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Featured in this issue:

Also in this issue:

Donald DeMarco • William J. Bennett • Bill Reel • William Murchison David Wagner • George Will • plus excerpts from the dissenting opinions of Justices Burger, White and O'Connor in the *Thornburgh* case

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INTRODUCTION

We have often noted that the abortion issue has permeated a broad range of other concerns and controversies, a fact vividly demonstrated in the media's coverage of recent events *in re* the U.S. Supreme Court. The Court's reaffirmation of a "right" to abortion on demand was certainly the main event of the session just ended, and the pregnant question of whether the original *Roe* decision will stand was the big "news" raised by President Reagan's surprising nominations to the Court.

On the latter point, the statement by retiring Chief Justice Warren Burger ("I agree we should reexamine *Roe*") may be the most important statement made during his 17 years on the Court. We expect to have much more on all this in due course; in this issue, we have included Mr. Burger's opinion as well as other commentary on both the abortion and *Baby Doe* decisions (about which more below).

Yet again, our lead article is by Joseph Sobran, in our judgment one of the finest writers in the land. (As it happens, Sobran has been in the news himself of late, but the controversies involved do not concern us here.) His subject is "Pluralism," and as usual Sobran brings fresh insights to the argument, beginning with his amusing discovery that a recent debating opponent "really thought that his position was not only his position, but also, somehow, the only reasonable compromise between his position and mine!" We need hardly add that the debate was on abortion.

Our old friend John Muggeridge has also been involved in another abortion battle, a bizarre affair which he describes here with as much good humor as can be expected under the circumstances. Readers familiar with the "Catholic issue" canard in this country will find that things can be quite different in Canada, not least because its *politics* are so different from ours, a point illustrated by Mr. Ted Byfield, a Canadian columnist (writing in a recent issue of *Western Report* magazine). A parliamentary system cannot put together the

kind of bi-partisan coalition that, in our Congress, supports a Hyde Amendment. So the ruling "Tory" (i.e., Conservative) party, to which many anti-abortionists belong, doesn't do anything about the issue. As Mr. Byfield puts it: "'Naturally I'm against it,' whimpers the Tory politician, 'but I do have to respect party unity.' It's a sad comment. History will write it on his tombstone. Mr. Reagan on the other hand goes out of the White House and joins the pro-life picketers. Is it because he has more courage? Yes, but he has more courage because he's thought the issue through. That's the difference."

Well, Mr. Muggeridge certainly has thought the issue through, and had the courage to try to get his neighbors to do likewise, only to find that that "difference" remains enormous. It's quite a story.

So is the following one, told by Mr. John Matthews (an erstwhile Brandeis professor who enjoys words so much he's taken up novel writing). He certainly complements Muggeridge's point: we tend to see what we *want* to see, and nothing makes that easier than not *looking* at what is really happening—or who is being hurt by it. Again the prime example is abortion, and Matthews sees some harsh truths, especially about the role of doctors, for whom "none of the emotional and ideological claims [of women] can obscure the reality of what they are dealing with; they have to *see* it in order to know what to do."

His point is that we are refusing to see that we are aborting the nation's future, which reminds us of something else we recently read: a letter to the editor of the Iowa *Corwith Herald*, signed by a Mrs. Paul Devine. *Her* point is that abortion has killed "over 18 million American consumers . . . That's right, *consumers*!"—with potentially disastrous effects on the economy. We'd never have seen such a letter had it not been reprinted in the June *Harper's Magazine* (evidently Mrs. Devine has opened some eyes?).

But as our next article makes clear, the "Major Media" generally maintains a blind eye on abortion. Mr. Dave Farrell, a veteran newsman (and former Boston *Globe* columnist), provides the evidence from his own experience, much of it wryly amusing if only because it's all so blatant. Indeed, given the on-the-record examples of media bias, it is amazing that the anti-abortion movement has been able to force (mainly by sheer staying power and determination) so *much* coverage, however slanted.

That the slant goes well beyond the mere number and balance of abortion stories is the subject of the study by Mr. and Mrs. Olasky, who provide in fascinating detail the historic background of what was in effect the first "modern" abortion reportage. Yes, we certainly remembered the Sherri

Finkbine story, and knew that it was a crucial turning point in the public perception of abortion. But we hadn't realized how great a landmark case it actually was—that it changed the crucial *terminology* used to describe the reality. The reader will note that we have kept all of the (*many*) citations, not merely to confirm that the Olaskys have done their investigative reporting thoroughly, but also because we hope that the Finkbine case will get the further study it deserves.

Dr. Anne Bannon also writes about changing terminology, within the medical profession. It's all very simple. Back in 1973, when the High Court legalized abortion, the "policy" of the American Medical Association was straightforward: "The intentional termination of life of one human being by another—mercy killing—is contrary to that for which the medical profession stands . . ." But of course abortion is just such an intentional "termination," so nobody should be surprised—certainly not anybody who predicted it—that the AMA's policy has . . . evolved. And indeed it has, into "it is not unethical to discontinue all means of life-prolonging medical treatment," including "nutrition or hydration."

So there you have it. Death by dehydration is now OK. Some may think it's an awful way to go, but it saves the doctor from having to finish you off himself, say by some lethal dose—precisely what doctors like Peter Singer promote but, as Mr. Sobran points out, Singer has evolved beyond his peers. It may take a few more years for the Healing Profession to catch up with him.

It reminds us of a suggestion we once made: that doctors add, after their M.D., an additional S.L. or Q.L.—standing for Sanctity of Life as opposed to Quality of Life. The patient has a right to know, don't you think? Even a doctor, when his (or her) own time comes, might want to choose carefully.

As it happens, our old friend Herr Kuehnelt-Leddihn writes about the very question that the doctors need to answer: Where do ethics come from? As always, his arguments, buttressed by a host of facts and examples, are uniquely his own, and may well surprise you (as they did us). But given that we live in an age of mass slaughter, there is no more pressing question than the one he raises. Without *some* accepted ethical standard, a society will surely decline, and, history shows, fall.

Also as usual, we try to provide the reader with a little treat after so much weighty fare. Here (in *Appendix A*) you have Prof. Donald DeMarco relating his struggles with opponents of "sexist" language. We laughed all the way through it. And we appreciate not only the good professor's sense of humor but also his good common sense.

You might call *Appendix B* another piece of common sense. It's only a brief excerpt from a speech by Secretary of Education William J. Bennett, but it's the best thing we've seen on the vexed "Sex Education" question.

Appendix C is also about Teenage Sex—and abortion—with biting commentary by Bill Reel, a regular (and usually amusing) columnist for the New York *Daily News.* Reel hadn't known that an unborn baby could finance his or her own abortion under the state's Medicaid "policy"—even if the "mother" could afford to pay. A lot of other people hadn't known it either, and Reel's blast set off a controversy that actually produced some policy *changes* (amazing what one man can do)—the state will no longer pay for abortions "for young women with family incomes above the poverty line"—which should save a few lives (not those of the unborn *poor,* of course, who can go on paying for their own "termination").

Which brings us back to the Supreme Court, and several pieces that neatly tie together most of the various issues we've covered so far. As noted, the Court also ruled on the so-called Baby Doe regulations—striking down the Reagan Administration's attempts to prevent outright infanticide. This journal has already run a great deal on that "problem," but we think you will find that Messrs. William Murchison (*Appendix D*) and David Wagner (*Appendix E*) summarize both the background and the meaning of the Court's latest ruling. We presume that the American Medical Association agrees with the Court's majority: age ought not to be a factor in the right to die.

Who will argue any longer that the Court's 1973 legalization of abortion on demand did not unleash all the horrors that Malcolm Muggeridge so aptly calls the Humane Holocaust? But the *Roe* Court has again shown that it remains determined not only to sustain *Roe* but also *expand* it, as it has done in its latest ruling in the *Thornburgh* case.

We'd say that the powerful column by Mr. George Will (*Appendix F*) acidly summarizes the incredible nature of the expansion. But that *Roe* majority is now down to the minimum five Justices, and it may well be that *Roe* has been reaffirmed for the last time. Certainly it has no other friends on the Court, as the dissenting opinions make clear.

Ordinarily the Court's opinions make difficult reading for laymen. But in this case there is a considerable amount of, well, lively prose—plus arguments which we think belong in our continuing record of the abortion question. Thus we reprint a generous selection here.

Chief Justice Warren Burger's brief dissent (*Appendix G*) is reproduced in its entirety, and from the original, with all the various legal citations, asides,

etc., that baffle the non-lawyer—and explain why we have omitted all such from the much-longer dissents of Justices Byron White and Sandra Day O'Connor (Justice William Rehnquist concurring).

In 1973, Justice White called *Roe* "raw judicial power," and he obviously hasn't changed his mind, as you will see (*Appendix H*). Justice O'Connor was of course not on the original *Roe* Court, so her also-strong opinions (*Appendix I*) are of special interest. But we must admit our favorite is Mr. Burger's final statement, "I agree we should reexamine *Roe*."

In due season, we hope to reprint *that* decision. Meanwhile, we'll continue to provide you with the best arguments we can find for its inevitability.

J.P. McFADDEN
Editor

Let's Compromise My Way

Joseph Sobran

NOT LONG AGO I was on a TV panel show and the subject of abortion came up. A young liberal on the panel said, "Well, since we can't agree on when life begins, the only sensible thing to do is keep abortion legal."

I had heard this position before, but this time it made me think. My colleague really thought that his position was not only his position, but also, somehow, the only reasonable compromise between his position and mine!

It was as if he had said, "Well, let's agree to disagree on abortion, and not kill each other over it." It sounds reasonable, until you reflect that abortion *means* killing each other.

What is it about these people we loosely call "liberals"? Discussing abortion with them is endlessly frustrating, for several reasons. All the reasons can be summed up in the word "elusive." There is a strange kind of logic in their minds that refuses to face the central issue and keeps shifting the rationale for the policies they want. When you refute their premises, they don't change their conclusions; they change the premises, and keep the same conclusions. We *must* have legal abortion.

In this case, I was confronted with the familiar appeal to "pluralism." Just as a practical matter, I always find that when "pluralism" is invoked, my side seems to lose. "Pluralism" means that my side is forbidden to "impose its values," while the other side is authorized to do just that: impose its values. *Its* values regularly claim to be the lowest common denominator of the pluralist society. And pluralism seems to stand for the society based on a low-level consensus, conveniently defined by the side that accepts least of our inherited moral tradition.

Apart from abortion, the liberal doesn't want to jettison our tradition against murder; he merely argues that we can no longer include abortion under the heading of homicide. Why not? Because, as a matter of simple fact, not everyone categorizes abortion as homicide. The very

Joseph Sobran, our senior Contributing Editor, has written more than two score original essays for this review.

fact that he rejects the old classification is sufficient proof that it is no longer a matter of consensus. So—it has to go.

There is a weird, heads-we-win, tails-you-lose quality to this version of pluralism. The conservative always finds himself in the position of having to sustain an entire moral tradition, while the liberal (or secular humanist, or whatever he may be called) gets to discard any piece of it he finds inconvenient or uncongenial. He may imply that the old moral rules he doesn't like are irrational, but as much may be said of the moral rules he *does* like. But since he doesn't have to face this, it is never his problem. He assumes he is simply being more rational than his opponents.

But it isn't a question of rationality. As C. S. Lewis points out in *The Abolition of Man*, the entire Tao, or moral order, is of a piece. You can't throw away a part without injuring the whole. The rule against killing the unborn is no more or less "rational" than the rule against exterminating an entire nation.

Under the ground rules of "pluralism," however, you can throw away any part that not everyone agrees on. This gives a complete advantage to the reductionist: he can never lose. And in our recent debates on "social issues," issues of public morals, the liberal has always had the luxury of this advantage. It is hard for either side to imagine him in any other position.

Let us try to imagine it anyway. The Australian philosopher Peter Singer runs ahead of the liberal herd. On impeccably liberal premises, he argues not only for abortion but even for infanticide, and, at the same time, for the rights of animals. Briefly, his position is that there is nothing so essentially unique about human nature that it is intrinsically wrong to kill a human being. His criteria are pain and sentience. He considers it morally worse to kill a full-grown dog that can fear death than to kill a human fetus or infant.

It isn't easy to say whether Singer is an antagonist of liberals who happens to share their premises or whether he is simply more on their side than they themselves are. At any rate, he would speed up the pace of apostasy from our moral tradition—so much so that most liberals, as human beings, would refuse to go along with him. Not that they have any rational principle of resistance. It is just that most of today's flesh-

and-blood liberals wouldn't want to live in a society where vegetarianism was compulsory and infanticide optional.

If Singer were a movement rather than an eccentric, liberals would find themselves in the unfamiliar position of wanting to sustain a consensus rather than to go on shrinking it. He would appear the rational reductionist, and they the irrational traditionalists. But this has not been a practical problem for them. There are not enough Singers around—yet—to force them to face the argument that not everyone believes that newborn infants are fully human, or even equal to fully developed animals.

For historically accidental reasons, "pluralism" has passed, so far, for a sort of universalism, accommodating the widest variety of beliefs. But it is a bogus universalism, utterly incoherent. What if the United States had a large immigration, in the tens of millions, of Hindus, who thought it was as wrong to kill a gnat as a man? Can you have a McDonald's in a country many of whose citizens believe in sacred cows?

It might be replied that if not everyone believes in sacred cows, all must be permitted to kill cows. But if not all believe that a man has any more worth than a gnat, can we, on pluralist principles, forbid people to kill men but not gnats? What about "consensus"?

What we call "pluralism" is not a real principle of indefinite application, but a historically specific compromise. It works only in a particular context of *positive* consensus. There used to be consensus about "self-evident truths" concerning man, his Creator, and his inalienable rights. This was rooted in Christianity. Outside that area of agreement, no compromise is possible.

In his *Areopagitica*, John Milton argued for limited tolerance. He was addressing the English nation during the Puritan revolution. England had become a Protestant country, characterized by a new liberty made possible by Protestant Christianity. It was appropriate, he said, for Protestants to tolerate each other's "neighboring differences" and "brotherly dissimilitudes," but he drew a firm line at "popery and open superstition." Milton was not what we would call a universalist.

Some have thought Milton inconsistent. But Willmoore Kendall has brilliantly shown that he was utterly consistent: he thought that the

Protestant consensus was the only basis for Protestant tolerance. Catholics and others outside the new dispensation were by their nature enemies of the Protestant regime. They could only subvert the kind of liberty he treasured.

There was a similar tacit particularism behind the American Constitution. When the First Amendment speaks of "religion," it doesn't mean all the varieties of belief and practice known to the twentieth-century anthropologist. It means, primarily, Protestant Christianity, and, secondarily, any kindred religion that more or less fits the Protestant paradigm. Serious and intelligent Americans have worried about whether Catholicism and Judaism could be assimilated into the American system. They knew that that system was by no means the ideal of Catholics and Jews. Moslems were out of the question. Even Mormon polygamy was firmly rejected when it appeared, as it has been ever since. The framers of the Constitution were hardly interested in making room for fire worship, human sacrifice, voodoo, and other exotica. They began with their concrete experience, not all-embracing abstractions.

The attempt to universalize this original pluralism could be said to be doomed to failure, except that it has succeeded disastrously. We have gotten into the habit of appealing to the hypothetical Hindu in making laws for the flesh-and-blood Baptist. Immigration has provided liberalism with excuses for broadening the idea of pluralism to an impossible extent. Real traditions, such as school prayer, have been banished in the name of consideration for aliens. The strange part is that real aliens rarely complain about the traditions they find here. Our universalism is not universal; it has not been imported from the Orient. The Chinese and the Arab who come to America arrive with the expectation that we will have our own tradition, to which they will somehow have to adapt. And they are willing to do so. Only the native alien seems to object to native traditions, on behalf of those genuine aliens to whom such objections never seem to occur.

Our diversity does raise real problems; and our old immigration laws, now so scandalous for their quotas, tried to anticipate those problems by making concrete judgments as to which kinds of aliens could be absorbed by our particular tradition. But nowadays this approach is

condemned as prejudice. We are expected to absorb anyone, and to reshape our whole culture on abstract principles that will not so much solve all problems by anticipation, as simply pretend that there is no problem at all.

The pluralist ideology, as distinguished from the older pluralist practicality, regards diversity as an unmixed blessing. It assumes that there can be a society without a vital moral tradition. The typical immigrant, on the other hand, takes for granted, as I have suggested, that we will have *some* sort of moral tradition, different from the one he has left behind, no doubt, but at least analagous to it. He can come to terms with it in more or less the way he comes to terms with our different customs of dress. But the pluralist ideology offers him, in effect, a nudist colony, as if this were a reasonable compromise among diverse dress codes.

A society can't be without a moral tradition for the simple reason that a society *is*, at the core, a moral tradition. Its morals and metaphysics are imbedded in its language and manners. We may be more or less conscious of, more or less confused about, our tradition; but it is there anyway, however mangled.

Even our allegedly "pluralist" society still has a large residue of specifically Christian assumptions about the nature of the world. We take for granted human dignity, in a general way; we assume that every human being has a continuous identity, from birth to death, and bears moral responsibility for his actions. To illuminate our positive assumptions by contrast with other possibilities, we don't (for instance) believe that human actions are predestined, or that human souls transmigrate into spiders, or that cannibalism is a permissible option. We aren't *nothing*, even if some reductionists aspire to what they think of as a neutral nothingness.

It is logically and practically impossible to be neutral between rival metaphysics. A man who thinks that other men are only his illusions of his own fantasies is hardly qualified to serve as a judge; he is likely, if he acts on his conviction, to wind up in a particular Western institution called a mental hospital. We are fairly definite, rather than pluralistic, about such things. The relativist may think he is being fairly modest when he asks that we lay aside our differences and do things *his* way.

But he is really asking quite a lot. We are already used to doing things *our* way, and sacrificing our way to his is not our idea of splitting differences.

The pluralist ideology takes its departure from the First Amendment, which forbids us (acting through Congress, anyway) to establish a religion or to abridge religious exercise. The ideology tries to expand this to mean that we should be publicly indifferent to religion itself. But we can't. From the ideology's perspective, the First Amendment itself sins by making religion a special category of human conduct. It "establishes" religion-in-general (as it conceives of religion) in the very act of forbidding the establishment of any *particular* religion. The concrete protection of religion can't be enlarged into a metaphysical neutrality toward religion. The First Amendment makes religion, religion-as-we-Americans-know-it, *special.*

The history of the pluralist ideology is a recent history, because the ideology is recent. It can't claim to be "the American Way." It is an un-American and even anti-American way. It consists of successive repudiations of the tradition, and is therefore not itself the tradition. The record of the ideology shows that if you keep trying to take the easy way out, you eventually reach an impasse from which there is no way out.

The ideology offers a cozy picture of the "pluralist society" in which diverse, even radically opposed groups live side-by-side in sweet harmony. In this picture there is no abrasive interaction. But in reality, there is plenty of it.

John Courtney Murray remarked that the old religious wars of Europe continue in modernity under civil guises. And though those guises are not to be despised, the wars do continue. We are all agreed that religious freedom is a Good Thing, but we are less attentive than we might be to the problematic nature of "religion."

Which religion is to be freely exercised? All? Well, no. There are obviously some pagan religious practices that would simply be criminal behavior on these shores. But beyond the jejune examples, Protestants and Catholics have different attitudes toward proselytizing. Until recently, Catholics favored proselytizing by Catholics, but not by Protestants (the latter was even illegal in some Catholic countries). Protes-

tants, on the other hand, tend to take a free-market approach to proselytizing and are willing to let all compete on equal terms. Broadly speaking, Jews haven't aggressively sought converts, and have considered proselytizing as an aggression against their own religion.

We come to a sort of impasse: some of our believers regard as essential to their own religion a form of activity that others regard as a violation of *their* religion. It is no use saying that each can practice his faith in his own house, when one practices his faith by entering the other's house. No pluralistic compromise is possible. One model of "religion" or the other will have to serve as the paradigm for religious freedom, and it will be effectively favored over its rivals. In some crucial ways no common denominator can accommodate the real differences among the faiths. The various believers live in diverse conceptual universes, and the law can only live in one.

The problem of pluralism, as Richard John Neuhaus points out, is that it means not only diverse players in the game but diverse definitions of the game itself. Some of these definitions are radically irreconcilable. The moment we try to solve the problem by generalizing "religion" to include new forms, we begin to exclude the older forms. And in actual fact it is the Protestant paradigm that still sets the ground rules for religious freedom in America; there is no use complaining that this is unfair—because it is impossible to take all the players on their own terms.

The secularist liberal may think he is above this game, but he isn't. He is in the thick of it. He supposes that his generalized rules of conduct are neutral, and that they avoid any taint of "establishment," but they don't. Civil libertarians are nagged by the question of whether tax exemptions for churches violate the no-establishment rule. But taxing churches raises its own problems. The liberal also thinks he can apply his principles of secular conduct to churches, and some have proposed revoking the tax exemptions of churches that "discriminate against" women by refusing to ordain them. But this would only give liberal, secularized churches a privileged, "established" status vis-a-vis traditional churches.

Religious people have other questions. Do the public schools, which enjoy something like the position of an established church in the field of education, "discriminate against" religious schools? It is hard for the

liberal to see any serious problem here, because he can hardly think of himself as one of the players, on the same plane as the others; he thinks he is the umpire, settling all disputes disinterestedly and authoritatively. He thinks of his rules as irreducibly minimal, affecting only "external" or "civil" conduct.

But it isn't so. The liberal brings as much moral passion to the game as the Moral Majoritarian. He not only wants to eliminate overt discrimination by race; he wants to eliminate prejudice itself, and to use the public schools to implant his ideals of equality in every young heart. He has his own positive creed, his own kind of proselytizing, and however uncontroversial some parts of his vision may seem, that vision is not a lowest common denominator among all other visions. And he is not compromising when he forces others to obey him.

Anyone who looks at the real world can see that the problems of a society of many faiths and denominations aren't resolved by intoning abstract formulas. We have recently had sharp, sometimes terribly bitter controversies about abortion, pornography, blue laws, yarmulkes for soldiers, public holidays, and school prayer. The best way to handle such issues is to reason from custom and to make whatever practical settlements content the most people; the worst way is to impose ideological rigidity on recalcitrant citizens. The idea that everything can be solved peaceably by letting everyone enact his own moral system has proved the most divisive approach of all, as divisive as the Missouri "Compromise" proved to be for the slavery issue.

Civil rights laws worked when they harmonized with our actual moral tradition. They failed, as in the Boston school system, when they became state fiats in direct conflict with important parts of that tradition.

We can't even agree consistently on whether a given measure "works." Consider censorship. When old obscenity laws were struck down, liberal rhetoric suggested that private moral choices would suffice to do the job formerly done by public sanctions. But today we have only *laissez-faire* filth. Little is done to shield children from it. What happened to the consensus, assumed by reassuring cliches about "private acts between consenting adults," that children ought to be protected against obscenity? In what sense has "freedom of expression," in

terms of that consensus, "worked"? It hasn't at all. We have simply abandoned the consensus.

Liberalism used to ask agnostically, "Who is to say what is 'obscene'?" It was always an empty question, answer-proof. The only sensible answer was to appeal to the tradition. In a traditional society, "obscenity" has something like the force of a concrete noun: we recognize it when we see it. The torrent of pornography around us is hardly agnostic on the point: it *advertises* itself as obscene. The purchaser of a porn magazine would have reason to feel cheated if he found no gross displays of organs a man or woman would still be arrested for showing in the street. *He* knows what to expect. By the logic of the lowest common denominator, after all, we should have abolished laws against indecent exposure. (Who is to say what is "indecent"?)

We still retain our wholly traditional distinction between the public and the private. That is the only ground for punishing or even identifying indecent exposure. It is also a sufficient ground for controlling pornography. Why don't we use it?

Only because we have been hypnotized by the special pleading of the pluralist ideology. I have said that our moral tradition is a concrete thing, and that the old pluralist practice was a concrete thing. It remains to be said that the ideology is also a concrete thing, rather than the pure and disembodied principle it pretends to be. It is our anti-tradition, a device for stripping away selected portions of Christian morality. It would make no sense even at a superficial level outside a traditionally Christian society. It is never found in Asia or Africa or the South Pacific.

It functions only to disqualify Christians from asserting their own traditions in their own homelands. That is its reason for being. The ideology serves to give any group practicing under the liberal umbrella—minorities, feminists, homosexuals, and leftists—the privilege of imposing its demands on the whole society, while denying the same right to Christians. It allows the liberal to specify the major premises of public discussion, and to dictate any arrangement he chooses to call a compromise.

The ideology equates religious believers with people who claim to have seen flying saucers: they are entitled only to assert their private

opinions, not to act on them in their role as citizens. It virtually denies the possibility of religious truth as well as the validity of any religiously-rooted moral tradition. Meanwhile it allows the unbeliever to keep, arbitrarily and without offering justification, any part of the tradition he chooses to hold onto for the time being. It is a cover for piecemeal apostasy masquerading as moral consensus.

And it begs all the important questions. If the free exercise of religion is a vital right, then religious education is entitled to special consideration. A system that makes it an economically burdensome option for parents is seriously defective. But the pluralist ideologue assumes that the problem is adequately "solved" by providing a public school system based on the lowest common denominator, which is—supposedly—agnosticism.

But the fact that parents disagree about religion does not imply that they agree that religion is unimportant. It implies the opposite. It implies that they should generally agree that secularized education is not enough. Secularized schools should be an option for non-religious people. They don't constitute a reasonable compromise among people who believe that it is urgent that their children learn what God has said to man. Disagreement about the greatest truths should not mean settling for trivial truths.

Secularism is aggressive, and tries to fill the vacuum it creates. When it banishes religion, it tries to give religious urgency to secular values. Secularism refuses to let its agenda step modestly aside for supernatural claims it professes itself incompetent to judge. It politicizes; and its real ambitions can be judged by its success in politicizing some churches and churchmen.

The purpose of law is not only to prohibit certain crimes, but to promote a way of life. Though liberal rhetoric may appear to deny this, it seems to be inescapable: even that rhetoric admits as much when it speaks of "the American Way." Writing in *National Review*, David Wagner quotes a pair of prominent secularists—Ira Glasser of the American Civil Liberties Union and Anthony Podesta of People for the American Way—as objecting to private schools and voucher programs on grounds that the choices they offer tend to undermine "pluralism." Wagner points out that these choices *are* pluralism, as most people

understand the term. But for Glasser and Podesta, it is socially desirable that children should mix with others of different backgrounds. The social imperative of "pluralism," liberal style, turns out to override the value of choice, even for people who in other contexts are "pro-choice." A substantive judgment of what is good, for children and for society, decides the issue; both men forget their own nominal commitment to procedural freedom as the *summum bonum.*

Dark suspicions are confirmed: the religious reader discovers that his opponents identify "pluralism" with what really amounts to a secularist uniformity. Once more the liberals want us to compromise by doing things their way. Doing things our way would be "divisive."

The old pluralist practice emerged from a Christian society with a long memory of religious warfare. And the best thing that can be said for pluralism is that it prevents us from killing each other over really important things. But we are grossly overreacting if we respond to the first sign of religious differences by apprehending new religious wars. It is ironic that this should be such an effective bogey of secularism so late in a century that has seen tens of millions of people perish at the hands of secularist regimes. The abstract possibility of religious conflict somehow distracts us from the enormous bloodshed that has really been perpetrated by Lenin and his heirs.

The secularist has an artful way of taking credit for everything good, while evading responsibility for anything bad. He still holds Christianity to blame for the Crusades, the Inquisition, and witch-hunts, the only parts of Christian history he ever seems to have heard of, while assigning the blessings of the American way of life to secularism, which he reads back into the nation's founding documents.

Christians should not be put on the defensive. The American tradition, as I have argued, has its roots in Christianity; even its "disestablishment" is Christian in conception and form. As for things like witch-hunts, we would be wise to recall C. S. Lewis's words: "Surely the reason we do not execute witches [nowadays] is that we do not believe there are such things. If we did—if we really thought there were people going about who had sold themselves to the devil and received supernatural powers from him in return and were using their powers to kill their neighbors or drive them mad or bring bad weather, surely we

would all agree that if anyone deserved the death penalty, then these filthy quislings did. There is no difference of moral principle here: the difference is simply about matter of fact. It may be a great advance in knowledge not to believe in witches: there is no moral advance in not executing them when you do not think they are there. You would not call a man humane for ceasing to set mousetraps if he did so because he believed there were no mice in the house."

Atheism is not just an abstract idea; as much as Christianity, it is a force, a living tradition, a way of life, a going concern that is still in business and has its own record. If believers can be held responsible for the Spanish Inquisition, how much more sensible it is to hold unbelievers responsible for the Soviet Union, where persecution of religion is still an everyday matter.

The Soviet system has certainly freed itself from the shackles of Christianity. Its record can stand as the last word on the idea that secularist negations are a panacea for social conflict.

Anyone who visits the Soviet Union is bound to be struck by a remarkable fact. As the official tour guides display the cultural splendors of Old Russia, you become gradually aware that the atheistic regime takes a proud and parasitic credit for the existence of everything, including the great churches, that it has somehow neglected to destroy. Its only virtues are the inexplicable lapses in its evils. In the same way the secularist liberal in America thinks he can claim the title to every American achievement that has managed to survive his assault on the American tradition, a tradition he has no title to. He offers himself as the proprietor and custodian of the American way of life, without pausing to think how the word "life" sounds coming from his lips.

Pluralism is not really a general principle. It never can be. It is only a rough, and so to speak adverbial, description of how major bodies of Christians and Jews have handled their differences in American life. The pluralist practice worked, among Protestants and some others, because it rested on a fairly high level of consensus about very basic things, the sort of things intimated in the opening sentences of the Declaration of Independence. The things nearly everyone agreed on were far more important, for practical purposes, than what they differed on.

Can we say with any confidence that this is still true? I doubt it. The level of moral consensus countenanced by liberal secular humanism is so low that without being too fanciful, we can imagine the Supreme Court ruling that it is a violation of the separation of church and state to read the Declaration in public schools, except as a historical curio.

If abortion mills and casually ubiquitous pornography really represent American pluralism, we have no reason to congratulate ourselves. They show not that pluralism is triumphant, but that it is exhausted.

Mr. Turner Comes to Welland:

"Illegal Murder" in Canada

John Muggeridge

"DAMN!" SWORE MY SIXTEEN-YEAR-OLD SON, Matthew. "Next Thursday we have to wear uniforms."

At Notre Dame College School (in Welland, Ontario) the privilege of attending classes on the last two days of the month "out of uniform" (i.e. in blue jeans instead of gray flannels) is a jealously guarded one, so jealously guarded, in fact, that only Bishops and Above are considered important enough to warrant its being set aside. Clearly, then, an event was being planned big enough in these uncertain Catholic times to need monitoring.

"*What* is happening on Thursday?" we asked as one parent.

"John Turner is speaking about the Pilgrimage, and it isn't fair."

Matthew was right. Having John Turner on the platform at Notre Dame's annual pilgrimage was, in the widest and deepest sense of the word, unfair. For John Turner, apart from being the leader of Canada's National Liberal Party, is this country's premier Catholic for Free Choice. Having graduated from St. Michael's College in Toronto, English Canada's most prestigious Catholic university, and won election to the House of Commons as an up-and-coming Liberal in the Trudeau sweep of 1968, he was appointed Justice Minister—to no one's great surprise, since, in deference to Quebec, that cabinet position was then still tacitly reserved for a Catholic.

Now comes the unfair part. Less than a year after being sworn in as Canada's top law officer (keep in mind that our constitution sees no need to go out of its way to separate Church and State—Turner got the Justice Minister's job because of, not in spite of, his Catholicity), he sponsored an amendment to the Criminal Code which legalizes abortion. "We believe," explained this St. Michael's alumnus to a House of Commons most of whose government benches were occupied by Catholic French Canadians, "that morality is a matter of private conscience. Criminal Law should reflect the public order only."

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The result, as predicted at the time by several unheeded conservative voices, has been juridical mayhem. Courtesy of Mr. Turner, a law came into force whose first two subsections order *life imprisonment* for "Every one who, with intent to procure the miscarriage of a female person, whether she is pregnant or not, uses any means for carrying out his intention" and two years imprisonment for "Every female person who, being pregnant, with intent to procure her own miscarriage, uses any means or permits any means to be used for the purpose of carrying out her intention," but whose fourth states that "Subsections (1) and (2) do not apply to (a) a qualified medical practitioner . . . who in good faith uses in an accredited or approved hospital any means for the purpose of carrying out his intention to procure the miscarriage of a female person, or (b) a female person who, being pregnant, permits a qualified medical practitioner to use in an accredited or approved hospital any means described in paragraph (a) for the purpose of carrying out her intention to procure her own miscarriage, if, before the use of those means, the therapeutic abortion committee for that accredited or approved hospital, by a majority of the members of the committee and at a meeting of the committee at which the case of such female person has been reviewed . . . has by a certificate in writing stated that in its opinion the continuation of the pregnancy of such female person would or would be likely to endanger her health . . ."

Put more briefly: an abortion seeker in Canada can expect to receive either a prison sentence or a cheque from her provincial hospital plan. As of January 1986, over a million cheques have been issued, and only one prison sentence, a trend towards legitimating abortion-on-demand which has done nothing, however, to dispel the semantic fog originally generated by Turner's law. Thus as recently as the fall of 1985 a Toronto judge, groping for words to describe what takes place in Henry Morgentaler's unaccredited and unapproved abortion clinic, came up with the imbecilic but, in the circumstances, unavoidable formula, "illegal murder." At least he sensed that *something* out of the ordinary was going on there.

For Turner, however, all is clear on the abortion front; thanks to his timely intervention, morality and legality have at last been decently and workably separated. "You know," he told television viewers on the occasion of his entering the race to succeed Trudeau as Liberal leader

in June, 1984, "I am one of the architects of the abortion amendment . . . It is a fair compromise."

Here, then, was the man in honour of whom Notre Dame students were expected to wear uniforms. And not only that. They were to welcome him in connection with the solemnest event on their Catholic school calendar, when, through spare-time fund-raising and walking fifteen miles in fair weather or foul before attending Mass in the school gymnasium, they publicly attest to the sacrificial nature of their religion. This House-of-Commons Catholic with his live-and-let-kill approach to abortion was to wear the Notre Dame Pilgrimage Button which depicts a world torn apart by greed and selfishness.

Our duty seemed clear. Matthew's principal would have to be telephoned. Not that there was any real hope of getting him to see what was wrong with the Turner visit. As is so often the case these days, we were Catholics trying to make ourselves understood to each other across a theological iron curtain. What divided us was the terrible question of loyalty. The principal was a party man. He had not only served as campaign manager for a Liberal candidate in last year's general election, but had even taken the disappointed parliamentarian on staff at Notre Dame. This is by no means to accuse him of putting politics before religion. In his world the roles of Liberal functionary and Catholic educator were entirely complementary.

Here is why my argument against Turner speaking at a high school pilgrimage must have sounded so puzzling to him. Turner, a former director of the World Bank, was scheduled to lecture at Notre Dame on Foreign Aid. How could his handling of the abortion issue fifteen years before possibly detract from the propriety of such an engagement? The principal naturally assumed that my call had been politically motivated; I was obviously a disgruntled Conservative using abortion as a convenient stick to beat Liberals with; why else would I have attacked Turner's stand on abortion when it differed so insignificantly from that of every other party leader in Parliament? (Later, in order to call my bluff and demonstrate the perfectness of his commitment to political impartiality, he provided equal time at the very next assembly to a Conservative.)

But that was not what I was talking about. Who cared which party

Turner belonged to, or how many politicians of other stripes were or were not invited in to answer him? He should be barred from appearing at the Notre Dame Pilgrimage for one reason only: he was the architect of Canada's . . . I wasn't allowed to finish. By this time the principal's front-office unction had deserted him. "I only wish," he shouted across the ideological no-man's land which yawned between us, "your boys were not in the school. And one last thing. I'm warning you now. Keep off our property." He meant, of course, keep off *our* property, because Notre Dame is a private school financed through tuition fees and charitable donations, but by now he was completely beside himself. Turner had been such a plum. None of the other area schools were getting him. The prospect of sign-waving parents disrupting the great man's visit was just too much to bear.

Next we tried a letter. It was addressed to the principal, the Bishop, the Chairman of the School Board and anyone we could think of at Notre Dame who might sympathize with us. Our central point was that Turner's visit would give abortion a good name. "Imagine in his place," we wrote, "the South African ambassador to Canada, who believes, no doubt sincerely, that Prime Minister Botha's race policies represent 'a fair compromise.' Would we not assume from his very presence on the same platform as priests, religion teachers and social activists, that the struggle for racial equality in South Africa need no longer concern us as Catholics?" As supporting evidence we quoted Bishop James C. Timlin of Scranton explaining why the Pennsylvania Catholic Conference objected to Governor Mario Cuomo speaking on "A Just Tax System and the Church" before the National Conference of Catholic Charities: "When it comes to the crucial issue of abortion it cannot be 'business as usual' with politicians who take a pro-choice stand. No matter what he speaks about, [Cuomo, or in our case Turner] is nationally known as a person who has taken a pro-choice stand. If he were talking about highways it wouldn't make a bit of difference as far as we're concerned."

And had we been writing three months later we could have pointed to the fact that a group of anti-apartheid professors and students had actually succeeded in preventing the South African ambassador from addressing a Toronto law school on the grounds that, had he been

allowed to speak to such an audience, credibility would have been lent to the principle of racial segregation.

But it was our final paragraph that we were proudest of. It drew attention to the fact that Turner is nationally known not only as a pro-choicer, but also as a Catholic success story. Did we want to offer as a role model for young Catholics about to take up their cross and follow Christ "someone who has time and time again asserted that there is no connection between his beliefs as an individual and his actions as a political leader"?

It was no use. We might just as well have tried to put the case against nakedness in a nudist colony. The principal's reply—signed, incidentally, by all those Notre Dame staffers whom we had hoped to touch the hearts of—is written from the viewpoint of a hardline anti-anti-abortionist. It depicts us as terrible simplifiers, guilty in the first place of maligning an innocent politician ("We don't have *any* indication that Mr. Turner is personally pro-abortion. If he were, your point would be well taken. Indeed you wouldn't have had to make it because he would not have been invited") and secondly of turning "an event designed to deepen the recognition of our relationship as brothers and sisters with all people on the earth" into one that threatened to "bring divisiveness to the Christian community of Welland."

Meanwhile, those to whom the letter was addressed come across as martyred moderates. "For now," sighs their spokesman, "we must bear the burden of the conflict that exists in the Christian community about how an elected official in a democratic society balances the tension when it exists between his moral persuasion and the will of the electorate."

Such a relentless unleashing of the clichés of hurt liberalism made further dialogue redundant. We could, perhaps, have replied with a treatise on Catholicism, democracy and the Canadian parliamentary system, but Turner was due at Notre Dame on Thursday. There was nothing for it now but to go public. With heavy hearts, therefore, we constituted ourselves into yet another Ad Hoc Committee—this one for Anti-Abortion Education—and, having decided, partly out of deference to our two high school-age sons, to show the flag not with picket signs, but with print-medium advertising, reserved space in the local newspaper.

So it was that on Tuesday, October 22, 1985, the Catholic parents of Welland found themselves being urged in a three-column-deep display advertisement on page four of the *Evening Tribune* to register their objections to Turner's addressing Notre Dame on social justice by telephoning the principal's office. Our advertisement was of necessity a trenchant one. It had a two-inch white-on-black heading and made liberal use of capitals, italics, exclamation points and question marks. Between the two rhetorical questions: "WHAT does JOHN TURNER know about Social Justice?" and "DO WE WANT SOMEONE SPEAKING TO OUR CHILDREN WHO STICKS UP FOR MORALITY ONLY WHEN IT SUITS HIM?" appeared incriminating quotations from old Turner speeches. The second to last line listed in bold type Notre Dame's telephone number and beneath it, that of the Ad Hoc Committee.

Such, of course, are the time-honoured devices of protest movements everywhere. You can see them being made use of almost nightly on television newscasts. Welland, which has uncabled access to more channels than any other community in Canada, should of all places have found them unshocking. Here citizens' action groups are part of the natural order of things. Posters in the library of blood-stained baby seals and grimacing leg-trapped wolf cubs hardly merit a second glance, while calls to action against the polluting of the Niagara River by Giant U.S. Corporations (are there, incidentally, any dwarf U.S. Corporations?) have come to be as little regarded a part of our junk mail as the latest flyers advertising price-slashed fake-leather jackets. So common an occurrence, moreover, is the setting up of picket lines by our workers that they have got into the habit of ambling rather than walking them; sometimes they even sit them. Last summer, for example, I spotted an industrial-activist on the post office steps comfortably ensconced in a garden chair, having in one hand a soda can and in the other a placard reading The Struggle Continues.

But the abortion struggle is different. This became apparent when on the very day our advertisement appeared, the *Tribune* ran a front-page editorial condemning it. "We believe," thundered Welland's Fourth Estate, "the ad to be both dangerous and inflammatory, and we urge the readers to whom it is directed to ignore its message." And no wonder. According to the *Tribune* it called into question "the morality

of the Parliament of Canada in 1969" not to mention "the religious convictions of the Justice Minister in that year." Moreover, "in publishing the name and phone number of the principal of Notre Dame College School and asking people to call him" its sponsors were encouraging their supporters "to conduct themselves as little more than common nuisances." The horridest aspect of our advertisement, however, was its subject matter. "Stripped of its hysterical language the message of the ad is one of opposition to abortion."

Good. Our point had got across. The allegation that we had invaded the principal's privacy was clearly nothing more than rhetorical window dressing. Our advertisement had, after all, been exclusively addressed to Catholic parents, a group to whom the identity of the local Catholic high school's principal can hardly have come as a surprise, and who, moreover, of all segments of Welland's population was the least likely to confuse the telephone number we had published—that of Notre Dame's switchboard—with the one the *Tribune* implied that we had published—that of the principal's private residence.

Nor was it sensible to fault our advertisement for lack of documentation or relevancy. History in the form of Mr. Turner's speeches was on our side; as Roman Catholics, moreover, we had a declared duty to warn our co-religionists against any politician or party whose platform treats abortion as less than an unspeakable crime. No. Our advertisement gave offence for one reason only: it accused Mr. Turner of having legalized abortion. Behind its critics' thinking was the proposition which governs all right reasoning on social issues among enlightened Canadians, that to be against the current pro-abortion *status quo* is the same thing as being against peace and progress.

It is not only in Canada, of course, that anti-abortionists find themselves stereotyped as reactionary trouble makers. I remember in 1981 helping to distribute *Lifeletter* (an anti-abortion newsletter) on Capitol Hill in Washington and noticing the look of barely-suppressed loathing on the faces of non-sympathizing legislative assistants. It occurred to me then that they were not displaying that tolerance liberals ought to extend to their opponents in a pluralistic society.

Gloria Steinem, to do her justice, has even stopped pretending to be fair-minded. In her publicly expressed view anti-abortion campaigners

are simply moral absolutists with bombs in their pockets. Now that opinion polls show "overwhelming support" for abortion on demand (I heard her misinforming a Toronto radio audience the other afternoon) anti-abortionists can be expected to resort increasingly to violence. Are you saying, cooed her interviewer, that pro-choice has made a propaganda breakthrough? Not at all, snapped the famous editress; it was entirely possible that the terrorists would win. Look at Ronald Reagan.

But at least in the United States those who reject such straight-faced slanders have an organized and powerful political movement to belong to. This is largely due to the same Ronald Reagan against whom Steinemites so logically concentrate their venom. History and geography, alas, prevent Canadians from having such a political movement. Ever since the United Empire Loyalists—that refugee political faction from south of the border—founded English Canada, a key decision facing its intellectuals has been which U.S. party merits their support.

What makes life as an anti-abortion Canadian so difficult is that for the last fifty years at least our national opinion makers have been voting Democrat. Republicans are the evil spirits in Canada's political demonology. It is *their* unconcern for the environment that brings dioxin to Lake Ontario and acid rain to our northern forests. The War of 1812 lives on. Instead of General Hull crossing the St. Clair River, Dow Chemical poisons it.

So it is that when Geraldine Ferraro, Eleanor Smeal, Ms. Steinem and their ilk travel northwards, they are welcomed with sunlit press coverage, cornucopian funding and the sort of grilling from Canadian Broadcasting Corporation investigative reporters that Chairman Gorbachev would face on East German State Radio. But when Phyllis Schlafly ventures among us, she comes unheralded, unbankrolled, and as likely as not uninterviewed unless it be to ask her what she thinks of the situation in South Africa, or whether she approves of the atrocities committed by Nicaraguan *Contras*. The point is that the whole focus of Canadian political life is against her. Our Maple-Leaf flag waves leftwards. In today's Canada an educated patriot is one who wants to pull out of NORAD, hand over Central America to the Sandinistas, untie aid to African dictatorships, pump money into population-control projects everywhere, and set up free-standing abortion clinics throughout the Dominion.

But why cannot there at least be a socially-conservative *version* of Canadian nationalism? It should surely be possible to share Mr. Reagan's concern for the sanctity of human life and endorse his efforts to defend the Christian West without wishing consciously or unconsciously to turn Canada into a satellite of anyone's Military-Industrial Complex?

The tragedy of recent Canadian history is that twenty-five years ago just such a school of opinion not only existed but played a decisive role in the political life of this country. Its power base was Catholic Quebec whose parliamentary caucus at Ottawa (led by the then Liberal Prime Minister, Louis St. Laurent) combined supporting Canada's role as a defender of the Free World (in 1949 St. Laurent was among the most enthusiastic advocates of NATO) with refusing to give an inch on such social issues as abortion. In the fifties, in fact, not only was power in the hands of social conservatives, but, given the fact that Canada's Catholic vote was more solid than in any English-speaking country outside Ireland, it seemed unlikely that they would soon lose it.

That is, until the Trudeau *putsch* of the late sixties. Trudeau was and is an unabashed leftist. As a Catholic, moreover, his view of society is an organic one, and he believes in bringing in socialism not by electing majorities but by reshaping institutions. His primary objective was never just to persuade us that he was right; always he concentrated on getting hold of the levers of power and then it didn't matter what we thought.

Typically his very first move on entering federal politics was to wrest control of Quebec's Liberal caucus from its old-guard leaders. The scene was now set for the notorious abortion amendment of 1969, the getting enacted of which was Trudeau's first and easily his most impressively successful exercise in institutionalizing revolution. By this time he was prime minister and John Turner his justice minister. Turner, an English-Canadian Catholic, had the task of "selling" legal abortion to Canada's social-conservative majority. He did so in the first place by equivocating so effectively as to the true nature of the proposed amendment that while it was being debated one opposition member actually convinced himself that it would have the effect of cutting down on the number of legal abortions.

Secondly, Turner quoted the argument used in Britain's Wolfenden Report to justify legalizing homosexuality. It was not particularly powerful or even relevant, but there is *nothing*, even to this day, like a British precedent for allaying conservative Canadian fears. And thirdly, he used force. During the debate on his bill Liberal M.P.'s were ordered to follow the party line; opposition members could vote as they pleased; a government victory was thus virtually unavoidable.

The Catholic Church in Canada also inadvertently played into the hands of Trudeau and Turner. This, remember, was the heyday of the new morality. Love seemed about to make the very Ten Commandments obsolete. Already leading Catholic theologians had argued that, Canada being a pluralistic society (O Pluralism! O Pluralism! What crimes are committed in thy name!), they could in charity no longer oppose widening the grounds for divorce or legalizing the sale of contraceptives. So why draw the line at abortion? Turner claimed that his amendment had the backing of two religious orders. Knowing that such was the case must have wonderfully eased the consciences of the 155 mostly Catholic M.P.'s who on May 9, 1969, voted it into law.

The sad reality was that the Church imposed its discipline less strictly than did the Liberal Party of Canada. Our Bishops condemned abortion, yet refused to hold to account those Catholics responsible for legalizing it. They blamed society but exculpated politicians, and in some cases not only exculpated them: in the years after he had legalized abortion Trudeau received an honorary degree from St. Francis Xavier University in Nova Scotia and Notre Dame in Indiana. About the same time Jean Chretien, another Turner cabinet colleague in 1969, won the Christian Culture Award from Assumption University in Ontario. And as for John Turner: no sooner had he defended his pro-abortion record on television than we watched him receiving Holy Communion from the Pope.

This helps to explain why Welland's anti-Turnerites found themselves being treated as a strident minority in Catholic as well as secular circles. Even the local Bishop, one of Ontario's best-known and most dedicated anti-abortion Church leaders, having listened to our protest against Turner's Notre Dame visit, shook his head in disbelief, calling the ex-justice minister "a Christian gentleman." Though he did not authorize the visit, he certainly saw no serious objections to it, a fact

which Notre Dame's principal interpreted in a newspaper interview to mean that he had approved of it.

Here the implication was that we had the mind of the Church against us, and within hours of the principal's statement having been published, local Catholics were telephoning to remind us that we were guilty of religious disobedience. One caller, who identified herself as a Birthright volunteer, promised to report us to the Bishop. By far the largest number of those who attacked our stand claimed to be Catholics, and most of these assumed with the principal that our motives were political masquerading as religious; we were closet Conservatives.

Our most virulent opponent was the author of a letter subsequently published in the *Tribune* signed "A Catholic Parent." She described our advertisement as "this piece of garbage" and wondered sarcastically whether our two sons "skip school whenever someone is speaking whose views they may disagree with." (You are right in the case of John Turner, Madam; with gloomy gallantry they testified to their Catholic belief in the sanctity of human life by boycotting him.) The Ad Hoc Committee she categorized as "narrow-minded, dangerous fanatics who judge others, and it's your kind of people I would not want my children to listen to."

But perhaps the most eloquent indication that we were protesting into a vacuum came when Turner did at last make his appearance at Notre Dame, and the only serious disagreement he provoked was with a Holy Cross father who objected to Turner's insisting that foreign aid be "tied" to conditions.

Plus c'est la même chose; plus ça change. So said a famous political scientist about the way history unfolds for Canadians. We move into the future looking backwards. It must be the Loyalist in us. Nobody marches on May 9, either in protest or celebration. Both sides in the abortion debate consider what happened 17 years ago on that date as a defeat. It is always this way in Canada.

The struggle continues, and Canadians continue to be jolted leftwards without realizing it. What passing a law which both forbids abortion and authorizes it to take place in accredited hospitals has done above all is to Canadianize it. Small wonder then that our protest was so egregiously misunderstood by articulate Wellanders. They have

come to think of the abortion amendment as part of Canada's social landscape. We are talking, don't forget, about a country where Maureen McTeer, the Roman Catholic maiden-name-retaining wife of External Affairs Minister, Joe Clark, took office recently as a member of the Board of Directors of the Canadian Abortion Rights Action League with no serious media repercussions, and where in one Ontario community doctors striking against the government's latest extension of socialized medicine, having closed down every non-emergency medical facility, were later pressured by public opinion into reconvening the Therapeutic Abortion Committee.

Seeing What We Want to See

John F. Matthews

> *"We will show... that, although the indictment refers to the killing of a 'baby boy,' [that] in fact, no 'baby boy' ever existed, and certainly no 'baby boy' was ever killed... You heard in the indictment, and you heard [the prosecutor] refer to a person. We will demonstrate... that no person ever existed and no person was ever killed."*
>
> —DEFENSE ATTORNEY WILLIAM P. HOMANS
> in the case of Dr. Kenneth Edelin.

THE INTIMATE LIFE of a great city—full of loving and giving, hardship and happiness, sorrow and ambition, and the hard work and hope of those who build and sustain it—barely exists to the enemy bomber eight miles up in the air, or to the distant soldier who presses the firing button on the ICBM. The cities of antiquity held no greater reality (beyond the prospect of loot or danger) for the swarming hordes of strangers camped outside the metropoli, or for the Roman legions systematically "reducing" the "barbarian" hill towns. To be "them" was to be as nothing; and to be as nothing was to merit destruction.

When it comes to alleviating responsibility, distance does the trick. ("I shot an arrow in the air, it came to earth I know not where . . . but certainly I saw nothing *human* out there.") But even more effective is the denigration of the victims as hostile, alien, or worthless. This view has the strange (sometimes useful) capacity to erase not only other people's humanity but also our own. The only good Indian, to many westering Americans, was a dead Indian. So the Nazis thought of the Jews, and so, today, a good many Israelis and their sympathizers think of Arabs, and vice-versa. "He is not my neighbor, he is an enemy; he is not my brother, therefore let him be destroyed" is a wonderful way to get rid of people's reality—whether we call them "Huns" or "Brits" or "Commies" or "Running Dogs of Capitalism."

On a national or sectarian scale this is sometimes thought of as patriotism or loyalty. But if a single individual feels this way about the rest of our species, we generally call it paranoia. "The wogs begin at Calais" was perhaps a respectable enough sentiment for 19th century English-

John F. Matthews, a former professor at Brandeis University, is currently at work on a novel.

men so long as enough of them despised foreigners—but when the old Scotsman remarked, "All the world's daft but thee and me, Lizzie—and sometimes I hae me doubts about thee, lass," even his wife might have wondered a bit about her safety and his sanity.

Not that he wasn't entitled to his opinion. This is the essence of modern "tolerance": in a "pluralist" society, our perceptions of reality are not necessarily concepts to be verified by mutual experience and comparison; they are merely a function of how we choose to "feel" about reality. So, on *moral* questions at least, nobody is supposed to have the right to say NO to anybody about *anything*. Not so much for fear of being wrong (which is said to be theoretically "unprovable"), but rather for fear of infringing upon somebody else's civil liberties.

We are not a lawless people. On the contrary, we value the law more highly, obey judges more devoutly, and pay lawyers more handsomely than even the declining Romans did. Without courts, we would have no way to be certain that most of our laws are constitutionally unenforceable; without judges we might long since have found that the commission of crimes *can* lead to serious punishment.

How else but "legalistically" would we ever have learned to penalize not the crime but only the methods of the police investigation; to license sexual perversion while banning the prejudice against it; to protect the addict and the pusher from "improper" and "intrusive" inquiries or tests? It takes the law to manage such things, just as it takes our courts to demonstrate that times have changed, and that a great many of the constraints that made life civilized and safe are among the very, very few things left in the world which are *not* to be tolerated.

To manage this has naturally required a certain revision in the definition of what used to be thought of as "reality." Not that we are talking about metaphysics, or the perplexing difference between appearance and reality, as when railroad tracks can clearly be seen to converge in the distance, only to be seen equally clearly *not to* upon closer inspection. What we are concerned with here, instead, is the odd legal compulsion to leave the acceptance of life's most conventional lessons to the private choice of individuals and groups who happen to have an "interest" in the matter.

A rather typical case in point is the "reality" of unborn children—their presence as human beings. One would think it fairly obvious that

a pregnant woman is pregnant with a living human creature in its earliest stages of development. No great surprise in that. Nor any either in the fact that, once born, the baby undergoes *further* development; changing and growing, from adolescence through adulthood and on (with luck) to ripe old age.

All this is perfectly natural, perfectly non-controversial; the sort of thing our species has been familiar with for thousands of years. One can see it happening all around one every day—more easily in others, perhaps, than in ourselves; but to face the *facts* of change and alteration, one need only look regularly into a mirror.

A baby in the womb is simply the *beginning* of the process. That this thing to be born is a *child* of some sort was never much quarreled about in the past, even in ages and places in which children (especially girls) were often unwelcome and sometimes quite brutally destroyed. The only question was (sometimes) who the father might be. What distinguishes *us* from the primitive and savage peoples we tend to emulate is that we seem to be the first in history to think that what's inside a pregnant woman is *not* a baby. Or at least that it isn't until she *says* that it is.

If she wants it, then the thing is a baby—just as everybody always thought it was. Thus the medical profession will defend and protect it at almost any cost (to its parents, at least), because it is obviously a precious little fragment of humanity, struggling to continue growing its way through birth, life, and the mysteries of maturation, just as the rest of us have had to do.

But if, on the other hand, the mother says she *doesn't* want it, then the mystical modern power of "choice" comes into play. Simply with a word to her physician, any woman who so desires may reduce the status of her pregnancy from "baby" (which a doctor would protect) to "fetus"—which means that it has no legal right to protection at all.

The fact that whatever is inside a pregnant woman can nowadays (with sonic imaging) actually be *seen* to cringe away from pain, or—utterly defenseless—try to twist itself out of danger there on the end of the pulsing umbilical cord; that it looks and acts like what, in the fullness of time, would grow up to be an adult human being if only given a chance . . . all this has nothing whatever to do with whether it's a baby

or not. It is what Mommy decides that makes the magic happen—and if she wants to be rid of it, that's the end of it.

What makes abortion possible (and staggeringly profitable) is the willingness of so many Americans to believe that what's aborted is *not* a baby at all—never was a baby, never will be a baby. All one has to do is catch the fetus "early" enough and the idea of *guilt* in such a matter becomes completely irrelevant.

In America alone, since 1965, members of the medical profession have deliberately "disposed of" over 15 million unborn babies. That is two and a half times the number of Jews killed by Nazis—and nearly a quarter of the total 52,000,000 killed in the same vast wartime holocaust. But unlike Jews, Russians, Japanese, Germans, Englishmen, Italians, or Americans (or whoever else one cares to name killed in that war) fetuses are not legally human and therefore have no right to be worried about—by their mothers, by their doctors, by the public, by anybody.

They don't even have the right, as we recently learned, to a decent burial. The idea that the hundreds of little corpses found stashed away in vats not long ago in California should somehow be memorialized was struck down by the courts as "improper." Not only that, the liberal press and various "women's" groups treated the case as a piece of "obscene propaganda," organized (it was said) by "fringe groups" who wanted to use the burial of these tiny corpses as an excuse to inhibit "female liberty." Unlike the bones and long-decayed corpses of soldiers missing in action in South East Asia, these aborted babies were not the fragments of any lost humanity. They were simply a kind of garbage, like any other filthy waste generated by surgery. Pickled in preservative, they still *looked* like unborn babies, but that gave them no reality, because they were nothing but fetuses and therefore had no rights that could entitle them to be called "human."

Where all this began, of course, was with Justice Blackmun's famous opinion in *Roe* v. *Wade* that the state has "no compelling interest" in protecting the rights of an unborn child (or, as he prefers to call it, "fetus") until it has become "viable" or "capable of meaningful life."

It was hard to determine (and nobody has yet found out) exactly what "viable" means in this context, or what, for that matter, the even more subjective phrase "capable of meaningful life" is supposed to sig-

nify. The only clarification the world was offered came in the rather vague notion (on page 48 of the famous decision) that "viability" and "the capacity for meaningful life" occur at the end of six (or, as *Roe* says, "usually seven") months of pregnancy, at which point the law in its permeable majesty begins to have a slight (but not predominant) interest in the protection of "potential" human life. (Not, however, to the extent that its protection can be thought of as superseding in any way the rights of the mother if she happens to be reluctant to give birth—because in that case her will always tends, within certain rather loose chronological limits, to prevail.)

Now, according to the Oxford English Dictionary, the word "viable" simply means "capable of living; able to maintain a separate existence." Which obviously doesn't tell us much about the rectitude of abortion, because, given proper care and if allowed to develop properly, nearly *all* unborn infants are "capable of living."

The ones that *aren't* are dealt with by Nature, sometimes, in the form of miscarriages—or by contemporary medicine (in its milder, more affirmative moods) which can do many wonderful things for premature infants who would certainly have died in the past, but who can now be nourished and incubated and brought along to be models of successful childhood. Some once-fatal birth defects are now correctable, and the only way to be *sure* that an embryo is not "capable of living" is for the mother and doctor to deny it the chance.

But if we are to take the other element of the OED defintion, "able to maintain a separate existence"—then the troubled intellectual waters deepen. No human infant in the history of the world has been able to "maintain a separate existence"; born or unborn, babies are wholly dependent, and like many other mammals and birds, they remain so for significant portions of their lifetimes.

To exist separately (i.e., outside the mother's body and without direct reliance on her bloodstream for oxygen and nourishment) is not at all to "maintain a separate existence." A child can no more "maintain" itself separately at the time of birth than it can as a child of three years, or as a fetus of three months.

This is scarcely a secret—even to the courts. After all, the purpose of "child care" laws is to ensure that somebody *deals* with this depen-

dence. Indeed, modern American children often seem, by comparison with their ancestors, relatively incapable of this sort of "viability." They appear to remain dependent both emotionally and financially—if not on parents, then on other adults or their peers, or on drugs, anodynes, psychoanalysts, and counselors well past what used to be the outer limits of adolescence. And in this they do not differ greatly from the rest of us. We can no more live without grocery stores, automobiles, gas, electricity, doctors, and the public water supply than we could if we were still fetuses, infants, or teenagers. And to exclude an unborn infant from membership in the human race simply because it is "unable to maintain a separate existence" is to imply that very nearly all the members of our species are also, at any given moment, suitable and legally indefensible subjects for extermination.

We are not good at playing hermits. Even in the days when that sort of career was fairly popular, the most withdrawn ascetic had to rely, inescapably, on what other people (or God) did for him in the way of sustenance and charity. St. Simeon Stylites, praying in austere and athletic solitude atop his pillar, still had to have help in the way of food and water from somebody. If "dependence" were really a capital offense, which of us could ever 'scape abortion?

And as for the curious notion called "having the capacity for meaningful life"—what on earth does that mean, one wonders? And how does one determine it?

Up to about two trimesters after conception, apparently, *nobody* has this capacity. Beethoven didn't; Einstein and Napoleon didn't; wife-beaters, popes, abortionists, and clinical parapsychologists of the future don't—because under the terms of the law it's something you cannot possibly possess until you are fairly well along into the "third trimester." Up to that point, whatever you might have *become* does not count, because you would not have legally accumulated enough lifetime to make it worth while to let you get on with it and find out what sort of person you may be. "Reality," after all, is something one possesses only through the courtesy of the Supreme Court.

But notice the biased preference. There is no observable reason why any *particular* age should be singled out as the point at which one becomes "human," or "capable of meaningful life." It could as well be

two or three decades as "two trimesters." One knows plenty of people in their twenties who do not (from a secular point of view) seem capable of "meaningful life." And what about the victims of Alzheimer's disease, strokes, cancer, or horribly crippling auto accidents? Do such people *cease* to have this mysterious capacity? And if so, why should they arouse "the protective interest of the State?"

A few years ago, it took 21 years to become an adult. Now it only takes 18—and the difference has nothing to do with biology or psychology, but simply with the legislature's perceptions of political advantage. So too, if there were a sufficiently active pressure group which could persuade our courts that the constitutional protections afforded to "human beings" were not applicable to anybody under the age of three (or 16), or with an inappropriate "class background," or who happened to have a Jewish mother—do you not think that there would be some judges who would find such "redefinitions" of the law not only expedient but proper?

Other countries have; other countries are doing it still, at this moment. And even in the U.S., there was a time not so long ago when Dred Scott was not a man at all but merely an article of interstate commerce.

In the eyes of ideology, enemies and "inferiors" always cease to be human. We define them out of reality every time we fight a war; we do it on the basis of class, race, creed, and nationality, or on the basis of hate, fear, or apathy . . . the only difference is that now we do it to unborn babies too.

A human life encompasses the totality of one's history, not just part of it. Every moment of life has its place, and the Last Judgment (if there is one) will surely reflect not only the *end* of the creature, but also its beginning.

"In the beginning was the Word"—and whether the word is to be "fetus" or "baby" legally depends entirely on the woman. She has the fearful power, the freedom of choice; her convenience is the law. The richness of our humanity is as much what we may "become" as what we *are* at any given moment, but if the courts say we are not sufficiently human, not adequately viable, well then, if the lady chooses to dispose of us—forget it.

Suppose you were a "fetus" designed by nature to become a Mozart,

able to compose before the age of twelve; or a Pascal, capable of re-inventing much of Euclidean geometry at eleven. Or suppose you could have been a St. Francis of Assisi, born with the capacity to move with glad and dazzling rapidity from spoiled brat to soldier to prisoner to self-impoverished saint—with such a gift for language, love, and perception that you would cram into a brief 37 years the kind of career and impact on the world that most people cannot come close to, no matter how many long lifetimes they manage.

Today, if you were potentially *any* of these people, and your mother chose not to bother having you—well, you would come to nought. If you have had less-than-meaningful trimesters, you will have no legal right to protection. Human reality will have come to your fetus a little too late for it to have a viable future, because under the current law, the only protected future is the one a "mother" chooses for *herself.*

How did we ever arrive at such a situation? By a lack of imagination, a lack of a sense of "consequences." The same disease which has made it possible for us to massacre one another throughout history without the faintest perception of the human potential in what we are killing. The same defect that lets us rob each other without a feeling of what is being lost; to hurt each other without any comprehension of the pain. It is the art of "not seeing" so that one is not obliged to care.

Is this the reason so many doomed modern "love-relationships" tend to end so differently, now, than they used to? Love and death are old companions; we meet them together in a thousand stories of famous lovers, from Pyramus and Thisbe, through Tristram and Ysolde and Romeo and Juliet, to those sad American Indian couples who are celebrated geographically in half-a-hundred locally famous "lovers' leaps." The ancient tales of tragic love end in death—for the lovers.

But nowadays, in an age without taboos, when nothing much remains besides the dying thrill of worn-out ecstasy, and when a future of unfrivolous and time-demanding parenthood looms ahead . . . the lady simply wipes out all that unpleasantness by disposing of the *baby.*

Not herself. Not her "lover." Just the fetal detritus left over at the end of the affair—of no more romantic, moral, or legal significance than a tumor.

This is one of the wonders of viability, part of the magic of freedom

of choice. Because unless she says she *wants* it, "there is no baby there . . . and no baby ever killed."

One can understand, perhaps, the ease and comfort there must be, not only for the promiscuous, but also for the ordinary single, frightened girl, in trying to see things this way. If she can actually believe it, then the idea of guilt need never enter her head. She has the support and counsel of an immense and active organized body of "liberated women" who are ready to wave their votes and placards and go marching should anybody (privately or legislatively) try to interfere with her freedom to be rid of an inconvenient pregnancy.

And what's more, she has been subjected to a lifetime of pressure and propaganda endlessly elevating sexual activity and physical gratification as the great liberties of the modern world. Her mental and moral self-images have been shaped by what she sees in the press, the movies, and on television, and by the persuasive seductions of a whole generation of "women's leaders" who have gone right on preaching (even in this age of AIDS and genital herpes) the "absurdity" and "inequality" of such old-fashioned notions as chastity and self-restraint. How could she be expected to consider "conception" as her responsibility, or to visualize the reality of a baby inside her when the law says there *is* none? Indeed, given the way the world is now, the wonder is perhaps not that we have over a million and a half abortions in America annually, but that we do not have more.

One presumes that, despite the contagion, there are still plenty of young people who simply refuse to *contract* this strange disease of the imagination. They simply cannot or will not pretend (even for their own presumed "advantage") that human embryos are somehow not a phase of baby-hood, as much a part of *our* real lives as the chrysallis is part of the life of a butterfly.

Even today, the great majority of American adolescents are not yet wholly deceived by the law in these matters. There may not be much left in the way of sexual restraint or innocence, or even salutary caution in our elementary and high schools, but there are lots of girls who love their babies and try to keep them, just as there are others who give them up for adoption (the way such girls have done for centuries) knowing perfectly well that there are more couples waiting in the U.S. for children to care for than there are doctors waiting to kill them.

In the end, it always comes back to the doctors, somehow. To that odd minority of "medical people" who make a living out of "terminating" pregnancies. In the women's movement, it has become a natural thing to build one's politics around abortion; so too, for a certain class of doctors and nurses, it has become (since *Roe* v. *Wade*) profitable to build all or part of one's career around abortion.

How profitable? Nobody, to my knowledge, has ever tried to calculate. But with a million and a half procedures a year, we must be talking of a gross intake somewhere between two hundred and five hundred million dollars.

All the "clinics" have to do is plant an inexpensive little notice in the right parts of the right newspapers and magazines, and—bingo—the girls come marching in. Not as if they were saints, exactly, but marching all the same—sometimes brushing right past little groups of "demonstrators," as if the "pro-life" people didn't even exist. On the way to an abortion, after all, one need see only what it is convenient to see.

Doctors, however, are not quite in the same position. It is all very well for the woman involved to justify herself with the legal verbiflage which strips fetal infants of their humanity on the grounds that they are merely "using" a female's anatomy for purposes she would not personally have chosen for herself. All she wanted was a little fornication; to get a baby out of it is not only manifestly unfair but downright "unreal." But for the doctors, none of the emotional and ideological claims can obscure the reality of what they are dealing with; they have to *see* it in order to know what to do.

What they must confront (whether it bothers them or not) is what *everybody* knew until quite recently: that an abortion is simply the extirpation of something which, with any luck at all, would otherwise have been on its way to adulthood. They have been educated to know this; there is no way they can *avoid* knowing; they have to know it to do it.

That is not a laboratory mouse or monkey lying there on the table before them. That is a woman. To do the work at all, you must at least know the kind of creature with which you're dealing. And if you know *that*, then it would seem you could not help but know that whatever you scrape or flush or cut away from her is simply one of the phases of

growth of every human being who ever lived and died in the history of this planet. And that if it were let alone, it would develop into a Christian, a Moslem, a Hindu, or a Jew; into a Japanese or an American, a Communist or a Republican; somebody black or white or albino; somebody who is "one of us" (and *real*) or "one of *them*" and hence probably as inhuman, unfeeling, and indefensible as an ordinary law-forsaken "fetus."

How do the doctors do it, one wonders? Day after day, taking human life at the source, "aborting" it like a trade mission or the flight of a failing space rocket? Is there nothing in it that troubles them? Do they never regret?

Apparently not. The only thing most physicians have objected to (in public, anyhow) is being involved with the execution of convicted criminals. Capital punishment is something with which they want nothing to do. They require to be "spared," as one wrote recently in the Boston *Globe* (Nov., 1985) "using the needle to kill." Something about the Hippocratic Oath, as one recalls. But of course the "termination" of unborn infants who have not lived long enough to commit any crimes, or "freely" enough to be responsible for any sins at all (unless one saddles them with Adam's) . . . this is a task which a busy minority of the medical profession is not only able but quite eagerly *willing* to undertake just so long as the price is right.

Somebody with the time, means, and inclination ought to make a study of them. What are they like? Are they mad? Is this really what one pursues a modern medical education for—to find a profitable niche in some expedient little specialty which has less to do with preserving life than with ending it?

Carolyn Forché, in *Science '86* (February), wrote of medicine nowadays as "a profession of healers struggling with ethical self-governance while within their ranks those who would harm rather than heal grow in number." She was discussing the doctors all over the world who participate in governmental or revolutionary torture—but what is one to make of these other strange physicians who are ready to *kill* anything that could be remotely human, just so long as the law guarantees them immunity on the grounds that the thing isn't quite viable yet?

The only abortionist I have ever heard speak of the matter (on TV) claimed to be providing an important medical service by making sure that any female in his "care" did not injure herself by trying to have "unqualified" help with an abortion she was determined to have anyway. "I don't advise it, I merely provide it," seemed to be the implication here, and the way the argument ran, it appeared that, so long as *somebody* had to do it, it might as well be him. "For the protection of the patient," one gathered. And since it was quite obvious that none of the unborn children he removed were in any position (yet) to pay for his services, the only plausible "patient," in such cases, was "the lady with the lump."

A taxi driver does not take a woman where her *infant* says to go; he takes instruction from the customer with the cash. Should a doctor behave any differently? Surely he has no responsibility toward somebody who has just, in a sense, come along for the ride. He must obey the ancient rule: "she who pays the band may call the tune." Why should doctors be expected to be better than any other kind of merchant; what they sell is a service, isn't it?

Should a medical doctor be victimized by old-fashioned prejudices into seeing *baby* every time he performs an abortion instead of seeing cash in the bank? After all, we're entitled to believe whatever we choose to believe. Aren't we?

Whether we are or not, there still remain certain exceptions. One of the things we *cannot* choose is to make these doctors stop. The law is very firm about that, and will continue to be until or unless we change it.

It will be interesting to see how much rope we are given. Our world is not, after all, empty of virtue. There are millions of good and loving people in it, and probably a larger concern for kindness, mercy, and benevolence among the general population than ever before in history. The only question is who shall determine our perceptions? Who will define our ideas of reality?

In the United States, that seems to depend on what the courts decide. But have we really run so short of "protection" and "freedom" (of which there is plenty for pornography and baby seals) that there is none left over for unborn infants? Are we so complacent, floating along on

the bland surface of our well-advertised comforts, that we no longer even care about what happens to the young of *any* age?

Rivers are not the only things that can be polluted. All it takes is enough indifference, enough averting of the eyes, enough self-serving "tolerance"—and sooner or later it becomes easy to forget that what makes all human beginnings so valuable is the unique mystery of what they may later become. People who forget this are ultimately unlikely to remember *anything* worth saving.

Civilized life depends on our awareness of its continuities. What we are aborting now—at the rate of about 300 or more a day in this country—is part of our own future. And if we think we can avoid being affected by it just because the Supreme Court has given women and their doctors the magic words "viability" and "capable of meaningful life" to cover up the killing, then we are not quite so bright as we like to tell ourselves we are.

The Media *Is* the Message

Dave Farrell

WHEN THE PULITZER BOARD announced in April that J. Anthony Lukas and Joseph Lelyveld would share in the 1986 Pulitzer Prize for their non-fiction books dealing with desegregation in Boston and apartheid in South Africa, it came as no surprise to those who follow the annual awards for the prestigious prizes.

Both books were of course well received by critics, and they do stand on their own as impressive works. But their subject matter provided an added attraction and incentive for the Pulitzer screening panel to move them into the final competition and virtually guarantee them a prize.

Lukas' *Common Ground: A Turbulent Decade in the Lives of Three American Families* and Lelyveld's *Move Your Shadow: South Africa, Black and White* fit neatly into the kind of thing Pulitzer Prize screening officials often look for, i.e., "scholarly" works in areas that appeal to the liberal agenda espoused by the academic and publishing powerhouses. But there is another burning moral issue that obviously does *not* appeal to these officials.

The credibility of the Pulitzer Prize nomination decision process—substantially undermined by the Janet Cook-Washington *Post* fiasco a few years ago (Janet invented a Black "toddler junkie" and nobody checked the "facts")—might be bolstered if the judges looked beyond the widespread media prejudice against the "pro-life" movement and considered for a Pulitzer one of the several excellent exposés that have been done on abortion.

Certainly the 1978 Chicago *Sun Times* investigative series—"The Abortion Profiteers"—merited an accolade from the Pulitzer judges. The two-week series detailed, for the first time, the assembly-line methods of the gruesome abortion "industry." The newspaper documented the dangerous practices of many of the city's clinics, found shocking instances of maternal deaths, widespread fraud by doctors, and clinics performing "abortions" on women who were not pregnant.

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But this spotlight on the sleazy abortion trade, as powerful and well done as it was, was evidently passed over, for unexplained reasons. Maybe the dominant powers in the Pulitzer club—the American Newspaper Publishers Association and the American Society of Newspaper Editors—aren't eager to highlight anything which might galvanize the public against the unrestricted abortion rights the Supreme Court granted in its infamous 1973 *Roe* v. *Wade* decision.

Unless and until public opinion swells to a point where newspapers, radio stations and television channels render "pro-lifers" equal time with the abortion trade, Pulitzer judges are not likely to seriously consider anti-abortion writings.

Too much is at stake. Why open the door to a repeat of the embarrassment Planned Parenthood and its aggressive pro-abortion allies had to endure a few years ago when the Nobel Prize judges awarded their highly-coveted annual peace prize to Mother Teresa of Calcutta?

The Albanian nun, who has been working for years among India's most wretched and destitute poor, is of course one of the world's foremost champions of the unborn.

Her lifetime labor with "the least of My brethren" and her strong position against abortion are powerful rebuttals against the argument that the *quality* of life into which the helpless unborn emerge at birth should be a controlling factor in a woman's decision whether or not to kill her own baby. Mother Teresa has been there, and *is* there, celebrating life.

The disdain with which the press has treated the anti-abortion cause, ever since the campaign to legalize abortion took off a decade and a half ago, remains a serious indictment of much of the U.S. media.

And it comes at a time when the print and electronic media—under fire for their handling of other controversial issues—have been making studies and issuing reports designed to prop up their own sagging image.

A good example is the year-long study commissioned by the Times-Mirror Company and executed by that Old Faithful of the media—the Gallup Organization (one of whose principals is a champion of abortion on demand).

It is no surprise that the survey, completed early this year, found that there really *was* no credibility crisis in the media.

Editor & Publisher, the weekly trade magazine which manages to anticipate the sentiments of major newspaper publishers (in reality it's little more than a house organ for the industry), devoted a long, supportive story plus a strong backup editorial in the same issue.

But one need not be a student of politics to be aware that coverage of topics such as defense spending, the death penalty, pornography, the Moral Majority, homosexual "rights," nuclear disarmament, etc. is just plain slanted.

However, this tilt pales by comparison to the media's handling of abortion since the drive to legalize it accelerated in New York in the late 1960s. It was not until the 1980 Presidential campaign that the anti-abortion movement was accorded any semblance of coverage in much of the press.

There were trickles of exposure in late 1975 and early 1976 when former President Jimmy Carter campaigned for the Democratic nomination in Iowa. Carter manipulated the issue well, insinuating that he was opposed to abortion. But once clear of Iowa and New Hampshire, Carter turned his back on the pro-lifers who did so much to give him his head start.

And although the "divisive" topic became a major issue in the 1984 Presidential campaign, thanks to Geraldine Ferraro and Catholics For a Free Choice, the media has tailed off once again on maintaining an illusion of balanced coverage, concentrating for the most part on cleansing the image of abortion mills and the doctors who practice their grisly commerce inside them.

The resuscitation of the National Organization for Women (NOW) and the buildup of Eleanor Smeal (who replaced the inept Judy Goldsmith) have been high on the recent agenda, along with extensive coverage of isolated abortion-clinic bombings.

Leading the charge in the continuing campaign to eradicate the stain of abortion from the American conscience is the New York *Times*. The newspaper's Sunday Magazine did a major propaganda piece for the abortion industry and its practitioners last year when reporter Dudley Clendinen penned a sympathetic feature on an Oregon doctor who makes his living snuffing out the lives of the unborn.

Entitled "The Abortion Conflict: What It Does to One Doctor," the

feature was analyzed in these pages by Joseph Sobran for what it was: a clever attempt to control and manipulate the reader's views and gain support for the doctors who make a handsome living from the abortion holocaust.

"But although Mr. Clendinen carefully shades his facts to portray Dr. Bours as suffering for his 'conviction' that 'abortion serves a moral need,'" Sobran wrote, "the facts he gives stubbornly tell a story that contradicts the article's tenor; and we are able to discern a highly self-serving young man, glib in the moral idiom of modern liberalism, who dissolves into a sort of corruption combined with sentimentalism peculiar to his social set and generation. He sees himself as a beleagured benefactor, and can't understand why others are so backward as to object to his killing for a living."

Contributing substantially to the ongoing endeavor to convince Americans that abortion is a laudable and acceptable medical procedure is the same dependable Gallup organization which was drafted for the Times-Mirror study.

Whenever Gallup dutifully reports, through its carefully-crafted line of interrogation, that abortion is supported by the majority of the American people, the print and electronic media rush in to feature the latest statistics on what a good thing the killing of the unborn really is.

It's not phrased that way, of course. "Rape and incest" are the usual buzz questions asked to bolster these statistics and create an aura of public acceptance for abortion.

However, when other polls challenge the findings, the media have no problem ignoring them.

One of the most telling omissions in recent years was the extensive study (2,018 hour-long interviews) the Connecticut Mutual Life Insurance Company conducted on "American Values in the 80s: the Impact of Belief."

The survey revealed that 65% of Americans believe that abortion is immoral. The interviews also showed that 71% of the population believes that homosexual activity is morally wrong.

The insurance company's findings also demonstrated that leaders in fields of news media, law, government, and education are far more liberal than the general populace in their support for abortion and homosexual conduct.

More than 1,700 leaders in these fields responded to a separate, eight-page questionnaire from Mutual Life. Only 42% felt homosexual conduct was wrong; only 36% said abortion was immoral—almost the exact reverse of "the people." Any wonder why the moral climate of the nation has been eroded?

Even the most militant supporters of abortion on demand concede privately that throughout the 1970s and 1980s, the anti-abortion forces across the United States have been egregiously short-changed on coverage of their activities. The track record that the media has compiled since the *Roe* v. *Wade* decision is outrageous and is etched indelibly in newspaper morgues and tape libraries of television and radio stations.

Throughout this period, the leading proponents of abortion—Planned Parenthood, National Abortion Rights Action League, National Organization for Women, the Bill Bairds, and the pharmaceutical houses which make so much money selling the deadly solutions and equipment essential to snuffing out the lives of the defenseless unborn—have been treated with generous sympathy by the media.

There is an enormous amount of data to support the charge that much of the media in the U.S. has vincibly or invincibly maintained a policy of promoting abortion and blacking out activities and news of the still-growing army of people and groups which support the unborn's right to life.

Television shows are getting bolder in promoting abortion in subtle—and not-so-subtle—ways, as a recent and well-publicized *Cagney and Lacey* show demonstrated.

And "Jo-Jo's Problem," a two-part NBC program aired in 1984, was described by Associated Press writer Fred Rothenberg as "not really an examination of the abortion issue as much as one comedic illustration of how these characters might deal with it." Abortion as *comedy*? Well, the decision on whether the unborn child would be allowed to live centered on a fantasy in which the father-to-be was going to opt for an abortion if he failed to catch a fly ball in the Yankee Stadium game he envisioned. Rothenberg found the two-part show "hilarious and moving television."

The manner in which story headlines are written by media reporters to reflect a pro-abortion stance is another technique often employed by

today's journalists who are liberal on "social issues."

A typical example is the Associated Press, which has widespread exposure across the country. How it slants abortion coverage is illustrated by a Lawrence Neumeister story earlier this year.

Under a dateline of Hempstead, Long Island—where longtime abortion huckster Bill Baird operates one of his clinics—Neumeister wrote:

> Bill Baird goes to sleep hearing the angry chant "Bill Baird is a murderer." But he wakes up each morning sustained in his pro-choice crusade by the memory of a woman who died in his arms 23 years ago after she tried to perform an abortion on herself with a coathanger.

The lengthy puff piece on Baird, one of a legion he has been accorded by a fawning media that tends to accept everything he says, violated a cardinal principle of good reporting when it bought Baird's assertion that a woman once died in his arms as a result of a "coathanger" self-abortion.

This is not to suggest that such deaths never occurred. But they did not happen in the numbers bandied about so loosely by the abortion professionals. Baird generally uses this type of shock tactic to advance his views and gain sympathy for the abortion industry by which he makes his living.

Did Neumeister check police records and verify that a woman actually did die in Baird's arms as a result of an attempt to abort herself? If not, he should have attributed the yarn to Baird himself, inserting the words "he says" after "by the memory of a woman who."

Another clever technique used to undermine anti-abortion perseverance comes through in Boston *Globe* religious-writer Jim Franklin's coverage of a talk by Cardinal Bernard Law two days before the 1984 state elections in Massachusetts.

A large headline dominating the top of the page abets the often-used tactic of identifying the anti-abortion movement as almost totally a promotion of the Catholic Church. One of its ugly by-products is the fostering of latent anti-Catholic sentiment which runs through liberal ranks, especially pro-abortion groups and "leaders" such as abortion advocate Bill Baird (himself a "fallen away" Catholic).

"Prelate Soft-Pedals Abortion Stance" read the headline over the

story on the Cardinal's talk to a Catholic nurses' group at a suburban Boston church.

"At the end of a campaign season dominated by questions about the relationship of women and politics," Franklin wrote, "Archbishop Law struck a note of moderation yesterday similar to that expressed by many other religious leaders in the past week."

Reporting that the Cardinal spoke simply of the reverence for life "from the moment of conception to the moment of death," Franklin seemed surprised, and stressed that Law did not use the word "abortion" in his sermon and did not urge the voters and candidates to oppose abortion, as he had done before.

His suggestion that the prelate was modifying his stand on abortion was a gratuitous supposition debunked by Law in subsequent public statements. It also overlooked the fact that the Cardinal was emulating the *Globe*'s strict policy of not editorializing or allowing its columnists to favor or oppose candidates on the eve of elections for any reason whatsoever.

As a columnist on the *Globe* throughout the post-*Roe* period, I had an excellent vantage point from which to view the Eastern media's handling of the abortion controversy.

After Rupert Murdoch purchased the Boston *Herald* from the Hearst Corporation two years ago, the newspaper changed its previous pro-abortion editorial position, and indeed now champions the pro-life cause.

Prior to that, however, its editors followed the *Globe*'s lead in a virtual blackout of news about the activities of highly-active local pro-life groups such as Massachusetts Citizens for Life and the Value of Life Committee.

Both organizations have numerous meetings and dinners which are often addressed by outstanding speakers of national reputation such as Rep. Henry Hyde of Illinois, Sen. Jeremiah Denton of Alabama—a renowned Vietnam War hero—and legal scholar John T. Noonan Jr., (recently appointed by President Reagan as a Federal Circuit Court Judge).

Yet coverage of such speeches was virtually non-existent in Boston throughout the 1970s and early 1980s.

But whenever a George McGovern or a Sen. Robert Packwood came to Boston, in some cases to address Planned Parenthood *et al.*, the media rushed to interview them. Their Boston visits usually triggered invitations to breakfast or luncheon meetings at various newspaper and television stations, where the McGoverns and Packwoods got additional opportunities in friendly atmospheres to promote abortion.

In contrast, Boston University President John Silber (a Protestant minister) and Massachusetts Senate President William M. Bulger, two of the region's leading anti-abortionists, seldom get any coverage for their public speeches on the issue.

Sen. Bulger was the main speaker at the 202nd anniversary dinner of the Friendly Sons of St. Patrick in New York City in March, and delivered a powerful message for the unborn. His moving talk not only got scant notice in the secular media of New York, but also virtually no coverage in his home town.

On the other hand, abortion-promoter Bill Baird from New York has been a big beneficiary of the Boston print and electronic media's one-sided abortion coverage. He is regularly afforded extensive airing of his activities *via* press conferences and interviews when he comes to Boston to promote abortion, despite the fact that Baird himself operates commercial abortion clinics.

When a jury (in 1985) awarded one woman a half-million dollar judgment against a Baird clinic and the doctor who botched an abortion there, the *Globe* failed to carry a line on the two-day court proceedings and the verdict which followed.

His clinic escaped with a $20,000 judgment because of state law setting this figure as a maximum verdict for hospitals and clinics operating as "charitable" trusts.

Baird's favored treatment by the newspaper—as some sort of folk hero and pioneer of women's rights—is surprising in view of his reputation even among some editors as a publicity-hungry abortion promoter.

Until I reported that young women who regularly carried crosses as part of Baird's pro-abortion rallies in front of the Massachusetts State House were *paid* by Baird, the *Globe* and other daily newspapers in Massachusetts carried pictures of these mockeries.

Yet the media continues to promote him and boost his abortion promotions. The cover feature on him in the *Globe Sunday Magazine*

(circulation 800,000 plus) of June 9th, 1985, was a glaring example.

Entitled "Bill Baird's Twenty Year War . . . Exploring the Private Side of the Tireless Pro-Choice Advocate . . . The Lonely Warrior," *Globe* staffer Christina Robb rounded up the usual assortment of abortion proponents, including a spokesperson for Planned Parenthood, to construct a lopsided portrait of the "fearless" Baird. The usual propaganda was recycled.

What makes the attention accorded Baird stand out so conspicuously is the fact that there is no disposition to run a comparable feature on someone like the well-known Boston Dr. Joseph Stanton, whose tireless efforts on behalf of the unborn, the crippled, the elderly, and the sick constitute one of the Greatest Stories Never Told by the Boston Media.

The blackout on Dr. Stanton and others like another Bostonian, Dr. Mildred Jefferson (whose contributions to the national anti-abortion cause need no recitation here) is in sharp contrast to the big play Boston's Dr. Kenneth Edelin has received since he was acquitted of charges arising from an abortion which was botched at Boston City Hospital a decade ago.

The double standard used by much of the print and electronic media in its handling of the abortion controversy is even more pronounced in its discussion of Federal judicial appointments.

It is no secret on Capitol Hill that several of the aging and ailing judges of the U.S. Supreme Court would step down tomorrow if there were a President of liberal leanings in the Oval Office.

But bolstered by a sympathetic press—which made much of President Reagan's age during the 1984 campaign—these judges are hanging on, hoping to last at least until after the November elections when the Democrats have an opportunity to take control of the Senate and move into a position to veto any appointment Mr. Reagan might make to the high court during the last two years of his term.

The kickoff for this strategy began in the media immediately after Mr. Reagan swept to his landslide win November, 1984. Story after story began surfacing about the judiciary and the need to make certain that balance was essential, i.e., that abortion should not be used as a "litmus test" for judicial appointments.

There was, of course, no mention of the fact that former President Jimmy Carter had loaded the courts with several hundred liberal judges who were not asked by the media to take a litmus test on their *permissive* attitudes on abortion, or crime, or any other issues high on the media's liberal agenda.

But when it seemed likely that President Reagan might be able to reshape the Court which gave us *Roe*, the campaign to block any changes in its make-up got underway.

Paralleling these stories were an unusual number of pieces on Justices William Brennan, Thurgood Marshall, and Harry Blackmun. Their fears about possible changes in the Court's rulings on abortion and other social issues are frequently emphasized in articles.

The numerous features which have been written about Justice Blackmun merit close scrutiny. When a stray bullet found its way through his apartment window in 1985, it was immediately attributed to one of the "crazies" in the pro-life movement.

That proved to be baseless, but it didn't stop the idolators of Blackmun in their campaigns to canonize the hero of the *Roe* decision.

The countless features which have extolled Blackmun since he wrote his life-shattering opinion 13 years ago bring to mind the flattery heaped upon Federal Judge John Sirica, who was regarded as just a so-so jurist by the Washington and New York media until he played a major role in ejecting Mr. Nixon from office during the Watergate probe.

The elevated stature which the press has conferred on Justice Blackmun is equally amusing when contrasted with old newspapers stories about him at the time of his nomination to the Supreme Court. When then-President Richard Nixon nominated him, he was described in many articles as a mediocre lawyer from the Midwest who lacked the caliber such a lofty judicial position demanded.

The real target of those criticisms, of course, was Mr. Nixon himself, who had defeated another liberal saint, the late Hubert H. Humphrey.

To cover their tails, many of those who now laud Blackmun because of his pro-abortion decision "note" how much he has "grown" on the job.

When you change your position and fall into line with the media liberals, somehow you grow in stature; you certainly win the accolades.

And this "party line" is invariably picked up and adopted by TV and radio, especially local stations, whose news operations survive on what they lift, day in and day out, from the "major" newspapers.

This scenario is repeated over and over again, unabashedly, by writers who even hold out as a carrot the publicity rewards that await those who alter their positions and embrace the "pro-choice" philosophy.

Probably no better illustration of this ever occurred than in Massachusetts in 1984 when Rep. Edward Markey decided to jump into the U.S. Senate fight for the seat of retiring Sen. Paul Tsongas.

Markey was—or at least appeared to be on his record—a strong pro-lifer throughout his career as a Massachusetts legislator and as the congressional successor to President Kennedy's close pal, the late Rep. Torbert Macdonald.

Once he moved into (he would later bow out) the Senate race against several other Democrats, Markey switched his position on abortion in order to gain the support of the Boston *Globe*, whose pro-abortion editorial posture is as strong as that of any newspaper in the country.

Sure enough, the *Globe* came through with a glowing editorial which said, in part: "The temptation to dismiss Markey's move as political expediency can be resisted. He should not be faulted for changing his mind, for moving towards a more enlightened position."

That was too much even for the most naive to swallow. But it demonstrates the lengths to which some editorial writers will go to promote abortion and reward those politicians who are willing to sell out.

The pro-lifers, hurting from the bias they suffer in a large segment of the media, are better off without the Markeys. They can take heart in the fact that the integrity of their cause, like that of the 19th century abolitionists, will sustain their inexorable march to victory.

From Crime to Compassion

Marvin Olasky
Susan N. Olasky

'Baby Case' Pair Head For Sweden
Pill May Cost Woman Her Baby[1]

THE HEADLINES SOUND LIKE a tabloid screaming at today's grocery check-out counter. In fact, those headlines appeared in major newspapers back in 1962, during the extensive press coverage of the first abortion controversy to move from the crime beat to "human interest" respectability.

When Sherri Finkbine, a Phoenix, Arizona, television performer, publicly declared her desire for an abortion, American media began to shift from the traditional "abortion as crime" position to an "abortion as liberation" mentality. The front-page coverage her story received reflected the clash of the harsh old vocabularies with the new, "enlightened" euphemisms.

I have examined the language and thematic consistency of the Finkbine-case coverage in eight newspapers. The three I chose from New York (the *Times*, *Post*, and the now-defunct *Journal-American*) exhibited a closeness of theme despite their different audiences. Four leading newspapers from different parts of the U.S. (Washington *Post*, Chicago *Tribune*, Los Angeles *Times*, and Atlanta *Constitution*) also played the story in similar ways. The Arizona *Republic*, which broke the story initially, had a greater quantity of coverage but little qualitative difference.[2] This consistency across geographic and audience lines indicates that many journalists made similar decisions about how to handle their Finkbine stories, and stuck to the same themes in subsequent news stories.

Such journalistic "perceptions" are important historically to the abortion debate because of the "agenda-setting" power of mass media. Simply defined, "the agenda-setting influence of the press underscores the role of the press in determining which issues, events, and persons

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gain our attention."[3] The agenda-setting concept suggests that journalists played a significant role in planting a new view of abortion in the public consciousness. Before we analyze those themes, a brief historical review seems in order.

Abortion as news, 1862-1962

Accurate generalization about American press coverage of most topics over a 100-year period would be impossible. Coverage of abortion is an exception. I have not found "pro-choice" stories during the century prior to the Finkbine case in major American newspapers; even neutral stories are rare. Abortion coverage in daily newspapers prior to 1962 was primarily part of crime reporting: the abortionist was the bad guy.[4]

For instance, on January 12, 1863, the New York *Times* ran a story about the mother of five children who discovered she was pregnant again and went to an abortionist. He botched the operation and the woman, realizing she was dying, gave her story to a coroner's jury. The *Times* believed it "high time that the attention of the public be directed to the scoundrels who, under pretense of giving relief, entail direct misery upon thoughtless women, and at times hurry rash mortals into an undesirable eternity."[5] Nine days later, the *Times* printed a similar story. I found eight more from 1865 through 1869.[6]

The *Times* coverage set, or at least epitomized, the style of abortion reportage for many years afterward. Offices of abortionists were raided, district attorneys produced indictments, and reporters could use the same format again and again.[7] Even in 1961, the *Times* reported the arrest of Dr. M. M. Friedman for performing an illegal abortion and falsifying a death certificate.[8] The same doctor made headlines a year later when the *Times* reported "Doctor Is Hunted in Heiress Death."[9] Another *Times* article on that same page reported "a dismembered body found in a sewer line of a $75,000 office-home in Queens." Those story angles were similar to that of a criminal-abortionist story in the New York *Daily News*, which reported the arrest of a Brooklyn mechanic who performed illegal abortions in his "fancy office" with "lots of good tools" and answered the telephone, "Doctor speaking."[10] Whenever it was time to write a story on abortion, reporters could merely round up the usual suspects and fill in the blanks.

During the decade before the Finkbine case several abortion-related events found their way into popular magazines. A Planned Parenthood

conference on abortion in 1955 received some coverage.[11] Isolated articles in the New York *Times* reported proposals to liberalize abortion laws.[12] In April, 1962, CBS broadcast an episode of *The Defenders* TV series dealing with abortion. The controversial program was reviewed widely in the *Times* as affiliates debated nationwide whether to carry the program.[13] But newspaper reporting about "criminal abortionists" changed little. Calls for change in abortion laws did not receive sustained coverage. After a century, the pattern seemed set.

Then the story about Sherri Finkbine began to develop. At age 29, she was the "pretty mother of four healthy children."[14] As Miss Sherri, she was the star of Phoenix' version of Romper Room, a nationally syndicated kiddie program. She was the wife of a high school history teacher who also operated a swimming school in the family pool behind the house. And she had unwittingly taken the drug thalidomide, then surfacing as a cause of birth defects in Europe and Australia.

The blameless victim

In July, 1962, the tranquilizer known as thalidomide was coming to nationwide American attention for the first time. Known in England as "The Sleeping Pill of the Century," thalidomide had been brought out in Europe in 1958, used by mothers to relieve the nausea of early pregnancy, and distributed to children as a pacifier ("West Germany's Baby-Sitter," it was called). Tragically, it was soon learned that women who took thalidomide during their second month of pregnancy ran the risk of bearing children with phocomelia (flipper-like limbs) or without any limbs at all.[15]

Due to the heroic efforts of Dr. Francis Kelsey, a Food and Drug Administration pharmacologist, thalidomide had not been cleared for use in the United States. Thalidomide did come to America, though, through roundabout routes. During the summer of 1961 Robert Finkbine was chaperoning 50 rambunctious students on a tour of Western Europe when he felt the need of a tranquilizer and went to a British physician. The physician prescribed two bottles of Distaval, which contained thalidomide. One year later, when Sherri Finkbine was in the first trimester of her pregnancy and had trouble sleeping, she found the Distaval in a medicine cabinet and took some pills. In the succeeding weeks of the second month of her pregnancy she used Distaval again, and again. But on July 16, 1962, when she read a newspaper story

about babies born in Europe with serious birth defects after their mothers had taken thalidomide, Sherri Finkbine called her doctor to ask about the tranquilizers with the unfamiliar name.[17]

The doctor checked and found out she had been taking thalidomide. The doctor then dispensed some advice. As Sherri Finkbine later explained, he "showed us pictures in a British medical journal of children born to mothers who had used the drug—horrible pictures . . . the arms . . . legs . . . fingers and toes . . . He told us, these are not odds to gamble with." The Finkbines said they wanted an abortion.[18]

Here the plot thickened. Arizona law at that time (11 years before the Supreme Court's *Roe* v. *Wade* decision legalizing abortion nationwide) said an abortion could be performed only when the mother's life was in danger. That would ordinarily have been no barrier to Sherri Finkbine: committees of three doctors appointed by the Arizona Medical Society had been regularly giving approval for physical problems of the mother, and on July 23, just three days after Sherri Finkbine first approached her doctor, a three-member medical panel approved a Finkbine abortion on the grounds of psychological danger to the mother. The abortion was scheduled for July 25 or 26, and undoubtedly would have taken place then had not Finkbine told a Phoenix newspaper about her story, in order to "alert others" to thalidomide dangers.[19]

Once the story hit the press, doctors and hospital administrators backed off, fearing public opinion and possible prosecution. Authorization for the performance of the Finkbine abortion was withdrawn. The Finkbines wanted a judge to make a declaratory judgment legalizing their abortion, but for legal reasons (discussed below) the judge refused. The Finkbines then announced they would leave Arizona to seek a more favorable legal climate for an abortion.[20]

Journalists had to decide how to report this series of events. Here was a woman publicly looking for an abortion. A century of newspaper tradition made this a crime story. But the Finkbine case did not fall into the crime *genre* for at least two reasons: the thalidomide-deformity question, and what might be called the Ozzie and Harriet issue.

The thalidomide question was a hard one for reporters. First, if they were to break out of the crime story format, they would have to wrestle with the question of whether abortion should be allowed, even in cases

of possible deformity. But second, it was unclear whether thalidomide did have an effect in most cases. Dr. Kelsey, responsible for keeping thalidomide from American markets, noted that "statistics published in Germany, where the incidence of deformity has been highest, show that Mrs. Finkbine has a 20% chance of bearing a deformed child."[21] Other estimates varied widely. When it appeared that the Finkbines would go to Sweden for an abortion, the Associated Press reported that all seven Swedish women who had applied for an abortion because of the use of thalidomide had their requests granted, although X-rays revealed deformities in only two of the cases.[22]

In sum, reporters proceeding out of the crime tradition could have covered the story in this way: "She has a pleasant home, adequate finances, and a supportive husband, but plans to kill her baby." Or this way: "Woman insists on abortion even though there is only a 20% chance of deformity in child she carries." A sensation-minded newspaper, in an era when large families were typical, could have proclaimed, "Four children say, 'We want one more,' but television star refuses." A more sober newspaper could have emphasized the statistics and provided examples of babies born with phocomelia whose parents were determined to help them lead normal lives.

Any of these emphases might have been likely in the "abortion as crime" century just concluding. But they did not make it out of the linotype machine, this time, in any of the newspapers studied, except in passing. The Kelsey statistic appeared only in the Washington *Post* and was not followed up.[23] All of the newspapers reported the information from Sweden, but it appeared as the last paragraph in most stories, and none of the newspapers followed up on it.[24] Instead, in every newspaper studied the emphasis was on depiction of the Finkbines as the second Ozzie and Harriet: she from Duluth, he from Laurenceburg, Indiana, meeting at college, with "four healthy children," still in love.[25]

"Pretty Sherri Finkbine" was the first abortion-seeker to attract great sympathy in the American press.[26] She was not a single woman engaged in "promiscuous" activity, nor a poor woman to whom the middle class could not relate. She was the perfect suburban housewife and mother, until tragedy struck. Finkbine was blameless, and therefore the object of sympathy from the press and a large part of the public. The New York

Journal-American reported that the Finkbines had won "several awards for their contribution to the children of their community."[27] The Los Angeles *Times* described Finkbine as a "deeply tanned brunet [*sic*] wearing a sleeveless dress of white who tapped the toe of an orange spike heeled pump."[28] The Arizona *Republic* published a poem by Robert Finkbine:

> Children are love.
> Parents among children
> Have hearts surrounded by love . . .
> The wide-love eyes
> Of a blond-curled imp
> Sweep over you.
> How does it feel to be eyeswept?
> Love is there.[29]

All of the newspapers studied relied on the Associated Press or United Press International for some of their coverage, but they also had their own staffs writing features, analyses, and additional news items. Hundreds of newspaper reporters hung on the Finkbines' every word as they first considered Japan and then went through the process of securing visas and making travel arrangements to Sweden.[30] During late July and early August reporters suggested that those who might criticize the Finkbines' decision were heartless. For instance, the Atlanta *Constitution* wrote that Sherri Finkbine "had to go to Sweden to find a more civilized attitude toward her plight," and that Americans "ought to have a look at their own abortion laws in light of what they did to her."[31]

The story petered out after August 18, the day the Finkbine abortion took place in Sweden. Marilyn Monroe had committed suicide on August 5 and problems leading to the Cuban Missile Crisis were developing. The Finkbines returned to Arizona. But the coverage made a difference in at least two ways. First, during the last week of August, a question on abortion for the first time was included in a Gallup poll. The poll asked whether Sherri Finkbine did right or wrong "in having this abortion operation": 52% of those responding thought she had "done the right thing," 32% felt she had done wrong, 16% had no opinion. Although there were no polls on abortion to measure public opinion before the intellectual softening up of the 1950s and the Finkbine episode of 1962, pre-1950 opinion is indicated by popular usage of the word "abortionist" to indicate a contemptible person; suddenly, to most people, the Swedes

were benefactors and America stood condemned. The second change may have been even more crucial in the long term: journalists developed new terminology concerning abortion and reversed the good guy/bad guy descriptions of a century.

The "Newspeak" terminology

As George Orwell noted, political language often seeks to defend the indefensible by softening the force of some ideas and images in order to make them more publicly acceptable.[33] An obvious problem for journalists covering the Finkbine story was terminology: what to call the operation she desired, and what to call the being that was growing in her womb? The word "abortion" was certainly not yet universally accepted—indeed, it still brought to mind the crime stories. Use of the word "baby," as we have seen in the "pro-life" versus "pro-choice" debate of recent years, seemed to bring with it the concept of murder, and that would not go with the Finkbines' sympathetic coverage. Some neutral term was needed.

The first problem, what to call the abortion, was dealt with in various creative ways. "Baby Surgery" was the August 1 solution of the Los Angeles *Times*,[34] which, earlier, had run the headline "Judge Weighs TV Star's Plea to Avoid Birth"[35] over an article reporting that Finkbine sought to "prevent the birth" of her child (a second article reported Finkbine asking a court to declare a "miscarriage necessary to save her life").[36] Yet another discussed "illegal baby surgery."[37] A columnist wrote of Finkbine's desire to avoid the possibility of "mothering" a drug-deformed child.[38] The New York *Journal-American* described an operation to "lose the baby."[39] The New York *Times* was the most straight-forward of the newpapers and often used the word "abortion," but also reported, "Couple May Go Abroad for Surgery to Prevent Malformed Baby."[40]

The problem of what to call the being in the womb seemed more difficult. Even though the use of the word "baby" would go against the thrust of most stories, the Finkbine articles early on were sprinkled with references to "unborn baby" and "child." For instance, the New York *Times* (July 26) reported that Finkbine "feared her child would be permanently affected."[41] The next day the *Times* referred to "Mrs. Sherri Finkbine, pregnant for three months with a baby she fears will be deformed."[42] The *Journal-American* mentioned "her baby" and "the unborn child."[43] The Los Angeles *Times* reported that Finkbine "wants to

prevent the birth of her child."[44] The Chicago *Tribune* referred to the "expected child [who] is threatened with deformed birth."[45]

Sherri Finkbine herself offered a temporary solution to the problem involved with describing the being as a baby or child: emphasize the possibility of deformity, not the presence of humanity. She was quoted as saying that giving birth to this deformed child would be like giving birth to a "living death."[46] In an interview with the Chicago *Tribune* she said: "There is a fifty-fifty chance our baby would be a basket case if it were allowed to be born."[47] The New York *Post* described a child "doomed to grotesque deformity," and posed the question: "What right, one might even ask, does anyone have to bring into the world a creature cursed from birth with an affliction so gruesome that it must loathe its own image and cry out against those who might have spared it this suffering."[48] The baby was said to be faced not with "the prospect of handicap but of monstrosity."[49] And although even thalidomide babies who suffer phocomelia have normal intelligence and life spans, thalidomide was said to have "killed the essence of some even in their mothers' wombs so that they were fortunate enough to be born dead."[50]

Medical language provided the eventual "neutral" solution: the word "baby" was replaced by the term "fetus."[51] Early on, the word "fetus" (and occasionally the word "embryo") was used when reporters focused on the medical aspects of the case. After the abortion, the *Journal-American* used the term "fetus" (August 18).[52] The next day, the New York *Times* reported that, in the Finkbine case, "the fetus" was deformed.[53] Reporters created sympathy for the Finkbines by emphasizing their "plusses"—appearance, children, love for children, professions, etc., and avoided the minus-factor, that abortion involved a baby and not a thing. They focused on the possibility of deformity, which suggested that the baby was less than fully human, really a medical "problem." By the 1960s, "fetus" had become the accepted journalistic usage.

The new bad guys

The role of Arizona's courts in the Finkbine case was complex. According to Arizona law at the time, abortions were legal only if the life of the mother was at stake. Yet, despite the narrowness of the law, abortions were performed for other reasons—mental health, even "fetal health"—if they were approved by a hospital abortion committee. There were no precedents of hospitals or doctors being prosecuted under the

law as long as they followed committee procedure for abortions.[54]

What set the Finkbine case apart was that Sherri Finkbine notified the press before her abortion took place. Hospital administrators, expecting protest, refused to perform the already-approved abortion. They, together with the Finkbines, went to court to obtain a declaratory judgment declaring that the Finkbine abortion fit the statutory requirements, and that therefore they would not be subject to prosecution. But the judge ruled that the case was not properly before the court because no one had filed a complaint against the Finkbines or the hospital; he noted that both state and county attorneys had said in open court that if the facts of Mrs. Finkbine's plight were presented, Arizona law would be no bar to the abortion.[55]

The Arizona *Republic*'s initial coverage clearly indicated that state and county officials were not about to second guess doctors or hospital staff. The Maricopa County deputy district attorney insisted that if doctors found the abortion necessary, "It is not a crime."[56] However, hospital officials, although legally in the clear, were evidently unwilling to risk bad public relations for a highly-publicized abortion unless they received a judicial pat-on-the-back in advance.

Washington *Post* headline writers may have given false signals concerning the true state of affairs by incorrectly contending on page one, "Judge Balks at Legal Abortion for Victim of Deforming Drugs."[57] He actually did no such thing, yet the Los Angeles *Times* reported that the judge refused to "legalize" the abortion, a claim accurate only in that the judge felt no legalization was necessary.[58] A headline in the New York *Times* read, "Mother, Rebuffed in Ariz., May Seek Abortion Elsewhere."[59] Later news stories in other newspapers paid no attention to the complexities of the legal case and reduced the question to the failure of the Arizona judge to permit Finkbine's abortion. Intentionally or not, a new theme had arisen: the idea of a narrow and inhumane legal system.

The Finkbines and their abortion supporters quickly embraced and advanced this theme; perhaps they had helped to originate it. Although the judge was ruling *only* that the case was not properly before his court, newspaper reporters generally accepted without question the Finkbines' statement that the judge had rejected "medical and psychiatric opinion" concerning the "recommended treatment."[60] Sherri Finkbine was quoted

as saying, "Here in the U.S. the decision is made by the courts rather than medical men."[61] The Arizona *Republic* quoted Alan Guttmacher, then head of the Planned Parenthood Federation, as saying, "The Phoenix case shows the idiocy of the situation. They [the laws] just haven't kept up with medicine."[62]

In most articles appearing after the court decision, the background of the story was reduced to the statement that the Finkbines had been denied a legal abortion in Arizona, and had no choice but to seek one elsewhere. That may be true, but they were refused by a hospital, not by the courts, or Arizona law.

Focus on the Finkbines

With the law inked in as bad guy, the search for good guys became clearer. Sherri Finkbine, attractive and innocent victim, was the logical choice. Yet, even if she were having only "baby surgery," and even if the word "child" was replaced by "fetus," an uncomfortable sensation might remain among readers: Was she being selfish? Was she acting in love?

During the days after the tragedy was first reported, reportorial emphasis more and more turned to how the "operation" would be performed for the good of the baby. The New York *Journal-American* quoted Sherri Finkbine as saying, "We weren't concerned for ourselves but we were concerned for our unborn child. We couldn't, in all conscience, bring into the world a child whose chances seemed so utterly hopeless."[63] Although many people across the nation offered to adopt the child if born, the Finkbines were said to be continuing abortion plans for altruistic reasons; a Washington *Post* reporter told Finkbine of one such offer and noted that she burst into tears, saying, "It doesn't change our minds. It wouldn't be fair to the child."[64] The New York *Times* quoted Finkbine as saying, "I burst into a rage when a San Francisco couple offered to adopt the baby. If it were born, the last thing I would want to do would be to place the burden on someone else."[65]

None of the newspapers focused on the probability that the baby would not be deformed, or its prospects for an otherwise normal life even if it were. Instead, the stress was on Finkbine's unselfish willingness to sacrifice her privacy to promote "more humane" abortion legislation. The Los Angeles *Times* quoted her as saying, "I hope that in a small way we have contributed toward achieving a more humane attitude toward this problem . . . the main thing is to do what is right for the baby."[66] The

Chicago *Tribune* quoted Robert Finkbine's observation that his wife went public to "help others who may get trapped in the same horrible thing."[67] Sherri Finkbine was viewed as a moral woman up against immoral law, a socially-responsible adult refusing to steal candy from a baby: "I feel I owe a responsibility to the child," she said, "and for its sake I don't feel it morally right to bring a deformed child into the world. Interrupted pregnancy seems to me to be the only kind and loving thing to do for my unborn baby."[68]

Thus a new story format for abortions was emerging. The old "abortion as crime" format viewed the aborted infant as a murder victim, but in the new one, sympathy was with Finkbine. Coverage was always from her perspective. In Sweden, upon receiving the news that her abortion had been approved, she reportedly "dropped the telephone receiver and buried her face in her hands weeping. 'I can't tell you how relieved I am. I don't know what I would have done if it had not been granted.'"[69] Earlier, she had said what she would have done: "If we should have an abnormal child we would love the child, and give it the best care in the world . . . "[70] But, as the story developed, journalistic identification with Finkbine was so intense that alternatives were ignored.

Conclusion

David Altheide has argued that "news perspective" is crucial, because most stories are too complex to fit into a dramatic and easily-understood standard news format. Journalists look for a lead or theme which will help them to structure the story and determine which facts are important. Once that theme has been developed, subsequent news stories on the same subject tend to be reported in similar fashion. Details which do not "fit" are not pursued.[71]

Coverage of the Finkbine story certainly supports Altheide's contention. Once the old bad guy/good guy structure was dropped and Sherri Finkbine made the heroine—and the legal system villainous—reporters ignored or did not stress facts that did not fit the new story structure. For instance, some reporters mentioned—but none emphasized—the fact that only two of seven babies aborted in Sweden for thalidomide were known to be deformed, or the statement of Francis Kelsey that only 20% of German thalidomide babies were deformed.

Overall, the Finkbine case reportage was clearly what today we would call "pro-choice." This was important, because, as David Paletz writes,

media depictions "provide almost all the information the public possesses about most interest groups." Favorable coverage "makes a group's policy agenda politically salient, legitimizes the group's demands and actions, and strengthens its ability to influence policy makers in its favor."[72] The Finkbine case was a major breakthrough for pro-abortion forces, and created the momentum which led to "liberalized" abortion laws in several states, and the *Roe* v. *Wade* decision in 1973.

The Sherri Finkbine story is thus interesting not only because it contains elements of a popular novel, but also because of its place in the historic movement for abortion "reform." It was crucial to the transition from the "abortion as crime" to an "abortion as liberation" mentality, which has created a new American ethic.

NOTES

1. Los Angeles *Times*, August 3, 1962, p. 1.; Arizona *Republic*, July 23, 1962, p. 1.

2. Newspapers were selected on the basis of three criteria: elite quality, since such newspapers have the greatest impact on individuals affecting legislation as well as on other newspapers; geographic distribution, since one research goal was to see how the Finkbine story played in different parts of the United States; and availability at the University of Texas. The Arizona *Republic*, available on inter-library loan, was added to the sample because of its in-depth coverage of the hometown Finkbine drama. The goal was to read all stories and editorials on the Finkbines, thalidomide, and abortion appearing in the surveyed newspapers from July 16 through August 31, 1962; it is possible that some small stories were missed. The problems of intercoder reliability were minimized by having two coders married and engaged in discussion of daily research results over dinner and at other times.

3. Maxwell E. McCombs and Lee B. Becker, *Using Mass Communication Theory* (Englewood Cliffs: Prentice-Hall, 1979), p. 121. Agenda-setting theory is so well known by now that a full literature review is not necessary here. Briefly, the concept was put on the communications research agenda by a study conducted by McCombs and Donald Shaw during the 1968 presidential campaign ("The Agenda-Setting Function of Mass Media," *Public Opinion Quarterly* 36:177); many other studies since then have debated the ways in which media bring issues to the fore. Agenda-setting theory largely has been applied to political campaigns and questions; see *Journalism Quarterly* articles including Wenmouth Williams, Jr. and David C. Larsen, "Agenda-Setting in an Off-Election Year," (54:748); Lynda Lee Kaid, Kathy Hale and Jo Ann Williams, "Media Agenda-Setting of a Specific Political Event," (54:585); Charles H. Tardy, Billy J. Gaughan, Michael R. Hemphill and Nan Crockett, "Media Agenda and Political Participation," (58:625); Stephen M. Gadziala and Lee B. Becker, "A New Look at Agenda-Setting in the 1976 Election Debates," (60:126); Wenmouth Williams, Jr., Mitchell Shapiro and Craig Cutbirth, "The Impact of Campaign Agendas on Perceptions of Issues in 1980 Campaigns," (60:230); Gerald C. Stone and Maxwell E. McCombs, "Tracing the Time Lag in Agenda-Setting," (61:55); D. Charles Whitney and Lee B. Becker, "'Keeping the Gates' for Gatekeepers: The Effects of Wire News," (59:60). Gaye Tuchman, in *Making News* (New York: The Free Press, 1978), applies agenda-setting theory to the development of the women's movement from the mid 1960s to the mid-1970s, see particularly pp. 146-152.

4. See James C. Mohr, *Abortion in America* (New York: Oxford University Press, 1978).

5. January 12, 1863, p. 5.

6. January 21, 1863, p. 3. Also see Cyril C. Means, Jr., "The Law of New York Concerning Abortion and the Status of the Foetus, 1664-1968: A Case of Cessation of Constitutionality," *New York Law Forum*, XIV, No. 3 (Fall 1968), pp. 457-459.

7. See, for instance, typical abortion articles from the New York *Times* in 1940: March 21, p. 12; March 22, p. 42; November 16, p. 38; November 20, p. 11.

8. January 24, 1961, p. 18.

9. September 13, 1962, p. 47.

10. August 23, 1962, p. 4.

11. *Time*, June 2, 1958, p. 70; *Coronet*, June, 1958.
12. June 17, 1960, p. 38; October 12, 1960, p. 31.
13. April 9, 1962, p. 58; April 20, 1962, p. 52; April 26, 1962, p. 67; April 27, 1962, p. 71; April 28, 1962, p. 51; April 30, 1962, p. 55; May 6, 1962, p. 11.
14. Washington *Post*, August 3, 1962, p. A4.
15. *Newsweek*, August 13, 1962, p. 52.
16. Arizona *Republic*, July 16, 1962, p. 1.
17. *Ibid.*, July 23, 1962, p. 1.
18. Los Angeles *Times*, August 4, 1962, p. 15.
19. *Op. cit.*, July 24, 1962, p. 1.
20. Washington *Post*, August 1, 1962, p. A6; Chicago *Tribune*, August 1, 1962, p. 3.
21. Washington *Post*, August 5, 1962, p. A3.
22. New York *Times*, August 13, 1962, p. 62; Arizona *Republic*, August 3, 1962, p. 1; Washington *Post*, August 3, 1962, p. A4.
23. *Op. cit.*, August 5, 1962, p. A3.
24. New York *Times*, August 13, 1962, p. 16; Washington *Post*, August 3, 1962, p. A4; *Journal-American*, August 2, 1962 (newspaper clipping in the *Journal-American* archives, Humanities Research Center, The University of Texas at Austin).
25. Chicago *Tribune*, July 27, 1962, p. 4.
26. Los Angeles *Times*, August 4, 1962, p. 1.
27. July 26, 1962, newspaper clipping in *Journal-American* archives.
28. August 4, 1962, p. 1.
29. July 26, 1962, p. 16.
30. Chicago *Tribune*, August 4, 1962, p. 5, and August 5, 1962, p. 1.
31. August 18, 1962, p. 30.
32. *The Gallup Poll, Public Opinion 1935-1971*, (New York: Random House, 1972) p. 1984.
33. "Politics and the English Language," *The Orwell Reader*, (New York: Harcourt, Brace and World, Inc., 1956) p. 363.
34. August 1, 1962, p. 1.
35. July 27, 1962, p. 2.
36. July 31, 1962, p. 1.
37. Los Angeles *Times*, August 5, 1962, p. F2.
38. Paul Coates, *ibid.*, August 4, 1962, p. 1.
39. August 18, 1962, clipping from *Journal-American* archives.
40. August 1, 1962, p. 19.
41. July 26, 1962, p. 25.
42. July 27, 1962, p. 12.
43. August 5, 1962, p. 1; August 19, 1962, clipping from *Journal-American* archives.
44. July 31, 1962, p. 1.
45. July 25, 1962, part 3, p. 1.
46. Chicago *Tribune*, July 27, 1962, p. 4.
47. July 27, 1962, p. 4.
48. July 31, 1962, p. 24.
49. *Ibid.*
50. New York *Post*, August 20, 1962, p. 23.
51. New York *Times*, July 25, 1962, p. 22; July 27, 1962, p. 12; August 5, 1962, p. 12; Arizona *Republic*, July 27, 1962, p. 4.
52. August 18, 1962, clipping from *Journal-American* archives.
53. August 19, 1962, p. 12.
54. While doctors cited fears of possible prosecution, it should be emphasized once again that these were red herrings: a prosecutor and his psychiatric experts would not be able to challenge successfully the diagnosis of mother's life in danger through mental strain because (1) prosecution psychiatrists would be unable to interview Sherri Finkbine (or anyone else in such a situation) until charges were brought; (2) charges could not be brought until the abortion occurred; (3) by which time the mental strain could logically be gone, along with the life which was said to bring on such strain. In the Finkbine situation, both the state attorney and the county attorney said in open court that if the facts of Mrs. Finkbine's plight were

as presented (and there was no way to disprove them), Arizona law would be no bar to the abortion. It may have been that the court of greatest concern to hospital administrators and doctors was the court of public opinion. Since the readiness of medical panels to allow abortions was not common knowledge at that time, doctors may not have wanted a public spotlight on procedures of decision-making in such cases.

55. Chicago *Tribune*, July 31, 1962, p. 1.
56. *Ibid.*, July 28, 1962, p. 2.
57. July 31, 1962, p. A3.
58. July 31, 1962, p. 1.
59. August 1, 1962, p. 19.
60. Los Angeles *Times*, August 1, 1962, p. 1.; Chicago *Tribune*, August 1, 1962, p. 3.
61. New York *Times*, August 5, 1962, p. 64.
62. August 21, 1962, p. 1.
63. July 25, 1962, clipping from *Journal-American* archives.
64. July 31, 1962, p. A3.
65. August 5, 1962, p. 64.
66. August 4, 1962, p. 15.
67. July 27, 1962, p. 4.
68. August 4, 1962, p. 15.
69. August 17, 1962, clipping from *Journal-American* archives.
70. Los Angeles *Times*, August 4, 1962, p. 15.
71. David Altheide, *Creating Reality*, (Beverly Hills: Sage Publications, 1976), p. 73.
72. David Paletz, *Media Power and Politics*, (New York: Free Press, 1981), p. 124.

R_x: Death by Dehydration

Anne Bannon, M.D.

MARY HIER SPENT 57 years in a New York mental institution. For reasons still not quite clear she was moved to a nursing home near Boston. She was 92 years old at the time of her forced move from familiar surroundings and familiar faces to what, for her, must have been a totally foreign environment.

Mary Hier was ambulatory when she was moved from New York State to Massachusetts. Even though she could not swallow food, she spent some meal times at table talking to other patients. She was fed through a tube, which had been placed directly through her abdomen into her stomach, a gastrostomy. The tube had fallen out on occasion and may have been pulled out once or twice. No one seems to be quite certain just how it came out in April of 1984, but one thing is certain: what should have been a relatively simple happening became a *cause célèbre*.[1]

Was it an accident, or was it a deliberately staged event? Or was it, perhaps, an eagerly-awaited fortuitous event? Fortuitous in the sense that it was bound to happen sooner or later, and if it happened in Massachusetts rather than New York, Mary Hier would be fair game for the "pro-death" practitioners.

Beware the Ides of March

Listen to the Rev. John Paris, S.J., speaking to a meeting (in New Orleans last March 15) jointly sponsored by the American Medical Association's Council on Ethical and Judicial Affairs and the Hastings Center: ". . . if you haven't made your views clear, and you're in a hospital in the state of New York, the hospital and its physicians will tell you even though your family doesn't want continued treatment, you're going to have it forever. . . . fortunately, in Massachusetts . . . we have no such constrictive legislation. . . ."[2]

Father Paris, in company with several other ethicians and the President's Commission, holds that food and water are *medical* treatments.

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In the Jesuit priest's own words, "I think that our posture should be very clear and very open—that the provision of nutrition and fluids are medical treatments, that they are to be evaluated and assessed like all other medical treatments on the basis of their efficacy, on the basis of the benefit that accrues to the patient, and that the patient ought to be able to make the decision that the burden of this treatment outweighs any potential benefit to him, and he or she should be free not to have it."[3] Note that Father Paris does not qualify his statement by the addition of the usual "when given artificially."

Why are so many so-called ethicians and even the supposed elite of the AMA so eager to have the courts proclaim food and water to be medical treatments instead of what every one knows they really are—basic human needs? A basic human need is a *sine qua non* for human existence. One can exist without medical treatment; one cannot exist for long without food and water. Another way of stating the obvious is that one might require medical treatment some time or other but that one requires food and water for all the days of his life. That sounds so obvious that it would seem not to require proof. But in its very simplicity lies its vulnerability. And therein also lies the vulnerablity of the intended victims of those ethicians, physicians, lawyers, judges, Presidents' commissioners *et al.* who wish to hold and dispense the power of life and death over and upon those victims. That is the goal—the power and the ability to get rid of "useless eaters" legally.

Dr. Mark Siegler, of the University of Chicago/Pritzker School of Medicine, in what is perhaps one of the most perceptive papers of the current debate, delineated the background and the birth of this truly demonic idea:

> The death with dignity movement has advanced to a new frontier: the termination or withdrawal of fluids and nutritional support.
>
> As recently as five years ago, or perhaps three, the idea that fluids and nutriment might be withdrawn, with moral and perhaps legal impunity, from dying patients, was a notion that would have been repudiated, if not condemned, by most health professionals. . . . This new stream of emerging opinion is typically couched in the language of caution and compassion. But the underlying analysis, once laid bare, suggests what is truly at stake: That for an increasing number of patients, the benefits of continued life are perceived as insufficient to justify the burden and cost of care; that death is the desired outcome, and—critically—that the role of the physician is to participate in bringing this about. This is an unexpected development and one that runs counter to the traditions of medical care.[4]

Traditionally, medical care has been divided into specific treatments and routine care. Specific treatments would include such things as antibiotics, medications in general, the use of specific tests and modalities, i.e., Cat scans, X-rays, respirators and other medical and surgical procedures. Specific treatments might also include the *type* of foods and fluids given to a specific patient. The manner in which the foods and fluids should be given (that is, by mouth, by nasogastric tube, by intravenous infusion, by intravenous "push," subcutaneously, by gastrostomy or by total parenteral alimentation) would be a medical decision about which method to utilize. The physician may even write NPO on the patient's chart: *Non per os*—nothing by mouth. This is a routine order for patients undergoing a general anesthetic. It may also be given when a patient is going to have some special tests that require fasting blood specimens. During these periods the patient may or may not be placed on IV fluids depending on the length of the fast required, the type of test to be done, or the state of hydration of the patient. These are all medical decisions though not all medical treatments. Where none of these special or specific needs exist the physician will usually write an order that the patient may receive a regular diet. That constitutes routine care, and no good nurse will let a physician get away without writing or countersigning such orders that insure the patient's basic human needs will be met.

Abortion Changed the Rules

Meeting the basic human needs of patients is a shared responsibility. The physician, the nurse, the dietician, and the administration are primarily responsible for providing for food, shelter and clothing—the classic basic needs. But the physician, because of his special relationship with the patient, has always been considered the ultimate protector of his patient just as the mother has always been considered the ultimate protector of her child.[5] That changed on January 22, 1973, when, by *fiat* of the Supreme Court, the mother became the ultimate threat to her child and, after 2,000 years, the physician, once more, could be hired to cure or to kill.[6]

Not content with making killers of physicians at one end of the spectrum, the neo-Nazis of the late 20th century also give aid and comfort to the pediatricians and pediatric surgeons who have already accepted selective infanticide as an enhancement of their dedication to the care

of children.[7] Now they stand at the new frontier—food and water.[8] Who are they, these movers and shakers? And how have they come so far in so short a time?

Secular humanists have been around for quite some time. Professor James Hitchcock of St. Louis University, in his book *What Is Secular Humanism?*, provides an insightful historical picture of the growth of this insidious philosophy and its influence on all of our institutions.[9] Its influence on American medicine should have been obvious from the changes in the ethical stands of the American Medical Association since the 1950s. But, as in the secularization of the churches, reported by Professor Hitchcock, the atheistic secularization of medical attitudes went largely unnoticed until January 22, 1973. With the advocacy of abortion virtually on demand by the American Medical Association, the presence and influence of secular humanists among the elite of that organization became indisputable.[10] Further evidence of the infiltration of secular humanists into the decision making areas of organized medicine, in general, has come from the articles which have been accepted for publication by well recognized medical journals, glorifying secular humanist attitudes toward life and death issues.[11] The intolerance of the secular humanists for opinions other than their own is amply demonstrated by the lack of space available to those of us who strongly oppose their pragmatic pagan opinions.

What has all this to do with Mary Hier? *In the Matter of Mary Hier* is only one of several "hard" cases brought to the judiciary over the past several years. The reason for bringing these cases into court is to allow secular humanist judges to hand down decisions declaring food and water to be medical treatments. And the purpose behind this technique is to legalize euthanasia. Why legalize the killing of innocent helpless human beings? And when have we heard that before? On January 22, 1973. Step number one on the road to total control of the human animal. For that is how human beings are seen by the secular humanist. Not someone just a little lower than the angels but something just a little higher than the ape. An animal among animals, to be measured by the same standards and to be treated by the same ethical approach—utilitarian standards and situation ethics. What is useful is good and an individual who is no longer useful is no longer good.

Therefore, under certain circumstances, certain human beings are expendable.

Mary Hier is the type of human who is expendable to the AMA, to the Reverend John Paris, S.J., to the President's Commission, to the entire secular humanist cabal who have tried to have her killed by denying her food and water. Oh, they gave her an IV, but not the gastrostomy she needed to get her enough calories to keep her alive. What was wrong with Mary Hier? She thought she was the Queen of England. She used to sign her name that way. Mary Hier, Queen of England.[12] Was she guilty of murder? No. She was only guilty of being old and alone and helpless in the United States of America in the 1980s. There was no one to speak for her. There was no one to care whether or not she was starved and/or dehydrated to death. She was a burden on society.

Then along came attorney Robert Ledoux and Dr. Joseph Stanton, and the medical mayhem came to a halt, at least for Mary Hier. In a conference at St. Louis University School of Medicine (January 11, 1986) entitled "Death Control and Death Selection, Food and Water—the New Frontier," Robert Ledoux underlined one of the reasons Mary Hier was marked for death:

> . . . If it weren't for Joe Stanton, Mary Hier would be dead now, and he came forward, and I said, "Joe, I have to have somebody." He went out and got the doctors and put the case back on. Interesting thing and something I didn't mention this morning. After the Appeals Court's decision came down and said that the implanting of the gastrostomy tube was a *highly intrusive and highly risky procedure* and I was trying to figure out how to save this lady's life, a little blurb appeared in the Boston *Globe*, and it said a lady 94 years old went through *a minor medical procedure* at Cape Cod Hospital to have a gastrostomy tube inserted, and what was her name? Rose Kennedy. So maybe for a 92 year old who is mentally ill and who people have nothing good to say for her, that is a highly intrusive procedure, but for Rose Kennedy, it was fine.[13]

The ordinary citizen, the poorer, the more rejected, and the less likely to be missed even by a family with a strong religious history, such a one is easily disposed of, with or without the consent of relatives. But the AMA is trying to make it even easier for the death-dealers.

How do the secular humanists exert their influence on the U.S. judicial system through the AMA? The most brazen example was the

"decision" announced at the AMA/Hastings Center New Orleans Conference. It was a set-up. There was really only one purpose behind the meeting, and that was to announce to the press a new AMA policy, ostensibly the result of open discussion and debate. There was no discussion of the proposed policy change, and there was certainly no debate. The seven-member AMA Judicial Council merely used the fiction of an open forum for the announcement of their *fait accompli.* A lawyer friend asked me what the actual numbers were when the policy change came to a vote. But there was no vote. In fact, there was no presentation of the changed wording to the entire conference, only to the press.

"Clarifying" the Revolution

How did the AMA Judicial Council get away with this travesty? It was easy. The Judicial Council members merely declared that they were "clarifying" AMA policy. They have a right to do that. But is that what they did? Clarification indicates that there has been a misunderstanding. The chairman of the Judicial Committee said that they had been working on the problem for two years. Nonsense. Does it take seven well-educated physicians two years to determine that the American Medical Association had always intended to include food and water under medical treatment and always intended that physicians could take food and water away from patients in order to kill them? I think not.

As an attendee at the AMA/Hastings meeting in New Orleans, I was present (front-row center) when Nancy Dickey, chairman of the Judicial Committee, announced the new formulation:

> I'd like to take just one minute before I open it up to questions and answers.
> The Council on Ethical and Judicial Affairs would like to share with you a recent clarification and expansion of the council's opinion 2.14.
> This addresses withholding and withdrawing of life support—life prolonging medical treatment.

The chairman then read the following statement on "Withholding or Withdrawing Life Prolonging Medical Treatment" in its entirety:

> The social commitment of the physician is to sustain life and relieve suffering. Where the performance of one duty conflicts with the other, the choice of the patient, or his family or legal representative if the patient is incompetent to act in his own behalf, should prevail. In the absence of the patient's choice or an authorized proxy, the physician must act in the best interest of the patient.

For humane reasons, with informed consent, a physician may do what is medically necessary to alleviate severe pain, or cease or omit treatment to permit a terminally ill patient whose death is imminent to die. However, he should not intentionally cause death. In deciding whether the administration of potentially life prolonging medical treatment is in the best interest of the patient who is incompetent to act in his own behalf, the physician should determine what the possibility is for extending life under humane and comfortable conditions and what are the prior expressed wishes of the patient and the attitudes of the family or those who have responsibility for the custody of the patient.

Even if death is not imminent but a patient's coma is beyond doubt irreversible and there are adequate safeguards to confirm the accuracy of the diagnosis and with the concurrence of those who have responsibility for the care of the patient, it is not unethical to discontinue all means of life prolonging medical treatment.

Life prolonging medical treatment includes medication and artificially or technologically supplied respiration, nutrition or hydration. In treating a terminally ill or irreversibly comatose patient, the physician should determine whether the benefits of treatment outweigh its burdens. At all times, the dignity of the patient should be maintained.[14]

In order to put this statement in proper perspective, here are two quotations from AMA official policy statements over the past thirteen years:

1973: The intentional termination of life of one human being by another—mercy killing—is contrary to that for which the medical profession stands and is contrary to the policy of the American Medical Association.

The cessation of the employment of extraordinary means to prolong the life of the body when there is irrefutable evidence that biological death is imminent is the decision of the patient and/or his immediate family.[15]

This statement was repeated without substantial change throughout the 1970s. The following statement allows that life support systems may be withdrawn from certain terminally ill patients:

1982: For humane reasons, with informed consent a physician may do what is medically necessary to alleviate severe pain, or cease or omit treatment to let a terminally ill patient die, but he should not intentionally cause death. In determining whether it is in the best interest of a terminally ill incompetent patient to administer potentially life prolonging medical treatment, the physician should consider what the possibility is for extending life under humane and comfortable conditions and what are the wishes and attitudes of the family or those who have responsibility for the custody of the patient. Where a terminally ill patient's coma is beyond doubt irreversible and there are adequate safeguards to confirm the accuracy of the diagnosis, all means of life support may be discontinued. If death does not occur when life support systems are discontinued, the comfort and dignity of the patient should be maintained.[16]

Since the statement envisions the possibility that the patient will sur-

vive without "life support systems," such systems cannot include artificially supplied nutrition and hydration; no one lives without eating or drinking.

There are only two differences between the 1982, 1983, and 1984 statements. The first difference is in the first paragraph of the 1982 statement: the simple deletion of the words, "The AMA says." The other change is in the second sentence, which is the same in 1982 and 1984. The phrasing of this sentence was slightly different in 1983. I make this point because of a letter from *Time* magazine in response to mine sent following *Time*'s article on the AMA Judicial Council opinion. *Time*'s reply stated that ". . . they [the AMA] feel the new statement represents a genuine change of opinion reached by substantially the same officials who formulated a different statement in 1984."[17] But the 1984 statement was simply a return to the 1982 phrasing and not a "different" statement. Whether the officials are the same or not is also questionable: there were only five members of the Judicial Council when the 1984 opinions were published; there are now seven members, and three of them new.[18]

Confirmation of the Judicial Council's power to "get away" with this *fiat* came from both the AMA General Counsel and from a past president, Dr. Joseph Boyle, who likened the AMA Judicial Council to the U.S. Supreme Court *in re* power to decide AMA policy on ethics.[19] Apparently the House of Delegates can disagree with the new policy but has no power to overturn it—they can only send it *back* to the Judicial Council for "further review" by the same people who passed the ruling in the first place! I find this hard to believe, but in any case the damage has already been done: both the California judge who ruled in the Bouvia case and the New Jersey judge who ruled in the Jobes case quoted the new AMA policy as support for their decisions.[20]

At the end of the March 15 sessions, I accused a Minnesota neurosurgeon, Dr. Ronald Cranford (plus others in the Judicial Council/ Hastings Center cabal) of deliberately taking "hard cases" into court to influence judges to rule that food and water should be considered "medical treatments" when they are given by tubes. His answer: "Yes, we are. And we're doing a good job of it too."[21]

Thanks to the AMA, Mary Hier may yet become just one more notch in some killer-doctor's scalpel. But then who is Mary Hier? Mary

Hier, Queen of England. Not a very important person. In fact, along with Elizabeth Bouvia of California, Nancy Ellen Jobes of New Jersey, and Paul Brophy of Massachusetts, Mary Hier is evidently not a person at all in the short-sighted eyes of the neo-Nazi mentalities who now dominate the American Medical Association.

NOTES

1. *In The Matter of the Guardianship of Mary Hier*, Massachusetts Probate and Family Court, Department No. 84P-0818-GI1.

2. Paris, John, S.J., talk on Withdrawal of Life Supports, March 15, 1986, Section C, conference on "A New Ethic for the New Medicine?", sponsored by the American Medical Association Council on Ethical and Judicial Affairs and the Hastings Center, held in New Orleans, March 14-16, 1986.

3. *Ibid.*

4. Siegler, Mark and Wiesbard, Alan, "Against the Emerging Stream," Archives of Internal Medicine, Vol. 145, January, 1985, p. 129.

5. Isaia 49:15: "Can a mother forget her infant, be without tenderness for the child of the womb?"

6. Bannon, Anne and O'Donnell, Ann, "Social Abortion and Medical Paternalism," *The Human Life Review*, Winter 1983, p. 106.

7. See Duff, R. S. and Campbell, A. G. M., "Moral and Ethical Dilemmas in the Special Care Nursery," *New England Journal of Medicine*, October 25, 1973, Vol. 289, No. 17.

8. "Death Control and Death Selection: Food and Water—the New Frontier," conference January 11, 1986, sponsored by the national organization Doctors for Life at the St. Louis University School of Medicine.

9. Hitchcock, James, *What is Secular Humanism?*, (Ann Arbor, MI: Servant Books, 1982).

10. See Brennan, William, *Medical Holocausts: Exterminative Medicine in Nazi Germany and Contemporary America*, (Boston: Nordland Publishing International Inc., 1980) pp. 331 and 332.

11. See Singer, Peter "Sanctity of Life or Quality of Life?", *Pediatrics*, July 1983, Vol. 72, No. 1, p. 128 ff; see also Wanzer, S. H., et al., "The Physician's Responsibility Toward Hopelessly Ill Patients," *New England Journal of Medicine*, April 12, 1984, Vol. 310, No. 15, pp. 955-959.

12. Ledoux, Robert, speaker, Supra 8.

13. *Ibid.*

14. Statement of the American Medical Association Council on Ethical and Judicial Affairs released in New Orleans, La., March 15, 1986.

15. *The AMA Quick-Reference Guide*, revised August, 1976, p. 46.

16. *AMA Reference Guide to Policy and Official Statements*, effective Fall 1983, pp. 80-81.

17. Coleman, J., *Time* editorial offices, letter dated April 21, 1986.

18. *Constitution and the Bylaws of the AMA*, December, 1985 revision, p. 31, sections 6.403 and 6.408.

19. Boyle, Joseph, Past-President of the American Medical Association, personal communication.

20. See *Elizabeth Bouvia, Petitioner* v. *Superior Court of the State of California for the County of Los Angeles*, in the Court of Appeal of the State of California, Second Appellate District, Division Two, #B019134, filed April 16, 1986, p. 16: "Significant also is the statement adopted on March 15, 1986, by the Council on Ethical and Judicial Affairs of the American Medical Association." Also see *In the Matter of Mary Ellen Jobes*, Superior Court of New Jersey, C-4971-85E, decided April 23, 1986, Opinion, p. 14: "Accord: Statement of the Council on Ethical and Judicial Affairs of the American Medical Association, dated March 15, 1986 . . ."

21. Cranford, Ronald, personal communication, March 15, 1986.

Where Do Ethics Come From?

Erik von Kuehnelt-Leddihn

TWO YEARS AGO, AN ECONOMICS SOCIETY in Tokyo invited me to give a lecture on economic trends in Europe. I mentioned Max Weber's "Protestant work ethic" only briefly, but when it came time for discussion, the first question was whether ethics *binding in conscience* are derived from religion, philosophy, or natural human inclinations. My Japanese listeners were worried because their basically Confucian (and certainly not Shintoist or Buddhist) ethics are deteriorating in the younger generations. This crisis is apparent in the high schools but is especially obvious in the universities. Young Japanese break traditional laws of behavior, arguing that they do not feel bound in the least by the notions of a Chinese sage who lived 2500 years ago. It must be kept in mind that Confucianism is not a religion (only uneducated East Asians would pray to Confucius), even though the system of behavior this wise old man worked out is quite similar to Western ethics; one could almost be a Christian and a Confucianist at the same time.

I pointed out to my listeners—the debate on this subject alone lasted an hour and a half—that a system of ethics truly binding in conscience can only be derived from a religion which dominates heart and mind: in other more specific words, from Divine Revelation. Mere philosophical constructions or a synthetic survey of manners, mores, and morals on a global scale will not suffice.

Now, is that really so?

Twice I have tried to address this question in a literary way: in a play and in a novel. The play (eventually transformed and published as a short story) was entitled *The Whiff from an Empty Bottle.* As the curtain rises, a nervous man walks back and forth in a parlor. On the back wall hang two large paintings—the portraits of his grandfather, a fundamentalist Presbyterian minister with a flowing white beard, holding a large black Bible in his hands, and his father, a liberal theologian who probably had his doubts about the Virgin Birth and Resurrection. The

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man on stage, Dr. Chester F. Smith, is a genuine agnostic, though Karl Rahner would have called him an "anonymous Christian," for he lives a thoroughly Christian life: he is the head of the Community Chest; he does volunteer work for the poor; he contributes to UNICEF; he is a kind husband; he never utters a lie and promotes every charitable cause. But he is deeply worried about his depraved son: Bob is a drug-dealer and a bigamist—an altogether vicious criminal who miraculously escapes arrest and conviction. Dr. Smith is waiting for him.

The son finally arrives, but in the ensuing conversation the father is unable to convince him of his wickedness. He has no persuasive arguments.

"Bob," he agonizes, "You married in Europe, deserted your wife and child in France. Without getting a divorce, you married here again. That's bigamy, and bigamy is polygamy. How could you do such a thing?"

"What's wrong with it?"

"It's . . . it's bad."

"But why?"

"Don't you *feel* it? It's . . . it's un-American!"

"Ha! Some Mormons are polygamists. Theirs is a very American religion."

"But the drug-dealing . . ."

"An interesting and rewarding business—it provides exciting sensations for my customers."

"It's a crime!"

"So what?"

"But, Bob, don't you realize? *Crime doesn't pay*!"

"Doesn't pay? My business pays very well. And the police? I've paid them all off! I live much better than you do. Dad, the trouble with you is that you are a good pagan. But if you are a pagan—as I quite believe you are—why do you parrot the whole register of Christian morality? If you're a pagan, then enjoy life to the last drop—be a real pagan! You're really the last one to teach me a lesson. Look at your grandfather, look! He could've told me off."

Dr. Smith does not even glance in the direction of his son's raised finger; he knows the portrait. His face reddens and his voice begins to

tremble. "Him? And what has he got in his hands? A fat book of Jewish fairy tales—that's all!"

"Sure! But with all his weird notions and superstitions he had a leg to stand on. A leg? No, two solid legs. He could condemn me, but *you* can't!"

"Bob, surely you realize that you're hurting other people with your vile trade; you're ruining lives!" Dr. Smith gasps.

"Hurt? What's wrong with that? We're *all* hurting each other. That's life. Dog eats dog. You're trying to hurt me now and I certainly am hurting you. When you married Mother you hurt Amelia who adored you and nearly went out of her mind. When I was born, I hurt Mother. But what you're doing now is ludicrous. You believe in the sacredness of polite doubt; you're a skeptic and an agnostic, and yet you repeat all that balderdash inherited from generations of parsons. Bear in mind—you're living on the whiff of an empty bottle. I merely had the courage and the honesty to throw that bottle away . . ."

Bob leaves. The father remains alone, his head bowed, his heart obviously broken. The curtain falls.

The original play is lost; I write from memory. But someone with greater acumen than I had dealt with the same subject on a higher level: Rosalind Murray in her excellent book, *The Good Pagan's Failure.*[3] At the time of its publication (1939), it was generally believed that the book was inspired by Miss Murray's father, the famous philologist Gilbert Murray, President of the League of Nations' Union in the mid-20s.[4] My play simply focused on two related phenomena: the inability of the Good Pagan to persuade a person (without reference to God's Revealed Word) that he must behave like a Christian (or a believing Jew); the erosion of our ethics, based on God's commands, through the increasing rejection of Scripture.

To demonstrate logically the existence of a Creator is relatively easy; to show that he is a merciful God is, however, quite difficult. But the belief in the immortality of our souls is largely, though not exclusively, an act of faith. (And without immortality, there is no divine justice—no God who can dry the tears of a lifetime.) But what about the Natural Law? Could we not imagine a good society beyond the realm of Revelation? Are not the laws proclaimed by the Old and New Testaments

verifiable, to a large extent, by reason? Is it not obvious that a society which tolerates lying, theft, murder, and slander is bound to perish?

This is certainly the case, but who obliges us to follow reason or the Golden Rule? Pascal tells us that the heart has reasons of which reason knows not;[5] but our non-rational emotions can be noble or ignoble. Reason, furthermore, is not infallible: it stumbles over misinformation; it has innate weaknesses due to Original Sin ("To err is human"), and—last but not least—it can be blinded by wishful thinking. The awareness of these handicaps has led to the relativism which colors so much of our already post-Christian civilization: in Emerson's formulation, "We may be at different hours of different opinions, but it can be said that we are at heart on the side of truth." But we are also confronted with the relativism of our own agnostic, sceptical age, expressed in the common attitude, "I think that I am right in my own ways and you are probably right in yours, so let's be sensible and make it fifty-fifty." I admit that such an attitude is a fine lubricant for a parliamentary democracy,[6] but let us reflect for a moment upon the horrors to which this way of thinking can lead.

Imagine a nice sceptic saying to a less-nice National Socialist, "I would not kill a single Jew. You want to slaughter six million; let's settle for three million." Unthinkable? Unfortunately not. We have only to remember the discussions in the various parliaments before they voted on legalized abortion. This had its advocates and its enemies. The advocates had the advantage: abortion is popular among the irreligious multitude, and popularity is the alpha and omega of parliamentary success. Those who reject abortion had only the politically weak force of their convictions resting on the Bible or, at least, on the vestiges of Christian civilization. The net result of this sometimes fierce, sometimes feeble, struggle was precisely such a "sensible" compromise. The parliaments decided—by their sacred majority rule—that the problem of the murder of the unborn is to be solved by a compromise: "You keep those older than three months, while we permit the massacre of those younger." So it happened in the larger part of "Christendom."

Our liberal democracies, as Willmoore Kendall has pointed out, have as a "latent premise" the dictum: "Right is what the majority wills—what the majority wills is right."[7] Yet democracy is not *liberal*

in the original sense of the term: this has been shown in antiquity[8] and—more relevantly—in the French Revolution, which started the Age of the "G": guillotines, gallows, gaols, genocide, gas chambers, and gulags. The Nazis ("National Socialists") rightly boasted that they were the successors to the French Revolution.[9] Max Horkeimer also argued that a straight line leads from the French Revolution to National Socialism[10], and when the Austrian Parliament in its majority decided to legalize abortion in the early stages of pregnancy, the retired Evangelical bishop of Austria, Dr. Oskar Sakrausky, declared emphatically that his country was now on the high road to another Auschwitz. What the Nazis were after was precisely what Karl Marx demanded: "The emancipation of society from the Jews"[11] as a "final solution"; they sought (just as abortionists do) to get rid of "unwanted life," which in the Third Reich included the mentally ill. As "useless mouths" (*bouches inutiles*, to use the language of the French Revolution), paranoiacs and schizophrenics also landed in the gas chambers. While these three revolutions—the democratic French, the Marxist Russian, and the National Socialist German—indeed tried to destroy "unwanted life" (the nobility, bourgeoisie, non-Aryans, and the mentally defective), it is the unique glory of "liberal" democracy (led by Sweden and England) to display the zealous impatience to murder a person right in the mother's womb.[12]

There is, however, as I have suggested, a second theoretical foundation for ethics: the "Natural Law." It has nothing to do with reason, calculation, or the notion that "social dictates" simply produce a cogent system of ethics. It implies something quite different: the assumption that the divine ethical precepts are engraved in the human heart. It assumes that the precepts of the two great theistic religions—Judaism and Christianity—come "naturally": that there is a general agreement in mankind that murder, theft, and adultery are wrong. I will concede that the divine moral precepts grow here and there on fertile ground outside these faiths, but I must deny by personal knowledge that the basic Biblical ethics, however rudimentary, flourish in religions everywhere. The more remote a religion is from our Biblical culture, the further it strays from our ethics, especially if it has no theistic foundations. Every horror becomes imaginable, and not only imaginable but *logical*. (Why on earth should a godless National Socialist with a

purely biological ideology *not* slaughter a Jew?; why should an atheistic-materialist Communist *not* kill a priest or a banker?) Rousseau was dead wrong. "Natural man" is not good; he is a fallen creature, although the various Christians faiths do not agree upon the extent to which he has fallen, or how corrupt his nature really is.

One might argue that a Natural Law is discoverable *in the light of Revelation and faith.* God's word is not in opposition to unspoilt nature. It is in keeping with it. Thus we can see that a law of nature could receive, *due* to Revelation, a sanction which binds us in conscience. But without Revelation? I daresay that I am here not within the Catholic theological tradition, but nearer to that of the Reformers. It could be argued that not only is man a fallen creature, but Nature (Creation) itself is fallen and aching for Salvation (see Romans 8: 19-23).

There is a rather popular fantasy, born in the 18th century but maturing in the 19th, according to which all the brown, black, and yellow races in the Third World lived in innocence, peace, and great happiness, free from "social diseases," alcoholism, and other vices until those wicked Christian missionaries came and taught them the concept of sin, forced them into ghastly clothes, and ruined their healthy sex lives. There are even some Christians who firmly maintain that all missionary activity should be abandoned; he who follows his conscience is saved anyhow. Christianization has merely destroyed the beautiful civilizations and native cultures which were the delight of anthropologists, ethnologists, art collectors, and museum directors.

As a world traveller and a student of cultural anthropology, I must contradict such views. In Mexico, it is fashionable to decry the conquest by the immensely courageous but brutal Hernán Cortés,[13] yet the Indian tribes who had been enslaved by the Aztecs greeted him as a liberator. The bloody sacrifices of the Aztecs on the Teocalli were unbelievably horrible, e.g., in a religious ceremony lasting a week, homosexual priests with stone knives cut out the hearts of some 12,000 men.[14] The old kingdom of Dahomey had its annual Evil Nights, the *Zenanyana,* when Amazons butchered prisoners in fiendish orgies. Only the French colonialists stopped these nightmares. (A description of the customary mutilations, especially of women, would fill pages.)

Flourishing, happy pagan civilizations? In how many of them did pain, despair, and delirious fear not stain the people's lives? The Pax Britannica, Gallica, or Iberica was a godsend to most of these "natives."[15]

In the southern parts of New Guinea every woman has to give birth to her first child in the jungle so as not to defile her hut. She then must take her offspring by the legs and bash out its brains on a stone. Thereupon, a herd of sows and piglets is driven towards the mangled body of the child, and the sow that eats it becomes a co-mother. The bereaved human mother must then adopt a piglet from that sow, and the way she nurses and brings it up establishes her status as a good mother in the community. Subsequent children she may keep.[16]

There are also "primitives" who commit horrors without religious motivations. The Auca Indians in East Ecuador, for instance, live untouched by modern times. If a young girl does not satisfy her "lover" sexually, he will ram a spear through her. And if a baby cries too much, the mother will make a hole in the ground, put the baby in it, and trample on her child. "Let's have another baby that cries less," will be her only comment.[17] Is this in keeping with the Natural Law? Might polygamy be in keeping with the Natural Law? Statistics tell us the greater part of mankind practiced it throughout history.

One might argue that these practices of primitive religions have no counterpart in advanced civilizations. But what then of the sacrifices of childen to the Caananite-Phoenician Moloch? What about the burning of widows in India? Certainly, if not for British prohibitions, it would still be practiced as it was before 1829, when the Viceroy, Lord Bentinck, declared that all those aiding or abetting *suttee* would be accused of homocide. In fact, today it continues illegally and even has the approval of "progressive" Hindus.

Several years ago, I talked with an Indian civil engineer who had studied in England, but who considered the British legislation in this matter to be "provincial" and "insular."

"Would you really approve of such a thing in your family?" I asked.

"In a simplified form, yes," he replied, "Because after all—what a miserable existence is that of a widow. Nobody respects her. My sister's husband, after a quarrel with his father, committed suicide by taking poison, slashing his wrists, and hanging himself. My sister, 48 hours later, did the same."

"Were there any children?"

"Of course," he said. "Four."

"For Heaven's sake, what happened to them?"

"What are families for? They were distributed among our relatives."

This practice has nothing to do with race; it is a matter of religion and culture. (Thus Goans are Indians, but they are Catholics not Hindus: all over India they are used as cashiers because they can be trusted with money.) In fact, the burning of widows seems to be an old "Aryan" custom. The 10th-century Arab traveller Ibn Fadlan visited what is today the Ukraine, whose big rivers were controlled by the Vikings. He described the funeral of one of their chieftains whose earthly remains were laid out on a river boat. The widow was raped by three of his best friends, then placed in the boat and choked to death by a naked old woman, the "Angel of Death." Finally, the boat was set ablaze.[18]

According to current popular opinion, one religion is as good as any other religion, provided "people sincerely believe in it." This is by no means the case. Take the *Hashashinim*, a murderous Shiite sect in medieval Syria that used hashish liberally and gave to many western languages (through the Crusaders) the roots of the word "assassin." Or take the religion of the Thuggies (the source of our word "thug") whose devotional exercises featured the waylaying of travellers: they were caught by the Thuggies, and strangled in front of an effigy of the goddess Kali. Fortunately, the British exterminated this East Indian sect. Americans had the unique opportunity to see the rise and gruesome end of Jim Jones' religious cult "People's Temple," which ended in a frightful ritual of suicide and murder in Guyana.[19]

Today, there is an enthusiasm for South Asian and Far Eastern religions. We have a boundless admiration for Gandhi and his principle of non-violence, but the political success of this curious man (who failed so bitterly in his family life) must be credited to the fact that he dealt with Britain. As colonial rulers of India, a Hitler or a Stalin would have simply killed him. Nor is non-violence, in fact, a hallmark of Hinduism—much less so of Islam. In 1947, when India was separated from Pakistan, and the Hindus fled east while Moslems fled west, the refugees met at the demarcation line, and for weeks they fell upon each

other like wild beasts—stabbing, choking, biting, raping, and mauling each other in their hatred. Nobody could stop this eruption of homocidal violence, which cost between 3 and 6 million lives. No government nor political party, motivated by a murderous ideology, caused it. The people, unhindered by religion, sunk spontaneously towards bestiality.[20]

The nadir of British colonial rule in India was the Amritsar massacre in early 1919, when the (Indian) troops of General Dyer fired at a savage mob and more than 400 people were killed. The Westminster Parliament immediately started an investigation; General Dyer was summoned before the Hunt Commission, and until 1984 "Amritsar" was a byword of shame for colonialism. But no longer. Two years ago, the troops of the World's Greatest Democracy gunned down more than a thousand Sikhs at Amritsar, then stormed and desecrated the famous Golden Temple—something the British would never have done.

Of a different nature was another bigger, more modern slaughter. It happened in a nation which (if I may be allowed to generalize) has philosophy at the top and superstition at the bottom, but very little of what we call religion: China. Its Cultural Revolution was instigated by Mao, his wife, and the army,[21] but it was carried out by leftist mobs, composed largely of students. This phenomenon has never been analyzed properly, but it resulted in countless casualties. Teachers and professors were murdered in vicious ways by their students, and this happened in the world's oldest civilization. We have only broad estimates, but one source speaks of eight million dead; others cite even larger numbers. I need not mention the cultural and artistic values destroyed. Education virtually ceased for some ten years.

Cruelty and callousness, however, were always endemic in the Far East. Under the Shogunate, Japanese peasants who could not meet the high taxes (60 to 80 percent) were beheaded. They were permitted to have only two children. The third child had to be suffocated after birth. This was called *mabiki*, thinning out. Today, in Red China, couples are only permitted one child each. For the second child they have to pay enormous taxes; the third child has to be aborted (under primitive sanitary conditions dangerous to the mother's health). If the only child happens to be a girl, she is often killed on the sly. (In old China, girls were frequently fed to the cat, but in Red China cats are fed to the people.)

But let us not dwell only on Asian horrors, which reached their apogee in our own age, when the innate cruelty of man, mixed with murderous political ideas imported from Europe, created new and startling terrors: civil war in Vietnam, where the United States intervened; and unspeakable savageries in Cambodia, engineered by men who had studied Marxism at the Sorbonne.

We must also face the diabolical atrocities committed by nations that shed (at least temporarily) their religious heritage: the nations of the Most Christian King (France), of the Holy Roman Emperor (Germany), and of the Third Rome (Holy Mother Russia). Their atrocities demonstrate what man becomes when he abandons religion—when he replaces faith with the French Revolution's godless egalitarianism, with the Russian Revolution's socio-economic mania, or with the German Revolution's Nazi biologism. This rejection of the Christian heritage was also exported to other continents. In the words of Douglas Jerrold, "Europe has become the apostle of her apostasy." We may recall how the Russian soldiers behaved when they swarmed over Europe during the Napoleonic Wars, and what horrors "literate" and irreligious men committed at the end of World War II. In World War I, the war on the Eastern Front between the three empires was still a Christian gentleman's affair, and the prisoners were treated accordingly.[22] But the war on the Western Front was already a different matter. And lest we harbor hope for the future, we have the words of the Soviet general Korotayev reported by Milovan Djilas in his *Revolucionarski rat*: "Once the entire world is communist, the wars will be of limitless horror."

We should not oversimplify our problem. Religion, above all our Western, monotheistic religions, consists of four elements: spirituality, ritual, ethics, and "philosophy." Ethics is, after all, only a part of it. It takes a long time for ethics to take root in a nation; only after generations does ethical behavior assume a natural, "automatic" character. Pagan religious forms, pagan superstitions, and pagan ethics often survive for centuries. And even theistic religions of the highest level can fall back into forms and tenets absolutely incompatible with Scripture. The Church, after all, is God's strength in human weakness. When the Catholic Church provided the Inquisition to certain governments (providing also priests as experts on heresy—many rulers saw heresies as

menacing both the state and society[23]), the resulting death sentences were carried out by the state, but the Church erred terribly and inexcusably.[24] (The same is true of the Calvinists in Geneva and the Puritans in Massachusetts.)

Then there is the not infrequent case of Christian religions that fail to place adequate stress on morals; they are satisfied with external forms of worship—some of quite marginal significance, and some mixed with pagan superstitions. A person can be rather (but not very) religious and yet fairly immoral. This has been the case among many Catholics in Latin America, where the Church has never sufficiently stressed the natural virtues: industry, chastity, respect for human life and property, family responsibility, sincerity, and sobriety. The result has been a low moral level in that part of the world. The number of illegitimate births is enormous (up to 85 percent). Mexico, Colombia, Nicaragua, and El Salvador are world leaders in murder and manslaughter. The statistics—all prior to the present civil wars—are positively frightening.[25] Today, a large sector of the Catholic Church in Latin America (especially in the racially mixed zones) has committed another mistake by endorsing a hodge-podge of silly sociology and monumental economic ignorance known as "liberation theology." Socio-political lamentations and revolutionary enthusiasm are no substitute for ethics. Two erroneous ecclesiastical policies succeeding each other offer a depressing picture of a Church lost in a labyrinth. One thing seems clear: without their ethical dimension, the theistic religions are a mere torso.

Nor can an ethical system survive in the long run without a spiritual context—without worship and the acceptance of God's Revealed Word. Mere intellectual ethical constructions do not "hold water"—they have no more power to bind one's conscience than the trial-and-error method. Immanuel Kant's "Categorical Imperative" is nothing but a snake biting its own tail; for what tells us to follow our conscience, if not a specific religious faith? It is significant that the lowest percentages of murder and manslaughter have been found in religious countries—in Spain and in the Republic of Ireland.[26] And not only has the abolition, suppression, and persecution of religion produced the worst atrocities in our Western world, but as religion wanes, common

crimes have multiplied everywhere by leaps and bounds. The picture drawn by Walker Percy in his brilliant half-serious and half-satirical novel *Love in the Ruins*, about the United States in the next century, when everybody lives with his machine gun, is not really exaggerated. One has to doubt that the rise of crime can be stemmed simply by more effective police measures, tougher courts, and stricter penal legislation, or even a generous application of the death penalty. (I fear that political terrorism might eventually result in the reintroduction of torture; in this "progressive" century, the return to rack and thumbscrew has become readily imaginable. The state, after all, must remain stronger than the forces hell-bent to destroy it.)

The rise in crime can be fought reasonably and humanely only with a genuine revival of religion. Draconic laws are not a real remedy. People, particularly those who are daring, logical, and sincerely atheistic, will often throw away the empty bottle and, in extreme cases, flirt with murder, suicide, and madness, (as I have described in my novel *Die Gottlosen*, which, unfortunately, was not published in America). The only logical and intellectually respectable alternative to the message of the Bible is a pagan, Satrean existentialist view: the world is an absurdity in which one is "damned to be free." Moralistic vacuities with a pale Judeo-Christian veneer will not stem the tide of evil.

Once we move away from the Divine Message, we are, as far as ethics is concerned, on the high seas of speculation. Legalists and legislators need a firm theoretical foundation, but some of them, having abandoned revelation and philosophy altogether (as did Marx, who claimed that "Communists preach no morality whatsoever")[27] have espoused the cause of legal positivism. Hans Kelsen, who profoundly influenced German-Austrian no less than American legal thought, was one of the most typical representatives of this school, which maintains that *all* established states have the right to tell us unequivocally what is right and what is wrong, and that, therefore, justice is nothing but an abstraction, a figment of the imagination.[28] *Every* state, according to Kelsen, is a state of law and order.[29] Challenged by William Roepke's observation that his moral argument would allow National Socialists to drag him, as a non-Aryan, to the gas chamber, he just shrugged his shoulders and giggled. There was no reply.

Oliver Wendell Holmes Jr., a central figure in American legal thought, was also a true positivist. "Sovereignty is a form of power," he wrote, "and the will of the sovereign is law because he has power to compel obedience and punish disobedience, and for no other reason."[30] Mark his words: "and for no other reason." Neither a divine revelation nor speculations about a rationally constructed natural law entered his mind. Of course, the sovereign state might respect local *mores*, traditions, and folklore. But we cannot be surprised that Holmes said "I think that the sacredness of human life is a purely municipal idea of no validity outside the jurisdiction."[31] The state, whether an absolute ruler or a parliamentary majority, simply decides that an unborn child is not a human being or that, being human, it can nevertheless be butchered. The matter is settled. No metaphysics allowed. And no religious nonsense.

We are living in a technological age and technology means the extension of the *physical* faculties of man, who now has greater capability than ever before to do good or evil. The guillotine, as a machine, was an early step in that direction, and the machine gun or the gas chamber are obviously more efficient annihilators than the bow and arrow. Slaughters can now be arranged quickly on a grand scale. "Progressive" tyrannies profit from such technological advances, as do unscrupulous individuals who, in our days, are provided incredible criminal opportunites. As Irving Babbit once said, "The final use of a science that has thus become a tool of the lust for power is, in Burke's phrase, to 'improve the mystery of murder.'"[32] Which means that our crises are—now more than ever—ethical, not scientific; they concern the ends, not the means.

But it is difficult to see how the ends can be clarified without the realization that religion, one of the basic differences between man and beast, must come into play. The alternative? A naked, purely arbitrary utilitarianism which is fundamentally blind, if not hostile, to the sacredness of life. Dr. Francis H. Crick, Nobel Prize Winner and the foremost fighter for legalized abortion in Britain, has already proposed that euthanasia be made obligatory for those who reach eighty years of age[33]—shades of the *bouches inutiles* of the Jacobins and the National Socialists. (What of Konrad Adenauer, who began his federal career at the age of 78, and Goethe, who wrote the second part of *Faust* at the

age of 82?) What a wonderful vision if Dr. Crick should prevail: an old man sitting in front of a birthday cake crowded with candles and, behind his chair, two sturdy men in white, one of them holding a syringe with the lethal dosage, while a combination ambulance/hearse waits outside.

Napoleon, no devout Christian, but an absolute realist and more than a merely military genius, knew well that the solution to ethical problems is religion. He said (in so many words):

> Until now, one has seen good education only in ecclesiastical establishments. I prefer to see the children of a village in the hands of a man who knows nothing but his catechism, to a quarter scholar who has no solid foundation for his morality and no solid ideas. Religion is a vaccine to imagination, it protects it against all dangerous and absurd beliefs. It is sufficient for a Christian Brother to say to a son of the people: "Life is only an intermediary state." If you take away the faith from the people you will get nothing but first rate brigands.[34]

This is perhaps a roundabout way to express a truism. Fyodor Dostoyevski put it more bluntly:

IF THERE IS NO GOD, EVERYTHING IS PERMITTED.

NOTES

1. The most sadistic atrocities in Japan during the post-war period were committed by the members of the *Sekigunha* (Red Army Faction), most of whom were unversity students.
2. Before the Communist take-over in China, the Jesuits planned to publish the first critical edition of the works of Confucius, whose ethics were dominant in China, Japan, Korea, and Viet Nam (but not further west).
3. Rosalind Murray, *The Good Pagan's Failure* (London-New York: Longmans, Green & Co., 1939).
4. Rosalind Murray was also the first wife of Arnold Toynbee, but the marriage broke up after her conversion. This woman—more than brilliant—was politically an outspoken conservative. Toynbee had dedicated his *A Study of History* to her.
5. Blaise Pascal, *Pensées*, ed. Léon Brunschvicg (Paris: Garnier-Flammarion, 1976), p. 127, No. 277 (423).
6. The indifference of democracy towards truth has been brilliantly criticized by Nicholas Berdyaev in his *The End of Our Time*, tr. D. Atwater (New York: Sheed & Ward, 1933), pp. 174-175.
7. Willmoore Kendall, "John Locke and the Doctrine of Majority Rule," *Illinois Studies in the Social Sciences*, XXVI, No. 2 (Urbana, IL, 1941), p. 132 et seq.
8. As a result of the execution of Socrates for his criticism of democracy, Plato as well as Aristotle was passionately antidemocratic.
9. Interview given by Joseph Goebbels to the *Petit Journal* (No. 25729) June 26, 1933. He called himself a democrat; so did Hitler, who spoke about his *deutsche Demokratie*.
10. Max Horkheimer's unpublished manuscript, "Die Juden und Europa" (written in Paris in July, 1939), p. 15, cited by Michael T. Greven, "Studien zur Faschismustheorie der Frankfurter Schule," *Paderborner Studien*, 1975 (6), p. 70.
11. The passage is often cited in America, but instead of the word "Jewry" or "Jews," the expression "Judaism" is used, which is simply wrong. The German word is *Judentum*. The origin of this mistranslation lies in the *Selected Essays*, tr. Stenning, published by International Publishers (a Communist outfit) in New York, 1926.
12. Sometimes they are hacked to pieces after being extricated from their mothers' wombs.
13. There seems not to be a single monument to Hernán Cortés in all of Mexico, but quite a number to Montezuma and Cuauhtemoc.
14. José Vasconcelos, *Breve Historia de México* (Mexico: D. F. Editorial Continental, 1965), p. 141 *et seq.*
15. The result of decolonization, under pressure from Washington and Moscow, was the birth of the Third

World. P. A. Talbot tells about a very old woman in Nigeria who came from a far away village to see a British administrator. Before her death, she said, she wanted to see a white man and to thank him for all the good things—above all, for peace—which they had brought to the country. See his *Tribes of the Niger Delta* (London: Sheldon Press, 1932), p. 329.

16. Andre Dupeyrat, *Savage Papua* (New York: Dutton, 1954), pp. 247-249.

17. Rosemary Kingsland, *A Saint Among Savages*, (London: Collins, 1980), pp. 42, 117.

18. Sigrid Undset, *Selvportretter og Landskapsbilleder* (Oslo: Aschehoug, 1938), pp. 195-196.

19. Curiously enough, I found the best account (so far) of the People's Temple tragedy in a Russian emigré periodical. Cf. Boris Paramonov, "Amerika v tjeni Dzhonstauna," *Kontinent*, 1979, No. 2, pp. 223-237. All money of that sect was left to the Soviet Union.

20. About the massacre, see Larry Collins and Dominique Lapierre, *Freedom at Midnight* (London: Pan Books, 1977), pp. 329 sq.

21. Adrien Hsia, *Die chinesische Kulturrevolution* (Neuwied: Luchterhand, 1971).

22. After the fall of the Austrian fortress of Przemyśl, the Russian officers invited the "captured" Austro-Hungarian officers to their banquet. The "fortunes of war" were not taken too seriously.

23. Above all, the Albigenses, who were Manicheans and fought all carnality, including marriage. Capable of destroying a civilization, they created a "national emergency."

24. An excellent account of the Inquisition can be found in the contribution of A. S. Thurberville, "Heresies and the Inquisition in the Middle Ages," *The Cambridge Mediaeval History* (Cambridge University Press, 1929) Vol. 6. The Inquisition existed only in a minority of countries whose governments asked for its services. It was nowhere "imposed" by the Church.

25. In 1967, there were 193 murders and manslaughters per million inhabitants in Mexico; 254 in Colombia; 293 in Nicaragua; 319 in El Salvador. Cf. *Statistisches Jahrbuch für die Bundesrepublik Deutschland 1968* (Stuttgart: Kohlhammer, 1968), p. 43. About the failure of the Church to teach the natural virtues in Latin America and the foolish attempts to turn left, cf. Frederick B. Pike, "The Modernized Church in Peru: Two Aspects," *The Review of Politics*, July 1964, pp. 307-318.

26. Spain saw a record low of 1 murder or manslaughter per million inhabitants, followed by the Republic of Ireland with only 3. These two countries are notoriously devout.

27. "Die Kommunisten predigen überhaupt keine Moral" is in *Marx-Engels Gesamtausgabe (MEGA)*, Vol. 5, p. 227.

28. Hans Kelsen, "Was ist sie Reine Staatslehre?" in *Festschrift fur Zaccaria Giacometti* (Zurich: Polygraphischer Verlag, 1953), pp. 143-162.

29. Leo Strauss, *Natural Right and History* (University of Chicago Press, 1953), p. 4, citing Kelsen's *Allgemeine Staatslehre* (Berlin, 1925), pp. 335-336 to the effect that it is meaningless to say that a tyranny is arbitrary and does not represent a state of law and order. Kelsen taught for years at the University of California and became an American citizen in 1945.

30. *The Harvard Law Review*, Vol. 44, March 1931, p. 788, reprinted from the *American Law Review*, Vol. 5 (1971), p. 534.

31. *The Pollock-Holmes Letters, 1874-1932* (Cambridge University Press, 1942) Vol. 2, p. 36.

32. Irving Babbit, *Rousseau and Romanticism* (Boston: Houghton Mifflin, 1919), p. 36.

33. K. D. Whitehead, *Respectable Killing* (New Rochelle: C.U.F., 1972), p. 108.

34. Maurice Baring, *Have You Anything to Declare?* (New York: Knopf, 1937), p. 197 quoting M. Marquiset.

APPENDIX A

[*The following article first appeared in the April, 1986 issue of* Fidelity *magazine. Mr. DeMarco teaches philosophy at St. Jerome's College, University of Waterloo, Ontario, and is a frequent contributor to U.S. and Canadian publications. (Reprinted with permission from* Fidelity, *206 Marquette Ave., South Bend, IN 46617.)*]

Diary of an Embattled 'Sexist'

Donald DeMarco

There's a scene in one of Woody Allen's movies in which he explains to his girlfriend that everything parents said was good for you turned out to be harmful—things like religion, milk, and college. To this list we could add using correct English.

That thought occurred to me recently after receiving a note from a female editor of a publication for Catholic teachers. I had been urged by a number of people, who were pleased with a presentation on bioethics I had made to them, to write it out and submit it to this editor for publication. I obliged, but my article was returned to me with an accompanying note advising me of a policy drafted by her editorial committee that forbids the use of "exclusive" language. In the interest of being helpful, my editor went through the article striking out the words "man," "mankind," and "he" wherever they appeared, and offered alternative words such as "person," "individual," "people," and "human." In her zeal, she struck out words that were part of quotations. Even the translated words of the Pope fell under her fire.

I wrote back to her, explaining that the arbitrary substitutes she suggested severely distorted the meaning of the ideas I was trying to convey. I pointed out, as politely as I could, that the word "man" in its generic sense is not exclusive but inclusive, since it includes both men and women (the word "female" is exclusive, although every word is both inclusive and exclusive in the sense that it includes what it is and excludes what it is not). Moreover, "person" is too broad since it can apply to God and angels, "individual" is broader still since it can refer to animals and inanimate things (although I took no offense in this unwarranted flattening out of *Homo sapiens*), "people" has a socio-cultural resonance, and the words "human" or "human being" are not identical with "man" inasmuch as they add to "man" a suggestion of moral perfection—one can be "humanized" but not "manized" (one is a man to begin with). I added that only the word "man" expresses the ontological quality of the human being and that no other word in the language has this specific meaning. My editor made no reply.

My next encounter with opponents of "exclusive" language was alive and in person. The scene shifted from Canada to the United States, but the problem was exactly the same. After delivering what I thought (and others thought as well, I later learned) was a tribute to the Catholic teachers in my audience and an affirmation of their important work, a nun stood up and voiced strong objections to my use of "exclusive" language. Her complaint was backed up by a salvo of applause from other sisters in her group.

Having been stung once, I thought I was well prepared to deal with her objection. I began by explaining that our language is limited (and even deficient) in that it has only one word to represent all humans in a generic sense and the male of the species. I pointed out that many other languages are not hampered by this limitation. For example, Polish, Greek, Latin, and German have different words for "man" as generic and "man" as male. In these languages the words *czlowiek, anthropos, homo,* and *der Mensch* all refer to "man" without any gender implication, while *mezczyna, aner, vir*, and *der Mann* refer specifically to the male of the species. As a result, I continued to explain, this poses certain problems for translators. To cite one instance, colleagues of mine who are translating philosophy from Polish into English find that only the word "man" does semantic justice to the word *czlowiek*. My colleagues say that if there were another word in English that could stand for *czlowiek* they would be happy to use it, but only the word "man" fills the bill. Having completed my brief philological disquisition, I advised the nuns that no offense should be taken where no offense is given, and that there are more important things for us to be concerned about.

My confidence was apparently unwarranted. The nun retorted, rather hotly, that *nothing* was more important. Once again, a salvo of supporting applause was heard.

After returning home, I endeavored to understand better the mind of my pedagogical colleagues in Rochester, New York, and to this end obtained a copy of their bishop's lengthy "Pastoral Letter on Women in the Church." ("The Fire in the Thornbush: A Pastoral Letter on Women in the Church," by the Most Rev. Matthew H. Clark, D.D., Bishop of Rochester, April 29, 1982. Copies are available from Diocesan Pastoral Center, 1150 Buffalo Rd., Rochester, NY 14624.) "In our communications at every level," the bishop writes, "we need to make efforts to use inclusive language and to avoid using expressions which are offensive to women." Nowhere in his letter, however, does the bishop offer a balancing suggestion, namely, that women ought not to take offense at linguistic expressions which are inherently non-offensive. His message seems to be that whatever offends some women is *ipso facto*

offensive and should be avoided. One could argue that this is a "sexist" position inasmuch as it assumes that women are right in their judgment of what is offensive simply because they are women. This is a dangerous impression to convey since it gives too wide a latitude to what women might find offensive. It encourages ideology rather than understanding, subjectivity more than objectivity. Furthermore, the bishop offers no guidelines concerning how women should react once they imagine themselves offended by "exclusive" language that is allegedly offensive. Are thus offended women entitled to be rude and uncharitable? Are they to believe that nothing is more important than combating "exclusive" language? Is it permissible to offend users of "exclusive" language (publicly or privately)? How grievous is this offense? Is it a mere solecism, a breach of etiquette, a confessable sin, a violation of human rights?

The bishop offers no light whatsoever on these important points. Nonetheless, in two other sections of his letter, he advises that husbands and wives "search their own attitudes with regard to sexism" and that "sexism" should be a program topic in conferences for priests. He does not clarify or define what he means by "sexism" but leaves the distinct impression that, whatever it is, it must be of considerable significance.

My experience with the nuns who adamantly insisted that nothing was more important than opposing "exclusive" language left me with the impression that their bishop's letter, given its lack of balance and clarity, had the unintended and unfortunate effect of fueling and reinforcing their unrighteous indignation. It was almost as if, while attempting to express a mandate for peace, the bishop inadvertently issued a license to shoot.

I put the bishop's pastoral aside and picked up an article by a very perceptive Protestant writer, Elizabeth Elliot, and read these words:

> Scripture makes it very plain that sexuality is a paradigm of a relationship which exists between Christ and His Church. And because it is a pattern of a heavenly mystery it should not be tampered with. . . . I believe the feminist movement is a form of rebellion against God, because God is the one who arranged distinct roles for men and women. . . .
>
> God is a masculine principle. C. S. Lewis says that God is so masculine, all creation is feminine by comparison. Why else would the Church have thought of the creation as 'she'? And the Church as 'she'? And the soul as 'she'? Because we are the responders and receivers. . . .
>
> Pastoral leaders must recognize this distinction, they must be willing to have the guts to stand up for it against screaming women. There aren't very many men strong enough to stand up to screaming women. This is one of the reasons for our troubles in the Church.

My next reprimand for being "sexist" came through the mail. This time it

was from a stranger who resides in Toronto. She had read a book review of mine in which I had used the now apparently taboo three-letter generic word. She opened her letter by accusing me of lacking Christian awareness and open-mindedness, of being sexist and misogynistic, of being in immediate need of becoming more Christian, and of reacting to her letter in a defensive way (this latter criticism was a prediction on her part). The content of my book review seemed to have escaped her attention, since it was a critique of the contemporary North American male's abstractedness and his flight from the incarnate world and from woman. So self-assured was my antagonist of the rightness of her conduct, however, that she sent copies of her letter to my publisher, managing editor, and book review editor.

Now I don't think I'm lacking objectivity or being unduly touchy when I say that her letter was personally offensive—the very quality which she professes, in the name of Christianity, to oppose. The word "misogynist," of course, refers to a person who *hates* women. For one person to deliver so severe a moral indictment of another solely on the basis of his use of generic terms hardly exemplifies the fundamental Christian mandate to practice charity. It was an act roughly equivalent to accusing someone of racism and hatred of blacks because he used the word "watermelon."

In my response to her (she had requested one), I once again explained the peculiar deficiency of the English language and that the word 'man' used as a class or genus is inclusive since its meaning extends to both men and women. I said that women have no reason to take offense at this word any more than members of the masculine sex should take offense at words such as "manhandle," "manslaughter," and "madman." I also explained that when Aristotle said "All men by nature desire to know," neither he nor his translators were being "sexist." His word, *anthropos*, which includes men and women, is best translated by the generic noun "man."

The allusion to Aristotle was timely. The very next day my teen-aged daughter came to me with a high school assignment she was working on. She had been asked to write an essay on the statement: "All people by nature desire to know," and asked if I could give her a little help. I took a copy of Aristotle's basic works from my bookcase and showed her this famous line which opens Chapter 1 of his *Metaphysics*: "All men by nature desire to know." I showed her additional translations of the same sentence. Though the translations differed slightly, the one invariant was the word "man."

I pointed out that the Greek word Aristotle used was "anthropos," which is the genus to which all human males and females belong. This word is accurately translated as "man." "Anthropos" does not mean "people," a word

which, for the Greeks, had a definite political-cultural significance. Three English words derived from the Greek well illustrate the point: "misanthropy" is a hatred of all men and women taken together, "misogyny" (from *gyne*, woman) is a hatred of women, while "misandry" (from *aner-andros*, man) is a hatred of men (i.e., just the males).

Then I reached for my Greek-Latin edition of the New Testament and checked a few well-known references. In both Matthew 4 and Luke 4 we find the phrase: "Man shall not live by bread alone." The Greek word is *anthropos* and the Latin is *homo* (both generic). By contrast, St. Paul states in his first letter to the Corinthians (11:08), where he refers to the Genesis account of Eve being fashioned from the side of Adam, that "Man was not created for woman, but woman for man." Here the reference is not to generic "man," but to the respective genders embodied by men and women. Accordingly, the Greek words (*aner* and *gyne*) and Latin words (*vir* and *mulier*) reflect this distinction.

My daughter felt that the ideological mistranslation of the opening sentence to Aristotle's *Metaphysics* was not only unjustifiable and annoying, but, quite frankly, rather silly. (Bless her innocence.)

The fuss over so-called "exclusive" language no doubt owes much of its energy to the severely strained relationship that currently exists between the sexes. Some women want to disassociate themselves from men to the point that they prefer to be called "womyn." An art critic who is married to a man surnamed Terman writes under the name Terwoman. Yet, according to a letter to the editor of the paper for which she writes, this appellation is not ideologically pure since its last syllable denotes the wrong sex. What next? Terwoperson? Or, to cleanse the name of its final masculine vestige—Terwoperchild!

Some feminists have succeeded in canceling mother-daughter and father-son functions. Barbershop quartets have been deemed intolerably sexist. Vanda Murrell, in her *Dictionary of Sexism*, attacks English as "Manglish." With perfect seriousness, for example, she advocates substituting "girlcott" for "boycott." A movement exists to replace "history" with "herstory." Novelist Anne Roiphe is in earnest when she insists that her daughter plays "cowpersons and Indians." Future chroniclers of history may be obliged to speak of "The Ottoperson Empire," "The Invasion of Norpersondy," and "The Isle of Person." Some Californians are insisting on the use of "waitperson," in spite of the fact that the distinction between "waiter" and "waitress" is perfectly adequate. I have heard or seen references to "Doberperson Pinschers," "Person-eating Sharks," and "Personhole Covers."

Less militant revolutionaries of the vernacular seek a compromise in the form of "he/she's," "his/her's" and even "hes/shes." I've seen in print the phrase: "All hes/shes are created equal."

The trouble with these odd hybrid concoctions is that they jump out at you from the page and are as distracting as a cloud of gnats, demanding you pay attention to the fact that the writer is not using sexist or exclusive language. These linguistic aberrations, when spoken, are delivered in the form of "he-slash-she." One woman writer, after her ears and sensibilities were assaulted one evening by a long sequence of such "slashes," likened the experience to "a replay of the Manson killings."

The hard-line feminists allow no concessions to embattled "sexist" writers. Unlike their stand on abortion, they do not recognize an author's right to control his own corpus, his right to choose, or his right to representational freedom; nor do they hold that the matter of using generic nouns and pronouns is a private one that is best left to the writer and his grammarian.

The business of "exclusive" language is apparently too serious to be left to the discretion of private parties. On this issue radical feminists assume a "take-no-prisoners" posture. Yet I am convinced that this grotesquely overblown concern about "exclusive" language in no way reflects their deeper spirit, which is incomparably more personal and profound. It is merely a convenient opportunity for expressing rage in a style more suited to provide them with enjoyment than others with understanding. At any rate, Pulitzer Prize-winning authoress Phyllis McGinley seems to think so, and the very least I can do for the fairer sex is to close this article by giving them the last word:

Snugly upon the equal heights
Enthroned at last where she belongs,
She takes no pleasure in her Rights
Who so enjoyed her Wrongs.

APPENDIX B

[The following is a transcribed excerpt from a speech given by U.S. Secretary of Education William J. Bennett to the Education Writers Association in Baltimore on April 11, 1986.]

"We give up."

William J. Bennett

Another example: teenage, out of wedlock pregnancy. We have now seen in places around the country what I regard as a classic bureaucratic response to this problem: setting up birth control clinics in schools. Now this is obviously a local decision, but I would say this to any locality considering it: you had better be sure—really sure—that you have consulted fully and thoroughly with parents and the community. Or you may find that you have created a full enrollment policy for private schools.

And let me say more, if I may. Of course this is a local decision and not a decision for the Secretary of Education. It is a judgment not about birth control in general but about birth control in the schools. First of all, in my view, this is not what school is for. School should be predominantly and overwhelmingly about learning—about math and English and history and science. But even as an additional function of the school, it is my view that this response to teenage pregnancy—what I've described and talked about—is the wrong kind of response to the problem. It offers a bureaucratic solution—a highly questionable, if not offensive one—in place of the exercise of individual responsibility, not just by the children but by the adults around them. Further, it tends to legitimate the very behavior whose natural consequences it intends to discourage. And further yet, it encourages those children who do not have sexual intimacy on their minds to have it on their minds, to be mindful of it. Or it suggests to these young people that they're somehow behind the times. It thrusts upon those young people with scruples about sexual intimacy a new publicly legitimated possibility. And it does this in school. The child sees those in authority over him or over her acknowledging as commonplace what ought not to be commonplace and what parents do not wish, with good reason, to be commonplace. If individual parents wish, there are many places to which they can take their children for professional help and guidance. But the wholesale use of the school is not the way to do it.

Birth control clinics in school may prevent some births. That I wouldn't deny. The question is: what lessons do they teach, what attitudes do they encourage, what behaviors do they foster? I believe there are certain kinds of

surrender that adults may not declare in the presence of the young. One such surrender is the abdication of moral authority. Schools are the last place this should happen. To do what is being done in some schools, I think, is to throw up one's hands and say "We give up. We give up. We give up on teaching right and wrong to you, there is nothing we can do. Here, take these things and limit the damage done by your actions." If we revoke responsibility, if we fail to treat young people as moral agents, as people responsible for moral actions, we fail to do the job of nurturing our youth.

APPENDIX C

[*The following column appeared in the New York* Daily News, *April 10, 1986; it is reprinted here with permission (©1986 by New York News, Inc.).*]

Medicaid's for medical care—not teen abortions

Bill Reel

Unborn babies are helping to finance their own demise under oh-so-liberal abortion policy in New York State.

"Any teenager who is pregnant can get Medicaid coverage for an abortion regardless of her parents' income and without parental notification. The teenager simply has to tell the Medicaid/finance worker at the clinic that she is applying 'on behalf of the unborn.' After the abortion the teenager must cancel the Medicaid coverage."

That revelation comes in a letter written by Alice Radosh, Coordinator of Adolescent Pregnancy and Parenting Services, Office of the Mayor, City of New York, and published recently in a newspaper for city high school students, New Youth Connections, which claims 250,000 teenaged readers.

Abortion on behalf of the unborn, covered by Medicaid, courtesy of taxpayers, works like this: A girl goes to an abortion clinic and says she wants an abortion. Can she pay for it? No. Can her parents pay for it? Yes, but she doesn't want them to know she's pregnant. No problem. This is New York, Mario Cuomo, governor, Ed Koch, mayor, where an unborn baby is eligible for Medicaid to get itself (himself? herself?) killed. Medicaid stops paying once the fetus expires.

Mayor Koch is okay in person, but his office can be offensive. A year ago, busybodies in the Office of the Mayor were harrassing Catholic childcare agencies like Covenant House for being too religious and not secular enough to suit them. Resentment against this effrontery was expressed here at the time; however, Mayor Koch should order his officious minions to resume baiting Catholics if it will divert those minions from promoting abortions for high school girls. What are we coming to when government tells teenagers how to expedite death for unborn babies? This is a worse scandal than politicians stealing money. Thieving politicians are old stuff; politicians plugging abortion are shockingly modern. Most of us remember when abortion was to be avoided, or at least to be ashamed of. Abortion was anathema for 5,000 years until enlightened types gave it their stamp of approval in the 1970s.

In a telephone interview, Alice Radosh defended the policy of Medicaid abortions "on behalf of the unborn," which she said has been in effect for

several months. She said the policy is needed to protect the confidentiality of a girl unwilling to disclose a pregnancy to parents. It would be unfair, she said, for the state to require a girl from a middle-class family to give birth while paying for a poor girl's abortion under Medicaid. She emphasized that a pregnant girl can receive pre-natal care "on behalf of the unborn" under Medicaid, so the policy does not promote abortion exclusively. She added that her letter to New Youth Connections was in response to articles in a previous issue that implied that a girl needed to have money to get an abortion.

Still, in pointing the way to the abortion clinic to 250,000 teenagers, the Coordinator of Adolescent Pregnancy and Parenting Services was way out of line. Abortion is an anti-pregnancy, anti-parenting service, after all.

Medicaid was enacted to help poor people pay for medical care, not to kill unborn babies. Abortion "on behalf of the unborn" is an Orwellian abomination that Governor Cuomo and Mayor Koch should work together to bury.

APPENDIX D

[*William Murchison is the associate editor of the Dallas* Morning News. *This column is reprinted with permission from Heritage Features Syndicate, June 11, 1986.*]

Where has the 'Baby Doe' ruling led us?

William Murchison

Farewell to the "Baby Doe" rules. The Reagan administration's attempt to safeguard the lives of severely handicapped infants has been rejected by the U.S. Supreme Court, on a plurality vote.

It was Justices John P. Stevens, Lewis F. Powell, Harry A. Blackmun and Thurgood Marshall reaching out to strike down the regulations. Chief Justice Warren E. Burger joined the result but declined to sign the opinion or, for that matter, to issue one of his own. Justices Byron R. White, Sandra Day O'Connor, and William J. Brennan dissented. Justice William H. Rehnquist took no part in the case.

No hard and fast law was laid down. The moral issue—whether it is right to starve handicapped babies to death, or permit them to perish for want of treatment—was left untouched. The court decided on narrow, technical grounds.

Two things are plain. One is that the medical community is delighted; it had fought tooth-and-nail against what it termed unwarranted government intervention in medical decision-making.

The other thing that seems plain is that undetermined numbers of babies are going to starve to death, or simply die of whatever affliction they are born with, the better to suit the convenience of parents, doctors, or both.

The rules were promulgated in response to incidents in which handicapped newborns, on the decision of doctors and parents, were denied medical treatment or even food and water.

One such case in Bloomington, Ind., caused a national scandal. A baby boy had been born with Down's syndrome. His parents requested that no surgery be performed to correct a defective digestive tract. The doctors said, sure, fine, whatever you want. Food and life-saving treatment were withheld deliberately from the infant, who at last obliged his parents by going someplace where he was sure to be less trouble.

President Reagan was aghast. The Department of Health and Human Services, on his orders, moved to remedy the situation. The so-called "Baby Doe" regulations were the upshot.

The regulations called for expedited examination of medical records and for

the posting of notices urging staff members to report the denial of nourishment and treatment to particular babies.

The court's decision disallows these particular rules, though not necessarily other, looser measures the administration might devise.

Here is the irony of it all. The suit against the "Doe" regulations arose when the parents of Baby Jane Doe, born Oct. 11, 1983, with spina bifida—an open spine—excess fluid on the brain, and an abnormally small head, denied the administration's right to counter their decision not to approve surgery for her. While the lawyers wrangled, Baby Jane's spine closed naturally. An operation drained excess fluid from her brain.

Christened Keri-Lynn, she lives today in Mount Sinai, Long Island, paralyzed from the waist down but beloved of her parents. "Everyone wants to hold Keri," her mother says. "She has become so special to all of us."

Lucky for Keri-Lynn she was born in 1983 instead of the latter half of 1986. The medical establishment loves her not—or at any rate her type; the U.S. Supreme Court has no use for any claims she might make to the civil rights accorded the general run of American citizens.

The Reagan administration will come—must come—at this question again. If it takes specific congressional legislation to do what the administration wants, let us have legislation.

The squalid moral climate of the late 20th century claims new victims each day. Five justices of the Supreme Court are unwilling to throw a constitutional shield before the least and most helpless of these victims. Someone else—society itself—must.

APPENDIX E

[*David Wagner is a member of the editorial staff of the Washington* Times. *This article is reprinted with permission of the Washington* Times, *June 12, 1986.*]

Why government intervened

David Wagner

One question that conservatives have often asked over the last 30 years or so has been, where does the authority of the federal government stop? And the related question: at what points will the courts cease to favor expansive interpretations of federal law?

Well, now we know: the federal government can do a lot, but it cannot do a ruddy thing to save a handicapped infant from parents who want him to die.

The Rehabilitation Act of 1973, which put handicapped persons' rights into federal law, may require us to respect their need to park their cars, but it does not require us to respect their right to live.

This was what the Supreme Court decided Monday in striking down federal "Baby Doe" regulations based on the 1973 act.

In the *Garcia* decision of February 1985, the court decided that the federal government had the right to tell the city of San Antonio how to pay its transit workers. But I guess there are limits. Telling people not to kill newborns is going just *too far.*

The cases in Bloomington and Long Island are the most famous. The Bloomington baby was starved to death because he had Down's syndrome and a blocked esophagus. Correcting the latter problem is a routine operation, but because of the former problem, nothing was done. Local pro-life lawyers began a race against time to persuade the state courts to let someone else claim responsibility for the baby; plenty of would-be foster parents had spoken up.

While the judges stroked their chins and meditated on the complexity of the question, the baby was wasting away. His screams, of course, used up what energy he had, hastening the starvation process. Finally the judges decided that the "treatment" chosen by the parents—that's what they called it, "treatment"—was justifiable, and the baby died.

In another such case, the father called the doctor to find out how far toward death his baby had progressed. The information was solicited and exchanged in the words of everyday conversation, such as "How's it going?" and "Just fine, just fine." I wonder whether it occurred to the doctor to say

"It's going like this!" and to stick the receiver into the room where the baby was wailing itself to death.

Such cases were the origin of the Reagan administration's efforts to protect newborns' rights by implementation of the Rehabilitation Act. These efforts were received as unconscionable federal intrusiveness by people who have no problem with federal hiring quotas, federal courts telling parents which public schools they can send their children to, and efforts by the American government to solve race problems in South Africa.

Complex problems, say the pundits. Agonizing situations. Well, dealing with a handicapped child has always been complex, and often agonizing, though eventually—I am told by parents who have done it—very rewarding. But the question of whether or not to allow such children to live has only been complex and agonizing since we have removed from our societal conscience the idea that the entitlement to life is based on our simple humanity, not on our beauty or our talent or our parents' income.

The problems do become genuinely complex when questions of "heroic measures" arise. But in most of the "Baby Doe" cases we are talking about operations that would be routine if the baby were not handicapped. Furthermore, mere feeding cannot rationally be looked upon as an unusual operation or a heroic measure—though for individual nurses who try to feed these babies, it can be heroic indeed.

But whether the operations required to save these lives are unusual or not, the grim evidence is that parents and doctors cannot be relied on to respect the lives of handicapped infants.

As a political issue, the "Baby Doe" question puts people in unusual positions. Conservatives favor parents' rights and limited government, and some conservatives are comfortable with the Supreme Court's decision for that reason. But they are making a big mistake. Parents' rights—the right to have, keep, educate, discipline, and love their own children—cannot legitimately be extended to a right to sentence them to death. There should be almost no limits on parents' rights; but there has to be that one.

Similarly with limited government: I can concede that a principled anarchist can defend the court's "Baby Doe" decision without inconsistency. Any other type of opponent of big government has to ask whether protecting life doesn't fall within the purview of legitimate governmental activity. It should be done by the lowest competent level of government, naturally; but that means the lowest level that doesn't drop the ball, as many states have.

Liberals are in an even more shameful position. One used to be able to think that American liberalism, whatever silliness it might lead to in the way

of specific policies, at least had an honorable regard for the powerless and the marginalized. But that was before American liberalism made abortion an irreducible part of its faith, as witness Democratic Party platforms since 1976, and the decision yesterday by the Supreme Court's liberal majority that no law that has the slightest retardant effect on abortion is to be permitted.

The concern for the powerless was always a deception (though one that takes in many well-intentioned people). Have any liberals other than the admirable Nat Hentoff protested the growing incidence of infanticide? Of course not: they're *for* it.

Our public debate has never been assailed with more blather about rights than at present, and at the same time our body politic has never cultivated so cavalier an attitude toward the most basic ones.

APPENDIX F

[George F. Will, a well-known author and critic, is a nationally syndicated newspaper columnist. This article first appeared in the Washington Post *June 15, 1986, and is reprinted with permission (© 1986, The Washington* Post*).]*

And Now The Right Not to Know

George F. Will

The Supreme Court, trying to concentrate and condense all the confusion in the universe into its rulings about abortion, has ruled (5-4) that a woman considering an abortion has a constitutional right not to be "intimidated" by being provided information about that choice.

A 1982 Pennsylvania statute required, among other things, that a woman must be told: that there may be "detrimental physical and psychological effects"; the medical risks of the particular abortion procedure and of carrying the child to term; the probable gestational age of the fetus; the availability of assistance for prenatal, childbirth and neonatal expenses; that the father must assist child support.

The statute also required that the woman be informed of state publications that describe the fetus and list agencies offering alternatives to abortion. The material must describe the "probable anatomic and physical characteristics of the unborn child at two-week gestational increments," and must contain the statement that many agencies exist to help the woman keep her child or place the child for adoption and "the Commonwealth of Pennsylvania strongly urges you to contact them before making a final decision about abortion."

Justice Blackmun (joined by Brennan, Marshall, Powell and Stevens) noted that the court had previously ruled unconstitutional the provision of information by the state, that the state hopes will "persuade" a woman to choose an alternative to abortion. By 1981, the court decided that a state had, well, an unconstitutional frame of mind if it hoped to persuade a woman not to choose an abortion. In 1981, the court also held that requiring the provision of information about the nature and alternatives to abortion "intrudes upon the discretion of the physician."

Hmmmmm. Presumably that violates the physician's constitutional right of privacy.

Now Pennsylvania is found to have violated the Constitution with "intrusive informational prescriptions." Ponder that phrase.

The woman's privacy right now involves a right not to have information

other than that produced at the physician's discretion. Blackmun says that providing facts about fetal characteristics may "confuse" the woman and heighten her anxiety. That frail vessel, woman, now has a constitutional "privacy" right to be protected against information that might confuse her.

Blackmun says that even information about alternatives to abortion "places the physician in an awkward position." Now there is a constitutional right of physicians not to feel awkward. Besides, says Blackmun, the information is not "always relevant." Now there is a constitutional ban on information that is not invariably "relevant."

In 1973, when the court discovered a "privacy" right that rendered the abortion laws of 50 states unconstitutional, it said the right to an abortion "is not unqualified" and must be weighed against important state interests, one of which is "protecting the health of the pregnant woman." In 1986, the court says a state is constitutionally forbidden to provide even accurate medical information about risks in abortion—the sort of information a state could provide concerning any other medical procedure.

In 1973, the court said states have a "compelling interest" in protecting fetal life after it reached "viability." In 1986, the court finds unconstitutional Pennsylvania's requirement that a second physician be present during an abortion performed after viability, to care for a child born alive. Is there a privacy right to a dead fetus? And what has become of the 1973 holding that a state may forbid all third trimester (the viability criterion) abortions except when the abortion is necessary to protect the health of the mother?

In 1973, the court, with its morally and medically meaningless distinctions between the trimesters of pregnancy, effectively legislated a universal right to unlimited abortion on demand. In 1986, the court is saying that it is unconstitutional for a state to influence the demand by providing information.

In 1973, the court said a state has a legitimate interest in "protecting the potentiality of human life." In 1986, the court says it is unconstitutional for the state to present information on alternatives to abortion.

The 1973 decision has been defended in terms of "freedom of choice." Now it is construed to proscribe, in the name of that freedom, provision of information by the state that might make childbirth seem an acceptable alternative to choice.

How did we come to the point where the Constitution is construed to forbid the provision of accurate information? Consumer-protection laws require all sorts of safety and other information to be given to consumers.

Manufacturers and advertisers of cigarettes are compelled to provide health-risk information. Citizens have a right to choose to see pornographic

movies, but governments have a right to try to influence that choice by confining such movies with zoning regulations.

Abortion, however, is now the premier American right, constitutionally protected against any government action that might influence the exercise of the right. The right to abortion, created by judicial arbitrariness, is, 13 years later, the subject of judicial fanaticism.

APPENDIX G

[*The following excerpts are taken from the dissenting opinions in the U.S. Supreme Court's* Thornburgh *decision. Chief Justice Burger's dissent is* in toto *from the original; we have omitted the reproduced legal citations, etc., from the opinions of Justices White and O'Connor, with whom Justice Rehnquist concurred.*]

SUPREME COURT OF THE UNITED STATES

No. 84-495

RICHARD THORNBURGH, ET AL., APPELLANTS *v.* AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[June 11, 1986]

CHIEF JUSTICE BURGER, dissenting.

I agree with much of JUSTICE WHITE's and JUSTICE O'CONNOR's dissents. In my concurrence in the companion case to *Roe* v. *Wade* in 1973, I noted that

> "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 carefully deliberated medical judgments relating to life and health. Plainly, the Court today rejects any claim that the Constitution requires abortions on demand." *Doe* v. *Bolton*, 410 U. S. 179, 208 (1973).

Later, in *Maher* v. *Roe*, 432 U. S. 464, 481 (1977), I stated my view that

> "[t]he Court's holdings in *Roe* . . . and *Doe* v. *Bolton* . . . simply require that a State not create an absolute barrier to a woman's decision to have an abortion."

I based my concurring statements in *Roe* and *Maher* on the principle expressed in the Court's opinion in *Roe* that the right to an abortion "is not unqualified and must be considered against important state interests in regulation." 410

U. S., at 154–155. In short, every member of the *Roe* Court rejected the idea of abortion on demand. The Court's opinion today, however, plainly undermines that important principle, and I regretfully conclude that some of the concerns of the dissenting Justices in *Roe*, as well as the concerns I expressed in my separate opinion, have now been realized.

The extent to which the Court has departed from the limitations expressed in *Roe* is readily apparent. In *Roe*, the Court emphasized

> "that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman . . . ." *Id.*, at 162.

Yet today the Court astonishingly goes so far as to say that the State may not even require that a woman contemplating an abortion be provided with accurate medical information concerning the risks inherent in the medical procedure which she is about to undergo and the availability of state-funded alternatives if she elects not to run those risks. Can anyone doubt that the State could impose a similar requirement with respect to other medical procedures? Can anyone doubt that doctors routinely give similar information concerning risks in countless procedures having far less impact on life and health, both physical and emotional than an abortion, and risk a malpractice lawsuit if they fail to do so?

Yet the Court concludes that the State cannot impose this simple information dispensing requirement in the abortion context where the decision is fraught with serious physical, psychological, and moral concerns of the highest order. Can it possibly be that the Court is saying that the Constitution *forbids* the communication of such critical information to a woman?* We have apparently already passed the point at

*The Court's astounding rationale for this holding is that such information might have the effect of "discouraging abortion," *ante*, at 13, as though abortion is something to be advocated and encouraged. This is at odds not only with *Roe* but with our subsequent abortion decisions as well. As I

which abortion is available merely on demand. If the statute at issue here is to be invalidated, the "demand" will not even have to be the result of an informed choice.

The Court in *Roe* further recognized that the State "has still *another* important and legitimate interest" which is "separate and distinct" from the interest in protecting maternal health, *i. e.* an interest in "protecting the potentiality of human life." *Ibid.* The point at which these interests become "compelling" under *Roe* is at viability of the fetus. *Id.*, at 163. Today, however, the Court abandons that standard and renders the solemnly stated concerns of the 1973 *Roe* opinion for the interests of the States mere shallow rhetoric. The statute at issue in this case requires that a second physician be present during an abortion performed after viability, so that the second physician can "take control of the child and . . . provide immediate medical care . . . taking all reasonable steps necessary, in his judgment, to preserve the child's life and health." 18 Pa. Cons. Stat. § 3210(c).

Essentially this provision simply states that a viable fetus is to be cared for, not destroyed. No governmental power exists to say that a viable fetus should not have every protection required to preserve its life. Undoubtedly the Pennsylvania Legislature added the second physician requirement on the mistaken assumption that this Court meant what it said in *Roe* concerning the "compelling interest" of the states in potential life after viability.

The Court's opinion today is but the most recent indication of the distance traveled since *Roe*. Perhaps the first important road marker was the Court's holding in *Planned Parent-*

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stated in my opinion for the Court in *H. L.* v. *Matheson*, 450 U. S. 398 (1981), upholding a Utah statute requiring that a doctor notify the parents of a minor seeking an abortion: "The Constitution does not compel a state to fine-tune its statutes so as to encourage or faciliate abortions. To the contrary, state action 'encouraging childbirth except in the most urgent circumstances' is 'rationally related to the legitimate governmental objective of protecting potential life.'" *Id.*, at 413 (quoting *Harris* v. *McRae*, 448 U. S. 297, 325 (1980)).

hood of Missouri v. *Danforth*, 428 U. S. 52 (1976), in which the Court held (over the dissent of JUSTICE WHITE joined by JUSTICE REHNQUIST and myself) that the State may not require that minors seeking an abortion first obtain parental consent. Parents, not judges or social workers, have the inherent right and responsibility to advise their children in matters of this sensitivity and consequence. Can one imagine a surgeon performing an amputation or even an appendectomy on a 14-year-old girl without the consent of a parent or guardian except in an emergency situation?

Yet today the Court goes beyond *Danforth* by remanding for further consideration of the provisions of Pennsylvania's statute requiring that a minor seeking an abortion without parental consent petition the appropriate court for authorization. Even if I were to agree that the Constitution requires that the States may not provide that a minor receive parental consent before undergoing an abortion, I would certainly hold that judicial approval may be required. This is in keeping with the longstanding common law principle that courts may function in *loco parentis* when parents are unavailable or neglectful, even though courts are not very satisfactory substitutes when the issue is whether a 12-, 14-, or 16-year-old unmarried girl should have an abortion. In my view, no remand is necessary on this point because the statutory provision in question is constitutional.

In discovering constitutional infirmities in state regulations of abortion that are in accord with our history and tradition, we may have lured judges into "roaming at large in the constitutional field." *Griswold* v. *Connecticut*, 381 U. S. 479, 502 (1965) (Harlan, J., concurring). The soundness of our holdings must be tested by the decisions that purport to follow them. If *Danforth* and today's holding really mean what they seem to say, I agree we should reexamine *Roe*.

APPENDIX H

From the Dissent of Justice White

Today the Court carries forward the "difficult and continuing venture in substantive due process" that began with the decision in *Roe* v. *Wade* (1973), and has led the Court further and further afield in the 13 years since that decision was handed down. I was in dissent in *Roe* v. *Wade* and am in dissent today. In Part I below, I state why I continue to believe that this venture has been fundamentally misguided since its inception. In Part II, I submit that even accepting *Roe* v. *Wade*, the concerns underlying that decision by no means command or justify the results reached today. Indeed, in my view, our precedents in this area, applied in a manner consistent with sound principles of constitutional adjudication, require reversal of the Court of Appeals on the ground that the provisions before us are facially constitutional.

The rule of *stare decisis* is essential if case-by-case judicial decisionmaking is to be reconciled with the principle of the rule of law, for when governing legal standards are open to revision in every case, deciding cases becomes a mere exercise of judicial will, with arbitrary and unpredictable results. But *stare decisis* is not the only constraint upon judicial decisionmaking. Cases—like this one—that involve our assumed power to set aside on grounds of unconstitutionality a State or federal statute representing the democratically expressed will of the people call other considerations into play. Because the Constitution itself is ordained and established by the people of the United States, constitutional adjudication by this Court does not, in theory at any rate, frustrate the authority of the people to govern themselves through institutions of their own devising and in accordance with principles of their own choosing. But decisions that find in the Constitution principles or values that cannot be fairly read into that document usurp the people's authority, for such decisions represent choices that the people have never made and that they cannot disavow through corrective legislation. For this reason, it is essential that this Court maintain the power to restore authority to its proper possessors by correcting constitutional decisions that, on reconsideration, are found to be mistaken.

The Court has therefore adhered to the rule that *stare decisis* is not rigidly applied in cases involving constitutional issues, and has not hesitated to overrule decisions, or even whole lines of cases, where experience, scholarship, and reflection demonstrated that their fundamental premises were not to be found in the Constitution. *Stare decisis* did not stand in the way of the Justi-

ces who, in the late 1930s, swept away constitutional doctrines that had placed unwarranted restrictions on the power of the State and Federal Governments to enact social and economic legislation. Nor did *stare decisis* deter a different set of Justices, some fifteen years later, from rejecting the theretofore prevailing view that the Fourteenth Amendment permitted the States to maintain the system of racial segregation [*Brown* v. *Board of Education*, 1954]. In both instances, history has been far kinder to those who departed from precedent than to those who would have blindly followed the rule of *stare decisis*. And only last Term, the author of today's majority opinion reminded us once again that "when it has become apparent that a prior decision has departed from a proper understanding" of the Constitution, that decision must be overruled.

In my view, the time has come to reognize that *Roe* v. *Wade*, no less than the cases overruled by the Court in the decisions I have just cited, "departs from a proper understanding" of the Constitution and to overrule it. I do not claim that the arguments in support of this proposition are new ones or that they were not considered by the Court in *Roe* or in the cases that succeeded it. [Cf. *Akron* v. *Akron Center for Reproductive Health*, 1983.] But if an argument that a constitutional decision is erroneous must be novel in order to justify overruling that precedent, the Court's decisions in *Lochner* v. *New York* (1905), and *Plessy* v. *Ferguson* (1896), would remain the law, for the doctrines announced in those decisions were nowhere more eloquently or incisively criticized than in the dissenting opinions of Justices Holmes (in *Lochner*) and Harlan (in both cases). That the flaws in an opinion were evident at the time it was handed down is hardly a reason for adhering to it.

Roe v. *Wade* posits that a woman has a fundamental right to terminate her pregnancy, and that this right may be restricted only in the service of two compelling state interests: the interest in maternal health (which becomes compelling only at the stage in pregnancy at which an abortion becomes more hazardous than carrying the pregnancy to term) and the interest in protecting the life of the fetus (which becomes compelling only at the point of viability). A reader of the Constitution might be surprised to find that it encompassed these detailed rules, for the text obviously contains no references to abortion, nor, indeed, to pregnancy or reproduction generally; and, of course, it is highly doubtful that the authors of any of the provisions of the Constitution believed that they were giving protection to abortion. As its prior cases clearly show, however, this Court does not subscribe to the simplistic view that constitutional interpretation can possibly be limited to the "plain meaning" of the Constitution's text or to the subjective intention of the Framers. The Constitu-

tion is not a deed setting forth the precise metes and bounds of its subject matter; rather, it is a document announcing fundamental principles in value-laden terms that leave ample scope for the exercise of normative judgment by those charged with interpreting and applying it. In particular, the Due Process Clause of the Fourteenth Amendment, which forbids the deprivation of "life, liberty, or property without due process of law," has been read by the majority of the Court to be broad enough to provide substantive protection against State infringement of a broad range of individual interests.

In most instances, the substantive protection afforded the liberty or property of an individual by the Fourteenth Amendment is extremely limited: State action impinging on individual interests need only be rational to survive scrutiny under the Due Process Clause, and the determination of rationality is to be made with a heavy dose of deference to the policy choices of the legislature. Only "fundamental" rights are entitled to the added protection provided by strict judicial scrutiny of legislation that impinges upon them. I can certainly agree with the proposition—which I deem indisputable—that a woman's ability to choose an abortion is a species of "liberty" that is subject to the general protections of the Due Process Clause. I cannot agree, however, that this liberty is so "fundamental" that restrictions upon it call into play anything more than the most minimal judicial scrutiny.

Fundamental liberties and interests are most clearly present when the Constitution provides specific textual recognition of their existence and importance. Thus, the Court is on relatively firm ground when it deems certain of the liberties set forth in the Bill of Rights to be fundamental and therefore finds them incorporated in the Fourteenth Amendment's guarantee that no State may deprive any person of liberty without due process of law. When the Court ventures further and defines as "fundamental" liberties that are nowhere mentioned in the Constitution (or that are present only in the so-called "penumbras" of specifically enumerated rights), it must, of necessity, act with more caution, lest it open itself to the accusation that, in the name of identifying constitutional principles to which the people have consented in framing their Constitution, the Court has done nothing more than impose its own controversial choices of value upon the people.

Attempts to articulate the constraints that must operate upon the Court when it employs the Due Process Clause to protect liberties not specifically enumerated in the text of the Constitution have produced varying definitions of "fundamental liberties." One approach has been to limit the class of fundamental liberties to those interests that are "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if [they]

were sacrificed." Another, broader approach is to define fundamental liberties as those that are "deeply rooted in this Nation's history and tradition." These distillations of the possible approaches to the identification of unenumerated fundamental rights are not and do not purport to be precise legal tests or "mechanical yardstick[s]." Their utility lies in their effort to identify some source of constitutional value that reflects not the philosophical predilections of individual judges, but basic choices made by the people themselves in constituting their system of government—*"the balance struck by this country"*—and they seek to achieve this end through locating fundamental rights either in the traditions and consensus of our society as a whole or in the logical implications of a system that recognizes both individual liberty and democratic order. Whether either of these approaches can, as Justice Harlan hoped, prevent "judges from roaming at large in the constitutional field" [*Griswold*, 1965] is debatable. What for me is not subject to debate, however, is that either of the basic definitions of fundamental liberties, taken seriously, indicates the illegitimacy of the Court's decision in *Roe* v. *Wade*.

The Court has justified the recognition of a woman's fundamental right to terminate her pregnancy by invoking decisions upholding claims of personal autonomy in connection with the conduct of family life, the rearing of children, marital privacy and the use of contraceptives, and the preservation of the individual's capacity to procreate. Even if each of these cases was correctly decided and could be properly grounded in rights that are "implicit in the concept of ordered liberty" or "deeply rooted in this Nation's history and tradition," the issues in the cases cited differ from those at stake where abortion is concerned. As the Court appropriately recognized in *Roe* v. *Wade*, "The pregnant woman cannot be isolated in her privacy;" the termination of a pregnancy typically involves the destruction of another entity: the fetus. However one answers the metaphysical or theological question whether the fetus is a "human being" or the legal question whether it is a "person" as that term is used in the Constitution, one must at least recognize, first, that the fetus is an entity that bears in its cells all the genetic information that characterizes a member of the species *homo sapiens* and distinguishes an individual member of that species from all others, and second, that there is no nonarbitrary line separating a fetus from a child or, indeed, an adult human being. Given that the continued existence and development—that is to say, the *life*—of such an entity are so directly at stake in the woman's decision whether or not to terminate her pregnancy, that decision must be recognized as *sui generis*, different in kind from the others that the Court has protected under the rubric of

personal or family privacy and autonomy. Accordingly, the decisions cited by the Court both in *Roe* and in its opinion today as precedent for the fundamental nature of the liberty to choose abortion do not, even if all are accepted as valid, dictate the Court's classification.

If the woman's liberty to choose an abortion is fundamental, then, it is not because any of our precedents (aside from *Roe* itself) commands or justifies that result; it can only be because protection for this unique choice is itself "implicit in the concept of ordered liberty" or, perhaps, "deeply rooted in this Nation's history and tradition." It seems clear to me that it is neither. The Court's opinion in *Roe* itself convincingly refutes the notion that the abortion liberty is deeply rooted in the history or tradition of our people, as does the continuing and deep division of the people themselves over the question of abortion. As for the notion that choice in the matter of abortion is implicit in the concept of ordered liberty, it seems apparent to me that a free, egalitarian, and democratic society does not presuppose any particular rule or set of rules with respect to abortion. And again, the fact that many men and women of good will and high commitment to constitutional government place themselves on both sides of the abortion controversy strengthens my own conviction that the values animating the Constitution do not compel recognition of the abortion liberty as fundamental. In so denominating that liberty, the Court engages not in constitutional interpretation, but in the unrestrained imposition of its own, extraconstitutional value preferences.

A second, equally basic error infects the Court's decision in *Roe* v. *Wade.* The detailed set of rules governing state restrictions on abortion that the Court first articulated in *Roe* and has since refined and elaborated presupposes not only that the woman's liberty to choose an abortion is fundamental, but also that the state's countervailing interest in protecting fetal life (or, as the Court would have it, "potential human life,") becomes "compelling" only at the point at which the fetus is viable. As Justice O'Connor pointed out three years ago in her dissent in *Akron,* the Court's choice of viability as the point at which the state's interest becomes compelling is entirely arbitrary.

The governmental interest at issue is in protecting those who will be citizens if their lives are not ended in the womb. The substantiality of this interest is in no way dependent on the probability that the fetus may be capable of surviving outside the womb at any given point in its development, as the possibility of fetal survival is contingent on the state of medical practice and technology, factors that are in essence morally and constitutionally irrelevant. The State's interest is in the fetus as an entity in itself, and the character of this entity does not change at the point of viability under conventional medical wisdom.

Accordingly, the State's interest, if compelling after viability, is equally compelling before viability.*

Both the characterization of the abortion liberty as fundamental and the denigration of the State's interest in preserving the lives of nonviable fetuses are essential to the detailed set of constitutional rules devised by the Court to limit the States' power to regulate abortion. If either or both of these facets of *Roe* v. *Wade* were rejected, a broad range of limitations on abortion (including outright prohibition) that are now unavailable to the States would again become constitutional possibilities.

In my view, such a state of affairs would be highly desirable from the standpoint of the Constitution. Abortion is a hotly contested moral and political issue. Such issues, in our society, are to be resolved by the will of the people, either as expressed through legislation or through the general principles they have already incorporated into the Constitution they have adopted. *Roe* v. *Wade* implies that the people have already resolved the debate by weaving into the Constitution the values and principles that answer the issue. As I have argued, I believe it is clear that the people have never—not in 1787, 1791, 1868, or at any time since—done any such thing. I would return the issue to the people by overruling *Roe* v. *Wade*.

As it has evolved in the decisions of this Court, the freedom recognized by the Court in *Roe* v. *Wade* and its progeny is essentially a negative one, based not on the notion that abortion is a good in itself, but only on the view that

*Contrary to Justice Stevens' suggestion, this is no more a "theological" position than is the Court's own judgment that viability is the point at which the state interest becomes compelling. (Interestingly, Justice Stevens omits any real effort to defend this judgment.) The point is that the specific interest the Court has recognized as compelling after the point of viability—that is, the interest in protecting "potential human life"—is present as well before viability, and the point of viability seems to bear no discernible relationship to the strength of that interest. Thus, there is no basis for concluding that the essential character of the state interest becomes transformed at the point of viability.

Further, it is self-evident that neither the legislative decision to assert a state interest in fetal life before viability nor the judicial decision to recognize that interest as compelling constitutes an impermissible "religious" decision merely because it coincides with the belief of one or more religions. Certainly the fact that the prohibition of murder coincides with one of the Ten Commandments does not render a State's interest in its murder statutes less than compelling, nor are legislative and judicial decisions concerning the use of the death penalty tainted by their correspondence to varying religious views on that subject. The simple, and perhaps unfortunate, fact of the matter is that in determining whether to assert an interest in fetal life, a State cannot avoid taking a position that will correspond to some religious beliefs and contradict others. The same is true to some extent with respect to the choice this Court faces in characterizing an asserted state interest in fetal life, for denying that such an interest is a "compelling" one necessarily entails a negative resolution of the "religious" issue of the humanity of the fetus, whereas accepting the State's interest as compelling reflects at least tolerance for a state decision that is congruent with the equally "religious" position that human life begins at conception. Faced with such a decision, the most appropriate course of action for the Court is to defer to a legislative resolution of the issue: in other words, if a state legislature asserts an interest in protecting fetal life, I can see no satisfactory basis for *denying* that it is compelling.

the legitimate goals that may be served by state coercion of private choices regarding abortion are, at least under some circumstances, outweighed by the damage to individual autonomy and privacy that such coercion entails. In other words, the evil of abortion does not justify the evil of forbidding it. But precisely because *Roe* v. *Wade* is not premised on the notion that abortion is itself desirable (either as a matter of constitutional entitlement or of social policy), the decision does not command the States to fund or encourage abortion, or even to approve of it. Rather, we have recognized that the States may legitimately adopt a policy of encouraging normal childbirth rather than abortion so long as the measures through which that policy is implemented do not amount to direct compulsion of the woman's choice regarding abortion. The provisions before the Court today quite obviously represent the State's effort to implement such a policy.

The majority's opinion evinces no deference toward the State's legitimate policy. Rather, the majority makes it clear from the outset that it simply disapproves of any attempt by Pennsylvania to legislate in this area. The history of the state legislature's decade-long effort to pass a constitutional abortion statute is recounted as if it were evidence of some sinister conspiracy. In fact, of course, the legislature's past failure to predict the evolution of the right first recognized in *Roe* v. *Wade* is understandable and is in itself no ground for condemnation. Moreover, the legislature's willingness to pursue permissible policies through means that go to the limits allowed by existing precedents is no sign of *mens rea*. The majority, however, seems to find it necessary to respond by changing the rules to invalidate what before would have seemed permissible. The result is a decision that finds no justification in the Court's previous holdings, departs from sound principles of constitutional and statutory interpretation, and unduly limits the state's power to implement the legitimate (and in some circumstances compelling) policy of encouraging normal childbirth in preference to abortion.

The Court begins by striking down statutory provisions designed to ensure that the woman's choice of an abortion is fully informed—that is, that she is aware not only of the reasons for having an abortion, but also of the risks associated with an abortion and the availability of assistance that might make the alternative of normal childbirth more attractive than it might otherwise appear. At first blush, the Court's action seems extraordinary: after all, *Roe* v. *Wade* purports to be about freedom of choice, and statutory provisions requiring that a woman seeking an abortion be afforded information regarding her decision not only do not limit her ability to choose abortion, but would also appear to enhance her freedom of choice by helping to ensure that her deci-

sion whether or not to terminate her pregnancy is an informed one. Indeed, maximization of the patient's freedom of choice—not restriction of his or her liberty—is generally perceived to be the principal value justifying the imposition of disclosure requirements upon physicians . . .

One searches the majority's opinion in vain for a convincing reason why the apparently laudable policy of promoting informed consent becomes unconstitutional when the subject is abortion.

Were the Court serious about the need for strict scrutiny of regulations that infringe on the "judgment" of medical professionals, "structure" their relations with their patients, and amount to "state medicine," there is no telling how many state and federal statutes (not to mention principles of state tort law) governing the practice of medicine might be condemned. And of course, there would be no reason why a concern for professional freedom could be confined to the medical profession: nothing in the Constitution indicates a preference for the liberty of doctors over that of lawyers, accountants, bakers, or brickmakers. Accordingly, if the State may not "structure" the dialogue between doctor and patient, it should also follow that the State may not, for example, require attorneys to disclose to their clients information concerning the risks of representing the client in a particular proceeding. Of course, we upheld such disclosure requirements only last Term.

The rationale for state efforts to regulate the practice of a profession or vocation is simple: the government is entitled not to trust members of a profession to police themselves, and accordingly the legislature may for the most part impose such restrictions on the practice of a profession or business as it may find necessary to the protection of the public. This is precisely the rationale for infringing the professional freedom of doctors by imposing disclosure requirements upon them: "Respect for the patient's right of self-determination on particular therapy demands a standard set by law for physicians rather than one which physicians may or may not impose upon themselves." Unless one is willing to recast entirely the law with respect to the legitimacy of state regulation of professional conduct, the obvious rationality of the policy of promoting informed patient choice on the subject of abortion must defeat any claim that the disclosure requirements imposed by Pennsylvania are invalid because they infringe on "professional freedom" or on the "physician-patient relationship."

I do not really believe that the Court's invocation of professional freedom signals a retreat from the principle that the Constitution is largely unconcerned with the substantive aspects of governmental regulation of professional and business relations. Clearly, the majority is uninterested in undermining the

edifice of post-New Deal constitutional law by extending its holding to cases that do not concern the issue of abortion. But if one assumes, as I do, that the majority is unwilling to commit itself to the implications of that part of its rhetoric which smacks of economic due process rights for physicians, it becomes obvious that the talk of "infringement of professional responsibility" is mere window-dressing for a holding that must stand or fall on other grounds. And because the informed-consent provisions do not infringe the essential right at issue—the right of the woman to choose to have an abortion—the majority's conclusion that the provisions are unconstitutional is without foundation.

The majority's decision to strike down the reporting requirements of the statute is equally extraordinary. The requirements obviously serve legitimate purposes. The information concerning complications plainly serves the legitimate goal of advancing the state of medical knowledge concerning maternal and fetal health. Given that the subject of abortion is a matter of considerable public interest and debate (constrained to some extent, of course, by the preemptive effect of this Court's ill-conceived constitutional decisions), the collection and dissemination of demographic information concerning abortions is clearly a legitimate goal of public policy.

Nonetheless, the majority strikes down the reporting requirements because it finds that notwithstanding the explicit statutory command that the reports be made public only in a manner ensuring anonymity, "the amount of information about [the patient] and the circumstances under which she had an abortion are so detailed that identification is likely," and that "Identification is the obvious purpose of these extreme reporting requirements." Where these "findings" come from is mysterious, to say the least. The Court of Appeals did not make any such findings on the record before it, and the District Court expressly found that "the requirements of confidentiality . . . regarding the identity of both patient and physician prevent any invasion of privacy which could present a legally significant burden on the abortion decision." Rather than pointing to anything in the record that demonstrates that the District Court's conclusion is erroneous, the majority resorts to the handy, but mistaken, solution of substituting its own view of the facts and strikes down the statute.

The majority resorts to linguistic nit-picking in striking down the provision requiring physicians aborting viable fetuses to use the method of abortion most likely to result in fetal survival unless that method would pose a "significantly greater medical risk to the life or health of the pregnant woman" than would other available methods. The majority concludes that the statute's use

of the word "significantly" indicates that the statute represents an unlawful "trade-off" between the woman's health and the chance of fetal survival. Not only is this conclusion based on a wholly unreasonable interpretation of the statute, but the statute would also be constitutional even if it meant what the majority says it means.

The Court's ruling in this respect is not even *consistent* with its decision in *Roe* v. *Wade*. In *Roe*, the Court conceded that the State's interest in preserving the life of a viable fetus is a compelling one, and the Court has never disavowed that concession. The Court now holds that this compelling interest cannot justify *any* regulation that imposes a quantifiable medical risk upon the pregnant woman who seeks to abort a viable fetus: if attempting to save the fetus imposes any additional risk of injury to the woman, she must be permitted to kill it. This holding hardly accords with the usual understanding of the term "compelling interest," which we have used to describe those governmental interests that are so weighty as to justify substantial and ordinarily impermissible impositions on the individual—impositions that, I had thought, could include the infliction of some degree of risk of physical harm.

The framework of rights and interests devised by the Court in *Roe* v. *Wade* indicates that just as a State may prohibit a post-viability abortion unless it is necessary to protect the life or health of the woman, the State may require that post-viability abortions be conducted using the method most protective of the fetus unless a less protective method is necessary to protect the life or health of the woman. Under this standard, the Pennsylvania statute—which does not require the woman to accept any significant health risks to protect the fetus—is plainly constitutional.

The decision today appears symptomatic of the Court's own insecurity over its handiwork in *Roe* v. *Wade* and the cases following that decision. Aware that in *Roe* it essentially created something out of nothing and that there are many in this country who hold that decision to be basically illegitimate, the Court responds defensively. Perceiving, in a statute implementing the State's legitimate policy of preferring childbirth to abortion, a threat to or criticism of the decision in *Roe* v. *Wade*, the majority indiscriminately strikes down statutory provisions that in no way contravene the right recognized in *Roe*. I do not share the warped point of view of the majority, nor can I follow the tortuous path the majority treads in proceeding to strike down the statute before us. I dissent.

APPENDIX I

From the Dissent of Justice O'Connor

This Court's abortion decisions have already worked a major distortion in the Court's constitutional jurisprudence. Today's decision goes further, and 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. The permissible scope of abortion regulation is not the only constitutional issue on which this Court is divided, but—except when it comes to abortion—the Court has generally refused to let such disagreements, however longstanding or deeply felt, prevent it from evenhandedly applying uncontroversial legal doctrines to cases that come before it. That the Court's unworkable scheme for constitutionalizing the regulation of abortion has had this institutionally debilitating effect should not be surprising, however, since the Court is not suited to the expansive role it has claimed for itself in the series of cases that began with *Roe* v. *Wade*.

The Court today holds that "The Court of Appeals correctly invalidated the specified provisions of Pennsylvania's 1982 Abortion Control Act." In so doing, the Court prematurely decides serious constitutional questions on an inadequate record, in contravention of settled principles of constitutional adjudication and procedural fairness. The constitutionality of the challenged provisions was not properly before the Court of Appeals, and is not properly before this Court. There has been no trial on the merits, and appellants have had no opportunity to develop facts that might have a bearing on the constitutionality of the statute. The only question properly before the Court is whether or not a preliminary injunction should have been issued to restrain enforcement of the challenged provisions pending trial on the merits. This Court's decisions do not establish a likelihood that appellees would succeed on the merits of their constitutional claims sufficient to warrant overturning the District Court's denial of a preliminary injunction. Under the approach to abortion regulation outlined in my dissenting opinion in *Akron*, to which I adhere, it is even clearer that no preliminary injunction should have issued. I therefore dissent.

Whatever the exceptions which would justify a district court in finally resolving an issue on the merits at the preliminary injunction stage, no such exception was applicable here. Nor is this a case in which the Court of Appeals was justified in resolving an issue not passed on in the district court because proper resolution was beyond any doubt or grave injustice might

result from failure to do so. The Court of Appeals not only decided to stand in the shoes of the District Court by ruling on an issue not passed upon below—it ruled on an issue on which, absent extraordinary circumstances, the District Court could not have ruled without "'clear and unambiguous notice'" that would "'afford the parties a full opportunity to present their respective cases.'" The Court attempts to veil the impropriety of its decision to affirm on the merits despite the procedural posture of this case by implying that the challenged provisions are patently unconstitutional. But this claim too is unsupported in this Court's decisions concerning state regulation of abortion.

The discretionary exception the Court fashions today will also prove vexatious to administer. Parties now face the risk that a final ruling on the merits will be entered against them by a court of appeals when an appeal is taken from the grant or denial of a motion for a preliminary injunction, although the district court made only an initial assessment of the likelihood that the moving party would succeed on the merits. It is predictable that parties will respond by attempting to turn preliminary injunction proceedings into contests over summary judgment or full-scale trials on the merits. That tendency will make the preliminary injunction less useful in serving its intended function of preserving the status quo pending final judgment on the merits, while making litigation more expensive, less reliable and less fair. If this case did not involve state regulation of abortion, it may be doubted that the Court would entertain, let alone adopt, such a departure from its precedents.

Because Pennsylvania has not asked the Court to reconsider or overrule *Roe* v. *Wade*, I do not address that question.

I do, however, remain of the views expressed in my dissent in *Akron*. The State has compelling interests in ensuring maternal health and in protecting potential human life, and these interests exist "throughout pregnancy." Under this Court's fundamental-rights jurisprudence, judicial scrutiny of state regulation of abortion should be limited to whether the state law bears a rational relationship to legitimate purposes such as the advancement of these compelling interests, with heightened scrutiny reserved for instances in which the State has imposed an "undue burden" on the abortion decision.

The Court today goes well beyond mere distortion of the "unduly burdensome" standard. By holding that each of the challenged provisions is facially unconstitutional as a matter of law, and that no conceivable facts appellants might offer could alter this result, the Court appears to adopt as its new test a *per se* rule under which any regulation touching on abortion must be invalidated if it poses "an unacceptable danger of deterring the exercise of that right." Under this prophylactic test, it seems that the mere possibility that

some women will be less likely to choose to have an abortion by virtue of the presence of a particular state regulation suffices to invalidate it. Simultaneously, the Court strains to discover "the anti-abortion character of the statute," and, as Justice White points out, invents an unprecedented canon of construction under which "in cases involving abortion, a permissible reading of a statute is to be avoided at all costs." I shall not belabor the dangerous extravagance of this dual approach, because I hope it represents merely a temporary aberration rather than a portent of lasting change in settled principles of constitutional law. Suffice it to say that I dispute not only the wisdom but the legitimacy of the Court's attempt to discredit and preempt state abortion regulation regardless of the interests it serves and the impact it has.

The Court singles out for specific criticism the required description, in the printed materials, of fetal characteristics at 2-week intervals. These materials, of course, will be shown to the woman only if she chooses to inspect them. If the materials were sufficiently inflammatory and inaccurate the fact that the woman must ask to see them would not necessarily preclude finding an undue burden, but there is no indication that this is true of the description of fetal characteristics the statute contemplates. Accordingly, I think it unlikely that appellees could succeed in making the threshold showing of an undue burden on this point, and the information is certainly rationally related to the State's interests in ensuring informed consent and in protecting potential human life. Similarly, I see little chance that appellees can establish that the abortion decision is unduly burdened by [the] requirements that the woman be informed of the availability of medical assistance benefits and of the father's legal responsibility. Here again, the information is indisputably relevant in many cases and would not appear to place a severe limitation on the abortion decision.

The Court's rationale for striking down the reporting requirements, as Justice White shows, rests on an unsupported finding of fact by this Court to the effect that "Identification is the obvious purpose of these extreme reporting requirements." The Court's "finding," which is contrary to the preliminary finding of the District Judge that the statute's confidentiality requirements protected against any invasion of privacy that could burden the abortion decision, is simply another consequence of the Court's determination to prevent the parties from developing the facts.

In my view, today's decision makes bad constitutional law and bad procedural law. The "'undesired and uncomfortable straitjacket'" in this case is not the one the Court purports to discover in Pennsylvania's statute; it is the one the Court has tailored for the 50 states. I respectfully dissent.

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