprehension of what it means to be human: that one must be born and die and at the same time take one's place in the great unseen, incoming tide of the generations.

In speaking of this new worship, I wish to make a distinction between sterility and barrenness. Childlessness has after all, always been with us. The distinction is that childlessness was once understood to be a form of unhappiness or deprivation — what I here choose to call barrenness — that could with courage or determination, or for very special reasons of piety and dedication, be transcended. The man or woman whom fate had singled out, for whatever reason, to live and die without progeny was surely not to be considered somewhat disobedient to the human imperative but was to be set aside from the common run of mankind as a special case. What I mean by sterility, however, is the voluntary, willful assertion of one's right —indeed, of one's obligation — to be disobedient to

just such an imperative. Where childlessness was once a condition to be commiserated with, it is now coming ever more widely to be hailed as a valuable and virtuous "option."

The new worship of sterility has appeared in many guises and taken many forms. It began, perhaps — though it is difficult to assign any precise historical order to its various symptoms — but for the sake of the narrative, let us somewhat arbitrarily say that it began with the announcement that we owed it to ourselves and to the world to cut back on our productive growth. This announcement claimed to be addressed to the economic order. We were, it was said, using up the world's natural resources; we were unleashing monsters of urban concentration; we were poisoning our skies, our earth and our waters; in the name of making life easier, we were making it intolerable; in the name of making life more bounteous, we were bringing death. This argument, offered as it was in the name of a cleansing return to health and simplicity, was seductive. Possibly driven by shame at our enjoyment of undreamed wealth, we neglected to see its hidden — and not so hidden — agenda. Which was to rouse in us a loathing of our society's technological vitality and all it can bring to the world, to effect a contraction, a shutting down, a turning back.

Intimately related to the attack on economic growth — at some points indistinguishable from it — was that other form of the new worship of sterility, namely, the population control movement. As the production of wealth was said to be poisoning the world, so the production of new life was declared to be threatening it with starvation. Everyone had long been aware of the problem of overpopulation in such places as India and China, of course. In my own childhood, "the starving children of China" had been invoked at untold numbers of mealtimes in untold numbers of households across the land to spur recalcitrant children to clean their plates. But now the menace was here, in America, even among the families of the middle class. Contraception, abortion and, finally, even sterilization itself came to be applauded as acts of the highest selflessness and social conscience. That these two movements, the anti-technological and the anti-natal, contradicted one another — that, for instance, it was that same "evil" American technology which offered the only real promise of saving India from starvation — was little to the point. They shared a common imagery, an imagery of the disaster of new and growing things. Indeed, together they created the distinct im-

pression that the only live births we might properly celebrate were those of the Forbish lousewort and the snail darter. For a time, in an effort to promote what is surely the most unambiguously definitive ritual of sterility of all, certain young men went about boasting lapel buttons designed to broadcast to a grateful world that they had just undergone vasectomies.

A perhaps even more telling contribution — certainly one more pervasive of everyday life — was that made by militant feminism. At the hands of a group of militants, issued in the name of something that was called the liberation of women, there was a new assault on motherhood more thorough-going and more radical than any ever seen. The assault was launched from several directions. One was the claim that motherhood in the concrete — that is, in the actual daily processes of tendering care to babies and small children — was a form of oppression. It was painful, troublesome and unrelievedly dreary. It had been imposed upon women as a way of keeping them indoors, subdued and harried and out of reach of all interesting and important forms of the world's work. Housewives were likened by one of the leading spokesmen for this new militancy, Mrs. Betty Friedan, to certain World War II soldiers who had in the horrors of combat suffered brain damage. Others spoke of motherhood in terms of slavery, or imprisonment. Their spiritual and intellectual godmother, Simone de Beauvoir, referred to the womb as "that infirmity of the belly." Beyond their resentment at the expectation that they would give care and nurture to the young, these women declared war on the authors of their maternal sufferings and obligations: men. Despite their claims that in seeking their own liberation they wished to liberate men as well, they unleashed upon these intended objects of their beneficence an unending torrent of hostility and abuse, a torrent of hostility and abuse so powerful and effective it may be said by now that the relations between the sexes — that indispensable ground for fruitlessness, both literal and figurative — the relations between the sexes have been fed a near fatal dose of poison.

But most destructive of all, not only to the natural desire of women for motherhood, not only to the relations between the sexes, but to any proper understanding of the nature of life itself, has been the assertion that differences between the sexes are merely learned, imposed by culture and thus erasable by culture. Now, there is no more radical, no more pro-sterility, anti-natal, anti-life statement

than the statement that there are no real differences between the sexes. Such a statement is nothing less than an attack on the very constitution of the natural order. One might as easily — and, I might add, with far less damage to individual lives — declare that there is no such force as gravity. With far less damage, because even if there were a worldwide movement for man's liberation from gravity, it is not likely that many people would respond to it by attempting to jump from high windows; whereas, to their own intense misery, as a major contributing factor to their "failure to thrive," many young people among us today *are* attempting to hold themselves as proof that there are no unalterable differences between the sexes.

From here, it has been only one short step to that other liberation movement, homosexual liberation — called, by one of the more sadly telling misnomers, "gay" liberation. The claim of gay liberation, as we know, is that heterosexuality and homosexuality are two morally and socially interchangeable forms of human sexual connection. If anything, we are told these days, homosexuality is the superior form of such connection. In any case, it is a "preference" — or, to use the currently fashionable word, an "option." "You do it your way, I'll do it mine." Now, without going into the question of what homosexuality *is* — though, to be sure, I have certain ideas of my own about this — the one thing that even the most passionate exponent of, or most ardent sympathizer with, homosexual liberation is bound to admit is that homosexual relations are — and are meant to be — fruitless. *Sterile.* To say that they are merely an acceptable alternative to heterosexual relations, then — as we are hearing said with increasing volume and certainty — is not only to round out the logic of moral relativism; it is to say that procreation has neither any weight nor any special value.

And, finally, to complete the list of guises by which the love of sterility has come to manifest itself, there is that recent congeries of theories and therapies I shall call, with apologies for the shorthand, the human potential movement. What these theories and therapies add up to is the statement that every person's primary responsibility and obligation is to himself. In other words, to the enthronement of simple selfishness. Selfishness is, of course, nothing new or startling in human experience — why else, indeed, do we have institutions and laws? But this may very well be the first time in human history that being selfish, living only for one's own needs, refusing the needs and requirements of others, has been preached as a higher form of

idealism. And looking out for yourself — as they say in the current argot of best-sellerdom, "looking out for number one" — is an activity both highly compatible with, and conducive to, sterility.

That is what one sees when one looks at the innumerable young couples walking in the streets, well dressed, well heeled, physically side by side but separately wrapped in the kind of sullen isolation that makes it impossible to judge whether they are in accidental proximity or have been married for 10 years. They will never have more energy or more possibility than they do at the moment one is seeing them. The world is their oyster, and yet they do not look content. Or energetic. Or full of possibility. They do not look, in a word, well. Their posture itself transmits the message: "Let it all end with, and by, and in, me."

But it might be asked: *So what?* Can I, who, had I been standing before you as recently as 70 or 80 years ago, would have been an old, worn-out woman, can I deny the blessings of controlling one's fertility? Of course, I cannot. Isn't childlessness, it might be asked further, after all an option among many options in a free society, and would I dare by turning back the clock legally to restrict it? And again, I must answer: No, I would not. And are not the children often a terrible pain in the neck, as well as in the heart, and, worse, do they not often prevent one from pursuing both one's goals and pleasures? Yes, they sometimes are; and, yes, they often do.

The real answer, however, lies with the young. They are, God help them, our living laboratory for the study of what life requires of us all. And in them we can see that sterility embraced is a condition that seeps into all of life — into work, into play and into relations with people. Beyond this, it breeds a politics of living without a future, the kind of politics in which people speak of future generations thunderously and in the abstract but without that terrible extra pinch of responsibility for the flesh and blood that are one's own real grandchildren and great-grandchildren. In addition, it leads to the awful black boredom, the hypochondria, of self-preoccupation.

We are fast becoming a nation of hypochondriacs. Eating better, living longer and enjoying a nearly miraculous level of medical care, we think of nothing but our diets and death, and slavishly adopt every new measure from the avoidance of eggs to five-mile runs to hiding from the sun, that is advertised as a means of staving off mortality. We treat our health, as Franz Kafka, himself a hypochon-

driac of considerable dimension, once remarked, we treat our health as if it were a disease.

Most of all, the agreement to be sterile represents the profoundest kind of self-hatred. If parenthood is a thing of no overriding value, then someone's willingness to have given birth to you ceases to be an occasion for gratitude. To celebrate life, new life, is the only way to celebrate your own being alive.

Our children, as I have said, are currently providing living evidence of what I am talking about. Look at the willfully childless young couple in their early 30's — of whom, thanks to the postwar baby boom, there are by now a generous sample. The young woman is beginning to doubt the wonders of self-realization promised to her in the pursuit of a career, but she does not know what is bothering her and grows sour. The young husband is beginning to feel unmanned by the fact that she is refusing to anchor and solidify and domesticate him. If she leaves him, which there is a good statistical probability she will, she will find no relief. If he leaves her, he will have a hard time finding another young woman who will do for him what he needs done, nor will he even know that that is what he is seeking. Both are suffering from a soul-killing lack of responsibility for the future and for someone and something beyond self that — no matter what their newest therapist or consciousness-raising group tells them — is making their lives feel meaningless to them. If first the young suffered from a fear of the world, and next, from the worship of sterility, then unless something happens to turn the present course of attitude, despair will be the hidden term of the next era. That, we might say, will be the fruit of the new sterility.

Those of us who are their elders stood by, undeceived but taking part in a gigantic national deception, as the young engaged in a massive, angry refusal to become adults. We stood by, and permitted this refusal to be characterized as something else — as a new form of social conscience and cultural consciousness. We stood by, and watched them grow sickly and — in many, many too many, cases, actually die. Now we are standing by as they refuse not adulthood but life itself. And the public deception goes on, speaking in the name of public spirit and liberation. It is time for us to say what we know — that they are not creating for themselves new forms of family existence, or a new range of sexual possibility, or a new level of social or psychic freedom, but only a new legacy of misery. A time when the number of abortions exceeds the number of live

births — as it did last year in New York City; a time when strong and handsome and prosperous young couples refuse to carry on life by reproducing themselves and instead expend their capacities for love and care on a ghastly narcissistic attention to self; a time when young women talk endlessly of growth but deny themselves their most important opportunity for widening and deepening and enhancing their lives; a time when young men fear to speak of masculinity in the only terms that make it significant — that is, the protection and support of women and children — and spend their manly energies on the care and beautification of their bodies; this is the time for those of us who are the elders at long last to assert to our children the value of our own lives as parents, as ordinary people and as mortals. And in so doing, to teach them the true enduring value of their own lives, and especially of the grandchildren and great-grandchildren they owe to themselves and to us.

The Hyde Amendment:

Victory At A Snail's Pace

Basile J. Uddo

Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices.[1]

THE ABOVE QUOTATION HAS become a classic one in the abortion debate. Many readers will recognize it as a part of a 1970 editorial in *California Medicine*, the official journal of the California Medical Association. Its relevance to this article, which is primarily concerned with the recent Hyde Amendment case, is that it should be read from time to time by everyone concerned for the unborn. Our battles have been so many on such diverse fronts and topics that we risk losing sight of what is really at issue: we are living under a totally unacceptable abortion policy! Recent victories have not won the war, nor have they always had their intended results. Despite the nearly total victory on the Hyde Amendment, last June 30th, the federal government went on paying for abortions until mid-*September* because of the pro-abortion inertia of a federal agency, which is part of an administration that is *supposed* to be opposed to such funding. Thus even our good times can be bad.

But despite government by bureaucracy, federal funding finally had to stop because the Supreme Court did, on June 30, 1980, reverse the embarrassment of a lower court decision that had set constitutional law on its head. *Harris* v. *McRae*[2] was indeed a critical and thorough victory for the anti-abortion movement.

Basile J. Uddo is an associate professor at Loyola University School of Law, and has contributed a number of articles to this and other journals.

Judge John Dooling's infamous opinion had declared the Hyde Amendment unconstitutional for a variety of ill-defined and erroneous reasons.[3] Among them were violations of due process, by impinging on a pregnant woman's choice to obtain a "medically necessary" abortion; equal protection, by treating "medically necessary" abortions different from other medically necessary services without a legitimate governmental interest; and the free exercise clause, by not funding an abortion for "religious" reasons. Additionally, Judge Dooling held that the Medicaid Act would require payment for all medically necessary abortions, but for the Hyde Amendment. Finally, Judge Dooling rejected an argument that the Hyde Amendment advanced a particular religious teaching in violation of the establishment clause.

By a 5-4 vote the Supreme Court revived the Hyde Amendment and put several issues to rest. In the process it seemed clear that the result was a product of the inexorable logic of the arguments in favor of the Hyde Amendment, and not of any fundamental change in the thinking of the Justices on the point of abortion. Justice Stewart, speaking for the majority, made this quite clear when he said:

> It is not the mission of this Court or any other to decide whether the balance of competing interests reflected in the Hyde Amendment is wise social policy. If *that were our mission, not every Justice who has subscribed to the judgment of the Court today could have done so.*[4]

But, begrudging as it might be, the conclusion is nonetheless important.

The majority opinion divides its analysis into statutory and constitutional components. On the Medicaid statute itself Justice Stewart agreed with most judges who have addressed the question: the act simply does not *require* a state to fund what Congress has chosen not to reimburse. This conclusion is unassailable in that the Medicaid scheme has always been viewed as one of "cooperative federalism" and not federal coercion. Any deviation from this scheme would have to be made explicit by Congress. The legislative history of the Hyde Amendment made it quite clear that Congress never expected that states would be required to pick up funding. Consequently, the Act does not require, though a state may choose, continued abortion funding. Having rejected the statutory attack, the majority opinion continues with the more interesting, and more important, constitutional attacks.

Due Process

There is something called substantive due process which, despite its inherent contradiction (substantive process)[5], has from time to time been used by the Court to promote such dangerous results as that Congress cannot enact labor laws, and states cannot enact anti-abortion laws. It is understandably a disfavored mode of constitutional analysis, since it is rudderless and based more on the predilections of individual justices than on anything in the Constitution.[6] Yet, it is undeniably the cornerstone of abortion litigation. Small wonder, then, that the opponents of the Hyde Amendment, and Judge Dooling, would seize upon this chameleonic concept in their effort to invalidate the policy determination made by Congress. The attempt, however, was correctly rejected.

In order to accept the argument that substantive due process was violated by the Hyde Amendment it would be necessary somehow to expand the "fundamental right" to choose an abortion to include a right to funding, or to demonstrate that the right itself had been impermissibly "penalized" by withholding funds. Both such revisions of the original abortion cases were rejected — as they certainly had to be, given the Court's 1977 decision in *Maher* v. *Roe*.[7]

Justice Stewart reaffirmed the *Maher* holding that the recently created fundamental right "protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy,"[8] but did not include an entitlement to Medicaid payments to effectuate such a decision. That the government chooses to advance its legitimate interest in childbirth by funding it and not abortion is immaterial provided no governmental obstacle is placed in the path of the woman who chooses to abort her pregnancy. Lack of funds is not, Stewart maintains, a governmentally-created obstacle.

The majority opinion found no constitutional distinction between the non-therapeutic abortions not funded in *Maher* and the so-called "medically necessary" abortions not funded under the Hyde Amendment. "It simply does not follow that a woman's freedom of choice carries with it a constitutional entitlement to financial resources to avail herself of the full range of protected choices."[9]

> To hold otherwise would mark a drastic change in our understanding of the Constitution. It cannot be that because the Government may not prohibit the use of contraceptives . . . or prevent parents from sending their child to a private school . . . government, therefore, has an affirmative

> constitutional obligation to ensure that all persons have the financial resources to obtain contraceptives or send their children to private schools. To translate the limitation on governmental power implicit in the Due Process Clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a Medicaid program to subsidize other medically necessary services. Nothing in the Due Process Clause supports such an extraordinary result. Whether freedom of choice that is constitutionally protected warrants federal subsidization is a question for Congress to answer, not a matter of constitutional entitlement.[10]

Justice Stewart's due process discussion also reiterated that merely characterizing a governmental act as a "penalty" does not transform valid legislative actions into impermissible burdens on constitutional rights. Simply to refuse to fund protected activity is not a penalty. Had Congress disqualified a woman who had an abortion from *all* medicaid funds, Stewart notes, the action would be more nearly a "penalty" and less likely to be allowed. As it is that is not the case.

Equal Protection

The Constitution requires that legislation treat similarly-situated persons the same, that is, governmental activity must not invidiously discriminate. In *Harris* v. *McRae* the plaintiffs' equal protection argument was quite unclear, but relied principally upon the government's decision to fund for indigents some "medically necessary" services (childbirth), but not others (abortion). This "selective subsidization," it was argued, denies Medicaid recipients equal protection.

The Court concluded that nothing in this case would require the government to demonstrate anything more than a rational reason for its "selective subsidization" — a task easily and convincingly performed. Simply put, Congress has made childbirth more attractive than abortion, except where the mother's life is clearly threatened, by funding a variety of alternatives to abortion. That is, the Court concluded, a rational way of advancing a legitimate governmental objective: protecting "potential" human life. No matter that abortion is singled out among many subsidized medical services for, as Justice Stewart admits, "*Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life.*"[11]

Establishment Clause

Finally, the Court majority laid to rest the most amazing — and menacing — arguments made against the Hyde Amendment. Somehow the plaintiffs had convinced themselves, and hoped to convince the Court, that the Hyde Amendment violated the first amendment establishment clause by "incorporat[ing] into law the doctrines of the Roman Catholic Church concerning the sinfulness of abortion and the time at which life commences."[12] This despite the fact that there is not a shred of evidence that Catholics or Catholic teaching had ever been any more influential than non-Catholic and secular sources in making abortion one of the most abhorrent crimes known to civilized man. Additionally, the argument ignored the inevitable result that, if accepted, persons who were motivated by their religious beliefs would be forever excluded from influencing the democratic political processes! Further, many existing laws would be subject to attack if the establishment clause argument were to be consistently applied. In effect anti-religiosity would become the *established* religion. Fortunately, the Court majority recognized that the plaintiffs could claim neither facts nor law to support their contention.

Factually, it has always been clear that the Roman Catholic Church is simply the whipping-boy for the pro-abortion movement. From the beginning pro-abortion tacticians plotted to play upon anti-Catholicism to deter attention from killing babies to fighting the "papal conspiracy." Nowhere is this more vividly put than in Bernard Nathanson's account of a 1969 pro-abortion strategy session between him and Larry Lader, a leader of radical-chic politics:

> On our last evening on the island, we sat over a fish dinner and a bottle of cold white wine in a small harborside restaurant, and Larry read me my last basic lesson in the political primer.
>
> "Historically," he said after the usual throat-clearing ceremony, "every revolution has to have its villain. It doesn't really matter whether it's a king, a dictator, or a tsar, but it has to be *someone*, a person, to rebel against. It's easier for the people we want to persuade to perceive it this way." I conceded that. It was a good tactical strategy. "Now, in our case, it makes little sense to lead a campaign only against unjust laws, even though that's what we really are doing. We have to narrow the focus, identify those unjust laws with a person or a group of people. A single person isn't quite what we want, since that might excite sympathy for him. Rather, a small group of shadowy, powerful people. Too large a group would diffuse the focus, don't you see?"
>
> I nodded. Where was he going?
>
> "There's always been one group of people in this country associated with

reactionary politics, behind-the-scenes manipulations, socially backward ideas. You know who I mean, Bernie."

Not the Catholics again? "Well, yes, and no." Throat-clearing again. A heavy thought coming. And I wasn't wrong. It was his devil theory.

"Not just all Catholics. First of all, that's too large a group, and for us to vilify them all would diffuse our focus. Secondly, we have to convince liberal Catholics to join us, a popular front as it were, and if we tar them all with the same brush, we'll just antagonize a few who might otherwise have joined us and be valuable showpieces for us. No, it's got to be the Catholic *hierarchy*. That's a small enough group to come down on, and anonymous enough so that no names ever have to be mentioned, but everybody will have a fairly good idea whom we are talking about."

His syntax was as careful and as surgical as his daily shave. It was irrefutable. The only thing that was a little jarring, even to my untutored mind, was that the original nineteenth-century laws in New York and elsewhere had been placed on the books mostly by doctors when there were few Catholics around. I raised that question, hesitantly.

"Bernie, we're talking politics now. Watch and see how respectful of facts the opposition will be once our campaign gets going. Just listen to the opposition."[13]

Why complicate pro-abortion bigotry with facts?

Legally, the argument is nearly as indefensible. Justice Stewart demonstrated as much when he dispensed with the argument in twenty-seven *lines* of a twenty-seven *page* opinion. He concluded that the Hyde Amendment had a secular purpose and its primary effect did not advance any religion. "The fact that the funding restrictions in the Hyde Amendment may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause."[14]

Free Exercise

One argument accepted by Judge Dooling, but left unanswered by the Supreme Court, was based upon the "free-exercise" component of the first amendment. Briefly stated the argument is that some women might decide to have an abortion as a product of their religious beliefs under certain Protestant and Jewish tenets. Consequently, the Hyde Amendment would impinge upon the free exercise of their religion.

The Court avoided the question on the technical ground that none of the plaintiffs had standing to assert such an argument since none of them alleged, nor proved, that they were pregnant and sought an abortion for religious reasons. In effect the Court said none of these parties were being deprived of their free exercise of

religion, and consequently they cannot attack the Hyde Amendment on that basis. Such an attack must await the proper parties. That means that the pro-abortion party has one glimmer of hope in the opinion and can be expected to return to court sometime soon, with the "proper party" seeking yet another injunction against the Hyde Amendment.

When this happens no such injunction should be issued because the plaintiffs will be unable to show irreparable harm (at the worst the abortion would have to be privately financed), nor will they be able to demonstrate a likelihood of success since the substantive arguments favor the Hyde Amendment. This is so because no religion *mandates* abortion as a tenet of its beliefs. At most a religion might assign the decision to abort to the woman's conscience. Her independent choice could not be characterized as religious in any but the most general sense. It simply escapes the full protection of the first amendment as traditionally understood. Even assuming that some religion might require abortion under certain circumstances the Hyde Amendment should be unaffected. To fund such "religiously required" abortions would violate the establishment clause. Consequently, the Hyde Amendment would not only be constitutional, but, in certain cases, absolutely necessary to prohibit funding of a sectarian religious practice.

In concluding, the majority opinion recognizes that, all things considered, "when an issue involves policy choices as sensitive as those implicated [here] . . . the appropriate forum for their resolution in a democracy is the legislature."[15]

The Dissents

As might be expected the four dissenting Justices — Brennan, Blackmun, Marshall and Stevens — were bitter in defeat. Their excoriations — collective and singular — would have one believe that in fewer than seven years abortion and its public funding have not only become legal, but also respectable, just, and indispensable to humane social policy. Conversely, anyone who opposes such policy is left to wonder if, in fact, horns are sprouting from his head.

Much could be said about the legal, logical and factual inadequacies of each dissent; we will cite only some appropriate highlights here. One example is Justice Brennan's conclusion that the Hyde Amendment is irrational because it eliminates, without reason, one form of treating sick pregnant women: abortion. As he sees it, the

consequence is "to leave indigent sick women without treatment simply because of the medical fortuity that their illness cannot be treated unless their pregnancy is terminated."[16] Obviously, Justice Brennan believes that it is a common occurrence to find a pregnant woman who suffers some illness treatable *only* by abortion. That is hardly the case, and when all opinions are considered such occurrences are rare. Dr. Jasper Williams, a former president of the National Medical Association and operator of a Chicago clinic serving primarily poor Medicaid patients, and a principal in the Hyde Amendment litigation, discussed this problem on "The MacNeil-/Lehrer Report" just after the Supreme Court arguments.

> DR. JASPER WILLIAMS: I believe that true life endangerment could be. The question is, who defines life endangerment? And many people take very minor conditions and consider them as life endangerment. I've been practicing now since 1957. I've lost two patients who were mothers delivering babies in that period of time. One from a pulmonary embolism, one from an amniotic fluid embolism. Neither of these patients could have foreseen that that was what was going to happen to them, nor could any physician have foreseen. I know of no condition at the present time where true life endangerment with adequate care, from the kind of medical treatment that's presently available and the kind of physicians who are out there able to help, that would require abortion.
>
> LEHRER: Do you believe that there's ever a reason to perform an abortion?
>
> WILLIAMS: I have not encountered such a reason.
>
> LEHRER: Have you ever had a patient that — where you felt that the mother's health was in jeopardy, not necessarily in terms of losing one's life, but just it was going to have bad health as a result of being pregnant and giving birth to a child?
>
> WILLIAMS: I have seen people like that, but medicine has made lots of progress, and we're able to handle most of those problems.
>
> LEHRER: What is your view? As you say, 60 percent of your patients are people who are women who are on Medicaid. Do you feel that the Hyde Amendment as written and passed by the United States Congress and interpreted at the state level in Illinois, discriminates against poor women?
>
> WILLIAMS: I do not believe it discriminates against them in a way that hurts them. The thing that discriminates aginst my patients, the poor women in Chicago on the South Side, is offering them the placebo of abortion instead of the therapy of jobs, education, housing and other social items which create a situation in which a woman becomes desperate and believes the Supreme Court when it says abortion is all right. Actually, it is not all right, and it doesn't solve any problems, and most of these people come back with the same problem over and over again. The statistics indicate now that many of the abortions being done are No. 2 and No. 3 for the same patient. . .

LEHRER: Dr. Williams, would you agree that preserving the health of the mother is a very important factor?

WILLIAMS: I certainly do, but the doctor there was disturbed about the mother who goes home and has no one to help her, and slowly dies. I'm worried about her, too, but the baby didn't kill her. He just admitted what killed her was nobody to help her. Our social system is what's wrong. We've got to be able to take care of those deficits. I'm sure the doctor's seen a lot of people die from heart attacks, men, they weren't pregnant. Slowly die. We as physicians despite the progress we've made, we can't cure everything, and people will die. And it may be that they might die a week earlier, a month earlier, if they have a baby, but by and large, we are capable of handling most of the complications which arise in pregnancy. And the people he's seen destroyed didn't die because of pregnancy. They died because they didn't have the right people taking care of 'em.

LEHRER: Is that true, Dr. Burnhill?

BURNHILL: They died because we don't have enough resources in our society to take care of everybody.

LEHRER: But did they die of being pregnant? He says they did not.

BURNHILL: Their life was shortened and their health was impaired by that pregnancy.

WILLIAMS: By the shortage of things he says he didn't have, not by the pregnancy.

BURNHILL: We live in a real world.

WILLIAMS: And so there's no just — there's no reason for killing the baby because he doesn't have enough people at New Jersey who know what they're doing and have the equipment to take care of these people. Put 'em on a kidney, if they've got a bad kidney. A lady recently had a baby with a transplanted kidney. She and the baby are fine. You would have aborted that woman.[17]

There is simply no evidence that abortions are a necessary component of caring for pregnant women.

Of course, Justice Brennan's more fundamental problem is that he wants abortion to be accepted as just another innocuous option for dealing with pregnancy; not that it is necessary, but that it should be freely and respectably available. Pursuing this purification of abortion Justice Brennan reiterates one of the most astonishing statements ever uttered in a judicial opinion:

> Abortion and childbirth, when stripped of the sensitive moral arguments surrounding the abortion controversy, are simply two alternative medical methods of dealing with pregnancy . . .[18]

As they say on TV: That's incredible! Seemingly Justice Brennan does not realize that his statement is like saying, "rape and conjugal

intercourse, when stripped of the sensitive moral arguments surrounding sexuality, are simply two alternative human methods of dealing with the sex drive." Or how about law suits and violence are simply two methods of settling disputes, or fraud and honesty in business dealings are simply two methods of making a profit, etc., etc.? Fortunately, most people do not agree with Justice Brennan,[19] and, perhaps more important, the majority of the Court does not agree. Recall Justice Stewart's admission that abortion is different "because no other procedure involves the purposeful termination of a potential life."

Justice Marshall suffers from a similar hyperbolic commitment to the abortion liberty. As expected his language is harsh, but his perception tainted. He says the Court's decision "represents a cruel blow to the most powerless members of our society."[20] In fact, it is a stirring victory for the *most* powerless — the unborn.

Justice Marshall also takes the opportunity to criticize the technical method the majority used to decide the equal protection question. He has been fond, for some time now, of urging the Court to seek more than a rational basis for upholding most legislation. He would prefer that the Court roam more freely in deciding, in effect, whether the law substantially advances *important* governmental objectives. Were this standard used, Justice Marshall would conclude that the state interest in fetal life was not important enough to sustain the Hyde Amendment. What he does not want to consider, however, is that the trouble with all such judicial meandering is that what is important is truly in the eye of the beholder. Marshall would substitute his notion of importance for that of Congress. But, what better test of governmental importance than that which commands a strong legislative majority fostered by the urgings of the electorate? In short, what better gauge of the importance of the Hyde Amendment than the Hyde Amendment itself.

Among other reasons, Justice Stevens believes the Hyde Amendment is unconstitutional because to prefer childbirth to abortion "constitute[s] an unjustifiable, and indeed blatant, violation of the sovereign's duty to govern impartially."[21] Even if this were correct, which it is not given the precedent and majority opinion, would we have impartiality without the Hyde Amendment? As the dissenters are fond of saying, there is truly another world out there the existence of which Justice Stevens either chooses to ignore or fears to recognize. The other world is called bureaucracy and there is a

serious doubt about that bureaucracy's impartiality on the issue of abortion. Take for example Secretary Patricia Harris' publicly announced support for abortion and its federal funding. How neutral is she as head of the Department of Health and Human Services (formerly HEW)? Consider her department's action after Judge Dooling's injunction *against* the Hyde Amendment became effective.

On the very first day it *could*, the Department delivered a nine-page, bilingual telegram to its regional administrators instructing them to begin funding abortions. Included in the telegram was a sample notice to Medicaid recipients that sounds more encouraging than informative. It says, in part, "a doctor may take the following factors into consideration in determining whether an abortion is medically necessary: physical, emotional, and psychological factors; family reasons; and your age." Here the department plants the seeds of doubt by adding in parenthesis, "for example, if you are a teenager or over the age of thirty-five." Would a recipient in those age-groups feel that she was being encouraged to have an abortion?

The notice goes on to say "the court has held it is your right to seek a confidential Medicaid abortion, and no benefits may be withheld from you for doing so." That's it. No mention of childbirth, no reminder of the availability of Medicaid funds for comprehensive pregnancy care, no mention of alternatives. Perhaps it could be argued that these things were not directly at issue, but if the neutrality Justice Stevens speaks of is more than a myth the government should never discuss abortion apart from its fuller, more comprehensive context. Moreover, the Department showed no such enthusiasm for implementing the Supreme Court decision.

Thus far the discussion of the dissents has focused on the idiosyncrasies of the opinions. More important are two overriding themes consistent throughout: a) the Hyde Amendment will impose great harm on Medicaid recipients, and b) it is irrational to exclude "medically necessary" (as opposed to non-therapeutic) abortions from general Medicaid coverage. If these two themes are incorrect the dissents are totally baseless.

Repeatedly, the dissenters suggest that the Hyde Amendment is insensitive to the great harm poor women will suffer as they turn to illegal or self-induced abortions. Yet, they never mention that the data contradict their conclusion. The Center for Disease Control (a federal agency in Atlanta) has studied the effect of the Hyde Amendment in states where all abortion funding had stopped. It concluded

that there was no increase in illegal or self-induced abortions, there was no increase in abortion-related complications, nor were there any abortion-related deaths. There was, however, a reduction in abortions, which is the intended effect of the Hyde Amendment.[22] Consequently, the horrible scenario sketched by the dissenters simply does not exist.

Far more crucial is the dissenters' conclusion that it is irrational to exclude "medically necessary" abortions from Medicaid coverage while continuing to fund other medically-necessary procedures. The assumption here is that not to fund "medically necessary" abortions is to condemn women to severe health consequences, which would be irrational in the context of broad health-care services. Justices Marshall and Stevens accuse the government of making "serious" health damage to the mother a more attractive alternative than abortion. The problem never touched on by the dissenters is that "medically necessary" as defined by the pro-abortion position, and as accepted by Judge Dooling, is an utterly meaningless concept. Judge Dooling relied upon several physicians in defining medical necessity.[23] One testified that "every pregnancy that is not wanted by the patient . . . there is a medical indication to abort . . . I think they are all medically necessary." Other doctors said that whether a pregnancy is wanted or unwanted is the "key factor" in determining medical necessity.

Based on these and other opinions Judge Dooling held that virtually any abortion is medically necessary. Judge Dooling gave some examples of medical necessity:[24]

> Women whose pregnancies occur in such circumstances of poverty, slum subsistence in substandard housing, and helpless insecurity that their pregnancies become unendurably stressful and emotionally destructive.
>
> Plaintiff "Susan Roe," [who wrote an affidavit] expressing her fear that if she carries her pregnancy to term, she will become an abusive parent like some of her friends.
>
> Poverty is itself . . . a medically relevant factor . . .
>
> The pregnant teenagers [who] run higher risks of unemployment and welfare dependency than those who delay parenthood until their twenties. [A doctor Hoffman testified that *all* abortions for adolescents are medically necessary.]
>
> The professional standards of medicine accept that grave fetal defects . . . may make abortion medically necessary in the judgment of a larger part of the medical profession. The child born with serious birth defects presents a

grave threat to family stability and to the rearing of the defective child's siblings.

The debasement of language becomes absurd. "Medical necessity" is anything desired by someone. Every conceivable social, financial, physical, or psychological factor would create medical necessity. Medically-necessary abortions would become totally indistinguishable from abortion-on-demand. Applying such a standard to any other medical procedure would border on the criminal. No doubt many doctors have been prosecuted for Medicaid fraud based upon performance of services no less medically-indicated than the abortions Judge Dooling, and the dissenters, would have the government finance. Were the Court to have endorsed such nonsense, the effect would have been to overrule the *Maher* line of cases, which drew a distinction between therapeutic and non-therapeutic abortions. As it is such a distinction still remains.

Conclusion

Harris v. *McRae* was indeed an important victory for anti-abortionists. Its result and reasoning have tremendous legal, practical and political implications. But in the larger scheme of things it is only a small step on the road to a Human Life Amendment. Let us not gloat — or pause — over it.

NOTES

1. *California Medicine*, Sept. 1970; Vol. 113, No. 3, *reprinted in The Human Life Review*, Winter 1975, Vol. I, no. 1, Appendix B, and Vol. IV, no. 1, Appendix D.
2. No. 79-1268, June 30, 1980 (Slip opinion).
3. One searches in vain the more than 300-page opinion for any clearly-defined constitutional issues or analysis.
4. Slip opinion at 26 (emphasis added).
5. The dictionary definitions demonstrate the contradiction. *Substantive* is defined as "pertaining to the rules of right which courts are called on to apply, as distinguished from rules of procedure." *Process* is defined as a synonym for procedure. *The American College Dictionary* (Random House).
6. The criticisms of substantive due process are legion; one example is Ely, *The Wages of Crying Wolf: A Comment on Roe* v. *Wade*, 82 Yale L.J. 920 (1973), also in *The Human Life Review*, Winter 1975, Vol. 1, no. 1.
7. 432 U.S. 464 (1977).
8. Slip opinion at 14, *citing Maher* v. *Roe* 432 U.S. at 473-474.
9. Slip opinion at 17.
10. Id. at 18-19.
11. Id. at 26.
12. Id. at 19.
13. Bernard Nathanson, *Aborting America* (New York: Doubleday, 1979), pp. 51-52.
14. Slip opinion at 20.
15. Id. at 27, *citing Maher* v. *Roe* 432 at 479.
16. Slip opinion at 3 (Brennan dissent).
17. "Medicaid Abortion," transcript of "The MacNeil/Lehrer Report" (Show #5212), April 22, 1980, reprinted in *The Human Life Review*, Summer, 1980, pp. 86-87, 89.

18. Slip opinion at 5.

19. As questionable as public opinion polls are in the abortion debate a recent Gallup Poll makes one thing clear: 71 percent of the American public reject what *Roe* v. *Wade* gave and Justice Brennan wants to extend. Only 25 percent of the public thinks abortion should be legal under all circumstances. "*Gallup Poll:* Attitudes on Abortion," New Orleans *Times-Picayune/States-Item*, August 28, 1980, sec. 3, p. 3.

20. Slip opinion at 3 (Marshall dissent).

21. Slip opinion at 9 (Stevens dissent).

22. Center for Disease Control: Morbidity and Mortality Weekly Report, Feb. 2, 1979, Vol. 28, No. 4 at pp. 37-39; June 6, 1980, Vol. 29, No. 22 at pp. 253-54.

23. All references to testimony concerning "medical necessity" are from the district court trial transcript as reproduced in the brief submitted to the Supreme Court by Americans United for Life Legal Defense Fund.

24. See Americans United for Life Legal Defense Fund Brief *supra*, note 22.

The Family: A Problem of Definition

Allan C. Carlson

THE CRUMBLING of Western Civilization's moral foundation and normative social structure might be traced through the corruption in meaning of a relative handful of words. The most surprising aspects of these shifts in definition have been their rapidity, their recentness, and the ease with which they have been accomplished. It has been demonstrated (in this journal and elsewhere) that subtle changes in the legal, medical, and public-policy definitions of "pregnancy" and "fetus" have accompanied the demolition of anti-abortion laws and the spread of research on "non-viable" aborted babies.[1] Others have described alterations in the legal definition of "marriage" which are cumulatively destroying the delicate balance of responsibilities sustaining the traditional Judeo-Christian marital relationship.[2]

A similar quiet revolution in the normative definition of "family" occurred in the United States between 1965 and the late 1970's. This radical alteration of a fundamental social concept originated among sociologists and family counselors. By the early 1970's, it had begun to affect the law, organized religion, the media, and other culture-sustaining structures of modern society. Receiving an unwitting Presidential blessing from Jimmy Carter early in his term, this semantic change has since permeated the entire federal bureaucracy. There are few better symbols of contemporary intellectual disarry than this remarkable transformation in the meaning of a word.

The term "family" has actually undergone several undulations during this century. In the two decades following World War I, American sociology strayed into a morass of confusion over its meaning. Where 19th-Century theorists defended the modern family — composed of father, mother, and their children — as natural, normative, and universal, the inter-war generation of sociologists took a different tack. Convinced that urbanization was the central force of change, writers such as William Ogburn, Ernest Groves,

Allan C. Carlson, an historian who was recently an NEH Fellow at the American Enterprise Institute for Public Policy Research in Washington, has written for such journals as *The Public Interest* and *The Lutheran.*

and Joseph Folsom substituted a functional analysis of society for an historical one. Under such scrutiny, the family seemed to be in turmoil, as its educational, protective, religious, economic, and security functions passed to the state. Inter-war sociology correspondingly focused on the male-female bond as the defining core of family life, and stressed flexible mate-selection, variable sexual roles, the functional value of divorce, and happiness as the principal justification for marriage and family living.

But even in this limited context, family theory remained foggy. Among the important sources of unclarity were the popular writings of inter-war anthropologists who — armed with the analytical tool of cultural relativism — wandered beyond the appropriate limits of their discipline and attacked Western normative and ethical standards as intolerant, corrupting, and pathological. Typical of this *genre* was Margaret Mead's 1928 classic, *Coming of Age in Samoa*, which argued that Americans paid heavily for their attempt to impose homogeneous cultural standards on their children. "It is unthinkable," she argued, "that a final recognition of the great number of ways in which man . . . is solving the problems of life, should not bring with it the downfall of our belief in a single standard."[3] Hence, whereas 19th-Century sociological theory had termed monogamy the modern family norm, Joseph Folsom admitted that "present day theory . . . does not know what the norm is."[4] Parenthood and children were effectively reduced to little more than by-products of a variable male-female bond.

Then something extraordinary happened in the social crucible of World War II. Unexpectedly, the much-maligned nuclear family re-emerged among sociologists as a normative guide. Serving as a transition work was *The Family: From Institution to Companionship,* by Ernest Burgess and Harvey Locke (1945). While still attached to the inter-war focus on the family's loss of function, Burgess and Locke gave new emphasis to its augmented affectional role. "More and more," they wrote, "the American family is becoming a union of husband and wife, parents and children, based upon the sentiment of love, common interests, and companionship."[5] Solidifying this re-embrace of the nuclear family was the work of George P. Murdock: "The family," he explained in his widely-adopted 1949 definition, "is a social group characterized by common residence, economic cooperation, and reproduction. It includes adults of both sexes, at least two of whom maintain a socially-approved relation-

ship, and one or more children, own or adopted, of the sexually cohabitating adults." Murdock added:

> In the nuclear family . . . we thus see assembled four functions fundamental to human social life — the sexual, the economic, the reproductive, and the educational. Without provision for the first and the third, society would be extinct; for the second, life would cease; for the fourth, culture would come to an end. The immense social utility of the nuclear family and the basic reason for its universality thus begin to emerge in strong relief.[6]

Talcott Parsons and his colleagues at Harvard's Department of Social Relations expanded on this clear definitional foundation. Writing in the mid-1950's, Parsons viewed the "basic and irreducible" functions of the family as the primary socialization of children and the stabilization of adult personalities in society. "It is the combination of these two functional imperatives," he continued, "which explains why, in the 'normal' case it is both true that every adult is a member of a nuclear family and that every child must begin his process of socialization in a nuclear family."[7] In the same volume, Morris Zelditch defended the sex roles found in the modern family, where the father would naturally assume the tasks of economic provider and authority figure, while the mother would normally take leadership in emotional expression, affection, and conciliation.[8]

Other sociologists accepted the essence of the Murdock definition and offered positive assessments of the American nuclear family. Writers such as Murray Straus, Clifford Kirkpatrick, and Guy Swanson viewed such a structure as particularly beneficial to women, adolescents, and children.[9] Scanning the globe, William J. Goode argued that the "conjugal [*read 'nuclear'*] family," linked to values first shaped by Protestant asceticism and to the principles of *laissez faire* economics and political liberty, was at the forefront of the world's drive for modernization and development.[10] As late as 1967, sociologist Gerald Leslie could state that the "white, Anglo-Saxon, Protestant, middle class family is a kind of prototype for the larger society. . . . Its patterns are ideal patterns for much of the non-white, non-Anglo, non-Protestant, non-middle class segmentof the population. . . . In twentieth century America, however, an increasing proportion of the population is achieving the ideal."[11]

By the mid-1960's, though, there were signs of renewed confusion. Not surprisingly, one source of disorientation was the cancerous concept of cultural relativism. Through the 1950's, some anthropologists had raised discordant notes over sociology's renewed defense

of the normative nuclear family. Morris Oppler, for instance, had rejected Murdock's definition of family for its culturally-determined bias,[12] while Claude Levi-Strauss had advanced his a-historical criticism of Western civilization's "parochial" refusal to accept cultural diversity.[13] Yet these remained minority voices.

Daniel P. Moynihan's 1965 report to the U. S. Department of Labor on the Negro family proved to be a prime catalyst for controversy and change. In trying to explain the startling rise in welfare dependency since 1960, Moynihan described the progressive disruption of black families and pointed specifically to the growing predominance of the black, female-headed family in the Northern urban slum. As Moynihan summarized: "Negro children without fathers flounder — and fail." To combat spreading poverty, he called for policy measures to bring black family patterns back into harmony with the predominant cultural model.

The response to Moynihan's report was unexpectedly negative. In an ever-growing crescendo, social scientists and black leaders — charged with cultural-relativist arguments — attacked Moynihan as culturally and racially biased. The female-headed family, they explained, was a manifestation of blacks' healthy adjustment to ghetto conditions and had inherent strengths of its own. As critic Robert Staples argued: "Divorce, illegitimacy, and female-headed households are not necessarily dysfunctional except in the context of Western, middle class, white values."[14] Moynihan's attempt to force blacks into middle class social patterns, they concluded, was simply unacceptable.

In an article frequently cited by Moynihan's critics, anthropologist Ray Birdwhistell claimed to debunk the sentimental myth of the Modern American Family. Locked up inside their suburban home, Birdwhistell stated, men, women, and children became "cage dependent." Marriage counselors, social workers, psychiatrists, and family doctors who accepted this faulty model as "healthy," he continued, became little more than "zoo keepers" reinforcing such pathology. Birdwhistell specifically objected to both ". . . the fantastic notion that one man and one woman should mate and after that be responsible for satisfying all of the other's significant emotional needs. . ." and ". . . the other equally exotic and impossible . . . idea that parents should be responsible for meeting all their children's needs." He called on family experts, as "carriers of culture," to examine ruthlessly their covert middle-class prejudices and thereby

free client families from a debilitating and unattainable ideal.[15] A few years later, Birdwhistell demanded a radical revision of the West's "increasingly outmoded legal, economic, educational, and religious formulations and structures" as a means of destroying "this impossibly overloaded and guilt-creating social unit, the family."[16]

As anthropological arguments began to distort sociological discourse, the nascent New Left revived old Marxist demands for the destruction of monogamy, the return of women to the factories, the collectivization of child care, and free and open sexuality. The Left's analysis received an historical boost from Philippe Ariés' *Centuries of Childhood*, which compared a supposed colorful, egalitarian, pre-bourgeois European communal life to the contemporary bourgeois order, where "The concept of the family, the concept of class, and perhaps elsewhere the concept of race, appear as manifestations of the same intolerance towards variety, the same insistence on uniformity."[17]

Radical feminists drew on the same distorted historicism. Industrial society, they argued, invented motherhood as the unrespected and unpaid exploitation of women involved in the rearing of their own young. This privatized, isolated, bourgeois, child-centered family, advocates continued, had now reached almost absurd proportions. The nuclear family needed children to justify its own existence, consumed women, and then discarded them so that new mothers might be produced in turn. Fortunately, they concluded, the women's movement now offered freedom from the family. As longtime feminist Jessie Bernard summarized, ". . . the nuclear family is only one way to organize these functions. They could be structured in other ways. They could, in brief, 'tomorrow be decomposed into a new pattern.'"[18]

Neo-malthusianism also emerged with new strength in the mid-1960's. The populationists charged that nuclear families, when left to their own devices, were biologically dangerous. As Judith Blake wrote, the "frightful reproductive potential" of youth in the 1970's meant either that Americans must restrict themselves to "micro-families," or that a substantial share of the population must remain childless.[19] Under these circumstances, advocates continued, sex education had to be taken out of the hands of embarrassed, incompetent parents and turned over to public school teachers who could inculcate "healthy attitudes" towards population control, "values clarification," and erotic fulfillment. Over the long run, they con-

cluded, maternity would have to be devalued, with procreation becoming a rare privilege granted to only a select and qualified few.[20]

Even the triumphant ideology of equality turned a jaundiced eye upon the child-rearing functions of the family. "It is idle," commented one Cornell University biologist, "to talk of a society of equal opportunity as long as that society abandons its newcomers solely to their families for their most impressionable years." As sociologist Suzanne Keller put it, "One of the great, still largely unchallenged, injustices may well be that one cannot choose one's parents."[21]

By the early 1970's, virtually the whole family-sociology industry seemed to have turned against the nuclear family and the middle class values which sustained it.[22] Journals such as *The Family Coordinator, Journal of Marriage and the Family, Social Work,* and *Social Casework* popularized and legitimized this professional assault on traditional families. Articles entitled "Marriage as a Wretched Institution," "Voluntary Childlessness — The Ultimate Liberation," "Sister Love: An Exploration of the Need for Homosexual Experience," and "Singlehood: An Alternative to Marriage" became part of the profession's stock literature. As family counselors Larry and Joan Constantine concluded: ". . . it is absolutely incumbent on society at large to permit — even to encourage — experimentation in alternate family structures. As a society with a dismal and deplorable record of ossified yet fragile marriages, of families that alienate and embitter the young, and of inauthentic and exploitative relationships between men and women, we cannot afford to do otherwise."[23]*

Symptomatic of just how far things went was a brief article in the April, 1972 issue of *The Family Coordinator.* Entitled "Are All Middle Class Values Bad?," the essay noted that such values had recently become the favorite whipping-boy of social workers, marriage and family counselors, sociologists, psychologists, and psychiatrists. The author cautiously argued, though, that "*some* [his emphasis] of the much maligned middle class values may be necessary

*In fairness, it should be noted that the professionally dominant advocates of ". . . co-marital sex (CMS) and alternative/experimental/emerging/variant/innovative/non-traditional marriage forms" encountered some stubborn opposition from rank-and-file marriage and family counselors. In her 1975 study of counselor attitudes towards non-monogamous marriage styles, Jacquelyn Knapp found lingering traditional biases among her research sample. Some, for instance, continued to label persons involved in secret affairs, "sexually open marriage," and swinging as "personality deviants," while between nine and seventeen percent of her respondents still said they would encourage their clients to abandon such behavior. Yet these intellectual dinosaurs were, by then, clearly a normally muzzled minority on the defensive. See: Jacquelyn J. Knapp, "Some Non-Monogamous Marriage Styles and Related Attitudes and Practices of Marriage Counselors," *The Family Coordinator* (Oct. 1975): 505-14.

for a technologically advanced society such as ours to survive," including ". . . punctuality, a certain minimum of reliability and accountability (if not responsibility), as well as a minimum of orderliness (which is not the same as a compulsive form of orderliness)." Yet even in this unique — if absurdly feeble — defense of the bourgeoisie, the author still stated that "middle class values have traditionally been anti-sex in our culture" and he welcomed the collapse of conventional family norms.[24]

Under the impact of this combined assault, the definition of the word "family" began another metamorphosis. Ira Reiss led the slide down the slippery slope with his widely-cited 1965 article defining family as ". . . a small kinship structured group with the key function of the nurturant socialization of the newborn. . . ."[25] Children were still involved under this approach, it is true; but most other aspects of family life became variable.

Semantic clarity progressively deteriorated over the next few years as the discipline embraced the heretofore unknown notion of "a pluralism of family forms." An important benchmark of such change was the Forum 14 Report of the 1970 White House Conference on Children, which celebrated a "pluralistic society of varying family forms and a multiplicity of cultures." Defining family as "a group of individuals in interaction," the Report described optional forms ranging from nuclear families to "single parent," "communal," "group marriage," and "homosexual" varieties. Decrying American society's excessive conformity, the Report's authors welcomed the contemporary movement "to destroy the cultural myth of a 'right' or 'best' way to behave, believe, work, or play." As family professionals, they viewed the family principally as "a vital, yet often unrecognized partner of bureaucratic service organizations having health, welfare, and rehabilitative objectives." Secure in such a controlling partnership, their primary recommendations focused on recognizing and fostering "the right of individuals to live in any family form they feel will increase their options for self-fulfillment."[26]

Family professionals also began sweeping aside clear statistical evidence that American family life was crumbling with the glib retort that "families aren't collapsing, they're changing." Serving as key institutional stimulants to this theme were the 1971 and 1972 sessions of the prestigious Groves Conference on Marriage and the Family. The gloom and uncertainty characterizing such meetings in the late 1960's gave way to a veritable orgy of intellectual excitement

over "the varied family forms phenomenon."[27] The family, in fact, became for many professionals little more than a plastic human relationship facilitating continuous social change "by adapting its structure and activities to fit the changing needs" of society.[28]

Family sociology textbooks, characteristically lagging behind the "cutting edge" of the discipline, shifted towards the "pluralistic" understanding of family during the mid-1970's. Representative was Ira Reiss' 1976 text, which stated that "a psychological comfort once available to many Americans is fast disappearing;" — specifically belief in the normative nuclear family. "We are involved now in a society with a variety of life styles," he continued, "that necessitates that people be able to feel that their life style is proper to them, even though it may not be a proper life style for other people."[29] Or as Bert Adams put it, "we do not like to choose, but we must do so increasingly; we do not like freedom, but we will exercise it increasingly." And such freedom to choose, he believed, would probably legitimate certain alternative family life styles such as unmarried cohabitation, androgyny, communal structures, sexual experimentation, "open" and "multilateral" marriages, and polygamy.[30]

Jimmy Carter became the first President to run afoul of this subtle, yet chaotic, change in the meaning of "family." He had started in the traditional camp. "The American family is in trouble," Carter stated in an August 1976 campaign speech which sparked his continuing interest in the concept of family-policy. Reflecting his undoubtedly sincere personal concern for family life, Carter assumed the existence of a nuclear family norm throughout this widely-ad mired address. His constant use of the phrase "the American family" — just as his subsequent call for a White House Conference on *The American Family* — indicated his support for the traditional family model.

But once handed over to Department of Health, Education, and Welfare bureaucrats, the Family-conference idea absorbed the changes which had rocked family sociology over the past decade. Within months, the conference was relabeled The White House Conference *on Families.* Among conference planners, "family" came to mean any two or more people that assumed some special relationship. "Pluralism" and "changing families" became the Conference's organizing themes. As Chairperson Jim Guy Tucker emphasized in his welcoming comments to the conference's advisory committee, ". . . we're going to focus on the realities of today's families, their

diversity and pluralism." Conference organizers even grossly manipulated the delegate selection process to ensure that "pluralism of family forms" proponents controlled the proceedings. Eventually, even President Carter's focus on families-in-trouble was tossed aside. As Tucker declared mid-way through the conference's hearing process, "there is no doubt that our families will survive. . . . Across the United States, we have been told, we have seen, that families have amazing strength and resilience. They are enduring institutions with incredible ability to cope, adapt and function." Families are not in trouble, it seems. They are simply changing.

Tragically, however, families *are* in trouble. Even a casual glance at trends in marriage, divorce, birth, abortion, and illegitimacy statistics since 1960 reveals staggering and still-rising levels of family disruption and rapidly-growing numbers of Americans rejecting family life altogether. Yet the definitional shift in the word "family" accomplished by family professionals between 1965 and 1977 has widely obscured this on going collapse of American family life.

For there are no "new" family forms. Nor are American families "changing." Rather, disruptive human relationships existent since the beginning of social life, but always discouraged or restrained in healthy and growing societies — homosexuality, unsanctioned sexual cohabitation, and promiscuity — have been elevated to family status by a simple semantic change. And normative standards — far from being parochial, oppressive, or pathological — are in fact the very defining elements of all culture. Without "single standards" guiding human acts such as mating, reproduction, and the nurturing of children, social life rapidly falls prey to anarchy and nihilism.

But now, carriers of culture ranging from family professionals to the awesome apparatus of the federal bureaucracy have stripped the word "family" of coherent definition, and have turned against traditional Western family values and norms. Few recent intellectual events portend greater societal disruption than this seemingly innocuous change in the meaning of a word.

NOTES

1. Including: Juliana G. Pilon, "Semantic Problems of Fetal Research," *The Human Life Review*, Vol. II, no.3, Summer 1976, 89-95; Jacqueline M. Nolan-Haley and Thomas W. Hilgers, *Roe* V. *Wade*: Some Definitional Condiderations," *The Human Life Review*, Vol.III, no. 1, Winter 1977, 55-62; and Raymond J. Adamek, "It Has Happened Here," *The Human Life Review*, Vol.III, no. 4, Fall 1977, 74-85.

2. Paul Johnson, "The Family as an Emblem of Freedom," paper presented at a Capitol Symposium on the Family, Washington, DC, June 5, 1980; Mary Ann Glendon, "Marriage and the State: The Withering Away of Marriage," *Virginia Law Review* (May 1976), 663-720; and Lenore J. Weitzman, "Legal Regulation of Marriage: Tradition and Change," *California Law Review* (Aug.-Sept., 1974), 1172-1286.

3. Margaret Mead, *Coming of Age in Samoa* (n.p.: William Morrow and Co., 1961 reprint of the 1928 original), 248.

4. Joseph K. Folsom, *The Family: Its Sociology and Social Psychiatry* (New York: Wiley, 1934), 117-18. This argument is adapted from: Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (New York: Basic Books, 1977), 196.

5. Ernest W. Burgess and Harvey J. Locke, *The Family: From Institution to Companionship* (New York: American Book Co., 1945), 510-11.

6. George P. Murdock, *Social Structure* (New York: Free Press, 1965; first edition — 1949), 9-10.

7. Talcott Parsons and Robert F. Bales, *Family, Socialization and Interaction Process* (Glencoe, IL: Free Press, 1955), 16-17.

8. Morris Zelditch, "Role Differentiation in the Nuclear Family: A Comparative Study," in Parsons and Bales, *Family, Socialization and Interaction Process*, pp. 314-15.

9. See Murray A. Strauss, "Conjugal Power Structure and Adolescent Personality," *Marriage and Family Living* (Feb. 1962), 17-25; Clifford Kirkpatrick, "Housewife and Woman: The Best of Both Worlds?" in S.M. Farber, P. Mustachi, and R.H.L. Wilson, *Man and Civilization: The Family's Search for Survival* (New York: McGraw-Hill, 1963), 136-52; Daniel R. Miller and Guy E. Swanson, *The Changing American Parent* (New York: John Wiley, 1958), particularly pp. 196-206.

10. William J. Goode, *World Revolution and Family Patterns* (New York: The Free Press of Glencoe, 1963), 19, 213, 368-69, 380.

11. Gerald R. Leslie, *The Family in Social Context* (New York: Oxford University Press, 1967).

12. Morris E. Oppler, "Review of Murdock's *Social Structure*," *American Anthropologist* (Jan. 1950), 77-80. This reference is borrowed from Michael Gordon, *The American Family: Past, Present and Future* (New York: Random House, 1978), which describes past-1945 developments in family Sociology in some detail.

13. Ably summarized in Sanche de Gramont, "There Are no Superior Societies," in E. Nelson Hayes and Tanya Hayes, editors, *Claude Levi-Strauss: The Anthropologist as Hero* (Cambridge, Mass.: The M.I.T. Press, 1970), 3-21.

14. Quoted in Lasch, *Haven in a Heartless World*, p. 158.

15. Ray L. Birdwhistell, "The American Family: Some Perspectives," *Psychiatry* (Aug. 1966), 203-12.

16. Ray L. Birdwhistell, "The Idealized Model of the American Family," *Social Casework* (Apr. 1970), 195-98.

17. Philippe Aries, *Centuries of Childhood: A Social History of Family Life*, translated by Robert Baldick (New York: Alfred A. Knopf, 1962), 415.

18. Jessie Bernard, "Marriage and the Nuclear Family as Target," in Gordon F. Streib, editor, *The Changing Family: Adaptation and Diversity* (Reading, MA.: Addison-Wesley Publishing Company, 1973), 25-26.

19. Judith Blake, "Coercive Pronatalism and American Population Policy," in Ellen Peck and Judith Senderowitz, editors, *Pronatalism: The Myth of Mom and Apple Pie* (New York: Thomas Y. Crowell, 1974), 29.

20. For pure expressions of these arguments, see: David B. van Vleck, *How and Why Not to Have That Baby* (New York: Paul S. Erickson, 1971); Garrett Hardin, *Stalking the Wild Taboo* (Los Altos, CA: William Kaufmann, 1973); and Walter R. Stokes, "Control of Procreation: A New Dimension of Freedom," in Herbert A. Otto, editor, *The New Sexuality* (Palo Alto, CA: Science and Behavior Books, 1971), 259-61.

21. Suzanne Keller, "Does the Family Have a Future?" *Journal of Comparative Family Studies* (Spring 1971), 8-9.

22. For a partial annotated bibliography of this professional assault on the family, see Dorothy Fahsbeck, *Marriage and the Family Under Challenge: An Outline of Issues, Trends, and Alternatives* (NewYork: Family Service Association of America, 1976).

23. Larry L. Constantine and Joan M. Constantine, "Dissolution of Marriage in a Non-conventional Contract," *The Family Coordinator* (Oct. 1972), 457.

24. Ben N. Ard, Jr., "Are All Middle Class Values Bad?" *The Family Coordinator* (Apr. 1972), 223-24.

25. Ira L. Reiss, "The Universality of the Family: A Conceptual Analysis," *Journal of Marriage and the Family* (Nov. 1965), 449.

26. "Changing Families in a Changing Society," Report of Forum 14, White House Conference on Children, 1970.

27. See Marvin B. Sussman and Betty E. Cogswell, "The Meaning of Variant and Experimental Marriage Styles and Family Forms in the 1970's," *The Family Coordinator* (Oct. 1972), 377.

28. Clark E. Vincent, "Familia Spongia: The Adaptive Function," in Joann S. and Jack R. DeLora, *Intimate Life Styles: Marriage and Its Alternatives* (Pacific Palisades, CA: Goodyear Publ. Co., 1972), 173.

29. Ira L. Reiss, *Family Systems in America* (Hillsdale, IL: The Dryden Press, 1976), 438.

30. Bert N. Adams, *The Family: A Sociological Interpretation* (Chicago: Rand McNally, 1975), 366-88.

The White House Conference:

Family Is as Family Does

James Hitchcock

DECIPHERING CODED terminology was a major prerequisite for understanding the White House Conference on Families held in three different regional meetings this past summer.

For example, when conference officials talked about "takeovers," they did not mean, contrary to what many people might have thought, a process by which state steering committees appointed delegates to the conference solely to satisfy their own view of who should be represented. Rather they meant situations where various groups of citizens, fearful that the conference would turn out as disastrously as the International Women's Year meeting in Houston in 1978, organized themselves to elect the kinds of delegates they preferred. Whatever might be said of these elections, they were the closest the conference ever got to democratic accountability, and conference officials sometimes seemed to regret that there were any elections at all.

"Special interest groups," also contrary to what might have been assumed, were not, for example, movements for homosexual rights or publicly-funded abortions, nor were they the social workers and educators who had a vested interest in encouraging new government programs of all kinds. The term was rather reserved for people who resisted these things and who, as family members, proclaimed in effect, "Let us alone." From the beginning conference officials perceived the latter people as somehow sinister.

With words thus defined in an Alice-in-Wonderland fashion, it is hardly surprising that the White House Conference on Families literally did not know what it was talking about. Originally it was supposed to be about "the Family." This was changed to the plural in order to signify, as the organizers never tired of repeating, that there is no single model valid for all families.

James Hitchcock, a professor of history at St. Louis University, is a prolific author of books and articles, and a frequent contributor to this journal.

Up to a point, almost everyone could accept this. No one, for example, would be likely to condemn either the "nuclear" or the "extended" family as traditionally understood. No one, either, wants to read single-parent families out of polite society. But the conference's hidden agenda could not stop there. The term had to be kept as elastic as possible, to include by implication any group of people sharing the same household, including homosexuals. Given numerous opportunities to indicate that by family they meant something which at least approximated the traditional definition of people related to each other by blood, marriage, or adoption, conference officials pointedly refused to do so. Obviously their intent was to use the word "family" as a peg on which to hang anything.

This being the case, those who tried to define family were treated as prissy and quarrelsome scholastics determined to split hairs in fruitless controversy while troubled people cried out for help. There was a curious kind of role reversal as a result — educated professionals, the kind of people who pride themselves on clear thinking and the avoidance of slogans, kept insisting that it made no difference what people meant by the word, while those who are often dismissed as ignorant and muddleheaded hysterics were the ones who thought it important for the conference to state exactly what it was all about.

The refusal to define family inevitably gave rise to basic confusion as to the conference's very purpose. Sometimes it seemed to be predicated on the assumption that families are "in trouble" and need help, help being perceived almost always as new or expanded government programs. At other times, however, conference leaders proclaimed defiantly that "the family is alive and well in America" and implied that the conference had been summoned to celebrate its well-being.

Writing some time before the conference, the sociologist Allan C. Carlson anticipated the flaws which would vitiate its thinking. Among other things, he noted that, if the family is not defined and an acceptable model agreed upon, there will be no way of judging whether families are healthy or not.[1] Given this uncertainty, how could the conference say anything meaningful, or on what basis could it prescribe remedies for the family's various deficiencies?

At the deepest level the refusal to define family seemed to be motivated by a tenacious resistance to morality itself, an assumed agnostic relativism so taken for granted that any overt reference to

moral criteria was treated as a dangerous atavism, rather like a recurrence of the bubonic plague. Those who sought a definition were suspected of trying to impose their own narrow view, probably religiously motivated, on the rich diversity of American life. It was thus possible to see such people as sinister "special interest groups" bent on perpetrating a "takeover," and it became not only permissible but almost mandatory to manipulate the process to prevent this from occurring. The underlying spirit of the conference, as officially organized and controlled, was a classic instance of the secularistic society, not only in the general exclusion of religious considerations (aside from a few token benedictions and moments of silence) but, more importantly, in the helplessly complacent assumption that one view is exactly as good as another.

The problem went a good deal deeper than specific issues, like abortion, which might be thought of as divisive in a sectarian way. It worked to invalidate anything which smacked of the kind of judgment which would, by implication, include some and exclude others.

A whole series of such judgments could be easily conceived. Is it better for people to enter into relationships with persons of the opposite sex rather than the same sex? Is it desirable that such relationships be based on mutual respect and affection and be enduring? Is it important that such enduring relationships be ratified and symbolized by a formal and legal commitment? Should such commitments be sustained permanently if at all possible? Is one of the important purposes of such relationships the procreation of children? Do those who bring children into the world have special obligations for their personal and moral formulation, and do they also possesss certain rights as a result? Should society seek to create an atmosphere in which commitments and responsibilities of this kind are supported and helped?

By its silence, and sometimes by its speech, the White House Conference was unable to give answers to any of these questions. Those who raised them too persistently were accused of disruptiveness, and the answers themselves were treated as unimportant.

The point is not, as it was often suggested, that to answer such questions would be to interfere in the personal lives of those who do not measure up to a certain ideal of family life. The point is that the conference was summoned mainly to recommend public policy. As was its destiny from the beginning, it found itself unable to say that the well-being of American society in any way depended on particu-

lar answers to these and other questions, nor that public policy should be aimed in one direction (for example, to support stable nuclear families) rather than another. To take certain extreme cases, if America should become a predominantly homosexual society, if the institution of marriage should virtually disappear from lack of use, if sexual promiscuity came to be statistically normal behavior, if couples mostly ceased producing children or neglected those they did beget, there would be few bases, in the results of the White House Conference, for regarding these developments as undesirable or seeking to reverse them. (It is indicative of the extent of the moral revolution that has occurred in recent years that, while those who would answer an unequivocal yes to the questions proposed above are now commonly dismissed as "fundamentalists," until a very few years ago the social sciences themselves overwhelmingly gave the same answers. Not only have several millennia of religious and moral wisdom been discarded, but also the insights of classical sociology and psychology.)

A revealing index of the studied moral neutrality of the conference is the almost total absence of a particular word from the reams of documents it generated — the word "divorce." Surely the incidence of divorce has something to do with the moral health of the family. When the divorce rate continues to rise steeply, when more and more marriages end abruptly, often with the effect of separating children from one of their parents at a crucial time in their lives, this ought surely to be of concern to those who take the well-being of the family as their primary task. Yet the subject was scarcely even discussed in the conference. By implication it too was treated as irrelevant.

In the mentality of the conference organizers, which was also, given its organization, the apparent mentality of a majority of the delegates at all three sessions, divorce was a taboo subject because of its implied judgment on people who have been divorced. (There was some amusing symbolism here. The original designated chairman of the conference was a divorced woman, who resigned when she was asked to accept a married man as co-chairman. President Carter then appointed as chairman Jim Guy Tucker, who has never been divorced but whose wife has been, thus presumably making him the right kind of compromise appointee.)

But the issue obviously goes well beyond anyone's possible desire to point accusing fingers at the divorced. Divorce, which is the

dissolution of a marriage, surely says something important about the condition of marriage. It is surely not a matter of indifference whether people remain married or not, whether or not children continue to live with both their parents, whether marital commitments are understood to be permanent in nature. Morality aside, there are important psychological and sociological issues here. Yet the demands of their zealous agnosticism required that conference delegates, highly educated though many of them were, render themselves oblivious to the most pressing kinds of questions.

The same studied insensitivity was practiced with regard to a whole range of elementary questions about family life. Had someone made a slashing frontal assault on the very idea of the family, charging that throughout history it has been a deforming and tyrannical institution deserving of annihilation, the conference would have had no moral or intellectual basis from which to meet the attack. What it had come to celebrate, insofar as it had any definable subject, was "people interacting with people," in whatever ways that occurs.

Many pro-family[2] people suspected that the conference was rigged to give support to avant-garde moral ideas like abortion and homosexuality — and there were certainly delegates who worked assiduously to that end, tasting success at least in the Baltimore and Los Angeles meetings, achieving a stalemate in Minneapolis. However, the organizers were probably sincere in saying, as they frequently did, that they hoped the conference would not get "bogged down" with such issues. Given the vagueness of the idea of family, it was inevitable, however, that both pro-family people and champions of "alternative life styles" would each struggle to give some discernible shape to the subject under consideration.

The real hidden agenda, however, was not moral iconoclasm, tolerable though such iconoclasm was to the organizers. Rather, it was an approach to social life ("family" in the broadest possible sense) which was studiously materialistic, largely economic, and fundamentally political.

Americans are now accustomed to the fact that their courts look upon religious division and disagreement with a peculiar horror, to be contained and sanitized at all costs. Pluralism is increasingly a misnomer in a society where genuine religious differences must be kept muted, and American secularism is now based not on the necessity of maintaining strict neutrality among all sects but rather on the

government's equal suspicion of all. Political, economic, racial, ethnic, or sexual conflicts, no matter how bitter or divisive they become, are officially taken as signs of a healthy democracy and as such are encouraged. Moral and religious controversy, however, is viewed as merely destructive. Thus the most fundamental questions about human existence, which inevitably intrude at every point of civilized life, cannot be confronted.

Moral and religious questions, no matter how obviously relevant to family matters, therefore had to be systematically excluded from the White House Conference. Its organizers, in setting forth their guidelines for discussion, gave no encouragement to anyone's possible belief that the family's crisis is essentially a moral one. Such an opinion was frequently expressed by citizens in attendance at regional hearings in each state, but even when such concerns were forwarded to Washington as reflective of the popular mind, they were passed over in silence as the national steering committee attempted to discern the *vox populi.*

Ostensibly religious people themselves played an essential role in this exclusion. The religious groups (including the United States Catholic Conference) which joined in the Coalition for the White House Conference on Families, a strange umbrella organization offering its public endorsement of the conference, did little or nothing to insure that religious and moral concerns were given proper weight. The chief Catholic spokesman, Auxiliary Bishop J. Francis Stafford of Baltimore, gave a speech last spring in which he affirmed that the primary questions were spiritual and asked whether the conference could transcend the materialism of American culture. Yet the same speech dealt almost exclusively with poverty and unemployment. At the Minneapolis meeting, where the percentage of overtly religious delegates was probably higher than at the other two conferences, any public mention of religion or God was likely to be met by someone's leaping up to proclaim, "Personally religion means a great deal to me. But it has no place in the public arena." (One of the reasons the USCC belatedly withdrew from the Coalition, after the Minneapolis meeting, was the fact that the Coalition urged the defeat of all resolutions perceived as having any kind of "sectarian" bias, including anti-abortion statements. Most were indeed defeated.)

Pro-family people tried to point out that the Supreme Court, in certain cases dealing with conscientious objection to war, has noted

the elasticity of the term "religion" and has declared that secular humanism enjoys that status. But careful thinking was not exactly characteristic of the majority of delegates, and the point was brushed aside unexamined. In Minneapolis a resolution requiring that the moral and religious values of parents be given equal consideration in the schools with the operative philosophy of secular humanism was defeated at an intermediate stage of the conference, although by a narrow margin. A majority of the delegates, Christian clergymen though some of them were, clung to their fond belief that secularism is a benignly neutral system of values.

An adequate analysis of the problems of the family would surely have to take account of the cultural phenomenon variously called the "me generation," the "culture of narcissism," or the "imperial self." Far from being a reactionary and sectarian ideal, this phenomenon has been noticed quite widely by essentially secular commentators, like the socialist historian Christopher Lasch.

In this view of society, what has happened to the family in recent years is merely one aspect of a much larger phenomenon — a general breakdown of a sense of responsibility, as people have come to regard it as their birthright to experience "self-fulfillment," and have systematically, and with encouragement from many of the principal organs of the culture, abandoned familial and other responsibilities which are felt to be too constricting. Men and women refuse to make permanent commitments to each other and often refuse to have children. The care and training of children are increasingly passed to outside agencies. To an extent such things have always gone on. What is new in the past two decades is the fact that they have not only become respectable, they have become in certain circles almost mandatory. The now deeply-ingrained expectation of self-gratification virtually insures, in many cases, that the spirit of self-sacrifice necessary to all successful human relationships cannot be summoned. The General Mills Corporation circulated to each delegate the results of extensive surveying the company had done of family members, demonstrating among other things the existence of "new-breed parents" who specifically reject the idea of sacrificing for their children. The conference never so much as discussed the implications of this.

A corollary to this is the kind of moral revolution which has taken place in America, which has had the effect of creating a system of values, especially in the sensitive area of sexual behavior, deeply at

odds with traditional values which are themselves overtly family-centered. Values being purveyed in the mass media, and increasingly also in the educational system, are now at odds with traditional values. The result is to weaken the moral authority of the family quite drastically and to set up a system of values which competes with parents for the allegiance of their children. Not only does this weaken the entire fabric of family life, it often throws children into intolerably confusing situations and robs them of any firm system of beliefs by which they might lead their lives. Rather astonishingly, the conference also failed to address itself to questions like the rising rate of adolescent suicide.

Even if the above analysis is not accepted in its entirety, it is obvious that it contains important insights into the nature of the crisis facing American families. But it is also a perspective which was fundamentally taboo to the kind of people who organized and dominated the White House Conference. By implication the family was denied to be a primarily moral entity, and moral perspectives on the family were implicitly declared irrelevant. Once again the result was willful stupidity fostered by ostensibly intelligent people — they had to pretend not to notice glaring features of the subject they were discussing, because otherwise the discussion would have been taken in directions where they did not wish to go.

Many delegates were at best ambivalent as to whether the family should be treated as having any kind of moral authority at all. The closest the conference came to recognizing this authority specifically was at Minneapolis, where a comprehensive resolution concerning parents' primary authority for the education of their children was, by a close vote, discarded in favor of a vague and innocuous affirmation of parental "participation" in the formation of educational policy. A resolution requiring parental consent to enroll children in morally controversial educational programs was defeated by one vote, the margin of defeat being provided by a Jesuit priest from Missouri, Father Michael Garanzini.

Both in Baltimore and Los Angeles the conference passed vague resolutions expressing concern over the effect of the media on children, which was as close as the conference came to acknowledging the possibility that the culture itself may be anti-family, or that a broad cultural crisis may have something to do with the family's problems. However, the Baltimore resolution concerned itself mainly with racial, ethnic, and religious stereotyping, and cautioned that

the media should give favorable portrayal to the family "in its diverse forms," the favorite code expression of those without much affection for the traditional family.

As could have been predicted, the conference found it difficult to identify religion as an important source of the family's strength. The Baltimore meeting gave it the barest of nods — a twelve-word statement easily lost in the welter of longer and more passionate affirmations. The Minneapolis meeting, in a close vote, rejected a motion requiring that theism be given equal weight with secular humanism in public institutions, especially schools. However, the same meeting rather inconsistently passed another resolution opposing the imposition of secular humanism on public institutions. It ranked fiftieth out of fifty-six issues on the meeting's list of priorities.

If, however, the churches were defeated at the conference, they were for the most part willing victims. With a few exceptions, those who were prominently identified as representatives of the churches either actively supported the secularist agenda or failed to take a firm stand against it. One Catholic priest, for example, Father Thomas D. Weise, vicar for charities for the Diocese of Mobile, was enthusiastic in his praise of the Baltimore meeting and described for the Washington *Post* how he had reached an agreement with Betty Friedan on the subject of abortion. At the Minneapolis meeting he gave public witness by telling the delegates that "this has been the most exciting experience of my life since I first fell in love." Perhaps most remarkable was the fact that the churches themselves did not try to insist that the conference needed to recognize the moral and religious dimensions of the family. An official interdenominational statement prior to the conference included the familiar warning about a "takeover" by "special interest groups" and then concentrated almost exclusively on the economic and material problems of family life. It was signed by official representatives of the Roman Catholic, United Methodist, Southern Baptist, and American Baptist churches and the Lutheran Church in America. Whatever visible religious strength appeared at the conference came mainly from evangelical Protestants (and some Catholic anti-abortionists) acting as individuals.

Often during the course of the conference the strange realization dawned that the family was being discussed, and its future planned, by people who were its enemies. What was for some people evidence of family pathology — divorce, separation, unmarried cohabitation,

homosexuality, estrangement of children from parents — was, for these others, evidence of hopeful progress towards liberation, and the conference refused to adjudicate between these two views. Had someone proposed that public policy encourage incest, the conference would have found it difficult to find a basis on which to take a stand.

Yet in the end this did not induce immobility in the deleates, as might logically have been expected. The carefully tended agnosticism on basic questions merely served to inspire a greater certainty and sense of righteousness about less ultimate issues. For the real agenda of the conference, intuitively shared by organizers and a majority of delegates, was based on an agreement to treat the family essentially as an economic unit, to define its pathologies as almost entirely economic in nature and therefore susceptible to economic cures. The hidden aims of the conference were in the direction of stimulating political support for new or expanded government programs addressed to all kinds of economic needs. In this context the word "family" was merely a convenient propaganda label attached to favored programs, most of which could have been formulated without any particular references to the family as such.

Conference rules specified that no more than half the delegates were to be professionals, a category defined as those who acquire more than half their income from activities related to family matters. This in itself seemed an excessively high ceiling. At public hearings in Missouri one witness suggested that the conference could be most productive if the organizers tried to identify men and women who had been successful in raising their own families, and drew on their own expertise. It was the kind of advice that the organizers did not want to receive, however. No one knows for certain what proportion of the delegates were professionals. What is certain is that a rather high proportion were people who would benefit, in some tangible way, from new or expanded government programs of various kinds. Educators, social workers, employees of private social agencies, medical personnel, and various other professionals were conspicuous at the three meetings. (Representative of the broad pattern were public-school teachers and administrators. On every troubled point of family life the delegates reached for the predictable liberal solution —more and better "education." The scope and influence of the schools would increase enormously if every resolution were taken seriously. The Baltimore conference called for support of the public schools, conspicuously omitting mention of the

private schools. At Minneapolis a resolution affirming parents' rights to educate their children in private schools "without financial penalty" was the casualty of a close vote.)

What might be called the professionalistic orientation of the conference helps account for the position of the churches. Many clergy seem now to have a professionalized mentality which causes them automatically to gravitate towards other professionals rather than towards their own parishioners. They share the unexamined assumption that more and better professional services are the solution to all problems, and the general professional aversion to making moral judgments. More tangibly, many church agencies are beneficiaries to one degree or another of government programs and are being drawn more and more into the public orbit, however private they may still be in theory. The National Conference of Catholic Charities, for example, was represented at the conference by its executive director, Monsignor Lawrence Corcoran, who was critical of the pro-family movement. Significantly, Catholic agencies officially withdrew from the Coalition for the White House Conference on Families not only because of its stand on abortion but also because of its opposition to public aid to parochial schools.

Not surprisingly, the greatest degree of consensus at the conferences came on non-controversial but obviously important problems like drug and alcohol abuse and care for the aged, although with some disagreement over how these problems were to be approached. The sharpest battle lines were not between liberals and conservatives as traditionally understood, that is, in conflict over economic issues. Liberal resolutions on economic questions tended to pass by larger margins than resolutions having controversial moral implications.

At Baltimore the fifteen issues given highest priority by the delegates involved: drug and alcohol abuse, the care of the aged, parental work schedules, taxation, child care, health, care of the handicapped, unemployment, family violence, adoption and foster care, education, and teenage pregnancy. The list at Minneapolis was not appreciably different. In both instances delegates showed a propensity for identifying tangible, physical problems ostensibly susceptible to equally tangible and physical solutions requiring heavy public financing. Obviously, no one can be indifferent to problems like drug abuse, care of the aged, or the plight of the handicapped. But it is worth pointing out that such problems are not always family problems, involving as they often do individuals who do not belong

to any family. The eagerness with which the conference identified them as of the highest priority sprang not only from the relief of discovering things which were non-controversial but also from the willingness to use the word "family" simply as a slogan under which to file all sorts of perceived social needs.

Since the conference chose not to treat the family as a moral institution, it was perhaps inevitable that it would ultimately fall back on an essentially mechanistic model. Thus the documents are studded with terms like "stress," "dysfunction," "support," "reinforcement," and "system." Apparently, the majority of delegates were most comfortable with the belief that the family is a complex mechanism that fails mainly because of impersonal forces which press on it at particular points. If the pressure can be relieved or redirected, if countervailing pressure can be established, or if pressure points can be reinforced, the family will once again begin to function correctly, without any regard for troublesome questions about the role of moral values and human choice in its life.

The inadequacies of the materialistic model are so obvious that it cannot be supposed that intelligent people fail to perceive them. For example, last winter a sociological study out of Rutgers University confirmed what unsystematic observation had already concluded —teenagers in affluent American suburbs often suffer from "malaise" and "alienation" and seek relief in drugs and promiscuous sex.[3] But the White House Conference assumed that most social problems are traceable to poverty and those which are not are attributable to inadequate social services or inferior education. Yet on these assumptions it is impossible to explain why the affluent suburban family is as much beset by troubles as the poor urban family. Failure to address the question was not merely a sin of omission on the part of the conference, however. As Allan Carlson has observed, ". . . the liberal family-policy agenda cannot overcome — for in some ways it actually reflects — the shallowness and confusion of prevailing cultural norms and the personal hedonism dominating American life."[4] The White House Conference gave Americans little reason to suppose that any of their problems are in any way their own fault or amenable to responsible, willed decisions on their part. Instead they are encouraged, at whatever social level, to think of themselves as passive victims of a process from which they will be rescued by better public programs. In a sense the conference, reflecting the dominant ideas of an avant-garde American culture, offered people

the bribe of non-responsibility — no matter what dubious personal choices they may make with whatever disastrous consequences for their families, there will be publicly supported programs to rescue them. (Thus, for example, there need be no discussion of the delicate and explosive question of whether small children need the attention of full-time mothers.)

Given the proclaimed American "shift to the right," and given President Carter's own professed concern for the health of the family, how did the White House Conference arrive at the point it did? How could it go so contrary to the perceived mood of the nation? The answer is both simple — the conference was stacked —and deceptively complex. It repays close attention because it has implications for the whole future of American democracy.

There were various ways in which its organizers could control the conference's drift — by the membership of its national steering committee (in one count only *one* member out of forty-one was unequivocally pro-family), by the guidelines issued for public discussion, by the selection of state steering committees, by the choice of delegates, by the state steering committees' readings of the summaries of public hearings (in Missouri, a strong anti-abortion state, the state committee chaired by Father Garanzini arbitrarily ignored all testimony about abortion), by the appointment of "facilitators" and section chairmen at each of the three national meetings, and finally by the meeting in late August when the resolutions were to be collated in Washington and a final report issued. Anyone unable to effect a predetermined outcome through this process would have to be a poor politician indeed.

So many pro-family complaints centered on the process of selecting delegates that it is worth noting a few of the more egregious examples of manipulation:

- Besides the delegates from each state, the national steering committee appointed "at large" delegates who had voting rights at each of the three meetings. At Minneapolis, for example, there were 119 "at large" delegates out of a total of about 630.
- The governors of Indiana and Alabama, disapproving of the apparent drift of the conference, decided not to send delegations. The national steering committee then in effect appointed delegations of its own choosing from both states.
- In seven states — California, Kansas, Maine, North Carolina, Pennsylvania, South Carolina, and Texas — none of the delegates

were elected. All were appointed either by the governors or the state steering committees or, in a few cases, chosen by lot. Originally the conference rules specified that a minimum number of delegates be elected. However, after an early pro-family victory in the Virginia elections this requirement was dropped.

- In Tennessee voting was restricted to 200 specially-selected delegates nominated by various organizations. Pro-life and pro-family organizations complained that they did not receive notices until the deadline for nominations was past.
- In the state of Washington an anti-abortion woman was twice elected chairman of the state delegation by mass meetings of interested citizens. However, the state steering committee not only overturned her election but refused even to certify her as a delegate. Eleven of the fifteen members of the committee were state employees and four were associated with Planned Parenthood. An appeals court judge recognized serious irregularities in the procedures but ruled that he had no legal authority to compel fairness.
- In Kansas, after first announcing that delegates would be elected at a state meeting, the steering committee instead had names drawn out of several boxes. As critics pointed out, no one except the committee was sure what names were in the boxes.
- In New York City a nominating committee culled forty-eight names from an original list of 520, and a member of the committee charged that people of pro-life or pro-family sympathies were systematically eliminated. Voting, held at Fordham University, was restricted to those who had applied in writing and been given authorization by the steering committee on the basis of whether there was sufficient room. Pro-family groups again charged that they were shut out. As a result, elected delegates included former officers of the National Organization of Women, Catholics for a Free Choice, and Lesbians over Forty; the attorney who argued the case against the Hyde Amendment in federal court; and the wives of various pro-abortion politicians.

The importance of these manipulations goes beyond ordinary political maneuvering, since it was the more-or-less openly stated position of the organizers of the conference that majority rule was unacceptable and that a "fair" representation of delegates had to include a noticeable proportion of people outside the normal patterns of family life. Once established, this rule easily translated itself in

some cases into a virtual exclusion from state delegations of people with traditional family perspectives.

Someone has remarked that there is nobody so self-righteous as a bishop when he is doing something trendy, and the comment seemed appropriate to Jim Guy Tucker at the Minneapolis meeting, when the unrepresentative character of much of the delegate membership was challenged. Ordinarily cultivating a relaxed and affable manner, Tucker summoned up all the reserves of his Southern Protestant heritage to give the objector a stern lecture on justice, implying that the criticism was aimed at black representation and the critic was probably a racist, although Tucker and everyone else knew that the point of the objection was not racial at all.

Tucker's reference to race had the effect of recalling one of the interesting ironies of the situation — although there was a general assumption by trendy white liberals that the blacks stood with them on their agenda, at least in Minneapolis there was a notable representation of black evangelical Protestants, who were firmly pro-family and refused the condescending implication that their interests were solely economic. Everyone recognizes the importance of evangelical religion in the black community, and these were people who insisted that it be taken seriously. (Predictably, the Minneapolis televison stations, given the opportunity of showing a dialogue about abortion between a black male pro-abortionist and a black female pro-lifer, chose instead an exchange between the black male and a white, male, Southern pro-lifer. To have shown the first exchange would have taken too many of the stereotypes which the media have cultivated for so long.)

The symbolism of Tucker's chairmanship extended beyond the ambiguity of his status with respect to divorce. Like "Jimmy" Carter, he is a Southerner whose very name and accent seem to identify him solidly with traditional, down-to-earth, rural American values. But the irony has not been sufficiently noticed that, whereas George McGovern was, perhaps prematurely, tagged with "acid, amnesty, and abortion" in 1972, President Carter has been able, precisely because of his reassuring Southern qualities, to preside over the greening of American public life. It is through his administration that the counter-culture has come into its own. The White House Conference has been one of the means by which this has been effected, and Jim Guy Tucker was a serviceable instrument for this purpose.

Despite the strong traditionalism and family-centeredness of Hispanic culture, most Hispanic delegates to the conference seemed to support the anti-family agenda. Black delegates were probably expected to do the same but did not always fulfill expectations. (Polls consistently show, for example, that blacks tend to be more opposed to abortion than whites.) What ethnic minorities were invited to do, in the conference as well as on the larger political and social scene, was to accept the leadership of the avant-garde white middle class and allow themselves to be coopted for its agenda.

This, finally, was the real point of the manipulation of the conference. It was to ensure that those people who are assumed to represent the wave of the future would dominate its proceedings. At bottom the conference assumed that the traditional family is passing out of existence and, while it was not exactly prepared to celebrate that event, it was nonetheless determined that no time be wasted in mourning it. The political implications of this are far-reaching and require nothing less than the abolition of truly democratic procedures, lest "backward" people retard progress. The White House Conference was an example of how Congress would probably be chosen if certain influential people had their way. The growing reliance on the courts rather than the legislatures is, of course, a major instance of the same thing.

Ostensibly the beneficiaries of the nuclear family's decline are the extended family, the single-parent family, the childless couple, the unmarried couple, possibly the homosexual couple or the commune. But the real beneficiary, as most delegates knew, dimly or sharply, is the government. In the end the White House Conference was called to ratify the process by which the state assumes most of the functions the family has traditionally discharged. The vast majority of resolutions at all three meetings called on government to take some kind of aggressive action and, although there were occasional warnings against government action detrimental to the family, most criticisms of government were for its failure to act.

Insofar as the majority of resolutions were economic in nature, this was a familiar pattern. It was the relatively few which recognized that not all problems are economic that occasioned the most controversy and alarm and seemed to promise the greatest threats to the family's independence.

The scenario by which government intervention in private life is justified is by now a familiar one. First, a certain kind of social

problem is identified. Either it is a hitherto unrecognized problem or a problem whose seriousness is alleged to have been greatly underestimated. Through professional organizations, civic groups, the media, the churches, etc., the prevalence of the problem is endlessly emphasized. Something like a sense of urgency is finally created. Next the complexity of the problem is also asserted. Ordinary measures will not do, especially measures which attack symptoms rather than causes. A massive, systematic, highly sophisticated attack must be mounted. A large part of the problem is said to be due to public ignorance. Consequently a massive "educational" campaign — through the media and the schools — must also be mounted. People's attitudes towards the problem must be changed. Often erroneous popular attitudes are said to be the result of some deeper-seated misconceptions about the nature of reality, which must also be changed. Finally, because of the complexity and massiveness of the problem, only governmentally-sponsored programs are deemed sufficient. It is the government which alone has the resources to finance the programs, coordinate the efforts on all levels, certify those who will administer the programs, and evaluate the results.

The tragedy of the situation is that the problems themselves are usually real enough and cry out for some kind of action. However, the good will of an awakened public is then exploited, first, to make people think that they have no power themselves to solve their problems, and second, to induce them to put themselves passively into the hands of increasingly intrusive bureaucracies.

A few randomly selected issues will illustrate the point:

• *Child and spouse abuse.* The occurrences are real, and shocking. There are unquestionably times when government intervention is justified. However, it takes no fevered imagination to realize that, if the government chooses to become systematically alert to intra-family abuse, it will inevitably claim for itself far-ranging powers of intervention. The very definition of abuse will continually expand and will be the means by which particular philosophies of child-raising will be imposed by law. What, for example, is psychological abuse? Does it include parents who are deemed too rigid, too backward, too authoritarian, or too moralistic in their attitudes and are therefore conceived as damaging their children?

• *Promotion of health.* Health too is an infinitely elastic concept. Already it is interpreted as implying the "right" of minor children to contraceptive and abortion services, no matter what their parents'

wishes. The new emphasis is on "preventive" health care, including preventive psychological care. If health is defined, as it sometimes now is, as the total physical and mental well-being of the individual, what will it not include? Not only, for example, will children be deemed to have a right to be "sexually active," the question will be seriously raised whether in most cases such activity is not a prerequisite for healthy development. It will become the duty of the state to promote and facilitate such activity, as well as to inculcate in children the proper kinds of "flexible," "open," "tolerant" attitudes towards all kinds of human behavior.

- *Minority rights.* Such rights always go beyond merely a legal guarantee of non-discrimination in employment, housing, education, or political participation. Inevitably they come to mean also that the government must actively promote minorities' well-being, and this means among other things that it must seek actively to promote tolerance. This in turn means that the power and authority of the state, especially through its schools, will be used to make "alternative life styles" like homosexuality seem normal, natural, even desirable. Private agencies like religious schools will be pressured into conforming to the same mold.
- *Help for distressed families.* Economic help is one issue, the merits of which have been debated for many years. However, the White House Conference also envisioned family members as lacking the basic skills to live their lives successfully. Several resolutions called on government and private agencies to help them acquire such skills, in parenting, in personal relationships, in preparation for marriage, etc. It once again takes no great imagination to see how such programs would quickly become the means by which particular values relating to marriage, parenthood, or sexuality would be in effect frozen into bureaucratic practice, actively promoted by the authority of the government, even embodied in law.

Perhaps most revealingly, delegates to the three meetings showed almost no propensity for thinking that government itself may often be the enemy of the family,[5] and no inclination to scrutinize the actions of public agencies or the courts (for example, in recent cases allowing children to "divorce" their parents for sometimes trivial reasons). Where government was criticized it was almost always for doing too little. There was, to be fair, talk about government's developing "family impact" statements which would calculate the probable effects of public policies on family life. But if no one can

say what a family is and if no one can meaningfully distinguish family health from family pathology, such statements will have little meaning. They could even be themselves a further means whereby government imposes its own notions of family life, contrary to those of its citizens.

The refusal to define the family is not unrelated to the ominous future which the White House Conference portends. As the distinguished historian of civilization Kenneth Clark has remarked, "authoritarian governments don't like dictionaries. They live by lies and bamboozling abstractions, and can't afford to have words accurately defined."[6] America is far from having such a government at present. However, one of the most dismaying aspects of the White House Conference was precisely the sense that so many delegates, chiefly those in the "helping professions," live their lives amidst words and jargonized phrases which float freely, endlessly combined and recombined to mean whatever their users want them to mean.

The family, throughout history, has been the chief zone of personal privacy and freedom in society, the place where the most intimate bonds of personal devotion and loyalty are forged, bonds stronger than any the state itself can claim. It was the pathos of the White House Conference that most of the delegates seemed both unaware of and indifferent to this fundamental reality.

NOTES

1. "Families, Sex, and the Liberal Agenda," *The Public Interest*, 58 (Winter, 1980), p. 66. Reprinted in *The Human Life Review*, Vol VI, no. 3, Summer 1980.

2. The term " pro-family" was disputed, on the grounds that all participants in the conference were pro-family but simply had different understandings of the family. However, the self-styled pro-family people were justified at least to the extent that they were the only group at the conference explicitly committed to the conventional definition of the family as people related to one another by blood, marriage, or adoption.

3. Ralph W. Larkin, *Suburban Youth in Cultural Crisis* (New York: Oxford University Press, 1979). The work is vitiated in part by the author's trendy and unproven political explanation of the phenomenon.

4. "Families, Sex, and the Liberal Agenda," p. 79.

5. See Hitchcock, "Beyond 1984: Big Brother versus the Family," *The Human Life Review*, Vol. VI, no. 1, Winter 1980, pp. 54-72.

6. *Civilization, a Personal View* (New York: Harper and Row, 1969), p. 257.

Why Love Pays

Ellen Wilson

"A man, I fancy, is after all only an animal that has noble preferences."
G. K. CHESTERTON

IN FRANCE, THE birthplace of liberté and egalité, a female author-philosopher is debunking the "myth" of maternal instinct. Elisabeth Badinter's *Love Plus: The History of Maternal Love* documents the unmaternal parenting practices of 18th century aristocratic Frenchwomen. This was a time when intelligent and socially-ambitious Frenchwomen shipped their young off to country wet nurses so that they might establish salons and invent epigrams. It is this lapse from the maternal ideal which has disillusioned Elisabeth Badinter as to the compelling nature of a mother's love. Given the opportunity, she suggests, what mother wouldn't choose Voltaire over the nursery. To maintain — and attempt to impose — the contrary is to cooperate in that Tom Sawyer ploy by which males have sought to escape equal responsibility for their young. In short, because she finds evidence that there is "no maternal instinct which exists always and everywhere," Elisabeth Badinter concludes that it might as well exist at no time and nowhere.

Yes, and on equally specious reasoning she might argue that there is no survival instinct that exists always and everywhere. Firemen climb into burning buildings to rescue strangers, the despairing occasionally commit suicide, Sierra Club members brake for squirrels. But despite these and similar exceptions, we recognize that by and large people do not capriciously risk their lives.

Similarly, the evidence for an innate heterosexual sex drive in human beings is abundant, though there are exceptions to it. We recognize the general utility of such an attraction for the purpose of propagating the species; we classify this as an instinct when we encounter it among the lower animals; we grapple with the social and ethical problems it raises for human beings. Yet we recognize that it can be controlled or rechanneled. We observe members of our species who experience homosexual rather than heterosexual promptings. We further note the existence of a wide range of perver-

Ellen Wilson is a contributing editor to this review; she expects to publish her first book soon.

sions and abnormalities in sexual practices. For all that, the innate nature of the heterosexual sex drive is undisputed.

And such is the case with the maternal instinct, so far as we can observe it. We see the faithfulness with which a mother cares for her young among the lower animals, we find the notion of such an instinct or innate predisposition to maternal behavior reasonable and consistent with the overwhelming body of evidence from human societies. We are not convinced otherwise by, for example, studies of eccentric groups of South Sea Islanders who reverse sex roles, since their news value lies precisely in their deviation from common practice. And so, when Elisabeth Badinter tells us there is "no maternal instinct which exists always and everywhere," she tells us no more than that man differs from other animals in his capacity for making choices contrary to his "instincts."

One of the distinctive characteristics of human beings is the ability to buck internal programming, whether for good or ill. Instincts can be resisted, can be temporarily or permanently frustrated through deliberate reordering of values, can be "reversed" or perverted by environmental or genetic problems, or by the conscious choice of evil. In man, therefore, instincts act only as internal promptings, suggestions, or incitements to action, varying in intensity, duration, and frequency of occurrence, but susceptible in some measure to control.

The question is, what kind of control we should exercise. The Badinter book does little more than leave us with the old human problem of what to *do* with all this internal activity — urges, desires, predilections, sudden impulses. When does self-fulfillment or self-satisfaction collide with higher, less egotistical claims? Is the "natural" thing to do always the right thing to do? And what is natural —that which occurs "always and everywhere" in nature, or only usually, or occasionally? Even "maternal love" can be perverted. Each of the mothers who came to Solomon claiming the surviving child as her own was motivated by a kind of mother love: the "false" mother mourned her own dead child so much that she wished to steal another's child. In *The Great Divorce*, C. S. Lewis shows the jealousy and possessiveness that can transform maternal love into something monstrous, precisely because it is so very powerful and "natural."

Well, let us pretend for a moment that a maternal instinct does not exist among humans, or exists no longer, or exists vestigially, to

no purpose, as a sort of psychological appendix. In that case we would still have to consider how human young should be raised and who should undertake which responsibilities. Here we approach the motives behind Elisabeth Badinter's book, as well as the other books and articles written by feminist writers trying to discredit traditional child-rearing roles. The standard is liberté and egalité, the drive behind the effort is resentment at confinement to the nursery merely because of biology. There is an in some ways understandable suspicion of an instinct "inflicted" upon women which "does them no good" — which, unlike the survival instinct, for instance, is for the sake of *others*. Not only is it seemingly useless to women, but it usually interferes with activities considered more self-fulfilling. In short, to feminist eyes maternal instinct is often self-destructive — a *non*-survival instinct which is likely to render life poor, nasty, brutish and short. Worst of all, if it *is* innate, motherhood falls under the category of involuntary servitude. Destiny, and not biology is the demon term in "Biology is destiny." Feminists are the free-choice party, and that means the egalitarian party, since one sex shouldn't be allowed to make freer choices than the other.

The egalitarians live in terror lest any variation in the condition of male and female prove a disguised effort to buy off, patronize, or subdue the female sex. Only expressions of identity will allay their fears. One equals one indicates an egalitarian relationship. One plus three equals four arouses suspicion: what if it would be more satisfactory to have the four all together, instead of spread out over time? Egalitarians are overwhelmed by the vexing problem of comparing apples and oranges. If the sexes assume distinct roles, how is one to quantify and compare their separate rewards and sacrifices, or the ratio of self-fulfillment to self-sacrifice? Surely it is much safer not to recognize sexual limitations, roles suited to male or female, sex-linked aptitudes, partialities or preferences. Isn't it more politic, after all, to cultivate a blindness to gender?

To equate equality with identity is to negotiate around the perilous question of interdependency. What made the woman-on-a-pedestal model particularly noxious was its elevation of dependency (in women) to a virtue; consequently, we are apt to consider any form of dependency bad. Perhaps our War of Independence has left us with a stronger than ordinary distaste for political relationships of dependency, and perhaps this historical accident has blurred the distinction between subjection and those natural — even necessary

— dependencies that issue from physical, mental and emotional limitations. It is certainly true that, increasingly in this century, we have come to assume that "unequal" relationships are unjust relationships.

No single class of people is more uniformly dependent than children. In an age idolizing independence and equality, the mother/-ild relationship will be construed by egalitarians not merely as demanding or displeasing, but as one of the least satisfactory relationships possible. Hence the "children's rights" movement, with its efforts to more nearly equalize parent/child relations. For the more rights the child acquires, the more "equal" he will be to his parents in all but a material sense. For the right to make important decisions affecting one's future — or to checkmate those of one's parents — is the key to child emancipation, partly because the options accumulate so insidiously, as the barricades go down one by one. There are the increasing involvement of the child's judgment and preferences in child custody suits, the contraception and abortion rights of older children (these presuppose the right to determine when and how to begin sexual activity), even — in one blueprint for a voucher plan for school tuitions — the proposal that the child gradually assume the right to choose his own school.

One reason the children's rights movement has met with comparatively little resistance and has seemed relatively uncontroversial is that many of its demands appear reasonable, and some seem to involve no more than a codification of private practice. (Another reason is that children's rights advocates are often counted on the "pro-family" side — they like children, don't they? — and this tends to engage sympathies.) It is only reasonable to consult children in custody suits, to take their interests and preferences into account when choosing schools for them — or day camps, movies, or restaurants. What is not very reasonable is to enshrine these as rights to be granted all children indiscriminately — and by the state. Children's rights proponents tend to dwell on the rights of personal autonomy rather than the maturity which has merited these rights. Thus, while parents grant *privileges* as rewards for good behavior, or in recognitiuon of developing judgment and maturity, children's rights proponents speak of — rights. In other words, they treat children as miniature adults, whose liberties have been curtailed by means of a largely indefensible discrimination.

The effort to bridge the gap between child and adult by denying it

exists can only render parenthood more frustrating to the egalitarians by showing how far reality veers from the "ideal" of an equal relationship. Once accept the paradigm of a fully equal and independent relationship between consenting "adults," and anything short of that ideal is bound to perplex and annoy.

Of course the sensible approach is to recognize that the parent/-child relationship is unequal by design, is *founded* on inequality, derives its sole justification from inequality. Children, through no fault of their own, are smaller and weaker and stupider — or at least more ignorant — than adults. Not only must their physical needs be provided for, but they must be instructed and civilized — even disciplined — as well.

To recognize how disquieting this truism may be to some is to realize how strong the thirst for equality has grown. Family relationships, discussed in terms of discipline and the doling out of weekly allowances, assume an uncomfortable resemblance to the British Raj in India, complete with Kipling and the unpleasant odor of paternalism. Yet, as any sane person understands it, parenthood is a wonderful thing, however exhausting or even demoralizing. Need on the one side is being satisfied by a loving abundance — of care and common sense, if not of material goods — on the other side. And the meeting of the child's needs satisfies a complementary need in the parent, not only to be loved, but to be entrusted with great responsibility, to become the source of life in another human being, to be the conduit of all that endears life to him.

It was C. S. Lewis who, in *The Four Loves*, distinguished between Need-love and Gift-love, and objected to our modern denigration of the former. He defended Need-love with realistic common sense: "Since we do in reality need one another ('it is not good for man to be alone'), then the failure of this need to appear as Need-love in consciousness — in other words, the illusory feeling that it *is* good for us to be alone — is a bad spiritual symptom; just as lack of appetite is a bad medical symptom because men do really need food."

Since *The Four Loves* was written, we have made the logical progression from denigrating Need-love to belittling Gift-love. I call this "logical" because, if Need-love is unworthy, and the behavior of the needy one parasitic, then it cannot be wise to encourage such behavior by pandering to it. Even when the need is genuine, the "needer" will be seen as sapping the strength and dispersing the

energies of the giver, as deflecting attention from those pursuits which could bring the giver greater satisfaction and fulfillment. Hence both Need-love and Gift-love must be unhealthy if one of them is: the sadist is as far from mental health as the masochist.

Bearing this in mind, we can see why feminists read patriarchal history as the largely successful effort of males to impose patterns of Need-love and Gift-love upon their relationships with women — patterns designed to make women financially and psychologically dependent upon men. These same patterns have coerced women into becoming "givers" of time, labor, children. This, they assert, is what lies behind the woman-on-a-pedestal role. And this exploitation theory of history is what lies behind Elisabeth Badinter's exposé of the myth of maternal instinct. If it *is* mythical, then society, which has almost always handed the mother primary care of her child, must have imposed this burden dishonestly, artificially — the *male sex* must have imposed it, for why would women have imposed it upon themselves? The child must be looked after by someone, and given this necessity the Independent is liable to view children as hot potatoes passed from one sex to another (Ms. Badinter envisions a future attempt to saddle males with an equally-exacting paternal instinct which, she says, would be equally fictitious). This is a singularly joyless and loveless way of understanding family relationships — as though they involved a Darwinian struggle for survival, or presupposed a Hobbesian State of Nature, with each family member warring against the rest, and with the traditional familial order representing one — but only one — possible social contract.

To the average loving mother (or father), anxious to bring her child to social and intellectual maturity, and midwife his passage into society, the Badinter thesis must seem rather silly. Even sillier are the well-meaning efforts of some researchers to scientifically prove the instincts she denies, as evidenced by this quotation from a *Time* magazine review: "Scientists have established that the sound of an infant crying affects a mother by stimulating the secretion of the hormone oxytocin, which triggers nipple erection for nursing." Those who are not convinced by the evidence all around them of maternal love, are unlikely to be moved by the wonderful effects of oxytocin. And for the rest of us — the oxytocin is superfluous. Four centuries of playgoers and high school students have understood effortlessly that Lady Macbeth is an unnatural mother. Shakespeare

was as certain of this as he was that his audiences would share his certainty.

But an idea may be influential even when it is false. So let us consider for a moment not the Badinter thesis — it disintegrates as soon as it is handled — but its implications. The clamor for sex-blindness usually masquerades as a call for diversity ("Why should all women be housewives?"); in reality, it is a demand for sameness. If we are to be robust, emotionally-independent human beings, if we are determined not to be deflected from higher occupations or more gratifying activities by the importunate demands of child (or spouse), then, like subsistence farmers, we must assume responsibility for the full range of our needs. It may be argued that Independents are not thereby rendered anti-social — they may be all for parties, for crowds and rallies, for reading groups and cultural events. But in defining man as a social animal, Aristotle was drawing attention to one of his primary *needs*: man *needs* others to compensate for an almost limitless variety of deficiencies, including the lack of recipients for his own gifts. Man needs others as surely as Badinter's Talleyrand needed his mother — as Talleyrand's mother needed proper outlets for her Gift-love. For one of the reasons we so badly need outlets for our love is to save us from becoming, by default, the chief recipients of our own Gift-love.

A distillation of the alternative philosophy was recently provided in an interview with Stefanie Powers in *T.V. Guide*. She and William Holden held their relationship up as a model of independent love — a love defined more in terms of what it was *not*, than what it was. What it was not was constricting, confining, demanding, jealous of time or other interests. Miss Powers then expressed a very negative view of relationships based on need, and maintained that the only mature love was that which both partners entered "freely," without the base compulsion of need.

Now the reality, as C. S. Lewis suggested, and as our own common sense should tell us, is that *all* human relationships are based on need, whether great or small, high or low. Further, there is nothing necessarily ugly or ignoble in this. In fact, our most cherished and valued relationships are those which we "need" most: those which satisfy our highest and most human needs. On the lowest level, of course, are the material needs — gratified by the farmer, manufacturer, repairman. As we climb the scale individual interests, abilities, and character traits become more and more im-

portant. This is another way of saying that we need not just commodities which can be supplied by anyone, but particular people. Our deepest attachments are to those people who seem to summon up the very needs they satisfy, who become irreplaceable not only because they offer us something very special — their unique brand of love — but also because they require an equally individualized love from us in return. We need these people to, so to speak, develop our full range, for only a variety of people can draw us out, reveal our likenesses and contrasts, "personalize" us. Anyone trying to convince himself that such relationships are "free" is taking great liberties with the language, for though they can be liberating, they are not bought cheaply.

Of course, it is true that in one sense we don't "need" this or that person. It would be possible to do without them, and we are too often put to the test. Still, there exists on one side the human desire for a certain quality of companionship, certain kinds of emotional support, empathy and exchange. And on the other side is ranged the small group of people who can provide those services. To undervalue that precious group is to risk forfeiting them for the sake of a foolish pride of independence — of *self*-possession. In such a state we inflate our own value, and delude ourselves into believing that the emotionally strong do not need other people. But the reward of such self-deception is a monotonous diet of self, and the progressive diminishing of one's ability to love and receive love generously.

At the same time, the Independent is likely to become intolerant of others' needs. If self-sufficiency is not only a higher condition than dependency, but the only healthy condition, then the emotionally dependent should be taken out of their lethargic indifference to their state. And they should be prevented from imposing upon the Independent and begging alms from his reserves of emotional security.

This sort of attitude, even in diluted form, must affect even temporarily trouble-free relationships. An emphasis on self-sufficiency must surely affect attitudes towards the nature and permanence of marriage, for instance, since it neutralizes vows of mutual support in time of difficulty. In fact, the thorough-going Independent would hold that, unless trouble strikes both partners about equally, each should assume responsibility for diverting as great a proportion of his personal difficulties from the other as is possible. Far from

bearing one another's burdens, one is to mind one's own, and advise others to do likewise.

But human relationships breed further difficulties for the independently-minded. There is always the temptation of one partner to give "gratuitously" to the other, and what is this but a covert sign that he regards his partner as an inferior? This is the inevitable mistake of those who equate identity with equality. For Need-love and Gift-love offered in varying kinds and proportions prove not a relationship between unequals, but a relationship between different and variable individuals, who will have different gifts to offer one another, and different occasions for doing so.

All That Fall, a radio play by Samuel Beckett, dramatizes the reality of human relations, rather than an absurd and unworkable ideal of independence. Beckett peoples his play with characters physically and emotionally creaking, sagging, and threatening imminent collapse, but caught up and held in precarious balance by a grudging but never-failing system of mutual aid. The title, taken from the psalm verse "The Lord upholdeth all that fall, and raiseth up all those that be bowed down," is both mocking and inspiring, as these fellow mortals, bowed down by their own needs and blinded by their own concerns, still attempt to support one another and direct each other's steps. This is a straitened vision of mankind stitched together in long basting stitches of need and weakness, but it is warmer and more attractive than the visions of those who reserve their autonomy through a lifetime of personal contracts. Rather than establishing human equality through independence, Beckett establishes male and female equality on the basis of their common — though not identical — limitations. This breeds a natural humility which can be elevated to a supernatural status by the acknowledgement of the one relationship between complete unequals, between the wholly dependent and the wholly provident, between God and man.

One of the Gospel parables tells the story of a merciful master who forgives his servant's great debt, only to discover that his servant has demanded payment from an even poorer debtor. We are in the position of the ungrateful servant if we manage to persuade ourselves of our personal autonomy in order to assert the "right" to repudiate the needs of others. That the fetus needs its mother is, if anything, proof that it is human. If it needed a kangaroo's pouch, we might have reason to doubt. What "maternal instinct" means when applied to the lower animals, I do not know. Whether it can be

sufficiently accounted for as a matter of glandular reactions or hormones, is not self-evident to a member of another species. But the meaning of that term when applied to our own species should be clearer: maternal instinct is a two-fold response to a need which echoes the mother's own needs. It is first a response of the heart —"instinctive," perhaps — and then a response of the moral sense which, acknowledging the justice of the heart's inclination, submits to entwining its fate with that of another being.

The Case of Phillip Becker

Robert A. Destro and William A. Moeller

INCONSISTENCY IS THE MOST common element found in court decisions dealing with the issue of when parents must provide medical care for their children. The standards which guide court decisions are difficult enough to follow when a child is not mentally retarded,[1] but when the additional factor of mental retardation is present, courts are faced with even greater problems. The case of Phillip Becker, a 15-year-old child afflicted with Down's Syndrome, is a case in point. In *Re Phillip B.*,[2] the court's decision is a model of subjective decision making which stems largely from the court's inability to deal directly with difficult questions presented when anyone attempts to determine the quality of a mentally retarded child's life.

Very often, courts are able to avoid the issue by declaring that they will look only to the "best interests" of the child. In applying the "best interests" test in practice, however, the courts give great, if not complete, deference to the decisions of the parents. Courts are often hesitant to order medical care for a mentally retarded child, and, in the case of Phillip Becker, the California courts followed the general rule that deference should be given to parental choice. In doing so, however, they ignored the fact that, as a matter of policy, a point must exist when the child's right to life must override a determination by the parents that death is in the best interests of the child.[3]

At least one court has pointed out that the quality of life should not be considered in determining medical treatment and held that the only important consideration is the medical feasibility of treatment.[4] Judicial failure to deal openly with the question of whether or not a life afflicted by mental retardation is worth saving was clearly apparent in *Re Phillip B.*[5] It is the intent of this article to point out that generally applicable legal principles and a common sense approach to such questions are more than adequate in order

Robert A. Destro, who has contributed several previous articles to this review, is General Counsel for the Catholic League for Religious & Civil Rights in Milwaukee; **William Moeller** is a student at the Marquette University School of Law.

to reach an equitable resolution to such a difficult problem and should have been applied to the *Becker* case.

I. FACTUAL BACKGROUND

At the time the litigation commenced, Phillip Becker was a twelve-year-old child afflicted with Down's Syndrome.[6] He has lived in private care homes from birth until the present time. He has never lived with his parents.[7] The cost of keeping Phillip institutionalized was initially borne by Phillip's parents, but now the cost is shared jointly by the State of California and the parents.

At the time of trial, his teacher, Mrs. Elizabeth Betten, stated that Phillip's motor sensory skills were very good and that his visual skills were exceptionally good. He was in the top level of his class and working at the top level for any retarded child. Mrs. Betten also indicated that for the next year she would recommend that Phillip be placed in a much higher class.

Mrs. Madeline Denman, a school psychologist for the Santa Clara Department of Special Education, concurred with Mrs. Betten's evaluation of Phillip as a high-functioning, retarded child. (She noted that Phillip has an I.Q. of near 60.) Eventually, she saw Phillip being placed in a sheltered workshop. Jean Haight, the program coordinator at Phillip's nursery, testified that Phillip was one of only two children at the nursery able to do chores. She stated that Phillip is responsible for his own area, makes his bed, dresses and feeds himself, helps clear the table, folds laundry, puts away groceries that are delivered, and feeds the cat. She also stated that Phillip's activity had diminished in the last few weeks before the trial and that he sometimes turned bluish around the eyes and the mouth after activity.

Sometime before 1973 it was discovered that Phillip had a cardiac problem. In early 1973 he was referred to Dr. Gary Gathman for diagnosis. Dr. Gathman made a clinical diagnosis of a ventricular septal defect[8] and elevated pulmonary artery pressure, a problem associated with a large defect. He also recommended cardiac catheterization, a simple, commonly-used and safe procedure, to discover more about the problem. Phillip's parents refused to allow it to be performed but gave no reason for the decision.

In 1977, Phillip was again referred to Dr. Gathman for evaluation. At that time he needed extensive dental work which was best performed under general anesthesia, and Phillip's dentist wanted to

know the degree of immediate risk for Phillip if general anesthesia were used. In order to calculate the risks, a cardiac catheterization was finally performed with the consent of Phillip's parents. Dr. Gathman reviewed his findings with Phillip's parents and recommended an operation to cure the defect. Mr. Becker's response was to request more psychological information about Phillip, and Mrs. Becker sought to be put in contact with a family who had a child afflicted with the same defect so that she might discuss the symptoms with them. Eventually, they refused to allow surgery.

At the trial, Dr. Gathman testified that a 3% to 5% mortality risk existed for Phillip, a percentage roughly the same for an adult patient during coronary bypass surgery. Dr. Gathman considered it to be low. Because of the low risk and Phillip's relatively high I.Q. for a Down's Syndrome child,[9] Dr. Gathman felt surgery should be performed. Without the surgery, Phillip would eventually lose interest in life because of a shortness of breath that would confine him to a bed to chair existence. With Phillip's additional pulmonary problem, Dr. Gathman felt surgery could not be delayed without significantly increasing the mortality risk.

Dr. James French, a pediatric cardiologist at Stanford University, corroborated much of Dr. Gathman's testimony but thought that the mortality risk would be slightly higher, 5% to 10%. Without the surgery, Dr. French said, research indicated that Phillip could survive for 20 more years, but that 20 years would be an optimistic prediction. He also testified that surgery could be expected to successfully lengthen Phillip's life. He agreed with Dr. Gathman's opinion that, because of Phillip's progressive pulmonary problem, delaying surgery could only increase the risks. Though he offered no opinion as to whether or not surgery should be performed, Dr. French felt the defect could be corrected with a reasonable risk. Thus, both doctors felt surgery was medically feasible and should proceed immediately.

Phillip's parents, however, gave several reasons for not wanting Phillip to have surgery. To Vicki Hult, a deputy probation officer investigating Phillip's case, they expressed concern that Phillip would outlive them and become a burden to other members of the family. Also, they were not sure that he would be provided with adequate care in an institution. It should be noted that, prior to trial, their beliefs regarding institutional care were based on institutions they

had visited while living in Kansas; they had never visited the facilities in the California county in which they now live.

In his testimony at trial, Mr. Becker stated that he was concerned about Phillip being taken advantage of when he is older and "becomes less and less the lovable little boy that he is now." Given Phillip's condition, Mr. Becker unequivocally stated that, in his own mind, he felt Phillip would be better off dead than alive. The decision to let Phillip die prematurely because of the heart defect was based on what he felt was good for Phillip and the rest of the family. Specifically, Mr. Becker said "it would be best for everyone, including Phillip and the survivors."

The trial court denied the juvenile authorities' petition to obtain custody because it felt that the parents had thoughtfully reached their decision.[10] Feeling that a court should not second guess parents who are thoughtful, it held that the Beckers had fulfilled their legal and moral obligations to their child.

The Court of Appeals affirmed the order of the juvenile court.[11] Although it held that the possible risk of death was credible evidence supporting the decision of the juvenile court, its reliance on this fact is somewhat puzzling. The trial transcript clearly indicates that the medical feasibility of the surgery was something Mr. Becker never investigated, and both doctors considered the risk reasonable. In fact, it indicates that the *only* knowledge Mr. Becker had about the mortality risk involved in the surgery was received through the previous day's testimony at trial. Mr. Becker's admission makes it clear that the Court of Appeals upheld the juvenile court's order for a reason which the Beckers did not seriously consider when they decided not to permit the operation. Both the California Supreme Court and the United States Supreme Court refused to hear the case.[12]

II. LEGAL CONSIDERATIONS

Although the *Becker* case is one in which the facts strongly suggest the proper conclusion, the law of custody rights and the developing law in the area of mental health rights suggest even more strongly that the court's decision was faulty. The law in each of the areas described below is changing rapidly, yet its outlines are clear enough to form the basis of a reasoned decision which gives adequate weight to all competing interests.

A. Standards for Removal from Parental Custody

Parental "Fitness" or the Child's "Best Interests"? Cases dealing with custody rights often turn on questions of parental "fitness" or the "best interests" of the child. In general, two points of view can be found:

> The traditional view still followed by many states holds that a parent is prima facie entitled to the custody of the child unless shown to be unfit. Anyone who alleges the parent is unfit must establish the unsuitability of the parent. The remnants of the old concept of parent's property rights in his child are operative under this rule. Under the more contemporary view, the prevailing criteria revolve around the "best interests of the child." Under this rule the court will award custody to the person or agency that the court finds will best promote the child's welfare.[13]

California follows the contemporary view and uses the "best interests of the child" standard. In order to determine whether the parent-child relationship should be severed, the initial focus is whether allowing the child to continue in the parent's custody will endanger his or her permanent welfare. If so, the parent's rights must give way because their preservation is of less importance than the health, safety, morals, and welfare of the child.[14] While the court looks first to the welfare of the child, it is important to note that the court must find *both* that removal is in the best interests of the child and that a clear showing of harm is present.[15]

California follows the well-accepted general principle that parenting is a fundamental right which should only be disturbed in extreme circumstances.[16] But California courts also hold that parental rights are not absolute since the child is also a human being possessing rights subject to protection.[17] Thus, it is important to recognize at the outset that genuine love and concern for the child, coupled with a desire to help the child, does not defeat a clear showing of potential harm should the child remain in the parents' custody.[18] Courts will not, therefore, view parental behavior alone without considering its effect on the child.[19]

Several recent decisions from states other than California emphasize that parental behavior in custody cases must be considered in light of its effect on the child. In *Re Custody of a Minor*, [20] for example, the court considered the case of a twenty-month-old boy suffering from lymphocytic leukemia being treated through chemotherapy, the only known effective treatment. Though the doctors predicted a better than 50% chance for long-term survival with the

chemotherapy, the parents were concerned over the side effects (nausea and loss of hair) and wanted to remove the child from the chemotherapy and treat him through prayer and diet. The court refused to permit the change and held that, given the effect on the child, the parents' good motives and sincerely held beliefs were not of sufficient magnitude to out-weigh the risk to the child.

Chemotherapy, though not life-threatening, was ordered continued because lack of treatment would certainly result in death, and the family relationship was intruded upon only to the extent necessary to insure that the child received needed treatment. These facts distinguish *Re Custody of a Minor* from cases where courts would not intervene when the treatment *was* life threatening.[21] The general rule is that the courts will require treatment even where an imminent risk of death exists.[22] In limited situations, however, courts have ordered surgery where the child's condition could not cause death, but permanent disfigurement was an almost certain result.[23]

The importance of medical opinion in cases where removal of custody is sought to insure medical treatment is illustrated by *In re Hofbauer*,[24] a New York Court of Appeals decision contemporaneous with the California Court of Appeals decision in *Re Phillip B.* In *Hofbauer,* the parents of a seven-year-old child suffering from Hodgkin's disease sought to remove their child from traditional radiation and chemotherapy treatments and put him under the care of a physician who advocated nutritional therapy including laetrile injections. The court permitted the change because the alternative was supported by the opinion of responsible physicians.[25]

Reliance on physicians for determinations of medical feasibility has been approved by the United States Supreme Court in numerous cases involving both minors and adults.[26] In *Parham* v. *J.R.*, for example, the Court held that it "[does] not accept the notion that the shortcomings of specialists can always be avoided by shifting the decision from a trained specialist using traditional tools of medical science to an untrained judge."[27] Yet this is precisely what was done in *Re Phillip B.* Both pediatric cardiologists who examined Phillip indicated that his heart condition, left uncorrected, would kill him.[28] In addition, both indicated that the operation could be performed at a reasonable medical risk,[29] yet the trial judge held that the surgery was elective, not life-saving. This contradiction of expert testimony was justified, in the judge's view, by a reference to the *Karen Quinlan* case[30] in which doctors' predictions of death when life-sustaining

machines were discontinued were proved to be wrong. "That kind of thing points to the fallibility of everybody, including the medical profession. So I am very skeptical . . . ," the judge in *Becker* asserted. But his logic and decision are unsupported by either common sense or case law.[31]

B. The Constitutional Right to Habilitation

Over the past few years, the law has begun to recognize that persons confined to mental institutions have a right to habilitation.[32] The cases make no distinction between the mentally ill and the mentally retarded.[33] Courts defining habilitation have held it to be "medical treatment, education, and care suited to residents' needs regardless of age, degree of retardation and handicapping condition."[34] The purpose of such a requirement is to allow the individual to lead a more useful and meaningful life and, if possible, return to society. The requirement of adequate and effective treatment has been imposed to prevent hospitals for the mentally handicapped from being transformed into penitentiaries where one can be held indefinitely without the benefit of a trial.[35] One court has summed up the right to habilitation as follows:

> The constitutional right to treatment is a right to a program of treatment that affords the individual a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capacities permit with the demands of his own person and of his environment and to raise the level of his physical, mental, and social efficiency.[36]

Although the courts have begun to mark the boundaries of the right to habilitation, implementation of that right is not automatic, particularly in cases where other rights are involved as in *Re Phillip B.* Nevertheless, the decision of Judge Premo did not even consider the impact of these cases.

Phillip was placed in a private institution at birth. Seven years later, when his heart condition was discovered, his parents prevented evaluation and habilitation through a simple, safe heart catheterization. They were able to do this by exercising their custody rights to refuse treatment. The catheterization was finally agreed to as a prerequisite to dental surgery when Phillip was 12. It was discovered that the condition was operable at the time, but the operation was needed almost immediately to prevent progressive deterioration. When his parents' refusal to treat him was supported by the California courts,[37] their decision foreclosed Phillip's right to habilitation

by making further progress in a useful and fulfilling life medically impossible. He became, in effect, the pawn of a family which, the record shows, did not know him very well. Their decision condemned him to increasing confinement and death brought on by his condition. One commentator has noted:

> The greatest danger to the mentally retarded child lies in the institutional setting — in this case because it affords the parents the opportunity to "distance" themselves from the child and deal with the situation in an abstract manner, namely, in the doctor's office instead of at home where the cries of the child are a constant call to the normal parental instincts and an impetus to reconsider the decision not to operate.[38]

The problem which faces any court in a dispute over proper custodial care is determining when the right of the parent should be implemented over a conflicting right of the child. The California Supreme Court has defined custody as "the sum of parental rights with respect to the rearing of a child. It includes the right to the child's services and earnings, and the right to direct activities and make decisions regarding his care, control, education, health, and religion."[39] Obviously, when parents permanently institutionalize a child, they actually surrender a major portion of their custody rights. In a situation where the child is institutionalized, then, the first question that must be answered by the court is whether or not the parents are the parties whose determination should be given the greatest weight.

In *Quillon* v. *Walcott*,[40] the United States Supreme Court held that the state may recognize that the extent of parental commitment to the child may determine the extent of parental rights. In *Quillon*, a natural father was not permitted to interfere in the adoption of his child by another because his only commitment to the child was spotty financial support and an occasional visit. Thus, it is arguable from *Quillon* that courts may be justified in giving less weight to the medical decisions of parents who, like the Beckers, have surrendered actual custody and admit that their decision is heavily influenced by factors which do not center on the child. Since the first focus is always the child's welfare, a court should give greatest weight to the child's interests in habilitation. When the parents refuse to grant permission for life-saving or other necessary surgery on the basis of an arm's length determination of what is "best" for a child they know basically as an outsider to the family, the court ignores its

responsibility to the child as well as to those who see him as the unique individual that he is.

C. The Quality of Life

In *Re Phillip B.*, the trial court considered evidence concerning "quality" of Phillip's life in reaching its decision. Phillip's father, as noted, expressly admitted to holding the belief that his son would be better off dead than alive.[41] Both doctors who testified stated that in certain cases of severe retardation they do not recommend surgery because they feel that little can be gained.[42] But the basic issue involved in "quality of life" cases is much broader than a simple risk-benefit analysis. The evidentiary question of whether such testimony is relevant at all, and if so, under what circumstances, is inextricably intertwined with the right of any one individual to determine whether another lives or dies.

In re Karen Quinlan[43] is perhaps the most celebrated case in which a court examined the issue. In *Quinlan* the New Jersey Supreme Court held that respirators could be discontinued because of the patient's very slim possibility of ever regaining cognitive life and her need to be under constant, expensive care. Although the court appointed the parents as guardians knowing that they would exercise their choice of care by refusing medical treatment for their daughter,[44] the Court apparently felt that their decision was reasonable and could not be said to have caused objective harm. The court's discussion of whether or not Miss Quinlan would return to a "cognitive, sapient" state was relevant only to the question of whether a particular form of treatment was legally required.

The decision is much more difficult in a case where a person may recover or where the treatment itself is unquestionably necessary to continue life (e.g., providing food or basic medical care to the comatose). Few courts have considered the issue,[45] although it is a major consideration for the parents of physically disabled or mentally retarded newborns.[46] In *Maine Medical Center* v. *Houle*, [47] the court, one of the few to consider the issue directly, held that quality of life should not be considered and that the only proper consideration is medical feasibility.

There are several significant reasons for not considering quality of life. If a court determines that it will consider "quality" to be a factor, it is put in the impossible position of determining that some point exists at which another's life is no longer worth living. If a

proxy is involved, as in *Quinlan* or *Becker* (the parents), ascertaining the patient's or subject's wishes and giving them sufficient weight may be impossible or tainted by the proxy's bias toward certain personal or culturally relative interests.[48] A person who values intelligence and success, for example, may find it more difficult to understand how a mentally retarded person's life can be "meaningful." As a result, the proxies may tend to project their cultural or personal desires into the mind of the person whose life or treatment is at issue.

Most legal commentators who have discussed the termination of life-sustaining treatment feel that it is not legal.[49] The basis for their judgments differ, but given the historical abuse that the concept "lives without value" has engendered,[50] courts are understandably hesitant to create precedent in this area. When one considers that denial of treatment because of a mental or physical defect violates the constitutional command of equal protection of the laws, the "quality" question is seen for what it is: a dangerously discriminatory device to enable the courts or others to eliminate, either actively or passively, those who do not fit a particular cultural, mental or physical norm.

Given what appears to be the general rule against using quality of life in making medical treatment determinations, making determinations on that basis, as well as receiving testimony on such an issue, should be considered an abuse of the court's discretion. A determination based even partially on the consideration should be summarily reversed.[51] Yet such testimony was considered in *Re Phillip B.* It clearly influenced the decision to permit refusal of the surgery, and the appeals court refused to find an abuse of discretion. By upholding the trial court's determination that to allow surgery would be risky,[52] the court avoided scrutiny of the true basis for the trial court's decision. The record was flimsy, and the facts simply did not support the decision. Even if, as the appellate court stated, "Legal judgments regarding the value of childrearing patterns should be kept to a minimum so long as the child is afforded the best available opportunity to fulfill his potential in society,"[53] it is difficult to reconcile that position with its decision to affirm a holding which left Phillip with no future.

D. The Conflict of Interest Problem

The potential conflict of interest between the parent's values and

what is best for the child has been recognized in cases involving parental decisions to institutionalize a child.[54] The nature of the conflict in the decision to institutionalize was summarized in the *amici* brief submitted in *Wyatt* v. *Stickney*:

> The parent may be motivated to ask for such institutionalization for a variety of reasons other than the best interests of the child himself, *i.e., the interests of other children in the family*, mental and physical frustration, economic stress, hostility toward the child stemming from the added pressures of caring for him, and perceived stigma of mental retardation. The retarded child's best interests may well be in living with his family and in the community, but theirs may not be in keeping him.[55]

When a child has been institutionalized, the parents may only deal with the child's concerns in the abstract, and they may not always be aware of the needs of such a child.[56] It may be much easier to deal with the fact that their child is *said* to have fainting spells than to see the child turn blue and pass out in front of them.

A close legal parallel exists between the position of mentally retarded children in need of physical care and the cases involving medical care for the children of Jehovah's Witnesses.[57] Courts have ordered blood transfusions for children over their parents' religiously-based objections because the child's best interests require it and harm would otherwise result.[58] In such cases the parents faced the conflicting demands of their faith and the needs of their child. Where treatment is suggested which violates their religious beliefs, it is the parents' religious responsibility to see that no member of the family receives treatments which are considered immoral. If a family member receives such treatments, the parents fear spiritual harm to the family member and themselves.[59]

"Parents have a duty of care, and if they grossly abuse it, religious objections stand as no excuse,"[60] though reasonable attempt must be made to accommodate the belief.[61] When a parent has a serious conflict of interest, the parent should not be the sole decision-maker regarding medical care for the child.[62] Courts have demonstrated an awareness of a conflict of interests in cases based on religious belief, and it is clear that a conflict can exist for other equally valid non-religious reasons which prevent the parents from acting solely on the basis of the best interests of the child.

Though such a conflict of interests was explicit in *Re Phillip B.*, the court was unconcerned.[63] Since those whose lives touched Phillip's on a day-to-day basis felt that Phillip needed the operation and

brought suit to seek custody, the court *should* have considered the parental conflict of interest as a significant factor, and ruled against them. But the court failed even to consider it. As a result, it never confronted one of the most important issues in the case. Although the appeals court correctly recognized that the state "has a serious burden of justification before abridging parental authority . . .,"[64] evidence that there is a conflict of interest such as the one apparent in the record of Phillip's case should go a long way toward meeting that burden.

III. A SUGGESTED APPROACH

From an examination of the trial court record and the opinion of the juvenile court judge, it seems apparent that the judge did not wish to interfere with the decision of two parents who, he felt, were reasonable. However, the *Becker* case did *not* present a parental rights issue of the type that is involved in more traditional cases such as *Wisconsin* v. *Yoder*;[65] it presented an issue dealing with the child's unquestioned medical needs. The judge's focus on the parental rights issue to the exclusion of all else reflects both a fundamental lack of understanding of the issues before him and the degree to which judicial perceptions regarding non-legal issues affect decision-making.

Judge Premo's choice of the *Quinlan* case as a factual and legal model for his decision is significant, both because of its quality-of-life orientation and its irrelevance to the parental rights issue he held to be controlling. As in *Quinlan*, the proper focus of decision in *Phillip B.* was the welfare of the child.[66] The judge's decision, however, focuses almost exclusively on the behavior of the parents. No longer accepted by California, this outmoded legal approach mandates a finding of parental neglect as a prerequisite for judicial intervention. In *Becker*, Judge Premo held that he could not "second-guess the decision away from the parents *in the absence of neglect on their part*,"[67] but he ignored the contemporary view that the court must consider the *effect* of the parental decision on the child.

In Phillip's case, the impact of the parental refusal to permit medical treatment was clear, but the court refused to interfere because it apparently felt that the parents were acting in Phillip's "best interests" even if the result of their act was certain death. The inherent problem in the application of the "best interests" standard in cases involving quality of life along with medical, legal, and moral factors is that courts often approach the decision backwards. In

such a procedure the initial determination of what is in the child's best interests is made in the abstract with only a cursory review of the facts. The result of such a haphazard procedure is the inconsistency that exists in case law.

The correct standard, followed by many states including California, is first to consider whether or not a demonstrable showing of objective harm exists.[68] This forces the court to deal with the facts in a thorough, detailed manner to determine if there is actual harm existing or certain to occur. Only after this determination is made can the court determine what in actuality is in the best interests of the child.

The most common forums in which this incorrect procedure has been applied are the treatment of the mentally and physically handicapped, [69] birth control and abortion,[70] and child custody cases where the parents' life-style or social status do not fit society's norm.[71] In each area, the courts have been asked to deal with facts of the situation presented but invariably seem to prefer to judge the *value* to be placed on the parental judgment, life-style, practice, or treatment.

In *Becker*, the decision of the juvenile court reflected a value judgement about the propriety of surgery which would extend the life of a retarded child. *Becker* did not focus on the objective harm to the child because the court was overly concerned with what was subjectively in the "best interests" of all those involved. The Supreme Court has recognized that parents should not be permitted to exercise arbitrary veto power over decisions which will affect the future of their children. The difficulty is finding the point at which a line can be drawn which recognizes both the rights of the child and interests of the parents without undue interference in matters properly left to the family.

In the case of Phillip Becker, the judge drew a line which was inconsistent with California law, the facts of the case, and sound public policy in his zeal to do what he thought was "best" for Phillip and his parents. The Supreme Court has drawn a line which is intended to eliminate arbitrary parental vetos of the type Judge Premo affirmed.[72] But, unfortunately, even this has been interpreted as being designed to eliminate input from parents, all in an attempt to do what is "best."[73] The problem common to all these cases is that the courts are failing to focus on the nature of the alleged harm in an

attempt to reconcile what may appear at first to be an irreconcilable conflict of interests.

From the perspective of those who place ultimate value on the preservation of individual human life and eschew determinations which seek to place an objective measure of value on the life of another, the interests in Phillip's case can safely be characterized as irreconcilable. Obviously, the court must choose, and the law is clear that it must consider the child's interests to be paramount. In the case of a pregnant adolescent, as in *Bellotti v. Baird*,[74] or the child whose parents wish to seek permission for the use of an experimental drug as in *In re Green*,[75] the interests may or may not be irreconcilable, depending in large part on the values shared by the participants in the decision-making process. In any case a determination of what is "best" for the minor involved or whether a parental decision is "harmful" will turn on which value judgments are made, and by whom.

In a long series of cases, the Supreme Court has held that value judgments are to be made first by the parents,[76] and only when there is a showing of harm may the state intervene to "protect" the child from the parent.[77] The trend, unfortunately, is for the courts to become involved in judging the reasonability of the first level of decision-making rather than focusing on the decison made and its potential for creating objective harm. If, as in *Hofbauer*, the decision made, in light of the harm alleged, is reasonable, the parental decision should be left undisturbed. In all cases, care must be taken by the court to identify all relevant factors: the *exact* nature of the harm alleged, its degree, and the rationale of the decision. If the difference between the parties is merely one of form (e.g., the manner of treatment or its morality where medical opinions differ), the decision should be left to the parents if the child cannot decide. If the determination of either the existence of "harm" or the "best interests" of the child turns on subjective value judgments by the court, the parents or medical witnesses, the court must scrutinize all the factors noted above. To proceed on a lesser basis would run the danger of the court serving merely as a rubber stamp for parental or medical judgment or imposing its own value judgments in an area heavily protected by the Constitution

IV. CONCLUSION

A case such as *In Re Phillip B.* is disturbing because it points to

the general inconclusiveness of the law in dealing with the medical rights of mentally retarded children. Courts indicate that an institutionalized child has a right to habilitation, but statutes and court decisions allow the right to be circumvented. *In Re Phillip B.* presents a difficult problem for any court. Legally, the parent is the person who is vested with nearly complete authority over the medical care of the child. Clear and convincing evidence is needed to remove the child from the custody of his parents and override their decision. When the parents have institutionalized the child from birth and visit him for several hours on the average of once every two months, however, it is difficult to justify allowing the parents to retain the same dominant power over health care decisions as they would have if the child were living at home under their care. Realistically speaking, they are not in as knowledgeable a position to judge the best interests of the child as those who have become what Goldstein, Freud and Solnit describe as the "psychological parents"[78] who make day-to-day custodial decisions for the child. Legally the biological parents retain the power to make custodial decisions, and should make medical decisions whenever they are qualified to do so. Generally, those decisions should be given great deference, but when their commitment to the child has been less than that of a custodial parent, their rights and the weight accorded to their opinions should be reduced accordingly.[79]

The case of Phillip Becker is symptomatic of a judicial failure to recognize that courts exist to arbitrate disputes. The need for consistent and clear legal standards which guide judicial behavior in an area of the law receiving increasing attention by policy makers, litigators, and scholars is readily apparent, but the courts have yet to respond with anything more than decisions which simply affirm or reject specific parental choices on the basis of unarticulated judicial preferences. When the courts fail to exercise their proper function, injustice is the result. In Phillip's case, the result of this *ad hoc* approach to the law promises to be a disaster for the only person who really had anything to lose: Phillip himself.

NOTES

1. See, e.g., Destro, "Social Values of the Federal Judiciary: The 'Least Dangerous Branch' Unleashed" *The Human Life Review*. Vol. VI, No. 2, Spring, 1980, p. 37.

2. *In the Matter of Phillip B.*, A Minor, No. 66103 (Superior Ct., Santa Clara County, CA, April 27, 1978).

3. *Jehovah's Witnesses in the State of Wisconsin* v. *King's County Hospital Unit No. 1*, 278 F. Supp. 488 (E. D. Wash, 1967).

4. *Maine Medical Center* v. *Houle*, Civil No. 74-145 (Superior Ct., Cumberland City, Maine, Feb. 14, 1972).

5. *In The Matter of Phillip B.*, A Minor, No. 66103 (Superior Ct., Santa Clara County, CA., April 27, 1978), recorder's transcript p. 22 (hereinafter referred to as *Becker*).

6. Down's Syndrome is also referred to as mongolism.

7. *Becker, supra* note 5, recorder's transcript p. 87-8; throughout the "Factual Background" discussion, the statements and quotations are taken from this transcript.

8. This is a hole between the two main pumping chambers of the heart. Forty percent of Down's Syndrome infants have such a defect.

9. Id. at 21. It should be noted that a severely retarded Down's Syndrome child will have an I.Q. of around 30. Phillip's near-sixty I.Q. ranks him in the top five percent of Down's Syndrome children.

10. *In the Matter of Phillip B.*, *supra* note 2.

11. *In re Phillip B*, 92 Cal. App. 3d 796, 156 Cal. Rptr. 48 (1979).

12. *Bothman* v. *Warren B.*, 48 U.S.L.W. 3623 (1980).

13. Thomas, "Child Abuse and Neglect, Pt. I: Historical Overview, Legal Matrix and Social Perspectives," 50 N.C.L. Rev. 293, 340 (1972).

14. *In re Imperatricis Guardianship*, 182 Cal. 355, 358, 188 P. 48, 50 (1920).

15. *In re B.G.*, 11 Cal. 3d 679, 699, 523 P. 2d 244, 255, 114 Cal. Rptr. 623 (1978).

16. *In re Carmeleta B.*, 21 Cal. 3d 482, 579 P. 2d 514, 146 Cal. Rptr. 623 (1978).

17. *Campbell* v. *Wright*, 130 Cal. 380, 62 P. 614 (1900).

18. *In re Randy B.*, 62 Cal. App. 3d 89, 132 Cal. Rptr. 720 (1976). Other courts also have supported this view. See generally *Prince* v. *Massachusetts*, 321 U.S. 158 (1944). (Neither the rights of parenthood nor religion are beyond limitation. The state's authority is not nullified because the parents ground their claim to control the child's course of conduct in religion); *State* v. *Perricone*, a 37 N.J. 462, 181 A. 2d 751 (1962) (the sincere affection and concern of Jehovah's Witnesses parents for their child were not controlling in finding neglect of the child for the purpose of obtaining a guardian).

19. California statutory law also emphasizes that the first consideration must be the child's welfare. The Civil Code provides for removal of custody upon finding "that an award of custody to a parent would be detrimental to the child, and an award to a non-parent will be in the best interests of the child." Cal. Civ. Code Sec. 4600(c) (West 1980).

20. 4 Fam. L. Rep. 2432 (BNA 1978).

21. Id. at 2435. See generally *In re Chad Green*, 448 Pa. 338, 292 A. 2d 387 (1972); *In re Seiferth*, 309 N.Y. 80, 127 N.E. 2d 820 (1955); *In re Hudson*, 13 Wash. 2d 673, 126 P. 2d 765 (1942).

22. See *State* v. *Perricone*, 37 N. J. 463, 181 A. 2d 751 (1962); *People* v. *Lalrenz*, 41 Ill. 618, 104 N.E. 2d 769 (1952), *cert. denied*, 344 U. S. 824 (1952).

23. *In re Sampson*, 29 N.Y. 2d 900, 328 N.Y.S. 2d 686 (1972), *In re Rotkowitz*, 175 Misc. 948, 25 N.Y. S. 2d 624 (9141).

24. 47 N.Y. 2d 648, 419 N.Y.S. 2d 936 (1979).

25. Specifically, the court held:

> The court's inquiry should be whether the parents once having sought accredited medical assistance and having been made aware of the seriousness of the child's affliction and the possibility of a cure if a certain mode of treatment is undertaken, have provided for their child a treatment which is recommended by their physician and which has not been totally rejected by all possible medical authority.

419 N.Y.S. 2d at 940-41.

26. See, e.g., *Doe* v. *Bolton*, 410 U. S. 179 (1973); *Jacobson* v. *Massachusetts*, 197 U. S. 14 (1905); *Planned Parenthood of Central Missouri* v. *Danforth*, U. S. 52 (1976).

27. *Parham* v. *J.L. and J.R.*, 442 U.S. 584, 609 (1979).

28. See *Becker, supra* note 5, recorder's transcript at p. 18, in which Dr. Gathman discusses the final stages in their various forms. On pages 40 and 41 of the recorder's transcript, Dr. French describes the inevitable terminal stages of Phillip's illness.

29. See *Becker, supra* note 5, recorder's transcript at p. 22 where Dr. Gathman states the risk in Phillip's case would be low. On page 53 Dr. French states the operation could be performed at a reasonable risk.

30. *In re Karen Quinlan*, 70 N.Y. 10, 355 A. 2d 647, *cert. denied*, 429 U.S. 922 (1976).

31. See generally, *Parham* v. *J.L., 442 U.S. 584 (1979).*

32. *Parham* v. *J.R.*, 442 U.S. 584 (1979).

33. *In the Matter of Phillip B., supra* note 2.
34. 442 U.S. 584.
35. See, 92 Cal. App. 3d at 802, 156 Cal. Rptr. at 51.
36. *Gary W.* v. *State of Louisiana*, 437 Supp. 1209, 1219 (E.D. La. 1976).
37. *Bothman* v. *Warren B.*, 92 Cal. App. 3d at 802, 156 Cal. Rptr. at 48. Paradoxically, the Appeals Court also stated the surgery was too risky since children with Down's Syndrome have more problems in the postoperative period. In other words, Phillip was institutionalized because he was retarded, but surgery, a recognized habilitation right, was now denied to Phillip since his parents had not permitted it when it would have been safer.
38. Murdock, "Civil Rights of the Mentally Retarded: Some Critical Issues," 48 Notre Dame L. Rev. 133, 142 (1972) (hereinafter cited as Murdock).
39. *Burge* v. *City and County of San Francisco*, 262 P. 2d 6, 12 (1953).
40. 434 U.S. 246, 256 (1978).
41. *Becker, supra* note 5, recorder's transcript at 111.
42. Id. at 34 where Dr. Gathman testified little can be gained from surgery if the child's I.Q. is under 30. Phillip's is about 60. Also, see Dr. French's testimony on page 30 where he testifies that if Phillip were a normal child he would recommend surgery.
43. 70 N. J. 10, 355 A. 2d 647 (1976) *cert. denied*, 429 U.S. 922 (1976).
44. Id. 355 A. 2d at 664.
45. See "Birth-Defective Infants: A Standard for Nontreatment Decisions," 30 Stan. L. Rev. 599, 601 N. 12 (1977).
46. See Robertson, "Involuntary Euthanasia of Defective Newborns: A Legal Analysis," 27 Stan L. Rev. 213 (1975) (hereinafter cited as "Involuntary Euthanasia").
47. Civil No. 74-145 (Superior Ct., Cumberland City, Maine, Feb. 14, 1972).
48. "Involuntary Euthanasia," *supra* note 46, at 255.
49. See, e.g., Horan, "Euthanasia, Medical Treatment and the Mongoloid Child: Death as a Treatment of Choice?" 27 Baylor L. Rev. 76 (1975); Nolan-Haley, "Defective Children, Their Parents, and the Death Decision," J. Legal Med. Jan. 1976, at 9: Robertson, "Involuntary Euthanasia of Defective Newborns: A Legal Analysis," 27 Stan. L. Rev. 213 (1975).
50. See generally, *United States* v. *Griefelt* Nuremburg Military Tribunals, Trials of War Criminals Before the Nuremberg Military Tribunals Under Control. Council Law No. 10. 599 (1950).
51. Cf., e.g. *Spevak* v. *Klein*, 385 U.S. 511 (1967); *Wong Sun* v. *United States*, 371 U.S. 471 (1963). In each of the foregoing cases improper procedure was held to taint the proceeding at issue.
52. 92 Cal. App. 3d at 802, 158 Cal. Rptr. at 51.
53. Id. at 801, 156 Cal. Rptr. at 51.
54. See Murdock, *supra* note 38, at 139.
55. Id. at 139 (emphasis added).
56. Id. at 142.
57. Id. at 142.
58. See e.g., Jehovah's Witnesses in *Wash.* v. *King County Hospital Unit No. 1* (Harborview), 278 F. Supp. 488 (D. Wash. 1967), aff'd *per curiam*, 390 U.S. 598 (1968); *State* v. *Perricone*, 37 N. J. 463, 181 A. 2d 751 (1962), *cert. denied*, 371 U.S. 890 (1962); *Hoerner* v. *Bertinato*, 67 N. J. Super. 517, 171 A. 2d 140 (1961).
59. Jehovah's Witnesses in *Washington* v. *King County Hospital Unit 1* (Harborview), 278 F. Supp. at 502.
60. Bennett, "Allocation of Child Medical Care Decisionmaking Authority: A suggested Interest Analysis," 62 VA. L. Rev. 285, 324 (1976) (hereinafter cited as Bennett).
61. *Sherbert* v. *Verner*, 374 U.S. 398 (1963).
62. Bennett, *supra* note 60, at 324.
63. The trial transcript *In re Phillip B.* indicates that the Beckers institutionalized Phillip because, ironically, they felt he would get better health care, and also because they were worried about how his presence in the home could affect their other children. In stating that Phillip would be better off dead, Mr. Becker said he based this belief on what he thought was best for Phillip and for the rest of the family. Also, Mr. Becker expressed concern that if Phillip outlived him and his wife, he would become a burden on his brothers. While a parent must be concerned about the welfare of his entire family, if he is to make decisions on the basis of the "best interests of the child" test, he must be able to put aside other competing interests. This illustrates the conflict about which Murdock was concerned.
64. Cal. App. 3d 802, 156 Cal. Rptr. at 51.
65. 406 U.S. 205 (1972).

66. See *In re Karen Quinlan, supra* note 43.

67. *Becker; supra* note 5, recorder's transcript at p. 150.

68. See, e.g., *In re B.G. supra* note 15; *Guardianship of a Minor,* Mass. App. Ct. 392, 298 N.C. 2d 890 (1973).

69. *In the Matter of Phillip B., supra* note 2; *In re Chad Green, supra* note 21.

70. *Planned Parenthood of Central Missouri* v. *Danforth,* 428 U.S. 52 (1976); *Bellotti* v. *Baird,* 428 U.S. 132 (1976).

71. E.g., *Smith* v. *Organization of Foster Families,* 431 U.S. 816 (1977); *New Hampshire* v. *Robert H.,* 393 A. 2d 1397 (N.H. 1978).

72. See *Bellotti* v. *Baird* (II), ____U.S.____, 99 S. Ct. 3035 (1979).

73. See, e.g. *Akron Center for Reproduction Health* v. *Akron,* 479 F. Supp 1172 (N.D. Ohio 1979): *Doe* v. *Irwin,* 428 F. Supp. 1198 (W.D. Mich. 1977) *vacated and remanded,* 559 F. 2d 1219 (6th Cir. 1977), *aff'd on remand,* 441 F. Supp. 1247 (W.D. Mich. 1977) *rev'd* No. 79-1056 (6th Cir. Feb. 26, 1980) compare, *New Hampshire* v. *Robert H., supra* note 71; *contra,* H.L. Matheson, No. 16 249 (S. Ct. Utah 1979) *cert. granted*____U.S.____

74. 99 S. Ct. 3035.

75. 448 Pa. 338.

76. *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972); *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Skinner* v. *Oklahoma,* 316 U.S. 489 (1960); *Pierce* v. *Society of Sisters,* 268 U.S. 519 (1925).

77. *Prince* v. *Massachusetts,* 321 U.S. 158 (1944); *New Hampshire* v. *Robert H., supra* note 71; *Smith* v. *Organization of Foster Families, supra* note 71; *Alsoger* v. *District Court,* 406 F. Supp. 10 (S.D. Iowa 1975), *aff'd,* 545, F 2d 1137 (8th Cir. 1976); *Doe* v. *Irwin, supra* note 73; *Wisconsin* v. *Yoder, supra* note 74.

78. See J. Goldstein, A. Freud, and A. Solnit, "Beyond the Best Interests of the Child," 17-21 (1973).

79. *Quilloin* v. *Walcott,* 434 U.S. 246 (1978).

"Healthy Ambivalence" Examined

[*The Wall Street Journal* is generally considered one of the two or three most important newspapers in the United States. If it is not the "paper of record" that the New York *Times* once was, nor the prime news source for the nation's capital (as the Washington *Post* now is), it is certainly the closest thing to a "national" paper available — and thus greatly influences how the rest of the world views events here. So we were surprised when, on July 2 this year, the *Journal* printed an editorial on abortion that was, we thought, considerably different from — and well below — its usual standards for commentary on public issues. Our first impulse was to commission a reply. But before we had time to ponder *who* might best do the job, we received copies of two letters sent to the editor of the *Journal* by readers. The first, sent the same day the editorial appeared, is by Mr. William Gavin of Washington, D.C. (where in recent years he has worked both in the White House and on Capitol Hill). It is brief, and, indeed, the *Journal* published the greater part of it in its Letters column on July 21. The second, longer letter arrived a few days later. So far as we know, no part of it has appeared in the *Journal*, or elsewhere. It was written by Mr. Michael Uhlmann, a Washington attorney (and a former assistant U.S. Attorney General). We think both letters make remarkable reading. Taken together, they certainly comprise the kind of answer we had in mind for the *Journal's* editorial (although no doubt more might be said — we welcome additional contributions!). So here we do the obvious, and print them both, together with the editorial in question, without change or alteration. We thank all the parties involved for their permission to do so.

— THE EDITORS.]

Healthy Ambivalence*

We have never been able to address the subject of abortion in any tone except profound ambivalence, an attitude guaranteed to make you unpopular with both sides of a moral and cultural dispute.

We are unimpressed by the scholasticism with which the moral question is settled by the Roman Catholic Church (and formerly by other theologians as well). The ordinary moral instincts of mankind

* "Healthy Ambivalence" is reprinted here just as it appeared in the July 2, 1980, issue of the *Journal*. It is reprinted with permission of *The Wall Street Journal* (©1980 Dow Jones & Company, Inc. All Rights Reserved).

do not equate early abortion with outright murder; that conclusion came only from the attempt to push morality through the sieve of Aristotelian logic. The same scholasticism, of course, also brands contraception a sin, a position increasing numbers of the Church's followers find impossible to accept. We have no doubt that when this theology was written into law, it caused needless suffering and agony.

At the same time, we are repelled by the attitude of much of our middle class elite, which seems to endow abortion with some kind of intrinsic virtue — not as exalted as mother, perhaps, but clearly more wholesome than flag or country. Surely abortion is something more than merely another medical procedure carrying no more moral implications than an appendectomy.

To take the limiting case — which has in fact occasionally happened — what do you do if the fetus survives the operation? Do you strangle it on the operating table? Do you plug it into the same life-support systems you would naturally employ if it had been born naturally but prematurely? Can it be said the society and the law have no interest in the answer to these questions? And is the moral equation really different five minutes after the operation than it was five minutes before?

Even in the far more common case of early-term abortion, we have trouble imagining that many women walk away without a twinge of guilt over a potential son or daughter. And it is not necessarily second-guessing the woman's decision to say this is a morally healthy human reaction.

From these musings we carry away a feeling that the morality of abortion will always be ambivalent, that hard-and-fast lines cannot be drawn, except perhaps in an arbitrarily pragmatic way. And given this ambivalence, we worry about any attempt to impose one judgment on those who have come to a different one. Our only firm conclusion is that in a pluralistic society, the abortion issue should not become the ground for socio-political aggression.

In the case of Harris v. McRae, which the Supreme Court decided Monday, it is not easy to decide which side is the aggressor. The issue is not whether anyone can have an abortion, but whether the state is going to pay for it under its medical care programs. Justice Stewart, writing for the majority, made the common-sense point that nothing in the Constitution requires such a subsidy. Against this, Justice Stevens argued in dissent that if the woman has a consti-

tutional right to decide, her decision should not be used to deny her a benefit for which she otherwise qualifies.

For our own part, we have no strenuous objection to using tax money to subsidize abortions. We would rather have it spent for that purpose than for building microwave systems for Cesar Chavez or bailing out Chrysler. But the fact remains that a substantial minority of the population does believe abortion to be murder, and naturally objects to being taxed to support it. We further doubt that, given the resources of this society, any substantial number of women who really want abortions will fail to find some way to finance them without public funds.

Courts, which pretend to deal in legal and constitutional absolutes, are not very good at drawing the uneasy compromises on which a pluralistic society depends. Legislatures are generally better at registering and balancing the distribution and intensity of opinion. Between the courts and the legislature, we seem to have arrived at a tolerable compromise, that abortions will be allowed but, except in extraordinary cases, not paid for out of tax funds. We suspect the court majority was wise in not interfering further.

July 2, 1980

To the Editor:

By this time you are no doubt as bored at hearing it as many of us are at repeating it, but — given your editorial, "Healthy Ambivalence" — let's try it one more time: the moral theology of the Roman Catholic Church does not now play and has never played a central, determining role in the fight against abortion-on-demand. Recently, Southern Baptists, in convention assembled, condemned abortion-on-demand. It is highly unlikely that Baptists are dupes of Rome or that Protestant Evangelicals and Orthodox Jews are victims of "Aristotelian logic."

More to the point, your understanding of how the Roman Catholic Church arrives at its position on abortion suggests large gaps in your theological and philosophical understanding. "Scholasticism" (which as we know, is a code-word for nit-picking irrelevancies among those who have never bothered to find out what the scholastics taught) bears no direct or causal relationship to a condemnation of abortion. That condemnation existed in the Church long before scholasticism began and has continued to exist long after that particular philosophical school reached its peak of influence.

Whenever and wherever it could be established that human life exists, the Church has, quite properly, called for its protection. Surely there is nothing particularly scholastic or dogmatic about this — indeed, contrary to your view, it is precisely the "ordinary moral instincts of mankind" that form the basis of condemnation of abortion. Since knowledge of the facts of pre-natal life for many centuries depended on less than scientific information, the Church's understanding of the exact start of human existence has changed. But the concept of protection of that life has never changed.

Finally, the condemnation of abortion and the condemnation of contraception, while they share certain moral presumptions, do not share a common philosophical or theological heritage. The former is based on the belief that human life is sacred (surely not a peculiar tenet of Rome); the latter is based on the Church's interpretation of natural law theory concerning procreative powers.

Perhaps one of the most remarkable facts of intellectual life in the United States is the almost total refusal of the intellectual and media establishment to take the trouble to learn the complicated — but certainly not insurmountable — problems, both philosophical and theological, concerning the abortion controversy. I suppose it is always easier to shout "Rome!" — but does that really help people to understand?

WILLIAM F. GAVIN

July 8, 1980

To the Editor:

Your editorial of July 2 on the Supreme Court's recent decision upholding the Hyde Amendment admits to a "profound ambivalence" on the question of abortion in general. In this, the *Journal* encourages, even as it reflects, widespread public sentiment to the same effect. But it is unclear whether your ambivalence flows from the nature of the controversy itself, or merely from the writer's reluctance to confront arguments against abortion other than those which may be distinctively or essentially Roman Catholic in origin.

That the latter rather than the former may be the case is suggested by the manner in which the editorial defines the terms of debate. On one side, we are told, are Catholic theologians, Aristotelian logicians, and assorted fellow-traveling scholastics, who contend that abortion is murder. On the other side are certain "upper-middle class elitists," who celebrate abortion as a great monument to social

progress and personal fulfillment. This conveniently reductionist framing of the issues suggests that reasonable people (by definition, all those who are neither Catholics nor upper-middle-class elitists) will come down somewhere in the middle.

Reasonable people, so the editorial implies, should be morally sensitive but, at bottom, politically pragmatic. They should be troubled by permissive abortion, particularly in the later stages of fetal development, but not so troubled as to *do* anything about it. In the end, they will tolerate it. And why? — Because their only alternative is to slide helplessly down the slippery slope of Aristotelian logic into the slough of Catholic theology.

There is a name for this sort of argument, but "ambivalent" is not the first adjective that comes to mind. One has come to expect it from those quarters where, as Arthur Schlesinger, Jr., once remarked, anti-Catholicism is the counterpart to anti-Semitism among the masses; but one is saddened to see it embraced so fulsomely in the editorial column of the most distinguished and thoughtful page in American journalism.

But let that pass. The more important point is that the *Journal* seems to think that the effort to restore legal protection for the child *in utero* would be an affront to the neutral principles of a pluralist society. The *Journal* buttresses this conclusion by reference to "the ordinary moral instincts of mankind," which, we are assured, "do not equate early abortion with outright murder." That may well be the case, but it is quite beside the point: one need not believe that abortion is murder in order to oppose the constitutional right to abortion-on-request, which is what the Supreme Court gratuitously decreed to be the law of the land seven years ago.

While the *Journal* may possess some special insight into "the ordinary moral instincts of mankind" which is denied to the rest of us, it would be more accurate to say that, until quite recently, "the ordinary moral instincts of mankind" considered abortion, whether early or late, to be a grievous offense against the common moral order which the civil law was right to prohibit save under the most exigent circumstances. Before the public came to be instructed in the ways of high-minded ambivalence, that conviction was the considered ethical teaching of every major religious denomination in America, and for that very reason was incorporated into the laws of every state in the Union by people who would have run for the hills at the

merest suggestion that they were carrying out the special orders of Rome.

Not everyone who subscribed to this conviction believed abortion to be murder; nor did the law by any means always so treat it. Neither did everyone agree on just how exigent the circumstances must be before human life could be licitly taken; nor was the law everywhere uniform in its treatment of exceptions. But despite these differences, the political culture supported, and the law enforced, a fundamental reverence for life in the womb. Even if one assumes, with the *Journal*, that "the ordinary instincts of mankind" have always been ambivalent about abortion, the massively important fact is that the ambivalence was resolved in favor of maintaining, rather than removing, legal protection for the unborn. The common folk of America who supported this resolution of the question were, to put it mildly, decidedly *un*-Catholic in their doctrinal preferences; nor did they consider themselves to be engaged, as the *Journal* would have it, in "push[ing] morality through the sieve of Aristotelian logic." They knew in their bones what only a modern intellectual would seek to deny, namely, that abortion involved the taking of a human life already in being; that, quite apart from formal religious doctrine, it would be a derangement of nature and an assault upon the common good to tolerate its common occurrence; and that they would be held accountable, if not by God then by posterity, for their treatment of the most innocent and vulnerable members of their species.

We have witnessed during the past decade or so a total inversion of the legal order's disposition toward the child in the womb. Indeed, it is difficult to think of anything even remotely comparable to it anywhere else in modern American jurisprudence. We have gone in a few short years from the presumption that the child *in utero* was entitled to protection, to the presumption that the child *in utero* has no intrinsic dignity whatsoever. This momentous reversal seems to have come about less because "the ordinary moral instincts of mankind" changed, than because the ordinary moral instincts of those whom the *Journal* calls "elitists" decided that the time had come to change the old order. It is true that in the decade preceding the Supreme Court's revolutionary ruling a number of states relaxed some of the traditional legal constraints against abortion; but these were a relative handful. A fact of at least equal significance is that these very changes generated their own political opposition, which

soon threatened to halt the abortion-reform movement in its tracks. When some hearty soul undertakes to write an unbiased account of the modern abortion-reform movement, he may discover that by the late 1960's the reformers had extracted from the political process just about all that could be extracted. He may also discover that the critical turning-point was the decision to use the courts rather than the legislatures as the principal engines of reform.

This strategy, as we now know, proved successful beyond the wildest dreams dreamt by the reformers only a few years before. The *Journal*, which is normally quick to spot and frequently skeptical about certain intellectual fashions that the so-called "new class" would like to foist upon the body politic, would do well to study the abortion-reform movement as *the* classic success-story of how the law can be manipulated in accordance with the special interests of a relatively small but determined and articulate elite.

It is hard to say where "the ordinary moral instincts of mankind" now stand on the issue. The public may not yet be any more ambivalent than it was, say, ten years ago, but there is this critical difference: public opinion now exists within a legal framework that has had stripped from it virtually every protection once enjoyed by the unborn child. Under the circumstances, one would not be surprised if, over time, the public came to believe that abortion was not only a necessary evil but a positive good. Contrary to what the *Journal* implies, "the ordinary moral instincts of mankind" are not a thing apart from the rest of the body politic. They are decisively formed, particularly in this democratic republic, by the prescriptions and proscriptions of the law. When the right to an abortion is elevated to the status of a constitutional guarantee, and when, further, the ambivalists reassure the public that this is a politically necessary and morally justifiable event, the humane disposition toward the unborn child which has been the hallmark of American culture and law is bound to dissipate.

Indeed, there is already evidence that a significant segment of the public has become morally desensitized. The statistics on abortion make clear that it is being used principally as a post-conception method of birth control. The so-called "hard" cases, which are everywhere employed as justification for liberalizing abortion laws, are but a tiny fraction of the statistical universe. Abortion is fast becoming simply another means by which one eliminates a stubborn hindrance to the acquisition of a preferred "lifestyle"; it has even

become, among women of fashion, a tool for sex-selection of children. On the particular issue of Medicaid funding, it has been argued in the halls of Congress and in the editorial columns of leading journals such as the New York *Times*, that the government should fund abortions for the poor on the grounds that to destroy children in the womb is cheaper than to subsidize them later on welfare. When that sort of argument can be made in a public place without apparent shame, we have obviously come a long way down a dangerous road. A sense of guilt, which appears to be the *Journal*'s principal barometer for measuring "the moral instincts of mankind," will not likely prevail against arguments which hold abortion to be socially, economically, and personally beneficial. Although the *Journal* would view the prospect as unsavory, if large numbers of Americans come to consider abortion as no more morally problematic than an appendectomy, it will be because institutions like the *Journal* encouraged them to believe that abortion was of grave moral concern only to quaint medieval theologians.

As to that, only time will tell. In the meantime, a substantial segment of the public has reason to believe that the abortion revolution was thrust upon them from above, as indeed it was by seven members of the Supreme Court in 1973. They feel, quite correctly, that they were deprived by the Court of the opportunity to give voice to their "ordinary moral instincts" through the legislative process. But no sooner did they resolve to redress this grievance in the wake of the Court's 1973 decision, than they were accused of all manner of incivilities, including but not limited to seeking to "impose" their morality upon others. But whose morality, pray, was imposed upon the body politic by seven members of the Supreme Court in 1973? And why is *that* morality entitled to a presumption of pluralist neutrality? In overturning the abortion laws of every state in the Union — laws which, incidentally, found their way into the statute books long before Catholics acquired any political influence worth noting — was the Court not engaged in what the *Journal* would call an act of "socio-political aggression"? The Court's action was "neutral" only if one assumes, as apparently the *Journal* does, that the only thing to go by the boards was some obscure bit of arcane scholastic doctrine. In fact, what went by the boards was a legal tradition which over many decades had granted greater and greater recognition to the independent rights of the unborn child. What went by the boards were the policy judgments of 50 state

legislatures. What went by the boards was the presumption that all human life, whether born or unborn, was intrinsically worthy and should not be taken without due process of law.

The *Journal* should not dissemble from itself or from its readers the enormity of what the Court wrought in 1973. The leading opinion for the Court, to put it as kindly as one can, is a legal, medical, and logical mish-mash. Explanations of its confusions and contradictions run the gamut from invincible ignorance to disingenuity, but perhaps the best explanation is that the Court, having determined to create a constitutional right to abortion, found itself confronted by a prickly dilemma: how to rationalize the killing of unborn children without at the same time rationalizing the killing of other members of the species whom the Constitution recognizes as "persons." In this, the Court failed miserably — not because it didn't try, but because everything science knows about the human being before birth makes the sought-after distinction capricious in the extreme. The distinction finally seized upon by the Court was that the fetus was merely a "potential" human being, a contrivance hitherto unknown to medicine, biology, or the law. In positing the existence of something called a "potential" human being, the Court necessarily implied that it knew what an "actual" human being was. But the Court nowhere told what an "actual" human being was, other than to suggest that it was someone who, unlike a fetus, possessed the capacity for "meaningful life." One can only guess at the meaning of that phrase, but, in guessing, a chill runs down the spine. If "meaningfulness" is the criterion by which membership in the human species, and hence constitutional personhood, is to be determined, then we have much, much more to worry about than fetal rights.

The great unasked, and therefore unanswered, question of the abortion cases is: At what point does this thing, this fetus, this "potential" human being acquire the constitutional status of a "person" so that it may enjoy the same right to life as, let us say, writers for the *Wall Street Journal*? At what point, in short, must the killing stop, and why? The *Journal* may consider that kind of question to be simply another example of pushing things through "the sieve of Aristotelian logic." But there are those of us who have reason to fear that the abortion cases put forward a doctrine inimical to the protection of *all* human life. It is true, thank God, that not every conclusion that can be yielded from a premise in logic will necessarily be

yielded in life or in law. Nevertheless, no one who loves his liberty or his children will rest easy so long as the law of abortion remains in its present condition. If it is an affront to American religious pluralism to take action against a dangerous and muddled constitutional teaching on who shall live and who shall die, then pluralism has become a threat to, rather than a bulwark of, a free society.

MICHAEL M. UHLMANN

APPENDIX A

[*The following appeared as the lead item (under a "Notes and Comment" heading) in the Talk of the Town section of the August 11, 1980 issue of* The New Yorker *magazine. It was written by Suzannah Lessard, and is reprinted here with permission (©1980,* The New Yorker *Magazine).*]

The Talk of the Town

A woman we know has written us:

A mother can now see her child in the womb three months after conception. The black-and-white picture, which is translated from ultra-sound waves and is called a sonogram, appears on a small screen of what looks like a television set. At first, it is hard to make sense of the swirling, unstable pattern of light and dark, but when the fetus is still, one can soon distinguish its head and then, a little less clearly, its torso. For some time, science has been producing pictures of life in the womb which are much clearer than the murky sonogram, but I, at least, was unprepared to see that figure emerge from the initially unintelligible swirls, unprepared for the knowledge that I was looking at my baby specifically as it was at that very moment. The picture shocked me, as though I had broken a taboo, thrilled me for the extension of my powers, surprised me by its concrete actuality, frightened me by bringing me closer than I am accustomed to being to the nothingness out of which we all come. The picture reminded me of photographs of galaxies. It consisted of millions of points of light which made up what looked like wispy, luminous clouds marking out against a dark field a soft yet unerring, freely symmetrical shape. In the center of this galaxy, hardest of all to perceive but most definite of all once discerned, was a small, dark, pulsating area. The darkness seemed blacker than the background. It had the dense darkness of blood, of a fleshly thing. This was the vessel that would become my baby's heart. Tiny as it was, its pulse was steady and measured. On the stethoscope, its beat came through the static like cymbals heard through the sound of a storm, like a long-listened-for signal travelling, through senseless noises, from another part of the cosmos.

The purpose of the sonogram was to locate my fetus exactly, so that a doctor could perform an amniocentesis — a procedure whereby amniotic fluid is drawn from the womb. The fluid contains living cells sloughed off from the fetus, which can be grown in a culture and then examined for genetic defects — in particular, for Down's syndrome. The chances of conceiving a baby with Down's syndrome rise with the age of the mother; at twenty-two, for example, the chance is around one in two thousand, whereas at thirty-five, my age, the chance is around one in a hundred. In

short, the reason for undergoing an amniocentesis is to forestall the fate of bearing a Mongoloid child, should that chance have struck you. However, establishing the possibility of escape, should it be needed, is not without a price. Implicit in choosing to have the test is a decision to end the life of the fetus if the results should come out in a certain way, and this deeply violates the experience of a much wanted pregnancy.

Pregnancy is such an utterly specific condition, yet also one that is a part of the most general rhythm of life that there is. In pregnancy, one is unusually aware of individuality — one's own, one's husband's, one's baby's — and of the way individuality is inextricably grounded in particular, unalterable time; time, which can so often seem like a great, undifferentiating river on which one is helplessly adrift, becomes instead a very local force in league with individual life. Yet pregnancy is also a state in which one feels a part of the grand, timeless, archetypal forces of nature. So during pregnancy one senses a profound harmony with the universe, an interchange between the grand and the particular which endows every detail of life with new vividness and meaning. Never is one more inclined to believe in the workings of Providence, for now one feels oneself to be a very part of the workings of Providence. The decision to have an amniocentesis negates this sense of harmony. It requires acknowledging that nature cares not at all for the individual, that it is full of blind chances that strike or miss individuals without meaning. The arguments of people who are against abortion often rest upon an assumption that Providence is an actual, objective force in the universe which gives every manifestation of life a special reason for being. But, attractive as this idea may be, it is one that many twentieth-century people are finding harder and harder to believe. To many of us, it seems obvious that our lives are vulnerable to an arbitrariness whose consequences, however stupendously significant to us, are not part of any grand plan at all but are as meaningless as the random way in which we are assailed. To those of us who believe this, it seems clear that man values individual life not out of respect for a principle larger than he is but in defiance of the laws of the universe. He draws his principles out of himself: he makes his moral decisions about the value of individual life utterly alone; and those decisions are necessarily relative ones, made in the face of conditions of existence which in themselves have no respect for individual life. To those of us who believe this, there is a shift of responsibility to our own shoulders which makes it a crime of negligence against individual life not to avail ourselves of the few small ways that we have learned to control our fate — have learned to protect ourselves against freakish accident. But, incontrovertibly true though this view of life may seem to us to be, the path to acceptance of it is not eased. Emotionally, the need to believe in Providence — or, at least, in some kind of personal luck or specialness — remains in force, and becomes more powerful than ever

during pregnancy. No matter how deeply we believe in the reasoning behind the decision to have an amniocentesis, the decision also offends our deepest wishes, dispersing a warm glow of inexpressible beauty with a grim, uncomforting light. Furthermore, the process itself, instead of somehow confirming the truth of this grim light — or, at least, being neutral and merely practical — draws one more deeply into the very experience that it violates, for during it a mother can actually see her baby on the sonogram.

In large part, it is modern science that has brought us to this view of the universe. The scientific approach that showed us that the cosmos does not revolve around man has also shaken us by revealing the impersonal quality of the forces that play with man's fate. Yet along with this terrifying chanciness science has revealed a complex beauty and orderliness in the universe which are far greater than anything imagined in the Age of Faith. The same body of insight that has made us feel alone and unprotected, helpless yet also responsible for ourselves, has prompted in us a great new awe. The same discoveries that have faced us with the terror of meaninglessness have revealed splendors that inspire a reverence far sharper and more specific than they did when they were shrouded in mystery. Amniocentesis is a comparatively minor scientific advance, but it brings one face to face with this paradox of our time — at least, for the month that it takes for the test to be completed. I have lived through that month and now know that my baby is normal. But before I sink back into the harmonious affirmative pleasures of pregnancy, before the illusion of a friendly personal Providence muffles my awareness, I want to record that vision of life and its demanding, paradoxical edge. We live in a universe of spontaneous order, where the somersaulting spirals of galaxies unfold — at a pace unthinkably slow — their immense, unerring, freely symmetrical shapes, where in microscopic privacy cells meet and without warning or announcement of any kind start at their own distinct pace to build, on their own distinct scale, an organism as complex as a human being, where human beings have both the ingenuity to extend their powers so that they can actually see each of these phenomena, so far beyond their natural ken, and the capacity for being in awe of the orderliness and beauty that they see. Yet this universe includes — and we have come to know that it includes — the possibility that, for no reason at all, an asteroid may crash into the Earth and destroy it.

APPENDIX B

[The following appeared on the Publisher's Page of "D" magazine on August 8, 1980; "D" is a magazine published for the Dallas/Fort Worth area in Texas; the publisher is Mr. Wick Allison, and we thank him for permission to reprint his editorial here (©1980 by D Magazine, Dallas, Texas).]

Abortion Mills: The City's Secret Shame

When the Supreme Court made its landmark abortion ruling in 1973, proponents hailed legalization as progressive and humane. Rather than risking their lives in back-alley operations at the sahky hands of abortionists, we were told, women could now turn to professional doctors for a safe, reliable medical procedure

It was an argument that made sense, whether or not one agreed with the legalization of abortion. If a woman I know were determined to have an abortion, I would want her to have the best medical and psychological care available. I wouldn't want her to entrust her life to the kind of people who were performing abortions when they were illegal.

But there's the rub. Those people are still performing abortions. Many of the clinics opened since the 1973 ruling are run by the same back-alley abortionists that legalization was supposed to protect us from. Because legalized abortion is big business, these new clinics can afford the trappings — good location, nice decor — that make unwary women think they're in a well-run, professional medical facility. But the trappings don't help in the operating room.

One can certainly make the case that there's a difference between an abortion clinic and an abortion mill. The question is, how does a frightened, confused young woman tell the difference? Two clinics in Dallas are nonprofit, and six of the for-profit clinics belong to an association that tries to enforce minimum standards of patient care. That's some help, but it's not enough. A quick check of the Yellow Pages (where abortion clinics are listed under "birth control," by the way) shows 19 clinics operating in Dallas. According to a recent *Times Herald* story, several of these clinics are run by doctors who are not allowed to practice at local hospitals. Imogene Mayfield, an abortionist who is still able to place a "Dr." before her name, has been expelled from Methodist Hospital, kicked out of the Dallas County Medical Society, arrested on federal drug chrges, and convicted of receiving stolen goods (the conviction was reversed on appeal). Incredibly, nobody has tried to stop her from performing abortions in Dallas.

An investigation by the *Chicago Tribune* in 1978 found that many of clinics operating there were employing "doctors" without licenses to prac-

tice, performing "abortions" on women who were not pregnant, and using strong-arm tactics to coerce women who had come in for counseling into having unwanted abortions. It strains credibility to believe these people operate any differently here.

Abortion in Dallas is unregulated, and that makes it dangerous. Yet, in a city whose government has made every effort to protect the public safety with ordinances covering everything from auto repair to street venders, the issue of regulating abortion has not even been seriously raised. I think I know why.

The Dallas City Council, like any other public body, is not likely to throw itself voluntarily into the path of a political hurricane. I can't blame them. The people I do blame are those who long ago should have forced the politicians to act. Specifically, I mean four groups: the pro-abortion lobby and reputable clinic operators, the pro-life and church groups, the Dallas medical community, and the press.

Why haven't any of these raised their voices to demand action? The pro-abortion lobby and clinic operators haven't because they are scared that once raised, the issue will focus public attention again on the entire issue of abortion. Abortion is a dirty subject, and the public isn't likely to make neat distinctions. Once aroused, the public could easily move from abortion mills to the issue of abortion itself. The pro-abortion lobby would rather let that dog lie, even if it means unscrupulous and even dangerous operators are allowed to victimize their patients.

The pro-life groups have another concern. With more than 18,000 abortions performed in Dallas in one year, their interest is not in forcing an improvement in the professionalism and medical finesse of abortion clinics. If abortion is murder, why aid and abet the murderers?

The medical community, I confess, I will never understand. Only recently reports have surfaced about doctors who decline to report suspected cases of child abuse; one case led to the death of a three-year-old child. I don't understand that. Neither do I understand how the medical community can stand by passively while get-rich-quick operators profane everything the medical profession has sworn to uphold. I would think the first calls for reform would come from Dallas doctors.

And then, of course, there are my colleagues in the press. Here the problem is even more outrageous, if subtle. Abortion is "liberal," and that makes controversy over it passé. Once again, as so often in modern journalism, distinctions are lost. Only one big city newspaper, the *Tribune*, has tackled the subject in depth. In Dallas, conceivably the largest public safety issue of this decade is virtually ig nored in the press.

As for my personal opinion, it seems unreasonable to regard the aborting of a fetus as anything less than the ending of a life. What is life, after all, but possibility? We all know what abortion is, which is why the argu-

ments over when life begins and whether a fetus is a person have largely subsided in the years since the court's dicision. As I said before, abortion is a dirty business, and I find everything about it — down to the billboards advertising it that litter our freeways — to be repugnant.

But my personal opinion doesn't change the facts. And the fact is that thousands of women in this city are obtaining abortions, under unsafe, unregulated conditions. If the goal is to protect life, those like myself who claim to be concerned with the children being murdered should be just as concerned with the mothers being maimed. The place to start is not in Washington with an amendment to protect unborn children but in Dallas with an ordinance to protect unwary women. Agree or disagree with me on the issue of abortion itself, but agree with me on this: We need regulation of our city's abortion clinics, and we need it now.

APPENDIX C

[*The following appeared as a "Viewpoint" article in the June, 1980, issue of the magazine* Sexual Medicine Today. *It is reprinted here with permission of the publishers. Dr. Ney is identified as Head, Department of Psychiatry, Royal Jubilee Hospital and Associate Clinical Professor, Department of Psychiatry, University of British Columbia, Vancouver, B.C., Canada.*]

Is Elective Abortion a Cause of Child Abuse?

by Philip G. Ney, M.D.

A presumably plausible argument in favor of elective abortion is that it would make each child really wanted. What could be better, it is often argued, than preventing the birth of unwanted children who will be neglected and battered? Unfortunately for this seemingly cogent claim, there is now reason to believe that elective abortion has the reverse effect.

Child neglect, abuse and murder is increasing. Having to treat so many battered children, I began to worry that using abortion to make every child a wanted child might be backfiring. When I examined the evidence, I became convinced that most of the abused children resulted from wanted pregnancies and that elective abortion is an important cause of child abuse.

Early elective abortion became available in Canada in 1969. From then on there has appeared to be an increase in deaths of Canadian children from social causes. The provinces with the highest rates of abortion — British Columbia and Ontario — also have the highest rates of child abuse. Newfoundland, Prince Edward Island and New Brunswick have low abortion rates. They also have low rates of child abuse.

Disquieting figures

The figures on this relationship in the United States are equally disquieting. Since elective abortion became available in 1972, there has been a continuing increase in child battering as indicated by a report of 22,683 battered New York children in 1974, and 26,536 in 1975. V. J. Fontana and D. J. Bersharov, in their book, *The Maltreated Child*, estimated that there will be 1.5 million battered children in the United States during the next ten years, resulting in 50,000 deaths and 300,000 permanent injuries.

The following mechanisms might help explain how abortions can lead to child abuse:

- Having an abortion can interfere with a mother's ability to restrain her anger toward those depending on her care. Abortion might also weaken a social taboo against harming those who are defenseless. With wholesale

abortions discarding nondefective unborn children, the value of children might diminish, resulting in less care and protection.

Higher mammals respond with parental care to signals of distress from their young. An aborting person, having already repressed her instinctive caring for her unborn young, might be less inhibited in giving vent to her rage at a whimpering child.

Having repressed that taboo, those people are more likely to be passive and indifferent to the distress of a battered child and more reluctant to intervene. What a contrast with the past when people did not stop to think about defending a child, even at the sacrifice of their lives!

• The decline in the value of children (and I am not discussing attempts to limit population growth) has had some significant side effects. Only two decades ago parents were willing to suffer major deprivation to have and raise children. It seemed like a sacred obligation or a great privilage. Nowadays, people balance having children with wanting a country house, another car, better vacations and early retirement.

This might be observed by children in such families. As a result they might feel less confidence in their parents' true concern for their welfare. They might then become so importunate in their demands for care and attention that their parents feel threatened. Not infrequently, the parental response to those attention-demanding children will be physical violence. What might cause children to question whether or not they were really wanted is that their mother had one or more abortions.

• Society is beginning to believe that a child has no right to exist and is therefore valued only when it is wanted. If it is permissible to kill an unwanted, unborn child, then one can defend killing children when they are already born when they are no longer considered to be valuable. Judging from the lenient attitude toward those who maim or kill children today, children nowadays probably have a legal value similar to their value during the Middle Ages — which was not very much.

• Recent evidence indicates many women harbor strong guilt feelings long after their abortions. Guilt is one important cause of child battering and infanticide. Abortion also lowers women's self-esteem and there are studies reporting a major loss of self-esteem in battering parents.

• Children who are aware of an abortion in the family might bring on themselves parental violence. As abortion survivors they experience a combination of guilt and anger. These feelings could lead to behavior that appears disrespectful or aggressive to parents — behavior that might trigger parental rage. Such guilty and angry children might turn on their siblings. The ensuing fighting might provoke parental battering. When these children mature, their unresolved guilt could lead to battering their own children.

• Marital stress plays a strong role not only in the "battered-wife" syn-

drome, but also in the "battered child" syndrome. Some women resent their male partners impregnating them and then coercing them to have an abortion. Fathers, on the other hand, might feel hostility toward women because they have no rights in decisions about which infant gets aborted and when. The "battle of the sexes" aggravated by elective abortion, can all too easily be turned violently against children.

◦ There is increasing evidence that previously aborted women become depressed during a subsequent pregnancy. Depression interferes with a mother's early bonding with her infant, and children who are not bonded to their mothers are at a higher risk of being battered.

If these hypotheses are valid, then as abortion rates increase, child battering rates will increase proportionately. In separate studies, Schoenfeld and Barker have reported that women who have abused their children had higher rates of abortion. Preliminary results of our own study show a greater frequency of child abuse by women whose first pregnancy either miscarried or was aborted.

An ever-expanding cycle

The argument that unwanted children will be abused, and should therefore be aborted, has been heard in varied guises throughout history. It has been a stock justification for doing away with those undesirable and those unwanted because they hampered the privileges and wants of those in power. But if the mechanisms here described are accurate, not only will abortion on request increase child battering, but the "abort and batter" syndrome will increase in an ever-expanding cycle in future generations.

I wonder why, when we are so interested in preserving nature's delicate balance, we do not have a similar concern for the long-reaching implications of elective abortion on the human species. What war, pestilence and famine could not do to us, medicine, in the name of humanism and emancipation might yet achieve. By helping to disrupt a major species-preserving mechanism — the mother-infant bond — medicine not only threatens the welfare and safety of large numbers of children, it might also be endangering the future of humankind.

APPENDIX D

[*We reprint here the text of the statement on abortion issued by Humberto Cardinal Medeiros (as it appeared in his diocesan newspaper,* The Pilot *— see the September 12, 1980, issue) Following it, we reprint the syndicated newspaper column (issued Sept. 18) by Joseph Sobran, which discusses Cardinal Medeiros' statement (reprinted here with permission; © 1980, Los Angeles Times Syndicate).*]

Dearly beloved in Christ:

As all of you know, since becoming Archbishop of Boston ten years ago, I have written and spoken to you many times about the most vital concerns of our day. I have joined with millions all over the world and in our country to condemn the evil of abortion. I have testified before the Senate Judiciary Committee in Washington favoring the passage of a Human Life Amendment; I have spoken and written in defense of innocent human life on any number of occasions, and it is my constant prayer, alone and with my people, that the United States would reaffirm what the Declaration of Independence proclaims as a fundamental human right —The Right To Life.

Living in a society that puts such faith in statistics, it is frightening to realize that 1,000,000 unborn children have been legally aborted in the United States every year since the death-dealing decision of the Supreme Court on January 22, 1973. As of this date, more than 8,000,000 of our very own children have been destroyed in the womb, strangely described as a "medical procedure."

Presently, we are faced with primary contests in our own districts, and a few weeks later, the final election which will determine those individuals who will vote on the law which will govern the conduct of the Commonwealth and the entire country. Through this letter, as your Archbishop, I wish to restate my unalterable opposition to legalized abortion as an offense against God and humanity, against our Maker and His people.

With pastoral concern for the spiritual welfare of the faithful who are both heirs of God's Kingdom and citizens of this noble nation, I plead with you to exercise your right and duty to vote in the upcoming elections; and, to bring your own conscience — the voice of God within you — to the ballot box with you. We are a nation *under God*, as we are a *nation of law*, and we must be as consistent with our concern for the unborn as we are for all those people from near and far who look to us for aid and comfort. We must work to change our nation from its blood-drenched current condition to a sacrificing society that welcomes life at every stage of human development. That might makes right by court ruling can never be the last word when human life is the issue.

The Second Vatican Council declares that abortion is "an unspeakable crime." Those who make abortions possible by law — such as legislators and those who promote, defend and elect these same lawmakers — cannot separate themselves totally from that guilt which accompanies this horrendous crime and deadly sin. If you are for true human freedom — and for life — you will follow your conscience when you vote, you will vote to save "our children, *born and unborn.*"

Your answer to this call to vote must not be taken lightly since it could be a matter of life or death for millions yet to come. May our values be a living witness of the faith and hope and love we share.

With a hearty blessing, I am

Devotedly yours in Our Lord,
+ HUMBERTO CARDINAL MEDEIROS
Archbishop of Boston

The Cardinal Scares a Columnist

by Joseph Sobran

Two days before the Boston primaries, Humberto Cardinal Medeiros issued a letter to Catholics in the area warning them of the serious sinfulness of supporting abortion, this "horrendous crime" that has left our society "blood-drenched." His letter was understood to be directed against candidates like Democrat Barney Frank, who is seeking the seat being vacated by Father Robert Drinan. The pro-abortion Frank won anyway.

Despite Frank's victory, the Cardinal's letter moved New York *Times* columnist Anthony Lewis to observe that "the most important issue in the 1980 election is not inflation or foreign policy or unemployment. It is the role of religion in American politics." He has a solid point there. The trouble is, he takes the wrong side.

Like most liberals, Lewis seems to have no religion, which may be why he gets so alarmed when other people do. The prospect of a nation being taken over by Marxist terrorists doesn't scare him, but Jerry Falwell does, and Cardinal Medeiros does, and it's a safe bet the village parson does. And like many people with morbid anxieties, he projects them onto others. Thomas Jefferson, James Madison, and the boys, he assures us, "were mortally afraid of mixing religion into politics. Those who hold their view today should start taking the new political religiosity seriously."

Funny, but Lewis never worried about this back when the mixing of religion and politics was being done by Martin Luther King, William Sloane Coffin, James Groppi, Dan and Phil Berrigan, and the National Council of Churches. Why was their activism excusable, even laudable,

and that of the Falwells and Medeiroses sinister? Isn't Lewis simply confusing his own preferences with constitutional principles?

Church and state, religion and politics should be kept separate as much as possible. But this requires that the state too remember its proper place. Many people criticize the churches for failing to speak out more forcefully when the German state was killing Jews. Why is it so meddlesome for the churches to speak out against the killing of unborn children? Many applauded when clergymen supported civil rights and peace. Why act shocked when they support the family? Disagree with them, if you will. But give reason against their reasons. Don't say they break some code by speaking out like everyone else.

If religious people are refusing to leave politics alone, it's because they feel politics can't be trusted to leave them alone. Government has gotten ever more aggressive in its attempts to remake American society and morals. Men of faith didn't pick this fight. The separation of religion and politics ended when the state started trying to redefine right and wrong, in pornography, abortion, race, economics, and the relations of the sexes.

Liberal complaints on this score give every appearance of being insincere. Not only are they inconsistent about American politics; they didn't, for instance, complain when Medeiros came out for cross-district racial busing. What is worse is that they never seem to object to violations of the separation principle when it's the state, rather than the church, that is on the aggressive. Religion is persecuted every day of every week in the socialist bloc of Eastern Europe. The official churches have been totally satellized by the socialist regimes, and dissenters are ruthlessly punished. When did you last hear an American liberal object to that? Alas, our liberals don't regard this horrible state of affairs as an important moral or social question — though millions of people suffer under it.

The very purpose of religion is to transform human beings. If it also improves the world we live in, that is all to the good. But it is generally agreed that the improvement of the world must come, for the most part, through multitudes of individual regenerations, not through social engineering, or clerical meddling, or churchmen engaging in partisan activities.

Cardinal Medeiros' letter was in the best tradition of clerical leadership, reminiscent of the Abolitionist movement that flourished in New England over a century ago. If he can be faulted for anything, it is for seeming to target his statement too closely to a particular contest. Perhaps it would have been wiser to speak out early and constantly, so that even Barney Frank would have had time to adjust his position. The real purpose of bearing witness, after all, is larger than just to swing an election.

IMPORTANT NOTICE

THE HUMAN LIFE REVIEW accepts regular subscriptions at the rate of $12 for a full year (four issues). Please address all subscription orders to the address below and enclose payment with order. You may enter gift subscriptions for friends, libraries, or schools at $12 each.

How to order previous issues:

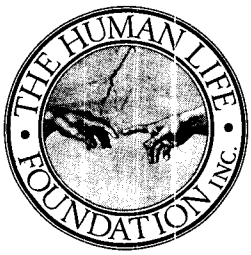
This issue — No. 4 of Volume 6 — is the 24th issue published to date. You may order single copies of this issue — or the 23 previous issues — by sending $3 per issue to the address below. Simply designate copies desired by asking for any issue(s) by number: # 1-4 (1975), # 5-8 (1976), # 9-12 (1977), # 13-16 (1978), # 17-20 (1979), and # 21-24 (1980). You pay only the copy price ($3); we pay all postage and handling.

Bound Volumes: we now have available Bound Volumes (in permanent, library-style hard-cover editions, with gold lettering, etc.) of the first five years (1975-79) of this review. *All volumes are completely indexed,* and are available postpaid at $30 per volume, or all five volumes for $125. Separate copies of each index are also available at $.50 per copy. Bound Volume VI (1980) will be available in early 1981.

Bulk orders: while supply of back issues lasts, we will supply 10 or more copies of any issue at $2 each; 100 or more copies at $1 each. Please indicate quantities per issue desired and include payment in full with order.

Address all orders to:

The Human Life Foundation, Inc.
150 East 35th Street
New York, New York 10016


THE HUMAN LIFE
FOUNDATION INC.