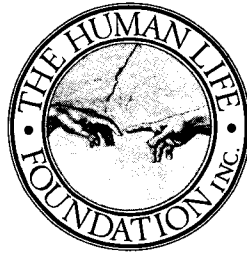


the HUMAN LIFE REVIEW



FALL 1985

Featured in this issue:

Ellen Wilson Fielding on The Real Thing

Joseph Sobran on The Abortionist As Hero

Steven Mosher on The Abortion Rules

R. V. Young on Pleasure, Pain and Abortion

Barry Nakell, Esq., on The Right to Life

Allan Carlson on Pregnant Teenagers and
Moral Civil War

Joseph R. Stanton, M.D., on *Untermenschen*

Also in this issue:

John T. Noonan, Jr. • Ronald K. L. Collins • Steven L. Carter
Nat Hentoff • Drs. Richard L. Landau & James M. Gustafson
James C. G. Conniff • William Gribbin • Francis Canavan, S.J.
and Brenda Becker on Dr. Bernard Nathanson

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. . . FROM THE PUBLISHER

With this our 44th issue we complete 11 full years of publishing. It is amazing to note that the abortion issue, our main subject over these many years, has remained in the forefront of the news and in the public view despite the desire of the strongly pro-abortion media to the contrary. This is in no small way due to your support of this publication and others like it that refuse to let the issue fade into history's dustbin, as most issues do. As long as we have the wherewithal, we will continue to bring you the best arguments against abortion, as well as the best writers available to keep you informed about the other "life" issues, i.e., euthanasia, infanticide, and much more. When we started this venture our goal was to fill a void—that goal has been accomplished. Our goal now is to keep that void filled.

With this issue we mark the return to our pages of Ellen Fielding (*née* Wilson). Ellen decided that she had other interests that she wanted to pursue a few years ago (getting married and starting a family) and even though we protested, she went and did it anyway. *We* welcome her back and know that our regular readers will too.

In our last issue, our lead article was by Mr. Steven Mosher (who "reviews" John Irving's *The Cider House Rules* in this issue) about forced abortion in China. Mr. Mosher's book, *Journey to the Forbidden China*, plus his earlier work, *Broken Earth: the Rural Chinese*, are both available at \$17.95 from Macmillan's Free Press, 866 Third Avenue, New York, New York 10022. His first novel, the story of a Chinese peasant family entitled *San Gen*, will be published early next year by W. W. Norton & Co.

As is our custom, the Appendices appearing in the *Human Life Review* are often reprinted from other publications, many of which you might not ordinarily see. William Gribbin's article (*Appendix B*) was reprinted from a new quarterly, *The Journal of Family & Culture* (721 Second Street, NE, Washington, D.C. 20002. Subscriptions: \$10 per year). Father Francis Canavan's essay "Is a Tadpole a Frog?" was reprinted from *catholic eye*, a publication of the National Committee of Catholic Laymen. Subscriptions may be obtained by sending \$25 to *catholic eye*, 150 East 35th Street, New York, New York 10016. The newsletter appears monthly; it is edited by J. P. McFadden.

We still have available a very few complete sets of Bound Volumes of the first 10 years of this review, as well as copies of our now-famous (Winter/Spring, 1985) 10th Anniversary double issue (which had the unusual distinction of running articles by then-Archbishops John O'Connor of New York and Bernard Law of Boston—both were made Cardinals shortly thereafter—the issue will surely become a collector's item). We also have several important books, including some copies of the original hardcover edition of Ellen Wilson Fielding's fine book, *An Even Dozen*. You will find complete information on how to order, etc., on the inside back cover of this issue.

Again, our thanks to all of you who have made this unusual publishing effort possible.

EDWARD A. CAPANO
Publisher

THE HUMAN LIFE REVIEW



FALL 1985

Introduction	<i>J. P. McFadden</i>	2
The Real Thing	<i>Ellen Wilson Fielding</i>	7
The Abortionist As Hero.	<i>Joseph Sobran</i>	13
The Abortion Rules	<i>Steven Mosher</i>	25
Pleasure, Pain and Abortion	<i>R. V. Young</i>	37
The Right to Life	<i>Barry Nakell, Esq.</i>	54
Pregnant Teenagers and Moral Civil War	<i>Allan Carlson</i>	64
The New <i>Untermenschen</i>	<i>Joseph R. Stanton, M.D.</i>	77
Appendices		86

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INTRODUCTION

“**W**HAT I CANNOT IGNORE is that the reality of Peter, *as he is and not as I choose him to be*, cuts across all the rhetoric about personhood, blobs of tissue and the like. Thinking can no more turn a 10-week-old fetus, moving about in my womb, into a blob of tissue than it could turn seven-month-old Peter, learning to crawl, into a blob of tissue.”

Our regular readers may hear a familiar ring in that tightly-rippling prose: sure, it's Ellen Wilson, back in our pages after a sabbatical during which she married, and gave birth to a son, among other feats nowadays unusual (she also did a stint as Book Editor of *The Wall Street Journal*). Writing now with the new wisdom motherhood confers, it is fitting that she begins by pinning down a most incredible claim of “pro-choice” rhetoric—that *mothers* are the intended beneficiaries of abortion. In her accustomed style, Ellen turns the argument around with a single line (“... what are these women mothers of, if their aborted fetuses aren't human beings?”). And she goes on to write movingly about things beyond argument: the realities we *know*. Fine writing, powerful stuff. Welcome back, Mrs. Fielding.

Our other contributing editor, Joseph Sobran, also writes on the rhetoric of abortion, specifically as it has recently been showcased in a “major article” (in, of course, the *New York Times*) and a book that has, as we write, been on the best-seller lists for almost half the year. Of course the author, John Irving, is accustomed to public attention and “critical” acclaim—which he doesn't get from Sobran. But then Mr. Irving is only a minor character in the plot Sobran criticizes: the main character is *The Abortionist* who, as Sobran points out, has been “the forgotten man” in the controversy. No more: surely a great success of anti-abortion polemics has been to put the opposition on the defensive “image-wise”: killing unborn babies is a filthy business (and a filthy-lucrative *business*). No wonder that there is now a kind of concerted ad cam-

THE HUMAN LIFE REVIEW

paign to sell “The Abortionist As Hero.” But the image won’t sell, as Sobran demonstrates here, with his accustomed finesse.

Next we have Mr. Steven Mosher, for the second time (in two issues). But—surprise—he writes not about rural China, on which he is a recognized authority (not least because he’s darn near the only American who’s actually *been* there?) but rather, yes, Mr. Irving’s book. We were surprised too: having read two books and much else by Mr. Mosher (an anthropologist by trade) on such to-us-germaine subjects as China’s forced-abortion and infanticide “programs,” it hadn’t occurred to us that fiction would be his field. It obviously is, as his article here demonstrates (oh yes: Mosher is also working on a first novel of his own, about Chinese peasants, of course). While nobody would call it a “review” of *The Cider House Rules*, it certainly should save you the bother of reading the book yourself.

Incidentally, *Cider House* got surprisingly bad reviews from the “major media” critics, even though most of them are obviously pro-abortion. This interests us: we had noted (see our 10th Anniversary issue, Winter/Spring 1985) that “no renowned writer has yet come forward as the champion of abortion”—but surely Mr. Irving qualifies nowadays as “renowned” (remember the hoopla over *The World According to Garp*, etc.)? We should have said no *artist* has championed abortion: put that way, we’d have been more accurate then, not to mention now.

One of the frustrating things about editing a journal such as this one is, that you get to know a lot of people you’ve never *met*. A prime example is Professor R. V. Young, who has contributed a number of articles fine enough to make him a friend of ours—and much appreciated by our readers—but we somehow don’t get down to North Carolina much, and he hasn’t been enticed to New York as yet. As you read his latest article here, you’ll surely understand why we’d like to remedy the problem. Using Dr. Bernard Nathanson’s now-famous video-film *The Silent Scream* as his point of departure, Young takes you on a fascinating tour of What It All Means, complete with his own lucid prose, a dash of poetry, even the original Latin for his indisputable quotations (never miss the good Professor’s footnotes, which are half the treat!). The thought struck us that *you* might want to read it twice, as we did, to get all that’s there. If so, persevere: there is a great *deal* in it, including much that we’d all like to ignore if we could. The point is we can’t ignore the truth, except at our own peril. Ideas have consequences, as another distinguished professor (the late Richard Weaver) once reminded us all; Young reminds us that the consequences can be inevitable, no matter whether the ideas be true or false.

INTRODUCTION

Now: it might seem odd that, in an issue that completes our 11th year of publication, we should run an article titled “The Right to Life.” Well, it’s not our title. Some time back we spotted a piece by Columnist Nat Hentoff in the *Washington Post* (reprinted here in *Appendix B*) reporting an unusual happening: a speech by an American Civil Liberties Union stalwart that was not *pro*-abortion. That’s news. We did the obvious, and asked the author, Mr. Barry Nakell, Esq. (also, as it happens, a North Carolinian), if we might reprint it here. He agreed. We thank him kindly, and let him speak for himself, without additional comment, except to note that we consider his an important contribution to that “dialogue” that everybody calls for, but few enter.

Then another regular contributor, Mr. Allan Carlson, again demonstrates his special talent for handling the kind of “facts” which obscure rather than explain what’s actually happening. Here, his subject is the “Teenage Pregnancy Plague” constantly used by abortion-promoters (Planned Parenthood *et al.*) to promote, in effect, *more* of what everybody knows is the only thing that can produce pregnancy. Malcolm Muggeridge often describes this “problem” as the sort of perverse Cosmic Joke a dying civilization plays upon itself. Indeed, Carlson ends up making much the same point: “problem” pregnancies seem “worse” in the U.S. precisely because the Old Morality is not yet dead here; many Americans are still unwilling to accept the death-wish “philosophy” that has depopulated much of the Western world.

Thus he concludes: “The true conflict is between rival visions of the world and future. Such a conflict does not allow for permanent compromise. It will be settled only when one or the other side triumphs. Neutrality in this struggle is not possible.” Is *victory* still possible? Alas, Mr. Carlson cannot answer that; but he leaves little doubt as to how victory—or regeneration, if you will—must be accomplished.

The reader might consider that what our old friend Dr. Joseph Stanton next has to say makes Carlson’s bleak picture even darker. On the other hand, the good doctor clearly personifies the tenacious adherence to principle that Carlson says can win back a lost heritage. In that sense, Dr. Stanton’s polemic provides needed inspiration. His subject is that worthy successor to the Abortion Holocaust, the “Right to Die” movement, which is also being steadily extended *via* lethal legislation. One wonders why there isn’t more resistance? While none of us are candidates for abortion, we could *all* become victims of the rapid “progress” being made in the “treatment” of the Hopelessly Ill. Do the progressives somehow believe they themselves will be spared? As we say, it’s hard to explain in normal terms. But of course, as Stanton explains, the

THE HUMAN LIFE REVIEW

rush to legalized euthanasia is cloaked in medical jargonese, a “medi-speak” in which treatment means *non*-treatment, and so on. We expect that you will find it all uncomfortably interesting reading. (You might even be inspired to ask your own doctor what *he* thinks of it.)

* * * * *

As is our custom, we have added a number of appendices. In fact, we can't remember ever having so many or, we trust, more interesting ones than those you will find here. *Appendix A* is a kind of synopsis of what has recently become a major public controversy: the Reagan Administration's *amicus* brief calling upon the Supreme Court to reverse itself on abortion. You will find what we hope is a useful description of the brief itself (plus excerpts), as well as several commentaries bracketing the arguments, pro and con. As we go to press, the Court is preparing to hear the cases involved, so we'll undoubtedly have more on this controversy in coming issues.

As indicated, *Appendix B*—Nat Hentoff's column—caused us to ask for Mr. Nakell's speech. You will see that Mr. Hentoff quotes liberally (how else?) from it; but he also adds, we think, some important perspectives of his own which you should find quite interesting.

Appendix C we have dubbed “Son of Cal-Med.” Here's why: in our very first issue (Winter, 1974) one appendix was an editorial first published in the journal *California Medicine* (Vol. 113, No. 3, Sept. 1970). It began: “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.” Exactly right. But the point of the editorial was that this “ethic” was rapidly eroding, a fact that could “be seen most clearly in changing attitudes toward human abortion” which had produced “a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous . . . until death.”

The editorial became, and remains, famous as a milestone statement on the road to the Abortion Mentality. It also argued something else: that “Medicine's role” in the new morality would be a dominant one because Medicine *alone* had the knowledge to “apply” the means necessary for the desired “betterment of mankind.” Altogether we reprinted “Cal-Med” four times (the last time in our Spring '83 issue).

With this background in mind, we think you will understand what we mean by calling the article by Drs. Landau and Gustafson “Son of Cal-Med” (you know, as in Son of Frankenstein). Note that “Medicine's role” becomes

INTRODUCTION

a “priestly role”; the “new” knowledge literally a new Gnosticism, a pseudo-religious justification for what Dr. Stanton is talking about. Surely this document belongs in the “permanent record” this journal exists to construct, if only for future historians who may well want to know *why* we chose death over life?

Now, quick, read straight on through *Appendix D* as a restorative. You’ll feel better again, and undoubtedly agree that nothing need be Hopeless while there remain among us such men as Mr. Conniff. (And, as Dr. Stanton reminds us, Mother Teresa.) Then luxuriate in the knowledge that his article actually appeared in the *New York Times*—obviously all things are possible, still.

We conclude with more refreshing items. *Appendix E* is an article by the remarkable Mr. William Gribbin, a man expert on more subjects than we can list. Here he writes about a major concern: the Family. Remember Allan Carlson’s article: surely if we could restore strong families we *could* do something about teenage troubles? Well, Mr. Gribbin says *some* progress has been made; more importantly—while we’ve wasted chances to do more—we know *how* to do it. That’s encouraging.

Then read Brenda Becker (*Appendix F*) on the also-remarkable Dr. Bernard Nathanson, of *Silent Screams* fame. No, it’s not an entirely flattering portrait: the point is, every serious controversy provokes serious plague-on-both-your-houses stuff; the abortion issue now qualifies. And, we’d say, Miss Becker is clearly more impressed by the *anti*-abortion side? (Her description of the *pro*-abortion meeting is hilarious, and devastating.) It’s a good read, from an unusual source.

Finally we give you a short, sharp piece (*Appendix G*) by our colleague Francis Canavan, S.J., which marvelously evokes a kind of summary of all that has come before it, right back up to Ellen Wilson’s lead article. A friend wrote us recently, pointing out that Voltaire’s greatest asset was that “he was clear, concise, and to the point”—he was a Master Chef producing new dishes from the same ingredients, etc. We thought of Father Canavan.

So you have our final ’85 issue, a full meal we’d say, and hope you agree. We’re already at work on next year, coming soon.

J. P. McFADDEN
Editor

The Real Thing

Ellen Wilson Fielding

LAST AUGUST Judy Mann wrote an attack on anti-abortionists that appeared in the *Washington Post*. It was occasioned by Rep. Christopher Smith's successful House fight to cut off funds for abortions in the District of Columbia. The column closed with this puzzling statement from pro-abortion Rep. Patricia Schroeder: "It's a signal we can't win anything . . . Mothers don't have a chance."

Mothers. What on earth could she have meant by that? Was it a sarcastic use of anti-abortion vocabulary? Was it a Freudian slip? Could the pro-abortion Rep. Schroeder actually face the reality of the pregnant woman's motherhood without flinching? For what are these women the mothers of, if their aborted fetuses aren't human beings?

I have been thinking about "real" and "imaginary" motherhood, "real" and "imaginary" babies, since my son Peter's birth last Christmas Eve. The sometimes overwhelming reality of Peter has made me understand how little, in some ways, my recognizing his humanity while he was still in the womb mattered. Of course, it mattered a great deal in one sense, since I had the legal power to end his life. But even if I had done so, he still *would have been*. He would have had a history, however short, and however little I knew about it. He would have existed even if I had thought he did not. The unborn Peter was a little like Bishop Berkeley's tree falling in the forest with no one there to hear. I understand better than I did before that things—and people—exist independently of our wishes and perceptions. But let's begin at the beginning.

I "knew" I was pregnant right from the start, and this surprised me, because I never "know" such things. My seeming intuitions are so invariably untrustworthy that I pay no attention to them. But this one was different.

Now, my knowing about my pregnancy was exciting for me, but irrelevant to Peter. He was there inside me not because I thought him

Ellen Wilson Fielding, our long-time Contributing Editor, is the former Book Editor of *The Wall Street Journal* and the author of *An Even Dozen* (Human Life Press, New York).

ELLEN WILSON FIELDING

into existence, as a novelist thinks up a character, but simply because he *was*. An equally strong intuition of his nonexistence would have had no effect whatsoever on the reality of his conception.

Once the pregnancy was confirmed, my husband and I began to follow Peter's life in the womb, as nearly as we could do. We had studied up on all the other great events in our lives, and so we bought books on pregnancy as a matter of course. Each week, I would read up on our baby's prenatal progress, issuing the latest bulletins to my husband: "His heart is beating . . . he's got fingerprints . . . he's one inch long . . . he's sucking his thumb . . . he startles when he hears loud noises." To flesh out the scientific facts, we created a life of thoughts, feelings and actions, some silly and some serious, for our baby: we imagined him swimming laps around the amniotic sac; enjoying our restaurant meals as they passed from my bloodstream to his; being jolted by the bus I took to work; picking out favorite composers from the tapes we played.

The more "visible" he became, the greater our need to give him a personality. The truth was, we were "with child" and we longed to get acquainted with him immediately, right then and there. But that desire to know him personally was something we wanted for ourselves; Peter already had a personality, although it was almost wholly hidden from us. He didn't need our imaginings, except insofar as they bound us more closely to him, made us feel greater responsibility for him.

And he didn't need the facts in our shelfful of books, either. At some point in the second month of pregnancy, Peter *was* one inch long, whether or not we had pinpointed the time correctly; his heart had begun beating before we heard it in the obstetrician's office. Peter's life may have depended on me, but it certainly didn't depend on my perception of his humanity, his health or even his existence. If I had ever considered aborting him, that consideration would not have cancelled the fact of his life; it would only have added to it the possibility of his death. His fate lay in my hands, but, once begun, his life was not something I could have wished away or imagined out of existence. It had happened—*Peter* had happened—as really and truly as the French Revolution or Magna Carta.

Early in my pregnancy, I ran into the problem of what pronoun to use. "It" was out of the question; our baby was even then either a boy

THE HUMAN LIFE REVIEW

or a girl, and ignorance seemed no excuse for neutering the unborn Peter-or-Susan. I tentatively tried out “her,” but “she” soon disappeared beneath an avalanche of “he” predictions. A co-worker told me she could tell I would have a boy from the way I carried; the nurse in my obstetrician’s office said the heartbeat sounded like that of a boy. Comparative strangers sounded so confident of Peter’s gender that I suspected them of consulting tea leaves or inspecting the entrails of chickens. My mother “had a feeling.”

I never thought any of them knew what they were talking about, any more than I credited myself with special knowledge when a “she” slipped out, or my husband when he used “he.” What any of us thought, felt or wanted was irrelevant. If Peter had been conceived a Susan, he would have been born a Susan no matter how many times he heard himself addressed by the wrong pronoun.

These lessons on reality were only hammered home after Peter’s birth. Beforehand, it was possible, to some extent, to delude myself into thinking that young Peter-or-Susan really *was* swimming laps, or doing calisthenics, or humming Vivaldi, though these were scenes I myself had thought into existence. But once I was formally introduced to Peter Henry Fielding, any fictions I had indulged in over the preceding nine months were forever retired.

The real Peter was almost militantly, stubbornly individual, and astonishingly unmalleable. His likes and dislikes, preoccupations, amusements and reactions were sometimes susceptible to influence but certainly were not waiting to be invented by me. When Peter was hungry or tired or alert or playful or cranky or curious—well, he just *was*, and never mind my fond hopes or imaginings for other, more convenient states of mind or body. His habits were adjustable, so long as I recognized that there was something to adjust. There was much I could teach him, so long as I understood the character of my student.

Fortunately, my husband and I like Peter as he is, though we wouldn’t complain if he took longer naps or modulated his ear-piercing shriek. Fortunately, that is, because much of Peter’s personality is already set, however we may influence his ideas, tastes and behavior.

He is a beautiful baby, but my wishing him to be so wouldn’t have made him that way. He has inherited much from my husband and little bits from me, but my own views of which inheritances are fortunate

and which unfortunate are irrelevant. Not only his parents, but Peter himself, and all those who come to love him later in life, must learn to live with that wonderful and maddening collection of characteristics. For at the center of his profound dependence on me is an almost sublime independence.

All this is obvious, but obvious things are often easy to ignore. What I cannot ignore is that the reality of Peter, *as he is and not as I choose him to be*, cuts across all the rhetoric about personhood, blobs of tissue and the like. Thinking can no more turn a 10-week-old fetus, moving about in my womb, into a blob of tissue than it could turn seven-month-old Peter, learning to crawl, into a blob of tissue. He is, as he was, himself—male and not female, boisterous, stubborn, active, exuberant. Different from my friends' babies in ways I would never even have thought to think of.

If I held fast to my imaginings about Peter even after I had met the reality, I would be succumbing to an illusion. Many people do so, and the battle between illusion and reality is being fought on many fronts today. We see it in the lies and evasions the illusionists console themselves with as they defend unreal positions. When, a few years ago, an infant born with Down's Syndrome was allowed to starve to death in Bloomington, Indiana, because his parents refused to consent to a life-saving operation, newspapers and magazines "reported" that the child would have been severely retarded and probably plagued with medical problems. No one knew or could know (or, now, will ever know) whether or not these predictions, reported as fact, would have proven true. The intelligence of Down's Syndrome children varies across a fairly wide range, and of course the intelligence of anybody, whether born with Down's Syndrome or not, is greatly affected by the love he receives, the quality of care and the type of environment. Nevertheless, this unjustified diagnosis of severe retardation was repeated in news stories and editorial pages without comment.

This was a highly revealing "Big Lie," because it showed squeamish journalists trying to imagine the Bloomington Baby into virtual nonexistence so that they could more comfortably collaborate in his passive extinction. We have seen similar evasions and presumptuous medical diagnoses in other cases of passive euthanasia of newborns. The reports of such cases are virtually interchangeable, with every parent described

THE HUMAN LIFE REVIEW

as “anguished” and every baby “incapable of living a meaningful life” and every editorial writer shaking his head at the “difficult choices” modern medical advances present us with.

The argument that the fetus cannot feel the pain of abortion is slightly different, because it depends on a refusal to reason from what we know. What we *know* is that the fetus reacts to the saline’s scorch or the doctor’s scalpel; the fetus recoils as you or I do when pain is inflicted.

Pro-abortionists are reduced to talking of primitive nervous systems and what we don’t know and objective versus subjective when they see, for example, the fetus in Dr. Nathanson’s *Silent Scream* flinch and thrash about. Our normal rational processes must be suspended when the subject is abortion, though we are allowed to jump to conclusions about pain when our baby touches the stove and screams. But this argument from ignorance is a desperate one, because by rights it should be an anti-abortion argument: if you *may* be inflicting pain on a human being you should stop doing what you’re doing until you know for sure one way or another. But this argument cuts pro-abortionists too close, because it echoes one of President Reagan’s favorite arguments against abortion in general, whether or not it is performed in a manner that causes fetal pain: if you *may* be killing innocent human life, at least stop until you know for sure.

Similar attempts to remold reality nearer to the heart’s desire are made by proponents of euthanasia. They imagine life for the senile, the handicapped, the incurably ill as meaningless or intolerable or unworthy of being called life, and then they are able to imagine death as the appropriate solution. But such imaginings, like my imagining my six-week-old fetus swimming laps in the amniotic fluid, have no rights, no special claims to truth. Unlike the pro-abortion and the pro-euthanasia illusionists, I at least was not trying to impose my imaginary Peter on the real Peter. I was whiling away the time before being introduced to my son.

Of course, pro-abortionists believe they are the ones in touch with reality. They insist that anti-abortionists make assumptions about those nine months in the womb that cannot be justified. But their own assumptions are staggering: that the human fetus is not entitled to pro-

ELLEN WILSON FIELDING

tection because it is small, weak, completely dependent, untestable for IQ or social skills—oh yes, and unwanted.

Today's human life debates are so terribly difficult and so unendurably protracted because they are arguments from differing first principles. They proceed from seemingly incompatible ideas of life and what we complacently call "priorities." They touch on the age-old philosophical questions about the nature of man and reality, the limits of freedom and the boundaries of responsibility. Though they are fascinating intellectual questions, they are exhausting and dispiriting ones when argued around an issue such as legalized abortion, that will not wait for an answer.

In despair, I am sometimes tempted to abandon this long and tedious and seemingly fruitless argument. But at stake are the very real, very vulnerable Baby Does and Phillip Beckers and Peter Fieldings. I look at Peter, crawling toward the TV or laughing at me or bashing his head or teething on my finger. And I think of a time that now seems very long ago, when my obstetrician would let me hear his heartbeat, and my shelfful of books would tell me exactly how he was growing and developing, and my imagination would follow him, ruefully, because I knew that the real Peter of those nine months would always be something of a mystery, because he existed in his own right, outside my brain.

He existed as my husband existed before I knew him, or my mother before I knew her. It is partly because of those lost months and lost years that all of us remain mysteries to one another. Because we are real, and can never be the true authors of one another. And because truth is stranger than fiction.

The Abortionist As Hero

Joseph Sobran

THE ABORTIONIST has been the forgotten man in the abortion controversy, even though many states have been paying him handsomely for his services. The word “abortion” has been rendered almost bland by repetition, but the word “abortionist” still has moral voltage: it reminds us that there is a real live man doing something to the unborn child, by way of executing the mother’s “choice.” To refer to this man is to concretize what the pro-abortion forces would prefer to keep abstract. And the associations of the word remain grim.

Until recently, pro-abortion forces have tried to keep the abortionist offstage during the debate. This strategy may be changing. The pro-abortion forces have changed their strategy many times before; at first they spoke in terms of emergencies—“rape and incest”—then gradually broadened the demand for legal abortion into a claim to a putative “basic human and constitutional right.” But they have hitherto kept the abortionist himself in the closet. Now they are bringing him out to make him a star.

On August 11, 1985, the New York *Times Magazine* ran a cover story titled “The Abortion Conflict: What It Does to One Doctor.” The doctor, Peter Bours of Forest Grove, Oregon, was pictured on the cover, a handsome, rumpled man in a green medical tunic, sitting with folded hands, his eyes downcast pensively. The story, by *Times* reporter Dudley Clendinen, is, in its way, a masterpiece of controlling the reader’s viewpoint and sympathies.

It is a basic principle of storytelling that the audience tends to sympathize with the character from whose perspective the story is told, however wickedly he behaves. This is as true of *Macbeth* as of *The Postman Always Rings Twice*: it is psychologically next to impossible to regard a hero whose crimes expose him to danger with unmixed disapproval. At least a part of us hopes he will get away with it, and resents the forces

Joseph Sobran, a Senior Editor of *National Review* and our Contributing Editor, also writes a nationally-syndicated newspaper column.

JOSEPH SOBRAN

that seek to expose and punish him. After all, we are all sinners, and each of us has gotten away with something. And besides, the police are sinners too. A skilled storyteller can have us rooting for the bad guy. Watch Mr. Clendinen in action.

The story opens at Dr. Bours' "clinic." A clinic is a place where people are helped and healed; that is what doctors do. A patient is lying on the operating table as sunlight breaks through the clouds and into the room. The woman "had three children, no spare money, and wished no fourth child. She had come to Dr. Bours for an abortion."

In other rooms of the clinic, we are told, "women gave birth to children they want to raise and love, and babies delivered by Dr. Bours returned, bringing their earaches and their colds for treatment." So Dr. Bours is no seedy, greedy abortionist, but a part of an affectionate community of families. But on certain days he performs abortions—while outside, at the clinic's entrance, "a grim band of men and women" stand "armed" with pictures of aborted fetuses. Some of the grim band kneel and pray; others shout at patients entering and exiting the clinic. (We turn the page: there is a large full-color picture of Dr. Bours smiling as he holds a baby he has delivered.)

Last year, we are told, two firebombs struck the clinic. Dr. Bours, his family, and some of his patients—"young mothers whose babies he has delivered"—have received "several death threats." And we learn that he has decided to stop delivering babies, "devoting" himself instead to family planning, "including" abortion. His devotion has nothing to do with cupidity, apparently: he has "kept his rates low," and gets only \$140 per abortion, not the \$1,000 some of his enemies say.

Now back to the patient. Dr. Bours goes to work. Ten or 11 weeks earlier, "a sperm loosed inside the woman joined with an egg in that space medical science knows as the uterus, but which antiabortionists call the womb. Out of that union came what medicine terms an embryo—to antiabortionists, it is a baby. Now, Dr. Bours reversed the process, suctioning the tiny form into a clear glass jar."

Here, we may pause to note, Mr. Clendinen slips in a subtle absurdity: to "reverse the process" of conception would be to resolve the embryo into its original components of potent sperm and fertile ovum—a virtual miracle of delicacy. Dr. Bours has, of course, done something much cruder. He has merely destroyed the embryo. But Mr.

Clendinen wants to make this small-scale act of violence sound like part of an organic “process.”

“It took only a few minutes, this procedure sanctioned by law and repeated hundreds of thousands of times each year across the nation. For Dr. Bours, it is part of a modern family practice; to those men and women outside the clinic, it is murder.” And Mr. Clendinen smoothly moves outward to incidents of bombing and arson at clinics “across the nation.”

It is pretty clear what Mr. Clendinen is up to—pitting the “scientific” terms favored by Dr. Bours against the presumably ignorant and simplistic Anglo-Saxon words favored by the shouting, praying grim band. Another point deserves mention. Dr. Bours, though he has quit delivering babies, is never an “abortionist,” only a doctor; while his enemies are “antiabortionists” throughout the story. Somehow the overtones contrive to associate them, not him, with abortion, although it is he, not they, who is profiting from the practice in question.

Now it is flashback time. We learn that Dr. Bours comes from a prosperous Delaware family, a Republican milieu, private schools, and Stanford University. At Stanford, in 1965, he made Phi Beta Kappa and “fervently opposed” the Vietnam War. The following year he did his senior thesis on “population control and economic development in third-world countries.” For *Times* readers, these are positive signals: he was highly intelligent and had a well-advanced social conscience. (His parents had been active in Planned Parenthood.)

“At the end of his senior year, the subject of birth control became suddenly personal.” He got his girl-friend pregnant. Abortion was illegal. (Here Mr. Clendinen pauses to remind us that “it had not always been so”: abortion was “freely practiced” through “most of history,” until laws against it were passed during “the Victorian era.”)

So, in the spring of 1966, young Peter Bours made a deal with a Mexican doctor and flew his girl-friend to Guadalajara. (He didn’t go with her. He couldn’t afford to.)

(And here again Mr. Clendinen interrupts his story to mention thalidomide babies and a liberal abortion law passed in California in 1967 and signed by Governor Ronald Reagan.)

In 1968 young Bours was studying medicine at Harvard. He married his girl-friend; they were soon divorced; he did his internship in San Diego,

married again, begot a daughter, went into practice in family and maternity care, having become an advocate of legal abortion along the way.

Mr. Clendinen picks up the story in Oregon, where it transpires that Dr. Bours has once more divorced and remarried. He was drawn to Forest Grove by “the uncomplicated beauty of the place.” He bought a farm and an old frame house in a conservative community. Reflecting on his own marital history, he says: “If I weren’t such a social traditionalist, I wouldn’t have married so many times.” Just as, if he weren’t so devoted to the family, he wouldn’t have performed so many abortions: so we are led, by Mr. Clendinen’s gentle prose, to infer. The tone is cozy, homey: “Together, [Dr. and Mrs. Bours] built a family practice based on delivering babies—often, in that era, to couples who wanted their children born at home or in one of the birthing cabins that Dr. Bours fashioned from outbuildings on his property. It was an effort to take obstetrical medicine out of cold, institutional hospital delivery rooms and return it to the home—and it fit with the ideas he had developed during the war years, the search for a redefinition of personal and social relationships.” Likewise Mr. Clendinen’s imagery is subtly designed to take the abortionist out of the “cold, institutional” abortion mill and place him in a more Norman Rockwell sort of setting. “For his wife, it was an idyllic time.”

Dr. Bours cultivated an informal style. “He wore loose shirts and comfortable pants and knockaround shoes, almost never a coat and tie. His patients called him by his first name.” He built a new clinic with his profits, keeping only \$50,000 a year in personal income. “He decided that women who wished to terminate their pregnancies deserved the same guilt-free atmosphere that women who bought their pregnancies to term enjoyed.”

Though the new clinic offered abortion only as “a last resort,” it managed to become, with its “low fees and cheerful atmosphere,” “one of the largest [abortion mills] in the state.” Dr. Bours was faced with the question of late-term abortions. “I have a practicable kind of morality,” he says, not too surprisingly. He draws the line at 12 weeks, after which point “complications increase.” Besides, says Mr. Clendinen, late abortions take “a greater emotional toll on a doctor and his staff,” which does no good for the cheerful atmosphere. “I’ve been cleaning up after him for four years,” says one of his nurses. “We all wish it were

formless, but it's not. It has a form. And it's painful. There's a lot of emotional pain."

In the late Seventies, the antiabortionists increased their pressure against the good doctor. They used graphic language and pictures; they brought a 20-week fetus in a bottle; they likened the clinic to Auschwitz; they crucified a doll splattered with blood-red paint. Mr. Clendinen makes it a point to note the religion of the antiabortionists, who are Catholic or fundamentalist; the religious views of Dr. Bours and his supporters aren't specified. A threatening letter from a man or woman who claimed to have set one of the firebombs is quoted at length. It is very ugly. Once someone pulled up at Dr. Bours' vacation house at 4 or 5 in the morning—on his birthday—and revved a chain saw, he says, threatening to kill his entire family.

Then Mrs. Bours got breast cancer. Although one antiabortionist has apologized for staging a mock funeral in protest against Dr. Bours' practice, it has been, on the whole, what he calls "a hard time." The abortion practice has continued to prosper, but for some reason fewer and fewer people have wanted him to deliver their babies. "There's a six-year-old boy that I delivered that I say hello to," he says, "and after the last newspaper article came out, he wouldn't look at me. That's the hardest thing for me, because I've always prided myself on my relationship with kids. It hurts me." It doesn't occur to him to ask himself why children don't like the idea of abortion.

Mr. Clendinen adds another sad detail: the cost of Dr. Bours' malpractice insurance has risen fivefold. That is another reason he is ceasing to deliver babies and concentrating on what he calls "the main business we have been doing, abortions and tubal ligations and vasectomies." Somewhat puzzlingly, he adds: "I have a certain sense of relief at this point. We need time to focus on the family." And on that note the article ends. Thus we have seen what the abortion conflict "does to" one doctor.

But although Mr. Clendinen carefully shades his facts to portray Dr. Bours as suffering for his "conviction" that "abortion serves a moral need," the facts he gives stubbornly tell a story that contradicts the article's tenor; and we are able to discern a highly self-serving young man, glib in the moral idiom of modern liberalism, who dissolves into a sort of corruption combined with sentimentalism peculiar to his social

set and generation. He sees himself as a beleaguered benefactor, and can't understand why others are so backward as to object to his killing for a living.

John Irving offers a similar portrait of a humanitarian abortionist. But since he is a novelist, he has the advantage of being able to mold his data to the convenience of his views. Even so, he is less successful, and far less skillful, than Dudley Clendinen.

Mr. Irving's new novel, on the best-seller lists as I write, is *The Cider House Rules*. Set in an orphanage, it is deliberately modelled on such Victorian novels as *David Copperfield* and *Jane Eyre*, both of which figure in the story; and yet its un-Victorian theme is that abortion is a social and moral right. The purpose of this odd combination of venerable form with current cause is to integrate abortion with a more or less conservative setting. The book tries to imagine abortion in a world without feminism, sexual revolution, and all the other contemporary trends with which we associate abortion-on-demand, as if to imply that it makes sense without all this related ideological baggage. Mr. Irving apparently senses that we assume the cause of legal abortion to be contingent on certain fads of our own time, and he wants to show that it would make equally good sense in the world of Dickens.

The main line of the story is as follows. Dr. Wilbur Larch runs an orphanage in rural Maine at the turn of the century. He not only delivers babies; he also aborts them, if a mother so desires. "I give them what they want," he says: "an orphan or an abortion." He does this on principle, at risk to himself.

Dr. Larch raises one of the unadopted boys at the orphanage, Homer Wells, as an apprentice abortionist. He confides to Homer his creed, which holds that delivering and aborting are equally "the Lord's work." As long as abortion is illegal, someone must assume the responsibility of performing it outside the law, whatever his personal reservations about it. "If abortion was legal," he says, "a woman would have a choice—and so would you. You could feel free not to do it because someone else would. But the way it is, you're trapped. Women are trapped. Women are victims, and so are you." He arranges phony medical credentials to make it possible for Homer to succeed him.

But Homer recoils. He believes that "the fetus has a soul." He leaves the orphanage to live in a *ménage à trois*, unusual even by French

THE HUMAN LIFE REVIEW

standards (to say nothing of Maine's), on an apple farm, where the rules set down for black migrant workers at the cider house are disregarded in much the way the abortion laws are skirted by Dr. Larch.

The woman in the arrangement bears Homer a son (her legal husband is sterile). In his teens—the story having reached the mid-1950's—the boy falls in love with the daughter of the migrants' foreman, who turns out to be pregnant by her father. Homer sees his duty: he performs an abortion on the girl, simply because she has no other hope. This in turn leads him to see his larger duty: he returns to the orphanage to succeed Dr. Larch, who by now has died. He is still, so to speak, personally opposed to abortion, but how else are women going to have any choice?

To anyone who has not read *The Cider House Rules*, an accurate evaluation of its literary merit is likely to sound abusive. I can only plead that reviewers in *Newsweek*, *The Wall Street Journal*, and *The New York Review of Books* rate it as low as I do, and go ahead and say it: I have seldom read a novel so thoroughly inept. The characters are wraiths and puppets; the story is contrived and inert; the dialogue is vacant; the humor unfailingly misfires; the moral is absurd. The whole thing is so dull and vile that is hard to summon up the energy to damn it. After reading it, I find the phrase "bored to death" less hyperbolic than I did before.

But I am not reviewing the book here; I simply ask the reader to take my judgment of *The Cider House Rules* as a starting point for a different line of discussion. I think there is a particular reason *why* it is so bad. The fault lies in its conception as much as its execution.

We are meant to see Dr. Larch not as a modern trendy, but as a crustily principled old Yankee. The problem is that his creator is a modern trendy. Mr. Irving is trying to imagine someone more imaginative than himself, which is by definition impossible for him to do, in the same way it is impossible for a humorless author to create a witty character, or for an author who hasn't even mastered grammar to create a character who has.

A nineteenth-century crusader for abortion would have to offer nineteenth-century reasons in favor of abortion. But Dr. Larch and the other characters lack reality because they talk the way Mr. Irving and his friends talk: they use phrases like "rape and incest," "a woman's

JOSEPH SOBRAN

freedom of choice,” “a society that approves of violence against women,” “unwanted and abused children,” and “commitment to the poor”—all the catch-phrases of today’s liberalism. One character even describes Dr. Larch as a “hopelessly naive Democrat and liberal.” Mr. Irving is unaware that at the time he represents these five words as having been uttered, four of them had different senses from the ones they carry now (the exception being “and”).

We are supposed to see Dr. Larch as ahead of his time, in other words, for no better reason than that he speaks in the slogans of *our* time. We know who the villains and butts are because they belittle black people, abhor homosexuality, admire Joe McCarthy, and of course disapprove of abortion (while secretly hiring the abortionist, the hypocrites!). The book is intended as a rebuke to a smug past; instead it merely expresses the fashionable perspective of a smug present.

Did I say smug? On a promotion tour for his book, Mr. Irving told an interviewer from the *Washington Post*: “The people who are so zealously against the right to abortion, I don’t think they *can* read my book. They’re not educated people.” It is always unsafe to assume that your arguments are simply over the heads of anyone who doesn’t accept them, but Mr. Irving ought to be even more cautious in this respect than other people. He plainly hasn’t bothered listening to the people whose views he thinks he is refuting; the only anti-abortion argument he can put in his characters’ mouths is the flat assertion that “the fetus has a soul.” And yet one reviewer, Benjamin DeMott, though critical of the book as a novel, nevertheless thinks it could play “a significantly assuasive role” in the abortion debate.

The book “tries to show what the world was like before we could take a safe, legal abortion for granted,” Mr. Irving told the *Post* interviewer. But the reviewers have assailed the book, even when they agree with its message, for its total improbability. One of the most improbable things it asks us to suppose is that a man could run an illegal abortion center for two generations without getting caught—even though all the women in the region knew where to find him. (This is of a piece with the plot’s stipulation that Homer and his lover manage to pass off their love-child as adopted, even though they aren’t married. They fool everyone, including her husband, for fifteen years—at which point an old paramour of Homer’s shows up and instantly perceives that the boy is Homer’s.)

THE HUMAN LIFE REVIEW

Since Mr. Irving has no idea what the world is like even now, he can hardly show us what the world “was” like before “safe, legal abortion.” Like the historian, the historical novelist has to understand the past as it understood itself, if he is going to offer any valuable comment on that past. But a book which is only nominally set in the past, and in which the characters speak in today’s cant (even in their obscenities), is a book that doesn’t grasp the necessities inherent in its own intentions.

It isn’t just that Mr. Irving doesn’t believe that a fetus has a soul; he doesn’t seem to think an adult has a soul. Certainly his characters aren’t fully human; his friendliest reviewer observes gently that most of them “lack presence and independent vitality.” Worst of all, in an age supposedly smothered in Victorian religiosity, none of *them* seems to believe they have souls; worship plays no serious role in their lives. Why *shouldn’t* such creatures fornicate and be aborted? Nothing is at stake in any abortion except Homer’s abstract and dogged dogma that the-fetus-has-a-soul. Nobody thinks about chastity, or virtue, or salvation. Dr. Larch thinks only of today’s liberal preoccupations, “the poor” and “a woman’s freedom of choice.”

This is implausible psychologically as well as historically. And Dr. Larch is so unworried about being caught by the authorities, at a time when performing abortions could mean imprisonment and ruin, that he actually proselytizes for his cause. Not only would this have been futile and risky; in that milieu, it would not have occurred to anyone to try to change the abortion laws, any more than to try to legalize heroin during Prohibition. It would be enough of an achievement to get away with the practice in private. And yet Dr. Larch is represented as writing letters to several presidents to argue his case, as if Franklin Roosevelt could have changed all the state’s abortion laws, or would have taken the least interest in doing so. He even contends (before the welfare state existed) that it is the state’s duty to provide abortions, not just permit them—a view that didn’t occur to contemporary abortion advocates until after legalization. Dr. Larch doesn’t even talk about women’s suffrage; Mr. Irving seems to have forgotten that that was *the* focal issue, at the time of his story, for those concerned about women’s rights.

Of course it is barely possible that a man at that time might have behaved as Dr. Larch does. The point is that Dr. Larch’s creator has no feeling of how enormously improbable it would have been. The entire

JOSEPH SOBRAN

book is saturated with the sense of Mr. Irving's gaucherie, his unconsciousness of his own anachronisms. He is writing fiction not for historically sophisticated people, but for the generation that watches *Saturday Night Live*. History in this novel makes only cameo appearances, as when we hear in passing that the Japanese have attacked Pearl Harbor.

In a world so thinly imagined it is duck soup to make an abortionist a hero. "Once upon a time it was 1910, and a doctor went about selflessly enabling women to have control over their own bodies. . . ." This sort of thing isn't fiction. It isn't even skillful propaganda. As far as that goes, Mr. Clendinen, as I say, does better under the constraints of fact than Mr. Irving does with total freedom to invent. Even though we accept the convention of fiction that it's so if the author says so, Mr. Irving gives the impression of faking, whereas Mr. Clendinen only seems to be stretching things a bit. It is ironic that a novelist should seem more dishonest than a journalist.

But neither gets very high marks for honesty. Each represents his hero as a do-gooder; each carefully avoids the term "abortionist." Dr. Bours is at least flesh and blood: he takes money for his services. Dr. Larch is an angel who takes what in the real world would be enormous risks, but asks nothing in return. In Dr. Bours' case we are asked to believe only that he may not be in this business solely for the money; in the fictional Dr. Larch's case we are to believe that money isn't even a consideration. We naturally prefer the lie that respects our intelligence to the lie that insults it.

Only yesterday, culturally speaking, the abortionist was regarded as an especially slimy character. It is still a little early to ask us to see him as a pioneering altruist, not to mention a celibate "man for others" like Dr. Larch. What makes Dr. Larch even harder to believe in is the whole texture of the world according to John Irving, a stylized world of bawdy comedy mixed with violent accident, in which people are the puppets of blind forces, including their own appetites. Dudley Clendinen's tacit plea for Dr. Bours is finally implausible because Dr. Bours is too plausible: he is an agent, not a victim, and what the abortion conflict "does to" him is the natural result of what he himself has chosen to do. But Dr. Larch is a sturdy Yankee, full of "character" in the old sense of integrity and self-control, in a world where that kind of character is assumed to be impossible. *He* isn't a victim, but everyone else is.

And that is why it seems a foolhardy strategy for the pro-abortion forces to call attention to the abortionist. Their case is most plausible when the pregnant woman is presented as victim, and when the “choice” they demand for her seems a choice she has no choice but to make. Most of us are conscious of ourselves as agents most of the time, making free and responsible decisions. The pro-abortionists themselves admit that abortion is a choice nobody really wants to make, or is proud of having made. They base their arguments on lachrymose cases involving rape, incest, and poverty (which certainly don’t occur in this country a million and a half times a year). That is, they are most persuasive when they induce us to imagine the woman seeking abortion as different from ourselves, even radically different: that way we are less likely to hold her responsible for her condition and her choice. Arguments from social determinism are always condescending: they appeal to us to make social-policy choices on the grounds that those affected by the choices we make somehow lack our own freedom to choose. This is a neat trick.

But the abortionist can’t be condescended to. He is as free an agent as one can imagine, a man it is natural to see as abusing his freedom, pandering to selfishness (even if it is sometimes desperate selfishness) for his own profit. We see him this way in Dr. Bours, in spite of Mr. Clendinen’s able efforts to put the best face on him. This is why Mr. Irving is forced to create an otherworldly abortionist—otherworldly in terms of Mr. Irving’s world of helplessly sex-driven creatures. Dr. Larch’s celibacy, in that world, endows him with the capacity for detachment and altruism, a godlike moral superiority to the creatures he aborts. If the women seeking abortion are too low for our censure, Mr. Irving wants us to believe that Dr. Larch is too high. None of these characters belong to our own world. Others abide our judgment; they are free—or unfree.

The feminist movement has eagerly embraced Mr. Irving since the publication of *The Cider House Rules*. He even appeared at a benefit for the National Abortion Rights Action League in Washington, and he has told several interviewers that he has long had a passion for the right of abortion. Just as the abortion movement has brought abortion out of the alleys and into the clinics, Mr. Irving has lifted it out of mere polemics and into the high-class district of literature. The feminists are

JOSEPH SOBRAN

no doubt grateful for the attentions of a highly-praised, best-selling novelist. But what they are really enjoying is not literature, but polemic, and it is Mr. Irving's polemical purpose that prevents him from imagining abortion as it is in the real world, even though he describes it graphically enough. His knack is for ribald fantasy and bizarre invention, not sustained realism.

But it is doubtful that even a better and different sort of writer could have achieved what he attempts. The fact of abortion can't be assimilated to a world in which people really care responsibly for each other. The personality of a man who will perform abortions doesn't lend itself to apotheosis: try to imagine a *Reader's Digest* piece about a kindly old country doctor who makes house calls in bad weather to do abortions, and you have some idea of the effect John Irving seeks in *The Cider House Rules*. There is no point in saying that a better writer might have brought it off; a better writer would have known better than to try. Dickens didn't attempt to display his genius by showing he could make a graverobber a hero; he displayed his common sense by not doing so.

Mr. Irving's idea of a Dickensian happy ending is to have the anti-abortion Homer Wells become an abortionist—an anti-abortion abortionist whose special heroism consists in sacrificing not only his future but his moral conviction. Of course he is not really sacrificing his conviction at all; he merely acknowledges “a woman's freedom of choice” as a greater good. So he is really pro-abortion, in the only meaningful sense, after all.

The idea that you can heroically “sacrifice” your moral conviction by helping others do something you disapprove of is of course absurdity. And Mr. Irving makes it easy for Homer by making the girl he aborts the very latest model of the liberal victim: a poor black teenage victim of rape and incest. At the climax of the story, the reader says to himself, “So *that's* why these migrant workers are black.” If Homer was really going to be a champion of choice, he should have proved it by taking a hard case: a rich white woman, eight months pregnant by a husband who desperately wants the child. But that would have been too unrealistic.

The Abortion Rules

Steven Mosher

THE FIRST THING TO SAY ABOUT *The Cider House Rules* is that it is not literature, but pro-abortion propaganda. The second thing to say is that, despite generally poor reviews (about which more below), the last time I looked it had climbed midway up the best-seller lists.

To prove the first point—and incidentally to dispel any lingering notion that the book might be worth reading—I provide an outline, compiled during a careful second reading. If what follows sounds trashy, degenerate, ghoulish, and exaggerated, look to the original for confirmation. I trust my outline will leave no doubt that the central theme of the book—one is tempted to say the *only* theme of the book—is the merits of unrestricted abortion. Indeed, a more accurate title for *The Cider House Rules* would be *The Abortion Rules*, which I will use here.

CHAPTER 1: *The Boy Who Belonged to the Orphanage*

Homer Wells (one of the two main characters) is born into an abortuary/orphanage headed by a Dr. Larch (the other main character). Homer is adopted out three times during his childhood only to be returned to the orphanage. First he is thought retarded. Then he is physically abused. Finally he is sexually assaulted. Understandably, he comes to look upon the orphanage as his real home, and remains there until grown.

CHAPTER 2: *The Lord's Work*

Larch's first—and last—sexual encounter is with a prostitute and her daughter. Following this episode he develops, in short order, 1) gonorrhoea, 2) an aversion to sex, and 3) an addiction to a pain-killing drug—ether. He embarks upon a life of sexual abstinence and drug indulgence.

As a new doctor at the turn of the century, one of Larch's first patients is the prostitute, who dies while in his care from complications

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STEVEN MOSHER

arising from an abortifacient drug she had administered to herself. His next patient is the woman's daughter, also pregnant, who demands an abortion. When he refuses, she obtains a "back-alley" abortion and, like her mother, returns to die in his care. Larch then visits the abortuary in question, where he discovers an evil, old, untrained abortionist about to abort a thirteen-year-old girl. He rescues the girl, whose pregnancy is the result of incest, and performs his first illegal abortion.

Thereafter, "Saint" Larch, as he is christened by his two dotting nurses, comes to understand abortion as "The Lord's Work," and accepts it as his calling. He is beseeched by women from all walks of life—rich, poor, married, unmarried—for abortions. When at age thirteen Homer Wells discovers his secret, "Saint" Larch decides then and there that the boy shall become his disciple.

CHAPTER 3: *Princes of Maine, Kings of New England*

During the day Homer is educated by Larch in the morals of his soon-to-be trade as an abortionist. The instruction centers upon the thesis that he will be helping the women who come to the orphanage/abortuary have whichever they want: an orphan, or an abortion.

In the evenings, Homer entertains the other orphans by reading them novels about orphans—Dickens's *David Copperfield* and Bronte's *Jane Eyre*—seemingly the only diversion of their bleak and dreary lives.

Homer forms a sexual liaison with an unhappy orphan named Melony, who also has a history of failed adoptions and sexual abuse. During one of their romps in an abandoned house they find a pornographic picture of the dead daughter of Larch's dead prostitute. This lewd photo becomes for "Saint" Larch a kind of pictorial hair shirt. He forces himself to stare at it for long periods of time in penance for "causing" the young woman's death by refusing to perform an illegal abortion.

CHAPTER 4: *Young Dr. Wells*

Homer, not yet sixteen, shares Larch's world of childbirth and abortion. His "graduation" comes when, in his mentor's temporary absence, he successfully induces labor in a pregnant woman suffering from puerperal convulsions, saving both mother and child.

Candy and Wally, a young unmarried couple from an apple farm on

THE HUMAN LIFE REVIEW

the coast, discover that Candy is pregnant. They decide to travel to Larch's abortuary for a "safe" abortion rather than go to their "local butcher."

CHAPTER 5: *Homer Breaks a Promise*

On Larch's orders, Homer performs an autopsy on a nearly full-term "product of conception." This gruesome experience not surprisingly leads Homer to conclude that an abortion results in the dismembering of a human baby, not merely a "fetus," or "the product of conception." He declares heatedly to his mentor that never again will he perform an abortion. Completely disregarding his disciple's change of heart, Larch forces him to continue as his assistant.

Candy and Wally arrive at the abortuary. Homer instantly falls in love with Candy, and again vows to have nothing further to do with any abortion, especially Candy's. He leaves the abortuary with Candy and Wally, traveling with them back to the coast.

CHAPTER 6: *Ocean View*

Homer enjoys his new life, learning how to grow apples (from Wally), how to swim (from Candy), and how to behave at drive-ins (from a casual girlfriend).

Back at the abortuary, Larch, growing old and under pressure to resign, sets about inventing a fictitious identity for Homer as a doctor. He is sure that Homer will eventually abandon his opposition to abortion and return to succeed him in the abortuary.

CHAPTER 7: *Before the War*

Melony, devastated by Homer's departure from the abortuary, sets out in search of her lover, working her way along the apple farms on the coast as a picker.

Homer confronts evil in the form of a man who deliberately punctures prophylactics and then hands them out as gifts.

Wally, excited by the coming world war (II), wants to join the air force.

Back at the abortuary, Larch worries that he will lose his errant disciple in the war. To forestall this, he falsifies Homer's medical records to make it appear that he has a defective heart, thus disqualifying him from military service.

STEVEN MOSHER

CHAPTER 8: *Opportunity Knocks*

Melony goes to the city, gets a job in the shipyard, and becomes a lesbian.

Homer, in an effort to broaden his narrow educational background, studies high school biology from a teacher who, it turns out, moonlights as an abortionist.

Wally joins the Air Force, and in due course is shot down over Burma.

Candy discovers that Homer has kept a clump of her pubic hair from the time of her abortion. From this she understands his love for her.

CHAPTER 9: *Over Burma*

Larch writes to President Roosevelt urging him to reverse the country's "anti-American, anti-democratic anti-abortion laws."

After Wally is shot down in Burma, Homer and Candy sleep together; Candy becomes pregnant. They return to the orphanage/abortuary to have a boy-child, which Homer then adopts, naming him Angel.

Homer weakens in his opposition to abortion, first referring a woman to Dr. Larch for an abortion, then later, at the abortuary, completing a botched abortion himself.

Wally, who survived the Burma crash, returns home paralyzed from the waist down, and sterile. Candy marries Wally, but not before arranging for Homer and her son to continue living with them as one family.

CHAPTER 10: *Fifteen Years*

Melony's lesbian companion of fifteen years becomes pregnant, and Melony packs her off to the abortuary for an abortion.

Homer, Wally, Candy and Angel live together as one big, happy family on the apple farm; Wally does not know that Homer is sleeping with his wife, and Angel does not know that Candy is his mother. Candy's fear that she will become pregnant again leads her to extract a promise from Homer: if an abortion is necessary, he will personally perform it. Homer obtains the necessary equipment from the abortuary as evidence that he is in earnest.

THE HUMAN LIFE REVIEW

Homer is having a father-to-son talk with Angel about the joys of masturbation when Melony shows up at the apple farm. She criticizes Homer for Living a Lie. He resolves to tell Wally and Angel the truth about himself and Candy.

Larch, in a ploy to get Homer to return to the abortuary, turns himself in as an illegal abortionist.

CHAPTER 11: *Breaking the Rules*

Angel falls in love with Rose, the black daughter of the chief of the apple-picking crew, and discovers that she is being sexually abused by her father.

Homer refuses Larch's ultimatum to return to the abortuary.

Rose gets pregnant by her father.

Homer attempts to send Rose to the abortuary, but discovers that Larch is dead of an overdose of ether. He decides, after a few seconds of soul-searching, to perform the abortion himself.

Rose, her baby successfully aborted, murders her father and takes to the road.

Homer Wells returns to the abortuary. He assumes the identity the dead "Saint" had created for him as a doctor, and takes over its day-to-day operations. The book ends with Homer a committed abortionist.

* * * * *

After just a few chapters of *The Abortion Rules*, it seemed to me that here was a book the liberal press would bend over backwards to promote. After all, radical abortion is one of the prime issues—radical feminism and radical environmentalism are others—that such publications as *Time* and *The New York Review of Books* tacitly encourage, if not actively advocate. I had no doubt that the reviews, when they came out, would be prominent, exhaustive, and favorable. The reviewers would use the opportunity presented by the book to promote their (and Irving's) views on abortion.

I was mistaken. The reviews were certainly prominent and exhaustive enough—*Time* devoted an entire page to the book—but favorable they were not. Only a fawning review in the *New York Times* saved *The Abortion Rules* from a general shellacking at the hands of the heavyweight critics. What caused this unexpected breach in liberal solidarity?

I suppose the most obvious reason why the critics withheld their kudos is the all-too-transparent political purpose of *The Abortion Rules*. Now merely having a political purpose is not invariably crippling. George Orwell's *1984* was certainly a highly-political glimpse of the bleak, totalitarian future that awaited peoples who did not safeguard their freedom. But his paramount political purpose did affect the artistic value of the book.

Literature serves its end when the writer follows an inner vision, not an external purpose. When a writer enslaves his craft to ideology, propaganda—not literature—is the inevitable result. Even the main characters are reduced to mere props in the ideological play the author is staging. It is the measure of Orwell's artistic failure that his main characters do not stick in the mind. Irving's main characters, and indeed his entire makeshift plot, are, if anything, even more easily forgotten. What sticks in the mind is the incessant harping of this pro-abortion author on abortion. What starts out as a novel quickly ends up as a pro-abortion tract.

If *1984* was an artistic failure, it was at the same time a resounding political success. Its lack of strictly artistic merit was more than compensated for by its political clout. To judge from the reviews, *The Abortion Rules* will not enjoy the same distinction. Beyond the sheer mass of pro-abortion propaganda, there is the graphic, blood-and-guts depiction of actual abortions being performed. Irving's treatment of abortion is simply too heavy-handed even for those who would like to agree with him.

The above outline makes clear, I trust, what Irving's message is. What it cannot begin to convey is his *zealousness* in promoting his message. At several points, (perhaps fearing that the reader is skimming?) Irving goes so far as to repeat himself: “. . . a society that approved of making abortion illegal was a society that approved of violence against women; that making abortion illegal was simply a sanctimonious, self-righteous form of violence against women—it was just a way of legalizing violence against women.” (p. 447)

Such high-profile propaganda undoubtedly alienated even sympathetic reviewers, and made it impossible for them to argue that *The Abortion Rules* is art. Even the New York *Times* reviewer, who loudly applauded Irving's stand on abortion, expressed reservations about his

book as literature. Hardened pro-abortionists may enjoy wading through page after page of ideological sludge, but I find it hard to imagine that such cant will win new converts.

But Irving's partisanship leads him to fall into an even greater error. Losing his moral footing entirely on the slippery slope, he attempts to portray abortion as an act of high moral goodness. Thus Dr. Larch is portrayed as performing abortions not for profit, but out of "moral" conviction (in contrast to the great majority of living abortionists). To further enhance the reputation of this underground abortionist, Irving gives him an orphanage to run. (Who knows of any living abortionists who run orphanages?)

Irving would even ask us to believe that the abortionist is a "saint" who is engaged in "doing God's work." The abortuary becomes a temple and the saintly abortionist a kind of priest who listens to the confessions of his female penitents as he dilates them and scrapes them clean, relieving them of their offspring as he forgives them their sins. Guilt and remorse are unthinkable.

But as insulting as all of this may be to the common sense of the reader, be he "pro-life" activist or secular humanist, Irving reaches even greater heights of moral abnegation with the character of Homer Wells. Homer starts slowly. Early in the book, when still opposed to abortion, he is depicted as a confused, shallow youth, a mere foil to Larch's impassioned defenses of abortion. Homer's conversion takes place suddenly, without any inner struggle, without any reflection on his past scruples. "Homer Wells made up his mind; he would be a hero." (p. 529) A hero?! It takes a few seconds for the reader to realize what Irving is saying: Homer has decided to become an abortionist.

If this rankles the sensibilities, then the description of Homer's first abortion is genuinely repugnant. "Homer Wells breathed slowly and regularly; the steadiness of his hand surprised him. He did not even blink when he felt the curette make contact; he did not divert his eye from witnessing the *miracle*." (p. 535)

Yes, you read it right: Irving is calling an abortion a miracle. This must surely be one of the first times in the history of literature that the deliberate destruction of a human being has been described as a miracle. In my own copy of *The Abortion Rules* (which I obtained from a book club for a dollar), the word "miracle" has been crossed out and

replaced with “tragedy.” I simply could not continue on with the book until I had corrected the Orwellian language.

Albert Schweitzer once remarked that, “By practicing a reverence for life, we become good, deep, and alive.” Irving uses all of his wiles to turn this formulation on its head. Yet it remains true on Dr. Schweitzer’s terms. Ironically, it is *The Abortion Rules*, with its disdain for life, that best demonstrates this. By deliberately confounding destruction with creation, death with life, it comes across as a shallow, lifeless and, yes, evil work.

Perhaps in his next work Irving will treat us to the euthanasist as miracle worker. Anyone who can canonize an abortionist will not find anything particularly reprehensible in elevating a “mercy killer” to sainthood, as long as his patients meet their end in speedy and painless fashion. With a bit of rewriting, many passages in *The Abortion Rules* could even be recycled for use in the new work, as for instance the one quoted above: “He shot the poison into her veins. Her emaciated body shuddered as she fought for breath, yet he did not avert his eyes. He did not want to miss the miracle of death.” At the risk of giving Irving ideas, this last even suggests itself as a title: *The Miracle of Death*.

In describing the destruction of a fetus as a morally attractive act, Irving parts ways not only with those who oppose abortion, but also with the majority of those who accept it. The truth is that abortion, even for those who support it, is at the very least distasteful. It is tolerated only because it forestalls consequences viewed as even more distasteful: unwed motherhood, career delay, population growth, and so on. Only radical feminists seem to have claimed an actual liking for abortion, regarding it in the same way that better-adjusted women regard childbirth—as a rite of passage into womanhood. Those who see abortion as an evil, necessary or otherwise, can only be put off by Irving’s championing of it as a good.

Another off-putting aspect of the book is Irving’s constant mucking about in gruesome, gynecological details. Even the most ardent abortion supporters are uncomfortable dwelling on the actual surgical procedure. Blood, placentae, the dismembered bodies of babies are the stuff of nightmares, not polite conversations around the dinner table. Those who demand abortions also insist that they be done quickly and quietly, so that they can be the more quickly forgotten.

THE HUMAN LIFE REVIEW

But Irving will not let them forget. Not only does he force-feed the reader page after page of pro-abortion propaganda, not only does he stand human morality on its head by intimating that we should revere death rather than life, but on top of all this he piles up passage after passage describing the carnage that abortion entails. In one typically tasteless episode he operates on a prostitute. “When he tried to sew up the uterus, his stitches simply pulled through the tissue, which he noticed was the texture of soft cheese—imagine trying to put stitches in Muenster!” (p. 55)

Such pruriently sadistic details abound in *The Abortion Rules*, as indeed they do in Irving’s previous works. In *The World According to Garp* he introduced us to a world of rapes, gougings, and sexual mutilations. *The Hotel New Hampshire*, although a lighter book, still had more than its share of rape, and incest, and sudden death.

I wonder if Irving, with his penchant for murder, mutilation, rape, and the like, is not the worst-possible author for the pro-abortion movement? What it needs is a writer who would focus attention on women distraught about frightening pregnancies, someone who would draw out with dramatic flair and feeling the details of the imagined sufferings of these women while maintaining a discreet silence about the miracle of life that was happening inside their bodies.

But Irving does everything wrong. First, he allows only a glimpse of his women—and none of their inner life—before wheeling them quickly into the incandescent glare of the operating room. Then he zestfully sets to work with scalpel and suture: “Her abdomen was full of blood; he sponged away, looking for the source, and saw that the hemorrhage issued from a six-inch rupture in the back of the uterus. Larch performed a Caesarean section and delivered a stillborn child—the pinched, scornful face of which forcibly reminded him of the (other) cigar-smoking daughter.” (p. 55)

I suspect that there are many in the pro-abortion movement who are unhappy with his graphic descriptions of the so-called “products of conception” (a waffling term repeatedly used by Irving). Like Hero Homer, the reader is confronted again and again with the gruesome corpse of a murdered baby. When Homer finds his first dead fetus (on the way to the incinerator), we learn that even a 27-day-old unborn child has a head, a spine, eyes, nose and mouth. It gets worse later:

“And with this discovery—that a fetus, as early as eight weeks, has an *expression*—Homer Wells felt in the presence of what others call a soul.” (p. 169) One can imagine a “pro-choice” advocate wincing at this passage—or thumbing rapidly past it.

Some irate activist has probably already informed Irving that it is not acceptable to talk about the “products of conception” as if they were human, possessing an *expression* and a *soul*. After all, they well understand that anything that focuses attention on the unborn child—alive, aborted, or stillborn, intact or in pieces—hurts their cause, which is dedicated to the denial of personhood to fellow human beings still in the womb. They are all too aware that if the great majority of Americans are finally made aware of the biological facts of human development, abortion on demand could end shortly thereafter.

What will be the political impact of this best-seller? Strident rhetoric, topsy-turvy morality, and gruesome gynecological details do not add up to a convincing justification of abortion. Indeed, so overblown is the book at many points that it reads like a parody of the pro-abortion position. Judged as a political tract, *The Abortion Rules* is a failure. It is not too much to hope that it may even persuade at least a few of those on the pro-abortion side to forsake it.

If Irving succeeds in anything, it is in calling attention—in the coarse voice of the carnival huckster—to the entire abortion issue. And those he forces to rationally consider the morality of abortion may no longer think that what is expedient is the right choice. *The Abortion Rules* may do more good than harm.

On the other hand, the book gives tremendous exposure to various hoary myths of the pro-abortion movement, which the casual reader may accept as fact. For example, Irving promotes the idea that many perfectly normal orphans are unadoptable. Indeed, the entire book is in effect dedicated to the proposition that orphans and other “unwanted children” live such dreary, unhappy lives that they would be better off dead. In actual fact, of course, there is an enormous shortage of children available for adoption in the United States today; many childless couples have to wait long years for a child, many more never get one. As for the orphans and other so-called “unwanted children” themselves, they surely value their existence no less than “planned” children, without regard to any “inconvenience” their birth caused their

parents—no “better dead than orphaned” thesis for them.

Another bit of pernicious nonsense repeated in *The Abortion Rules* is that countless numbers of women died agonizing deaths as a result of back-alley abortions. Irving never says this in so many words, nor does he bandy about figures—one would hardly expect him to. Novelists trade in impressions, not statistics. So we are treated to botched abortions by the dumpster-full, each more gory than the last. “Saint” Larch’s final encounter with a dying young woman is enough to make the gorge rise in one’s throat. “Dr. Larch bent so close to the speculum, he had to hold his breath. The smell of sepsis and putrefaction was strong enough to gag him if he breathed or swallowed, and the familiar, fiery colors of her infection (even clouded by her discharge) were dazzling enough to blind the intrepid or untrained.” (p. 490) What the septic and putrifying prose of this and other passages is intended to blind us to is the fact that illegal abortion did not result in numerous deaths. (If it had, mortality rates among women of child-bearing age would have dropped sharply after abortion was legalized. But the rates stayed the same.)

Finally, Irving even attempts to negate the argument that abortion amounts to playing God, determining who shall live and who shall die. At the very end of the book, Homer is meditating on the morality of indiscriminate abortion: “After the first one, thought Homer Wells, this might get easier. Because he knew now that he couldn’t play God in the worst sense; if he could operate on [his first abortion patient], how could he refuse to help a stranger? How could he refuse anyone? Only a god makes that kind of decision. I’ll just give them what they want, he thought. An orphan or an abortion.” (p. 535)

Thus the Western World’s moral code is invented. In *The World According to Irving*, it is not conscience that dictates the act, but the act, or rather its capability of being performed, that dictates the conscience. Irving is taking the morality of the Sixties—If it feels good, do it—into the realm of the absurd: If you can do it, then it *must* feel good.

Irving’s code robs Homer of volition, denying him any choice in whether or not to commit a fatal act of violence against the unborn children that he himself believes have souls. What Irving is really saying is that, while it may be useful as a slogan, abortion should *not* be a matter between a woman and her doctor, but between a woman and

STEVEN MOSHER

her wants, however frivolous. And this of course is perfectly in tune with the “pro-choice” movement, whose ultimate argument is a naked ego, which happens to reside in a female body, ranting, “I won’t share this body with anyone!”—not even her own child. Obviously John Irving thought that a compelling novelistic treatment of abortion could win converts for his cause. I am happy to report that he is unable to execute his intentions. I would be happier if there were a novelist who would dramatize the opposite side.

Where is the book that dramatizes Life? Where is the work of literature that focuses attention on the unborn child, that establishes not only its existence and the pattern of its development, but also its personhood. In the *Dune* series, by Frank Herbert, an author whose books sales dwarf Irving’s, there is a child who has mental and emotional life from practically the moment of conception. I do not know what Herbert’s position on abortion may be, and I certainly do not classify the *Dune* series as serious literature. My point is that breathing fictional life into the truly-living unborn will help to reverse the fictional morality under which the youngest and most vulnerable of us are being slaughtered. We need an author who, with zest and feeling, can make the *personhood* of the unborn child into a best seller.

Pleasure, Pain and Abortion

R. V. Young

NOTHING HAS EVER DISMAYED advocates of legalized abortion so much as Bernard Nathanson's documentary film, *The Silent Scream*, the ultra-sound video of an actual abortion of a twelve-week fetus. The film provides powerful evidence that unborn children suffer grievous pain and distress as their lives are violently ended by the abortion "procedure." A multitude of pro-abortion physicians have appeared on radio and television and before various legislative bodies to assert categorically that the visual evidence offered by the film is "unfounded," "misleading," or at least "inconclusive." There seems no requirement for these physicians even to have given the matter prior thought, much less to have engaged in the relevant serious research. Feminist publicists have demanded that attention be shifted back to the plight of pregnant women, and a "Silent No More" letter-writing campaign was announced by the National Abortion Rights Action League, seeking positive testimonials from women who have undergone abortions.¹ Cartoonist Gary Trudeau even saw fit to ridicule *The Silent Scream* and the whole notion of fetal pain in a more-than-usually vulgar episode of *Doonesbury*.

This rather frantic response from the abortion lobby is not wholly mistaken from the perspective of its adherents: it is a correct perception, instinctive perhaps, that *The Silent Scream* devastates such moral standing as the abortionist and his supporters are able to muster. Pleasure and pain are the poles of good and evil for the secularist ethos which provides the pretexts for legalized abortion. Should it be effectively demonstrated that abortion inflicts real pain on the unborn child, then the abortion lobby's tattered banner of moral respectability simply disintegrates, unraveled on its own premises. It is another—perhaps the decisive—confirmation of James Hitchcock's claim that "those who support abortion have no moral position. Their position is based pre-

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cisely on the denial of morality, at least in this instance.”² I would go further and remove Hitchcock’s final qualification: the support of abortion is not merely immoral in itself; it lies at the center of what might be called an anti-morality, a garish parody of the real thing which drains spiritual life of meaning, undermines the foundations of decency, and induces in its persistent followers an absurdly self-righteous moral posturing. Such is the result of the view that evil, in the moral sense, is reducible to pain, good to pleasure.

The significance and pervasiveness of this viewpoint can be clarified by a brief reflection on two classic pieces of modern fiction. Dr. Rieux of Albert Camus’ *The Plague* is the archetypal existential hero, the defiant challenger of the goodness and sovereignty of God. As William Lynch remarks, “The novelist calls for a holy act of rebellion against all the forms of pain in men; it is therefore a rebellion which really asks that all other causes, all other zeals and purposes, be liquidated down into the form of this single crusade.”³ This rebellion against a reality in which human beings inevitably suffer pain is motivated, finally, by pity. Lynch illustrates this sentiment by way of Graham Greene’s *The Heart of the Matter*. The scrupulous police inspector Scobie gives up his professional integrity, his marital fidelity, his religious faith, and finally his very life out of a fastidious fear of inflicting pain:

The wife is to be pitied and the other woman is to be pitied, and therefore, both are, without choice, to be chosen. Scobie cannot stand the idea of giving pain to either. Then he cannot endure the torture this dilemma causes in God, and offers Him the holocaust of his suicide which wipes out the need and agony of all partial and analogical choices of the good.⁴

The terrible irony, of course, is that Scobie’s wife, whom he would spare the knowledge of his infidelity, has known all along and is ready to turn to the arms of another man. The young woman, for whom he thought his adultery was necessary for survival, is likewise quickly involved with another man after Scobie’s suicide. Without his religious scruples, this character would epitomize the modern liberal, whose compassion for a suffering world leads him to violate every canon of decency. Lynch comments aptly on the mindset of which Scobie is paradigmatic:

On the surface there is a great conflict today between the forces of pity and cruelty, with the latter emerging as an almost diabolical force on the contemporary scene

THE HUMAN LIFE REVIEW

of history. But there is a sense in which even the cruelty has been, professedly, derived from a kind of heresy of univocal pity, a war against all poverties and class structures.⁵

Proponents of abortion are in much the same position: out of a professed pity for the woman with an untimely pregnancy, they inflict upon the unborn child the cruelty of abortion. It is precisely by making the reality of fetal pain literally *visible* for the first time that *The Silent Scream* explodes the abortionist's pretensions to pity and to moral credibility. It is doubtful, nevertheless, whether opponents of abortion should simply expropriate the pain argument and use it in the same sentimental fashion as their foes have been accustomed to do. Defenders of life should, rather, restate the issue. Seizing the opportunity provided by the querulous complaints of feminists, the anti-abortion movement ought to fix attention squarely on the pregnant woman and her plight. For it is unprincipled, irrational pity for her condition that most deeply wrongs her—far more than the pain or suffering caused by her pregnancy. As Plato points out, “Good is not the same as pleasure, or bad the same as pain,” and it is far worse to *do* evil than to suffer it.⁶ Abortion, then, does not just treat the unborn child as nonhuman; it actually dehumanizes the woman to whom it is offered as a “compassionate solution” to her problem and her pain. She is persuaded to deny to her child the very pity that she herself calls forth and to inflict pain even as she seeks to avoid it.

“Pain” and “pleasure” are, of course, flexible terms, and it must not be thought that what is at stake here is just physical sensations. “Pain” includes anguish, anxiety, discomfort, even inconvenience—whatever is a source of sorrow or frustration. “Pleasure” includes comfort, convenience, various satisfactions (physical, emotional, intellectual)—whatever fulfills or pleases. According to the mentality of contemporary secular ideologies, pain is to be avoided at all costs, while pleasure is a fundamental right of the individual. No one can be expected to endure any pain which can possibly be escaped or to forego any pleasure which can possibly be enjoyed. Hence the title of Donald Demarco's recent collection of essays, *The Anesthetic Society*,⁷ seizes the mood of the post-industrial West in a shrewd metaphor. It is, finally, a matter of power and control: pain is an affront to pride, a reminder of the constraints upon the human will, the finitude of human possibilities. Plea-

sure, conversely, gives a sense of elation; it gratifies the ego as well as the senses or emotions and reassures us of our control of our destinies, of the sanctity of our plans and expectations. Thus is pleasure the god, pain the devil, of our contemporary gnostic idolatry.

The way such an outlook serves as a motive for abortion can be illustrated by two anecdotes. Several years ago at a small North Carolina college, I debated a woman who served as health educator at a county social-services department. Abortion is simply a necessity, she argued, even for married couples. The very best contraceptives are effective only 98% of the time, and in 25 years of marriage a 2% failure rate means a 50% chance of an unplanned pregnancy! At the time I was mesmerized by this health professional's grasp of statistical probability, which she seems to have confused with annually-compounded interest. What concerns me now is her unquestioned assumption that taking an unwanted pregnancy to term is simply unthinkable. *You have to do something*, she insisted. More recently I heard the same complaint, this time at a seminar for Methodist ministers at Duke Divinity School. The pro-abortion debater—a Baptist clergywoman—likewise chided medical science for failing to devise a contraceptive of more than 98% effectiveness. Woman can still become pregnant, she said, even when using contraceptives “responsibly.” Then abortion is the *only choice* (a new perspective on the term “pro-choice”).

Of course, these official spokespersons are merely reiterating the plaintive utterances often heard by anti-abortion speakers from audiences of college co-eds: “If I got pregnant, I’d *have* to have an abortion. I couldn’t face being pregnant now; it would ruin my whole life.” A variation on the same theme is, “If your wife (or daughter) were raped and got pregnant, what would *you* do then? Would you *make* her have *that* baby?” The implicit assumption of such questions is that anyone who opposes abortion has simply never considered how distressing and humiliating an unplanned pregnancy can be, and is insensitive to the pain and discomfort generally attendant upon pregnancy. Obviously, no sensitive, humane person could expect another to endure the pain and grief—or sacrifice the opportunities for personal gratification—that an unintended pregnancy might entail. Such is the inevitable result of convincing a generation of young women that pleasure is the good, pain the only real evil.

THE HUMAN LIFE REVIEW

During the past ten years or so, the logical lunacy of secularism has inexorably churned out its own *reductio ad absurdum*: the animal-rights or animal-liberation movement. With the Soviet Union poised for world conquest, already a source of unimaginable misery for its own people as well as millions in other countries, the zealots of "Green Peace" have mounted an expensive campaign to keep the Russians from killing whales. With a million and a half unborn human babies slaughtered annually, animal-rights activists have demonstrated outside the Department of Health and Human Services to protest cruelty to laboratory animals on the part of medical researchers. One need have no special animus against animals to find here a curious ordering of "priorities."

The movement to "liberate" animals or protect their "rights" has about the same intellectual credibility as the Flat Earth Society, but it is considerably more respectable and furnishes a chilling glimpse of the extent to which moral understanding has disintegrated in the contemporary world. Animal-rights activists can boast the support of pet philosophers with impressive academic pedigrees. One of the leaders, Tom Regan, proudly points out that, by the end of the last decade, no fewer than four academic philosophy journals had devoted all or most of an issue to "exploring the moral status of animals." The philosophical proponents of animal liberation have not only attained respectability, he claims, "even an outsider to the recent turn of events might begin to wonder whether we are not now on the cutting edge of a significant development in our moral and cultural evolution."⁸ What is more, the bearing of this "turn of events" on the issue of abortion is not merely inferential. Peter Singer, probably the best-known academic guru of the animal-liberation movement, became better-known when he leaped into the controversy over infanticide that sprang up in the aftermath of the death by starvation of "Baby Boy Doe" in a Bloomington, Indiana, hospital. In a "commentary" first published in the journal *Pediatrics* (of all places), Singer sneers at the notion of the sanctity of human life, which he believes has been properly undermined by abortion and the withholding of life-saving treatment from "certain patients."

"If we compare a severely defective human infant," he writes, "with a nonhuman animal, a dog or a pig, for example, we will often find the nonhuman to have superior capacities, both actual and potential, for

rationality, self-consciousness, communication, and anything else that can plausibly be considered morally significant.”⁹

I won't pause here to deplore Singer's remarks: the present purpose is better served by placing them in the context of G. E. M. Anscombe's 1958 essay "Modern Moral Philosophy," a classic polemic in which she argues three points: 1) that moral philosophy should be dropped from the agenda of contemporary philosophers, who are manifestly incapable of handling it; 2) that the concepts of "*moral* obligation and *moral* duty" should likewise be abandoned by contemporary philosophy, as no longer meaningful within its intellectual framework, and 3) "that the differences between the well-known English writers on moral philosophy from Sidgwick to the present day are of little importance."¹⁰ All three theses arise from Anscombe's observation that virtually all modern academic philosophers in the Anglo-American world are consequentialists. This similarity not only overrides their differences; it also vitiates their ethical thought. Having inherited from the Judeo-Christian tradition a *law* conception of ethics with its attendant notions of *moral* duty and obligation, these philosophers retain no belief in God as Lawgiver. Hence the increasing inanity of modern ethical discourse: "It is as if the notion 'criminal' were to remain," Anscombe comments, "when criminal law and criminal courts had been abolished and forgotten." (p. 30)

Anscombe notes that consequentialism, with its relativist notions of self-prescribed "principles," is the utter antithesis of the concept of moral obligation founded on divine law: "But of course the strictness of the prohibition has as its point *that you are not to be tempted by fear or hope of consequences.*" (p. 34—emphasis in original) It was with chilling prescience that Anscombe chose as her "paradigm case of injustice"—as the sort of moral abomination that consequentialist philosophers in 1958 were willing to regard as "moral" under certain circumstances—"the judicial condemnation of the innocent." (pp. 39, 42) The speculation of academic philosophers has become the practice of virtually every nation in the industrialized world. The "judicial condemnation" of the altogether innocent Baby Boy Doe was secured from the Indiana Supreme Court in 1982, and nine years earlier the U.S. Supreme Court put the signed death warrant of a child in the hands of every woman capable of conceiving one. It remains for "philosophers"

like Peter Singer—at “the cutting edge of a significant development in our moral and cultural evolution” (the expression is too cruelly appropriate)—to sit back and applaud their own work. As Anscombe notes, it is probably not worth contesting the matter with such men: “But if someone thinks . . . that it is an open question whether such an action as procuring the judicial execution of the innocent should be quite excluded from consideration—I do not want to argue with him; he shows a corrupt mind.” (p. 40)

Now the corruption of modern moral philosophy epitomized by Singer’s preference for pigs over “defective” people is a necessary outcome of the effort to derive a system of moral obligation from the identification of pain with evil, pleasure with good. In modern times this position is descended from the Bentham/Mill school of utilitarianism of which Singer is a scion. Though he at times seems to ascribe rights to animals, Singer generally rejects the concept of natural or inherent rights, preferring the idea of “moral standing” which he attributes to animals on the basis of their sentiency—the capacity for pleasure and pain.¹¹ Utilitarianism is thus a very crude philosophy, and some who embrace its ends have sought for a more sophisticated and beguiling means of moral reasoning. Although various contemporary versions of consequentialism have their roots in utilitarianism,¹² many have undertaken to secure a concept of moral rights notwithstanding the absence of belief in a divinely ordained moral law. The effort, however, is doomed to failure. Anscombe cites the example of the Oxford Objectivists, who “distinguish between ‘consequences’ and ‘intrinsic value’ and so produce a misleading appearance of not being consequentialists.” They are still identifiable as consequentialists, nonetheless, by their refusal to uphold the absolute prohibition against shedding innocent blood. (p. 33, no. 4)

One encounters the same desire to evade the consequences of consequentialism and, at one point, even the same term, “intrinsic value,” in the work of Tom Regan, another leading animal rights philosopher. Dissatisfied with Singer’s utilitarianism, Regan wishes to ascribe the same natural rights to animals as are traditionally ascribed to “marginal humans” (infants, the retarded, etc.). In “The Moral Basis of Vegetarianism,” he is content to borrow from the utilitarians the “sentiency principle”—that beings capable of suffering pain are entitled to avoid it, as those capable of enjoying pleasure are entitled to receive it. But

Regan goes further and tries to develop a system of rights out of the assertion “that pain is an intrinsic evil”; within a dozen sentences, however, he is conceding that one can inflict *pain* without doing *wrong* (e.g., by “forcing a child to take some essential medicine”).¹³ Regan does not seem to notice that this qualification essentially alters the meaning of his initial proposition: “evil” cannot mean *moral* evil (or sin, in Christian terms), but only what causes aversion in a creature; it is only evil in the sense that “bad” weather is evil. Hence the proposition, as it stands, is devoid of moral significance. Regan does notice that if animals have a right only to be spared pain, then they could be licitly killed under anesthesia (p. 26); and this will hardly satisfy the vegetarian conscience. Hence in the second part of the essay, he suggests that, like humans, animals possess “intrinsic worth” because they too might have “positive interests, such as desires, goals, hopes, preferences and the like, the satisfaction of which brings intrinsic value to their lives, in the form of intrinsically valuable experiences . . .” (p. 30)

Now in the first place, it is obvious that a being’s “interests” are easily reducible to the enjoying of pleasure and the avoiding of pain, if these two latter terms are understood in the broad sense characteristic of the utilitarian discourse from which Regan is trying to distance himself. Merely changing vocabulary cannot effect a real advance. More astounding is Regan’s notion that the capacity to value something also endows a being itself with “intrinsic worth”; that is, makes the valuer valuable. It is as if a rabid baseball fan automatically became Pete Rose. Doubtless a sturgeon takes pleasure of a fishy sort in eating minnows and could even be said to have an “interest” in eating them, just as a man might have an interest in eating sturgeon; but it is difficult to see how either creature is properly or objectively valuable on account of these satisfactions, or how obligation is thereby established in any other being. Why should a sturgeon’s pleasure—or interest—in eating minnows constrain a man’s interest in eating sturgeon? The relation between recognizing and enjoying worth in another entity, and having worth oneself, is simply not self-evident. Indeed, Regan’s concept of “intrinsic worth” comes very close to implying that the mere possession of “positive interests, such as desires, goals, hopes, preferences and the like” spontaneously creates a *right* to have them satisfied. Although this is a perennially popular notion, powerfully encouraged by much mod-

ern advertising, it hardly seems a valid philosophic principle.

Nevertheless, Regan will not relinquish it. Under a different rubric—"inherent value"—the same concept is central to a later essay, "One Argument Concerning Human Rights." Regan here claims to make a decisive break with utilitarianism and "any type of consequentialist theory" by grounding the possession of natural rights or "basic moral rights" on a firmer foundation than sentience, interests, or even consciousness. (pp. 117, 129-30, 131) But there is nothing here but a change of terms: like "intrinsic worth," "inherent value" is ultimately reducible to the equation between sentience and the possession of rights. Beings are said to have inherent value if "*they* are better or worse off having one form of life rather than another," if they are "*subjects* of a life that has value (is better or worse) for the individual whose life it is." (p. 135)

Such a being, Regan maintains, automatically is entitled to respect since "*x*'s having value of this kind is logically independent of any other being's happening to take an interest in or otherwise valuing *x*." Since Regan adds that "*x*'s being good-of-its-kind is logically distinct from *x*'s having inherent value" (p. 133), it is impossible to find any basis of moral obligation to *x*—given the lack of any other being's valuing or having an interest in *x*—beyond the philosophy professor's *ipse dixit*. And since Regan expressly excludes irreversibly comatose human being's from the class of beings possessed of inherent value (pp. 127-30), it is equally impossible to see how life can be of value to the individual whose life it is unless said individual is—if not conscious—at least sentient. Thus we are back at the utilitarian square one. Matters are not helped when, in another essay, "What Sorts of Beings Can Have Rights?", Regan argues that not only a plant but even a car can have a "good of its own." (pp. 176-82) Although I suspect that Regan's Datsun is a better car than he is philosopher, there is no apparent relation between the goodness of a Datsun and a factory-farm chicken's possession of moral rights.

Regan has not moved a single step beyond the principle of utility: a being has inherent value if its life (I am not sure what to do with the Datsun here) is valuable (i.e., useful; i.e., pleasing) to itself. It seems to amount to a grandiose scheme of "I'm O.K., You're O.K., It's O.K." Regan has by no means risen above consequentialism, and he finally

gives himself away according to Anscombe's precise litmus test; he finds a "moral" pretext for killing the innocent:

It is not implausible to suppose that normal, adult humans, because they can lead a life that can have a range of values (e.g., moral virtues) not obtainable by the severely mentally enfeebled, can be regarded as themselves having greater inherent value than the enfeebled. Thus, if, in bizarre life-and-death circumstances (e.g., familiar philosophical examples about survivors on a lifeboat), it came down to choosing between saving the life of a normal adult or that of a severely mentally enfeebled child, it perhaps would not be unreasonable, other things being equal, to choose to save the former on the grounds that he/she was of greater inherent value than the unfortunate child. (p. 137)

One may hope that the convoluted awkwardness of the prose in this passage is an index of the philosophy professor's reluctance to cast the "unfortunate child" overboard. Still, it seems a curious way to demonstrate a superior range of "moral virtues." Among animal liberationists it would seem that some animals are more equal than others: philosophy professors, like pigs, are more equal than "defective" children.

In the past it was very difficult for a moral philosopher to live up to his principles; today one is bound in charity to assume that most lead lives of much finer quality than their moral reasoning. The problem begins with the effort to treat pleasure and pain, in their various manifestations, as the antithetical poles of good and evil. The principal purpose of traditional moral training was precisely to steel one against the temptations of pleasure and pain. It is, in fact, questionable whether the concept evoked by our modern usage of the word "pain" was even available to our ancestors before recent centuries. The English word is derived from the Latin *poena* which means not "pain" but "punishment," "penalty," or even "revenge" (with a capital "P" *Poena* is the goddess of revenge), and with the coming of Latin Christianity *poena* was routinely associated with punishment for sin—the hardships, griefs, and persecutions of this life or the *pains* of hell. This seems to have been the initial meaning of the English word *pain* (as of the French *peine* and the Spanish *pena*), and it was bound to resonate in a Christian culture even when the modern sense of "pain" as simple physical anguish or suffering began to emerge.¹⁴

This brief philological excursus suggests that the development of the current meaning of the word signals a changed view of the human condition: pain was accepted as an inevitable element of a fallen world,

a necessary part of the reality of sinful humanity. It was less an outrage to human sensitivity—a challenge to believers in a benevolent God, as addressed by C. S. Lewis in *The Problem of Pain*—than clear evidence of God’s providential chastisement of His erring creatures. Pain is an integral part of the milieu of our temporal existence, and our deliverance from the pain and suffering of this world, St. Paul affirms, is a mark of the redemption of our sinful minds and of our corrupted bodily nature:

For I reckon that the sufferings of this present time are not worthy to be compared with the glory that shall be revealed in us.

For the earnest expectation of the creature waiteth for the manifestation of the sons of God.

For the creature was made subject to vanity not willingly, but by reason of him who hath subjected the same in hope,

because the creature itself shall also be delivered from the bondage of corruption into the glorious liberty of the children of God.

For we know that the whole creation groaneth and travaileth in pain together until now.¹⁸ (Rom. 8:18-22)

When St. Thomas Aquinas comes to treat of what we call “pain,” he uses the terms *tristitia* and *dolor*, which mean primarily “sadness,” “sorrow,” or “grief,” physical anguish being only one kind of *dolor*, which is a lesser affliction than mental or spiritual suffering.¹⁶ Like pleasure (*delectatio*, not *voluptas*), pain is dealt with in the treatise on the passions in the *Summa Theologica* (I-II, 22-48), and as a passion it is not a substantial entity but rather an accident occurring in the substance of man. Hence when St. Thomas raises the question, “whether all sadness/pain [*tristitia*] be evil,” he observes that pain can be treated in two ways. “Simply and in itself . . . all pain is a kind of evil”—or an “intrinsic evil” in Regan’s phrase. The matter does not, however, end here. “In another way, something is said to be good or evil on the supposition of something else, as shame is said to be good on the supposition of some disgraceful deed. . . . Therefore,” St. Thomas continues, “supposing there is a source of sadness or pain, it is an indication of goodness that someone should grieve or be saddened in the face of a present evil. For it is impossible not to be saddened or grieve over evil unless one does not recognize it or does not regard it as repugnant to oneself; and either of these possibilities is a manifest evil.”¹⁷ Pain, though evil in itself, is not absolutely evil because it only exists in rela-

tion to something else from which it derives its character. Hence it is impossible, St. Thomas maintains, for pain, grief, or sadness to be the ultimate evil:

Pain or sadness which arises from a genuine evil cannot be the ultimate evil, for there is something worse, namely, either not to judge as evil what in fact is, or even not to reject it. Sadness or pain which arises from an apparent evil, which is really a good, cannot be the ultimate evil, since it would be worse to be wholly deprived of a real good.¹⁸

It can be easily deduced from these passages that St. Thomas accepts the view of his classical predecessor, Plato, that it is worse to do evil than to suffer the effects of evil, pain and sorrow. Still more important, however, is Thomas's observation that pain itself is a "disturbance of the human appetite" and hence a reckoning that evil is present.¹⁹ Pain itself, then, is only a symptom of or a response to an evil real or apparent: it "supposes" another factor from which it takes its character. In modern terms, pain is "subjective"; that is, though two persons may suffer the same object of pain—be burned by the same fire, say—their sensations are not the same but distinct and unique.²⁰ Conceived as sensation or even as simple emotion, pain is not rational and therefore not accessible to meaningful communication. That is why the attempt to construct a systematic ethics out of the diverse and random sensations of individual creatures—by gauging the relative weight of the pains of factory-farm chickens, pregnant women, blue whales, unborn children, philosophy professors, etc.—can only end in absurdity. Pain—indeed, any sensation or passion—only takes on meaning when it is submitted to the measure of reason and becomes a strand in the web of human experience and culture. Pain is then not only a factor in ethics but also, as the poet Wallace Stevens has it, aesthetics—an *Esthétique du Mal*:

It was almost time for lunch. Pain is human.
There were roses in the cool café. His book
Made sure of the most correct catastrophe.
Except for us, Vesuvius might consume
In solid fire the utmost earth and know
No pain (ignoring the cocks that crow us up
To die). This is part of the sublime
From which we shrink. And yet, except for us,
The total past felt nothing when destroyed.²¹

THE HUMAN LIFE REVIEW

“Pain is human.” Not because animals have no sensations of pain or even, in some cases, rudimentary feelings of grief, but because pain as such has no moral significance because it has no meaning at all. For beasts—all predators, prey, or both—inflicting and suffering pain is part of their natural existence, a factor in their environment and nothing more. Pain becomes human when, and only when, it is seen not as identifiable with evil but as an index to evil, subject to rational judgment.

Similar strictures apply to pleasure: it is not the same as the good, nor even as happiness. Like pain or grief it is a symptom or indicator which “supposes” the presence of something else. “Not even the delight [*delectatio*] that follows from the perfect good,” St. Thomas comments, “is itself the essence of happiness [*beatitudo*], but a kind of result of it as it were, in itself accidental.” As for bodily pleasure [*voluptas*], it is not even a “proper accident” of the perfect good:

For since the rational soul surpasses the proportion of corporeal matter, the part of the soul which is free of a bodily organ has a certain infinity in relation to the body itself and the parts of the soul concretely realized in the body; just as what is invisible is infinite in a certain way in relation to material things, even so a form is contracted and limited in a certain way by matter; hence a form free of matter has a kind of infinity.²²

But infinite only “in a certain way,” and man’s longing for happiness is limitless, and finds its end neither in his own soul,²³ nor in any created thing:

It is impossible for man’s happiness to be in any created good. For happiness is the perfect good which completely quiets appetite; otherwise it would not be the final end, if anything yet remained to be desired. Now the object of the will, which is human appetite, is the universal good, just as the object of the intellect is universal truth. From this it is apparent that nothing is able to quiet the human will except the universal good, which is found in nothing created, but only in God, since every creature is good by participation.²⁴

St. Thomas Aquinas draws the conclusion that only God can satisfy the human will by observing the inherent limitations of every kind of earthly or created pleasure: human desire is always disproportionate to worldly fulfillment. There is a remarkable similarity in Plato’s discussion of the limits of pleasure: “Are we not told,” Socrates asks, “that pleasure is always something that comes to be, that there is no such thing as a pleasure that is?”²⁵ Socrates proceeds to develop the argu-

ment that pleasure only occurs in the realm of becoming, as part of a process of mutability, “an alternation of Passing away and Becoming” (55a), as in the pleasure afforded by the relieving of hunger or thirst. One need not be a Platonic idealist to recognize the elusive insubstantiality of pleasure—its lack of full reality. As in St. Thomas, it is a kind of by-product or accident. Unlike virtue or reason, pleasure cannot be relied on or trusted. “No one, whether in his waking hours or his dreams,” remarks Socrates’ interlocutor, Protarchus, “has had a vision of Intelligence and Reason as ugly: no one can ever possibly have conceived them as being or becoming ugly, or ever going to be so.” Pleasure on the other hand cannot be counted to be even wholly or consistently agreeable:

But I fancy that when we see someone, no matter whom, experiencing pleasures—and I think this is true especially of the greatest pleasures—we detect in them an element either of the ridiculous or of extreme ugliness, so that we ourselves feel ashamed, and do our best to cover it up and hide it away: and we leave that sort of thing to the hours of darkness, feeling that it should never be exposed to the light of day. (65e-66a)

These passages from the *Philebus* highlight what is perhaps the single most egregious error made in the modern effort to find moral absolutes in pleasure and pain: the belief that they are antithetical opposites, sheer contradictories, rather than contraries. Pain and pleasure are, in fact, so inextricably bound up with one another that they are mutually necessary: we know the pleasure of food and drink from the pain of hunger and thirst, the pleasure of sexuality from the separation and opposition of the bodies of men and women, the pleasure of companionship from the grief of loneliness. Pleasure and pain are both *passions*; that is, in the root sense of the word, *sufferings*, states in which we are open to or possessed by sensation, emotion, or desire. A world from which every pain was banished, in which every pleasure was available, is inconceivable: it contradicts the nature of pleasure and pain, which both imply a susceptibility and vulnerability in human beings dwelling in a physical, temporal world. Whoever rejects the Christian (or Platonic) promise of eternal peace must make do with this world and all of its pleasures and pains, as Wallace Stevens depicts it in “Sunday Morning”:

THE HUMAN LIFE REVIEW

Divinity must live within herself:
Passions of rain, or moods in falling snow;
Grievings in loneliness, or unsubdued
Elations when the forest blooms; gusty
Emotions on wet roads on autumn nights;
All pleasures and all pains, remembering
The bough of summer and the winter branch.
These are the measures destined for her soul.²⁶

Here is no impossible utopia free of pain and distress: the pleasures are complementary to the pains and both are for “remembering.” Without a life in eternity, then such meaning as this life has, the poet urges in a subsequent line, is only the child of the ultimate pain, extinction: “Death is the mother of beauty.”

Utopian pity—the kind that leads men and women to crusade on behalf of seal babies while they are aborting human babies—draws back from the hard skepticism of a Wallace Stevens; but it is utterly appalled by the traditional wisdom of our religious heritage. Christianity places at the very heart of reality the Cross, which it regards as wellspring of joy beside which mere pleasure fades into insignificance. Far from rejecting the passions, Christianity finds in the *Passion* of Christ the way to blessedness itself. In this the early Christians affronted the Stoicism of the Roman Empire, with its ideal of “apathy” (*apatheia*—the equal repression of feelings of pleasure and pain) as much as Epicurean hedonism. Contemporary moral philosophy, the intellectual support for the abortion lobby, imitates Epicureanism at its worst. Its obsession with avoiding any sort of pain or frustration and acquiring every sort of pleasure or satisfaction can truly be termed “anti-life.” Not only do modern philosophers furnish pretexts for such measures as abortion and infanticide; in addition, the excessive preoccupation with pleasure and pain defies the real condition of human life in which pleasure and pain, like joy and sorrow, are inevitably linked. Abortion and infanticide begin in pity and end in cruelty because each is usually an attempt to evade reality.

Opponents of abortion will be truly “pro-life,” then, not by sentimentalizing all organic life, idealizing criminals, or shrinking empathetically from the sheer fact of pain. “Pro-life” should mean an acceptance of the realities of human life as they are, an acknowledgement of human limitations among which are the inescapable experiences of pain

and suffering. *The Silent Scream*, with its vivid portrayal of fetal death agony, is a valuable weapon in the pro-life arsenal; but opponents of abortion must not fall into the trap of arguing that abortion is wrong simply because it causes pain to the unborn child. Abortionists could very well begin to anesthetize their victims, and that should be no more acceptable to anti-abortionists than anesthesia in the cattle slaughterhouses would be to Tom Regan.

What *The Silent Scream* shows is that the entire philosophic edifice that houses abortion and other anti-life “solutions” to life’s problems is a shaky structure resting on sand. It is in fact a lie: it promises a pregnant woman that all kinds of pleasure are to be had without any sort of pain; that the processes of life can be reversed; that sexual intimacies can be enjoyed without risks—without venturing out of a self-enclosed, egocentric world into an unknown realm where a stranger, a baby, can disrupt one’s personal plans. *The Silent Scream* shows that the baby in the womb is already there, already involved in his mother’s destiny. It shows that there are real contingencies in life that must be faced.

Opponents of abortion must never deny or conceal that giving birth to a child does cause pain, that it is an occasion of genuine sacrifice on the part of the mother. One might even say that it is a kind of death, or at least a reminder of death, insofar as it is concrete evidence of the ineluctable movement of earthly life from birth to death—becoming always grasping after being, which cannot be held, but which, God willing, will finally hold us in the Beatific vision. Thus *The Silent Scream* does indeed focus attention on the plight of pregnant women by displaying so graphically the nature of their choice. They can choose to inflict agony and hideous suffering in the interest of a fantasy of autonomous control of destiny, or they can reject pity and offer love, accepting the suffering and the intimation of mortality that love involves by bearing joyfully the burden of life. Pity the woman who succumbs to the abortionist’s pity.

NOTES

1. According to *Lifeletter '85*, #8, the campaign has been an utter failure, with the *Congressional Record* receiving fewer than 70 letters, only 39 from women who had actually had abortions.
2. *The Years of Crisis: Collected Essays, 1970-1983* (San Francisco: Ignatius Press, 1985), p. 164.
3. *Christ and Apollo: The Dimensions of the Literary Imagination* (Notre Dame, IN: Notre Dame University Press, 1975), p. 129. The confrontation between the priest and the physician in the third book of Walter Miller’s *A Canticle for Leibowitz* (New York: Bantam, 1972), pp. 240-245, could almost be taken as a rejoinder to Camus. “Pain’s the only evil I know about,” the physician says, to the horror of the priest for whom his view is just another “old heresy.”

THE HUMAN LIFE REVIEW

4. *Ibid.*, p. 128.
5. *Ibid.*, p. 126.
6. *Gorgias*, 497d, 469c, translated by W. C. Helmbold (Indianapolis: Bobbs-Merrill, 1952). On the crucial role of this Platonic dialogue in establishing the moral norms of Western civilization, see Eric Voegelin, *Plato and Aristotle, Order and History*, vol. III (Baton Rouge: Louisiana State University Press, 1957).
7. Published by Christendom Publications (Front Royal, VA, 1982).
8. *All That Dwell Therein: Animal Rights and Environmental Ethics* (Berkeley: University of California Press, 1982), pp. 113-14.
9. Reprinted in *The Human Life Review*, (Fall 1983), pp. 86-89.
10. Reprinted in G. E. M. Anscombe, *Collected Philosophical Papers* (Minneapolis: University of Minnesota Press, 1981), III, 26. Further citations of this essay are given parenthetically in the text. Some of the insights first broached in this essay are elaborated in an interesting if curious way by Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame, IN: University of Notre Dame Press, 1984), esp. p. 53.
11. For a refutation of utilitarianism generally and Singer in particular, see R. V. Young, "A Conservative View of Environmental Affairs," *Environmental Ethics*, 1 (1979), pp. 241-54, esp. 248-51.
12. R. G. Frey, *Interests and Rights: The Case Against Animals* (Oxford: Clarendon Press, 1980), pp. 14-15, calls himself "some sort of act-utilitarian" and adds, "This means I am a consequentialist." He sets about refuting the animal-liberationists from within the consequentialist frame of reference and succeeds admirably in annihilating the "moral standing" of animals. However, I should not care to rely on his reasoning to defend the moral standing of human beings.
13. *All That Dwell Therein*, pp. 8-9. Further quotations of Regan are all from this volume with page numbers given parenthetically in the text.
14. See the *Oxford English Dictionary*, s.v. *pain*; and Lewis & Short, *A Latin Dictionary*, s.v. *poena*. The same semantic pattern holds for the Greek root; see Liddell & Scott, *A Greek-English Lexicon*, s.v. *poine*.
15. In verse 18 the English "sufferings" corresponds exactly to the Greek *pathemata* and the Latin *passiones*. In verse 22, however "pains" is an interpolation of the translators of the King James version, showing how pain was viewed in the early 1600's.
16. *Summa Theologica*, I-II, 35, 8: "*Utrum Dolor Exterior Sit Maior Quam Interior.*" I quote throughout this article from the five-volume manual edition of the *Biblioteca de Autores Cristianos* (Madrid, 1955).
17. *Ibid.*, 39, 1: "*Aliquid esse bonum vel malum, potest dici dupliciter. Uno modo, simpliciter et secundum se. Et sic omnis tristitia est quoddam malum. . . . Alio modo, dicitur aliquid bonum vel malum, ex suppositione alterius; sicut verecundia dicitur esse bonum, ex suppositione alicuius turpis commissi. . . . Sic igitur, supposito aliquo constistabili vel doloroso, ad bonitatem pertinet quod aliquis de malo praesenti tristetur vel doleat. Quod enim non tristaretur vel non doleret, non posset esse nisi quia vel non sentiret, vel quia non reputaret sibi repugnans; et utrumque istorum est malum manifeste.*"
18. *Ibid.*, 4: "*Dolor autem seu tristitia quae est de vero malo, non potest esse summum malum; est enim aliquid eo peius, scilicet vel non iudicare esse malum illud quod vere est malum, vel etiam non refutare illud. Tristitia autem vel dolor qui est de apparenti malo, quod est vere bonum, non potest esse summum malum, quia peius esset omnino alienari a vero bono.*"
19. *Ibid.*, 1: "*Et sic omnis tristitia est quoddam malum; hoc enim ipsum quod est appetitum hominis anxari de malo praesenti, rationem mali habet; impeditur enim per hoc quies appetitus in bono.*"
20. On this point see Young, "A Conservative View," pp. 248-51. I am acquainted with Anscombe's caveat regarding the careless use of "subjective" to mean little more than "unreliable" in *Collected Papers*, II, 48. As the text shows, this is not what is at issue here.
21. *The Collected Poems of Wallace Stevens* (New York: Knopf, 1954), p. 314.
22. *Summa Theologica*, I-II, 2, 6: "*Unde manifestum est quod nec ipsa delectatio quae sequitur bonum perfectum, est ipsa essentia beatitudinis, sed quoddam consequens ad ipsam sicut per se accidens. . . . Cum enim anima rationalis excedat proportionem materiae corporalis, pars animae quae est ab organo corporeo absoluta, quandam habet infinitatem respectu ipsius corporis et partium animae corpori concreatarum; sicut invisibilia sunt quodammodo infinita respectu materialium, eo quod forma per materiam quodammodo contrahitur et finitur, unde forma a materia absoluta est quodammodo infinita.*"
23. *Ibid.*, 7.
24. *Ibid.*, 8: "*Impossibile est beatitudinum hominis esse in aliquo bono creato. Beatitudo enim est bonum perfectum, quod totaliter quietat appetitum; alioquin non esset ultimus finis, si adhuc restaret aliquid appetendum. Obiectum autem voluntatis, quae est appetitus humanus, est universale bonum; sicut obiectum intellectus est universale verum. Ex quo patet quod nihil potest quietare voluntatem hominis, nisi bonum universale. Quod non invenitur in aliquo creato, sed solum in Deo, quia omnis creatura habet bonitatem participatam.*"
25. Philebus, 53c, translated by R. Hackforth, *Plato's Examination of Pleasure* (Indianapolis: Bobbs-Merrill, 1954). Further quotations are from this edition. Section numbers are given parenthetically in the text.
26. *Collected Poems*, p. 67.

The Right to Life

Barry Nakell

WHAT IS THE BASIC, fundamental civil liberty?

Certainly free speech is a prominent star among the constellation of civil liberties.

Religious freedom also is a prominent feature in that orbit. Equal protection occupies a stellar position as well.

The right to privacy beams out from the penumbra of many stars.

This special galaxy of fundamental safeguards is surrounded by the guarantees of procedural due process.

But the basic civil liberty, essential to all of these and presumed by each of them, is respect for the dignity of life.

If we could achieve a consensus in support of a meaningful commitment to this basic human right, we would take a great stride toward achieving all of the liberties for which we stand. It is not possible truly to respect the dignity of life and not also understand the importance of the freedoms of speech and religion, the guarantee of equal protection of the laws, the right of privacy, and the procedural safeguards of due process.

Without this basic component, however, without respect for the dignity of life as the universal elementary ethical principle—whether based on religious, moral, humanist, or utilitarian beliefs—we have no common principle from which to derive the other fundamental liberties that are enshrined in the Bill of Rights and the 14th Amendment.

The one principle shared by all great religious and philosophical traditions is respect for the dignity of life. Whether that position is reached on the basis of the Bible—Old or New Testament, fundamentalist or liberal interpretation—or on the basis of rational enquiry—it is essential to civilized society.

The principle requires respect for the dignity of all life, without distinction based on privilege or power, class or station, color or religion, sex or nationality; without political tests and without moral judgments.

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THE HUMAN LIFE REVIEW

This principle is, of course, the underlying basis for the paramount issue on the North Carolina Civil Liberties Union agenda since our founding: our unstinting opposition to the death penalty. As our general counsel, Norman Smith, has recently explained in an excellent law review article in the July, 1984 issue of the *Boston College Law Review*, the actual rationale for our opposition to capital punishment is our belief in the right to life; our opposition to governmental action depriving a person of life.

The capital punishment debate in the courts today focuses on the cruel and unusual punishment clause. But, regrettably, capital punishment is not unusual today—and some states, particularly Florida, Texas, Georgia, Virginia and, yes, North Carolina—and the U.S. Supreme Court I am sorry to say, are working hard to make it less unusual.

And the reason the death penalty is cruel is because it irrevocably violates the right to life. So Norman is right and has performed an outstanding service by directing our attention to the actual basis for our position—our respect for the dignity of all life.

Yet the Constitution nowhere provides explicitly for that fundamental principle. Indeed the Fifth Amendment speaks in three places of capital punishment:

- 1) No person shall be held for a capital, or otherwise, infamous crime, other than by presentment or indictment of a Grand Jury;
- 2) nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;
- 3) nor be deprived of life, liberty or property, without due process of law.

And the 14th Amendment repeats the third.

Moreover, surely the most embarrassing provision of the Constitution is in Article I (Sec. 2, Cl. 3) which expressly counts slaves as three-fifths of a person (and “Indians not taxed” as not persons at all): “Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective Numbers, which shall be determined by adding to the whole Number of free persons, including those bound to service for a Term of years, and excluding Indians not taxed, three-fifths of all Persons.”

In addition, I have reviewed the American Civil Liberties Union Pol-

BARRY NAKELL

icy Guide in a search for a strong statement of the principle of respect for the dignity of life, and not found any. This is an oversight that we need to correct.

This principle has obvious implications for the civil liberties perspective on the issue of abortion. I have been discussing those implications informally for some time and with greater intensity over the past several months with many of you, and with other members of NCCLU, and with other people of good will. I find that most of us are not entirely comfortable with the ACLU position on the issue, that most of us have been undergoing considerable soul searching about the issue, and that most of us have reservations about the current constitutional policy.

Nevertheless, I believe that most of us resolve the whole panoply of questions in favor of a generally pro-choice position, perhaps with qualifications or reservations. But the reasons for that are not of a constitutional or a civil liberties character.

I would like to explore this matter further with you today. I would like to share my thoughts because I think that the principled position of the NCCLU requires a thorough consideration of the competing considerations. I hope this talk will open up a dialogue on the matter.

I do this because I realize that abortion is a very difficult, complex issue that can be very emotional on all sides. Before I begin, I would like to explain that the concern I want to express today is largely a professional one with the interpretation of the Constitution, not necessarily with the practical result of whether abortion is legal or illegal, restricted or regulated. I think this discussion is important, however, not only for the country but for our organization as well and for us, its members.

I am fortunate that within the NCCLU we have a tradition of free speech and of rejecting orthodoxy.

Constitutional protection for abortion is inconsistent with the basic principles of the Civil Liberties Union. ACLU policy is that the Constitution should be interpreted to give expansive protection for constitutional rights, including the right to life, and should not be enlisted to protect the right to *take* life, in any form.

What I have said, of course, suggests that *Roe v. Wade* was wrongly decided. *Roe v. Wade* is the decision in which the Supreme Court held

that the constitutional right of privacy precludes the states from prohibiting abortions before the stage of viability of the fetus.¹ That decision involved a two-stage analysis.

The first stage was that “the right of personal privacy includes the abortion decision.”² I accept that conclusion.

That did not end the matter, however. The states may invade an area of constitutionally protected privacy but they need to show a “compelling interest” to do so.³ For example, the right of privacy clearly protects conduct in the privacy of the bedroom. The Court has held that it applies to obtaining contraceptives and to viewing (though not obtaining!) obscene material. Yet the State can invade the privacy of the bedroom where it has a compelling interest to do so—such as to prohibit a husband from beating his wife, or vice-versa, or the wife from killing her husband, or vice-versa.

The right of privacy means that the Court’s scrutiny of the reason for any law invading a privacy, as any other fundamental interest, will be more intensive than its review of ordinary legislation, which is rather minimal. But it does not mean the right of privacy is absolute.

Roe v. Wade depends on the position that life does not begin until birth. The Supreme Court held that until that point there is only “potential life.” Based on that proposition, it decided that the states do not have a compelling interest in protecting prenatal life after conception, until viability.⁴ I do not agree with that conclusion because I believe that reasonable people could responsibly disagree about when life begins.

I believe that reasonable people may decide that life begins at conception. Indeed, that is my personal position.

First, scientific evidence clearly establishes that conception marks the beginning of the life of a human being—of a being that is alive and is a member of the human species.

Secondly, my own observations lead me to conclude that life begins at conception.

My wife Lynne and I have two daughters. We loved both of them from the moment we knew they were alive in her body. We talked to them, we nourished them, we played with them. Most parents have the same experience.

We have all seen newborn infants and must be convinced that they

were alive before their emergence from the womb. Other parents have made the same observation, as have doctors and nurses in their obstetrics or pediatric practices.

Thirdly, the Civil Liberties Union stands for expansive interpretation of constitutional liberties. If there is doubt about whether a fetus is a human life, our bias compels us to advocate in favor of its constitutional protection.

So, my personal position is that life begins at conception.

At the same time, however, I believe that reasonable people may decide that life does not begin until viability or birth. I disagree with that position, but can understand how reasonable people could reasonably adopt it. The Supreme Court has also recognized “the wide divergence of thinking on this most sensitive and difficult question.”⁵ Apparently because in other areas “the unborn have never been recognized in the law as persons in the whole sense,” the Court held that the states may not, “by adopting one theory of life . . . override the rights of the pregnant woman that are at stake.”⁶ The Court did agree that the State does have an “important and legitimate interest in protecting the potentiality of human life.”⁷ It held, however, that that interest becomes “compelling” only “at viability.”⁸ I believe that it is the indefensible stage of the decision.

The reason, then, that I disagree with *Roe v. Wade* is this: I believe it is reasonable for a State to determine that life begins at conception and vigorously to protect the right to life from that point, and that the Supreme Court should not interpret the Constitution to deny the State the authority to grant such expansive protection to life. The Constitution should not guarantee a right *to take life* as reasonably determined by the State. That is the basic civil liberty principle.

For that reason, *Roe v. Wade* is fundamentally out of sync with the fundamental principles of our organization. I think we have been misguided in supporting it.

Roe has been a very difficult decision to defend doctrinally. Many of the most skilled legal scholars have tried without success to develop a constitutional theory to explain it.

Recently, Judge Ruth Bader Ginsburg offered a new theory. She made her presentation in a lecture at the University of North Carolina Law School a year ago. I was in Boulder on leave at the time, so

missed the lecture, but I read it in the *North Carolina Law Review*.⁹ Judge Ginsburg implicitly acknowledged the inadequacy of the privacy theory to support *Roe*, and so suggested a “constitutionally based sex-equality perspective.” Essentially, I understood her to be endeavoring to advance a sex discrimination argument for *Roe*. Frankly, she did not elaborate on that conclusion, and I am hard-pressed to understand it.

Pregnancy is a unique event that is, by nature, sex-based. It makes no sense, then, to complain that anti-abortion laws would apply only to women and not to men. I may not understand Judge Ginsburg’s argument. If so, I await her further explication.

But I want to make another point here. What is the interest of the woman asserted in support of abortion: The privacy interest in autonomy over her body. I support that right for *both* men and women.

But the argument overlooks the interest of another party—the unborn child. Thus, the privacy interest asserted depends upon a rejection of the idea that the preborn child is a life. As I have said, that is a reasonable position. But there is no neutral principle that can elevate it above the contrary belief.

Moreover, I must wonder whether there is not some measure of contrivance in this argument. From the perspective of the pregnant woman seeking abortion, is the interest really in determining what happens to her body? A woman has a strong concern during the determinate period of her pregnancy with her appearance and with her health, both physical—including ordinary discomfort as well as extraordinary difficulties—and psychological. But the paramount concern with the unwanted pregnancy is not with the period of pregnancy itself—but with the consequence of having an unwanted child. If it is the birth of the child that is the concern, is this really a problem of body anatomy? Of privacy? If so, what is the difference between permitting abortion and permitting the taking of the life of the newborn child?

The proper argument in favor of abortion is not a civil liberties argument but an argument based (1) on the limits of the criminal sanction—many pregnant women will be so desperate for abortions that they will obtain them even if they are illegal but under demeaning, dangerous and expensive conditions—(2) on compassion for the tragic predicament of many of them; and (3) on concern for the future of unwanted children. I strongly share the concern for women in this posi-

tion. I support strengthening our educational systems and providing educational programs in family planning and birth control to prevent them, and I believe that anti-abortion advocates have a responsibility in this direction. I recognize that our society is still imperfect and that women with unwanted pregnancies are often the victims of societal circumstances. Their cries for relief are piercing as a matter of practical policy. They are not persuasive as a constitutional matter, however. The reason for having fundamental guarantees embodied in a charter such as the Constitution is to protect them from the claims of pressing needs that stand in constant tension with the Constitution's protections. The clamor to suspend the First Amendment to permit limiting the speech of Communists; the clamor to suspend the Fourth Amendment to permit searches for illegal narcotics; the clamor to suspend the Eighth Amendment to permit executions; the clamor to suspend the equal protection clause to permit the continuation of policies that support traditional preferences for men over women.

"It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards."¹⁰

The situation is a little backward here. In the classical posture, the Constitution would be interpreted to protect the right to life, and pro-abortion advocates would be pressing to relax that constitutional guarantee. By a quirk of fate, it is the abortion decision instead that enjoys the constitutional protection. What I am suggesting today is simply that *Roe* be overturned, thus freeing the abortion decision from constitutional controls.

Other groups may then want to support abortions, but not an organization whose client is the Bill of Rights. If we have a conflict of interest between the right to life of the unborn child and the right to an abortion by the mother, we must resolve that conflict in favor of the helpless fetus.

Whether the "right to life" principle should prohibit abortions as a constitutional imperative should be the real question. I think it should not for one simple reason:

The Constitution is a safeguard against governmental action only, and not against private conduct. Thus, the Constitution by its own force would not prohibit abortions any more than it prohibits murder or any other crime by private persons as opposed to governmental officials.

THE HUMAN LIFE REVIEW

Although some civil libertarians have tried to obliterate this distinction and the NCCLU has occasionally done so, *e.g.*, in opposition to lie detector tests of employees of private businesses, I have always believed it is essential to confine the Constitution to its proper sphere: protection against official, governmental oppression.

Thus, a state would not be required to prohibit abortions. The question of state funding of abortions is another matter.

I want also to take a broader perspective.

I obviously believe in "judicial activism." The Constitution requires the Courts to interpret and apply its terms, and that is all that is meant by judicial activism. The due process and other clauses not only authorize but require the Courts to engage in active enforcement of constitutional rights.

Moreover, I believe that the activism of the Court in the areas of segregation, voting rights and criminal procedure, among others, were not only proper but were exemplary. They were taken on the high moral plane framed by the constellation of fundamental civil liberties.

But we have to understand that their imposition on the country by the courts rather than by the Congress or the state legislatures exacted a political cost. Opponents of these decisions felt that they had been inflicted on them by a non-majoritarian process, and have felt oppressed by them. We have no trouble defending those decisions because of the clear moral commands that they enforce, however.

Roe v. Wade has wrought a divisiveness that is not healthy for the country. It is impossible to establish a principled defense because the decision lacks a principled foundation, and is in fact contrary to the basic principle upon which we depend.

The high moral ground is today occupied by the pro-life movement. That is why advertisements of this kind are effective. "When they tell you that abortion is a matter just between a woman and her doctor they're forgetting someone."

Senator East's subcommittee on Separation of Powers held hearings on a proposed Human Life Bill. The Majority Report of that hearing is ringing with statements that sound like pronouncements the NCCLU would make. Indeed, I believe we would heartily endorse the entire report except when it draws the natural conclusions regarding abortion.

For example, page 2: "To protect the lives of human beings is the

highest duty of government. Our nation's laws are founded on respect for the life of each and every human being." On page 3: ". . . the intrinsic worth and equal value of all human life." Page 16 refers with approval to Justice Brennan's opinion in *Furman* affirming the principle of the sanctity of human life. Page 17 discusses the 1975 decision of the highest court of West Germany affirming the "right to life" as a reaction against the Nazi regime's idea of "Destruction of Life Unworthy to Live." Page 18: "We must . . . affirm the intrinsic worth of *all* human life."

The Constitution considered slaves three-fifths of a person. The Nazis selected some persons as unworthy to live. Today in India girl babies may be aborted because their economic value to the family would be less than that of a male child. As a bumper sticker I saw recently said: "Equal rights for unborn women."

The divisiveness endangered by *Roe* has implicated all of the Court's decisions and created a climate facilitating the erosion of truly fundamental rights. *Roe* is the most vulnerable of the Court's modern decisions establishing constitutional rights. Its indefensible foundation has weakened the Court as an institution and has emboldened the attacks on very important protections.

Was this necessary?

Before *Roe*, the legislative campaign to liberalize abortion laws in the state legislatures was gaining strength in over half the States. In 1967, North Carolina passed a law permitting abortion in cases of rape or incest or if there was risk to life or health or gravely defective birth. It would have resulted in a broad scope for abortions, subject to important limitations and regulations. This political process would not have been as fast as the Supreme Court process nor ultimately as satisfactory to the pro-choice advocates, but it would have been more acceptable, less divisive and probably more enduring.

I decry our loss of the high moral ground on this issue.

There are other areas where we have given up the high moral *rhetoric* while retaining the moral high *ground*. "Law and order" is one example distressing to me. We are the proponents of law and order. Those who have appropriated the campaign slogan seem to support only the "order" half. One of the most important cases in North Carolina in a long time was decided in the U.S. District Court in Fayette-

THE HUMAN LIFE REVIEW

ville last month. In an action brought by attorneys named Gerry Beaver and Billy Richardson (a former University of North Carolina Student Body President) and in a trial presided over by Judge Fox (appointed, by the way, by President Reagan on the recommendation of Senator Helms), a jury awarded \$900,000 to a plaintiff who had been sterilized as a result of a brutal police assault. The noteworthy aspect of the case is that the judgment was against the police department because it adopted gross brutality as a policy.

Such decisions entitle us to claim the “law and order” position.

We occupy the moral high ground and we properly claim it. Our support for *Roe v. Wade* is misguided, however. We need to find our way back to our special galaxy.

Today there is some reluctance to express pride in the civil liberties ideology. We should publicly acclaim the success of our program. The civil rights movement was a monumental success, though problems remain. The labor movement brought the working class into such high status that they, like the blacks who have benefited from the the civil rights movement, have become comfortable with the status quo. We have succeeded so well we may be losing our constituency. The criminal procedure revolution has been a huge success, though problems remain—most importantly, the death penalty. There is no poverty in this country by Third World standards, though there is still too great a disparity between the poor and the majority, too large an underclass, too few resources devoted to education. The civil liberties ideology can take great pride in its accomplishments.

The challenge today is to make people care even if their rights are not endangered at this moment. The challenge is to maintain a vigilant concern for civil liberties in an era of abundance. To meet that challenge we must choose our issues wisely and in a principled fashion.

NOTES

1. 110 U.S. 133, 1973.
2. 410 U.S. at 154.
3. 410 U.S. at 155.
4. 410 U.S. at 156.
5. 410 U.S. at 160.
6. 410 U.S. at 162.
7. *Ibid.*
8. *Ibid.*
9. 63 N.C.L. Rev. 375, 1985.
10. *Almeida-Sanchez v. U.S.*, 413 U.S. 266, 273, 1973.

Pregnant Teenagers and Moral Civil War

Allan C. Carlson

AMERICAN TEENAGERS do one thing better than their peers in any other Western land: make babies. The annual teenage pregnancy rate (births plus abortions per 1,000 women, ages 15-19) for the United States is 96; among whites, it is 83. This compares to 45 for England and Wales, 44 for Canada, 35 for Sweden, and a mere 14 for the Netherlands. Among teenagers 14 years old or younger, the U.S. birthrate is four times that of Canada, the nearest competitor in the children-having-children sweepstakes. Significantly, these American rates do not derive from more sexual activity. By age 17, for example, nearly 60 percent of Swedish girls have had intercourse, compared to only 37 percent of American girls. Yet the latter tend to get pregnant, while the former do not.

This situation has stimulated a new and controversial report by Planned Parenthood's research arm, the Alan Guttmacher Institute.¹ On the basis of a 37-country statistical analysis and a six-country comparative case study, the report concludes that the unique American teenage pregnancy problem is caused by the irregular and inexpert use of contraceptives by American youth, appallingly weak sex-education programs, the lack of an effective national health service, and the reactionary pressures of fundamentalist religious groups.

As intended, this research study has unsettled traditionalists and has stimulated congressional calls for enhanced Federal programs to provide free contraceptives and more and earlier sex education to the young. Yet the situation is more complex. Claims to the contrary, the Guttmacher report is not a work of science. It is an ideological tract, one reflecting a fundamental division in American society. In addition, its proposed "solutions" are not compelling logical conclusions at all. Rather, they represent a call for one side in this cultural conflict to surrender to the other. Nor is the program which the report presents startlingly new. Indeed, it is but the latest attempt to advance a moral-political agenda nearly three-quarters of

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THE HUMAN LIFE REVIEW

a century old. The Guttmacher report must be read and understood within these ideological and historical perspectives.

The Intellectuals' Sex Revolution

For nearly 1,900 years, Western civilization managed its teenage pregnancy problem through the creation and defense of an ascetic moral code. Under its terms, marriage was ordained by God and sustained by the institutional church as the only legitimate sexual bond. The regulation of sexual mores reflected recognition of the strong linkage between human sexuality and the construction and renewal of civilization. Accordingly, human sexuality was channeled away from destructive and self-indulgent goals and toward fruitful and socially stable ends. Serious deviations from this norm were treated as perversions punishable by law. Out-of-wedlock pregnancy in the West was prevented by the most effective form of contraception ever devised: sexual abstinence or chastity outside of marriage. While by no means a perfect system, it worked reasonably well. With some modifications and strains, this code lasted in Western Europe and America through the 1950's. As one sociologist, commenting on the United States, noted as late as 1968: "The norm in this country is one of early, frequent, and random dating, with a gradual narrowing of the field . . . delaying of coitus until after the wedding, and the strong expectation of marital fidelity."²

Yet individuals and organizations were already working diligently to destroy this moral system. Their tools were ideas. Their purposes: to "liberate" sexuality from religious and cultural restraints; to construct a "new" morality.

The intellectual "father" and spiritual model of this movement was English psychologist Henry Havelock Ellis, author of *Studies in the Psychology of Sex* (appearing in seven parts, 1896-1928). In this monumental work, Ellis used value-neutral scientific observation and the analytical device of cultural relativism to drive home three themes:

Everybody is not like you. In his opening chapters on "The Evolution of Modesty," Ellis argued that modesty was a universal human trait, but one that took different forms in different places. In Tierra del Fuego, for example, women wore only a minute triangle of animal skin but were so modest that they never removed it. Among the Buganda in Africa, in contrast, it was a punishable offense for a man to expose any part of his

thigh. Ellis concluded that modesty was merely a function of time, place, and status. Only in Victorian England, he suggested, did it reach “pathological” levels.

Even your neighbors are different from you. Through his extensive and explicit case studies, Ellis opened the door on private sexual behavior. It was “impossible,” he wrote, to find two individuals with nearly identical sexual emotions and needs. Everyone, he added, had his or her own little sex secrets. To choose but one example, he described the devout, church-going American woman who “had never allowed herself to entertain sexual thoughts about men” but whose erotic desires were aroused by “the sight of a key in any bureau drawer.”

There is no objective boundary between the normal and abnormal. “The majority of sexual perversions, including even those that are the most repulsive,” Ellis wrote, “are but exaggerations of instincts and emotions that are germinal in normal human emotions.” As “a naturalist” rather than a judge, Ellis viewed the whole range of sexual behaviors—the heterosexual and the homosexual, the sadist, the libertine, the masochist, the fetishist, the lover of animals or corpses—with an absolute scientific objectivity. He so set a standard of “objectivity” and moral neutrality that all later sex researchers and liberators would adopt.³

Other moral revolutionaries, all pledged to science, followed. Ellis’ contemporary, Sigmund Freud, understood the role of sexual restraint in the building and maintenance of civilization. Yet his clinical reports on sexual perversion and fetishism and his elaborate description of the powerful sexual desires and fantasies of children helped, however unintentionally, to advance the new moral vision. Alfred Kinsey’s *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953) presented comprehensive statistics on American sexual preferences. With clinical neutrality, Kinsey watched and described the whole range of sexual behaviors, including the induced orgasms of five-month old babies. Many of the “myths” sustaining the Judeo-Christian moral code so succumbed to scientific realism. Finally came William Masters and Virginia Johnson, who directly observed 10,000 human sexual acts and analyzed the results in minute detail. Through their work, human sexuality was stripped of its remaining mystery and sacredness.

Toward Political and Cultural Victory

In America, organizations dedicated to “ethical culture,” “sexual hygiene,” and “sex education” had existed since the turn of the century. Yet prior to the late 1950’s, their influence outside of elite circles was meager. Then they made their move. Planned Parenthood, still somewhat on the margins of respectability despite a conscious campaign since 1920 to recruit the wealthy and powerful, was the first organization to secure culture-shaping authority. By decrying the supposed horrors of American population growth, they quickly gained influence. In 1964, former Presidents Harry Truman and Dwight Eisenhower both felt comfortable in serving as honorary co-chairmen for the national Planned Parenthood fund-raising drive. That same year, the Sex Information and Education Council of the United States (SIECUS) coalesced with the stated goal of generating “public awareness, understanding, and acceptance of the multiplicity of patterns of human sexuality—to move from a restrictive concept of genital sexuality to the larger dimension in which every individual, at whatever age, boy or girl, man or woman, is seen as a whole.”

By the mid-1960’s, these partisans of a new moral and sexual order could smell victory, and they pressed home their intellectual assault. Their arguments deserve attention as a case study on how to conduct and win a moral revolution through the manipulation of words and ideas; the same themes, moreover, appear in the new Guttmacher study,

First, declare the old morality dead. “The beginning of wisdom for educators,” wrote Isadore Rubin, managing editor of *Sexology* magazine in 1965, “is the recognition of the fact that the old absolutes have gone; that there exists a vacuum of many moral beliefs about sex.” The ascetic ideal was dead in America, she said: only its legalistic legacy remained. Sociologist Ira Reiss argued that abstinence was no longer the dominant standard among teens, “a fact that all of us must face, whether or not we approve of such a state of affairs.” The need, all agreed, was development of a new philosophy of sex education for a democratic, pluralistic society.⁴

Second, destroy the residual influence of tradition and religion. In her call for a democratic sexual policy, though, Dr. Rubin made it clear that some elements of pluralistic America were not invited to partici-

pate in its shaping. Teachers, deans, and school counselors, she said, should “identify and destroy those outmoded aspects of the ascetic ideal which no longer represent the ideals of the vast majority of American ethical leaders [e.g., people like herself] . . . and which no longer contribute either to individual happiness and growth or to family and social welfare.” Sex educator Esther Middlewood welcomed American churches to the new liberating task only if they presented “a program which is sufficiently well founded on facts about current practices, current moral concepts, and sociological and psychological knowledge”; that is, only if they had abandoned efforts to teach the old ascetic dogma and joined the revolution. Surprisingly, many churches readily abandoned Christian principles. The United Methodist Church and the United Church of Christ were soon receiving special praise from the experts for their progressive sex curricula. Even the Roman Catholic Church, long the chief enemy of the new sexuality, wavered. Theologian Daniel Callahan, writing in the Catholic journal *Commonweal*, pointed to Catholicism’s cultural isolation on the matter of human sexuality and argued that a “better” strategy “would be for the church, in its teaching authority and in its members, to immerse itself in the present.”⁵

Third, make everything relative by recasting the traditional as the abnormal. Professor Reiss concluded that the choice of a premarital sexual standard in modern America was “a personal one, and no amount of facts or trends can ‘prove’ the superiority of one standard to another.” Editor Rubin surveyed the vast anthropological data and said that there had been no universals in sex values, with the possible exception of a prohibition on incest. If anything, she said, Western society had been deviant in its obsession with premarital chastity. Sociologist F. Ivan Nye drew a distinction between “intrinsic,” unchanging values and “instrumental” or utilitarian values. Under the ascetic ideal of the past, he noted, values such as obedience to parents and maintenance of a strong family had been treated as intrinsic and necessary. Yet as a consequence of social change, Nye charged, obedience to parents had become “meaningless,” while a prosperous welfare state had actually made the value of “strengthening the family”—with the exaction of “its pound of flesh from family members in terms of sacrificed individual goals, interests, recreation, and social relations outside the family”—negative.⁶

Fourth, declare religious opinion unacceptable in any public moral debate, allowing only science to take part. Professor Nye argued that all forms of social structure should be viewed as instrumental, open to infinite variations. "Thus freed from the dead hand of traditional practice," social scientists and policymakers could "objectively weigh the changes that from time to time need to be made if the family and other social institutions are to function more effectively." Core values were admittedly necessary to society, Rubin added, yet they must bear no relation to "religious values, prejudice, or irrational fears." Rather, borrowing from the ideas of philosopher John Dewey, she defined the new democratic and scientific values that should be inculcated: faith in the free play of critical intelligence; respect for the equality and dignity of each individual; the right of self-determination; and the need for cooperative effort for the common good.⁷

Fifth, advocate "choice." In a pluralistic, democratic society, the moral revolutionaries said, the indoctrination of youth into the traditional ascetic sexual code could not be allowed. Adolescent sex should be controlled only to protect the health of the young, and not to defend adult prejudices. The "motives" of behavior, not "actions" themselves were the appropriate foci of concern. The question to ask regarding premarital sexual behavior was not: "Is it moral?"; rather, it was: "Do the sexual partners care for each other?" In the current "transitional period of morality," then, youth must be exposed to the whole range of possible patterns of sexual behavior. Rubin suggested training young people in six competing value systems, ranging from "traditional repressive asceticism" to the "sexual anarchy" of René Guyon. She concluded: "If . . . we give [youth] the skill and attitudes, the knowledge and the understanding that enable them to make their own intelligent choice among competing moral codes, we have given them the only possible equipment to face the future."⁸

Sixth, advance the "contraceptive" solution as the sole answer to our social problems. With traditional moral barriers crumbling and with sex open and free, only the problem of out-of-wedlock pregnancy remained. Traditionalists defending chastity, Professor Nye noted, advanced the following scenario: fewer moral restraints on sex outside of marriage mean more extramarital intercourse, mean more premarital pregnancies and related social problems. "Notably lacking from this

chain,” he added, “is any more effective use of contraceptive devices by the unmarried.”⁹ In the new moral order, freely available contraceptives and instructions on how to use them would provide the solution.

Finally, seize control of the schools and begin indoctrination of the young in the “new” code. Education in the schools, not indoctrination in the homes or churches, must be the goal, the moral revolutionaries said. Research showed that “democratic morality” could be taught at very young ages. Where this method superseded the traditional dogmatic, judgmental approach, the child became “less punitive, less anxious, more tolerant, more democratic, more responsible, more secure, had fewer conflicts, and showed better school adjustment.”¹⁰ In short, such a child had been successfully converted to the new moral order; in sociological parlance, the child had been “socialized.”

America as the Moral Exception

Between 1960 and 1980, moral revolutions of this sort succeeded in most parts of Western Europe. The sexual codes inherited from the Christian past and sustained, most recently, by the middle class, crumbled with surprising rapidity. Chastity became a joke-word. Pre-marital experimentation by teenagers was recast as normal, expected behavior. Contraception and, if necessary, abortion would be relied on to handle potential negative consequences such as pregnancy.

Yet in a major deviation from the European pattern, this moral revolution didn’t quite succeed in America. True, many battles were won, particularly on the policy level. The Federal government caved in to elite pressure and made Planned Parenthood a quasi-Federal agency while the discouragement of pregnancy, unwed or wed, became a tacit Federal policy. Public school systems began adopting sex-education curricula based on the scientific model and presuming teenage sexual activity. The national media fostered the same sense of revolution, and taboo after taboo fell on the television networks.

Yet, at the popular level, curious things were happening. It is true that in some areas of the country, tolerance of pre-marital sexual relations appeared to grow. A 1980 study by B. K. Singh of Texas Christian University found that 59 percent of Americans in 1978 thought pre-marital sex to be “not wrong at all” or “wrong only sometimes,” compared to 51.4 percent in 1972. Yet when these numbers were

broken down by region and religion, startling divergences appeared. The highest levels and greatest expansion of approval for premarital sex between these years, for example, were in the Northeast United States, the Pacific Coast, and the Mountain states. In contrast, though, approval of premarital sex actually *declined* in the South and Midwest. While the percentage of Catholics approving premarital sex jumped from 48.7 to a startling 62.8 percent, the increase among Protestants was only 4.7 percent. More significantly, among all persons of “high” religious attendance, there was no change in attitude (actually, a statistically insignificant decline from 36.5 to 36 percent).¹¹ Translating these statistics into political terms, we can see the early mobilization of evangelical and fundamentalist Protestants against the “new morality” attempting to secure cultural and political control of America.

The difference between Europe and America is that the Western religions—Christianity and Judaism—are culturally alive in the United States in a way that they are not on the other side of the Atlantic. “That the Americans are exceptional in their attitude to religion is obvious to all, and never more so than today,” reported British historian Paul Johnson in the inaugural Erasmus Lecture held this past January.¹² Among large numbers of Americans, religious dogma is still taken seriously, and the indoctrination of children into the moral code of the Judeo-Christian tradition is still considered a parental obligation. In short, the United States may be the last place in the developed world where the Judeo-Christian ascetic code still has a significant number of adherents. Accordingly, in an era of conflict between this inherited moral code and the “new” one, America’s religious exceptionalism would predictably produce exceptional results.

Discovering a Divided America

Indeed, this is exactly what the Guttmacher Institute researchers have unwittingly discovered and reported. American political and religious leaders, they say, “appear divided” over what course to take: discouraging sexual activity among young unmarried people or promoting contraceptive use. In consequence, “American teenagers seem to have inherited the worst of all possible worlds regarding their exposure to messages about sex. Movies, music, radio, and TV tell them that sex is romantic, exciting, titillating; premarital sex and cohabitation are visible

ways of life among the adults they see and hear about. . . . Yet, at the same time, young people get the message, 'good girls should say no.'"¹³

These observations are correct. The United States is a nation divided between two moralities. Unlike Europe, the great leap to the "new" morality of sexual freedom in the 1960's fell short; the partisans of the "old" morality of sexual asceticism were numerous enough and organized quickly enough to deny the advocates of change a full victory. As a result, American teenagers are suspended between these poles. Given generally complete dominance of the mechanisms of social control, either morality does—in radically different ways—prevent teenage pregnancy. Yet locked in stalemate, neither one works very well, for each moral system necessarily undermines the other. The price of coexistence is a high and increasing level of teenage pregnancy.

The Guttmacher report, of course, advances the standard "new morality" solution to the deadlock: American teens have the lowest level of contraceptive practice among the six developed nations studied, so give them free contraceptives and government-funded abortions. Those American youth who do employ contraceptives use birth control pills less frequently than their European and Canadian counterparts do, so abolish the "daunting" pelvic examination which medical protocol in the United States still requires before the pill can be prescribed. Agencies with full contraceptive services are found only sporadically in the United States, so create a national health service giving everyone access to contraceptive services, including special units to serve junior high and high schools. Parental desires to control the sex lives of their children are still strong in America, so adopt the Swedish law where all doctors (not just the Federally funded variety) are specifically forbidden to inform parents about a child's request for birth control services. Sex education in the United States is sporadic, a local option, so seek a national sex-education curriculum. "Fundamentalist groups in America are prominent and highly vocal," so adopt the Dutch administrative model where emotionally charged issues are turned over to governmental experts who could "make birth control services available to teenagers without exacerbating divisions in the society." Americans still view sex as both romantic and sinful, so promote the "matter-of-fact attitudes" found in Europe.

Nothing new here: just the same cultural battle cries heard over the

last 20 years. Interestingly, though, the Guttmacher researchers this time tip their hat a bit too far. They reveal a broader agenda usually kept hidden in presentations such as this.

On the question of unemployment, for example, they note that the other five countries all provide more assistance than the United States in the form of youth training, unemployment benefits, and other forms of support. All of the other countries grant more extensive welfare benefits, including national health insurance, food supplements, and housing and child allowances. "Poverty to the degree that [it] exists in the United States is essentially unknown in Europe," they state. "Western European governments are committed to the philosophy of the welfare state." Moreover, the researchers stress that the larger 37-country study "found that more equitable distribution of household income is associated with lower teenage fertility—at least among the younger teenagers." The message here is that democratic socialism works.

The Guttmacher report's fondness for the socialist solution explains the special and admiring attention given Sweden. There, egalitarian income policies and the world's most comprehensive welfare state have combined with universal sex education, special youth-sex clinics, free, widely available, and fully confidential contraceptive and abortion services, the frank treatment of sex, and the widespread advertising of contraceptives to produce the desired effect: "Sweden is the only one of the countries observed to have shown a rapid decline in teenage abortion rates in recent years."

Indeed, it seems true: socialism and the "new morality" work well together in the war against pregnancy.

On the Disappearance of Children and Nations

There are, though, serious logical problems to be found within the Guttmacher study. In particular, the presumption that pregnancy is a disease leads to several major interpretive errors. First, it ignores the fact that over half of the births to teenage mothers in America are marital births, compared to only 18.6 percent in Sweden. In many parts of America—rural areas of the South, for example—marriage at 18 or 19 is considered normal and the births that result are welcomed. Sociologists funded by the Ford Foundation may dislike those facts; nonetheless, they are true.

Second, even unwanted pregnancies may not be a disease so much as a *symptom* of a disease. American youth are not affected only by the peculiar problem of pregnancy, while otherwise in sound shape. The United States also holds the unenviable distinction of having the highest rates of adolescent homicide and suicide in the developed world. Like the teenage pregnancy rate, these two symptoms of disorder have been on the upswing in our country for the last two decades. Adolescent drug use is also higher in the U.S. than anywhere else in the developed world. Suicide, homicide, drug use, and out-of-wedlock pregnancy are all symptoms, I suggest, of serious emotional troubles and widespread cultural alienation. These phenomena derive, in part, from the conflict of the two moralities now found in America. For that reason, there are no simple clinical ways to treat these deeper disorders. However, it is clear that treatments aimed at merely one symptom are not cures at all.¹⁴

Third, the Guttmacher report notes, but quickly retreats from, a curious fact, one with disturbing implications: all of the six countries closely studied “have fertility levels below that required for replacement.” In Sweden, for example, the fertility rate is less than 60 percent of the level needed to achieve even zero population growth. Assuming that this level of reproduction continues over three generations, the Swedish people would effectively disappear. If the statistical correlations of the type used by the Guttmacher researchers mean anything, casual sex and a rigid antipregnancy policy seem to be directly related to the disappearance of children and nations.

Accordingly, the terms of the teenage pregnancy debate in America can be clarified. To begin with, it is not a conflict between “science” on the one hand and “religion” on the other. As honest scientists readily concede, the scientific method was never meant to be used to settle moral questions. “Right” and “wrong” are categories alien to the authentic scientific process. Rather, the misuse of science by the partisans of the “new” morality must be seen as an ideological play.

Moreover, the call for abandoning social concern about “actions” and concentrating simply on motives represents another ideological maneuver, a subtle call for full surrender by the traditionalists at the outset. As Paul Landis has correctly noted, “social systems have to assume that it is ‘acts,’ not merely thoughts and motives . . . that are

THE HUMAN LIFE REVIEW

consequential.”¹⁵ Social order in a free society rests on the regulation of behavior, not on the unknowable machinations of the human mind.

Finally, the problem is not amenable to a libertarian solution: let everyone be free to act as he or she pleases. On fundamental questions of moral and social order, the bond of the individual to society as a whole is necessarily close. Individual choices have social consequences, as, for example, when a divorce reverberates through a neighborhood. Similarly, broad social changes affect individuals, as when the mass media enter the home. Successful free societies are those where inherited moral codes preserve social order and allow material growth with a minimum of state coercion. “Free to choose,” while effective economic doctrine, brings ruin when applied to basic moral principles.

The true conflict is between rival visions of the world and future. Such a conflict does not allow for permanent compromise. It will be settled only when one or the other side triumphs. Neutrality in this struggle is not possible. As Western moral theologians understood long before Freud, human sexuality is bound in complex ways to the maintenance of civilization. Accordingly, the divorce of sexuality from family formation and social responsibility must result in the disintegration of what remains of the Western heritage. Impressionistic observation and demographic statistics suggest that this is already occurring in Europe. If the West is to survive in any meaningful manner, it can only be on the basis of the ascetic Judeo-Christian moral code forged and defended over two millennia.

At present, the human casualties in America’s cultural conflict are mounting. Disproportionately young, they have been denied their civilizational legacy. Young Americans deserve the opportunity to know and live by that time-tested code. It is now incumbent on the generations which have allowed the drift of the last two decades to restore the Western legacy to the nation’s schools, churches, art, and literature. Only then will the “pregnancy problem” find a value-laden, life-affirming resolution.

NOTES

1. Elise F. Jones, *et al.*, “Teenage Pregnancy in Developed Countries: Determinants and Policy Implications,” *Family Planning Perspectives* 17 (March/April, 1985), pp. 53-62.
2. Harold T. Christensen, “The Impact of Culture and Values,” in Carlfred B. Broderick and Jesse Bernard, editors, *The Individual, Sex & Society: A SIECUS Handbook for Teachers and Counselors* (Baltimore: The Johns Hopkins University Press, 1969), p. 160.

ALLAN C. CARLSON

3. From Edward M. Brecher, *The Sex Researchers* (Boston: Little, Brown and Co., 1969), pp. 3-49.
4. Isadore Rubin, "Transition in Sex Values—Implications for the Education of Adolescents," *Journal of Marriage and the Family* 27 (May, 1965), pp. 185, 187; and Ira L. Reiss, "Premarital Sexual Standards," in Broderick and Bernard, *The Individual, Sex and Society*, p. 109.
5. Rubin, p. 189; Esther Middlewood, "Sex Education in the Community," in Broderick and Bernard, *The Individual, Sex and Society*, pp. 91-92; and Daniel Callahan, "Authority and the Theologian," *Commonweal* (June 5, 1964), p. 323.
6. Reiss, p. 115; Rubin, p. 188; F. Ivan Nye, "Values, Family, and a Changing Society," *Journal of Marriage and the Family* 29 (May, 1967), pp. 344-45.
7. Nye, p. 248; Rubin, p. 188.
8. Rubin, p. 187.
9. Nye, p. 245.
10. R. E. Munss, "Mental Health Implications of a Preventive Psychiatry Program in the Light of Research Findings," *Journal of Marriage and Family Living* 22 (May, 1960), p. 155.
11. B. K. Singh, "Trends in Attitudes Toward Premarital Sexual Relations," *Journal of Marriage and the Family* 42 (May, 1980), pp. 387-93.
12. Paul Johnson, *The Almost-Chosen People: Why America Is Different* (Rockford, IL: The Rockford Institute, 1985), p. 3.
13. Jones, *et al.*, p. 61.
14. My thanks to Professor Edward Wynne of the University of Illinois-Chicago and editor of *Character II* for his insights here.
15. Paul H. Landis, "Review of Lester Kirkendall's *Premarital Intercourse and Interpersonal Relations*," *Journal of Marriage and Family Living* 24 (February, 1962), p. 97.

The New *Untermenschen*

Joseph R. Stanton, M.D.

ON APRIL 12, 1984, a trial balloon went up in the pages of the prestigious *New England Journal of Medicine*. The title of the “special article” (as the *NEJM* headlined it) was “The Physician’s Responsibility toward Hopelessly Ill Patients.” There were ten prominent co-authors. The sponsor of the meeting which produced the article was the Right To Die Society. The principle author was Dr. Sidney Wanzer, a member of the board of that society.¹

In the article, “hopelessly ill” patients are broadly defined and categorized, and set apart for varying degrees of *non-treatment*, which in today’s “medi-speak” becomes “treatment.”

Because there remains common agreement—for now—that the mentally-competent patient has the right to accept or reject vigorous and aggressive medical treatment, this group is covered in a single paragraph.

But in the extensive section titled “Individualizing Treatment” mentally-incompetent patients are categorized as follows:

- a) Patients with brain death
- b) Patients in a persistent vegetative state
- c) Severely and irreversibly demented patients
- d) Elderly patients with permanent mild impairment of competence.

As of now, 27 states recognize brain death as a legal guideline² and there is common if not unanimous agreement that with the truly brain-dead patient—one with permanent cessation of all brain functions, including those of the brain stem—the physician is not obligated to initiate or continue treatment which would offer the patient no hope, but would simply prolong the dying process. It is a medical judgment which must be substantially documented in the case of an individual patient.

Joseph R. Stanton, an associate professor at Tufts University School of Medicine, is widely known as a Founding Father of the national anti-abortion movement. This article is adapted from his June 9, 1984, address at a “right-to-life” convention in Kansas City.

So let us focus on the other three classifications of incompetent patients:

Patients in a persistent vegetative state. These are “Karen Ann Quinlan” cases. There are an estimated 5,000 such patients alive today. At first, the authors acknowledge “the uncertainty of diagnosis and prognosis, making it difficult to predict the length and quality of the patient’s life with and without treatment.” However, the authors quickly sidestep their stated misgiving about making such a diagnosis and assert that antibiotics and nutrition can be withheld when “this neurologic condition has been established with a high degree of certainty.” Acceptance of this proposal would preclude the admittedly rare but possible “miraculous” recovery of some patients from long coma.

Severely and irreversibly demented patients. The authors write that “patients in this category, most of them elderly, are at one end of the spectrum of decreasing mental capacity. They do not initiate purposeful activity but passively accept nourishment and bodily care. . . . [They] need only care given to make them comfortable. If such a patient rejects food or water by mouth, it is ethically permissible to withhold nutrition and hydration artificially administered by vein or gastric tube . . . spoon feeding should be continued if necessary for comfort.”

What the doctors are saying is not only do you *not* have to administer an I.V. if the patient needs it to survive, but you need only feed him to keep him comfortable. The right to nutrition and hydration is not guaranteed, but qualified. In this very large class of patients, the doctors proclaim: “It is ethically appropriate not to treat intercurrent illness . . . antibiotics for pneumonia can be withheld.” This may have a familiar ring to some: it is almost identical to a bill for handicapped children proposed in Florida in the early seventies by one Dr. Walter W. Sackett, who claimed that such a policy would save the state billions over a decade.

Elderly patients with permanent mild impairment of competence. The authors refer to these patients as the “pleasantly senile.” For their treatment, it is recommended that “if emergency resuscitation and intensive care are required, the physician should use these *sparingly*” [my emphasis]. What is critical to note is that the authors have moved from the brain-dead patient being maintained on a respirator to the “pleasantly senile” and encompass them all in their net. Because of

their senility, the people in this last group are unable to make the critical decisions that will determine their own future health and well-being. Yet no ethics committee is proposed by the authors. There is no proposal for a guardian *ad litem* to protect their interests. No, what is proposed instead is that the individual doctor have discretionary power over life and death, for the *sparing use* (i.e., lack of) of emergency treatment and intensive care when necessary will mean certain death for many of these people.

Dr. Edward Hook, one of the authors, is from the University of Virginia, as is the well-known Rev. Joseph Fletcher, Situation Ethicist, Emeritus Director of the Euthanasia Council, and a long-time proponent of abortion, infanticide (“infanticide may be thought of as post-natal abortion”) and active euthanasia.³ Also long active at the University of Virginia Medical Center was Dr. Anthony Shaw, whose 1972 New York *Times* article “Doctor, Do We Have A Choice?” fired the opening salvo in the public discussion of infanticide.⁴ One is tempted to wonder what Thomas Jefferson, founder of the University of Virginia, who wrote of the endowment of unalienable rights by the Creator, would think of their planned abrogation of the elemental human right to nutrition and hydration. Indeed, the fingerprints of the Euthanasia Society and the Right To Die Society are all over this death-dealing proposal for the “hopelessly ill.”

The American Medical Association *News*⁵ acknowledged that this paper goes significantly beyond the conclusion of the President’s Commission for the Study of Ethical Problems,⁶ saying “it was more explicit in its support of withdrawing such life support.” Surely one significant difference is that this paper does not “maintain a presumption in favor of sustaining life.” Although the contents of the paper were widely reported in the press, its radical advocacy of setting up a whole new class of patients—the “pleasantly senile”—caused relatively little comment.

Another of the authors, Dr. Roger Crawford, of Hennepin County Medical Center in Minneapolis, commented that “several things in the article indicate a major shift from five or ten years ago.” As a doctor, I would say they surely do! The physician used to treat the patient, and did not withhold nutrition and hydration because of senility!

JOSEPH R. STANTON, M.D.

To gain more insight into the mindset of the authors of this proposal, let us go back to the text.

The paper refers to “Intentional reduction of medical intervention” in dealing with the hopelessly ill, and this includes not only those reduced to coma, but also those who are senile and/or demented. Now remember that Dr. Shaw’s *Times* article proposed non-treatment of defective newborns as a “treatment option.” That was in 1972, when most Americans still believed that infanticide as “medical treatment” could never happen here. But the dehydrated corpse of Baby Boy Doe of Bloomington, Indiana, bears tragic witness to the fact that the impossible has become the possible. Abortion, also once a taboo in our society, now claims a million and a half lives every year, proving that for some, the impossible has become the eminently practical. If it has happened with infanticide and abortion, can euthanasia be far behind?

For justification of the new policy (“the advance in doctors’ thinking”) the authors cite consideration of monetary cost to society and the use of scarce treatment resources in the care of the hopelessly ill, and argue that the “financial ruin of the patient’s family as well as the drain on the resources for other patients who are not hopelessly ill should be weighed in the decision-making process.”

That changes the basic medical principle from “Does this treatment help the patient?” to “Is this treatment cost effective to society?” Where is the presumption favoring life in this economic equation? How would the pleasantly or unpleasantly senile patient fare if such an equation became the standard by which treatment was determined?

For “hopelessly or terminally ill” patients contemplating suicide, the authors caution that physicians cannot participate in the act, “for this is contrary to the law.” On the other hand, the physician is not obligated to assume that every such wish is irrational and requires “coercive intervention.” If words mean what they mean, therefore, the doctor is not obligated to stop patients from killing themselves. New ground indeed. Perhaps doctors ought to distribute the Exit Society or Hemlock Society handbooks describing how to kill oneself tidily and efficiently. Maybe then elderly patients would better understand the position of Colorado Governor Richard Lamm⁷ when he says that old folks have a “duty” to die. What an entirely new concept for the ministry of healing and caring!

All of this comes despite the authors' admission, quoted above, about the difficulty in making such diagnoses. There are papers in the medical literature on autopsy studies which indicate that a doctor's diagnosis is not infallible, and from autopsy data in many cases it can be concluded that had the correct diagnosis been made, it would have substantially altered the prognosis (i.e., the patient would have lived). Given such facts, one would hope for more humility in proposals for the shortening of life for "hopeless" patients, and assurance that the rights conferred by the Declaration of Independence and the Constitution cannot and *should not* be abrogated by medical *fiat*.

Why haven't such proposals been vigorously challenged? There is little doubt in my mind that if this claim on the bodies of the frankly senile or demented is not resisted, such a philosophy will reach out to ensnare the aged as a *class* (think of how much money we could save!).

How many people are we talking about? Dr. Edward Schneider, of the National Institute on Aging in Bethesda, Maryland, wrote recently that "The fastest-growing group in the population is the group aged 85 and above. Members of this group total only about 2,000,000 men and women today, but by the year 2050 there will probably be as many as 16,000,000 Americans in that age group. As many as half of all Americans will live into their eighties."⁸

Remember the economic framework under which this will happen. We live in an age of huge federal deficits and skyrocketing health-care costs. Dr. Schneider continues: "While Americans 85 years and older constitute one percent of the population now, they fill more than 20 percent of the nursing home beds" (i.e., they are expensive). It becomes obvious how "reduction" in treatment and *non-treatment* as medical "options" can be used to cut costs. Indeed, Schneider's article was headlined "Increase in Number of Aged Called Threat to Health Care."

Many octogenarians (indeed many people in their sixties and seventies) suffer from the benign forgetfulness of aging. Alzheimer-type dementia affects one in 20 at the age of 65, one in four at the age of 85, as Dr. Schneider points out.

If Dr. Schneider is right, there are already some 80,000 Americans afflicted with what he would call an incurable, hopeless disease, and the numbers will increase dramatically as we move into the next century.

Soon millions may be recipients of the less-than-benign "medical"

JOSEPH R. STANTON, M.D.

attention now proposed. And many other “categories” will be included, no doubt.

Shortly after the article was published in the *New England Journal of Medicine*, I chanced to visit Dr. Leo Alexander, who wrote the seminal papers on “Medical Science Under Dictatorship”,⁹ and papers on analysis of the mentality of the anti-life movement in medicine during Hitler’s Third Reich as he witnessed it at the Nuremberg Trials, where Nazi doctors were tried, and some sentenced to death, for “crimes against humanity.”

Dr. Alexander pointed out that the change in medical attitude that led to Hitler’s euthanasia program had developed well before the dictator’s rise to power—in the 20’s and 30’s, when some began to accept the concept that human life was not sacred, that some human lives were “devoid of value.” These were the “Untermenschen.” The corollary of that tragic conclusion was that direct euthanasia was possible. It was carefully circumscribed at first; death was to be administered only to those patients with severe physical disability or mental disease. Yet official figures show that 250,000 people were exterminated in the euthanasia program. Dr. Alexander asked me if I had seen the article on the “hopelessly ill” in the *Journal* and then said: “It is much like Germany in the 20’s and 30’s—the barriers against killing are being removed.”¹⁰

Santayana said long ago that “those who do not remember their history are condemned forever to repeat it.”¹¹ These proposals for treating “hopelessly ill” (i.e., senile) patients, wherein non-treatment becomes treatment, where life is viewed as a burden and death as desirable (for others), pose a grave threat to the future of human civilization: they contain the very same elements that produced crimes we once condemned but now will not remember.

Quality-of-life formulas and decisions based on them already exist. Dr. Shaw had concocted a standard for handicapped adults: the equation is $QL = NE \times (H + S)$. It argues that Quality of Life equals Natural Endowment times the contribution made to that individual by his/her family and the contribution made to that individual by society.

As Dr. Shaw himself adds: “A person’s quality of life, whether it is a newborn with an intestinal obstruction or an octogenarian with terminal cancer, may be determined to a significant degree by factors doctors frequently fail to consider.”¹²

THE HUMAN LIFE REVIEW

Now take an eighty-year-old irascible, incontinent patient; he is not yet “hopelessly” ill, but he has no family and is very expensive to keep alive. Shaw’s formula surely applies.

Or consider what Daniel Callahan wrote in the *Hastings Center Reports*,¹³ one of the first publications to discuss non-feeding of humans: “A denial of nutrition may in the long run become the only effective way to make certain that a large number of biologically tenacious patients actually die.” He writes this while acknowledging “the stubborn emotional repugnance against a discontinuance of nutrition.”

I need not unnecessarily prolong this: the small spark of non-feeding so that patients may die may soon burst into a flame, which will consume countless tragic victims as our society increasingly kills unwanted human life at its earliest beginnings, at birth, and at life’s other extremity, old age.

What I have attempted to outline here is part of a pattern. Before concluding, let me read what Dr. E. W. Kluge wrote in “The Ethics of Deliberate Death” in 1981:¹⁴ “As time goes on, the problem of the individual’s right or duty to die will assume greater and greater importance, especially if current socio-economic trends continue and the availability of medical resources decreases rather than increases. Laws governing these resources will become not merely desirable but necessary.”

Discussing brain death he concludes: “The almost universal scarcity of high grade medical resources and personnel and the presence of persons who *do* have a right to medical treatment make it a duty to euthanatize.”

There is the inexorable progression. The right to die becomes a duty to die and this evolves into a duty of the doctor to “euthanatize,” i.e., to kill. And if you can kill by withholding food and water, how much quicker (and more “humane”) to kill by lethal injection. The force to halt this progression will most probably not come from within the elite circles of medicine, ethics, or the law. It must therefore come from an outraged populace. We must, on the basis of history just in this century, actively resist any and every attempt to create a new class of less-than-fully-human *Untermenschen*.

As Joseph Piccione writes in the small but excellent booklet “Last Rights”: “Every living member of the species *homo sapiens* is a person

JOSEPH R. STANTON, M.D.

and as such possesses absolute human dignity until death.”¹⁵ Death when it comes, as it must come to all, must not be a death induced by a doctor or nurse—a member of the “healing profession”—refusing ordinary medical treatment. Among the elemental necessities and basic human rights of the sick, the suffering, and the dying are surely the rights to food and water, human warmth, and medical care. The right, if you will, to be loved, as Mother Teresa has loved the dying in the streets of Calcutta.

Let us reject each and every concept categorizing people as “biologically tenacious individuals” and look as Mother Teresa does on the sick, the starving, the deformed, the suffering and the dying and seek out in each one, no matter how obscured or hidden, *imago Dei*, the image of God in whose likeness, however imperfectly, each of us was made. That (and *only* that) in our Judeo-Christian tradition, bestows the ineffable dignity which makes each human life sacred, both in the civic sense, and in the divine sense of our understanding and love for our fellow man.

There is in the very roots of Judaism a profound respect for life, and we who are Christians believe that we have the promise of the Lord that if we bring even a cup of water in His name to the very least among us, we have brought it to Him, and can win eternity by that action. We must bear witness to that promise, and articulate by our lives, words and actions this premise to a society, and a health-care profession, caught in the web of the “situation ethic,” and drifting away from a noble heritage. And let us pray that God will raise up doctors and nurses respectful of their high calling as the appointed—sworn—care-givers of society.

NOTES

1. See *New England Journal of Medicine* 310, April 12, 1984, pp. 955-959. Dr. Wanzer's co-authors were S. H. Wanzer, M.D., S. J. Adelstein, M.D., R. E. Cranford, M.D., D. D. Federman, M.D., E. D. Hook, M.D., C. G. Moertel, M.D., P. Safar, M.D., A. Stone, M.D., N. B. Taussig, M.D., J. VanEys, M.D.
2. P. A. Byrne, M.D., S. O'Reilly, M.D., P. M. Quay, S.J., “Brain Death: An Opposing Viewpoint,” *Journal of the American Medical Association* 242, 1979, pp. 1985-1990.
3. Joseph Fletcher, “Ethics and Euthanasia,” *American Journal of Nursing* 73, 1973, pp. 670-675.
4. Anthony Shaw, M.D., “Doctor Do We Have a Choice?” *New York Times Sunday Magazine*, January 20, 1972.
5. “Artificial Feeding Guidelines Offered,” *American Medical Association News*, April 27, 1984.
6. “Summing Up,” *Final Report on Studies of the Ethical and Legal Problems in Medicine and Biomedical Behavioral Research* (U.S. Government Printing Office, 1983), p. 34.
7. “Governor Lamm Asserts Elderly if Very Ill, Have Duty to Die,” *New York Times*, March 29, 1984.

THE HUMAN LIFE REVIEW

8. "Increase in Number of Aged Called Threat to Health Care," *New York Times*, May 26, 1984, p. 28.
9. Leo Alexander, M.D., "Medical Science Under Dictatorship," *New England Journal of Medicine* 241, 1949, pp. 39-47.
10. Leo Alexander M.D., Personal communication with author, May, 1984.
11. George Santayana, *The Life of Reason*, (1905).
12. Anthony Shaw, M.D., "Defining the Quality of Life," *Hastings Center Reports*, October, 1977, vol. 7, no. 5, p. 11.
13. Daniel Callahan, "On Feeding the Dying," *Hastings Center Reports*, October, 1983, vol. 13, no. 5, p. 22.
14. E. W. Kluge, *The Ethics of Deliberate Death* (Port Washington, New York: Kenniker Press, 1981), cited in D. E. Gibson, "Hospice Morality and Economics," *The Gerontologist* 24, 1984, no. 1, pp. 4-8.
15. Joseph J. Piccione, *Last Rights*, Child and Family Protection Institute (Washington, D.C., 1984).

APPENDIX A

EDITOR'S NOTE: on July 15 of this year, Acting Solicitor General Charles Fried filed an *Amicus Curiae* brief on behalf of the U.S. Department of Justice with the Supreme Court *in re* two state cases now before the Court on appeal from federal circuit courts. The brief not only argues that the Court should uphold the state anti-abortion laws, but also that it take the opportunity presented to reverse itself on *Roe v. Wade*, the 1973 decision that legalized abortion on demand nationwide.

For the record, the cases come from Pennsylvania (*Richard Thornburgh, et al., Appellants, v. American College of Obstetricians and Gynecologists, et al.*) and Illinois (*Eugene F. Diamond, et al., Appellants, v. Allan G. Charles, et al.*).

Mr. Fried's brief runs a full 30 pages, and includes a great many references to previous cases (as it indeed must); we conclude that this journal is not the proper one in which to reprint the brief in its entirety.

However, we have no doubt that the brief is of great interest to many of our readers; it is surely an important, historic milestone in the abortion controversy. It substantiates, so to speak, the anti-abortion position of President Reagan's Administration. It also represents the first time in more than 30 years that the federal government has asked the Court to reverse itself (the last instance was *in re* another moral issue, school desegregation, in 1954).

Thus we have decided to do the following: run a few sections of the brief itself—enough, we hope, to give you the flavor of the whole thing—and add four of the many editorial commentaries on the brief which appeared in the nation's press.

Thus what follows is a) the brief's "Summary Argument" (p. 2); b) a section of the arguments (excerpted from pp. 20-27); and c) the concluding argument (pp. 29-30). After which we run, in no particular order, the four representative newspaper columns.

The reader may, we trust, obtain the brief itself from the U.S. Department of Justice (Washington, D.C. 20530—see above for the correct title, etc.). And, please note, the several *-notes below are ours.

Summary of Argument

The opinions of the courts below* are multiply flawed. In their manifest eagerness to strike down the state statutes in question they transgress numerous canons of constitutional adjudication: provisions are construed so as to impugn rather than to save their constitutionality; facts stipulated solely for purposes of a preliminary injunction are taken as dispositive for an ultimate judgment on the statute; and provisions repealed and substantially recast to meet constitutional objections are struck down in their earlier versions. More substantively, the courts below reach their conclusions as if this Court in *Roe*

* The "courts below" are the federal circuit courts.

THE HUMAN LIFE REVIEW

v. *Wade* had posited only one value, a woman's unfettered right to an abortion, rather than a balance of values which include the state's interest in maternal health and in unborn and future life. The harsh and one-sided nature of the decisions below may in part be a response to a change in emphasis in this Court's opinion in *Akron v. Akron Center for Reproductive Health*, which itself expressed considerable impatience with legislative attempts to balance the interests recognized in *Roe v. Wade*. To the extent this is so, these cases and *Akron* itself are not just wrong turns on a generally propitious journey but indications of an erroneous point of departure. Indeed, the textual, doctrinal and historical basis for *Roe v. Wade* is so far flawed and, as these cases illustrate, is a source of such instability in the law that this Court should reconsider that decision and on reconsideration abandon it.

Excerpts

As the decisions below demonstrate, the constitutional inquiry mandated by *Roe v. Wade* is not easy for courts to conduct in a principled fashion. The key factors in the equation—viability, trimesters, the right to terminate one's pregnancy—have no moorings in the text of our Constitution or in familiar constitutional doctrine. Because the parameters of the inquiry are indeterminate, courts are disposed to indulge in a free-ranging, essentially legislative, process of devising regulatory schemes that reflect their notions of morality and social justice. The result has been a set of judicially-crafted rules that has become increasingly more intricate and complex, taking courts further away from what they do best and into the realm of what legislatures do best.

We recognize that the principle of *stare decisis*, furthering as it does the policies of continuity and consistency of adjudication, weighs against reconsidering recent precedents. See *Atascadero State Hospital v. Scanlon*, No. 84-351 (June 28, 1985), slip op. 9-10 n.3; *Akron*, 462 U.S. at 420 & n.1. This principle, however, does not count so strongly in constitutional litigation, where, short of a constitutional amendment, this Court is the only body capable of effecting a needed change. See *Akron*, 462 U.S. at 420; *Glidden Co. v. Zdanok*, 370 U.S. 530, 543 (1962). Moreover, this Court must respond to obligations that transcend the institutional concerns underlying the doctrine of *stare decisis*. See *Erie R. Co. v. Tompkins*, 304 U.S. 64, 77-78 (1938) ("If only a question of statutory constriction were involved, we should not be prepared to abandon a doctrine so widely applied throughout nearly a century. But the unconstitutionality of the course pursued has now been made clear and compels us to do so." (Brandeis, J.)). Where a judicial formulation affecting the allocation of constitutional powers has proven "unsound in prin-

APPENDIX A

principle and unworkable in practice,” where it “leads to inconsistent results at the same time that it disserves principles of democratic self-governance,” this Court has not hesitated to reconsider a prior decision. *Garcia v. San Antonio Metropolitan Transit Authority*, No. 82-1913 (Feb. 19, 1985), slip op. 18.*

1. To provide a regime for delimiting the permissible scope of abortion regulation, *Roe v. Wade* divided pregnancy into three trimesters, with radically different consequences for state regulatory power in each. This analytical framework has proved inherently unworkable. Subsequent developments, both technological and medical, have demonstrated the arbitrariness of these lines: the Court “simply concluded that a line must be drawn, * * * and proceeded to draw that line” (*Garcia*, slip op. 14 (original quotation marks omitted)). Arbitrary line-drawing may occasionally be necessary to make explicit constitutional rights efficacious, but such arbitrariness gains the appearance of legislation pure and simple where the subject is one upon which the Constitution is silent.

The Court in *Roe v. Wade* properly recognized that the states have a strong interest in safeguarding maternal health, but it is difficult to grasp why the compelling quality of this interest should undergo a radical change at the end of the first trimester. The Court made a determination—basically one of legislative fact—that “until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth” (410 U.S. at 149, 163). The legislative nature of this finding is shown by “evidence that developments in the past decade, particularly the development of a much safer method for performing second-trimester abortions, * * * have extended the period in which abortions are safer than childbirth” (*Akron*, 462 U.S. at 429 n.11). The fact that *Akron*, despite this evidence, retained the end of the first trimester as the sharply determinative point demonstrates that point’s essential arbitrariness. As Justice O’Connor wrote in dissent, “The fallacy inherent in the *Roe* framework is apparent: just because the State has a compelling interest in ensuring maternal safety once an abortion may be more dangerous than childbirth, it simply does not follow that the State has *no* interest before that point that justifies state regulation to ensure that first-trimester abortions are performed as safely as possible” (*id.* at 460 (emphasis in original)).

It was similarly arbitrary for the Court in *Roe v. Wade* to determine that the state’s legitimate interest “in protecting prenatal life” (410 U.S. at 150, 153-154) undergoes a constitutionally significant change at the point of fetal viability. There is no obvious constitutional connection between the ability of a fetus to survive outside the womb, and the magnitude of a state’s lawful

* *Garcia* was authored by Justice Harry A. Blackmun, who also wrote the *Roe v. Wade* decision.

THE HUMAN LIFE REVIEW

concern to protect future life. As Justice O'Connor said in her *Akron* dissent, “[P]otential life is no less potential in the first weeks of pregnancy than it is at viability or afterward. * * * The choice of viability as the point at which the state interest in *potential* life becomes compelling is no less arbitrary than choosing any point before viability or any point afterward” (462 U.S. at 461 (emphasis in original)).

The “viability” standard is particularly unworkable as a constitutional reference point because it changes with advances in technology. The “increasingly earlier fetal viability” demonstrated in recent scientific studies (462 U.S. at 457 (O'Connor, J., dissenting)) obviously owes to improvements in medical techniques, and not to any change in our perceptions about how fully developed or worthy of life a fetus is at any point in time. It is disturbing to attribute constitutional significance to a point which, besides being in motion rather than being fixed, has its movements dictated by advances in engineering rather than by forces more familiar to traditional judicial analysis.

The arbitrary nature of *Roe v. Wade*'s analytical framework is reflected in the increasingly complex line-drawing of its progeny. A state may require that certain information be furnished to a woman by a doctor or his assistant (*Akron*, 462 U.S. at 448), but may not require that such information be furnished to her by the doctor himself (*id.* at 449). A state may require that second-trimester abortions be performed in clinics (*Simopoulos v. Virginia*, 462 U.S. 506 (1983)), but may not require that they be performed in hospitals (*Akron*, 462 U.S. at 437-439). As each set of these subtle distinctions was crafted, still more unanswered questions were posed. During the decade since *Roe v. Wade* the adversaries in the abortion debate have come back again and again, asking this Court to spin an ever-finer web of regulations. The adversaries are back again today. They are sure to return. Each time, the set of rules will get longer and more intricate. This is an inappropriate burden to impose on any court, or on any Constitution.

2. The second, compelling ground for our urging reconsideration of *Roe v. Wade* is our belief that the textual, historical and doctrinal basis of that decision is so far flawed⁴ that this Court should overrule it and return the law to the condition in which it was before that case was decided.

There is no explicit textual warrant in the Constitution for a right to an

⁴ This judgment is shared by a broad spectrum of constitutional scholars. See, e.g., J. H. Ely, *Democracy and Distrust* 2-3, 248 n.52 (1980); Gunther, *Some Reflections on the Judicial Role: Distinctions, Roots, and Prospects*, 1979 Wash. U.L.Q. 817, 819; Burt, *The Constitution of the Family*, 1979 Sup. Ct. Rev. 329, 371-373; A. Bickel, *The Morality of Consent* 27-29 (1975); Epstein, *Substantive Due Process by Any Other Name: The Abortion Cases*, 1973 Sup. Ct. Rev. 159; Wellington, *Common Law Rules and Constitutional Double Standards: Some Notes on Adjudication*, 83 Yale L.J. 221, 297-311 (1973); Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 Yale L.J. 920 (1973).

APPENDIX A

abortion. It is true, of course, that words, and certainly the words of general constitutional provisions, do not interpret themselves. That being said, the further afield interpretation travels from its point of departure in the text, the greater the danger that constitutional adjudication will be like a picnic to which the framers bring the words and the judges the meaning. Constitutional interpretation retains the fullest measure of legitimacy when it is disciplined by fidelity to the framers' intention as revealed by history, or, failing sufficient help from history, by the interpretative tradition of the legal community. That tradition is illuminated not only by court decisions, but by the practice of lawyers and legislatures "in the compelling traditions of the legal profession." *Rochin v. California*, 342 U.S. 165, 171 (1952) (Frankfurter, J.).

We respectfully submit that by these criteria *Roe v. Wade* is extraordinarily vulnerable. It stands as a source of trouble in the law not only on its own terms, but also because it invites confusion about the sources of judicial authority and the direction of this Court's own future course. *Stare decisis* is a principle of stability. A decision as flawed as we believe *Roe v. Wade* to be becomes a focus of instability, and thus is less aptly sheltered by that doctrine from criticism and abandonment.

a. The ultimate textual source for *Roe v. Wade* (410 U.S. at 129) is the Fourteenth Amendment's guarantee: "nor shall any State deprive any person of * * * liberty * * * without due process of law." It is late in the day to argue that this provision should be limited to its apparent textual meaning: government's actually taking hold of a person, as to confine him, without fair procedures. The expansive possibilities of "due process," however, early offered temptations which by all accounts led to one of the most troubled and demoralizing episodes in our constitutional history, during which the Court repeatedly frustrated the workings of the ordinary democratic process by imposing its own debatable and parochial view of appropriate social policy. *E.g.*, *Adkins v. Children's Hospital*, 261 U.S. 525 (1923); *Lochner v. New York*, 198 U.S. 45 (1905). The now prevailing doctrine that the Due Process Clause incorporates particular protections of the Bill of Rights, however controversial on historical grounds,⁵ was plainly intended to have the function of reining in such judicial extravagance and reanchoring the interpretation of that Clause in the constitutional text—though somewhat downstream of its historical starting point. See *Adamson v. California*, 332 U.S. 46, 69-72 (1947) (Black, J., dissenting).

Viewed in this context, *Roe v. Wade* seems particularly ill-founded. Due process analysis, while it must recognize the need to go beyond scrutiny of the

⁵ See, e.g., Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding*, 2 Stan. L. Rev. 5 (1949).

THE HUMAN LIFE REVIEW

few relevant words of the Clause, must nevertheless seek a connection with the intentions of those who framed and ratified the constitutional text. As this Court acknowledged in *Roe v. Wade* (410 U.S. at 138-139), however, and as Justice Rehnquist emphasized in dissent (*id.* at 174-176 & n.1), state laws condemning or limiting abortion were very general at the time the Fourteenth Amendment was adopted. Indeed, the period between 1860 and 1880 witnessed “the most important burst of anti-abortion legislation in the nation’s history” (J. Mohr, *Abortion in America* 200 (1978)). Nor does the tenor and contemporaneous understanding of those laws leave much doubt that they were directed, not only at protecting maternal health, but also at what was widely viewed as a moral evil comprehending the destruction of actual or potential human life (see Mohr at 35-36) and the undermining of family values in whose definition and reenforcement the state has always had a significant stake. It is fair to conclude that those who drafted and voted for the Fourteenth Amendment would have been surprised indeed to learn that they had put any part of such subjects beyond the pale of state legislative regulation. . . . The purpose for which history is invoked in *Roe v. Wade*, by contrast, is far from evident. The Court’s opinion appears to acknowledge the relevance of history, yet it reaches a conclusion in direct variance with the historical facts recited.

Conclusion

There can be no doubt of the strength of the conviction held by some that free access to abortion is a fundamental expression of individual freedom, and that such freedom is the first principle of a just society. A conviction of self-evidence may well accompany a view so strongly held. Yet this conviction does not constitute a constitutional argument. It is at best an intuition based in controversial moral and social theories of the good life and of an individual’s situation in society, theories “which a large part of the country does not entertain.” *Lochner v. New York*, 198 U.S. at 75 (Holmes, J., dissenting). And when controversial but seemingly self-evident convictions are translated directly into constitutional doctrine, we risk repeating the whole lamentable story surrounding *Lochner* for which Justice Holmes (*id.* at 76) composed the epitaph at its birth: “[The Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question of whether statutes embodying them conflict with the Constitution of the United States.”

As in logic contradictory premises can be used to prove anything, so in constitutional law principles that are ill-founded can be used to justify any

APPENDIX A

conclusion, and thus rob the law of its intrinsically compelling force. And when constitutional law, which is above ordinary politics, seeks to settle disputes of value and vision which are the stuff of politics, both law and politics are more not less subject to the kind of intense pressures which have characterized the abortion debate since *Roe v. Wade*.

[The following article ran in the Los Angeles Times on August 8, and is reprinted here with permission. Mr. Noonan, currently a professor of law at the University of California, Berkeley, is well known as a legal scholar and author of numerous books and articles, not least on abortion and related issues.]

Knee-Jerk Spasms on *Roe v. Wade*

John T. Noonan, Jr.

Last month the U.S. government asked the U.S. Supreme Court to abandon *Roe v. Wade*, the 1973 decision that denies the states virtually any power to regulate abortion. A fearful outcry at once went up in the nation's press: A basic constitutional right, it was editorially asserted, was being cynically sacrificed to politics. Self-righteous editors thundered against both Attorney General Edwin Meese III and President Reagan.

Surprisingly, although there was no time pressure (the case would not be heard before November), the pundits did not wait to read the government's brief before they objected to it. Equally surprising is the fact that they paid no attention to its author. The author is neither the President nor his attorney general. He is Charles Fried, the Carter Professor of General Jurisprudence at Harvard Law School, on leave as acting Solicitor General. Fried is one of the most learned lawyers in the country—an urbane, sophisticated and serious thinker. His subtle and powerful brief deserves a far fairer hearing from the nation's newspapers.

The brief itself is a tract neither for nor against abortion or women's rights. It could have been written by someone who is on either side of the abortion controversy. On the merits of abortion it is studiously neutral. To the rights of women it is respectful. What the brief is all about is the rule of law in a democracy governed by a constitution.

What does the brief do?

First, it carefully catalogues the outrages committed by lower federal court judges who had invalidated two state attempts to regulate abortion within the framework of *Roe v. Wade*. Specifically, these judges had:

- Held unconstitutional statutes already repealed and therefore in no sense proper subjects of litigation.

THE HUMAN LIFE REVIEW

- Ordered a state law not to be enforced, although the law did not violate any state or federal statute or the Constitution.
- Denied the states the right to inform a pregnant woman of what happens in an abortion.

(These rulings imposed a censorship that prevented the state from having a woman informed about the difference between an abortifacient and a contraceptive, would not let the state have a woman informed that she had “a right to review” materials on abortion published by the state public health department, and prevented the state from requiring the attending physician to tell a woman about the relative medical risks of abortion and childbirth.)

Generalizing, the brief concludes that the lower court judges had shown an “extreme and unseemly hostility” to state legislation in the field of abortion. Such hostility is contrary to our federal system, to respect for democratically elected governments and to *Roe v. Wade* itself.

Second, the brief criticizes the Akron case, a 1983 Supreme Court decision, for having given “the wrong message” to the lower federal judges. But, the brief concludes, “Akron is a symptom, not the source, of the problem.” The problem was that *Roe v. Wade* itself had “no moorings” in the Constitution.

Third, the brief goes on to a principled critique of *Roe v. Wade*, presenting in focused form the criticisms already made by such noted constitutional law scholars as John Hart Ely, dean of Stanford Law School, and Harry Wellington, former dean of Yale Law School. These critics object to *Roe v. Wade* not because of its effect on the unborn but because of its departure from the Constitution itself.

Once upon a time, in *Lochner v. New York* (1905), the Supreme Court interpreted the word *liberty* in the 14th Amendment expansively, so that an employer’s liberty to make contracts could not be limited by a state making regulations to protect a worker’s health. The court majority simply read into the word *liberty* its own preference for *laissez-faire* economics. After 32 years this expansive reading was rejected, and the *liberty* that the majority had created was restricted by the court itself.

The brief points out that, for every student of the Supreme Court, the period during which *Lochner* ruled was one of “the most troubled and demoralizing episodes in our constitutional history.” *Roe v. Wade*, Fried’s brief continues, was clearly analogous to *Lochner*. The *Roe* majority had read its own preference for *laissez-faire* in abortion into *liberty* in the 14th Amendment. A similarly demoralizing episode was occurring.

What was so wrong with *Lochner* and is so wrong with *Roe*? It is the overriding of the expression of the people’s will by a life-tenured judiciary. It

APPENDIX A

is the subjection of state governmental power to an arbitrary federal norm. It is the substitution of the private wills of a majority of justices for the rule of law. The brief eloquently asks that the rule of law be restored.

If the justices are unrestricted in reading their private views into the Constitution, then, in Fried's words, the work of constitutional interpretation becomes a "picnic to which the framers bring the words and the judges the meaning." At this picnic the Constitution is devoured. Fried's brief is an earnest plea for better constitutional law.

[*This article ran in the Baltimore Sun on August 14, and is reprinted here with permission. Mr. Collins is a law professor at Willamette University in Oregon, and the editor of Constitutional Government in America (© 1985 by Ronald K. L. Collins).*]

Abortion: Justice versus the President

Ronald K. L. Collins

A moral principle is more than a policy preference. A matter of conscience is not the same as a question of political power. On both counts the Justice Department abandons principle in favor of policy in the brief it recently filed asking the Supreme Court to overrule the 1973 landmark abortion decision, *Roe v. Wade*. The department either lacks the courage of moral conviction or lacks such conviction altogether.

On the 10th anniversary of the court decision that recognized a qualified right to abortion, President Reagan declared: "The real question . . . for all of us is whether [a] tiny human life has a God-given right to be protected by the law—the same right we have." Despite the president's plea to "the conscience of the nation," the Justice Department's brief adroitly shuns the "real question" posed by Mr. Reagan.

What is important, overwhelmingly so, to the Justice Department is not the "value" question raised by the president, but the policy question related to the division of political power. In its 30-page "friend of the court" brief, the Justice Department hammers home the point that the *Roe* decision is objectionable primarily because it transferred to the national government power which otherwise belonged to the states. Throughout the document, prepared under the direction of Charles Fried, the acting solicitor general, the government lawyers refer to "principles" associated with the various "interests" of the states.

The states' rights theme is one that the president assiduously avoided in his noted 1983 "pro-life" speech. With rival caution, the Justice Department

THE HUMAN LIFE REVIEW

steers a different course. It is careful not to develop any point that could lead to the conclusion that the unborn are entitled to be protected, in the president's words, "as persons under our Constitution." For Mr. Fried and his legal aides, all that is involved in the two new abortion cases now before the court is whether it is constitutionally permissible for federal judges to take the abortion decision out of the hands of state legislators. Ironically, this federal "hands-off" policy is clearly at war with the president's avowed belief that the court should place the abortion question beyond the pale of state choices by ruling that fetuses deserve constitutional protection.

At bottom, the department's lawyers see the abortion controversy as just another regulatory issue, as simply one more matter calling for decentralization. Seen against that backdrop, tossing the abortion decision back to the states is consistent with the logic today espoused by other federal regulatory agencies. Thus, the operative "principle" is the same one that prompts the Food and Drug Administration to defer to the states when it comes to regulating harmful food additives. Similar thinking inclines the Federal Trade Commission to do likewise in the case of consumer protection. Do those sounding trumpets of praise for the Justice Department's action really mean to defend a regulatory policy point over and above a moral principle?

If abortion truly involves questions about what the President has said concerns the "value" and "sanctity of all human life," then there is something horrid about allowing the fate of "life" itself to hinge on an accident of political geography.

If, as the president maintains, the "tragedy" of abortion can be equated with slavery, how can people of conscience subscribe to a view akin to the 19th century rebel cry of "states rights"?

What should be apparent from the Justice Department's brief is that its abortion concerns run contrary to the "sanctity of life ethic" championed by the president. There is simply no room in the Constitution, the government lawyers contend, for "moral . . . theories of the good life and of an individual's [fetus's] situation in society."

No matter how one feels about the abortion controversy, it is beyond denial that there are indeed values to be considered, values of life and liberty. However, the Justice Department's handiwork is value free. Whatever view one takes about fetal life, personhood, and the Constitution, it cannot be denied that this issue is of fundamental importance. Yet, the Justice Department's brief is silent on the point. In that regard the department's position might be described—to borrow from the vernacular of the day—as an example of "secular legalism."

APPENDIX A

In his public call to the Court to take another look at *Roe v. Wade*, President Reagan defined the abortion debate as pitting the “sanctity of life ethic” against the “quality of life ethic.” It was in that context that he urged that *Roe* be reconsidered. Regardless of the wisdom of the president’s ultimate views on abortion, his words do reveal an awareness of the fundamental values involved in the controversy.

Viewed by that standard, the Justice Department’s discussion of abortion as a question of political decentralization and deregulation is amoral in a way that undermines the belief that the Constitution can (and should be) a depository of fundamental values.

[The following article ran in *The Wall Street Journal* on August 21, and is reprinted here with the author’s permission. Mr. Carter is an associate professor of law at Yale University.]

***Roe v. Wade* Left Both Sides Open to Science**

Stephen L. Carter

Now that the Reagan administration has formally asked the Supreme Court to overturn its 12-year-old decision legalizing abortion in *Roe v. Wade*, pro-life and pro-choice forces alike might usefully pause to consider the ways in which changing medical technology is altering the debate over abortion and will inevitably alter the shape of the constitutional compromise the justices crafted in *Roe*.

In *Roe*, the justices rejected the major philosophical and moral arguments pressed by both sides, choosing instead to ground the constitutional right to terminate a pregnancy in a plainly transient technological situation. But if a constitutional decision rests on the court’s conclusions about current scientific knowledge, that decision ultimately must either change or end up looking quite silly. In a nation whose public morality is premised on the rule of law, judicial decisions that end up looking silly are better avoided.

Yet the *Roe* opinion derives its constitutional rules largely from two conclusions about scientific fact: The pregnant woman’s near-absolute right to end her pregnancy during its first three months flows from the finding that in the first trimester, abortion is a safer medical procedure than childbirth. The state’s authority to restrict abortion in the third trimester rests on the understanding that the fetus becomes viable—is able to survive outside the womb—at some point in the last three months.

Although they might represent sound medical judgment, these arbitrary

lines are difficult to explain by reference to the Constitution, or even to some set of abstract moral principles. The justices have shown little interest in the pro-choice argument that a woman's right of personal autonomy requires that she be able to control her own body including its reproductive potential. The court has declined to consider the pro-life argument that the fetus (and presumably the conceptus) is a human being. Instead, the court seems to have reduced the abortion issue to a question of choosing the best treatment (abortion or childbirth) for a particular medical condition (pregnancy). The *Roe v. Wade* compromise represents not a feminist approach, but a medical one.

Justice Sandra Day O'Connor and other critics—not all of them pro-life and not all of them on the right—have pointed out the inherent weakness in the *Roe* framework: It assumes an unrealistically static quality in the technology of reproduction. As technology continues to advance, however, the point of viability will be pushed back into the second trimester, and perhaps someday into the first, while the period during which abortion is safer than childbirth will move forward, well into the second trimester, and eventually into the third. When abortion is the safest method of treating pregnancy but the fetus is viable, the court's carefully constructed trichotomy collapses. If pro-choice forces want to protect the core of *Roe v. Wade*, they should urge the justices to rest the constitutional rule on some less technology-dependent ground. *Roe* as it stands is unlikely to survive much longer.

The difficulty with the reasoning of *Roe* mirrors a difficulty in the argument over abortion generally: The two sides are often talking past each other. In fact, the strongest arguments on either side seem to be in conflict with one another only because of the limits of currently available medical technology.

The strongest argument against abortion must surely be that the fetus is a human being that the state has a right, and perhaps a responsibility, to protect. If one earnestly believes that the fetus is human, then any rejoinder about not imposing one individual's morality on another is nonsensical.

The strongest argument in favor of the right to choose to end a pregnancy surely rests on the unique status of the pregnant woman: The fetus resides in her body, and if her right is ended, she will be forced to carry the fetus to term. The state must not intervene in what should be a private decision.

The pro-choice forces want the right to terminate pregnancies. The pro-life forces seek to save the lives of fetuses. The limits of available medical technology are such that terminating a pregnancy will nearly always result in the death of the fetus. That is why the Supreme Court's paradigm possesses a surface appeal: It acknowledges the conflict but tries to resolve it by crafting a constitutional rule from the technological limitations.

APPENDIX A

But as the technology of reproduction passes the court's decision by—and it will—it is also likely to leave behind the current debate. In these times when fertilized eggs can be transplanted, or even frozen, stored and returned later to the womb, it requires no huge leap of faith to envision development of a relatively safe means of terminating pregnancy that would nevertheless leave the fetus alive.

Pro-choice and pro-life forces alike should be preparing now for that future. As abortion grows safer than childbirth later and later in pregnancy, pro-life forces must come to grips with the fact that they wish to deny women an increasingly safe medical procedure and force them to undergo a more dangerous one. Childbirth represents a significant trauma for the human body, and pro-life forces must be prepared to explain why they insist on placing pregnant women at risk.

Similarly, as the medical community learns more about saving the lives of those born prematurely, the pro-choice forces must realize that to preserve the right to end a pregnancy, they will ultimately have to support the destruction of at least some viable fetuses. To make this position palatable, whether to the public or the justices, they must be prepared to meet the pro-life argument head-on, and press the emotionally wrenching case that viability is not the equivalent of humanity.

Both sides ought to be considering whether the arguments transcend technology, or are merely artifacts of our contemporary scientific understanding. Also, the two sides, as well as the justices of the Supreme Court, ought to be thinking about ways to avoid enshrining as constitutional doctrine a rule that technology may render obsolete.

[The following syndicated column was issued July 18 (just three days after the Solicitor General filed his brief) and is reprinted here with permission. Mr. Sobran is a well-known commentator on social and political issues. (©1985, Universal Press Syndicate.)]

Judicial Agent of Faction

Joseph Sobran

The Justice Department has asked the Supreme Court to reverse its own ruling in *Roe v. Wade*—the 1973 decision that virtually gave us abortion on demand. It is a pretty safe bet that the court will do nothing of the kind.

So much of the discussion about abortion has focused on the merits of the issue itself that we have hardly noticed the radical implications of the court's

action in striking down the laws of all 50 states. If the court had been talking about a less inflammatory issue—if it had struck down all highway speed laws, say—we would be talking less about the issue and more about the legal oddity of the ruling.

In effect, the court held that the legislatures of all 50 states had failed to understand the Constitution—the fundamental law presupposed by any specific legislative act. This is a remarkable implication, but not as remarkable as a further one: since apparently no legislative minority, legal scholar, or advocate of legal abortion ever raised constitutional scruples (as distinct from moral and policy considerations) against the abortion laws until about 1965, the court virtually said not only that the majority had always been wrong, but also that no minority had ever been right!

Bear in mind that the laws struck down were not uniform: they were liberal and conservative, permissive and restrictive. But all of them, according to the court, were misconceived. This was a far more sweeping ruling than *Brown v. Board of Education* (1954), which affected only the segregation laws of a dozen states.

Writing in dissent, Justice Byron White called *Roe v. Wade* an exercise in “raw judicial power.” It ran counter to the role of the court as conceived by the framers of the Constitution, and is interesting as a revelation of the role the modern court has arrogated to itself.

What did the framers have in mind? We can discover their intentions most fully in *The Federalist Papers*, written under the pseudonym “Publius” by Alexander Hamilton, James Madison, and John Jay.

Publius was concerned to provide for majority rule—“popular government” was his phrase—while avoiding majority or special-interest tyranny, which he called “faction.” He explained that the dispersion of representation over a large republic is one safeguard against factional combinations of special interests. Legislation filtered through two houses of Congress, with their diversity of interests, would tend to reflect the “deliberate sense” of the whole country—a better kind of majority than a crude plebiscite would yield.

Publius desired law to have the character of a public-spirited consensus rather than of mere self-interested will. He was well aware of the tendency of simple democracy to degenerate into special-interest politics, “this dangerous vice.”

Accordingly, the Constitution represents the ultimate American consensus. It expresses the will of an abiding, long-term majority that can help restrain a passionate, factional majority in the short term.

The device through which the Constitution serves this function is judicial

APPENDIX A

review. Publius was anxious to rebut the charge that judicial review would mean the superiority of the judiciary to the legislative branch. He argued that the judiciary in effect represents the long-term majority, and that when it strikes down an act of Congress as unconstitutional it is acting on behalf of consensus against factional passion.

But in *Roe v. Wade*, the modern court showed its disposition to do just the opposite. There already was a longstanding legislative consensus against abortion on demand: the diverse laws of 50 states were agreed on that much, and had been for some time.

As is so often the case, the court actually was pretending to discover in the Constitution a part of the liberal agenda that really wasn't there. And far from having a consensus behind it, the liberal agenda can seldom even get a current majority in its favor. That is why that agenda—on forced busing, pornography, abortion, etc.—so often has to be smuggled into public policy by the courts and bureaucracies.

And so, far from representing a long-term consensus that is more deliberate than the current majority, the court often imposes the ideological interest of a minority, with no roots in the Constitution or American moral and political tradition. This is not an improvement on crude majority rule; it is something inferior to it.

Publius would be deeply distressed to find that even the judicial branch can be corrupted into an agent of faction. He would be even more distressed to find a factional judiciary posing as the custodian of consensus, even as it propagates divisive social policies.

APPENDIX B

[The following "Sweet Land of Liberty" column appeared on the Op-Ed page of the Washington Post on August 16. Mr. Hentoff is a regular columnist for New York City's Village Voice and a well-known civil libertarian. (© The Washington Post, 1985.)]

A Heretic in the ACLU

Nat Hentoff

The American Civil Liberties Union is resolutely against capital punishment. It is also resolutely pro-choice in another matter concerning the death penalty. Is there a contradiction? Not according to the publications and legal briefs of the national ACLU and its state affiliates. For the ACLU, the right to an abortion is as firmly guaranteed by the Constitution as the right to freedom of speech.

But there are signs of heresy within the ACLU concerning *Roe v. Wade*. The conscientious objectors are still very few in number, but they are beginning to be heard. This spring, for instance, Barry Nakell spoke on "The Right to Life" before the annual meeting in Chapel Hill of the North Carolina Civil Liberties Union. Nakell, a board member of that affiliate, is a professor of law at the University of North Carolina.

He felt impelled to speak up publicly against the ACLU position because, Nakell told me, "I was feeling more and more uncomfortable in not being on the record with my friends concerning my belief that the basic civil liberty, essential to all others and presumed by each of them, is respect for the dignity of life."

Nakell reminded the annual meeting that the principle of the dignity of life is the basis "for the paramount issue on the North Carolina Civil Liberties Union agenda since our founding: our unstinting opposition to the death penalty." And he pointed out that the NCCLU general counsel, N. B. Smith, had published an article last year in the *Boston College Law Review* in which Smith emphasized that "life itself is plainly a basic and essential right, and the [Supreme] Court would have difficulty in plausibly declaring life to be less than fundamental."

The heretic also prodded his audience to reconsider its attitude toward *Roe v. Wade* by reminding them that in 1975, West Germany's highest court had interpreted the "right to life" guaranteed by the Basic Law of the Bonn Constitution as giving constitutional protection to unborn children. That "right to life" was in reaction to the Nazi regime's pervasive destruction of "life unworthy to live."

APPENDIX B

Yet, Nakell said in his talk, “I have reviewed the ACLU policy guide in a search for a strong statement of the principle of respect for the dignity of life, and have not found any. This is an oversight that we need to correct.”

As for abortion, the law professor made the reasonable point (in some circles) that reasonable people can “responsibly disagree about when life begins.” Some say it begins at birth. Others, Nakell among them, believe life starts at conception.

With regard to the ACLU’s position, Nakell emphasizes that in all other matters, the ACLU “stands for expansive interpretation of constitutional liberties.” But not in terms of the rights of the fetus. Yet one would think, he said, that “if there is any doubt as to whether a fetus is a human life,” the ACLU, by tradition and principle, would be the advocate of the most powerless of all and urge constitutional protection for this developing life.

Most tellingly—before an audience that has been as steadfast as Justice William Brennan in denouncing the state as executioner—Nakell observed that the ACLU, in supporting *Roe v. Wade*, thereby agrees that the Constitution protects the right to *take* life.

“The situation is a little backward here,” he noted. “In the classical posture, the Constitution would be interpreted to protect the right to life, and pro-abortion advocates would be pressing to relax that constitutional guarantee.” The Supreme Court turned it all around, however, and the ACLU agrees with the court that some lives are less worth protecting than others.

Nakell has not been put in Coventry by his fellow North Carolina civil libertarians. He expects the dialogue will continue, and when he went to the ACLU biennial meeting in Boulder, Colo., in June, Nakell had a sense that some other ACLU members around the country were also ready for dialogue. At one meeting, when a delegate said firmly that “a woman has the constitutional right to a dead fetus,” most of those in attendance cringed. Nakell felt that was encouraging.

And one ACLU member in California has said, in a letter to me, that “no one can say with authority when life begins, but since we know that identity begins at conception, we’re obliged to give the benefit of the doubt.”

Barry Nakell tells of a bumper sticker he saw recently: “Equal Rights for Unborn Women.”

APPENDIX C

[The following article first appeared in the Journal of the American Medical Association, November 2, 1984. Dr. Landau is a professor in the Department of Medicine at the University of Chicago. Dr. Gustafson is a professor at the Divinity School at the University of Chicago. This article is reprinted with Dr. Landau's permission.]

Death is Not the Enemy

Richard L. Landau and James M. Gustafson

Karl Barth, a 20th-century Protestant theologian, wrote, "Life is no second God, and therefore the respect due it cannot rival the reverence owed to God." On the other hand, for secularized persons in a secular society, there is no "first God" and thus nothing due more respect or reverence than life itself. Life and its preservation become more than the necessary conditions for the realization of a measure of self-fulfillment and for capacities to contribute to other persons and to society. They become virtually ends in themselves. The pursuit of health and the preservation of physical life seem to have replaced "salvation," the glorification of God, or the beatific vision as the chief end of man. To the secular person, what theologians call "the conditions of finitude," those inexorable restraints and limitations on human life of which the final one is death, seem repressive since there is nothing real or lasting beyond them. A kind of physical fundamentalism comes into being; the practical dogma is to preserve life as long as medically and technically possible. If God is functionally designed as one's "ultimate concern" (to use a term of another Protestant theologian, Paul Tillich), the preservation of life becomes one's God. If one's ultimate object of trust is fundamentally one's God, life becomes one's God—or one's idol.

We are not concerned to argue for the existence of God, or for some form of life after death. We do not claim that a religious outlook is necessary to avoid absolutizing the value of physical life. Secular persons can consent to the conditions of finitude, to the reality of death, to conceiving of death as sometimes friend as well as enemy at least as readily as the religious person. We are concerned, however, to reflect on some of the outcomes of the preoccupation with the preservation of physical life. The intensification of concern to sustain and preserve life is the other side of concern to avoid physical death. These concerns may have obvious benefits in most circumstances—the prevention of many risks through public health measures and educational activities directed toward preventive medicine and personal hygiene and the development of therapies for countless diseases.

An intense preoccupation with the preservation of physical life, however,

APPENDIX C

seems sometimes to be based on an assumption that death is unnatural, or that its delay, even briefly, through medical and technical means is always a triumph of human achievement over the limitations of nature. It is as if death is in every case an evil, a kind of demonic power to be overcome by the forces of life, propped up by elaborate medical technologies. Dramatic medical interventions portrayed in the media become living “westerns.” The powers of death are the bad guys, to be vanquished by the good guys, dressed in white coats, rather than white hats. Every delay of death is a victory by the forces of good. Or, to change the analogy, the development and use of costly and dramatic end-stage therapies are seen as the “arms” to be used in a “crusade,” a war fought over “holy places” because they were occupied by an alien, and therefore enemy, power. A “crusading mentality” comes into being; almost any means is justified when it will delay the enemy, death.

We do not wish our position to be construed as being obstructive to scientific and technologic research, but we do believe medical scientists should be reminded that death is as integral an aspect of human life as it is of all other biologic species'. The development of technologies with the prime aim of prolonging life should be seriously questioned if the ultimate result is destined to be a grotesque, fragmented, or inordinately expensive existence. We were not privy to the discussions of the institutional review board at the University of Utah that led to the news report that the board had refused to approve continuing human experiments with the artificial heart, but it is possible that such considerations contributed to that decision.

Today's practicing physicians have accepted—often without knowing it—a far greater priestly role than any of their predecessors. In part this is attributable to the diminished impact of religion in our civilization. To a greater extent, this phenomenon is due to the immense power that medical science has placed in physicians' hands. However, given the frequent announcements of scientific “breakthroughs,” the limitations of their power to diagnose and control diseases are not always appreciated by the public. The emphasis on mortality statistics as a measure of medical care effectiveness has tended to obscure the fact that most of the time and effort of practicing physicians is devoted to improving the life of their patients. The real enemies are disease, discomfort, disability, fear, and anxiety. Sensitive, perceptive physicians attempt to guide their patients, those who are relatively healthy as well as those who are handicapped and ill, to a perspective in which the preservation of life is not their God.

APPENDIX D

[The following article first appeared as an About Men column in the New York Times Magazine of August 18, 1985 (Copyright ©1985 by The New York Times Company; reprinted by permission). Mr. Conniff is a freelance writer who is now working on a book about his son Mark.]

Manchild Coming of Age

James C. G. Conniff

My youngest son, Mark, has his suits and jackets fitted with extra care, because, 5 feet tall, he weighs more than 170 pounds and is built like a padded fire hydrant. He is dieting to fight that image, though, and has 27 Special Olympics awards on his wall to prove it, right beside life-size posters of Michael Jackson, Kenny Baker and Barbara Mandrell. Mark is a powerful swimmer, and five of the awards are for first place in the category.

For 31 years, Mark has been a central fact of our family life, knitting us together, trying our patience, helping us laugh, probably making us better people than we would have been without him.

I remember the night call, hours after he was born, and the doctor's trying to be gentle as the darkness around me grew suddenly deeper: "I regret having to tell you your new son may be mongoloid."

They don't say that anymore. They don't call leprosy leprosy, either. Now it's Hansen's disease. And mongolism is Down's syndrome, or trisomy 21, a chromosomal abnormality that hinders the development of the mind. The growing brain signals its imprisonment in the smaller skull by causing erratic gait, slower growth, vulnerability to infections, clubfeet, other anomalies.

Knowing I was a medical writer, the doctor shared with me the details that left little room for doubt: the epicanthal fold of the eyelids at either side of the nose, excessive bone-flex even for a newborn, deeper-than-normal postnatal jaundice, clubfeet, the simian line across the palm of each hand. Later, one of many specialists we consulted would say of Mark: "Let's leave a door open for me to back out of. There are people in Congress less bright than he may yet turn out to be."

Nobody's perfect, in other words. Even so: *mongoloid*. The word boomed in my soul like the tolling of a leaden gong. No more sleep for me. Next morning, I entered upon a conspiracy of one.

"Why can't I see the baby?" was my wife's first question after the kiss, the forced congratulatory smile. The lie, "They're getting him ready," came with clinical ease. "He'll be up to see you soon."

Then the quick maternal discovery of his clubfeet, and my too-swift assur-

APPENDIX D

ance that the feet were “only an anomaly” which remedial measures would correct. Worst of all, her tearful puzzlement at learning we would have to leave him in the hospital “for a few more days” to make sure his casts “weren’t on too tight”—or some such double talk.

Back home without him, I found myself unable to keep up the charade under mounting internal pressure. After a few miserable says, I blurted out the truth and endured her dry-eyed demand that we “Go bring him home, right away, so I can take care of him. Now. Today.”

Caring for a baby with legs in plaster casts spread wide at the ankles by a rigid steel bar to straighten the growing feet can take its emotional toll. But from the start, Mark’s older brothers, and especially his sisters, devoted themselves to helping us raise him. Under what I now look back on as a cascade of sunrises and sunsets “laden with happiness and tears,” we overcame any misguided temptation we may have had to institutionalize him.

One undeniable result has been that he is much further along, and far better equipped to deal with life in spite of his limitations, than he would have been if we had done that to him. Today, as he stands poised to see whether he likes it in a group home, we take comfort in knowing we tried to do right by him. Another gain has been that he has done well by us; caring for him has matured us. Aged us too, no doubt, but that would have happened anyway.

The father of a retarded child wonders if in some unforeseeable way he may have contributed to the tragedy (in my case, possibly the case of mumps I had before Mark was conceived). Some men walk out on what they see as an impossible situation, a saddling of their marriage with an unending burden. Some come back. Each case is unique. No one outside it can judge.

Ironies abound. Long before Mark was born, I wrote an article on mental retardation. It helped, I’m told, get Federal funds for research into the causes. And when Hubert H. Humphrey’s granddaughter was born retarded, he and I wrote pieces pleading with readers to recognize that mental retardation is a totally different affliction from mental illness. “It’s not contagious, either!” Hubert would shout at me, as if I needed convincing. Yet in my own extended family some still think Mark is contagious.

Harder to take is watching him strive, in a family of writers, to produce copy. Pages of hand-scrawled and sometimes typed letters, all higgledy-piggledy, spill from his fevered efforts to “follow in your footsteps, Dad!” And almost nightly, lonely and eager for an audience, Mark interrupts our reading or television watching to rattle off plots from reruns of “M*A*S*H.” We try to look attentive, even though it drives us nutty. Shouting matches help ease

THE HUMAN LIFE REVIEW

tension, and I have on occasion threatened to work Mark over. But sooner or later he forgives me. With a hug.

Indefatigable, Mark has handsawed his way through storm-toppled tree trunks without resting, mowed lawns, backstopped me on cement-laying jobs. I repay him with prodigious hero sandwiches, which he seldom fails to praise.

At 31, he still cannot read, but he does guess at numbers, at times embarrassingly well. When, here lately, he began to put a cash value on his toil and asked for pay, I offered him a dollar. He looked at me with a knowing grin and said, quite clearly despite his usual speech problems, "Five bucks, Dad, *five* bucks." I gave him five ones.

For signs like this that the manchild is coming of age, I am grateful. And for something else: I can't say we feel he's ready for Congress, but he has given us hope. Unlike the night he was born, in part because of Mark, I am no longer afraid of the dark.

APPENDIX E

[The following article appeared in the first issue (Spring, 1985) of The Journal of Family and Culture, and is reprinted here with permission (©1985 by The Free Congress Research and Education Foundation). Mr. Gribbin, a former deputy director of the White House Office of Legislative Affairs, is the author of, among much else, The Churches Militant (Yale University Press), and a recognized expert on family policy issues.]

The Family in the Formulation of Public Policy

William J. Gribbin

For the American family in public policy, the last four years have been neither the best nor the worst of times. The only similarity of this quadrennium to the revolutionary period thus described by Dickens is that, lately as in the 1790s, many people have lost their heads in various fashions.

It is true, however, that whether or not the family has resurged in policy impact, it certainly has made a comeback—the most spectacular since Gloria Swanson's in "Sunset Boulevard"—in campaign appeals. From Ronald Reagan to Mario Cuomo, the family is now included among the carefully modulated mantras of contemporary politics.

That is a tribute to the energy and ingenuity of what has come to be called, over the last decade, the Pro-Family Movement. That term is as imprecise as most socio-political labels; but it is generally understood as the national network of grass-roots organizations and citizen activists who, while reflecting the tremendous diversity of the American people, have found a common ground both in opposition to governmental interference with the family and in advocacy of traditional Judeo-Christian ethics. Because of their entry into the political process in recent years, the American family does not lack cheerleaders in high places. But now it is time to inquire how the game itself is going.

Let us be clear about our initial assumptions. We face the results of several decades of social experimentation, much of it focused on family life and interaction. As we compare the consequences of different approaches to family problems, both here and abroad, one overriding fact becomes clear: there is no engine of progress, security and social advancement as powerful as the family, particularly the bourgeois family whose customs and ethics defined western civilization during the two centuries before the Great Unraveling of recent decades. There is no instrument of economic growth, savings and investment, job creation and job training, as effective as the middle-class family. There is no cultural institution as ennobling as family life. There is no

better, indeed, no equal means to rear the young, protect the weak, or attend the elderly. None.

One would think that, as a consequence, the bourgeois family order would be the starting point for public policy deliberations. One would think that familial stability, intergenerational cohesiveness, parental rights and responsibilities, and the economic independence of the family unit from government would be the criteria by which domestic policy proposals—and that includes the items that comprise the federal budget—would be judged. Instead, those considerations remain afterthoughts at best, irrelevancies at worst.

That situation is rooted in events and decisions of four years ago. Though they seemed inoffensive at the time, they have, in hindsight, had seriously negative effects.

As the Reagan Administration prepared to assume office in the autumn of 1980, as its likely officers drew up organizational charts and prepared to translate a candidate's ideas into a president's programs, there emerged the outlines of a policy process to be centered around an Office of Policy Development, Cabinet Councils, and attendant enterprises. There were, in some quarters both within and without the Administration, high hopes that familial concerns could be built into that system. That possibility was suddenly, and perhaps necessarily, preempted, however, by economic problems that threatened to become an all-out crisis. At the same time, the Administration-to-be discovered a solution of sorts, a solution that would relegate some of the most fundamental questions of domestic policy to the political sidelines. It was a David-ex-machina solution in the form of a comprehensive budget plan that became, with many emendations, the President's economic package.

None of this is news, and none of it is particularly objectionable. Our purpose here is not to take sides in the Administration's economic debates of the last several years. Rather, our point is that, from the Transition of 1980-1981, the Administration's domestic policy has been, by and large, budget policy. The presidential entourage of the first term failed to employ a policy process adequate to the analysis and molding of vast areas of public affairs.

Instead, it had the budget process, a handy tool for many purposes, such as restraining Cabinet secretaries in pursuit of their own agendas; but that process has been inadequate to larger tasks. Tumorlike, it has been invasive of other policy operations. Its standard of measurement—dollars and cents—has replaced all others. That is not a bad standard, though pedestrian; but it is utterly insufficient in matters which require vision, values, ethical insights, sociological perception, or a sense of history. For those characteristics, the Administration has had Ronald Reagan, but not a policy process emulative of his example.

APPENDIX E

This is not to say that the budget process, over the last four years, has not been occasionally the vehicle by which the Pro-Family movement has sought to achieve its non-budgetary goals. It has tried to cut funding of programs considered inimical to the well-being of the family. Fair enough, but using the budget process as a policy process is like using a washing machine as a dishwasher. Even with certain elements in common—in this case, soap and hot water—the outcome can be an unpleasant surprise.

That approach may be justified if it gets results. But it has not. Program after program inimical to the bourgeois family order has been not only preserved, but increased, sometimes by the Administration itself. And why not? It's just a matter of money; and it little matters where the money goes as long as the bottom line—expenditures versus revenues—is acceptable.

That is precisely the problem with using a budget process as a substitute for a policy process. It reduces all decisions to financial ones. It replaces the most important question—"For what purpose, to what end?"—with a more easily answered inquiry: "How much?"

That is why, from the very beginning, the Reagan Administration has lacked a coherent social policy, although its Chief Executive has had a remarkably coherent sociology, expressed by him with a folksiness that masks its seriousness. But what could have become his family policy remained an abstraction. In the Budget Trek, it did not compute. It could hardly enter into the budget review process that has set the Administration's legislative course year by year. A social policy of any sort is just not relevant in the cold cash tug-of-war between OMB and the departmental barons, who came, more and more, to prevail in the contest.

Yes, it does matter who wins the Administration's intramural budget arguments; and it matters mightily to the American family, whose pelf is at stake in the struggle. But even when the outcome is a degree of budgetary restraint, the process does not begin to generate a coherent view of what our society is, or might be, all about.

That shortcoming has taken a dreadful toll. One large example has been the politics of the social security system. Consider the price paid by the Administration and its allies in Congress over that one issue because they allowed it to become exclusively—need we say it?—a budget matter.

The real questions that should have been raised about social security, the publicly posed questions that would have given the President the moral high ground on the issue, were never posed to the American people, even though they surely would have been the questions with which Mr. Reagan would have been most comfortable. How, for example, do social security benefit-

THE HUMAN LIFE REVIEW

eligibility rules affect family structures? How does the system encourage or discourage patterns of caring and sharing between generations? How does its future relate to rates of childbearing and, more important, to the cultural attitudes that control those rates? How can we chart the future of social security without reassessing, as a people in search of a new consensus, the role of the elderly, not only in today's society, but in the society that awaits us at the opening of the third millenium?

Imagine President Reagan, stressing his own role as an older American and family member, exploring those subjects on television with the American people. Whatever the outcome, it surely would have been preferable to the excoriation he received for proposing, to a disregarding Congress, social security changes that had the merit of budgetary responsibility but lacked any constituency. Despite the merits, fiscal and programmatic, of Mr. Reagan's original social security initiative, it was doomed by the budget process that generated it. It was sold as a formula for an accountant, not as a policy for a president.

Even more telling has been the way welfare policy has become a subset of budget policy. To give credit where due, certain thoughtful officials in the Administration did secure the inclusion of important reforms of public assistance programs in the reconciliation bills of 1981 and 1982. Eligibility was tightened, and benefits were somewhat restricted to the truly needy. It was, however, a revealing commentary on the supremacy of the budget process that those changes had to be passed as cost-saving measures, not as welfare reforms designed to liberate families from the culture of poverty.

Most damaging to long-range welfare reform was the way the semantic imperialism of the budget process wiped out years of groundwork for a comprehensive restructuring of public assistance programs. The budget process lumps those programs—welds them, really—with radically different programs like social security, veterans' pensions, federal employee retirement, and other "entitlements." That word has dominated the budget process for the last four years, as officials on all sides of various issues have tried to cut entitlements, cap entitlements, defend entitlements.

But the word is a lie, for it insists that the disparate programs under its heading have enough in common to be approached in a unified way. Well, the only way that applies to all of them is the budget way, with a budgetary motive: how much can we save, how much can we cut, how should we distribute the pain?

When dealing with "entitlements," policy is really not needed; all one needs are budget targets and a calculator. So much off here, so much off there, until

APPENDIX E

the right numbers roll up on the OMB equivalent of a slot machine. The rationale is winning or losing, not justice, not a renewed social order, surely not stronger family life. In such a system, there is no opportunity even to consider which policy alternatives best serve the interests of low-income families. Perhaps those interests will be advanced by this or that package of entitlement changes, but only accidentally.

Thus fell by the wayside years of conservative analysis of public assistance: not repudiated, simply ignored. Who will pose to the 99th Congress the devastating questions that could restore integrity to welfare policy? Who will ask whether a particular program still serves its original purpose; whether it creates work disincentives; whether it reinforces or erodes familial bonds; whether it endorses or repudiates the centrifugal homelife of the poverty subculture? Certainly the Administration's opponents do not want to debate on those terms. It remains to be seen whether the Administration will force them to do so, rather than itself being forced to debate the empty question of how many people get how much money.

It is the difference between arithmetic and geometry, between the simplistic numbers of the budget process and the multi-dimensional calculus of human needs and personal conduct.

By and large, the pro-family policy community has gone along with this fundamentally defective way of approaching social policy because, as noted above, it has sometimes entailed attacks on programs inimical to familial interests. But there is an obvious danger in allowing even one's short-range objectives to be formulated by those who do not entirely share one's long-range goals. In this case, the Pro-Family Movement has shared with the Administration the stigma of the Fairness Issue, that is, the accusation that budget decisions of the last four years have been unduly burdensome to low-income persons.

That bum rap—after all, the accusation reflects a perversely materialistic view of the benefits of government, community, and the social order—would not have worked if the President's social vision had not been constrained into a narrow financial focus. If, for example, those who championed the interests of the American family had been included in the budget cycle from its beginnings in the Transition of 1980-1981, the whole rationale behind spending reductions would have been different. It would have been a positive case—in favor of certain social objectives like parental rights, community self-determination, transfer of resources back to those who earn them, the independence of mediating institutions—rather than a negative one based on recurrent trouble with “the markets.”

THE HUMAN LIFE REVIEW

As recent events in both the Congress and the Administration have shown, it is not too late for interesting and perhaps dramatic changes to get things back on the right track. Since this problem arose from the budget process, perhaps the solution should be sought there as well. If that process is to be the overweening forum for public policy formation, then the Pro-Family Movement must take its case there, intruding not only its agenda but also the humane perspective that has shaped it.

What is needed, in fact, is a fundamentally new kind of budget; and Fiscal Year 1986 is not too far off to begin thinking of it now. It would be a budget constructed around the goal of preserving and fostering the traditional family order. This American Family Budget would treat expenditures—their increase, reduction, or elimination—on two bases: first, whether they advance or hinder the interests of the family; second, whether they justify a revenue exaction from family income.

As things stand, any particular expenditure—say, the \$3.5 billion by which America's families subsidize domestic businesses and foreign buyers through Export-Import Bank loan guarantees and insurance—competes for budgetary validity against any other expenditure, like the \$290 million population account at AID or the \$150 million for the Corporation for Public Broadcasting, not to mention the \$7.9 billion available for the Synfuels Corporation in fiscal year 1985. In that context, virtually all expenditures have equal validity because the standard of judgment is utterly relative. The logical, though fiscally disastrous, way of dealing with competing claims is to yield to all of them.

Or to cut them all indiscriminately. This superficially appealing approach reminds one of the choice Solomon offered two women who both claimed the same child. Everybody gets a partial cut. In Solomon's case, this was a ruse to expose the impostor and reveal the true mother. In 1985, the enthusiasm for across-the-board spending reductions is a way of sidestepping judgment on program after program, particularly those that offer make-work for professionals of the New Class.

If the claims of the American family have no special status in terms of what is or is not cut from the federal budget, what import will they have in decisions about further revenue reductions? Whether the proposal be tuition tax relief or increasing the zero bracket amount in the federal tax code, entrenched expenditures usually take precedence over socially constructive "tax expenditures." It is, after all, just a matter of the budget's bottom line.

It is too soon to predict whether that will be the case with regard to what is likely to be the major legislative initiative of the 99th Congress. That will be,

APPENDIX E

of course, a tax bill, which some will describe as simplification and others will call reform. (Still others will see it as a main chance, but that is a different story.) It will be a perfect opportunity for the Administration to weld its economic policies to the grassroots policy objectives which create enduring coalitions and mold a new social order. It remains to be seen whether the chance will be seized or ignored.

From the Left, the tax battle of the 99th Congress will surely be conceptual, with little but verbal concern for budgetary impact. The goal of those who place the state before, and over, the family will remain the governmental acquisition of familial income and its redistribution according to their own preferences. That will result in an ideological tax policy, not a managerial one; a principled tax policy (for bad principles are principles still), not a pragmatic one; a tax policy designed to meet social objectives, even discredited ones, not a tax policy disguised to raise money efficiently and in such quantities as to reduce future deficits.

What will successfully oppose such a policy? A managerial, pragmatic tax policy, to raise money and reduce deficits? Hardly. Only an ideological, principled tax policy designed to shape society according to the values of the Right can hope to stand against the tax policy of the Left.

Proponents of family rights may think they do not have a dog in the tax fights of the 99th Congress. But they do, and they cannot afford to sit on the sidelines. This time around, however, they cannot assume that their policy objectives are entirely aligned with either side. Surely they are not coincident with the political redistribution of wealth and the crushing of economic initiative. That strikes at the heart of familial independence and has been, both in Europe and in the United States, the mortal enemy of the bourgeois family order.

But by the same token, pro-family principles demand something more than merely a more efficient and more simple tax code. For family concerns, that is neither here nor there. What, we should ask, is in this restructuring of federal taxes for the American family? Will it include a significant increase in the dependency exemption as Mr. Reagan has proposed? Will it index that exemption to safeguard the family against taxflation? Will it forever exclude the possibility of tuition tax relief? Will its flattened rates minimize or worsen governmental imposition upon household income? Will it tilt toward more institutional day care for children, rather than parental care at home, through excessive financial incentives for the former? Will it be enacted in tandem with the elimination of anti-family programs, or will the continuance of those programs be used to justify an unnecessarily high tax

THE HUMAN LIFE REVIEW

rate, to underwrite the cost of their ongoing offensive against the family?

Until those questions are answered, it remains unclear how the American family will be affected by an overhaul of the federal tax code. We should be wary of rushing into burning buildings, hasty marriages, and unspecified tax “reforms.” Of the three, the last can be most devastating to family life.

But caution need not be cowardice. There is good reason for optimism about what could be accomplished in a thoroughgoing tax rewrite, particularly if it is forced into the context of an American Family Budget. After all, the Pro-Family Movement has made its greatest progress precisely at those points where it has intruded its goals into economic contests. The first outstanding example, almost by happenstance, was the Economic Recovery Tax Act of 1981, which somewhat reduced the federal government’s share of the average family’s earnings. An even better example was the Administration’s re-formed population policy announced at the United Nations’ Conference on World Population in Mexico City last August. The peculiar dynamic of that policy was its blending of economic dicta and social vision, which became mutually reinforcing. It cannot adequately be described as either an economic statement or a social prescription. By being both, it becomes a manifesto for human liberation.

It also showed how familial interests in public policy can be advanced in tandem with other concerns without being subordinated to them. But this can happen only when those who are committed to reestablishing the bourgeois family order keep clearly in mind precisely what those interests are (and, implicitly, what those interests are not). A sound first step would be to assert the supremacy of social policy in shaping the American future through an American Family Budget.

To some, that will seem presumptuous. But others will learn the point of Tom Wolfe’s remarkable portrait of Bernard-Henri Levy: “The philosophy and the confidence that goes with it—these are everything. The age belongs to monomaniacs.” Whether monomaniacal or, as Scripture puts it, singlehearted, advocates of the family can, by escaping the budget warp, make fewer friends and more progress.

APPENDIX F

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Bernard Nathanson's High Tech Heresies

Brenda L. Becker

Until recently, the two armed camps in the abortion debate had, for me at least, one thing in common: Both had upon numerous occasions insulted my intelligence. The pro-abortion crowd, with their doubletalk about the "contents of the uterus," all seemed to suffer bouts of ethical epilepsy; I had yet to meet one who could define for me the exact moment or physiological change that turned "reproductive choice" into infanticide. (Their definitions of viability were even flimsier; most would have excluded toddlers and anesthetized surgical patients from the ranks of the living.) And the pro-lifers I'd encountered were grass-roots enthusiasts who appeared content to wallow in sentiment. As medical advances like fetal surgery and in-vitro fertilization brought us deeper into ludicrous paradoxes (like saving preemies young enough to be aborted, and fighting for the legal rights of zygotes), they went on handing out their blurry broadsheets and marching around clinics. Then came Bernard Nathanson, M.D.

I first learned about Nathanson in an unlikely place: *New York*, the glossy weekly for would-be Yuppies. Their profile article had obviously begun as a routine hatchet job on the Right-to-Life movement's most prized convert—a man who decided, after helping to found the National Abortion Rights Action League (NARAL) in the sixties, and supervising the biggest abortion mill in the country, that he had, in his own words, "presided over 60,000 deaths." Yet the article wound up as a near-tribute to the renegade obstetrician who has almost singlehandedly thrown the left into a defensive frenzy with his videotaped ultrasound scan of an actual abortion, *The Silent Scream*.

The man intrigued me. Even if he was a blatant media hound, as has been charged, there was some bizarre courage involved in ostracizing yourself so completely from all the best New York parties. I also wanted to see the film, if only because the feminist establishment has howled it down as the most dangerous piece of propaganda since *Triumph of the Will*.

I saw the film twice—once at a pro-life rally and once in a nest of pro-choicers. Then I sat and talked to the man who's being vilified for the rather simple act of showing what an abortion looks like. The experience convinced me of one thing: The wretched debate is entering a new phase that will utterly

THE HUMAN LIFE REVIEW

flummox the media with its complexity, which is to say they will largely ignore it. And it will make the old picket lines and shouting matches, the coat hangers versus the crucified baby dolls, look like child's play.

It is a raw night in late April, and I am sitting in a pew of St. John the Baptist Church in Yonkers, New York. *The Silent Scream* is on tonight's agenda of the parish pro-life committee, along with a live appearance by its narrator, Bernard Nathanson.

He's late. The crowd waiting patiently is about three-quarters female and middle-aged, with a smattering of Nice Young Couples in jeans and nylon windbreakers. The folk group regales us with an atrocious pro-life song of their own composing; still no Dr. Nathanson. Finally, we go ahead without him, after being informed that the Blessed Sacrament has been reposed in the chapel. Good thing, I guess; what follows is strong stuff.

Strong, and flawed. The clips I've seen of *Scream* showed a fuzzy bobbling form that could have been a fetus—or just about anything else. Here, on a large screen, the images gain startlingly in clarity and impact. And the narration nails the congregants to their pews.

Nathanson, dapper and owlish, delivers it with laser-cool intensity. "When I was a medical student in 1949," he intones, "we had no such science as fetology. We were taught that the unborn child was *something* in the uterus—but it was really an article of faith as to whether or not it was a human being. But the whole story has changed since the 1970s."

He goes on to list the window-to-the-womb technologies "so discerning that the tiny valves of the heart can be studied as they snap open and shut. Those technologies have convinced us that beyond question the unborn child is simply another member of the human community, indistinguishable in every way from any of us."

If this audience was not already convinced, it soon would be. "Now for the first time, we have the technology to see abortion from the victim's vantage point. Through ultrasound, we are going to watch a child being torn apart, dismembered, disarticulated, crushed, and destroyed by the unfeeling steel instruments of the abortionist."

Aside from the soft clacking of the projector, you could hear a holy card drop. He presses on with a clinical description of dilation and curettage, holding tenaculum and dilators aloft disdainfully for the camera. We proceed to watch an abortion, and it's a stomach-turner.

At first, the ultrasound image is hard to sort out. But as minutes elapse, the pulsing contours become easier to identify, and it's sort of elating. (Whispered cries of "There it is!" punctuate the dark.) "We can see the child moving

APPENDIX F

rather serenely in the uterus,” Nathanson says. Enter the suction tip, a stark white rod at bottom screen. “As it moves toward the child, the child will rear away from it and undergo much more violent, agitated movements.” Sure enough, the fetal image contracts like a poked sea creature, clambering up the far side of the womb. The little convulsion is eerily purposeful—and unquestionably a response to an outside stimulus.

The suction tip flashes across the grainy screen. Freeze frame: “Once again, we see the child’s mouth wide open in a silent scream. . . . It senses aggression in its sanctuary.” I squint hard: This so-called scream provoked the biggest outcry of charlatanism, and in this image as porous as coral, I admit I’m at a loss to discern it. This hyperbolic sticking point is maddeningly superfluous; what follows shakes us up far more than any alleged micro-scream.

“The heart has speeded up; the child is being pulled in a downward direction, and the body is now being torn systematically from the head.” Sickened groans; the instrument shadow yanks and tugs. Finally the free-floating head, a pathetic wandering golf ball on a gray sand trap, is extracted by forceps. “Now all we see remaining,” says the voice-over, “are the shards, the pieces of tissue, that document that there was once a living, defenseless, tiny human being here.”

As the lights go up, these parishioners seem ready to run out and give their life savings to the cause. Myself, I find there’s one picture I can’t get out of my mind; not the babies in bottles, not even the unnerving grappling on the ultrasound, but a brief shot of that woman lying in stirrups, her body jiggling as the suction machine chugs between her legs as insistently as a Roto-Rooter. It is an image of utterly pure and sanitized *violence*; nothing, not even the hacking of a saw through diseased bone, could seem so antithetical to the concept of healing, to the ancient dictate of *primum non nocere*. The scene looked like a Black Mass of medicine, savagely parodying the prostrate sacrifice of childbirth. It looked like—rape.

Nathanson’s arrival at St. John’s gets a standing ovation and much earnest fawning. He is impeccably clad in cream jacket and chocolate tie; he is also astoundingly articulate and a shameless showman. He tells us that abortion is not just a Catholic issue or he wouldn’t be here, because he is an atheist; later, he deftly fends off a daft little old lady who harangues him for neglecting to mention that “abortion is an attack on the life of almighty God.” After receiving their zillionth red-rose lapel pins, he and his lovely wife head home to their Chelsea townhouse.

The next time I see *Scream*, the scene has changed to the gentrified brownstone neighborhood of Park Slope, Brooklyn. The ladies of the Brooklyn Pro-

THE HUMAN LIFE REVIEW

Choice Network have gathered in the basement of the Ethical Culture Society (where else?) to view the loathed film and screen a Planned Parenthood rebuttal. Nathanson boasts correctly that he's moved the fight onto his turf; it's a bristling bunch.

These central-casting feminists are a predictable lot. The required facial expression is one of sardonic boredom, usually assumed while droning about how "exciting" something is. Little makeup to be seen, but many workboots and scrubby antique clothes.

We start out on an objective note. "The alleged science shown in this film is laughable; feel free to laugh," sneers our young moderator. As the film progresses, a tide of nervous, derisive giggling ripples through the room. The word "fetology" is a hoot, for reasons unclear. All the weak spots I noticed subliminally in the first showing—the somewhat sappy music, the soft-focus shots of sad post-abortion women who look like feminine-freshness commercial actresses, an absurd allegation of a link between the Mob and the abortion industry—are greeted with contemptuous snorts.

This derogatory soundtrack ceases, in fact, at only two points. As we watch the fetus squirm at the instrument's touch, a stout granola-fed baby in a Snuggli sets up a howl. It is hustled away, but its shrieks still filter through the narration, and there is much shuffling and throat-clearing. Later, the snickering starts again as Nathanson says, "The abortionist and the anesthesiologist have a secret language between them, which shields them from the grisly reality of what is going on." Then the snickers die: "They refer to the head of the child, which is now being sought, as 'number one.' And the anesthesiologist will inquire of the abortionist, 'Is number one out yet? Are we finished?'"

Next, we see Planned Parenthood's film, a bland collection of "experts" who offer unsubstantiated complaints about a number of technicalities. None tries to deny the stuff about the fetus being ripped apart. Our live rebuttal speaker is a local ob/gyn named Vicki Alexander. Dr. Vicki, who nobly assures us that she just *loves* to deliver babies, proceeds to tear that old film to bits. "Notice how he uses large terms to set himself up as an expert," she says. "And his voice goes *up* and *down*." Ah, yes, we nod; most deceptive. "And by the way, we don't use those forceps at a 12-week abortion. You don't have to 'crush the head.' The head is very malleable, and it just sorta slides right out."

Bernard Nathanson and I sit across a mahogany desk from each other in his unpretentiously posh office on the Upper East Side. The patients and the nurse have gone home for the day; the suave and outrageous pundit, suffering jetlag from a European tour with the video in tow, rubs watery eyes and puts

APPENDIX F

his feet up on his desk. Here is what looks like a very tired Jewish doctor inching past middle age.

He is initially cagey; the “megapress” is his Moby Dick. I warm him up a little with a story about the head sliding out.

“Yes, I’m told that NARAL and NOW are mounting a campaign to bring out all their women who’ve had abortions,” he chuckles, “which of course is morally and medically irrelevant. How can we present our victims? They’re all dead. Have you seen the rebuttal film? Six talking heads.”

Now he’s rolling, stabbing a pencil irritably at a prescription pad. “You’d think the rebuttal film would use the same technology I did—‘Nathanson’s totally wrong; here’s our film.’ Of course, all the movies made of it are repulsive. If they think they’re going to see the fetus slide down the suction tube smiling and waving as it goes into the bloody sponge, they’ll have a monumental surprise.”

I mention the clamor over Reagan’s comment about the unborn feeling excruciating pain during abortion, a charge whose veracity has bogged down in endless arguments about the development of the cerebral cortex at eight weeks, twelve weeks, whatever. Doesn’t it weaken your case, I ask, to imply an emotional response in an embryo?

Nathanson shoots a don’t-play-reporter-with-me look. “No. I only said, this is a set of primitive responses to pain. There is no intellectualization here. If the fetus somehow survived the ordeal, it wouldn’t sit down and write a book about it years later. But this is a living creature being stimulated. If you stroke a ten-week-old fetus around the lips, it will try to suck. If you poke it with a sharp object, it will try to get away.

“You know, my wife suggested that we show an abortion being performed on a dog—except that we’d have the animal-rights activists bombing the stage.” (In a curious parallel, Nat Hentoff—another pro-life heretic from that curia of liberalism, the *Village Voice*—has begged his cohorts on the left to “think of the fetus as a baby seal.”)

Quiet and querulous, Nathanson hardly looks the part of a pariah. But he is now a detested exile from much of the medical establishment. Was breaking ranks difficult?

“Well, you know, I broke ranks in 1969—much more radically than I have now, by the way. When I first helped organize NARAL, I was attacking things which were absolutely sacrosanct. People tried to take away my hospital privileges, called me before a board of professional conduct. But I felt these things needed saying—and in the state of the art at that time, I was absolutely right.” Elsewhere, Nathanson has described his discreet referrals to doctors in

THE HUMAN LIFE REVIEW

Puerto Rico for his affluent patients, his encounters with weeping septicemia victims in the E.R.; he told an AMA interviewer that one of these ashen survivors was his college girlfriend, to whom he lent \$500 for an abortion in Montreal.

“But as science developed,” he continues, “I was totally wrong. So, having been that vociferous on one side, I felt the least I could do as a public obligation was to be equally vociferous on the other. It wasn’t enough to say, ‘I was wrong,’ and crawl into a hole.”

Yes, I say, but you performed abortions; you were aware of what a fetus looked like at every stage of development.

“No I wasn’t. I had no idea what we were working with then.”

Oh, come on, I press. In a second-trimester saline or prostaglandin abortion, doesn’t one in effect deliver a stillborn fetus?

Nathanson looks haughty. “One is not there. Clearly you’re not familiar with what we used to do, and what they still do. The saline or whatever is injected, and then you leave. And you do not come back. The nurse delivered all those babies; she’d just wrap them up in a towel and send them to the pathology lab.

“Look,” he says impatiently, “I don’t deny that I knew what a fetus looked like. But under political inspiration, you invoke an enormous mechanism of denial—a machine 500 feet high and made of lead. It’s just a job, and you don’t want to know about it. But when you start working with these ultrasounds, your mechanism of denial starts to fissure and crack. First thing you know, you’re face to face with what you’re doing. That’s what happened to me between 1973 and 1977.”

Indeed, it was in 1974 that Nathanson sent his famous letter to the *New England Journal of Medicine*, the one about 60,000 deaths. At that point, however, he didn’t advocate recriminalizing abortion; he advanced only to the currently fashionable soft-left position of “grieving a loss.” Was there a certain incident that pushed him over the edge?

“If you mean, was there a single point at which my apostasy became an epiphany, no. I didn’t have any dazzling vision on the road to Damascus. I just became more and more uncomfortable with it.”

The TV-movie scriptwriter in me tries again: How does he live with the thought of those 60,000 lives? Nathanson seems to find the question a little silly. “I don’t walk around with an insufferable burden of guilt. The denial mechanism was much more effective in those days, because you couldn’t see this child in there, moving, breathing, doing all the things every other baby does.”

APPENDIX F

His hospital colleagues, he says, “are very, very upset with me. They deal with me largely the way the upper classes dealt with FDR—they considered him a traitor to his class. In the *New York* article, a former colleague of mine, who didn’t question my sincerity, said, ‘How can he be associating with *those people*?’ People are astonished that I could be involved with what the liberal press and the liberal medical establishment consider our reactionary elements—the Catholic Church, the fundamentalist Protestants, the Orthodox rabbis, and the rest.”

It is indeed true that Nathanson, a Joyce scholar and quintessential Manhattanite, has shown great willingness to rub elbows with busloads of grassrooters—a margin of whom are even loonier than that little old lady in Yonkers. With admiration, I mention his refusal to hold his nose in the air, and he chews me out for elitism.

“That’s America. It’s not here on Park and 79th Street, it’s out there in the middle. I’ve crisscrossed the country on this issue, and what we see here is so skewed by the press, it’s appalling—and I detest that attitude.

“I’ll admit that at first I found myself being a little—disdainful, shall we say? But you’ve got to look into their hearts. These are good people, they really are. And the pro-life movement’s been regrettably stereotyped.” He hands me the letterhead of the American Association of Pro-Life Obstetricians and Gynecologists; it is studded with lofty credentials.

Few of these thoughtful docs make the evening news, however. I try to explain my frustration at the movement’s crummy graphics and down-home spokesmen, who are arrayed (in New York, at least) against the best that Planned Parenthood can buy from Madison Avenue. Technology has thrown an ammo dump in the movement’s lap, yet their image is defined by Bible-Belters and clinic-bombers. Why, I ask, don’t they at least find a decent PR agency?

To my relief, he agrees. “Really, I’ve been saying this till I’m blue in the face. For Christ’s sake, quit being amateurs about it. Of course, they *are* pretty smart; the National Right-to-Life Committee is right down there in Washington with their lobbyists, and they’ve knocked off a lot of pro-abortion legislators. That’s what they’ve set their sights on. The last election was a virtual referendum on abortion, and it was a landslide victory. Maybe they’re more realistic than we are; maybe public relations is bullshit.”

We talk about politics. His desideratum, a constitutional amendment, will not happen, he says; the best we can hope for is a reversal of *Roe v. Wade*. “Then the matter will be returned to the states, and the people will decide what they want. Unfortunately, what we’ll probably end up with is about

APPENDIX F

forty-five states that legislate against abortion, and three or four states that will become abortion sanctuaries.”

Finally, we get back to the point where my fascination with this issue began—the medical laboratory, and the primal metaphysics of the test tube. “You know, you’ve asked how the abortion issue will be solved politically, but not how it will be solved technologically. In the next five years, we will have the technology to move the pregnancy from the uterus at twelve or fourteen weeks and put it into another uterus, intact, or into a life support system where it will mature. There will be no cause for killing then.”

Five years?

He shrugs, relishing the role of provocateur. “It’s being done in veterinary medicine now. This will of course diffuse the whole abortion issue. We’ll be able to speed up pregnancy; instead of nine months, how about three weeks? Visionary, yes—but so was ultrasound thirty-five years ago.

“Of course, that’s going to bring up a whole group of other questions. If we have fetal transplants and life support systems, whom does the baby belong to if it’s put on one? The state? The prospective adoptive parents? The woman we took it from? Nobody? It raises another interesting question—would we *use* this technology if it were available?”

It seems that the key message to be learned from Nathanson—or, perhaps more accurately, from the *furor* over Nathanson—is that personhood is closing in on the fetus from both ends of an unbroken continuum. And none of us, on either side of the issue, is quite ready for what that will mean.

First, let’s move human identity backwards from birth. It’s happening; a reasonable definition of “salvageability” has crept from 28 weeks’ gestation to 24 weeks’ just since that quaintly obsolescent pronouncement, *Roe v. Wade*. It will keep moving back, although not as fast as Nathanson says. Ponder some consequences:

- In-utero surgery is now being performed on fetuses with hydrocephaly and urinary-tract problems. These fetuses are second, discrete patients whose hospital bed is a uterus. On another floor of the same hospital, they could be aborted on demand; patients and doctors essentially declare them person or non-person on an ad-hoc basis, depending on how badly the birth is desired.

- According to a Centers for Disease Control official quoted in the *Philadelphia Inquirer*, some 400 to 500 late abortions a year produce the most dreaded complication of all—live birth. (The real number is probably much higher, since hospitals cover up these incidents in a frenzy of embarrassment and fear of litigation.) That “statistically insignificant fraction” of our million-plus abortions a year equals *more than one a day*. As a rule, the “live-born fetuses” (is it okay to call them babies now?) are left to

APPENDIX F

expire quietly; a few are placed on fancy life-support systems until they die in a few hours or days.

- But as our life-support systems get fancier, and we can save these usually brain-damaged mites even sooner, who pays for and takes custody of them? The mother, who entered the facility to destroy the fetus? The taxpayers? Private insurers? Right-to-Life groups? On the brink of viability, baby-saving is an avocation pricier than collecting vintage Jaguars and considerably less glamorous.

Now let's consider personhood at the very dawn of pregnancy. Our wizardry here is accelerating even faster than in the neonatal phase. In-vitro fertilization—IVF, in jargon—has brought one boon to the pro-lifers: It has focused our attention on that DNA-packed droplet as the tangible first appearance of a couple's long-sought baby. The achievement of fertilization, the sweating-out of implantation in the uterine wall—all render ludicrous the pro-legalizer's medieval fogginess about what's "in there." It may not yet be cute and anthropomorphic, but the desperate couples in the IVF clinics will tell you: That's our kid in there.

But IVF has brought its own tangled woes. To wit:

- To achieve a pregnancy, you need overkill—literally. As many concepts as possible must be harvested and implanted to improve the odds, sometimes even enough to freeze for later tries. One embryo is lucky to make it; the other siblings-to-be are lost. The implications make you wonky if you stick to the credo that life begins at conception; the argument for life starting at *implantation* looks better and better. Somehow, it strains even a pro-life moral framework to contemplate crippling this astonishing technology—which has ended heartbreak for hundreds and will do so for thousands—to prevent the "murder" of hours-old cell clusters.

- IVF has saddled us with another, more urgent dilemma: To perfect this technique, like any other, scientists need to tinker. On what? Not, right now, on living embryos; the Reagan Administration has nixed it, and IVF biggies are chafing and feeling like Galileo. The less radical among them have suggested an experimentation cutoff of fourteen days after conception—with the medical community, of course, monitoring its own adherence to its own chaste standards.

On paper, this looks like a reasonable compromise, until we recall just how elastic those standards tend to become. Fetuses, nothing; think of hare-brained Golden-Fleece-Award "studies" with mangled kittens and chimps festooned with electrodes, all to prove that pain hurts or smoking is bad for you. Without implying an overnight leap to a Mengele scenario, let's remember that scientific curiosity is a potent drug, and that history's lesson is that it winds up justifying too damn much.

Nathanson and I kick these exhausting topics, and others, around for a while longer. It is late; Nathanson roots around for a copy of one of his seldom-

THE HUMAN LIFE REVIEW

reviewed books to give me, and courteously shows me to the door and the limo-filled Park Avenue night. As I leave, I notice a quotation framed on the wall from his beloved Joyce:

“Welcome O Life! I go to encounter for the millionth time the reality of experience and to forge in the smithy of my soul the uncreated conscience of my race.”

These words have always struck me as both bombastic and irresistible; in this setting, they also seem peculiarly appropriate.

APPENDIX G

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Is a Tadpole a Frog?

Francis Canavan, S.J.

Is a tadpole a frog? One answer to this question is another question: Who cares? What difference does it make to us? It is not a bad answer, either, since we care no more for frogs than we do for tadpoles. Whether a tadpole is a frog may be an interesting question to some few people, but to most of us it is certainly not an important one.

It would be important, of course, to a primitive tribe that regarded the frog as a sacred animal. Frogs, to such a tribe, would be untouchable. Yet the tribe might come to feel that too many frogs were too much of a good thing. Murmurs might arise about a Frog Explosion. Something, clearly, would have to be done.

At this point the wise men of the tribe would confront the question whether a tadpole is a frog. Some of them would argue that a tadpole is not a frog. But, they would say, looks are all we have to go by: only that is a frog which looks like a frog. A tadpole, therefore, is not a sacred animal and may be killed at pleasure.

Others among them would point out that tadpoles, if they survive, always come to look like frogs and therefore must already have the nature of frogs. Looks are not all we have to go by. We can recognize the nature of the frog as having been present from the beginning in the tadpole. To kill a tadpole, therefore, is to kill a frog.

The anti-tadpole school would probably carry the day, but not because of the superior philosophical intelligence. They would win the argument on the highly pragmatic ground that the way to get rid of unwanted frogs without feeling guilty about it is to kill tadpoles before they look like frogs.

Besides, primitive peoples tend to go by appearances and to use separate words for ice, hail, snow, rain, mist, fog, and steam because they do not recognize these apparently distinct things as different states of the same substance, water. They often take the same attitude toward embryos, infants, children, women, and men. The idea of a common and universal human nature is too abstract and sophisticated for the primitive mind.

Modern Man (the eponymous hero of our age) is nothing if not sophisiti-

THE HUMAN LIFE REVIEW

cated and has risen above all that. He does not regard frogs as sacred animals. In fact, he does not believe that any animal is sacred, not even himself. From his positivistic and skeptical point of view, to argue about whether a tadpole is a frog or a fetus is a human being is beside the point.

As he sees it, we *feel* differently about the proper way to treat men, dogs, trees, and stones. But the differences are only in our feelings, not in any traits that our minds can recognize in the things themselves. To a truly modern mind, even human beings have only such worth and such rights as other human beings collectively choose to assign them. There is no natural or transcendent standard of judgment to which we can appeal to determine the worth of humanity. We may therefore make such distinctions as we choose to make among the born and the unborn, the deformed and the normal, the mentally healthy and the insane.

Such enlightened clarity of thought, however, is too strong a draught for most of the population to swallow, and so recourse to sophistry is necessary. We must talk much about rape and incest as justifications for abortion even though we know that they are the cause of very few pregnancies. We must go on endlessly about the impossibility of knowing when a fetus becomes a person, because abortion is not murder unless it kills a person. We can then quietly assume, without discussion, that a fetus, being a nonperson, may be aborted for any reason or for no reason other than the mother's will to be rid of it.

One could answer this assumption directly: we do not know that the fetus is *not* a person; therefore, to abort it is to be willing to kill it if it is a person. But even waiving that argument, we may still question the assumption that there is nothing wrong with abortion unless it is murder.

For the very least we can say is that the product of human conception is a living human being. It is a being because one does not abort nothing; something has to be in the womb to have an abortion. It is a living being because it is going through a rapid process of growth and development. This growth is not the random multiplication of cells that characterizes a tumor but a steady, progressive development into the shape and organic structure of humanity. The living thing in a woman's womb is endowed from the beginning with a uniquely human genetic program that directs its future development and constitutes it as a member of the human species. Even before it looks human it has all the biological determinants of humanity.

Whether or not it has achieved what we choose to call "personhood," there is no stage of its development at which it is an acorn striving to become an oak tree or a tadpole on the way to becoming a frog. Its development, from

APPENDIX G

conception on, is simply the process by which a human being grows—as all of us did—from the initial stage of its life into the stage at which it is capable of living outside the womb.

What do we think this living being in the womb is? That is the key question. If we start with the determination to find reasons that will justify killing it, we shall say that it is not human, or that it is not alive, or even that it is not a being—a mere “nothing” as one enthusiastic abortionist called it. Or, recognizing the weakness of all those assertions, we shall fall back on saying that it is not a person, or that no one can know if it is a person, and so we are justified in killing it when in our judgment killing is necessary, or useful, or desirable. But none of these pronouncements, however stridently made, will get us past the fact that, at bare minimum, the human embryo has human nature and is a living human being. We wade into deep and dangerous waters when we justify killing that.

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Index

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The Human Life Review Volume #11 1985 Index*

A

abolitionist movement in U.S., W/Sp, 17
abortion (see also: *Roe v. Wade*)
and alternatives, W/Sp, 38, 39, 50-52; S, 61-63, 65-66
and the American Medical Association, W/Sp, 46, 47
and anti-abortion movement in U.S., W/Sp, 17, 31, 192; S, 81-83, 90-91
and births (live) resulting from, F, 123
and Catholicism, W/Sp, 28-29, 31-32, 34-37, 39, 63-64, 66-83, 92-103, 116, 123, 127
and China, S, 7-34
and "choice" as an "ethic," W/Sp, 179-189
and civil rights, W/Sp, 78; S, 80-91; F, 56-63, 101-102
and destruction of human life, W/Sp, 45-46, 85
and economy (U.S.), S, 43-46
and euthanasia, W/Sp, 10, 102; S, 82; F, 79
and fatherhood, S, 111-112
and federal funding, W/Sp, 35; S, 81
and fetal experimentation, W/Sp, 9, 10
and frequency in the U.S., W/Sp, 87; S, 61
and genocide of poor, W/Sp, 55
and "hard case" arguments, W/Sp, 24, 185; S, 51, 52; F, 23, 40, 59
and historical attitudes, motives and origins, W/Sp, 125-171
and international family planning, S, 84-85, 88-89
and Judaism, W/Sp, 129
and the law/legislation, W/Sp, 21-22, 34-35, 51, 53-56, 93, 135; S, 81-84; F, 86-91, 92-94
and literary/fictional portrayals of, S, 67-79; F, 18-24, 25-36
and the mass media, W/Sp, 119-124
and pain in the unborn, W/Sp, 24; S, 81; F, 11, 37, 120
and politics, W/Sp, 26-40, 52-53, 66-83, 104-118, 122-123; S, 86
and pro-abortion movement in U.S., W/Sp, 37; S, 59-61
and pro-abortionists' false charges, W/Sp, 56-59
and psychological effects of, W/Sp, 48-49; S, 90-91, 108-110
and *The Silent Scream*, S, 58, 62, 89; F, 11, 37, 39, 52, 116-118, 119
and social attitudes/mores, W/Sp, 9-11, 32, 44
abortion clinics
violence toward, S, 46-47
Abortion in Literature, S, 67-79
Abortion: Justice versus the President, F, 94-96
Abortion Rules, The, F, 25-36
Abortionist As Hero, The, F, 13-24
abortionists
changing perceptions of by mass media, F, 13-15
described in New York *Times* article, F, 14-17

in John Irving's *The Cider House Rules*, F, 18-24, 25-36
profits from abortion, F, 14-15, 18, 22, 31; S, 49, 91
advertising
and freedom of expression, S, 98
Akron v. Akron Center for Reproductive Health, F, 87, 88, 89, 92-93
Alan Guttmacher Institute, F, 64-65, 67, 71-74
Alexander, Leo, F, 82
Almost Absolute Value in Human History, An, W/Sp, 125-178
American Civil Liberties Union (ACLU), F, 55-56, 58
and abortion, F, 60, 62, 63, 101-102
American Medical Association (AMA),
and arguments for strict abortion laws, W/Sp, 46
Animal Farm, W/Sp, 126
animal liberation movement, F, 41, 43-45
Anscombe, G. E. M., F, 42-43, 46
Aquinas, Thomas, F, 47-48, 49
attitudes toward abortifacients and contraceptives, W/Sp, 142-143, 147
Arendt, Hannah, W/Sp, 23
Aristotle, W/Sp, 128; S, 105
atheism
and U.S. politics, W/Sp, 19, 96
Atascadero State Hospital v. Scanlon, F, 87
Atwood, Margaret
and treatment of abortion in *Surfacing*, S, 72, 78
Augustine
attitudes toward fetal life, W/Sp, 136-138
Austin, Susan
Making Pictures, S, 58-66

B

baby (see: Bloomington baby, children, unborn child)
Bagehot, Walter, S, 93
Baird, Bill, S, 60-61, 66
Becker, Brenda L.,
Bernard Nathanson's High Tech Heresies, F, 116-125
Bernard Nathanson's High Tech Heresies, F, 116-125
Bernardin, Joseph Cardinal, W/Sp, 38, 61
Beseda, Curtis, S, 48-49, 50, 56-57
birth control, artificial (see: contraception)
Black, Justice Hugo, S, 100
Blackmun, Justice Harry, W/Sp, 120-121
Bloomington Baby (see also: infanticide), F, 10-11, 41, 42, 80; S, 82
Boston *Globe*
and coverage of abortion issue, W/Sp, 119-124
Boston College *Law Review*, F, 55, 101

Brennan, Justice William, S, 95
Brooks, Gwendolyn
and treatment of abortion in "The Mother,"
S, 74
Buckley, James L.,
Sound Doctrine Revisited, S, 80-91
Burke, Edmund, S, 93

C

Camus, Albert, F, 38
Canavan, Francis
The Cuomo Thesis, W/Sp, 84-91
Is a Tadpole a Frog?, F, 125-128
A Pearl in the Garbage, S, 92-102
Carlson, Allan C.
The Malthusian Budget Deficit, S, 35-47
Pregnant Teenagers and Moral Civil War,
F, 64-76
Carter, Jimmy, W/Sp, 106, 192
Carter, Stephen L.
Roe v. Wade Left Both Sides Open to
Science, F, 96-98
Catholicism
and abortion, W/Sp, 79-83, 92-103, 116,
123, 161-164
and democracy, W/Sp, 40
as a liberal scapegoat, W/Sp, 94-99
and papal pronouncements *in re* abortion,
W/Sp, 149-151, 156-161
and politicians, W/Sp, 26-40, 52-53, 84-91
and U.S. Constitution, W/Sp, 26-27, 69-71
Caution—"Think of Forever," A, S, 108-112
Chaffee, Zechariah Jr., S, 93
Challenge of Peace, The, W/Sp, 34, 59, 85
Cheever, John
and treatment of abortion in "The Enormous
Radio," S, 73-74
Chen Muhua, S, 10
Chesterton, G. K., W/Sp, 76, 105, 117; S, 50-
51, 53, 56
children (see also: unborn child)
and child abuse, W/Sp, 43, 55
U.S. infant mortality rate, W/Sp, 38
and "war against third child," S, 39-41
China
forced abortion and infanticide, S, 7-34
population program compared to Nazi's, S, 18
Choice Ethic, The, W/Sp, 179-189
Christian Science Monitor, W/Sp, 123
Christianity
and communism, W/Sp, 12-13
and historical attitudes toward abortion,
W/Sp, 130-153
and sexual revolution, F, 70-71
and socialism, W/Sp, 12-16
Churchill, Winston, W/Sp, 25
Cider House Rules, The, (see: Irving, John)
civil liberties
and abortion, W/Sp, 78; S, 80-91; F, 56-63,
101-102
and the death penalty, F, 55

and the First Amendment, F, 54, 92-102
and privacy, F, 57, 59
and racial discrimination, S, 80
Civil War (U.S.), W/Sp, 19
Collins, Ronald K. L.
Abortion: Justice versus the President, F, 94-96
communism
and attacks on Christianity, W/Sp, 12-13
and derivation from liberalism, W/Sp, 13
and forced abortion in China, S, 7-34
and nuclear war, W/Sp, 12
Conniff, James C. G.
Manchild Coming of Age, F, 105-107
Constitution, U.S.
and the Fifth Amendment, F, 55
and the First Amendment, W/Sp, 69; S, 92-
102; F, 54
and the Fourteenth Amendment, F, 90
and politics, W/Sp, 87; F, 100
and protection for the unborn, W/Sp, 114,
121; F, 56-63, 97, 99
and respect for life, F, 54-55, 58
contraception
and the Catholic Church, W/Sp, 30-31; F, 68
and historical attitudes toward, W/Sp, 142-
143, 145
and the law, W/Sp, 90
and teenage pregnancy, F, 64-65
as a social panacea, F, 69-70
Cooke, Terence Cardinal, W/Sp, 41, 64
Coolidge, Calvin, W/Sp, 25
Cuomo, Mario M., W/Sp, 56, 74
address to the Department of Theology at
University of Notre Dame, W/Sp, 26-40, 84-
91, 92-103, 104-118
Religious Belief and Public Morality,
W/Sp, 26-40
Cuomo Thesis, The, W/Sp, 84-91

D

Dachau, S, 18
death
and death penalty, F, 78, 101
as natural part of life, F, 103-104
"right to die" movement in the U.S., F, 77, 79
and the terminally ill, F, 77-84
Death is Not the Enemy, F, 103-104
Declaration of Independence
and religion, W/Sp, 18
Defoe, Daniel
and treatment of abortion in *Fortunes and*
Misfortunes of Moll Flanders, S, 68
Dempsey, James
A Caution—"Think of Forever," S,
108-112
Dickens, Charles, S, 68
Didion, Joan
and treatment of abortion in *Play It As It*
Lays, S, 71
divorce
and influence on population growth, S, 37

Dostoevsky, Fedor Mikhailovich, W/Sp, 13-14
and opinion of Marx and Lenin, W/Sp, 14
Douglas, Stephen, W/Sp, 114-116; S, 106-107
Douglas, Justice William O., W/Sp, 17, 191
Down's Syndrome (see: Trisomy 21)
Drabble, Margaret
and treatment of abortion in *The Middle Ground*, S, 74
Dred Scott v. Sanford, W/Sp, 110; S, 106-107
Dreiser, Theodore
and treatment of abortion in *An American Tragedy*, S, 69-70
drunk driving, W/Sp, 122

E

economics
and the family, S, 52; F, 108-115
and U.S. budget deficit, S, 35-47
education
and social revolution, F, 70
Ehrlich, Paul, S, 38
Eichmann, Adolf, W/Sp, 22-23
Ellis, Henry Havelock, F, 65-66
Erie R. Co. v. Tompkins, F, 87
ethics (see: morality)
eugenics
and China, S, 24-29
Eugenics Quarterly, S, 38
euthanasia
and abortion/infanticide, W/Sp, 10, 102; S, 82; F, 79
and demented patients, F, 78
and ethics, F, 83
and the elderly, F, 81; S, 82
and Euthanasia Society, F, 79
and senile patients, F, 78-79, 80, 82
and suicide, F, 80
and "Untermenschen," F, 82-84
and vegetative patients, F, 78

F

Falwell, Jerry, W/Sp, 18, 28, 97
family
and the elderly, F, 113
and pro-family movement, F, 109-115
and Reagan Administration, F, 108-112-
and taxes, F, 114-115
and U.S. budget deficit, S, 35-47
and "war against the third child," S, 39-41
Family in the Formulation of Public Policy, The, F, 108-115
Farrell, Eileen
Abortion in Literature, S, 67-79
fatherhood
and legal rights *in re* abortion, S, 111-112
feminism, W/Sp, 188
Ferraro, Geraldine, W/Sp, 105, 188, 195
fetal experimentation, S, 9, 10

Fielding, Ellen Wilson
The Real Thing, F, 7-12
Fitzgerald, F. Scott
and treatment of abortion in *The Beautiful and Damned*, S, 70, 71
Fletcher, Joseph, F, 79
Forced Abortions and Infanticide in Communist China, S, 7-34
Ford Foundation, F, 73
Franklin, Benjamin, W/Sp, 69
Freud, Sigmund, F, 66
Fried, Charles, F, 92, 93, 94
files *amicus curiae* brief on *Roe v. Wade*, F, 86-92, 92-94, 96-98, 98-100
Friedman, Milton, S, 54
Frost, Robert, W/Sp, 179

G

Garcia v. San Antonio Metropolitan Transit Authority, F, 88
Genovese, Kitty, S, 49
Ginsburg, Ruth Bader, F, 58-59
Glidder Co. v. Zdanok, F, 87
Gordon, Mary, S, 70
Greece (Ancient)
and social attitudes toward abortion, W/Sp, 127-136
Greene, Graham, F, 38
Gribbin, William J.
The Family in the Formulation of Public Policy, F, 108-115
Gustafson, James M. (with Richard L. Landau)
Death is Not the Enemy, F, 103-104

H

Hansbury, Lorraine
and treatment of abortion in *A Raisin in the Sun*, S, 75-76
Harris v. McRae, W/Sp, 72, 88
Hatch Amendment, W/Sp, 34-35
Hemingway, Ernest
and treatment of abortion in "Hills Like White Elephants," S, 69-70
Hentoff, Nat, W/Sp, 181
A Heretic in the ACLU, F, 101-102
Heretic in the ACLU, A, F, 101-102
Hippocratic Oath, W/Sp, 49-50, 100
Hitler, Adolf, W/Sp, 23, 109; F, 82
Holmes, Justice Oliver Wendell, S, 98-99
Homosexuality
and ethic of "choice," W/Sp, 187
legislated as a "right," W/Sp, 21-22
and social mores, W/Sp, 9
Hook, Edward, F, 79
Huiyang (China)
and episode of forced abortion, S, 18-21
Human Lives, Human Rights, W/Sp, 41-65
humanity (of unborn child) (see also: unborn child)
and Chinese government, S, 7-34

and concept of ensoulment, W/Sp, 144-145, 146, 151-153
and dependence on "wantedness," F, 12
and determination of beginning of human life, W/Sp, 125-127, 134, 164-171; F, 57, 117, 127-128
and mother's reaction to her child, F, 7-12
and sensitivity to life, W/Sp, 154-156
and value, F, 43-45, 95
Hyde, Hon. Henry J.
Keeping God in the Closet, W/Sp, 66-83

I

illegitimacy
and poverty, S, 51, 55
infant (see: children)
infanticide, F, 41
and abortion, W/Sp, 90, 130, 135, 142; S, 82; F, 79, 116
and China, S, 7-34
and euthanasia, F, 83
and female infanticide, S, 21-24
and Trisomy 21 (Down's Syndrome), F, 10
vs. adoption, S, 49
in-vitro fertilization, F, 124
Irving, John
speaks at National Abortion Rights Action League, F, 23
and treatment of abortionists in *The Cider House Rules*, F, 18-24, 25-36
as a writer of pro-abortion propaganda, F, 25-36
Is a Tadpole a Frog?, F, 126-128

J

Jackson, Jesse, W/Sp, 74
Jefferson, Thomas, W/Sp, 17, 19, 69, 87; F, 79
John Paul II, Pope, W/Sp, 37, 62
Johnson, Lyndon, W/Sp, 106
Johnson, Virginia, F, 66
Judeo-Christian ethic
as basis for U.S. society, W/Sp, 67, 68
and euthanasia, F, 84
and the family, F, 108-109
and *Harris v. McRae*, W/Sp, 72
and human sexuality, F, 75
Judicial Agent of Faction, F, 98-100

K

Kamisar, Yale
The Real Quinlan Issue, S, 103-107
Kant, Immanuel, S, 92
Keeping God in the Closet, W/Sp, 66-83
Kendall, Willmoore, S, 92
Kennedy, John F., W/Sp, 77, 106
King, Martin Luther, W/Sp, 83
Kinsley, Alfred, F, 66

Kluge, E. W., F, 66
Knee-Jerk Spasms on *Roe v. Wade*, F, 92-94
Kruschev, Nikita, W/Sp, 15

L

Lamm, Richard, F, 80
Landau, Richard L. (with James M. Gustafson)
Death is Not the Enemy, F, 103-104
Laski, Harold, S, 93, 94, 95
Law, His Excellency Bernard F.
A Story of Frustration, W/Sp, 119-124
Lenin, Vladimir Ilyich, W/Sp, 13, 15
Lewis, C. S., F, 47
libertarianism, S, 96
vs. Marxism, W/Sp, 21
Liley, Sir William, W/Sp, 46
Lincoln, Abraham, W/Sp, 69, 107; S, 63
and Lincoln-Douglas debates, S, 106-107
and religious opposition to slavery, W/Sp, 18, 19, 114-117
Lincoln Didn't Defer to Court on Moral Issue, S, 105-107
literature
and treatment of abortion, S, 67-79
Lochner v. New York, F, 90, 91, 93
Locke, John, S, 92, 93, 94
Luce, Hon. Clare Boothe
"Politics into Religion and Vice Versa,"
W/Sp, 190-196

M

Making Pictures, S, 58-66
Malthus, Thomas R.
and *Essay on Population*, S, 36
and influence on U.S. economics, S, 37-46, 85
Malthusian Budget Deficit, The, S, 35-47
Manchild Coming of Age, F, 105-107
Marshall, Justice Thurgood, W/Sp, 113
Marx, Karl, W/Sp, 14, 15; S, 36
Marxism
vs. libertarianism, W/Sp, 21
Masters, William, F, 66
Mather, Cotton, W/Sp, 18
McDowell, Gary L.
Lincoln Didn't Defer to Court on Moral Issue, S, 105-107
McNamara, Robert, S, 84
Meese, Edwin III, F, 92
Meiklejohn, Alexander, S, 93, 94
Mencken, H. L., W/Sp, 190
Mill, John Stuart, S, 36, 93, 96
Milton, John, S, 92, 93-94, 100
Mondale, Walter, W/Sp, 105, 106
moral values
and abortion, W/Sp, 9-11, 32, 33, 84-91; F, 61, 62, 63, 94-96
and "ethic of choice," W/Sp, 179-189; S, 11, 67, 109; F, 56, 69
and euthanasia, F, 77-84; S, 104

and historical changes, W/Sp, 125-171
and legislation of, W/Sp, 21-22
and moral philosophy, F, 41-45, 46-47, 50
and "morality through consensus," W/Sp,
89, 100, 110, 116
and politics, W/Sp, 20, 26-40, 85, 109
and the press, W/Sp, 119-124, 194; F, 13-
17, 92
and privacy, F, 57, 66; S, 104
and religion, W/Sp, 20, 61-65, 85-86, 92-103
and sexual revolution, F, 65-66
Mosher, Steven W.
The Abortion Rules, F, 25-36
**Forced Abortions and Infanticide in Com-
munist China**, S, 7-34
Mother Teresa, F, 84; S, 62
motherhood
and economics of, S, 40-41
and humanity of unborn child, F, 7; S, 109
and pro-abortion logic, F, 7-12; S, 111-112
Muggeridge, Malcolm
**Socialism is Absolutely Opposed to Chris-
tianity** (interview with Alexander Solzhenit-
syn), W/Sp, 12-16
What the Abortion Argument is About,
W/Sp, 9-11

N

Nakell, Barry, F, 101-102
The Right to Life, F, 54-63
natalism
as solution to economic crises, S, 42-43
Nathanson, Bernard, W/Sp, 45, 122; S, 58, 89;
F, 10, 116-125
National Abortion Rights Action League
(NARAL), F, 23, 116, 120
and "Silent No More" campaign, F, 37, 120
National Conference of Catholic Bishops, W/Sp,
74
and church/state debate, W/Sp, 78
Naughton, Bill
and treatment of abortion in *Alfie*, S, 72-73
Neuhaus, Richard John, W/Sp, 19, 23, 68, 81, 193
New England Journal of Medicine, F, 82
and the "right to die," F, 82
New Law, New Order, S, 48-57
New Untermenschen, The, F, 77-85
New York Times
and anti-Catholic bias, W/Sp, 97-99
and articles on abortionists, F, 13-17
Nuremberg Tribunals, S, 20
Noonan, John T., S, 67
An Almost Absolute Value in History,
W/Sp, 125-178
Knee-Jerk Spasms on Roe v. Wade, F, 92-94
North Carolina Civil Liberties Union, F, 54, 63,
101-102
Notre Dame, University of
speech delivered by Mario Cuomo (Sept. 13,
1984), W/Sp, 26-40, 84-91, 92-103,
104-118

Novak, Michael, W/Sp, 31, 107
nursing
and reaction to abortion, W/Sp, 9; F, 16-17

O

Oates, Joyce Carol
and treatment of abortion in "Foetal Song,"
S, 75
O'Connor, Cardinal John J., W/Sp, 74, 84, 97, 121
Human Lives, Human Rights, W/Sp, 41-65
O'Connor, Sandra Day, F, 89, 97
O'Hara, Frank, S, 70
O'Neill, Eugene
and treatment of abortion in "Abortion: A
Play in One Act" and in "Strange Interlude,"
S, 69-70, 71
Open Letter to Governor Cuomo, An, W/Sp,
92-103
Orwell, George
and treatment of abortion in *Keep the Aspi-
dstra Flying*, S, 75

P

Paul VI, Pope, W/Sp, 62
peace/disarmament movement in the U.S.,
W/Sp, 17, 34, 59, 73
Pearl in the Garbage, A, S, 92-102
Pearl River Delta (China), S, 10, 21
People for the American Way, W/Sp, 18, 193
Pfeffer, Leo, W/Sp, 17, 192
Piccione, Joseph, F, 83
Planned Parenthood, F, 64, 67, 119, 122
and emotional appeals for abortion, S, 60-64
and evolution of abortion policy, S, 50
and exportation of abortion, S, 89
Plato, W/Sp, 128; F, 39, 84
Pleasure, Pain and Abortion, F, 37-53
politics
and abortion, W/Sp, 71, 94
and atheism, W/Sp, 19
and pluralism, W/Sp, 75-76
and politicians' religious responsibilities,
W/Sp, 26-40, 52-53, 92-103
and public vs. private domain, W/Sp, 19-22,
29, 52, 53, 54, 85, 108-109
and religious basis in U.S., W/Sp, 17-25,
191-196
and separation of church and state, W/Sp,
17, 19, 20, 26-40, 59, 66-83, 86, 103, 123-
124, 191-196; F, 69
polygamy, W/Sp, 20
population control (see also: zero population growth)
and abortion, S, 12-17, 40
and economics, S, 30-32, 37-46, 87-88
and divorce, S, 37
and the environment, S, 87
and female infanticide in China, S, 22-24
and U.N. Fund for Population Activities
(UNFPA), S, 14, 85

and U.N. Second Decennial Conference on
Population, S, 84-87

pornography
and freedom of expression, S, 96-102
and legislation, W/Sp, 21-22
and social consciousness, W/Sp, 43; S, 96-98

pregnancy
and "choice," W/Sp, 180-181, 183; F, 97-98
as a "disease," F, 74, 96
as a hardship, F, 40; S, 60-61, 65
and motherhood, F, 7-12
and teenagers in the U.S., F, 64-75

Pregnant Teenagers and Moral Civil War, F,
64-76

pro-family movement in the U.S., F, 101-115

prohibition movement in the U.S., W/Sp, 17, 35

Q

quality of life
and concept of *untermenschen*, F, 82-83

Quinlan, Karen Ann, S, 103-104
and euthanasia, F, 78
and right to die, S, 103-104

R

rape
compared to suction abortion, F, 118
which results in pregnancy, W/Sp, 57, 146, 185

Ratner, Herbert, S, 61

Reagan Administration
and abortion funding, S, 11
and *amicus curiae* brief filed by U.S.
Department of Justice on *Roe v. Wade*, F,
86-92, 92-94, 94-96, 96-98, 98-100
and pro-family movement, F, 109-112
and U.S. economy, S, 55

Reagan, Ronald, W/Sp, 106, 107; S, 83, 105; F,
11, 15, 92, 94

Real Quinlan Issue, The, S, 103-104

Real Thing, The, F, 7-12

religion
and Declaration of Independence, W/Sp, 18
and origins of U.S. society, W/Sp, 17
and politics, W/Sp, 17-25; 26-40, 71-72, 92-
103, 122-123, 191-196
and polygamy, W/Sp, 20
and the press, W/Sp, 24-25, 97-99
and public v. private domain, W/Sp, 19-22,
31, 54, 85
and religious freedom in U.S., W/Sp, 17, 27
and reverence for life, F, 103-104
and separation of church and state, W/Sp,
17, 19, 20, 26-40, 59, 66-83, 86, 103, 123-
124, 191-196; F, 69
and slavery, W/Sp, 18, 33

Religion in Politics, W/Sp, 17-25

Religious Belief and Public Morality, W/Sp,
26-40

Right to Life, The, F, 54-63

Ritter, Father Bruce, W/Sp, 43

Roach, Archbishop John R., W/Sp, 74

Roe v. Wade (see also: abortion), W/Sp, 37, 78;
S, 105
as act of "raw judicial power," W/Sp, 101;
F, 99
and ACLU principles, F, 56-63, 101-102
and *amicus curiae* brief filed by U.S.
Department of Justice, F, 86-92, 92-94, 94-
96, 96-98, 98-100
and biological beginning of human life, F, 58,
123; S, 81
compared to *Dred Scott v. Sanford*, W/Sp,
110-113; S, 106
and federal funding of abortion, W/Sp, 35-36
and politicians' responsibilities, W/Sp, 88
and public values in the U.S., W/Sp, 81-83;
S, 105-107
and reversal, W/Sp, 24; F, 60, 86-92, 92-94,
94-96, 96-98, 98-100; S, 59, 81
and U.S. economy, S, 43, 56

***Roe v. Wade* Left Both Sides Open to
Science**, F, 96-98

Rome (Ancient)
and decline of empire, W/Sp, 129
and societal attitudes toward abortion,
W/Sp, 127-136

Rubin, Isadore, F, 67-68

S

school prayer, W/Sp, 17

Schroeder, Hon. Patricia, F, 7

Scott, Paul
and treatment of abortion in *The Raj
Quartet*, S, 76-78

secular humanism, W/Sp, 18, 23

senility
and euthanasia, F, 78-79

separation of church and state (see: religion, politics)

Sexton, Anne
and treatment of abortion in "The Abortion,"
S, 74

Silent Scream, The, S, 58, 62, 89; F, 11, 37, 39,
52, 116-118, 119

Silverman, Anna and Arnold, S, 38

Simon, Julian, S, 30

Simopoulos v. Virginia, F, 89

Singer, Peter, F, 41, 42-43

slavery
and Lincoln, W/Sp, 18, 19, 67, 110-113; S,
105-107
and religious debate, W/Sp, 18, 19, 86, 111

Smith, Adam, S, 35

Smith, Hon. Chris, F, 7

Smith, N. B., F, 55, 101

Sobran, Joseph, W/Sp, 187

The Abortionist As Hero, F, 13-24

Judicial Agent of Faction, F, 98-100

New Law, New Order, S, 48-57

An Open Letter to Governor Cuomo,
W/Sp, 92-103

Religion in Politics, W/Sp, 17-25
social consciousness
and abortion, W/Sp, 44
and the homeless, W/Sp, 44
in the U.S., W/Sp, 71-72
Social Security
found unconstitutional by U.S. Supreme Court, S, 55
threatened by anti-family campaign, S, 41
socialism
vs. Christianity, W/Sp, 12-16
Socialism is Absolutely Opposed to Christianity, W/Sp, 12-16
Socrates, F, 49
Solzhenitsyn, Alexander
Socialism is Absolutely Opposed to Christianity (interview with Malcolm Muggeridge), W/Sp, 12-16
Sound Doctrine Revisited, S, 80-91
Spanish Inquisition, S, 53
Spinoza, Benedict de, S, 92, 93, 94
Stalin, Josef, W/Sp, 15, 16, 23
Stanford University, S, 11
Stanton, Joseph R.
The New Untermenschen, F, 77-85
Story of Frustration, A, W/Sp, 119-124
Stowe, Harriet Beecher, S, 63

T

Tagg, John
Understanding Mario Cuomo, W/Sp, 104-118
Taney, Chief Justice Roger, S, 106
"personally opposed" to slavery, W/Sp, 111-112
teenagers
and pregnancy rate in U.S., F, 64-75
and sexual revolution, F, 70-71, 72-73
Tocqueville, Alexis de, W/Sp, 17, 191-192
Trisomy 21, S, 74; F, 10, 104-107
Trotsky, Leon, W/Sp, 13
Trudeau, Gary, F, 37

U

unborn child (see also: humanity)
and civil rights, F, 59
and disposal after abortion, W/Sp, 47
and early signs of life, W/Sp, 45
and experimentation, W/Sp, 9, 10
and historical attitudes toward, W/Sp, 129, 130, 164-171
and mother's reactions to, F, 7-12; S, 58
and pain in the unborn, W/Sp, 24; S, 81; F, 11, 37, 120
as a patient, S, 123-124
and results of abortion, W/Sp, 92; F, 117-118, 120

and "The Silent Scream," S, 58, 62, 89; F, 11, 37, 39, 52, 116-118, 119
and U.S. Constitution, W/Sp, 114, 121; F, 56-63, 97, 99
Understanding Mario Cuomo, W/Sp, 104-118
United Nations
and Second Decennial Conference on Population, S, 84, 87, 88
and UN Declaration of Rights of the Child, W/Sp, 10
and UN Fund for Population Activities (UNFPA), S, 14, 85
untermenschen
and euthanasia, F, 82-84
Updike, John
and treatment of abortion in *Couples*, S, 70-71
USA Today, S, 48
U.S. Department of Justice
and *amicus curiae* brief on *Roe v. Wade*, F, 86-92, 92-94, 94-96, 96-98, 98-100
USSR
and the Gulag, W/Sp, 12
and nuclear war, W/Sp, 12
and violence inherent in communism, W/Sp, 12

W

Warren, Chief Justice Earl, S, 101
Washington Post, S, 17, 49
Wealth of Nations, S, 35
western civilization
and Christianity, W/Sp, 14-15
and moral revolution, W/Sp, 90-91
and socialism, W/Sp, 14-16
What the Abortion Argument is About, W/Sp, 9-11
White, Justice Byron, F, 99
Wiesel, Elie, W/Sp, 82
Will, George, W/Sp, 21; S, 182
Wolfe, Tom, F, 115
women
and female infanticide, S, 21-24
and population control, S, 37
Women Exploited by Abortion (WEBA), S, 90-91
Wortman, Tunis, S, 92

X, Y, Z

Young, R. V., S, 67
Pleasure, Pain and Abortion, F, 37-53
Zepezauer, Frank
The Choice Ethic, W/Sp, 179-189
zero population growth (see also: population control)
and abortion in China, S, 12-17
and anti-family attitudes, S, 39
and contribution to U.S. budget deficit, S, 41-43