the HUMAN LIFE REVIEW

FALL 1986

Featured in this issue:

Also in this issue:

Paul Appelbaum & Joel Klein • Judge Joseph R. Nolan • Paul C. Vitz

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. . . FROM THE PUBLISHER

With this our fourth and final issue of 1986 we complete twelve full years of publishing. A dozen years (Whew!) of trying to bring you the best fresh material and reprints available about our mutual concern: the life and well-being of the unborn. We are proud to begin this issue with what we consider a very important statement by Senator Robert Dole, a frequently-mentioned presidential contender, going on record in the magazine of record.

In our last issue those of you with discerning eyes might have noticed an error we made on the contents page. Even though it *was* our *Summer* issue and the cover was correct, a gremlin in the computer managed to change the contents page to read "*Spring* 1986." The gremlin also managed to sneak it past our expert proofreaders. Pesky little devil.

Our first Appendix (A), "Therefore Choose Death" by Paul S. Appelbaum and Joel Klein, first appeared in the April 1986 issue of *Commentary*, published by the American Jewish Committee, 165 East 65th St., New York, N.Y. 10022 ($33 a year), and is reprinted here with permission. Appendix C, "Religion and Traditional Values in Public School Textbooks" by Paul Vitz, is reprinted with the permission of *The Public Interest*, which first published it in their Summer 1986 issue. (Subscriptions are $18 per year available from *The Public Interest*, 10 East 53rd St., New York, N.Y. 10022.) I also hope you notice that in Judge Joseph Nolan's dissent in the Brophy Case (Appendix B), his sole citation was Dr. Anne Bannon's article, "Rx: Death by Dehydration," which appeared in our *Summer* issue.

You will find full information about previous issues, bound volumes, microfilm copies, etc., on the inside back cover. Finally, since you won't be hearing from us until 1987, let me take this opportunity to wish you an early but sincere Merry Christmas.

EDWARD A. CAPANO
Publisher

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INTRODUCTION

AMERICANS HAVE A LONG HISTORY of mixing morality and politics. Perhaps it is because the Founding Fathers, after confidently declaring that we get our rights direct from the Creator, bequeathed us an ingenious political Constitution based on the assumption that a strictly-limited national government would leave to "the people" power over those matters most intimate to them, such as their religion (about which Congress was to "make no law") and their families. In short, the system provided no means to *resolve* moral issues: the good sense of the people must somehow prevail.

In the main it has prevailed, so far. But it has done so *through* the political system. Slavery is the great example, even though it required that ultimate "extension" of politics, war. Nobody expects a civil war over abortion. Yet there must be a political resolution of what has become the most intractable moral issue *since* slavery.

Of course the Fathers never imagined that abortion *would* become such an issue, or that the courts would come to dominate our politics to the extent that they would declare abortion a "fundamental right" (conferred by the Creator?) by judicial *fiat*, "the people" being given nothing whatever to say about it.

In retrospect, it is hard to imagine that the Supreme Court's pro-abortion majority actually believed that *Roe* v. *Wade* would be the "final solution" to the abortion question. *Roe* was so extreme that it amazed even its supporters. And so unexpected that it caught opponents unprepared—momentarily. But in short order a determined band of political leaders would, in the time-honored American Way, turn this great moral issue into a political one.

One of those early leaders was Sen. Robert Dole of Kansas (now the Republican Majority Leader in the Senate). In our lead article, he reminds us of a great many things even ardent anti-abortionists have forgotten, for instance "how long and hard this fight has been." Dole knows. He was in it

from the start, and, as you will see, has never wavered in his determination to reverse *Roe* and end legalized abortion on demand. He spells out his own program for accomplishing this end. To be sure, it is no panacea—Dole is a seasoned and realistic political man—but we think our readers will find what he has to say here most interesting.

Our second article is by another man of politics, Mr. Lewis Lehrman, who is perhaps best known for having lost—by a whisker—his nationally-publicized battle with Mario Cuomo for the governorship of New York four years ago. Mr. Lehrman has obviously been doing a lot of thinking since then, and has concluded that abortion is an even more historically-crucial issue than most of us thought. He makes his case with impressive eloquence. Not surprisingly, he too sees slavery, and especially President Lincoln's role in its demise, as the obvious political analogy. Indeed, he echoes Lincoln's stand against *Dred Scott*, holding that "*Roe* v. *Wade* may for now be a legal decision of the Supreme Court, but it is unlawful in the full sense of the word" because it is "without any identifiable source of authority in constitutional law"—it is "nothing but 'raw judicial power,'" as the dissenting Justice White said at the time.

Mr. Lehrman may have had Mr. Cuomo in mind when he wrote that "It is no use" invoking "the pluralism of opinions, or the absence of consensus, as if, in the struggle over [abortion] all disagreements were merely part of a friendly historical debate; as if no lives were at stake and there was no ultimate judge to whom to make an appeal." As we say, strong stuff, a prose battle hymn for what Lehrman believes will be the decisive moral struggle that will determine the future of our Republic.

Obviously the nation's future belongs to its children, provided they are *there* to inherit it (otherwise that future will belong to somebody *else's* children). As it happens, this year's Eighth Grade graduates are the first to enter high school minus their erstwhile "fellow fetuses"—some 745,000 of them—who were killed in 1973, the first year of legalized abortion. Mr. John Wauck, our latest editorial recruit, describes a little-noticed newspaper ad which attempted to draw attention to what losing so many should-have-been classmates will *mean* for the future of the students, and the nation. We think you will find it fascinating if disturbing reading. And Wauck asks the right question: Why haven't opponents of abortion made *more* of the predictably disastrous consequences of slaughtering our future?

The obvious reason is that we don't see the missing: they aren't here anymore, and they weren't actually visible while living out their brief, secret lives.

But what if we could see them all, or even just that never-born Class of '73—all 745,000 little ghosts together in one place, a place we know and *can* see? Faith Abbott, our managing editor, hadn't seen the newspaper ad, but of course she read Wauck's article, just when New York City was staging its historic Statue of Liberty celebration, a juxtaposition that set off some fireworks of fantasy in her mind. So she wrote down her visions. The result might indeed enable you to visualize the faceless 18,000,000 (or "so") missing babies—"all those innocent zeroes," she calls them—who couldn't make the party on the Great Lawn, or any other party.

Words can make us "see" reality. But they can also be used to hide it. God knows those who are in truth "pro-abortion" have worked hard (and all too successfully) to obscure reality: they insist on "pro-choice," call pre-born babies "fetuses" at best, blobs or "tissue" whenever possible, their remains "products of conception," and so on—as with the Emperor's Clothes, we're not supposed to notice. Well, our friend James Hitchcock notices everything. Here, he explains how the manipulation of abortion-related words ("In every war of ideas control of terminology is at least half the battle") has become a serious problem where most people wouldn't expect it—within the Roman Catholic church. The key word (as Mr. Cuomo would agree) is "pluralism," which is being used to cover the proverbial multitude of sins.

Hitchcock writes with his usual surgical precision, marshalling the facts to let them speak for themselves. In our judgment he is a master at constructing a compelling case. No doubt many of our readers already know "the facts" involved, but when Hitchcock stitches them all together you can see the reality the facts conceal.

Then Mary Meehan takes over, to expand the controversy not only further into the murky areas of Catholic "dissent," but also into the theological realm of other denominations. This may be friend Mary's *magnum opus*. She has delved deep into facts and opinions known to very few others; we expect our readers will learn a lot they *didn't* know, as we did, not least from the copious notes with which she backs up her arguments. Her conclusion is that, *in re* abortion, the "pro-choice" theologians are behaving so scandalously as to give "a bad name to theologians in general," not to mention God Himself (seriously: one "theologian" claims "God is truly 'pro-choice'").

And now for our customary change of pace, from our most faithful contributor Joseph Sobran, who never fails to surprise us with his ability to view the familiar from yet another angle. In fact, what you get here is only a small part of a much longer essay (a small book, really) published in the 30th Anniversary Issue of *National Review*: we haven't the space to publish the

whole thing—we trust it will be expanded into a book before long—but as you will see this "Sex, etc." portion stands firmly on its own. We won't attempt to tell you more about it, because we can't imagine any Sobran fan (meaning virtually all our readers) who won't read every word of it. And enjoy it.

Our final article is also a reprint: it was first published in a law review we'd probably never have seen but for our old friend Jim Csank (out in Cleveland), who spied it and sent it along with a "Here's one for you" note. Csank was quite right: Prof. Alan Stone's unusual article—in fact it is the text of a lecture—belongs in our continuing record of the abortion issue. Stone's thesis is, simply, that the law has intruded deeply into medicine, and *vice versa*, and that "the cure can be worse than the disease"—judges and doctors alike are headed for "an ethical crisis" that predictably will produce a "loss of confidence in both professions." Why? Because of *Roe* v. *Wade*, which put the courts squarely into determining what "medical judgment" ought to be and, in turn, caused doctors to look to the courts for *medical*, not legal, decisions.

There is no reason to believe that Prof. Stone is any kind of "right-to-lifer"—he is merely stating the obvious: *Roe*'s bad law opened a Pandora's Box of horrors for all concerned. Legalizing the killing of pre-born "non persons" judged "unwanted" has, as predicted, put the lives of *all* unwanted persons in jeopardy. But who is to authorize killing them all? Freed by *Roe* from the Hippocratic ethic, doctors demand that the courts must do so. And judges increasingly agree, as their multiplying "mercy killing" decisions attest. The question is where does it *stop*, now that the "unalienable right to life" has been abrogated? The answer is it *won't* stop, unless and until the Judeo-Christian ethic of the sanctity of all human life is rewritten into the law.

* * * * *

We have as usual added appendices which we hope will be of special interest to our readers. As a matter of fact, *Appendix A* can be read as a companion to Prof. Stone's article—we don't know whether its authors had read Stone's lecture, but they are obviously concerned with the same problems, albeit from a somewhat different perspective. More, while Stone contents himself with predicting trouble ahead, Messers. Appelbaum and Klein argue flat out that the medical profession, at least, had better "reaffirm" its old ethic to *treat*, not get rid of, patients, which will require a return to "an undivided commitment to healing the sick and preserving life"—oh yes, they too see that the trouble began with *Roe*—with the "right to privacy" used by the Court to support the "fundamental" right to abortion. Again, there is no reason to

believe that the authors are anti-abortionists; they only examine the logic of *Roe*, which has indeed put us on the slippery slope leading to a once-unthinkable "quality of life" non-ethic.

Appendix C is an unusual (certainly for us) article, being the summary of a study commissioned by the National Institute of Education and carried out by Prof. Paul Vitz of New York University. It was titled "Religion and Traditional Values in Public School Textbooks: an Empirical Study," and it gained nationwide publicity when released. It also stirred up considerable wrath among the liberal "Educationists"—those professional educational bureaucrats who want no prying into what they are ordering taught in the classrooms. Even the Congress got involved, e.g., pro-Educationists like Sen. Lowell Weicker (best known to our readers as a leading pro-abortionist) ferociously attacked the Vitz study.

Our interest in it is this: legalized abortion was unthinkable in "the old days" because the great majority of Americans *thought* it was unthinkable. But *then*, the schools taught values far different from those taught today—a change that, without doubt, contributed mightily to the "abortion mentality" that nowadays plagues us. It's not that simple of course, but think about it as you read what Prof. Vitz found—and didn't find—in the texts nowadays inflicted on our children.

What *did* they teach them in "the old days"? Well, we dug out an old volume from the famous *McGuffey's Readers* series, once a standard text in many schools. No, the old readers didn't foist religion on the kids—but they did assume a set of shared values, and thus proselytized unselfconsciously for the "good"—it still sounds pretty good to us, and we thought you might enjoy seeing a sample, so we've reproduced one little item in *Appendix D*. We trust it is a good note on which to close this issue.

J.P. McFADDEN
Editor

Taking the Initiative for Life

Robert J. Dole

IT IS AN ANCIENT TRUISM that where leaders have no vision, the people perish. Thomas Jefferson had both vision and leadership when he wrote, more than 200 years ago, "The care of human life and not its destruction . . . is the first and only object of good government."

In 1973, our nation's highest court abandoned Jefferson's vision, and as a result of its decision in *Roe* v. *Wade*, at least seventeen million children have not been born in the United States.

But something else *was* born: a spontaneous outpouring of the American conscience, as millions of people rallied to the defense of life itself.

They have been in the forefront of this historic movement: acting upon their right, as American citizens, to work to change any law they believe contradicts the God-given rights on which our nation was founded. They have lifted the banner of life and with it, the consciousness of all who love liberty.

For thirteen years, they have sounded no uncertain trumpet; they have refused to compromise principles which are beyond compromise. And throughout that thirteen year period, I, too, have been privileged to be a part of the fight against abortion on demand.

Many people do not realize how long and hard this fight has been. In fact, it began in the Congress almost immediately after the Supreme Court's *Roe* v. *Wade* decision. At first, federal abortion funding was the battleground. To cite just some of the more important votes, I voted to bar use of Social Security funds for abortion way back in 1975. In 1977, I voted against a proposed amendment that would have allowed federally-funded abortions, and (later that year) voted *for* an amendment, sponsored by Sen. Jesse Helms, to prohibit the use of taxpayers' money to fund abortions except when the mother's life would be in danger.

In 1981, I again joined Sen. Helms to table an amendment that

Robert J. Dole, the senior Senator from Kansas, is the Majority Leader of the United States Senate.

would have deleted the Hyde Amendment from a funding bill. The next year I voted against another attempt to "table" a Helms amendment to restrict federal funding. In 1983, I voted for Sen. Orrin Hatch's constitutional amendment to overturn *Roe* v. *Wade*. The next year we had to defeat yet another amendment that would have allowed abortion in some cases. Last year, the fight was over abortion funding in the District of Columbia: I voted for Sen. Gordon Humphrey's amendment to deny such funds.

Some of my colleagues have been dismayed by the seemingly-endless "showdown" voting on abortion, and I can understand that feeling. But it must also be remembered that the Congress did not create the issue: it stemmed from that day in January, 1973, when a majority of Supreme Court Justices decided to enshrine their private views on abortion in that most public of documents, the United States Constitution, a stunning example of what can truly be called "judicial legislation."

With *Roe*, the Court invalidated the abortion laws of all 50 states, from the most protective to the most permissive. It held, in effect, that not a single state had correctly read the Constitution for almost 200 years! The result, as the Senate Judiciary Committee recently concluded, is that under *Roe* v. *Wade* "No significant legal barriers of any kind whatsoever exist today in the United States for a woman to obtain an abortion for any reason whatever during any stage of her pregnancy."

In fact, there is nothing in the text or history of the Constitution to suggest that the Framers intended to grant Constitutional protection to feticide. Indeed, many of the state legislatures which ratified the Fourteenth Amendment (on which the Supreme Court would base its 1973 ruling) also enacted strict anti-abortion statutes during the same period.

I know many prominent legal scholars, including some who are personally inclined to support legalized abortion, have criticized *Roe*. To cite only one, Professor John Hart Ely (then at Harvard, now Dean of Stanford University Law School) has called *Roe* "a very bad decision . . . because it is bad constitutional law, or rather [because] it is *not* constitutional law and gives almost no sense of an obligation to try to be."

Testifying before the Senate Judiciary Committee in 1981, then-professor (and now Judge of the U.S. Court of Appeals for the District

of Columbia) Robert Bork said: "I am convinced, as I think [almost] all constitutional scholars are, that *Roe* v. *Wade* is an unconstitutional decision, a serious and wholly unjustifiable usurpation of state legislative authority."

Supreme Court Justice Sandra Day O'Connor repeated these concerns in a decision handed down June 11, 1986, when she wrote: "Today's decision . . . makes it painfully clear that no legal rule or doctrine is safe from *ad hoc* nullification by this court when an occasion for its application arises in a case involving state regulation of abortion."

Justice Byron White wrote: "In my view, the time has come to recognize that *Roe* v. *Wade* departs from a proper understanding of the Constitution, and to overrule it."

And there is no doubt that then-Chief Justice Warren Burger had a change of attitude when he declared: "If today's holding really means what [it] seem[s] to say, I agree we should reexamine *Roe*."

So it is clear that *Roe* is not the final solution to the abortion question. And in the Senate of the United States, we are going to continue our efforts toward a final reversal of that decision. The Majority Leader has the power to set the Senate's agenda. I have brought up President Reagan's nominees for Federal judgeships and tried to move them through the Senate, but it has been difficult.

Look at what happened to Daniel Manion. Editorials and critics said "He's not qualified. He can't spell. He didn't go to 'the right schools.' He's only a country lawyer"—as if there's no room in America for anybody who does not come from the cities.

The real reason, of course, is that his opponents believed he had the "wrong" philosophy. But, as President Reagan has said, there should not be a restrictive *caveat* in the Constitution that says qualified conservative judges need not apply. True, we finally won the fight to confirm Judge Manion, but by a terribly narrow margin.

Obviously the selection of judges is very important. I believe President Reagan's position is exactly right. It is certainly the policy I will follow as Majority Leader—and in any other position I may hold in government.

I know that some are discouraged that we have not already won our

abortion fight, and indeed it is far from over. But it *can* be won if the many organizations and individuals who support our cause remain unswervingly true to the moral imperative—and end legalized abortion on demand. And one of the most important means of achieving that imperative is by continuing to press for the appointment of judges who will interpret, rather than invent, the law.

In the public forum, we must demonstrate to the mass media and our concerned fellow citizens that, while our opposition to abortion is principled and absolute, so is our affirmation of human life in all its wonder.

Sometimes it is indeed difficult to support life. Recently, when I accepted an invitation to address the National Right to Life Committee's convention in Denver, there was considerable criticism. Some called asking "Why are you going to Denver?"

My answer: "Why, is there something wrong in Denver?"

They said: "If you go, you are pandering to the pro-lifers!"

I said "Well, it's a little late for that; I've been voting with them for the last thirteen years!"

The anti-abortion movement is often called the modern-day equivalent of 19th-century abolitionism. Those who wanted to end slavery were criticized too. As a National Right to Life Committee past president, Jean Doyle, wrote: "Today's emergency pregnancy service[s] must . . . be likened to that era's underground railroads . . . the way station to a safe place where life is given a chance. Not every troubled pregnant woman is fortunate enough to find a refuge."

The traditional refuge for most Americans is the family. And the economic problems of our families are often a critical part of the reason why a woman chooses abortion.

For years, we have tolerated a tax code in this country which has *not* favored the family—it has actually worked against it—and no society can remain strong if its basic unit, the family, is left weakened and unprotected. But the Senate has taken several giant steps toward genuine tax reform—reform which should not be measured simply in dollars and cents, but in concepts like basic fairness and social stability.

As a result, I hope that one of President Reagan's most cherished goals will become reality. By increasing the personal exemption to $2,000, we will finally stop *penalizing* the family—we will be giving

people with children a break that is long overdue. (Also, with just two tax rates—15% and 27%—about 80% of all the American people will find themselves taxed at the lower figure. And even the 27% top rate is lower than at any time since 1931.)

This is a pro-family bill. It's a pro-*child* bill. The families that need help the most will receive it. More than six million of the working poor will be taken off the tax rolls altogether. For a family of four, income up to $13,000 will be subject to no tax at all. Also, the earned income credit will rise from the present 11% to 15% and it will be indexed to inflation. So, finally, the working poor will enjoy the benefits of tax indexing, the most pro-family tax reform in decades.

But a fair tax code for the family is not enough. Recognizing the stress abortion can bring into a young person's life, pro-life counselors are now trying to identify not only the pressures that drive a woman to *consider* abortion, but also those impelling her to *choose* abortion over adoption.

A young woman's decision to abort is most often an act of desperation. Can anyone doubt this? She may feel driven to the decision by an overwhelming sense of confusion and a host of conflicting emotions—fear, shame, her own parents' disapproval, apprehension over her prospects for education and employment, and often a sense of helpless abandonment, particularly if the child's father has walked away from his responsibility. And she may lack money for adequate food and housing, for medical expenses, and for a baby's many other needs.

Clearly these women—like their unborn infants—are abortion's victims. Realizing this, some have established special counseling and support groups to help others like themselves confront the issue, and to dissuade still other women from ever facing so painful a situation.

It is an affirmation of life when church-related and other groups institute "maternity homes" or "pregnancy centers" to offer services ranging from food and shelter to adoption counseling and education or job training.

One volunteer network "fights abortion with adoption" by sponsoring homes for unwed mothers. Addressing pro-abortion audiences, the group's founder tells them: "If you don't want the babies, [we] do."

Another very successful program places unwed mothers with existing families. These volunteer households offer the young woman the envir-

onment she needs and provide for her material needs as well.

One unique program in the South offers a "General Educational Development" program for young mothers who want to earn their high school diplomas, and alternative schools for younger girls.

These are just a few examples I know about. But there is no question that such volunteer efforts can make a vital difference on a nationwide scale. According to one recent survey, more than three and a half million women have received pro-life counseling and, I'm told, the result is sometimes astonishing: between 50 and 80 percent of the women involved decide not to have abortions. And as President Reagan said in his own message to the Denver convention, "Each child saved is an immeasurable victory."

We must work to ensure that no woman in such a desperate situation will find herself alone and without hope. That is why the network of volunteer maternity services should be expanded, and why these efforts deserve the vigorous support of all caring people.

No, these efforts can never take the place of needed legislation, or a constitutional amendment to overturn *Roe*. However, they can convey our compassion for women in need, and our resolve to see human potential where some can see only problems.

Clearly, the fight for life must address the whole range of issues surrounding abortion with a broad range of actions: working for changes in the laws, strengthening families, supporting the President's judicial nominees, electing pro-life candidates, promoting alternatives to abortion for needy women and their children—all this and more must be done.

And the fight must be continued until it is won. As a young Marine defender of Khe Sanh put it: "For those who fight for it, life has meaning the protected will never know."

The Right to Life and the Restoration of the American Republic

Lewis E. Lehrman

THE DECLARATION OF INDEPENDENCE and the Constitution of the United States inaugurated not only the American experiment, but also one of the great economic booms in history. Americans moved West and South, labored North and East to till the soil, build roads, finance banks, invest in new technologies, discover new methods of farming, mining, and manufacture. "We made the experiment," Lincoln wrote during the prosperity of 1854. In America "we proposed to give all a chance." Now "the fruit is before us. Look at it—think of it. Look at it in its aggregate grandeur, of extent of country and numbers of population—of ship and steamboat and rail."

In 1854, almost four score years had gone by since the Founding, and nearly as many years divided the abject poverty of Thomas Lincoln from the prosperity of his son Abraham, the "lone Whig star" of Illinois. In twenty years of hard work before 1854, Lincoln had been preoccupied with personal advance in law and politics, during which time he had focused on the great issues of economic nationalism: the tarriff, the National Bank, and internal improvements. It is true that he was only one among thousands of apostles of national development and economic growth; but he was utterly devoted to their cause.

In 1853, all America basked in the glow of a prosperity Americans took as their just deserts. The period stretching from the inauguration of James Monroe in 1817 through the early 1850s has gone down in American history as the Era of Good Feeling and of Manifest Destiny—an era during which, despite the great perils faced by the infant nation at the turn of the century, America had conquered a continent and established her independence of Europe. The new nation had finally settled down.

Then, out of the Great Plains, the Kansas-Nebraska Act of 1854

Lewis E. Lehrman, who narrowly lost the New York governorship to Mario Cuomo in 1982, is the chairman of Citizens for America. This article first appeared in the August 29, 1986 issue of *National Review*, and is reprinted here with permission.

blew in upon American politics with the force of a tornado, sweeping aside the economic issues paramount in the immediate past. The old Whig Party disintegrated under the pressure of the new politics, and so in all but name did the Old Democracy, the party of Jefferson and Jackson—both parties swept aside by the gale force of a single moral issue, or what our pundits today would call a social issue. That issue, the extension of slavery to the territories, led ineluctably to the great national debate over the "unalienable right to liberty" of the black slave. It was neither the first nor the last, but it was, up to that time, the greatest debate over the first principles of the American Republic.

At first, Americans—Democrats and Whigs alike—refused to believe that the work and wealth of recent decades, not to mention the pocketbook politics of the era, would be swallowed up in a moral struggle over a single issue. But, in opening all the Western lands to slaveholding, Kansas-Nebraska shattered the spirit of the Missouri Compromise of 1820, which had limited slavery to states south of 36°30′. If it were true, as Lincoln would later say, that eventually the nation must be all slave or all free, there could be little doubt in which direction the new act was taking us.

In the words of one distinguished historian of the period, Professor Gabor Borritt of Gettysburg College, Kansas-Nebraska shook national politics like Jefferson's "firebell in the night." So abrupt was the transition from preoccupation with economics and national security ("Manifest Destiny" and "Western Lands") that Abraham Lincoln, himself one of the most knowledgeable of Whig leaders on tax, tarriff, and banking issues, abandoned further discussion of them. After 1854, he became almost mute on economic issues, claiming in the year he stood for President that "just now [tax, tarriff, and financial affairs] cannot even obtain a hearing . . . for, whether we will or not, the question of slavery is *the* question, the all-absorbing topic of the day."

Today, six years after President Reagan's first victory, we are far along with economic expansion and just as far along with rebuilding our national defense. Financial markets have risen to new highs. Employment levels and new business formations have reached new peaks. In Libya and Grenada we have successfully, if ever so cautiously, tested our willingness once again to use force in defense of our national principles and interests. Politicians of both parties still speak as

if they expect Americans, riding the wave of new prosperity at home and restored prestige abroad, to continue to focus on economic and defense issues as they have for a generation. As Vice President Bush declared in an interview in June, "Today, people vote their pocketbooks." We shall see.

For I believe that today the American people are prepared to put their pocketbooks back into their pockets. I believe that Americans once again are preparing to ask fundamental questions, about life and death, about our special purpose as a nation, and about the first principles and fundamental law by which, as a nation under God, we have dedicated ourselves to live. I believe that national politics during the late 1980s and 1990s will be dominated by the great constitutional, moral, and social issues of our time.

Chief among these issues will be the right to life. Thirteen years ago, in *Roe* v. *Wade*, the Supreme Court overthrew the common law of centuries and the statute law of fifty states, authorized abortion on demand, and thereby severed the child-about-to-be-born from the Declaration of Independence. It was in the Declaration, the organic law of the American Founding, that the Fathers of our country proclaimed the self-evident truths of our fundamental moral and constitutional law: that all men are created equal, and that all men are created by God with the unalienable right to life, liberty, and the pursuit of happiness. It was this original charter of the nation that the Supreme Court violated in *Roe*, without even the mandate of an election or a vote in Congress.

Five thousand days and twenty million lives later, abortion on demand has buried a nation of children as big as the whole of Canada. But far from resolving the issue of the right to life, as the Justices intended, the Court has stirred up all America and ignited the moral tinder deep in the souls of our countrymen. The Court, by creating a great debate over our fundamental law and essential character as a people, has guaranteed that abortion will surely sweep away all more mundane political considerations.

I suggest not merely that the issues of slavery and abortion are historically analagous. Rather I say that they are, in a crucial sense, the same issue. Both are but particular cases of the recurring challenge to the first

principles of the American Revolution, which forbid the violation of the God-given rights of any person, no matter how convenient such a violation might be for some powerful individual or faction, or even a majority.

In the normal course of our politics we do not experience this challenge in its starkest terms. Our fundamental law, our fundamental purpose as a nation is not fully articulated in the positive law by which we govern our daily affairs. The Declaration of Independence, in which our nation's fundamental principles are stated, is not phrased in such a way as to give perfect guidance to the resolution of everyday political disputes. In the normal course of events the American people are content to let the Declaration's unalienable rights be secured by the more intricate structure of the Constitution, which by the genius of the Founding Fathers transformed the play of political interests into a dynamic balance wheel of human and civil rights. Nevertheless, the Declaration gave birth to America as an independent nation and best expresses our ultimate reason for national being.

From time to time, our ordinary politics fails us in ways too dramatic to ignore. An impasse develops in the constitutional process. A weakness shows up in the architecture of liberty. Our positive law (including even the Constitution, or its interpreters) can fail in some critical way to uphold the first principles of our national Founding. It is at such times that it becomes necessary for Americans—who seem now, as they seemed in 1854, too concerned with progress and payrolls—to reconsider the organic law written in their hearts. It is then that American politics again becomes a struggle over the meaning of the Declaration of Independence.

In our time, most leading politicians and intellectuals argue that such philosophical struggles, turning ultimately on moral and religious questions, should be excluded from American politics. With Senator Stephen Douglas, Lincoln's great opponent, who held that Kansas-Nebraska and the *Dred Scott* decision (1857) made the black man forever a slave in America, they hold that the Supreme Court can settle and has settled forever the abortion issue. They are content to accept, paraphrasing Judge Taney, that the child in the womb has no rights which Americans are bound to respect. They argue, with Supreme Court Justice John Paul Stevens, that only "secular interests" are fit

subjects of national debate. Some even argue that the resurgence of religion and moral issues in American politics is but a passing fad, safely scorned by sophisticated pragmatists concerned with the weightier matters of wealth and weaponry.

These opinions are as unsurprising as they are unconvincing. What we hear rolling across the Potomac are the hollow, haunting echoes of the great slavery debates of the 1850s. For decades the battle over slavery had been stayed by the timely intervention of grave Whigs and eloquent Democrats who foresaw what passions would be loosed when men ceased to struggle for gain and ground and sought instead to live faithfully by the Divine standards Americans had set themselves in the Declaration. Webster and Clay, Calhoun and Douglas, prudently had sought to guide the energies of the people into economic growth and westward expansion, to mitigate, even to avoid the supervening moral and religious issues raised by the debate over slavery. The remarkable thing is how successful they were for so long in convincing Americans that slavery could be countenanced if its extent could be compromised.

But the insurgent noise would not be silenced. For the muffled murmur throughout the land was the sound of the slave, his tortured breathing rustling the pages of the Declaration of Independence, scaring up from the dry parchment the great truths placed there by Jefferson. For the needs of nation-building, for the sake of a union between slave and free states, slavery may have been legalized in the Constitution. But it was the Creator, as the Founders proclaimed in the Declaration, Who gave men the unalienable right to life and liberty. This contradiction, like a house divided, could not stand.

Just three years after the Kansas-Nebraska Act, the *Dred Scott* decision gave meaning to Lincoln's warnings; it declared the U.S., in effect, a slave nation. *Dred Scott* held that the black slave was not a person under the Constitution, and it made inviolate the property rights of slaveowners. In the very next election, the nation responded by choosing a President who had proclaimed *Dred Scott* unbinding as a "rule of political action" in virtue of the fundamental law of the Declaration and the power of Congress to prohibit slavery in the territories. Six hundred thousand men and boys, the flower of American youth, perished in a war over the meaning of a religious and moral principle—or,

in the words of "The Battle Hymn of the Republic": "As He died to make men holy, we shall die to make men free."

There is then no need to be surprised that in the battle over *Roe* v. *Wade*—wherein we deal not only with life and liberty, as in *Dred Scott*, but with life and death—moderate men and women should wish to put the fundamental issues aside. There is no reason to be astonished that so many leading intellectuals wish to believe that the Supreme Court has settled the matter. Nothing should be easier to understand than that the political, business, and academic establishments are embarrassed by the issue and affect to scorn those who raise it. After all, if the modern followers of Lincoln are right, no material bounty America bestows on her people or the world can excuse her crime. If the party of Lincoln is right, there is only one road to national rededication: to fight the evil of abortion until it is extinguished, a fight that may make the divisions of the 1960s, from which we are barely recovered, look like a family reunion.

One way of scorning the issue—one popular tune to whistle past the graveyard—is to deride abortion as a "single issue" pursued by fanatics to the detriment of the common good. Those who take this tack understand neither the issue nor their countrymen. The unalienable right to life is not, for America, a single issue, but a first principle, a self-evident truth established at its Founding. Nothing is more striking about American history than our willingness to take principles of truth and right seriously. Americans know that neither blood, nor culture, nor even locality is what binds us together. Uniquely among nations we are bound together and defined by our founding principles. It is the pragmatic politicians of the pocketbook who do not know their countrymen.

July 4, 1776, was an event of worldwide significance, not because a new nation was founded on the shores of the Atlantic, but because a new nation, the very first of its kind, was founded "under God," begotten, as Thomas Jefferson wrote, according to the "Laws of Nature and of Nature's God," a nation dedicated, in fact, to a religious proposition, a principle of natural theology. Consider again the phrasing: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights," to life, liberty, and the pursuit of happiness. This proposition, the great Eman-

cipator proclaimed, is "the Father of all moral principle" among Americans, the animating spirit of our laws. By reason of this founding principle, Lincoln called his countrymen "the almost chosen people"; and it was Jefferson himself who proposed that the national seal portray Moses leading the chosen people to the promised land.

The Founders' principles of equality and unalienable rights are characterized by their universality and claim to Divine sanction. The universality of the principles makes it clear that the Founders did not mean that all human beings are or ought to be equal in all respects—height, weight, beauty, wealth. They meant instead that no person has to another the relation that God has to him: Thus the rights enumerated in the Declaration are God-given, and hence "unalienable." Neither the weight of tradition nor the exigencies of statecraft can rationalize the false claim that the unalienable rights of the Declaration are a gift of the state or of the people. As Professor Henry Jaffa would put it: No man has a natural right to rule over any other man, as God does over man; thus a man may rule over another, his equal, only with his consent. This is the essential meaning of our founding law. If there were ever any doubt that we are bound by it—and the Declaration is still put at the head of the statutes-at-large of the U.S. Code and described therein as organic law—Lincoln's testimony and the general assent given it by Americans then and later should have laid that doubt permanently to rest.

But while most Americans take the Declaration seriously, we do have a tendency to fix upon its assertions of equality and liberty, quickly passing over its guarantee of an unalienable right to life as if it were merely a glittering generality. The truth is that life, liberty, and the pursuit of happiness are a logically ordered sequence. The rights to liberty and to the pursuit of happiness derive from every man's right to his own life and are meaningless without it.

Life precedes liberty in the words of the Declaration because liberty was made for life, not life for liberty. If the right to life is omitted, then liberty is a right contingent upon force and without moral substance, and the Declaration is a nullity. Moreover, it is by reason of the unalienable right to life that all men hold the right to the fruits of their labor. A free society dissolves into an absurdity if the right to life is denied.

Abortion, like slavery, allows equals to rule over equals without their consent, depriving the child in the womb not only of the right to liberty, but of the right to life as well. But there is a disputed point: Do unborn children hold these rights? There can be no denial that they have life and have had it from the very first moment of conception: That is true in medicine as in law. But what is more important is that, as our fundamental law affirms, they hold life as a gift of the Creator—Who "created" them "equal" and "endowed them" at creation "with certain unalienable rights"—from the moment of conception. Creation does not occur at the second trimester, or at the third, or at viability, but at the very beginning of life. The usual arguments about viability, intelligence, pain, quickening, meaningful life, or unwanted children are as irrelevant as earlier arguments that the poor, black slaves were better off under the rule of a benevolent master. Under the Declaration, under the Divine and natural law by which we have promised to live, the child about to be born, no less than the black slave, holds rights unconditional upon the convenience of others, rights that cannot be altered because other men place a lesser value on the life of a child in the womb.

It is no use, in extenuation, to invoke the pluralism of opinions, or the absence of consensus, as if, in the struggle over *Roe* v. *Wade*, all disagreements were merely part of a friendly historical debate; as if no lives were at stake and there were no ultimate judge to whom to make an appeal. The organic law of the American nation and the Divine law prevail over all positive law, and thus over the litigious subtleties of politicians and judges.

Our task is easier than Lincoln's, and its strain on the country will be less. In the Constitution Lincoln faced an explicit, if time-bound, sanction for slavery, which is lacking in the case of abortion. Each in its own time, slavery and abortion have masqueraded as the law of the land; and the abortion masquerade is utterly transparent. There is an inescapable absurdity in the Supreme Court's argument that the same Fourteenth Amendment that made the black slave a person can be used to deny the personhood of the child about to be born. In 1868, when the Fourteenth Amendment was passed, 28 of the 37 states held abortion to be a criminal act, even prior to quickening. (Over the next 15 years seven more states made abortion a crime. By the time of *Roe* v.

Wade, in 1973, nearly all the states had criminalized abortion. There *was* a national consensus on abortion: that it is wrong.) In view of the near universality of the laws against abortion at the time the Fourteenth Amendment was passed, there can be no doubt about its intent or the meaning of the amendment today. The Court's decision in *Roe* v. *Wade* had absolutely no basis, literal or implied, in the Fourteenth Amendment. If the Fourteenth Amendment calls for anything, it calls for reversal of *Roe* v. *Wade*.

Roe v. *Wade* may for now be a legal decision of the Supreme Court; but it is unlawful in the full sense of the word. It is without any identifiable source of authority in constitutional law. In the light of logic, the moral law, and American history, *Roe* v. *Wade* is absurd; it comes to just nothing—nothing but "raw judicial power." It requires no irreverence for the letter or the spirit of the Constitution to declare that the decision must be overturned, by a subsequent Supreme Court decision if possible, but if not, then by constitutional amendment or congressional act. There is in the *Federalist Papers*, the original handbook of constitutional interpretation, a clear warrant for such a rebuke of the Court. *Federalist* Number 81 declares that if judicial "misconstructions and contraventions of the will of the Legislature" do create constitutional defects, there is a constitutional remedy. Even if the legislature cannot "reverse a [judicial] determination once made, in a particular case," it can "prescribe a new rule for future cases." Above all, and despite recent judicial imperialism, the three branches of the Federal Government are co-equal, and all subordinate to "the people" who "ordained" the Constitution to fulfill the promises of the Declaration.

Yet this argument does not end the debate. For the ultimate charge against those who would push the right to life to the top of our political agenda is that they are mixing religion and politics, trying to impose a single set of religious values on the nation. But the link between religion and American politics is indissoluble, for, at the very beginning, in the Declaration, the nation was founded upon the principles of natural religion; it would collapse without them. Jefferson himself, often falsely described as a completely secular man, acknowledged this link, writing that "The God Who gave us life, gave us liberty . . . Can the liberties of a nation be secure when we have removed a conviction that these liberties are the gift of God?"

Those who fear the intrusion of religion into politics are not all wrong. We have been well served by the consensus that excludes sectarian passions from ordinary political disputes. But when fellow Americans of good will ask us to grow quiet on the painful but fundamental issues of abortion, prayer, or pornography, for fear of starting a divisive debate over religious and moral principles, they make a rule of thumb into a rule of life. The truth is not that religion never belongs in American politics. The truth is instead, as Lincoln argued, that religion belongs in American politics only when our politics have been forced back upon first principles.

By nature Lincoln was as much politician as prophet. He was a moderate and judicious man, certainly not inclined to fanaticism. Neither was he a natural candidate for a martyr's crown. But when the crucial issue was joined, Lincoln exposed the counsels of moderation for the well-meaning sophistries they were. And he died a martyr.

Some of us, dreading the great moral conflict Lincoln faced, might have sided with Douglas. But now, more than a century later, who laments the reversal of *Dred Scott* or would rewrite history to keep the slave in chains? Who now holds up the memory of Chief Justice Taney for the honor of the ages? Who now wishes that Lincoln had used the Court's decision as an excuse to turn to other matters? Who can ever forget what Lincoln, against all polite opinion, and borne up by his faith in a just God, did for free men?

We know it intuitively. It is the Declaration's principles and Lincoln's example we must follow. Certainly not to violence. There will be no need, for, as I said at the outset, the law to which we appeal is inscribed on the hearts of all Americans, more deeply now than ever. The abyss of civil war does not lie before us. If we fail, we will have been overcome by nothing but false opinion and the petty demon of polite society—because we are afraid of the elite consensus and the inelegance of moral commitment, afraid to take on the establishment by naming the national sin, unwilling to bear witness to first principles while the party of prosperity is going so well. But to name these considerations is to know how shameful it is to hold back. We must be bold; so that for now and for all time to come, the unalienable rights to life and liberty, the promises of the Declaration of Independence, shall not perish from this earth.

The Class of '86

John Wauck

On Memorial Day this year, a full-page advertisement ran in the New York *Times*. The ad's headline offered congratulations to the graduating eighth-grade classes of 1986, and condolences to the 745,000 who would have been their classmates, had they not been aborted. It was a startling ad, and it was especially surprising to see it in the New York *Times*, because the ad named the *Times* itself as one of the culprits in the "Massacre of 1973," the first year of legalized abortion. Beneath the bold headline, the lengthy text detailed the ways in which legalized abortion, foisted on America by a powerful cabal within the political establishment, harms not only aborted babies, but also every citizen, both materially and spiritually.

Abortion has escaped greater opposition because its chief victims are, of necessity, somewhat remote—silent and hidden in the womb; the more remote the grievance is, the less likely is prompt and effective opposition. The fetus, of course, *is* close to home—actually in the house, you might say—but it is neither visible nor audible. No one will ever stand up and say: "I was once a healthy unborn baby, but now I am the victim of abortion," pointing an accusing finger at those who killed him. But protest, not silence, changes laws, and the anti-abortion movement has progressed slowly, through the efforts of a dedicated minority. The silent victims of abortion depend on the "non-victims"—moved by compassion—to press their case.

In fact, though an organization called WEBA (Women Exploited by Abortion) publicizes the ways in which abortion hurts the women it purports to help, the popular "victim" in the abortion issue is the pregnant woman who does not want to bear her child. And the hard cases—in fact rare—are given enormous emphasis; the sufferings of rape and incest victims are constantly paraded in pro-abortion rhetoric. But only one in 25,000 abortions is due to a rape-pregnancy; the statistics for incest are even smaller.

Nevertheless, pro-abortionists have no trouble finding men and

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women who will claim that laws forbidding abortion are unjust; that such laws are an invasion of privacy which condemns women to unhappy motherhood and poverty. The pregnant woman is trapped between an aggressive intruder (the unwelcome fetus) and an overbearing legal system. Awarded the public-opinion status of victim, she has the world—at least the Major Media and our more "sensitive and concerned" politicians—on her side. No one dares to suggest that she is an accomplice in the crime—a victim perhaps, but a victim of her own irresponsibility. The pain of the aborted fetus is conveniently ignored.

Yet not all of abortion's real victims are voiceless and unborn. The ad in the *Times* was sponsored by a Cleveland-based group called Doctors for Life. It was an attempt to expand the focus of the abortion debate, to show how abortion hurts all Americans, especially the young. The ad notes that American high-schools, already suffering from low enrollments caused by the sharp drop in the birth-rate since the late sixties, are about to feel the effects of abortion on demand. The freshman class this September was the first in American history to enter high-school decimated by abortion: thirteen years ago, in 1973, one out of every five babies was aborted. The battle deaths in all our military conflicts put together is slightly more that 650,000; the death toll in aborted fetuses was 745,000 in 1973 alone. That's a lot of empty desks in the classrooms.

"The fetus is a universal stage of personal development, because everyone must go through this fetal stage once and only once." The ad asks the eighth graders to see themselves in their aborted classmates-to-have-been, to realize that their entire generation has been victimized by a deadly, but legal, disregard for life. Even though today's students survived, abortion was still an attack on their value as persons. Every fetus represented a chance of a lifetime for a particular person; that person might just as well have been them. In the words of the ad, "those fetal cells were you, only you, and the only you ever to be—which is absolutely personal." Only the luck of the parental draw separated them from the fate of their less fortunate classmates.

Having established this solidarity of the living—born and unborn—the text shows how abortion remains a permanent imposition not only upon those it denies life, but also upon the survivors, the fetuses "who made it." Because of the drastically reduced numbers in the Class of

'86, today's students "will have to work harder to provide health care, pensions, military service, social security and other benefits for those very adults who destroyed one fifth of the Class of '86."

It is often argued that those who have large families show an irresponsible attitude toward society's future by recklessly overpopulating the world. And pro-abortionists thought that the advantages of a more spacious society, free from overcrowding, would be theirs. But the real danger we face is a rapid decline in population; the burden of "too many" people is more bearable that the burden of too few. Those extra people are also extra consumers; they create more jobs and stimulate the economy. The nearly 20 million babies aborted since 1973 might have put a dent in our current agricultural depression, with all their hungry mouths; perhaps we wouldn't be selling our food to the Russians to save struggling U.S. farmers.

Clearly, abortion is foisting heavy responsibilities on future generations: today's eighth-graders can expect to pay billions of extra dollars in taxes to make up for all those lost taxpayers. Their parents must realize that every child their neighbor aborts raises the odds that *their* child will be the one killed (should there be another war) fighting to protect the lives and freedom of those very people who raised the odds. Parents who make the sacrifices to raise children, to the detriment (in the modern mind) of their own standard of living, must share their social security and health care benefits with those who refused to raise their own. Who—one is tempted to ask—is doing the work of society and footing the bills for the future? Only Mormons, some Catholics, and Orthodox Jews? And who is reaping the rewards?

The Doctors for Life ad also points out less tangible wounds that abortion inflicts on society. It diagnoses abortion as the root of a cancer gripping our country: "If you are not careful," the ad warns the eighth-graders, "slick, erroneous messages will enslave you to uncivilized anti-family living." Abortion has laid an axe to that most dependable of bonds: the love of a mother for the "child of her womb." More violently than contraception, abortion has driven a wedge between sex and family living. Cut off from its natural environment, sex has taken unnatural and uncivilized forms: the ad mentions "pornography," "homosexuality," and "non-parental macho manhood." Abortion has

created a climate where these aberrations almost seem "minor matters" in comparison, a climate where it is nearly impossible to protect children from evil influences—"minor matters" indeed.

The injustices due to abortion are fairly obvious consequences of "terminating" a large part of a nation's unborn population. It is not surprising that the media, much of it notoriously pro-abortion, pays little attention to the dramatic economic and social upheaval abortion is causing and will cause in the future. Where are the reams of sociological ruminations upon abortion to rival the coverage given our drug problem? Pictures of abortion's results are shunned as "psychological terrorism." When a good look at the work of your hands terrifies you, it is time to ask some questions; but those questions are liable to weaken the "pro-choice" position, so they cannot be raised.

What is surprising is that anti-abortionist have not made more of the injustices *they* and their children will suffer from abortion. Ordinarily, a patient does not need to be told that he is in pain; doctors are only called in to identify the nameless ache and provide a cure. The peculiar blindness of anti-abortionists to a manifest "ache" illuminates a fundamental difference between the anti-abortion and pro-abortion mentalities: one position is selfish, the other is not. The "pro-choice" supporters seek their own rights of "privacy" and "reproductive freedom"; their comfortable "lifestyle" is at stake. Anti-abortionists fight to give *others* the right to life. Their own potential suffering has not been a preoccupation of anti-abortionists. Perhaps they are embarrassed to imitate their "pro-choice" opponents shamelessly pleading for their own material well-being. After all, who are the anti-abortionists to complain of injustice when millions of unborn babies are dying? The Doctors for Life ad provides another reason to oppose abortion—a reason untouched by the endlessly-debated status of the fetus.

The refrain throughout the ad is that the "Massacre of 1973" was the work of "powerful people." For the curious, the ad supplies the names: the U.S. Supreme Court; the Rockefeller, Brush, Sunnen, Ford, and Mott foundations; the American Medical Association; the American Civil Liberties Union; the National Organization for Women; the Unitarian Universalist Association; the American Jewish Congress; the New York *Times*; Planned Parenthood. I doubt any of the accused would dispute the charge. The New York *Times* did make abortion an

"issue" and worked hard to change public opinion. With the generous support of various foundations, the ACLU has certainly led pro-abortion legal efforts ever since the Supreme Court changed the law by judicial review—the latest instance of fiat by committee. The nation's doctors, after getting the American Medical Association's seal of approval, pocketed 80 million dollars from abortions in 1973. The National Organization for Women, claiming to represent *all* women, has provided loud support—cheerleaders in spite of themselves. But from the feminist perspective, the *Roe* v. *Wade* decision can hardly be called a triumph. Far from being a symbol of women's liberation from "patriarchal structures," the abortion decision proclaimed the persistence of the most stereotypical features of sexual politics: the dependence of women on male-dominated structures of power, and the feebleness of that domination, because men have been following the promptings of women since the time of Adam—a paradox of sorts, but not a new one, and surely not a sign of sexual revolution.

By appealing to the social self-interest of the living (ever a potent political force), the Doctors for Life ad makes a fair point and shows considerable tactical sense. By focusing on *Roe* as an abuse of power, the ad endeavors to enlist as an ally a dependable impulse in man: the natural rebelliousness of youth. The ad is addressed to eighth-graders. Conventional wisdom holds that youth is a time for testing authority and convention, for questioning the powers that determine the status quo. As the cultural turmoil of the sixties ground to a halt in the mid-seventies, teenagers found themselves rebels without a cause; by that time, everything had been rebelled against. As rebellion itself became mainstream, it was inevitable that youth would begin to rebel against rebellion. There are signs of this trend appearing in unlikely places. Rather than "confronting bourgeois values," yuppies and "young fogies" are enthusiastically embracing the conventional ideals of the corporate establishment. The recent pop hit by Madonna, "Papa Don't Preach" (a rebellious title if ever there was one), describes a pregnant young woman who decides to keep her child, against the advice of friends and father:

> . . . but I've made up my mind, I'm gonna keep my baby.
> He says he's going to marry me; we could raise a little family.
> Maybe we'll be alright. It's a sacrifice.

Predictably, Planned Parenthood has raised a storm of protest against the song, claiming that "the message is that getting pregnant is cool," though in fact the lyrics describe the situation as "an awful mess." What really angers Planned Parenthood is the suggestion that abortion would be even more awful. Another pop hit proclaims the novel (in some circles) idea: "We don't have to take our clothes off to have fun." And a recent cover story in *Penthouse* magazine analyzed the rising popularity of celibacy. Shaky foundations, to be sure, for rebuilding our gutted public morality, but things could be worse. It does not speak well, however, for authority and convention when the maternal instinct and public decency become forms of rebellion.

The implicit argument of the ad is that, for both the naturally conservative and the naturally rebellious, abortion makes no sense. The next generation of yuppies will find their affluent lifestyle undermined by sky-rocketing taxes, high social security payments, and sundry economic crises as the nation adjusts to its declining population. (We are already hearing about the problems presented by our "aging" population—a quaint approach to the issue. Of course, we are aging just as we always have; the real problem is that we are not being replaced.) The pro-abortionists may well find themselves increasingly crowded out by the "rebels" who refuse to conform to the abortion mentality—for instance, Mexican immigrants? (Perhaps the deliberately childless should consider learning Spanish.) And the politically rebellious could hardly find a more entrenched and heartless establishment to criticize than the cabal that produced legalized abortion.

It is fitting that doctors should attack abortion as an abuse of "power," for they are well aware of the awful power in the abortionist's hands: the power of life and death. One of the chief attractions of the medical profession is the personal importance a doctor feels, knowing that people's lives depend on him. The doctor has the power to save others from death. The attraction has its roots in pride, perhaps, but it is perfectly natural; no one seriously aspires to insignificance. But somewhere something went awry in the abortionist's professional ambition. The healthy thrill of saving lives gave way to a different sense of power. As the advertisement reminds the eighth-graders, "Power corrupts." It is said that some men kill for fun, but what exactly could that "fun" be? It is not in the color of blood or in some personal vendetta. It probably

isn't the money; though doctors make millions every year from performing abortions, they could make that money in other ways. Is it raw power that leads these professional killers on? This is a moral perversion; but it would seem difficult to deny that abortionists are engaged in an abuse of power of that sort. Medicine is an art, but the poisonous saline solution that scalds the fetus and the blades that slice it to pieces are not the instruments of the healing art. The last thirteen years have not been medicine's finest hour.

This is not something doctors like to talk about. Because they are doctors, they sense most easily—in their consciences, in their work, in their imaginations, and in the eyes of their colleagues—that abortion gives doctors a power that no man should have over others: the power to kill them. Call the fetus whatever you like—an embryo, a dependent creature, a "potential" man or woman, a human being, a person, whatever; it *is* alive, and the abortionist kills it. Give the fetus the rights of a person or the "rights" of an animal; abortion is still the profession of terminating life: the killing art. Even if an animal has no right to life, to make a living killing animals on request would surely seem disreputable? Perhaps we would not call a man who specialized in killing animals a "murderer"—a butcher, I suppose—but we would never call him a doctor. And in abortion we are not talking about barnyard animals or people's pets; we are dealing with the unique product of the love—however attenuated—of a man and a woman.

"Doctors for Life" ought to sound redundant, like "Architects for Building" or "Athletes for Sports." The refreshing ring to "Doctors for Life" is a sad commentary on the state of the profession. The Doctors for Life have become the rebellious voice in a contaminated profession. It was the cooperation of doctors with pro-abortionists, at first clandestine and then open, that made *Roe* possible; the refusal of doctors to cooperate is necessary if *Roe* is to be reversed. The abortion issue is ultimately in the hands of doctors. Honest doctors, trained to *save* lives, cannot help but see abortion as an abuse of power. They can argue convincingly that abortion wields a corrupting power over society as a whole—over pocketbooks and consciences—and thus makes victims of us all.

Ghosts on the Great Lawn

Faith Abbott

YOU KNOW ERMA BOMBECK, and how funny she can be. Millions read her syndicated newspaper column regularly. But sometimes she's not funny.

One of her own favorite columns is reprinted from time to time, when she's on vacation. Thus, last summer, her fans saw again her sober column titled "The Phantom Senior Classes." It's about teenagers who die in drunk-driving accidents. Erma imagines a Central High ("somewhere in the midwest") which "until this moment" had a senior class of about 200, but this year, she writes, there will be *no* senior class at Central—nor any such classes for the next 45 years, because during that time some 9,000 young drunk-driving victims won't live to get their diplomas.

In a futuristic flashback, she adds that Central High closed its doors in 2029, because of "decreasing enrollment"—indeed, 44 more Centrals would also close down, because in those 40-some years over 400,000 young people would also be victims of such tragic accidents.

It struck me, because I too had been thinking about phantom children, not at Central High but on the Great Lawn in New York's Central Park, during the big Fourth of July Liberty Weekend celebration, when President Reagan joined the millions who came to see the refurbished Statue of Liberty's torch relighted.

The following Monday, the tabloid New York *Daily News*' front-page banner headline roared "IT WAS SOME PARTY"—the historic six-million throng, the story reported, had "one big bash . . . ate 750,000 hot dogs, and drank two million drinks." There were millions in the subways; the longest lines *ever* waited above; the statistics ran on and on.

And then this: the "Most Well-Mannered Crowd: the 800,000 at the Central Park Concert."

There have been many concerts in Central Park, including Rock affairs that got out of hand, with drug disasters, muggings, even riots,

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involving as many as a half-million "youths" of all ages. But this one was to be different. A half-million people were expected, but the police didn't expect big troubles from a crowd coming to hear the New York Philharmonic. (Who goes out of control when Zubin Mehta conducts, Yo Yo Ma plays his cello, Itzhak Perlman fiddles, and the soloists are Marilyn Horne, Placido Domingo, and Sherrill Milnes?) The 1,700 cops mobilized were there mainly to handle pedestrian traffic in and out of the park. A police Captain said: "Zubin Mehta groupies are not generally trouble-makers."

And it *was* a great night, with the enthusiastic crowd exceeding predictions and reaching the 800,000 the *News* reported. (Have *you* ever seen that many people in one place?)

On the blistering hot afternoon before the concert I had walked across the Great Lawn on the way to higher ground from which I hoped to view the First Ever Annual Great Blimp Race. The Lawn had begun filling up since early morning; from atop the Belvedere Castle (yes, we did see the five blimps, between buildings) I saw whole families with picnic and "survival" apparatus. But I had no idea of what a *capacity* crowd on the Great Lawn would look like, until that night, when I watched the concert live on TV and saw the aerial view from the blimps. And when I read Monday's *News*, I thought: So that's what 800,000 looks like.

Numbers have always left me cold: I have No Head for Figures—zeroes and commas play tricks on me: hundreds turn into thousands and vice-versa. From earliest memory (when I told friends about my great-grandmother who died at age 301—actually she was run over by a milk cart at 103) through my first job, when my boss began to look for a *new* job because, he said, he needed to make a "five-figure salary" (which someone later explained meant $10,000-up) up to the present, my inability to translate figures into what they represent has been a practical disability and a social embarrassment.

So I have had to make a sort of game about numbers. A kind of Sesame Street for adults, where you see the numbers and then envision abstract images. And since adult heads must deal with many more than ten oranges or witches or whatever, there must be an expanded concept: a spatial concept, if hundreds and thousands up to millions are to make any sense.

Time magazine recently had a clever Sesame-Street-type visual aid, for people who can't conceptualize a sea depth of 12,500 feet, at which the remains of the *Titanic* lie: ten Empire State buildings were stacked up atop each other. So if you can visualize how tall the Empire State is, you get the idea of how deep is the ocean over the *Titanic.*

My first numerical-visual aid was 2,000, which was the size of the student body in my high school. When I would hear that some demonstration or celebration had drawn a crowd of something-thousand, I'd remember my high school auditorium as a standard of comparison.

After the *Roe* v. *Wade* decision in 1973, I began attending the annual March for Life in Washington, and my numbers game expanded: one year there were 35,000 marchers (we stood on a street corner and watched them march by); another year 50,000; one year 70,000. From Capitol Hill one got a conceptual idea of what 70,000 *looked* like. Anything to do with the *million* category was still an abstraction. Until my Great Lawn experience.

A few days after I'd read in the *News* about the 800,000 people at the concert (more than ten times the size of that Washington mob), I received a copy of an ad which had appeared in the New York *Times* on May 26th (we had not seen it earlier because it was in the *Times'* "National Edition," which goes outside New York). The ad, sponsored by Doctors for Life, offered Congratulations to the 8th Grade Graduates of 1986 and Condolences to "Your classmates who didn't make it"—the 745,000 souls who would have been 8th grade graduates in 1986 had they not been aborted.

The ad said: "Many of you (3,137,000) were born in 1973—the year abortion was legalized. Over 745,000 of your Class of '86 were aborted in the same year—the Massacre of 1973." Now that the figure 800,000 was indelible in my mind, I could "see" 745,000. And 750,000 hot dogs dispensed that Liberty Weekend? Just about one for each absent member of that class.

And of course these 8th graders would become, in the fall, the first high school freshman class in American history to have been decimated by abortion. I imagined the Great Lawn filled with silent 8th grade graduates, Class of 1986, standing upright, the ghosts of the Class That Wasn't There.

"Where there is no vision, the people perish." Would a vision—a viewing—of the perished help make sense of their sheer numbers, I wondered? Of course there can't be pictures of my ghosts on the Great Lawn, those victims of "the massacre of 1973." I remembered the pictures of the mere 900 victims of the Jonestown Massacre. Who can forget all those full-color magazine photos of the victims of fanatacism and cyanide-laced Kool-Aid, lying there on the ground in Guyana. Horrible, we shuddered. Still, though, *that* happened somewhere else, not "close to home." Not on Central Park's Great Lawn. But we *had* seen 800,000 people on the Great Lawn, which is almost exactly *half* the number of babies unborn-in-America every year, so I could visualize them covering *two* Great Lawns with a capacity crowd of ghosts. Probably all of Central Park could be populated by ghosts, at the current rate of snuffing-out.

But 1.6 million *is* hard to visualize. Break that figure down, though, into the *daily* rate of snuffing-out, and you get about four thousand ghosts created every day. Twice the size of my high school auditorium. Two full assemblies a day, wiped out: vaporized.

The other day, I caught myself saying (as who doesn't?) "Gee, thanks a million." And suddenly I wondered how long it would take to say "thanks" a million times. It would take a lot longer to count to 1.6 million: it *is* more awesomely horrible to *know* that that many babies are killed each year.

The ad said that only 600,000 had been killed in all our wars. That amazed me, so I looked it up. The total I found was 652,000 deaths in battle, plus another 500,000-plus "other" war deaths. I looked up that famous disaster, the 1918 Flu epidemic. It killed "only" a half million Americans. I'm told that an estimated 18 million unborn babies have died since *Roe* v. *Wade*, which must make abortion the worst epidemic in history.

Dwelling on this tends to make my Numbers Game work *too* well. Before you know it, you're thinking: How many each hour, each minute—how many, from here to the subway? *That* sort of thing.

Especially when there are visual aides, from here to the subway. Each summer day in Manhattan one sees large groups of name-tagged little kids erupting from the subway, being maneuvered along 86th Street toward Central Park: happy, fun-time-anticipating kids, two by

two. Their day-camp counselors stop them every so often to take yet another head-count and remind the kids to stick with their partners. My mind wanders and I see one single line of kids. Their buddies aren't there. One out of how many, I wonder, got vaporized in the few years since these day-campers were born? Nobody can do a head-count of those little ghosts.

Not to overdo it, but there's another big story in town this summer that makes the abortion issue "hit home"—babies falling out of windows.

One can't imagine New Yorkers saying: "So what?" when they read that yet another child has fallen to its death from an unbarred window. No: we are compassionate. We agonize over needless deaths. The *News* (August 11) headlined: "9th child falls to death," and the New York *Times*, the same day, told us it was "the 77th time that a child has fallen through a window in the City. Nine of the falls have resulted in deaths, including four within the last three weeks."

We think: how *needless*. Why don't these parents/babysitters learn from the papers about window-bars? We *feel* for the bereaved parents even as we accuse them of negligence (and as we check our *own* window-bars).

Even when we know and can quote the statistics about abortion; even when we see the annual statistics broken down into daily and hourly fatalities, we tend—automatically—to make a distinction between *statistics* and *individual* victims of preventable fatalities, whose names and ages are reported in the papers, with their baby pictures.

What if the media informed us that, this year, 1.6 million babies would fall to their deaths from unguarded windows? At the rate of about 4,000 daily, almost three every minute? We wouldn't feel just "compassion" but horror. We'd raise hysterical cries about committing national suicide, about what it all meant for the *future.*

The reality is that 1.6 million babies were victims of preventable deaths last year. Is there any difference, ultimately? There is no future for the nine small children with names who have died so far this year from window falls: there is the same no-future for the un-named, unbirth-dated babies who are also victims of needless death. But *these* victims of preventable deaths never make it to the stage where *we* have

"feelings" about them. The 4,000 per day aborted babies are statistics of a *different* sort; we don't read about how they died; we don't know their names; we can be rhetorical about Unborn Millions, but not about three babies falling out of windows every minute, even though the end result is the same. There are no degrees of death.

Maybe it's because abortion statistics have all those zeroes. We think of the aborted in terms of zeroes if we think about them at all. It's easier to deal with "mass murder" than to think about individual victims. To think of the victims as one-at-a-time individuals offends one's sensibilities. But that is how they died, one at a time, just as the window-victims died. Just as the window-victims had been *born*, one at a time; just as you and I were born, and will die. So the fatalities of legal abortion would have been born one at a time, had they not been "terminated." Each of the 1.6 million victims unborn in America every year has an identity.

It's as if the unborn don't count. They do, however, count up. The next window victim will be the 10th. Somewhere, there has been (or soon will be) abortion victim 18,000,001.

"Where there is no vision, the people perish." One wonders if even the most ardent pro-abortionists, given a vision of several empty Great Lawns and *knowing* what the empty spaces represented, would say: So what? More likely they'd say Yes, but . . . most likely, they'd not say anything, because they are too busy with numbers: *theirs*. (Stand up and be counted, all in favor of women's reproductive rights.) Their numbers represent the *born* who are now free of burdensome unwanted babies.

And what was Ellie Smeal's National Organization for Women doing in our nation's capital on July 7th, the day the *Daily News* raved about New York's Freedom Party? Picketing the U.S. Catholic bishops, that's what. About 25 women (*that*'s a crowd I have no trouble visualizing) bearing signs about Civil Rights, and also carrying umbrellas, marched outside the bishops' headquarters, chanting: "Let it rain. Let it pour. We know what we're marching for."

Ellie Smeal's supporters had done better last March in Washington: an estimated 80,000 demonstrated for Abortion Rights. On July 7th, they were protesting the bishops' endorsement of an amendment for the so-called Civil Rights Restoration Act now pending in Congress. They

want the government to force institutions to support abortion: that's what "civil rights" is all about, of course. Indeed, "We know what we're marching for." *What*, not *who*. So that was how NOW joined in celebrating Liberty Weekend.

NOW cares about *now*. What about the future? Is their Emperor eternally resplendent in new clothes? Don't they know that decimated populations will affect everyone? Even if they (being very cerebral people) don't weep over the unborn, don't they worry about, say, economics? Don't they know that they, and the children they *have* allowed to live, face tremendous financial burdens? That there won't be enough people for jobs, children for schools, soldiers to defend the nation—and who will take care of the NOW Generation in *its* old age?

One might say that they have their backs to the future. Yet it is often these same people, oblivious to the ramifications of a dwindling population, who crusade for "conservation." Who ask: Have you thought about the future? Save our trees! Be good to ozone layers. Save the whales. We must not allow this-or-that animal to become extinct. Conserve, preserve! Save our National Parks. (Save our Great Lawns, so that someday they *can* be empty?)

Erma Bombeck touched on that, too: "The people of this country champion the lives of helpless seals, unborn babies, abandoned dogs and cats, abused children, alcoholics, the elderly and the disease-ridden. When will we weep for the phantom classes at Central High?"

I wish Erma had listed unborn babies next to phantom classes rather than between helpless seals and abandoned animals—I trust Erma would correct this, if she thought about it. After all, what unborn children and her phantom teenagers have in common is that they *all* are "would-have-beens and should-have-beens."

There is no doubt that the concert on the Great Lawn had a strong emotional impact on everyone there, as well as on television viewers (some of whom, like us, could rush to our windows to see the fireworks, live, at the grande finale). It was a shared experience, a sort of group emotion. But such "emotional experiences" can lead to a heightened perception of reality.

When I read the Doctors for Life ad, and had that spatial-visual concept of how many ghosts there must now be from sea to shining sea,

I felt "personally" involved. I *felt* the reality of how many aren't, and won't ever be, there to share in our So Proudly Hailing; to join in the final Ode to Joy, which had everyone standing up. Then everyone sang God Bless America (even Kate Smith would have been impressed). In the land of the free and the home of the brave, these twilight ghosts were unfree to ask God to bless America. For them, Freedom's Birthday had come too late.

More from Erma Bombeck's column: "The halls echoed with school songs that were never sung, valedictorians who never spoke and cheers that were never heard."

The *News* had also mentioned, in connection with the well-behaved 800,000, that 1,200 plastic bags had been given to the concert-goers, to clean up after themselves; and that they'd left behind only 250 cubic yards of trash. I do not have a concept of cubic yards, but I figured 250 of them must be a mere drop in the sanitation truck bucket. And then I remembered stories I'd read about the disposal of fetuses, in just such trash bags, and I had no wish to conceptualize. I did not want to play my Numbers Game.

A few years ago President Reagan published a book, *Abortion and the Conscience of the Nation.* Conscience has to do with knowing and feeling, it seems to me: a conscience is *formed* by the working-together of the heart and the mind. If there is one point of agreement on both sides of the abortion issue, it is that this is "a battle for hearts and minds." It has to be fought in the courts, but nothing will ultimately change until hearts and minds do. Whichever gets most involved *first* doesn't seem to matter all that much, since eventually both must come together. If we are *whole*—and I don't know anyone who would like to be considered fragmented.

There are dedicated anti-abortion people who *feel* so deeply about the unborn that they use sheer emotional bombardment as a weapon. You know, all those graphic pictures, etc. But people will not see what they don't want to see. Shock tactics simply turn them off.

Then there are those whose approach is basically cerebral: they know that seeing is not necessarily believing; nevertheless they are convinced that seeing *statistics* will lead to comprehension. (If people only knew the *facts* about unborn babies, they would rise up and say: "This killing has got to stop!") Which is a bit like saying: If teenagers only *knew* the

Facts of Life, they'd stop getting pregnant—education is the answer. But we know that a whole generation of Sex Ed has produced the highest pregnancy/abortion rate in history.

Abortion and the Conscience of the Nation? It may be that until there is a coming-together of seeing and believing and knowing, in individual consciences, there can't be any formation of a national conscience; and 1.5 or 1.6 million—all those innocent zeroes—will continue to be slaughtered, one at a time, every few seconds, every single year. But their little ghosts will continue to not go away.

The nonsensical nursery rhyme becomes less nonsensical:

The other day
Upon the stair
I saw a man
Who wasn't there.
He wasn't there again today:
I wish that man
Would go away.

Catholic Pluralism

James Hitchcock

IN EVERY WAR OF IDEAS control of terminology is at least half the battle. At the beginning of the abortion wars, anti-abortionists claimed the high ground for themselves by taking the designation "pro-life." Arguably this was a tactical mistake, since it has opened the door to endless debate about who is "really pro-life" and what properly belongs to that designation, arguments which would have been obviated by the simple term "anti-abortion."

Those who favor abortion legally and morally usually call themselves "pro-choice," attempting to claim for themselves the high ground of human freedom. Unlike their opponents, however, the straightforward designation "pro-abortion" is hardly open to them, implying as it does support for what is, at a minimum, a wholly distasteful procedure.

In the Fall of 1984, in the midst of the presidential election, the New York *Times* published an advertisement titled "A Catholic Statement on Pluralism and Abortion," signed by several hundred people, among them three priests and 24 religious women. The statement claimed that both the morality and the legality of abortion were legitimately debatable questions within the Roman Catholic Church. Sponsors of the advertisement admitted that they were motivated in large measure by the desire to deflect criticism from the Democratic Party for its stand in favor of legalized and publicly funded abortions, and they accused Catholic leaders, especially Archbishop John J. O'Connor of New York, of using their authority on behalf of the Republicans.

There was a predictable outcry about the advertisement, as there was intended to be, and the Vatican's Sacred Congregation for Religious and Secular Institutes soon announced that religious who had signed the statement would be required to retract or face expulsion from their communities. The three male clerical signers soon issued what amounted to retractions. The case of the 24 women still drags on two years after the initial provocation, a microcosm of the general state of

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the Catholic Church in America at the present time.

Predictably, supporters of the 24 have claimed that the nuns are oppressed by a male-dominated Church, conveniently overlooking the speed with which the three male signers submitted to Vatican authority. Although many male religious are at heart as rebellious as many female religious, as a whole the former tend to be far more circumspect than the latter in their public statements.

The original Vatican announcement seemed to insure a public and dramatic confrontation between Church authorities and the rebellious women, and it was, therefore, a surprise to many when, beginning in the Spring of 1986, there was a series of announcements that various of the signers—in groups of two, three, or a half dozen—had been "cleared" by the Vatican. By the Summer this process had been applied to all but two of the 24.

But the process of "clearing" the nuns in question was from the beginning a mysterious one, since there was no public explanation of how their attitudes had changed, if at all, despite an established principle in Catholic moral teaching that scandal which is given publicly must also be undone publicly.

Doubts about the process developed quite early among those who observed it closely, since the Vatican had ordered the signers' own religious superiors to confront their rebellious subjects and to threaten them with expulsion if they did not retract. Although most superiors said little in public, there were persistent reports that in private they were supporting the nuns against the Vatican. At one point, following a meeting between the superiors and the signers, it was announced that the superiors of at least 16 of the nuns in question were in solidarity with their subjects.

Such a development was hardly surprising on the contemporary American religious scene. Attitudes of rebellion by religious orders against Rome, and sometimes against bishops, are now almost endemic and, as noted, much stronger and more overt in female communities than male ones. The issues aside, the mere fact that Rome had spoken was enough, in some cases, to guarantee the opposite response.

The ideology of radical feminism, which is now dominant in some communities, intensifies this. According to this ideology, male hierarchs have no right to exercise authority over women, who are answerable

only to one another. Within religious communities themselves, there is to be little or no hierarchical authority and decisions are to be consensual. ("Conservative" members of such communities complain privately that they are ignored, or worse, when consensus is formed.)

Thus the confrontation between the Vatican and the "New York *Times* 24," as they might be called, necessarily involved a confrontation with the established structure of American religious orders. Although the Vatican instinctively avoids confrontations whenever possible, this was in its way a golden oppportunity. Overt rebellion against Church teaching has hardly been confined to the subject of abortion, and certain communities have become centers of organized dissent, notably on the issue of whether women can be ordained to the priesthood. In demanding that the signers of the advertisement retract their words or face expulsion, the Vatican placed an enormous and unwelcome responsibility on the leadership of particular religious communities. If, as was almost inevitable, those leaders failed to take the requisite action, this could have been made the basis for a sweeping review of religious life, including, possibly, the replacement of certain superiors by others who would act in accordance with official Church policy.

Quite early it became obvious that the Vatican would not do this, and this failure itself revealed a good deal about the problems of what is often called "the American Church." Obviously troubled by certain tendencies among American religious, the Vatican several years ago appointed a committee of three American bishops to investigate. But the chairman of the committee, Archbishop John R. Quinn of San Francisco, has consistently claimed that there are no serious problems and that religious life in America is healthy. Soon after the controversy over the *Times* ad erupted, he declared that it lay outside the scope of his committee. The Vatican would now find it difficult to take firm action against religious communities when its own chosen investigator has publicly acquitted them of any suspicion of serious error. (The appointment of Archbishop Quinn to conduct the investigation can in turn be traced to the need to nominate a prelate acceptable to the majority of American bishops, who are probably in basic sympathy with the direction in which religious life has been moving in the United States.)

Concerning one of the "*Times* 24," Sister Margaret Farley of Yale Divinity School, the Vatican statement used the word "retraction." Sister Margaret's superior, Sister Helen Amos, then publicly denied the word's applicability, calling its use "tragic." Sister Margaret insisted, equally publicly, that she had retracted nothing. The confusion deepened, since it was now impossible to judge on what basis she or any other signer had been "cleared."

In late July, 11 of the signers, all of whom had been properly "cleared," issued a public statement "deploring" the Vatican claim that they had made "declarations of adherence to Catholic doctrine on abortion" and calling the entire process "a dangerous precedent in the life of the church." By Summer's end, therefore, slightly over half of those officially "cleared" were insisting that they had changed their positions not one iota. Presumably, if the statement to which they affixed their names in 1984 was unacceptable for a religious, it remained so in 1986.

Some of those "cleared" claimed that they had never even been contacted directly by a Vatican representative nor asked to sign any kind of statement, and that assurances of their fundamental orthodoxy on the abortion question had merely been given by their superiors. Under the circumstances it was difficult not to suspect that the whole process had been designed mainly to avoid a confrontation, and to avoid revealing the fact that Church authorities apparently lack the ability to discipline rebellious religious. The process failed even as a face-saving device, however, because of the insistence of so many of those involved on not admitting to even the smallest degree of submission.

The two nuns who refused to participate even in this face-saving attempt, and who remained unapologetically recalcitrant about the advertisement, were Sisters Patricia Hussey and Barbara Ferraro of Charleston, West Virginia. The Vatican announced that it was turning their cases over to their superiors. (Both belong to the Sisters of Notre Dame de Namur.) However, the superiors, while admitting to being "troubled" over the two nuns' stand on abortion, also indicated that they do not regard it as grounds for dismissal from the community. Thus at Summer's end it seemed likely that no disciplinary action would be taken even against the two signers who were unambiguously unrepentant.

Some such scenario as the above was almost predictable from the

beginning, given an unwillingness on the part of Church authorities to take strong disciplinary action. The original *Times* ad was provocative and was intended to be. It was a direct attack on official Catholic teaching in an extremely sensitive area. Reigning feminist ideology, as well as reigning theories of religious life, virtually insured that those who mounted such a challenge would be supported by many of their colleagues. (In the Fall of 1985 an advertisement offering such support was also published in the *Times*.)

Emotions generated by the controversy were also predictably explosive. Many Catholics opposed to abortion were outraged that religious women could successfully affront the teaching as they had. On the other side the air was filled with rhetoric about "oppression," "patriarchy," and "tyranny."

The *National Catholic Reporter*, chief organ of American Catholic leftism, made medical history in its handling of the issue. One of the 24, Sister Margaret Ellen Traxler, was reported to have suffered a mild stroke, which her doctors were said to have attributed to the suffering caused her by the Vatican, although no responsible physician would assign so specific a cause to such a trauma. When another signer, Sister Marjorie Tuite, died of cancer, her terminal sufferings were also attributed to the aggravation imposed on her by the Vatican. (In the same article the *Reporter* reached the nadir of religious journalism when it allowed Sister Patricia Hussey to claim that a Vatican official had attempted to take sexual liberties with her while trying to persuade her to recant.)

For many people the issue at stake is not abortion but authority. Whatever they may think about the former, it is the exercise of the latter which disturbs them, and they are prepared to justify almost any degree of rejection of Church doctrine in order to uphold the principle of dissent from authority. For such people virtually any exercise of authority is itself evil, far worse than any evil connected with abortion. Thus the 1984 statement was in its way also inevitable. Abortion could not be allowed to remain an unchallengeable Catholic "taboo." The "right of dissent" had to be extended to the one moral issue on which the Church has, fairly successfully, continued to speak with one voice. Short of that, authority would be conceded a legitimacy which, in the minds of many, it ought never to have.

Yet this also is not quite accurate. Its inaccuracy can be readily seen if the issue is changed from abortion to, for example, racism. It is impossible to imagine any group of Catholics, much less priests and religious, making a public statement in support of theories of racial supremacy and racial segregation, on the grounds that there ought to be a "pluralism" of Catholic views on the subject. Any religious who did sign such a statement would unquestionably face severe discipline, including expulsion from her community.

Those who invoke the idea of "pluralism" in the context of abortion are saying, therefore, that they do not regard the practice as morally repugnant in the same way that certain other things are. Although formally they may insist that they agree totally with the Catholic teaching and merely wish to allow for a measure of freedom in the Church, in reality abortion is in their minds at best a debatable practice.

Its moral ambiguities in their minds in turn stem in large part from the fact that it is in the area of sexual morality, so personal and so intimate, that self-consciously "modern" Catholics most strongly resent religious authority. Although most liberal Catholics have retained varying degrees of moral reservation about abortion, there is also a presumption in their minds that, when the Church speaks about sex, it usually errs.

This attitude is strongly reinforced by notions of "social justice" now prevalent on the Catholic left and deeply ingrained in certain religious communities. In practice, this concept owes little to traditional Catholic social doctrine as found, for example, in the classic papal encyclicals, and owes almost everything to the secular left.

Much of the controversy over abortion in the contemporary Church now centers on the concept of the "life issues" as a "seamless garment," an image developed by Cardinal Joseph Bernardin of Chicago. According to this formulation, no moral issue should ever be addressed in isolation from others. Thus those who are concerned about abortion, war, capital punishment, or other perceived social evils should open their embrace to the entire range of such issues.

There are some liberal Catholics who strive to do this. Many anti-abortionists, however, are deeply suspicious of what they view as an attempt to swamp their movement in a larger sea of issues. Most leftist

Catholics, including priests and religious, cannot really espouse the "seamless garment" precisely because they can never become truly exercised about abortion. This in turn is due to the fact that they take their ideology, and their list of social evils, from a contemporary leftist ideology which for the most part not only fails to see abortion as an injustice but believes that a woman suffers a grievous injustice if she is not allowed to abort an unwanted child.

At best, therefore, such people pay occasional lip service to abortion as an evil. Usually it is omitted from their standard lists of evils. The principal rhetorical effect of the "seamless garment" concept has been to allow leftist Catholics to accuse anti-abortionists of being inconsistent and to use that alleged inconsistency as justification for ignoring the abortion issue.

An organization of nuns dedicated to "peace and justice" calls itself Network, and there exists, apart from any specific group, a widespread network of leftist Catholics held together by a commitment to varying kinds of issues, who have made common cause with one another and support one another's crusades. Few of them are willing to include abortion in their network in any meaningful way, and most would probably be inclined to defend the signers of the *Times* advertisement.

A sampling of signers from the 1984 statement includes, for example:

—Sister Margaret Ellen Traxler, a militant feminist who on the one hand claims to disapprove of abortion morally but on the other fanatically defends women's "right" to abort if they see fit. She has launched sometimes vitriolic attacks on anti-abortion politicians.

—Sister Maureen Fiedler, a crusader on behalf of the Equal Rights Amendment. Sister Maureen also defends a woman's "right" to abort but also insists, rather disingenuously, that the ERA, if enacted, would have nothing to do with abortion.

—The late Sister Marjorie Tuite worked for a Protestant group called Church Women United, which is pro-abortion. Besides feminism, her chief cause was the support of the Marxist government of Nicaragua. (A new insight into the meaning of "pro-life" in some parts of the "peace and justice" network was revealed in the praise given Tuite at her funeral by Nora Astorga, Nicaragua's ambassador to the United Nations, who is reliably reported to have helped perpetrate a brutal murder at the time of the Sandinista revolution in Nicaragua.)

—Sister Jeanine Gramick, an activist on behalf of homosexual rights long associated with groups which morally justify homosexual behavior.

By an almost automatic instinct, activists in one area of this "social justice" network come immediately to the support of each of the others.

So firm does the Catholic position on abortion seem to be from the outside that most observers, including many within the Church, probably assume that the "*Times* 24" and their supporters are a mere fringe, impotently pounding their fists against a solid wall. The reality, once more, is a good deal more complicated.

The *National Catholic Reporter*, which remains officially opposed to abortion but also endlessly hospitable to pro-abortion opinion within its pages, strongly criticized the 1984 advertisement and urged Catholics not to sign the 1985 sequel. However, it has been even more harshly critical of Vatican actions, and constantly argues that the Church lacks credibility on the abortion issue. The *Reporter*'s misgivings about the two advertisements can be seen as largely tactical, since the statements provoked an almost inevitable Vatican reaction and arguably retarded the goal of making abortion an acceptable "alternative" within the framework of Catholic morality.

Those who signed the ads do not seem to think of themselves as an impotent fringe group but aim precisely to change the direction of the Church's mainstream. There is no doubt that in practice pro-abortionist sentiment enjoys a degree of tolerance even in official Church circles in the United States.

Some of the signers of the *Times* statement claim that privately they have received expressions of support from certain bishops and that the Vatican backed away from strong action because such episcopal support does indeed exsist. Russell Shaw, a staff member of the U.S. Catholic Conference, the bishops' official agency for public issues, told the media at one point that there had been "a significant rhetorical shift" on the part of the Vatican.

A number of the signers have at one time or another had close Church ties in addition to their membership in a religious order. A lay woman named Delores Pomerleau, for example, was once hired by the U.S.C.C. to produce a book on "sexism," which the organization had to suppress just prior to publication when it was discovered to be seriously at odds with Catholic teaching on a number of points. Why

Pomerleau, whose ideological sympathies were well known, was commissioned to write the book, and why it was not monitored prior to being printed, remain unexplained.

In the late Summer the Vatican revoked the teaching credentials of one of America's best-known Catholic moral theologians, Father Charles Curran of the Catholic University of America in Washington. Curran justifies legalized abortion, urges Catholic hospitals to provide abortion services, and justifies abortion morally under certain circumstances. His own bishop, Matthew Clark of Rochester, New York, has publicly supported Curran in his conflict with the Vatican and, although other bishops who have spoken publicly have endorsed the Vatican's action, Curran claims that privately he has received expressions of support from over 40 bishops.

Direct or indirect support for the "*Times* 24" has appeared even in the official diocesan press. In Cardinal Bernardin's own diocesan paper, for example, a Chicago pastor named Daniel O'Sullivan, while acknowledging that the signers made a mistake for which they ought to be accountable, placed even greater blame on Cardinal O'Connor and on Cardinal John J. Krol of Philadelphia, for their public opposition to abortion in a way which O'Sullivan charged amounted to partisan politics. They too should be punished, he argued.

Tom Fox, editor of the *National Catholic Reporter*, claims to have had a conversation with a bishop who admits to not supporting the Church's teaching on contraception. When asked about abortion, the bishop replied that he could envision situations where "abortions of mercy" might be legitimately performed. Although no bishop has ever publicly even hinted that he finds abortion morally acceptable, it is not unreasonable to think that Fox's confidant is not the only American prelate who holds that opinion.

At present the most prominent episcopal spokesman for "social justice" in the United States is Archbishop Rembert Weakland of Milwaukee, chairman of the committee which has drafted an episcopal letter on the economy. Archbishop Weakland is often cited as representative of the "new" kind of prelate who is concerned with a wide range of issues.

As with other prominent "peace and justice" bishops (for example, Archbishop Raymond G. Hunthausen of Seattle), anti-abortionists have

not found Archbishop Weakland strongly supportive of their cause.

A Milwaukee theologian named Daniel Maguire, a former priest, is probably the single most outspoken "Catholic" proponent of the morality of abortion. While noting that Maguire's opinions are "not consonant with the official teaching of the Catholic Church," Archbishop Weakland has nonetheless defended his right to teach at Marquette University, a Catholic institution.

In mid-Summer, Archbishop Weakland issued a strong statement denouncing violence directed against abortion clinics and the picketting of the homes of abortionists. Whatever might be thought of those issues in principle, the circumstances under which the statement was issued were disturbing to many anti-abortionists. It was made in response to a request from several Protestant clergy all of whom are themselves pro-abortion. It was hailed as "fantastic" by operators of abortion clinics, one of whom said the statement was much stronger than they had expected.

Archbishop Weakland has said that his strictures against the destruction of property do not apply only to anti-abortionists but also to those opposing, for example, military installations. The statement emanated from a context in which abortion was paramount, however, and if it were really perceived as applying to anti-war demonstrators it would have brought forth cries of outrage from many leftist Catholics, for most of whom Archbishop Weakland remains something of a hero.

The 1984 *Times* statement was organized by a group called Catholics for a Free Choice, which has an uncertain membership and is largely financed by overtly pro-abortion sources outside the Church. Its head is Frances Kissling, a former professional administrator in the abortion industry. Kissling believes the "*Times* 24" have been "victorious."

In late Summer, two of the signers—Sister Margaret Ellen Traxler and Sister Carol Costan—joined an ecumenical coalition formed to lobby for federal funds to pay for abortions for victims of rape and incest.

Although such an affiliation might seem like indisputable evidence that the two nuns are indeed pro-abortion, they and their allies indignantly deny it. The standard position, widely accepted in liberal Catholic circles, is that of the unofficial National Coalition of American

Nuns, which holds that abortion is morally wrong but also enthusiastically supports permissive abortion laws, on the grounds that a mother's "freedom" should never be interfered with. (Sister Donna Quinn, another NCAN Member, goes on to claim that "there is nothing so far to say when life begins," a statement which no one even minimally competent in biology could possibly make.)

The NCAN position, which is not confined to that group, is that the signers of the *Times* statement should escape censure not only because they ought to have the freedom to dissent from Church teaching but also because they are not in fact "pro-abortion" at all. In this view the only purpose of the advertisement was to assert freedom of discussion in the Church and the Vatican "overreacted" by interpreting this as a repudiation of Catholic teaching. (In sensing a "rhetorical shift" on the part of the Vatican, Russell Shaw repeated the same claim.)

Just as those who oppose abortion are routinely denied the title "pro-life" even by some of their fellow Catholics who allegedly agree with their moral stance, so also those who passionately urge that abortion be legal, and even funded by tax money, are not to be regarded as "pro-abortion." Yet in insisting that abortion is not a settled moral issue, the signers of the 1984 statement were precisely insisting that it may be sometimes a moral choice and a permissible action.

Ultimately the "*Times* 24" are absolved of the charge of being pro-abortion simply because no one is pro-abortion. Ideally, the argument runs, there ought not to be abortions because women ought never to get pregnant except when they wish to be. Hence abortion is always a "tragic" choice which no one favors but which must be tolerated.

But to say this is to say nothing more than that abortion is a surgical procedure. No surgical procedure is ever desired, in that its necessity always implies sickness or disorder. Yet surgery is also commonly viewed as life-giving, even as miraculous. It is this kind of aura which those who deny that they are pro-abortion wish to confer on the procedure.

Not for the first time has one side in the unending war of ideas found it useful to deny its own existence.

Theologians and Abortion: Not Their Finest Hour

Mary Meehan

IN SEPTEMBER, 1984, TWO ROMAN CATHOLIC theologians appeared at a Washington press briefing to attack their Church's teaching on abortion. The briefing was sponsored by a small group called Catholics for a Free Choice, whose executive director appeared with the theologians.

Daniel C. Maguire of Marquette University told reporters that the Jewish community includes the Reform, Conservative, Orthodox and Hasidic traditions and that "the same phenomenon has occurred within Catholicism in the past 25 years." He identified the position that all abortions are wrong with the "Hasidic Catholics." Asked to explain the Second Vatican Council's declaration that abortion is an "unspeakable crime," Maguire quickly shifted the discussion to contraception.[1]

His colleague, J. Giles Milhaven of Brown University, had prepared a statement in which he noted approvingly Catholic doctors who refer for abortion and Catholic women "who would never have an abortion themselves, but see their way clear to enable and help others have abortions." He attributed this sort of behavior to "the genuine faith of the Catholic people, their love of fellow human beings and their common sense."[2]

The following day, 67-year-old Catherine O'Connor of Rockville, Maryland, commented on the two theologians and 53 others who had signed a "pro-choice" statement. A Catholic laywoman, nurse and grandmother, O'Connor had just spent a few days in jail for the crime of "wanton trespass" at an abortion clinic. She had entered the clinic to urge women not to have abortions.[3] O'Connor said she felt "heartsick" about the theologians. She added that it is "terrible when anyone has this attitude, this lack of regard for human life." But when it is "someone who should be a part of the influence for good and for respect for life and the sanctity of life—and they're going the other way—that really is a blow."[4]

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The admirably incorrigible Mrs. O'Connor said that in earlier experiences of being jailed for anti-abortion work, she found that many inmates "had a great appreciation of life—greater than a lot of people on the outside who should know better."[5] Others jailed for sit-ins at abortion clinics have reported the same thing about their fellow inmates.

The problem is not restricted to Catholicism. Many Protestant and Jewish theologians lend their prestige to a practice which their faiths traditionally condemned. Other theologians suffer from timidity. They do not really *like* abortion, but they cannot bring themselves to condemn it, either. While the Catherine O'Connors of this world do their time in court and in jail, these theologians appeal to "pluralism" and "toleration." All the while, the bloody slaughter goes on.

There are exceptions, theologians who have refused to sell their religious birthright for a mess of secular pottage. For moral theologians as a group, however, what Norbert Rigali wrote twelve years ago still applies today: ". . . the abortion debate to this moment has not been for American theologians their finest hour."[6]

At least since 1970, Giles Milhaven and others have waged a major campaign in theological journals and learned societies, trying to make abortion a debatable issue within Catholicism and to undermine traditional teaching on the subject.[7] Accomplishing the first goal went a long way toward accomplishing the second. Dissenting journal articles, a stacked panel in a theological meeting, and a New York *Times* advertisement signed by a tiny percentage of Catholic theologians were used to suggest that abortion is an open question within Catholicism. Now it is suggested that Catholics are free to follow dissenting theologians if they do not like what their Pope and bishops are saying.[8] It is a devise-your-own Catholicism, alien to nearly 2,000 years of Catholic history.

In June, 1984, at the annual meeting of the Catholic Theological Society of America, a moral theology seminar featured several panelists whose attitudes toward traditional teaching ranged from cool to hostile. This should have surprised no one, since Daniel Maguire was an active member of the small committee that chose the panel.[9] But it greatly upset some workshop participants, including Germain Grisez. An authority on abortion who teaches at a Catholic seminary, Grisez felt

that Maguire and his colleagues were trying "to establish that a Catholic's pro-choice abortion position is a legitimate position" and that "in order to do this, they set this thing up, and they kept complete control over the presentations." Grisez thought they had not made a pro-choice position intellectually respectable, "but they made it politically in power in this situation in the association. Therefore, they can go out and say 'Well, in the Catholic Theological Society we had this thing, and all these papers were presented, and so forth and so on. See, it's a respectable position.'"[10]

Three months later, at his press briefing with Maguire, Giles Milhaven declared: "Catholic theologians do hold different opinions. We had a meeting of the Catholic Theological Society of America here in Washington in June in which there was a very lively debate in the section on abortion." Bowing to the scholarly journals, Milhaven added: "There's a recent article in *Theological Studies* which presents a position which is not the official position of the hierarchy."[11]

In their campaign against "the hierarchy's position," which also happens to be the position of huge numbers of lay Catholics, Milhaven and his colleagues are presumably acting in good conscience. But as Daniel Maguire himself once wrote: "A formidable amount of harm is done by people who are acting in perfect obedience to their consciences."[12] In doing harm, pro-choice theologians are assisted by Catholics for a Free Choice (CFFC). This organization exists to trumpet dissent on abortion; it fiercely attacks the Catholic hierarchy, and skillfully works the media. CFFC used to claim a membership of only 5,000; so critics suggested that it represented a tiny fraction of the 52 million U.S. Catholics. The group's resourceful leader recently solved that problem by declaring that "we don't have membership anymore." CFFC now sees itself as an educational group.[13]

Catholics for a Free Choice is supported by foundations, most of which have a minimal interest in Catholicism but a major interest in population control and abortion.[14] Their grants paid large dividends in the past two years as CFFC gained substantial media coverage for two New York *Times* advertisements on Catholics and abortion. The first ad, denying that official teaching "is the only legitimate Catholic position,"[15] triggered Vatican action against Catholic religious who signed it and local actions against lay signers (such as cancellation of speaking

engagements at Catholic colleges). CFFC eagerly broadcast all reprisals, portraying the signers as victims of the hierarchy.[16] Then, after lengthy publicity, CFFC stalwarts published a second *Times* ad, decrying reprisals against signers of the first ad and declaring solidarity with them. Some signers of the first ad were so enthusiastic that they signed the second as well, thus declaring solidarity with themselves.[17]

Another group heavily financed by pro-abortion foundations is the Religious Coalition for Abortion Rights (RCAR), which chiefly involves Protestant and Jewish groups.[18] Unlike CFFC, the RCAR can count on official statements of many denominations supporting legalized abortion. The statements generally stress religious freedom, insisting that a right to abortion is part of such freedom. Some, however, indicate uneasiness or even a bad conscience on the issue. After calling abortion permissible in certain hard cases, the Episcopal Church says that in other cases its members "are urged to seek the advice and counsel of a Priest of this Church, and, where appropriate, penance." The Presbyterian Church, U.S.A., despite its support for public funding of abortion, affirms its "commitment to minimize the incidence of abortion" and says that "abortion should not be used as a method of birth control." The United Methodist Church declares that "our belief in the sanctity of unborn human life makes us reluctant to approve abortion," yet calls "all Christians to a searching and prayerful inquiry into the sorts of conditions that may warrant abortion." Far from being embarrassed by the fuzzy thinking and contradictions of such statements, the RCAR proudly distributes them in a pamphlet called "We Affirm."[19]

The fuzzy thinking and contradictions appear to have two sources. One is the clash of religious beliefs with the "me-first" attitude of our unhappy culture. The second is the fuzzy thinking of theologians who should know better.

Scriptural Arguments

Some of them, like Daniel Maguire, claim that the Bible "does not forbid abortion."[20] Paul D. Simmons, a Protestant ethicist, refers to "the absence of a prohibition of abortion in the Bible."[21] Many believers, of course, think that the subject is covered adequately by one of the Ten Commandments: "You shall not kill" (Exodus 20:13).[22] This is reinforced elsewhere: "The innocent and the just you shall not put to

death . . ." (Exodus 23:7). "Only if you thoroughly reform your ways and your deeds . . . if you no longer shed innocent blood in this place . . . will I remain with you in this place, in the land which I gave your fathers long ago and forever" (Jeremiah 7:5-7).

Pro-abortion theologians argue that these commands refer only to treatment of born persons. They cite Exodus 21:22-25 as proving that the unborn were not regarded as fully human in ancient Jewish history. The passage deals with an unintended miscarriage:

> When men have a fight and hurt a pregnant woman, so that she suffers a miscarriage, but no further injury, the guilty one shall be fined as much as the woman's husband demands of him, and he shall pay in the presence of the judges. But if injury ensues, you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe.

This is generally interpreted to mean that if the child alone died, the punishment was only a fine; whereas if the mother died, the punishment was the death penalty.[23]

If the common interpretation is correct, the passage shows that a woman was valued more highly than an unborn child. It also shows, as do many other Scriptural passages, that a man was valued more highly than a woman ("as much as the woman's husband demands of him"). An earlier passage of the same chapter reveals that a man was allowed to sell his own daughter into slavery and that, unlike male slaves, the daughter was not freed after six years (Exodus 21:7). Several verses later, we find that if a slaveholder struck his slave so hard that the slave died, the slaveholder "shall be punished. If, however, the slave survives for a day or two, he is not to be punished, since the slave is his own property" (Exodus 21:20-21). It is not surprising that abortion supporters who cite the Exodus passage on accidental miscarriage rarely cite the rest of the chapter. It was not the high point of Jewish law.[24]

Even if considered out of context, however, Exodus 21:22-25 does not condone abortion caused by accident—much less abortion by intent. Another part of Scripture deals directly with the latter, and the condemnation seems clear: "For three crimes of the Ammonites, and for four, I will not revoke my word; because they ripped open expectant mothers in Gilead, while extending their territory . . . Their king shall go into captivity, he and his princes with him, says the Lord" (Amos 1:13-15). Abortion advocates might say that this refers to a

wartime atrocity and to forced abortion, rather than to abortion freely chosen by a woman. They could also say that the expectant mothers in Gilead must have died, so that the passsage does not deal only with harm to the unborn. All of this may be true, but strained. A double atrocity is involved; the Ammonites killed both women and unborn children. The passage speaks to both evils.

Anyone who wants to justify abortion freely chosen by women must deal with other Scriptural passages on fetal life. The Psalmist declared: "Truly you have formed my inmost being; you knit me in my mother's womb. I give you thanks that I am fearfully, wonderfully made . . . My soul also you knew full well; nor was my frame unknown to you when I was made in secret . . ." (Psalm 139:13-15). Isaiah said, "The Lord called me from birth, from my mother's womb he gave me my name" (Isaiah 49:1). The Lord compared his love for his people with that of a mother for her child: "Can a mother forget her infant, be without tenderness for the child of her womb? Even should she forget, I will never forget you. See, upon the palms of my hand I have written your name . . ." (Isaiah 49:15-16). God told Jeremiah: "Before I formed you in the womb I knew you, before you were born I dedicated you, a prophet to the nations I appointed you" (Jeremiah 1:5).

The verses above are the common heritage of Jews and Christians. In their New Testament, Christians have additional verses to ponder. The Apostle Paul declared that God "set me apart before I was born and called me by his favor . . ." (Galatians 1:15). It was said of John the Baptist that he would "be filled with the Holy Spirit from his mother's womb" (Luke 1:15). When his mother was expecting him, she greeted Mary (also expecting) with these words: "Blest are you among women and blest is the fruit of your womb. But who am I that the mother of my Lord should come to me? The moment your greeting sounded in my ears, the baby leapt in my womb for joy" (Luke 1:42-44).

Christian theologians who suggest that fetal life is expendable must deal with the Scriptural account of Christ as an unborn child and the likelihood that his mother, when she first realized that she was pregnant, was young and poor as well as unwed. Today's opinion leaders view poor teenagers as prime candidates for abortion. As pacifist Jim Forest writes of Mary's case:

> Abortion didn't occur to anyone in her family or neighborhood. Their failure of imagination is striking, even shocking, since the young woman's situation is a casebook example of why abortion has been accepted in so many parts of the world. Even many Christians, advocates of nonviolence, protectors of endangered whales and baby seals, and savers of discarded bottles, would appeal to her not to keep the child . . . Mary's unpromising child managed to be born. She named him Jesus.[25]

Viewed in this light, Christ's words to his disciples may take on new meaning: "I was a stranger and you welcomed me. . . . I assure you, as often as you did it for one of my least brothers, you did it for me" (Matthew 25:35,40).

Theologians who support abortion dismiss many Scriptural passages unfavorable to their case. Faced with anti-abortionists' citation of Psalm 139, Protestant ethicist Beverly Wildung Harrison acknowledges the passage as great poetry but says that it should not be taken literally. A veteran abortion activist, Harrison attacks her opponents as "biblicists" who use "proof-texting" and "substitute scriptural exegesis for ongoing moral reasoning."[26] When theologians downplay the Scriptures, they should do it with more flair than this. They might consider the approach described by Protestant theologian Harold O. J. Brown:

> In one congregation where I presented the biblical position on abortion, a woman objected that the fetus is not a human being. When I quoted Jeremiah 1:5 to her, she replied, "That's just Jeremiah's opinion."[27]

The Feminist Attack

Harrison's radical pro-choice opinion requires explaining away not only the Scriptures, but also a long line of Christian theologians. Her favorite approach in dealing with traditional theologians is to accuse them of misogyny and preoccupation with sexual sins. She claims that traditional teaching against abortion was based on these biases, rather than on reverence for life. Harrison dismisses several Fathers of the Church as "vitriolic toward women." Augustine, she says, was "racked with ambivalence about sexuality." Jerome, poor man, was "sexphobic in the extreme."[28] The great Reformer, John Calvin, "vented his sexual prudery, more severe than Luther's, in expressing rigorist objections to adultery and related sexual sins, including, in fragmentary references, abortion."[29]

The problem with Harrison's interpretation is that it is contradicted by a great deal of evidence. In the Christian tradition, abortion has never been considered merely a sexual sin. One of the earliest Christian

teachings, "The Didache," linked abortion with another act of violence: ". . . do not kill a fetus by abortion, or commit infanticide."[30] One of the most recent, a declaration of the Second Vatican Council, also coupled abortion with infanticide and called them both "unspeakable crimes."[31]

Tertullian, an early Church Father, wrote:

> But, with us, murder is forbidden once for all. We are not permitted to destroy even the fetus in the womb, as long as blood is still being drawn to form a human being. To prevent the birth of a child is a quicker way to murder. It makes no difference whether one destroys a soul already born or interferes with its coming to birth. It is a human being and one who is to be a man, for the whole fruit is already present in the seed.[32]

Basil of Caesarea (Basil the Great), Ambrose, Jerome, and Augustine all condemned abortion. Most of them called it murder, at least in the later stages of pregnancy. John Chrysostom called it "something even worse than murder."[33]

Harrison contends that John Calvin "displayed little interest in the question of abortion" and that it "was totally marginal to Calvin's moral concerns." The Reformers, she declares, "in no way elaborated their denunciations in moral terms related to the value of fetal life."[34] Yet Calvin wrote that the fetus

> is already a human being . . . and it is almost a monstrous crime to rob it of the life which it has not yet begun to enjoy. If it seems more horrible to kill a man in his own house than in a field, because a man's house is his place of most secure refuge, it ought surely be deemed more atrocious to destroy a fetus in the womb before it has come to light.[35]

This is not to say that Harrison's complaints about discriminatory attitudes toward women are baseless. Chrysostom, for example, thought women "weak and fickle."[36] He believed that they were "reasonably subjected" to the rule of men, in part because Eve allowed herself to be deceived by the serpent. Women were to acknowledge their subjection in church by covering their heads and keeping silent. While Chrysostom urged men to be kind to their wives, and while he condemned wife-beating, he advised women whose husbands happened to beat them: ". . . take it not ill, O woman, considering the reward which is laid up for such things and their praise too in this present life."[37] Statements like these can transform the mildest-mannered woman into a flaming feminist.

If Chrysostom had condemned abortion as a rebellion by women against their subjection to men, his case would be worthless. Yet he clearly opposed abortion because it involved the taking of human life before birth, "something even worse than murder." His and other Church Fathers' arguments against abortion must be answered on their own merits. But Harrison and some other feminists feel no obligation to do this. By allowing their anger over misogyny to carry them to a pro-abortion stance, they have, in rather literal fashion, thrown out the baby with the bath water. Some of them also dismiss women who do not agree with them. Thus the Woodstock Theological Center's Madonna Kolbenschlag declares: "Many women who espouse the pro-life position do so, at least in part, because they have internalized patriarchal values and depend on the sense of identity and worth that comes from having accepted 'woman's place' in society."[38] This is the sort of condescension and pop psychology that passes for moral discourse among many academics today.

Rosemary Bottcher is not a theologian—in fact, not even a believer. But she is a feminist, and her words should be pondered by feminist theologians:

> Pro-abortion feminists resent the discrimination against a whole class of humans because they happen to be female, yet they themselves discriminate against a whole class of humans because they happen to be very young. They resent that the value of a woman is determined by whether some man wants her, yet they declare that the value of an unborn child is determined by whether some woman wants him. They resent that women have been "owned" by their husbands, yet insist that the unborn are "owned" by their mothers. . . .[39]

Ensoulment Debates

Another argument used by abortion supporters is that in the early stages of gestation the unborn do not have human souls and that early abortion thus cannot be homicide. Most do not stop at that point to ask whether it might be another type of offense. To use a legal analogy, there are many felonies short of homicide. Indeed, some advocates of delayed ensoulment have viewed abortion as "anticipated homicide, or interpretive homicide, or homicide in intent."[40] Protestant theologian Dietrich Bonhoeffer, apparently referring to the ensoulment debate, wrote that raising the question of "whether we are here concerned already with a human being or not is merely to confuse the issue. The simple fact is that God certainly intended to create a human being and

that this nascent human being has been deliberately deprived of his life. And that is nothing but murder."[41]

In public policy debates, the position that ensoulment is delayed and abortion therefore should be permitted has an ironic twist. Many of those who suggest it argue on one level that anti-abortionists must not impose their "religious beliefs" about abortion on those who do not share their beliefs. But on another level, they argue that we must settle the fate of the unborn on the religious grounds of ensoulment—or, more precisely, on religious *doubt* about ensoulment. They cannot have it both ways. In a pluralistic society, we must consult neutral authorities, such as the facts of science, to ask: Is the fetus alive? Is it a member of the human species? Public policy should be based on the answers to those questions, rather than on theology. The law has no competence in theology.

The ensoulment issue, however, is relevant to the moral decisions of believers. One who accepts a theory of delayed ensoulment might believe abortion to be regrettable, perhaps even sinful, but less serious than homicide.

Theories of delayed ensoulment have an ancient history. Aristotle believed that the embryo-fetus had three different souls: first vegetative or nutritive, then animal or sensitive, then human or rational. He apparently thought that human ensoulment occurred at about 40 days after conception for males and 90 days for females.[42] Aristotle's primitive biology had great influence on Thomas Aquinas and many other medieval theologians. Some were also influenced by a mistranslation of Exodus 21:22-25 in the Septuagint version, which made a distinction between a formed and an unformed fetus.[43] Although they generally held that abortion was a serious sin at any stage of fetal development, they said that it was not homicide unless the fetus had a human soul or was "formed."[44]

It is ironic that some contemporary theologians, who consider themselves progressives in most matters, rely on Aristotelian biology to support their permissiveness on abortion. Some who are the first to cite medieval theologians on abortion would be the last to cite them on anything else. It is reasonable to ask for more consistency than this.

Ancient and medieval thinkers did the best they could with their limited knowledge of human biology. They knew nothing of ovum and

sperm, genes and chromosomes. Their knowledge of fetal development was minimal and also mistaken in many respects.[45] It would be unfair to suggest that some of the greatest minds of Western history, especially Aristotle and Aquinas, would have failed to rethink their ensoulment theories if faced with scientific evidence of the genetic code and fetal development.

Joseph F. Donceel, a Jesuit philosopher (and professor-emeritus at Fordham) quoted by pro-choice theologians, offers a more sophisticated view. He concedes that Aquinas was mistaken in his biological views, but claims that he was right about delayed ensoulment. Donceel bases his case on the Aristotelian and Thomistic doctrine of hylomorphism, saying that the soul is the substantial form of the body and can exist only in a highly-organized body. He believes that hylomorphism explains the true unity of the human being, while theories of immediate ensoulment depend on Platonic or Cartesian "dualism" of soul and body. Hylomorphism, Donceel contends, "holds that the human soul is to the body somewhat as the shape of a statue is to the actual statue," adding that the shape "cannot exist before the statue exists."[46] Dualistic theories, on the other hand, see the soul as the sculptor of the statue, the driver of the car, or the ghost in the machine.[47]

Most lay people, to the extent that they think about it, probably support the driver-of-the-car theory. Donceel concedes that Cartesian dualism "is not absurd" and "has been held by many great thinkers." But he says that it "seriously endangers the unity of the human person and leads to great philosophical difficulties."[48]

Hylomorphism as interpreted by Donceel leads to great *practical* difficulties for the unborn, since it is used to justify early abortion. According to him, the embryo has a vegetative or animal soul; it is not yet sufficiently organized or differentiated to receive a human soul. He is careless, or inconsistent, or both, in his policy conclusions. In one article, he suggests that early abortion is morally permissible "provided there are serious reasons for such an intervention," but does not list what he considers to be serious reasons.[49] In a later article, he declares:

> What the present state of our knowledge warrants us to say is that every abortion may be a homicide, and that, as a result, abortion is always immoral, because, in case of doubt, we are not allowed to perform an action that might kill a person. . . .[50]

In a recent pronouncement, Donceel returns to his position of condoning abortion (at least for non-Catholics!) "during early pregnancy, for serious reasons." He does not explain why he abandons the principle that, when in doubt, we may not take the chance of killing a person.[51]

Donceel thinks that a human soul is not present in the first "few weeks" or "several weeks" of pregnancy. "The least we may ask before admitting the presence of a human soul," he says, "is the availability of these organs: the senses, the nervous system, the brain, and especially the cortex." He says that "it is difficult to be more specific," but then indicates that he may be speaking of ensoulment "around the twelfth week" of pregnancy.[52] That particular end of the hunting season would allow the vast majority of abortions.[53]

We might expect more precision from a philosopher, especially in a matter of life or death. And while there is something to be said for the theory of hylomorphism, the theory does not require delayed ensoulment (also called delayed hominization). Indeed, as Catholic theologian Benedict Ashley argues in a technical but powerful essay, "if the philosophical principles of Aquinas are correctly applied to the data of modern embryology, the theory of delayed hominization turns out to be quite implausible."[54] It seems that Donceel too quickly assumes that medieval biology did not seriously affect Aquinas' view of ensoulment. Aquinas thought that a woman's menstrual blood was the matter that had to be prepared by a man's semen, over a relatively long period, so that it would become highly organized. "The less organized this matter, the longer time would be required for the agent to carry out the series of steps necessary to prepare it for the human soul," Ashley remarks. But "modern biology sees this developmental distance as much shorter, because the maternal matter, the ovum, is already very highly organized, and therefore proximately prepared."[55]

Ashley argues that the soul is present when conception (fertilization) is completed. Stressing that the nucleus of the zygote has both information and power, he adds:

> We must not merely understand the zygotic nucleus as a genetic "blueprint" and then argue, as some authors have done, that a "blueprint" is not identical with the building. The nucleus *does* contain a blueprint or exemplar of the adult in its genetic code. In addition, it has the active power to produce the finished building, and to produce it, not as something separate from itself, but as a transformation of the total organism of which the nucleus itself is a part.[56]

He believes this means that "the zygote is already informed by the substantial form or soul of the adult into which it will develop."[57] One might add that the unity of the human being and the theory of hylomorphism seem more plausible if human soul and human body are together at the beginning than if the soul suddenly appears somewhere along the route.

In the light of modern embryology, the Aristotelian theory of hylomorphism survives. But the Aristotelian model of three successive souls for one body is a Rube Goldberg contraption.[58] It should be placed in a dusty museum, along with the Ptolemaic system of astronomy and other curiosities.

Donceel and many other theologians suggest that the phenomena of identical twinning (in which one embryo divides into two) and recombination (in which two embryos combine to form one) show that ensoulment does not occur at fertilization. One soul cannot split into two, they say, nor one person divide into two.[59] According to Charles E. Curran, a Catholic theologian, "truly individual human life is present from the fourteenth to the twenty-first day after conception, and after that time only the life of the mother or a reason commensurate with life could morally justify an abortion." He believes that identical twinning and recombination cannot occur after that time.[60]

Supporters of immediate ensoulment respond that identical twinning is a form of asexual reproduction. They contend that the first embryo is ensouled at fertilization and that the second is ensouled when the split occurs. As one suggests, our knowledge does not necessarily keep pace with the process: ". . . we know certainly that early human life contains individual life; what we cannot know, until a later time, is whether it is a single life or multiple lives."[61] The explanation for the rare case of recombination may be that one embryo dies and its matter is absorbed by the survivor.[62]

Benedict Ashley declares that the theory that individual identity is established only when twinning becomes impossible must "answer to very significant biological difficulties." Here are two:

> 1) If, during this period, the morula or blastula is merely a mass of cells, lacking individuality as a distinct organism, what causes it to develop and differentiate according to definite laws, as we observe it does? 2) If, only after the twinning stage is passed . . . the twin embryos now each become self-identical organisms, what produces this new individual unity in each?[63]

To use the old philosophical question about the cosmos, why is there something rather than nothing? What makes the process of embryonic and fetal development work?

The Hard Cases

Much theological support for abortion results from compassion for women caught in hard cases. Rape and incest, fetal handicaps, and severe poverty lead some theologians to make exceptions to their general position of respect for life.

There are two problems with their approach. First, their compassion is often too narrow in scope, so that sympathy for a woman caught in a hard case precludes sympathy for the child whose life is actually at stake. Compassion should be broad enough to cover everyone involved in a hard case and to find a solution that will protect the rights and interests of all.[64]

Second, acceptance of abortion in one hard case often leads to its acceptance in many others. When faced with legal restrictions on abortion, political pro-abortionists first use hard cases to create loopholes in the law. Then they widen the loopholes and start driving trucks through them. Many theologians—some intentionally, others not—have aided this process.

It does not help matters when a leading Protestant ethicist such as James M. Gustafson says that abortion is morally acceptable in a certain hard case, but declines to explain why. Gustafson describes a case in which a woman becomes pregnant after being raped by her former husband and three other men. Although the woman apparently is willing to consider carrying the child to term, Gustafson decides that an abortion is morally justified.

> Clearly, logic alone is not the process by which a defense of this particular judgment can be given . . . Nor is it a matter of some inspiration of the Spirit. It is a human decision, made in freedom, informed and governed by beliefs and values, as well as by attitudes and a fundamental perspective. It is a discernment of compassion for the woman, as well as of objective moral reflection. . . .[65]

In Gustafson's case study, the abortion in question would be illegal. He suggests that the moralist counseling the woman, after concluding that the abortion is morally acceptable, has an obligation to help the woman find an abortionist and money to pay for the abortion. The moralist must also "seek reform of abortion legislation which would remove the

unjust legal barrier to what he believes to be morally appropriate."[66]

This is rather demanding, especially since Gustafson has not shown why the abortion is morally acceptable. Rape is a great evil, but does it justify the greater evil of killing? Even harder to understand is why a religious thinker, who states a commitment to life, would not at least encourage the woman to carry the child to term. Gustafson's description of the case indicates that the woman is open to this possibility. Even if he feels that abortion can be justified, why would he not encourage the woman to be what he might consider generous or heroic? We do not know, because Gustafson does not choose to tell us.

Charles Curran suggests that abortion in another rape case can be justified by a "theological notion of compromise." He says that this theory "recognizes the existence of human sinfulness in our world because of which we occasionally might be in a position in which it seems necessary to do certain things which in normal circumstances we would not do." In an apparent reference to the 1971 war between Bangladesh and Pakistan, Curran declares: "In the case of abortion, for example, the story as reported about women in Bangladesh who were raped and would no longer be accepted in their communities if they bore a child out of wedlock illustrates a concrete application of the theory of compromise."[67]

Curran's notion of compromise can be stretched to cover a multitude of things "which in normal circumstances we would not do." If human sinfulness justifies such a serious act as abortion, why would it not justify—to use a few random examples—perjury, torture, or ordinary homicide? If a husband wrongs his wife by beating her in such a way as to cause pain but not to threaten her life, is she justified in committing homicide as a response to his sinfulness? Or, to use an example closer to the one of rape followed by abortion: Suppose that I am living in a wilderness during a bitterly cold winter. Further suppose that someone wrongs me by trespassing on my land and ransacking my cabin in a search for money. When I return from a hunting trip and surprise the intruder, he knocks me unconscious, steals my money and, on his way out, tosses a bundle on the floor. Awakening and hearing cries from the bundle, I open it and find a tiny infant. The baby is totally dependent on me for survival. Am I morally justified in throwing the baby out into the snow? Because of the intruder's sinfulness?

Curran does not even consider the alternatives. Instead of providing the Bangladesh women with abortions, sympathizers could have tried to take them away from their communities before their pregnancies were recognized. They could have provided the woman with prenatal and obstetrical care, helped them place their children for adoption, then sent them back to their communities. (This is how many pregnant, single women have been helped in the past; many still are.) Another solution, more radical and requiring far more time, is to change the society so that women are no longer outcasts because they are single mothers or rape victims.

As Baptist minister James A. Brix says of hard cases: "Compassion may be demonstrated in providing all possible assistance, including emotional support, to the mother throughout pregnancy and beyond." He adds an important reminder: "It is not a perfect solution, but neither are many in life."[68]

But his fellow Baptist minister, theologian Paul Simmons, is prepared to justify abortion in many cases, including that of fetal handicap:

> We know mistakes are made in nature, that genetic codes can become terribly confused. Choice, not chance, becomes the divine mandate. We cannot be indifferent to the plight of persons who may be cursed by radical genetic deformity. We make decisions to abort as stewards of genetic knowledge and as guardians of the future.[69]

If we make such decisions, we are "guarding the future" from the handicapped. That is a strange position for a Christian to take. A major lesson of the Gospels is that Christ loved the sick, the blind, and the crippled. He did not try to solve their problems by taking their lives, but rather by curing them body and soul.[70] His disciples, from Peter and Paul to Mother Teresa, have followed his example. The Simmons solution is outside the Christian tradition.

Gustafson, Curran, and Simmons focus almost exclusively on women. They seem to assume that women bear the entire moral, emotional, and economic burden of pregnancy. Yet women's sexual partners share the moral burden and certainly should share the others as well. Without seeming to realize it, the pro-choice theologians allow men to be morally irresponsible. Then, thinking of women with their lonely burden, the theologians are anxious to give them escape routes. They would serve women far better by insisting that men share the burden.

The hard cases have had great influence on Jewish thinking about abortion. Orthodox interpretations show that it is possible to prevent an exception from swallowing the rule, while Reform interpretations show that it is difficult to do so. Views among the Conservatives vary, with some rabbis taking a strict view and others a permissive one.

According to Jewish tradition, the law decreed by God for Noah and his descendants (the Noahide law) used to apply to all humans, but now applies only to Gentiles. The Noahide law forbids abortion—under penalty of death, by some interpretations.[71] For Jews, the Noahide law was replaced by the Ten Commandments and the ritual laws announced by Moses after the revelation on Mount Sinai. The Mosaic code was later supplemented by rabbinic rulings; early rulings (and debates) were compiled in the *Talmud.*

Jewish law explicitly allows abortion to save the mother's life.[72] Indeed, commentators generally say that abortion is *required* in such a case. The mother's life is considered to be at stake if it is physically threatened or if she has a psychiatric problem that could lead to suicide.[73] The Orthodox generally hold the line at this point, or at the point of grave threat to the mother's health. Following ancient tradition, they view non-therapeutic abortion as a serious moral offense.[74]

But in 1958 a noted Reform commentator, Solomon B. Freehof, justified abortion in the case of likely fetal handicap. He wrote that "since there is a strong preponderance of medical opinion that the child will be born imperfect physically, and even mentally, then for the *mother's* sake (i.e., her mental anguish now and in the future) she may sacrifice this part of herself."[75] When people decide to allow sacrifice of the "imperfect," they are careening toward the bottom of the slippery slope. By 1967 the Union of American Hebrew Congregations (a major Reform group) appealed to the states to allow abortion not only in cases of threat to the physical and mental health of the mother, but also for threatened fetal handicap, rape and incest, "and the social, economic and psychological factors that might warrant therapeutic termination of pregnancy."[76] That last phrase appeared to wipe out every remaining barrier to abortion at the same time that it termed social and economic abortions "therapeutic."

Reform and Conservative rabbis who favor a permissive abortion policy sometimes cite the *Talmud* to the effect that the embryo is "mere

fluid" on the fortieth day of pregnancy.[77] But elsewhere the *Talmud* suggests that ensoulment takes place at conception.[78] Moreover, today we certainly know from science that an embryo is not "mere fluid." By forty days, the embryo has head and trunk, arm and leg buds, hand plates, a heart that has been beating for two weeks, stomach, liver, gall bladder, intestines, and "the earliest differentiation of the cerebral cortex." On the fortieth day, according to two scientists:

> The eyes become pigmented, as seen through the transparent skin. The jaws are now well formed, and the teeth and facial muscles begin to form. . . . The diaphragm forms, as do limb, back, and abdominal muscles. Partitioning of the heart into distinct chambers begins . . . .[79]

Reform Jews consider themselves progressive in dietary law and many other matters. They generally welcome the contributions of modern science. Why are so many of them returning to primitive thought on fetal development while rushing forward to the twenty-first century on everything else?

More tragically, they are turning their backs on one of the highest values of their own religion. As Seymour Siegel (a Conservative) says, traditional Judaism teaches "a bias for life" and views the fetus as "human life on the way." Siegel declares ". . . we must invoke our bias for life not only when everyone agrees that there is life but, perhaps even more importantly, when there is a difference of opinion. For bias means just that, that we always weigh our decisions so that life will result rather than its opposite." Invoking William Wordsworth's phrase that we come into the world "trailing clouds of glory," Siegel says that we have a responsiblity to form our community so that it will promote "the most precious of all God's gifts, the gift of life."[80]

Religious Liberty

Theologians necessarily touch upon political theory when they speak of public policy on abortion. Pro-choice theologians say that it is wrong to impose religious views upon citizens who do not agree with those views. At some points in the abortion debate, this was stated more bluntly: We were told that the Roman Catholic bishops were trying to impose their anti-abortion views on the rest of the country and that this could not be allowed.[81] The increasingly heavy involvment of evangelical and mainline Protestants in anti-abortion work proves that opposition to abortion is by no means a uniquely Catholic stance. The involve-

ment of articulate non-believers (such as Rosemary Bottcher, Doris Gordon, Bernard Nathanson, and Nat Hentoff) proves that it is not simply a religious view, either.[82] Many activists base their opposition to abortion on convictions about civil rights; certainly this is one of the most effective answers to the religious-liberty argument.[83]

Some theologians, however, argue that we must have legalized abortion partly in order to recognize women as genuine moral agents, capable of making free choices. "From women who rationally deliberate the issues," says Beverly Wildung Harrison, "I confidently expect agreement that women as a group must be considered competent moral agents and that an optimal social policy places the decision about abortion with women."[84] Similar logic about the ethics of warfare would remove all legal restraints on soldiers. Under that logic, Lieutenant William L. Calley, Jr., could not have been prosecuted for ordering the My Lai massacre during the Vietnam War.[85]

Catholic theologian Christine Gudorf goes even farther than Harrison: "We must control our own bodies because morality itself is learned through accepting responsibility for the actions of our bodies (our selves)."[86] Yet how do we accept responsibility for our actions if we claim special immunity from law? Is Gudorf suggesting a need to learn morality from experience alone? That would be, to say the least, an extremely wasteful and dangerous form of learning. Carried to its logical conclusion, it would require repealing laws against assault and battery, rape, and homicide.

It is wrong to elevate one human's freedom over another's very life. A woman should not have to undergo wife-beating, rape, or murder in order to provide full scope to a man's freedom of choice. A child should not have to undergo child abuse—before or after birth—in order to protect its parents' freedom of choice. Laws against the abuse of others do not cancel our status as moral agents. They may make it harder for us to commit evil acts, but they cannot prevent evil intentions—nor compel good ones. Neither sin nor virtue can be prevented by law.

Failures of the Pro-Choice Theologians

Reading the works of abortion-supporting theologians is a depressing experience. Some engage in highly selective quoting of sources, others

in shoddy reasoning. Most fail to deal with the physical reality and the sheer violence of abortion, e.g., the fact that it usually involves death by dismemberment. Some write in feminist anger, instead of religious love. They insist on placing the mother and unborn child in an adversarial relationship, stacking the rhetorical deck so that readers feel they must choose between mother and child. One would think that those who worship the God of Life might see both as God's children and find ways to support both.

The pro-choice theologians are giving scandal to the laity. They are also giving a bad name to theologians in general. In this, they are aided by the negligence of some able theologians who disagree with them. Richard A. McCormick, for example, used to criticize abortion and its supporters with strength and eloquence.[87] But in recent years, his concern about the rights of dissenting Catholics has made him an ambivalent figure at best. When the Archbishop of Detroit criticized then-Sister Agnes Mary Mansour because of her role in abortion funding, McCormick was so eager to make points about dissent that he neglected to assess the merits of Mansour's position, except to remark in passing that he disagreed with her and to explain his disagreement in a footnote.[88] He and other theologians were so indignant about a Vatican threat to the Catholic teaching credentials of Charles Curran that they failed to judge the merits of Curran's positions on abortion, euthanasia, and other moral issues.[89] Many Catholic theologians have developed such a "circle the wagons" mentality when dealing with the Vatican that they have abandoned their obligation to criticize other scholars' work.

Some pro-choice theologians are even giving God a bad name. Paul Simmons, for example, says that "God is truly pro-choice" and that "one is free to abort or not to abort, as God leads." In a context where he seems to be speaking of God's command, Simmons declares that abortion "may at times be understood as the command to control population growth."[90] It is time to defend what some have called the "innocence of God." And what Thomas Becket called the "honor of God."[91]

Theologians who condone abortion should look to their own honor as well. In a passage much quoted by anti-abortionists, the Scriptures advise: "Rescue those who are being dragged to death, and from those

tottering to execution withdraw not" (Proverbs 24:11). Instead of rescuing those in danger, many theologians today support the executioners.

NOTES

1. The writer's transcript of September 14, 1984, press briefing sponsored by Catholics for a Free Choice (Washington, D.C.), pp. 9 & 14-15.

2. J. Giles Milhaven, "Catholic Opinions in the Abortion Debate," a paper distributed at September 14, 1984 press briefing pp. 1-2.

3. "Pro-Life Grandmother Jailed," press release of Prolife Nonviolent Action Project (Gaithersburg, Md.), September 12, 1984, p. 1.

4. Transcript of the writer's interview with Catherine O'Connor, September 15, 1984, p. 2.

5. *Ibid.*, p. 1.

6. Norbert Rigali, S.J., "Theologians and Abortion," *The Priest*, June, 1974, p. 22.

7. The influential Jesuit journal *Theological Studies* has carried many of the dissenters' articles.

8. Daniel C. Maguire, "Abortion: A Question of Catholic Honesty," *The Christian Century*, September 14-21, 1983, pp. 803-807. Maguire bases his position largely on the system of probabilism, citing Henry Davis, S.J., on the subject. But he fails to note such Davis cautions as: ". . . an innocent man has a right to his life. Consequently, I may not shoot at an object which is very probably not a man at all, though probably it is. My very probable conviction that it is a wild beast will not, as a fact, safeguard the man, if a man happens to be there, and every man has a right that I should not take the risk of injuring or killing him." Henry Davis, S.J., *Moral and Pastoral Theology* (New York: Sheed & Ward, 1946, 5th ed.), vol. 1, p. 99.

9. Mary Meehan, "Catholic Theologians Clash on Abortion," *National Catholic Register*, July 1, 1984, pp. 1 & 6.

10. Transcript of the writer's interview with Germain Grisez, June 15, 1984, pp. 1-2. Grisez wrote *Abortion: the Myths, the Realities, and the Arguments* (New York: Corpus Books, 1970), 559 pp.

11. Transcript of September 14, 1984, press briefing, *op. cit.*, p. 3.

12. Daniel C. Maguire, *Death By Choice* (Garden City, N.Y.: Doubleday & Co., 1974), p. 106.

13. Notes on the writer's interview with Frances Kissling, president of Catholics for a Free Choice, March 18, 1986. Kissling indicated that the CFFC board made the decision to abolish membership.

14. Mary Meehan, "Foundation Power," *Human Life Review*, vol. 10, no. 4, Fall, 1984, pp. 42-60; Joan Beifuss, "Pro-choice Catholics Reap Widespread Publicity," *National Catholic Reporter*, January 11, 1985, p. 4; Mary Meehan, "For Population Control Groups, It's Fat City," *National Catholic Register*, December 1, 1985, pp. 1 & 8 (reprinted in *Congressional Record*, December 4, 1985, pp. E-5427 & 5428). A few of the foundations supporting CFFC have made grants to Catholic colleges or universities—not, however, for theological studies.

15. "A Diversity of Opinions Regarding Abortion Exists Among Committed Catholics," New York *Times*, October 7, 1984, p. E-7.

16. See most issues of the CFFC newsletter, *Conscience*, from Winter, 1984/85, through May/June, 1986.

17. "We Affirm Our Solidarity With All Catholics Whose Right to Free Speech Is Under Attack," New York *Times*, March 2, 1986, p. E-24. Signers included a number of abortion clinic personnel.

18. See first and third articles cited in n. 14, above, for information on foundation funding of the Religious Coalition for Abortion Rights. (Catholics for a Free Choice is a member of the Religious Coalition.)

19. Religious Coalition for Abortion Rights Educational Fund, "We Affirm," Washington, D.C., January, 1986, pp. 3, 5 & 6.

20. Daniel C. Maguire in *The Christian Century*, op. cit., p. 805.

21. Paul D. Simmons, *Birth and Death: Bioethical Decision-Making* (Philadelphia: Westminster Press, 1983), p. 93.

22. All Scriptural quotations are from the New American Bible.

23. Jack W. Cottrell, "Abortion and the Mosaic Law," *Christianity Today*, March 16, 1973, pp. 6-9, challenge the common interpretation and many translations upon which it is based. Cottrell says the passage refers to premature birth and that "life for life, eye for eye" applied in the case of harm to *either* mother or child. Umberto Cassuto, *A Commentary on the Book of Exodus* (Jerusalem: Magnes Press, Hebrew University, 1967, trans. by Israel Abrahams), pp. 273-277, made a similar interpretation but believed that monetary compensation could substitute for corporal punishment. Centuries ago, John Calvin apparently reached the same conclusion; see his *Commentaries on the Four Last Books of Moses* (Grand Rapids: Wm. B. Eerdmans Publishing Co., 1950), vol. 3, pp. 41-42.

24. Exodus 21: 22-25 was mistranslated in ancient times: The Septuagint version said that if the child was not fully "formed," a fine applied; but if the child was formed, "life for life" applied. The formed/unformed distinction affected some later ensoulment theories. See David M. Feldman, *Marital Relations, Birth Control, and Abortion in Jewish Law* (New York: Schocken Books, 1974), pp. 257-258; and Michael J. Gorman, *Abortion and the Early Church: Christian, Jewish and Pagan Attitudes in the Greco-Roman World* (New York: Paulist Press, 1982), pp. 34-35.

25. Jim Forest, "But Many Offering Death" *P.S.* (published by Prolifers for Survival), November/December, 1982, p. 4. Henri Daniel-Rops, *Daily Life in the Time of Jesus* (New York: Hawthorn Books, 1962, trans. by Patrick O'Brian), p. 137, says that Mary "was probably no more than fourteen" years old when she bore Jesus.

26. Beverly Wildung Harrison, *Our Right to Choose: Toward a New Ethic of Abortion* (Boston: Beacon Press, 1983), p. 70.

27. Harold O. J. Brown, *Death Before Birth* (Nashville: Thomas Nelson Publishers, 1977), p. 131. Other, disputed portions of Scripture should also be noted: Rabbi Ishmael, cited in the *Talmud*, interpreted Genesis 9:6 as referring to shedding the blood of "man within another man," that is, an "embryo in his mother's womb." This is why some rabbis argue that the Noahide laws set the death penalty for abortion. But the *Talmud* also cites a contradictory opinion. See *Talmud, Sanhedrin* 57b. [All Talmudic quotations are from I. Epstein, ed., *The Babylonian Talmud* (London: Soncino Press, 1935).] See, also, David Novak *The Image of the Non-Jew In Judaism: An Historical and Constructive Study of the Noahide Laws* (New York and Toronto: Edwin Mellen Press, 1983), pp. 185-187. At least two authorities beleive that the New Testament condemnation of *pharmakeia* (use of drugs, but often translated as "sorcery" or "witchcraft") in Galatians 5:20 and Revelation 9:21, 21:8 & 22:15, may include abortifacients. See John T. Noonan, Jr., "An Almost Absolute Value in History," in Noonan, ed., *The Morality of Abortion: Legal and Historical Perspectives* (Cambridge: Harvard University Press, 1970), pp. 8-9; and Michael J. Gorman, *op. cit.*, p. 48. But John Connery, S.J., *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola University Press, 1977), pp. 34-35, discounts this interpretation.

28. Beverly Wildung Harrison, *op. cit.*, pp. 135, 137 & 138.

29. *Ibid.*, p. 147. It is interesting, to say the least, that Harrison thinks it prudish to object to adultery and that she views it as simply a sexual sin. It can also be viewed as a sin against charity, justice, and truth. It represents a broken vow and a bad example to spouse and children. It often leads to anger, hatred, and a broken marriage.

30. "Teaching of the Twelve Apostles" in Johannes Quasten and Joseph C. Plumpe, *Ancient Christian Writer: The Works of the Fathers in Translation* (Westminster, Md.: Newman Press, 1948), vol. 6, p. 16.

31. Vatican Council II, "Constitution on the Church in the Modern World," part 2, chapter 1, no. 51, in Walter M. Abbott, S.J., ed., *The Documents of Vatican II* (New York: Guild Press, 1966), p. 256. Other translations of the Latin text say "terrible crimes" or "abominable crimes." Earlier, the same document links abortion with murder, genocide, euthanasia, slavery, prostitution, and other evils, calling them all "infamies" and "a supreme dishonor to the Creator." *Ibid.*, part 1, chapter 2, no. 27, p. 226.

32. Tertullian, "Apology" chapter 9, no. 8, in Roy Joseph Deferrari, ed., *The Fathers of the Church* (New York: Fathers of the Church, Inc., 1950), vol. 10, pp. 31-32. Today many anti-abortion writers avoid using the word "murder" for abortion because it is not murder in a legal sense and because many women who have abortions, since they have been misinformed or coerced, are not subjectively guilty of murder in a moral sense. Abortionists, however, do not necessarily have the same excuses.

33. John Connery, *op. cit.*, pp. 49-59; Michael J. Gorman, *op. cit.* pp. 66-73. The Chrysostom quote is from his Homily 24 on Romans, in Philip Schaff, ed., *A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church* (Grand Rapids: Wm. B. Eerdmans Publishing Co., 1956), vol. 11, p. 520.

34. Beverly Wildung Harrison, *op. cit.*, pp. 146-147.

35. John Calvin, *op. cit.* p. 42.

36. John Chrysostom, Homily 9 on First Timothy in Philip Schaff, ed., *op cit.*, vol. 13, p. 436.

37. John Chrysostom, Homily 26 on First Corinthians, in *ibid.*, vol. 12, pp. 150-155. Those who read this view as an expression of God's will fail to understand that it suggests an unjust God who makes women weak and inferior and constantly punishes them for the first woman's sin. As suggested lately in another context, there is a need to defend the "innocence of God" and the "honor of God."

38. Madonna Kolbenschlag, H.M., "Abortion and Moral Consensus: Beyond Solomon's Choice," *The Christian Century*, February 20, 1985, p. 179.

39. Rosemary Bottcher, "Pro-Abortionists Poison Feminism," in Gail Grenier Sweet, ed., *Pro-Life Feminism: Different Voices* (Toronto: Life Cycle Books, 1985), p. 45.

40. John Connery, *op. cit.* p. 306. Contrary to popular opinion, the Catholic Church has never declared officially that ensoulment occurs at conception. But a 1974 Vatican statement noted that "even if a doubt

existed concerning whether the fruit of conception is already a human person, it is objectively a grave sin to dare to risk murder." See Sacred Congregation for the Doctrine of the Faith, "Declaration on Abortion" (Washington: U.S. Catholic Conference 1975), p. 6. See also p. 13, n. 19.

41. Dietrich Bonhoeffer, *Ethics* (New York: Macmillan Co., 1955), p. 131.

42. Aristotle, *De Generatione Animalium*, 735a, 736a, 736b, in J. A. Smith and W. D. Ross, ed., *The Works of Aristotle* (Oxford: Clarendon Press, 1908 ff.), vol. 5; and *Historia Animalium*, 583b, in *ibid.*, vol. 4. Aristotle advocated early abortion as a form of population control. See his *Politics*, 1335b, in Ernest Barker, trans., *The Politics of Aristotle* (London: Oxford University Press, 1958), p. 327.

43. See n. 24, above. The formed/unformed distinction was also made by some Fathers of the Church, though by no means all. Some who made it did not rely on the Septuagint.

44. John Connery, *op. cit.*, pp. 105-123. Some medieval theologians thought abortion morally permissible if done before ensoulment in order to save the mother's life.

45. See Joseph Needham, *A History of Embryology* (Cambridge: Cambridge University Press, 1959, 2nd ed., rev.), pp. 18-96.

46. Joseph F. Donceel, S.J., "A Liberal Catholic's View," in Robert E. Hall, ed., *Abortion in a Changing World* (New York: Columbia University Press, 1970), vol. 1, p. 40.

47. Donceel, "Immediate Animation and Delayed Hominization," *Theological Studies*, vol. 31, no. 1, March, 1970, pp. 83 & 94.

48. *Ibid.*, p. 94.

49. Donceel in Robert E. Hall, ed. *op. cit.*, p. 44.

50. Donceel, "Why Is Abortion Wrong?" *America*, August 16, 1975, p. 67.

51. Donceel, "Catholic Politicians and Abortion," *America*, February 2, 1985, p. 83.

52. Donceel in *Theological Studies, op. cit.*, p. 101, including n. 80.

53. U.S. Department of Health and Human Services, Centers for Disease Control, *Abortion Surveillance: Annual Summary 1981* (n.p.: U.S. Government Printing Office, 1985), pp. 5 & 35.

54. Benedict Ashley, O.P., "A Critique of the Theory of Delayed Hominization," in Donald G. McCarthy and Albert S. Moraczewski, ed., *An Ethical Evaluation of Fetal Experimentation: An Interdisciplinary Study* (St. Louis: Pope John XXIII Medical-Moral Research and Education Center, 1976), p. 114.

55. *Ibid.*, pp. 117 & 122. See Thomas Aquinas, *Summa Contra Gentiles*, book 2, chapter 89.

56. Benedict Ashley, *op. cit.*, p. 125. The zygote is the single cell formed by fusion of sperm and ovum.

57. *Ibid.*

58. As John Gallagher argues, "The principle of economy dictates that we should accept as fact only those occurrences for which there is adequate evidence. We have examined the evidence and found that none of it indicated that there need be three changes in first being in the process rather than one. Therefore, we should accept the more economical hypothesis." John Gallagher, C.S.B., *Is the Human Embryo a Person?* (Toronto: Human Life Research Institute, 1985), p. 26.

59. Joseph F. Donceel in *Theological Studies, op. cit.*, p. 98, deals with identical twinning. Richard A. McCormick, S.J., *How Brave a New World? Dilemmas in Bioethics* (Garden City, N.Y.: Doubleday & Co., 1981), p. 182, says that twinning, recombination, and spontaneous abortions all raise doubts about the status of the embryo before implantation in the uterus. The last-named problem (often called "fetal wastage") was also raised by the late Karl Rahner, S.J., and others. It is ably handled by Thomas W. Hilgers, "Human Reproduction: Three Issues for the Moral Theologian," *Theological Studies*, vol. 38, no.1, March, 1977, pp. 147-149; and Benedict Ashley, *op. cit.*, p. 126.

60. Charles E. Curran, *Directions in Catholic Social Ethics* (Notre Dame: University of Notre Dame Press, 1985), p. 133; and *Transition and Tradition in Moral Theology* (Notre Dame: University of Notre Dame Press, 1979), p. 212. In his *Politics, Medicine, and Christian Ethics: A Dialogue with Paul Ramsey* (Philadelphia: Fortress Press, 1973), p. 131, Curran says that values commensurate with human life "would obviously include grave but real threats to the psychological health of the woman and could also include other values of a socio-economic nature in extreme situations." But his theory of compromise, noted below, has the potential for many more exceptions.

61. John Scanlon, "Principle of Human Indeterminancy" (letter to the editor), *America*, February 8, 1986, p. 108. See, also, Benedict Ashley, *op. cit.*, pp. 126-128,; and Robert E. Joyce, "Personhood and the Conception Event," *The New Scholasticism*, vol. 52, no. 1, Winter, 1978, pp. 103-104. Joyce, incidentally, offers excellent criticisms of the developmental or gradualist approach to ensoulment and personhood (pp. 104-107).

62. *Ibid*, p. 104; and Michael A. Vaccari, "Personhood Before Implantation," *International Review of Natural Family Planning*, vol. 1, no. 3, Fall, 1977, p. 222, say that the first embryo is absorbed and *then* dies.

63. Benedict Ashley, *op. cit*, p. 127. The embryo is called "morula," and then "blastula," at very early stages of development.

64. See Mary Meehan, "Facing the Hard Cases," *Human Life Review*, vol. 9, no. 3, Summer, 1983, pp. 19-36.

65. James M. Gustafson, "A Protestant Ethical Approach," in John T. Noonan, Jr., *op. cit.*, p. 117.

66. *Ibid.*, p. 118.

67. Charles E. Curran, *New Perspectives in Moral Theology* (Notre Dame: Fides Publishers, Inc., 1974), pp. 191-192.

68. James A. Brix, "Looking Past Abortion Rhetoric," *The Christian Century*, October 24, 1984, p. 988.

69. Paul D. Simmons, "A Theological Response to Fundamentalism on the Abortion Issue," in Edward Batchelor, Jr., ed., *Abortion: The Moral Issues* (New York: Pilgrim Press, 1982), p. 181.

70. When Christ said, "Better for him if he had never been born" (Matthew 26:24), he was not speaking of someone who was leprous, blind, or otherwise handicapped. He was speaking of Judas Iscariot, who was about to betray him and to commit suicide. Judas' handicaps were moral, not physical.

71. See n. 27, above. Some authorities doubt that the death penalty was ever actually applied. They see Rabbi Ishmael's position as a protest against widespread abortion among the pagans.

72. *Talmud, Oholoth* 7:6.

73. J. David Bleich, "Abortion in Halakhic Literature," in Fred Rosner and J. David Bleich, ed., *Jewish Bioethics* (Brooklyn: Hebrew Publishing Co., 1979), pp. 146-158.

74. *Ibid.*, pp. 134-177. Some Orthodox rabbis, however, believe that abortion can be permitted in cases of fetal handicap or for other grave reasons. Among Conservative rabbis, Seymour Siegel (cited below) is strongly against abortion, while David M. Feldman, *op. cit.*, pp. 251-294, offers a relatively permissive view.

75. Solomon B. Freehof, *Recent Reform Responsa* (Cincinnati: Hebrew Union College Press, 1963), p. 193, from a responsum originally published in 1958. A responsum is a formal rabbinic opinion or decision, replying to a specific query.

76. Resolution passed by UAHC General Assembly in 1967, quoted in Albert Vorspan, *Jewish Values and Social Crisis: A Casebook for Social Action* (New York: Union of American Hebrew Congregations, 1968) p. 202.

77. *Talmud, Yebamoth* 69b. Some Orthodox rabbis believe that abortion is permitted during the first forty days of pregnancy, at least for Gentiles. See J. David Bleich, *op. cit.*, pp. 142-146.

78. *Talmud, Sanhedrin* 91b. There is also a suggestion that the child studies Torah while in the womb. *Ibid.*, *Niddah* 30b. The ensoulment issue, however, is not decisive in Jewish thought about abortion. See David M. Feldman, *op. cit.*, pp. 271-275; and Immanuel Jakobovits, *Jewish Medical Ethics* (New York: Bloch Publishing Co., 1975, 2nd ed., rev.), pp. 182-183.

79. Roberts Rugh and Landrum B. Shettles, *From Conception to Birth: The Drama of Life's Beginnings* (New York: Harper & Row, 1971), p. 47. See, also. pp. 17, 33, & 42-46.

80. Seymour Siegel, in U.S. Senate, Committee on the Judiciary, Subcommittee on the Constitution, Hearing on *Constitutional Amendments Relating to Abortion*, 97th Congress, 1st session (November 5, 1981), pp. 483, 484, & 486. The Wordsworth quote is from "Ode on Intimations of Immortality from Recollections of Early Childhood."

81. John M. Swomley, Jr., "Theology and Politics," *Church & State*, November, 1976, pp. 10-12.

82. Rosemary Bottcher, letter to editor, *The Christian Century*, December 7, 1983, pp. 1137-1138; Doris Gordon, "How I Became Pro-Life," *Congressional Record*, 96th Congress, 1st session, vol. 125, part 26, pp. 33994-33996; Bernard N. Nathanson and Richard M. Ostling, *Aborting America* (Garden City, N.Y.: Doubleday & Co., 1979), 320 pp.; Bernard Nathanson, *The Abortion Papers: Inside the Abortion Mentality* (New York: Frederick Fell Publishers, Inc., 1983), 240 pp.; Nat Hentoff, "How Can the Left Be Against Life?" *Village Voice*, July 16, 1985, pp. 18 & 20.

83. See essays by Elizabeth Moore, Jane Muldoon, and Gordon Zahn in *Sojourners*, November, 1980, pp. 15-17 & 20-22.

84. Beverly Wildung Harrison, *op. cit.*, p. 16.

85. Some argue persuasively that male theologians have been stricter about abortion than about war. The solution should not be to loosen restrictions on abortion, but rather to tighten them on war.

86. Christine Gudorf, "Making Distinctions," *Christianity and Crisis*, July 14, 1986, p. 242.

87. Richard A. McCormick, S.J., "Abortion," *America*, June 19, 1965, pp. 877-881; and *Notes on Moral Theology, 1965 through 1980* (Washington: University Press of America, 1981), pp. 106-107 & 729-732.

88. McCormick, "The Magisterium," *Sisters Today*, April, 1984, pp. 462-465; and "Medicaid and Abortion," *Theological Studies*, vol. 45, no. 4, December, 1984, pp. 715-721. McCormick's ambivalence is

partly due to his doubts about the status of the early embryo; see his "Therapy or Tampering? The Ethics of Reproductive Technology," *America*, December 7, 1985, pp. 402-403.

89. McCormick, "L'Affaire Curran," *America*, April 5, 1986, pp. 261-267; Walter J. Burghardt, *et al.*, "Theologians' Statement Supports Curran," *Washington Post*, March 15, 1986, p. G-7. This is not to say that there is no place for dissent in theology. There should have been, for example, forceful dissent from the anti-semitism that infected Christian theology and Church practice in the patristic and medieval eras. But it *is* to say that today's theologians should not elevate the process of dissent over the substance of moral issues.

90. Paul D. Simmons, *Birth and Death: Bioethical Decision-Making, op. cit.*, pp. 87, 106, & 98.

91. Quoted in David Knowles, *Thomas Becket* (Stanford: Stanford University Press, 1971), p. 119.

Sex, etc.

Joseph Sobran

THE SOCIALIST VISION OF A social order in which all share with all—driven by what Robert Heilbroner calls "new motives of cooperation and confraternity"—is sheer sentimentalism. But the socialist's conception of the alternative—a society of unfettered greed and selfishness—is sheer cynicism. It is perfectly normal for people to share, to take satisfaction in generosity, but they don't do so impersonally, anonymously, through the medium of the state. A man may give a million dollars to a specific child or charity, but he won't leave a single dollar in the street as a gesture of benevolence to the next person who happens to come along. Such undifferentiated bounty is not in our nature, because we are rational creatures (more or less) who like to know what we are doing.

Love makes the world go round, all right, but the love in question is not a boundless love of all mankind—which may be an ideal, of sorts, but is pretty useless as a social norm. In the long run the most reliable kind of love is family affection. This is neither altruistic nor selfish and therefore eludes the socialist's false dichotomy. A man regards his children as extensions of himself. It is hardly selfish of him to work long hours to provide for them, enduring hardships that would strike a carefree bachelor as an absurd waste of short life. On the other hand, the father's sacrifice is not what we regard as philanthropy, because we understand that he has a certain emotional investment in his children. This common and intermediate kind of love makes up the fabric of society.

Since the Sixties America has learned in the dear school of experience what it would not submit to learn from tradition: that the breakdown of the family means social disorder. We were told incessantly that "poverty causes crime," even as crime rates soared along with general prosperity and special anti-poverty measures. A more telling

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Joseph Sobran needs no introduction to our readers. This article is excerpted from his *Pensées: Notes for the Reactionary of Tomorrow*, which first appeared in the 30th Anniversary issue (December 31, 1985) of *National Review*, of which Sobran is a Senior Editor. It is reprinted here with permission ().

correlation occurred between crime and illegitimacy, as fatherless young men terrorized the cities.

George Gilder points out that young single men, who make up only 13 per cent of the population, commit 90 per cent of the violent crime. An even more disproportionate number of these men have grown up with their fathers absent. We shouldn't need careful statistical studies to confirm the intuition that children need parents to give them love and to initiate them into the traditions of the human race; anyone who has warm memories of his own parents will shudder with pity for those who miss the primal affections of childhood—surely a worse deprivation than mere relative poverty.

And yet the Alienist disposition is so preoccupied with the hard case that it will sacrifice the family in order to succor the orphan. It is as if the existence of families somehow constitutes an injustice to those who don't have them. Families create what socialism calls "privileges" and "accidents of birth," and result in what socialism sees as "gross inequities." Socialism (including liberalism) is always "correcting for" the family, finding fault with the family, monitoring the family for pathologies (wife beating, child abuse, incest) that can be invoked to warrant state intervention. Children must be accorded "rights" against their own parents, and education must be reformed, on what Chesterton calls "the principle that a parent is more likely to be cruel than anyone else." Sweden has even passed a law against parental cruelty that defines spanking and harsh words as "child abuse," punishable by the state.

In a natural reaction against this, conservatives are prone to glorify the family, as if they had never heard of Agamemnon or King Lear. The truth, as C. S. Lewis reminds us, is that since Adam fell every human institution has had a fatal tendency to go bad. Lewis points to the "savage anti-domestic literature," typified by Samuel Butler's *The Way of All Flesh*, that arose in reply to the Victorian sentimentalization of the family.

But the real fault is not in the family itself. It lies in human pride, egotism, sloth, blindness, and all the other defects that can pervert our most intimate affections and make the home a hell even where there is nothing to provoke the attentions of Swedish social workers. We fail in love all the time. Real love, which has been aptly defined as "practical

concern," takes patience, perseverance, imagination, restraint, and simple good manners.

The point is not that the family is perfect but that there is no substitute for it. If parents fail in the domestic virtues, if children choose to misbehave, there is not much anyone can do. No social program could have saved King Lear.

The modern state, in trying to disregard, improve, or supersede the family, has done far more harm than good. Family violence in our time is almost a joke compared with the violence inflicted by the state. And part of the harm done by the state lies in its attempts to "liberate" people from family ties, while increasing its own demands on them.

Santayana remarked that the only thing the modern liberal wants to liberate man from is the marriage contract. And it is true that the liberal passion for sexual freedom seems an anomaly, set against the liberal's general penchant for augmenting state power at every turn. But Igor Shafarevich has explained the apparent anomaly as an essential feature of "the socialist phenomenon."

Traditional sexual morality, Shafarevich says, makes the family a locus of loyalty and authority. Sexual freedom breaks down the sacred bonds of kinship and deprives sex of its sacramental character. It profanes. It reduces us to interchangeable units in a mass, and destroys the intricate social structure of particular ties that impedes state power. Every socialist movement has included a campaign for what is variously called sexual freedom, free love, or community of wives. Once in power, of course, a socialist regime may be prudish and puritanical, but this is only because it wants to regulate the populace's breeding habits and control its general behavior, not because it wants to restore the autonomy of the family. The Soviet regime has conducted an erratic population policy: legalizing, banning, and then again legalizing abortion; promoting birth control, then encouraging even illegitimate births. There is no real inconsistency in these fluctuations: the very phrase "population policy" means that the birth rate has become a subject of state concern—one more production standard to be set by the authorities.

Liberalism may be faintly embarrassed by certain twists in such Communist policies, but it is essentially at home with the whole idea of a "population policy." It looks on the statist approach to reproduction

as "progressive," though it dares to be fully explicit about this only where "backward" nations are concerned. In domestic discussion, the liberal plays down the prospect of state supervision and stresses personal "choice"—in premarital sex, homosexuality, birth control, divorce, and abortion. But he isn't really indifferent to the choices people actually make. More or less consciously, he is aware that he is promoting some forms of behavior at the expense of others.

Liberals profess, for example, to be "pro-choice" in the matter of abortion, and they resent being described as "pro-abortion." But when it transpired that Communist China has been imposing not only mandatory birth control but forced late-term abortion, liberal objections were curiously muted. Some openly justified the Chinese policy on the grounds that China has a serious overpopulation problem. (The state, it was assumed, should have the prerogative of deciding when a country is "overpopulated" and of prescribing remedies. So much for "choice.") A group of liberal congressmen even had an amicable lunch with visiting administrators of the Chinese population-control program.

Again and again we find proof in liberal behavior that "liberalism" is not what it pretends to be. It pretends to be concerned with procedural freedoms; but its concern nearly always turns out to mask a substantive agenda, the actual substance of which is socialist. This is the key to all the notorious "double standards" of liberal behavior. Free speech is demanded for the subversive of the Left—not, the liberal assures us, because he favors the Left, but because all points of view should be heard. But (as conservatives in such liberal strongholds as the academy and the mass media have discovered) the liberal will often take active measures to prevent "reactionary" views from being heard. Behind every double standard lurks an unacknowledged single standard: promoting socialism.

Consider another apparent contradiction of liberal behavior. The liberal argues for state-subsidized abortion on the grounds that a woman who can't afford to exercise her "right" to abortion is effectively denied that right. But when conservatives (and those maverick liberals who actually mean what they say) propose a system of educational vouchers that would enable poor parents to choose schools for their children, the liberal community abandons the logic it adopts for abortion. It con-

demns private education as a "privilege" (while helping to keep it so) or a subterfuge for racism. What emerges from this contradiction is the inference that liberals don't regard parental choice in education as a serious right.

A further inference is that liberals don't regard education itself as a parental prerogative. They want public schools to have a monopoly (some of them openly advocate the abolition of private schools), and they want those schools to be rigorously secularized, with religion strictly excluded. What about parents who regard religion as central to education? The liberals' answer is contained in their stony silence on this question.

The secularized public school, ironically, now enjoys the status of an established church. Everyone has to support it. If a dissenter prefers a different school system, he must pay for that himself, and his doing so in no way diminishes his obligation to support the established system. He can expect no sympathy from the keepers of the establishment—only thinly veiled hostility.

It is instructive to notice when the liberal resorts to the rhetoric of "choice" and when he abruptly drops it. There is a consistency behind his inconsistency. His alleged neutrality about substance tactically serves a body of very positive commitments.

Not that all liberals are fully conscious of a hostility to the family. Far from it. But liberalism inexorably chips away at any preferred status for the family. Its method is not to abolish but to neglect and "redefine." It will say that our traditional concept of the family is "outmoded" and "unrealistic." It will "broaden" the concept to include, for example, households of homosexuals—again, professing to be "value-free" when affirming the right of homosexuals to adopt children. (How can you be neutral about "values" when announcing a "right"?)

The combination of graduated tax rates, inflation, and redistributive programs has had a punitive effect on the family, reducing the personal exemption to a fraction of its original value (roughly one-fifth of what it was worth in 1948). This has made large families prohibitively expensive for many people; the number of working mothers has tripled since World War II. The liberal regime has never said, in so many words, that it opposes large families; but does anyone suppose that it is

merely "neutral" about them? Is it anxious to ensure them "equal opportunity" with small families, or childless couples, or even homosexual couples?

It is interesting to note that New York City was recently found to be subsidizing a special private school for homosexual youths. City officials insisted that the subsidy in no way implied approval. The same officials would insist that even a slight subsidy to a private religious school would fatally compromise the state's neutrality in religion. The total pattern of liberal concerns tells its own story over the head, so to speak, of all liberalism's ad hoc justifications of its particular policies.

More and more parents see the public schools as threats to their children's safety, well-being, and even educational needs. Liberalism's response has been to tighten its own grip. It accuses parents of "failing" in sex education, for example, and assumes that this constitutes a mandate for the schools to do the job. It may be, of course, that parents also fail in religious education, but here again liberalism switches its logic according to the issue at hand. Parents whose children are economically trapped in the public schools are denied any right to control the curriculum: their attempts to exercise even a veto power over materials selected by teachers is denounced as "censorship." The minds of the young must be kept under the liberal monopoly, no matter how egregiously the public schools themselves may be thought to fail.

Liberalism has of course had a serious impact on the general culture beyond the schools. The catch-phrase "freedom of expression" has been broadened to cover even the crudest pornography. What began as a campaign for "privacy"—consenting adults, plain brown wrappers, and all that—has become an open overthrow of traditional public morality. It is practically impossible to shield children from raw filth. What used to be called fornication is now a standard feature of popular entertainment, even on prime-time television. The degrees of explicitness vary; the denigration of chastity is nearly complete, however, even where the bodies remain clothed. Americans stand helpless as the cultural pimps go to work on their children.

And once again liberals take refuge in clichés of "choice" and "freedom" that are in flagrant contrast to their usual preference for government control. The liberal who is ordinarily hostile to commercialism

and suspicious of the manipulative wiles of advertisers becomes an advocate of utter laissez-faire where the stimulation of sexual appetites is at stake.

What is sad, and horrible, is the crassness of it. At one time the liberal held at least the aesthetic high ground. It was the censor, with his narrow anxieties, who seemed crass, ready to ban from the local library any book that dealt frankly with serious subjects. But it is no longer the banning of *Ulysses* that is in question. No genuinely artistic purpose is served by 99 per cent of the sexual themes of popular entertainment; no Renaissance has come of the baring of breasts in public. It is as if, as the old taboos have fallen, new taboos have taken their place—taboos on the spiritual. Popular culture has adopted a general smirk. If the movies were really candid, they would show people praying, marrying, and having children as well as fornicating; the fornication might at least occasionally result in pregnancy, disease, and the heartache and shame that more than occasionally accompany such inveterate behavior in real life.

Have liberals had any regrets or second thoughts about the sexual revolution? Of course. At the personal level, many liberals recoil from the porn explosion. Some of them have noticed that the "new freedom" has failed to pay the promised dividends in serious art—that nudity is a distraction rather than an enhancement of aesthetic experience.

But the liberal ideology has no way of accommodating these human reservations. It can only propose more programs, bigger budgets for government research for cures for the latest venereal diseases, new campaigns to "educate" the public about the real consequences of behavior that has now been declared licit. And the remedies are as crass as the malady. The real problem is that sexual freedom has meant, for millions of people, a cluster of debasing addictions.

Socialist utopianism has gone hand in hand with sexual utopianism. Many people who would never buy into the socialist delusion have fallen hard for the sexual one. But the price—in disease, abortion, guilt, frustration, hostility, suspicion, and coarseness—has yet to be acknowledged. The feminist movement, with its bitterness against men, is at least an understandable reaction against all the lies of sexual "liberation," which has been particularly injurious and insulting to women;

there was no such movement or general mood in the days when marriage was the norm. A woman was expected to be chaste; and though this was derided as a double standard, it gave woman a special protection against male aggression. There was no confusion about what a lecherous man was asking of her. She had the right not only to refuse, but to take offense at improper advances. If women could be virgins again, there would be no feminism. Women are now fair game for the men who prize them least, and they know it, and they resent it, and they are right; but they also know that to speak of a woman's "honor" is to sound ridiculously quaint. By the same token, a man's honor used to consist largely in respect for woman's; that has changed too. Is everybody happy?

The sexual revolution that was declared in the name of privacy has resulted in a gross devaluation of privacy—the intuition that there are recesses of personality that deserve to be withheld from easy exposure. The more of a thing that can be seen at a glance, the less there is of it in the first place. Human beings are mysteries; they deserve to be respected as mysteries, not stripped open like a cellophane package. Sex is delicate; it deserves to be handled with delicate restraint and ritual. Society should be organized so as to prevent the tyranny of boors and the prevalence of an easy-sex culture. Young people should be protected from making irreversible mistakes, and taught that love is a career, not a vacation.

People do fail in love, all the time. That is why the essential kinds of love need social support. The problem is that we are currently giving our support not so much to the wrong people as to the wrong side of our nature, the side that wants love on the cheap. We are offering human beings the kind of freedom appropriate to dogs. The "gain" they experience is really part of an overall loss.

We get what we pay for. What is natural—natural to human beings, as distinct from animals—is not necessarily easy, but that is all the more reason to insist on it. The price is high, but the rewards of loyalty and fidelity are priceless. To be a parent is more than a joy; it is to be related to the world in a radically different way from the way of youth, to see another who is not "wholly other," but a strangely free part of yourself.

Every parent knows this; the wonder is that a knowledge so widely shared no longer forms the heart of our law and culture. It is almost as if parental affection has become a love that dare not speak its name, instead of being the social reality from which all other things take their bearings. To love a child is to love uniquely. It is astonishingly insensitive to denigrate as "privilege" or "accident of birth" the parent's deep desire to give. From the perspective of the receiver, every gift is an accident. No child asks to be born; life is a gift. The first accident of birth is birth. It becomes the child to learn gratitude for this, though it is best if the parents don't insist on gratitude.

Of course no parent is perfect. To have a child under the best of circumstances is to court tragedy, not to mention the disapproval of population planners. All one can say is that most of humanity has always found it worth the risks, for reasons that are hard to explain to outsiders, such as the people who write editorials in the New York *Times*. It is as well not to be too calculating about having babies, who will upset all calculations anyway. As Chesterton says, "If a thing is worth doing, it is worth doing badly." Even King Lear might agree.

Judges As Medical Decision Makers

Alan A. Stone

IN THE SHORT TIME available to me, I shall examine and criticize three of the many judicial decisions in the area of law and medicine. Those of you who like to think of the law as reason and justice tempered by mercy will be offended by what I have to say; but I shall be even-handed. Those of you who think of medicine as science and art tempered by compassion will also be offended. My justification for the critical and polemical thesis I shall present is my deep and growing conviction that in law, as often as in medicine, the cure can be worse than the disease. There is a word in medicine for cures that create diseases—the word is iatrogenic. Law needs a similar word; let me suggest juridicogenic.[1]

Any discussion of the role of the judiciary in medical decisionmaking in the twentieth century must begin with the abortion decisions: *Roe* v. *Wade*[2] and *Doe* v. *Bolton.*[3] One aspect of those decisions is relevant to my particular thesis. I quote a crucial sentence from Justice Blackmun's decision in *Wade*: "For the stage, prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician."[4] Although we have come to know the abortion decision as freedom of choice versus right to life, we find Justice Blackmun writing not that the state must yield to the woman's choice but to the physician's "medical judgment." I assure you this is not just a sentence taken out of context. Earlier in his opinion, Blackmun had written that the attending physician before extra-uterine viability is free to "determine . . . that, in his medical judgment, the patient's pregnancy should be terminated."[5] The language of the decision throughout misleadingly suggests that some crucial sort of medical judgment is involved not only in how the abortion is performed but whether the pregnancy "should be terminated."

Justice Burger in his brief comment to the abortion decisions chose

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to emphasize this very same crucial and misleading point.

> I do not read the Court's holdings today as having the sweeping consequences attributed to them by the dissenting Justices; the dissenting views discount the reality that the vast majority of physicians observe the standards of their profession, and act only on the basis of careful deliberated medical judgments related to life and health. Plainly, the Court today rejects any claims that the Constitution requires abortions on demand.[6]

What was the reality that Justice White in dissent had discounted? Implied by Blackmun and explicit in the words of Burger were the crucial and false notions that the reality of medical standards and medical judgment would keep the woman's right to an abortion from becoming abortion on demand, abortion as a routine form of birth control. Professor Noonan, a bitter critic of the abortion decision, refers to this aspect of the decision as the "doctor as heroic figure."[7]

Some have attributed Blackmun and Burger's "heroic doctor" misleading language to political or personal motives or even to sugar-coated hypocrisy. There are even professional cynics steeped in constitutional law and court watching who suggest Machiavellian duplicity on Burger's part. Burger, they say, is waiting for another Reagan appointee so that with a majority he will then write: I never approved abortion on demand and since that is what it became I now join with those who reject *Wade* and *Bolton.*

As a psychiatrist, I am in the unusual position of insisting that we take the Justices' words at their face value. Of course, the Chief Justice turned out to be completely wrong: the consequences predicted by the dissent were as accurate as any judicial prediction can be. As Justice White correctly interpreted the decision, "any woman is entitled to an abortion at her request if she is able to find a medical advisor willing to undertake the procedure."[8] As Justice White predicted, abortion has become a routine alternative method of birth control. If we take Justice Blackmun's and Burger's words about medical judgment at face value, we can only assume that they were quite misled about the medical profession, its medical standards, and the medical judgments that were and would be applied to abortion. It was Blackmun and Burger who were out of touch with reality if they honestly believed what they wrote.[9]

My point is not that the abortion decisions were wrong or right as a matter of law or morality. My point is that to the extent these opinions

involved factual inferences about medical standards and medical practice—inferences which suggested a context for the decision, inferences which suggested more limited consequences of the decision, inferences which suggested the realities of medical practice—to that extent, the decision was quite misleading.

I claim that such misleading statements about medical realities are not uncommon when judges make medical decisions. I also claim that the result of such misleading statements by judges is costly. The credibility of the courts is undermined in the eyes of the medical profession, and the credibility of the medical profession is undermined in the eyes of the public. The result is greater public distrust of both law and medicine. A loss of faith in both professions is the result of the vicious circle of counterproductive moves set in motion by these flawed decisions. I shall of course deal today with cases that make this point. I offer a critical perspective of juridicogenic decisions, not a survey of the judicial literature on law and medicine. However, I do want to claim that the cases I shall cite are among the most important law and medicine decisions on anyone's list.

Before I leave the abortion decision I want to say a few more words about the *Bolton* opinion. In *Wade*, Blackmun had used the phrase "attending physician" to describe the doctor who would make the abortion decision. This conjures up an earlier time when patients actually had a personal physician who attended them at bedside both at home and in the hospital, but is certainly an inapt phrase for describing doctors who perform abortion procedures in clinics.

Typically the pregnant woman is greeted by a nurse, a social worker, or an abortion counselor. The "medical decision" is made with them. She meets the doctor typically only after she is "prepped and in the stirrups." The physician is more appropriately characterized as a technician in an assembly line than an attending physician. There are certainly exceptions to this practice, but the picture I describe will certainly be familiar to the vast majority of the participants in this example of "deliberated medical judgments related to life and health." Doctors, of course, still use the phrase "attending physician" but with a different meaning. As Victor Fuchs has written of contemporary medical practice, my heart can get a doctor, my liver can get a doctor, my head can get a doctor, but I cannot get a doctor.[10]

The nostalgic image of the doctor-patient relationship is important in *Bolton* because there the Supreme Court had a great deal to say about the importance of the privacy of the doctor-patient relationship. The Court made this privacy seem as sacred to law as the privacy of the marriage bed. We shall see how much respect subsequent courts have had for the privacy of the doctor-patient relationship as cases were decided in the name of privacy.

The next case I shall discuss is the Massachusetts Supreme Judicial Court's decision *Superintendent of Belchertown State School* v. *Saikewicz.*[11] This was the Massachusetts Court's alternative to the New Jersey Supreme Court's Karen Quinlan decision. *Quinlan*, granting the right of a comatose patient to refuse extraordinary care, left the actual medical decision to the doctors who would take into account any expressed preferences of the patient in consultation with the family and the hospital ethics committee.[12] This decision was generally applauded by the medical profession, but we should note that mandatory review by an ethics committee means the loss of the very kind of privacy that *Bolton* tried to protect. Massachusetts rejected the *Quinlan* approach and reached the high-water mark in judicial intervention in medical decisionmaking. In the *Saikewicz* decision, Massachusetts made the judge the hands-on decisionmaker, deciding when to pull the plug on the terminally-ill patient. The Massachusetts case may be less well known to you than *Quinlan* or the abortion cases, so I shall provide more detail.

Joseph Saikewicz was a severely retarded sixty-seven year old inmate of Belchertown, a state institution for the mentally retarded. During medical evaluation that was itself the result of a federal class action right to treatment case, it was discovered that Joseph Saikewicz had a serious form of leukemia which the doctors predicted would kill him in a few months whether treated or not. Saikewicz had spent nearly his entire life in the state institution. He had no relatives to whom the doctors could turn for guidance about his preferences. In fact, Joseph Saikewicz never possessed the mental capacities necessary to formulate any preferences about accepting or refusing extraordinary treatment of a terminal illness. Apparently, the doctors were not eager to treat him; treatment would involve taking him to a general hospital, sedating him and/or restraining him for long periods while drugs would

be given intravenously and intrathecally. The treatment would be painful and would cause suffering; and, given his mental disability, it would be impossible to communicate with the patient to explain the reasons for the painful treatment. At best, treatment would extend Joseph Saikewicz's life only a few months.[13]

The doctors turned to the probate court and asked the judge to take the responsibility for withholding treatment. I have no doubt that this was because they were functioning within the regime of a federal judge whose court retained jurisdiction over all of the state's institutions for the mentally retarded. They were therefore as concerned about their own legal obligations and possible liabilities as they were about their clinical and ethical responsibilities to Joseph Saikewicz. As Professor Robert Burt of Yale has pointed out in his excellent book, *Taking Care of Strangers*, it is interesting to note that in both the Karen Ann Quinlan and Saikewicz cases, the doctors who testified in court made no effort to see how the proposed medical procedure would work.[14] The expert neurologists who testified in *Quinlan* did not disconnect the respirator or attempt to wean her from the machine in order to evaluate her response. The Supreme Court of New Jersey fully expected Karen Quinlan to die;[15] her years of continued existence were an ironic commentary on judicial wisdom and medical expertise in the adversarial process. Similarly, the expert oncologists did not try to medicate Joseph Saikewicz and take him to the general hospital. Nor did they even consider treating him in the medical ward of the state institution.

When doctors see the threatening shadows of the law, they forget that they are doctors with personal responsibility; they act to minimize their own risks; they often call in their lawyers and do what they are told; they often behave very much like bureaucrats. Indeed there is a high correlation between the increasing judicial and legislative intervention in medicine and the increasing bureaucratization of medical care. For every legal intervention another committee is created. Thus, by casting what seem like threatening shadows, the courts have influence far beyond their actual decisions on medical practice. Juridicogenic cures contribute to the bureaucratization of medical care.

The judge in the *Saikewicz* case could not easily say that an ordinary or reasonable person would refuse the treatment. The oncologists testi-

fied that in their experience almost everyone accepted the treatment even when told that the benefits were meager.[16] The hearing transcript reveals that on that basis the judge was in fact about to order that the treatment be given when the medical experts once again emphasized the difficulties of communication, the suffering involved in the treatment, and Joseph Saikewicz's assumed inability to tolerate what would be happening to him. The judge reversed ground at the last moment and ruled that the treatment need not be given.[17] Joseph Saikewicz died of leukemia; like Karen Quinlan, he was completely unaware of the controversy surrounding him.

What is important for our purposes is the way the Massachusetts Supreme Judicial Court subsequently fashioned their juridicogenic formula for the right of terminal patients to refuse treatment. As I have suggested, they could not apply a reasonable person test to justify the *Saikewicz* decision; if a reasonable person is a person who does what most people in that situation would do, Saikewicz should have been given the treatment. Further, they could not easily decide the case by a best interest test. They might have said that in the circumstances of *Saikewicz* it was in the best interest of a mentally retarded person to refuse a treatment which non-retarded persons would accept; but that might start the court down the slippery slope of "quality of life," and sound like discrimination against the mentally retarded.

The Massachusetts court was also unwilling to follow the New Jersey *Quinlan* precedent. In its judicial wisdom, the court decided that the right of all incompetent terminally ill patients to refuse life-sustaining treatments should not be delegated to doctors, relatives, and ethics committees. They concluded that only in an adversarial hearing with a legal guardian for the patient and a guardian ad litem to argue for treatment would the potentially conflicting interests of patients, families, and doctors be properly confronted.[18] It is ironic that the court looked to the right of privacy as one of the basic justifications for this complex and intrusive legal process. Adversarial due process would be the American way of death, at least in Massachusetts. The court made no mention of the impact of its decision on the doctor-patient relationship or the cost of privacy.

Having decided that momentous question which put an end to the right of such patients to die in peace and medical privacy, the court

reached out for a legal formula to apply in the adversarial hearing that would accent the positive theme of patients' rights while empowering judges to exercise those rights. The court adopted the standard of substituted judgment or proxy consent; the judge alone could exercise this proxy consent.[19] After an adversarial hearing, the judge would make the medical decision by attempting to decide what the incompetent patient would himself decide if competent.[20] In a subsequent similar case in New York, a medical expert was asked by a judge to help him decide this very question: What would a mentally retarded person want if he knew he had cancer of the bladder, if he could fully understand the risks and benefits of cancer treatment, and if he could understand the effects of his mental retardation on the treatment process. The expert answered: "Your Honor, that is like asking me if it snowed all summer, would it be winter?"[21] This wonderful answer captures the absurdity of imposing legal formulas on the complex real world of medical decisionmaking—an absurdity which the Supreme Judicial Court of Massachusetts could not see, so mesmerized was it by its own recitation of legal incantations which appeal to the all-powerful libertarian notion of individual autonomy and the panacea of due process.

Due process is to some judges what tranquilizing drugs are to some psychiatrists—they solve the judge's and the doctor's problem even if they do not address the real difficulty. The judge must exercise the patient's autonomous choice; only in this way can the patient's rights be served. The idea is logical but logic is sometimes pushed to absurdity when applied by judges to the realities of the medical world. Joseph Saikewicz was a classic example; he did not have the capacity to develop preferences—how could a judge know what his preferences would be? Judges are not fools, of course, and the supreme judicial court recognized that in a case like *Saikewicz*, the subjective proxy consent might come close to being an objective test.[22] Nonetheless, the court offered specific guidelines to help judges decide what they thought would be in the person's mind, if he had a mind.[23] This gave a semblance of clear and simple rules for making what is in reality an ambiguous and difficult decision.

Saikewicz was not limited to incompetent mentally retarded persons in state mental institutions as it could have been by a less activist court.

In one bold and arrogant step applauded by civil libertarians, probate judges in Massachusetts were given the authority to preside over death. Ivan Illich, a priest and radical critic of modern medicine, has described the medical profession as a priesthood presiding over and denying natural death.[24] I wonder whether he would count it an advance of civilization to impose on the medical priesthood a judicial College of Cardinals. The cost of dying in America is staggering; estimates are that eleven percent of Medicare is expended on dying.[25] The financial costs are only one part of the picture.

The *Saikewicz* decision, as interpreted by lawyers to doctors, required the doctors to postpone any decisions to forego or terminate treatment and to keep all incompetent dying patients in Massachusetts alive, no matter how futile the treatment, while they rushed about getting consultations and their lawyers rushed about arranging for the required legal hearing and the judicial proxy decision. *Saikewicz*, the lawyers said, applied to deformed premature infants (anticipating the Baby Doe regulations) as well as to senile and comatose adults. Many physicians commented on the resulting pattern of overtreatment and undertreatment. If treatment had begun doctors were afraid to stop the treatment without prior court approval. And it was said that in some cases, treatment was never initiated in order to avoid legal entanglements. Doctors cannot be absolved of their responsibility for such iatrogenic harms but neither can courts be absolved of their responsibility for the juridicogenic harms such decisions produce. Remember the language in these decisions about privacy; guardians were to be appointed in every case. Lawyers and expert witnesses were to conduct adversarial hearings. The hospital and its lawyers became concerned about the hospital's liability in light of *Saikewicz*; they felt the need to police their physicians in addition to any court proceedings—the patient's "attending physician" had to report to the Death Committee—specialists, nurses, and ethicists had to be consulted. In short, as happens so often in law, where due process has been, bureaucracy follows and here in the name of privacy, privacy was lost.

The *Saikewicz* decision stood for two powerful principles. First, courts not doctors should make these decisions about life and death. Second, those judicial decisions should reflect what the patient himself would choose. As to the first principle, the court's decision was greeted

with resounding approval by some health lawyers concerned about patients' rights, and it was greeted by outrage and derision by almost all physicians. The vicious circle I described earlier in this talk began; the medical profession lost a great deal of its respect for the court. For example, the editor of the *New England Journal of Medicine* openly criticized and condemned the court.[26] The public became confused and suspicious about both professions; families were bewildered. The realities, the costs, and the logistics of death with due process were soon recognized, and the Massachusetts courts backed away from *Saikewicz* as applied to dying patients.

First in the appellate case *In re Dinnerstein*,[27] and then in *In re Springs*,[28] the Supreme Judicial Court of Massachusetts came close to the New Jersey approach in *Quinlan*. I believe the aggressive step forward and the two steps backward had undermined the credibility of both the court and the medical profession. Earl Springs, an elderly man with renal failure, was the subject of the second step back. His right to refuse kidney dialysis treatment became a struggle between a right to life nurse on the one side and his relatives on the other. Were his relatives letting him die to save money? Did he want to die? Was he really incompetent? Did the right to life nurse, who had no responsibility for Earl Springs, invade his privacy? These questions were argued and reargued in the courts and played out in the media as a public spectacle that even Earl Springs' death did not end. When my former colleague, then Justice Braucher, of the supreme judicial court, wrote the *Springs* decision, he reached for a crafty compromise. Doctors need not turn to the courts in every case, but they must accept any civil or criminal liability that might follow from their actions and decisions.[29] On the other hand, he opined that when such medical decisions are made in accord with professional standards and with proper consultations, liability seemed highly unlikely.[30] This is what *Saikewicz* had meant all along, the court is there only when needed. But the need is determined by fear of legal liability. I know of doctors who advise families with elderly parents who suffer from chronic recurring ailments, such as congestive heart failure, as follows: "Look, if you think it is time for your parent to die, do not bring them to the emergency room; if you do, I will treat them. I do not allow my patients to die unless the

treatment is entirely futile." I doubt that the Supreme Judicial Court of Massachusetts had in mind such juridicogenic consequences and I doubt that families given such advice are left with a sense of confidence in either the medical or the legal profession. Now lawyers may justly claim that this advice is not what the court intended, nor does it follow from what the court actually wrote. But iatrogenic harms do not follow from what doctors intend or from what is actually written in medical texts. The medical maxim that guards against iatrogenesis is *primum non nocere*; judges who make medical decisions might do well to consider the same maxim.

Now it is important to emphasize that I believe that in all of the cases I have described there are deep and profound moral problems created by new biotechnology, and when I teach these cases to my students, I explore these moral problems, and I find that we have no moral consensus because we inevitably reach the slippery slope of "quality of life." However each of you would solve these moral problems, my purpose today is only to suggest that judges have not yet come up with good legal cures for these difficult moral problems.

Thus far I have said nothing about judicial decisionmaking in my own medical specialty of psychiatry. In this last part of my talk I shall turn to that subject briefly. While Massachusetts doctors, lawyers, and judges were struggling with *Saikewicz*, a case involving the right of psychiatric patients to refuse drug treatment was making its way through the Massachusetts Federal Court.[31] Civil libertarian lawyers argued that involuntary civilly committed patients had a constitutional right to refuse antipsychotic drugs except in emergencies when they were imminently violent.[32] An activist federal district judge did all that he could to get the Department of Mental Health and the libertarian lawyers to find a compromise.

Perhaps to press the Department of Mental Health, he issued a temporary restraining order against involuntary drug treatment;[33] however, the Department of Mental Health could find no compromise. To psychiatrists, an acute psychotic episode is itself an emergency, and I believe that anyone who has spent a few days in a mental hospital or in the same room with an acutely psychotic person would agree. Furthermore, despite the fact that antipsychotic drugs can be and have been abused as chemical restraints, when properly prescribed, they are highly

efficacious. In fact, antipsychotic drugs are perhaps the only psychiatric treatment with proven efficacy. To psychiatrists, the idea that someone was crazy enough to be involuntarily committed, but then has the right to refuse the only efficacious treatment seemed like the kind of law and justice one finds in the novels of Franz Kafka.

Unfortunately, it was difficult to formulate these views into a good legal argument. The Massachusetts law of civil commitment had been reformed under the influence of civil libertarians whose views were that the law should be purged of all psychiatric concepts and should be replaced by objective legal criteria emphasizing acts rather than status. So reformed, the Massachusetts civil commitment statutes said nothing about acute psychosis or incompetence to make medical decisions. The plain language of the statute indicated that a committed patient might be dangerous to self or others but still competent to refuse treatment. The attorney general's office nonetheless attempted to argue, as a matter of statutory interpretation, that the need to be involuntarily confined should be equated with incompetence, an argument that was unacceptable to the court.[34] Clearly, the idea of forcing treatment on a presumably competent patient was alien to common law and constitutional theory. The plaintiffs' lawyers also made much of the significant side effects associated with antipsychotic drugs.[35] Thus in this worst case scenario a potentially dangerous drug was being foisted on a presumably competent, although involuntarily committed, patient.

The district court judge held that there was a constitutional right to refuse treatment except in emergencies characterized by imminent violence.[36] As to the psychiatrists' concerns that they could not know when a patient was imminently violent, he observed in a footnote that many professions had difficult tasks.[37] An acute psychosis was not an emergency in his view, and the patient's refusal of treatment could only be overcome by a competency hearing and the appointment of a guardian who would then, as you can anticipate, make a proxy decision.[38] Thus, the guardian could, in theory at least, choose to honor the incompetent involuntarily committed patient's refusal of the only available efficacious treatment. As to the argument that it then took three weeks to schedule a competency hearing, the judge opined that the state courts could easily rectify the logistics.[39] Lurking in the judge's decision

was the idea that respect for individual autonomy includes the right to be psychotic at state expense and he said as much. I consider the decision of this court to be one of the most misguided, injudicious, juridicogenic opinions in the entire case law of law and psychiatry.

The judge's original temporary restraining order demonstrated a total disregard for professional standards of care, or the potential harms to psychotic patients who refused needed treatment. He needlessly and heedlessly turned the clock of mental health care back thirty years. His temporary restraining order and his ultimate decision left the psychiatric profession muttering that the judge was out of touch with reality. Case reports began to appear of patients whose treatable psychotic disorder went untreated month after month. Again the cycle of public dissatisfaction with law and psychiatry was set in motion. The toll of juridicogenic harms will never be tallied, but the cost in human suffering, the economic cost to the state, and the morale cost to public sector psychiatry are all too real to be ignored. The decisions *Rogers* v. *Okin*,[40] *Mills* v. *Rogers*,[41] and mercifully at last, *Rogers* v. *Commissioner of the Department of Mental Health*[42] went up through the First Circuit to the Supreme Court, back to the First Circuit, and then to the Massachusetts Supreme Judicial Court for interpretation of applicable state law. That court had backed away from *Saikewicz* in the manner I have described, but now in the context of psychiatry, it reasserted the entire *Saikewicz* procedure making the judge and not a guardian the proxy decisionmaker.[43] Think of it, doctors, if they are not afraid of liability, can now after consultation with relatives and ethics committees either provide aggressive treatment or pull the plug on incompetent terminal patients without a due process hearing, but psychiatrists cannot treat involuntarily committed mental patients without both a competency hearing and, if the patient is found incompetent, a proxy consent by a judge.

Thus, the Massachusetts Supreme Judicial Court went even further than the Federal Court's misguided decision, closing its eyes to the juridicogenic harms, it locked the mental health system into procedures which emphasized the libertarian view of rights and individual autonomy and ignored the needs of patients and the costs of human suffering. What can it mean to speak of individual autonomy when the person is trapped in a terrifying web of delusions and hallucinations? How

does the right to be psychotic advance the goal of individual autonomy in a free society? The juridicogenic harms of such decisions are now visible in the streets of every major city as the homeless mentally ill exercise their autonomy by sleeping in the streets and by rummaging for food in trash cans. Can the public have respect for law or for psychiatry when they witness this triumph of the libertarian theory of rights and this disregard for the needs and the suffering of the mentally ill?

Let us now consider the role of the judge as proxy consenter or medical decisionmaker in the case of mental patients. The judge, when he or she determines that the involuntarily committed patient is legally incompetent to make medical decisions, is asked to consider six factors:

1) any expressed preference by the patient;

2) any religious preferences;

3) the impact of the decision on the family as it would influence the patient;

4) the possibility of adverse side effects;

5) prognosis without treatment from the unique perspective of the patient; and

6) prognosis with treatment—while not conclusive, a good prognosis enhances the likelihood that the patient would accept treatment.

With these factors in mind, judges in Massachusetts are expected to make psychiatric decisions. Again, consider the costs involved: there are the court costs, the time of the doctors and lawyers, and if the judge refuses to order drug treatment, there is the added cost to the state of weeks of unnecessary confinement at an estimated cost of $200 a day. Since our state hospitals, now sharply reduced in beds, are filled to capacity, there is also the cost involved in depriving other patients of needed treatment or the alternative of dumping untreated patients back on the streets.

One must ask how judges could make these psychiatric decisions. How can a judge, to whom the patient is a total stranger and who knows little or nothing about drugs and mental illness, assess the preferences, the impact of family suffering on the patient, and the prognosis with and without treatment from the unique perspective of the patient? The short answer, I believe, is that they cannot, and anecdotal evidence

suggests two typical patterns of judicial decisionmaking. First, they decide whether the patient is competent or not. If not competent, they routinely order the drug treatment. Thus after costly and time-consuming delays, proxy consent is a myth in their court. A second pattern is for the judges to routinely require the treating psychiatrist to answer the six questions. Thus, after all is said and done, these judges put the ball back in psychiatry's court after forcing us to play the legal game by their complicated and costly legal rules. Elsewhere, I have argued that ethical psychiatrists should refuse to accept clinical responsibility for patients when judges exercising proxy consent determine that incompetent patients should not be given what the psychiatrist in good faith believes to be essential treatment—I consider such a situation court-ordered malpractice.[44]

Remember, we are not talking about mentally ill persons who are walking the streets; however the civil commitment statute is worded, we are considering only those mentally ill patients who were so disturbed that, unlike the thousands of mentally ill who live in the streets, they were hospitalized. Elsewhere, I have described a model civil commitment statute which makes incompetence a necessary criterion for civil commitment.[45] This approach is not without problems, but surely it is a more sensible remedy than the *Saikewicz/Rogers* formula fashioned by the Massachusetts Supreme Judicial Court.

I want to make one final general comment. Health care now consumes eleven percent of the gross national product.[46] Health care costs are what make American cars cost more than Japanese cars. Unless aggregate costs are controlled, Medicare will be bankrupt by 1990.[47] This will happen as the number of elderly people entitled to Medicare steadily increases. Government is desperate to control the aggregate cost of health care. As lawmakers seek to control costs, the medical industry is being both regulated and deregulated at the same time. Government is creating incentives to force doctors to consider the aggregate cost of health care in deciding what is appropriate treatment for individual patients. This poses terrible ethical problems which good economists, Lester Thurow for one, point out cannot be solved by economists.[48]

Equally true is that these ethical problems cannot be solved by doctors, their own code of ethics give no clear guidance. Will they be

solved by judges? Based on my own reading and studying I cannot be sanguine about the ability of judges to solve these problems without substantial juridicogenic harm. Some courts proceed more sensibly than others. In my opinion, *Quinlan* is much better than *Saikewicz*. One thing seems clear, however, decisions like *Saikewicz* and *Rogers* and the growth of malpractice liability give doctors a clear message—ignore the aggregate cost of health care in treating individual patients. These judicial messages directly contradict the legislative message of cost control. These mixed legal messages will set the stage for an ethical crisis in law and medicine over the next decade for which there will be no easy answers. The law and the courts will surely play a large part in dealing with this crisis: law and medicine will have to learn to live together or everyone will pay the price of increased loss of confidence in both professions.

NOTES

1. Juridicogenic is an incorrect neologism since it combines Latin and Greek terms. Its use is justified only on the premise that its meaning will be more obvious than the correct form, critogenic, which has been previously suggested by my colleague, Thomas Butheil, M.D.
2. 410 U.S. 113 (1973).
3. 410 U.S. 179 (1973).
4. 410 U.S. at 164.
5. *Id.* at 163.
6. *Doe* v. *Bolton*, 410 U.S. at 208.
7. *See* J. Noonan, *A Private Choice: Abortion in America in the Seventies*, pp. 38-40 (1979).
8. *Doe* v. *Bolton*, 410 U.S. at 221.
9. Justice Blackmun has had a long professional association with the Mayo Clinic. His experience may be with doctors who if not "heroic" are men and women holding to the highest ethical standards of the profession. Still, it is unclear how the highest ethical standards would or should influence the medical decision to perform a procedure which is both legal and acceptable (as Justice Blackmun took great pains to point out) to medical ethics.
10. V. Fuchs, *Who Shall Live?*, pp. 67-70 (1974).
11. 373 Mass. 728, 370 N.E.2d 417 (1977).
12. *In re* Quinlan, 70 N.J. 10, 54, 355 A.2d 647, 671, *cert. denied*, 429 U.S. 922 (1976).
13. *Saikewicz*, 373 Mass. at 729-35, 370 N.E.2d at 419-22.
14. R. Burt, *Taking Care of Strangers*, pp. 153-58 (1979).
15. *See* 70 N.J. at 54, 355 A.2d at 671.
16. *Saikewicz*, 373 Mass. at 733-34, 370 N.E.2d at 421.
17. Transcript at 43, *In re* Saikewicz, No. 45596 (Mass. P. Ct. Hampshire County May 13, 1976), *reprinted in* R. Burt, *supra* note 14, at 156-57.
18. *Id.* at 755-59, 370 N.E.2d at 432-35.
19. *Id.* at 751, 370 N.E.2d at 431.
20. *Id.* at 752-53, 370 N.E.2d at 431.
21. *In re* Storar, 52 N.Y.2d 363, 380, 420 N.E.2d 64, 72-73, 438 N.Y.S.2d 266, 275, *cert. denied*, 454 U.S. 858 (1981).
22. *See Saikewicz*, 373 Mass. at 750-51, 370 N.E.2d at 430-31.
23. *Id.* at 752-55, 370 N.E.2d at 431-32.
24. I. Illich, *Limits to Medicine*, pp. 201-08 (1976).
25. V. Fuchs, *How We Live*, p. 199 (1983) (citing J. Lubitz, M. Gornick & R. Prihoda, *Use and Costs of*

Medicare Services in the Last Year of Life (1981)).
26. Relman, *The Saikewicz Decision: Judges as Physicians*, 298 *New England Journal of Medicine* 508 (1978).
27. 6 Mass. App. Ct. 466, 380 N.E.2d 134 (1978).
28. 380 Mass. 629, 405 N.E.2d 115 (1980).
29. *Id.* at 637, 405 N.E.2d at 121.
30. *Id.* at 638-39, 405 N.E.2d at 121-22.
31. *Rogers* v. *Okin*, 478 F. Supp. 1342 (D. Mass. 1979), *vacated*, 634 F.2d 650 (1st Cir. 1980), *vacated sub nom. Mills* v. *Rogers*, 457 U.S. 291 (1982).
32. *Id.* at 1352.
33. *Id.* at 1353.
34. *Id.* at 1353, 1361-62.
35. *Id.* at 1359-60.
36. *Id.* at 1364-65.
37. *Id.* at 1369 n.36.
38. *Id.* at 1362-65.
39. *Id.* at 1363.
40. 478 F. Supp. 1342 (D. Mass. 1979), *vacated*, 634 F.2d 650 (1st Cir. 1980), *vacated sub nom. Mills* v. *Rogers*, 457 U.S. 291 (1982).
41. 457 U.S. 291 (1982).
42. 390 Mass. 489, 458 N.E.2d 308 (1983).
43. *Id.* at 496-507, 458 N.E.2d at 312-19.
44. A. Stone, "Psychiatric Abuse and Legal Reform: Two Ways to make a Bad Situation Worse," in *Law, Psychiatry and Morality*, pp. 133-56 (1984).
45. A. Stone, *Mental Health and Law: A System in Transition*, pp. 65-79 (1975).
46. Freeland & Schendler, "Health Spending in the 1980's; Integration of Clinical Practice Patterns with Management," *Health Care Financing Rev.*
47. Board of Trustees, Federal Hospital Insurance Trust Fund (1983 Annual Report), H.R. Doc. No. 75, 98th Cong., 1st Sess. 46 (1983).
48. *See* L. Thurow, *Dangerous Currents*, pp. 24-27 (1983).

APPENDIX A

[*The following article first appeared in the April, 1986, issue of* Commentary, *and is reprinted here with permission of the authors. Paul S. Appelbaum is Professor of Psychiatry and director of the Law and Psychiatry Program at the University of Massachusetts School of Medicine. Joel Klein is a partner in the Washington law firm of Onek, Klein, and Farr.*]

Therefore Choose Death?

Paul S. Appelbaum and Joel Klein

Like the serpent that coils around the staff of Aesculapius, the god of healing, contemporary law is now thoroughly intertwined with the practice of medicine. The effects of this entanglement, a recent development in the histories of both disciplines, are apparent in each camp, as judges decide when life-sustaining treatment should be terminated, and physicians struggle to define "patients' rights." Some of the more subtle yet potentially more profound consequences of the interaction of law and medicine, however, have gone largely unremarked. One of the most unsettling of those developments is the abandonment by the medical profession of an unambivalent commitment to the treatment of the ill.

The signs of this change can be discerned in the medical literature and are echoed in physicians' discussions in hallways and cafeterias. Medical journals contain suggestions designed to make it easier for pediatricians to determine when babies with ameliorable congenital anomalies, such as Down's Syndrome with malformation of the esophagus, or malformations of the spinal cord (myelomeningocele), should be allowed to die rather than receive treatment. Physicians talk about whether it is worthwhile attempting to save the latest alcoholic admitted with bleeding in his gut or severe deterioration of the liver. Studies show that patients who refuse a recommendation for treatment may be discharged from the hospital, sometimes to almost certain deterioration and death, with little or no effort made to change their minds.

The contribution of law to this turn of affairs stems from the Supreme Court's creation of a constitutional basis for the right of individual autonomy (or "privacy," as the courts are wont to call it) in the contraception and abortion cases little more than a decade ago. It turns out, as Archibald Cox said of equality, that autonomy once loosed is not easily cabined. Endorsed by liberals and libertarians alike, autonomy has been promoted by the courts as the predominant value in medical decision-making, with important effects on the willingness of physicians to treat the seriously ill. But legal notions of

autonomy were in part built on and later reinforced by the idea developed by some physicians and bioethicists that there is a minimum quality of life below which life itself is not worth living. Both ideas developed in the context of the treatment of the terminally ill, but, interacting in a perverse fashion, have since spread to the rest of medical care. The evolution of these lines of thought, and their effects, are well worth considering.

A rethinking of our traditional assumptions about health care was stimulated by the development in the 1950s and 1960s of improved means to sustain life in the seriously ill. The introduction of respirators, pacemakers, and intravenous and intragastric feeding techniques meant that lives could be supported even beyond the failure of patients' abilities to breathe, to trigger contractions of their hearts, and to swallow food. Patients who previously would have died rapidly could now be sustained for substantially longer periods, in some cases indefinitely.

Although these advances were of clear benefit to many people, allowing them to survive acute episodes of severe illness long enough for treatment to take effect, troubling issues soon began to be apparent. The respirator that could be used to support a victim of smoke inhalation while his lungs recovered from the trauma they had suffered could equally well be employed to sustain the life of a comatose patient with widely disseminated cancer, whose death without recovery of consciousness was only a matter of time. Since situations of this sort had never existed before, and the medical profession had traditionally prided itself on its devotion to prolonging life whenever possible, the initial tendency was for physicians to use the new techniques indiscriminately in both types of cases.

Dissatisfaction with this approach was quickly manifested. Many physicians, as well as family members, were distressed at the prospect of supporting people whose lives promised only continued suffering before an imminent and inevitable demise. More generally, as the escalating costs of medical care began to press against the limits of available resources, it became harder to justify the money spent on prolonging the dying process. In response to these concerns, efforts were made to develop criteria for deciding when initiation of life support was improper or its discontinuation desirable.

But these efforts also proved problematic. Most of those involved in the process could agree on criteria to be employed in clear-cut instances, such as when death from an underlying disease was imminent. But the borderline cases were less easily resolved. What of patients, for example, who had suffered massive strokes and would never regain consciousness, but for whom indefinite support on a respirator was a possibility? As is inevitable in the

United States today, in the absence of a social consensus on how to resolve these issues, physicians and families alike turned to the courts.

Karen Ann Quinlan became the symbol of the dilemmas created by the new technology. Rendered permanently comatose, apparently by an injudicious combination of alcohol and drugs, the young woman was declared by her physicians to be unlikely to regain consciousness or ever to breathe on her own. Nonetheless, she was considered indefinitely supportable with the assistance of a respirator. The artificial prolongation of her non-sentient life seemed wrong to her father, who unsuccessfully asked her physicians to turn off her respirator; to the representatives of the Catholic Church consulted by Mr. Quinlan; and ultimately to the justices of the New Jersey Supreme Court. By the time the case reached New Jersey's highest court in early 1976, it had attracted national attention. The justices were challenged to go beyond their intuitions to render a decision, buttressed by principled argumentation, to discontinue respiratory support.

So in the name of righting the wrong being done to Karen Ann Quinlan, Chief Justice Hughes began the process of stripping away those values that might lead to a conclusion that the young woman's life should be sustained. For this purpose, he endowed Miss Quinlan's right of individual autonomy with a potency derived from recent U.S. Supreme Court decisions in the area of privacy. In espousing her right to choose, the Chief Justice concluded—based on testimony from the woman's parents as well as his own suppositions—that "if Karen were herself miraculously lucid for an interval," she would "decide upon discontinuance of the life-support apparatus, even if it meant the prospect of natural death." Having assumed the unknowable, the court next tackled the task of overcoming "competing" interests that appeared to counsel against shutting off the respirator.

Might one maintain that the state had an interest in sustaining the life of Karen Ann Quinlan? The court concluded that whatever interests the state had in "the preservation and sanctity of human life" were diminished by Miss Quinlan's poor prognosis (here the court focused on her prognosis "to resume cognitive life," rather than the likelihood that death would supervene) and the degree of bodily invasion necessary to support her. "Ultimately," the court concluded, "there comes a point at which the individual's rights overcome the state interest. It is for that reason that we believe Karen's choice [to stop the respirator], if she were competent to make it, would be vindicated by the law."

Could it be argued that the ethics of the medical profession would be so offended by an order permitting termination of treatment that the state ought

not to allow it to take place? Miss Quinlan's attending physicians, supported by "several qualified experts who testified in the case," had contended that removing the respirator "would not conform with medical practices, standards, and traditions." The court brushed this concern aside, however, concluding that "the interests of the patient . . . must be evaluated by the court as predominant, even in the face of an opinion *contra* by the present attending physicians." Elsewhere in the decision the court suggested that the physicians might have been influenced in their opinions by their fear of malpractice liability if they had agreed to remove respiratory support, a factor portrayed as contaminating their decisions with "less than worthy motivations."

In as simple a manner as that, the New Jersey Supreme Court disposed of two major impediments to the termination of life support, which in this case rested on the court's interpretation of the value of autonomy. Courts that have considered the issues since—and a steady stream of doctors, lawyers, and anguished family members have trudged into courtrooms to resolve these cases—have largely echoed the *Quinlan* court's approach. The right of autonomy is held to be paramount; it is presumed that patients would or should choose to have their respirators turned off or similar life support withheld; and decisions are rendered in favor of withholding care. When values other than those addressed by the *Quinlan* court are raised, such as the interests of families, they too are vanquished in favor of autonomy.[1]

Whatever might be said of the legal basis for the right of autonomy or the wisdom of its various applications, it should not go unremarked that the courts' reliance on the principle has resulted in a counterintuitive use of the term. By definition, one would suppose, the exercise of autonomy depends on an individual's ability to make at least minimally reasoned choices. When that capacity is lacking—because of infancy, mental incompetence, or unconsciousness—it would seem that the concept of autonomy should have little significance. Invariably in such situations, someone else must be responsible for making choices that are usually left to autonomous individuals. But this has not deterred the courts from relying on the right of autonomy to support decisions concerning people who are unable to decide for themselves. Thus, in a now established line of cases, it has been held that incompetent and unconscious patients have a "right to refuse" medical treatments that could restore their competence or sustain their lives.

The use of autonomy to support these decisions is puzzling. Death, after all, is the ultimate insult to autonomous decision-making. But the courts have been less concerned in these cases with honoring lay understandings than with finding a tool that might enable them to achieve the result they see as just.

The peculiar spin accorded to the principle of autonomy, however, accounts for some of the unexpected effects of the decisions.

The efforts of the courts have generally been accorded a warm reception among bioethicists. The latter, often philosophers or theologians who have spent some time in medical settings, are having an increasing influence on both judicial and medical considerations of issues such as termination of life-sustaining care. Most bioethicists consider autonomy a primary value. Often this belief rests on some combination of Kantian philosophy and libertarian political principles. But regardless of its theoretical origins, the value of autonomy in decision-making has been popularized among medical professionals by bioethicists, thus reinforcing the importance attached to individual choice by judicial decisions. Nor are most bioethicists disturbed by the interpretation of autonomy offered by the courts, namely, that autonomy is to be interpreted as a right to die rather than as a right to live. They too seem more concerned with the need to end the suffering of the dying than with any desire for logical consistency in the use of terms.

Independently of the attempts by the courts to resolve the difficult issues of when treatment should be withheld, the medical profession had been coming to some conclusions of its own on the matter. Autonomy of patient choice is not a value that historically has been held in high esteem by physicians, who have often believed that they are better able to determine how patients should be treated than are patients themselves. Thus, the path taken by the courts was not one that physicians would have chosen on their own. But they too recognized the need to justify removing respirators and withholding chemotherapy in cases where continued suffering seemed the only likely outcome of treatment.

Rather than looking to abstract notions of autonomy and privacy, physicians instinctively turned to the issue of the quality of patients' lives. It seemed apparent to them that patients surviving on respirators, unaware of what was occurring around them, curled into shrunken balls on their hospital beds, were living lives that were in some sense not worth enduring. The point at which someone's life could be characterized in this way was difficult for most physicians to describe abstractly, the determination depending as it did on a rather subjective analysis of risks and benefits. But like the late Supreme Court Justice Potter Stewart, who is often remembered for his "I-know-it-when-I-see-it" approach to defining pornography, many physicians felt that they too knew when a life was no longer worth the effort to live.

By the time Karen Ann Quinlan's case reached the courts, then, physicians had already begun backing away from the belief that all available means of

sustaining life ought to be employed in every circumstance. The *Quinlan* court was able to cite a body of literature in medical and legal journals indicating "that physicians distinguish between curing the ill and comforting and easing the dying; that they refuse to treat the curable as if they were dying or ought to die; and that they have sometimes refused to treat the hopeless and dying as if they were curable." Thus, the court's willingness to see Miss Quinlan's respirator turned off appeared to be supported by the thrust of medical opinion.

This, however, was something of a misinterpretation, since most physicians—including all those who testified in the *Quinlan* case—were not yet ready to take that step. And even those who would have taken it were driven by quality-of-life considerations, not by respect for a patient's decisional autonomy. A later case decided by the Massachusetts Supreme Court, which involved the question of whether an elderly, profoundly retarded man named Joseph Saikewicz should be given chemotherapy for leukemia, addressed this difference of view explicitly. The court concluded that the chemotherapy should not be given because the patient lacked the ability to comprehend the reason for the pain he would have to endure. Much as in the *Quinlan* case, the *Saikewicz* court rested its holding on the belief that this would have been the course the patient would have chosen had he been competent to make the choice. The court went further, however, taking pains to emphasize that "to the extent that this formulation equates the value of life with any measure of the quality of life, we firmly reject it."

Yet physicians and bioethicists took this assertion at somewhat less than face value. Despite the tortured efforts of the courts to avoid making decisions based on quality of life—for to do so, in their view, would deny an equality of rights under law—many observers concluded that this was precisely what the courts were doing. It was pointed out, for example, that almost no competent persons able to make their own decisions ever refuse initial trials of chemotherapy for leukemia. Thus, if the Massachusetts court was willing to ascribe such a decision to Saikewicz, it could only be because the quality of his life if he were to undergo treatment would be so much worse, by virtue of his inability to comprehend what was occurring, than the life of a non-retarded person. Even if one were to accept the court's protestations to the contrary, it was evident to everyone that most court decisions allowing termination of life-sustaining treatment were being decided precisely as they would be if a rough quality-of-life standard were being applied. Physicians, therefore, felt that the courts were implicitly endorsing their approach to decision-making, and the use of a quality-of-life standard spread.

It is not difficult to find elements to criticize in the decisions of the courts. Since judges were motivated by the desire to justify a particular outcome rather than by any internal logic arising from the relevant legal principles, their arguments were often strained and self-contradictory. Similarly, even in situations of terminal illness, there were obvious problems when physicians adhered to quality-of-life standards, with the latitude they give to bias about the relative value of people's lives. But both judges and physicians were confronted with situations that seemed to cry out for relief, and they did what they could to provide it. The problem is that these decisions in the extreme cases began to legitimate a logic and soon a set of practices that took on a momentum of their own. In particular they had a powerful effect on the thinking of doctors, who have of course continued to shape treatment decisions in the vast majority of cases that never reach the courts.

Traditionally, medical training has emphasized the value of immense efforts to promote health and save life. Medical students begin to absorb this ethos as they start their clinical education on hospital wards, routinely working 100-hour weeks. Shifts may last 36 hours, with 8 to 12 hours in between. Things get somewhat better when training is completed, but physicians in many specialties, even when out of the hospital, are perpetually on call. Medicine of this sort is an all-consuming commitment.

Time is not the only thing that physicians learn to surrender to their profession. On the job, great stress is placed on giving meticulous attention to the details of patient care. Charts and test results must be reviewed, patients examined, orders written, and all done now. Pushing things aside for consideration tomorrow is looked on as a sign of disreputable laziness on the part of a trainee or practicing physician. This is not to say that dedication alone produces medical care that is always technically competent or favorably received by patients. To some extent, in fact, the frantic pace inculcated into medical students early in their training yields physicians who have too little time to sit with patients, learning their needs and responding accordingly. But when it comes to the treatment of serious illness, most patients are reassured by the thought that their physicians will do everything possible to effect their cure, and will do so with unimpeachable intensity.

To be able to respond with this level of dedication, however, one must have an ethic that is powerfully motivating. The belief that all illness is worth treating and all life worth saving is such an ethic, and its success in encouraging physicians' efforts has been evident for many years. Now, however, as a result of the problems raised initially by our new capacities to sustain the terminally ill, the orientation of physicians toward health rather than illness,

and life rather than death, it is beginning to break down. Confronted by doubts about the validity of their ethic, which they have already been told is not universally applicable, in a growing number of cases physicians are starting to back away from their commitment to treatment.

A recent case history, taken from a study conducted for the President's Commision on Ethical Problems in Medicine, illustrates this phenomenon. A middle-aged male patient was admitted to the hospital for evaluation of a mass in his lung. When a diagnosis of malignancy was made, his physicians recommended surgery to remove that lobule of the lung where the tumor was lodged. There was no evidence that the tumor had already spread beyond the lung; thus, surgical cure remained a possibility. The patient's wife, however, who spoke for the patient, reported that he did not desire to undergo the operation and preferred to be discharged from the hospital; he might later consider radiotherapy or chemotherapy, neither of which offered the possiblity of cure. His physicians, murmuring something about a patient's right to individual choice, allowed him to go home.

The researchers performing the study were curious about why the patient and his wife would refuse potentially life-saving care. Discussions with the wife revealed first that the decision had been hers, not her husband's, because he habitually left all important choices to her. Furthermore, her reasoning was based on the firm belief that exposing cancer to air would cause it to spread. She believed, therefore, that the only means of saving her husband's life was to stop the surgery from taking place, the precise opposite of the medical reality.

What happened in this case? Had the physicians taken the time to learn why the patient's wife was refusing treatment on his behalf, they might have had a chance to reverse the unfortunate decision. That they did not make an effort to persuade the patient's wife of the incorrectness of her choice might be attributed in part to her unpleasant and aggressive tone, and the general press of other patients' needs. But the physicians never even took the time to inquire about the basis for her decision, a step preliminary to any effective intervention. The reason they gave for their failure in this regard was the feeling that patients have the right to make their own choices, even if they are bad choices (the courts have emphasized that repeatedly), and that it would be improper for physicians to challenge this right.

The shift seen in this case—from a dedication to persuading patients of the importance of treatment to a willingness to stand back while patients make bad choices of their own—is repeated day after day in hospitals and doctors' offices. To the judges issuing high-sounding opinions about autonomy, this

rejection of the physician's duty to take the extra step to ensure that a patient will be treated must have been entirely unanticipated. Similarly, the popular media, and particularly the New York *Times*, which have been so concerned with safeguarding the patient's "right to die," have apparently remained unaware of this side-effect of the right they have promoted.

A look at the psychology of physicians, however, renders the phenomenon quite understandable. For the vast majority of doctors, dedication to patient care has served to restrain other, potentially conflicting, impulses. These include the desire to avoid unpleasant situations, like wrestling with a drunk in the emergency room while trying to stitch the gash he received during a barroom brawl; the longing to get home at a reasonable hour to spend some time with one's family; the pressure to let normal emotions reach the surface, including anger at obnoxious patients or frustration at those who stymie their own care. All these, with occasional and unfortunate exceptions, have been held in check by the devotion to the higher ethic of medicine, the treatment of disease.

But when health is reduced to one value among many, and death is often seen as preferable to life, the pent-up emotions of the medical profession burst through the bonds that have restrained them. Doctors discover that it is simply easier to let people refuse care than to struggle with them; to leave at five o'clock rather than to work through the night (it is not economic motivations alone that have led so many physicians to join multi-doctor clinics, which advertise in medical journals the "life-style" advantages they offer); to get angry and yell back when patients are rude. Predictably, perhaps, there is now a case in Georgia where a patient is suing for the intentional infliction of emotional distress because his doctor told him, "I don't have to be your damn doctor," and, "If only your smart-ass wife would keep her mouth shut." Doctors have found out that it is easier not to play God, and still easier not even to play doctor.

While the medical profession can attempt to blame this state of affairs on the courts for their interpretation of the value of individual autonomy, physicians must shoulder their share of responsibility for the intrusion of quality-of-life issues into routine medical care. Once the barrier was broken to the introduction of these considerations in cases involving the terminally ill, and their legitimacy reinforced by the unstated but transparent logic of the court decisions on discontinuing care, physicians became conditioned to thinking about the value of the lives they were attempting to save. Not surprisingly, when the question was asked in this way, the value of treatment sometimes began to seem less than the costs of the effort that was required.

The quality-of-life question, or, to put it non-euphemistically, the question of whether a patient's life is worth saving, is now a commonly considered subject in medical journals. A controversial report in *Pediatrics*, for example, details the protocol employed by doctors in Oklahoma to decide which newborns with defects of the vertebrae and spinal cord should be treated. The physicians endorse a psuedomathematical formula according to which quality of life is held to equal the patient's natural endowment multiplied by the sum of the contributions from the home and social environments. When the team caring for a newborn infant, plugging its medical and social criteria into the quality-of-life "equation," decides that the baby's quality of life is below that level at which life should be sustained, "the family is then informed that we do not consider them obligated to have the baby treated." Needless to say, the physicians themselves do not feel "obligated" to provide treatment, either. In explanation of the practice, the physicians offer the following thoughts: "Life [is] a basic and precious good, but only a relative good. It is not to be sustained in the face of extraordinary hardships; these hardships can include physical, geographical, and financial considerations."[2]

The implications of this statement of principles are chilling. Lives that are too troublesome to maintain, too costly to support, of too little perceived value to the decision-maker, can be abandoned. If this approach were limited to a single team of physicians with idiosyncratic ideas about the value of human life, it might be dismissed with scorn. But in fact such approaches have permeated medical thought today, at both ends of the spectrum of life and everywhere in between. Reports from nursing homes explain how demented, but hardly terminal, patients with fevers are allowed to die without treatment if their quality of life is sufficiently low. A distinguished panel of physicians declares in the *New England Journal of Medicine*[3] that "Severely and irreversibly demented patients need only care given to make them comfortable," while for "pleasantly senile" patients, "Freedom from discomfort [rather than effective treatment of their illness] should be an overriding objective." And the American Medical Association, joined by the American Hospital Association, is currently before the U.S. Supreme Court arguing that the federal government has no right to monitor or intervene in so-called "Baby Doe" cases when physicians and families decide to withhold life-sustaining treatment from seriously retarded or deformed infants.

In sum, having sanctioned the consideration of quality-of-life issues, physicians are now faced with judgments at every turn as to whether a given patient's life is worth saving. One does not need the support of empirical studies (although they exist) to know that the judgments of physicians as to

the quality of any patient's life are likely to be highly variable: what looks like quality to one may fall well below the standards of another. Interestingly, one study has shown that physicians who invoke the phrase "quality of life" in their decision-making do so significantly more often to justify withholding care than to support giving it. Younger physicians, having grown to professional maturity in an environment in which decisions to terminate life-sustaining care on quality-of-life grounds were becoming common, may be more prone to using such determinations in deciding whether or not to treat their patients. Looking at the issuance of "do not resuscitate" orders for hospitalized patients, researchers have found residents in training much more inclined to write such orders than older, attending physicians.

One physician summed up the situation this way:

> The old, chronically ill, debilitated, or mentally impaired do not receive the same level of aggressive medical evaluation and treatment as do the young, acutely ill, and mentally normal. We do not discuss this reality or debate its ethics, but the fact remains that many patients are allowed to die by the withholding of "all available care." There seems to be, however, a general denial of this reality.

One need not be an absolutist on right-to-life questions to be concerned about these developments. On the contrary, to propose to address the problem of therapeutic nihilism by compelling physicians to sustain life by whatever means necessary, even when death is imminent and its delay can only be achieved at the cost of great suffering, simply trades one unpleasant situation for another. Yet it is sobering to reflect that those who warned us, when we began finding justifications for discontinuing care in terminally ill patients, that we were heading for a tumble down a slippery slope were right. It may not be impossible to draw distinctions between the cases of terminally ill persons and those who are not on the verge of death, but at the least it is an extraordinarily difficult task.

Although the problem will not be easily eliminated, there may be some ways to ameliorate the effects of this revolution in medical ethics. Insufficient attention has been given to interests that may conflict with current tendencies to discontinue care. For the sake of an easy solution in cases like *Quinlan* and *Saikewicz*, the courts have been too quick to assume the answer to the unknowable question of what a patient would do if able to make the choice, and then too willing to dismiss the stake of society in the maintenance of life. Yet clearly we all have very real interests in perpetuating a vision of our society as a community in which the health and life of our fellows are of importance to all of us. The diminution of our willingness to undergo sacrifices—whether of time, effort, or money—to sustain each other's lives

cannot but reduce societal cohesion. For the same reason, only on a more intimate level, family members have real interests (perhaps sometimes subject to conflicts, but less often than one might glean from the court opinions) in seeing their loved ones healed and sustained.

The decision of the Massachusetts Supreme Court in the *Richard Roe* case suggests—by the very unreasonableness of the opinion—where the courts might begin to alter their approaches. Roe was a troubled youth. He abused alcohol and dangerous drugs, became violent, and was ultimately committed to a state hospital, where he was diagnosed as a paranoid schizophrenic. During his second hospitalization, when he was twenty-one, Roe's father successfully petitioned to be the guardian of his incompetent son so that he could care for him when he returned home. Upon that return, Roe refused to take the medication prescribed by his psychiatrists; his parents, fearful of his return to a psychotic, assaultive state, sought to compel him to do so. When a legal-aid lawyer who had known Roe at the hospital became involved, the stage was set for another landmark decision on autonomy.

In response to the efforts of Roe's parents to get him to take the medication that would normalize his behavior, the Massachusetts court created an elaborate judicial procedure intended to divine whether Roe would have refused the medication had he been competent to choose. His admittedly incompetent refusal of treatment, the court ruled, was to be taken into account as evidence of what he might have desired if competent. Reaching this result, the court quickly disposed of the parents' claim that they had the right to decide this issue for their son by noting its "preference for judicial resolution of certain legal issues arising from proposed extraordinary medical treatment." It made no difference that the medication in question was, in fact, a well-established and routine treatment for schizophrenia. Nor did the court think it conclusive that the medication was indisputably the best (and probably the only) way to restore Roe to competence so that he could exercise his own autonomy. In the name of autonomy, a procedure was created that favored the maintenance of Roe's psychotic, non-autonomous state.

Had the court recognized the importance of restoring health and competence, and respecting the values of family life, it might have decided differently. Rather than again inquiring into what an incompetent's decision would have been if he had been competent—a quixotic quest—the court might have acknowledged frankly that health should at times take precedence over pretensions to autonomy. Further, instead of dismissing as suspect the family's interest in seeing their son treated—the court believed that the tranquility of the family home and the development of Roe's siblings might have been

foremost in their minds (are those things so easily separable from Richard Roe's interests?)—the court could have recognized that Roe's parents, who wanted to care for their son despite his severe illness, were the best people to determine his needs. In short, a presumption for treatment and for health could have been established.

No matter how the courts behave, though, physicians also have a significant stake in seeing that their traditional emphasis on healing is not replaced by a morally suspect variety of triage. Indeed, at a time when doctors are facing great uncertainty generally, because of the basic economic restructuring taking place in medicine, they would do well to reaffirm a professional ethic that rests on a responsibility to treat. In a world of high finance and rapid corporatization, doctors are likely to become increasingly dissatisfied as they search for new opportunities in an economic climate that breeds both winners and losers. In such circumstances, if comfort is to be found, it will come from the non-economic rewards of patient trust, respect, and confidence. To earn those, however, will require an undivided commitment to healing the sick and preserving life.

NOTES

1. The supreme irony of the Quinlan case is that contrary to the expectation of her physicians, Karen Ann Quinlan began to breathe on her own after her respirator was turned off. Although she never regained consciousness, she lived until June 1985, more than nine years after the New Jersey court ruled that her autonomous choice would have been to die.
2. For a fuller discussion of this report, see "Infanticide & Its Apologists," by Mary Tedeschi, *Commentary*, November 1984.
3. See *New England Journal Of Medicine* 310, April 12, 1984, pp. 955-959.

APPENDIX B

[*On Sept. 11, 1986, the supreme court of Massachusetts decided a case in which the specific question was whether food and water can be withheld from a person with "hopeless brain damage" but not suffering from a fatal disease or condition. The following day the Boston* Herald *summarized the case as follows: "A landmark opinion by the state's highest court yesterday cleared the way for the wife of comatose Easton firefighter Paul Brophy to remove her husband's feed tube and allow him 'a death with dignity.' The 4-3 decision—the first time the Supreme Judicial Court has ruled on the removal of a feeding tube—will allow Brophy to die of starvation."*

The Brophy case is indeed a legal landmark, and was immediately hailed by Right to Die societies. One of the Justices in the case was Joseph R. Nolan, whose dissent was described as "blistering" by the Herald. *We reprint Nolan's opinion here in its entirety.—Ed.*]

The Dissent of Justice Nolan

The court today has rendered an opinion which affronts logic, ethics, and the dignity of the human person.

As to logic, the court has built its entire case on an outrageously erroneous premise, i.e., food and liquids are medical treatment. The issue is not whether the tube should be inserted but whether food should be given through the tube. The process of feeding is simply *not* medical treatment and is not invasive, as that word is used in this context. Food and water are basic human needs. They are not medicines and feeding them to a patient is just not medical treatment. Because of this faulty premise, the court's conclusions must inevitably fall under the weight of logic.

In the forum of ethics, despite the opinion's high-blown language to the contrary, the court today has endorsed euthanasia and suicide. Suicide is direct self-destruction and is intrinsically evil. No set of circumstances can make it moral. Paul Brophy will die as the direct result of the cessation of feeding. The ethical principle of double effect is totally inapplicable here. This death by dehydration and starvation has been approved by the court. He will not die from the aneurysm which precipitated loss of consciousness, the surgery which was performed, the brain damage that followed or the insertion of the G-tube. He will die as a direct result of the refusal to feed him. He will starve to death, and the court approves this death. (See Anne Bannon, "Rx: Death by Dehydration," *The Human Life Review*, Vol. 12, No. 3 [Summer, 1986], p. 70.)

I pass over the glaring weakness in the evidentiary basis for the finding that Paul Brophy would decline provisions for food and water. The evidence that he knew the horrors of such a death is not present in this case, and without

such evidence it can be argued persuasively that Brophy never made a judgment that food and water should be denied him.

Finally, I can think of nothing more degrading to the human person than the balance which the court struck today in favor of death and against life. It is but another triumph for the forces of secular humanism (modern paganism) which have now succeeded in imposing their anti-life principles at both ends of life's spectrum. *Pro dolor.*

APPENDIX C

[*What follows is a summary (by the author) of the report to the National Institute of Education completed in late 1985 by Prof. Paul C. Vitz of New York University. It first appeared in the Summer, 1986 issue of* The Public Interest, *and is reprinted here with permission.*]

Religion and Traditional Values In Public School Textbooks

Paul C. Vitz

While media attention has recently focused on efforts in California to reject some proposed public school textbooks because of their inadequate treatment of the theory of evolution, a different textbook dilemma has gone largely unnoticed. This is the bias against any mention, pro or con, of religion, of traditional family values, and of conservative positions in a variety of areas.

Let me describe what one finds—or doesn't find—when one examines social studies textbooks. I looked at ten sets of six books each, the offerings of ten publishers for Grades 1-6. The selection included all social studies texts adopted by the states of California and Texas. These two states were selected because of their large school-age populations and because many other states look to their adoption lists for guidance in selecting their own texts. In addition, texts adopted by both the states of Georgia and Florida were included. The ten-set sample is representative of the nation as a whole, accounting for an estimated 70 to 75 percent of texts used in the country. Furthermore, there is no reason to think that the five or six fairly common texts that are not in the sample are very different from those in the sample; in fact, one of the characteristics of public school textbooks is how similar most of them are.

Specifically, all of the ten sets of books in the sample have the same general structure. Grade 1 texts deal with the individual student in the family and school setting; Grade 2 texts expand the setting, usually to include the student's neighborhood; Grade 3 texts expand the context further to include the life of the surrounding community; and Grade 4 texts include different regions of the country or of the world.

The books for these first four grades also include aspects of American history or world culture. Because of the homogeneity of the sets for the first four grades, they are analyzed together, while the Grade 5 and 6 books are each treated separately below. We should keep in mind that these social studies books are aimed at introducing the student to American society as it exists today and, to a lesser degree, how it existed in the past.

APPENDIX C

In examining the first set of books for Grades 1-4, any references to religion are described as "text items" if they are made with words and as "image items" if they occur in pictures. Each page of each book was evaluated. *Primary religious references* are defined as those that refer in words or pictures to a religious activity such as praying, going to church, participating in a religious ceremony, or giving religious instruction. *Secondary religious references* are those that refer to religion in some indirect way, such as mentioning the date a church was built, or referring to a minister as part of the community, or showing some Amish in a buggy. Differentiating the two categories was simple, and was verified by having the texts and scoring checked by independent readers furnished by an outside educational research organization.

The first notable finding of the study is that none of the books has a single *text* reference to a primary religious activity occurring in contemporary American life. The closest any book comes is a descriptive reference to the life of the Amish—a small, rural Protestant group whose distinctive way of life has not changed in centuries, and who are certainly not representative of today's religious Americans. Another reference that comes "close" to describing primary religious activity is about a Spanish urban ghetto, "El Barrio." The complete relevant text reads: "Religion is important for people in El Barrio. Churches have places for dances and sports events."

There are, however, a few *images* showing primary religious activity in a contemporary American setting. In Grade 1 texts, two images are Jewish, one is Catholic, and there is a rather vaguely drawn picture of a minister or priest at a funeral. In the Grade 2 texts there is one Jewish image and a photograph of a family praying at Thanksgiving dinner (nondenominational). The primary religious images in Grade 3 texts are a Catholic priest, a rabbi, a minister or priest (with collar) at a sick bed, and a family with heads bowed for Thanksgiving. The Grade 4 texts have no primary religious images dealing with contemporary American society. These ten primary religious images referring to contemporary American life are distributed over forty books and roughly ten thousand pages. If we include the one primary religious image in the twenty books for Grades 5 and 6 the situation is even worse: For all six grades, eleven primary religious images are distributed over sixty books and over approximately fifteen thousand pages.

We find a similar but less extreme pattern in secondary religious references. In the Grade 1 books surveyed, there is one text reference to God in the Pledge of Allegiance. Secondary images include a church noted on a local map, a boy in bed with a crucifix on the wall behind him (implicitly Catholic), two images of Christmas trees, and one of children dyeing Easter

eggs. Since Christmas trees and Easter eggs by themselves are found in many nonreligious homes, their religious significance is ambiguous and minor. In the Grade 2 books there is one text reference to the Amish, the Pledge of Allegiance is given twice (including the words "one nation, under God"), and in one instance the music and words of "America the Beautiful" are printed with "God shed his grace on thee"; there is also a text reference to a church building. Secondary religious images are pictures of churches; of the Amish people; six churches on local maps; and a photo, without a caption, of a wedding party with a cross in the background.

All text references to religion in the Grade 1-4 books are secondary. The name of God, for example, appears only in such things as the Pledge of Allegiance, but there are occasional photographs of a church or Spanish missions, and even some religious images of the Pilgrims; one book refers to ministers as important community members.

When these books cover other societies, however, religion gets a substantially greater emphasis. Thus, many of the books treat American Indian life prior to the arrival of Europeans; in the process, Indian religion often gets a sympathetic treatment. For example, one book describes a Hopi rain dance and prayer; another notes a Pueblo Indian story about prayer and how the Earth Mother created corn for them. Religious life is sometimes noted in the study of Mexican society. But these occasional acknowledgments of religious life in other societies create the impression that religion is foreign, exotic, or a quaint old world tradition. This view is expressed in the following comment about European society: "As you see, in Europe many people are religious." That this is much more true now of the United States than Europe is never suggested.

Nor do these textbooks suggest that religion plays a part in American festive culture. "Mardi Gras," we read, "is the end of winter celebration." The Thanksgiving holiday usually, but not always, receives similar secular treatment. The Pilgrims, we learn from one text, "are people who make long trips." Nowhere in relating the story of the first Thanksgiving is it explained to whom the Pilgrims were giving thanks. The closest these books come is an image or two of Pilgrims praying. In one text that devotes thirty pages to the Pilgrims no reference is made to their religion in any way and we learn only that Thanksgiving was celebrated because the Pilgrims "wanted to give thanks for all they had." (A mother whose child was in a class using this book wrote to me to say that she was told by her child that Thanksgiving was when "the Pilgrims gave thanks to the Indians." The mother called the principal and "reminded" the principal that Thanksgiving was when the Pilgrims thanked

God. The principal of this New York suburban school said "that was only her opinion," and that the schools could only teach what was in their history books.)

Clearly these textbooks are averse to discussing religious ritual—at least when it takes place on American soil. A Pueblo's prayers to Mother Earth can be described in these books, but Pilgrim prayer—or, for that matter, Christian prayer—is never described in the United States, or elsewhere, present or past.

All ten publishers' Grade 5 textbooks are introductions to American history. The overwhelming impression made by all these books is the superficiality of their treatment of just about everything. They are a pastiche of topics without any serious historical treatment of what might have been going on. Nevertheless, certain aspects of the coverage of religion deserve special notice. Not one book notes the importance of religion in American history. There is not one reference in any of these books to such religious events as the Salem Witch Trials, the Great Awakening of the 1740s, the revivals of the 1830s and 1840s, the great urban revivals of the 1870-1890 period, the Holiness and Pentecostal movements around 1880-1910, the liberal and conservative Protestant spilt in the early twentieth century, or the "Born Again" movement of the 1960s and 1970s. In fact, religion in the last hundred years or so hardly figures at all in these books—the whole topic is ignored.

The omission reflects a seriously declining role for religion in the presentation by these textbooks of each successive century of American history. The average text, for example, has 24.5 pages covering the history of the 1600s; the percentage of these pages containing *any* reference in word or image to religion is slightly more than 50 percent. For the pages covering the 1700s, the percentage drops to 9.75, and for the 1800s, to 3.42. By the 1900s references to religion in American history decline to an average of 1.27 references every one hundred pages.

The ten social studies texts for Grade 6 all briefly cover either world history or world cultures with history mixed in. Because these books differ in the particular historical periods, countries, and cultures that are covered, it is hard to compare them systematically. However, some generalizations are possible. There is far less coverage of ancient (that is, biblical) Jewish history than of either Egyptian or Greek history in these books. Nor is there any further reference to Jewish life and culture for two thousand years, until the Holocaust. In short, Jewish contributions to Western culture are seriously underrepresented.

A few books give Jesus some mention, but four out of ten make no mention whatsoever of either his life or teaching. One text provides the following

complete description of Jesus' life: "Jesus became a teacher. He preached that there was only One God. He told those who would listen that they must honor God by treating others with love and forgiveness." In several books Mohammed's life gets much more coverage than that of Jesus. For example, in one text the life of Jesus gets 36 lines, while the life of Mohammed gets 104 lines. In another the rise of Islam, Islamic culture and Mohammed get an eleven-page section plus other scattered coverage. The rise of Christianity receives but a few lines on one page. In these three or four books it is not as though great religious figures are totally avoided—rather, Jesus is.

One strange characteristic of many of the texts in the study is their failure to mention the Reformation, or to give it little emphasis. For example, one book has 20 pages on Tanzania, 19 pages on the history of the Netherlands, and 16 pages on ancient Crete—but makes no reference to Martin Luther and John Calvin and has almost nothing on Protestantism. (The total absence of reference to Protestantism in the section on Holland is particularly noteworthy given that country's history.) Even the texts that do take up the Reformation usually do not discuss the theological differences that were at issue. Religious differences, the fundamental basis of the conflict, are typically omitted.

Curiously, when religious events are focused upon in some texts, a feminist emphasis, projected onto the distant past, is often evident. The few women of influence in the past are mentioned, even featured, out of proportion to their historical significance. For example, one text mentions that Muslims kept women out of power, and then features the one known sultanate of a Muslim woman (it lasted four years). A particularly egregious example of this tendency is one book's treatment of Joan of Arc, whose story is told without any reference to religion in any way. The coverage is entirely secular and seems to have been included because Joan of Arc was an important woman.

The second part of the survey of social studies textbooks examined the treatment of family and traditional family values. Since the Grade 5 and 6 books address U.S. history and world history and culture, these books were excluded as irrelevant to the issue of family values in America. This study, then, involved only the books for Grades 1-4—books purporting to introduce the child to an understanding of U.S. society.

The books vary greatly in their emphasis on family. For example, the Grade 4 texts, because of their focus on geography, often have no representation of family life at all. Grades 1-3 texts usually have some, and often a strong, representation of family; every publisher has at least one book with a moderate (six-to-fifteen pages) family emphasis. Thus, in terms of amount of family emphasis, most of these sets do well.

But serious issues arise when one looks at the *kind* of family emphasis—when one moves from quantity to quality. These books are extremely cautious when attempting to give an explicit definition of a family. For example, one text states, "A family is a group of people." The teacher's edition of this book elaborates the definition so as to make a family a group of people "who identify themselves as family members." The entire emphasis in all these books is on the many types of family—all implicitly equally legitimate.

More typically, however, no explicit definition of a family is given by these books. Instead an implicit definition is provided by the pictures and stories referring to family life. In these cases the definition suggested by the images is that a family consists of those people, whoever they might be, that the child lives with. Specifically, there is not one text reference to marriage as the foundation of the family. Indeed, the words "marriage" or "wedding" occur not once in the forty books. (The one exception occurs in a reference to a neighbor's wedding—but this occurs in a short treatment of life in Spain.) Further, it is relevant to note that neither the word "husband" nor the word "wife" occurs once in any of these books. Not one of the many families described in these books features a homemaker—that is, a wife and mother as a model. The words "housewife" and "homemaker" never occur in these books. Yet there are countless references to mothers and other women working outside of the home in occupations such as medicine, law, transportation, and politics.

In the course of reading these books, certain observations were made that had not been anticipated. For example, there is a liberal bias to these social studies texts. Many of these books single out certain prominent people for special emphasis. These people are not necessary for the discussion of social life or the history of the United States (like presidents), but are considered by the authors to be important people who would interest the students. Such people are selected to serve as "role models" for students, since they are usually featured under such headings as "Famous People" or "Someone You Should Know" or "People Who Made a Difference." In one study, people whose major contributions have occurred since World War II were specifically noted. A person was scored as a political "role model" if he is singled out for distinctive biographical treatment and if the person was active in political life or well known for his political or ideological significance. (People selected as role models in the arts, from sports, and from the world of science are therefore not included in this analysis.) In most cases explicit political issues are not raised. That is, their political party is never mentioned, but the general message of approval for their contributions is clear. Table I lists all of these role models. Comment would seem superfluous.

Table I. Role Models in Public School Textbooks[a]

Name	*Accomplishment*
Herman Badillo	New York politician
Romana Banuelos	Treasurer of the U.S.
Thomas Bradley (2 times)	Mayor, Los Angeles
Ralph Bunche	U.N. Official
Rachel Carson (2 times)	Ecology movement
Raul Castro	Governor of Arizona
Henry Cisneros	Mayor, San Antonio
Vine DeLoria	American Indian rights
Millicent Fenwick	U.S. Congress, N.J.
Ella Grasso	Governor of Connecticut
Patricia Harris	Lawyer; black rights
Dolores Huerta	United Farm Workers
Nancy Kassebaum	U.S. Senate, Kansas
Maggie Kuhn	Gray Panthers; feminist
Martin L. King, Jr. (3 times)	Civil rights leader
Clare Booth Luce	Ambassador
Thurgood Marshall	Supreme Court Justice
Margaret Mead (2 times)	Anthropologist
Patsy Mink	U.S. Congress, Hawaii
Julian Nava	Ambassador to Mexico, author
Dixy Lee Ray	Governor of Washington
Eleanor Roosevelt (3 times)	Founder of U.N., various good works
Coleman Young	Mayor, Detroit

[a] All people of post-World War II political and social significance selected for special biographical emphasis (Role Models) in the sixty social studies textbooks for Grades 1-6 which were surveyed.

In another study I examined how religion and other traditional values are represented in basal readers, the books used to teach children how to read. These books most often use fictional stories, but articles about science and biographical pieces are also common. The purpose of these texts is to develop reading ability. Since basal readers are introduced at an early and critical stage of a child's education, these stories and articles become an important source of values, ideas and information for students.

Because the earlier readers have little content and the later readers are not widely used, the basal readers from the middle grades are the most appropriate for content analysis. I chose to analyze readers from Grade 3 and Grade 6 in order to obtain a representative range of widely used material. The eleven publishers selected account for all the readers used in California and Texas and a high percentage of the readers used nationwide. The sample is thus a representative survey of the stories and articles read by our country's public school children.

Only stories or articles were scored; poems, games, exercises, reviews, and

similar material were not evaluated. However, such items, which are harder to evaluate and compare, are always a relatively small part of the total content of each book. Stories and articles usually take up anywhere from 75 to 90 percent of the pages. Scoring consisted of the author or an assistant reading each story or article in each book and writing a brief summary. All references to religion were specifically noted. Later I read all the stories and articles scored by the assistant to gain first-hand familiarity with the complete sample.

An independent analyst read all the stories in four of the readers to check on the accuracy of the author's summaries. This analyst found only one story out of 140 that had reference to religion of any significance that was missed. (This story had one sentence that mentioned the "good Lord.") Thus, although a few stray religious references might have been missed in the twenty-two-book sample, these possible oversights would not change any of the major conclusions. In addition, the conclusions and results mentioned below were evaluated for accuracy by the independent evaluator.

For all intents and purposes religion is excluded from these basal readers. There is not one story or article in all these books in which the central motivation or major content is connected to Judeo-Christian religion. No character has a primary religious motivation. Indeed, religious motivation is significant, although of secondary concern, in only five or six stories or articles (1 percent of the total). In additional instances, religion enters into a story in a minor or secondary way, but without any narrative importance. No informative article deals with religion as a primary subject worthy of treatment. There are many articles about animals, archaeology, fossils, and magic, but none on religion, much less about Christianity.

In contrast to the treatment of Christianity and Judaism, there was a minor spiritual or occult emphasis in a number of stories about American Indians. One fifty-five-page story features a typical white American girl on a ranch in California who seeks to find her "Indian Heart." The girl makes several animal fetishes and seeks ways to commune with animal spirits in an attempt to capture the spirit of the animal, in this case a coyote. Another story called "Medicine Bag" features an Indian medicine bag passed on from father to son; the bag is part of an Indian youth's "Vision Quest" in which he seeks the meaning of his name. An article about Comanche medicine art gives an interpretation of the paintings but also information about Indian spirituality.

Although biblical religion figures rarely in basal readers, it is worth examining the few instances in which Christianity or Judaism is described. In some stories, for example, a Roman Catholic theme can be detected. A biography of the Mayo brothers (who established the Mayo Clinic) mentions that an

order of Catholic nuns was instrumental in setting up the Mayos' first hospital, St. Mary's. A story about the famous battle at the Alamo, described as a mission church in Texas, has a young boy refer to the church and to Our Lady of Guadalupe and has the boy's mother praying for the safety of her husband during the battle. The story is an exception among other basal stories in that the mother actively prays and the son makes a positive comment about Our Lady of Guadalupe and his own church. (The religious meaning of these actions, however, is somewhat ambiguous since the mother's prayers are ineffectual and her husband is killed along with the rest of the defenders.)

The only other cases in which prayer is mentioned are in two stories, each with a single sentence that describes how a major character prays (but not to whom) at a time of extreme danger. In another story, a man rescued after days of living alone on a large iceberg shouts in German his delight in being saved, "Gott im Himmel!"

A story by the Jewish writer Isaac Bashevis Singer set in nineteenth-century Eastern Europe in a small village has a minor religious theme. It takes place during the celebration of Hanukkah and involves a Jewish boy who gets lost for three days in a blizzard with the family goat. Once in the story he prays, but God is not mentioned. (In the original story the boy prayed "to God" and remarked, "Thank God." But in the school reader the first reference is deleted and the second is changed to "Thank goodness.") The celebration of Hanukkah is an important background context for the story, but the religious meaning of Hanukkah is not evident and for most young readers it could be just another ethnic holiday.

There is another Jewish story that centers on the mother making gefilte fish (from a live carp kept in the bathtub) for Passover. God is mentioned once, but no reference is made to the religious meaning of Passover, and the focus on the article is on the poor fish. Passover, like Hanukkah in the previous story, could be a strictly secular ethnic holiday as far as the text is concerned.

Religion gets a neutral or positive mention in a few stories on black history or black life. One story refers to information in the family Bible of Benjamin Banneker; another refers to the "good Lord" once; and a story about a black teenager mentions that his father was a minister. A fourth story is a history of the origin and development of jazz (by far one of the better pieces in all twenty-two books). This history correctly and positively identifies the importance of the black church in the development of black music. A story on Harriet Tubman helping slaves escape via the underground railway mentions her prayer and two ministers, one a Quaker, as important in the escape. There is a biographical story on the life of Martin Luther King, Jr. that mentions he

was a minister, discusses his studies at a seminary, and quotes his "Thank God, I'm free at last" speech.

However, certain nontraditional religions receive relatively frequent mention. The Greek and Roman religions are part of six stories; two stories that are not particularly religious in content are attributed to Buddha. American Indian religion is also featured positively in five stories and one article. Bible stories, however—even popular ones such as David and Goliath—never appear in these books.

In summary, then, we see very little representation of religion in these basal readers. While Catholicism, Judaism, and the black church—that is, "minority religions"—receive occasional minor representation, Protestantism is omitted completely. Seventy-two percent of those basal readers sampled either have no reference at all or only minor negative or neutral reference to God, Christianity, or Judaism. Of the remaining books, two or three contain modest references. Although it makes no mention of Judaism or representative Protestantism, one reader does introduce religion into eight of the book's forty stories, and, hence, gives religion about half of all the coverage found in the complete sample.

I review briefly some of the other trends we observed in the 670 stories and articles that were surveyed.

For all practical purposes the concept of patriotism is absent from these books. Less than 1 percent of the stories have any patriotic theme—all from the War of Independence. The most popular of these is the story of Sybil Ludington in 1777, which appeared three different times: Dressed as a man, Ludington warns local pro-Independence farmers about a British threat. One other story with a patriotic theme is the story of Mary, a black girl who wants to join the army and bring food to George Washington's troops during the harsh winter at Valley Forge. In many respects these four of the five total patriotic stories could also be described as feminist.

The second notable omission is the role of business in American life. Almost no stories in the textbooks have a business theme of any kind. One reasonably probusiness article is about a black youth who bought a house in a run-down part of town, fixed it up, and became the youngest landlord in Michigan. Here, the positive emphasis is on good citizenship, not on business success. However, there are no stories about Henry Ford, Andrew Carnegie, or any more recent examples of this "Horatio Alger" type. Neither is there a single story in which an immigrant to this country finds happiness and success in business or in a profession.

The only actual business success story features a black woman from Rich-

mond, Virginia, born in 1867, named Maggie Mitchell Walker. This story—which appeared in three different readers—does make the point that she became a successful banker, but the major emphasis is on her success as a woman. The meaning of her accomplishment is in overcoming prejudice in black men against women (no white prejudice against blacks was noted since all the characters in the story were black). Even the life of American workers goes unmentioned; there are no stories about labor or labor unions either.

By far the most noticeable ideological position in the readers is a feminist one, which shows in a number of ways. To begin with, certain themes do not occur in these stories and articles. There is hardly a story that celebrates motherhood or marriage as a positive goal or as a rich and meaningful way of living. (The few that are positive about motherhood are set in the past or feature ethnic mothers.) No story shows any woman or girl with a positive relationship to a baby or a young child; no story deals with a girl's positive relationship with a doll; no picture shows a girl with a baby or doll.

Even romance receives short shrift. Only five stories focus on romance: One involves two dogs; another, an O. Henry story, deals with a young man and a young woman who have fallen out over a misunderstanding that the story resolves; and a third features a young black girl who daydreams that a popular singer will fall in love with her. A fourth story has a loving prince win the hand of a princess even though she has apparently changed into a cat. A fifth story involves a captured Confederate officer. His new wife, dressed as a man, tries to rescue him from prison and almost succeeds, but in the end the officer is killed and she is caught and hanged. The emphasis is more on her daring attempted rescue of her husband than on romance. Great literature from Shakespeare to Jane Austen to Louisa May Alcott is filled with romance and the desire to marry, but one finds very little of that in these texts.

Many stories focus on the role-reversal of their heroine. In one story, a princess sets out to slay the dragon in her kingdom; she invents the first gun and with it kills him. The slain dragon turns into a prince who asks the princess to marry him. She rather casually agrees, but only if her new kingdom has lots of dragons in it for her to slay and lots of drawbridges for her to fix—she wants to keep busy at such things. There is not one traditional story of a prince rescuing a princess or slaying a dragon. Indeed, stories set in the past featuring sex-role reversal and mockery of traditional stories about kings and queens or about young men rescuing maidens are surprisingly common.

Other examples of strongly feminist stories include a story about a new kid on the block who wins at "King of the Hill" and other boyish activities and turns out to be a girl, and a dog sled race between a girl and a boy where the

girl turns back to rescue the boy when he gets in trouble and still manages to beat him to the finish line. There is also a story of a star baseball player—a girl—who is in a hitting slump because her favorite "Rusty McGraw" bat is missing. Her friend, a girl detective, solves the problem by finding that a boy has stolen it so he could make the first team instead of the girl. At the end she gets her bat back and hits two home runs. (In stories in which boys and girls competed, the girls won by an overwhelming margin.) Yet another example is the story, found in two readers, of "Trail Boss," a girl who drives longhorn cattle back from Texas to Illinois. Finally, in one astonishing instance, a mystery featuring Encyclopedia Brown—the boy detective in a series of popular children's books—is rewritten so that Encyclopedia is a girl.

The frequent stories of female success in these books are typically set in traditionally male preserves. There are, for example, many stories about the female pilots Amelia Earhart and Harriet Quimby, while there is only one single-page story on the Wright Brothers, and there is no mention of Charles Lindbergh or any other male aviation pioneer.

There are also explicitly feminist stories about Elizabeth Blackwell, a leader of the women's movement, and Elizabeth Cady Stanton, the first female physician in the United States. These stories are much more factual than the feminist fiction pieces and address an important historical movement. Because they are honest and straight-forward in their purpose, they contrast sharply with the manipulative quality of the many other stories that distort history to include women soldiers, judges, or merchants at times and places where there were none.

When one looks at the total sample of 670 pieces in these basal readers, the following findings stand out. Serious Christian or Jewish religious motivation is featured nowhere. References to Christianity or Judaism are uncommon and typically superficial. In particular, Protestantism is excluded, at least for whites. Patriotism is close to nonexistent in the sample. Likewise, any appreciation of business success is seriously underrepresented. Traditional roles for both men and women receive virtually no support, while role-reversal feminist stories are common.

The above characteristics taken together make it clear that these basal readers, like the social studies texts, are so written as to present a systematic denial of the history, heritage, beliefs, and values of a very large segment of the American people.

APPENDIX D

[*The following vignette is reprinted here because, after reading the preceeding article by Prof. Paul Vitz, we thought of it. We have reproduced it directly from an edition of* McGuffey's Third Eclectic Reader, *which was first published in the late 1870s. We trust you will enjoy it. —Ed.*]

LESSON LVI.

WHEN TO SAY NO.

1. Though "No" is a very little word, it is not always easy to say it; and the not doing so, often causes trouble.

2. When we are asked to stay away from school, and spend in idleness or mischief the time which ought to be spent in study, we should at once say "No."

3. When we are urged to loiter on our way to school, and thus be late, and interrupt our teacher and the school, we should say "No." When some schoolmate wishes us to whisper or play in the schoolroom, we should say "No."

4. When we are tempted to use angry or wicked words, we should remember that the eye of God is always upon us, and should say "No."

5. When we have done anything wrong, and are tempted to conceal it by falsehood, we should say "No, we can not tell a lie; it is wicked and cowardly."

6. If we are asked to do anything which we know to be wrong, we should not fear to say "No."

7. If we thus learn to say "No," we shall avoid much trouble, and be always safe.

DEFINITIONS.—1. Cạuṣ'eṣ, *makes.* 2. I'dle ness, *a doing nothing, laziness.* 3. Urġed, *asked repeatedly.* Loĭ'ter, *linger, delay.* In ter rŭpt', *disturb, hinder.* 4. Tĕmpt'ed, *led by evil circumstances.* 5. Con çēal', *hide.* Fạlse'hŏŏd, *untruth.*

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