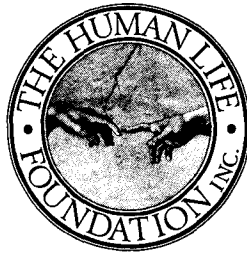


the HUMAN LIFE REVIEW



SUMMER 1982

Featured in this issue:

Joseph Sobran on Tendency Land
Dr. C. Everett Koop on The Slide to Auschwitz
Dr. Joseph R. Stanton on Feticide & Infanticide
Steven R. Valentine on 'Wrongful Life'
Prof. Gary E. Crum on A Doctor's Defense
Robert Brungs, S.J. on Life & Personhood
Prof. R.V. Young on Taking Choice Seriously
Ellen Wilson on Gifts for Children

Also in this issue:

The Bloomington Baby (from the *Congressional Record*, including Rep. Henry J. Hyde, Sens. Jesse Helms & Jeremiah Denton, George F. Will, Stephen Chapman); plus Warren King, Hadley Arkes

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. . . FROM THE PUBLISHER

Since the Bloomington Baby tragedy, we have been inundated with articles, columns and speeches by famous and not-so-famous people expressing their outrage over the incident. So, with this escalation from abortion to infanticide, we have decided to devote (dedicate) this, our 31st issue, to Baby Doe and, as Mr. Sobran put it, the "out of the closet" horror of infanticide.

In the article by Joseph Stanton, M.D., he quotes from the *Journal of California Medicine* editorial "A New Ethic for Medicine and Society." This editorial has been reprinted a number of times in *The Human Life Review*, the latest being the Winter '82 issue. (For information about how to obtain copies of this and other back issues and bound volumes please see the inside back cover.) Prof. Gary Crum (a newcomer to these pages) dedicates his article to Dr. Harry Yeide, Jr., Professor and Chairman of the Department of Religion at George Washington University, in gratitude for his advice and patient instruction. Within the material reprinted from the Congressional Record (Appendix A) are two newspaper columns: the first, by George F. Will, appeared in the *Washington Post*; the second, by Mr. Stephen Chapman, ran in the *Chicago Tribune* the same day. Those publications hold the original copyrights.

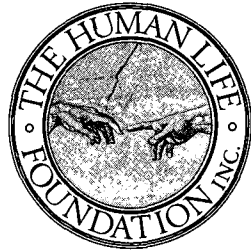
In our last issue we neglected to give proper credit for the article by Jacqueline Nolan-Haley, "Amniocentesis and Human Quality Control." The article first appeared in *The Journal of Legal Medicine*, published by the American College of Legal Medicine, 875 North Michigan Avenue, Suite 3342, Chicago, Illinois 60611, and was reprinted in the Spring '82 *Human Life Review* with permission. We regret the error.

The Foundation has available Ellen Wilson's *An Even Dozen*, published by The Human Life Press, at \$10 per copy. *The Human Life Review* may be obtained in microform from both University Microfilm International, 300 North Zeeb Road, Ann Arbor, Michigan 48106 and Bell & Howell, Micro-Photo Division, Old Mansfield Road, Wooster, Ohio 44691.

Finally, a word about manuscripts; the editors do read *all* material submitted. However, we do ask that anyone sending an article enclose a stamped self-addressed envelope if they want unused manuscripts returned.

EDWARD A. CAPANO
Publisher

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Editor

J. P. MCFADDEN

Publisher

EDWARD A. CAPANO

Contributing Editors

JOSEPH SOBRAN ELLEN WILSON

Production Manager

ROBERT F. JENKINS

Editors-at-Large

FRANCIS CANAVAN, S. J.

MALCOLM MUGGERIDGE

JOHN T. NOONAN JR.

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INTRODUCTION

“**W**HERE HAVE WE heard all this before — the extenuating circumstances, the sudden scruples about the moral tradition, the marvelously generous presumption that the killing was motivated by a pure conscience? We have been hearing it all incessantly for more than a decade now. To hear the advocates of abortion talk, you would gather that every aborted life represents the triumph of maternal conscience.”

Thus Mr. Joseph Sobran, in our lead article, which he was moved to write (with even more than his accustomed passion) by the death of the Bloomington baby. Indeed, we might well dedicate this issue to little Baby Doe, for there is much in the following pages that has been inspired by him — and virtually nothing that is *not* related to the moral collapse which his pitiful death symbolizes.

So we *do* dedicate this issue to Baby Doe, a gesture at least as efficacious as the “treatment” afforded him by his doctors, and the hospital in which he lived out his six-day agony of starvation. Unwanted in this world, we trust that he has been welcomed home in the next. But perhaps the greatest horror is that Doe *was* wanted; at least a dozen couples (all, if the press reports are accurate, themselves parents of “imperfect” children) offered to adopt him. As Mr. Sobran noted (in a recent newspaper column), this “oddly reverses the story of Solomon, in which it was the real mother who preferred letting the false claimant take her child rather than allow it to be cut in half.”

After reading Mr. Sobran’s article (which you surely will if you begin it) the reader may well want to turn directly to the appendices, which contain much more about Baby Doe, not least the powerful impact his court-ordered execution had on the U. S. Congress.

Our next article is not new. It first ran in this journal over five years

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ago (Spring, 1977). The author, Dr. C. Everett Koop, was then a famous baby surgeon; he is now the Surgeon General. In introducing it then, we noted that Koop was saying bluntly that infanticide was already a widely-accepted practice in our hospitals — in direct defiance of law. We expected that his article would attract wide attention. Perhaps, now, it will. Certainly, post-Bloomington, it makes grim reading.

So does the following article by Dr. Joseph Stanton, who also has had much to say, for years now, both on abortion and infanticide. Again, all too few were listening. *Had* we listened, the Bloomington case would not have been nationwide news; indeed, if the lesson Drs. Koop and Stanton have worked so hard to teach had sunk into the nation's conscience, Doe might now be alive, another celebrated example of the wonders workable by medical practitioners bent on saving, not destroying, new life.

We move on to several newcomers to our pages. Mr. Steven Valentine asked us if we would be interested in something on "wrongful death," another devil-child of abortion which, as he notes, is "just beginning to attract notice in the popular press." The same could have been said, just weeks ago, about infanticide. So we may be just a little ahead of the news in drawing your attention to yet another coming horror? Certainly Mr. Valentine could not have known how timely his article would be when we printed it.

Professor Gary Crum must have thought that he was writing generally about history long past, and specifically about a doctor long dead. We were fascinated when we got his article, and thought it well worth printing — important lesson in it, etc., and of course many see the same problem looming ahead, etc. — again, we couldn't know how timely it would be right now. There are, we'd say, many Doctor Brandts still among us; may they profit from reading his original justification of the actions for which he was executed.

Then we have the Reverend Robert Brungs, S.J. (who first appeared here in our Winter, 1979 issue), who neatly wraps up the fundamental reason for our troubles: we are abandoning our commitment to the sanctity of life in favor of a *quality* of life "ethic" under which, *a la* Humpty Dumpty, the word means exactly what the *user* means it to mean; Baby Doe merely fell short of a current definition, while in the power of users also possessed of the power to enforce, fatally, that definition. Father Brungs too locates the start of it all in the Supreme Court's abortion *fiat*. And warns that we are witnessing "the elimination of the biologically suspect," despite the fact that "we all — every one of us with no exceptions — are biologically suspect."

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Professor R. V. Young is another newcomer here (although he has written for a wide variety of other publications, not least on his scholarly specialty, Renaissance literature). He takes on what is nowadays touted as the “complex problem” of making choices, another vexed question intimately related to abortion. We think you will find his arguments both refreshing (“Among human beings pregnancy is virtually always the result of choice”) and compelling. And, again, most timely: up to now, in our Great Abortion Debate, pro-abortionists have insisted on opposing the “right to life” with a “right to choice.” Now, clearly, such “choice” is being extended beyond the unborn, to “unwanted” infants today, to other categories unwanted tomorrow. It would seem that the proper name for its proponents would be the “right to death” party?

Having read thus far, we would be surprised if our readers would not appreciate a relaxing break, and even more surprised if Ellen Wilson does not provide just that with her latest essay, another example of her ability to write smoothly, with deceptive ease, about real complexities. We cannot resist adding that she too bears directly on all that has come before: that choice avoided is choice made; that we must hold to ideals precisely *because* “reality is such hard going.” Enjoy it.

We think the reader will find the appendices in this issue quite as interesting as the regular articles. Appendix A contains selections from the *Congressional Record in re* the Bloomington case. Not surprisingly, most of the speakers are well known to our readers; both Mr. Henry Hyde and Senator Jesse Helms have previously appeared in our pages (and we hope to have an article from Senator Jeremiah Denton in a future issue). We are also glad to reprint here the much-celebrated newspaper columns by Messrs. George F. Will and Stephen Chapman. It all makes formidable reading, yet our only regret is that we could not reprint *more* of it. And there was a great deal more: Senator Denton, for example, added (after his speech, reprinted here) a dozen fine-print pages of relevant material on infanticide — all well worth study — including the full text of another “famous” news story which appeared in the midst of the Bloomington uproar (see the *Washington Post*, May 6); it reports that a Maryland veterinarian was suspended from practice and fined \$3,000 “in the starvation death of a dog.”

Appendix B contains two syndicated columns on Baby Doe by our own Joseph Sobran which robustly supplement his lead article in this issue.

Appendix C is also related, in its way: it is a reprint of a *Seattle Times* story on the “dilemma” caused by babies judged — by “professionals”

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and “moralists” — as less-than-perfect. (The Rev. Lawrence Reilly is, by the way, a Roman Catholic priest.)

Appendix D “goes” with Mr. Crum’s article, being the full text of Nazi Doctor Karl Brandt’s justification of his crimes. Perhaps our Indiana readers will want to share the text with their supreme court justices.

Appendix E is simply one of the best articles we have read this year, by Professor Hadley Arkes (who previously appeared in our Winter, 1980, issue). That is reason enough to add it to our continuing record, but you will note that Mr. Arkes, writing albeit mainly about political matters, makes abortion a key factor in his argument. Thus we conclude another issue that ranges across a wide spectrum of questions, without straying far from the central dilemma of abortion, the killing of innocents.

* * * * *

Some months back, Mr. William F. Buckley Jr. included some generous words about this review in his syndicated newspaper column. *Most* generous: the *Human Life Review*, he wrote, is “the locus of civilized philosophical, legal and polemic discussion on the abortion issue . . . The journal has the manners of a bishop and the tongue of H. L. Mencken, and if you didn’t know the two could fuse, it’s because you have deprived yourself of familiarity with this remarkable journal.” He also quoted from our (Winter, 1982) article by Joseph Sobran:

The pro-abortion side hasn’t been what I would call ingenuous. They specialize in footage of babies with spina bifida and other terrible birth defects, when in fact most women or couples who decide to abort don’t wait around to find out whether the blessed non-event would have brought deformity into the family; they just want to get rid of the thing.

The column drew a considerable mail response. Among the letters was one from a mother, writing in regard to the mention of spina bifida; she agreed that it was “devastating,” adding that it was “a description to which I can do nothing but agree as I have a son who was born with this affliction.”

She then went on as follows:

remember, however, that *all* birth defects however mild are devastating to new parents who, generally, have no more serious concern during pregnancy than the ultimate sex of their newborn. Spina bifida is one of the most common birth defects, the largest percentage occurring in the white, middle-class population (Celts and Britons are especially vulnerable) but few people are aware of it as the majority of afflicted infants are allowed to die following birth (a sort of post-natal abortion). Indeed, until not too long ago, these deaths were inescapable, the children succumbing to either meningitis (because the spinal column was open to the air) or brain death due to hydrocephaly (so-called water on the brain which occurs

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in 85% of these babies either pre or post-natally). Some years before my son was born, a British surgeon discovered that, if the bifida were closed immediately after birth and a shunt implanted in the brain to relieve the pressure buildup of hydrocephaly, not only would the child survive, but even regain some lost neural function. These children then stood as good a chance for a meaningful life as any other orthopedically handicapped youngster, and, in some cases better since, unlike muscular dystrophy, spina bifida is not a literal "death sentence." Only a "high" lesion (one located higher on the spinal column) mitigates against surgical intervention because of the enormity of the resultant neurological damage. Each spina bifida child is a unique case with varying degrees of involvement from slight to severe. There is no patent diagnosis for this affliction but rather a varying amount of possibilities which might take months or years to manifest itself into a final handicapping condition. In and of itself, spina bifida does not cause mental retardation although it can occur in cases where other causes are involved (such as additional birth defects in the same infant). Brain damage caused by hydrocephaly or repeated bouts of meningitis, both of which are preventable by immediate surgical intervention, has led to the belief that these children are, to quote one physician, "better off dead."

My son is not quite twelve. He can read and write the Russian and Greek alphabets and is learning Hebrew, Czech and Serbo-Croatian. His reading skill is on college level, his abstract reasoning in the superior range and although he does have some minimal brain dysfunction (he did not develop hydrocephaly) which is not necessarily related to his condition that causes him some problems with math, he is no worse off than many "learning disabled" children now handled in the normal public school setting. Indeed, he cannot walk without long-leg braces and crutches and uses a wheelchair the majority of the time. So did Franklin D. Roosevelt! Mr. Buckley, the arguments regarding aborting possible spina bifida pregnancies (and though this defect is present less than one month after conception, there is no accurate test for it in the first trimester of pregnancy) generally concern the financial and mental hardships experienced by the parents, that there will be stress, sorrow and anguish. Very true, but then life is filled with such tribulations. These children also bring joy, delight and fulfillment together with a wonderful opportunity to grow emotionally and spiritually far more than is allowed the "average parent." If the possibilities of mental distress are sufficient to abort a pregnancy, what about the fate of a child who suffers spinal injury at some point after a normal birth? This child could easily be just as handicapped as any spina bifida child, and, if so, what then? Does society euthanize that child either actively or passively as in the case of so many newborn spina bifida babies left to die for want of surgical intervention? If only "healthy, normal" babies have a right to life, where will it end? When will it be only "healthy, normal" children and then "healthy, normal" adults?

We love our son, and though we have suffered with him through the trials his handicap has brought to us all, so we have grown, matured and, I hope, become better human beings because of those trials. But the present attitude toward abortion of the imperfect fetus is but a symptom of a much larger ill. The United States and the West are sinking into a narcissistic, self-obsessed society preferring, in the poet's words, "bondage with ease rather than strenuous liberty." We consign our old, sick and needy to giant, faceless bureaucracies to insure our own non-involvement while we indulge in drugs, sex and electronic diversions. We want to gain success but be protected at all costs from failure. We want to be free but safe, licentious but sterile, married but uncommitted, parents without obligations. We want energy without producing it, money without earning it, freedom without

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maintaining it and love without returning it. If President Reagan fails to reindulcate the sense of values which made this country great, and in turn fails with his program, his real failure will be that he has overestimated us Americans and that, in very truth, "they don't make them like that anymore!"

VALERIE H. PROTOPAPAS
Huntington Station, N. Y.

Moving testimony, we'd say, to the truth that awesome knowledge provides wisdom powerful beyond that available to those of us who have been, as we think, more fortunate.

J. P. MCFADDEN
Editor

Life and Death in Tendency Land

Joseph Sobran

ABORTION FOES HAVE long argued that all the reasons given for legal abortion would do equally well for legal infanticide. And now a growing number of others are agreeing. Only most of the new converts find this a reason not for opposing abortion, but for favoring infanticide.

With the death of the Bloomington baby — allowed to die by the wishes of his parents and with the blessing of the Indiana supreme court — the struggle for the right to life reaches a new plateau. Baby-killing has come out of the closet.

At least we need not scruple, any more, to call it baby-killing. For years we were told that this phrase was strident and unfair; now we see that it is rational and exact.

The killing of the Bloomington baby has been defended by the same people who defended the killing of unborn babies. Should we be surprised? In the first days after the baby's death, his murder by neglect was denounced by several commentators, nearly all of whom have consistently denounced legal abortion. The few who were willing to defend the extrauterine murder were also on the record as having supported intrauterine murder. The alignment was clear.

As if seeing the implications of the event, the pro-abortion New York *Times* issued a belated and feeble editorial deploring the Bloomington killing, and insisting that it was in no way kindred to abortion. Evidently the *Times* realizes that premature advocacy of infanticide could unravel legal abortion itself, and the editorial can be read as an exercise in damage-control. It did not call for any prosecutorial or remedial action.

A handful of others also sought to dissociate the Bloomington killing from the cause of legal abortion, but unconvincingly. It may be some sort of demonstration of one's own residual decency to

Joseph Sobran, a peripatetic author, journalist, and commentator, is a contributing editor to this review.

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draw a line between abortion and infanticide; but the line is arbitrary. The logic and momentum of convenience-killing will not halt at any such artificial boundary, any more than legal abortion stopped at the vague point in early pregnancy beyond which most people can't even bear to imagine an abortion.

What lies ahead? No respectable person is about to say, "I am in favor of letting parents kill their children." Instead we get a series of eerie distinctions without differences. A philosopher writes: "I have little sympathy with the idea that infanticide is just another form of murder." A columnist praises the Indiana court for eschewing "simple solutions to complex problems." A doctor observes that keeping the Bloomington baby alive would have cost the parents and the public a lot of money. (A crude paraphrase, but this is what the doctor's ethical argument — such as it is — boils down to.) Letters to our leading newspapers praise the Bloomington parents for sparing themselves, society, and of course the child himself the "burden" of the child's existence.

So it appears that the parents did not, thank God, act out of mere selfishness. They made their decision out of keen appreciation of the intellectual complexities at stake and out of their sweeping concern for the common good of humanity. Killing a professional murderer may be an act of barbaric societal revenge, but killing your defective infant is the mark of high intelligence and delicate social conscience. What a pity that these parents were too modest to give their names, that they might step forth to accept the accolades they had earned.

No doubt they made their criminal decision under great anguish. No doubt it is good to show mercy. But it is suspicious that so many voices were raised in such eagerness to give them the benefit of doubt as to their motives, and then to acquit them of all blame not by adducing the evidence but by throwing out the law.

Where have we heard all this before — the extenuating circumstances, the sudden scruples about the moral tradition, the marvelously generous presumption that the killing was motivated by a pure conscience? We have been hearing it all incessantly for more than a decade now. To hear the advocates of abortion talk, you would gather that every aborted life represents the triumph of material conscience.

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I have observed many times, in these pages and elsewhere, that the abortion argument has gone through three phases. First the advocates admit the evil, but argue that since abortion “happens anyway,” we had best come to terms with it by legalizing it, the better to control it. Second, they deny that we can judge it right or wrong: abortion becomes a “moral” or “religious” question, and law evidently should never address either. Finally, abortion becomes a positive good — “a fundamental constitutional and human right” — worthy of public support. The abnormality has somehow evolved into a norm.

Since infanticide now seems to be following the same cycle, we should take a closer look at the first phase. It too “happens anyway.” Dr. C. Everett Koop, now United States Surgeon General, has testified vigorously for years that defective infants are often killed, by neglect and other means, in our hospitals. What can be done about it?

Sometimes nothing. Few laws can be enforced against every single violation. In that sense, there is hardly a crime on earth that doesn’t “happen anyway.”

But it is a strange twist of logic which holds that because we can’t always punish acts of which we disapprove, we should reconsider our disapproval; that because we can’t abolish murder, we should give up on every attempt to prevent it; that because sin won’t disappear, we should stop calling it sin.

Abortion “happened anyway” before it was legalized. It happens much more commonly now. The new complaint of the pro-abortion side is that it doesn’t happen commonly enough: and they want us to correct that injustice by subsidizing it with our taxes. At least they have abandoned their former fatalism: they now admit, at any rate, that public action can indeed affect the frequency of the evil, even if they no longer admit that it is an evil.

Where would they stop? Can they even tell us? Yes, they can and sometimes do. The problem is that they all tell us different things. Some say they would allow no abortions after the first trimester; some, after the second; others draw the line, as we have seen, at infanticide, still others would permit infanticide in certain cases; and there is still another group that has yet to draw a line anywhere.

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But all these lines are personal and ineffectual. They have absolutely no effect on the great force which all the pro-abortionists together have liberated; a force that has no visible inclination to relent.

Advocates of abortion always imagine that they are dealing with isolated abnormalities; they assume that the norm can somehow take care of itself. They appeal to our pity when they posit a girl in trouble who simply can't bear the burden of motherhood: would we punish her?

No, of course not. If she had already had the abortion, and if she were an isolated case, we would want to make as little of it as possible. The normal human desire is not to compound the misery of those who have already suffered.

What is never considered is the social impact of indulging a large number of such cases. Abortion is abnormal, but it is not freakish: one abortion begets another, so to speak. Some men have made not only livings but fortunes performing them, one after another.

In the Bloomington case, the state supreme court, by approving the killing in advance, normalized infanticide. The court was precisely not being asked to extend compassion to a tormented couple, but to apply a principle that could serve as a basis for future social policy. It was not asked to impose severity or extend clemency toward an act already done, but to decide whether it would be done at all. And it sentenced an innocent child to die; and maybe other children too.

G. K. Chesterton pointed out that anarchy begins not with riots at the bottom, but with rot at the top; as when a ruling class retains its power but loses its grip on basic values. He saw in the ruling class of his own time and place "the modern and morbid weakness of always sacrificing the normal to the abnormal."

That phrase well describes a tendency that has outlasted Chesterton, growing stronger all the time. The whole idea of reform has come to mean less a recovery of form than a mudslide into formlessness, and normlessness. The reformers seem to assume that the fundamental rules of society — the customs, morals, and expectations by which we organize our lives — can stand any amount of tampering for the sake of exceptions. The work ethic and the stability of the family are expected to be untainted by unrestrained

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welfare spending, easy divorce, abortion, promiscuity, homosexuality, and other approved inroads against old mores. The law-abiding will continue in their wonted ways, even after the laws have been struck down. They will support society, even after society has ceased supporting them.

Norms are neither averages nor abstractions. They are actual sources of energy. They are ways of assuring people that they can fruitfully work and plan to have children, because society will back them up. That is to say, the rest of us will recognize the value and dignity of work and the family, and we will punish anyone who violates these things. Why should people marry if they sense that others will not lift a finger to protect their earnings, their savings, the security of their home, the safety and virtue of their children? If their wealth is ravaged by inflation, if their property is unsafe against criminal invasion, if their children are fair game for violence and pornography, how can society dare to ask for their trust, let alone their loyalty and sacrifices?

This is the pass our reformers have brought us to, and all because they are anarchists in spite of themselves. The more they multiply rules to protect abnormal people, the more they forget the rules normal life depends on. We may know what they think today; but there is no telling what they will think tomorrow. They make plenty of rules, but not according to any rule; and as a result, all their rules are unruly. We live amid a kind of riot of rules. Apparently the only kind of rule we must never make is a rule against what "happens anyway." In other words, we can make any rule we like, provided we know it will never be broken.

It is extremely hard to deal with people whose minds seem possessed by a violent aversion to definition. The trouble with most of the people we call liberals is that they can't imagine what sort of society they would be conservatives in. They have a direction without having a destination. Chesterton once pondered the difficulties that arise from this sort of indeterminacy:

Our political vagueness divides men, it does not fuse them. Men will walk along the edge of a chasm in clear weather, but they will edge miles away from it in a fog. So a Tory can walk up to the very edge of Socialism, *if he knows what is Socialism*. But if he is told that Socialism is a spirit, a sublime atmosphere, a noble, indefinable tendency, why, then he keeps out

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of its way; and quite right too. One can meet an assertion with argument; but healthy bigotry is the only way in which one can meet a tendency . . . Against this there is no weapon at all except a rigid and steely sanity, a resolution not to listen to fads, and not to be infected by diseases.

“Tendency”: what a pregnant word! Books might be written on the way tendencies — the things that “happen anyway” — metamorphose into rights. The whole process was magically telescoped into one article in a major American newspaper.

The story was headlined “Pope Restates Church’s Ban on Contraceptives, Divorce.” The reporter observed that the Pope’s statement condemned the “unofficial but widespread practice” of giving communion to divorced and remarried Catholics.

The phrase “unofficial but widespread” bears reflection. Its actual import is that the writer approves of the practice but, in keeping with the etiquette of reportage, wants to preserve a neutral guise. But, she continued, the impact of the Pope’s words “is difficult to predict, since repeated studies have shown that vast numbers of Catholics no longer follow their church’s teachings on many matters of sexual morality.”

Is this news? Isn’t “repeated studies” just a way of conjuring up what “happens anyway”? It has always been true that many Catholics — “vast numbers,” in fact — “no longer follow” the Ten Commandments. That is why Catholic churches have confessionals.

The writer went on to recall the 1980 synod of bishops at which “Archbishop John Quinn of San Francisco told his fellow bishops that three out of four American Catholic women use artificial birth control methods despite the church’s teaching against it and that only 29 per cent of U.S. Catholic priests believe contraception is wrong and deny absolution to those who use it. Quinn called for a re-examination of the church’s teaching on birth control.” She also quoted a “leading” theologian as citing “similar figures.”

Those who have not gone all the way over to Tendency Land may note that polls only measure; they can’t prescribe, or settle matters of truth and conscience. Christianity would have gotten low approval ratings in Nero’s Rome, and Jesus Christ would have had a low recognition factor.

One might as well write a news story thus:

The Pope today reiterated the Catholic Church’s traditional taboo on

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theft, despite repeated studies showing that as many as 94 per cent of American Catholics have engaged in a wide variety of larcenous practices, including shoplifting, burglary, and tax evasion. The Reverend Dudley O'Donnell of Notre Dame University, a leading theologian, contends, citing similar figures, that it is time for a re-examination of the church's traditional position on stealing. "I think it has to be left to the individual conscience," he says. "There is an important modern tradition that holds that property itself is theft, and I think we have to come to terms with that. We can't just stick our heads in the sand."

The worship of Tendency naturally obliterates the perception of norms. The votary of Tendency is baffled that anyone should ever have disapproved of what Happens Anyway. For what happens is bound to keep on happening, and if its frequency hitherto has increased it is bound to keep on increasing, and if the increase has accelerated it will just keep on accelerating, and so on, until all reason vanishes in a mad calculus of extrapolation.

Powerful trends can't be resisted, so it is a kind of sin, if only of irrationality, to oppose or try to retard them. Rather we should adopt an attitude between approval and appeasement. "The old tyrants invoked the past," said Chesterton. "The new tyrants will invoke the future."

Infanticide is merely a natural extrapolation from abortion. If it can't be seriously wrong to kill a tiny bit of protoplasm (and it can't be, because it happens anyway), then it can't be so very wrong to kill a somewhat bigger bit, and what real difference does it make whether it's inside the womb or out?

People who are used to really reasoning about such things have a hard time grasping the sheer incomprehension with which they are regarded by those whose minds are tyrannized by Tendency. It is not simply a matter of disagreement, however deep. It is a matter of two kinds of minds, one of which has lost an important power of perception, and thinks the other is seeing things that aren't there; even as the other thinks the first is odd for not addressing things that stand, obvious, before them both.

It is Tendency-worship that is becoming normalized in American life. What were once basic rules of behavior are now said to be "complex problems" — as, for example, the complex problem whether to save your own child's life. It would be reassuring if those who talk this way could actually display a sense of intellec-

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tual complexity, as by informing us what the relevant criteria are, so that we could begin sorting out the complexities for ourselves. Under what circumstances is it appropriate to kill your child? And by the way, what are the constituent simple parts of these complex problems? Or is it that any attempt to resolve them into parts yields only further and tinier complexities, like the subatomic particles of matter? At any rate we may notice that the people who talk about “complex problems” never seem to take us a single step toward a solution, but only sit staring at them with a dumb and demoralized simplicity. The situation seems to be so very complex that those who appreciate it despair even of communicating how complex it really is. (The key to the mystery may be a single enigmatic paradox. I often suspect that the perplexity of normless people can be traced to their enthrallment to the unspoken formula “Value judgments are evil.”)

Life always seems hopelessly complex to people who have no principles. It has special difficulties for those who do, but not, at least, the peculiarly baffling and discouraging blur of milling details that faces those who don't know where to start.

When a man doesn't know where to start, it is usually predictable where he will end: wherever Tendency carries him. The columnist who deplored “simple solutions to complex problems” concluded:

The question of whether you can ever take the life of [I think he means “kill”] an infant is one that evades an answer. The only sure answer is, “It depends” — usually no, sometimes, regrettably, yes. This is what the Indiana court said. As a result, two things died — a baby named Infant Doe, and a belief in absolutes.

We have all grown up.

Have we now? What a strange logic. Because a court ruled against life, “we” can no longer believe in absolutes. Had the court ruled otherwise, then, “we” would still believe in them? And would that be “growing up”?

Surely not even a contemporary court would expect such deference as this: that our metaphysical convictions should depend on its hasty rulings. This must indeed be a court of last resort, if not only events but truths hang on its words.

It is strange how many people, professing general skepticism

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about all creeds and institutions, are willing to pay total submission to the judiciary, as if it were a kind of oracle. In fact it is rather striking that so many who “grow up” to abandon the Bible and the Church seem eager to let the Constitution and the Court serve as functional substitutes. Perhaps this is because Constitution and Court offer to provide an unfolding revelation of Tendency.

At any rate, they can hardly deny that they want the Court’s recent declarations, particularly on that basic constitutional and human right of abortion, to enjoy the veneration of all citizens. And they regard attempts to limit the Supreme Court’s jurisdiction as a kind of secular sacrilege.

This is surely odd. They admit that the Constitution no longer means what it meant in 1789; in fact they say that part of its glory is to have changed, to have followed the great stream of tendency. And it is especially the latest meanings divined by the Court, not the earliest meanings intended by the Framers, for which they desire our reverence. When one leading constitutional scholar demonstrated that the Supreme Court had wilfully misconstrued the plain original sense of the Fourteenth Amendment, another leading (or misleading) scholar arose to cry out that we must not be tyrannized by “the dead hand of the past.”

The answer is obvious; in fact there are so many obvious answers that it is hard to make them all. One is that there is hardly any point in writing law down in words if those words are not going to have a fairly constant meaning. Another is that since all words are written by the hand of the past, we would be grateful to know at what point that hand can be safely pronounced dead. Are we to be forever tyrannized by the dead hand of Earl Warren?

The Court’s 1973 finding that abortion laws violate a constitutionally guaranteed right of privacy was preposterously ahistorical, depending for any slight plausibility it had on a congeries of earlier interpretations so controversial that it would be a fluke of probability if all of them were sound. In fact the Court’s recent corpus of “activist” rulings follows the contemporaneous liberal/secularist agenda so closely that it is impossible to take seriously the Court’s claim to be a politically neutral interpreter of the American constitutional tradition. A spate of recent research has shown how badly the Court has misunderstood the Constitution’s original meanings.

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The Court and the votaries of Tendency may not care much; but among people of a different cast of mind, the Court's prestige depends heavily on its fidelity to historical meaning.

The long and the short of it is that the Court now exercises political functions without facing political restraint or responsibility. Despite its rhetoric of checks and balances, it has become a grave anomaly in a system of self-government, not to mention a government of laws not men. It has the very quality that should be absent from law itself: unpredictability. It tells us (sometimes to our surprise) what the Constitution means today; we have no idea what the Constitution will mean tomorrow.

A branch of government that can order sweeping social changes, without answering either to the voters or to the other branches of government (short of the drastic remedy of impeachment), simply cannot be described as "an independent and equal branch" of our government. It is far too independent to be equal. It is so independent that it is, truly, supreme.

The health of American society, the recovery of its norms, has one clear political precondition: the de-mystification of the Supreme Court. So far a number of conservatives have sought to correct the Court's actions by introducing constitutional amendments. This will never do. If a man is shooting holes in your wall there is no sense in plastering the wall until you have disarmed him. The Court is still armed and dangerous.

The better remedy, which has also been proposed in Congress, is to strip the Court of its appellate jurisdiction in every vital area where it has abused its power. The whole argument for judicial review, as Chief Justice John Marshall set it forth in *Marbury v. Madison*, is that whenever a statute conflicts with the fundamental law of the Constitution, the Constitution must have priority. But Congress and the Executive branch also owe their first loyalty to the Constitution; and when an act of the judiciary seriously conflicts with the Constitution, it is their duty to use their lawful powers to restore the proper order of things.

It is tragically late for such a restoration now. Apart from causing millions of prenatal deaths, the Supreme Court has seriously disordered the moral compass of an entire nation. Further evil consequences may still ensue, unpredictably. What we have wit-

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nessed is a profoundly law-abiding people misled by profoundly lawless rulers. We all know that hard cases make bad law. Perhaps the lesson of the Bloomington baby — that poor martyr to Tendency — is that bad law makes hard cases.

The Slide to Auschwitz

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IN JULY the City Council of Cambridge, Massachusetts, voted to petition Harvard University to temporarily halt the construction of a half million dollar laboratory for specialized genetics research. This intervention of the town in the affairs of the University was not just the hysterical reaction of ignorant people to the misunderstood pursuits of a scientific faculty. Rather, it had been initiated and pushed by distinguished scholars on the Harvard faculty. These individuals were deeply concerned with the newly acquired power in biology to alter the genes of living organisms and create new hybrids of animals and plants, and of viruses, some of them potentially dangerous.

It is the custom of men to be concerned about those things of which they know little at present but where the potential seems to be a threat to all of mankind. This was true of the first atomic bomb; of its successor, the hydrogen bomb; of all the weaponry to deliver thermonuclear warfare; of biological warfare and of nerve gas. There are even environmentalists who are deeply concerned over the destruction of the ozone by aerosol cans. Yet, each of these potential dangers to mankind is theoretically, if not practically, controllable.

I would like to address you today on another potentially destructive force against mankind which, because of the nature of human beings, may not be controllable until it has inexorably pursued its path of destruction and has come to weigh upon the conscience of so many people that, like a Vietnam war, it must grind to a halt. I am speaking of the growing disregard for life itself. I am speaking of what was called in a more moral, or perhaps a more religious generation, the sanctity of human life. Given

C. Everett Koop, M.D., is today the Surgeon General of the United States. This article first appeared in the Spring, 1977, issue of this review. (Dr. Koop was then the chief surgeon of Children's Hospital in Philadelphia.) It was adapted from his address to The American Academy of Pediatrics, on the occasion (October 18, 1976) of his being awarded the William E. Ladd Medal, the highest honor given to pediatric surgeons in this country.

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the conflicting concerns of our generation — the specter of famine raised by those primarily concerned about population control, the specter of financial chaos for the whole world raised by economic pundits, the intrusion of violence as an accepted thing into our culture, and the declining morality in all the affairs of men — it is quite possible that when the inevitable swing of the pendulum takes place and life once again becomes precious, it might be too late to stop the slide that will ultimately herald the decline and demise of our civilization.

I am nearing the end of my thirty-first year in the actual practice of pediatric surgery, longer I think than anyone in this room today. I have had the unusual advantage of growing up with my specialty. It has been for me an extremely satisfying career. One of the most satisfying aspects has been my participation in the rehabilitation of youngsters who were born with congenital anomalies incompatible with life but nevertheless amenable to surgical correction. The surgical correction might have been by a dramatic one-stroke procedure or it may have required years of time and effort, plus further operations, to get the best possible result. At times the best possible result was far from perfect. Yet, I have a sense of satisfaction in my career, best indicated perhaps by the fact that no family has ever come to me and said: "Why did you work so hard to save the life of my child?" And no grown child has ever come back to ask me why, either. On the other hand, in a recent study that I did on twenty-five families, all of whom had had a child with an imperforate anus operated upon by me in the period twenty-five to fifteen years ago, almost every family referred to the experience of raising the defective youngster as a positive one. A few were neutral; none were negative. Some siblings felt that they had not had some of the advantages that they might have had if their brother or sister had been born normal, yet on balance the conclusion from these twenty-five families whom we studied quite extensively was that many of them were better families than they would have been without the necessity of facing the adversity produced by the problems of the imperfect child.

I do not think that I am over the hill, but with mandatory retirement less than five years away it does behoove me to look at the end of my career. As I do it saddens me. But it frightens me too

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when I see the trends in our society and recognize the acquiescence, if not the *leadership*, of the medical profession down a path which in my judgment leads to destruction.

In January of 1973 the United States Supreme Court declared that a new right existed in the Constitution; namely, the right of a woman to have an abortion on demand. I am not here today to argue the pros and cons of the abortion question, but in a paper I presented in 1973, I predicted ten consequences of the Supreme Court's decision on abortion that would remarkably — deleteriously — affect the society in which we live.¹ All ten of these prophetic statements have found realization in historical fact.

Without going into all the details, I expressed the concern that abortion of somewhere between a million and two million unborn babies a year would lead to such cheapening of human life that infanticide would not be far behind. Well, you all know that infanticide is being practiced right *now* in this country and I guess the thing that saddens me most about *that* is that it is being practiced by that very segment of our profession which has always stood in the role of advocate for the lives of children.

I am frequently told by people who have never had the experience of working with children who are being rehabilitated into our society after the correction of a congenital defect that infants with such defects should be allowed to die, or even “encouraged” to die, because their lives could obviously be nothing but unhappy and miserable. Yet it has been my constant experience that disability and unhappiness do not necessarily go together. Some of the most unhappy children whom I have known have all of the physical and mental faculties and on the other hand some of the happiest youngsters have borne burdens which I myself would find very difficult to bear. Our *obligation* in such circumstances is to find alternatives for the problems our patients face. I don't consider death an acceptable alternative. With our technology and creativity, we are merely at the beginning of what we can do educationally and in the field of leisure activities for such youngsters. And who knows what happiness is for another person? What about the rewards and satisfactions in life to those who work with and succeed in the rehabilitation of these “other-than-perfect” children? Stronger character, compassion, deeper understanding of another's

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burdens, creativity, and deeper family bonds — all can and do result from the so-called social “burdens” of raising a child with a congenital defect — repaired but less than perfect.

I have frequently said, facetiously, that nothing makes a woman out of a girl quicker than a colostomy in her child. But it is true.

When from the materialistic point of view a life seems to be without meaning, it can from the spiritual point of view be extremely useful. Such a life might, for example, provide a source of courage in the manner in which the stress caused by disease and its treatment is accepted. There is also no doubt that the value placed upon the patient by his associates as one who is respected and honored and loved is a source of inspiration to all who see it and a spiritual blessing to many.

“American opinion is rapidly moving toward the position where parents who have an abnormal child may be considered irresponsible.” This is the observation of Dr. James Sorenson, Associate Professor of Socio-Medical Sciences at Boston University, who spoke at a symposium, “Prenatal Diagnosis and Its Impact on Society.”²

Now, if I take a strong stand against a statement like Dr. Sorenson’s, I am told that I am trying to legislate my morality for other people. I think, on the contrary, those who agree with Dr. Sorenson’s statement are trying to legislate the morality of our society. Parents who might give remarkable love and devotion to an abnormal child are put in the position of feeling they must conform to Dr. Sorenson’s morality, or lack of it, for the good of *society* rather than for the good of their own child.

In the book, *Ideals of Life*, Millard Everett writes:

No child [should] be admitted into the society of the living who would be certain to suffer any social handicap — for example, any physical or mental defect that would prevent marriage or would make others tolerate his company only from the sense of mercy.³

If dehumanization is one of the ideals of life, then when we reach the utopia planned by Mr. Everett, life will be ideal indeed. His reference to marriage I cannot help but consider because I am convinced that the backbone of our remarkable nursing profession and that much of our pediatric care and pediatric social service is to be found in the many unmarried women who devote themselves

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selflessly to the care of patients. I cannot believe that all of these fine women *chose* not to be married merely to take care of patients. It would follow then that there might have been some "social handicap," to use the words of Millard Everett, that might have prevented marriage. If the social handicap existed then, the social handicap must exist today. How long will it be before the Millard Everetts of our society decide that those with this social handicap, whatever it might be, be eliminated also?

Lord Cohen of Burkenhead, speaking of the possibility of euthanasia for children in Great Britain who were mentally defective or epileptic, said:

No doctor could subscribe to this view . . . who has seen the love and devotion which bring out all that is the best in men when lavished on such a child.⁴

J. Engelbert Dunphy, in the annual oration before the Massachusetts Medical Society in 1976, had this to say:

We cannot destroy life. We cannot regard the hydrocephalic child as a non-person and accept the responsibility for disposing of it like a sick animal. If there are those in society who think this step would be good, let them work for a totalitarian form of government where beginning with the infirm and incompetent and ending with the intellectually dissident, non-persons are disposed of day and night by those in power.

Dunphy goes on to say:

History shows clearly the frighteningly short steps from "the living will" to "death control" to "thought control" and finally to the systematic elimination of all but those selected for slavery or to make up the master race. We physicians must take care that support of an innocent but quite unnecessary "living will" does not pave the way for us to be the executioners while the decisions for death are made by a panel of "objective experts" or by big brother himself. The year of 1984 is not far away!⁵

Dr. Dunphy was speaking of adults dying of terminal cancer, yet his thinking can be extrapolated to the "imperfect" child with frightening consequences.

In the Forshall lecture given by Robert B. Zachary on July 9, 1976, in Sheffield, England, he said:

I accept that the advice given by other doctors may well be different from that which I myself give, and although I would strongly support their right to have a different view, they should be expected to state the fundamental principles on which their criteria are based.

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Zachary went on to state:

I believe that our patients, no matter how young or small they are, should receive the same consideration and expert help that would be considered normal in an adult. Just because he is small, just because he cannot speak for himself, this is no excuse to regarding him as expendable, any more than we would do so on account of race or creed or color or poverty. Nor do I think we ought to be swayed by an argument that the parents have less to lose because he is small and newborn, and has not yet established a close relationship with them or indeed because the infant himself does not know what he is losing, by missing out on life.

Mr. Zachary concluded his lecture:

There are some ways in which modern society cares greatly about those who are less well off; the poor, the sick and the handicapped, but it seems to me that newborn babies are often given less than justice. Our primary concern must be the well-being of the patient — the neonate — as far as it is in our power to achieve it. In his battle at the beginning of life, it could well be that his main defense will be in the hands of pediatric and neonatal surgeons.

Has not Mr. Zachary enunciated the whole *raison d'être* of the specialty of pediatric surgery?

On the occasion of the 100th anniversary of the Children's Hospital in Sheffield in July of 1976, Mr. Peter Rickham of Zurich presented a paper entitled "The Swing of the Pendulum." Although he concerned himself largely with the problems of meningomyelocele (a birth defect where the spinal cord is exposed, leading to neurological *sequellae*, some correctable and some not), an ethical problem of greater proportion in the British Isles than here, he did talk to some degree on medical ethics in reference to the neonate. In discussing his own interviews with theologians of diverse religious convictions, he had this to say:

They all doubt the validity of the basis of the present argument for selection of only the least handicapped patients for survival. The hope that selection will reduce to a minimum the overall suffering of these patients and their families is a well meant but somewhat naive wish. How many normal newborn infants will live happily ever after, especially in our present time? It may be argued that by not selecting, we artificially increase the number of people with an unhappy future, but can we be sure of this in any given case? After all we as doctors deal with single, individual patients and not with statistical possibilities. It has also been pointed out to me (said Rickham) that even a child with a grave physical and mental handicap can experience emotions such as happiness, fright, gratitude and love

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and that it may be therefore, in fact, a rewarding task to look after him. It has been further argued that, strictly speaking, selection implies a limitation of resources, because with an optimum of resources and care a great deal can be done for these children and their families. In underdeveloped countries these resources do not exist, but in developed countries, where such enormous sums are spent by governments on purposes which are of very doubtful benefit to humanity at large, the distribution of resources is a debatable subject. Finally it can be argued that if selection is practiced, it may not be necessarily the fittest on whom the greatest effort should be expended.

Duff and Campbell in their paper on moral and ethical dilemmas in the special care nursery make the statement that “survivors of these (neonatal intensive care) units may be healthy and their parents grateful but some infants continue to suffer from such conditions as chronic cardiopulmonary disease, short bowel syndrome, or various manifestations of brain damage; others are severely handicapped by a myriad of congenital malformations that in previous times would have resulted in early death.”⁶

First of all, it is not necessarily true that the myriad of congenital malformations of previous times would now result in early death. Many patients who have lesions that appear to be lethal can have those lesions corrected and although they may not be pristine in their final form they are functional human beings, loved and loving and productive. If indeed we decide that a child with a chronic cardiopulmonary disease or a short bowel syndrome or various manifestations of brain damage should be permitted to die by lack of feeding, what is to prevent the next step which takes the adult with chronic cardiopulmonary disease who may be much more of a burden to his family than that child is, or the individual who may not have a short bowel syndrome but who has ulcerative colitis and in addition to his physical manifestations has many psychiatric problems as well or the individual who has brain damage — do we kill all people with neurological deficit after an automotive accident?

Very, very few parents of their own volition come to a physician and say, “My baby has a life not worthy to be lived.” Any physician in the tremendously emotional circumstances surrounding the birth of a baby with any kind of a defect can, by innuendo, let alone advice, prepare that family to make the decision that that

physician wants them to make. I do not consider this to be "informed consent."

Campbell and Duffy say this: "Often, too, the parents' and siblings' rights to relief from seemingly pointless, crushing burdens were important considerations." Here again Duff and Campbell have enunciated a new right and that is that parents and siblings are not to have burdens. Even Duff and Campbell use the word "seemingly" in reference to "pointless" and I am sure that "crushing" as applied to the burden may not be nearly as crushing as when applied to the eventual guilt of the parents in days to come.

As partial justification for their point of view, Duff and Campbell say that although some (parents) have exhibited doubts that the choices were correct, all appear to be as effective in their lives as they were before this experience. Some claim that their profoundly moving experience has provided a deeper meaning in life and from this they believe they have become more effective people.

If these same parents were seeking deeper meaning in life and if Duff and Campbell were indeed interested in providing deeper meaning in life for the parents of their deformed patients, why not let the family find that deeper meaning of life by providing the love and the attention necessary to take care of an infant that has been given to them? I suspect that the deeper meaning would be deeper still and that their effectiveness would be still more effective and that they would be examples of courage and of determination to others less courageous.

Duff and Campbell talk about "meaningful humanhood," a phrase which they extract from Fletcher, and of "wrongful life," a phrase which they take from Engelhart. As soon as we let anyone, even physicians, make decisions about your humanhood and mine, about your rightfulness or wrongfulness of life and mine, then we have opened the door to decisions being made about our worth which may be entirely different in the eyes of a Duff and a Campbell or their followers than it would be in yours and mine.

In their discussion, Duff and Campbell say that parents are able to understand the implications of such things as chronic dyspnea, oxygen dependence, incontinence, paralysis, contractures, sexual handicaps, and mental retardation. Because a newborn child has the possibility of any of these problems in later life, does this give

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us the right to terminate his life now? If it does, then I suspect that there are people in this room who have chronic dyspnea, who may have oxygen dependency at night, who might be incontinent, who may have a contracture, who may have a sexual handicap and I trust that none of you are mentally retarded, but let's carry it to its logical conclusion. If we are going to kill the newborn with these potentials, why not you who already have them?

Finally Duff and Campbell say, "It seems appropriate that the profession be held accountable for presenting fully all management options and their expected consequences." I wonder how commonly physicians who opt for starving a baby to death are willing to be held accountable for the eventual consequences in that family which may not be apparent for years or decades to come.

I think the essential message in the Duff and Campbell paper is missed by many. These authors first brought to attention the concept of death as one of the options in pediatric patient care. But it is not always understood that the death they presented as an option was not the death of infants who could not possibly survive but rather the death of infants who could live if treated, but whose lives would not be "normal." It is not the lesion, but the physician's *decision*, that is the lethal factor. In view of the fact that the socio-economic status of the family, and the stability of the marriage, are mitigating circumstances in deciding on treatment or non-treatment, it is clear that there has been introduced a discrimination just as deplorable as those of race, creed, or color, of which we are constantly reminded. I wonder how many of us would be here today if someone had the option of not feeding us as newborns?

Arthur Dyck, who has the intriguing title of Professor of Population Ethics at the Harvard School of Public Health, is also a member of the faculty at the Divinity School at Harvard. The connotation of being a Professor of Population Ethics these days, even with a seminary appointment, would lead one to expect that such a man would be ready and willing to eliminate all life that was not "meaningful" — a word I detest. Yet, Professor Dyck believes much more in the *equality* of life than he does in the *quality* of life; he believes that we should and must minister to the maimed, the incompetent, and the dying. To put it in his words:

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The moral question for us is not whether the suffering and the dying are persons but whether *we* are the kind of persons who will care for them without doubting their worth.⁷

We in the medical profession have traditionally responded in our treatment of patients as a reflection of our society's human concern for those who are ill or helpless. Indeed we have often acted as advocates for those who had no one else to stand up for them. Thus we have always responded, in days gone by, with love and compassion toward the helpless child. It may well be that our technical skills have increased too rapidly and indeed have produced dilemmas that we did not face a decade ago. But this does not give us any new expertise in deciding who shall live and who shall die, especially when so many non-medical factors must be taken into account in making the decision.

It is really not up to the medical profession to attempt to alleviate all of the injustice of the world that we might see in our practice in the form of suffering and despair. We can always make the effort to alleviate the pain of the individual patient and to provide the maximum support for the individual family. If we cannot cure, we can care, and I don't mean ever to use the words "care" and "kill" as being synonymous.

Leo Alexander, a Boston psychiatrist, was at one time (1946-47) consultant to the Secretary of War on duty with the office of chief counsel for war crimes in Nuremberg. In a remarkable paper (which appeared in the *New England Journal of Medicine*, July 4, 1949), "Medical Science under Dictatorship," he outlined the problem.⁸ Let me just mention the highlights of Dr. Alexander's presentation. The guiding philosophic principle of recent dictatorships, including that of the Nazis, was Hegelian in that what was considered "rational utility" and corresponding doctrine and planning had replaced moral, ethical and religious values. Medical science in Nazi Germany collaborated with this Hegelian trend particularly in the following enterprises: the mass extermination of the chronically sick in the interest of saving "useless" expenses to the community as a whole; the mass extermination of those considered socially disturbing or racially and ideologically unwanted; the individual, inconspicuous extermination of those considered disloyal to the ruling group, and the ruthless use of "human experimental mate-

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rial” in medical military research. Remember, physicians took part in this planning.

Adults were propagandized; one outstanding example being a motion picture called “I Accuse,” which dealt with euthanasia. This film depicted the life history of a woman suffering from multiple sclerosis and eventually showed her husband, a doctor, killing her to the accompaniment of soft piano music played by a sympathetic colleague in an adjacent room. The ideology was implanted even in high school children when their mathematics texts included problems stated in distorted terms of the cost of caring for and rehabilitating the chronically sick and crippled. For example, one problem asked how many new housing units could be built and how many marriage-allowance loans could be given newlyweds for the amount of money it cost the state to care for “the crippled, the criminal, and the insane.” This was all before Hitler. And it was all in the hands of the medical profession.

The first direct order for euthanasia came from Hitler in 1939. All state institutions were required to report on patients who had been ill for five years or more or who were unable to work. The decision regarding which patients should be killed was made entirely on the basis of name, race, marital status, nationality, next of kin, regularly visited by whom, and a statement of financial responsibility. The experts who made the decisions were chiefly professors of psychiatry in the key universities in Germany. They never saw the patients. There was a specific organization for the killing of children which was known by the euphemistic name of “Realms Committee for Scientific Approach to Severe Illness Due to Heredity and Constitution.” Transportation of the patients to the killing centers was carried out by the “Charitable Transport Company for the Sick.” “The Charitable Foundation for Institutional Care” was in charge of collecting the cost of the killings from the relatives without, however, informing them what the charges were for.

Semantics can be a preparation for accepting a horror. When abortion can be called “retrospective fertility control,” think of all the euphemisms for infanticide!

Although Leo Alexander said this in 1949, it applies today:

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The case therefore that I should like to make is that American medicine must realize where it stands in its fundamental premises. There can be no doubt that in a subtle way the Hegelian premise of "what is useful is right" has infected society including the medical portion of society. Physicians must return to their older premises, which were the emotional foundation and driving force of an amazingly successful quest to increase powers of healing and which are bound to carry them still farther if they are not held down to earth by the pernicious attitudes of an overdone practical realism.

I think those of you who graduated from medical school within ten to fifteen years of my time probably came out of that experience with the idea that you had been trained to save lives and alleviate suffering. The suffering you were to alleviate was the suffering of your patient and the life you were to save was the life of your patient. This has now become distorted in the semantics of the euthanasia movement in the following way:

You are to save lives; that is part of your profession. If the life you are trying to save, however, is producing suffering on the part of the family, then, they say, you are to alleviate that suffering by disposing of your patient. So in a strange way you can still say you are saving lives and alleviating suffering — but the practice of infanticide for the well-being of the family is a far cry from the traditional role of the pediatrician and more lately of the pediatric surgeon.

There are many times when I have operated upon a newborn youngster who subsequently dies, that I am inwardly relieved and express honestly to the family that the tragic turn of events in reference to life was indeed a blessing in disguise. However, being able to look on such an occasion in retrospect as a blessing does not, I believe, entitle me to distribute showers of blessings to families by eliminating the problems that they might have to face in raising a child who is less than perfect.

We are rapidly moving from the state of mind where destruction of life is advocated for children who are considered to be socially useless or have non-meaningful lives to a place where we are willing to destroy a child because he is socially disturbing. What we need is alternatives, either in the form of education or palliative measures for the individual as well as for society. We here should be old enough to know that history does teach lessons. Destructiveness eventually is turned on the destroyer and self-destruction is the result. If you do not believe me, look at Nazi Germany. My concern is that the next time around the destruction will be greater

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before the ultimate self-destruction brings an end to the holocaust.

The power to destroy our civilization and indeed our race is not necessarily good or bad in itself. The difficulty is to be certain that we have the moral character to use this power appropriately. Man's reaction to this kind of power can be either pride, man's greatest problem, or humility, one of man's most commendable virtues. Power accepted in humility is a source of strength for man's moral prerogatives.

We are an enthusiastic and an aggressive people and one of our tendencies is to make decisions on the basis of expediency — to take shortcuts to solutions, if you will. We must be very careful not to throw the baby out with the bathwater and I can't think of any situation where the use of that aphorism is more apropos because we are concerned with babies and we are indeed throwing many babies out in what seems at first glance to be a commendable goal to make life easy for parents and to remove burdens from society.

I have not really chosen a title for these remarks although several have come to mind. The first is "The Camel's Nose is in the Tent," from the Middle Eastern proverb that when the camel's nose is in the tent, it is not long before he is in bed with you, and refers to the thin edge of the wedge in reference to euthanasia. The second that occurred to me, because I see the progression from abortion to infanticide, to euthanasia, to the problems that developed in Nazi Germany, and being aware of the appeal of alliteration in titles, is "Dominoes to Dachau." But having just visited Auschwitz in the company of some of my Polish confreres and having read extensively from the Germans' own reports about what went on there, I view what we are experiencing now as a dynamic situation which can accelerate month by month until the progress of our downhill momentum cannot be stopped. Therefore, I guess I favor the title: "The Subtle, Slippery Slide to Auschwitz."

It is difficult to be a participant in history and understand what is going on with the same depth of perception that one would have if he were able to look back upon the present as an historian. The euthanasia movement — and I use that in the broadest possible sense — is with us today with greater strength and persuasion than

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ever has been the case before in the history of what we call modern civilization.

Do not dismiss contemptuously my concern in reference to the wedge principle — that when the camel gets his nose in the tent he *will* soon be in bed with you. Historians and jurists are well aware of what I am saying.

The first step is followed by the second step. You can say that if the first step is moral then whatever follows must be moral. The important thing, however, is this: whether you diagnose the first step as being one worth taking or being one that is precarious rests entirely on what the second step is *likely* to be.

My concerns center around several aspects of this issue. First of all, I have to say that I am a proponent of the sanctity of life, of all life, born or unborn. I hate the term death with dignity because there is no dignity in death. I have many times withheld extraordinary measures from the care of my patients who were terminal regardless of their age and have felt that I was doing the moral and the ethical as well as the just thing. I have never, on the other hand, taken a deliberate action to kill a patient whether this deliberate action was the administration of a poison or the withholding of something as ordinary as feeding that would keep him alive.

I am concerned about legislation that would take the problems of life and death out of the hands of the medical profession, and out of the realm of trust between the doctor and his patient or the patient's family, and put them into the legal realm.

Perhaps more than the law, I fear the attitude of our profession in sanctioning infanticide and in moving inexorably down the road from abortion to infanticide, to the destruction of a child who is socially embarrassing, to you-name-it.

I am concerned that there is no outcry. I can well understand that there are people who are led to starve children to death because they think that they are doing something right for society or are following a principle of Hegel that is utilitarian for society. But I cannot understand why the other people, and I know that there are many, don't cry out. I am concerned about this because when the first 273,000 German aged, infirm, and retarded were killed in gas chambers there was no outcry from that medical profession either, and it was not far from there to Auschwitz.

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I am concerned because at the moment we talk chiefly about morals and about ethics but what is going to happen when we add economics? It might be hard enough for me to survive if I am a social burden but if I am a social burden *and* an economic burden, no matter how precious life might be to me, I don't have a chance.

Let it never be said by an historian in the latter days of this century that after the Supreme Court decided on abortion in 1973, infanticide began to be practiced without an outcry from the medical profession.

Let it not be said by that historian that perhaps the entering wedge was the decision on the part of pediatricians that there were some burdens too great to be borne by families and that a far better solution to the burden was infanticide of a child who was either unwanted by those parents or who would produce social problems and emotional distress in the family and in society.

Let it not be said that the entering wedge was the infanticide of a portion of the neonatal population of our teaching hospitals' intensive care units.

Let it not be said that pediatric surgeons of this country, who have perhaps the greatest experience and the greatest understanding of what can be done with a deformed life, not just in the correction of mechanical problems but in the rehabilitation of a family, stood by while these things happened and said nothing.

Let it not be said by that historian that in the third quarter of the 20th Century physicians were so concerned with perfect children that the moral fiber of our profession and of our country was irreparably damaged because we had forgotten how to face adversity.

Let it not be said that the extermination programs for various categories of our citizens could never have come about if the physicians of this country had stood for the moral integrity that recognizes the worth of every human life.

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From Feticide to Infanticide

Joseph R. Stanton, M.D.

IN HIS INTRODUCTION to the book, *Abortion and Social Justice*, George Huntston Williams, the Hollis Professor of Divinity Emeritus at Harvard, quotes from a famous epistle from the second century written to a pagan lawyer, named Diognetus, by an unnamed Christian:¹

Christians cannot be distinguished from the rest of the human race by country or language or customs. They do not live in cities of their own; they do not use a peculiar form of speech; they do not follow an eccentric manner of life. Yet, although they live in Greek and barbarian cities alike, as each man's lot has been cast, and follow the customs of the country in clothing and food and other matters of daily living, at the same time they give proof of the remarkable and admittedly extraordinary constitution of their own commonwealth. They live in their own countries, but only as sojourners. They have a share in everything as citizens, and endure everything as aliens. Every foreign land is their fatherland, and yet for them every fatherland is a foreign land. They marry, like everyone else, and they beget children, but they do not cast out their offspring.

“Among the marks of the Christians within Roman imperial society,” Williams writes, “was their abhorrence of the then common practice of casting off offspring by abortion, by exposure, or by selling them into slavery.”

Today in America, we are some 120 years away from the rejection of slavery. We are also nine years into the public legalization of abortion on request.

In our nation's capital, and in New York City, more babies are aborted than are allowed to live. In the *New York Times* (October 18, 1981) it is reported that on the lower west side of Manhattan, for every 1,000 births, there were 1,772 abortions.² That provides a surfeit of feticide, yet even that does not satisfy the elitist abortion *apparat*. With more than ten million reported abortions now staining our national honor, a new paradox is developing. Increasingly,

Joseph R. Stanton, a practicing physician, is an associate clinical professor of medicine at Tufts University School of Medicine, and a founder of the national movement against abortion. This article is adapted from his address (in October 1981) to an anti-abortion organization.

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we can save lower and lower birth-weight *wanted* babies born prematurely, and do this with better and better results.³ We are witnessing development of marvelous new technology by which curative or ameliorative procedures can be carried out on fetuses *in utero* — on that constitutional non-person — in order to assure that the post-natal life of that individual will be healthier. Our neonatal care nurseries, with the regionalization of neonatal care, and increasingly-sophisticated technology, daily save younger and younger premature babies. This is the positive side of medical care. The paradox to which I draw your earnest attention is that as our technology increases, a dark side of medicine — Death as an “option” for afflicted newborns — arises.

Does abortion lead to infanticide? Will infanticide lead to euthanasia? Others have written of the slippery slope — the wedge argument — the camel’s nose under the tent; as soon as you justify one, you justify the other. I believe the threat of infanticide, killing by neglect, is part of the evil fruit of the Supreme Court abortion decisions of January 22, 1973. It is expressed like this: “If you can kill before birth a perfectly normal healthy fetus at 20, 22, or 24 weeks by abortion because it is unwanted, why should you protect a defective child at birth?”

Joseph Fletcher⁴ writes: “It is reasonable to describe infanticide as post natal abortion. . . . Furthermore, infanticide is passive. An infant cannot put an end to its own life. This makes it ‘Allocide’ not suicide. Its variables are only 1) with respect to the euthanasiasts’ choice of direct or indirect means; and 2) whether it is done within the context of terminal illness or some other adverse state.”

John Fletcher (no kin to Joseph) in the *New England Journal of Medicine* asks: “How should physicians and parents now understand their obligation to care for the *defective newborn* in the light of arguments for genetically indicated abortion after amniocentesis?”⁵ This Fletcher believes you *can* tolerate the destruction of defective fetuses before birth, but hold the line and defend the right to life of defective newborns after birth.

Dr. Milton Heifetz,⁶ speaking of those newborns who could not live without medical care and even with medical care would live only a “sub-human existence,” writes: “We must evaluate what can really be termed the salvage value. This factor is vital in our deci-

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sion making. What kind of child will result? Will life be one continuous form of agony? Will life be meaningful to any degree? What is meaningful and to whom?" Further in the same chapter, he writes: "The newborn is an organism with a potential for human qualities, qualities which are as yet non-existent."

He continues: "Is life at birth more significant than at the second, fourth or sixth month of pregnancy? It is not. True, it is closer to gaining the attributes of man, but, as yet, it has only the potential for those qualities. If this difference is true for the normal newborn, how much less significant is it for the newborn who doesn't even have this potential?" You see, in Heifetz' words, the malignant dehumanization of the unwanted unborn child now spreads to the born defective child.

Significantly, in the appendix to Heifetz' book, he lists as "world supporters of euthanasia" the signers of The Humanifest Manifesto II. Among the many names are the following, which those of you who have followed the abortion battle closely will perhaps recognize.

- FRANCIS CRICK of Great Britain, Nobel Laureate (with Dr. James Watson) for the discovery of the structure of D.N.A. Watson wrote of Crick in the A.M.A.'s *Prism* Magazine in 1973: "Perhaps, as my colleague Crick has suggested, 'the child should not be declared fully human till three days after birth,'" which would allow the dispatch of genetically-flawed children by neglect and non-feeding.
- EDD DOERR, long-time spokesman of Americans United for Separation of Church and State.
- ALAN GUTTMACHER, late President of Planned Parenthood Foundation of America.
- LAWRENCE LADER, pro-abortion spokesman and original Chairman of the National Association for the Repeal of the Abortion Laws (NARAL).
- HENRY MORGENTHAU, M.D. — the notorious Canadian abortionist and past president of the Humanist Association of Canada.
- PROFESSOR B. F. SKINNER of Harvard, the "Behaviorist."
- JOSEPH FLETCHER, the "Situation Ethicist" already quoted on infanticide. Fletcher is on the Board of the Right to Die Society,

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and was a vice president of the foundation-funded, abortion-pushing Association for the Study of Abortion.

- PROFESSOR SOL GORDON — Guru of Sex Education.
- BETTY FRIEDAN, the founder of the National Organization of Women.

The Humanist Manifesto II endorses 1) a non-Theistic view of man and the universe. God is irrelevant to man and his affairs. “As non-Theists, we begin with humans not God, nature not deity . . . we can discover no divine purpose or providence for the human species; 2) We affirm that moral values derive their source from human experience. Ethics is autonomous and situational needing no theological or ideological sanction.” They reject the belief that God is operative in human affairs. “Thou Shalt Not Kill” is also thrown out the window: you may kill “humanely.”

The absolute rights recognized in Humanist Manifesto II include abortion, a right to “death with dignity,” euthanasia, and the “right” to suicide!⁷

Someone might say here: “What you say is shocking, but surely you overstate? Where is the proof?” How I wish that there were no proof.

The awful fact is that infanticide — the killing of infants — has been in and out of human experience since the dawn of recorded history. Professor Williams cited the power of the father in Roman law to murder his children under the concept *patria potestas* in Roman law. How tragic that the rights of the all-powerful *pater familias* were transferred to the mother in *Roe* and *Doe* as far as the right to life of the unborn child is concerned. In Sparta, frail or defective infants were left exposed to the elements to die. The same practice was followed by Eskimos.⁸ Infanticide and child abandonment were common in the industrial revolution in England. In China, the killing of female offspring or their abandonment was widespread as late as the 1800’s. The elimination of such barbaric practices has always — up to now — been regarded as evidence of civilization’s “advance.”

It is ironic that the liberal media today berates anyone who questions the premises of atheistic secular humanism and its handmaiden, the situation ethic, labelling such questioning as an attack

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on our “pluralistic society.” Witness the endless and scathing denunciations of “right to lifers” and the “Moral Majority,” “New Right,” etc. They wrap them all together, and if you can add the Ku Klux Klan in the next sentence, so much the better. What must be pointed out, however, is that it is the secular humanist view of man, which the media does not attack, that has sustained abortion, sanctions infanticide, and provides the logic and the “ethics” of euthanasia.

It is the first rule of war to know the enemy, and what we are involved in is a war for the soul of America. There has been a profound misperception of what has been essentially an elitist attempt to change a basic view of man which, for almost 200 years, made this nation the last, best hope of peoples everywhere. In America today, the enemy of the unborn child, of the born defective child, and of the aged and impaired human is the non-Theistic secular humanist view of man. We should repeat this day in and day out, and we should recognize it whenever and wherever it appears, regardless of how it may be cloaked or covered. We should determine the attitude toward human life, born and unborn, of everyone who seeks our vote for public office. At the ballot box, in the American way and as an informed electorate, we should make our votes demand restoration and preservation of that view of man, so beautifully crystalized and captured in the basic documents associated with the nation’s birth. “We hold these truths to be self-evident that all men are created equal and endowed,” not by the courts or the American Medical Association, or the secular humanists, but endowed by the Creator of life (capital “C”) with certain and inalienable rights, first among these life *itself*. Only this will reverse the abortion mentality; only this will end feticide and restore protection to the defective newborn now the victim of “humane” killing.

Let us look at the evidence for the reality of infanticide in modern society. You will recall the famous Kennedy Conference report in the early 1970’s. It caused widespread discussion at the time. A mongoloid child was born in Johns Hopkins hospital with a duodenal atresia — that is atrophy of a small segment of the duodenum as it leaves the stomach. No food can get out of the stomach. Untreated, the child will die. Treatment is by what the newspapers

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called a twenty minute operation, to short-circuit the obstruction. In the Hopkins case, only because the child had Down's Syndrome, the decision was made "not to treat." A sign was placed on the baby's crib: Do Not Feed. The baby lived fifteen long days before it died.

Of the Hopkins case, Joseph Fletcher writes:

The physicians in charge believed that direct euthanasia is wrong, that doing it indirectly, though undesirable, was morally tolerable. Hoping that the newborn would die of dehydration and starvation in three or four days, they wheeled it off into a corner where it lay dying for fifteen days, not three or four. Some form of direct termination would have been far more merciful as far as the infant, nurses, parents, and some of the physicians were concerned. In that case, indirect was morally worse than direct — if, as I and most of us would contend, the good and the right are determined by human well-being. Indirect euthanasia did no good at all in that case, but lots of evil.⁹

The identical defect has occurred in other Down's syndrome babies in American hospitals, and they too have been allowed to die.

In "The Way We Die,"¹⁰ Dempsey writes as follows:

Doctors don't talk much about infanticide, and, for obvious reasons, hospitals don't specify euthanasia as the cause of death. Thus, no one knows how many deformed, brain-damaged and poor-risk "preemies" who might be coaxed into life are allowed to die, or are chloroformed outright.

When almost everyone was born at home, infanticide was rarer. But the hospital, by its very sterility, gives a curious sanction to such deaths. It speaks for society. When a parent does not want the damaged child, or when a physician decides that the world needs no more monsters, the hospital staff not infrequently omits the usual feeding orders. Starvation is seen as more merciful than outright suffocation. Yet it takes a long time for even a newborn baby to starve.

A few years ago, in a Chicago hospital, such a mongoloid was rejected by its parents; although physicians could have saved his life, parental consent would have been necessary for the operation that would make it possible for him to ingest milk. Instead, the baby was placed in a side room where its cries would not offend others. Nurses, torn by this decision, went in from time to time to hold and rock the infant as they might any normal baby. They did this for the eleven days it took the child to die.

Newborn Siamese twins were recently transferred by court order from Lakeview Hospital in Danville, Illinois, to the Children's Memorial Hospital in Chicago. At birth, the doctor instructed the nurses not to resuscitate them. The babies surprised everyone with

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the vigor of their fight for life. In the chart was entered the note: "Do not feed in accordance with the parents' wishes."¹¹ Reporting on a case from England last August, the Chicago *Tribune* headlined an article "Court condemns baby girl to live." Overruling the decision of parents to allow their Down's Syndrome daughter to starve to death, Lord Justice Tempelman said: "We are asked to condemn her to life because we cannot be certain we should condemn her to death."¹²

Dr. Anthony Shaw probably fired the opening gun for American acceptance of infanticide-by-neglect in the non-treatment of defective newborns in an article, "Doctor, Do We Have a Choice?" in the New York *Times* Sunday Magazine in 1972.¹³ Then, Dr. Shaw and Doctors Duff and Campbell in companion pieces in the *New England Journal of Medicine*¹⁴ in 1973) put the issue out in the open. *Death*, as an option in the treatment of the newborn. In the New Haven Hospital, of 299 consecutive deaths in the special care nursery, 14% — *forty-three* — were due to withholding or stopping treatment.

Infanticide, the killing of born infants by direct and indirect acts, is presently forbidden by the laws of every one of the fifty states. Wrote Duff and Campbell: "If working out these dilemmas (in defective newborns) such as these we suggest is in violation of the law, we believe the law should be changed."

These are but a few citations from an increasing body of medical reports, books, and symposia in which calls are made to withhold life-saving treatment because a "quality of life" judgment or a social judgment of the worth of a newborn should be the determinant factor.

Listen now to Professor Victor Rosenblum of Northwestern University Law School. Incidentally, Professor Rosenblum has a son Josh, who is retarded. Rosenblum writes:

Modern advocacy of infanticide betrays an hostility toward and fear of the disabled. When the defective newborn is left to die, something vital dies within us all, our sense of justice, our self respect, our mission as human beings. When that child is left to die, we become idolators of the plastic, the cosmetic, the illusory and the elitist. When, on the other hand, we help that child to live we affirm our capacity to love, our respect for human differences, our dedication to the democratic values of heterogeneity as instruments of creative achievement.¹⁵

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In response to the question “How shall we respond to malformed babies?” Jean Rostand, the French biologist, rather prophetically wrote:¹⁶

Above all, I believe a terrible precedent would be established if we agree that life could be allowed to end because it was not worth preserving, since the notion of biological unworthiness, even if carefully circumscribed at first, would soon become broader and less precise. After first eliminating what was no longer human, the next step would be to eliminate what was not significantly human, and, finally, nothing would be spared except what fitted a certain level of humanity . . . I would almost measure a society's degree of civilization by the amount of effort and vigilance it imposes on itself out of pure respect for life.

In considering extensions of the mentality that would tolerate infanticide, Rostand writes further:

If eliminating “monsters” became common practice, lesser defects would come to be considered monstrous. There is only one step from suppression of the horrible to suppression of the undesirable. If it became customary to thin out the ranks of people over ninety, those in their eighties would begin to seem very decrepit, and then those in their seventies. Little by little the collective mentality, the social outlook, would be altered. Any physical or mental impairment would diminish the right to live. Each passing year, each stress, each illness would be felt as an exclusion; the sadness of aging and deteriorating would be combined with a kind of shame at still being there.

Such may become the pressures on the aged and infirm if our toleration of infanticide is not reversed.

Well, the mongoloid or exceptional children are one group of the impaired. What about others without mental impairment? In the United States and in England, as the technology of helping, through reparative surgery, children born with myelomeningocele improves, there is a move to withhold surgery from some of these children in the name of the quality of their lives.

The *Lancet* is the leading British medical journal. An editorial (November 24, 1979) written by “a pediatric surgeon” was titled “Non-Treatment of Defective Newborns.”¹⁷

Early in the editorial, the writer proclaims: “Even with the splendid words of Pope John Paul II, in his sermon in Phoenix Park on the sacredness of human life ringing in our ears, God (I am a Christian) asks us to be merciful. This does not include forcing a half man to eke out a miserable existence when it is in our power

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to end it.” Incredibly, the “half man” he talks about is a newborn paralyzed from the waist down. He then details how a colleague “let slip the information that it takes at least 30 cc. of intravenous air to produce fatal embolus.” He calls the newborn only “potential,” and states that potential is fulfilled “by the capital of love that parents invest in him after birth.”

Who does he propose for subjects of treatment by non-treatment? “Among treatable infants are those with severe spina bifida and hydrocephalus, babies with more severe chromosome disorders, and even straight-forward Down’s Syndrome, and babies with rubella syndrome.”

What is this new treatment? “I offer the baby careful and loving nursing, water sufficient to satisfy thirst, and increasing doses of sedative.” The sedative is chloral hydrate. What happens with this treatment? Babies starve to death, or become so weak and sedated they die of dehydration.

At a well-publicized pediatric and ethical conference in 1974 at Sonoma Valley in California, 17 of the 20 participants felt there were circumstances that would validate direct intervention to kill a dying infant.¹⁸

Now listen to Dr. Jerome Lejeune, the discoverer of the genetic defect Trisomy 21, or Down’s Syndrome, responding¹⁹ to the *Lancet* proposal for destroying the defective:

In your introduction to an unsigned paper on Non-treatment of Defective Newborn Babies (Nov. 24, p. 1123) you state that “the editorial view was that the balance of benefit lay in anonymity.” Balance of benefit to whom? To the anonymous children’s physician nursing to death babies with Trisomy 21 and mourning them so tactfully thereafter? Or to a hospital in which such a mortuary facility is replacing a treatment ward? Or to you, Sir, indulging yourself in an anti-medicine scoop without revealing its source? Or to all three, because infanticide is still a criminal offence in civilized countries?

The whole history of medicine is at hand to answer any unknown death-doctor. Those who delivered humanity from plague and rabies were not those who burned the plague-stricken alive in their houses or suffocated rabid patients between two mattresses. Health by death is a desperate mockery of medicine.

Victory against Down’s syndrome — i.e., curing children of the ill-effect of their genic overdose — may not be too far off, if only the disease is attacked, not the babies. The length of the road to be covered before such

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an achievement cannot be predicted, but at least wounded parents have the right to know that life-doctors still exist and that we will never give up.

The propaganda for infanticide is coming under the aegis of “quality of life” and cost control. We should not really be surprised. Eleven years ago, a frank editorial in a major American medical journal said we would reach this point. The only real surprise is that we have reached it so quickly. The editorial was titled “A New Ethic for Medicine and Society.” It speaks of medicine’s changing role in society “as the problems of birth control and birth selection are extended inevitably to death selection and death control whether by the individual or by society.”²⁰

Feticide and infanticide, and the poison of the situation ethic, have already badly corrupted the professions of law and medicine both here and in England. It is very doubtful that corrective actions will come from the elites of either profession, that is, from the *official* organizations of law or medicine.

The protection of the unborn child and the born defective child lies then in the hearts, the consciences, and the dedication and action of “ordinary” people like us. We must sound the call to action, to perseverance — a call for rededication to those noble impulses of the human spirit that initially impelled us to join the fight against abortion. John Donne (in 1631) wrote these famous lines:

No man is an island, entire of itself; every man is a piece of the continent, a part of the main; if a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friends or thy own were. Every man’s death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee.

Whenever an innocent human life ends, whether it be in the suction trap of an abortion clinic owned and operated by Planned Parenthood, or in a pediatric ward of a university hospital, where a decision is made “not to treat” — to sedate and starve to death a defenseless, defective newborn — each time and every time the bell tolls.

May we never grow insensitive to its pealing, and may the Author of life strengthen the effort to bear witness to an unchanging value, to defend, to serve, and to love these, the least of our brethren.

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When the Law Calls Life Wrong

Steven R. Valentine

A NOVEL THEORY OF legal action called “wrongful life” is just beginning to attract notice in the popular press.¹ The words themselves have an odd and contradictory ring. But far worse than sounding strange, they have implications that are frightening. It is possible, for instance, that if the current trend towards full acceptance of the “wrongful life” concept continues unchecked, it could result in an end to the right of conscientious objection to abortion by physicians who practice in the field of obstetrics and gynecology. Further, it could lead to an era in which nearly all of the “defective” unborn are aborted. Moreover, “wrongful life” could produce an increase in the employment of abortion for sex selection. Most ominously, the success of “wrongful life” in the courts could create a much higher incidence of infanticide against the handicapped newborn.

“Wrongful life” is a general theory in the civil law of “tort” (a derivative of *tortum*, the Latin word meaning wrong). There are three sub-categories of “wrongful life,” which are “wrongful conception,” “wrongful birth,” and “wrongful life” proper. All three arise from the birth of a child. In a “wrongful conception” action, the parents sue their doctor for having failed in a pre-conception sterilization operation.² “Wrongful birth” cases involve a lawsuit in which the parents seek damages from a doctor who failed to provide them with information about possible birth defects that would have led them to seek an abortion.³ A “wrongful life” proper case occurs when the handicapped child himself sues the doctor, and possibly the parents too, for having allowed him to be born.⁴ The latter two of these “wrongful life” theories of legal “recovery” rest on the highly questionable proposition that a handicapped life is worse than no life at all.⁵ But the courts have begun accepting this view by recognizing “wrongful life” theories in dozens of decisions.

Steven R. Valentine, currently a law clerk for the Attorney General of Indiana, is the author of *All Shall Live*, a Quaker perspective on the abortion issue.

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The progress of medical science in developing and improving the technique of amniocentesis⁶ and other means of diagnosing birth defects in the womb doubtless will continue. Such tests are becoming easier, and cheaper. Thus, it is not unreasonable to predict that such tests, plus a proliferation of successful “wrongful life” actions, will have the inescapable result of placing the physician under a legal duty to perform, or at least to recommend or suggest, some type of pre-natal diagnostic test for “defects” during every pregnancy that comes under his care — that, in short, no doctor who values his economic security will be able to afford *not* to prescribe such evaluations. For this development may go hand in hand with another: if “wrongful life” creates a legal duty to prescribe and/or to perform pre-natal genetic screening, it will be only a matter of time before medical malpractice insurers will require that doctors do these tests (when indicated and consented to by the mother), or forfeit the insurance coverage without which none could afford to practice.

The twin pressures of such a new legal duty and the realities of malpractice insurance will pose a difficult moral dilemma for doctors who oppose abortion as a matter of conscience. Because the principal purpose of these procedures is to provide parents with information on whether their child might be handicapped (so that, if she is, she may be aborted if there is no intrauterine treatment for her), physicians who refuse to participate in abortion are not likely to involve themselves in the performance of the screening tests. Thus if such diagnostic procedures become a matter of routine, then the right of doctors to object will be infringed, and all physicians in obstetrics-gynecology who are anti-abortion may be forced by conscience to leave their chosen field of practice.

Numerous state legislatures have enacted laws that insure that the rights of individuals who are opposed to abortion on a moral, religious, or ethical basis will not be abused in the post-*Roe v. Wade*⁷ environment of near-total abortion permissiveness. The “individual conscience clause” type of statute typically provides that any medical practitioner who expresses a conscientious objection may not be required to participate in an abortion procedure.⁸ *Roe*’s companion case, *Doe v. Bolton*,⁹ forms the basis of Federal court doctrine in this area. In *Doe*, the U.S. Supreme Court noted

its approval of a Georgia abortion-law conscience clause. Since *Doe*, the validity of an individual conscience clause has never been questioned seriously in the Federal courts.¹⁰ In addition, in 1973 Congress passed the Church Amendment, which similarly protects individuals who conscientiously object to abortion from being compelled to participate in its performance.¹¹

As Brigham Young University Law Professor Lynn Wardle, author of a leading treatise on the Supreme Court's abortion privacy doctrine, has noted: "An individual's refusal, on moral grounds, to participate in performing an abortion is an exercise of conscience protected by the same right of privacy which now protects the woman's right to choose an abortion."¹² But does a doctor's right to object to participating in the performance of an abortion also extend to a right of refusal to disclose information about genetic risk to prospective parents? Would this foreclose their ability to obtain the information necessary to make an informed choice about abortion, which is a right that is protected by the *Roe* decision?

One commentator has suggested that ". . . it may be possible to avoid even this limited intrusion on the physician's . . . (ethical) convictions." "To serve legitimate needs of prospective parents," says a leading *Yale Law Journal* article, "courts need not require objecting doctors either to undertake techniques to ascertain a person's genetic risk or even to provide prospective parents with genetic counseling." "Instead," suggests the comment, "courts should require such physicians to conform to the standard of care exercised by other doctors in uncovering indications that prospective parents among their patients may be at genetic risk and to suggest that those parents go to other doctors to obtain any necessary additional testing and counseling." "Although this obligation may disturb the scruples of some practitioners," noted the comment, "it is nevertheless needed to give prospective parents the opportunity to learn of their genetic risks."¹³

But for those genetic risks that lead to the discovery of a likely birth defect in the human fetus that cannot be treated in the womb, and therefore may well lead to an abortion, the referral of the parents by a conscientiously-objecting doctor to one who does not object may be the moral equivalent of participating in the actual

performance of an abortion. To do so might compromise or burden the protected right to object. Thus, it can be said logically that the creation of a legal duty for physicians to perform up to a given standard of care in the field of pre-natal genetic diagnosis could well lead to serious interference with a doctor's protected right to individual conscience.

Those few judges who have opposed claims of "wrongful birth" under the general "wrongful life" theory have asserted that allowing recovery would encourage a "Fascist-Orwellian societal attitude of genetic purity"¹⁴ or the "Hitlerian elimination of the 'unfit.'"¹⁵ But it is clear that the U.S. Supreme Court's *Roe v. Wade* decision does not in any way preclude the right of a woman to destroy the unborn child whom she would allow to be born if she had not been informed of his genetic malady. Even during the final trimester, when the mother's right to an abortion is supposedly restricted to situations in which her life or health is endangered, the court's use of the term "health" is broad enough to encompass the emotional distress that the forthcoming birth of a defective child might entail.¹⁶

Thus, the rise of the "wrongful life" suits could set in motion a chain of events that will result in the near-total elimination of genetically defective births in the United States. This indeed may evince a Hitlerian mentality and it would certainly contravene the tradition of generosity towards the handicapped members of our society.

In his scorching dissent to the majority holding in *Roe v. Wade*,¹⁷ Justice Byron White contended that the Supreme Court had taken the position that "During the period prior to the time the fetus becomes viable, the Constitution of the United States values the convenience, whim, or caprice of the putative mother more than the life or potential life of the fetus; the Constitution, therefore, guarantees the right to an abortion as against any state law or policy seeking to protect the fetus from an abortion not prompted by more compelling reasons of the mother."¹⁸ The scope of the abortion right that Justice White decried is broad enough even to encompass abortions for sex selection.

For one of the by-products of amniocentesis and other fetal-defect diagnostic tests is the revelation of the sex of the unborn

child.¹⁹ Thus, even if the test reveals the fetus to be free of all genetic disease, the mother may choose, if she so wishes, to abort the unborn child merely because she is of the “wrong sex.” No known studies exist that shed light on how often this practice occurs, but experts such as *Child and Family Quarterly* editor Dr. Donald DeMarco are convinced that it happens frequently enough to be noteworthy.²⁰ If the “wrongful life” cause of action, among other factors, leads to more widespread use of procedures such as amniocentesis, then it is logical to assume that more of these tests will lead to a higher incidence of abortion for sex selection, which even some radical pro-abortionists admit is abhorrent.

One of the most hotly-debated issues in modern medical science involves the question of whether ordinary medical care justifiably may be withheld from defective newborn children. Babies born with disorders of the central nervous system, such as anencephaly, Down’s syndrome, spina bifida, and other diseases, often require routine surgical or medical intervention merely to stay alive. Before recent advances in surgery and pediatrics made these actions possible, such infants died of natural causes. Since in the case of some handicapped newborns, the chances are small that they will live what some would consider to be normal lives, it is now a relatively common practice for parents to request, and for physicians to consent to, the “non-treatment” of such children. They are simply left to die.²¹

Non-treatment of the handicapped newborn child has occurred throughout history, and in many cultures. But only in the past decade has the medical profession openly acknowledged the scope, and even the desirability, of such practices. In 1973, Doctors Raymond S. Duff and A. G. M. Campbell described and documented forty-three such cases at the Yale-New Haven Hospital in Connecticut.²² Following the Yale-New Haven revelations, similar cases have received public attention.²³ In 1974, the U.S. Senate Subcommittee on Health held hearings during which eminent physicians attempted to justify the practice.²⁴ Pediatrics texts contain discussion of medical indications for the withholding of ordinary treatment,²⁵ and physicians writing in medical journals have advocated non-treatment in some circumstances.²⁶ Thus, the non-treatment of

handicapped newborn children, or infanticide, is gaining status throughout the United States.

Though this form of infanticide is clearly illegal and could be prosecuted successfully under any state's homicide or child-neglect laws,²⁷ no parent or physician ever has been tried or convicted for denying ordinary medical care from, and so bringing about the death of, a handicapped newborn child.²⁸ Writing in the *Stanford Law Journal*, Professor John A. Robertson has suggested several reasons for the failure of law enforcement in this area. First, he says, some ". . . prosecuting authorities, through the exercise of their discretion, have informally delegated authority to parents and physicians to decide the fate of defective newborns."²⁹ Second, Robertson says, the "extremely low visibility of the practice" makes it very difficult for prosecutors to learn of its occurrence. Third, even if they do find out about it, Robertson observes, prosecutors may shy away from legal action because it involves "novel and complicated points of law." Fourth, he argues, prosecutors "may know of the practice [but] may feel that [it] is . . . desirable."³⁰

As noted Princeton University Ethicist Paul Ramsey has observed, it is not possible to think of a moral argument that is employed to justify elective abortion that cannot be employed with equal force to condone infanticide.³¹ If it becomes an accepted social tenet in the abortion context that a handicapped child is better off not existing at all than she is living with the burden of her genetic abnormality, then why not eliminate those who "slip through the cracks" set up by pre-natal genetic screening procedures and are born with serious genetic defects? Given the substantial legal risk involved in a situation in which a doctor has failed to detect a disorder and is thereby subject to a "wrongful life" legal action, does it not become part of his own best interest to advocate an agreement with the parents whereby necessary and ordinary medical attention is denied with the goal of ensuring the early death of the defective child? In these situations, it becomes the self-interest of the doctor to persuade the grief-stricken parents that death is "best" for the child. In some cases, he may in fact be tempted to take some form of unilateral action to shelter himself from "wrongful life" liability. Social prejudice against the handi-

capped, and cultural acceptance of the "quality of life" test for weighing the right to life, serve to support parents and doctors in choosing the infanticide option. The "wrongful life" legal theory then may be seen to have the wholly plausible impact of increasing the incidence of infanticide against the defective newborn.

After due consideration of the plausible implications and possible consequences of the establishment of the general "wrongful life" theory in tort law, some state legislatures may wish to abolish it as a cause of action in the courts of their jurisdictions. This power, subject to any possible Federal constitutional considerations, is reserved to legislatures by state constitutions. Though it may be argued that legislative abolition of the "wrongful life" tort causes of action would place a burden on the woman's "constitutional right" to choose to have an abortion,³² the elimination of the causes of action would not ban the use of genetic screening tests by any means. Rather, it would only preclude physicians from having a "duty" to prescribe or to perform them. Hence, it would not burden even indirectly the abortion privacy right that was created by the Supreme Court in 1973.

In the absence of legislative action against the "wrongful life" tort theory, it seems well on its way to full acceptance in court jurisdictions across the United States. The implications of this development stretch beyond those that have been explored in this article and suggest things that are terribly disquieting about the state of our civilization's attitude towards the sanctity of human life. For regardless of their theoretical insulation from the politics and culture of everyday American life, the attitudes of the courts reflect to a large extent where we are as a society.

The notion that human life, whether it results from a botched sterilization or a failure to obtain information that would have led to a eugenic abortion, ever can be "wrongful" is inimical to the reverence for life that always has been an integral part of the moral foundation of Western civilization. The idea that a handicapped child would lead a life that would better never have been lived, or that the parents of such a child are "damaged" by that child's presence in their family, bespeaks not only a pervasive social prejudice against the handicapped, but also involves judgments that are beyond the moral abilities of courts, legislatures, or society as a

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whole, to make. Moreover, discussion of the “wrongfulness” of the lives of “defective” children and the application of “quality control” technologies to human pregnancy give rise to a way of thinking that looks at children as “products” to be “manufactured” as if they were valueless, lifeless, inanimate objects. And “wrongful life” lawsuits are like those involving “product liability” theories, wherein physicians are the “manufacturers” who are held liable for the “defective products.”

Is it a measure of our moral degeneration that the courts of modern American society would not reject outright the idea of “wrongful life” in all of its legal embodiments? That law and medicine would conspire to allow human pregnancy to be treated as a mere manufacturing process, one that is designed to weed out “defective products,” reveals the failure of the professions to uphold that reverence for life that is supposed to be society’s highest ideal. But there is hope. Though the U.S. Supreme Court’s *Roe v. Wade* decision opened the Pandora’s box that gave us the “wrongful life” mindset, putting “wrongful life” back into that box does not require the Herculean effort of passing and ratifying an amendment to the Constitution of the United States. When the law calls life wrong, the people may change that law by convincing their state legislators to tell the courts that they may not say it again.

NOTES

1. See, e.g., “Suing for Being Born,” *Newsweek*, March 8, 1982, at 53.
2. Since “wrongful conception” does not involve abortion and infanticide implications, it is not discussed here with any detail. It is worth mentioning, though, to define the scope of the general “wrongful life” theory.
3. There are more than sixty published decisions in which “wrongful birth” has been the theory of recovery. See, e.g., *Turpin v. Sortini*, 174 Cal. Rptr. 128 (1981). Other states that have recognized “wrongful birth” include Illinois, Michigan, New Jersey, New York, Pennsylvania, Texas, and Wisconsin.
4. A California Court of Appeals stands alone in recognizing the “wrongful life” proper theory. *Curlender v. Bio-Science Laboratories*, 106 Cal. App. 3d 811, 165 Cal. Rptr. 477 (1980). The California Court also recognized a right of the handicapped child to sue his parents for having allowed him to be born. *Curlender* conflicts with *Turpin*, note 3, *supra*, however, and the California Supreme Court eventually will have to resolve these conflicting decisions from the state Courts of Appeals.
5. For a more detailed discussion of the legal intricacies of “wrongful life,” see Dennis J. Horan and Steven R. Valentine, “The Doctor’s Dilemma: Euthanasia, Wrongful Life, and the Handicapped Newborn,” in *Infanticide and the Handicapped Newborn* (Salt Lake City: Brigham Young University Press, 1982).
6. Amniocentesis involves the extraction and analysis of fetal cells shed into the amniotic sac and fluid that surrounds the unborn child.
7. *Roe v. Wade*, 410 U.S. 113 (1973).
8. See Lynn Wardle, *The Abortion Privacy Doctrine* (Buffalo: William S. Hein Co., Inc., 1980).

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9. *Doe v. Bolton*, 410 U.S. 179 (1973) at 197, 198; as cited and analyzed in Wardle, *supra*, at 197-198.
10. Wardle, *supra*, at 198.
11. Health Programs Extension Act of 1973, Pub. L. No. 93-45, 47 Stat. 95 (1978) as amended by National Research Act Pub. L. No. 93-348, 88 Stat. 353 (1974) (codified as 42 U.S. §300a-7, Supp. V. 1975).
12. See generally, Lawrence Tribe, *American Constitutional Law* (1978), §14-10, at 856, and *id.*, 54 (discussing conscientious objector rights); as cited in Wardle, *supra*, at 214, note 284.
13. Note, "Father and Mother Know Best: Defining the Liability of Physicians for Inadequate Genetic Counseling," 87 *Yale Law Journal* 1488 (1978) at 1511-1512.
14. See *Gildiner v. Thomas Jefferson University Hospital*, 451 F. Supp. 692 (E.D. Pa. 1978) at 695. The court's majority rejected this view of "wrongful life."
15. See *Dumer v. St. Michael's Hosp.*, 69 Wisc. 2d 766, 233 N.W. 2d 372 (1975) at 780 (Hansen, J., dissenting).
16. See, J. Ely, "The Wages of Crying Wolf: A Comment On *Roe v. Wade*," 82 *Yale L. J.* 920, 921 (1973).
17. *Roe v. Wade*, *supra*, and *Doe v. Bolton* (consolidated), *supra* (White, J., dissenting).
18. *id.*
19. See Note, "Liability of Physicians for Inadequate Genetic Counseling," *supra*, at 1493, note 21; see also, Monteleone and Moraczewski, "Medical and Ethical Aspects of the Prenatal Diagnosis of Genetic Disease," in Thomas Hilgers, Dennis Horan, and David Mall, editors, *New Perspectives on Human Abortion* (Frederick, Maryland: University Publications of America, 1981), at 49.
20. Donald DeMarco, "Abortion: Fear of the Actual and Preference for the Possible," in Hilgers, Horan, and Mall, eds., *New Perspectives on Human Abortion*, *supra*, at 445.
21. Perhaps the earliest highly publicized incident of this type occurred at the Johns Hopkins University Hospital in 1963. The case study is presented in J. Gustafsen, "Mongolism, Parental Desires, and the Right to Life," in Dennis Horan and David Mall, editors, *Death, Dying and Euthanasia* (Frederick, Maryland: University Publications of America, 1980), 250-278; see also Dennis Horan, "Euthanasia as a Form of Medical Management," in Horan and Mall, eds., *Death, Dying and Euthanasia*, *supra*, at 196-227.
22. R. Duff and A. Campbell, "Moral and Ethical Dilemmas in the Special-Care Nursery," 289 *New England Journal of Medicine* 890 (1978) as cited in J. Robertson, "Involuntary Euthanasia of Defective Newborns: A Legal Analysis," 27 *Stanford Law Review* 213 (1975) as reprinted in Horan and Mall, *Death, Dying and Euthanasia*, *supra*, at 140.
23. See *Boston Globe*, Feb. 25, 1974, at 1, Col. 1; *Newark Star-Ledger*, Oct. 3, 1973, at 32, Col. 8; see also R. Trumo, *An Act of Mercy* (1973); *Time*, March 25, 1974, at 84; as cited in J. Robertson, *Involuntary Euthanasia of Defective Newborns*, *supra*, at 140.
24. *N. Y. Times*, June 12, 1974, at 18, col. 4, as cited in J. Robertson, *supra*, at 140.
25. F. Ingraham and D. Matson, *Neurosurgery of Infancy and Childhood* (1954), 35-39 as cited in J. Robertson, *supra*, at 140.
26. See, e. g., Gimbel, "Infanticide: Who Makes the Decisions?" *Wisconsin Medical Journal* 10 (1974); Lorber, "Results of Treatment of Myelomeningocele," 13 *Developmental Medicine and Child Neurology* 279 (1971); as cited in J. Robertson, *supra*, at 140.
27. See generally, J. Robertson, *supra*.
28. The first and only criminal indictment in such an infanticide case occurred at Danville, Illinois in the summer of 1981 and arose from the birth of Siamese twins. The charges of attempted murder and conspiracy to commit murder against the parents and doctor were dismissed by a judge because of insufficient evidence. See *Ob-Gyn News*, Sept. 5, at 18, col. 1.
29. J. Robertson, *supra*, at 169.
30. *Id.*
31. P. Ramsey, "Reference Points in Deciding About Abortion," in John T. Noonan, Jr., *The Morality of Abortion* (Cambridge, Massachusetts: Harvard University Press, 1970) at 79.
32. *Roe v. Wade*, *supra*.

Nazi Bioethics and a Doctor's Defense

Gary E. Crum

A HASTINGS CENTER conference in 1976 dealt with the problem of how to properly use Germany's Nazi experience in drawing analogies with current bioethical policies.¹ Many other investigations have dealt with the Nazi medical crimes, seeking to integrate post-war testimonies and captured documents in an effort to discover the socio-ethical antecedents of the crimes.² There is even currently underway an extensive psychological study of the physicians who were directly or indirectly involved in the Nazi medical crimes.³

One difficulty in trying to draw Nazi analogies is the tendency to draw the analogy on too broad a scale.⁴ The extensive documentation of the Nazi culture and the medical crimes, when compared with the first-hand information each of us has of our own culture, usually results in too much complexity for drawing easy analogies. It seems therefore that a more useful effort to draw analogies might result from a study of the bioethical positions held by individual Nazi medical personalities.

A logical place to start would be with the key defendant in the Nuremberg Medical Case, Dr. Karl Brandt. Brandt was the highest-ranking physician in the German Government during most of World War II and played an important policy role in the health affairs of the Third Reich. He is an interesting subject for a bioethical study because 1) as a policy formulator he was not directly involved in the actual killings; 2) he presented a largely consistent bioethical position during his Nuremberg defense, and 3) he was one of the defendants who was eventually convicted and sentenced to death for his actions.

Before delving into the Nuremberg transcripts of Brandt's defense, something should be said about the environment under which Brandt's words were spoken. The trials were preceded by a plethora of publicity which was more than a little detrimental to

Gary E. Crum is an assistant professor at George Washington University in Washington, and a co-founder of the American Public Health Association's Forum on Bioethics.

the defendants.⁵ Brandt was charged with several capital crimes, so he had ample incentive to cast his actions and motives in the best light possible. Nevertheless, it would be a mistake to assume that his statements were often fabrications designed to gain personal acquittal. Telford Taylor, the Chief of Counsel at the Nuremberg Trials, has noted that the defendants were not exclusively concerned about the possible court sanctions or their personal reputations, but were additionally concerned with the overall reputation of the German medical profession.⁶ The result of this concern, in Dr. Brandt's case, was a lengthy opposition to prosecution claims, usually not on a disputation of the facts, but on the ethical *justification* for the undisputed facts. Even when the facts were disputed, Brandt sometimes outlined his position as to what ethical conditions would have been necessary to justify the actions which the prosecution claimed took place.

Personal Background

During Brandt's testimony at Nuremberg,⁷ he gave some facts about his background. He was born on January 8, 1904, and had several physicians in his family tree. He himself became a surgeon specializing in accident surgery, particularly in the area of the brain and spine injuries. During his early years as a physician he was struck by the pathetic situation of many spinal-injury patients who were suffering great pain and for whom he could do nothing. Brandt testified: "After a certain time, again and again, these patients would make the same request: 'Doctor, give me an injection! I cannot stand it anymore.'"

Brandt became a member of the National Socialist League of Physicians (NSLP), but only after making the written stipulation that he would not have to exercise "any active duty in any S.S. or S.A. formation."

In 1933, Brandt by chance found himself to be the attending physician treating an important car accident victim: Wilhelm Brueckner, Hitler's adjutant. When Hitler was later in need of an escort physician (in case of an assassination attempt) to accompany him on his trip to Venice to visit Mussolini, Brueckner successfully recommended Brandt for the job. This resulted in Brandt being made a member of the S.S. in 1935, so that all of Hitler's

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personal attendants would be dressed similarly. Brandt on one occasion quarreled with the head of the S.S., Heinrich Himmler, about the S.S. uniform, because it failed to distinguish medical officers from regular officers. Brandt, unlike Himmler, felt that "the medical officer is first a doctor and secondly an officer."

In the spring of 1939 Hitler turned over to Brandt a special request received from the father of a deformed, apparently retarded child. The father wanted the child killed. Brandt consulted the child's physicians, who, according to Brandt, determined that "the keeping alive of such a child could actually not be justified." Brandt said that this recommendation for euthanasia was in accord with typical maternity ward practices in German hospitals.

During the fall of 1939, Hitler gave Brandt and Bouhler (Chief of the Chancellery of the Fuhrer) a directive authorizing them in effect to initiate a secret euthanasia program for all "incurable patients," but only the incurably insane and deformed children were eventually included. (The euthanasia program for deformed children had been started even before this time, but did not actually carry out any killings until after Hitler's 1939 directive.) Brandt's estimates suggested that about 60,000 insane people, including the feeble-minded and the senile, were officially gassed with carbon monoxide, and cremated. The killing of the insane was stopped in August, 1941, primarily due to opposition from church leaders who had learned of the secret program. However, the bureaucratic apparatus for euthanizing the insane and the actual killings of deformed children continued until the second half of 1944, when war conditions made it impossible to continue.

In August, 1942, Brandt became Reich Commissioner for Medical and Health Services; in September, 1943 he was put in charge of German health science and medical research. His fortunes underwent an abrupt change in the fall of 1944, when he was fired as Hitler's escort physician because of rivalries among Hitler's top staff, notably Himmler, Martin, Bormann and Prof. Theodore Morrell (Hitler's personal physician).⁸

In 1945 Brandt was arrested at Hitler's orders and condemned to death on questionable charges, but he was "liberated" by the Allies before the German death sentence could be carried out.

Human Experimentation. On the stand Brandt denied having

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knowledge, when he was in power, of virtually all human experiments done on concentration camp victims, including the experiments dealing with freezing, malaria, lost (mustard) gas, transplants, sea water, sterilizations, and typhus.⁹ He admitted knowing of the use of human subjects during experiments dealing with hepatitis and sulfanilamide, though he argued that it was his understanding that the subjects were condemned criminals. He also eventually admitted that he had suggested experiments for testing certain drugs and for gaining nutritional information, and had recommended that concentration camp inmates be used, but argued that these experiments were not dangerous.

Brandt had a fairly complex position as to the criteria which one applied before approving an experiment involving human subjects.

In regard to preliminary animal studies, he remarked:

It is a matter of course that before one undertakes a human experiment all possible animal experiments must be conducted first, and that the execution of an experiment on human beings requires all medical and human precautions.

He argued, however, that animals were not adequate subjects when dealing with human-specific diseases such as dengue, typhus, and malaria.

Brandt also related a 1944 incident concerning a German agent who was sent into Spain and who, by "devious means," later had monkeys flown back to Germany for use in chemical warfare experiments. (The zoos in Germany and in captured countries had been unable to supply enough monkeys for these experiments.) Brandt's implication was that such an effort would not have been undertaken if concentration camp inmates or other groups were truly considered expendable by Nazi leaders.

Brandt had three criteria for assessing the ethical nature of experiments on human subjects; namely, are the experiments important, are they dangerous, and are the subjects volunteers. He condemned the Nazi sterilization experiments as being "useless" and without "medical indications," while judging that the typhus experiments were an example of an "important" experiment. Experiments which were important could become "criminal," according to Brandt, if continued after adequate results had been obtained.

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In addition to condemning all non-important experiments with human beings, Brandt expressed the opinion that there should be limits on the use of human subjects in important experiments which were dangerous to the subjects. He felt that dangerous experiments (whether done on volunteers, non-volunteers, and/or condemned prisoners) could only be justified by some international agreement, not by individual nations acting on their own. He excluded from this "dangerous" category those experiments which were dangerous only due to possible complications, as long as those possible complications were genuinely not expected to occur.

As a probable example of a non-dangerous Nazi experiment involving human subjects, Brandt argued that the hepatitis experiments described by the prosecution failed to present any likely risks either in regard to the experimental methods employed or in regard to the disease itself.

On the question of volunteers he said it was a "difficult" question as to whether it should be permissible to use non-volunteers in experiments that were important but not dangerous. He did feel that willing prisoners could be considered as true volunteers as long as the experiment was not in the dangerous category. As noted above, he had some misgivings about the use even of volunteers in dangerous, important experiments, unless internationally-derived criteria were available for an approving consultation. But in all cases he felt that the human subject must be informed about the experiment and its expected result.

When asked who was the real guilty party in regard to the use of concentration camp inmates in improper experiments, Brandt placed the blame on Himmler. Even if an order requesting inmates initially came from the Luftwaffe or some other official source, Brandt believed that the only real culprit was the one who had the ultimate responsibility for delivering the inmates to the experimenters.

Euthanasia Program

Brandt, who admitted playing an important role in it, said that the Nazi euthanasia program was aimed at: "... insane persons, who were in such a condition that they could no longer take any conscious part in life. These people were to be given relief by death."

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The duration of the patient's disease, the type of disease, and the patient's reaction to treatment were all taken into consideration. Neither excessive pain nor imminence of death were necessary criteria for being euthanized.

On a point later strongly challenged by the prosecution, Brandt argued that there was no effort to single out Jews, Negroes, Gypsies, or other racial groups, and no effort to preserve from the program those insane persons who were able to do some regular work. The ability to work, according to Brandt, was important only as a factor in measuring the extent of the patient's insanity.

Certain insane patients were routinely excluded from the program, e.g., veterans whose insanity was related to war-received disabilities, and persons whose insanity stemmed from occupational disabilities. According to Brandt, these people were denied what he had previously characterized as being "relief by death" not because they were unworthy of such "relief," but in consideration of "the mentality of the people towards such questions."

In regard to the phrase "useless eaters," Brandt said it "never fell in his presence." In his opinion the phrase did not play any important part in euthanasia policy; also, there were not enough people being euthanized to significantly affect the food situation. Brandt's position was that budgetary considerations "must not under any circumstances play a part. That would be a sad condition."¹⁰

The patients to be euthanized were not generally aware of what was about to happen to them. Brandt remarked:

The point of view was that the insane person himself is in no position to judge his situation . . . If one were to say that the patient gave his approval, that means exactly the same as if one says he did not approve. In individual cases where the question of euthanasia was discussed with mentally healthy persons, sane persons, the point of view was gained that the patient cannot decide about himself, but that the decision must be left to the doctor alone. Through momentary pain the patient may be so deceived, just as through a relative comfort he may be deceived about the severity of his disease. Here one can judge only on the basis of the diagnosis, and considering the condition and the prognosis, and only the doctor can reach the decision.

Even though each doctor, in Brandt's opinion, had this life-and-death role, any doctor with a different opinion was never forced to take part in the Nazi euthanasia program. Also, those who did

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choose to take part were still permitted to exclude individual patients falling under the euthanasia program's auspices. In referring to this "conscience clause," as it might be called today, Brandt noted that each doctor "had the right and the duty, if he did not approve, to refuse to carry out euthanasia."

In regard to the question of whether the patient's relatives should have been asked for euthanasia permission, Brandt argued that they were no more accurate in judging medical conditions than was the patient. Furthermore, Brandt remarked: ". . . One cannot expect a relative to decide about the life or death of someone else. It was the opinion that the doctor, with the support of the state, has to take the responsibility."

However, in the largely separate "deformed children" selection process, parents were required to give oral or written approval before euthanasia was carried out.

When asked by the prosecution about his opinion of the mass killing of tubercular Poles, Brandt expressed disapproval:

I consider it necessary that as long as one can help a human being and as long as there is any prospect whatever, one must help him . . . I see no justification because a person is sick or suffering, or because he can no longer work, to kill him, no matter what his nationality is or what his age is.

When asked by the prosecution why the child euthanasia program was not halted at the same time the euthanasia program for the insane was halted, Brandt said there was a desire to avoid long-term difficulties for the families. "We wanted to kill and put an end to these deformities as soon as possible after they had been born."

Brandt spent quite a bit of his testimony defending the philosophy and purpose of the German euthanasia program. In his final statement before the court he argued that euthanasia was "not a crime against man or against humanity. It is pity for the incurable, literally."¹¹

Brandt was asked by the prosecution if he did not feel euthanasia had "something horrible about it." His reply:

The human beings who cannot help themselves, and whose tests show a life of suffering are to be given aid. This consideration is not inhuman. I never felt that it was not ethical or was not moral.

But one thing seems necessary to me — that if anybody wants to judge the question of euthanasia he must go into an insane asylum and he should

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stay there with the sick people for a few days. Then we can ask him two questions: the first would be whether he himself would like to live like that, and the second, whether he would ask one of his relatives to live that way —perhaps his child or his parents. The answer cannot be connected with the concept of demonic order but it will be deeply felt gratitude for his own health and the question of whether it is more humane to help such a being to find a peaceful end or to care for it further — this answer results without being expressed. In this connection I have a reference to literature where it says about having a child with a hereditary brain disease kept alive for three and one-half years and that this creature screamed for three and one-half years. I see nothing particularly humane in this.

The State and the Hippocratic Oath

Brandt made several comments which qualified the importance of the Hippocratic Oath in modern medicine. He maintained that Hippocrates himself would now compose the oath differently:

You see, the Hippocratic oath is also cited today, and it is said that patients and sufferers are not to be given any poison, and [if] a doctor simply declares or asserts such a thing, that is either a lie, or hypocrisy. There is no doctor today who does not give a suffering patient narcotics, and tries to make the final hour of a dying person easier. One can say that is not euthanasia. In any case it is against the oath of Hippocrates.

Brandt was also asked about Hitler's policy of December 23, 1942, which obligated German physicians and certain other health professionals to notify Brandt immediately of any "diagnosis of a serious and progressive disease to a person occupying a leading and responsible position within the state." Brandt's position was that the interests of the patient can at times be legitimately dominated by the state's interests. When asked about the effect of Hitler's decree on the ethical stance of a physician in regard to the Hippocratic oath, Brandt replied:

In general the physician is obligated to maintain secrecy about what he finds out in the course of his profession and not to pass on any information. He is relieved from this moral law at the very moment when his knowledge implies a general danger because a physician knows that in some cases, for instance, in the case of the dangerous insane patient, he of course is obligated to impart the knowledge which he has gained in practicing his profession and obligated to pass it on for general safety. Then the general interest exists; and it is far above the interest of the individual patient. Therefore, there can be exceptions.

In commenting on the interplay between the individual and the state, Brandt denied that the euthanasia program resulted from the

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state ceasing to have an interest in the lives of the insane. The state's motive was, in his words, "only . . . to help the condition of the person and bring it to an end in the interest of the afflicted person."

Brandt argued that the state also had the authority, during war time, to require physicians to undertake experiments. In such cases the state "takes the responsibility away from the physician if such an experiment ends fatally . . . from that moment on, the physician is merely an instrument." He said that the ethical duties of physicians must be subordinated to "the totalitarian nature of war," but he later reneged on these statements by saying that he did not mean that military physicians must subordinate professional ethics to military orders. He meant only that the "authoritarian leadership" had the general ability to interfere "with the personality and the personal feelings of the human being." The personality was "dissolved in the concept of a collective body." Brandt further noted that "Everything was done in the interest of humanity and so that the individual person had no meaning whatsoever."

In referring to the effects of the State on his own personal willingness to engage in the euthanasia program, Brandt noted the air of legitimacy supplied by approval from high places: "One decisive point for me, perhaps, was that the head of state himself had given me the assignment, and I certainly could not expect that I was given such a decree for any criminal action."

The Court's Sentence

Karl Brandt was eventually convicted of having played a criminal role in the human experiments dealing with sulfanilamide, epidemic jaundice, mustard gas, and in the euthanasia program. He was hanged, along with six other defendants, on February 16, 1948.

The court was unable, in the light of prosecution arguments, to believe that Brandt was as completely ignorant of the criminal human experiments as he claimed. The prosecution pointed out during Brandt's trial that Brandt had visited concentration camp towns and had served on Goering's Presidential Council of the Reich Research Council, a group under whose auspices certain of the experiments were initiated.

Along with the inconsistencies sometimes evident in the above quotes from Brandt's testimony (e.g., "few" people realized they were to be killed under the euthanasia program, even though the program was specifically aimed at those who had *no* conscious participation in life), Brandt failed, in the court's opinion, to explain away certain prosecution exhibits.¹² The court, though refusing to rule on the propriety of a country establishing a euthanasia program, nevertheless condemned the use of the German euthanasia program to exterminate non-German nationals.¹³

Brandt's conviction was not based on his personally having conducted criminal experiments or having euthanized a patient, but primarily on his "failure to follow up a program (euthanasia) for which he was charged with special responsibility,"¹⁴ his dereliction in protecting non-Germans from euthanasia, and his failure to recognize his obligation to gather the information which he testified he lacked on those experiments conducted in concentration camps. The court, in specific reference to the sulfanilamide experiments, ruled as follows:

Occupying the position he did, and being a physician of ability and experience, the duty rested upon him to make some adequate investigation concerning the medical experiments which he knew had been, were being, and doubtless would continue to be, conducted in the concentration camps.¹⁵

It is interesting to note that this concept of a "duty to investigate" was not uniformly applied during the post-war trials in Nuremberg and Tokyo.¹⁶

Brandt's Ethical Position

In regard to Brandt's stated philosophical position on human experimentation, it can be argued that his three criteria (importance, danger, voluntary participation) are a fairly effective set of ethical safeguards. His comments concerning informed consent, animal experiments, and experiments continued after adequate results are obtained, are not different from those accepted by many medical professionals today.

His philosophy relating to the use of prisoners, and the use of human subjects for dangerous, important experiments, is far from conservative, but it does support the concept that non-condemned prisoners have a right not to be exposed to dangerous experiments

against their will. Furthermore, his statements concerning the need for international human rights agreements in the area of human experimentation illustrates an apparent willingness to subordinate personal and local ethical criteria to a kind of intercultural consensus — a position which indirectly admitted the appropriateness of having Allied judges preside over the medical crime trials of German citizens such as himself.

Perhaps his least defensible statement on human experimentation was blaming only Himmler for the callous concentration camp experiments which were requested by the Luftwaffe and other Nazi organizations. Brandt's reasons for exonerating the requester of the experiments was conceivably due to an inference on his part that the requested experiments were, if properly carried out, not contrary to his three criteria. However, the official reports of human suffering and death which were filed following some of the camp medical experiments (e.g. the high altitude experiments) could hardly have failed to have alerted officials to the consequences of making requests of Himmler.

Brandt's statements on euthanasia, in contrast to his statements on the Hippocratic oath and the role of the state, seemed to be consistent and the result of strong ethical convictions. Unlike his statements on the human experiments, Brandt admitted having extensive knowledge of the euthanasia program while he was in power. Hitler's orders had gone directly to Brandt, and he claimed to be convinced that the authority given him was both legal and medically appropriate.

Brandt's position in regard to the breaking of a patient confidence in the face of a potentially grave danger to society is similar to that taken by most current experts.¹⁷ Much less convincing are his attempts to equate the killing of insane persons with the administering of life-shortening pain control substances to patients in great suffering. His statements concerning the physician-state relationship during wartime were at times inconsistent, presenting a less radical position as the trial wore on.

Upon reviewing Brandt's statements, the reader might infer that Brandt was a well-meaning Nazi official and physician whose basic medical humanitarianism was undermined by both internal and external pressures to incorporate the racist philosophies of his

country. Even this incorporation, moreover, may have been a case of turning a blind eye to the insidious erosion of his program goals more than it was case of active support.

Although the author himself is categorically opposed to active euthanasia, a careful study of Brandt's stated euthanasia position fails to convince me that he is a more appropriate candidate for the extreme labels often reserved for Nazi euthanasia officials than are some writers encountered in the bioethical literature of today.

For example, in the 1975 anthology, *Beneficent Euthanasia*, Richard Brandt (no known relationship to Karl Brandt) wrote:

. . . there is *not* a prima facie obligation not to terminate when there would be no injury, or when there would be a positive benefit (release from pain) in so doing, provided the patient has not declared himself otherwise or there is evidence that his wishes are to that effect.¹⁸

Diana Crane has written in relation to newborn children suffering from myelomeningocele: "In this type of case, also, specific guidelines for the withdrawal of treatment and even for the termination of life would appear to be highly desirable."¹⁹

On the legislative front, a 1969 bill authorizing involuntary euthanasia was introduced (but not passed) in the Florida legislature; also, voluntary, active euthanasia bills have in the past been introduced in England's House of Lords and in Idaho.

Another advocate of killing for mercy is Joseph Fletcher. Fletcher specifically expresses disdain for those who believe that active euthanasia programs will develop into the "Nazi-type misuse of euthanasia" where the program was warped by evil excesses.²⁰

Is Fletcher right in claiming that the Germans' misuse of their euthanasia program is not likely in contemporary Western society, or does the Nazi euthanasia experience serve as a true warning for current societies and individuals? Germain Grisez has argued that it does serve as a warning:

Proponents of the legalization of euthanasia dismiss the Nazi example as irrelevant. The Nazi regime had its own absurd ideology, which is unlikely to appear again. No one today is pressing to send Jews or some other ethnic group to death camps. This dismissal of the Nazi precedent is an important part of the argument that the opposition to voluntary euthanasia on the basis of its relationship to nonvoluntary euthanasia is fallacious.

Perhaps the Nazi precedent is not precisely relevant. However, certain elements of *liberal* ideology together with a consequentialist jurisprudence can lead to an equally horrible final solution.

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The final solution in the United States and other western societies will be unlike the final solution in Nazi Germany. . . [People] will be killed but not because they are Jews. They will be killed because the quality of their lives has declined to the point that such lives are judged not to be worth living.²¹

These contemporary pleas for euthanasia, and the associated referrals to the Nazi euthanasia program, suggest that, at least in Karl Brandt's case, "Nazi-style" bioethics might be somewhat less unusual than it has been made out. This is particularly true if he failed, due only to dereliction, to discover the euthanasia abuses that conflicted with his stated policy goals and ethics. Even the contaminating racist aspects of the Nazi euthanasia program, if Grisez is correct, may be analogous to ideological flaws found in the philosophies of some current euthanasia proponents. Thus it seems that current advocates of euthanasia, particularly some of those who now advocate involuntary euthanasia, might differ from the executed criminal, Karl Brandt, only in that they have not been given the means to implement their philosophy on a society-wide basis.

Conclusion

Karl Brandt was a Nazi official who took a leading role in a euthanasia program that was responsible for the deaths of numerous mentally ill people and many others who were probably given a mental-illness diagnosis for ulterior reasons. Furthermore, the evidence presented at the Nuremberg Trials strongly suggests that he was also indirectly involved in concentration camp experiments on human beings, experiments that were capital offenses in the eyes of the Nuremberg judges.

Whether Brandt's involvement was overt and race-inspired, or was due to simple or willful negligence, he nevertheless was held responsible along with others for the thousands of deaths which resulted. This is not to say, however, that Brandt was devoid of a strong awareness of the ethical problems surrounding the areas of human experimentation and euthanasia. Nor is it to say that he was unprofessional in his activities as the chief health administrator of the Third Reich. Brandt went about his duties with a professionally-planned and well-sequenced strategy that evolved logically from his and his superiors' value systems. Unfortunately, professional does not mean moral. The final line in ethics should

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not be how professional or efficient one is in carrying out one's actions; it should not be based on whether one's actions produce progress toward particular goals. The final line should instead be whether one has chosen methods that meet the highest universal standards for human conduct. The thoughtful and intelligent arguments of Brandt, like the arguments of the current euthanasia advocates, fail that crucial test. They trade deontological standards for "good ends," withholding no means, not even killing, in their pursuit of those ends.

As a Nazi who went to the gallows, Brandt may appear to many to be so monstrous a historical figure that his ethical position is of only morbid interest. But Brandt's story and ethical reasoning is unfortunately not so uncommon that it could not be essentially repeated by health policy makers in the foreseeable future. To believe otherwise is not to learn from the Nazi experience, but to fictionalize it to the extent that it becomes even more likely to reoccur. If Brandt was indeed a mass murderer, he was also an intelligent and well-meaning physician in at least a certain sense of those terms. It is the Brandts who therefore represent the greatest threat for the future, not the Himmlers and the Hitlers, for it is the Brandts who can effectively cloak evil in the vestments of scholarly discourse and good intentions.

NOTES

1. "Biomedical Ethics in the Shadow of Nazism: A Conference on the Proper Use of the Nazi Analogy in Ethical Debate." *Hastings Center Report* 6, supplement (August 1976), pps. 1-20.
2. For example: Nuremberg Military Tribunals (NMT) *Trials of War Criminals* (Washington: U.S. Government Printing Office, 1949), Vols. I and II; Alexander Mitscherlich, *Doctors of Infamy* (New York: Schuman, 1949). For summaries of the Nazi euthanasia programs, see also Virgil C. Blum and Charles S. Sykes, "The Lesson of Euthanasia," *Human Life Review* II (2); 59-70; Frederic Wertham, *A Sign for Cain* (New York: Macmillan, 1966), Chpts 8 and 9; and Gitta Sereny, *Into That Darkness: From Mercy Killing to Mass Murder* (New York: McGraw-Hill, 1974).
3. "Doctors of the Death Camps," *Time* (June 25, 1979), p. 68.
4. One result of this broad stroke is to blithely throw all Germans into a "bad German" pot, forgetting "the complex motives that cause good people to do evil deeds." Richard Hunt, "Entering the Future Looking Backward," *Hastings Center Report* 9 (May 1979), p. 6.
5. Frederic Maugham, *U.N.O. and War Crimes* (Westport, Connecticut: Greenwood Press, 1975), p. 110.
6. "Biomedical Ethics. . .," p. 6.
7. The quotes in and contents of this section, unless otherwise noted, are taken from the English version of the unpublished trial transcript which is on microfilm (M887, 4) at the National Archives in Washington, D.C. *United States v. Karl Brandt et. al.*, Vol. 7 (February 3-5, 1947) pps. 2301-2661.
8. According to Brandt's testimony, Bormann never did wish Brandt as Hitler's escort physician, and probably used Brandt's 1935 stipulation on entering the NSLP to eventually alienate Hitler from Brandt. Himmler wanted his own escort physician to have the job, while Morrell and Himmler were

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both antagonized by an episode in which Brandt expressed professional concern over the strychnine therapy Morrell was giving the Fuhrer. *Ibid.*, pps. 2357-2362.

9. The Hastings Center Report Supplement ("Biomedical Ethics. . .") contains a good summary of the major experiments included in the charges at Nuremberg.

10. In his final plea for his client, Brandt's lawyer (Dr. Servatius) remarked: "The economic motive of eliminating 'useless eaters' is certainly not sufficient for such measures (euthanasia). Such a motive was never upheld by the defendant Karl Brandt; it was apparently mentioned by others as an accompanying contingency and later taken up by counter propaganda." NMT, Vol. II, p. 135.

11. NMT, Vol. II, p. 139. (For the complete text of Brandt's final statement, see Appendix A in this issue.)

12. One prosecution exhibit, the forms to be filled out for patients being considered for the euthanasia program (Document No. NO-825), challenged Brandt's claim that only Germans were supposed to be euthanized under the official program (as opposed to unofficial "euthanasia" activities carried out by physicians who were allegedly in excess of their authority). Brandt could only suggest "statistical reasons" in explanation as to why there was a requirement that forms be filled out for all patients who were "Jew, partial Jew of grade I or II, Negro, partial Negro, Gypsy, partial Gypsy, etc."

13. NMT, Vol. II, p. 197-198.

14. *Ibid.*, p. 197.

15. *Ibid.*, p. 194.

16. UN War Crimes Commission, *Law Reports of Trials of War Criminals* (London: His Majesty's Stationery Office, 1949), Vol. XIII, p. 72. (See also the sentencing of Erhard Milch during another Nuremberg trial: NMT, Vol. II, p. 776.)

17. For instance, compare Brandt's position with that of Charles McFadden, *Medical Ethics* (Philadelphia: F.A. Davis Company, 1967), p. 410.

18. Richard Brandt, "A Moral Principle About Killing," *Beneficent Euthanasia*, Marvin Kohl ed. (Buffalo: Prometheus Books, 1975), p. 113. (Emphasis in the original.)

19. Diana Crane, *The Sanctity of Social Life: Physicians' Treatment of Critically Ill Patients* (New York: Russell Sage Foundation, 1975), p. 205.

20. Joseph Fletcher, "Voluntary Euthanasia: The New Shape of Death," *Medical Counterpoint 2* (June 6, 1970), p. 21; as quoted in Blum and Sykes, p. 66.

21. Grisez, Germain, "Suicide and Euthanasia," *Death, Dying and Euthanasia*, Dennis Horan and David Mall, eds. (Washington: University Publications of America, 1977), p. 809, 811. (Emphasis in the original).

Human Life vs. Human Personhood

Robert Brungs

MANY ARE THE legacies of *Roe v. Wade*, not the least of which, of course, is the death of more than ten million unborn children. Apart from the hideous slaughter there well may be one overwhelming effect of this Supreme Court decision which is not adverted to sufficiently, especially in the light of the future which is already building.

We have already consecrated in our political and social system — thanks to the seven justices who produced *Roe v. Wade* — the notion that not every human being is a person, that somehow individual human life is not the same as being a human person. The spate of movies, books, and television programs about the Holocaust rarely point out the key role of this very distinction in the deaths of millions upon millions of Jews and Slavs. We need not go back to the slavery issue to find this distinction at work. It has happened in the lifetime of many of us now living. Perhaps one of the great moral tragedies of our time is that many of those who want (rightly) to keep the horrors of the Holocaust before our minds are the same people who trivialize its meaning by encouraging the social acceptance of a distinction between human beings and human person. They seem not to hear themselves.

The rationale that permits legal abortion is that there is human life which is not protected by the State. The unborn child is not legally a person, and, therefore, can be treated arbitrarily. It has no rights at all. It is the State or the society that decides who is and who is not a person under the protection of the law. In the name of reproductive *freedom* we have embarked on an essentially *totalitarian* estimate of the human being. Such a distinction has never served freedom well in the past.

Along with the distinction between individual human beings and human persons, another strange notion has been creeping into our

Robert Brungs, S.J., is a director of the Institute for Theological Encounter with Science and Technology in St. Louis.

collective psyche. How often do we hear the phrase, the right to a quality of life? In the abortion question, and especially in terms of some recent judicial decisions on wrongful birth, we get the strange notion that the right to a quality of life is somehow a more fundamental right than the right to life itself. That the quality of life depends absolutely on the fact of life seems to have escaped notice. Of course, one interpretation of this whole question of the quality of life versus life is that my right to a certain quality of life supersedes someone else's right to life. This is little more than a slightly sophisticated statement of the law of the jungle. Whether we call it the bomb shelter ethic, the life boat ethic, the tough love ethic, or any other kind of ethic, it is no more and no less an ethic of profound selfishness.

This is merely reiterating what has been said better elsewhere. But let's look at this in the context of the beginning of a whole new era in human history and in human living.

Science and Technology

Almost unnoticed by most of us — and especially by those institutions to which we have usually looked for leadership — the world has radically changed. In the past and into the present, our science, our technology, and our industry basically looked toward changes in that environment *external* to ourselves for our betterment. It was in this spirit that our ancestors learned to domesticate plants and animals, to irrigate lands for plant production, to store grains and meat. It was still in that same spirit that later generations learned to harness steam, electricity, and this generation is attempting to tame nuclear and thermonuclear forces. Human beings, through their understanding of the forces of nature, changed the environment in which they lived into a world which better promoted human qualities and values. That this was not always done with adequate concern for results goes without saying. But, by and large, the efforts of human beings to better their lives have been successful. The only ones who want to go back to the "good old days" are those who have forgotten what they really were like. Few of us in the highly technical societies around the world would have the skills requisite for life in the "good old days."

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While the thrust of much of our science, technology, and industry has remained the same as in the past, a significantly new direction has been embarked upon. With the enormous growth (and change) in the biological sciences since about 1950 we have begun an entirely new technological adventure. We are beginning an era in which science, technology, and industry will (already do, really) look toward changes in that environment *internal* to ourselves, not for our betterment, but rather that *we* might be “better.” It will be directed not to our betterment, but to our bettering! In other words, we will be among the products of our technologies and industry. The day may well come when human beings will be the most important of our artifacts. This is the challenge of this new and even novel human effort.

Thus, we are engaging in the beginning of a scientific, technological, industrial movement, much of which will impact directly and immediately on human beings. It should be pointed out that medicine, as we have known it, has been used directly and immediately on human beings, even deeply invasively. So we can legitimately ask why the new biomedical techniques should worry us at all. We have had a lot of practice over the years at the direct and immediate use of technologies on the human body and psyche. Let us, however, at once note that the new capabilities can be quite different.

In what we might call classical medicine, the techniques (whether surgical, pharmaceutical, dietary, or whatever) were used on an ad hoc basis to restore an individual patient to a generally recognized norm of health and/or to alleviate pain. The treatment was individualized and looked to overcoming some pathological state — guided always by the precept that the patient be no worse off after treatment than before (*primum non nocere*). Undoubtedly many of the new techniques we shall develop will pursue this same goal on a much more sophisticated base. For example, we may some day be able to repair defective genes *in utero*. This will, when it happens, be rightly considered as a major medical breakthrough. It will be one of the very significant milestones in human ingenuity, and we can all applaud the men and women who brought it about.

There will be, however, at probably about the same time the potential for “enhancing” our human genetic inheritance. When we

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begin to pursue this avenue of human genius, we will have to face a subtle (or perhaps not so subtle) change in medical purpose and practice. What will occur in society when the purpose of biomedical intervention into the human physical composite is no longer solely a restoration of organic health, i.e., the removal of a pathological condition? Another purpose will be surfacing, a purpose that is not at all new in the intellectual annals of our race. We shall be talking about interventions, the results of which will be transferred to future generations. That will indeed be the rub. We begin, then, to talk about eugenics, a recurring human dream (nightmare?). What will be new will be the capacity to accomplish it on a reasonably successful basis.

When we begin to “enhance” our genetic inheritance, we shall almost certainly be adding a new adjective to medical intervention. We shall not be talking only about direct and immediate interventions into human beings. If eugenics becomes a social goal, these interventions at some point will have to be *systematic* as well. Systematic carries a double implication: it must be methodical and methodological.

To achieve any eugenic effects, it will not be enough to achieve an 80 or 90 percent success. Let us take an example of negative eugenics. It has been proposed (and the proposal has met great approval in some segments of our society) that we might eliminate a genetic disease, like cystic fibrosis, by a more sophisticated amniocentetic technique and selective abortion (*Roe v. Wade*, again). If we can refine amniocentesis to reveal carriers of a defective gene (whether or not they have the genetic disease), then all the carriers of the gene would be aborted. Over a couple of generations the disease resulting from that genetic defect would be eliminated. Of course, we are not eliminating disease, but diseased people. Anyway, it will be unproductive to kill only 80 or 90 percent of the carriers. Besides the fact that the logistics for accomplishing this are nigh on impossible to achieve (every pregnancy in the world would have to be monitored amniocentetically) it's quite interesting that it is proposed. Still, the methodical attempt will be present.

We have seen this methodical aspect recently on another level. Just a few years ago the World Health Organization (WHO) was

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engaged in a project to eliminate smallpox from the litany of human woes. At one point they found only a handful of cases in the world, in very rural Ethiopia. Even then they were not willing to announce success until there were several months in which no cases were reported anywhere in the world. It should be noted that smallpox is an infectious disease, the elimination of which did not demand the death of those who had it. Still the WHO project shows clearly the methodical aspect of systematic "health care."

The methodical aspect of systematic technological intervention into human beings is not as important as the methodological aspect. If we are going to pursue the goal of bettering human beings, then we imply that we already know what a "good" human being is. It is here that the estimate of the human will be extremely important and where the mischief of *Roe v. Wade* will make itself felt.

We must realize that if we are going to intervene systematically into the human composite, the biosciences and biotechnologies will have to be subject to some controlling view of what it means to be human. This controlling view of the human is far more important and far more critical than the technologies themselves. The principal reason for any social application of these biotechnologies will, perhaps strangely enough, be more order, less randomness in the human situation. It is simply a novel form of the cry for "law and order." Any society-wide advance in systematically improving the human stock (read eugenics) will demand new criteria for judging which technologies ought to be promoted for what purposes. As we move from the concern for the well-being of individuals to concern for the well-being of society (take, for example, abortion for fetal indications and also the concern for population control), what criteria are more likely to be applied to the use of bioscientific discovery and biotechnological application? As things are going culturally and socially (*partly* thanks to the wisdom of the Supreme Court), the most likely criteria will be the basic canons of experimental science wedded to the whims and changing fads of the dominant cultural system. These canons are simplicity (efficiency, in the technological mode), predictability and reproducibility.

Eugenics (and this is the goal of any systematic application of

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biosciences and biotechnologies) demands a predictably better product. Any method or technique which does not produce a predictably better product (whether animal or human) will quickly be abandoned. Without a predictable result, we might as well be content with those natural processes which have been pejoratively described as the “roulette of random reproduction.” The tone of that remark seems to suggest the contempt (fear?) of anything spontaneous and uncontrolled. Moreover, if the predictable results are not reproducible, eugenics is an unachievable dream; randomness will not have been reduced to order.

The canons of experimental science were developed for experimentation on inanimate *objects*. The adoption of the methodologies of physics into the life sciences has led to the technological and industrial application of biological advance. These canons are premised on the all but total manipulability of the experimental research object. Laboratory science demands as complete a freedom as possible to transform and rearrange the structures of the experimental object. In order to obtain reproducible results, the experimenter has to be in control of the environment in which the experiment is conducted. The laboratory environment must be closed to any random, spontaneous, uncontrolled event that would affect the result. The laboratory is a closed system in which all spontaneities must be deliberately and systematically eliminated.

If the canons of experimental science do become the basis for the social application of biotechnological capability — and very many of the biotechnological proposals that are being made would have it so — the type of control needed in the laboratory would have to be imposed on the social system and, of course, on those individuals who make it up. The absence of the random, of the spontaneous, of the independent is absolutely required for reproducible results. Spontaneities such as uncontrolled reproduction or any other kind of “deviant behavior” — however “deviant” might come to be defined — would not and could not be tolerated. Let us not be mistaken about this: any serious eugenics program is by nature totalitarian.

Here again we see in the *Roe v. Wade* decision that “cloud as big as a man’s hand.” In a eugenics society new norms of humanness will have to be created and imposed. The distinction at the heart of

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Roe v. Wade, namely, that living human beings are not legal persons until that is granted to them by an agency external to themselves, will allow normative imposition. Those who do not measure up to these new criteria can simply be designated non-persons, since this is now the prerogative of the stronger members of society or of society itself. Ironically enough, the call to privacy as a Constitutional right which demands the distinction between living human beings and legal persons, will be itself one of the first victims of a eugenics program. Ironic, indeed!

We find it quite easy to assume that such laboratory conditions could never be imposed on a society as open as ours. That is probably true right now, if the attempt towards eugenics were made all at once and in all its clarity. If the attempt continues in the incremental fashion used thus far, the outcome is much more debatable. One thing is clear already: if these novel capacities are to be used to their full potential to produce predictable and reproducible results, the social system will have to be very tightly controlled. There is simply no alternative! The price for social predictability and reproducibility will inevitably be the elimination of human dignity and freedom.

Each step down the biotechnological road will form the base for and be supportive of the next step down that road. That base is already being laid: the technologizing of human reproduction has already proceeded through artificial insemination, chemical contraception, abortion, *in vitro* fertilization and is now looking forward to *in vitro* gestation. We should take a very long look at possible destinations before deciding whether to make the journey. We still have an opportunity to decide what "definition" of the human we wish to call our own. A society based on laboratory models is inevitable only if we *continue* to choose a model of the human as essentially malleable, objectivized, to be transformed and rearranged. That is a highly likely outcome, if we do not face these issues, since there is enough momentum built into technological advance to cause significant worry.

Shall we either deliberately build, or at least acquiesce in, some kind of biological collectivist society, or shall we consider the human being and his or her *inherent* dignity and freedom as paramount? There are important voices in our society, including the

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U.S. Supreme Court, which are consciously or unconsciously dedicated to norms of life, dignity, and freedom external to the individual human beings. This is but one step short of giving the welfare of the social group or of the race priority over the welfare of the individual. As soon as some human beings are not persons, all are at jeopardy. Certainly the new biological tools and their use can be good or evil, but their presence considerably broadens and deepens social, political, and cultural issues. We are living through the beginnings of the greatest technological revolution in the history of mankind. We stand on the threshold of the capability of deliberately directing our own future growth as a species — something absolutely novel in our history.

Let us look at one admittedly bizarre mention of “socio-genetic” engineering ideas. This is taken from an article by William Murray in the June, 1975 issue of *Cosmopolitan*. While Murray’s article is written in a very popular and even somewhat sensational manner, it does not really misrepresent proposals that some scientists have dumped into the public forum:

“Here and now *Homo sapiens* is in the process of becoming *Homo biologus*,” a noted French biologist named Dr. Jean Rostand wrote a few years ago, “a strange biped that will combine the properties of self-reproduction without males, like the green fly; of fertilizing his female at long distance, like the nautiloid mollusk; of changing sex, like the xiphophorus; of growing from cuttings, like the earthworm; of replacing his missing parts, like the newt; of developing outside his mother’s body, like the kangaroo; and of hibernating, like the hedgehog.” And Dr. Robert C. Gesteland, an associate professor of biological sciences at Northwestern University in Illinois, has suggested crossing man with plants, so all we’d need for food would be water and sunlight; developing a servant class of supersmart apes; and best of all, breeding a race of humans only four inches tall, which would lesson pollution and conserve natural resources. . . . Dr. Haldane (the late British geneticist) predicted we might breed, for one thing, a race of legless mutants with prehensile tails or feet for space travel. Other scientists would like to see women laying eggs that could be hatched or eaten; human beings with gills to facilitate underwater travel; people with two kinds of hands, one for heavy work, the other for lighter tasks. . . .

Shades of the cantina scene in *Star Wars*! This sounds bizarre and is bizarre in anything like the foreseeable future. But the language is here and so are the attitudes. They are worth looking at. It is not difficult to see that *function* is the predominant rationale given for making such changes: legless mutants *for* space travel;

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gills *for* underwater travel, etc. It is no exaggeration at all to say that the functional aspect of these changes is an appeal to an external principle to decide human value. In this proposed world, a human being's value would not flow from within; rather it would be determined solely by how one fits a predetermined social niche. These predictive proposals (fantasies?) look to changing human beings to accomplish social tasks, rather than to adapt those tasks to fit human capability. When that world is upon us (and it is creeping up on us), we shall be respected and honored only for what we do, never for being what we are.

In the context of another aspect of growing biotechnical achievement, I remember a cartoon in, I believe, an issue of *The American Scientist* of some years ago. The scene is in a laboratory for cloning human beings. A technician is pounding on the door to the lab chief's office, shouting: "Come quick! Come quick! all the Einsteins are tap dancing." What will we do with tap dancing Einsteins? They certainly are not fulfilling the role for which their existence was planned.

But despite the difference in language, is the Supreme Court, in *Roe v. Wade* really saying anything else? It says, in effect, that you can be a living human being who is not a legal person, who has no protection under the law. This, equivalently, says that a human being has only that dignity which the State or a social consensus is willing to confer. Until this dignity is conferred, the individual can be treated (or disposed of) arbitrarily. This arbitrariness will be an essential attitude as we tinker with living human systems. It has, for example, been reported (and evidently admitted) that human embryos ("left-over human embryos") have been frozen for future use in the *in vitro* fertilization clinic at Queen Victoria Hospital in Melbourne, Australia. Why? Probably for the same type of experimentation that was proposed for funding Pierre Soupart at Vanderbilt. Soupart sought funding (not granted before his death) for the study of laboratory-fertilized human embryos which, after 14 days of experiment would be killed (Cf. *The Federal Register*, June 18, 1979, p. 35039).

In the light of *Roe v. Wade*, it is quite difficult to understand why funding was not granted. If the embryo (or fetus) *in utero* is not granted the protection of law, if its life is so easily erasable,

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why worry about embryos *in vitro*? And, indeed, without some reverse in the mischievous concepts underlying *Roe v. Wade*, this worry will decrease. After all, we're going to need a very large rug under which to sweep the laboratory detritus. *Roe v. Wade* provides that rug — and does so, ironically enough, in the name of freedom. This has been and will continue to be true. Abortion, population control by the most efficient technical means, the culling of the weak, the retarded, the disabled, the old, and finally, positive eugenics will be proclaimed by the dominant culture *in the name of freedom*. The proponents of such measures are really “biological rednecks,” biological “law and order” people, who are either fearful of what is not controlled or disdainful of what is not perfect. The sad thing is that they are seemingly unaware that the freedom they invoke cannot exist in the world they propose. Proponents of such “progress” are in reality gnostic utopians who view the human being as radically manipulable and to be transformed, whose dignity will derive solely from the success of the transformation. Charles Frankel in the March, 1974 issue of *Commentary* stated it very well:

The most astonishing question of all posed by the advent of biomedicine, probably, is why adults of high intelligence and considerable education so regularly give themselves, on slight and doubtful provocation, to unbounded plans for remaking the race. The factor responsible is not biomedicine; something else can be the catalyst tomorrow. It is the larger idea which has shaped the major traumatic events of the last three hundred years of modern history. What unites the Puritan radicals, the Jacobins, the Bolsheviks, the Nazis, and the Maoists is the deliberate intention to create a “new man,” to redo the human creature by design. . .

The partisans of large-scale eugenics planning, the Nazis aside, have usually been people of notable humanitarian sentiments. They seem not to hear themselves. It is that other music that they hear, the music that says there shall be nothing random in the world, nothing independent, nothing moved by its own vitality, nothing out of keeping with some idea: even our children must not be our progeny but our creation.

Roe v. Wade, with its unfounded and very dangerous distinction between human beings and human persons will play a major role in the development of attempts at a eugenic society. In such a society — as history and common sense both show — neither freedom nor privacy can be allowed. This distinction, then, will go a long way toward destroying what it hoped to achieve. As our bio-

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technological capability increases, so too will the mischief of the Supreme Court's decision. It will guarantee the elimination of the biologically suspect. And we all — every one of us with no exceptions — are biologically suspect. So “raw judicial power” will finally yield to “raw biological power.” We shall all be the losers.

Taking Choice Seriously

R. V. Young

TOWARDS THE CLOSE of Aldous Huxley's dystopian vision of a future world ruled by an omniscient technocratic state, there is an arresting exchange between the World Controller, Mustapha Mond, and John the Savage, a young man raised on a primitive "reservation" outside the confines of the *Brave New World*. The peculiar style of the Savage's remarks is in part explained by a stray copy of the *Complete Works* of Shakespeare which, along with a cultic religion based on Indian fertility rites and a degenerate Catholicism, has helped to shape his view of the world.

"Exposing what is mortal and unsure to all that fortune, death and danger dare even for an eggshell. Isn't there something in that?" he asked, looking up at Mustapha Mond. "Quite apart from God — though of course God would be a reason for it. Isn't there something in living dangerously?"

"There's a great deal in it," the Controller replied. "Men and women must have their adrenals stimulated from time to time."

"What?" questioned the Savage, uncomprehending.

"It's one of the conditions of perfect health. That's why we've made the V.P.S. treatments compulsory."

"V.P.S.?"

"Violent Passion Surrogate. Regularly once a month. We flood the whole system with adrenalin. It's the complete physiological equivalent of fear and rage. All the tonic effects of murdering Desdemona and being murdered by Othello, without any of the inconveniences."

"But I like the inconveniences."

"We don't," said the Controller. "We prefer to do things comfortably."

"But I don't want comfort. I want God, I want poetry, I want real danger, I want goodness. I want sin."

"In fact," said Mustapha Mond, "you're claiming the right to be unhappy."

"All right then," said the Savage defiantly, "I'm claiming the right to be unhappy."

"Not to mention the right to grow old and ugly and impotent; the right to have syphilis and cancer; the right to have too little to eat; the right to

R. V. Young is an associate professor of English at North Carolina State University; his new book, *Richard Crashaw and the Spanish Golden Age*, will be published soon (by Yale University Press).

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be lousy; the right to live in constant apprehension of what may happen tomorrow; the right to catch typhoid; the right to be tortured by unspeakable pains of every kind." There was a long silence.

"I claim them all," said the Savage at last.

Mustapha Mond shrugged his shoulders. "You're welcome," he said.¹

Of course it was not Huxley or the twentieth century which originated the opposition adumbrated here between freedom and happiness. "Many there be that complain of Divine Providence," says John Milton, "for suffering Adam to transgress; foolish tongues! When God gave him reason, He gave him freedom to choose, for reason is but choosing; he had been else a mere artificial Adam, such an Adam as he is in the motions."² Centuries before, Aristotle had reasoned out the paradox that a life of pleasure ("comfort" Mustapha Mond might call it) is less happy than a life of virtue requiring hardship and choice.³ The issue is today of pressing importance because, for the first time in his history, mankind may actually have within his reach the possibility of guaranteeing, at the cost of freedom and reason, a kind of happiness: the absence of pain, anxiety, and suffering; indulgence in various sensual and emotional, even certain intellectual, pleasures and gratifications. It may be that we truly stand on the edge of that abyss which C. S. Lewis has termed *The Abolition of Man*.⁴

The most spectacular symptom of this crisis is the current conflict over abortion. Proponents of abortion represent themselves as champions of freedom of choice — "pro-choice" is their preferred designation. Yet the justification of abortion requires a redefinition of human nature in such a way that genuine freedom and choice become impossible. The abortion mentality is utopian. Its goal is to eliminate all that is unpleasant, uncomfortable, and imperfect in human life. "It will become necessary and acceptable," said a 1970 editorial in *California Medicine*, "to place relative rather than absolute values on such things as human lives, the use of scarce resources and the various elements which are to make up the quality of life or living."⁵ The abortionist proposes a world of happiness and comfort in which virtually every possibility of anxiety and suffering, ugliness and deformity, pain and loss, has been removed. In this air-tight, sterile world, uncluttered by the debris of history and sealed off from the pressures of contingency, perfectly free

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individuals will make absolutely free choices among a multitude of relative values. Obviously we are confronting a tissue of sheer contradiction. Proponents of abortion demand absolute free choice while undermining the conditions in which authentic choices are possible and abolishing the personal responsibility which gives choice its significance.

What it means to choose

Let us begin by considering what it means to choose. It is a commonplace of moral philosophy to observe that free choice requires that the action of the choosing subject be undetermined by internal or external necessity. It is not so commonly recalled, however, that choosing also requires that an agent's choice be capable of realization in actual consequences. "The object of choice being one of the things in our own power which is desired after deliberation," writes Aristotle, "choice will be deliberate desire of things in our own power."⁶ The operative phrase for the present purpose is "things in our own power," to which the philosopher immediately adds that choice is "concerned with means" rather than ends. Choice is, then, the selection of means by which a rational agent, a person, enacts his will or realizes his intentions in the world he inhabits. It is the remarkable privilege of a spiritual creature that he is capable of transcending the apparently ineluctable material processes of the universe by selecting among various alternative and mutually exclusive possible courses of action.

As a result, the defining characteristic of a rational creature is his capacity for decisive action with substantial effects upon his world. This is an inestimable privilege and a fearful responsibility, because our choices affect others, even as their choices affect us. "Were the world so made that others were immune from our good and evil," observes Rev. James V. Schall, S. J., "it would follow that we are intrinsically isolated, and not socially related in that unique area of choice wherein we decide how we shall ultimately define who we are."⁷ Human freedom, therefore, can never be absolute. Inevitably it is constrained, not only by one's own prior choices, but by the impinging choices of others. Paradoxically, for human beings to be free at all — for their choices to have import — their freedom must be realized within limitations. One can only

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choose what is possible; for a choice to be moral, it must acknowledge additional limitations which include, above all, the integrity of similarly unique rational creatures. Abortion, insofar as it purports to “terminate a pregnancy” without killing a human being, is the choice of what is impossible.

Among human beings pregnancy is virtually always the result of a choice. Even cases of forcible rape involve the choice of the rapist, and so even the pregnant victim of such a crime is subject, in an especially cruel mode, to the cost of living in a contingent universe in which the evil choices of others have real effects. But of course only a tiny — almost an infinitesimal — fraction of the more than one million abortions done each year in this country can claim even the tenuous justification that the woman did not choose the act of intercourse which resulted in her pregnancy. It is not impossible that there are girls, quite young, who have entered into sexual activity without fully appreciating its possible consequences; but it is doubtful that their number is nearly so great as enthusiasts for grade-school sex education would have us believe.

The fact is that most women who conceive children have freely chosen, with full knowledge of its potential outcome, the sexual relation which has resulted in pregnancy. Abortion is, then, a choice whose precise purpose is to obviate the result of a previous choice. To be sure, there is nothing intrinsically evil in seeking to compensate for one’s errors, but abortion is an especially deceitful and vicious means of solving problems by pretending they never existed. As the notorious *California Medicine* editorial coolly phrases it, “it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent.”⁸ Hence abortion is a very peculiar form of killing: in the typical murder the victim is usually the object of the murderer’s greed, rage, or immediate fear. The woman who procures abortion, however, has no particular animus against the specific person in her womb; she does not want him dead as such. Rather, she wants him *never to have existed at all*. It is not that a certain individual is perceived by another as an obstacle to some good thing which the latter wishes to acquire or retain; it is the human existence *per se* of the newly begotten child which is perceived by his mother as an evil because she does not wish to be a mother. Although stories of female athletes who resort to abortion in order not to miss a

tournament, or of women who weigh another child against a vacation or a new car, are not unfamiliar, this narrowly-calculating attitude is not typical. Anyone who has addressed a college audience on this issue has undoubtedly heard from young women in the audience this objection, or something like it: "If I had a baby it would ruin my whole life." What such a young woman is unwilling to face is not the child as such, but the alteration in her own sense of identity or self-image. She is unwilling to accept a development in the reality of her situation which she has not planned, even though it is a known possible consequence of her own actions.

In this perspective it is not difficult to see why so many women seeking (or simply favoring) abortions do not think of themselves as murderers, and why they react so angrily to the imputation. Subjectively their intentions are wholly different from those of, say, a Mafia hitman or a drunken wife beater. And this consideration does not even take into account the various social and economic pressures and very real suffering often attendant upon unplanned pregnancies which unquestionably mitigate the moral guilt in many instances of abortion. Yet, notwithstanding the sympathy which must frequently be extended to women contemplating abortion, there is some basis for insisting that abortion is, from an ontological perspective, worse than ordinary murder. St. Augustine explains that sin consists in preferring an inferior to a superior good; that is, in inordinate love.⁹ Abortion not only prefers the comfort, convenience, or advantage of the pregnant woman to the very life of her unborn child, a fundamentally good thing, but seeks to deny that the life ever existed. In this sense it is a radical denial not only of the worth of a specific life, but of the essential goodness of life itself and the Providential ordering of its procreation.

The woman who *chooses* abortion, therefore, is destroying the basis on which choice can be made. Rather than making amends for a mistaken prior choice, rather than accepting the abundant, gratuitous good available in any new life — even when conceived in illicit or distressing circumstances — she seeks instead not merely to evade the consequences of her action but to obliterate its existential reality. The *choice* of abortion is a meaningless choice — no choice at all — because its sole purpose is to render nugatory

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another choice. Abortion is the most obvious means by which we currently attempt, as individuals, to attain the "Brave New World," to benefit from "all the tonic effects of murdering Desdemona and being murdered by Othello, without any of the inconveniences."

The *California Medicine* editorial seems to suggest that "the very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life"¹⁰ are aimed simply at removing the onus of homicide from this act. Doubtless remorse and a concomitant desire for legal and ethical justification constitute a powerful motivation for the various linguistic subterfuges adduced to conceal the true nature of abortion. Still, I am inclined to suspect that the various euphemisms for abortion are, ultimately, designed to conceal not only the abortion itself but the entire actuality to which the abortion is applied as a remedy. The many young women who have insisted to me — fiercely, even desperately — that abortion is "different" from infanticide, that a fetus is "not the same as a baby," are not, I think, overwhelmed by guilt (in most instances the abortions are still, presumably, hypothetical), nor are they fiends bent on justifying murder. They are victims themselves — hapless collaborators in a pervasive conspiracy of self-indulgence and irresponsibility which suppresses truth and consequences alike, and promises that no decision is ever final.

"Nothing is at last sacred but the integrity of your own mind," wrote Ralph Waldo Emerson. "Absolve you to yourself, and you shall have the suffrage of the world."¹¹ Along with Franklin, Emerson is America's most cherished and platitudinous prophet, and the result is the evil banality of situation ethics, which promises that anything is "OK" if it is wanted with sufficient intensity: "It may be biologically human, but it's not human to me." I vividly remember these words, spat from the tight lips of a nursing student. "I think you're one hundred percent right," said the young man to whom I had just demonstrated that life begins at conception, "but I still disagree with you." What these wholly typical examples of contemporary logic have in common is their insistence that opinion need have no connection with reality, that (indeed) reality itself is shaped by the imperious force of subjective desires, rather than serving as a natural limit to desire. Quite lost is the wisdom of St. Thomas Aquinas: "Our choice is always concerned

with our actions. Now whatever is done by us is possible to us. Therefore we must needs say that choice is only of possible things.”¹² In a world where possibilities have no limits and choices no finality, choice itself is meaningless.

There is no small irony, then, in *Time* magazine’s endorsement of “pro-choice advocates” at the close of a recent cover story, “The Battle over Abortion,”¹³ for the very label is a grotesque misnomer. The “choice” of abortion takes choice out of the realm of possibility into the realm of wish. The woman does not wish to be pregnant, to bear a child. Now this wish that things be other than they are can, superficially, be gratified. With an early suction abortion she need never see the child, never even feel him kick. It is easy, then, to believe that the child never existed, that the abortion was merely a “procedure,” the “terminated” pregnancy merely a temporary condition unrelated to her own serious choice already consummated. Of course, this is pure evasion. Once a woman has conceived she is forever the mother of a child. As has often been observed, it is only a question of whether the baby will be born alive or dead, whether he will leave the womb whole or in pieces.

Sometimes the evasion does not work. Another of my vivid memories is a young woman’s explanation of why she had missed my freshman composition class for more than six weeks. She had become pregnant in her second semester at the University. The counseling service had (of course!) recommended an abortion. “It will be as if it never happened,” she was told. “You needn’t miss a class.” But it had happened, and she knew it. She quit going to all of her classes because of shame and guilt over a “non-event” of which her teachers and classmates were unaware. Now she faced the prospect of going home and explaining to her family why she had failed all of her courses. Her parents had not been informed of the event; after all, it was to be as if it had never happened. I felt, and still feel, deep sympathy for this girl; but I believe that, in the long run, she is far more fortunate than many of her sisters who have gone back to class and accepted a “choice” which cast into oblivion not only the lives of their unborn children, but also the integrity and meaning of their own lives.

I have suggested that the abortion choice is not a valid choice at all, but a mockery of choice because it renders choice nugatory

by denying its consequences. I would argue also that meaningless choices are destructive of freedom, that the freedom to abort is, in fact, the prelude to slavery. Reality exists; choices do have consequences. We may make further choices which mitigate or amend those consequences, but we can never simply ignore them. Sooner or later they overtake us. The woman who seeks to evade the consequences of sexual activity through abortion barter away not only her offspring's, but her own birthright for a mess of emotional pottage. She who allows herself to be convinced that abortion is "anything but the taking of a human life," who permits herself to believe that there was never a baby there at all, has literally yielded up a portion of her soul. As John the Savage realizes in *Brave New World*, freedom requires the "right to be unhappy," and anyone who will be happy at any price cannot be free. But to the extent that one freely yields up the freedom of his will — for comfort, pleasure, security — to that extent one diminishes his own humanity, because our human nature itself is defined by our freedom: not in a jejune political sense but in the radical sense that we can make choices which deliberately alter our relation to the world we inhabit. The serious, philosophical proponents of abortion are convinced that ordinary human beings must not be permitted such choices, and they are determined to redefine and reconstitute human nature to this end. Abortion is merely one weapon, albeit a very important one, in their arsenal.

There is no need to reiterate here the endless list of scientific evidence establishing the consensus (which Justice Blackmun was, incredibly, unable to locate in writing *Roe v. Wade*) that maintains that a new human life originates at conception.¹⁴ What is worth considering are the arguments by means of which scientists, who are unwilling to lie, or fearful of doing so in a professional context, justify their promotion of abortion. In 1964 Columbia anthropologist Ashley Montagu wrote: "The basic fact is simple: life begins not at birth, but at conception"; and he went on to describe the "developing child" as "a living, striving, human being from the very beginning."¹⁵ When Professor Montagu's pro-abortion stance was called into question in the light of such remarks in this book called, significantly enough, *Life Before Birth*, he responded by asserting in a letter to the *New York Times* (March 3, 1967) that

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although “from the moment of conception the organism thus brought into being possesses all the potentialities for humanity in its genes and for that reason must be considered human . . . the embryo, fetus and newborn of the human species do not really become functionally human until humanized in the human socialization process.”¹⁶

Let us for the moment prescind from Professor Montagu’s distortion of his actual statements in *Life Before Birth*, and from the fact that his *Times* formulation provides an explicit rationale for infanticide as well as for abortion at any stage in pregnancy. Let us instead set Professor Montagu’s lucubrations beside a famous passage of the *Declaration of Independence*, generally regarded as the charter of the American conception of human rights:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness . . .¹⁷

When Jefferson wrote “all men” he meant, of course, all human beings, and when he said they were equal he did not refer to talent, strength, intelligence, or other endowments, but simply to the fact of their equal humanity. As Aristotle points out, substantial entities do not admit degree: “If a particular substance is ‘man,’ it will not be any more or less a man either than itself or any other man, in the way that one white thing is whiter than another, or one beautiful thing more beautiful than another.”¹⁸ When Jefferson says that all men are “endowed by their Creator with certain unalienable Rights,” he attributes to each human being, merely by virtue of his humanity, certain innate or intrinsic rights which cannot be denied because he fails to measure up to a test of functionality. He can, presumably, forfeit his rights by violating those of another, but otherwise these natural rights are unconditional because they are an attribute of human nature. It will not, I trust, escape notice that Jefferson lists the right to life first.

Now Professor Montagu’s efforts to weasel out of his admission that unborn children are human beings undermines the very basis for any natural rights at all. It is not enough simply to be human; in order to qualify for protection under the Montagu scheme, one must be “functionally” human. Obviously we are not endowed with “functionality” by our Creator, and we are not all equally func-

tional. What is more, there is nothing very stable about such criteria: who is to say what constitutes functionality? Is a poet as functional as a steel worker? A nuclear physicist as a dairy farmer? Depending on whether man is to be regarded as a symbol-using animal, a tool-using animal, or a laughing animal, at his most functional (and hence most human) he might be college professor, carpenter, or comedian. Once functionality has been established as the standard by which the humanity of fetuses and infants can be denied there is no logical or moral basis for not applying the same standard to the general population.

If Professor Montagu's views prevail, then, our human rights cannot be natural or innate; they can only be civil rights, for it is society which confers humanity itself since we are only "humanized in the human socialization process." There is no guarantee that the process will always be successful, that every adult of the species will be deemed sufficiently functional to merit human status. In any case, what society giveth, society taketh away. The Supreme Court decisions illustrate this melancholy fact in a striking way. Using a logic similar to Montagu's, Justice Blackmun wrote: "With respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb."¹⁹ For human beings to enjoy natural rights, there must be a publicly-acknowledged definition of human nature which enables a human being to be identified rationally. The allied sciences of genetics and microbiology have made this task easier than ever: there is a genetically human organism present from the moment an ovum produced by the female of the species is fused with a sperm produced by the male. "Functional" and "meaningful," however, are not aspects of an individual organism, but describe instead the regard in which he is held by others. "Meaningful" in particular is an utterly meaningless term unless we specify, meaningful *to whom*? In *Roe v. Wade* the Supreme Court has produced a decision which is essentially totalitarian: it does not merely deny human rights to a certain class of human beings; it assumes the prerogative of conferring humanity itself. "We need not resolve the difficult question of when life begins,"²⁰ writes Justice Blackmun, and on this basis he and six colleagues have arbi-

trarily decreed that (for now at least) it will begin at birth.

Philosophically, the most disquieting term in Professor Montagu's remarks is "potentialities for humanity," which finds an echo in Justice Blackmun's invocation of the *cliché*, "potential life." Logically, the phrase is absurd because it is not legitimate to call the fetus "potentially" anything unless one is prepared to say what he is *actually*; but, as Professor Montagu concedes, in genetic terms the fetus "must be considered human." He cannot at the same time be both potentially and actually human, and his humanity is potential only to the same extent that we are all complexes of "human potentialities." As the Spanish philosopher Xavier Zubiri argues: "The person is the being of man. The person finds himself implanted in being 'in order to realize himself.'" Zubiri proceeds to explain that "realizing himself" means "having to elaborate his personality in life."²¹

In other words, human life, throughout its course, is a matter of realizing potentialities; and no one ever succeeds in realizing or completing himself absolutely. It has always been a curious morality that argues for the legitimacy of killing unborn children *because* their human future lies before them. Even the heathen poet Ovid tells his mistress, who has attempted abortion, "Let the ripe fruit fall of its own accord. Suffer the new to grow. Life is no small reward for a little delay."²² When the matter is closely scrutinized, it becomes clear that the term "potentially human" can be applied to us all. No one becomes human except in his acts; that is, our humanity, in any sense other than the purely biological (which abortionists insist upon disregarding), is not automatic or necessary. We do not necessarily attain it by becoming "viable," or being born, or starting school, or reaching the age when we can drive, or drink, or vote. Human life is precisely the activity of fulfilling human potentialities, of becoming human. Because the rational nature of human beings is defined by the capacity for free choice, it can be neither necessary nor absolute. "Hence, in its acts," writes Zubiri, "the living being 'becomes' in reality that which it already was, and its being consists of an 'arriving at' which is not physical or chronological, but metaphysical, and which includes even 'having arrived at.'"²³ Human rights must, perforce, be grounded in simple biological (or genetic) humanness, because

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that is all that can be safely ascertained at any given point in any person's life. The right to life is, then, the right to the opportunity to realize one's human potential. The abortionists virtually demand that Jefferson's "pursuit of Happiness" become a right to happiness itself — as in the Planned Parenthood slogan, "Every child a wanted child" — *before* the right to life be granted. But the Greek sage Solon said that we must call no man happy while he lives; the end of his life only will reveal if it were a happy one.²⁴

It will be perceived that our discussion has come full circle: happiness and freedom again. For it is because persons are complexes of potentialities that they are free — free to make the choices that fulfill their lives in specific, concrete, and finite ways. Happiness, then, is necessarily limited — you cannot, as the old saying puts it, have your cake and eat it too. You cannot choose to have sexual intercourse and remain a virgin, a person who is not intimately involved with another. You cannot become pregnant without becoming still more deeply and intimately involved with yet another person — another pulsing, living bundle of human potential. Therefore, Zubiri can argue, "Freedom is only possible as freedom 'for,' not just as freedom 'from' . . ." ²⁵ That is, our freedom itself is a condition of our finite nature and our situation in reality, which binds us to the limitations and consequences of our own choices.

What is more, in a contingent universe, a universe predetermined neither by Calvin's inscrutable deity nor by B. F. Skinner's all-too-scrutable material environment, our choices are not merely decisive; they issue in consequences that are unpredictable, that are larger than we are. Never is this more true than when our choice is the sexual act, which may, beyond our immediate intention or control, issue in a new human life, a new complex of possibilities with unforeseen consequences. "Thus, a kind of defiance, a challenge to every existing order," writes Rev. Schall, "is necessarily contained in the very birth of any human child."²⁶ The price of freedom, if I may alter a famous line, is eternal uncertainty. Freedom means risk, suffering, genuine evil; but it is also the only basis for true goodness and happiness, as Fr. Schall explains:

This implies, paradoxically, that a creature exists in the world who has disaster as a constitutive element in his very metaphysical make-up. The refusal to accept such a being, to accept this as an accurate description of

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man as a unique, new being capable of radical decision — or of such a God as his origin — is indeed behind much of the rejection of Christianity, which continues to insist on posing a freedom so full of risk that it threatens to jeopardize what seems most worthy and valuable. But without the possibility and actual existence of such a free creature, the absolute adventure, the seriousness, and unbounded joy that really lie behind creation would not be possible.²⁷

It is the rejection of this element of risk and uncertainty in the life of men and women that accounts for the shrill anxiety and incessant self-delusion of the abortion mentality. Attempts to rationalize abortion as a moral alternative to childbirth, or even to minimize its horror as a “necessary evil,” inevitably entail a distortion of reality, indeed an attempt to repudiate human nature and the creature-status of human beings. Magda Denes makes this chillingly (though inadvertently) clear in the introduction to her personal and graphic account of the hideous obscenity of an abortion hospital:

For in fact I am for abortions [she says]. My rage throughout these pages is at the human predicament. At the finitude of our lives, at our nakedness, at the absurdity of our perpetual ambivalence toward the terror of life and toward the horror of death.²⁸

Abortion is, then, a rebellion against the providentially ordained structure of human life — against the unforeseen contingency which a baby poses to the tidy, comfortable worlds we may have planned or even constructed for ourselves.

Given their origin in a denial of the order of nature, it is not surprising that arguments favoring abortion rarely respect the *données* of reality. Judith Jarvis Thomson, professor of philosophy at M.I.T., asks one to imagine that he has been kidnapped and knocked unconscious by members of the Society of Music Lovers. Upon awakening he finds himself lying in bed with a famous violinist whose circulatory system has been routed through the kidneys of the kidnap victim. If the latter does not agree to lie in bed for nine months, allowing the comatose musician to make use of his kidneys, then the musician will die. This fanciful situation is offered as a reasonable analogy for pregnancy. Not content with such nonsense, Professor Thomson proceeds to berate those who believe in the sanctity of life for their refusal to make even hypothetical exceptions: “I suspect, in fact, that they would not make

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an exception for a case in which, miraculously enough, the pregnancy went on for nine years, or even the rest of the mother's life."²⁹ Even atheists, it would appear, will invoke the miraculous when it suits their purposes.

The argument from "what if" reaches its apotheosis with Michael Tooley:

Suppose at some future time a chemical were to be discovered which when injected into the brain of a kitten would cause the kitten to develop into a cat possessing a brain of the sort possessed by humans, and consequently into a cat having all the psychological capabilities characteristic of adult humans. Such cats would be able to think, to use language, and so on. Now it would surely be morally indefensible in such a situation to ascribe a serious right to life to members of the species *homo sapiens* without also ascribing it to the cats that have already undergone such a process of development: there would be no morally significant differences.³⁰

Professor Tooley, who seems to think this an absolutely devastating *scenario* for right-to-life advocates, has evidently not read the *Narnia* series, where C. S. Lewis sets forth quite lucidly the proper relationship between human children and talking animals. In any case, anyone who did to ordinary garden-variety cats what abortionists do to unborn children would most likely be sent to an institution for the criminally insane. Whatever chemicals may be discovered in the future for the enhancement of the intellect, it is obvious that we possess already the capacity to debase it by willfully ignoring the nature of reality and the goodness of creation. One is reminded of Virgil's words to Dante as they enter the gates of hell: "Now we come to the place where I have told you / that you will see the wretched people / that have lost the good of the intellect."³¹

The abortion mentality is utopian, and that, in turn, is necessarily totalitarian. Happiness cannot be guaranteed to free men and women. Freedom means, among other things, "the right to be unhappy," or at least the right to risk unhappiness. Only comfort, security, and a stale, sterile pleasure can be guaranteed, and then only to creatures of a far more diminished humanity than any unborn child, whose world lies all before him. The abortionists' "pro-choice" slogan is a lie based on a lie. It promises choices without consequences, and hence without meaning, by way of killing supposedly without victims. Proponents of abortion demand free-

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dom, but they do not take freedom seriously. To be “free” of unwanted pregnancy, they lie about the nature of the unborn child and of their own actions. And of course it is only the truth that will set us free.

NOTES

1. *Brave New World* (1932; Reprinted by Harper & Row: New York, 1969), p. 163.
2. *Areopagitica* (London, 1644).
3. *Nicomachean Ethics*, 1099a, 1105a-1112a.
4. *The Abolition of Man* (1947; reprinted by Macmillan: New York, 1965).
5. Quoted by K. D. Whitehead, *Respectable Killing, the New Abortion Imperative*, (Catholics United for the Faith, New Rochelle, N. Y., 1972), p. 163. [The entire text of the editorial in *California Medicine* (Sept., 1970; Vol. 113, No. 3) has been reprinted several times in this review, most recently in Appendix C of HLR, Winter '82. —Ed.]
6. *Nicomachean Ethics*, 1113a. See also St. Thomas Aquinas, *Summa Theologica*, I-II, xii-xiii.
7. *Christianity and Life* (Ignatius Press: San Francisco, 1981), p. 17.
8. Quoted by Whitehead, pp. 163-64.
9. *Of True Religion*, 23, 26, 37; *The City of God*, XIV, 4-6.
10. Quoted by Whitehead, p. 164.
11. “Self-Reliance,” in *Essays* (1841; reprinted by Charles E. Merrill: Columbus, Ohio, 1969), p. 41.
12. *Summa Theologica*, I-II, xiii, 5.
13. *Time*, 117, 14 (6 April 1981), 28.
14. The case is briefly but thoroughly summarized by Scientists for Life, *The Position of Modern Science on the Beginnings of Human Life* (Sun Life: Thaxton, Va., 1975).
15. *Life Before Birth* (New American Library, New York, 1964), p. 2.
16. Quoted by Whitehead, pp. 53-54. This passage is in part adapted from my earlier essay “Liberty, Reality, and Abortion,” *The Wanderer*, March 18, 1976, 1, 6-7.
17. Charles Callan Tansill, ed., *The Making of the American Republic: The Great Documents* (Arlington House: New Rochelle, N.Y., n.d.), p. 22.
18. *Categories*, Chap. 5, 3b-4a.
19. *Roe v. Wade* (January 22, 1973), p. 48.
20. *Ibid.*, p. 44.
21. *Nature, History, God*, trans. Thomas B. Fowler, Jr. (University Press of America: Washington, D.C., 1981), pp. 375, 376.
22. *Amores*, II, xiv, 25-26: “sponte fluant matura sua. sine crescere natu./ est pretium non leve vita morae.”
23. *Nature, History, God*, p. 363.
24. Cited by Aristotle, *Nicomachean Ethics*, 1100a.
25. *Nature, History, God*, p. 342.
26. *Christianity and Life*, p. 17.
27. *Ibid.*, p. 87.
28. *In Necessity and Sorrow* (Basic Books: New York, 1976), p. xv. This and the following two paragraphs are adapted from my review of Bernard Nathanson's *Aborting America* in *Faith & Reason*, 6, 4 (Winter, 1980), 327-31.
29. “A Defense of Abortion,” in *The Rights and Wrongs of Abortion*, ed. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton Univ: Princeton, N.J., 1974), p. 6.
30. “Abortion and Infanticide,” *ibid.*, pp. 75-76.
31. *Inferno*, III, 16-18: “Noi siam venuti al loco ov'i't'ho detto che tu vedrai le gente dolorose / c'hanno perduto il ben de l'intelletto.”

Gifts for Children

Ellen Wilson

MUCH HAS BEEN written about modern America's infatuation with youth, and the often-heroic efforts of her post-adolescent citizens to retain membership in the Pepsi generation. But what concerns me here is not the glorification of youth's "private" and convivial virtues — physical attractiveness, the predisposition to be amused, the large appetite for pleasure — but the glorification of youthful qualities in public and professional aspects of life as well.

For youth today has become more than a social and physical ideal. It is more like a Code of Life; a well-spring of ethical wisdom. The ancient Chinese revered age, and accorded special honor to the virtues of age. Our own fascination with potentiality predisposes us toward the characteristics of youth — while it prejudices us against those of maturity or age.

Most of us recall the formal enshrinement of youth in the 1960's — the age of Aquarius and *Hair*, demonstrations and open-air concerts. In those days youth confronted the adult world openly, confidently, and sometimes even contemptuously. Innocence and idealism were ranged against a jaded cynicism; individuality against conformity; spontaneity against a prudent counting of costs. The young were said to possess a generous feeling of self-sacrifice, while their elders clung to security, and shunned risks.

It takes all kinds, the saying goes, and certainly the interplay of youth and experience can counteract the constitutional complacency of both. But in an age which surrenders so whole heartedly to one, the case for the other will not be made as well as it should. A closer look at the characteristics of both youth and maturity is needed.

The characteristics of youth at its best are largely the product of ignorance. The adolescent character forms a kind of photographic negative of maturity. Its easy acceptance of dares and challenges; the pleasure of playing at high odds, for high stakes; the reliance

Ellen Wilson, author of *An Even Dozen*, is widely considered to be among the best young American writers.

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on an almost intuitive grasp of a situation — these are understandable and even defensible in people lacking acquaintance with the dangers being courted. Prudence is a kind of knowledge closely related to experience. It springs from the German *kennen* rather than *wissen*; the French *connaitre* rather than *savoir*. Typically, it is the fruit of a long acquaintanceship with life.

Similarly, youth's hyperactivity and passionate enthusiasms, its headlong plunging into new interests, its large investments of emotional energy, are more characteristic of sprinters than of long distance runners. Great enthusiasms are not always transient, but they are usually intermittent, for we cannot easily sustain such high-voltage emotions at their initial level.

The adolescent's taste for originality and his impatience with the customary stem partly from the desire for quick, ad hoc solutions, such as informed much of the radical political activity of the 1960's. Ignorant of other times besides their own, young people tend to distrust adult lectures on the value of continuity. The accustomed becomes another word for the outworn; that which has persisted to the present seems the threadbare legacy of an obsolescent generation.

The Youthful Ideal is not wholly wrong. Energy, intensity and a high tolerance for risk — these are elements in the success of any important enterprise, whether it be a profession, a political cause, or a country. But if we rest content with these alone, we are committing the Fallacy of the Partial Truth. Some people, appreciating these attractive and highly-visible traits, come to doubt the advantages of more experienced, less highly-strung ones. They are tempted to believe that too close a knowledge of life may induce a second fall from grace, a dulling of the freshness of youth with no compensating advantage. Perhaps the introduction to failure and limitation, though inevitable, is the death-knell of generosity and initiative.

Whether or not these were the private conclusions of youthful minds in the 60's, the publicized conclusion of the young — and of their hagiographers — was that maturity represented an unwelcome termination of youth, and, if it could not be resisted physically, it should be battled morally. Thus the 60's are a test-case for the success of a youth-dominated culture.

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In goals, emblems, and style, the decade of the 60's so accurately reflected the youthful ideal that it produced something close to caricature. It opened with the acceptance of a dare to conquer space — a challenge manageable by starting with a race to first base, the moon. The early years of the decade were punctuated by intense, short-term crises publicly interpreted as national tests of will, strength, or moral purity. The Berlin Wall, the Bay of Pigs, the Cuban Missile Crisis — in each case, public perception (and to a lesser extent, official policy) treated these as discrete events for which we would be assigned debit or credit marks in preparation for the final tally. For instance, the Bay of Pigs was perceived as a loss, pure and simple: there was little effort to discriminate between the idea and the follow-through, to analyze possible systematic responses to a Communist Cuba, to discuss long-range options. Similarly, the resolution of the Cuban Missile Crisis was accepted as a victory, without considering whether it was merely a defensive victory, and without deliberating long-term threats or options. Presumably such deliberations took place in Security Council meetings and other exalted circles, but each critical event of the 60's was presented to the public — and received by the public — as a test. It was all played more like baseball than like chess. (Perhaps this crisis-training had something to do with the discrediting of the Domino Theory in the late 60's.)

The Peace Corps was another public manifestation of the youth ideal: by this means we would build living bridges between nations, subdue disease, and eradicate ignorance. We would send out wave after wave of idealistic young Americans, propelled by a spirit of adventure and self-sacrifice, and as that youthful ardor dissipated and maturity threatened to set in, each wave would recede, yielding place to the next. I sometimes wonder whether, in idle or unemployed moments, Third World inhabitants amused themselves by wondering what a middle-aged or elderly American looked like. For although the Peace Corps accepted volunteers over a broad age range, its publicized image and promotional efforts emphasized youth. (It is not to be faulted on this account, nor are my remarks to be taken as criticism. I merely note how well the Peace Corps was suited to the times.)

As the 60's wore on, the unambiguously benign picture of the

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youth culture was darkened and compromised by incidences of violence and withdrawal. Still, the pattern of youthful activity remained: life lived in crises, revolutions and reversals; experience validated by emotional intensity; relationships entered into impetuously, abandoned precipitously. Those pilgrims to the great outdoor rock concerts were searching not for community — that would have required putting down roots, nourishing enduring relationships — but for *feelings* of community. Feelings were also the point of the time-annihilating, mind-expanding drug trips, the intensely emotional, mystical religious cults, the flirtations with Eastern religion. The subgroups pursuing such activities were seeking meaning by total immersion in experience.

And this was true of those with revolutionary political affiliations as well. The bombings and burnings, the sisterhoods and brotherhoods, exacted so much more than a Democratic or Republican Party membership. Exacting so much more, they seemed to promise more. And they seemed purer, more genuine, than Country Club Republicanism.

This is not to say that all the effusions of the youth culture in the 60's were harmful or ineffectual, but that, unsupported by the experience and self-discipline of other age groups, such effusions could not be trusted to sustain themselves. Significantly, the primary example of a sustained, long-term public and political commitment in that decade — Vietnam — failed. It is customary to place much of the blame (or credit, according to your political perspective) on the outspoken opposition of the young. But the collapse of Vietnam was a product of the youth culture in another way: for this failure was a particularly youthful one — a lapse of attention.

Youth is ill-suited to bear the extended burdens of maturity, because it is already weighed down by a heavier burden — itself. For the traits I have been describing reflect in part the subjectivism that bedevils this most legitimately self-centered of ages. The adolescent desperately needs to set himself tests and measure himself against standards: to “prove himself,” as we say. But proving oneself is a monumentally self-centered business, carried on amid possessive pronouns — not this or that achievement but *my* achievement. So a school exam is important not because the answer to this or that question is in doubt, but because one's abil-

ity to supply it is. The exam is a measure of one's command of the material, and also of one's rank among the competition.

Now, to a certain extent all of us go through life trying to prove ourselves, anxiously evaluating our performance and measuring it against our ideals and the performance of others. The difference between youthful and adult methods of doing so is perhaps a matter of degree, but in human affairs degree can be crucial. After all, the difference between sobriety and drunkenness, hunger and satiety, is a matter of degree also. The point is, if we are preoccupied with proving ourselves — glancing at the mirror out of the corner of the eye — then we will be less preoccupied with what we are doing. Self-fulfillment will take precedence over the fulfillment of the tasks before us. It is true that the former can often be achieved through the latter, so that for long stretches there may be no conflict between the two. But when conflicts arise or when we have mastered the challenges of a given role, will duty or the desire to see the thing through or a concern for the larger picture suffice to hold us in place? In many circumstances of life, duty may not impose such heavy demands. But in private relationships and public policies, the virtues of loyalty and perseverance play a crucial role.

This is why "self-fulfillment" must normally be the prerogative of the young. In adulthood it is rightly replaced by an enlarged perception of the need to fulfill adult duties, and an enlarged capacity for satisfaction in that role. Adolescence is the time of groping toward the role one will assume, the duties one will fulfill. A certain indulgence is proper under these circumstances.

But a society which holds up youthful ideals for general emulation — which touts self-help books and indulges in all sorts of narcissistic posturings under the guise of self-fulfillment, which expedites the shirking of responsibilities and the repudiation of vows — such a society is fixated in adolescence. Like Peter Pan, it is afraid to grow up.

That is a pity, because there is much to be said for mature societies. Adulthood is not merely youth drained of its appealing qualities. It commands strengths tailored to the moral requirements of its state in life — chiefly, persevering through the long haul. In most societies for most people adulthood has been the time of

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earning a living, creating a home, marrying, and caring for a family. These activities all require what we might call the grace of the long haul: the ability to endure routine, which often means monotony; to sink down roots and develop long-term attachments; to preserve willed loyalties; to persevere.

The responsibilities of adulthood require a faith in the feasibility of continuity and kept promises. But this is a faith which must be justified by works as well. The mature adult acknowledges that he is partially responsible for his emotions, and wholly responsible for what he does with them. He recognizes that “self-fulfillment” cannot be pursued successfully as an end, but only obliquely, as a by-product of kept faiths and fulfilled obligations. Or, as Alastair MacIntyre explains in his book *After Virtue*:

The ethical is presented as that realm in which principles have authority over us independently of our attitudes, preferences and feelings. How I feel at any given moment is irrelevant to the question of how I must live. This is why marriage is the paradigm of the ethical. Bertrand Russell has described how one day in 1902 while riding a bicycle he suddenly realised that he was no longer in love with his first wife — and from this realisation there followed in time the break-up of the marriage. Kierkegaard would have said, and surely rightly, that any attitude whose absence can be discovered in a sudden flash while riding a bicycle is only an aesthetic reaction and that such an experience has to be irrelevant to the commitment which genuine marriage involves . . .

Here Kierkegaard’s categories of the aesthetic and the ethical parallel those of the youthful and the mature. The adult should more easily perceive the ramifications of his commitments because he is placed by age and role in a position of responsibility for others. And this responsibility, if undertaken seriously, will almost necessarily draw his attention away from himself.

For here perhaps is the central distinguishing characteristic of maturity — the achievement of a less subjective, more nearly objective personality. “Grownup” commitments demand that we extend our interest outside ourselves, that we recognize other people’s competing claims, other people’s objective existence. Marriage is an extreme example of this, because it exposes husband and wife to an intense and unmediated sharing of one another’s lives. Not only do husband and wife take partial responsibility for one another’s well-being, but each entrusts to the other his own

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happiness and well-being. With these ground rules, good or even tolerable marriages are only possible if both spouses subordinate and at times renounce altogether the subjectivist claims of self-fulfillment. For each has promised to place first the "fulfillment" of the other, the fulfillment of the marriage.

Which brings us to children, who are masters at piercing the subjectivist's charmed circle. Even if they did not demand attention (which they do, in large doses), they would receive it spontaneously, as the instinctive offering of maternal and parental love. The parent is bound by ties not easily or cheaply broken, and unlike his child, who may claim that he "didn't ask to be born," the parent cannot blame anyone else for his predicament. He *did* ask to get into all this — he tied the bonds, contracted the commitments, which brought into the world these frighteningly dependent beings. There is no safe retreat within the self because the self's "self-interest" has been enlarged to include other people. There is no legitimate retirement into private schemes for self-fulfillment because the ego has voluntarily expanded the meaning and scope of fulfillment. Alternately concerned and amused, captivated and enraged, by the domestic drama being played out in his home, caught up in public, private and professional activities, the adult should have little time for polishing up his ego.

And, if he is reasonably successful in forming healthy relationships, rearing satisfactory children, accommodating himself to the requirements of his "station in life," he should not be seriously tempted to retreat into the self-absorption of adolescence. Health and sanity — and a productive life — are not the products of sustained introspection. Even the mystic devotes his time to contemplating Another.

A by-product of accepting adulthood in the growing understanding of life as a continuum. With childhood and youth behind, and only a long level stretch of years intervening between him and age, the adult has a broader experience of the progression of life. The child "knows" that he will one day grow up, but he cannot realistically imagine this. It is all hearsay, knowledge at one remove, like the stories his parents tell him about his infancy. But the person who accepts the challenges each stage of life presents to him lives life from the inside. He may not yet have the wisdom of age, or

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leisure in which to reflect. But he has a tested confidence, and strength and endurance enough to make use of what he does know. This is why, at his best, the adult is the appointed protector of the weak and sustainer of the needy.

That many people fail to rise to this challenge is a function of the relationship between reality and our ideals. The youthful ideal we have grown accustomed to during the past twenty years is also poorly served in the reality. The point is that a universal attempt to live the youthful ideal throughout a lifetime is unhealthy and unsatisfactory. Properly formulated and strenuously attempted, ideals should be capable of generating approximate realities. But because of the public distaste for adulthood, even that compromised success eludes us. The young who do not graduate to new roles and responsibilities, attitudes and ways of perceiving, will not contribute their part to shaping life as a continuum. They will attempt to live their own lives without change (change of *role*, that is, for circumstantially their lives will probably have little stability, little permanency) and will more deeply resent the changes life itself imposes. They will be awkward custodians of the young or old; their capacity for fidelity will be stunted. And their role in public concerns is likely to be equally ineffectual: lacking an attraction to the rooted virtues, and supported by a largely individualist philosophy, they will have little good advice for those seeking the sources of stable, secure social structures.

To argue that our society remains infatuated with youthful ideals is not to charge most of the adult population with immaturity. But man holds to ideals because reality is such hard going — so ultimately unsatisfactory, so tragically, painfully incomplete. If we are deprived of an ideal before which to warm ourselves, we will be tempted to lose heart, to lose confidence in the value of even the marred, imperfect thing we are making of our lives. Society today offers adults too few incentives and too few commendations for shouldering heavy burdens, assuming extensive commitments, persevering in imperfect unions. Movies, books, T.V., even advertisements bore in on the monotony and unadventurousness of traditional family life. They juxtapose the spontaneous generosity of youth with the seemingly “safe,” selfish and unimaginative routine of heads of households. Feminist and

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feminist-influenced books and movies generally show marriage as a kind of giving up, a dropping out of the great game of life. The decision to go it alone — or to acknowledge one's "mistake" and dissolve the ties that too tightly bond — is represented as a courageous act.

In reality, of course, either lifestyle, either decision, calls for a kind of courage. But one is a typically youthful courage — the leap in the dark, with an option to back out of any unexpected unpleasantness — while the other is typically adult — the deliberate choosing of a difficult thing, with a deliberate refusal to install escape hatches. If only the first form of courage is publicly recognized and publicly rewarded — if the second form is slandered as cowardice or timidity or laziness or lack of initiative — then the second form will be made that much harder.

Both ideals are necessary, but in a health society they will exist in certain proportions, in a certain relationship. Mirroring the relation of the passions to reason in Greek and Christian philosophy, a healthy society will subordinate (but not enslave) the youthful virtues to those of maturity. For the sensible adult, remembering youthful ideals, can, in the old phrase, value them "as he ought." He will be in a position to know where and when to give them their head. Doing so, he will resemble the Biblical parents who, "evil as you are, know how to give good gifts to your children."

APPENDIX A

[*The Bloomington baby was born on April 9 (Good Friday) and died on April 15. His death was widely reported in the national media, and widely discussed in the U. S. Congress. We reprint here, directly from the Congressional Record, some selected commentary. While most of what follows is self-explanatory, there are some minor difficulties also, e.g., the Record uses a variety of printing formats and headings, some of which fully identify the subject and speaker, while others do not. Thus Mr. Henry Hyde is not fully identified until the second reprinted section; Mr. Staton is not so identified (David M. Staton is a Republican from West Virginia), and so on. But most of the speakers are well-known to our readers, and further information can easily be obtained either from the Record or from any congressional data-book. We emphasize that what we reprint here is only a part of the material put into the Record concerning the Bloomington case — there is much more than we can possibly include here. Also, more than a half dozen members inserted the same column (by Mr. George F. Will) that Mr. Hyde praises below. But we trust that what we have included is fairly representative of the whole, and will be of interest to our readers.*]

April 20, 1982

NEWBORN BABY STARVES TO DEATH IN BLOOMINGTON, IND.

Mr. HYDE. Mr. Speaker, on April 15, last Thursday, a little newborn baby starved to death in Bloomington, Ind.

How can such an outrage occur, you might well ask, in a Nation that by all counts is the most wealthy, most affluent in recorded history?

Was this the result of some maldistribution of welfare? Was this child, this week-old baby, one of the unfortunates that had slipped through the social safety net that Government ought to provide for its poorest citizens? In what ghetto or what remote Appalachian mountainside did this starvation occur?

Well, Mr. Speaker, it is one dimension of this horror that it occurred in a modern hospital in Bloomington, Ind., and not through oversight or neglect; it was deliberate.

Not only was this starvation deliberately permitted by the infant's parents, but it was sanctioned by the Supreme Court of Indiana.

What crime had this infant committed to warrant such cruel and unusual punishment? Could this baby not feel and suffer? Perhaps, because he was only permitted to live 1 week while systematically starving to death, he could not cry out and form the words

"For God's sake, help me."

But perhaps had this defenseless little member of the human family been able to miraculously cry out for some scrap of food or water it would not have done much good because he suffered from Down's syndrome, and from a deformity of his esophagus which prevented food from reaching his stomach. The deformity was correctable through surgery, but even if the surgery was withheld the baby could have been fed intravenously. Permission to operate and permission to feed intravenously was denied by the parents and, so, absent a court order, starvation was to ensue, and ensue it did until death last Thursday.

Oh, yes, the courts of Indiana, those temples of justice which delude people into thinking that no man is above nor beneath the law, sanctioned this act of engenic infanticide in a 3-to-1 ruling.

Why? Do not the courts order blood transfusions for babies even yet in their mother's womb when religious scruples forbid the mother consenting to such a procedure? Of course, time and time again.

This child, Baby Boy Doe, was not even given the dignity of a name. Do you know why? In war, abortion or its logical refinement, infanticide, it is always more convenient to dehumanize the enemy. Here the enemy was an

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infant boy. They could hardly call him a fetus, so call him Baby Boy Doe.

I suggest to you that Baby Boy Doe is the Bloomington martyr, a triumph of the quality of life ethic over the sanctity of life ethic, an affirmation of the monstrous doctrine that if you are not planned and perfect, you are not privileged to live, if you do not pass the physical or mental examination society establishes for you, you must be killed—either in the womb or out of the womb.

Why was this infant abandoned by his parents and the courts? Because he suffered from Down's syndrome which meant a form of mental retardation. This affliction is not uncommon; 1 in about 700 to 900 births suffer from it.

This much is true:

First. A tiny fraction of Down's syndrome children are severely retarded.

Second. Medical science cannot know at birth the degree of retardation.

Third. We have learned a lot recently that Down's syndrome children are radically responsive to early intervention such as infant stimulation programs.

Many Down's syndrome people lead extremely useful lives and are employed and employable. The Down's syndrome person can teach us a lot about love, and unselfishness and giving.

Those parents that wanted to adopt this starving infant must try and understand that their love and compassion would have been a lifelong reproach to those others who felt starvation a humane treatment for this little infant, and who would define their guilt feelings as kindness toward a little retarded citizen. "We cannot love him, and so you may not love him" is their sad rationale.

Section 504 of the Rehabilitation Act of 1973 prohibits any discrimination against the handicapped under programs or activities receiving Federal assistance. I have asked the President and Secretary Schweiker to clarify the regulations in this area so the refusal of lifesaving treatment to a person because of his or her handicap will be recognized as an unconscionable violation of the letter as well as the spirit of the law and no more Federal funds can be allocated to such a program or institution.

Mr. Speaker, a rock star named Ozzy Osbourne has abused animals in his

act and recently bit the head off a bat during the high-spot of his performance. While appearing in Indianapolis recently the authorities were most watchful to prevent any animals from being abused during his performance. These same authorities should have enlisted the aid of the ACLU and visited Bloomington Hospital—but, no, we do think more of animals than we do of people; do we not?

The Cook County, Ill., dog pound uses a gas chamber to destroy unwanted canines and to prevent them from starving in the streets. If starvation is too cruel for a dog, why is it legally permissible to starve a baby to death in a hospital?

I weep for Baby Boy Doe. I weep for his parents. I weep for the hospital, a place to cure and heal and alleviate suffering. And for the doctors and for the courts. But mostly for us, if we tolerate this regression of our society to barbarism.

The Jewish people, who know something about suffering, have a saying: "He that saves one life saves all humanity."

Today, as we commemorate the Holocaust, those words have a special meaning.

I would presume to formulate a corollary. That he who deliberately destroys one life assaults all humanity.

Baby Boy Doe committed no crime, no unkindness. He had the misfortune to be born where there was not enough love to go around.

Surely his suffering and his death have placed him today next to the One who told his Disciples 2,000 years ago "For I was hungry and you gave me food; I was thirsty and you gave me drink." They crucified him, too.

April 22, 1982

**PROTECTING THE STRONG
FROM THE WEAK**

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Mr. HYDE, Mr. Speaker, I had always believed, as a lawyer and a legislator, that the function of the law was to protect the weak from the strong. As a result of a recent decision of the Indiana Supreme Court which sanctioned the death by starvation of

Baby Boy Roe, it is apparent that the law exists to protect the strong from the weak.

The brilliant columnist George Will has treated this subject with the sensitivity it deserves. I commend his column to everyone who cares about the kind of humane, caring society we ought to live in, but as yet do not.

The column follows:

[From the Washington Post, Apr. 22, 1982]

THE KILLING WILL NOT STOP

(By George F. Will)

The baby was born in Bloomington, Ind., the sort of academic community where medical facilities are more apt to be excellent than moral judgments are. Like one of every 700 or so babies, this one had Down's syndrome, a genetic defect involving varying degrees of retardation and, sometimes serious physical defects.

The baby needed serious but feasible surgery to enable food to reach its stomach. The parents refused the surgery, and presumably refused to yield custody to any of the couples eager to become the baby's guardians. The parents chose to starve their baby to death.

Their lawyer concocted an Orwellian euphemism for this refusal of potentially life-saving treatment—"Treatment to do nothing." It is an old story: language must be mutilated when a perfumed rationalization of an act is incompatible with a straightforward description of the act.

Indiana courts, accommodating the law to the *Zeitgeist*, refused to order surgery, and thus sanctioned the homicide. Common sense and common usage require use of the word "homicide." The law usually encompasses homicides by negligence. The Indiana killing was worse. It was the result of premeditated, aggressive, tenacious action, in the hospital and in courts.

Such homicides can no longer be considered aberrations, or culturally incongruous. They are part of a social program to serve the convenience of adults by authorizing adults to destroy inconvenient young life. The parents' legal arguments, conducted in private, reportedly emphasized—what else?—"freedom of choice." The freedom to choose to kill inconvenient life is being extended, precisely as predicted, beyond fetal life to categories of inconvenient infants, such as Down's syndrome babies. There is no reason—none—to doubt that if the baby had not had Down's syndrome the operation would have been ordered without hesitation, almost certainly, by the parents, if not by them, by the courts. Therefore the baby was killed because it was retarded. I defy the parents and their medical and legal accomplices to explain why, by the principles affirmed in this case, parents do not have a right to kill by calculated neglect any Down's syndrome child—regardless of any medical need—or any other baby that parents decide would be inconvenient.

Indeed, the parents' lawyer implied as much when, justifying the starvation, he emphasized that even if successful the surgery would not have corrected the retardation. That is, the Down's syndrome was sufficient reason for starving the baby. But the broader message of this case is that being an unwanted baby is a capital offense.

In 1973 the Supreme Court created a virtually unrestrictable right to kill fetuses. Critics of the ruling were alarmed because the court failed to dispatch the burden of saying why the fetus, which unquestionably is alive, is not protectable life. Critics were alarmed also because the court, having incoherently emphasized "viability," offered no intelligible, let alone serious, reason why birth should be the point at which discretionary killing stops. Critics feared what the Indiana homicide demonstrates: the killing will not stop.

The values and passions, as well as the logic of some portions of the "abortion rights" movement, have always pointed beyond abortion, toward something like the Indiana outcome, which affirms a broader right to kill. Some people have used the silly argument that it is impossible to know when life begins. (The serious argument is about when a "person" protectable by law should be said to exist.) So what could be done about the awkward fact that a newborn, even a retarded newborn, is so incontestably alive?

The trick is to argue that the lives of certain kinds of newborns, like the lives of fetuses, are not sufficiently "meaningful"—a word that figured in the 1973 ruling—to merit any protection that inconveniences an adult's freedom of choice.

The Indian a parents consulted with doctors about the "treatment" they chose. But this was not at any point, in any sense, a medical decision. Such homicides in hospitals are common and will become more so now that a state's courts have given them an imprimatur. There should be interesting litigation now that Indian a courts—whether they understand this are not—going to decide which categories of newborns (besides Down's syndrome children) can be killed by mandatory neglect.

Hours after the baby died, the parents' lawyer was on the "CBS Morning News" praising his clients' "courage." He said, "The easiest thing would have been to defer, let somebody else make that decision." Oh? Someone had to deliberate about whether or not to starve the baby? When did it become natural, even necessary, in Indiana for parents to sit around debating whether to love or starve their newborns?

The lawyer said it was a "no-win situation" because "there would have been horrific trauma—trauma to the child who would never have enjoyed a—a quality of life of—of any sort, trauma to the family, trauma to society" In this "no-win" situation, the parents won: the county was prevented from ordering surgery; prospective

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adopters were frustrated; the baby is dead. Furthermore, how is society traumatized whenever a Down's syndrome baby is not killed, it was, I believe, George Orwell who warned that insincerity is the enemy of sensible language.

Someone should counsel the counselor to stop babbling about Down's syndrome children not having "any sort" of quality of life. The task of convincing communities to provide services and human sympathy for the retarded is difficult enough without incoherent lawyers laying down the law about whose life does and whose does not have "meaning."

The Washington Post headlined its report: "The Demise of 'Infant Doe'" (the name used in court). "Demise", indeed. That suggests an event unplanned, even perhaps unexplained. ("The Demise of Abraham Lincoln"?). The Post's story began:

"An Indiana couple, backed by the state's highest court and the family doctor, allowed their severely retarded newborn baby to die last Thursday night. . . ."

But "severely retarded" is a misjudgment (also appearing in The New York Times) that is both a cause and an effect of cases like the one in Indiana. There is no way of knowing, and no reason to believe, that the baby would have been "severely retarded." A small fraction of Down's syndrome children are severely retarded. The degree of retardation cannot be known at birth. Furthermore, such children are dramatically responsive to infant stimulation and other early interventions. But, like other children, they need to eat.

When a commentator has a direct personal interest in an issue, it behooves him to say so. Some of my best friends are Down's syndrome citizens. (Citizens is what Down's syndrome children are if they avoid being homicide victims in hospitals.)

Jonathan Will, 10, fourth-grader and Orioles fan (and the best Wiffle-ball hitter in southern Maryland), has Down's syndrome. He does not "suffer from" (as newspapers are wont to say) Down's syndrome. He suffers from nothing, except anxiety about the Orioles' lousy start.

He is doing nicely, thank you. But he is bound to have quite enough problems dealing with society—receiving rights, let alone empathy. He can do without people like Infant Doe's parents, and courts like Indiana's asserting by their actions the principle that people like him are less than fully human. On the evidence, Down's syndrome citizens have little to learn about being human from the people responsible for the death of Infant Doe.

April 28, 1982

THE SAD STORY OF INFANT DOE

HON. ROMANO L. MAZZOLI
OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Mr. MAZZOLI. Mr. Speaker, we all know by now the sad story of Infant Doe, a Down's syndrome baby with a malformed esophagus who was allowed to starve to death at the instruction of his parents.

Any guilt or wrongdoing on the part of Infant Doe's parents is a matter beyond my judgment. It is between them and their Maker.

But, I cannot hide my disgust and outrage at the hospital staff, the medical people, the government authorities, and the courts for having permitted this tiny infant to starve to death.

Think of that, Mr. Speaker, a baby starved to death in a hospital in Bloomington, Ind., amid all the technical and scientific equipment which could have restored and rescued his life.

This abomination cries out for attention.

How could the doctors and the nurses have gazed on this tiny, struggling infant and then closed their eyes and turned away? How could they have withheld their life-giving services from this newborn, helpless babe? They are a blot on the proud name of physician and the proud name of nurse.

Why did the governmental officials—who have legal authority to take children from abusive parents—stand mute and still in the presence of this poor baby grasping for life? They, who are charged to protect the helpless and the hurt, instead joined in the wanton and intentional destruction of life.

And the judges. They do not deserve to wear the robes of judicial office. They disgrace the whole profession of the law. They certainly could have seized upon a legal theory or applied a judicial authority to save this child's life. They would have done more for an endangered snail darter or an injured bird than they did for this human baby.

Mr. Speaker, I hope we learn lessons from this terrible misadventure. I would hate to think Infant Doe died in his lonely agony for nothing.

May 10, 1982

FROM ABORTION TO INFANTICIDE

Mr. HELMS. Mr. President, once a nation decides that the lives of certain

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human beings are to be denied the protection of its laws, the lives of all its citizens are imperiled. Once a government assumes the power to declare some human beings not worthy of life, that government has begun a course at the end of which, unless changed, lies the killing of those whom the government finds inconvenient to have around. The government, in such cases, would simply declare that the innocent lives involved are unmeaningful, or disadvantaged, or unloved, or even incapable of full and complete human existence.

In the Chicago Tribune of April 22, columnist Stephen Chapman explored the consequences of choice in light of the recent court-ordered death by starvation of an infant in Bloomington, Ind. It is worth the time of every Senator to read and ponder.

Mr. President, I ask unanimous consent that this editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

FROM ABORTION TO INFANTICIDE (By Stephen Chapman)

After losing in court last week, prosecutors for Monroe County, Indiana, tried to put a good face on things. True, the state supreme court had upheld a couple's refusal to allow surgery on their week-old infant, a victim of Down's syndrome, to repair his deformed esophagus. But, one prosecutor noted, the decision was "narrowly drawn."

It nonetheless led to the child's prompt death from starvation. We may be grateful that the court restrained itself from a broad decision.

The right-to-life movement has long been ridiculed for its contention that a society which tolerates the indiscriminate killing of fetuses must sooner or later come to accept even worse—such as euthanasia for the elderly and terminally ill. It used to be easy to dismiss these analogies as hysterical. But probably not even the most vociferous critic of legalized abortion could have imagined that we would proceed, in nine short years, from allowing abortion to sanctioning infanticide.

The evolution, of course, is a natural one. The difference between a fetus and "Baby Doe"—the parents' name were kept secret to protect the guilty—is one of degree, not of kind. Both are recognizably human; both are incapable of sustaining existence on their own; both are unable to comprehend the world about them.

The "pro-choice" movement seeks to portray us all as recognizably human only on the day we spring forth from the womb, denying any meaningful resemblance between today's infant and yesterday's fetus.

But human life is a continuum. It does not begin at birth, or even at the start of the third trimester, Justice Harry Blackmun notwithstanding.

A living, unmistakably human organism exists from the moment the ovum is fertilized. It will not develop into a cat, or a plant, or a cyst—only a person, because it already is a person.

To draw an arbitrary distinction between a fetus and a baby to justify treating them in radically different ways is to invite similar distinctions, and different treatment, among different groups of people—between one-week-olds and one-month-olds, or one-month-olds and one-year-olds. As of last week, such distinctions carry the imprimatur of the Indiana Supreme Court.

The theologian Paul Ramsey once noted that there is no argument for abortion that cannot serve just as well to rationalize infanticide. This case emphatically validates his suspicion. But Ramsey's point was to dramatize the callousness of abortion, not to condone the killing of babies. Unfortunately, the sort of thinking that accommodates abortion cannot easily resist the logic of infanticide.

Presumably Mr. and Mrs. Doe would have aborted their child had they known he would be born deformed and retarded. No pro-abortionist would have questioned their decision. Why bring a defective child into the world, with no prospect but great financial expense and continual heartache? Preventing the birth of abnormal children is one reason for the growing use of an amniocentesis to detect fetal disorders.

No one, least of all the organizations favoring legal abortion, has been heard to defend the Indiana court's decision (though they have not been heard to condemn it, either). But the difference between aborting a defective fetus and allowing an abnormal infant to die of starvation is, to put it charitably, an exceedingly subtle one.

Surely it is unreasonable to expect the parents to endure all the costs imposed by a handicapped child merely because they weren't lucky enough to know in advance. If a defect can't be discovered beforehand, why should the mere technicality of birth condemn parents and child to living with it?

Then there is the "unwanted child" argument: Better to dispose of a child in the womb than to force him on an unwilling and resentful mother and father. "Baby Doe" aptly fits this category. Parents who would choose to let their own flesh and blood die painfully of starvation aren't models for a loving household. If a fetus is better off dead than unwanted, how much more so a newborn infant.

But the most striking thing about this cause is that the court not only allowed the parents to escape the ordinary obligations of producing a child, but also refused to let anyone else assume them. At least ten couples offered to adopt Baby Doe (including one which already has a child with Down's

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Syndrome). No matter. The court decreed that the right of the parents to let their infant die outweighed any rights the child might possess.

It is a measure of abortion's effect on our thinking that in at least one state it is now permissible to do to a deformed, retarded infant what would be illegal if done to a dog or a cat. The eagerness of so many couples to adopt Baby Doe offers a vision of what we might be. But the death sentence given him by our duly ordained courts offers a glimpse of what we are becoming.

May 12, 1982

RIGHT OF CHILDREN WITH BIRTH DEFECTS

(Mr. STATON of West Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. STATON of West Virginia. Mr. Speaker, on Thursday, April 15, 1982 a tiny, week-old baby boy died of starvation in Bloomington, Ind. The death would have been tragic enough if it had occurred because of some unavoidable circumstance. However, the tragedy is compounded by the appalling fact that this death occurred by deliberate design.

The baby was born with Down's syndrome, a genetic defect involving varying degrees of mental retardation and sometimes physical effects. One in approximately 700 to 900 infants born have this condition. This baby was condemned to die because he was unfortunate enough to be one in 700. His esophagus was deformed preventing food from passing into his stomach. Although corrective surgery could have remedied this situation, the baby's parents refused to grant permission for the operation or for intravenous feeding. Despite the pleas of persons wishing to adopt the little boy, he starved to death, the act being sanctioned by the very judicial system charged with protection of the dearest of our rights, the right to life.

This was a human being born into the world. And yet with a rationale that has terrifying similarities to the Nazi Reich's brand of eugenics, this tiniest, most defenseless of our kind was deliberately permitted to languish and die. It is too late for this little boy so coldly labeled "Infant Doe." But perhaps it is not too late to shake the sensibilities and compassion of those

who might otherwise view such infanticide as wholly acceptable and permit its reoccurrence in the future. It is with this hope that I have introduced a concurrent resolution, expressing the sense of the Congress concerning the right of children with birth defects to life sustaining medical treatment and nutrition. This resolution reads as follows:

H. CON. RES. —

Whereas thousands of children are born each year with some birth defect or condition of mental retardation;

Whereas these children are born with the same right to life, liberty, and the pursuit of happiness afforded to all Americans, and

Whereas an individual's right to life is the most fundamental of human rights: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That an infant's basic right to live should not be jeopardized, and that each child has the inalienable right to full and complete medical treatment and food nutrients necessary to sustain its life regardless of handicapping condition.

May 20, 1982

HANDICAPPED BABIES JOIN HUMAN FETUSES—BEYOND THE PROTECTION OF THE LAW

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Mr. PAUL. Mr. Speaker, last month a baby born in Bloomington, Ind., was denied the routine surgery needed to keep it alive. It was denied this surgery for the simple fact that it was afflicted with Down's syndrome. The fact that a small fraction of the babies born with Down's syndrome are severely retarded was, apparently, considered sufficient cause to kill "Infant Doe."

"Killing" is most surely what was done. The routine, lifesaving surgery was withheld, and the parents and doctor might just as well have held the baby's head under water, or slit its tiny wrists. This baby was starved to death—but the crime has been legally excused because the child was handicapped. A terrible moral threshold has been crossed which allows some people to choose whether or not others will live. There is, it seems, an open season on human lives not considered "meaningful" or of sufficient "quality"—two

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terms used by those defending the murder of Infant Doe.

In a society which does not respect the right to life of all of its members, no one's life or liberty are secure. The law has previously allowed the taking of the lives of innocent fetuses, now, the same terrible prerogative is being extended over the lives of new born babies. Soon perhaps, that same logic will extend the power of healthy, "normal" individuals over the very old, retarded and handicapped adults, and innumerable others who may be deemed inadequate, meaningless, unpleasant, and insignificant.

I would like to call my colleagues' attention to a new case in Illinois, similar to the one of Infant Doe. On Monday, May 17, the Washington Times reported that a 3-week old baby was born with spinal bifida at the Lawrence County Hospital near Robinson, Ill. Once again, corrective surgery will allow the baby to live, but its parents have refused. Some prolife groups have asked the Government to enforce the civil rights of the child, but so far, the courts have refused to uphold this clear violation of this person's most basic rights. And the usually vocal major civil rights groups have been strangely, perversely, silent. Those who cannot speak for themselves are being allowed to die because of their handicaps.

Where is the chorus of liberal voices which rises up whenever discrimination is charged? Where are those who concern themselves with fighting child-abuse, or with providing day-care centers? Where are the fanatical advocates of women's rights, gay rights, and nonsmokers' rights? Where are the advocates of human rights at home and abroad? Why are these habitually shrill voices now so strangely silent?

The Federal Government has mandated equal access for the handicapped to public buildings and transportation. It has taken tax dollars to provide special educational facilities. It has legislated that providers of health care who receive Federal funds may not discriminate against the handicapped.

But the very lives of handicapped children are being taken and Government officials are silent. Despite all the apparent concern for the handicapped, our Government has refused to provide the basic protections re-

quired by the clear and simple language of the Constitution. These babies are being deprived of their lives without due process in violation of the 5th amendment; and they are being denied the equal protection granted by the 14th amendment. These cases make a mockery of our Constitution, which nowhere provides that exceptions may be made in cases involving handicapped citizens. If a healthy baby were treated as Infant Doe, or the baby in Robinson, Ill., those guilty would be charged with murder. Morally and constitutionally, there is no difference. The usually vocal rights advocates who are now silent betray their bald hypocrisy.

These two cases, of Infant Doe, and the Robinson, Ill., baby, and many others like them are the bitter fruit of the abortion, "pro-choice" tree. I wonder how far we will go before people wake up to the utter immorality of it all. The correct label for these cases was supplied by my distinguished colleague, HENRY HYDE, who called it "eugenic infanticide." "Eugenics," you may remember, was advocated by Adolph Hitler as the policy appropriate to the perfecting of his master race. Since then, the policy has been discredited, but appears to be undergoing a revival here in America. If the handicapped can be rooted out early, then, as a lawyer in the Infant Doe case put it, society might be spared the horrific trauma * * * but, of what? Of having handicapped people about? Well, Hitler might have used the same language to justify ridiculing German society of the horrific trauma of having the Jews about.

Given this bracing new environment of ours, I view as ominous the recent reports that a medical test has been developed to detect sickle-cell anemia in fetuses. A whole new class of unborn children will now be subject to a murderous form of preventive treatment.

I wonder whether civil rights groups will come forth when black babies with the sickle-cell trait join Infant Doe, the Robinson, Ill., baby, and the millions of aborted fetuses? It is my guess that the civil rights groups will be silent in this new situation which will make previous cases of prejudice seem trivial in comparison.

If all human life is not held to be sacred, then none is. There can be no middle ground. No one's life, and cer-

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tainly no one's civil liberties, can be considered secure in a society which refuses to acknowledge the most basic right of its most defenseless citizens. I hope my colleagues here in Congress, and more of my fellow citizens, will soon come to realize this.

May 26, 1982

A QUESTION OF "EQUAL
JUSTICE UNDER LAW"

HON. JOHN N. ERLBORN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

● Mr. ERLBORN. Mr. Speaker, I am today introducing the Handicapped Infants Protection Act of 1982, which my colleagues, Representatives, CARL PERKINS, Democrat of Kentucky, JAMES JEFFORDS, Republican of Vermont, AUGUSTUS F. HAWKINS, Democrat of California, ARLEN ERDAHL, Republican of Minnesota, PAUL SIMON Democrat of Illinois, MILLICENT FENWICK, Republican of New Jersey, AUSTIN MURPHY, Democrat of Pennsylvania, MARGE ROUKEMA, Republican of New Jersey, DALE KILDEE, Democrat of Michigan, and HENRY J. HYDE, Republican of Illinois, are cosponsoring. The aim of our bill is not only to strengthen the remedies and protections that exist under current law but also to expand them and provide others that will insure equal justice under law for handicapped infants.

Mr. Speaker, these words are inscribed over the front entrance of the Supreme Court building, which stands only a short walk from here. They should be for all of us a daily reminder of what we stand for as a nation. To deny any citizen his civil rights, especially his most basic civil right to life, or to allow him to receive unequal treatment before the law because of a handicap condition is totally foreign to the American character and completely out of step with our declared national purpose.

This is why recent news stories about the "Bloomington Baby" and other cases in which handicapped infants have been allowed to die simply because they were handicapped have provoked a ground swell of outrage and cries of "infanticide" all across the country. The public outcry has been

constant, and it is growing. It is clear that we cannot tolerate such injustice.

The Bloomington baby case involved the deliberate starvation of a newborn child afflicted with Down's Syndrome and a nonfunctioning esophagus apparently for no other reason than that he was severely handicapped. The child could have been fed intravenously pending routine surgery that could have corrected this digestive tract disorder to permit oral feeding. As the Washington Post (April 18) put it, this baby died "not because he couldn't sustain life without a million dollars worth of medical machinery, but because no one fed him."

Instead, a 6-pound baby boy struggled for life for a week before death by starvation. During the week, it was debated whether anyone had the right to overrule the parents' decision of sure death. After a hospital room hearing, the Indiana Supreme Court ruled that only the parents could make the life-or-death decision.

A baby is more than a mere possession of his or her parents. It is a life which society should protect.

The Bloomington baby case is not the first occurrence of infanticide in this country. Reports and reviews in newspapers and in various medical and legal journals suggest that we are already several years into the reality of this practice. Last year, Columnist Joan Beck, in discussing the Siamese twins case in Danville, Ill., reported—Chicago Tribune, May 22, 1981—that it "occurs in many hospitals, where the death of newborns with severe birth defects is often tacitly encouraged," and quoted University of Wisconsin Law Professor John A. Robertson as having said that the passive euthanasia of "defective newborns is a pervasive and widespread practice in pediatric nurseries, hospitals, and intensive care units across America, Europe and elsewhere." She also cited a report by doctors at the Yale-New Haven Medical Center, who acknowledged that "14 percent of deaths in that hospital's special newborn unit were babies permitted to die because parents and physicians considered their lives not worth living."

The Stanford Law Review (February 1978) reported that every year thousands of parents in the United States make the decision to withhold or withdraw medical care from newborn infants. "If the parents decide to termi-

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nate treatment," this report said, "a court will review the decision. Procedural review by a court will safeguard the state's interest in the integrity of the decisionmaking process."

Such a decision should not be made on the basis of whether a child has a handicap. That would be discrimination, pure and simple—discrimination in its most extreme form. In the case of the Bloomington baby, it would appear that the safeguard of judicial review was woefully inadequate. Nor can we readily believe that in all the other documented cases, those infants whose lives were forfeited by parental decision suffered from incurable and untreatable conditions that made any effort to sustain their lives useless.

For too long we have left this issue unresolved. For too long we have allowed other priorities to demand our attention. We can no longer excuse ourselves by saying we did not know it was happening. We must face this reality that is in evidence all around us.

A handicap condition can be no justification for treating such infants any differently from other newborns. Some people claim that there are already sufficient remedies in the law to prevent this kind of thing from happening. But it is not evident from the facts that these remedies have been applied nor that they are adequate.

Most Americans look upon the courts as the final arbiters of justice. In this matter, however, the line between those who are to live and those who are to be allowed to die has become an ever-expanding gray area. It is for this reason that Congress must produce legislation that will make clear its intent that those remedies and protections that already exist will be enforced. Further, we should establish clear and firm laws to fully insure equal justice for all.

If parents are allowed to destroy their offspring at birth, will we someday say a child who is severely handicapped by an accident can also be killed? I do not believe we can risk leaving a door open to such an outlandish possibility, and I urge my colleagues to lend their support to this legislation.

Basically, what this bill does is to insure equal treatment for handicapped and nonhandicapped infants alike. It is not intended to require any extraordinary or prolonged medical care for infants, either handicapped or

nonhandicapped, whose physical conditions are untreatable or incurable or whose lives would not be prolonged beyond the immediate future.

What we are asking for is equal treatment for the handicapped child—treatment that would ordinarily be provided for any nonhandicapped infant in a similar physical condition.

The first part of this bill lays the foundation for what follows, citing, for example, that despite existing provisions of Federal law, handicapped infants have been without effective "remedy to protect their lives against attempts to cause their death through denial of nutritional sustenance or medical treatment routinely provided to other handicapped or nonhandicapped individuals."

"It is a fundamental principle of American law" the bill reads, "to affirm the value of all human life without regard to mental or physical disability."

"The death of handicapped individuals," it says, "through deliberate neglect is a matter of gravest national concern, demanding immediate action by Congress."

The bill would prohibit a handicapped infant from being deprived of nutrition necessary to sustain life or of medical treatment necessary to remedy a life-threatening medical condition, in cases where food or treatment would ordinarily be given to similarly situated nonhandicapped infants.

It would allow for a parent or guardian or, in case the parent or guardian of a handicapped infant fails to prevent such deprivation, a third party who is willing to provide for the welfare of the infant involved, to bring action in court.

There is also a requirement that the Secretary of Health and Human Services encourage those having knowledge of a violation of the rights of a handicapped infant to report it. In addition, the bill would require that information on public and private agencies and services that are available to provide assistance, support, and treatment for handicapped infants be provided to parents of handicapped newborns. This bill also provides for expedited legal processings and injunctive relief in such cases, as well as immunity for third parties who would report such incidents.

Under the provisions of this bill, any

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health-care facility found to be in violation of the above-mentioned prohibition will have its Federal financial assistance suspended.

May 26, 1982

SENATE CONCURRENT RESOLUTION 101—CONCURRENT RESOLUTION RELATING TO THE RIGHT TO LIFE OF HANDICAPPED INFANTS

Mr. DENTON (for himself, Mr. HELMS, Mr. NICKLES, Mr. EAST, Mr. HATCH, and Mr. HUMPHREY) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 101

Whereas thousands of children are born each year in the United States with some birth defect, condition of mental retardation, or other handicap;

Whereas these children have the same God-given right to life, liberty, and the pursuit of happiness as all other human beings; and

Whereas the right to life is the most fundamental right of a person: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That a handicapped child's right to life should not be abridged or denied on account of age, health, defect, or condition of dependency.

● Mr. DENTON. Mr. President, along with Senators HELMS, NICKLES, EAST, HATCH, and HUMPHREY, I am today submitting a concurrent resolution affirming that handicapped newborn babies have the same right to life as do all other Americans, and that this right should not be abridged or denied because of age, health, defect or condition of dependency.

Ten years ago, I would have thought such a resolution to be a nice, but superfluous, measure. Yet certain events publicized in the Nation's daily papers, culminating with one in April in Bloomington, Ind., now make the introduction of this resolution a sad but necessary duty.

My resolution has been prompted by the growing incidence of infanticide throughout our Nation. In the past, infanticide was condemned by public opinion and by those in positions of authority. Now we see that, regrettably, a certain ambiguity has clouded the judgment of many. This has happened in part because of the widespread acceptance of abortion on

demand and the "planning for the perfect baby" philosophy that has developed along with the abortion movement.

Acceptance of infanticide is partially the result of "death selection" carried out through amniocentesis, which identifies, in preborn babies, diseases for which there is no known cure. These affected babies are often aborted. But recent "advances" in medicine have carried death selection technology to the point where the prestigious *New England Journal of Medicine*, in its issue on June 18, 1981, reported the successful killing in utero of a "less-desired twin." The article says that one of two male fetuses suffered from Down's syndrome. The treatment, which was termed "aggressive management," consisted of passing a No. 18 spinal needle into the chest and heart of the affected twin and removing half of the fetus' blood. The "untreated" live baby, along with his dead brother, were delivered 23 weeks later. The doctors claimed that their "treatment" eliminated "prolonged" suffering for the child and family.

The logical assumptions that justify killing by abortion are the same as those that justify infanticide and euthanasia. Only the techniques are different. The logical identity is shown graphically by an article that appeared in the October 25, 1973, issue of the *New England Journal of Medicine*, "Moral and Ethical Dilemmas in the Special-Care Nursery" by Raymond S. Duff, M.D., and A. G. M. Campbell, M.B., F.R.C.P. The article, using the language of the 1973 Supreme Court abortion decisions, addresses the problem of newborn babies who are thought to have "little or no hope of achieving meaningful 'humanhood.'" The authors speak of early death as a "management option." The specific means of "treatment" in such cases is usually "nothing by mouth"—in short, starvation.

Furthermore, they acknowledge that, over a 2-year period, 14 percent of the deaths in the newborn unit were "permitted" to happen because the doctors and the parents had decided that severely handicapped children do not have the prospect of lives worth living. Similarly, babies who are aborted obviously are not considered to have lives "worth living." Accounts of infanticide are no longer limited to the pages of learned medical journals; they now

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also appear on the pages of our daily newspapers.

With the ground for infanticide "so well prepared" it was inevitable that a "Baby Doe" case would happen somewhere.

On April 9, 1982, in Bloomington, Ind., the decision was made to starve to death a baby boy born with Down's syndrome and a malfunctioning esophagus; he died after 6 days without food.

In sending Baby Doe to his lawful death, all the formal legal procedures were followed. Parental consent was obtained, judicial orders were issued, prescribed medical procedures were followed. At the same time, there were willing and loving couples near at hand in Indiana who wanted to adopt Baby Doe. Tragically, the judges in this case were deaf to the pleas for the life of the innocent child.

Contrast the action in the Baby Doe case with that taken earlier this month by the Maryland Board of Veterinary Examiners. In that case, the board fined a Maryland veterinarian \$3,000 and suspended his license 60 days for starving a dog to death. To his credit, the veterinarian at least

claims he tried to treat and feed the poor animal. How can we justify a situation in which the life of a human child is accorded less value than that of a dog?

I do not want to judge anyone. I sympathize deeply with parents who have a Down's syndrome baby, and I know that it can be difficult for some. But yet, Baby Doe could have been a crown to other families, Down's syndrome and all. I understand both the problems and the opportunities for love that a retarded or handicapped child can bring, a point made by George Will with strength and poignancy in his column printed in the Washington Post, April 22, 1982, entitled, "The Killing Will Not Stop." I know there are many tragedies in life, but I do not think we should add to them.

I applaud President Reagan for directing Secretary Schweiker to advise hospitals receiving Federal money of their responsibilities to all handicapped Americans.

I urge the Senate quickly to approve this concurrent resolution and to take any other actions necessary to stop this kind of killing.

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[The following newspaper columns, by Mr. Joseph Sobran, both concern the Bloomington baby's death, as does his article in this issue. The first was issued on April 20, the second two days later. They are reprinted here with permission (©1982, Los Angeles Times Syndicate).]

Baby Doe and Civilization

by Joseph Sobran

Baby Doe was born with Down's Syndrome and a malformed esophagus. His parents decided to let him die rather than authorize a corrective operation to let him swallow food or even permit intravenous feeding. Their wishes were respected. Baby Doe is dead.

The Monroe County (Ind.) prosecutor, Barry Brown, considered bringing criminal charges against the parents. Several people had offered to adopt Baby Doe and assume his medical bills. But Brown changed his mind — perhaps because two county judges and the Indiana Supreme Court had refused to order that Baby Doe's life be saved. He died before the U. S. Supreme Court could receive an appeal, pending which, apparently, it was too much to ask that he be sustained a little while.

Infanticide is nothing new. Aristotle unblushingly recommended it in the case of malformed infants, and in some parts of the Orient infant girls were frequent victims of it until recently — assuming the practice has been ceased.

What is disturbing is that it has made a furtive comeback even in the United States. Surgeon General Everett Koop has long denounced its rising occurrence in American hospitals, a theme of his recent books, including *What Ever Happened to the Human Race?* Dr. Koop once wrote me a letter setting me straight when I had expressed my skepticism in an article. I still found it hard to believe him.

Now the practice of killing babies outside the womb is coming out of the closet. The climate is hospitable. With the Baby Doe case, the judiciary is beginning to supply its indispensable approval.

Baby Doe's parents have a lawyer, who argues that they should not be prosecuted because they have already been through a "tremendous ordeal." This suggests that at least their consciences are not dead, though it is not usual to spare legal punishments on the principle that a bad conscience is penalty enough.

But if this case allows infanticide to become normalized in American

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law, it is safe to predict that there will soon be plenty of parents for whom the decision to let a child die will be something less than an ordeal. Hard cases make bad law, and bad law makes bad people. It is one thing for a prosecutor to decide not to seek justice against the occasional malefactor who, under great stress, does evil. But when the law is bent to create a precedent for evildoing, then infanticide, like abortion, will soon be proclaimed as "a fundamental human right."

The community of progressive opinion, like the watchdog that didn't bark, has been significantly silent on this case. I have seen no denunciations except from a few Right-to-Life groups. Does this mean that a new progressive consensus in favor of infanticide is imminent? That opposition to infanticide will soon be deplored as the dogma of a few religious sects who want to impose their views on everyone else? That the barbarism of Mr. and Mrs. Doe will be upheld by the avatars of "conscience" and "compassion"?

Who knows? It will bear watching. The case reverses the familiar situation of courts ordering blood transfusions to save a child's life, over the religious opposition of the parents. It also oddly reverses the story of Solomon, in which it was the real mother who preferred letting the false claimant take her child rather than allow it to be cut in half.

Civilization does indeed stand on a slippery slope. Nearly half a century ago, Evelyn Waugh wrote prophetically, on the eve of Nazi and Communist atrocities:

Civilization has no force of its own beyond what is given it from within. It is under constant assault, and it takes most of the energies of civilized man to keep going at all. There are criminal ideas and a criminal class in every nation, and the first action of every revolution, figuratively and literally, is to open the prisons. Barbarism is never finally defeated; given propitious circumstances, men and women who seem quite orderly will commit every conceivable atrocity. The danger does not come merely from habitual hooligans; we are all potential recruits for anarchy. Unremitting effort is needed to keep men living together in peace; there is only a margin of energy left over for experiment, however beneficent. Once the prisons of the mind have been opened, the orgy is on.

Eugenics and Euphemisms

by Joseph Sobran

The death of "Infant Doe" in Indiana may be a turning point in the struggle to protect the youngest human lives. Until now it has been plausible to ridicule the concerns of the right-to-life movement as somewhat

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exaggerated. No longer. Now courts at two levels have virtually ordered the death of a child, in keeping with the wishes of his parents, who didn't want a Mongoloid.

My friend and colleague George Will observes correctly that the boy was allowed to die only because he was retarded. Had he not shown evidence of Down's Syndrome, either the parents would have ordered the operation to save him or the courts would have ordered it in spite of them.

What the Indiana courts sanctioned, at a minimum, was eugenic infanticide. The word "eugenics" — the science of breeding a better race — has become unfamiliar today, but in the '20s it had a progressive and futuristic ring. So much so that G. K. Chesterton could write a book called *Eugenics and Other Evils*, and the title could have a rather jauntily paradoxical ring — as if someone today were to write a book called *Equality and Other Evils*.

But within a few years Adolph Hitler, always one to beat a bad idea into the ground, had — by exterminating rather more races than other people would have preferred — given eugenics a bad name. In the early '70s the idea popped up eccentrically, when Nobel Laureate William Shockley spoke up "Dysgenics" — the inadvertent breeding of larger and larger numbers of worse and worse races — and proposed that we pay inferior people to allow us to sterilize them. Because Shockley thought blacks were, on the whole, genetically inferior, he was widely and properly denounced as a racist. But there was an even more fundamental objection to his objectionable scheme, which is that human beings should be brothers, not products, of one another.

Early returns suggest that opinion about the killing of the Indiana baby breaks down along the lines of opinion about abortion. Of the columnists I have seen, three — Will, M. Stanton Evans, and I — have strongly denounced the act. All three of us oppose legal abortion. Only one — Richard Cohen — thinks it is just as well the baby was allowed to die. Cohen, as it happens, favors legal abortion.

Nobody has yet taken up the word "eugenics," but Cohen has found a nice-sounding substitute phrase for it: "Quality of life." He asks: "Is life always to be protected no matter what? Is the quality of that life never to be taken into account?" Again, he refers to "the quality of the life that lay ahead" of the baby: "Its death might have been awful, but its life might have been worse." The baby was allowed to die for "its own good."

Those who feel otherwise, Cohen says, desire "simple solutions to complex problems." He concludes: "it's not that simple. The question of whether you can ever take the life of [I think he means "kill"] an infant is

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one that evades an answer. The only sure answer is, 'It depends' — usually no, sometimes, regrettably, yes. This is what the Indiana court said. As a result, two things died — a baby named Infant Doe, and a belief in absolutes.

“We have all grown up.”

Grown up? So the generations of parents who accepted the special burdens — and received the special awards — of raising a retarded child were themselves more childish than this presumably mature pair who let their child starve to death? What sort of maturity is that?

But eerier than Cohen's defense of this act is the silence of all those people who are usually so quick to deplore man's inhumanity to man. That is the truly horrifying aspect of this child's death. It means that our acceptance of abortion has eaten away much of our traditional moral sensitivity. When the question whether we should kill children becomes a “complex problem,” we are all in deep trouble.

Good reader, please don't let this thing go any further. What has happened to our dear country? Can we afford to let it continue another year?

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[The following article appeared in the Seattle Times May 3, 1982, and is reprinted here with permission. Mr. King is a medical reporter for the Times.]

When death is best for the patient: Doctors face dilemma

Warren King

The 3-pound baby girl, born 2½ months early, lay gasping on the bathroom floor. Her heartbeat was one-third what it should have been. She was on the verge of death.

Then the medics came and stabilized her vital signs. They took her away, and they started her on a medical journey that would challenge the medical judgment and ethics of the best physicians.

At Children's Orthopedic Hospital, the baby was constantly on a respirator. She suffered frequent seizures. She was bleeding from the head, and her dilated eyes never responded to light.

The prognosis could not have been much worse. And even with an interpreter, no doctor could communicate adequately with the infant's Laotian parents.

"I, in my gut, felt the parents didn't have the slightest idea what I was talking about . . . My comments (on the prognosis) were extremely frank and honest, and they would smile and say thank you," recalled Dr. David Woodrum, the pediatrician who attended the child.

Woodrum was faced with the extreme extension of a dilemma that increasingly faces doctors caring for children with almost no hope of improving: Whether to continue life supports or, after consultation with the family, allow the patient to die naturally.

The case of the Laotian infant was one of four used as focal points for a seminar on "Ethical Dilemmas in Pediatrics," held Friday at Children's Orthopedic Hospital.

The session was among several conducted as part of the hospital's three-day 75th Anniversary Pediatric Symposium. More than 150 doctors from the Northwest and other parts of the country attended the conference.

Leading the ethics discussion were Dr. Abraham Bergman, director of outpatient services for Children's Orthopedic, moderator; Justice Robert Brachtenbach, chief justice of the Washington State Supreme Court; the Rev. Lawrence Reilly, director of the Office of Medical Morals, Sisters

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of Providence, and Dr. Phillip Pallister, director of the Birth Defects Unit, Helena, Mont.

Reilly seemed to capture the sentiment of the session. He said initial emergency treatment should always be given to patients. But after that, the decision to continue life supports should be based on whether the child has a chance for continuing a "meaningful life."

"I think we have to make judgments on the quality of life," he said.

Reilly said consideration should be given to whether the patient has the ability to be aware of others, how much prolonged suffering there will be and the ability of the human being to return to society.

In the case of the Laotian child, Woodrum decided to continue extensive efforts to keep the little girl alive, even though she was "virtually dead on the respirator." Without real communication with the parents, he believed he could not do otherwise.

Now, weeks later, the child is progressing well and has excellent chances for a "meaningful" existence.

"That's the kicker," said Woodrum, "but it's not unusual . . . There are disasters, but there are these others and that's what makes us hesitate."

Dr. David Shurtleff, an expert on birth defects, described a case in which the child was born with hydrocephalus, or a grossly deformed head that is the result of accumulated fluid around the brain. The child also may be retarded.

Many such babies are allowed to die, but Shurtleff said this child's parents hold a religious belief that life should be preserved at all costs. They believe that love can make the baby thrive and grow.

Thus, when the baby began responding to the mother, it was decided to continue treatment so the child could go home. A shunt to provide a continuous drain for the fluid was inserted through the baby's skull.

"As long as they have a child in the home that can respond to them, they think it is worth caring for," said Shurtleff.

Reilly said he would withdraw from counseling in such a case because he couldn't agree with such a decision. He said consideration for the child himself should outweigh the consideration of the parents' wishes.

Another case discussed by the panel was a 3-year-old near-drowning victim who after months of treatment, required both a breathing tube in his throat and a tube for nourishment in his stomach. The separated parents disagreed on whether he should be allowed to die, so he was kept alive with little hope of recovery.

Finally, after five months and a \$113,000 medical bill, the boy died.

Brachtenbach spoke of the difficulties of drawing legal guidelines for such cases.

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He cited the case last month in which the court ordered the removal of life supports from a 65-year-old Whatcom County woman who had suffered a heart attack and had no hope of regaining her cognitive functions. The woman's husband and four sisters had requested the unprecedented state-court action.

Now, said Brachtenbach, the court is struggling with writing the opinion to justify the action.

He said the court probably will outline a process in which the patient's family and medical team must make the decision and "that would end the responsibility."

But Brachtenbach said there are very few cases in the nation on which to base guidelines.

"We've got the damnedest series of questions you can imagine," he said. "It is fraught with all sorts of things when you turn it over to us."

APPENDIX D

[What follows is the final statement of Dr. Karl Brandt, a defendant at the Nuremberg War Crimes Trials, as extracted from the unpublished trial transcript recorded on microfilm at the National Archives in Washington. Dr. Brandt was condemned to death by the Nuremberg Tribunals, and was hanged on February 16, 1948.]

Final Statement of Defendant Karl Brandt

There is a word which seems so simple — order; and how colossal are its implications. How immeasurable are the conflicts which hide behind the word obey. Both affected me, obey and order; both imply responsibility. I am a doctor and on my conscience lies the responsibility of being responsible for men and for life. Quite dispassionately the prosecution has brought the charge of crime and murder and they have raised the question of my guilt. It would have no weight if friends and patients were to shield me and speak well of me, saying I had helped and I had healed. There would be many examples of my actions during danger and my readiness to help. All that is now useless. As far as I am concerned I shall not evade these charges. But the attempt to vindicate myself as a man is my duty towards all who believe in me personally, who trusted in me and who relied upon me as a man as well as a doctor and a superior.

No matter how I was faced with the problem, I have never regarded human experiments as a matter of course, not even when no danger was entailed. But I affirm the necessity for them on grounds of reason. I know that opposition will arise. I know things that disturb the conscience of a medical man, and I know the inner distress that afflicts one when ethics of every form are decided by an order of obedience.

It is immaterial for the experiment whether it is done with or against the will of the person concerned. For the individual the event seems senseless, just as senseless as my actions as a doctor seem when isolated. The sense lies much deeper than that. Can I, as an individual, detach myself from the community? Can I remain outside and so without it? Could I as part of this community, evade it by saying I want to live in this community, but I don't want to make any sacrifices for it, either of body or soul? I want to keep a clear conscience. Let them see how they can get along. And yet we, that community and I, are somehow identical.

Thus I must suffer these contradictions and bear the consequences, even if they remain incomprehensible. I must bear them as my lot in life,

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which allocates to me its tasks. The meaning is the motive — devotion to the community. If on its account I am guilty, then on its account I will be answerable.

There was war. In war, efforts are all alike. Its sacrifices affect us all. They were incumbent upon me. But are those sacrifices my crime? Did I tread on the precepts of humanity and despise them? Did I pass over human beings and their lives as if they were nothing? Men will point at me and cry “euthanasia,” and falsely, “the useless,” “the incapable,” “the worthless.” But what actually happened? Did not Pastor Bodelschwingh, in the middle of his work at Bethel last year, say that I was an idealist and not a criminal? How could he say that?

Here I am, subject of the most frightful charges, as if I had not only been a doctor, but also a man without heart or conscience. Do you think that it was a pleasure to me to receive the order to permit euthanasia? For 15 years I had toiled at the sickbed and every patient was to me like a brother. I worried about every sick child as if it had been my own. My personal lot was a heavy one. Is that guilt?

Was it not my first thought to limit the scope of euthanasia? Did I not, the moment I was included, try to find a limit and demand a most searching report on the incurables? Were not the appointed professors of the universities there? Who could there be who was better qualified? But I do not want to speak of these questions and of their execution. I am defending myself against the charge of inhuman conduct and base intentions. In the face of these charges I fight for my right to humane treatment! I know how complicated this problem is. With the utmost fervor I have tortured myself again and again, but no philosophy or other wisdom helped me here. There was the decree and on it there was my name. It is no good saying that I could have feigned sickness. I do not live this life of mine in order to evade fate if I meet it. And thus I assented to euthanasia. I fully realize the problem; it is as old as mankind, but it is not a crime against man nor against humanity. It is pity for the incurable, literally. Here I cannot believe like a clergyman or think as a jurist. I am a doctor and I see the law of nature as being the law of reason. In my heart there is love of mankind, and so it is my conscience. That is why I am a doctor!

When I talked at the time to Pastor Bodelschwingh, the only serious admonisher I knew personally, it seemed at first as if our thoughts were far apart; but the longer we talked and the more we came into the open, the closer and the greater became our mutual understanding. At the time we were not concerned with words. It was a struggle and a search far

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beyond the human sphere. When the old Pastor Bodelschwingh left me after many hours and we shook hands, his last words were: "That was the hardest struggle of my life." For him as well as for me that struggle remained; and the problem remained too.

If I were to say today that I wish this problem had never come upon me with its convulsive drama, that would be nothing but superficiality in order to make me feel more comfortable in myself. But I am living in these times and I see that they are full of antitheses. Somewhere we all must make a stand. I am fully conscious that when I said "Yes" to euthanasia I did so with the deepest conviction, just as it is my conviction today, that it was right. Death can mean deliverance. Death is life — just as much as birth. It was never meant to be murder. I bear a burden, but it is not the burden of crime. I bear this burden of mine, though with a heavy heart, as my responsibility. I stand before it, and before my conscience, as a man and as a doctor.

APPENDIX E

[The following article appeared as the cover story of the May 28, 1982, issue of *National Review* under the title "A Lover's Lament." It was adapted from a speech delivered at Hillsdale College in Michigan. Professor Hadley Arkes, who has previously appeared in this journal (see "On the Public Funding of Abortions," *Winter, 1980*), is currently teaching at Georgetown University, on leave from Amherst College, where he is a professor of jurisprudence. This article is reprinted with permission of the author and of *National Review* (©1982, *National Review, Inc., New York, New York*.)]

A Lover's Lament

Hadley Arkes

One of the President's closest aides "confided" this February, in an interview with David Broder, that the next nine months would be the "make or break" time for the Administration. Everyone takes for granted by now that the political prospects of the Administration (and of the Republican Party in Congress) will turn on a decline in interest rates and the recovery of the economy. Presumably, this senior advisor will not resign his office — or urge his President to step down — if these events do not arrive on time. Like many partisans of the Administration, he may hope that good times will make a conservative Administration more popular, but in his own understanding, at least, the moral claim of conservatives to govern would not apparently depend on the level of interest rates or unemployment at any moment. He must have, then, *other reasons* for preferring to have Ronald Reagan in office, and yet we may reasonably ask: what has the Administration done over the past year to instruct the press and the public on what those "other reasons" might be?

We must remind ourselves that it required no small exertion of political genius to bring us to the point at which friends of the Administration seem to be flagging in their confidence just a year after a landslide victory, and Mr. George Will is warning that the conservative moment in our politics may come to an early end. This state of affairs has not been produced by nature. To reduce the political ends of a conservative Administration to the singular question of "the budget and taxes," to hinge the moral claims of a conservative Administration on the vagaries of the stock market — these things were accomplished through deliberate statecraft. They are the necessary consequence of the strategies chosen by the men who managed Mr. Reagan's campaign and established the shape of the Administration during the period of "transition": since the fall of

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1980 Mr. Reagan and his entourage have systematically tutored the American public to judge a conservative Administration first and foremost by its success in managing the economy and improving on the record of the Carter Administration.

Of course, Mr. Reagan had presented, in his candidacy, a sense of urgency on the question of national defense, but as he hammered on that issue in the campaign, he persistently made himself vulnerable to the efforts of the Carter camp and the press to portray him as inexperienced and belligerent. For tactical reasons it became necessary to shift the attention of the media elsewhere, and the Reagan people decided to steer the campaign to the more familiar ground of the "bread and butter" issues, where the record of the Carter Administration was manifestly weak. But as the Reagan campaign altered in this way the nature of its public appeals and the ordering of its concerns, it took the steps that also recast the character of the Administration which emerged from the campaign. And that altered sense of the mission and character of the Administration would become the source of serious political dangers.

That these dangers were evident already in the fall of 1980 is a point that was confirmed for me recently when I had occasion to review my own papers and notes from the campaign. That fall I was able to commit some of my days to the Reagan headquarters, and in the course of my work I was brought to Kenyon, Ohio, where I debated on behalf of Mr. Reagan before a college audience. In looking back over my text for the evening in October, I find that I took the occasion to sound a warning to my friends in the campaign. I made the case for Mr. Reagan, but I also pointed out that the new choice of tactics was threatening to transform the meaning of the Reagan candidacy: as Mr. Reagan made the issue of the economy pre-eminent, he was running the risk of converting the election into a choice merely between two social scientists, who were offering two different empirical theories about the measures that would revive the economy and bring down inflation.

Now I must confess that I am one who has become "hooked," over the last several years, on the writings of Jude Wanniski, Paul Craig Roberts, and the editorial writers of the *Wall Street Journal*, who have made the most imaginative case for what is now called "supply-side" economics. God help me, I find Wanniski persuasive in almost everything he writes, and I can only be grateful that he hasn't appeared at my door with a set of encyclopedias to sell. I have been convinced, then, that Mr. Reagan has been right in the main lines of his program for the reduction of tax rates, and that if the program had any fault, it was in the agreement to modify and postpone the original scheme of reductions.

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And yet, not for nothing has it been said that Hitler received better advice from his astrologers than recent Presidents have received from their advisors on economics. Even if we have been impressed with a “rational belief” in favor of supply-side economics, we must still recognize that the truths which inform this school can never be more than “contingent” in character, and that its empirical predictions, even when they are most powerful, can never be more than statistical or probabilistic. It may be true, for example, that a reduction in tax rates will result in an increase in investment and production — and, eventually, an increase in revenue. All of this may happen, but it may not happen every time for every reduction in tax rates. Whether it happens or not is dependent or *contingent* on circumstances. This is not to point out any infirmity that is peculiar to supply-side economics. It is merely to point out the nature of truths that are merely statistical and contingent, as opposed to propositions that must hold true *as a matter of necessity*.

The understandings of supply-side economics are attuned, I think, to the ways of the world, but no truth they convey would have the necessary force, say, of the proposition that “No number is so large that one more may not be added to it”; or: “If Smith is thrown out of a window, he is not responsible for falling down, and he may not be held accountable then for any damage that is caused by his fall to the ground”; or: “No moral inference can be made about a man merely from knowing his race. We cannot say, therefore, merely on the basis of race, that any man deserves benefits or disabilities; that he deserves to pay higher taxes or to receive reparations.”

It can be shown with little strain not only that these propositions are true, but that they *must* be true — that any attempt to contradict them would eventually fall into self-contradiction. They are, as we say, “apodictically” true, or true of necessity. Not only do they stand on a different plane from the “truths” conveyed by supply-side economics, but propositions of their kind would eventually furnish the *moral* foundation for the program of supply-side economics, and they would also bear this notable difference: they would not have the same political vulnerability as supply-side economics, because their validity would never be dependent on the ups and downs of the economy. Propositions of this kind supply the content and form of “principles,” and it is the peculiar quality of principles that they mark off the things that are right or wrong in themselves, regardless of any ancillary effects they happen to produce.

And so, if it is wrong in principle to assign children to schools on the basis of their race, that wrong would remain the same even if it could be shown that the performance of black children actually *improved* under

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these conditions. If infanticide is in principle wrong, it would be wrong even if it could be shown that the effort to repress the killing of infants would have the effect of raising interest rates and depressing the economy.

It was the special strength of Ronald Reagan as a political candidate that he was able to crystallize, in the public sentiment, a conviction about the principles that should define our character as a political community. If the campaign had been directed along the path of Mr. Reagan's distinctive strengths, he would not have spent October of 1980 urging the American people to act as social scientists and judge between two different sets of empirical forecasts for the economy. He would have asked them, rather, to act as *citizens* and affirm a judgment on certain questions of principle that would have to be addressed before an Administration could pursue a policy in taxation or anything else.

In his usual, artful way, he could have raised these issues of principle by posing questions to his audience, and the subjects of those questions could have ranged from anti-trust to abortion and the redistribution of income. In none of these cases would the validity of his own positions have been proven or disproven by any effects they might produce in the Gross National Product or the state of the credit markets. For that reason, any program built on the answers to these questions would have been likely to be insulated politically from the play of the stock exchange.

Whether the economy became better or worse would have had no bearing on questions like: Is it always wrong for some people to have more while others have less? Can we assume that all higher incomes have been earned unjustly, and that the higher the income that any person has, the larger is the portion he is not justified in keeping for himself or his family? Do human beings lose their claims to live if their families do not "want" them? Do their claims, as human beings, to the protection of the law hinge on their size or their degree of dependency on others? Is it legitimate for a company to produce and market a breakfast cereal so long as its product commands no more than about 6 to 8 per cent of the total sales? But would the company suddenly be engaged in a criminal activity — and be subject to prosecution — if its product came to attract about 10 percent of the sales in its market?

There are right and wrong answers to all of these questions, but in no instance will the truth of the answer be confirmed by any effect that is produced in the economy. Let us assume for a moment that we have a tax policy that levies a rate of 20 per cent on the incomes of everyone "except for Americans of Oriental extraction, who will pay at a rate of 50

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per cent.” We could readily establish that an Oriental ancestry represents no fact of moral significance that would justify the imposition of penalties or a heavier charge of taxation. Let us suppose that a new Administration came into office committed to removing injustices of this kind. If the discourse of our past year provides any guide, we might expect the “party of equality” to protest that the tax cut is inequitable: Orientals would be getting their tax cut by more than half, while other people might be receiving little or no reduction in their taxes!

The more fundamental question of equity, of course, is whether the higher tax on Orientals was morally justified in the first place, and, if it were not, we could hardly be faulted for undoing a wrong now merely because not all parts of the population would receive the same amount of relief from taxation. I hope it would be clear, also, that the case for undoing this wrong in principle would be entirely unaffected if the opposition party suddenly became scrupulous about the budget and warned that a massive reduction in taxes for Orientals, at this particular time, would enlarge the deficit and drive up interest rates.

If the partisans of “progressive” taxation were able to absorb this minor introduction to moral reasoning, we might be able to show them, with a few additional steps, that the same objection could be raised against a tax policy that established a rate of 20 per cent, but which went on to stipulate that “people with incomes exceeding \$60,000 will pay at a rate of 50 per cent.” We could show that the mere “fact” of having an income of \$60,000 has no more significance morally than the fact of being an Oriental: in neither case would the law establish any ground which could justify the penalty of steeper taxation.

An Administration that came into office determined to remove this inequity would have the assurance, once again, that nothing it did to relieve this wrong could be discredited in principle even if its measures had the consequence of enlarging the deficit in the budget. And what could be said in this respect for the wrongs in principle contained in the tax laws could be said in equal measure for any of the other wrongs that it was the mission of the Reagan Administration to address, from the new racialism of quotas and preferential hiring to the laws that permit, each year, the killing of 1.5 million children in abortions.

If it is true, then, that Mr. Reagan drew his following in the country through his uncommon knack for touching and representing these questions of principle, the political standing of the Administration should not have been affected in the slightest degree last August by the decline of the stock market and the upward flight of interest rates. It was Mr. Reagan’s supreme political asset that he came into office with a set of concerns

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that could not be reduced merely to the “management of the economy” and which could be sheltered politically from the mistakes wrought by his counselors on economics. And yet, these assets were largely squandered. The Administration managed to school the press and the public to judge the new government first — and most decisively — by its success in managing the economy. Hence the situation in midsummer, when the interest rates darted upward, the stock market betrayed a want of confidence, and the friends of the Administration began to panic.

For all of this, as I say, the Administration had largely itself to thank. Just how needless was the statecraft that brought the Administration to this situation could have been seen in any overview of the new government. For it was apparent from the change of men and measures that the intention was to alter the ends of public administration in all of its departments. And so the Administration has come forth with a realistic program to improve the national defense quickly, while it has laid the groundwork for a notable expansion of spending on defense in the future. It has withdrawn the support of the Federal Government from activist efforts to promote schemes of “racial balancing” in the schools and racial quotas in employment. It has placed in the Department of Health and Human Services people who have been strongly tied to the “pro-life” movement, and whose presence would ensure that the authority and funding of the national government will not be used to promote abortions.

And yet there can be no gainsaying that the emphasis on the management of the economy in the first year has involved more than a focusing of the public attention. It has also diminished the energy that may be invested in other concerns, and it has distracted the Administration from some of its other commitments. After the sale of the AWACS to the Saudis, Mr. George Will suggested that the measures of the new Administration would become more coherent as soon as the President was able to bring to these matters the benefit of that reflection he had been concentrating on matters of taxing and spending. In regard to racial quotas, the Department of Justice was scaling back schemes of racial busing and announcing its unwillingness to join lawsuits any longer in support of these “remedies.” Still, there was no attempt yet to reject these policies at their root and to put the Administration in opposition, legally, to schemes of “reverse discrimination.” And if opponents of abortion were spread throughout the government, they were not represented among the President’s closest advisors, and that omission probably accounts for the notable failure to appoint an opponent of abortion to the one position

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that mattered the most: the vacancy that opened on the Supreme Court with the resignation of Justice Stewart.

When a dispute flared over the appointment of Mrs. Sandra Day O'Connor, the opponents of her nomination were charged with religious zealotry in their insistence on according such a decisive weight to the "single issue" of abortion. And for the sake of avoiding the embarrassment of defeat, the White House staff was apparently willing to acquiesce in this ridicule. But in its willingness to support this caricature of its own devoted followers, the Administration not only acted with a gratuitous want of propriety: it also turned the facts of the matter upside down: the Administration was not being opposed in this nomination by a group with a parochial, truncated view of the ends of the political order. Nor was it dealing with allies who took a narrow view of their responsibilities as part of the coalition that sustained the Administration. It would be more accurate to say that the Administration was rapidly converting itself into a "single issue" Administration, and it was showing a rare insensitivity now to a number of groups that had supported Mr. Reagan in all parts of his program, from national defense to the reduction of taxes to the merciful easing of "regulation."

The Reverend Jerry Falwell and his constituency had been firm in their support of national defense, but a vacancy on the Supreme Court was simply not relevant to the problem of restoring the national defense, since the weaknesses in our defense did not emanate from any decisions of the courts. Quite another matter was the removal, in a sweep, of all laws in the country that restrained abortion — the imposition, in effect, of a "national" policy of legalized abortion on demand at any stage of a pregnancy. That state of affairs had emerged, distinctively, from the abuse of judicial authority. Therefore it could not be a mark of "zealotry" to seek the undoing of a wrong by concentrating on the source from which the offenses had come.*

The mindset that identifies a moral concern with religious zealotry was reflected rather well in the language that became familiar in our public discourse over the past year: questions about the economy or national defense have been regarded as the legitimate or "normal" questions of politics: but issues such as abortion and busing and affirmative action have been regarded as "social issues," as though they were somehow dis-

*It should be evident now, with the President's notable weakness in the polls among women, that Mr. Reagan derived no lasting political benefit from the appointment of Judge O'Connor. Those who were opposed to Ronald Reagan because of his stand on so-called "women's issues" were not likely to be won to his side on the strength of this one appointment. And yet, for the sake of this high gesture toward those who have been most reserved about Ronald Reagan, the Administration was apparently willing to risk a breaking of faith — and a vast, dispiriting effect — among the people who have formed the core of Mr. Reagan's most dedicated workers.

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tant from the main business of government. The so-called “social” issues are placed at the periphery of politics because they are labeled as “moral” issues, and in the confusion of our current discourse, “moral” issues are identified with “religious” questions: they are thought to turn on matters of private faith or subjective belief, cut off from the prospect of giving reasons, citing evidence, and establishing the truth or falsity of propositions.

But in the strictest sense, moral propositions are radically distinguished from statements of personal belief or subjective feeling. Moral propositions claim to speak about the things that are *universally* right or wrong, just or unjust — by which we mean right or wrong, just or unjust, for others as well as ourselves. When the question of abortion, say, is regarded as a moral issue, it has nothing to do with matters of “belief.” It would involve, rather, the grounds of principle on which the human fetus can be regarded as anything other than a human being, with a claim to the protections of the law. And if we find — as we must — that the offspring of *Homo sapiens* cannot be anything other than a human being, then the grounds on which fetal life is taken must be at least as compelling as the grounds we demand in other instances for the taking of other human life.

It was a telling sign, during the presidential campaign, when Mr. Reagan began to cast his remarks about abortion in the language of personal “belief,” as though the nature of the human fetus was an inscrutable religious matter; as though the science of embryology had nothing to contribute on the question; and as though the canons of principled reasoning made it impossible to distinguish between a frivolous and a compelling reason for the taking of human life. Indeed, it might be said, as an ironic commentary on the first year of the Reagan Administration, that the Administration treated matters of fact as matters of belief, and matters of belief as matters of fact: it treated as a collection of necessary truths the tenets of “supply-side” economics, which may bear a closer resemblance to a religion. On the other hand, it treated certain inescapable facts — like the human nature of the human fetus — as though they were matters of mystic belief.

As a matter of legal and moral judgment, the case in principle against abortion can be made without appealing at any point to revelation or to convictions of a religious nature. But if we put that to the side, we may take President Reagan at his own understanding: he professes to “believe” that a child in the womb is a human being, and that abortion involves the taking of human life. If he believes *that*, then he must be convinced that the 1.5 million abortions that are performed in the United

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States each year must be acts of killing that claim 1.5 million lives. It would be as though the authorities were compelled to stand back and permit 1.5 million members of a minority group to be lynched each year without the need to render a justification.

If that kind of killing were taking place, there would hardly be a doubt that we were in the presence of a crisis that touched the foundations of the political order. And if the killing were taking place during a presidential election year, could anyone doubt that it would be regarded as an issue at least as significant as the rate of inflation or the level of unemployment? If we take the President, then, at his word — that he believes 1.5 million innocent lives are being destroyed each year — how could he possibly regard that as a peripheral issue, which can be decorously placed to the side while the Administration tackles the truly “important” questions, such as the reduction of taxes?

Early in his first year, the President was addressing a joint session of Congress, and he proposed, among other things, the elimination of the special assistance that was furnished to workers who lost their jobs as a result of competition with foreign firms. Mr. Reagan pointed out that there was simply an inequity present: the law offered no comparable help to people who lost their jobs as a result of competition with domestic firms. Since there was no ground of principle on which to defend this inequity, he simply proposed to end the program. A short while later I was at lunch with a friend who was working on speeches in the White House, and I pointed out that this particular passage in the speech was a reflection of Reagan in his truest voice: it was Reagan, once again, pointing out the parts of our laws that had no principled foundation; and when a law cannot find a principled justification, it will be the source of an irritating injustice, for it will be imposing on someone a restriction or a cost that cannot be justified.

When the President raises these points, they are almost always instructive, and the public has no trouble in grasping the lessons he would teach. In fact, it is arguable that the President has built his political career by conveying issues in this way, and he could conceivably build a successful Presidency in the same manner by systematically addressing and removing these kinds of inequities that weave through our statutes and foster cynicism among our citizens. The public may have lost their confidence in the competence of political men to manage the economy, but they cannot see why it should be beyond the capacity of their leaders to manage the government in a principled way.

It is certainly within the state of the art, for example, to revoke executive orders on “affirmative action” and cease to press for court orders on

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“racial balancing.” A people tutored to urbanity will not expect any longer that their lives may be redeemed through the promises of politicians. But they can be grateful to a leadership that seeks to ensure at least that the law administers its restraints and benefits on terms that are fair to all. I put the question then to my friend: Who was it who wrote that passage in the President’s speech about the loss of jobs through foreign competition? He replied that the President himself inserted that passage into the text. All of which may confirm the sense that Mr. Reagan is his own best writer, but it may suggest also that the political course I’ve argued for here would be one that accords with Mr. Reagan’s special strengths — and his best political reflexes.

Anyone who knows the politics of this country as it takes place in the congressional districts knows that issues such as abortion and busing and racial quotas have been very important at the margins, and that they played no small part in the movement that swept the Republicans back into control of the Senate for the first time in 28 years. It has been possible for the Republican Party to attract many Democrats on these issues, and the constituency for these concerns tends to preserve itself even through downturns in the economy.

There is no small profit to be made, then, if the President invested in these issues his considerable skill in speaking to the American people and advancing measures through Congress. Most notably, he would be able to reshape the public understanding of the grounds on which the success of his Administration would ultimately be judged. Few people identify Lincoln today as the man who presided over the Legal Tender Act, which brought on a massive inflation, and in judging the significance of his Administration there is no need to dispute the unmeasurable question of whether his leadership advanced or retarded prosperity, and by how much. The record of his Administration was marked by an achievement far more unequivocal than that. In the same way, the final judgment on the Reagan Administration should not be left to the arts of accountants and econometricians, debating the prosaic question of whether Ronald Reagan really did succeed in cutting back the size of the government to the level that was indeed the “right” one for the economy. Mindless reckonings of that kind could be displaced in the public judgment. Far better for Mr. Reagan to attempt to ensure that he is judged in the light of achievements far more precise and memorable.

If he made progress, for example, toward stopping the practice of abortion on demand, the results would be measured in the saving of over one million lives each year. In that event, there would be no strain to discover the standards by which the success of the Reagan Administra-

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tion could be known; and there would be little risk that that achievement would be measured by any contingent set of numbers for interest rates and employment. For it would be understood then, far more clearly, that the mission of the Administration was to found the political order anew: to bring the American people to the point of judgment, once again, about the moral understandings that finally bind them to one another and establish the terms of principle on which this political community shall live.

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