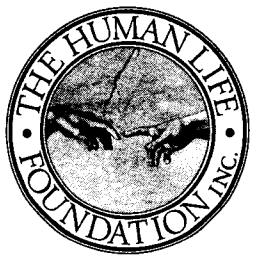
the HUMAN LIFE REVIEW



FALL 1984

Featured in this issue:

Also in this issue:

Steven Valentine • Laura Weston • *plus* a letter from Mrs. Eugene Quay, recounting a memorable scholar's finest achievement

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. . . FROM THE PUBLISHER

Herewith our 40th issue, completing ten years of publication—a feat of which we are immensely proud. We started this journal on faith. Believing that there was a need for what we meant to publish, we plunged ahead, violating the first rule of publishing—producing our Review before establishing either an audience or a "stable" of writers who would be willing to appear in our pages. We soon acquired both.

We now have a regular readership approaching 15,000 and an impressive list of contributors who continue to provide fresh material that is balanced, informative, diverse—and certainly not available elsewhere. We continue to do it all without a paid staff—another feat of which we are enormously proud. Here's to the next ten!

Some notes on this issue: parts of the article "Foundation Power" by Mary Meehan first appeared earlier this year in the *National Catholic Register*, 6404 Wilshire Boulevard, Suite 900, Los Angeles, California 90048. (Yearly subscriptions are $23.) The article by Lino Graglia "Was the Constitution a Good Idea?", is reprinted with permission from the July 13, 1984 issue of *National Review*, 150 East 35th Street, New York, New York 10016. (Subscriptions are $29 per year.) "Why the ACLU is Gambling with Roe" by Steven Valentine was first published by the Washington *Times*, 3600 New York Avenue, NE, Washington, D.C. 20002. The article included in the Appendix by Mrs. Effie Alley Quay first appeared in the quarterly *Child and Family* edited by Herbert Ratner, M.D. This fine journal, which has been publishing for over 20 years (we recommend it highly), has subscriptions available at $8 per year, address *Child and Family*, P.O. Box 508, Oak Park, Illinois 60303. The complete text of Eugene Quay's article to which Mrs. Quay refers was first published by the Georgetown Law Journal, Winter 1960—Spring 1961, Vol. 40, Nos. 2 and 3.

The Foundation still has available copies of *Abortion and the Conscience of the Nation* by President Ronald Reagan. Complete details of how to obtain copies can be found on the inside back cover. Also available are Ellen Wilson's *An Even Dozen* ($10.00); Joseph Sobran's *Single Issues* ($12.95); Prof. John T. Noonan, Jr.'s *A Private Choice* ($11.95); plus fully indexed Bound Volumes of our first nine years (again, see the inside back cover).

Finally, *The Human Life Review* is available in microform from both University Microfilm International (300 N. Zeeb Road, Ann Arbor, Michigan 48106) and Bell & Howell (Micro-Photo Division, Old Mansfield Road, Wooster, Ohio 44691).

EDWARD A. CAPANO
Publisher

THE HUMAN LIFE REVIEW

FALL 1984

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INTRODUCTION

WE BEGIN THIS ISSUE (our 40th, completing 10 years of publication) with another finely-honed essay by our friend and colleague Joseph Sobran, who has rarely let us down (having contributed to all but a handful of our first forty) and of course *never* lets his readers down, as he demonstrates again here. For instance:

> We hear of all the "hard cases" that justify abortion: poverty, deformity, mental strain, rape and incest. We even hear the "hard case" of Chinese overpopulation cited as an excuse for forcing abortion on poor women who are willing to accept the child along with increased poverty. We never hear of ordinary selfishness or the abortionist's profit.

Strong stuff, but then this is the season for it: as we write, abortion has become the focal point of the presidential election campaign, the nexus between our "religion of politics" and the politics of religion. So we trust the reader will absolve Mr. Sobran for delving quite deeply into politics this time, on a whole spectrum of questions from the "choice" of abortion to the "symbiosis" that exists, he argues, between "liberalism" and Communism.

In fact, most of our contributors seem to be affected by the current political humidity. Professor James Hitchcock next examines (with his usual attention to detail) the politics of the "Seamless Garment," the proposal, first made by Chicago's Cardinal Joseph Bernardin, to link abortion "to a broad spectrum of questions affecting the sanctity of human life, including war and capital punishment." His point is, that while the Cardinal may not believe that his proposal marks "a radical departure from previous episcopal policy," many hope that it does, including prominent politicians who are also Roman Catholics, for whom the Seamless Garment is a perfect fit on every issue *but* abortion. Thus, Hitchcock says, the November elections may be a clear test of the political importance of the anti-abortion movement.

As it happens, Professor R. V. Young is also concerned about the Seamless Garment theory, specifically its inclusion of capital punishment as an issue "equal" to abortion. Young doesn't see much equality between the two: indeed, he says that to mix them at all only weakens the case against abortion by "obscuring the different relation of the guilty and the innocent to society." Those who disagree, he points out, must answer the formidable arguments of the great

Aquinas himself, which Young thoughtfully provides in the original Latin (see his notes).

Abortion also remains the focus of the next article, in which Miss Mary Meehan explores the strange power that "non-political" foundations have exercised on the politics—and practice—of "population control," which invariably includes heavy emphasis on abortions. Here again, the current political situation intrudes: as you will see, Mrs. Geraldine Ferraro, the Democratic vice-presidential candidate, is involved in one of the strangest examples of funding, i.e., the seemingly-improbable grants by the Playboy Foundation to a group called Catholics for a Free Choice. It's a very interesting story and, as always, Miss Meehan thoroughly documents her case.

At first glance, some may find our next article improbable too: in effect, you might say its about "Men's Lib," which we hardly knew existed. But Mr. Frank Zepezauer obviously knows a great deal about this new "cause" which is growing rapidly in response to what many "embattled" males consider the unequal advancement of women's rights. We found the whole subject fascinating, and think that you will yourself (even if you're a herself). Certainly you will discover that men can produce their fair share of "hard case" arguments in support of claims for justice.

Our usual custom at this point is to provide you with a refreshing change of pace. It is of course possible that you will not think a serious article on the Constitution fits the prescription. But you may be wrong: Professor Lino Graglia has managed to write an eminently-readable short story of The Document which, surely, the Founding Fathers would have relished—he's got it all just right, as plain and simple as it was *intended* to be, thus illuminating the incredible distortions that have been allowed to deface the original structure. Although first published elsewhere, this one obviously belongs in our permanent record of the abortion question, if only because it confirms what we have been saying for a decade: the Constitution has nothing to do with abortion, or any "right" to it. (It follows, does it not, that the proper solution to the "abortion dilemma" is not a needless constitutional amendment, but rather the Supreme Court's return to its proper function?)

We may have saved the best for last. The Rev. Francis Canavan, S. J., our esteemed colleague and contributor, has written much (here and elsewhere) about the law as *teacher* to any society: as he puts it, "A society's laws reflect its moral beliefs and these, in turn, reflect its religious beliefs"—surely a neat wrapping-up of the current political controversy over abortion in particular and "religion and politics" in general? Funny thing is, he first wrote this piece not too long after *Roe* v. *Wade* (as text for an address delivered to a conference of scholars). It seems fitting that, as we conclude this journal's first decade, we can

print it now as proof positive that arguments against the horror of abortion, new or old, remain fresh, because they concern timeless verities.

Appendix A is a further demonstration of that fact. It is the story of how a short but memorable article summarizing the case against abortion came to be written, some 15 years ago, by Eugene Quay, a lawyer of renown then, and *still*, to those involved in the anti-abortion movement. You will find out why as you read about his remarkable accomplishments.

Appendix B is an article by a young lawyer, Steven Valentine, concerning what could be the next phase in the abortion struggle—again, much depends on what happens in the November election, but we think you will find Mr. Valentine's scenario most interesting reading. After which, in *Appendix C*, you will find another short story: this one has nothing to do with politics, or for that matter religion; it does, however, say a great deal about the kind of nation we have become in the past decade.

* * * * *

As we write, the front-page news is the speech by New York's Governor Mario Cuomo at Notre Dame, in which he in effect defended his pro-abortion position. Needless to say, there is much in this issue (and all previous ones) that bears on that controversy, with more to come in the next—which we hope will be a worthy 10th Anniversary celebration issue. But our immediate point is this: Mr. Cuomo announced that he was donating Notre Dame's $1,500 honorarium to the Nazareth Life Center in Garrison, New York. As it happens, we know the Center well: it is a fine example of the growing number of organizations that exist to provide the only real "alternative" to abortion: they help a woman have, not kill, her own child. The Human Life Foundation, as you may know, provides financial support to such groups, including Nazareth Center, which was founded four years ago by Father Eugene Keane.

Well, Father Keane decided that he must "repectfully decline" Mr. Cuomo's donation, lest anyone conclude that he agreed with the Governor's position on abortion, rather than that of his Church, which has been so consistently and forcefully articulated by New York's Archbishop John J. O'Connor. Father Keane's action also made headline news, with most stories noting that the Center would not in fact lose well-deserved funding: the Human Life Foundation, which publishes this journal, made a special grant of $3,000 to the Center the following day. We rarely get to publish stories with happy endings, and so could not resist passing this one along to you. We hope it augurs well for the happy anniversary issue, coming next.

J. P. McFADDEN
Editor

"Choice": The Hidden Agenda

Joseph Sobran

THOSE WHO FAVOR legal abortion commonly say that they are not "pro-abortion," but, rather, "pro-choice." We are invited to infer that they would be perfectly happy if every pregnancy issued in a live birth, provided only that this was the mother's choice, with the alternative of abortion available to her in case she changed her mind along the way. But this position is false and hypocritical, as recent events have shown.

Recently a China scholar named Steven Mosher returned from a long stay on the mainland to report that the Communist regime had adopted a policy of mandatory abortion, even into the ninth month of pregnancy. His report horrified a number of people, including his academic peers, who feared that his revelations (whether they were true seemed to be irrelevant) would jeopardize the access of other Western scholars to China.

It quickly became evident that Mosher was telling the truth. This embarrassed progressives who had for many years lauded China's progressive policies in population control. A New York *Times* editorial writer of feminist bent soon found an angle that enabled her to disown this particular policy: she argued that forcing abortion was in principle no different from prohibiting it. The Chinese regime, like anti-abortionists in America, were enemies of choice.

But the problem can't be disposed of quite so easily. It is ludicrous to suppose that this particular violation of "choice" is some sort of anomaly under a Communist system. Communism gives the state total power over every individual in every aspect of life. Mass purges and mass executions, for "offenses" that would be protected private behavior in the West, are among its regular features. In fact the real anomaly would be a Communist state that recognized a "right" to abortion, or to anything else. Under Communism, "rights" exist purely by state sufferance.

Soviet Russia legalized abortion in the Twenties and outlawed it again in the Thirties, when the state faced a population shortage. Today it is

Joseph Sobran, our contributing editor (since 1975), is nowadays a celebrated author, newspaper columnist, commentator on TV and radio, etc.

permitted once more, and there are several abortions (perhaps as many as five) for every live birth, but the state is so worried about the diminution of the ethnic Russian population that it is actually encouraging illegitimate births to achieve the population balance it desires. No principle would prevent the state from outlawing abortion again tomorrow.

After the first disclaimers, progressive opinion in America began to soften on the new Chinese policy. A documentary on public television examined the policy at length and asked whether we ourselves, faced with China's population problem, would behave differently. A segment of the documentary was shown on CBS's 60 Minutes, with Morely Safer echoing the question.

In the summer of 1984, a group of nine Chinese officials, en route to the International Population Conference in Mexico City, were welcomed at a Washington luncheon sponsored by the Population Institute and attended by ten senators and congressmen. Since the American legislators were nominally "pro-choice," one might have expected tensions. None were reported. Progressive harmony prevailed.

At about the same time, a World Bank report on overpopulation concluded that Third World birth rates are "impermissible," while acknowledging that the source of the problem was that families in these countries "desired" large numbers of children. The report was hailed by progressive commentators as a step toward solving the putative problem. The only reservations came from conservatives, who questioned the right of Western financiers to impose birth-control requirements on non-Westerners.

There is an obvious divergence between the goal of limiting population growth and a commitment to permitting people to make their own choices. It parallels the divergence between state economic planning and personal economic freedom. In each case the two things may be uneasily reconciled, but the only personal freedoms that can exist under systems of economic or population planning are residual, always subject to further limitation in the event that the state fails in its macroeconomic goals—as it usually does. Then, of course, what began as an option may become an obligation. And by now we are used to hearing progressive speculations that the looming population crisis may soon require us all to submit to mandatory limitations, the alternative being war or mass starvation. The imperative of physical survival is the *deus ex machina* that is typically invoked to usher us from liberty to servitude.

The striking fact is that the progressive consensus of the last few decades has been so passionate, first, in demanding birth control and abortion as personal choices and, at a later phase of development, at announcing that the choice thus legitimized may soon become not choices but requirements. It is eerie how readily the transistion between the two incompatibles is made: the progressives seem to move *en masse* from one pole to the other, with hardly any demurral in their ranks.

Now so far, I have been using the word "progressive" to identify this mindset and the people who hold it. I have held back from using the more common word "liberal." For one thing, the word "progressive" seems to me both broader and, since not all progressives call themselves liberals, more accurate. And I think the word "liberal" is a kind of misnomer even for the people who choose it. The reasons may be worth considering.

In the nineteenth century, "liberalism" came to stand for a commitment to free procedures: free speech, freedom of opinion, a free market, free elections. The general idea was that people should be free to make their own choices in all sorts of areas, without restraint by custom or traditional authorities, except so far as they chose these restraints themselves. Let people choose, and let the chips fall where they may. The old liberalism had its difficulties: at times it grounded itself in pure principle (freedom was a "right"), while at other times, or even at the same time, it was asserted that free procedures would produce better social results than the old arrangements. Today people who stand for liberalism in the areas of speech, religion, and sexual behavior are widely known as "liberals," even though they usually have strong reservations about the free market; and those who stand for a free market, whatever their views about other freedoms, are called "conservatives." The few people who still stand for freedom across the board are known as "libertarians."

Many "liberals" are in fact socialists. Europeans often wonder why so many American socialists persist in calling themselves liberals, and the American socialist Michael Harrington asks the same question. The answer is fairly obvious. Socialism still has a bad odor in America, and those who espouse it in substance know well enough that they had better find an acceptable label for it, if they want any chance of political success. And these people themselves are slightly uneasy about socialism's record in the Soviet Union and elsewhere: by calling themselves "liberals," or in

some cases "democratic socialists," they give assurances to others and to their own hearts that they would not flout all procedural decencies in order to impose a socialist regime. In other words, they ostensibly subordinate the substance of socialism to the procedures (or some of them) of the old liberalism. In even plainer words, they would not impose socialism by bloodshed.

Now to a Communist, this is "bourgeois sentimentalism." It means that socialism must take a back seat to the very thing it would destroy, namely the free market—even a free market of opinions or votes. The "liberal" seeks a certain end, the supreme end of socialism, by means that are radically incompatible with socialism itself. This is a contradiction.

The Communist has a point, however twisted his perception. "Bourgeois" freedoms spring from a certain culture, the culture of what we call civility. The mark of civility is equality and reciprocity: no citizen has any but a conditional right to command another. Each has an equal right to consent: in religion, in government, in ordinary exchanges, in choice of activity. Socialism means not only a command economy, but a whole comprehensive system of command, in which the state assumes the authority to alter culture itself. The point is vividly brought home in Roland Huntford's study of Sweden, *The New Totalitarians*. And however much socialism may speak of its own fetish of "equality," this equality is bogus. As Anthony Flew nicely puts it, there can be no equality between the "equalizers" and the "equalizees." Even in America we see how eagerly the professed egalitarians—progressives all—seize the mission of changing schoolchildren's "attitudes" on race, sex, morality, and other matters.

The archetypal American "liberal" organization, the American Civil Liberites Union, illustrates the point vividly. Originally founded to protect radicals of the Left from prosecution, it was substantially committed to socialism. Its founder, Roger Baldwin, once said openly that "Communism is the goal," and its governing board included Communists for many years, until the ACLU realized that it was at least an apparant conflict of interest to serve the cause of civil liberties while serving the interests of Stalin. But even today, under all the ACLU's myriad activities, we can see the contours of a generic socialism: the power of the modern state is never comprehensively challenged. On the contrary. The ACLU still selectively promotes those particular liberties that are most serviceable to

the Left in undermining traditional order. The ACLU is concretely found challenging property rights, parental prerogatives, religious activity—personal freedoms all, and the pillars of social order as Western man has always understood it. At the same time, the ACLU is generally found, when it comes to cases, on the side of Communists, pornographers, criminals, homosexuals, abortionists, and the like. It is hardly reassuring that it "balances" its leftism by occasionally defending neo-Nazis and Klansmen. In fact when it took the part of neo-Nazi demonstrators in the notorious 1978 Skokie case, it had to calm many of its angry members by sending out a form letter explaining that unless it defended such people on principle, it could hardly defend the sort of people it would prefer to defend. And we may gather what sort of people these would be from the very fact that its defenses of Communists never require it to send out soothing explanations. The Skokie case winnowed out the ACLU's ranks, but the organization's principled stand was understood and applauded by progressives of all denominations.

A number of recent thinkers—Michael Oakshott, Friedrich Hayek, Bertrand de Jouvenel, Raymond Aron, and others—have drawn a basic distinction between two kinds of political order. One is *teleocracy* (or telocracy), which Hayek also calls the "end-governed" order. Teleocracy posits a substantive end—the saving of souls, racial purification, the greatest happiness of the greatest number, a just distribution of goods—toward which the state serves as a means. On this view, the state is what Oakshott terms "enterprise association," like a church or a business corporation, whose members are joined by a shared goal.

Set against this is *nomocracy*, Hayek's "rule-governed" order, in which the state as such is not characterized by a substantive goal of its own, but merely seeks to establish conditions in which citizens may safely, justly, and peacefully pursue goals of their own. Oakshott calls this mode of union "civil association."

The distinction between teleocracy and nomocracy corresponds to the difference between a baseball team and a baseball league, or between a legal firm and a bar association. In one kind of association, the members are closely united by their common pursuit; in the other, they are most loosely united by their shared need for a framework within which they may reduce, by terms of an overarching order or system of procedures, the friction engendered by their several pursuits. Nomocracy ensures that

divergence of purposes will not dissolve into lawless competition; or, as Kenneth Minogue puts it, that competition will remain competition, and not turn into conflict. Minogue remarks that competition, unlike conflict, has a positive quality, with competitors morally committed to their shared framework. This accounts for those rituals—in citizenship, in athletic events—through which competitors assure each other that they are not enemies.

We see the "bourgeois sentimentalism" of liberals when they delude themselves that there can be peaceful competition and good faith, in a framework of world government or even negotiation (hopefully called "dialogue"), between Communism, a teleocratic system of power based on an uncompromising view of all social relations as one of mortal conflict, and the nomocratic West. André Malraux pithily dismissed this delusion when he remarked that knocking over the chessboard is not a move in chess; but his words have gone unheeded. The sentimentalism of the liberals finally consists in supposing that one can be Communist and peace-loving, socialist and democratic, teleocratic and nomocratic, at the same time. In fact today's "liberalism," though generically socialist, is specified by its assumption that there can be a "convergence" of things essentially opposite; what Minogue calls "the illusion of ultimate agreement."

Liberals have assured their fellow Westerners that Communism would eventually democratize, as evidence of which they have seized on every symptom of "thaw." At the same time, they have insisted on the West's duty to be "open to change," never quite admitting that the sort of "change" they have in mind is change toward a socialist paradigm. Their secret model has to be inferred from the seemingly random but deeply unified series of "reforms" they have championed: secularization, centralization of political power, increasing state command of economic life, sexual freedom, the derogation of marriage and the family, and so forth. They seek the total politicization of society, according to a certain pattern. Concretely, they always veer leftward, directing their venom against the traditional (and especially against anti-Communism), at the same time making ingenious excuses for every enemy of traditional order, criminal or ideological. (The more ideological the criminal, the more excusable in liberal eyes.)

The oft-noted "selectiveness" of liberal solicitude is not patternless or

purposeless: it is directed by a deep-seated, not always conscious, but discernible impulse toward socialism. On this hypothesis all the apparent contradictions of liberal behavior can be easily resolved. The strategic purpose of modern liberalism shows up in the immediate liberal consensus that springs up on issues as diverse as cutting the federal deficit (where the liberal "party line" has suddenly made a complete and unanimous reversal) and abortion. Communists themselves are no more agile in adopting the short-term cause not on its intrinsic and separate merits, but according to whether it is "objectively progressive."

It serves the liberal posture to affect a grand aloofness from "East-West conflict" while all serious criticism is reserved for the West and while the "two superpowers" are equated in ways that serve only the interests of the superpower of the East. ("Until the liberals equated the American liberation of Grenada with the Soviet invasion of Afghanistan," one conservative wag quipped, "I had no idea how deeply they felt about Afghanistan.")

Socialism in all its guises, from liberal democratic to Marxist, is not merely a "political" system. People of identical philosophies of God and man can hold divergent political views: one Catholic may be a monarchist, another a democrat. Merely political systems carry no ultimate implications. But socialism in our time has the nature of a religious movement. Its implications are total. It absorbs rival religions, as when Catholics try to subsume their faith under politics through "liberation theology." And when socialism can't absorb rival religions, it persecutes them. This proves that it understands itself to be operating on the same level as religion; if it were "merely secular," it would seek ways to coexist with religion. To talk about socialism is always to talk about something more than "politics."

That is why the "Left" is as keenly interested in abortion as the "Right." In fact one anti-abortion liberal has complained that he can't find a political home anywhere: conservatives are too diffuse in their concerns to give due priority to the abortion issue, while liberals hold that if you aren't a feminist you can't be a liberal, and it you aren't pro-abortion you can't be a feminist. In other words, it is the *Left* that is practicing "single-issue politics" on abortion. The more or less official liberal line, of course, is that abortion is a "theological" obsession of the Right. The truth is that abortion—which is in the final analysis the dero-

gation of the individual soul—is integral to the whole socialist view of life. This goes far beyond politics as such.

What we are seeing is a fanatical worldwide quasi-religious movement that masks its fanaticism in various cool, rational, and even scientific guises, adopting the coloration of modes of expression the civilized world accepts, while concealing the substance of its goals. Though it is sometimes conspiratorial, more often its votaries are only dimly aware of the purposes they enact.

I will not labor further the point that current "liberalism" and Communism exists in symbiosis. It seems to me obvious that this is the case. Every day confirms it anew. But lest any reader suppose that I see a generic "socialism" as an absolute evil, and "capitalism" as its opposite and therefore an unqualified good, I should mention here another symbiosis: that between Communists and capitalists. One curious form of capitalistic enterprise—and one that enjoys full liberal approval—is that which is commonly referred to as "East-West trade." What passes remarkably unremarked about capitalist investment in Communist countries is that it allows Western investors to avail themselves of some of the world's cheapest labor. The workers in the Worker's Paradises are captives, unfree, unrepresented in politics or in the bogus labor unions, their wages set by state fiat at very low lovels, below not only free market value but also legal minimum wages in the West.

Professing to share wealth, socialism actually concentrates it in the hands of a small ruling class, whose right to command is absolute and who therefore not only own the wealth but in effect own the workers. That the workers are not personal chattles hardly mitigates their servile condition. They have little personal choice. They have no legal protection, no means of self-defense, let alone avenues of self-improvement.

At this stage in history, Western capitalists could hardly have expected such an opportunity to exploit labor under terms so favorable to their interests. They found it in the socialist East. They found that they could take full advantage of it, without being hectored by their liberal domestic critics, merely by cooperating with socialists powers. The socialists have turned out to be no more principled about the class interests of the proletariat than the capitalists are about private property and economic freedom.

This symbiosis is a very ominous one, ironically confirming as it does

the most violent socialist diatribes against capitalist greed. It does prove that capitalists are indeed willing to crush the personalities of those they employ, even as it proves that socialists are also willing to do as much. It illustrates that socialism too is a "ruling class ideology" that cynically rationalizes the interests of power.

But we are also seeing the emergence of a new, hybrid ideology, expressed in the attempts of Western financiers to use their disbursements of capital to impose stringent population controls on "developing nations." The anonymous oracles of the World Bank and the International Monetary Fund clearly regard the inhabitants of those nations not as persons but as pests, whose proliferation must be stopped by one means or another. This may have something to do with capitalism; it has nothing to do with "choice."

Contrary to that liberal tradition that traces itself to Kant, the current liberalism is anything but universalist in its designation of those subjects it acknowledges as eligible for the prerogatives of "choice." It is strangely contemptuous of workers under Communism, of rapidly multiplying brown and yellow people (the proliferation of white people never seems to cause alarm), and of the unborn. I don't think I am romanticizing the past when I observe that people used to slaughter and enslave each other with much more candor than they do nowadays; there was much less pretense that they were spilling blood and wasting freedom out of "compassion." There were always plenty of temptations, hypocrisies, excuses, and self-justifications for ancient barbarities, but never, as far as I know, this dogged insistence that the barbarians were acting from a refined benevolence toward their victims. Today we can commit atrocities with a checkbook.

We hear of all the "hard cases" that justify abortion: poverty, deformity, mental strain, rape and incest. We even hear the "hard case" of Chinese overpopulation cited as an excuse for forcing abortion on poor women who are wiling to accept the child along with increased poverty. We never hear of ordinary selfishness or the abortionist's profit.

From all this it is impossible not to conclude that for the progressive community the real motive is the desire not for expanded "choice" but for abortion itself. The rhetoric of free procedure is only a cover for a substantive goal. Many of our professed nomocrats are only teleocrats in disguise. They want freedom for certain practices because they want the

practices, not the freedom. When the practices are established, the freedom can be dispensed with. The actual goal is always to maximize the practice, first by allowing it, then by encouraging it, and finally by mandating it. If not every progressive teleocrat understands the progress of his *telos*, well, not every ant understands the ant colony. It is enough for the individual ant to do its job for the moment. The colony, by its own mysterious patterned energies, will do its will. In time the procedures will be gerrymandered to produce the desired result, and it won't be "reproductive freedom."

Meanwhile the progressive community warns us of the terrible tyranny that awaits us if "reproductive freedom" (in this year's sense) is repealed. But many of us still remember the days before that freedom existed, and it wasn't so bad. Can anyone seriously pretend that refusing to let a woman abort her child in the ninth month is a moral horror equal to forcing her to do so? Only in the New York *Times*. And as always, the false equation of a limited freedom with the total extinction of freedom serves only to advance the date of extinction.

All real freedom is limited. You may have the freedom to travel to the ends of the earth. This does not imply a right to invade your neighbor's house. You have the freedom to speak. This is not a right to deceive or slander. A freedom is defined by its normal use, which is to say its normative use. The freedom to reproduce is an especially precious one, because children are especially precious. You may choose to have children; you may choose not to have children. But you may not choose to kill your child. That is to make an ugly absurdity of "choice." And if you claim that choice, someone else may soon claim it for *you*. This would once have sounded far-fetched, but now the time gives it proof.

The Seamless Garment Unfolds

James Hitchcock

SHORTLY AFTER HIS appointment as archbishop of Chicago in 1982, the future Cardinal Joseph Bernardin announced that he had accepted the chairmanship of the American bishops' committee on pro-life activities, because he regarded that issue as one of the most important that the bishops face.

In late 1983, in a widely-publicized speech at Fordham University in New York, Cardinal Bernardin proposed the concept of a "seamless garment" of "life issues" which must henceforth govern the debate about abortion. No longer could abortion be considered in isolation, nor even in conjunction with closely related issues like infanticide and euthanasia. Henceforth those who profess to be pro-life have to give attention to a broad spectrum of questions affecting the sanctity of human life, including war and capital punishment.

Although Cardinal Bernardin said he did not believe his proposal marked a radical departure from previous episcopal policy, public reaction to his speech indicated that many people thought it did. As the cardinal himself later noted, he received much praise from people not ordinarily in sympathy with Catholic teaching on moral questions, even as many veterans of the anti-abortion wars expressed concern that their issue would in effect be smothered under the "seamless garment."

No one with the slightest political sophistication could doubt that the new policy was meant to apply, in some way or other, to the 1984 elections, in which it was highly likely that the Democratic Party would again take a strong pro-abortion position, while the Republicans would if anything strenghten their 1980 anti-abortion stand. Thus, whatever the cardinal intended, his words would be closely scrutinized as to their political implications.

In 1983 no one foresaw that the Democratic vice-presidential candidate a year hence would be a Catholic woman who could legitimately be described as fanatically pro-abortion, nor that the Catholic governor of

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New York would deliberately make himself the public spokesman for "pro-choice" Catholics and openly challenge the right of his archbishop to make moral pronouncements on the subject. These developments gave added significance to Cardinal Bernardin's 1983 statement.

In a lecture at St. Louis University three months after his Fordham speech, the cardinal undertook to clarify his earlier remarks in the light of the controversy they provoked. He noted that, while abortion, war, and capital punishment could not be "collapsed" into one issue, each showed a disregard for human life. Not all Catholics need be equally concerned about every issue, but it is imperative, the cardinal insisted, that the way in which each issue is approached be related to each of the others.

As a statement of general principle (that Catholic morality forbids abortion and the deliberate killing of civilians in war) the speech was one to which most people could give assent. The major question, which was not laid to rest by the St. Louis talk, was what specific applications were intended. Cardinal Bernardin noted that the "life issues" require close political analysis, and an evaluation of parties, platforms, and candidates with respect to those issues. But he offered no guidance on how to do this. In response to questions, he acknowledged that it is possible to establish priorities for such issues, but again gave no indication what those priorities should be.

Any evaluation of Cardinal Bernardin's principle depends in part on knowing whom, primarily, he was addressing. Both talks were given at universities, which are communities not particularly noted as hotbeds of anti-abortion sentiment and which harbor people who are openly pro-abortion and many others who find the whole subject uninteresting or unimportant. At most Catholic institutions only a handful of faculty are publicly identified as anti-abortion, and campus pro-life groups are likely to be small and rather marginal.

It might have been reasonably assumed, therefore, that the cardinal's purpose was to persuade liberal academics to take the abortion issue more seriously. The fact that both talks were given at Jesuit institutions added to the reasonableness of that expectation, since the Society of Jesus corporately (as distinct from a few of its members) has given practically no support to the anti-abortion movement, and one of its most prominent American members, Father Robert Drinan, has been one of the most effective and dedicated pro-abortion advocates in public life.

However, a close perusal of the two speeches gives little hint that they were aimed at Catholic liberals inclined to dismiss abortion as a conservative cause. Indeed, the cardinal seemed to recognize this fact, in his revealing comment that his Fordham speech had been praised by those who do not ordinarily agree with Catholic moral doctrine and was criticized by anti-abortion activists who feared that he was undercutting their position. In other words, people on both sides of the abortion debate understood the Fordham speech as a move away from the "narrowness" of classical Catholic morality. Put another way, while many anti-abortionists thought they were being told that they would henceforth have to broaden their concerns, few of those who favor abortion seemed to think that it applied to them. They too understood the speech as aimed at "single-minded" anti-abortionists. Despite the fact he has had numerous opportunities to do so, Cardinal Bernardin has never contradicted that impression.

If the Fordham speech is taken literally, its political message is that Catholics should henceforth support candidates and parties which are "consistent" in their opposition to abortion, expanded arms production, and capital punishment. But such advice has little relevance in the real world, since neither the Democratic nor the Republican parties qualify under that rubric. Indeed, last spring the leftist *National Catholic Reporter* surveyed both houses of Congress and found that only three senators and seven representatives fit the definition. Thus, if Cardinal Bernardin's advice were taken literally, the vast majority of voters would have no one at all they could support.

Cardinal Bernardin is not politically naive, however, and many anti-abortionists believe that his principle was meant to serve a different purpose. First it set up criteria as to who is or is not genuinely "pro-life." Then on that basis it was discovered that most politicians fall far short on one or another point. Thus in effect voters are being told that, absent the ideal candidate, they must settle for an approximation, someone who qualifies on some counts but not others. It is here that the matter of priorities becomes crucial, since it is essential to know whether some lapses from the definition of "pro-life" are more serious than others. By refusing to indicate those priorities, Cardinal Bernardin made it legitimate for Catholics simply to choose. He has, in short, provided a rationale for voting for pro-abortion candidates, on the grounds that, while their stand on abortion is regrettable, it is not serious enough to disqualify them.

Cardinal Bernardin's bland insistence that he has no wish to dilute the anti-abortion witness was undercut by the very terminology he chose to employ. Anti-abortionists had pre-empted the "pro-life" name for themselves, to the point where even many of their opponents were resigned to letting them use it. Frequently, however, they have been accused by other opponents of being inconsistent and of claiming the "pro-life" name without justification. By his "seamless garment" theory Cardinal Bernardin in effect accepted those criticisms, admitting that those who are merely anti-abortion cannot in justice call themselves "pro-life" and implicitly admitting that anti-abortionists have indeed been short-sighted and inconsistent in their concerns. The praise heaped on his Fordham speech stemmed in great part from a realization, by many who are not enthusiastic about the anti-abortion movement, that this was precisely its import.

If Church leaders in the United States sincerely want to weave a seamless garment, the obvious starting place would seem to be liberal Catholic politicians who are pro-abortion. It is hardly reasonable to expect to convert Jesse Helms, for example, to a liberal position on any issue. But Edward Kennedy, Tip O'Neill, Geraldine Ferraro, Mario Cuomo, and numerous others profess to be personally opposed to abortion, to believe that it is a moral evil. Presumably, therefore, a major attempt at moral suasion directed at them might bear fruit.

Within the Church itself, numerous individuals and groups have sprung up in recent years purporting to be concerned with "peace and justice." Priests and religious are conspicuous in their ranks, and virtually all of these activists profess t be motivated by the highest fidelty to religious and moral principles. Presumably, once again, it should require no great effort to convince them of the need to add abortion to their list of crucial issues and to campaign against it with the same fervor they generate against nuclear arms and capital punishment.

No such effort has been made, however, and the American bishops continue to give both active and passive support to "peace and justice" groups which ignore abortion and even support pro-abortion candidates for public office. One of the most self-consciously "Catholic" politicians in Washington is Senator Patrick Leahy of Vermont, who functions as almost a quasi-official spokesman for the bishops on war/peace issues. Yet Leahy remains determinedly and consistently pro-abortion.

Among "peace and justice" activists the abortion issue is commonly disdained as the property of the "far right." But such an attitude shows incredible moral obtuseness—no one is exempt from opposing moral evil simply because of the faults of others who oppose it. It is, similarly, politically short-sighted—the abortion issue would cease to be the property of the "right" if liberals would espouse it.

With a few exceptions, however, this will never happen, because a woman's "right" to an abortion has been decreed by liberal ideology as not even open to discussion. Catholic liberals realize this, realize that they have no chance of persuading other liberals to change their minds. Even to raise the issue is to risk fragmenting the liberal movement. Hence few Catholic liberals are willing to raise it. (Catholics in the Democratic Party also know that they stand little chance of aspiring to national office if they oppose abortion.)

Liberal bishops no doubt regret sincerely that most liberal politicians favor abortion, but these bishops also value the goals of the liberal movement too highly to risk sundering it. Hence a formula like the "seamless garment," while ostensibly making abortion an integral part of any liberal program, in fact does the opposite—it provides a rationale for those who want to avoid abortion in making their political judgements.

The significance of Cardinal Bernardin's Fordham speech cannot be grasped fully without some understanding of the internal situation of American Catholicism itself. Throughout his episcopal career, which began in 1966, Bernardin has been impeccably "balanced" and "moderate" in all his public statements, and few of his public utterances could ever be faulted from the standpoint of Catholic orthodoxy. But at the same time he has presided, for most of the period since 1968, over the process by which American Catholicism has moved steadily to the left, not only politically but also theologically. There is now a sizeable body of Catholics, including many priests and religious and some bishops, who are openly at odds with the Pope on issues like the ordination of women to the priesthood, priestly celibacy, divorce, and birth control. Cardinal Bernardin has remained their hero, continuously and lavishly praised.

While Archbishop John J. O'Connor of New York, who has made it clear that abortion remains the Church's issue of first priority, was being attacked by the New York *Times*, even before he had been installed, Cardinal Bernardin has enjoyed media coverage which is favorable to the

point of being adulatory, part of that adulation based precisely on the claim that has deemphasized the abortion issue and rebuffed "fanatical" anti-abortionists. During the early part of the 1984 campaign, for example, Roy Larson of the Chicago *Sun-Times* wrote an article headed "In Religious Terms Chicago Is a Class Act," contrasting the supposedly suave and "nuanced" style of Bernardin with O'Connor's "erratic" behavior. The archbishop of New York, who holds a doctorate in political science and is intellectually one of the best qualified American bishops, was dismissed as having "acquired the habit of talking before thinking."

Besides arguing that principle requires that abortion be linked with other life issues, Cardinal Bernardin also argues that there now exists a "new moment" in American society which makes such a linkage propitious, that sceptics may now be won over to the anti-abortion cause by noting the "consistency" which now characterizes that cause. Yet such has not happened, nor does it seem likely to. As noted, not even liberal Catholics, who profess to be personally opposed to abortion and who hailed the Fordham speech, have seen fit to enter the anti-abortion struggle.

Cardinal Bernardin played the key role in drafting the American bishops' pastoral letter on war and peace which was issued last year and which was generally recognized as showing that the bishops had moved considerably to the left on public issues. Criticized by many conservative Catholics, the letter was extravagantly praised in much of the secular media and brought the bishops expressions of support from people who ordinarily have little good to say about the Catholic Church.

It might therefore be assumed that, having built up considerable moral capital in the liberal community, the bishops would be listened to with a new seriousness when they speak on abortion. Such, however, has not been the case. The very people who hailed the bishops as "prophetic" and "courageous" when they seemed to be espousing liberal conventional wisdom have now resumed attacking them when they once again dare to "impose" their views on abortion.

This is hardly surprising, nor is it particularly significant. For, despite the "seamless garment" idea, both liberals and conservatives in 1983 perceived the war/peace letter as meaning that the bishops were moving away from their preoccupation with abortion. An attempt in the letter to link abortion to the questions of war was simply ignored by liberals who

welcomed the rest of the document. Certain journalists, like Mary McGrory of the Washington *Post* and Evarts Graham of the St. Louis *Post-Dispatch*, condescendingly praised the bishops in 1983 for having at last done something "significant," then denounced Archbishop O'Connor in 1984 for violating the separation of church and state. As many both inside and outside the Church understand, the bishops are permitted to be "prophetic" only when they are serving the liberal consensus, not when they are moving against it.

Cardinal Bernardin once again reiterated his position at the 1984 National Right to Life convention, meeting with a tepid response. But it is worth noting that, although anti-abortion activists have been the main people objecting publicly to the "seamless garment," the fabric has also been ripped from the left. One of the leading American Catholic "peace activists" is Professor Joseph Fahey of Manhattan College, a former president of the American branch of Pax Christi, an international anti-war group to which a number of bishops belong. Not long after Cardinal Bernardin's St. Louis speech, Fahey was among the signers of an appeal by Catholics for a Free Choice, a pro-abortion organization, asking Catholic scholars to endorse a statement upholding a woman's "right" to an abortion. Catholic social-action groups like Network continue to give enthusiastic support to pro-abortion politicians.

Also intriguing have been the actions of journalist Jim Castelli, the Washington correspondent for *Our Sunday Visitor*, the Catholic newspaper with the largest circulation in the United States, which is sold in perhaps a majority of parish churches.

In 1976 Castelli worked for National Catholic News, the bishops' official news agency, and from that position wrote a series of articles, mainly published in the diocesan press, which criticized the anti-abortion movement for its "narrowness" and "fanaticism." Castelli has also published a book purporting to be an "inside" account of the drafting of the war/-peace letter, a work in which Cardinal Bernardin emerges once again as a hero of enlightenment and Archbishop O'Connor is treated as a villain.

In his *OSV* dispatches, Castelli frequently defends the bishops from the criticisms of conservatives who are unhappy with the bishops' stand on military matters and the economy, his recurring claim being that these conservatives are trying to silence the authentic voice of Catholic morality. At the same time, Castelli has worked closely with Catholics for a

Free Choice, on one occasion participating in a workshop (organized by Geraldine Ferraro) held to convince Catholic politicians that it is politically safe to support abortion. In his presentation on that occasion, Castelli predicted that the bishops would dampen their campaign against abortion, because many bishops are concerned that the issue has been co-opted by the New Right. To the degree that Castelli can be considered knowledgable about internal Church matters, his prediction can be seen as acheiving partial fulfillment in Cardinal Bernardin's Fordham speech.

In 1976, Archbishop Bernardin, then of Cincinnati, was president of the American hierarchy, and in that capacity went with an episcopal delegation to interview both presidential candidates. Afterwards they announced they were "encouraged" by Gerald Ford's position on abortion, "disappointed" by Jimmy Carter's. These mild expressions called forth an enormous outcry in the liberal media, with the bishops hysterically denounced for violating the First Amendment and "imposing" their morality on the rest of the country. But the discontent was not confined to the liberal media: staff members of the United States Catholic Conference reportedly threatened to resign unless the bishops retracted their statement, which they then proceeded to do.

The episode points to another major dimension of the issue. Ecclesiastical bureaucrats at all levels tend now to be liberal in both their political and religious opinions, and to resent the aggressiveness and influence of the anti-abortion movement. Beneath the level of the bishops themselves, many bureaucrats make deliberate efforts to weaken or dilute what they regard as an unfortunate Catholic obsession with abortion. Many of them believe that they now have at least the tacit support of a substantial number of bishops.

In 1980, Ronald Reagan and the Republican Party espoused an anti-abortion position far stronger than almost anyone anticipated even four years before, and the President's commitment is no longer in doubt. In 1980 Catholics also voted Republican in almost unprecedented numbers, a fact which was a source of great dismay to the "peace and justice" Catholics who have come to regard the program of the left wing of the Democratic Party as virtually synonomous with Catholic social doctrine.

Many such liberals, including once again many in sensitive ecclesiastical positions, are anxious to prevent a recurrence of that pattern. Although it is not clear to what extent the abortion issue was the deter-

mining one with respect to the 1980 Catholic vote, it obviously binds to the Republicans those people who consider abortion one of the greatest moral evils of the day. Recognizing that there is no chance of getting the Democratic Party to change its pro-abortion stance (and, indeed, not even willing to make the effort) these liberals have tried to deflect concern away from abortion in 1984.

In addition, and probably in fortuitous conjunction with that concern, the official leaders of the Church in the United States seem determined in 1984 not to lay themselves open to the same charge of political partisanship to which they were subjected in 1976. Thus they have gone to elaborate lengths to officially espouse a stance of non-partisanship and neutrality.

The United States Catholic Conference has issued a position paper on the 1984 elections in which it urges Catholics to "take stands . . . become involved . . . inform your conscience." The statement rejects any "right" to an abortion and opposes public funding. However, it also tells voters to give attention to arms control, capital punishment, civil rights, the economy, education, energy, family life, food and agriculture, health, housing, human rights, and Central America. The bishops' official spokesmen went before the platform committees of the two major parties to make similar pleas, and on balance it is not unreasonable to infer that, given the bishops' perspective on most public issues, their preference is in effect for the Democrats, since the abortion issue is always outweighed by the long list of which is merely a part.

In March the general counsel of the USCC, Wilfred Caron, who has shown himself unfriendly to the anti-abortion movement in the past, issued a memorandum warning Church leaders that they run the risk of losing ecclesiastical tax exemptions if they are perceived as too partisan or aggressive on public issues. Given the rhetoric which surrounded the bishops' "prophetic" leap into the public arena in their war/peace letter, it might be assumed that they would vigorously resist Caron's advice in the name of truth. Instead some bishops have gone out of their way to accept these restrictions on their public role.

Thus Archbishop James A. Hickey of Washington has issued guidelines in which he warns his flock against making political judgements on the basis of a "single issue" only. He goes on to tell church officials not even to appear to endorse or oppose specific candidates, either directly or

indirectly, and not to give permission for partisan literature to be distributed on church property, noting that it is legally debatable whether churches can actually prohibit the distribution of such literature on their property.

Whatever Archbishop Hickey may have intended, Marjorie Hyer, the religion reporter for the Washington *Post*, attributed the statement directly to Cardinal Bernardin's "seamless garment" concept and said it represented the bishops' desire to move away from a "narrowly partisan" approach to politics. She noted several past incidents in which church authorities publicly opposed pro-abortion politicians and inferred that the archbishop was attempting to prevent a recurrence of such incidents.

Archbishop Patrick F. Flores of San Antonio has issued a statement similar to Archbishop Hickey's but he adds that "A Christian's social concerns should extend over the entire spectrum of social issues" and warns that the guidelines have to be "impartially applied to all candidates or parties, whether an individual candidate or party supports the Church's position on a specific issue or not."

Archbishop Edmund Szoka of Detroit has demonstrated neutrality in action, first suspending a priest who served as a delegate to the Democratic national convention, then publicly rebuking another priest who endorsed an anti-abortion candidate for state office. Meanwhile, however, Archbishop John R. Roach of St. Paul-Minneapolis has indicated that he sees nothing wrong in the fact that one of his priests also served as a Democratic delegate.

Caron's memorandum applies to the Catholic press, which is advised to avoid all appearance of partisanship and even to "avoid labeling a candidate as pro-abortion . . ." Although such advice seems to go to the heart of freedom of the press, few Catholic editors have questioned it. The result, in the diocesan press, tends to be headlines so "neutral" as to be evacuated of all content, such as "Gov. Cuomo, Abp. O'Connor Comment on Voting for Pro-Choice Candidates" and "Growing Controversy over Religion, Politics in Presidential Race."

The nomination of Geraldine Ferraro inevitably gave the abortion issue an even greater prominence than it would otherwise have had, since she quickly established her identity as a "liberated" Catholic who is proud to be counted as "pro-choice." Governor Cuomo, credibly rumored to have engineered her nomination, looms behind her as a kind of *eminence grise*,

articulating even more aggressively the position of the Catholic for whom abortion has ceased to be an issue at all.

But the episcopal equation in the United States was changed during the course of 1984 by the promotion of two prelates—Bishop John J. O'Connor to head the archdiocese of New York and Bishop Bernard F. Law to be archbishop of Boston. Both immediately began to make it clear that abortion is still the premier moral issue in American life, addressing that issue at every opportunity.

In mid-summer Archbishop O'Connor was plunged into controversy when he said publicly that he did not understand how any Catholic could vote for a "pro-choice" politician. He was immediately attacked by Governor Cuomo, to whom the New York *Times* gave almost unlimited space to accuse the archbishop of partisanship and of threatening the liberties of non-Catholics. Thus the Catholic governor now sounds the alarms which were rung by anti-Catholic bigots in the days of John F. Kennedy.

Cuomo, however, goes much farther than the usual "I am personally opposed to abortion, but . . ." formula. Instead he has set himself up as a kind of theologian, informing Catholics that Christ did not condemn abortion and indicating that through reading theology he has worked his way out of the "narrow" and "negative" religion of his youth.

Once again the liberal media perceives in Cardinal Bernardin an "enlightened" foil to those bishops—in this case Archbishop O'Connor—who still seem not to understand the American system. Such, for example, was the burden of an article in the Chicago *Sun-Times*, in which the cardinal was lavishly praised by Chicago Catholics ordinarily known for their dissent from various Church teachings.

Shortly after the Cuomo-O'Connor confrontation, the current president of the American hierarchy, Bishop James W. Malone of Youngstown, Ohio, issued a statement affirming the Church's right to speak on public issues and criticizing politicians whose policies are at odds with their stated moral beliefs. Most of the media interpreted the statement as support for Archbishop O'Connor, although the *Times* gave it the opposite reading, claiming that Bishop Malone was opposing "partisanship." Later, however, Russell Shaw of the USCC published what was probably a semi-official interpretation of Bishop Malone's statement, in which he said that the bishop was indeed supporting the archbishop and that the

Times analysis was not based on the full text of the document.

Meanwhile, Congresswoman Ferraro has continued polishing her pro-abortion credentials, telling one audience that she would willingly pay for an abortion if her daughter needed one and that it is "overly generous" even to say that pro-lifers are concerned about life prior to birth.

For the entire history of the abortion debate certain code words have functioned as emotional triggers, one of which—"single issue"—was devised by "pro-choice" activists as a charge of moral narrowness. It has now been taken over by the bishops themselves. So also the word "partisan" has been understood in 1984 to mean chiefly a bias towards the Reagan administration over the abortion issue, even as other kinds of Catholic partisanship have been nothing short of blatant.

The 1983 war/peace letter is the most obvious example, since during the debate which preceded it several bishops publicly exulted in their emerging conflict with the Reagan administration. The liberal media were virtually unanimous in seeing the letter as a slap at the administration, and they welcomed the confrontation.

So too the bishops, including especially Cardinal Bernardin and Archbishop Hickey, have been consistantly and outspokenly critical of the administration over its policies in Central America, without apparently thinking of themselves as "partisan" in any way. One of the most startling examples of partisanship occured when a delegation of bishops visited the White House last April for what were described as cordial talks with the President. As the delegation emerged, however, Bishop Malone produced an already-prepared statement denouncing the administration for its policies in Central America. (It is significant that, in seeking an example of an unacceptably "partisan" position, Wilfred Caron chose abortion rather than Central America.) Even as Archbishop Flores was issuing his statement percieved as directed at the anti-abortion movement, a priest in his archdiocese, Father Tim McCluskey, was described as using the pulpit, week after week, to "beseech" his Hispanic parishoners to vote. McCluskey is involved with activist groups highly critical of the Reagan administration.

The National Conference of Catholic Charities, representing numerous tax-exempt organizations in all parts of the country, has been severely critical of the Reagan administration. The organization's president, Father Thomas Harvey, in 1982 endorsed a pro-abortion candidate for Congress

in California, and in 1984 the organization went on record as calling the social policies of the Reagan administration "totally unacceptable."

Just before Labor Day, an ecumenical group in California announced that it was forming a coalition to oppose the President's reelection and said that it would, among other things, seek to use diocesan commissions of peace and justice to that end. In fact numerous public positions taken by Church bodies are clearly partisan, but in 1984 it is understood that, in using the word, the bishops are mainly referring to the anti-abortion movement.

Archbishops O'Connor and Law are by no means alone in emphasizing the critical importance of abortion as a public issue. Strong statements have been made, at various times, by the bishops of Connecticut, New Jersey, and Iowa, for example. However, Governor Cuomo is correct in thinking that Catholic opinion is not solidly anti-abortion and that some political capital can be accumulated by espousing the pro-abortion cause.

Feminist nuns, for example, are on record as supporting legalized and publicly-funded abortions. Privately many priests, including some in sensitive church positions, agree with the nuns, although in the present atmosphere most are not likely to say so publicly. A much larger number sincerely believe that abortion is wrong but also regret that it has become an issue of such importance. They long for it simply to disappear, so that the "real" public agenda can be addressed by the Church without distraction. For all such people the key problem in 1984 is how to deflect attention away from the blatantly pro-abortion stance of the Mondale-Ferraro ticket.

The most obvious strategy is the one already alluded to in the USCC's official warnings against partisanship, namely, an elaborately "even-handed" analysis of issues, so that on balance abortion is put in a properly modest place. Thus an NC News dispatch, following the Democratic convention, emphasized that the ticket got both good and bad ratings from Catholic spokesmen, depending on which issues were addressed. Bishop Malone, in an interview with an NC News reporter, also emphasised the need for a "multi-issue" stand. Archbishop Law had given a powerful anti-abortion speech before the Knights of Columbus, but Bishop Malone observed, in his interview, that he hopes the day will come when the Knights will address a "full range" of public issues. The Catholic press, including diocesan newspapers, have been littered with

letters, often from priests or nuns, warning Catholics that being "pro-life" means being more than simply anti-abortion. The bishop of Bismarck, North Dakota, John F. Kinney, barred Joseph Scheidler, a veteran anti-abortion activist, from speaking to the North Dakota Right to Life convention, because Scheidler was critical of the bishops' war/peace pastoral.

The full range of Catholic positions is reflected in a survey of the Bay area by the San Francisco *Examiner*. The paper was first told by a spokesman for the Archdiocese of San Francisco that politicians who say they are "personally opposed" to abortion but still vote for it are "morally schizophrenic." Bishop John S. Cummings of Oakland also noted the contradiction but urged voters not to look at only one issue, observing that Ms. Ferraro might be closer to Catholic social teaching on other subjects. Even this was not enough for Father Raymond Decker, a diocesan official, who affirmed his support for legalized abortion and said the Church must respect "other people's consciences." (Decker has been militantly pro-abortion ever since the Supreme Court first legalized the practice in 1973. This has not prevented his being given a series of responsible positions in both the San Francisco and Oakland dioceses.)

In gathering its bouquet of Catholic opinions the *Examiner* managed to uncover the nation's first openly "pro-choice" bishop, Francis A. Quinn of Sacramento, who told the paper "We are agonizing over the women's right and over the right of the man or woman in the womb." Calling it a "terrible agony," he continued, "We are still struggling with it." Last year a professional pro-abortion activist was invited into the Sacramento diocese to speak at a "peace" workshop. Although the invitation was eventually withdrawn, Bishop Quinn at the time regretted that the cancellation made it appear that the Church was closed-minded. (Quinn earlier released the text of a letter which he had sent to both President Reagan and Soviet President Yuri Andropov, urging them to make peace. In the course of the letter the bishop accused Reagan of appealing to the "lower instincts" of the voters by his strong anti-Soviet stance.)

Predictably, some Catholic support for Ferraro has not found her abortion stance a problem at all. Thus a Jesuit in Washington, Michael Class, regretted, in a letter to the Washington *Post*, that Ferraro does not head the ticket. The Philadelphia archdiocesan newspaper portrayed her as a strong Catholic and noted the high approval she had from Network (the

very liberal "Nuns Lobby" that is, in practice, pro-abortion). Father Francis Brown, editor of the Steubenville, Ohio, diocesan newspaper, took issue with a columnist who called Ferraro "fanatically pro-abortion," saying that the designation is unfair in view of the fact that she claims to be personally opposed.

Both Ferraro and Cuomo are from the diocese of Brooklyn, and their dissent from Catholic doctrine can be seen as partly encouraged by the general atmosphere prevailing in that see. Thus when Archbishop O'Connor announced that the Church would not sign contracts with the City of New York requiring it to hire homosexuals for sensitive positions, an auxilliary bishop of Brooklyn told the media that the Brooklyn diocese has no problem with the contracts. The Brooklyn diocesan newspaper, the *Tablet*, has published articles critical of Pope John Paul II and Mother Teresa of Calcutta and, not surprisingly, siding with Governor Cuomo against Archbishop O'Connor. The *Tablet* regretted Ferraro's stand on abortion but suggested that on balance she supported Catholic social teaching and that Catholics might well vote for her.

An associate pastor of Ms. Ferraro's parish, Father John McLaughlin, has called her a "good Catholic" and said he is "proud" to belong to a Church which teaches "primacy of conscience." Another associate pastor, Father John F. Cullinane, said he is too involved with "spirituality" to raise the issue of Ms. Ferraro's voting record and judged that Archbishop O'Connor's stand on abortion belongs to a past age when people had "more security in their beliefs than they do now." Ferraro has been photographed on the steps of her church in the company of its priests.

Both Governor Cuomo and Congresswoman Ferraro can be seen as quintessential "communal Catholics" celebrated by the priest-sociologist Andrew Greeley—Catholics who continue active in the Church even after they have rejected its teachings. Following the Cuomo-O'Connor skirmish, Father Greeley wrote in the New York *Times* that religion will not be an issue in the 1984 election unless the media make it one, because, he insisted, Catholics do not differ in their view of abortion from anyone else. (Interestingly, Greeley attributed anti-abortion sentiment either to the "dictation" of the hierarchy or to a "mindless bundle of conditioned reflexes.")

One of Greeley's persistant themes is the prevalence of anti-Catholicism in American life, although he seems to spend half his time

decrying it, the other half stirring it up. His *Times* article played, as did Mario Cuomo, on old fears of Catholic power, ostensibly to quiet them. By a strange twist of logic, those who believe Catholics are likely to vote in accordance with the teachings of their church were accused of anti-Catholicism, while those who think Catholics disregard those teachings were praised for an enlightened attitude.

Greeley has espoused a pro-abortion stance for years, even as his novels celebrate the lusts—sexual, financial, and political—of a fantasized world of Chicago Catholic *arrivistes*. If some Catholic leaders want the Church's supposed "coming of age" to mean that now Catholics support unswervingly the whole secular-liberal consensus, Greeley seems to envision a world in which Catholics are simply content to enjoy political power for its own sake, essentially devoid of any moral purpose. He idolizes politicians like Cuomo and the late Mayor Richard Daley of Chicago simply because they "made it" and did not allow religion to get in their way.

Part of the burden of Greeley's article was that the anti-abortion movement is without significant political influence, a theme which pro-abortionists have been sounding for over ten years and on which Ms. Ferraro insists. Yet, despite these repeated claims, and despite periodic statistical surveys purporting to "prove" them, somehow abortion continues to make a measurable difference in elections, and there is no doubt that it has played an important role in the shift of Catholics to the Republican Party.

The 1984 elections may be the clearest test to date of the political importance of the anti-abortion movement, although that test could be blunted somewhat if, as is generally expected at this writing, President Reagan is overwhelmingly reelected. But what is definitively significant about this election is not so much the question of whether Catholics will be influenced by their Church's official teaching as the fact that, in so many ways, their own religious leaders are telling them to disregard that teaching.

Abortion and Capital Punishment

R. V. Young

On the evening of March 15, 1984, my wife picked up a ringing telephone and was immediately addressed by her Christian name. "I want you to call the governor tonight," said an urgent female voice, which continued in this vein for several seconds before my dumbfounded spouse could recognize the caller or understand the substance of her impassioned message. A few hours later, before the sun came up on March 16, James Hutchins would become the first criminal executed by the state of North Carolina in more than twenty years. The call was intended to enlist my wife's and my participation in a campaign by opponents of the death penalty to inundate the governor's mansion with last-minute pleas for clemency. Mrs. Young's feminine wisdom enabled her to disengage from the conversation by thanking the lady for the information. God, who loves peace and concord, had arranged it so that I was teaching an evening class and so did not become involved.

The lady who had called had been hired along with her husband to supervise the various family-oriented programs of the Roman Catholic Diocese of Raleigh. We had made their acquaintance as a result of our anti-abortion activities. On two or three occasions my wife and I had served as the pro-life representatives at an informal gathering of laymen who discussed family concerns under the aegis of the diocese. Once or twice I had been asked to defend the right to life on a radio or television broadcast. We had probably met with this lady or her husband no more than half a dozen times over a period of three or four years, and all our contacts were the result of our well-known opposition to abortion.

Given this context it would seem that the effort to solicit our support for a clemency campaign for James Hutchins entails a number of assumptions: that anyone who is opposed to abortion must *ipso facto* be opposed to capital punishment, that capital punishment is condemned by Catholic teaching to the same extent as abortion, that the Church can call upon the faithful to adopt the same public attitude toward capital punishment as

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toward abortion.[1] Indeed, opposition to the death penalty, at least in the Diocese of Raleigh, seems to be the more pressing issue. Although our caller may have been acting on her own initiative, capital punishment seems to engage a disproportionate share of the time and attention of ecclesiastical officials. Yet in this respect the Diocese of Raleigh is hardly unique. By now Cardinal Bernardin's "seamless garment" theory, first set forth in an address at Fordham in the autumn of 1983, is well known. In effect the Archbishop maintains that pro-life consistency requires the acceptance of a long list of proposals generally considered part of the most "liberal" political agenda.[2] Basically the same viewpoint was presented to the Democratic Platform Committee in the testimony of Bishop Eugene Marino on June 12, 1984 on behalf of the United States Catholic Conference. In an agenda that put the USCC on record as favoring national health insurance and a nuclear freeze, and opposing capital punishment as well as abortion, the latter received first position only by virtue of alphabetical order. No distinctions were drawn regarding the basis on which the bishops arrived at their positions on various issues.[3]

Now this is a dangerous and not merely a curious state of affairs. The Catholic Church represents one of the chief institutional foes of abortion, and the confusion and dilution of Catholic doctrine regarding the right to life can only have a deleterious effect on the entire anti-abortion movement. Of all the myriad issues which Cardinal Bernardin and the USCC have sought to gather under the pro-life umbrella, capital punishment is the most troublesome. There is, at least, a *prima facie* case to be made that a pro-life position forbids the killing even of a dangerous criminal with deliberation and direct intention. Moreover, a plausible case can be made against the death penalty on prudential grounds: it can be seen as degrading to society in general and especially to those individuals involved in carrying it out. But however valid these objections may be, infliction of the death penalty cannot be construed as a violation of the right to life in the way that abortion, euthanasia, and infanticide are; and the equating of prudential and humanitarian considerations with the firm principle which forbids the shedding of innocent blood can only serve to weaken that principle. Whether one approves or disapproves of capital punishment, it is a moral error to categorize it with abortion, and it is a strategic error of serious magnitude to include the two issues on the same political agenda.

It is difficult to see how any Christian could regard capital punishment as absolutely forbidden by his religion. It is mandated for a variety of crimes in the Old Testament,[4] and it is never explicitly forbidden by Our Lord in the New Testament. The episode in which He saves and forgives the woman taken in adultery (John 8:3) seems to be an instance of stymying malicious and vindictive mob action, rather than the institution of a new prohibition. It is surely a recommendation of mercy, but it does not imply that the death penalty in never to be exacted. It was certainly not so interpreted by the overwhelming majority of Christians before the twentieth century, doubtless because they took seriously the words of St. Paul regarding the power of earthly rulers: "For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil" (Romans, 13:4). It seems clear that a distinction is here established between the wrathful vengeance of an individual, or of a mob, and the legal "vengeance" of the state charged with the maintenance of public order and security.

There is the Catholic tradition, of course, an authoritative treatment of the issue by St. Thomas Aquinas. St. Thomas poses directly the question, "whether it be lawful to kill sinners?" (*Summa Theologica*, 2a2ae. 64, 2) and gives an unequivocally affirmative reply. Criminals who threaten the community or who harm others, he argues, may be put to death by public authority. The guilty may be killed, then, for the sake of the common good, but subsequent articles of the same question (*De Homicidio*) insist that death cannot be inflicted by a private individual (article 3), that suicide is never lawful (article 5), and that the killing of the innocent is never permissible (article 6). The distinction drawn between the guilty and the innocent is particularly noteworthy:

> A man turns away from the rational order by sinning, and therefore he declines from human dignity, to the extent that a man is evidently by nature free and exists on his own account. . . . And although it is therefore inherently evil to kill a man who remains in his natural dignity, it can, however, be good to kill a sinner, just as to kill a beast.[5]

The Angelic Doctor's terms are unlikely to please humanitarian liberals, but the point he makes is crucial. Even fallen human beings retain an inherent natural dignity insofar as they are rational creatures capable of free choice and self-determination. This dignity is not lost when it is not

wholly realized, as in children (born or unborn) below the age of reason, in retarded persons, or in the senile: the capacity, hence the dignity, is present by nature even if it is as yet unfulfilled or even permanently impeded. It is rather the source of this dignity—that man is "by nature free"—that enables him to lose it. Freedom and dignity are in some measure vitiated by sin, by freely abusing the privilege of rationality. It is at the point when a man's sins threaten the common good—when his sins become crimes—that he can be treated in accord with the diminution of his human dignity.

So far as I know there is no more important treatment of capital punishment in the Catholic tradition. There is no magesterial statement, papal or conciliar. While the second Vatican Council explicitly condemns abortion and infanticide as "abominable crimes" (*Gaudium et Spes*, #51), and is eloquent on the subject of war (ibid., #s 77-82), the Council documents never mention capital punishment. To be sure there is no magisterial affirmation of the death penalty; apparently it has simply been taken for granted as one weapon in the arsenal of the state for maintaining order and exacting justice. Presumably, the clear condoning of the death penalty in Scripture, buttressed by the theological support of St. Thomas Aquinas, has been regarded as decisive.

Now there is nothing to prevent a pope or council in the future from promulgating dogmatically the immorality of capital punishment, since the matter has not been formally defined. It is certainly not inconceivable that an authoritatively revealed interpretation of the relevant New Testament passages and their relation to the Old Testament might differ from the common-sense interpretation. Such a magesterial statement does not, however, appear to be imminent, and no one, I trust, is holding his breath. In the meantime any Catholic who wishes to make opposition to capital punishment as high a priority in the Church as opposition to abortion, or even tuition tax credits, should be engaged in a rigorous course of reasoning and scriptural exegesis. It is incumbent on him to demonstrate that St. Thomas' theological argument and the Church's traditional acceptance of capital punishment are in fact incompatible with the deposit of faith handed down by the Apostles. There is no other procedure entitled to intellectual and moral respect within the Catholic community.[6]

This approach is not much in evidence at present. Cardinal Bernardin's "seamless garment" theory, and Bishop Marino's testimony on behalf of

the USCC, are couched in the vague terms of ideological humanitarianism rather than Catholic moral theology. This tendency is further reflected on the local level. In my own area the diocesan press treats the incompatibility of Christianity and the death penalty as a self-evident axiom: no real argument is even allowed to develop. The approach instead is to build sympathy for individual deathrow inmates. An emotionally charged portrait of a condemned criminal is presented with the implication that this person must not be executed because of his own peculiar sufferings or situation. What is offered in this way is an appeal to sentimentality which simply ignores the pertinent theological and moral issues. In fact, it is arguable that such clemency campaigns demean through trivialization the remaining dignity of the prisoner by denying him any real responsibility for his actions. In effect, the criminal is reduced to a pawn in a "liberal" political program.

In the winter of 1984 both the dioceses of Raleigh and Charlotte centered attention on the fate of James Hutchins. As I now write, in the summer of 1984, the focus is turned upon Velma Barfield, convicted in 1978 for the murder of her fiancé by poisoning. In addition, Mrs. Barfield has admitted to poisoning her mother and two elderly persons in her care, for whose deaths she has not been convicted. The *North Carolina Catholic* of June 24, 1984, which appeared shortly after an August execution date was set for Mrs. Barfield (the Supreme Court has since granted a stay of execution), features a large photograph of the woman on the cover. The story on the inside, "Clemency Is Final Hope for Velma Barfield," includes another photograph of the prisoner, now seated with her son, daughter, and two grandchildren, with one of the grandchildren on her lap. The same photographs are used in a leaflet about Velma Barfield that was recently available in the vestibules of parish churches. The newspaper account, like the leaflet, is less a news story than an invitation to the reader to join in a clemency campaign on behalf of Velma Barfield. Indeed, the story ends by soliciting letters to the Governor, to be channeled through the Margie Velma Barfield Support Committee, of which the address is given.

Mrs. Barfield's impending execution is opposed essentially on two grounds: first, that at the time she committed the murder she was not responsible for her actions as a result of a miserable childhood and an addiction to prescription drugs; second, that she is now, in any case, fully

rehabilitated and poses no threat to society. "Who is Velma Barfield?" asks Pam Smith, author of the *North Carolina Catholic* article, and then answers her own question:

> She is a person who was physically and sexually abused as a child, was a victim of poverty, and was married to a husband with alcohol problems. Eventually she was a victim of the drugs meant to help her cope with her pain and depression.

The article then gives testimony from a prison social worker and Mrs. Barfield's present attorney to the effect that she is an altogether changed person: a Christian and an inspiring friend and counselor to other inmates.

Now the fact is, this portrayal of Velma Barfield, both pictorial and verbal, is sentimental and selective. Although the article in the paper presents her as wholly irresponsible for her actions, a victim of drugs prescribed to her by her physicians, it neglects to mention that she had sufficient wits about her to take out life insurance policies on her victims, with herself as beneficiary, or that she professed herself a Christian and affected a pious air at the time of the killings. An angry joint letter from the daughters of two of these victims, printed in a subsequent issue of the *North Carolina Catholic* (July 22, 1984) puts the entire affair in a rather different light:

> Dr. Horace M. Baker, M.D., testified at her trial that he saw Mrs. Barfield on the afternoon she gave the poison to Stuart Taylor and that he saw her again two days later while Stuart Taylor lay on his death bed. At neither time was she under the influence of drugs.
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> In her article Pam Smith said that Mrs. Barfield has now learned to reach out. She reached out to us by reassuring us that our parents were in good hands, that she really cared about them while they lay on their beds twisting and turning in pain. Yes, we found Mrs. Barfield a friend and religious counselor at the time of the loss of our fathers.

It is painful to imagine the sense of mortification and frustration that must have prompted this letter; if for no other reason Pam Smith and the editors of the *North Carolina Catholic* should feel ashamed for their fulsome glorification of Velma Barfield. Of course, the grief and anger of the relatives of murder victims do not constitute a sufficient cause for application of the death penalty; this decision can only be based on the common good insofar as it can be determined. The point is that the appeal to sentiment cuts two ways and is finally self-cancelling. The law can no more weigh the feelings of the friends and relatives of Velma Barfield

against the feelings of the friends and relatives of her victims than it can judge the state of Mrs. Barfield's soul.

Liberal Catholic opinion, however, seems bent on pursuing its political goals irrespective of considerations of justice and the common good as defined by Catholic tradition. The *North Carolina Catholic* has mounted a fervid, highly emotional campaign against the death penalty as if the only concern were individual inmates. At the end of her article Pam Smith includes a plea for articles to the Governor on behalf of Velma Barfield: "Letters should be concerned with Velma Barfield as an individual," the reader is instructed, "rather than general opposition to the death penalty." But the real issue is not Mrs. Barfield, but the death penalty itself. As we have already seen, diocesan bureaucrats were equally concerned to save James Hutchins from the death penalty and resorted to the same sentimental tactics. But if capital punishment is *ever* justifiable, then it must be justifiable in the case of a man like Hutchins. He gunned down three police officers, none of whom was in a position to defend himself effectively. They had been summoned by Hutchins' own daughter whom he had terrorized in a drunken rage. It was not an isolated incident. Some years before he had done time in the New Mexico penitentiary for manslaughter; that is, he had killed, been imprisoned, been released, and killed again. Like Hutchins, Velma Barfield has become a means of opposing the death penalty through sentimentality rather than moral and theological reason.

When someone has the temerity to raise the issue of Catholic tradition in the context of the capital punishment debate, the mendacious tactics of liberal Catholicism become especially apparent. An editorial by Pam Rice, Respect Life Coordinator for the Diocese of Charlotte (*North Carolina Catholic*, July 8, 1984) maintains that one cannot consistently oppose abortion without opposing capital punishment with the same fervor. With typical casualness, the author simply assumes that the immorality of capital punishment is a settled Christian dogma: "We must speak out and not allow the judicial system of our country to prevail over our own Christian heritage to which we cling and to the teaching of our Lord whom we love." In the next issue (July 22, 1984) Tom Ashcraft, a Charlotte attorney and legislative aid to Senator Jesse Helms, reproves the editorial and the paper for "sowing confusion" among the faithful. As Mr. Ashcraft rightly observes, for Catholics the most authoritative source of

"our Christian heritage" is the Magisterium of the Church, which has always condemned abortion and never condemned capital punishment. He further notes the support given to the licity of capital punishment by the Common Doctor of the Church, St. Thomas Aquinas. Unable to refute Mr. Ashcraft's letter, the editor attempts to undermine it by adding this devious comment: "Editor's note: The U.S. bishops as a body and bishops in several states, including Bishop F. Joseph Gossman of Raleigh, have issued statements opposed to capital punishment as it is currently applied in the United States."

This is very slick. Although the comment is true, it is utterly irrelevant to the distinction drawn by Mr. Ashcraft. A national bishop's conference, as Cardinal Ratzinger has recently pointed out, lacks the canonical authority to issue doctrinal statements. The authority of these conferences is confined to liturgical matters, and then the decisions must be ratified by the Holy See.[7] To be sure, the bishop of a diocese is the supreme pastor in his own territory, but individual bishops are in no position to define new doctrine on their own. In any case, the opposition to the death penalty by the American bishops bears a queasy qualification: "as it is currently applied in the United States." This addendum takes the expressed opposition completely out of the realm of faith and morals and into the uncharted area of prudential judgment, and the political opinions of bishops are no more authoritative, much less infallible, than yours or mine. Now the editor of the *North Carolina Catholic* denies none of this explicitly, but the evident purpose of the "Editor's note" is to encourage the inference that capital punishment and abortion are equally condemned by the teaching authority of the Church. It is, to say the least, a device manifesting questionable journalistic integrity.

The impulse to oppose the death penalty is certainly not an ignoble one, and it is not impossible to conceive arguments against the execution of criminals based on sound Christian principles rather than on the manipulation of emotion. I, for one, would listen with far more patience to an argument that began by conceding that men and women like James Hutchins and Velma Barfield have committed unspeakable crimes and thereby forfeited their human rights and standing in the community. Even opponents of capital punishment tacitly admit that offenders forfeit their rights to a great extent, because life imprisonment is recommended as the alternative to death. That person whom the state can justly incarcerate for

life has obviously lost his right to freedom. Given this understanding of the situation, one could reasonably argue that capital punishment is detrimental to the general welfare of society. In our contemporary cultural *milieu*, so the argument might run, state executions inevitably involve a sensationalistic aura which tends to cheapen life in general and brutalize society, provoking as many to violence through perversity as it deters through fear. In the long run therefore it is wiser for society to take the nobler course of forbearance; no matter how vile a person's crimes are, no matter how dangerous he is, it is wiser to incarcerate him for life than to execute him. A still more powerful argument against capital punishment would simply assert that any direct or intentional killing is *always* wrong; that even the state can only wield the sword defensively and the primary effect must never be to kill.[8] What both of these hypothetical lines of argument have in common is their basis in the duties of the state and the welfare of the community and not a sentimentalized conception of the criminal, which has the effect of blurring the crucial distinction between the innocent and the guilty.

It is important to note that the state cannot be expected to forgo the death penalty as a matter of charity. In the first place, it is not proper to expect a theological virtue requiring grace of an impersonal entity. In any case, it is not necessarily charitable to inflict life imprisonment rather than death. As C. S. Lewis points out, Christian charity demands that we seek what is most likely to lead to the salvation of the perpetrator of a violent crime like murder:

> The real question is whether a murderer is more likely to repent in the execution shed or, say, thirty years later in the prison infirmary. No mortal can know. But those who have most right to an opinion are those who know most by experience about the effect of prolonged prison life. I wish some prison chaplains, governors and warders would contribute to the discussion.[9]

Such reports as we have of prison life do not suggest that it encourages spiritual edification. This is a point—however embarrassing for modern humanitarians—that no Christian can afford to ignore. Like Velma Barfield, James Hutchins was credited by the newspapers with a religious conversion before his execution. No human being can presume either to affirm or deny the sincerity and validity of these conversions, but we must ask whether repentance would be as compelling for an inmate not facing imminent death. It is precisely such considerations which lead St. Thomas

Aquinas to the conclusion that capital punishment is not a violation of charity:

> Sinful friends, just as the Philosopher says, should not be deprived of the benefits of friendship, so long as we hold a hope of their restoration; but rather we are more bound to help them in the recovery of virtue than of money, if they have lost it, inasmuch as virtue is more in accordance with friendship than money is. But when they lapse into the greatest evil and become incurable, then they must not be shown the intimacy of friendship. And therefore sinners of this sort, who are presumed more likely to harm others than mend themselves, are both by divine and human law commanded to be put to death. And yet the judge who does this acts not out of hatred but charity, by which the common good is preferred to the life of the individual. And even the death inflicted by the judge is a benefit to the sinner, either as expiation for his crime if he is converted, or if he is not converted as an end of his crime, since by death the power of sinning is taken from him.[10]

If, however, we allow the force of the arguments against capital punishment—and I am far from denying them—they must never be equated with arguments against abortion, infanticide, and euthanasia. To equate these two sets of arguments is to weaken the case against abortion and associated evils by obscuring the different relation of the guilty and the innocent to society. If society refrains from executing criminals, it is because of what the deed may be thought to do to society itself. Of course, a society which condones, indeed encourages, abortion and other killings of the innocent is headed, sooner or later, for sure self-destruction. But a prior consideration is the violation of the rights of the victims. This is not a consideration with respect to the execution of criminals: the mere fact that we punish or restrict them in any way at all implies that they have in some measure forfeited their rights, as the unborn, the handicapped, and the aged have not. The argument over capital punishment, then, is an argument over the extent and kind of punishment which is appropriate and just.

When the argument is conducted in terms of sentimentality rather than reason, there can seem to be very little difference between the death penalty and abortion. Indeed the goal of the USCC and many Catholic diocesan bureaucracies across the country seems to be to make the two issues indistinguishable in the public mind. The exploitation of emotion in what is essentially a political campaign seems a very dubious procedure for the Catholic hierarchy in the United States, for it threatens to undermine the moral authority of the Church. It is also a threat to the move-

ment opposing legalized abortion. Since the emotions can be stirred up on either side of any issue—abortion as well as capital punishment—it is perilous to rely on them. Since the current opposition to the death penalty, as it is usually formulated, has little substance but emotion, it is unlikely to convince the public. It might, however, harm the unborn, handicapped, and the aged. If opponents of capital punishment cannot articulate arguments of genuine ethical significance, they should at least refrain from similarly trivializing the case against abortion and the killing of the infirm and the aged. All the good intentions possible will not lift from these people the onus of having exposed the innocent to guilt by association with murderers.

NOTES

1. This attitude is defined in the *Declaration on Abortion* #22, issued by the Sacred Congregation for the Doctrine of Faith, on November 18, 1974: "It must in any case be clearly understood that a Christian can never conform to a law which is in itself immoral, and such is the case of a law which would admit in principle the licity of abortion. Nor can a Christian take part in a propaganda campaign in favor of such a law or vote for it. Morover, he may not collaborate in its application."

2. See "Schaeffer Notes Danger of 'Seamless Garment' Theory," *The Wanderer* (June 21, 1984), for an account of the Cardinal's address to the National Right to Life Convention in June, 1984, and the attack on his position by Franky Schaeffer at the same convention.

3. The substance of Bishop Marino's testimony is given in the *North Carolina Catholic* (June 24, 1984).

4. E.G. in Exodus 21:12-17, 29; 22:18-20; 35:2. There are of course numerous other references.

5. *Sum. Theol.* 2a2ae. 64, 3 ad 3. I have translated from the Leonine text published by the BAC in 5 vols., III, 412: ". . . homo peccando ab ordine rationis recedit: et ideo decidit a dignitate humana, prout scilicet homo est naturaliter liber et propter seipsum existens, . . . Et ideo quamvis hominem in sua dignitate manentem occidere sit secundum se malum, tamen hominem peccatorem occidere potest esse bonum, sicut occidere bestiam."

6. For objections to capital punishment in a context of sound moral theology, see Germain Grisez and Russell Shaw, *Beyond the New Morality: The Responsibilities of Freedom* (Notre Dame, IN: Univ. of Notre Dame, 1974), p. 146. Grisez elaborates his position in his recently published and massive study of Christian ethics, *The Way of the Lord*, vol. 1: *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983).

7. See Rev. Luther Groppe, S.J., "A Comparison of the Statements of the German and American Bishops on War and Peace," *Fidelity*, 3:8 (July 1984), 13.

8. For an excellent discussion of the principle of double effect in relation to the power of the sword, see G.E.M. Anscombe, "War and Murder" and "The Justice of the Present War Examined" in *Collected Philosophical Papers* (Minneapolis: Univ. of Minn., 1981), II, 54-55, 58-59, 60, 78-79. In "Mr. Truman's Degree," *ibid.*, pp. 68-69, she maintains that the death penalty is licit but "not indispensable."

9. *God in the Dock*, ed. Walter Hooper (Grand Rapids, MI: Eerdmans, 1970), p. 339. See also p. 287.

10. *Sum. Theol.* 2a2ae. 25, 6 ad2, BAC ed.: "quod amicis peccantibus, sicut Philosophus dicit, . . . non sunt subtrahenda amicitiae beneficia, quousque habeatur spes sanationis eorum: sed magis est eis auxiliandum ad recuperationem virtutis quam ad recuperationem pecuniae, si eam amisissent, quanto virtus est magis amicitiae affinis quam pecunia. Sed quando in maximam malitiam incidunt et insanabiles fiunt, tunc non est eis amicitiae familiaritas exhibenda. Et ideo huiusmodi peccantes, de quibus magis praesumitur nocumentum aliorum quam eorum emendatio, secundum legem divinam et humanam occidi. —Et tamen hoc facit iudex non ex odio eorum, sed ex caritatis amore, quo bonum publicum praefertur vitae singularis personae. —Et tamen mors per iudicem inflicta peccatori prodest, sive convertatur, ad culpae expiationem; sive non convertatur, ad culpae terminationem, quia per hoc tollitur ei potestas amplius peccandi."

Foundation Power

Mary Meehan

AMERICANS THINK OF foundations as benevolent operations that support education and the Boy Scouts, medical research and symphony orchestras. Occasionally, however, someone blows the whistle on the political role that many foundations play.

Foundation executives do not like to talk about their political role; "fascinating social change" is closer to their way of speaking. Foundations are supposed to stay out of politics in order to keep their substantial tax benefits. Instead of paying income taxes, most foundations pay only an "excise tax" of two percent on their net investment income. Donors to foundations may take tax deductions on their contributions.[1]

In reality, however, foundations can have enormous impact on politics, provided they are careful to dot their legal i's and cross their legal t's. Good lawyers keep them out of trouble. Foundations cannot contribute directly to political candidates, but they can give huge sums of money to "educational" groups that influence the political climate or even set the political agenda. They can also give to public charities that engage in lobbying, provided the latter spend no more than twenty percent of their budgets to lobby. (Groups spending more than $500,000 are held to a lower percentage.) They can give great sums to legal defense funds and to what might be called legal "attack" funds, which seek social change through the courts.[2]

Foundations do this sort of thing on issues ranging from promoting affirmative action and nuclear disarmament to opposing union organizing. An astonishing number of political changes (called "reforms" by their supporters) are bankrolled by foundations through the stages of incubation and hatching and right up to point of entry into political campaigns. Anyone who spends a few weeks in a Foundation Center library can predict with reasonable accuracy the social and political trends of the next several years.

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In the area of population control, the foundations have gone well beyond manipulation of politics. They are, in fact, trying to manipulate entire populations, here and abroad, by affecting fertility rates and birth rates. In order to do this, they are meddling with law and politics, women's health, children's lives, and the religious convictions of millions of people. They do not seem awed by the great responsibility they have assumed.

A recent survey by the *National Catholic Register*, based on foundation reports and tax returns, revealed that foundations gave more than $36 million in fiscal year 1982 to population studies and population control. A large portion of the total went directly or indirectly for abortion. Foundation money was used to finance pro-abortion litigation, to support public education and lobbying campaigns favoring abortion, and even to finance abortion facilities and equipment.[3]

It is impossible to say precisely how much of the money was spent for abortion because much of it was given to groups such as Planned Parenthood, which provide both contraception and abortion. Also, much was given to groups such as the Population Council, which generally avoid involvement with surgical abortion, but develop abortifacients such as intrauterine devices (IUDs) and anti-pregnancy vaccines.[4]

The largest donors to population groups were the Ford Foundation ($10.2 million), Andrew W. Mellon Foundation ($7.3 million) and Rockefeller Foundation ($5.2 million).[5] All financed the development of contraceptives and abortifacients and promoted population control abroad. Their favorite instrument for this work was the Population Council, founded by the late John D. Rockefeller III and heavily funded by Rockefeller family members as well as by foundations. The interest of "JDR III" in population control was intensified by a 1951 Asian trip in which he was "upset by the sight of Asia's teeming masses . . ." The patrician Rockefeller, concluding that there were too many people, went home and started the Population Council.[6] (Mother Teresa of Calcutta, a peasant's daughter who saw teeming masses in great poverty, rolled up her sleeves and started helping them.[7])

Two other foundations associated with old wealth in America, the Pew Memorial Trust and the Longwood Foundation (a du Pont family venture), were also among the top twelve donors in the population area. But most of the others were relatively obscure foundations with names such

as Huber, Jessie Smith Noyes, and Sunnen. Although small by comparison with Ford and Rockefeller, they devoted such a large portion of their resources to population control that they had impact well beyond their size. Some of them also funded radical ventures in the abortion area that the large foundations avoided. The little guys, receiving little publicity, were not obsessed with respectablity and discretion.

The following list[8] shows foundation grants received by national groups involved in population control and population studies:

Population Council	$9,376,533
Planned Parenthood (including its state affiliates and its research arm, the Alan Guttmacher Institute)	6,859,988
Program for the Introduction and Adaptation of Contraceptive Technology	2,249,200
Population Reference Bureau	621,500
Population Crisis Committee	301,000
Religious Coalition for Abortion Rights (RCAR) and RCAR Educational Fund	282,000
Center for Population Options	232,957
Pathfinder Fund	215,553
Population Resource Center	210,500
Catholics for a Free Choice	199,060
American Civil Liberties Union (ACLU) and ACLU foundations—grants earmarked for reproductive rights work	169,000
Population Institute	167,750
Centre for Development and Population Activities	135,500
Association for Voluntary Sterilization	125,800
National Family Planning and Reproductive Health Association	121,000
International Projects Assistance Services	120,150
*World Organization Ovulation Method—Billings	120,000
National Abortion Federation	104,000

U.S. Centers for Disease Control	103,136
Zero Population Growth	100,254
*National Commission on Human Life, Reproduction, and Rhythm	90,000
International Fertility Research Program (now called Family Health International)	70,000
National Abortion Rights Action League (NARAL) and NARAL Foundation	67,650
Catholic Alternatives	50,104
Center for Constitutional Rights	30,000
Abortion Rights Mobilization	25,000
Abortion Fund	24,050
*Human Life Center, St. John's University (Minnesota)	20,000
Total	$ 22,191,685

*Natural Family Planning (NFP) groups

The rest of the money went primarily to universities, state or regional organizations, and groups based abroad. Only a tiny portion of the total, approximately $386,000, was earmarked to develop or promote the only method of family planning that does not require drugs, devices, or surgery. This is "Natural Family Planning" (NFP), which involves periodic abstinence based on signs of ovulation. It is practiced by Catholics who adhere to their Church's teaching against contraception. It is also supported by some feminists, since it avoids the major health risks of birth-control pills and IUDs.[9]

The *Register* survey also turned up a tiny number of donations, totalling about $237,000, to right-to-life groups.[10] Although this sum seems pathetic, these groups are regularly attacked by their foundation-financed adversaries as wealthy tools of the New Right. (Many a right-to-life leader, trying to meet expenses on nickel-and-dime contributions, must wonder *where all* the New Right money *is*.)

In a recent fundraising mailing, the head of the Religious Coalition for Abortion Rights (RCAR) complained that "it is much harder for us to raise the money we need for RCAR's programs than it is for the Moral Majority and New Right groups to finance their simplistic, judgmental campaigns which ignore the real needs of real people." Two paragraphs

later, she announced that "*for a limited time, a generous Foundation will match every dollar you give to RCAR, above the first $15, dollar for dollar.*"[11] But she is by no means the only "pro-choice" leader who appears to have no sense of irony. In a fundraising mailing that supported, among other things, "a woman's right to have an abortion," the president of the American Civil Liberties Union declared: "When you join with the thousands of others concerned with preserving our freedoms, those freedoms will be preserved for all and passed on to our children."[12] *Children*? What children? How many will be left by the time the ACLU finishes its work?

It would be interesting to know how much of the ACLU's voluminous litigation on behalf of abortion has been financed by foundations. The figure of $169,000 for 1982 is conservative, since many foundations list donations to the ACLU Foundation on their tax returns without indicating for which project(s) the money is to be used.[13]

In 1982 four foundations gave grants of $30,000 each to the ACLU Foundation for abortion work.[14] One of the four, the Scherman Foundation, also gave $15,000 to the Center for Constitutional Rights for abortion litigation.[15] The late George Gallup, Sr., board chairman of the group that conducts the Gallup Poll, was a director of the Scherman Foundation until shortly before his death last July. Asked last year whether his connection with Scherman might cast doubts on the objectivity of Gallup polls on abortion, Gallup said he did not see why it would, "because I have only one voice out of eight . . . so no matter what I thought, it wouldn't make a difference, would it?"[16] He added that "I didn't know that much went" to abortion groups. The Scherman board meets quarterly, but Gallup said, "I usually get there once a year, so I'm not as familiar with it as I should be." Of his own views on abortion, he said, "I don't have any. I have to be like Caesar's wife, you know—above suspicion." Gallup also remarked that he tried not to have strong views on political issues.[17] Yet in 1982 the Scherman Foundation gave a quarter of a million dollars to groups involved in population control, including Catholics for a Free Choice, the Pathfinder Fund, Planned Parenthood, the Population Crisis Committee, the RCAR Educational Fund, and the two groups involved in abortion litigation.[18]

The most critical litigation money was given in 1971-72, when the Sunnen and Rockefeller Foundations supported the pro-abortion side in

Roe v. *Wade* and *Doe* v. *Bolton*, the cases that led to legalized abortion throughout the country. The fascination of John D. Rockefeller III with population control was not limited to the Third World. In 1968 the Population Council, whose board he chaired and whose activities he supported with generous donations, gave $20,000 to the Association for the Study of Abortion for an international conference on abortion. The Rockefeller Brothers Fund chipped in another $5,000.[19] When the conference was held in Hot Springs, Virginia, in November of 1968, the keynote speaker was—*viola*!—John D. Rockefeller III. He proposed a loosening of restrictions on abortion and said he thought that a repeal of abortion laws "will inevitably be the long-range answer."[20] Later he was appointed to head a presidential commission on population, which in 1972 proposed abortion on request.[21]

This occurred at just about the same time that the Rockefeller Foundation, of which JDR III was honorary chairman, gave $50,000 to the James Madison Constitutional Law Institute for a "program in population law." The program, nowhere explained in the foundation's annual report, happened to be the *Roe* v. *Wade* and *Doe* v. *Bolton* cases.[22] The pro-abortion side won those cases early in 1973. The president of the Association for the Study of Abortion—which had received more Rockefeller money since its 1968 conference—exulted: "This is the decision sought by ASA since its foundation in 1964—virtually our organizational *raison d'être*." He noted that ASA had "coordinated a successful effort to get influential groups and individuals to prepare and file *amicus* briefs in these two cases."[23]

The Sunnen Foundation, a Missouri-based group started by population-control enthusiast Joseph Sunnen, has contributed heavily to pro-abortion groups for many years. It too supported the *Roe* and *Doe* cases; more recently, it has financed litigation efforts of the Abortion Rights Mobilization, a militant group headed by Lawrence Lader.[24] One of the earliest abortion activists, Lader has specialized in Catholic-baiting. In the early days of the pro-abortion movement, he told a colleague: "Historically, every revolution has to have its villain. It doesn't really matter whether it's a king, a dictator, or a tsar, but it has to be *someone*, a person to rebel against." Lader made it clear that he had Catholics in mind, but:

> Not just all Catholics. First of all, that's too large a group, and for us to vilify them all would diffuse our focus. Secondly, we have to convince liberal Catholics to join us, a popular front as it were, and if we tar them all with the same brush, we'll just antagonize a few who might otherwise have joined us and be valuable showpieces for us. No, it's got to be the Catholic *hierarchy.* . . .[25]

A major effort of the Lader group in recent years has been a federal lawsuit attacking the tax-exemption of some or all Catholic-Church entities in the United States because of Church efforts against abortion.[26] Both Lader's group and the Sunnen Foundation are tax-exempt.[27] What is sauce for the goose apparently is not, in this case, sauce for the gander.

As important as it may be, litigation is a small part of the foundations' involvement in population control. They pour huge sums into Planned Parenthood—and on such a regular basis that it seems like paying their annual dues to a country club. Money virtually cascades into PP offices, some of it going to the national "Public Impact Program" of propaganda and lobbying.[28] Foundations also give massive sums to local PP groups for general support or to build and renovate clinics. Thus the Longwood Foundation, established by the du Ponts primarily to support the famous Longwood Gardens, gave $400,000 to the Delaware League for Planned Parenthood in 1982. The money was earmarked for renovation of a Newark clinic and for construction of a new headquarters. In the same year, the Indianapolis Foundation gave $67,500 to a PP group for general support and "to assist with the costs of a new clinic building." The Richard King Mellon Foundation gave $55,000 to the Planned Parenthood Center of Pittsburgh for purchase of a computer.[29] The list goes on and on, to a total of $6.8 million in 1982 for Planned Parenthood and its many affiliates. This is undoubtedly a conservative figure, since the *Register* survey did not cover all foundations. Nor did it cover foundation grants to United Way affiliates, many of which support Planned Parenthood.

The foundations do not neglect smaller groups, nor ones whose primary focus is other than population control. No stone is left unturned. In 1982 the William and Flora Hewlett Foundation, based in California, gave $45,000 to the Meals for Millions/Freedom from Hunger Foundation "for efforts to integrate family planning component into the program." In 1983 Hewlett authorized $210,000 for the American Home Economics Association "to integrate family planning and sex education

activities into its domestic and overseas programs." No one is safe, not even leaders of the Catholic Church. Hewlett gave $15,000 in 1982 to the Prospective US Center in New York City for a program "to increase understanding of population issues among Catholic Church leaders in developing countries."[30]

Most foundation efforts related to U.S. Catholics and abortion have not been directed to coverting the shepherds, but rather to taking their flocks away from them. The favored instrument is Catholics for a Free Choice (CFFC), which in 1981 received nearly ninety percent of its income from foundations. Sunnen was the largest donor, weighing in with $75,000. The Educational Foundation of America was next, with $50,000. Four other foundations, including the giant Ford, made grants in the neighborhood of $20,000 each. Membership dues provided less than two percent of CFFC's income in that year.[31]

Catholics for a Free Choice claims only 5,000 members, and executive director Frances Kissling is refreshingly frank when she notes that many members do not pay dues and that "we keep everybody forever, as everyone else does. It's sort of like the Church: once a member, always a member." One of CFFC's supporters, the George Gund Foundation, was so concerned about the group's small base that it promised to match every dollar from the first 1,000 new Catholic members.[32]

CFFC was started in the early 1970's in New York and later moved to Washington, D.C. In its early years it was a tiny band of gadflies who specialized in events bound to shock Catholics and gain media attention. The crowning of "Pope Patricia the First" on the steps of St. Patrick's Cathedral was one example.[33] Even in the early years, CFFC had foundation money, though apparently not a great deal.[34] Foundation support mushroomed in 1980-82.[35] This may have been due to more aggressive fundraising by CFFC. Perhaps, too, foundations developed a greater appreciation of the advantage of waging guerrilla warfare within the Church.

What does the foundation money buy for CFFC? The Sunnen and Brush foundations paid for a handsomely-printed series of booklets called "Abortion in Good Faith." The booklets attack Catholic teaching on abortion from several angles and suggest that one can support abortion and still be a good Catholic.[36] The Ms. Foundation for Women made small grants for publication of CFFC brochures in Spanish and for

general support.[37] The Educational Foundation of America also showed special interest in Spanish-speaking communities and in obtaining "exposure in print and broadcast media for a Catholic pro-choice perspective."[38] The Mary Reynolds Babcock Foundation, based in North Carolina (which has the smallest percentage of Catholics of any state in the country),[39] gave $40,000 to CFFC from 1981-83 for media work. The foundation's 1983 report explained that its latest grant enabled CFFC "to distribute press kits and participate in media interviews, provide technical assistance to other Catholic organizations wishing to discuss abortion, and conduct a direct-mail campaign to acquaint Catholic activists with the pro-choice position and the need for addressing the issue."[40] Again, no stone is left unturned.

Catholics for a Free Choice, which apparently receives no money from any Catholic group, does receive some from Unitarian Universalists. By June 1983 the North Shore Unitarian Universalist Veatch Program had given a total of $85,000 to CFFC over the years. Veatch is technically not a foundation, but operates like one. It has long been a major supporter of pro-abortion groups.[41]

The Cleveland-based Brush Foundation, which helped finance CFFC's "Abortion in Good Faith" series, was started in 1928 by a eugenics enthusiast. He directed that his money be used for population control as well as "scientific research in the field of eugenics" and "the education of the people to the importance of the betterment of the stock."[42] Following his instructions, the foundation supported a researcher who "was one of the first to develop the technique of culturing cells from the amniotic fluid early in pregnancy. . . . If the chromosome pattern is abnormal, indicating a serious genetic defect, the fetus can be immediately aborted."[43] The use of amniocentesis and selective abortion has led to the deaths of many children with Down's Syndrome, spina bifida, and other handicaps.

Some feminist groups refuse to take money from the Playboy Foundation, since *Playboy* magazine degrades and trivializes women.[44] But Catholics for a Free Choice has received at least $20,000 from the Playboy Foundation.[45] Asked about this by a *Ms.* magazine writer last year, CFFC's Frances Kissling said that "I've never felt that taking money from someone indicates that we support them—it indicates that they support us." But she also said that if *Hustler* magazine started a foundation, she would not take their money, since "there are boundaries of good taste."[46]

Representative Geraldine Ferraro of New York, the Democratic vice-presidential candidate, is a friend and supporter of Catholics for a Free Choice. A Catholic with a solidly pro-abortion voting record, she is an ideal representative of the CFFC position. A Ferraro quote and picture are featured in a CFFC brochure, and she was profiled in the group's newsletter last year.[47] In 1982 she cosponsored a briefing arranged by CFFC for other members of Congress. Later she wrote an introduction to the printed version of the briefing papers, calling it "an indispensable aid for every member of Congress and, indeed, for anyone in the political arena seeking a concise sourcebook of pro-choice thought."[48]

Catholic Alternatives, a local group in New York, is also patronized by foundations. Its name might suggest Catholic alternatives to abortion, such as support for couples with problem pregnancies. Instead, the group offers *alternatives to Catholic teaching*, supporting Catholics "in their use and choice of birth control methods and/or termination of pregnancy."[49] The General Service Foundation, based in St. Paul, Minnesota, sent $210,000 to Catholic Alternatives from 1977-81. Much of the money was intended for counseling teenagers, but General Service also hoped that the group could expand into a "national network."[50] Perhaps this goal was not attained because Catholics for a Free Choice intensified its fundraising and captured the national position. The Scherman Foundation, for example, gave $30,500 to Catholic Alternatives from 1977-81; in 1982 it gave nothing to Catholic Alternatives, but $25,000 to Catholics for a Free Choice.[51] Despite its reduced importance, Catholic Alternatives was able to raise some $50,000 from foundations in 1982.[52]

Another group much favored by foundations is the Religious Coalition for Abortion Rights (RCAR). Catholics for a Free Choice is a member of RCAR, which is primarily composed of Protestant and Jewish groups. Since most of its members have strong pro-choice positions, one might think that they could support RCAR on their own. But positions adopted by church leaders sometimes cause controversy in the pews; dissenters group together in Methodists for Life, Presbyterians Prolife, and other organizations. Possibly RCAR and its Educational Fund rely largely on foundations in order to avoid causing more disruption in the pews.

Sixty-four percent of the RCAR Educational Fund's 1982 income came from foundations.[53] Executive director Fredrica Hodges said that the main RCAR group raised about half of its 1982 funds from direct-

mail fundraising and about half from the religious groups that make up the coalition.[54] In at least three cases, however, contributions from a member group originated with foundations. In 1982 the Sunnen Foundation gave $85,000 to the United Presbyterian Church, U.S.A.; the church, in turn, transmitted $75,000 of that to RCAR. Also in 1982, the same church received a $50,000 grant from the George Gund Foundation and passed it on to RCAR. In 1983 the church received $75,000 from Sunnen and channelled it to RCAR.[55] In the bad old Watergate days, this sort of transaction was called "laundering." Asked why Sunnen didn't give money directly to RCAR, the foundation's executive director said he thought that RCAR had 501(c)(3) tax-exempt status. He remarked that Sunnen feared that RCAR might "step over the bounds" and for that reason preferred to give to the group through a church.[56]

The Religious Coalition for Abortion Rights circulates much literature, including a "Call to Concern" which says that "abortion may in some instances be the most loving act possible." The same statement supports public funding of abortion and attacks "the institutional mobilization of Roman Catholic dioceses" in the anti-abortion cause.[57] (It does not explain why it is wrong for the Catholic Church to organize against abortion, but praiseworthy for other churches to organize *for* it.) RCAR also lobbies on behalf of abortion. Its location for this purpose could not be better; it is headquartered in the Methodist Building in Washington, D.C., almost next door to the Senate office buildings.

It is hard to tell how much influence RCAR and CFFC have on Capitol Hill. They do not have the impact that the Planned Parenthood lobbyists have. On the other hand, they may quiet the consciences of legislators who vote pro-abortion but occasionally have doubts about their position. ("If those *religious* groups say it is all right, well, why not?") Certainly the two groups have had some success in placing a religious seal of approval on abortion. Financing them may be one of the best investments that the pro-abortion foundations have made.

Some foundations have gone beyond financing research, litigation, and propaganda for abortion. Biting the bullet, they have decided to pay for abortion facilities and services. The Best Products Foundation and four others gave a total of $24,050 to the Abortion Fund in 1982.[58] This is a group that helps finance abortions for women who cannot afford them. A direct-mail appeal for the Fund explained:

> We can't save the whole world from unwanted children. But you and I can light one candle.
>
> During our first few months of operation we helped hundreds of poor women obtain abortions. During 1982 we hope to aid at least 5,000 more women.
>
> At the Abortion Fund, we don't picket, protest, or lobby. Each week we quietly write checks to help fill the gap left by an insensitive and politically motivated Congress. . . .[59]

The ubiquitous Sunnen Foundation gave at least $187,000 to finance abortions for poor women at Reproductive Health Services, an abortion clinic in St. Louis, from 1979 through 1983.[60] (A young woman died following an abortion at that clinic in 1981.[61]) The Philadelphia Foundation has contributed to the Elizabeth Blackwell Health Center for Women, which provides both abortions and maternity care.[62] The David and Lucile Packard Foundation has given money to a Planned Parenthood group in California for "start-up costs of providing abortion services."[63] Many foundations have supported other PP clinics that provide abortions. (In 1983 Planned Parenthood clinic staff performed 83,000 abortions throughout the country.[64])

Although the Ford and Rockefeller foundations have invested in propaganda and litigation to make abortion legal in the U.S. and/or to keep it legal, they have qualms about providing surgical abortion in countries where it is still against the law.[65] Some other foundations are willing to finance illegal activities, so long as they are carried out with some discretion and with euphemisms such as "menstrual regulation" (a form of early abortion).

Professor Donald P. Warwick of Harvard University, who studied this problem in depth several years ago, concluded that most groups providing funds for abortion abroad "operate on a clandestine and usually illegal basis. As one expert commented, 'Not even your best friends will tell you what they are doing overseas.'" Warwick added:

> This is not to deny that there are many ambiguities about what, precisely, is "legal," or that officials who speak publicly against abortion may give tacit support to quiet foreign aid. . . . Nevertheless, severe legal and cultural restrictions on abortion create a climate in which private agencies selling abortion services behave more like intelligence operatives than purveyors of foreign aid. This style of operation raises serious ethical questions . . .[66]

Among the groups Warwick listed as having promoted abortion in countries where it is illegal were the International Projects Assistance Services,

the Population Crisis Committee, and the Pathfinder Fund.[67] All three have received foundation support.

Warwick described the International Projects Assistance Services (IPAS) as the "most aggressive organization in this arena" and one "that is disreputable and proud of it."[68] The organization makes loans for the establishment of abortion clinics, trains medical personnel in abortion techniques, and manufactures vacuum-aspiration (early-abortion) equipment for use abroad. A recent IPAS brochure said that from 1973-83 the group "provided more than $700,000 in grants and loans for initiating fertility management clinics in more than 16 countries."[69] Earlier Warwick had reported that IPAS was supporting abortion clinics in "Mexico, Brazil, and Indonesia, where abortion is illegal." He said that IPAS was "also training midwives in the Philippines to use the vacuum aspirator, even though this technique is specifically banned by the government."[70] In 1982 an IPAS spokeswoman said that abortion is "illegal in most of the countries that we work in."[71]

Most private foundations want to be respectable and legal, so they are wary of contributing to a group like IPAS. But the William and Flora Hewlett Foundation, the Scherman Foundation, and the Harry G. Steele Foundation gave a total of $120,150 to IPAS in 1982.[72]

Foundations were far more generous to another group that funds illegal activities abroad, the Population Crisis Committee. Fourteen foundations gave a total of $301,000 to the Committee. Included among the donors were some of the usual suspects: Hewlett, Huber, Packard, and Scherman.[73] The Population Crisis Committee has funded "menstrual regulation" projects in Bangladesh (where abortion is technically illegal but promoted by the government) and in three other countries where abortion is illegal: Indonesia, Nigeria and the Philippines.[74] In December 1983 a Committee spokeswoman said that the projects in Bangladesh and Indonesia were still in operation. Asked about the problem of legality, she said that "we are simply funding projects at the request of local individuals." The Committee, she indicated, did not address the question of legality, but simply responded to what it believed to be well-formulated projects.[75]

Possibly the Population Crisis Committee is able to raise large sums from U.S. foundations, despite its financing of illegal activities abroad, because of the high-powered political and diplomatic people who serve

on its board. Current or recent directors include former Defense Secretary Robert McNamara, Rep. John Conyers, Jr., former Ambassadors Ellsworth Bunker and Marshall Green, retired Generals Maxwell Taylor and William Westmoreland, and former Senator Robert Taft, Jr.[76] As a congressional aide recently noted, these are people who can pick up a telephone and be in touch with cabinet members. Or, presumably, with foundation executives.

Last year the Pathfinder Fund withdrew from surgical abortion in order to protect the U.S. government funding it receives to provide other forms of birth control abroad. A Pathfinder spokeswoman recently said that "it was basically the pressure from right-to-life groups" on the Agency for International Development that led to Pathfinder's change of policy.[77] Several years before, Professor Warwick reported that Pathfinder had helped a local doctor open an abortion clinic in Colombia:

> When asked about the legality of this move in Colombia, an individual familiar with the project said that the clinic was indeed illegal, but that prosecution was unlikely, if only because the children of public figures were using its services. A staff member further commented: "Where abortion is culturally acceptable we don't think that the law is restrictive in an ethical sense. We are also concerned at the practical level—will it be enforced or not?"[78]

Pathfinder also promoted abortion in Bangladesh.[79] As noted recently in *The Nation*, international-aid agencies have put heavy pressure on the government of Bangladesh to hold down the nation's birth rate.[80] This may be one reason why the government promotes "menstrual regulation" despite its own anti-abortion law. In 1982 the Brush Foundation, Educational Foundation of America, and the George Gund Foundation provided a total of $55,000 for Pathfinder's abortion-training program in Bangladesh. The goal was to train enough doctors and paramedics to perform abortions throughout the country.[81]

Professor Warwick was correct in saying that the funding of illegal activities abroad raises serious ethical questions. It also raises, if one might put it this way, stupidity questions; for this is the kind of Western arrogance that poor nations rightly find offensive. It raises questions of racism as well; the funders are wealthy white people, while the targets—mothers and children—are poor people of color.

Yet the most crucial issue in foundation funding of abortion, whether abroad or at home, is the taking of human life. It is ironic that many

foundations that finance the killing also fund projects to save lives and relieve suffering. They support positive medical research, programs to help crippled and mentally-retarded children, projects to alleviate hunger, and even—in a sort of ultimate irony—programs to end child abuse. To say that they are schizophrenic in their attitudes toward humanity would be a great understatement. Perhaps, subconsciously, foundation executives are weary of the struggle to help the young and the poor and have decided that the quickest, cheapest way to help them is to be sure that there are fewer of them. Subconscious self-interest, especially with reference to poor people abroad, may also be involved. As Rev. Richard Neuhaus has written, the population controllers serve "those interests that have a stake in maintaining the present maldistribution of the world's wealth," and "the problem of world poverty is not created by the poor people but by the rich people."[82] The rich, including foundation donors and executives, consume far more of the earth's resources per person than do the poor.

There is also the issue of cultural and religious imperialism. It is easy to understand this with resect to the promotion of abortion abroad, but easy to miss it when viewing the domestic scene. Yet Ford, Gund, Huber, Packard, Playboy, Scherman and Sunnen engage in this kind of imperialism when they finance Catholics for a Free Choice, seeking to establish CFFC as a rival voice to the leadership of the Catholic Church. These foundations and others do the same when they pump money into the Religious Coalition for Abortion Rights, trying to promote theological approval of a barbaric practice.

What happens when religious people here and abroad, misled by foundation-financed propaganda, opt for abortion and discover that it only makes a difficult situation unbearable? Do the foundations really care about the daily lives, the joys and sorrows, of these people? Will the foundations be there to console them in hard times, pray with them, forgive their sins, bury their dead? No, they will not. They will have gone on to other "imaginative" and "forward-looking" programs, leaving the churches to pick up the pieces and deal with the human wreckage.[83]

Perhaps anti-abortion protesters should divert some of their pickets from abortion clinics to the elegant precincts of foundation power. A sign observed at a protest several years ago could be copied in great quantity: "Stop the Rich from Killing the Poor."

NOTES

1. Lorenz Renz, ed., *The Foundation Directory* (New York: Foundation Center, 1983, 9th ed.), pp. x-xii.

2. See 2 U.S.C., Sec. 441b: and 26 U.S.C., Sec. 501(c)(3), Sec. 501(h), Sec. 4911, Sec. 4945. See, also, David F. Freeman, *The Handbook on Private Foundations* (Cabin John, Md.: Seven Locks Press, 1981), 436 pp.; and Children's Defense Fund, *Lobbying and Political Activity for Nonprofits: What You Can (and Can't) Do Under Federal Law* (Washington: Children's Defense Fund, 1983), 20 pp.

3. Mary Meehan, "Funding the Abortion Pros," *National Catholic Register*, January 15, 1984, pp. 1, 8; "Funding the Abortion Pros," *ibid.*, January 29, 1984, pp. 1, 7; "Bankrolling the 'Pro-Choice' Machine," *ibid.*, January 29, 1984, pp. 1, 7. The total of $36.2 million reported in the *Register* series missed four grants. The corrected total is $36,394,381. The survey did not cover all foundations, but did include most involved in population control in a significant way. In the current article, I have drawn upon material discovered in my survey for the *Register*, as well as subsequent research.

4. Population Council, 1978 annual report, pp. 27, 29; 1980 annual report, pp. 8, 11-12; 1982 annual report, pp. 17-19.

5. Ford Foundation, 1982 annual report; Andrew W. Mellon Foundation, 1982 annual report; Rockefeller Foundation, 1982 tax return. A foundation's fiscal year does not necessarily coincide with the calendar year; Ford's, for example, runs from October 1 of one year to September 30 of the next. Information in this article is based on the foundation's fiscal year, rather than that of the recipient.

6. Peter Collier and David Horowitz, *The Rockefellers: An American Dynasty* (New York: Holt, Rinehart and Winston, 1976), pp. 285-291.

7. Malcolm Muggeridge, *Something Beautiful for God* (New York: Harper & Row, 1971), pp. 83-121.

8. The figures are based on foundation tax returns and annual reports on file at the Foundation Center Library, Washington, D.C. Groups receiving a total of less than $20,000 are omitted from this list, as are universities and groups based abroad. Also omitted is Human Life International, which received a total of $35,500 but which did both Natural Family Planning (NFP) and anti-abortion work. I have assumed that its foundation money was divided between the two types of work.

9. See 1982 tax returns of De Rance, Rockefeller Foundation, St. Paul Foundation, Strake Foundation, and Trust Funds Inc. There are several NFP methods; most NFP advocates say their methods are far more reliable than the old "rhythm" method. See Nona Aguilar, *No-Pill, No-Risk Birth Control* (New York: Rawson, Wade, Publishers, 1980), 254 pp.; Eveyln Billings and Ann Westmore, *The Billings Method* (New York: Random House, 1980), 254 pp. For an example of a feminist sympathetic to NFP (which she calls "organic birth control"), see Barbara Seaman, *The Doctors' Case Against the Pill* (Garden City, N.Y.: Doubleday & Co., 1980), pp. 181-184.

10. See 1982 tax returns of De Rance, Strake Foundation, and Trust Funds Inc. The search for these donations was not as thorough as the search for population-control grants, but thorough enough to indicate that very little foundation money goes to anti-abortion groups. De Rance, based in Milwaukee, appears to be the only large foundation that supports such groups.

11. Fredrica F. Hodges, fundraising letter postmarked February 3, 1984, p. 4 (emphasis in original).

12. Norman Dorsen, fundraising letter, n.d. (received by the writer on May 15, 1981), pp. 2, 4.

13. According to the writer's July 19, 1984 telephone interview of an ACLU staff memeber, the ACLU does not release information on its foundation grants.

14. The four were the George Gund Foundation, Joe and Emily Lowe Foundation, Piton Foundation, and Scherman Foundation, according to their 1982 tax returns. In 1983 the Ford Foundation announced a grant of $50,000 to the ACLU for its abortion work (Ford Foundation *Letter*, October 1, 1983, p. 7). In a December 27, 1983 telephone interview with the writer, Oscar Harkavy of the Ford Foundation indicated that Ford had supported earlier ACLU abortion litigation.

15. Scherman Foundation, 1982 tax return.

16. Writer's telephone interview of George Gallup, Sr., on December 22, 1983.

17. *Ibid.* According to the writer's July 19, 1984 telephone interview of a Scherman spokeswoman, Gallup's resignation from the Scherman board was accepted on July 10, 1984. According to foundation tax returns, he had served on the board at least since 1976.

18. Scherman Foundation, 1982 tax return.

19. Population Council, 1968 annual report, pp. 4, 20, 68, 72-73; writer's telephone interview of a Rockefeller Brothers Fund spokewoman, July 26, 1984.

20. John D. Rockefeller III, "Abortion Law Reform—the Moral Basis," in Robert E. Hall, ed., *Abortion in a Changing World* (New York: Columbia University Press, 1970, 2 vols.) vol. I, pp. xv-xx.

21. U.S. Commission on Population Growth and the American Future, *Population and the American Future*

(Washington: U.S. Government Printing Office, 1972), pp. 103-104. The commission also recommended public funding of abortion.

22. Rockefeller Foundation, 1972 annual report, p. 140; Richard Lewis, "An Attorney's Crusade to Overturn Controls," *American Medical News*, February 16, 1979, p. 11 ff. Perhaps because of a typographical error, Lewis said the Rockefeller Foundation gave $150,000, rather than the $50,000 listed in the foundation's annual report. Lewis reported that the Sunnen Foundation earlier had given $75,000—and that Joseph Sunnen personally had given $25,000—for the *Roe* and *Doe* litigation. In a July 24, 1984 telephone interview with the writer, Sunnen Foundation executive director Samuel Landfather said of that litigation: "The Rockefeller Foundation and we were the first ones, I think, in on that."

23. According to the July 26, 1984 interview with the Rockefeller Brothers Fund spokeswoman, the Fund gave ASA $20,000 in 1971-72. The Rockefeller Foundation, according to its 1972 annual report, gave $15,000 to ASA in that year. See Robert E. Hall, "ASA President's Report" (New York: Association for the Study of Abortion, January, 1973), pp. 1, 2.

24. Sunnen's 1981 tax return was not available. But its returns for the other years between 1978 and 1983 show a total of $74,500 in grants to the Abortion Rights Mobilization for litigation.

25. Bernard N. Nathanson and Richard N. Ostling, *Aborting America* (Garden City, N.Y.: Doubleday & Co., 1979), pp. 51-52. See also, Bernard N. Nathanson, *The Abortion Papers: Inside the Abortion Mentality* (New York: Frederick Fell Publishers, Inc., 1983), pp. 177-209.

26. Loretta McLaughlin, "Group to Sue Catholic Church," Boston *Globe*, September 25, 1980, p. 16. According to the writer's telephone interview of an IRS spokesman on July 26, 1984, the case was still pending at that time.

27. U.S. Department of the Treasury, Internal Revenue Service, *Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954* (Washington: U.S. Government Printing Office, 1984), pp. 2, 910.

28. See 1982 tax returns of Educational Foundation of America, George Gund Foundation, David and Lucile Packard Foundation. In many other cases, however, the purposes of foundation grants to Planned Parenthood were not specified. The foundation money received by PP and its affiliates is dwarfed by the government money they receive. The latter amounted to $95 million (nearly one-half of their income) in 1983, according to Planned Parenthood Federation of America, 1983 annual report, p. 14.

29. Longwood Foundation, 1982 tax return; Indianapolis Foundation, 1982 annual report; Richard King Mellon Foundation, 1982 tax return.

30. William and Flora Hewlett Foundation, 1982 tax return and 1983 annual report.

31. Catholics for a Free Choice, 1981 tax return.

32. Writer's interview of Frances Kissling, April 17, 1984. The CFFC newslatter *Conscience*, informing its readers of the offer, identified the foundation only as "a generous supporter." See issues of *Conscience* from March/April 1983 through March/April, 1984.

33. *Conscience*, July 1981, p. 8.

34. Writer's telephone interview of Joseph O'Rourke, an early CFFC activist, on April 28, 1984. O'Rourke remarked that CFFC "really was just kept alive for years because the mainline pro-choice movement wanted a Catholic voice."

35. Mary Meehan, "CFFC Financial Background," *National Catholic Register*, May 20, 1984, p. 8; Catholics for a Free Choice, 1980-82 tax returns. See, also, 1980-82 tax returns and/or annual reports of Mary Reynolds Babcock Foundation, Brush Foundation, Educational Foundation of America, Ford Foundation, George Gund Foundation, Ms. Foundation for Women, Huber Foundation, Norman Foundation, David and Lucile Packard Foundation, Playboy Foundation, Scherman Foundation, Spectemur Agendo, and Sunnen Foundation.

36. The six booklets, published by CFFC in Washington, D.C., in 1981-82, have these titles: *An Ethical Inquiry, The Church in a Democracy, The History of Abortion in the Catholic Church, I Support You But I Can't Sign My Name, My Conscience Speaks,* and *We Are the Mainstream.* On its back cover, each bears this notice: "This series was made possible by grants from the Brush Foundation and the Sunnen Foundation."

37. Ms. Foundation for Women, 1979 and 1980 annual reports.

38. Educational Foundation of America, 1981 annual report.

39. Felician A. Foy, O.F.M., ed., *1984 Catholic Almanac* (Huntington, Ind.: Our Sunday Visitor, Inc. 1983), p. 436. Catholics make up 1.88 percent of North Carolina's population.

40. Mary Reynolds Babcock Foundation, 1983 annual report.

41. North Shore Unitarian Veatch Program, 1979-80 and 1982-83 annual reports.

42. Brush Foundation, *The Brush Foundation, 1928-1980* (Cleveland: Brush Foundation, n.d.), pp. 1, 2, an excerpt from deed of gift by Charles F. Brush.

43. *Ibid.*, p. 15.

44. Lionel Rolfe, "The Naked Truth About the Playboy Foundation," *Grantsmanship Center News*, January/February, 1978, p. 10 ff.; Ann Marie Lipinski, "Playboy's Strange Playmates," Chicago *Tribune*, March 30, 1980, sec. 12, pp. 1, 4; Lindsay Van Gelder, "Playboy's Charity: Is It Reparations or Rip-off?" *Ms.*, June, 1983, pp. 78-81.

45. Marsha Levine and Elan Garonzik, ed., *The Foundation Grants Index* (New York: Foundation Center, 1983, 12th ed.), p. 114; Playboy Foundation, 1983 annual report.

46. Van Gelder, *op. cit.*, p. 80.

47. "I Am Here to Say . . ." (Washington: Catholics for a Free Choice, n.d.); Anne Sears Mooney, "CFFC Visits Congresswoman Geraldine Ferraro," *Conscience*, May, 1983, pp. 8-9.

48. Kissling interview, *op. cit.*; Geraldine Ferraro, introduction to *The Abortion Issue in the Political Process: A Briefing for Catholic Legislators* (Washington: Catholics for a Free Choice, [1982]), p. 1.

49. *Contraception and Abortion* (New York: Catholic Alternatives, 1976), 16 pp.

50. General Service Foundation, 1977-79 tax returns and 1981 annual report.

51. Scherman Foundation, 1977-82 tax returns.

52. See 1982 tax returns of the Barker Welfare Foundation, Bing Fund (Calif.), Flagg Fund, Edward John Noble Foundation, and Louis L. Stott Foundation; and 1982 annual report of Jessie Smith Noyes Foundation.

53. Religious Coalition for Abortion Rights, 1982 annual report, p. 13. The percentage calculation is the writer's.

54. Writer's telephone interview of Fredrica Hodges on January 4, 1983.

55. Sunnen Foundation, 1982 and 1983 tax returns; George Gund Foundation, 1982 tax return; writer's telephone interviews of Allen Kratz, a denomination spokesman, on January 4, 1984 and July 23, 1984. Kratz said that the church transmitted funds to RCAR in line with its "longstanding commitment to freedom of choice for women." Following a merger with another Presbyterian group, the church is now called Presbyterian Church (U.S.A.).

56. Landfather interview, *op. cit.* He was speaking of the national RCAR. According to its 1983 tax return, Sunnen gave $40,000 directly to Missouri RCAR.

57. James Luther Adams, *et al.*, "A Call to Concern," reprinted by RCAR in 1977, p. 1.

58. See 1982 tax returns of Best Products Foundations, Pettus-Crowe Foundation, Flagg Fund, Green Fund, and Harris Foundation (Ill.).

59. Mary Farmer, fundraising letter, n.d. (received by the writer on October 8, 1982), pp. 2, 3.

60. Sunnen Foundation, tax returns for 1979, 1980, 1982 and 1983; writer's telephone interview of Samuel Landfather, July 13, 1984.

61. E. F. Porter, Jr., "Seeks Inquiry of Clinic in Abortion Death," St. Louis *Post-Dispatch*, October 30, 1981, pp. 1-A, 7-A.

62. Philadelphia Foundation, annual report for year ending April 30, 1983; *Philadelphia Consumer Yellow Pages*, March, 1983, p. 151. Several years ago, a business magazine reported that many abortion clinics were expanding their operations to include obstetrics, sex counseling, etc. "This diversification helps them turn a tidy profit and protects them against financial disaster should the Right-to-Life movement succeed in barring legal abortion." *Business Week*, December 10, 1979, pp. 68, 73.

63. David and Lucile Packard Foundation, 1982 tax return.

64. Planned Parenthood Federation of America, 1983 annual report, p. 5.

65. Donald P. Warwick, "Foreign Aid for Abortion: Politics, Ethics and Practice," in James Tunstead Burtchaell, ed., *Abortion Parley* (Kansas City: Andrews and McMeel, Inc., 1980, pp. 301-322), pp. 307-308.

66. *Ibid.*, p. 302.

67. He included International Planned Parenthood Federation in the same category. *Ibid.*, pp. 309-316.

68. *Ibid.*, p. 315.

69. "IPAS Programs" (Carrboro, N.C.: International Projects Assistance Services, n.d.).

70. Warwick, *op. cit.*, p. 315.

71. Bonnie Derr, quoted in Elizabeth Moore, "U.S. Company Promotes Overseas Abortion-related Activities," *National Right to Life News*, August 26, 1982, p. 1 ff. See Christopher Tietze, *Induced Abortion: A World Review, 1983* (New York: Population Council, 1983, 5th ed.), pp. 7-18, for information on legal status of abortion throughout the world.

72. See 1982 tax returns.

73. See 1982 tax returns of Alcoa Foundation, Cabot Family Charitable Trust, Clark Foundation (N.Y.), Clayton Fund, Compton Foundation, Educational Foundation of America, General Service Foundation, William and Flora Hewlett Foundation, Huber Foundation, F. M. Kirby Foundation, Alice G. Morrison Memor-

ial Foundation, Stewart R. Mott Charitable Trust, David and Lucile Packard Foundation, and Scherman Foundation.

74. Population Crisis Committee/Draper Fund, 1980-81 annual report, pp. 17-18.

75. Writer's telephone interview of Sallie Craig Huber on December 28, 1983.

76. *Draper Fund Report* (published by Population Crisis Committee), August, 1983, inside back cover. Listed as honarary chairman was former Senator Joseph Tydings. Listed as national co-chariman was Robin Chandler Duke, former president of the National Abortion Rights Action League.

77. Writer's telephone interview of Marilyn Edmunds on July 13, 1984.

78. Warwick, *op. cit.*, p. 312.

79. *Ibid.*

80. Betsy Hartmann and Jane Hughes, "And the Poor Get Sterilized," *The Nation*, June 30, 1984, pp. 798-800.

81. See 1982 tax returns; and Educational Foundation of America, 1981 annual report, p. 11.

82. Richard Neuhaus, *In Defense of People: Ecology and the Seduction of Radicalism* (New York: MacMillan Co., 1971), pp. 268, 309.

83. "They were careless people, Tom and Daisy—they smashed up things and creatures and then retreated back into their money or their vast carelessness, or whatever it was that kept them together, and let other people clean up the mess they had made." F. Scott Fitzgerald, *The Great Gatsby (Franklin Center, Pa: The Library, 1974), p. 176.*

Embattled Fatherhood

Frank Zepezauer

> This gentleman developed a terminal disease, lateral sclerosis, whereupon his wife filed for divorce. She openly refused to comply with judicial instructions to honor the visitation portion of the divorce order, left the jurisdiction of the original court, and moved out of state. The dying and immobile man spent thousands of dollars in unsuccessful attempts to see his children. The courts of two states refused to enforce their own orders against the fugitive mother. A Kansas judge declared that it would be best for all if the man would hurry up and die.[1]

THAT STORY REPORTS a classic hard case, yet is differs only in degree from a swelling mass of reports now appearing in published investigations into what divorce is doing to men. Even when published, however, they are not yet widely publicized, because the problems of women have become a media obsession whose current focus is on the many ex-wives, legal or common law, whose plunge into lower incomes has been dramatized as "the feminization of poverty." Since in the majority of cases this downward slide has been aggravated by child support default—the "dead beat daddy syndrome"—women's groups have agitated for tougher legal sanctions against the non-paying spouse, nearly always the father. Thus strictly-enforced child-support collection joins other demands on the growing list of women's rights, and divorce has now come forward as one more media-amplified woman's issue. Men in government, who have been conditioned to respond promptly to the demands of angry women, have passed new laws which will make it easier to squeeze money out of reluctant ex-husbands. One such measure went through the Senate at a brisk pace and passed with a 99-0 vote, a signal during an election year that both liberals and conservatives love not only motherhood but the American tax payer.[2]

The protesting women built a good case. Most divorced women go downward financially, some so far down that they enter welfare rolls, forcing society to assume an obligation which has traditionally been

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Frank Zepezauer, a regular contributor, is rapidly becoming an expert on the separate but unequal problems facing male Americans (see also his article "The Masculinization of Evil" in our Summer, 1984, issue).

assigned to the father. Many ex-husbands have balked at paying child support or openly rebelled. And women could dramatize some hard cases of their own: the battered wife whose marriage was a reign of terror and whose divorce was an entry to poverty; the hapless mother of toddlers abandoned by her live-in boy friend, unable to get paid employment or day care; the middle-aged house wife with no job skills traded in by a philandering husband for a younger woman. But, in keeping with a pattern now firmly established, we have heard for the most part only one side in our current domestic wars. Common sense tells us that listening exclusively to one partner of a troubled marriage means that we'll get a distorted picture. And what applies to one marriage applies to the millions now heading for the divorce court. The composite reports of men devastated by divorce settlements tell us that the male side in the domestic wars has also suffered casualties and can shock us with atrocity stories. The collective story is only beginning to take shape, but what we already know tells us that in many areas of domestic life the morale of fathers and the integrity of fatherhood itself has been under severe and prolonged assault. Those involved in the now-coalescing pro-family and pro-life movements need to consider the implications of their testimony.

From the male perspective, then, let's first look at American family life and divorce in rough outline. Divorce rates rose slowly from the Civil War period, leveled off for a while after World War II and then, after 1965, accelerated so quickly—up 80% in 12 years—that by the beginning of the 80s almost half of our marriages were terminated. They've leveled off again but remain high, exceeded in the Western world only by our liberal role model, Sweden. Estimates now anticipate that one half of all children will spend some part of their lives with one parent, and the number who will never know the other parent is growing. The broken family is a fact of life, so common that many now identify it as an "alternative" domestic arrangement.

Keeping in mind that data on divorce comes from fifty states and countless jurisdictions, we can nevertheless say that the percentage of divorces initiated by women has risen dramatically in the past two decades. One writer puts the rate at above 90% in Los Angeles County.[3] A documentary on divorce reported better than 50% in Santa Clara County, California. R. F. Doyle, president of Men's Rights Association, one of the oldest of the many divorce-consulting groups now springing up

throughout the country, says that "it is no secret that women seek divorce far oftener than men do; 73% of divorces are granted to women. Statistics from 12 apparently randomly-selected states show 66.3% initiated by wives."[4] Even if we discount the many situations where the wife's initiative merely ratifies an already-dead marriage, we still find an increasing number of women who find divorce, like abortion, an attractive option. As with abortion, the reasons for filing divorce papers need not necessarily be profound. Doyle's group has dealt with hundreds of men whose wives drifted into a mysterious malaise which told them to get out of their marriage. "The Men's Rights Association," Doyle says, "has seriously considered saving handwriting in divorce counseling by having stamps made saying 'Don't love him anymore' and 'Wants her freedom.'"[5] This turn-around in attitudes can also be inferred from another fact: prior to 1970 husbands who left home outnumbered wives by 300 to 1; by 1973 more women than men were leaving home. We used to believe that marriage was stabilized largely by a massive female consensus in its favor, that women conspired as "tender traps" to lure reluctant men into its never-ending obligations and thereafter appealed to law, custom, and religion to keep men working at it. We can now add that belief to our collection of broken myths.

Although the situation is slowly changing, nearly all men who lose their wives will also lose their children. Some 90% of divorce settlements grant custody to the mother, one reason why 80% of single parent households are now controlled by women.[6] Some courts go to extraordinary lengths to maintain this legalistic momism. Doyle reports that "Women living with men, other than their husbands, are awarded custody regularly in disputes. Yet when a father lives with a woman, he is denied custody, despite the children's preference for paternal custody."[7] The same applies in many cases to irresponsible, promiscuous or emotionally disturbed women where a very strict burden of proof is placed on the father. In some cases a man will be assigned support obligations for children he didn't sire in keeping with old common law rulings that any offspring in a marriage become the responsibility of the father. Nor does he have to be married to assume the responsibility. A man can find himself obligated to support a child begotten in a live-in arrangement or a casual affair. In one case a single man was deliberately deceived by his lover who had assured him she was taking the pill. When she became pregnant, she filed a

paternity suit, which, according to local feminists, was no more than asserting her rights. When the man protested the ludicrous unfairness of the action, one feminist told him that he pursued sex with a woman at his own risk which might have been by-passed with voluntary sterilization. Another feminist, perhaps mindful of how that argument applied to control-over-my-own-body pro-choicers, volunteered to defend him.[8]

When a man loses his children, he often loses his house. Old custom and modern chivalry prefer keeping children in their original environment in a style of living to which they've become accustomed. This practice favors the custodial parent who is usually the mother. She remains at the center of the family home while the father is exiled and in time alienated. Settlements that award child support obligations to the father also award visitation obligations to the mother, but women defy visitation rules as often as men defy custody payments. The increasingly angry literature of the men's movement reports the frustration of fathers who have tried to get their ex-wives to honor visitation rights. In some cases the ex-wife simply ignored the obligations, complying only after the father pursued costly litigation. In other cases the woman left the jurisdiction, leaving the father ignorant of his children's whereabouts or, when he found them, incapable of seeing them. Other fathers reported a more prolonged and infuriating experience when ex-wives found subtle methods to block the father's access on visitation days or used the visitation privilege as leverage or exploited their closeness to the children to bad mouth the absent parent.

All these experiences compounded the father's sense of loss. What had been taken from him was often everything that had given his life meaning, and yet he retained heavy obligations which, in those cases where the wife willfully killed a viable marriage, fed not only an anguished sense of loss but an unbearable feeling of outrage. Under laws still common in many jurisdictions, a man suing, say, an adulterous wife, would find that he had to relinquish to her half his assets, his home and his children, pay for both lawyers, and undertake monthly alimony and child support payments. He retained the obligations of a family man while losing nearly all of his privileges, remaining a husband until his children reached maturity while his ex-spouse remained a wife only to the day of the final divorce decree. As one disillusioned man put it, "I've seen lots of courts that require a man to continue supporting his wife and children. I've yet

to see one that requires a woman to continue cooking and cleaning for him."[9] No wonder, then, that for men marriage has become a high risk venture.

Marriage has become risky for men for several reasons, each of which sheds more light on the situation many men now confront. Ancient attitudes about men and women conflict with modern realities. The patriarchy that gave family men the power to rule also imposed on them the obligation to provide and protect. Caring for wives and children became a man's primary concern. Caring for widows and orphans became a society's primary concern, and the charity extended to the bereaved mother was also extended to the discarded wife. The wife's protected position made her the weaker party, the aggrieved victim in a separation for which the stronger party was expected to take the blame.

The incongruity between old assumptions and current situations can be seen in the history of "no-fault" divorce, one of the major causes of family dissolution. These up-dated procedures responded to the recognition that assigning blame to one party of a mutually responsible partnership defied reality and encouraged fraud. The fake adultery drama, which became a part of our folk lore, was one of the most notable examples. But when divorce reform declared no one at fault, it increased incentives to break up marriages. After "no fault" was instituted in New Hampshire, for example, divorces involving children increased by 187% within five years. Similar sharp increases occurred in other states, particularly in California, which replaced Nevada as the nation's divorce capital. And, according to leaders of men's groups, the incentives opened up by no-fault procedures were more attractive to women than to men because women could count on family court judges still guided by the old chivalry. Thus if the new law said no one was at fault, old custom, still enforced, said the husband was at fault. The incentives for women increased even more in community-property states where they could expect half of their husband's assets as well as custody of the children without having their own messy linen brought before the eye of justice. "Wild horses couldn't drag most women into divorce court," R. F. Doyle remarked, "if cases were judged solely on merit, and they stood an equal chance of losing."[10]

Added to incentives that made divorce look good to women were social forces that made marriage look bad. Most of these resulted from

the growing secularization of Western society. Neo-Malthusianism exploited the appearance of a huge population cohort; in the mid-60s nearly 70 million Americans, one third of the nation, fell between the ages of five and 25. Extrapolations from current birthrates generated panic about a population explosion spawning challenges first against the natalist and then the marital imperative. Choosing not to have children or not to marry evolved, like many other concessions to necessity, into a positive obligation, turning childless couples and committed singles into cultural heroes.

At the same time a number of other oft-cited factors were at work. Behavioral science, which had once strongly supported the traditional family, began to question whether it was good either for the individual or for society. The same nostrums helped to promote the sex revolution which desacralized sex and marriage. And an influential faction of behavioral scientists launched a quasi-religious movement to release "human potential."

Human Potential theologians preached a radical individualism which assumed that not only culture but human personality itself was shaped by individual choice. Since one needed to create his own Self, he required the freedom to choose from possibilities within his own psyche. These choices permitted experiments from which discoveries about what was right or not right for the individual could be assimilated into a larger pattern of "growth." Since the movement worked outward from the individual into society, both the society and the individual had to remain "open." Any ideal or standard, any institution or tradition which derived its authority from a conception of the fixed order of nature, or from revelation, thus imposed a false pre-fabrication on the constantly-emerging, self-referencing individual. That meant that every concept and institution deposited by history on a reluctant generation became subject to challenge. Most severely tested were the concept of sex roles and the institution of marriage. What previous generations had believed was part of the natural order, so fundamental in fact that they built civilization itself on their faith, was to the emerging generation a lifeless legacy which killed their future.

By the time pop culture vulgarized an already questionable credo, we were entering the silly 70s when the possibility of growth sanctioned any kind of anti-traditional behavior. Single parenthood, for example, evolved

from social problem to social experiment, "The Single Parent Alternative," as one headline captioned it. The newly-sympathetic media also informed us that "the single parent family is here to stay"and that "single parents thrive on newfound life style" which can be "an opportunity for personal growth," or "a pathway to liberation" from an "aberration" known as the nuclear family. One Sunday supplement writer gushed over an impending divorce as "the liberation of Eve Williams" who had undertaken "the most courageous decision of her life," divorcing not only a husband but "a life style and an identity." Eve Williams' husband was supposed to take all this liberation like a good sport.[11]

So were the husbands whose wives absorbed the following advice: "Divorce can be an indication of maturity. Even the process of getting a divorce can be a maturing experience. Consider the settlement proposals as your Bill of Rights and assert yourself as a deserving human being. You have nothing to lose but a husband you don't want anyway. Independence as a mature woman is a wonderful experience."[12] It was so wonderful in fact that the runaway wife, whose defiant new independence reached us through talk shows and mass circulation magazines, emerged as a freedom fighter.

Such Human Potential concepts shaped the feminist ideology which helped destabilize traditional marriage in many ways. In its most radical manifestations it waged total war against the institution itself. One manifesto declared "Marriage has existed for the benefit of men and has been a legally sanctioned method of control over women . . . the end of the institution of marriage is a necessary condition for the liberation of women. Therefore, it is important for us to encourage women to leave their husbands and not to live individually with men."[13] That is what many wives actually did. A rally sponsored by Men's Rights Inc. gathered nearly a thousand angry men, many of whom reported that their wives had been encouraged to leave them by activist feminists.[14] Less radical liberationists, those George Gilder called the "moderate extremists," grudgingly accepted a thoroughly reformed marriage as only one of several options that should be made available to women. Alice Rossi, for example, declared that each traditional relationship formed two marriages, the husband's and the wife's, and the husband's was by far the more highly privileged. This unremitting hostility aggravated the grievances that any marriage produces in a woman, tempting her to break off

a relationship that might still succeed. And the once-powerful appeal to commitment and duty weakened under a Zeitgeist that elevated the individual above "oppressive" institutions. Even where commitment remained active, the intensive careerism of feminism strained many functioning marriages to the breaking point. Working women had new priorities and special needs, as well as a financial independence that gave them added leverage in family politics. Their success could add even more strain. For every thousand-dollar increase in a woman's salary, the chance of her getting a divorce went up 2%. We had always believed that society needed marriage. In the 70s we discovered that marriage needed society, and society was no longer helping. Thus half of the marriages went belly up, and an increasing number of men found their children taken from them into a growth experience called the "single parent family."

Asking about what has happened to children in broken families takes us from the causes of marital dissolution to its consequences, and opens up one more perspective on the current status of fatherhood. In one way or another children suffered when their parents separated, but in some cases they did better in a single-parent household than in a warring family, which tells us that both bad and broken marriages usually hurt children. During the past fifteen years suicides by teenagers have become the most frequent cause of early death. Other signs of distress appear in high rates of alcoholism, drug abuse, rebelliousness, withdrawal, general fecklessness and lack of purpose. We record nearly a million runaway children every year. The IQ of youngsters from broken homes runs lower than those from intact homes, as does their overall school performance and deportment. The correlation between delinquency and crime on the one hand and broken homes on the other remains high, as much as 75%.[15]

Men's groups point out that much of this personal and social pathology derives not so much from broken families as from female-dominated households. The effects of "father-absence" have become a hot new field of inquiry. Available data shows that when the man in the house has departed through death, divorce, extended absence or emotional withdrawal, both his sons and daughters are likely to suffer. Sons in particular need fathers to distance themselves from the powerful presence of their mothers. An impressive amount of evidence shows that achieving gender identity is harder for boys than for girls and that the consequences of their

failure are more severe. George Gilder's now-famous book, *Sexual Suicide*, largely rests on the premise that healthy societies must provide young boys with a clear and respected male role—all boys, not just the strongest. Without it their compulsive sexual and aggressive energy will find forms of expression dangerous enough, as history shows, to tear some societies apart. Inadequately socialized males thus generate more crime and disruption than does poverty. Those from poor but intact families produce relatively little crime even in the high-risk ghettoes. Boys growing up in now-discredited patriarchies that maintain old Chinese or Jewish traditions usually find their way into useful work despite linguistic and financial handicaps. On the other hand, boys—and girls—coming of age in female-dominated households wind up with a greater share of the problems, in part because they have experienced a disproportionate share of child abuse.[16] One of our most cherished myths is the naturally-nurturant mother, and one of our best-kept secrets is the far-from-uncommon abusive mother. In both abortion and divorce, "the freedom to choose" is for the mother, not the the child.

Single parenthood, which fell upon most women as an unfortunate consequence of broken marriage, became for others a positive goal achieved by rejecting marriage altogether. Ever since the Moynihan Report in the 60s, we've known that welfare policies had perversely encouraged the formation of "never formed" families. Some have now entered a third generation of children who know men and fathers only as occasional visitors to an ongoing matriarchy. Better than 75% of Black children now live in single-parent households run by women, and 23% of Black children are born to unwed teenage mothers who receive financial support by "marrying the state."[17] In fact, the pattern is so established that some Blacks see in it a unique style of Black domesticity instead of a social catastrophe. But the copycat white middle class, which often tries to emulate Black culture, has now translated ghetto illegitimacy into a new fashion called "elective single parenthood." Accelerating through the 70s, this middle-class method of family formation had become by 1980 statistically significant. In just one year, 1979-80, the birth rate for white unmarried women aged 20-24 increased by more than 16%.[18] No wonder then that white males have joined their black counterparts in a gender increasingly described as optional, disposable, dispensable and expendable, the result of still one more "growth" discovery that women no longer

need men as husbands or fathers, nor, as a noisy faction insists, even as lovers. Many lesbians, as well as some of their straight sisters, lament male absence by crying all the way to the sperm bank.

If men are not needed, then they lack *power*—the primary issue in the gender wars—what George Gilder began with in *Sexual Suicide*, what Amaury de Reincourt explored in *Sex and Power in History*, and what the endless outpouring of feminist literature is pre-occupied with today, as feminists acquire and exercise power primarily by claiming they lack it. They have succeeded because they can expand with infinite detail a fact that obtrudes with conspicuous certitude: in all societies throughout history, men have wielded most of the political, economic, and cultural power. Western Civilization is the most male-dominant of all cultures. Greek women, who had some status under the old earth-goddess cults, found themselves (during the totally masculine Golden Age) confined to the inner recesses of their houses, forbidden even to show themselves at the window. Jewish women were subjugated by husbands who thanked Yahweh daily for not being born female. Despite feminist myth-making, there has never been a pastoral matriarchal age. All known societies have been run by men, but few have matched the overpowering assertion of the male principle introduced by the Indo-Europeans and the Hebrews, and few have had so many feminist revolts; de Riencourt traces the beginnings of women's liberation back to the time of Euripides, and sees it flaring up from time to time throughout Western history.[19]

Today's feminists are therefore out of patience with any suggestion that women in this male-oriented culture had any leverage to begin with, much less powers that sometimes gave them parity with men. In her book *The Hearts of Men*, Barbara Ehrenreich brushed the whole point aside by saying "Men have always exaggerated the power of women."[20] George Gilder,[21] de Riencourt and the leaders of the men's movement insist, however, that feminists dramatically exaggerate the powerlessness of women. The quarrel takes us to every corner of the globe, and every epoch in history, to the begining of sexual dimorphism, a vast spatial and temporal arena from which feminists industriously dig up the evidence for their indictment against Western male supremacy. But contrary evidence exists, particularly in the post-World War II period of an America which observers as far back as de Tocqueville found uniquely hospitable to women. Gilder's argument rests on the premise that women derive their

power from their control of the "sexual constitution," a compact rooted in nature and in cultural need upon which all other constitutions are based. With regard to pre-1965 America, Gilder and the power-balance theorists also maintain that in most homes the financial power of the male breadwinner barely offset the considerable psychological and moral power of the female homemaker. Even though paternal authority had religious and legal sanction, it actually existed in subtle symbiosis with maternal influence to form a unified family authority. Paternal despots existed, as did their maternal counterparts, and the tragedy in some families wrought by a domineering father was matched in others by a commanding matriarch. The now-frequently-trashed image of John Wayne, a man's man who was tough on the bad guys and gentle with the ladies, often appeared with competing images of feckless masculinity shaped by Caspar Milquetoast, Walter Mitty, Ralph Kramden and Dagwood Bumpstead. And prior to the feminist outbreak in the 70s, there was something of a masculine revolt, which Ehrenreich reports, launched by the playboy, the beatnik, the drop-out and the hostile intellectual. Phillip Wylie's *Generation of Vipers*, which gave to our vocabulary the term "momism," now comes across as strongly as Friedan's *The Feminine Mystique.* Although feminists scornfully reject the Gilder thesis, they apparently still fear it. Tom Bethel reported in a recent *National Review* article that they have managed to prevent the re-issue of *Sexual Suicide.*[21]

Theorists of a pre-1965 gender power-balance in America nevertheless build their case on compelling if less conspicuous facts about the actual power of men in the home and in society. Political and economic power in any society is exercise male elite which controls other men as well as women. Many low-ranking men also find themselves under the sway of higher-status women. Nor does the male power elite remain isolated from the significant influence of women close to them, the legendary power behind the throne, the general's general, and the tycoon's heir. In their frequent exploitation of the "nigger" metaphor, feminists overlook the fact that women as supposed slaves to their husbands are the only slaves who have ever inherited their master's wealth or controlled them through indirect power. In fact, Gilder saw in this male double bind—subordination in the workplace and obligation in the home—a major source of compliant workers. Industry had the married man—as he put it—literally "by the balls." Men's groups have been less sanguine about

the situation, defining "men's liberation" in part as opening up space between these two relentless demands. They also point out that in spite of loud feminist complaints about lacking control over their bodies, men have throughout history found *their* bodies dragooned into military service. And, in spite of the noisy indignation of single women, many single men during the post-World War II period found themselves among the most discriminated-against groups in America, earning less on the average than their female counterparts, receiving more disparagement than the supposedly harried spinster, and experiencing more personal distress. Overwhelming evidence shows that single men also caused more social distress, and were the most volatile and disruptive group in the community. Their numbers are now growing.

The image of an all-powerful *pater familias* shrinks under closer inspection of American realities. Whatever authority he once exercised was offset by duty, and when power and privilege waned, duty became tougher to bear. Severe contempt still falls on the man who deserts his family, but the runaway wife can now win sympathy or even acclaim as a hero of the revolution. The runaway husband often joins an underworld of outlaws and outcasts, condemned by a verdict delivered more frequently by women than by men. Even today the slogan about "dead beat daddies" delinquent in child support generates sufficient energy to galvanize all political factions into action. One index of power today can therefore be seen in the fact that for two decades men's groups have campaigned against "malingering mommies" careless about honoring visitation rights. They have urged that new laws designed to crack down on child support default apply equally to visitation violations. They received no cooperation from feminists (who knew they could get what they wanted on their own) nor from Congress, which increased the leverage custodial ex-wives had already won from the divorce courts. And now in deference to the actual power of women, Congress has put into the hands of ex-wives the right to attach wages of defaulting fathers who fall behind for as little as one month. The surprise is not that so many have defaulted but that so many still pay.

The wounding bite of female scorn inflicted on the irresponsible father also reveals the emotional power women bring to their one-on-one relationships with men. It derives from several sources: from the difficulty many men have achieving a secure feeling of masculinity—one reason

why feminists often taunt male critics for being "threatened and insecure"; from the intensity of a sex drive seeking satisfaction and meaning in a culture, like all others, where sexuality is controlled by women; from the maternal capacity to implant strong feelings of guilt and dependency. These easily-manipulated emotions can serve as a means of moral training which can tame the obstreperous male into a good soldier or citizen or family man, but they can severely handicap a man caught in a power game with a self-serving woman. Most of the efforts of the men's movement have been directed at helping men develop the emotional independence that will put them on an equal footing with women. Their fear of a broken relationship which will withdraw support and approval is compounded by their inability to deal effectively with women better skilled at emotional give and take. Some do not know how to fight with a woman on even terms and more than a few, as the battered wife syndrome indicates, answer verbal abuse with physical abuse. Many men also lack emotional staying power. The files of men's groups are full of men who relinquished their rights just to gain a little peace. Added to the often disabling lack of psychological skills are the further blows to male self esteem brought about by two decades of media assault against the male role and the "masculine mentality."

Not long ago, in spite of grumbling and occasional derelictions, the average man pulled faithfully at the family harness because his duty was reciprocated by the duty of his wife and children in a covenant of shared effort and reward which could, if successful, build in the man the experience of what Germans call *Familienglück*, happiness from a warm and loving home, participation in a private, personally experienced history, a feeling of purpose and value. Now an increasing number of men see marriage as a high-risk enterprise made chancy by the options his beloved may or may not exercise, whether she will choose marriage in the first place over common-law independence, whether she will continue a pregnancy or deny him fatherhood by aborting it, whether she will terminate the marriage, leaving him with the obligations but not the benefits of fatherhood. Even though those negative options define a worst-case scenario, they are being made often enough to allow us to say that the status of fatherhood today depends on the uncertain and declining powers of the married father and the nearly-absent powers of the divorced father.

The complaint from women today focuses not so much on male

chauvinism as on male irresponsibility, a growing lack of commitment. Yet, surprisingly, in spite of the risks and hassles, many men still hang in there. We can take hope from their continuing faith in marriage, from the many marriages which still succeed in a hostile environment, and from the efforts of groups such as the pro-family movement to make married life less of a risk for both men and women. But we should no more rely on the natural dutifulness of men than on the natural goodness of women. The next time we blow bugles summoning young men to devote their lives to country and family, we'd better come up with a good answer when they ask: "What's in it for me?"

NOTES

1. R. F. Doyle, *Rape of the Male*, p. 99. Published by Poor Richard Press, St. Paul, MN, 1976. The men's literature usually is published by out of the mainstream presses and in newsletters, like the communications of Russian dissidents. Doyle is president of Men's Rights Association, one of the oldest organizations dedicated to protecting the rights of divorced men. He writes from personal experience, and from the experience of thousands of men he has worked with.

2. In the August 21, 1984 issue of the Washinton *Times*, HHS Secretary Margaret Heckler reports with approval "an improved child support system." Noting that "the single parent family is a fact of life," that one out of five children live with one parent, that "only 59% of 8.4 million women raising children alone in 1981 had legal orders for child support," she says that she spearheaded a bipartisan effort to add sharp enforcement "teeth" to existing laws. She makes no mention of what men's groups believe is an equally pressing problem: the failure of many custodial ex-wives to honor visitation rights.

3. Daniel Amneus, *Back to Patriarchy*, (Arlington House, New Rochelle, N.Y., 1979).

4. R. F. Doyle, *Rape of the Male*, p. 73.

5. *Ibid.*, p. 73.

6. Statistics vary from state to state. Doyle refers on page 100 to a study by Laverne V. Rickey, Professor of Law at Univ. of Washington and executive secretary of the State of Washington Judicial Council, who found 96% awarded. That was eight years ago. Fathers are having better success winning custody, but the 1984 figures probaby still enter the 80-90% range.

7. *Rape of the Male*, p. 102.

8. As reported by Fredric Hayward, president of Men's Rights, Inc., part of the Coalition for Free Men, in personal correspondence.

9. *Rape of the Male*, p. 109.

10. *Ibid.*, p. 101.

11. Susan Berman, *The Liberation of Eve Williams*, San Francisco *Chronicle*, July 4, 1976, Sunday Magazine. Her ex-husband, a liberal minister in San Francisco, was already ideologically pre-disposed for his wife's decision. He said in the same article, "Marriage in the traditional sense isn't working that well anymore. I don't even perform traditional weddings. I let the couple write their own ceremony. I look upon this divorce as a stage in our frienship."

12. Roberta Greene as quoted by Daniel Amneus in *Back to Patriarchy*, p. 41.

13. From *The Document*, declaration of feminism as quoted in a brochure *To Manipulate Women* issued by Concerned Women of America.

14. The New York *Times*, Monday, June 15, 1981. "The great majority of them (the members of the rally) were divorced fathers, and many of those were said to have been left by their wives, often in response to feminist urgings."

15. Most of this data is taken from *Back to Patriarchy*, Chapter IV. Among the sources are Drs. Sheldon and Eleanor Glueck who in a study found the delinquency ration of children living with mother only, compared with father only, to be about 3 to 1. Some 75% of all delinquents and most adult criminals are from broken homes, the majority run by single mothers.

16. Figures on the high percentage of child abuse inflicted by single mothers have appeared in several publications in the men's movement. In *Back to Patriarchy* Amneus quotes Urie Bronfenrenner, addressing a Congressional Committee on child abuse: "The most severe injuries occurred in single parent homes, and were inflicted by the mother herself." I asked Francis Baumli, Ph D., a psychologist active in the men's movement, whether data pointing to a high incidence of child abuse was accurate. He said it is. He referred me to Straus, Gelles and Steinmetz, *Behind Closed Doors*, issued by The National Institute of Mental Health.

17. The data and the quote come from William Tucker in *Black Family Agonistes, The American Spectator*, July, 1984. Michael Novak covered the same ground in *The Human Life Review* (Spring, 1984).

18. Data from a report entitled *Husbands Optional?* In the San Jose *Mercury*, Dec. 8, 1982.

19. This paragraph summarizes Part II, Chapter 1, *The Patriarchal Revolution* in *Sex and Power in History*, Amaury de Riencourt, Delta, New York, 1974.

20. Barbara Ehrenreich, *The Hearts of Men*, Anchor Books, New York, 1984, p. 95.

21. George Gilder, *Sexual Suicide*, Bantam Books, New York, 1973.

22. *National Review*, July 27, 1984, p. 23. ("Incidentally, *Sexual Suicide* is now out of print as a direct result of feminist pressure on New York publishers.")

Was The Constitution a Good Idea?

Lino A. Graglia

THE ANNIVERSARY of our achievement of political independence 208 years ago is an occasion not only for celebration, but, more important, for examination of the current condition of our independence. That the ideals of personal liberty, individualism, and self-government with which we began as a nation have been allowed to deteriorate may be illustrated by a relatively minor recent incident that would once have been unthinkable in this country. A few months ago a low-level unelected and unremovable official of the national government—the federal district judge in east Texas—ordered that residents of two 52-unit housing developments in Clarksville, Texas, be evicted from their homes, which some of them had occupied for more than twenty years, because of their race. The Clarksville Housing Authority was ordered to assign them to new quarters so that each of the developments would have a racial balance of 50 per cent black and 50 per cent white, give or take 5 per cent. There was of course much unhappiness and complaint from all or nearly all of the people involved, but in the United States of America in the year 1984 the order was carried out; the people were indeed removed from their homes, though not all of them would go where the judge had ordered them assigned.

Now, it is true that these people were poor and that the housing developments were government-subsidized projects—the citizens of Clarksville who could fully pay for their housing, it is reassuring to note, were not required to move and can continue to live in "racially imbalanced" areas, just as those who can pay for private schools can escape court-ordered racial busing—but even so, was there not a time in America when such a government edict would have occasioned protest? What outrages did the British perpetrate or threaten that provided better grounds for revolt? We have apparently become so accustomed to the control of our lives by federal judges that we have lost all sense of indignation and all heart for resistance. But if all we did was trade King George III for the federal

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district judge in east Texas, I doubt it was worth a revolution.

Political liberty requires that government be according to law and with the consent of the governed, not according to the whim of an irresponsible government official. Law is most likely to be good, or at least tolerable, the theory is, if made by those who must live under it. But where was the law—and who were the people that gave it their consent—that required the eviction of those families from their homes in Clarksville because of their race? Well, the law, the judge told us, was the grandest law of all, the United States Constitution, and surely you do not propose to utter a word against the Constitution. We will not regain our political freedom, my thesis is, unless we fully understand and are prepared to insist that what the judge told us in this case—and what the judges tell us in almost every case in which they invoke the Constitution—is simply not so.

Few people, it seems, have ever actually read the Constitution or have a clear idea of its structure and provisions. This is not surprising, because the Constitution is neither very entertaining nor very informative. Some knowledge of the Constitution has nonetheless become essential in order to understand clearly what is does *not* contain—in order to understand that it does not, for example, in any way limit the power of the states to restrict the availability of abortion or pornography or to permit prayer in the public schools.

Considering the remarkable things our judges have found in it, one could easily imagine that the Constitution is a very long and complex document, perhaps like the Bible or the Talmud or at least the tax code. It may be somewhat surprising, therefore, to be reminded that it is actually very short—easily printed, with all amendments, in a thin booklet of fewer than twenty pages—and apparently quite simple and straightforward. The Constitution was, after all, the result of the very practical and mundane purpose of granting the central government the power to ensure a national common market by removing barriers to interstate commerce.

The original Constitution, adopted in 1789 to replace the Articles of Confederation, is only about ten pages long and consists of seven articles or major sections. The first article, by far the longest, provides for the national legislature, the Congress. It consists mostly of provisions regarding the methods of election and operating procedures, some of which are obsolete, having been changed by amendment. Although strengthening

the national legislature, the Constitution was careful to leave general policymaking authority—the "general welfare" or "police" power—with the individual states. The national government was limited to specified powers, primarily the powers to tax, regulate foreign and interstate commerce, and provide for the common defense. The possession of wide-ranging and undefined powers by the national judiciary is, of course, totally inconsistent with this basic constitutional scheme.

Article II of the Constitution, on the Presidency, consists largely of a description of the complicated method of selection, much of which is also obsolete. The very short third article, on the judiciary, creates a federal Supreme Court and grants Congress authority to create other federal courts. It explicitly provides for congressional control of the Supreme Court's appellate jurisdiction, a potentially important means of limiting the Court's power. Article III also provides for jury trial in federal criminal cases and narrowly defines the crime of treason. These three articles provide the framework for a complete system of national government, the basic function of the Constitution.

Article IV requires each state to give "full faith and credit" to the official acts and records and court judgments of other states, prohibits discrimination against out-of-staters, provides for the admission of new states, and provides that the United States shall guarantee each state "a republican form of government." Article V provides for the amendment of the Constitution; Article VI provides that the Constitution, and the laws and treaties made pursuant to it, shall be "the supreme law of the land"; and Article VII provides for ratification. That is essentially all there is to the original Constitution.

Apart from the fact that the national government was to be limited to its specified powers, the original Constitution placed very few restrictions on either the federal or the state governments. Some of these restrictions, such as that Congress could not prohibit the slave trade until the year 1808, are obsolete, and others, such as that neither the federal nor the state governments may grant any "title of nobility," have been of little or no importance. The Federal Government is prohibited from suspending the "writ of habeus corpus" except in emergencies, both the federal and state governments are prohibited from enacting a "bill of attainder" or "ex post facto law," and the states are prohibited from enacting any law "impairing the obligation of contracts." Only the protection of contract

rights—a "bulwark" against "socialist fantasy," Sir Henry Maine called it—has been important in giving rise to constitutional litigation.

Surprising as it may seem, the Constitution nowhere states that federal judges have the power to invalidate the acts of other officials or institutions of government. The extraordinary nature of this power, and the fact that it was without precedent in English law, should alone be taken as establishing that no such power was granted. Given the very few restrictions in the original Constitution, there was little basis for the exercise of such a power even if it had been granted. It is clear that the constitution did not—and indeed still does not—contemplate a significant policymaking role for judges.

In 1791, two years after the adoption of the Constitution, ten amendments were adopted, the so-called Bill of Rights. The First Amendment, easily the most celebrated, provides that Congress shall not establish a religion or prohibit the free exercise of religion or abridge the freedom of speech or of the press or the rights of peaceful assembly and to petition government. Its basic purpose was to prohibit the Federal Government from licensing the press and from interfering in any way with state authority in matters of religion. That the religion clauses have become the means by which the Supreme Court *overrides* state authority regarding religion merely illustrates that constitutional law is not only not based on but often directly contrary to the Constitution.

After the First Amendment the Bill of Rights seems to go rapidly downhill. The Second Amendment, creating a right to bear arms in connection with the maintenance of a militia, seems to many people who are otherwise Bill of Rights enthusiasts to be obsolete and irrelevant—at best a nuisance constantly brought up by opponents of gun control. The Third Amendment, having to do with the quartering of soldiers in private houses, seems even more remote from and unrelated to any present-day concern. It is safe to say that few people have heard of it and fewer would miss it if it did not exist.

The remaining substansive provisions of the Bill of Rights have to do mostly with criminal procedure. The Fourth Amendment prohibits "unreasonable searches and seizures" and creates a search-warrant requirement. It creates no "exclusionary rule," which is solely an invention of the Warren Court, the effect of which is to divert the major issue in American criminal trials from the guilt of the accused, which is typi-

cally not seriously in doubt, to the procedures by which the evidence of guilt was obtained.

The Fifth Amendment, something of a catchall, requires grand-jury indictments for "capital" and other serious crimes, prohibits putting a person twice in jeopardy of "life or limb" for the same offense, creates a privilege against self-incrimination, provides that no person shall be "deprived of life, liberty, or property without due process of law," and requires just compensation for the taking of private property for public use. The repeated references to capital punishment (referred to still again in the Fourteenth Amendment) are particularly noteworthy in light of the fact that the Supreme Court has come very close to holding (Justices Brennan and Marshall would simply hold) that capital punishment is constitutionally prohibited—another example of constitutional law made in the teeth of rather than in accordance with the Constitution.

The Sixth Amendment creates a right to jury trial in criminal cases, to be informed of the charge, to confront and compel the appearance of witnesses, and to have the assistance of counsel. The Seventh Amendment requires jury trials in civil cases, involving more than $20. It is, almost all would agree, simply an embarrassment, an excellent illustration of the desirability of keeping constitutional limitations on self-government to a minimum.

Th Eighth Amendment prohibits cruel and unusual punishments and excessive bail. The Ninth provides that the Constitution's enumeration of rights shall not be taken to deny or disparage other rights retained by the people, and the Tenth makes explicit that the states and the people retain all powers not delegated to the Federal Government.

It is very important to understand that the various provisions of the Bill of Rights were demanded and ratified by the states as limitations on the Federal Government, not as limitations on themselves, and it was early held by the Supreme Court that they have no application to the states. The next time someone tells you that, for example, a city cannot keep the Ku Klux Klan from parading through the heart of downtown (a recurring issue in Austin, Texas)—or prohibit pornographic bookstores or nude dancing, or permit prayer in public schools—because of the First Amendment, you might point out that it is very surprising considering that the first word of the First Amendment is "Congress" and that it nowhere mentions the states. Of course, you might also ask where, in any

event, this defender of constitutional rights finds protection of nude dancing in the First Amendment—but be forewarned that the Supreme Court can find it and has found it.

Sixteen more amendments have been adopted since 1791. The Eleventh Amendment was adopted to overturn a Supreme Court decision that allowed states to be sued. The Supreme Court has never liked this amendment, however, and has therefore largely read it out of the Constitution—suing states and cities is today a major industry. Humpty Dumpty and other close students of language would no doubt find it fascinating that the very same act by a state official can be "state action" for the purposes of the Fourteenth Amendment, making the state liable to suit, yet not be state action for the purposes of the Eleventh Amendment, removing the state's immunity from suit.

The Twelfth Amendment changed the procedure for electing the President and Vice President. The Thirteenth, Fourteenth, and Fifteenth Amendments are known as the post-Civil War or Reconstruction Amendments; the Thirteenth abolished slavery, ratifying the Emancipation Proclamation, and the Fifteenth gave blacks the right to vote.

The Fourteenth Amendment was adopted for the very specific and limited purpose of guaranteeing blacks certain basic civil rights, such as to make contracts, own property, sue and be sued, and be subject only to equal punishments. In the hands of the Supreme Court, however, it has become by far the most important provision in the Constitution, in effect a second Constitution that has swallowed the first and transferred all policymaking power not only to the Federal Government but to the unelected branch of the Federal Government, the Court itself. Virtually every constitutional decision involving state law, which is to say the vast majority of all constitutional decisions, purports to be based on a single sentence of the Fourteenth Amendment, and indeed on four words: "due process" and "equal protection." By totally divorcing these words from their historic purposes, the Court has deprived them of meaning and therefore made them capable of meaning anything, magic formulas suitable for the Court's every purpose.

It is therefore essentially misleading to speak of "the Constitution" or "interpretation of the Constitution" in connection with Supreme Court decisions invalidating state law. No more is in fact involved than the Court's purported discovery of new meanings in "due process" and

"equal protection." Supposedly on the basis of these two pairs of words the Court has reached such near-incredible decisions as that New York may not refuse to employ Communist Party members as public-school teachers and may not give college scholarship aid to American citizens unless it also gives it to resident aliens, that California may not punish the parading of obscenity through its courthouses, and that Oklahoma may not have a higher legal drinking age for males than for females, even though it is males who present the drunken-driving problem. Except for those four words, these and countless other matters, some of much greater importance, would still be left for decision by elected officials at the state or local level rather than by the majority vote of a committee of nine lawyers, un-elected and life-tenured, sitting in Washington, D.C.

To complete our review of the Constitution, the Sixteenth Amendment gave Congress the power to levy an income tax, the Seventeenth provided for the direct election of senators, the Eighteenth gave us Prohibition, the Nineteenth gave women the right to vote, the Twentieth set new dates on which terms of elected federal officials would begin and end, and the Twenty-First repealed the Eighteenth.

The remaining five amendments I think of as modern or contemporary. That is, I can remember when they were adopted. The Twenty-Second Amendment, adopted in 1951, limits the President to two terms—which in my view is, like most limitations on self-government, simply a mistake. The Twenty-Third, adopted in 1961, allows residents of Washington, D.C., to vote for President; the Twenty-Fourth, adopted in 1964, abolishes the poll tax in federal elections. The Supreme Court, however, seeing little value in confining the amendment process to Congress and the states as provided in the Constitution, then decided on its own to abolish the poll tax in state elections as well. The Twenty-Fifth Amendment, adopted in 1967, has to do with presidential succession, and finally, the Twenty-Sixth, adopted in 1971, gives 18-year-olds the right to vote.

A proposed Twenty-Seventh Amendment, the Equal Rights Amendment, purported to prohibit all distinctions by government on the basis of sex. Because its literal interpretation would have been intolerable, its practical effect would have been to leave the difficult policy choices involved to federal judges, authorizing them to do what they now do without authority in the name of the Fourteenth Amendment.

We have lived now under the Constitution for almost two hundred years in unprecedented prosperity and freedom, and sound conservative principle cautions against changing what has proved workable. It may be doubted, however, that our success as a nation has been due to the Constitution, as interpreted by the Supreme Court, rather than in spite of it. We must not forget that but for the Supreme Court's interpretation of the Constitution in the notorious *Dred Scott* case, our greatest national tragedy, the Civil War, costing us more lives than all our other wars combined, might well have been avoided. The Court's decision that the Constitution precluded Congress from dealing with the slavery question made its resolution by war seem inevitable. A better illustration of the dangers of constitutional limitations on self-government would be difficult to imagine. On the basis of this one experience, it is doubtful that the net contribution of the Constitution to our national well-being has been positive, and it is certain that the net contribution of judicial review has been negative.

The *Dred Scott* decision was, however, only one of many injuries inflicted on the nation by the Supreme Court in the name of the Constitution. In the 1883 Civil Rights Cases, its next major constitutional decision invalidating a federal statute, the Court held that Congress could not prohibit compulsory racial segregation in places of public accomodation. The Court thereby gave us such segregation for another eighty years, until Congress again barred it in the 1964 Civil Rights Act. The Court's current contribution in the race area, busing for racial balance in the schools, is solidly in the *Dred Scott* and Civil Rights Cases tradition. Federal courts have recently ruled, for example, that the Atlanta public-school system, having become virtually all black, has finally achieved "unitary" status, after more than twenty years of compliance with court orders, and may therefore terminate its racial-balance efforts. The Boston and Denver public-school systems, however, although they have gone from majority to minority white while obeying busing orders, still have some whites left and must continue to attempt to distribute them evenly among the schools.

Even without judicial review, most constitutional restrictions are just bad ideas, the product of the mistaken and presumptuous notion that the people of one time are better able to deal with future problems than the people of future times will be. In constitution-making the rule should be

the less the better, and a major virtue of our Constitution is its brevity. Indeed, except for what the Supreme Court has made of the Fourteenth Amendment, the Constitution would cause few problems today. Even the very brief original Constitution, however, manages to contain several provisions that are at best an inconvenience.

The Constitution provides, for example, that only a "natural born citizen" can be President. A great political leader could arise and become a much-admired senator or governor, but no matter how strongly the people wanted him for their national leader, he could not be elected President, unless he was born an American citizen. Felix Frankfurter and Albert Einstein, for example, were ineligible, as is Henry Kissinger. This was a source of concern some years ago when Governor George Romney of Michigan, who was not born in this country, was seeking the Republican presidential nomination. Surely this is a situation for which there is nothing to be said. Similarly, the Constitution "protects" us from any temptation we might have to elect a 34-year-old-President, a 29-year-old senator, or a 24-year-old-congressman. We have particular reason to be grateful today that the drafters did not also concern themselves with maximum ages for high federal office.

Still another example of a needless and potentially troublesome constitutional restriction is the provision that a member of Congress cannot be appointed to any federal office during the term for which he was elected if Congress had raised the salary of the office during that term. This caused a serious problem when President Nixon wanted to appoint Senator William Saxbe of Ohio to the office of Attorney General. The Attorney General's salary had recently been increased as part of a general salary increase for all federal employees. The result was that President Nixon wanted Senator Saxbe to be Attorney General, Senator Saxbe wanted to be Attorney General, and no one, apparently, was opposed. Unfortunately, it was unconstitutional, proving that a real constitutional issue can arise, but not necessarily to any good purpose.

Because, as Bishop Hoadly pointed out to the King in 1717, whoever has absolute authority to interpret the law is the true lawgiver, to leave the ultimate interpretation of the Constitution to unelected, lifetime judges is to invite subversion of self-government and tyranny. The prescient Tocqueville warned, long before the Court attained its present power, that though the President, whose power is limited, and Congress, which is

subject to the electorate, might err without greatly injuring the nation, "if the Supreme Court is ever composed of imprudent or bad men, the Union may be plunged into anarchy or civil war." *Dred Scott* proved the accuracy of Tocqueville's warning, and the Court seems determined to prove it again.

Purporting merely to enforce the Constitution, the Supreme Court has for some thirty years usurped and exercised legislative powers that its predecessors could not have dreamed of, making itself the most powerful and important institution of government in regard to the nature and quality of life in our society. It has effectively remade America in its own image, according to a doctrinaire ideology based on egalitarianism and the rejection of traditional notions of morality and public order. It has literally decided issues of life and death, removing from the states the power to prevent or significantly restrain the practice of abortion and, after effectively prohibiting capital punishment for two decades, now imposing such costly and time-consuming restrictions on its use as almost to amount to prohibition.

In the area of morality and religion, the Court has removed both from the federal and state governments nearly all power to prohibit the distribution and sale or exhibition of pornographic materials. It has further weakened traditional sexual restraints, disallowing restrictions on the availability of contraceptives and lessening the stigma of illegitimacy by prohibiting government distinctions on that basis. It has prohibited the states from providing for prayer or Bible-reading in the public schools while also prohibiting virtually all government aid, state or federal, to religious schools.

The Court has created for criminal defendants rights that do not exist under any other system of law—for example, the possibility of almost endless appeals with all costs paid by the state—and which have made the prosecution and conviction of criminals so complex and difficult as to make the attempt frequently seem not worth while. It has severely restricted the power of the states and cities to limit marches and other public demonstrations and otherwise maintain order in the streets and other public places, even though the result may be to require cities to spend thousands of dollars to prevent or control the disturbances the demonstrations may be intended to provoke.

Nothing, however, can better illustrate the extraordinary power the

Supreme Court has now achieved than its busing decisions. It would have seemed incredible just a short time ago that the Court would be able to order the exclusion of public-school children from their neighborhood schools and their transportation to more distant schools because of their race. For more than a decade now, however, those orders have been handed down and faithfully complied with across the country despite the fact that they typically operate to increase racial separation not only in the schools but elsewhere and despite their obviously destructive impact on our public-school systems and our cities. Because a requirement of racial integration of the schools—complusory racial discrimination by government in school assignment—cannot be defended, the Court has always insisted that there is no such requirement and that it orders busing only to enforce the 1954 *Brown* decision's *prohibition* of racial assignment. Difficult as it may be to believe, the only justification ever offered by the Supreme Court for its requirement of racial discrimination by government is that such discrimination is constitutionally prohibited.

Similarly, the Court has boldly asserted that its busing requirement is consistent with the 1964 Civil Rights Act. That act, however, states that "desegregation" means "the assignment of students to public schools . . . without regard to their race" and, redundantly, that it "shall not mean the assignment of students to public schools in order to overcome racial imbalance." The Court's definition of "desegregation" is of course directly to the contrary, requiring the assignment of students to schools on the basis of their race in order to overcome racial imbalance. As Senator Sam Ervin said in justified outrage, the act "says in about as plain words as can be found in English" that assignments are to be nonracial. Congress "could not have found simpler words to express that concept" and was careful to use language "that even a judge ought to be able to understand," he said, but "the Supreme Court nullified this act of Congress" by requiring racial assignment nonetheless in suits brought under the act. Perhaps the Court has obtained a sort of squatter's right to do what it wants with the Constitution, but it can claim no warrant deliberately to pervert a recent, clear, and specific act of Congress. Less egregrious abuses of office by other government officials have led to calls for impeachment. But to the Supreme Court truth, logic, and the consequences of its acts impose no insurmountable obstacle. That, one is forced to

admit in awe, is real power, power to which no mere elected official could aspire.

Given the Supreme Court's power, the selection of a Supreme Court Justice may well be the most important act a President may have an opportunity to perform. The Justice will decide a much wider range of issues than a President can, and he is likely to remain in office—as in the cases of Justices Douglas and Black, who served for more than a third of a century—long after the President is gone. The power to select Supreme Court Justices has therefore rightly become a major issue in recent presidential campaigns. The system of self-government through elected representatives with which we began as a nation has so deteriorated that we must now choose our highest elected official with care not so much because he will govern us as because he may have an opportunity to choose one or more of the judges who will govern us and whom we will be unable to remove.

Even the election of Presidents who campaign as opponents of judicial power has, however, apparently lost its effectiveness as a means of restraining the Supreme Court. The Court's power is now so firmly established and so widely accepted as to have the status of a force of nature largely impervious to political events. With his very first appointments to the Court, President Franklin D. Roosevelt ended forever the Court's opposition to the New Deal, and never again was a federal statute regulating the national economy or welfare, or a state statute regulating business, held unconstitutional (with one exception, later overruled). President Nixon was exceptionally fortunate to be able to make four appointments to the Court during his first term (President Carter, of course, made none, and President Reagan has made only one, and that was due to an unexpected resignaton). The Court's power and willingness to govern not only has not been checked as a result of the Nixon appointments, however, but has continued to grow.

Chief Justice Burger, Nixon's first appointment, wrote the opinion in the *Swann* case, in which the Court first ordered busing for racial balance in the schools. Justice Blackmun, Nixon's second appointment, joined Justice Burger's opinion in *Swann* and wrote the opinion for the Court in *Roe* v. *Wade*, in which the Court for the first time created a constitutional right to have an abortion. Chief Justice Burger and Justice Powell, Nixon's third appointment, concurred in *Roe* v. *Wade*; of the four Nixon

appointees, only Justice Rehnquist dissented. Justice Blackmun also wrote the precedent-shattering opinion in which the Court held that a state may not constitutionally prefer American citizens to resident aliens.

Illustrating the utter chanciness of government by the Supreme Court, if the Senate had not rejected President Nixon's first two choices for the seat that finally went to Justice Blackmun, we almost surely would no longer have court-ordered racial busing—the Court's 5 to 4 reaffirmation of busing in 1979, after backing off for some years, required Blackmun's vote—and abortion would probably still be a matter for regulation by the people of each state through the political process. Justice Blackmun has publicly identified the prohibition of such regulation as his greatest contribution to American life. Never in our history has so much turned on the will of a single individual not answerable to the people whose lives he controls.

Justice Stevens, appointed by President Ford to replace Justice Douglas, the most radical Justice in the Court's history, has voted indistinguishably from Douglas on busing, abortion, and most other basic social issues. Justice O'Connor, appointed by President Reagan, wrote the opinion for the Court holding that Mississippi is constitutionally prohibited from maintaining a nursing school for women even though it also maintains another nursing school of equal quality that admits men—a result unimaginable just a few years ago. The ERA could be defeated in the political arena, but nothing can prevent the Justices from enacting it anyway, and theirs are the only votes that ultimately count. What Phyllis Schlafly achieved by years of magnificent effort, Justice O'Connor can cancel with a stroke of her pen.

Similarly, despite numerous cases presenting the issue to the Court, the exclusionary rule has still not been rejected. In short, six appointments by Presidents ostensibly opposed to judicial activism have not been sufficient to reverse a single major innovation of the Warren Court and have, instead, produced further innovations.

Proponents of judicial review defend the power of the Supreme Court as necessary to the protection of individual liberties against government officials. The assumption, almost universal among academics, is that the American people are not to be trusted with self-government and are much in need of restraint by their moral and intellectual betters. It is somehow forgotten that Supreme Court Justices are themselves high

government officials, and officials who, not being subject to the restraint of the ballot, are more, not less, subject to the corruption of power. It is also hard to understand why the search for moral and intellectual leaders, if that's to be the role of our judges, should be confined to members of the legal profession.

In any event, far from being essential to the preservation of our individual liberties, federal judges have become themselves the greatest source of danger to those liberties. It would be difficult to think of a more serious and widespread violation of liberty than that resulting from the Supreme Court's busing decisions—which also violate equality, in that their immediate impact is primarily on the less well off. By undermining effective enforcement of the criminal law—to say nothing of the Court's invalidation of traditional vagrancy statutes—the Court has diminished our liberty to walk the streets of our cities with a degree of security. The Court has admittedly done wonders for the liberties of street demonstrators, dear to the hearts of academics, but for the poor and elderly, forced to live in fear of the crime the Court's decisions have made more difficult to combat, the Court's contribution to liberty is less clear. Most important, every Court decision removing a policy issue from the political process deprives us of our most basic civil right, the right of self-government.

The issue presented by the Supreme Court's virtually unlimited power is, therefore, not whether we agree or disagree with its exercise in particular cases but whether we acquiesce in its usurpation by the Court. The great Judge Learned Hand protested that he would find it "most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not." I consider it not merely irksome but shameful to be ruled, not even by Platonic Guardians authorized and supposedly competent to rule, but by a handful of lawyers, elected by no one, holding office for life, and pretending to interpret the Constitution. Whatever may be the best system of government, that surely must be one of the worst. But I would, in any event, rather be misruled by my fellow citizens than saved from misrule by the Supreme Court. Bad government is a risk we must take; government by judges is an insult to our national heritage.

Law and the Value of Human Life

Francis Canavan

A SOCIETY'S LAWS reflect its moral beliefs and these, in turn, reflect its religious beliefs. I use religion here in a broad sense to mean a society's prevailing beliefs about the ultimate structure of reality, the nature of man, and his relation to the cosmos and to whatever its source may be. In this sense even the official atheism of the Soviet Union is a religion that has an unescapable effect on its morals and its laws. As a society's religious and moral beliefs change, then, so will its laws.

More than a century ago, in Victorian England, Sir James Fitzjames Stephen foresaw with surprising clarity the practical consequences of the loss of belief in a personal God and in a life after death. "This is the vital question of all," he wrote. "Upon this hang all religion, all morals, all politics, all legislation—everything which interests men as men. Is there not a God and a future state? Is this world all?"[1]

Should we ever become convinced that human life ends absolutely in death, Stephen felt, "there will be an end of what is commonly called religion, and it will be necessary to reconstruct morals from end to end."[2] He explained the reason why in these terms:

> If these beliefs are mere dreams, life is a very much poorer and pettier thing; men are beings of much less importance; trouble, danger, and physical pain are much greater evils, and the prudence of virtue is much more questionable than has hitherto been supposed to be the case. If men follow the advice so often pressed upon them, to cease to think of these subjects otherwise than as insoluble riddles, all the existing conceptions of morality will have to be changed, all social tendencies will be weakened. Merely personal inclinations will be greatly strengthened.[3]

General acceptance of a purely secular view of life—the view that this world is indeed all—he says,

> would have an equally powerful and direct influence both on law and morals. The value which is set upon human life, especially upon the lives of the sick, the wretched, and superfluous children would at once appear to be exaggerated. Lawyers would have occasion to reconsider the law of murder, and especially the law of infanticide.[4]

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This brings us to where we are now—a little over a century after Stephen wrote. We are living through what the press calls "the sexual revolution," which is a working-out of the implications of separating sex from procreation. Hence contraception, sterilization, divorce, pre- and extra-marital sexual relations and homosexuality have become disputed moral and legal questions. At a deeper level, we are living through a religious revolution, the de-conversion of Western culture from Christianity. As Stephen foresaw, it has led to a question of "the value which is set upon human life, especially the lives of the sick, the wretched, and superfluous children." Abortion has been for some twenty years a hotly argued issue in law and morals, and euthanasia, infanticide and massive (and more or less coercive) population-control programs are now coming to the fore.

The abortion issue has been argued largely in terms of a conflict of rights: a woman's right to control her own body vs. the unborn child's right to live. But the more perceptive participants in the debate, even among the proponents of legalized abortion, have understood all along that something much more significant than a conflict of rights is involved. It is nothing less than the introduction of a new, post-Christian and utilitarian ethic as the basis of our laws. Let us cite two examples from the 1970's of this awareness of what is at stake.

The first is an editorial published in *California Medicine*, the journal of the California Medical Association, in 1970,[5] and reprinted several times in this review. The editorial begins with the statement:

> The traditional Western ethic has always placed great emphasis on the intrinsic worth and equal value of every human life regardless of its stage or condition. This ethic has had the blessing of the Judeo-Christian heritage and has been the basis for most of our laws and much of our social policy. . . . This traditional ethic is still clearly dominant, but there is much to suggest that it is being eroded at its core and may eventually even be abandoned.

The factors that are leading to the erosion of the Judeo-Christian ethic, according to the editorial, are three: the rapid growth of population; the dwindling proportion of resources to population; "and third, and perhaps most important, a quite new social emphasis on something which is beginning to be called the quality of life. . . ." Growing numbers of people now see these "*as realities which are within the power of human beings to control and there is evidently an increasing determination to do*

this." I have added the emphasis to the preceding words because they deserve emphasis as being the heart of the matter. They state the characteristic temptation of a technological age, i.e., to do all that we are capable of doing. But, more importantly, they identify the driving force that is eroding the old ethic and bringing in a new one: the determination to make a purely this-worldly "quality of life" the supreme goal of social policy. The rules of social ethics will follow from the choice of that goal, and they will be profoundly and increasingly different from those of the traditional ethic.

The editorial frankly acknowledges the extent of the change that it sees coming, in these words:

> What is not yet so clearly perceived is that in order to bring this [desired quality of life] about, hard choices will have to be made with respect to what is to be preserved and strengthened and what is not, and that will of necessity violate and ultimately destroy the traditional Western ethic with all that it portends. It will become necessary and acceptable 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 of living which is to be sought. This is quite distinctly at variance with the Judeo-Christian ethic and carries serious philosophical, social, economic, and political implications for Western society and perhaps for world society.

The process of replacing the old ethic with a new one is already well under way, the editorial remarks, and is exemplified by society's acceptance of abortion as morally right and even necessary. But, since the old ethic is still alive and influential,

> it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices. It is suggested that this schizophrenic sort of subterfuge is necessary because while a new ethic is being accepted the old one has not yet been rejected.

The editorial goes on to predict, with evident approval, that "the new demographic, ecological, and social realities as aspirations are so powerful that the new ethic of relative rather than of absolute and equal values will ultimately prevail. . . ."

The New Republic made similarly frank and penetrating remarks in its lead editorial on July 2, 1977. It chided pro-abortionists for the shallowness of their argument from "a woman's right to control her own body"

and for the unfairness of their argument against the anti-abortion movement by "the smear of guilt by association with the Catholic Church." Then it said:

> Those who believe a woman should be free to have an abortion must face the consequences of their beliefs. Metaphysical arguments about the beginning of life are fruitless. But there clearly is no logical or moral distinction between a fetus and a young baby; free availablity of abortion cannot be reasonably distinguished from euthanasia. Nevertheless we are for it. It is too facile to say that human life always is sacred; obviously it is not and the social cost of preserving against the mother's will the lives of fetuses who are not yet self-conscious is simply too great.

One could accuse *The New Republic* of lacking the courage of its own convictions. Having said that there "is no logical or moral distinction between a fetus and a young baby," it falls back on defending the taking of "the lives of fetuses who are not yet self-conscious," as if their lack of self-consciousness made a significant difference; and it offers as a reason for its stand "the social cost of preserving [them] against the mother's will," as if the mother's will were relevant to social cost. But no matter; *The New Republic*, like *California Medicine*, recognized that the real issues are the value to be set on human life, the ethic which shall determine that value, and the ethic, therefore, which shall furnish the basis of our laws.

In resolving these issues, law will play both an active and a passive role. Of the two, the passive role would seem to be the more fundamental. If the new ethic becomes the "working religion" of the bulk of our population, the laws will be inevitably changed to reflect it. Those of us who adhere to the traditional ethic may and should resist the process to the bitter end. But, to quote Fitzjames Stephens once again, "Law cannot be better than the nation in which it exists, though it may and can protect an acknowledged moral standard . . ."[6] If the religious and moral foundation of the law crumbles, the laws will change.

There is, however, a real though secondary role that law can play in actively influencing the conscience of society. We have seen law perform this function in regard to the civil rights of black people in this country. Their rights were implicit in the statement of the Declaration of Independence that "all men are created equal [and] are endowed by their Creator with certain unalienable rights." The Fourteenth Amendment, adopted in the aftermath of the Civil War, had as its primary intention to

protect the rights of the newly-emancipated blacks. We may take these documents as expressions of the conscience of American society. Yet it was not until the second half of the present century that they achieved significant practical effect, so far as black people were concerned, and then only because of positive action taken by the U.S. Supreme Court and Congress.

The Supreme Court itself had canonized a much lower standard of racial equality in the *Civil Rights Cases*[7] and in *Plessy* v. *Ferguson*.[8] The white population of the country by and large acquiesced in the situation of imposed racial inequality that resulted. It was the Court itself that began to undo its own handiwork in the 1930s, though hardly in response to massive popular demand. When at last in 1954, it declared legally-imposed racial segregation unconstitutional by definition,[9] it laid down a principle that probably most Americans were willing to accept but for which it could not be said they had been clamoring. But the Court's 1954 decision and its follow-up decisions created the moral atmosphere that made possible the congressional civil-rights legislation of the 1960s.

I do not mean to imply blanket approval of everything done by the Court or Congress, or by the Federal bureaucracy and State legislatures in the course of the civil-rights "revolution" that is still going on. I only offer this development as an example of how law, whether through adjudication or legislation, can play an active role in stimulating the conscience of a society, reawakening its awarenesss of its basic values and forcing it to take effective action to implement them.

For the fact is that the values of a society, however basic, are not strongly held as individual convictions by all the members of the society. In most of us they exist in tension with other values, interests, and selfish drives. If the law is silent, the interests and drives may take over and shape society's mores. If the law speaks in such a way as to undermine the existing structure of society's moral values, multitudes will be thrown into confusion about those values and many will conclude that they do not impose any moral imperatives at all. That has been the effect of the Supreme Court's pro-abortion decisions in *Roe* v. *Wade*[10] and subsequent cases. On the other hand, if the law affirms the basic social values and does what it can to enforce the rules of conduct that follow from them, it

does not merely command observance of the rules but by implication teaches the values.

I am fully aware that the effectiveness of law is at best limited and that many forces influence a society's beliefs and practices as much or more than law does. It would be foolish to claim too much for law as a moral educator. But, for the present purpose, it is enough to say that it has a real and significant influence.

This is particularly true when we are dealing with a value as basic as human life. Loving-kindness among spouses and their children, candor among friends, sensitivity to the feelings of others in general are all admirable qualities and human values, but there is little that law can do to foster them. That function the law wisely leaves to other social agencies. Life, however, is a value so fundamental that law cannot ignore it.

Law must lay down some rules regarding the taking of human life and must specify some obligations for protecting it. The rules it chooses will both reflect and promote some view of the value of life, therefore some ethic. As between competing ethics, in this matter, it is impossible for the law to be simply neutral.

The legal choices that American society (along with other Western societies) is now making about taking human life will influence and perhaps determine a long series of future legal choices. Abortion is only the most immediate controversial issue. The deeper issue is the value of human life as such. Resolving that issue will involve coming to a conclusion about the very definition of life. Will it continue to mean the physical life of man born of woman? Or will it be redefined as a state of consciousness of a certain desired quality, in relation to which physical life is a mere vehicle without intrinsic value of its own? Answers to these questions will necessarily be implicit in the decisions that legislatures and courts make about abortion and about the increasingly urgent issues of infanticide, euthanasia, population-control and the limits of genetic engineering.

To that extent, whether they care to admit it or not, legislators and judges will be teachers and leaders of society. They may choose to uphold our traditional ethic, rooted in the Judeo-Christian heritage, despite the serious inconveniences it will impose on us in an age of rapid technological development. Or they may adopt the new secular ethic that subordinates the value of an individual life to "the quality of life." This ethic, as

California Medicine remarked, "is quite distinctly at variance with the Judeo-Christian ethic and carries serious philosophical, social, economical and political implications for Western society and perhaps for world society." But the choice is there to be made: the authors and interpreters of the law must make it and cannot escape it.

NOTES

1. *Liberty, Equality, Fraternity* (1873; edited by R. J. White and reprinted by the Cambridge University Press, 1967), p. 101.
2. *Ibid.*, p. 39.
3. *Ibid.*, p. 98.
4. *Ibid.*, p. 48.
5. Vol. 133, no. 3 (September 1970).
6. *Liberty, Equality, Fraternity, op. cit.* p. 159.
7. 109 U.S. 3 (1883).
8. 163 U.S. 537 (1896).
9. *Brown* v. *Board of Education*, 347 U.S. 483.
10. 410 U.S. 113 (1973).

APPENDIX A

[*What follows requires explanation. When the editors were planning publication of this review, in 1974, we consulted many sources, and many experts on the questions—above all abortion—we intended to deal with. We were repeatedly told that we* must *begin with the late Eugene Quay's monumental study* Justifiable Abortion: Medical and Legal Foundations, *which had appeared in the* Georgetown University Law Journal *(in two lengthy parts, Winter, 1960, and Spring, 1961). It was virtually unavailable even then, but we managed to borrow a copy. It was, and is, a classic. Our original intention was to republish it in these pages. However, its great length, plus the fact that the Supreme Court's* Roe *v.* Wade *decision "outdated" many parts of it, caused us to delay (Lord willing, we may yet publish it, or at least parts of it).*

We had all this in mind when, recently, we received a letter from Mr. Quay's widow, Effie Alley Quay, who has herself been a notable writer for various newspapers and journals. Her letter not only tells a story we think our readers would like to read but also reminded us that Mr. Quay had written another classic piece quite short enough to include here. As the reader will note, Mrs. Quay provides the background as to how and why the article was written. It was originally published, in 1969, in Child and Family *(Vol. 8, No. 2), a quarterly of high distinction, edited by Dr. Herbert Ratner.*

In another letter, Mrs. Quay described her reason for writing us:

> Because few realize the effort this monograph cost him, I wrote this piece as a kind of well-deserved through inadequate tribute to his memory. It is also belated but as I am now 85 years old, if it is ever to be done, it must be now. . . . I would rather see it in your Review than anywhere else and think he would too."

We hope that is true. We know that we consider it our privilege to publish what follows here.—JPM]

DEAR MR. MCFADDEN:

I was introduced to the pro-life cause long before that term was ever coined when my husband, the late Eugene Quay, returned from a meeting in Washington, D.C., a discouraged, deeply saddened, very angry man.

The time was late May of 1959. The meeting was the annual conference of the American Law Institute, of which my husband was a life member. His anger was due to the fact this prestigious legal society had approved a section of its proposed Model Penal Code justifying abortion on three counts: impairment of the physical or mental health of the mother; the likelihood the child would be born with grave physical or mental defect, or had resulted from rape or incest.

Designed to give states a model whereby to "liberalize" their abortion laws (as the saying went then), it was the beginning of all we have seen since—the annual killing of more than 1.5 million unborn babies and the biased, arbitrary court decisions required to give this slaughter a veneer of legality.

Being a far-sighted man and a legal scholar, my husband recognized it for what it was: a violent departure from all existing laws and from the Judaeo-

Christian concepts on which they were founded. He saw it not only as a threat to innocent life but also to our most cherished constitutional safeguards. Thus, he did all in his power to prevent its adoption.

He did not tell me what he said, only that he would not have been heard at all except for the intervention of Judge Learned Hand, who defended his right to speak. Even so, as the 1959 *ALI Proceedings* make clear, he was warned at the outset that his motion to eliminate the abortion section had no support, the implication being that he was wasting valuable time in making it, to say nothing of arguing for it.

Nevertheless, he stood to his tackling and managed, despite repeated calls for the question and interruptions from the Chair, to enunciate the fundamentals of what was to become the pro-life position. First reminding his hostile *confreres* that as Americans we abhor totalitarianism and reject the claim of any state that it can dispose of the lives of all or any of its people, he went on:

> We were shocked at the slaughter of the Kulaks, we were shocked at the slaughter in the name of science at Dachau. We still maintain the right of every individual, as a human being, to retain his life as long as he is guiltless of any offense that would justify taking it.
>
> That is equally true for the child and the child still in the womb . . .
>
> That child [in the womb] has done no wrong. It has simply followed the law of human nature, growing in the womb . . . doing no harm to anyone, simply waiting there patiently for the time when it will be ready to meet the mother's love and venture on a full life among [its] fellow men . . .
>
> If the state wants to take the life of a human being at one stage, it can take the life of that individual at any other stage . . . The fundamental thing is that the state cannot give the authority to perform an abortion because it does not have that authority itself. These are human lives and are not the property of the state.

But it was all to no avail, as were his further efforts to alert Catholic law-school deans (in attendence as ex-officio members) to the startling and ominous implications of the proposed statute. He did, however, have the satisfaction that his criticisms had met with the partial concurrence of an eminent jurist, Judge Hand having joined him as the session adjourned to say that, while he could never agree with my husband's basic position against abortion *per se*, he did share the opinion that, as written, the proposed statute was "bad law."

Though he came home defeated, he had no intention of accepting that defeat in silence. He began almost at once on a thoroughgoing critique of the Model Penal Code's abortion section.

Well aware that surprise was to be part of the strategy, his aim was to make his material available before the new abortion law was presented to state legislatures for adoption.

Working under pressure of time and without help of any kind—doing his own research, consulting with physicians, philosophers, and other specialists,

even doing his own typing—he labored well over a year, often working far into the night, to finish his monograph. Meanwhile, he was faced with the necessity of seeking a publisher, which he ultimately found in the *Georgetown Law Journal*, of which he had been founder and first editor in his law-school days.

Published under the title *Justifiable Abortion: Medical and Legal Foundations GLJ*, Winter 1960; Spring 1961), his paper proved to be an exhaustive, scholarly and devastating rebuttal of the ALI proposal, from both the legal and medical points of view.

For one thing, his article demonstrated the hypocrisy of the claim that abortion was needed to protect the physical or mental health of the mother. Through a detailed review of the medical literature, from the turn of the century on, he showed that one after another of the presumed indications for therapeutic abortion had been abandoned until by the mid-1950s virtually none was recognized as valid, a circumstance underscored in a terse statement by Dr. R. J. Heffernan of Tuft's University that "Anyone who performs a therapeutic abortion is either ignorant of modern methods of treating the complications of pregnancy or is unwilling to take the time to use them."

Thus the reality of what the ALI proposed was revealed: that abortion for social, economic, or any other reason, including mere whim or convenience, be legalized under the pretense of medical necessity.

The lasting value of the work was attested to by Dr. Herbert Ratner when, several years later, he published a short paper of my husband's in *Child and Family*. Referring back to *Justifiable Abortion*, Dr. Ratner wrote:

> It has since become acknowledged as a classic, the fountainhead for all subsequent legal thinking and writing of those concerned with the preservation of the values of Western civilization. The medical profession is no less indebted, for also at stake is medicine's commitment to the preservation of human life—its *raison d'etre* as a learned profession.
>
> Quay earned his B.A. degree in 1909, from which one can gather that he is now close to 80 years old. His paper is the culmination, as well as an exemplar, of the dedication of a member of a learned profession, in this instance, a lawyer, ordered to the pursuit of law's end, justice . . .

This latter paper, which was the occasion of Dr. Ratner's comment, was given by invitation at a conference in November, 1968, sponsored by the Association for the Study of Abortion, an elitist group of abortion promoters, now recognized as among those chiefly responsible for the Supreme Court's *Roe* v. *Wade* decision.

It was an invitation I had urged him to refuse. For one thing, by this time his health was poor and his vision all but gone. For another, I feared that if these pro-abortionists could not use him to lend an air of impartiality to their meeting, they would give him a hard time. And so it proved.

The first move was to ask that he change the title of the paper he had been

invited to give and to label his constitutional arguments "A Catholic Lawyer's View." When he refused, his name was stricken from the list of featured speakers and his participation limited to a workshop appearance. Nonetheless, he persisted, feeling that there was a slight chance he might do some good with the little paper he planned to do on *The Constitutionality of Abortion Laws: The Rights of the Fetus.*

Since he could no longer see well enough either to read or to write, I helped him, going with him to the law libraries, finding the volumes he directed me to, looking up the cases to which he referred me, and reading to him the sections he thought might be helpful, then, at home, typing a few more paragraphs at his dictation. For him it was a laborious and frustrating job. Unable to glance back to see what had been written or to check its phrasing, he could work only from my rereading to him what we had got down.

He had been careful to keep within the constraints of a workshop paper but, in the event, even that was not allowed. Several hours before his scheduled appearance, it was announced that time allotted for the workshop had been cut and speakers requested to hold their presentations to 10 minutes.

He complied by dint of working most of the afternoon with the aid of our son, the Rev. Paul M. Quay, S.J., who had accompanied him to help him on the trip and to read his paper.

Nevertheless, I think it was one of the finest things he ever wrote, a judgment perhaps confirmed by a remark overheard by Fr. Quay as the workshop broke up. A guest, respectfully honored as a prospective donor to the abortion cause, said to the moderator as they strolled out together: "I am surprised that there was no comment on Mr. Quay's very formidable paper."

The moderator shrugged and replied: "What can you do with a paper like that? You can only demolish it or ignore it."

I'm inclined to believe that the inquiring guest realized there was no way to demolish it. As Dr. Ratner wrote when he published this paper: "Q's paper is the best statement available, in terms of conciseness, lucidity and learnedness, in defense of the unborn child and traditional English-American laws."

As it happened, this was his final effort. A few months later he became seriously ill, never to recover. He had in mind to do much more and often spoke during his long illness of his wish to get at it. He died in May of 1972, eight months before the Supreme Court acted, striking down the abortion laws of all 50 states and completing the work initiated by the ALI.

Despite our grief, when this happened my son and I agreed that we were glad he had not lived to see it. It would have broken his heart.

He saw the ALI proposal as a dangerous invasion of constitutional safeguards.

At the same time, however, he had a certain confidence in the integrity of his own and the medical professions and, above all, in the wisdom of the American people. Once it became clear to them, as he said in his final paper, that the new permissive abortion statutes were "an attempt at an unconstitutional delegation of judicial authority to private individuals"; that these statutes would face the courts "with the dilemma of declaring that an unborn child is a person for some purposes, yet not for others, including the most important one of the right to life"; that, moreover, these statutes introduced "in the provision for abortion of the possibly defective the very dangerous concept of legal determination of 'fitness' to live," they would be strenuously opposed and rejected. He was encouraged in this view by the many requests he had for copies of *Justifiable Abortion* from those working to prevent adoption of the ALI proposals by their states. The Supreme Court decision, of course, would have nullified any such hope.

Thus, he would have been faced with what he dreaded most. For deep as was his concern for the unborn child—and it was deep indeed—he was most troubled, I believe, by the subversion of the law he loved, revered, and served, because he was convinced that, if that great basic structure which protects us all was ever undermined, the nation he also loved would be doomed.

EFFIE ALLEY QUAY

Constitutionality of Abortion Laws: Rights of the Fetus

Eugene Quay

The basic rights of the fetus are the same as yours and mine and protected by the same constitutional safeguards.

A consideration often overlooked in discussions of this kind is the original purpose of abortion laws, which was repressive, not permissive. Laws against homicide could not be applied to a killing prior to the only point, "quickening," at which life could be legally established. But destruction of even a potential life was condemned.

Nor was this legal emphasis on the right to life weakened by the exception which allows abortion to save the mother's life. Here, too, the sanctity of life was upheld. When the exception was written, the state of medical science was such that the choice was not between the life of the mother or the life of the child. It was between the life of the mother or the death of both.

Abortion at any time during pregnancy was made criminal by the English act of 1803.[1] Like the English statute, the first abortion laws in the United States were not a relaxation of the laws against murder, but created a new crime to fill a gap.

There was no intent of the law to disregard the right of the fetus to life. The law protected this life from the time it was thought to exist as a separate entity, just as it does today. The difference is that science can now tell us that new life begins at the moment of fertilization.[2]

The courts have frequently taken note of this increase in scientific knowledge and incorporated it in their decisions as when Massachusetts' "Dietrich" rule of 1884 was rejected in the case of Bonbrest v. Kotz, 65 F.Supp. 138, 140, 143 (U.S.D.C. District of Columbia, 1946). Referring to the earlier decision the court declared:

> The law is presumed to keep pace with the sciences and medical science certainly has made progress since 1884 . . . From the viewpoint of the civil law and the law of property a child *en ventre sa mere* is not only regarded as a human being, but as such from the moment of conception—which it is in fact.

In 1960, the New Jersey Supreme Court made it a matter of law in declaring: "Medical authorities have long recognized that a child is in existence from the moment of conception." Smith v. Brennan, 31 N.J. 353.

Eugene Quay, Esq., was a well-known legal scholar who did extensive research on the legal aspects of abortion. This talk was presented at the International Conference on Abortion of the Association for the Study of Abortion, Hot Springs, Va., Nov. 1968.

And at least one state—Wisconsin—has amended its abortion law to take account of the change in scientific thinking, defining "an unborn child" as "a human being from the time of conception until it is born alive."[3]

Courts early determined in cases relating to inheritance or title to property that the fetus must be recognized as a living human being—a person—from the moment of conception. In the great flood of personal injury actions of recent years, this is recognized still further, as for instance in Smith v. Brennan, cited above, New Jersey's highest court said:

> Medical authorities recognize that before birth an infant is a distinct entity and . . . the law recognizes that rights which he will enjoy when born can be violated before birth.

In 1933, Colorado inserted a clause to make express provision for the unborn in its statute relating to dependent children.

In another personal injury case, the Ohio Supreme Court ruled that the article of the Ohio Constitution guaranteeing that the courts are open to all persons applied equally to the unborn person. Williams v. Marion R. T. Co., 87 Northeastern 2nd 334 (1949); 132 Ohio St. 114.

Decisions explicit

In this case a pregnant woman was injured in a crash and her unborn infant was saved though born prematurely and terribly injured. Holding that the child in the womb had a distinct life of her own so that an action for damages would lie in her name, the Court said:

> To hold that the plaintiff in the instant case did not suffer an injury to her person would require that this court announce as a matter of law the infant is a part of the mother until birth and has no existence in law until that time.
>
> In our view such a ruling would deprive the infant of the right conferred by the Constitution upon all persons, by the application of a time-worn fiction not founded on fact and within common knowledge untrue and unjustified.

Court decisions of this kind—that the child is a person in the eyes of the law from the moment of conception and entitled to the protection of the law and Constitutional guarantees—are clear and explicit.

Until science conclusively proves the contrary, we can only go along with these holdings of the Courts, based on our present science. The 14th amendment to the U.S. Constitution declared in much the same language as the then-existing State Constitutions that no state may "deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." ("Due process" is concerned with the prevention of arbitrary and unreasonable legislation and with protection against unfair judicial procedures.)

In view of this, it would be difficult to defend liberalized abortion laws—

passed or proposed—against a challenge of unconstitutionality. If such a challenge were made, the courts would be faced with the dilemma of declaring that an unborn child can be a person for some purposes, yet not for others, including the most important one of the right to life. Or else to hold the new abortion laws unconstitutional, as indeed they are.

In reading the new statutes one must be struck by the near uniformity with which conditions for legalized abortion are prescribed with no provision for enforcement of these conditions.

There is no tribunal in the usual sense, no attorney provided to see that conditions of the statutes are met and limitations preserved, no judge, no jury. No standards are set for testing the indications for abortion.

All is left to one or several medical men who are required to do no more than give a "substantial opinion" that the individual case does in reality meet the requirement of the law, whereas, in a proceeding before a real tribunal, the doctors would have to appear as witnesses and would be required not only to give the basis for their opinion but to defend it under cross-examination.

New abortion statutes, then, are an attempt at an unconstitutional delegation of judicial authority to private individuals. Of such the North Carolina Supreme Court stated in 1953:

> The legislature cannot vest in a subordinate agency the power to apply or withhold the application of the law in its absolute, unguided discretion. Carolina-Virginia Coastal Highway v. Coastal Turnpike Authority, 237 N.C. 52.

One-sided process

Most glaring of all is failure of such statutes to provide a hearing for the child in the womb. The proceeding is completely *ex-parte* with not even nominal representation for the one who in this type of action must be regarded as the defendant. As I have noted elsewhere:

> One charged with a capital offense must be indicted, the indictment tested for sufficiency, an attorney provided for any defendant who cannot hire his own, time given for preparation of defense, he must confront his accusers, have an open trial and a record made. The child in the womb against whom no charge is made, is given no defender, no time, no hearing, no specifications to support the demand for his destruction. The unborn child could have no appeal even could he in some way have a recognized defender because there would be no record—no allegation and findings—to review.[4]
>
> The medical men alone determine on the killing of the child *in utero* and follow that decision by executing the sentence they have imposed.
>
> Contrast this with the principles laid down in the famous Scotsboro cases of 1932 in which the U.S. Supreme Court held that seven Negroes, ignorant, illiterate, yet forced to stand trial without counsel, had been denied due process. The court stated:
>
> It has never been doubted by this Court, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent

tribunal having jurisdiction in the case, constitute basic elements of the constitutional requirements of due process of law. Opportunity of being heard is described as among the "immutable principles of justice which inhere in the very idea of free government and which no member of the Union may disregard."

And the court stated further:

Let us suppose the extreme case of a prisoner charged with a capital offense, who is deaf and dumb, illiterate and feebleminded, unable to employ counsel, with the whole power of the state arrayed against him, prosecuted by counsel for the state without assignment of counsel for his defense, tried, convicted and sentenced to death. Such a result, which, if carried into execution, would be little short of judicial murder, it cannot be doubted would be a gross violation of the guaranty of due process of law; and we venture to think that no appellate court, state or federal, would hesitate so to decide . . . Powell v. Alabama (1932), 287 U.S. 45, 77 L ed. 158.

Unjust laws restricted

The revised abortion statutes are equally defective in regard to substantive aspects of due process which restrict legislative enactment of unfair and unjust laws. That the constitutional due process clause is binding on legislative action is made abundantly clear by numerous federal and state rulings. To be brief, I will cite only one, that of the California Appellate Court which held in People v. Zolotoff (1941), 48 Cal. App. 2nd 300:

This clause should not be so construed as to interfere with the state in its enactment and local administration of the criminal law, nor to confine it to any special mode of proceedings, *so long as the law as enforced* affords equal protection to all persons within its jurisdiction similarly situated and is not violative of fundamental rights that are essential to the protection of life, liberty and property.

Abortion as a "civil right"

One common assertion is that as a matter of "civil right" every woman has such use or disposition of her body as she pleases. As noted above, it has been ruled that the child in the womb is not a part of the mother. But aside from this, it should be noted that if such a right could be established without regard to how it might affect other individuals or the community, it would be necessary to repeal many other laws such as those against prostitution, drug abuse and indecent exposure as well as various compulsory health measures.

In any case a mother's assertion of her right to abortion was coldly received by the New Jersey Supreme Court. In a 1967 decision in the case of Cleitman v. Cosgrove, the court stated:

The right to life is inalienable in our society . . . We are not faced with the necessity of balancing the mother's life against that of her child. The sanctity of the single human life is the decisive factor in this suit in tort . . . It may have been easier for the mother and less expensive for the father to have terminated the life of their child while he was an embryo, but these alleged detriments cannot stand against the preciousness of the single human life to support a remedy in tort. Though we sympathize with the unfortunate situation in which these parents find themselves, we firmly believe the right of the child to live is greater and precludes their

right not to endure emotional and financial injury. Cleitman v. Cosgrove, 49 N.J. 22, 41, 227 A 2nd 689, 699.

This reasoning seems to me applicable to the entire abortion problem.

Enormity of consequences

On the one hand, we have the principle of the inalienable right to life, universally upheld by our courts. On the other, are the advocates of liberalized abortion who ask all of us to allow abrogation of this right for reasons small in comparison with what is given up—to avoid the birth of a possibly defective child in some few cases or the birth of a normal unwanted child in many.

The same thing applies if the problem is considered numerically. The enormity of the consequences for the many far outweighs the size of the problem faced by the few. The figure of 10,000 deaths per year from illegal abortions has been cited by some abortion protagonists. This has been termed "preposterous" by Dr. Herbert Ratner, public health director of Oak Park, Illinois, who showed it would not leave room for reported deaths from other causes among women of childbearing age.[5] Dr. Christopher Tietze also found the figure "unmitigated nonsense."[6] Perhaps, the best evidence of the unreliability of all such guesses is that the figures have not changed since the introduction of the Pill.

In Illinois during the five years from 1962 to 1967 there were five deaths recorded as due to criminal abortion. In the nation as a whole in 1963 there were 275 deaths attributed to abortion, legal or illegal.[7]

Dr. Andre E. Hellegers of Johns Hopkins University is impressed at the disparity between the small size of the abortion problem and the magnitude of the effort to relax abortion laws and we may wonder with him whether the proposed change is to permit another thousand or so abortions or as would seem to follow from testimony of some abortion advocates—the legalization of abortion on the massive scale of a million or two a year.[8]

Similarly, we may ask whether abortion is really the answer to the problem of maternal mental health. Or will the psychiatrists who sanction abortion on this ground find themselves faced later with the same patients suffering mental disturbance from another cause—the sense of guilt said often to follow abortion? And among those who will never be worried by a sense of guilt, will we find a disposition to abandon contraceptives in favor of abortion as a birth control measure in the Japanese manner? It will be noted that none of the abortion statutes sets any limit to the number of abortions any woman may have.

The choice, then, is between a speculative, temporary relief for a relative handful and the retention of our most cherished constitutional safeguards. It should be noted that the entire thrust of the proposed remedy is for the permissive killing of an innocent life, not for the preservation of life as in the earlier statutes. Moreover, there is also introduced in the provision for abortion of the possibly defective, the very dangerous concept of legal determination of "fitness" to live.

As we have seen, these changes could be made, if at all, only by Constitutional amendment. Could we do this and still retain the basic structure of our law? No, for Constitutions are intended for the statement of important and permanent principles. Thus some of the states are at pains to declare in their constitutions the right of citizens to change laws; but these states invariably add that the due process clause securing the basic rights of persons is established beyond repeal.

It must never be forgotten that *all* the rights of persons of which Americans are so proud rest upon constitutional safeguards. Abandon these, or permit them to be eroded, and we will have unwittingly substituted a state in which those rights can be conceded or withheld at the will of either a majority or an effective minority. Such a change would leave all of us at the mercy of some future Hitler, and leave any group whose continued existence might seem at the time a social or economic liability faced always, perhaps under the guise of the latest in human engineering, with the prospect of another Dachau.

NOTES

1. Miscarriage of Women Act, 43 Geo. III c. 58, 1803.
2. W. T. O'Connell, M.D. "The Silent Life: An Embryological Review," *Linacre Quarterly* 35 179-89 Aug. 1968.
3. See Eugene Quay, "Justifiable Abortion: Medical and Legal Foundations," *Georgetown Law J.* 49, 518 Spring 1961 (Part II)
4. *Ibid.* 49:177 Winter 1960. (Part I).
5. "A Public Health Physician Views Abortion," *Ill. Med. J.,* 131:687-93 May 1967. Also *Child and Family* 7:38-46 Winter 1968.
6. Chicago *Tribune*, Sept. 7, 1967.
7. *Supra* 5.
8. "Abortion, the Law, and the Common Good," *Medical Opinion and Review*, 3:76 May 1967.

APPENDIX B

[*The following article first appeared in the Washington* Times *on August 8, 1984. Mr Valentine is currently chief counsel of the U.S. Senate Subcommittee on the Separation of Powers. (©1984 by the Washington* Times.)]

Why the ACLU is Gambling with Roe

Steven R. Valentine

The American Civil Liberties Union has filed a lawsuit in Chicago that demonstrates dramatically the extremes to which the pro-abortion movement seeks to push the U.S. Supreme Court's 1973 *Roe* v. *Wade* decision. But the ACLU case, *Keith* v. *Daley*, may also turn out to be the means by which *Roe* v. *Wade* is significantly restricted, or even reversed, by the Court.

Overriding the veto of Gov. James Thompson, the Illinois General Assembly recently enacted three significant changes in its abortion law.

First, under the new statute, physicians who abort unborn children who may be viable must use the procedure that is safest for both the mother *and* the child.

Second, doctors must tell expectant mothers who seek abortions about the availability of medication to relieve the pain that the viable unborn child may feel during the operation. And third, the new law prohibits abortionists from performing sex-selection abortions.

None of the three amendments to the Illinois abortion law violates the Supreme Court's *Roe* v. *Wade* ruling. After all, *Roe* says that women have a right to *abort* (empty from their wombs) unborn children, not to ensure that they will die in the process. And the humane act of at least relieving the pain of the unborn as they are aborted does not prevent women from having abortions. Finally, *Roe* gave women the right to decide whether to give birth to a child, not *what kind* of child.

Yet the ACLU believed so strongly that these Illinois amendments threaten *Roe* v. *Wade* that it found five local abortionist physicians to bring a lawsuit in federal court seeking to have the offending provisions declared unconstitutional. Why?

The "viability" issue is a gravely serious problem for the abortion industry. Not only is the point in pregnancy at which the unborn child would be "viable" outside the mother's womb getting earlier as technology advances, but by definition a "viable" unborn child who is only aborted (emptied from the womb) might live. Until recently, most late-term pregnancies have been ended by fetal expulsion procedures that sometimes result in live births. To avoid this "unwanted" outcome, abortionists lately have been turning to a relatively new

method of abortion by which the unborn child is dismembered by a knife while inside the womb, then removed part by part.

The new post-viability provision of the Illinois law, then, is designed effectively to prohibit this grotesque, feticidal method of abortion. Taken in conjunction with earlier viability, the prospect of losing this abortion method scares pro-abortion doctors, and hence their compatriots at the ACLU. They want the federal courts to say that *Roe* v. *Wade* really means not only a right to an abortion, but a right to a dead child, too.

Fetal pain is an aspect of the abortion issue that President Reagan has done much to bring before the public. Almost any objective observer who looked at the medical facts would agree that, at least at some point in gestation, the unborn child is capable of feeling pain. And any of the methods of abortion now in prevalent use, therefore, may cause incalculable pain to the unborn children who are the targets. Recognizing these facts, and the reality that abortion is legal by direction of the Supreme Court, the Illinois General Assembly took a humane step. It provided that doctors must show the same humane consideration toward doomed unborn children that is asked for dogs and cats who are "put to sleep."

The fetal pain issue, too, scares the abortion industry and its friends at the ACLU. It tends to humanize the unborn child. Perhaps worse yet, from their perspective, requiring doctors to tell expectant mothers that their babies might feel excruciating pain when they are aborted might lead to a sharp drop in the number of abortions. Thus, by its lawsuit, the ACLU seeks to have the federal courts say that *Roe* v. *Wade* forbids Illinois to invade the "privacy" of the "physician-patient relationship" by trying to alleviate fetal pain.

Information released recently by the National Academy of Sciences indicates that as many as 60,000 newborn Chinese girls are killed each year because their parents prefer boys. The shocking NAS report describes in gory detail the methods by which baby girls are killed. For example, some expectant Chinese parents keep a water bucket by the maternity bed in which to drown the little girls as soon as they are born.

Sex-selective abortion in America is the moral equivalent of sex-selective infanticide in China. Amniocentesis, and other prenatal genetic screening procedures, are becoming more widely used each year as parents seek to avoid the births of "defective" children. Virtually all these tests have to be undertaken quite late in pregnancy, and the wait for the results is usually several weeks. A by-product of amniocentesis, as well as most of these other tests, is revelation of the sex of the unborn child. Thus, even if the child is genetically "normal," the mother can choose a late-term, extremely painful (for the child) abortion if she

finds that the child is not of the desired sex. Every known barometer of the practice indicates that, by an overwhelming margin, it is the female unborn babies who get aborted.

No known studies indicate how widespread the practice of sex-selective abortion is in America. But it is significant enough to be discussed and debated in the legal and medical journals. Obviously the Illinois General Assembly is convinced that it is a problem. And the abortion industry, with the ACLU by its side, is worried about the implications of the Illinois ban on sex-selective abortion.

But it is not sex-selective abortion per se that is the problem for the pro-abortion side. It is two other considerations.

First, if *Roe* v. *Wade* is to be the pure, unencumbered right to abortion (and feticide) that they seek, then no state legislature is to be permitted to presume to tell any woman which are legitimate reasons for having an abortion.

Second, and perhaps more important, if the sex-selection statute in Illinois is upheld in the federal courts, then it will be established that *Roe* v. *Wade* does not mean that women have the right to choose which kinds of unborn children should be permitted to live until their natural birth.

In short, might the next step for states like Illinois be to ban genetic abortions where tests show that the unborn child has Down's syndrome, spina bifida, or some other malady? That is what may really scare the abortion industry and the ACLU.

Thus, in *Keith* v. *Daley*, the abortionists and the ACLU seek to preserve and expand the *Roe* v. *Wade* "right to an abortion." But the new Illinois law is a state statute. And if the U.S. District Court strikes it down (it already has issued a temporary restraining order), then Illinois has a right of appeal to the U.S. Court of Appeals for the Seventh Circuit, and, ultimately, to the U.S. Supreme Court.

By the time the case reaches the Supreme Court, is argued, briefed, and considered, President Reagan's re-election, coupled with vacancies on the high bench, might provide the margin by which it could be used to reverse *Roe* v. *Wade* altogether. Five of the six pro-*Roe* Justices are now older than 75. And two of the three anti-*Roe* are under 60.

Even if the composition of the court when *Keith* v. *Daley* reaches it is not such that *Roe* v. *Wade* can be reversed, it will provide a means by which to win significant restrictions on the abortion "right." Do a majority of the Justices really mean to say that *Roe* v. *Wade* means a right to feticide? An effective right to cause the unborn child pain as it is aborted? A right to sex-selection abortion?

Thanks to the new ACLU lawsuit, we may find out.

APPENDIX C

[*The following article first appeared in the July 25, 1984, Dallas* Morning News. *Laura G. Weston is a Dallas mother of four who is active in the anti-abortion movement. This article is reprinted with her permission.*]

An Appeal for Decent Burial

Laura G. Weston

I write this to appeal to the bond of common decency which exists among the citizens of Dallas, despite the differences we may hold on the issue of abortion.

As I am sure you are aware, each week hundreds of abortions are performed in Dallas. The abortion industry is evasive about what happens to the bodies of the babies after an abortion. I found out what at least one abortuary did.

Last fall I began pro-life counseling outside the North Central Women's Center/Dallas Women's Center. As time passed I realized I had never seen a pathology truck come to pick up the bodies, as I had seen twice a day at another abortuary, which has since closed. The suspicion began to grow that this abortion mill was throwing the bodies into the trash.

One day the director of the abortuary came out and accused me of showing pictures of aborted babies which were lies. She contended they merely removed "tissue products of conception" which was not what we were showing.

Were the pictures really deceptive? I suspected there was one way to find out. After struggling with myself over what I might find, I went to the dumpster behind the abortuary. To my horror I saw that many of the large black plastic bags it contained were smeared with blood.

One of the ones on top was oozing blood, and I stood there for what seemed like an eternity, unable to go on.

I finally decided to put the bag in a box and take it home. When I finally opened the bag, I found a smaller plastic bag labeled "Collection Bag" which was filled with blood. In this bag was the tiny body of a beautiful baby boy. His head had been ripped off, and his chest was torn open, but through my horror and sorrow, I could not help but be struck by the wonder and perfection of his tiny body.

In no way did the dehumanizing term "tissue product" fit this little human being. Though he was only about 1½ inches long, he was beautifully formed.

Since then I have seen hundreds of other babies. Some were so tiny they fit on the end of my finger. Others, had they not been torn apart, would have been too large to rest in my hands.

Most were between the two extremes; all were wonderfully recognizable little

boys and girls. Their bodies were compelling testimony both to the beauty of God's handiwork and to the horror of man's.

After my first discovery, I never dreamed I would come back to recover more bodies. I was absolutely sure throwing babies into the trash was illegal, and that a few phone calls would stop this barbaric practice. I was wrong.

Last Mother's Day a service was held at the grave of the babies which Kaye Thorogood, Peggy Krebs and I recovered from the dumpster behind North Central Women's Center. The grave contained the remains of more than a thousand abortions. I can testify the pictures we showed were too kind in portraying the horrors of human dismemberment, beheading and disembowelment.

Some weeks ago City Councilmen Paul Fielding and Max Goldblatt announced they would bring before the City Council an ordinance prohibiting the trashing of aborted babies. As yet, the ordinance has not been presented. In part, the ordinance is being held up by the Dallas Medical Society, responding no doubt to pressure from its abortionist members and the abortion establishment in Dallas.

The citizens of Dallas do not want dead babies in the trash. We would be happy to resume burying these babies. This ordinance must be considered and passed. It is a matter of common decency.

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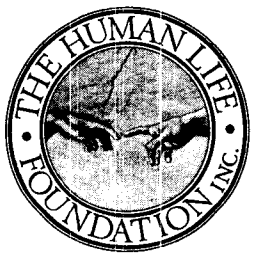
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