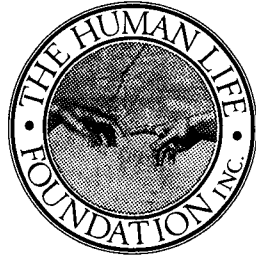


# the HUMAN LIFE REVIEW



WINTER 1987

*Featured in this issue:*

Ellen Wilson Fielding on ..... Mother Love  
Tina Bell on ..... What Hath Woman Wrought?  
Frank Zepezauer on ..... Warehousing Children  
Carl Anderson on.... The Family beyond Ideology  
Hadley Arkes on.. Abortion and Moral Reasoning  
Marvin Olasky on .... When the *Times* Damned It  
Richard Neuhaus on ..... The Doctors' Dilemma  
William M. Bulger on ..... The Most Common  
Death Chamber

*Also in this issue:*

Stan E. Weed • Joseph Sobran • James Hitchcock • Michael Blumenthal  
*and excerpts from The Family: Preserving America's Future*

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. . . FROM THE PUBLISHER

In January I had the good fortune to witness one of the great moments in the anti-abortion drama—the March for Life in Washington, D.C. Why was this March more significant than any of the others? Well, if you remember the day (11 inches of snow and a wet, bone-chilling wind) you can appreciate the devotion and determination of those (some accounts reported as few as two thousand, others “some” five thousand people; I say 15,000) hearty souls both young and old who provide the impetus that keeps us all going. With cheers to them we begin our thirteenth year with this, our 49th issue.

Readers who enjoy (as we think you will) the article by Professor Hadley Arkes may want to get the book, *First Things*, from which we extracted only one smallish chapter (the whole runs well over 400 pages!). It was published by Princeton University Press (41 William St., Princeton, N.J. 08540; softcover edition \$11.95).

The article by Pastor Richard Neuhaus is reprinted from *The Religion and Society Report* (January, 1987), of which he is editor. We highly recommend it. To subscribe, address The Rockford Institute, 934 North Main Street, Rockford, IL 61103 (the *Report* is \$24 per year).

The report on the American Family (see *Appendix A*) is available from the White House, but we have also ordered copies (which should be available by the time you read this), and will gladly send you one while our supply lasts. Write me directly.

You will find full information about previous issues, bound volumes, microfilm copies, etc., on the inside back cover.

EDWARD A. CAPANO  
*Publisher*

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## INTRODUCTION

**H**ERE IS AN UNUSUAL SENTENCE for you: “Sometimes, since the birth of my son Peter almost two years ago, I mourn the disappearance of the nicer person I once was.” Makes you want to read on, to find out what she *means*? You should. The writer is our friend Ellen Wilson Fielding—Malcolm Muggeridge once described her as “The Jane Austen of the Permissive Society”—no one who has read her previous essays (more than a dozen have appeared in this review) will be surprised by her ability to turn ordinary notions into striking insights, all the while maintaining the coolest of prose styles. It’s a treat to have her back with us.

Her article is taken from the text of an address she delivered to the annual meeting of Women for Faith and Family (a Catholic organization) in St. Louis last October. (Oh yes: Ellen’s second child, Maria, was born last New Year’s Eve.) The meeting was largely organized by Mrs. Ann O’Donnell, a founding member of WFF, and of many other organizations as well. Only her close friends knew that Ann was, by then, rapidly losing her battle with cancer—anybody who knew Ann O’Donnell would find it hard to believe that anything could defeat her. She died a few weeks later.

Ann wrote several pieces for this journal, but that is not the reason why we dedicate this issue to her memory. Many people have dedicated themselves to the fight against abortion, as Ann did even before *Roe v. Wade*. Perhaps a few have equalled her unflagging determination; if any have matched her humor, her *style*, we’ve never met them. Our colleague James Hitchcock knew Ann well, and we asked him to write something about her for this issue, about which more below. For now, as Ann would have insisted, we’ll carry on.

As it happens, our second article might have been inspired by the first. In fact, it is the first published article of another unusual young woman, Mrs. Tina Bell, housewife, mother of four, who simply decided to have her say about “Feminism,” and sent it along to us. As you will see, she has a *lot* to say, and she can write as well. We enjoyed it, and think you will too.

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Next we have Mr. Frank Zepezauer, our steady contributor, who writes about an issue deeply entwined with feminist ideology: that great panacea disarmingly labeled simply “day care.” But the issue is not simple at all. Its roots spring from concepts of society that are fundamentally different from those most Americans would consider traditional. Yet, as Mr. Zepezauer shows, day care is glibly described by many as an obvious, indiscriminate *good* that any woman ought to be entitled to, at public expense if need be. (Even the American Catholic Bishops treated it pretty much that way in their recent economic pastoral.) What it comes down to, he says, is the very same “pro-choice” argument that divides us on abortion: “They insist on the rights of the woman. We insist on the rights of the child.” But “eventually one or the other must stand alone as the primary value.”

Much of the controversy, as everybody knows, involves money. We scarcely hear children mentioned nowadays without hearing how *costly* they are. The media delights in stories predicting the astronomical costs of raising even one child. And it’s pretty daunting stuff, given the now-seemingly-universal assumption of the cradle-through-college obligations of parents.

How in the world did *our* parents manage to raise those old-fashioned large families? Well, says our friend Carl Anderson, history shows that children can help to *produce* money—actually advance “economic development and material progress.” And the time has come to reassert “the crucial linkage between the generating of children and the generation of wealth.”

The reader may well wonder where Mr. Anderson would dare speak such revolutionary common sense? Certainly not from any pulpit we can think of offhand. But he was addressing the more than five thousand delegates who crowded the Palais des Congress in Paris last September for the Ninth International Congress for the Family. Evidently it was a most impressive gathering, with speakers—including Mother Teresa—from a score of countries. Such people *share* Mr. Anderson’s belief that children are assets, not liabilities. And that the future belongs to those who . . . well, increase and multiply. We recommend a careful reading of his unfashionable thesis.

Professor Hadley Arkes also holds currently-unfashionable ideas. Why else would he write a book titled *First Things: An Inquiry into the First Principles of Morals and Justice*, as he just has? The reader may not be surprised that it deals rather harshly with *Roe v. Wade* and the “quality of mind” manifested by the Court which produced it. Professor Arkes quotes *Roe*’s author, Justice Blackmun: “Pregnancy often comes more than once to the same woman, and . . . if man is to survive, [pregnancy] will always be with us.” And comments: “One becomes aware instantly that one is in the presence of no ordinary

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mind.” (We’ve never been in the Professor’s classroom, but we imagine that his lectures are not dull.)

Mr. Arkes holds that, were his “first principles” applied, they “would move us decisively to a judgment radically different” from *Roe*. We of course agree. But he makes a powerfully-reasoned case that goes far beyond the familiar anti-abortion arguments. Indeed, he raises questions that should make both sides uncomfortable. It is invigorating stuff: we trust that the single chapter reprinted here will inspire many to read the entire book; it is an impressive contribution to a “debate” that is hardly academic—there is nothing abstract about a holocaust that consumes unborn lives by the millions.

Surely a most obvious fact about *Roe* is that it symbolizes a shockingly radical break with what *was* an American consensus on the first principles of morality, public and private. A mere two decades ago, abortion was still generally considered what it had been, at least in our Western world, for almost two millenia: a heinous crime that victimized women, and, at the very least, ostracized its practitioners (no “respectable” doctor would perform the foul deed).

In our own nation, every state had anti-abortion laws, the result of what might be accurately described as a 19th Century civic crusade led mainly by Protestant churchmen and the medical profession itself (Roman Catholics played little part in it). Plus the *press*: for instance, the New York *Times* was a crusading *anti-abortion* paper in the 1860s, a prime mover in the successful campaign to pass legislation that would endure until, a century later, the “same” *Times* led the successful campaign to repeal it.

Professor Marvin Olasky has written previously in this journal (see, e.g., “From Crime to Compassion” in our Summer, 1986 issue) on the general subject of the great turnabout in press coverage of abortion. Here, he describes in fascinating detail how much the *Times* has changed. Have you ever suspected that today’s *Times* tends to portray “pro-lifers” in something less than objective terms? Listen to the *Times*, in 1890, describing an arrested abortionist: he “has the appearance of a vulture . . . His sharp eyes glitter from either side of his beaked nose, and cunning and greed are written all over his face.” His female accomplice is “wholly repulsive . . . vice and disease having made her a disgusting object.”

Evidently, in those days, there was a certain amount of editorializing in the news columns? Anyway, we find Mr. Olasky’s research not only fascinating reading but also food for thought: What would happen if *today’s* media changed its pro-abortion bias? Why, public opinion might change once again.

Next we bring you a disturbing article by Pastor Richard John Neuhaus, a

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well-known author (of, e.g., *The Naked Public Square*). In effect, he reviews a new book exploring the “medicalization of death” under the Nazi regime (in fact, German doctors were involved with euthanasia, sterilization, and other “advances” *before* Hitler took power). Pastor Neuhaus says that the book “has raised again the question of parallels between the Nazi Holocaust and the current debate on abortion.” What disturbs him is that the *author* does *not* see such parallels: rather, he finds the “lessons” for our time in Vietnam war crimes, the *CIA*, or torture in Chile. But, says Neuhaus, only “the willfully blind” can dismiss the obvious analogies—the German crimes stemmed from the same kind of “lives not worth living” doctrines that fuel our own abortion/euthanasia holocaust.

Neuhaus makes another crucial point: American doctors seem as passive today in the face of legalized killing as were their German counterparts—studies show that if abortion was made illegal again most doctors would not perform them! So “medical ethics” are no more than obedience to current law? As we say, it’s a disturbing article, which we hope will disturb *doctors* most of all.

Our final article is, as it happens, yet another address, this one delivered by Mr. William Bulger, president of the Massachusetts state senate, to an anti-abortion group in Boston last November—just before voters rejected a state constitutional amendment that would have restricted abortion funding. When Bulger spoke, polls showed little support for the amendment (only some 28%, as we recall). In the event, the measure received well over 40% support. Not enough, to be sure, but Bulger’s point is that the battle must go on. We are pleased to reprint his text for several reasons. Certainly it is unusual for a “politician” to take so strong a stand (Bulger’s own constituency voted No). And he is a prominent Democrat, suggesting that his party’s peculiar pro-abortion allegiance is more a national than local phenomenon—we wonder what would happen if like-minded members “spoke out” as powerfully as Bulger has? But most of all, we think his speech belongs in our continuing record of the abortion debate.

\* \* \* \* \*

As usual, we’ve added some interesting appendices, beginning with (*Appendix A*) generous excerpts from what *should* become an important national document: the report of a “task force” commissioned by President Reagan to study the American family. Certainly its recommendations are unlike anything we’ve read in a government document in eons—should they be taken seriously, they could cause policy changes of enormous consequence. That remains to be seen. But the President has endorsed the report—he also

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commended it in his State of the Union address—and the young official who headed it (Mr. Gary Bauer) has now been appointed Mr. Reagan’s chief domestic-policy advisor. We hope you will read it carefully.

*Appendix B* is a short article describing a recent study which shows that the vaunted “Teen-age Family Planning Programs” reduce *births*, not pregnancies—in short, they promote abortions. The wonder is that anybody could be surprised by evidence that “how to” education produces *more* of what’s being taught. Yet the study remains “controversial” (we hope to have more from the authors in due course).

*Appendix C* is a column by our friend Joseph Sobran reporting what seems to us one of the most incredible abortion-related cases on record (although we’re assured there are *worse* ones). It confirms a terrible reality: the Supreme Court’s abortion *fiat* is being enforced, often brutally, by lower courts that rarely hand down such punishments in any other, or truly criminal, cases. Again, we expect to have more on this subject soon.

As promised, you next have (*Appendix D*) James Hitchcock’s moving R.I.P. for Ann O’Donnell. We would only add a Chesterton quote: “A man’s good work is affected by doing what he does, a woman’s by being what she is.” Ann O’Donnell did more than most men attempt, but she will be remembered by all who knew her for what she was. (Our condolences go to her husband Edward, and their children.)

We trust that our regular readers will not be surprised by *Appendix E*; it struck us that it not only belongs in our permanent record, but also just where we’ve placed it. Surely it illuminates Chesterton’s point?

J. P. MCFADDEN  
*Editor*



# Mother Love

*Ellen Wilson Fielding*

I GREW UP IN WHAT I suppose was the first generation of American women who were expected, as a group, to care deeply about the jobs they would choose: to invest not only time and effort, but emotion and commitment in them, and to do so throughout the greater part of their lives. College-educated women had a special duty to strike out from the example of previous generations by “using” that education, rather than “wasting” it, as so many earlier women graduates had done, on child care. We were expected to find interesting, challenging things to do in our professional lives, and we were not expected to jettison those lives because of the unreasonable and unnecessary sacrifices past generations had exacted from their womenfolk.

People talked about “having it all” when I was in college, though many of the college kids of the 80s have proved wiser or more realistic in their expectations, and some of their older sisters have tired of practicing what was preached to them.

My generation watched reruns of 1950s television series, and saw models of stagnating suburban women marking time before the Feminist Revolution. And the 60s were still close enough to us to make a revolution in women’s feelings, instincts and expectations seem entirely possible. Babies were nice, yes, but motherhood was mostly defined by what you were giving up for it. The 70s feminist mentors believed women had given up too much in the past—money, prestige, career tracks, creative and intellectual fulfillment, self-esteem, adult interests. These mentors repudiated what they saw as drastic self-abnegation, and so of course they had to argue that such self-abnegation was unnecessary. Men were to share more of our burdens, the government and private corporations were to help out with baby care and the like. Women would be happier, psychologically healthier, and our children would doubtless benefit from our contentment.

I don’t wish to debate career vs. family or day care vs. home care,

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*Ellen Wilson Fielding* is our Contributing Editor. This article is adapted from her address to the second annual Women for Faith and Family meeting in St. Louis last October.

nor will I explore the economic necessities that make the word “choice” seem a cruel joke to many hard-pressed families. What I mean to do is to see how my own experience dovetails with the traditional Christian teaching on the importance of the family, self-giving and the like.

I was 28 when I married, and knew I wanted to have children and to be their full-time mother. Two things strike me about these desires. First, the Christian teaching which celebrates not only the bearing of new life but also the guidance of a human soul, seemed almost irrelevant to my wish to have children. So did my private opinions about the duties of parents. I just wanted children, and wanted to be what they call a “primary caretaker.” I didn’t have to worry through the pros and cons. I didn’t feel self-sacrificial. Doubtless the faith in which I was reared helped counteract the contrary advice of my culture, and helped overcome the secular world’s prestige problem with motherhood. Still, much of my thinking—or feeling—boiled down to good old-fashioned maternal instinct.

The second thing that struck me—and indeed, made me feel an unnatural child of my age—was my lack of regret at leaving the nine-to-five world for perhaps many years. I was book editor of *The Wall Street Journal* at the time. It was an important, in some ways influential job. But I waged no internal battles over the decision, and apart from the sadness of leaving good working companions and a settled routine, felt only anticipation of the future.

That isn’t the whole of it. What I had been doing seemed, however interesting, less important as well as less appealing than what I was about to do. I understood that other people saw things differently, but a *baby*—a human being, for God’s sake—made a newspaper seem like small potatoes. Sometimes I felt defensive when I looked at what I was doing from the careerist’s perspective, but that didn’t change my own perspective.

These two points—the apparent sufficiency of maternal instinct to combat the spirit of the times in my own case, and my uncomplicated lack of regret about leaving the work-force—made me wonder about the role of Christianity in these family issues. What was the relationship between maternal instinct and a religious view of human life? If I had been very reluctant to relinquish career for family, I hope I would have

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come to the same decisions about my priorities and my responsibilities to my children. But would Christianity have simply provided a religious equivalent or reinforcement for maternal instinct? Or does the Christian faith add a whole new dimension to the understanding of family life? What does a Christian view of the family have to teach us about the family of man?

Let me stop to consider the reaction of other people to my decision to leave work after Peter's birth. Most were happy for me, a few were envious in a good-natured way, some couldn't understand why I'd prefer such a choice, and others, while understanding my reasons, thought I was making a great sacrifice. These last two groups of people thought I was exchanging a larger world for a smaller one, great responsibilities for ones more petty or limited, influence over large numbers of people for an extended tyranny over one. Some thought the love I would feel for my baby would "make up for" the sacrifices; others didn't. But both groups of people were assuming, as it is so easy for any of us to do, that the many are more important than the few *because* they are many, and that love for a spouse or a child or a parent or brother or friend emotionally blinds us to this arithmetical truth.

But Christianity teaches a deeper, bigger truth about the individual and also about love. Christianity teaches us that each soul is uniquely valuable because it has been loved into existence by God. The destiny of each soul is supremely important, because God Himself is seeing that destiny in His eternal present. It's not a greater thing to sacrifice one's life for a nation of people rather than for one person; in either case, the sacrifice is noble or even allowable only because the mortal life of an immortal soul is being surrendered for the mortal life of another immortal soul.

In my own mind, I felt I was going to a greater thing when I left *The Wall Street Journal* to care for my new son, because I was setting out to give more, more intensely, to a single human soul than I had been able to give for the millions of souls mildly affected by the book reviews I prepared for publication.

Don't think I am denigrating paid labor. Work is one way of serving God and man; fortunate people find their jobs interesting and satisfying as well. But family life seems a special bonus to mankind, a chance for

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average people to venture almost frighteningly close to God and to other human beings. That is the Christian view of marriage as well as the Christian view of parenthood; in each case men and women are given the opportunity to cooperate with God through a unique union with another person. So I saw approaching motherhood almost sacramentally. It was, after all, the natural result of the vows my husband and I had exchanged at our marriage ceremony.

That must be one reason why frustrated ambition didn't sour or undermine my leavetaking of the nine-to-five life. I truly felt I was headed for the more ambitious and more demanding task, and this had nothing to do with romanticism about what life with a baby or toddler would be like. The incidentals of motherhood—like the incidentals of any job—may often be tedious, repetitive, frustrating, seemingly thankless, sometimes nerve-racking. But the essence is truly sublime, for the essence of motherhood is the acceptance of God's offer to share in the creation and development of another human being. The question was not whether the job was good enough for me, but whether I was good enough for the job.

What makes most parents "good enough" for the job, what helps them pierce through to the essence of it often enough not to be vanquished by the difficulties of the incidentals, is love—the love God offers when He offers us a child. Some people refuse that love, or lose it, or are so messed up that they cannot accept it. But most parents depend on it, and find it dependable.

And it is here that the Christian faith can teach us something very important about parenthood and God's love for all men. For many people misinterpret maternal—and paternal—love, even as they and their children depend on it, and so they fail to draw on its full power to teach us about the human family.

Sometimes parents delude themselves into thinking that they love their children because those children are specially brilliant or charming or talented or beautiful. But while all of us tend to dwell on our children's strong points, and downplay their faults, the strong points are not "why" we love them, and the bad points almost never kill that love. (And, by the way, our own good points are not "why" our children love us, though, if we are lucky, they will help our children to *like* us, as our faults make us less likable.)

The more common misunderstanding about parental love takes the other extreme. Through a kind of displaced false modesty, many parents will say to themselves: "My child isn't really special, but my love makes me think he is." This makes love a well-intentioned deceiver, telling us lies for our own good. The lying love is supposed to help both parent and child: it enables the parent to love the child enough to get through all the irksomeness and pain parenthood guarantees, and it allows the child to be loved, however unworthy he may be.

Although most children are not "special" as this kind of parent means the term, I think this interpretation of a deceitful parental love is wrong too. It assumes that love is ordinarily earned or deserved, and it ignores the precious source of a parent's love.

All love is from God, but a parent's love for his children seems, in some respects, especially godlike, because it begins when a baby is completely dependent and completely incapable of proving he deserves love. God gives us this love (to call it instinct does not change where it comes from, what it is and how it works) so that we can be good parents, but He sends us no cheat, no set of blinders to our children's faults. Instead, He sends a special vision; insofar as human beings are capable of doing so, parents share God's loving vision. However imponderable it may be, we know that God created man in love, and that love astonishingly continued even after mankind's fall from grace. Parenthood offers most of us the best chance we will have to forgive seventy times seven times *lovingly*, because we can see something of what God sees when He looks at them.

So are our children deserving or undeserving of our love? They are as deserving as we are—or as anyone else is, for that matter. They are worthy of love *because God has loved them first*. And we are capable of loving, *because God has loved us—all of us—first*. One of the most striking and dislocating quotations from the New Testament is John's definition of love: "not that we loved God but that He loved us." Love is not only a duty we owe God and man, but a gift from God to man—even if we never return that gift. What else can we do but scramble unsuccessfully to keep up with God?

For parents such scrambling is a fact of life. We love our children intensely, unconditionally, and that is God's doing. But our performance is another matter. We get tired, we get frustrated, we lose our

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sense of balance, we give in to resentments and possessiveness and ambitious daydreaming. We blow our chance to live up to the godlike nature of our love.

Sometimes, since the birth of my son Peter almost two years ago, I mourn the disappearance of the nicer person I once was. If motherhood has called up reserves of generosity, patience and disinterestedness I never knew myself capable of, it has also given birth too often to shrewishness, ill temper and the instincts of a spoilsport. (All the “noes” you have to say as a mother have their effect: sometimes “no” petrifies into an automatic response.)

But both the good and the bad effects of what they now call “mothering” are signs of the enormous growing and stretching the role calls for. There are times when I can feel the enormous love for my child pouring through me—and there are times when my weariness, resentment and the like are actually holding off or blocking the love that pushes to be let through. In other words, the great goal or challenge of motherhood is to learn to love your child as much and as well as you do in fact love him—as much and as well as God has let you love him.

What a tremendous undertaking! Unfortunately for the spiritually lazy, though, this is only the first lesson to be drawn from the Christian understanding of motherhood and the family.

A mother’s successes—the times we sympathize and take time to understand, and temporarily put aside our own needs without resentment—are mostly the work of the love or maternal instinct or whatever you wish to call it that God has instilled in us. They owe all too little to general virtuousness, as we can see by looking at how unsuccessfully we often love those not bound to us by ties of blood or marriage. Loving, caring and self-sacrificing mothers can be cold, suspicious and ungenerous to those outside the warm circle of family and friends. They can expect the worst from other people, and hand on those expectations to their children. In doing so they draw sharp boundaries between “Us” and “Them.”

But these are boundaries God does not want us to draw, or at least not in that way. Of course human beings are made to form special ties and develop local patriotisms. But God loves everyone as we love our children (only he is much better at it). God sees everyone as we, at our best, see our children. He is not blind to mankind’s faults, but loves the

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sinner, and rejoices in the good he is capable of. We are so made that only the greatest saints, perhaps, can approach everyone with something like this love. But all of us are called to try, and all of us should at least recognize our failures as failures to obey that new commandment Jesus gave us: "That you love one another as I have loved you."

Such a vision of what godlike love can be, combined with such repeated failures to live up to the promise of that love, can sometimes make motherhood seem the most frustrating and even humiliating of vocations. But the hard truths that motherhood (and fatherhood) can teach us about ourselves are matched by the almost ecstatic experience of loving freely, beautifully and almost effortlessly, on those occasions when our aspirations meet our performance. Such experiences can draw us nearer to God, if we remember the source of our love, and such experiences can draw us nearer to God's other children, if we do not ignore or shrink away from the commandment our loving Father gives us: to love one another as He has loved us.

## What Hath Woman Wrought?

*Tina Bell*

**H**AVE YOU NOTICED that prominent feminists like Betty Freidan, Susan Brownmiller and Andrea Dworkin are qualifying previous bold assertions about motherhood, the family, and human sexuality?

Having helped break down the barriers against women in our repressive, “patriarchal” society, many feminists are understandably displeased by the bitter social fruits of their policies. Although the media, the schools, many politicians and many women (including Gloria Steinem, whose bread and butter depends on die-hard feminism) continue to champion the same old feminist causes, there is a lot of re-thinking going on.

Germaine Greer, intellectually the most honest of the “Founders,” has abandoned her espousal of promiscuity and contraception and now condemns both. Betty Freidan, now a grandmother, admits that women need to have families, although she once called the family an “oppressive institution.” As Dinesh D’Souza puts it (in the Winter, 1986 *Policy Review*), “they are now turning their attention to social evils that they helped to cause”—and conveniently disavowing the ideological causes for those evils.

Even though more women are entering the professions than ever before, more women are living below the poverty line as single mothers (easy divorce was long a feminist cause). This, coupled with a decrease in political support, is discouraging the feminists. D’Souza aptly labels this phenomenon the “post-feminist depression.” Liberation has *not* been a stunning success.

Can we rely on feminists to clean up their own mess? I think not. Both Mr. D’Souza and the feminists base their conclusions on statistical data: the number of women living below the poverty line, the number of teenage pregnancies, the number of divorced women, the number of women entering professions heretofore barred to us. The evidence shows a strange coincidence: women are active in the workplace, yet

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**Tina Bell**, a graduate of St. John’s College in Annapolis, describes herself as “a 32-year-old housewife,” mother of four, “a terrible housekeeper, a rather good cook.”



they are undergoing emotional and social difficulties on an unprecedented scale. Anyone who measures political principles by statistics alone is bound to be confused by this. If, however, we look at the feminist fallacies which have been unquestioningly accepted by the powers that be, the coincidence appears to be a simple case of cause and effect. Unless feminists are willing to discard the principles on which their movement was built, they will never succeed in alleviating any of the anguish they've caused.

Feminism has always been based on selfishness. By encouraging limitless ambition, feminist rhetoric favored the few talented women at the expense of the many ordinary ones. It also urged women to seek personal fulfillment in the male-dominated workaday world and not in the demanding but rewarding world of motherhood. Feminists argued that women stayed home to raise children because men forced them to. Underneath our conditioning we are all androgynes. The classic exposition of this theory is contained in Germaine Greer's *The Female Eunuch*: she blames "cultural conditioning" for every imaginable difference (except one) between men and women. Her argument has been answered by George Gilder in *Sexual Suicide*, in which he argued that *women*, because of the complex nature of their sexuality (periods, pregnancy, childbirth, nursing), have required men to marry them and provide for the upkeep of the resulting children—only the necessity of fathering a woman's children leads men into the monogamous state.

Feminists delight in calling Mr. Gilder a misogynist. They have always claimed with varying degrees of coherence that men and women are essentially the same. To place a social value on motherhood gives the lie to their incessant demands for "equality." Thus motherhood and its concomitant impact on a woman's life has become secondary to her "real" happiness. "Environmental conditioning"—what English-speaking people understand by the word "education"—must not be allowed to come between a woman and her innate ability to handle a jackhammer.

Sixties radicalism and feminism have both (as Irving Kristol has said) been absorbed into the mainstream of American political and social thought. News anchormen, editorial writers, television personalities and the publishers of children's textbooks tacitly assume the liberal position on everything from American History (did we really need to fight all

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those wars?) to biology (man is destroying his environment). Instead of learning American History, my son is being told that America oppresses the world at large and discriminates against women at home. This absorption probably accounts for the diminished shrillness of liberal and feminist rhetoric. But feminism, unlike sixties radicalism for which Yuppie liberals can feel a fond nostalgia as they vote for Reagan, will be harder to uproot, precisely because very few see it as a threat to society. Indeed most people still think that the feminists have achieved *progress*, if for no other reason than the existence of expanded professional opportunities for women.

**F**eminists are myopic. They cannot understand the nature of women or predict our powerful desire—even in this liberated age—to have children. (If you don't think we are liberated yet, watch television and look for a mother. The last "exemplary" female I saw was a puppet on Sesame Street named Sally the Bricklayer.) That is why they can't seem to come to terms with the fact that liberated women are not happy. Treating women as if we lived in isolation—that is, as if we didn't live with men and children—has guaranteed that, whatever feminists say or do for the benefit of womankind, they will forever miss the mark. Unfortunately, many women have tried to follow the feminist model of perfect womanhood. They remain stranded in life, caught between late adolescence and old age with no hope of companionship because they are too busy building careers for themselves.

Our identity as physical and social creatures comes from our sexuality. In denying the consequences of sexuality, feminism has separated us from both our instincts and the social community. Women ignore their emotional need for love and family in order to pursue "independence." But by denying themselves descendants they isolate themselves from society: children are a physical link with history. While it is sometimes necessary that a woman forego motherhood for one of a variety of reasons (health, religious vocation, personal responsibilities), it is all too common nowadays for women to regard their capacity to bear children as an option to be accepted or denied according to personal convenience.

Feminism turned motherhood into a "choice." The legalization of abortion is a grim reminder of this "choice" which, by its very exist-

ence, sends out a loud, unspoken message to every woman that the society she lives in has no interest in her as a mother. Even a woman who “chooses” to carry a baby to term must never forget that she has made a *decision* to do so and, consequently, had better raise a perfect child. This is why pregnant women are especially susceptible to the barrage of warnings issued by the government, doctors and various well-meaning organizations about what they should and should not drink, eat, and smoke. There are so many options open to them if the child is defective that they must defend it even in the womb.

The “choice” problem continues after the baby is born, too. One of the questions typically asked of a new mother these days, along with the usual ones about the baby’s size, name, etc., is: Will you stay home to take care of it? Before feminism the question was not asked: barring economic necessity, no mother would willingly leave her infant behind with a stranger and go out to work. One must pause and wonder at the destructive power of a force which causes that kind of separation.

Now that these questions have been raised it will be hard to silence them. Motherhood, in the traditional sense, has become, with homosexuality, an “alternative life style.” A reporter on an ABC program about the aftermath of women’s liberation called the stay-at-home housewife a “relic of history.” While I don’t think he is right—there are quite a few of us out here and our number is slowly growing—there is a lot of anxiety floating around these days in obstetrician’s offices and at kitchen tables. No longer able to rely on habit and tradition to offer the supports necessary to the job of motherhood—supports based on training, example and the expectations and encouragement of our peers and family—we must constantly reinvent it, consulting books and magazine articles to answer questions which our mothers and our common sense should be able to answer for us. While this may sound trivial, it is not when you have to live it. Quite a few married couples of my acquaintance have separated because the women were unhappy at home and desperately needed to get away and become independent—in other words, to perform a job for which they would be recognized and rewarded. In one case this meant driving a school bus. Feminism has convinced us that we need to be exceptional to be happy and that the mundane tasks of housework and child-rearing are onerous tasks providing little or no satisfaction. Many women have sacrificed the acces-

sible satisfactions accompanying traditional motherhood to pursue more celebrated but less attainable professional goals.

Who will take the place of the traditional housewife? Everyone. Social scientists have come up with a whole new vocabulary describing what mothers do. My favorite term is “primary caregiver,” which sounds suspiciously like “zookeeper.” Anyone can be a “caregiver.” Even Miss Molly on Romper Room tells her little viewers to “ask the *grownup* at your house” to get them crayons, scissors and paper for a given project. You really feel crummy about your job when Miss Molly can’t even call you by your name! Educators are no longer simply teachers, but “experts” on The Child, always on the lookout for “problems in the home” they can blame for Johnny’s lack of self-control in the classroom. Parents are regarded as semi-morons when it comes to social studies and mathematics and complete incompetents when it comes to deciding what curriculum their child should study. They do, however, serve one important function for the typical teacher: they are very good at causing psychological problems.

The modern liberal has put himself in the precarious position of asserting the importance of early childhood development to the healthy functioning of society while maintaining at the same time that anyone can assist in that development with little more than a training course. A “rational” approach to children was supposed to eradicate all of the problems caused by parents, the oedipus complex, and conflicts with arbitrary, authoritarian teachers. This is why many psychologists go around praising infant day-care to the skies: it seems the little buggers can “perform” better on tests when placed in an institutional environment early on. But education is moral as well as intellectual, and as Rousseau said in *Emile*: “The first education is the most important, and this first education belongs incontestably to women; if the Author of nature had wanted it to belong to men, He would have given them milk with which to nurse the children.” Motherhood involves more than can be covered in a course in psychology. For one thing, it can only be done by a mother—a woman who has given birth to, or adopted as her own, an utterly dependent human being with whom she has established a lifelong relationship. The commitment she makes to her child is physical, emotional and instinctive. The idea that “mothering” can be accomplished by anyone but a mother is analogous to the suggestion

that the function of husband or wife could be performed by someone hired for the purpose; the essential personal involvement which constitutes a marriage would be absent.

Motherhood demands a participation which is intrinsically linked with the very soul of the mother; a participation which never ends and never ceases to demand selfless cooperation. I can think of no other process in nature which entails the eventual and expected separation of the beloved (the child) from the lover (the mother) with the cooperation and encouragement of the lover. In this way, and in this way only, the natural order provides for the existence of the social order. It is the personal element in motherhood—"my child" versus "the child"—which ensures the possibility of moral education. This personal element extends through the mother to all the members of the family, and bridges the gap between self-interest and moral actions. (Moral actions are, fundamentally, not performed out of self-interest. If I die for my country it is not because I consider this a strictly rational act, but because it is *my* country and I love it.) If this personal element—the task of "mothering" as done by a mother—is absent in child-rearing, then the soundest basis for moral actions is removed from society. And if this basis is removed, children learn to base their actions solely on calculated self-interest; they are no longer connected to anyone or anything.

The social problems caused by feminism are obvious enough to convince feminists that something is wrong with what they've been telling us all these years. But being unable to see the deeper, more serious ramifications of their attack on the family, they will never be able to offer any lasting solutions. There predominates in our schools and the media a deliberate misunderstanding of the nature of human sexuality and its relationship to the political community. While a great many women have rejected the tired demands of feminism and its accompanying mutilations of the soul, many more lack the intellectual and emotional resources with which to resist the call of career over family, of public over private "success." Feminism's disasters will be with us for a long time. A generation of institutionally-raised children is now growing up. Without the personal involvement in their lives that only a family can provide, they will learn very young how to survive by means of self-interest. Taught in school and by television that they can

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“be anything they want to be,” that *they* are their life’s work, they will either become continually frustrated by their own limitations or become coldly ambitious. In neither case will they be capable of loyalty to anything greater than themselves.

It is important that we recognize the questions raised by feminism, questions challenging the basis of our ability to maintain a healthy society. If we don’t challenge the current political and educational climate, we will always have the consequences of feminism with us. Even the reversal of *Roe v. Wade* will not halt the trend toward androgyny unless it is accompanied by a reaffirmation of family life powerful enough to reverse the philosophical *damage* done by our educators and political leaders. Father Jerzy Popieluszko, who was murdered for his involvement with Solidarity, said during a Mass: “The most splendid and lasting battles known to history are the battles of human thought.”

It will always be possible, and should always be possible, for exceptional women to lead exceptional lives. But it is not always remembered that true heroism involves sacrifice and should never be identified with mere prominence. There is a difference in kind between Florence Nightingale, Joan of Arc, or Jeanne Kirkpatrick, and the female tokens held up to us in women’s magazines: the first female astronaut, the first female high school football player, whose celebrity seems to be based not on excellence but on competition with men. *That* kind of achievement only demeans women, based as it is on a spirit of envy. What we are faced with now is not a generation of superachievers but rather a sizeable herd of sheep, women who are running every which way in pursuit of money, recognition, and power because they were taught a vague but abiding dissatisfaction with their essential physical natures.

Men and women benefit most when they cooperate with each other. Our differences complement each other, each contributing what the other lacks. This may happen in myriad ways—as many ways as there are people. Children play many of the same games together when they are small. When girls and boys begin to play in different ways, the girls with dolls and the boys with trucks, they each seem to acquire a sense of pride that comes from finding a place in the world. That security of identity must be nurtured so that it may grow properly. Feminists cannot eradicate nature, but they have discovered the ever-present possibility of perverting it.

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Two of my neighbors, both mothers of small children, recently quit their jobs so that they could stay at home and care for their children. They have both been home for a couple of months now and, curiously, are going about their duties gingerly, the way a woman must have done years ago when she went to work in an office and felt herself in unfamiliar territory. They joke wistfully about going back to their jobs. One of them told me today about her sister-in-law, a high-powered career woman who jogged and swam during her pregnancy and intends to return to her lucrative and challenging job when the baby is three weeks old. "But," she sighed, "you're not supposed to make comparisons . . ." as she walked slowly back into her house, baby in one arm, toddler following behind, to fold her laundry.

How many of our daughters will be able to choose, as we did, the more important but less celebrated job of motherhood? Perhaps women with financial means will be able to hire other, more tractable women to bear their children for them. The Canadian feminist Margaret Atwood has written a futuristic novel about a world (run by conservatives) in which a certain class of women (called "handmaids") are child-bearers and household drudges for the men who control everything. Ironically it works the other way now: women are raising and even, in some cases, giving birth to children not for men, but to enable professional women to achieve nominal motherhood. *Now* who are the oppressors?

## Warehousing ‘Wanted’ Children

*Frank Zepezauer*

**U**NIVERSAL, GOVERNMENT-SUPPORTED professional day care has achieved movement status. It has evolved—or been pushed—from part-time baby sitting to part-time parenting. And, as some hope and others fear, it may with the help of a media campaign hurry us toward *state* parenting.

Today, an apparently unchangeable fact—that half the mothers of pre-schoolers now work—argues a presumably undeniable appeal: that all taxpayers should subsidize child care. Day-care advocates plead a heart-warming cause and dramatize a far-reaching problem. But they are fighting for an expensive solution and generating a growing mess. In the fourteenth year of the abortion culture, they also show how far the “choice” ethic has gone and where it’s likely to take us. In the process, anti-abortionists may find themselves battling as much for “wanted” as for “unwanted” children, and for the same reason: the obligation to protect their rights.

The mess is caused by the expansionist vision of the day-care Utopia, by troubles created when that vision clashes with reality. Traditionalists need to look at what the vision actually demands and at what it has so far brought about. That would bring us to the question about what we ought to do.

The day-care promises mount up as the average age of institutionalized children goes down. Once day care meant part-time schooling, a stretch of the kindergarten idea to three and four year olds who would go to class three times a week, seldom more than four hours a day. The child then went home to mother, who *was* still home, *usually*. Today, however, nearly half of the children below the age of *two*, infants and toddlers (most of them still in diapers, some barely weaned) will be dropped off at some center for as often as six days a week for as long as ten hours a day.<sup>1</sup> As we move downward through the tender years of childhood to newly arrived infants, we move from a kind of teaching in

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kindergarten to a kind of parenting in “infant centers.” This push toward a universal pre-school system introduces the toughest question about day-care: who will be doing the work?

Look at your infant or toddler now, or remember him, and ask who you’d like to have caring for him *most of the time*: you’d want, at the very least, someone *nearly* as good as you, with her wits together and her heart in the right place, not to mention moral values somewhere in the same ballpark as yours. In the best of times that’s a lot to ask and to promise. And when it comes to family values, these are hardly the best of times.

Thus what most of us would *normally* want is already a lot to expect. Some women fret at leaving their children too long with granny. What two women, however closely related and loving, could agree on a style of child-rearing? What two *parents*, for that matter, see eye to eye about what to do for their children? What would mothers do with *strangers* who will in effect take care of their jobs? That’s what already happens in many day-care centers, and it will happen more often if the movement shifts into high gear. To bring us to that goal, the movement Utopians will therefore have to promise quality surrogate parenting. Promising that much borders on presumption. Promising *more* sets up a generation of mothers for cruel disappointment.

But *more* is exactly what you have to promise if you want to go from making the best of a bad situation to creating the best of all Utopian worlds. In those higher regions we would not want substitute parents. We would want better parents, professional specialists, state-of-the-art nursery technicians. Real parents, so goes the progressivist argument, have always been amateurs, stumbling into jobs they seldom prepared for, deciding the future of nations through trial and error, teaching their children as much by horrible example as by elevated principle. The logical mind has always mocked the spectacle. The professional mind has always tried to improve it. Why not train and accredit people for the job? We hand sick children over to doctors. We hand ignorant children over to teachers. Why not hand untrained children over to child care specialists as disciplined as the Marine Corps and as dedicated as the Peace Corps? The promise then is not enlightened baby-sitting. It’s professional child care provided by Mary Poppins with an M.A. in Early Childhood Education. Pass the legislation, turn on the

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funding, and they'll drop out of the sky brandishing their credentials like tightly furled umbrellas.

Our experience with existing public education has shown that such over-promising is built into the system. Expand its jurisdiction down into the nursery and it will spread across the landscape a still larger network of centers and offices, agencies and departments, out of which will spew inspectors and evaluators and counselors galore. *Into* them will go data gatherers, accountants, coordinators, lobbyists, and administrators. We will need, of course, referral centers connecting client parents with private and public services. Need them? We've already got them, in California, under the name Resource and Referral Child Care Network. And what progressive California has, other tag-along states will also want. Once we connect parent to center in a process as complicated as courtship, we need to insure the success of the relationship by, for example, providing "counselors" to assist distressed children or to adjudicate quarrels between parents and teachers, or negotiate referrals to specialists working with disturbed, handicapped or illness-prone children.

This litany illustrates both the relentless expansionism of the public schools and the spiraling costs that feed the fights about public education. Consider, for example, that most public schools already suffer from high teacher-student ratios; that the ratio must go *down* with the age of the student—that while a high-school teacher can effectively handle 30 students, grade-school teachers must have only 26, kindergarten teachers 16 and *pre-school* teachers no more than a dozen. To serve the needs of still-diapered children, a "teacher" with more than six toddlers or *three* infants puts the children at risk.<sup>2</sup> So day-care centers are "labor intensive" with nearly all the cost going into salaries. And they will no doubt repeat another public-school pattern: that salaries increase in direct proportion to the distance an educator is removed from children; actual teachers get the lowest salaries, principals more, and superintendents the most. A large part of the billions now drained off by public education feeds an ever-expanding bureaucratic structure *outside* the classrooms. Consider George Gilder's estimate when he surveyed the likely costs of a national day care system: that care for "pre-school" children would cost *nearly twice as much as the current expenditures for the first six grades*.<sup>3</sup> That was in 1973, when a much lower

percentage of mothers were in the work-force—and 13 years before the day-care lobby had revved itself up into “movement” status.

It would take a Karl Marx to picture the day-care movement’s dream, a Charles Dickens to describe the present reality, a George Orwell its likely fate. Dickens, for example, might begin by describing the best of times before taking his readers to the worst. He might tell us about a yuppie dual-career family in San Francisco; in 1985 this six-figure-income couple—she’s a local television star, he’s a banker—described the problem of keeping nannies.<sup>4</sup>

Now, if you haven’t been keeping up, you have to know that nannies are the Harvard professors of the child-care profession, educated at nanny colleges in Britain or, increasingly, here. They live in the house, provide a long menu of child-care services, and command top dollar . . . when you can get them. This unfortunate couple went through four of these nursery prima donnas in one year. Two of them turned out to be great, so loving and maternal that sensible young men found them out and married them. The third came down with mother-panic, the overwhelming fear that sometimes grips a woman when she realizes her awesome responsibility—she ran off after three weeks, probably in search of a sensible young man. The fourth arrived, passed muster and, at last report, is still around, but her grateful employers won’t tell how good she is because they don’t want to start a bidding war. Other less fortunate yuppie couples make do with less qualified nannies or with “au-pairs,” young women from overseas imported for a year, or with free-lancing nice old ladies or college students, all of whom come and go in endless rotation. That, Dickens would tell us, is the best of child-care problems among the dual-income aristocrats.

Move down from Nob Hill or Trump Towers and you slide closer and closer to Oliver Twist. Substitute-parenting in the child’s own home comprises less than 25% of all child care, only a small fraction of which is provided by live-in help, whatever their competence. Another 56% of the children receive their care in day-care “homes,” usually some makeshift neighborhood arrangement, some licensed, others not. These women usually operate alone and are seldom bothered by inspectors. The child-care “ombudsman” for the San Jose, California, school district reports that such homes must be visited before a license is issued, but only once in three years thereafter.<sup>5</sup> Even so the demand far

exceeds the supply. In California alone there are already 692,922 state-approved child care sites, but 1,000,000 more are “needed.” Most have lists that keep desperate parents waiting from three months to three years, a situation that prompts extra-legal operations and strains the capacities of constantly under-staffed inspection agencies.<sup>6</sup> A figure from 1980 gives a picture of the national situation: 7 million pre-school children with working mothers, only 1.6 million licensed day-care slots. Note, incidentally, that as of 1985 California had already budgeted \$277 million for early childhood programs, and now faces the obligation of *doubling* expenditures for a system that in its present form is dangerously inadequate. In fact, a California couple discovered that even their professionally-staffed center could not properly serve pre-schoolers. They checked into the situation in the rest of the state and country, decided to quit the day care “industry,” and wrote a book warning parents about its hazards.

In their book, *The Day Care Decision*,<sup>7</sup> William and Wendy Dreskin warn not only about the catch-as-catch-can day care “homes” but also against the “centers,” pre-school facilities providing part or full-time care. Some 15% of all U.S. children now receive full-time care in such places, 60% of which are operated commercially, most often at high risk because of the ever-mounting costs from equipment, personnel, hygienic procedures, and liability insurance now in outer orbit. But with these centers, as with the live-in help and the neighborhood “home,” the ongoing, nerve shredding problem is staffing.

Quality pre-school teachers, not to mention quality surrogate parents, are hard to come by. Viewing the situation in 1984, *Newsweek* reported that “not enough good care is available at a price the poor or even the middle-class family can afford to pay.”<sup>8</sup> One reason for this constant shortage derives from the bottom level status of the work. Over 65% of the centers offer no medical coverage; 85% offer no retirement benefits. According to one report, the turnover rate—which is the “bane of the profession”<sup>9</sup>—now reaches 40%. Departing staffers dump more work on those remaining. They, in turn, put up with the hassles until they burn out and join the exodus. The turnover rate thus compounds an already low assessment of day-care work. It “ranks with dishwashing, peddling and pumping gas as occupations least able to retain personnel.”<sup>10</sup>

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Go behind the bureaucratic designations of “day care center,” or “pre-school” or “infant/toddler nursery,” continue beyond the Mother Goose language of Happy Hollow, Rainbow Place, and Kiddy Circus, and you’ll often find what Ralph Nader calls “warehouses” where the honest are not always competent and the competent are not always honest. Given the hazards built into the system, parents might settle for warehousing as long as they get their kids back in reasonably good shape. In a growing number of cases, they won’t even get that much. In the mid-80s, the nation was scandalized by a wave of sexual molestation and child-abuse allegations leveled at day-care employees. Some proved false, others true enough to throw further suspicion on the people drawn to the work. The scandals discouraged the few men who entered the field, over-burdened inspection programs, and pushed liability costs beyond the means of some of the most dedicated providers. Such developments aggravated the already worrisome staffing problems. A check of private centers in New York disclosed that one-third of the employees had previous criminal records, including arson, robbery, prostitution and possession of weapons and drugs.<sup>11</sup>

Even when you find reasonably good staffs at work in up-to-date facilities, you still run into problems. The health risk alone can tax the wits of the best day-care manager. The Dreskins assign it an entire chapter, subtitled “Warning: Day Care May Be Hazardous to Your Child’s Health.”<sup>12</sup> By the end of the chapter we know

- that most parents are not aware of the health problems associated with day care
- that health risks are as high in top-quality centers as in make-shift operations
- that all forms of day care significantly increase the exposure of infants/toddlers: outbreaks of infectious diseases in centers have drawn the attention of pediatricians and medical researchers from the National Centers for Disease Control
- that many children who pick up infections in centers remain “asymptomatic”—they show no signs of illness, but act as carriers, passing on the disease to their family and friends, or to day-care workers (they may also harbor the disease until it flares out in later years).

After a survey of the problem, Dr. Stephen Hadler of the Phoenix Center for Disease Control said: "Day care centers are a fertile environment for the spread of infectious diseases. [They] represent a major potential problem in public health."<sup>13</sup>

The Dreskins' review of day-care health problems runs through a troubling list of infectious diseases that thrive around runny noses and dirty diapers and constantly-dirty hands. You read about cytomegalovirus (usually fatal) shigellosis, hemophilus influenza, hepatitis A, rubella, bacterial meningitis and the common cold. And you learn of the procedures needed to contain them: constant hand washing, toy cleaning, using disposable plates and towels, separating sinks for bathroom, kitchen and diaper changing areas, placing paper towels in every room.

**M**ost important on the list is an isolation room for sick children who, according to rules frequently violated by parents, shouldn't be dropped off at the center to begin with. Parents leave sick kids at the centers because they often don't know what to do with them. Staying home too often can jeopardize careers. Those lucky enough can patronize the latest specialty, kiddie clinics with big fees and cute names like Wheezles, Sneezles, Sniffles, and Chicken Soup. But for most parents, most of the time, when it comes to the health of their pre-schoolers, they're playing a dice game.

These questions about health, safety and staffing remind us of the third element in the day-care mess, the quarrels that it spawns. We shouldn't be surprised. In America, tax-funded education has often divided the community it was intended to unite. Conservatives have seldom trusted the public schools and today, when they appear to promote secularist values, they trust them even less. Connaught Marshner had both political and pedagogical progressivism in mind when she called public schools "not only a failure but a nuisance and a threat to the continuance of an ordered society."<sup>14</sup> Pushing such a controversial system downward into nursery training can easily lead to cultural war.

In a 1986 newsletter, Phyllis Schlafly explained what conservatives will be fighting about. She called tax-funded, universal day care costly, dangerous, and pedagogically unsound—nothing more than a scheme to service the ambitions of dual-career couples, create more jobs for

teachers, divert more public money into the hands of secularist mind-shapers. In an age supposedly committed to gender equality she made a further point not often brought up: that the system may hurt boys “far worse than girls.”<sup>15</sup> The conservative constituency for whom Marshner and Schlafly speak thus fight over a fundamental grievance. They don’t want to put their children in schools that threaten their values—or be forced to *pay* for them. If conservatives already feel that deeply about schools for teen-agers, you can understand how they feel about schools for infants and toddlers.

But liberals, who supposedly line up on the other side of this fight, by no means show themselves united behind universal day care. For reasons of their own, many liberals mistrust the public schools. Just twenty years ago a number of pedagogical radicals were demanding the “de-schooling of society.” The influential voice of John Holt expressed their hostility to a system they found “mean spirited, competitive, exclusive, status seeking and snobbish.”<sup>16</sup> Holt helped pioneer a home-teaching movement which now involves almost a million children. Liberal misgivings about the “spirit” of public schooling spill over into the controversy over day care. Left-of-center skeptics, such as the Dreskins, are now calling attention to reports showing how even the best of child-care centers tend to slide into routine and regimentation. One psychologist complained about centers where “children spent a lot of time waiting for things to happen; standing in line to go outside, to go to the bathroom, waiting for lunch to be served.”<sup>17</sup> A matron was overheard saying to a rebellious child in a bathroom: “This is peeing time, so you are going to pee.”<sup>18</sup>

Parents, whether liberal or conservative, might suffer such conditions if they had some assurance of good results. What they get instead are confusing reports on what all parties agree is an “experiment.” Few people know what such large-scale institutionalizing of our very young will do. The frequently-cited Israeli kibbutz nurseries were staffed by dedicated volunteers, bound by a 3,000-year tradition and inspired by a revolutionary ideal. Even so, their dogmatic state-parenting effort fell apart within a generation. The much-studied “children of the dream” showed great citizenship, but limited creative individuality. Had all Jews been raised in Kibbutzim nurseries we’d have been deprived of the pyrotechnic brilliance of Jewish culture. In any event, not more

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than five percent of the Israeli children shared the experience, and the country shows little interest in universalizing it. And the results from Sweden also tell us mostly what to avoid. (See my article on social engineering in Sweden and Israel, "Selling Tarnished Utopias," in the Spring 1986 Human Life Review.)

A number of liberals also share another concern with Phyllis Schlafly: pressuring growth in a pedagogical hot-house. San Francisco Columnist Cyra McFadden<sup>19</sup> writes about moppets of ten months undertaking "baby gymnastics" and "child's art classes," about parents fretting about getting kids into private pre-schools charging \$6,000 a year, and highly-selective toddler academies receiving 500 applications for every 50 places, and about organizations training four-year-olds for school interviews *via* "two week crash courses in how to shake hands, how to look people in the eye, how to present yourself to the interviewer as poised and confident." McFadden finds this frenetic push toward tender-aged sophistication amusing. Other liberals, still attached to the humanist vision, find it appalling. Thus we find some liberals trying to get their kids out of the schools we already have while others try to expand public schooling into the lives of infants.

The irony of this liberal double-think is illustrated by the complex attitudes of blacks toward universal day care. After all, it has usually been the interests of minorities that have sold liberal social experiments. The Head Start Program, whose success now presumably argues the case for day care, joined with other Great Society efforts to help blacks realize the promise of the civil-rights movement. But blacks point out that Head Start worked relatively well *not* because it dumped ghetto children into alien environments (to be worked over by experts) but rather because Head Start people brought the program into the neighborhoods and kept the mothers involved with their children—unlike Workforce, which puts mothers into the labor market and their kids into the child-care system.

As George Gilder reported 13 years ago, the day-care system feeds deep black suspicions about white motivations. He found that black mothers resisted sending their children to a private center on the edge of Harlem because they "would have nothing to do with their liberal child-raising methods."<sup>20</sup> Things haven't changed much since then. When it looked like the new day-care centers would be drawn into the



public education system, the National Black Child Development Institute put out a booklet letting the public know what they thought about it. Their title says it all: *Child Care in the Public Schools: Incubator for Inequality?*<sup>21</sup>

Thus, universal tax-paid day care raises expectations that can't be fulfilled except at great costs. And it has already spawned more problems than it was designed to solve. Most conservatives fiercely oppose it. Liberals support it with varying degrees of enthusiasm. Yet it remains high on the liberal agenda, always included in the picture of the "good life" to come. Those who push it know the unpleasant facts: the staffing problems, health hazards, parental misgivings, mounting costs, and the perpetual drain on the public treasury. But every problem which conservatives can recite only persuades progressivists that we need more day care. As they see it, the problem is not day care, but money. They're OK and their program is OK. It's society—the rest of us—that's the problem. The argument that frames this position uses the rhetoric of "choice" but relies on the imagery of necessity. We must endorse universal day care because, they argue, we must defer to reality. When an avalanche drops half a mountain before you, you do not pick up the rocks and cement them back on the slopes. If "you can't turn back the clock," you must look at what the times tell you. More than half of our young mothers now enter the workforce—women are now dedicating much of their energies to careers—while half of our young marriages end up in divorce, and almost three-fourths of welfare families form around a single mother. All these changes have been brought about by choice, but choice supposedly can no longer *change* it. We must therefore do what we must do. The reality remains fixed, and the only difference between conservatives and progressivists is how long it will take before everyone sees what is out there to see.

So the question about what ought to be done with the day-care mess rests finally on the question about how we define the necessity which compels our action. And, as with the abortion question, we divide from those who call themselves "pro-choice" over the fundamental right which will determine moral necessity in our lives. They insist on the rights of the woman. We insist on the rights of the child. In many cases these rights can co-exist, or give way to the other. But eventually one or the other must stand alone as the primary value.

FRANK ZEPEZAUER

To consider what might happen if the exclusive rights of the woman win out, consider only what has already happened. Ask first what a woman wants, or what she needs, and you release an endless flow of choices to which society must constantly adapt. The choice to abort a child or to have it, the choice to give or deny it a father—few of these choices are private. Most generate situations which the rest of us must ultimately cope with, a necessity that the open-eyed will recognize, and the warm hearted will respond to. It's the women's choice. But it's our necessity.

**B**ut ask first what the child needs and you expose the foundation on which all societies are built. Women protect children. Men protect women. Society protects families. And at the center is the child. Christians have known that all along. Their "patriarchal" faith develops out of a simple story of a God who took human form as a helpless child. He was nurtured by a mother and father who adapted to the necessity that lay in the manger before them.

Neither Joseph nor Mary chose the event. The event chose them. Then they chose to dedicate their lives to its demands. That's the Christian version of the choice ethic.

NOTES

1. Forty-nine percent of women with infants under two were in the labor force in 1985, up 10% since 1980.
2. The February 1985 *Phyllis Schlafly Report* passed on the results of a study showing that children attending half-day kindergarten classes of 16 students outscored children in full-time classes of 22-28.
3. George Gilder, *Sexual Suicide* (New York: Bantam Books, 1973), p. 166. Gilder estimated the costs of the then proposed day-care system as \$20 billion vs. the \$12 billion then spent for classes K through 6.
4. Reported in the San Francisco *Chronicle* (June 17, 1986).
5. Reported by Flo Furdicke in the San Francisco *Chronicle* (June 17, 1986).
6. Robert Arvantes, quoted in San Jose *Mercury* (April 6, 1986).
7. William and Wendy Dreskin, *The Day Care Decision* (New York: M. Evans and Co., 1983).
8. *Newsweek*, (September 10, 1984).
9. Ethel Seidelman, San Francisco *Chronicle* (June 18, 1981).
10. M. Whitebone, Director, Child Care Project, Berkeley, quoted in the *Chronicle* (June 18, 1986).
11. Sidney Harris, San Jose *Mercury* (June 22, 1986).
12. Dreskin, pp. 68-94.
13. *Ibid.*, p. 70.
14. Connaught C. Marshner, *Blackboard Tyranny* (New Rochelle, NY: Arlington House, 1978), p. 320.
15. *Phyllis Schlafly Report*, (February, 1986).
16. Quoted in the Peninsula *Times Tribune* (Palo Alto, CA, January, 29, 1980).
17. Elizabeth Prescott, Pacific Oaks College, Pasadena, quoted in San Francisco *Chronicle* (June 18, 1986).
18. Dreskin, p. 24.
19. San Francisco *Chronicle* (July 27, 1986).
20. Gilder, p. 166.
21. See Dreskin.

## Putting the Family beyond Ideology

Carl A. Anderson

THE TIME HAS COME TO BE audacious about economic policy, and the role of the family's *children* in advancing economic development and material progress. This the family does—and has done historically, if one looks at the record of the past—by its industry and saving, its training of the young, and its bonding of them to their elders. Even more important, for considerations of economic policy, is the family's role, over the last two centuries or so, in fostering the values and aspirations—we might say the moral disciplines—which are essential to the emergence and the endurance of a free and humane culture.

It is also time to assert the crucial linkage between the generating of children and the generation of wealth, between fidelity to the home and the possibility of a free enterprise society. Unfortunately, today this linkage is sadly neglected when so many in public office are reluctant to recognize the familial facts of economic life.

Two centuries ago, when Adam Smith wrote *The Wealth of Nations*, and unleashed his revolutionary ideas upon a world in need of them, the basic unit of economic activity was the household headed by an individual, whom Smith wished to see economically free. That is not the same thing as saying Smith advocated a society of economically autonomous persons. Two centuries ago, some things were taken for granted: the individual's place in the home unit, the family as the extension of its head, the household as the economic building block of larger societal structures. This does not mean cottage industries. It means that an individual's economic activity is not for a person, but for a family.

Smith's economic individual was conceptualized as the head of a larger entity: the small human community called a family. Smith did not have to explain that to his eighteenth-century readers. It was taken for granted that individual economic enterprise—the behavior that ultimately generates the wealth of nations—starts, not with lone men

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and women in pursuit of personal profit, but with individual households, the members of which assist and support one another in communal economic activity.<sup>1</sup>

The Industrial Revolution which began in the 1760s emerged within a political environment that increasingly minimized the role of government in economic affairs. As historian Paul Johnson points out, this development “took place not because of the state but despite it [and] was made possible largely by the withdrawal of government from economic affairs.”<sup>2</sup>

In England, for example, government spending as a proportion of the gross national product fell from 15 percent to 8 percent between the years 1830 to 1890—sixty years which witnessed the longest sustained period of rising living standards in that nation’s history. This combination of economic betterment and individual liberty was, in Johnson’s view, “not only the most important event in secular history but the most beneficial.”<sup>3</sup>

This unprecedented economic achievement was not without its negative results, however. Much of the progress rested upon the backs of married women and young children forced by financial necessity into the new manufacturing and textile industries. By 1839, 58 percent of the 420,000 workers in Britain’s textile industry were female, and 46 percent were under age 18. Only 23 percent of the labor force was made up of adult males.<sup>4</sup> Clearly, the social and economic role of the family was rapidly being drained of content by the demands of the emerging industrial society.

The impact of these developments on family life was not lost on the critics of Capitalism. In 1845, Friedrich Engels observed in his book, *The Condition of the Working Class in England*, that when married women enter the industrial labor force, “family life is . . . destroyed and . . . its dissolution has the most demoralizing consequences both for parents and children.”

Nearly forty years later, Engels would develop the definitive marxist analysis of the social and economic role of the family. In writing *The Origin of the Family, Private Property and the State*, Engels sought to place the family at the center of marxist theory and argued that the evolution of the family was immediately related to the evolution of the means of production.

Indeed, Engels held that the first division of labor, the first class conflict which emerged in history, occurred between man and woman within the context of monogamous marriage. He wrote that “monogamy does not by any means make its appearance in history as the reconciliation of man and woman . . . On the contrary, it appears as the subjection of one sex by the other, as a proclamation of a conflict between the sexes.”<sup>5</sup> The modern bourgeois family, for Engels, was based on an enslavement in which the wife represents the proletariat and her husband the bourgeoisie.

Ironically, Engels’ solution to the evils of economic exploitation of family life was to intensify the reach of economics into the family. Although Engels, in 1845, observed that the introduction of married women into the industrial workforce made healthy family life impossible for themselves and their children, by 1884 he was insisting that “the first premise for the emancipation of women is the reintroduction of the entire female sex into public industry.” If, according to Engels, Capitalism assaults the family by viewing it only in economic terms as a ready source of labor, then marxist theory makes that assault complete by insisting upon the total participation of married women and men in the workforce in order that the family as an economic unit of society be abolished.

Having emptied the family of its economic content, marxist analysis next removed the family’s traditional legal standing as a protected social institution. Soon to gain legal recognition would be divorce at the will of either spouse for any reason or none at all. Cohabitation and childbearing outside of marriage would be given the same legal standing as childbearing within marriage. Also, the primary responsibility for the upbringing and education of children would be shifted from parents to the State. The family, now purged of its social, legal, and economic functions, would be expected to wither away. In its place would stand the newly autonomous, yet collective, man.

This ideological assault on the family emerged from an internal logic tied to the marxist understanding of equality. This understanding precludes even the possibility that the new collective may emerge from within the traditional individual family. As normally understood, the notion of “equality” embraces those external conditions which affect rights, privileges, and opportunities. But as Igor Schafaravich observes,

“In socialist ideology, however, the understanding of equality is akin to that used in mathematics (when one speaks of equal numbers or equal triangles) . . . the abolition of differences in behavior as well as in the inner world of the individuals constituting society . . . . The equality proclaimed in socialist ideology means identity of individualities.”<sup>6</sup>

It is within this context that the term “the masses” as used in marxist literature is to be understood. As Bernard-Henri Levy points out, “‘Mass’ is the name the baker gives to unformed dough. It is the name the metalworker gives to the boiling liquid he is about to pour into the mould. It is the term in physics which designates what in bodies has no quality and is nothing but simple density. Humanity reduced to its ‘mass’ is nothing, in this sense, but society reduced to the totalitarian body of the prince, itself monstrously dilated to the dimensions of the body of men.”<sup>7</sup>

Thus, under the weight of modern ideology the individual person dissolves into a nothingness which is at the same time an emergence into the being of the collective State. Against this philosophy of the State which first alienates and then absorbs the individual, stands the family.

Within the Judeo-Christian tradition, “it is the family that takes each man and woman out of anonymity, and makes them conscious of their personal dignity, enriching them with deep human experiences and actively placing them in their uniqueness, within the fabric of society.”<sup>8</sup>

It is the family too that stands as a mediating institution between the vulnerable individual and the claims of the State. As natural institutions, marriage and family arise from the concrete reality of the natures of husband and wife and the relationship between parents and children. As such, they possess their own inherent and inalienable rights and duties which no government can treat in an arbitrary or artificial manner. Thus, the family stands as the basis of our pluralistic and free political institutions.

The process of proletarianization of the family which began during the Industrial Revolution and which the marxists first criticized and then sought to bring to completion has been largely rejected by the free economies in the Western democracies.

By the end of the nineteenth century a fundamental goal of the organized labor movement in the United States was the creation of

what in effect was a family wage. American labor leaders sought to reform pay scales in order that a primary breadwinner could earn enough to support his family. A fundamental tenet of this reform was that married women, especially married women with small children, should not be forced by economic necessity to work outside the home. A second equally-important reform was the virtual abolition of child labor in the United States.

With the passage by the U.S. Congress of the Fair Labor Standards Act of the 1930s, the American worker had very nearly succeeded in securing his wife and children from the rigors of the workplace. More importantly, in so doing, the American laborer constructed a protective boundary around the life of his family, holding it safe from economic exploitation.

In France during this time the family was also seen as a centerpiece of social and economic policy. In 1916, following the admonition of Pope Leo XIII, a private family allowance system for the heads of households with dependent children was instituted by the Joya Engineering Works at Grenoble. Hundreds of other companies quickly joined this voluntary effort to place the family at the center of economic policy. Soon government too joined the effort with a broad range of social benefits directed toward the childful family. By 1938, approximately three percent of the total French national income was spent on family support programs. One year later, the government's new Family Code would increase even more the benefits to be provided to the childful family.<sup>9</sup>

Indeed, by 1948, this right to a family wage had become accepted to the degree that the Universal Declaration of Human Rights asserted in Article 23 that "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity."

Nonetheless today we are all too familiar with the growing social and economic distortion of the family. It is hardly necessary to recount again the already too familiar indications of the family's decline in recent years: the divorce rate, the illegitimacy rate, the number of families on public assistance, the proportion of young adults living alone and of older adults living and dying alone. Brute statistics overwhelm

the reassurances of those social scientists who minimize the problems of the family.

I would suggest that a substantial cause of this recent breakdown of family life is that too many in public life have neglected to maintain the strong economic and legal framework which supported the family earlier in this century. Today, it is safe to say that the family remains largely an afterthought in national policies geared toward the autonomous individual, that artificial construct of the official mind. Contemporary government policies, by treating human society as something mechanical and artificial rather than organic, ignore the cadences of communal life by which infancy becomes youth, youth merges into maturity, and maturity ripens into old age—cadences which are essentially familial processes. By ignoring the social and economic content of the family, these policies also distort the response of government to social developments which are essentially familial processes.

In large measure, the governing concept, the defining principle, behind government policy has been the autonomous individual, often without the least thought as to the impact of legislation or administrative action upon families. Contemporary government's neglect of the family as an institution in this respect bears a striking similarity to the mid-nineteenth century Capitalist's view of men, women and children as autonomous members of his workforce.

And when that is not the case—when government seeks to promote the family through some benefit program—it now too often does so within a legal framework that requires an official neutrality between marriage and non-marital cohabitation, between childbirth and abortion, and between raising children within marriage and raising children outside of marriage. Under such circumstances, so-called “pro-family” government benefit programs often encourage any living arrangement except the family based upon marriage.

Clearly, the experience of the last two decades indicates that we cannot strengthen family life by substituting governmental action for the economic function of the family. Whatever short-term benefit may result from the State's decision to pre-empt a traditional responsibility of the family, recent experiences suggest that such benefits may soon be overshadowed by unforeseen longterm consequences which threaten family stability. This happens most often when government adopts a



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stance of neutrality between the family based upon marriage and other living arrangements, but especially when it provides benefits *equally* between a variety of legally-recognized lifestyles.

We can strengthen family life, as we did earlier in this century, by creating economic conditions in which the family itself may successfully perform its own economic and social functions. There is no more urgent task in our civic life. We treasure the family, not only for what it gives its members, but for what it enables them to give their community: their moral values, their sense of purpose and responsibility, their compassion and commitment to something larger than self-interest. Those are essential characteristics for a free and humane society, and they are surely worth defending.

One place to begin is the examination of existing public policies from the standpoint of their effect upon the stability of marriage and the autonomy of the family. In this effort, we can rely upon those international human rights documents which already incorporate principles of familial autonomy—principles which limit government's reach into family life. For example, the Council of Europe Convention on Human Rights provides that "In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions [First Protocol, Article 2]."

Another place to begin is with the insistence that new government policies include the basic principle of fairness for families, as does the historic tax reform legislation just passed in the United States.

During the first half of this century a remarkable number of men and women in many nations worked together in the cause of political and economic justice for their families. Laborers, capitalists, churchmen, economists, and government officials, they all shared a common commitment to the values which support and sustain the family. It is time again to form this community of believers in the family, whose fellowship and solidarity can overcome partisan and political alignments and transcend institutional limits. It is time again to assert the rights of the family and its central place in a free society. It is time again to place the family beyond ideology.

CARL A. ANDERSON

NOTES

1. Carl Anderson and William Gribbin, *The Wealth of Families: Ethics and Economics in the 1980s* (Washington, D.C.: American Family Institute, 1982), pp. 19-25.
2. Paul Johnson, *The Things That Are Not Caesar's* (Washington, D.C.: American Enterprise Institute, 1980), p. 3.
3. *Ibid.*
4. Allan Carlson, "The 'Proletarianization' of the American Family," *Persuasion at Work*, Nov., 1985, p. 2
5. Karl Marx and Friedrich Engels, *Selected Works in One Volume* (New York: International Publishers, 1968), pp. 502-503.
6. Igor Schafarovich, *The Socialist Phenomenon* (New York: Harper and Row, 1980), p. 245.
7. Bernard Henri-Lévy, *The Testament of God* (New York: Harper and Row, 1981), p. 56
8. John Paul II, *L'Osservatore Romano* (English Edition), February 13, 1982.
9. Allan Carlson, "Toward a National Family Policy: The European Experience" in *The Emblem of Freedom: The American Family in the 1980s*, ed. Carl Anderson and William Gribbin (Washington, D.C.: American Family Institute, 1981), pp. 103-104.

## Abortion and Moral Reasoning

Hadley Arkes

ANYONE IN AMERICA WHO WRITES these days about abortion must take account of the landmark decision of the Supreme Court in *Roe v. Wade*,<sup>1</sup> and in estimating the “quality of mind” manifested by the Court, he would have to regard that profundity which stands near the beginning of Justice Blackmun’s opinion for the majority: “Pregnancy often comes more than once to the same woman, and . . . if man is to survive, [pregnancy] will always be with us.”<sup>2</sup> One becomes aware instantly that one is in the presence of no ordinary mind. Justice Blackmun’s opinion reached, with this memorable passage, its philosophic acme. In the balance of the opinion—which is to say, in the parts that sought to settle the substantive rights and wrongs of the issue—Blackmun’s opinion achieved that distance from any rigorous philosophic and moral reasoning which has become typical of the Supreme Court in our own time.

Blackmun’s judgment rested on the conviction that the Court “need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.”<sup>3</sup> Within the space of five lines, Justice Blackmun managed to incorporate three or four fallacies, not the least of which was the assumption that the presence of disagreement (or the absence of “consensus”) indicates the absence of truth. That particular fallacy hinged in turn on his assumption that the question of when life begins—or, more accurately, the question “What is a human life, and when can it claim the protection of the law?”—is an inscrutably religious or “theological” matter. Blackmun reflected here the tendency in our public discourse to equate moral questions with matters of religious faith or private belief, which cannot be judged finally as true or false. It was as though the matter of abortion, as a profound moral question,

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was somehow cut off from the process of weighing evidence and testing arguments by the canons of principled reasoning. Justice Blackmun, at any rate, never subjected to the test of principled reasoning his own assumptions about the nature of the fetus and its standing in the eyes of the law. But if the arguments over abortion were tested in that way, we would discover that almost all of the “first principles” we have managed to extract here from the logic of morals would come to bear on that issue. And as they did, they would move us decisively to a judgment radically different from the one arrived at by Mr. Justice Blackmun in this case.

It is not surprising that the most prominent cliché in the public dispute over abortion would have been exposed as a fallacy by the very first step we took in drawing out the implications that arise from the logic of morals. The first thing that had to be understood about a moral proposition was that it is distinguished at the root from statements of merely personal, subjective taste: it is not consistent with the logic of morals to say, for example, that “X is wrong” and yet to insist at the same time that “people must be left free to do X or not, as it suits their own pleasure.” This incompatibility between the logic of morals and the claims of personal preference was precisely the point that Lincoln brought out in his debate with Stephen Douglas:

[W]hen Judge Douglas says he “don’t care whether slavery is voted up or down,” . . . he cannot thus argue logically if he sees anything wrong in it; . . . He cannot say that he would as soon see a wrong voted up as voted down. When Judge Douglas says that whoever, or whatever community, wants slaves, they have a right to have them, he is perfectly logical if there is nothing wrong in the institution; but if you admit that it is wrong, he cannot logically say that anybody has a right to do a wrong.<sup>4</sup>

Apparently, the moral lessons that were taught in the debate between Lincoln and Douglas have not become part of the education of political men and jurists of our own generation. And so it has become common for public figures to declare in public that they “personally disapprove” of abortion, but that abortion is a “deeply religious and moral question,” and *therefore* that the laws should not impose an official policy on this matter. It may be, in most cases, that our public men and women have failed to recognize their own fallacies, but that recognition has not been lost on their constituents who have been opposed to abortion, even if they have not been schooled in moral philosophy. They

have had wit enough to understand that their politicians would not be likely to declare that they are “morally opposed,” say, to the torture of children, but that they are disinclined to interfere with the religious or moral views of parents. “It is not,” they may aver, “that we are in favor of torture, but that we are ‘pro-choice.’” That argument is not likely to be heard because its incoherence would be understood instantly: one could be “pro-choice” on the torture of children only if there were nothing in principle wrong or illegitimate about the torture of innocent people. The point is not grasped so quickly in relation to unborn children because they are not viewed as children, or “persons”; and so long as it is possible to mask from view the nature of the fetus, it is possible even for the most decent people to settle their judgments on abortion on grounds they would be too embarrassed to apply to any other question of consequence.

But the nature of the fetus is a problem that must be judged with the discipline of principled reason, and once again Lincoln would offer the best example of the way in which the question ought to be addressed. I had occasion earlier to recall that fragment which Lincoln had written for himself, in which he questioned an imaginary proponent of slavery about the grounds on which the slavery of black people could be justified:

You say A. is white, and B. is black. It is color, then: the lighter having the right to enslave the darker? Take care. By this rule, you are to be slave to the first man you meet, with a fairer skin than your own.

You do not mean *color* exactly?—You mean the whites are *intellectually* the superiors of the blacks, and therefore have the right to enslave them? Take care again. By this rule, you are to be slave to the first man you meet, with an intellect superior to your own.

But, say you, it is a question of interest; and, if you can make it your *interest*, you have the right to enslave another. Very well. And if he can make it his interest, he has the right to enslave you.<sup>5</sup>

By the force of principled reasoning, in other words, there was nothing which could be said to justify the slavery of black men that would not apply to many whites as well. In the same way, it would be found that there is nothing which could be said for the sake of questioning the human nature of the human fetus that would not also disqualify, as “human” beings, many people who are moving about outside the

womb. And if we find that there is no ground of principle on which an unborn child can be regarded as anything less than a human being, then the arguments offered in favor of abortion will have to be judged by a far more demanding standard. For with the force of the same principled reasoning, the arguments that would now be required to justify the taking of fetal life would have to be at least as compelling as the kinds of arguments we demand on other occasions to justify the taking of human life. At that point, we would discover that arguments which have been regarded as quite plausible by large sections of our public may be exposed as either vacuous or embarrassing once they are framed explicitly as justifications for the taking of *human* life.

Behind the disposition in our own time to be more tolerant of abortion there seems to be an intuitive sense that the fetus, after all, does not really “look” like those beings around us we typically identify as “human”—the creatures who deliver lectures, repair plumbing, or run to first base. The fetus, in other words, does not speak; it does not work with its hands—indeed, at a certain stage it does not even appear to have hands—and it is not able to walk about on its own. But if the fetus lacks the power of oral expression, so do deaf mutes. If the fetus lacks arms and legs in its early stages, there are many people who have lost one or more of their arms or legs or who were born without power over their limbs. And yet, no one would suggest that these people lack features essential to their standing as human beings or that they have forfeited their claim to live. The fetus, of course, would not have an articulate sense of itself, and it would not display those stable habits which reveal the mark of a distinct “character.” But there are also many adults who are not in possession of themselves, as we would say, and who are not competent to manage their own interests. Their condition does not seem to elicit contempt in our society; if anything, their infirmity seems to call out for a special concern and protection.

There are children, as we know, who were born with flippers where their arms should have been, and so it is arguable that they do not “look” the way human beings are supposed to look. But this example serves to remind us that “looks” are thoroughly irrelevant to the question in principle here. There was a time, not all that long ago, when many Americans did not think that blacks “looked” like real human beings. As Roger Wertheimer recalls, even men who were otherwise

decent and educated regarded the black slave as “some sort of demiperson, a blathering beast of burden,”<sup>6</sup> somewhere between a human being and a monkey. The question, however, is not what the organism “looks” like, but what it is. The embryo may not look like the average undergraduate—some people may even think it looks like a tadpole—but it is never the equivalent of a tadpole even when it “looks” like one. That apparently formless mass is already “programmed” with the instructions that will make its tissues the source of specialized functions and aptitudes discriminably different from the organs and talents of tadpoles. This “tadpole” is likely to come out with hands and feet and with a capacity to conjugate verbs. Fortunately, our knowledge of embryology has advanced beyond the state at which it was left by Aristotle, and it is no longer even quaint to suppose that the human offspring begins as a vegetable and becomes an “animal” before it ascends to the condition of a “rational” being. Over the last twenty years, embryology has shown us just how clearly it is possible to recognize, in the zygote or embryo, the genetic composition that defines a unique being. But these recent advances have merely confirmed the ancient recognition that human beings cannot give birth to horses, cows, or monkeys. As we were reminded by André Hellegers, the late, noted fetologist, all species are identified biologically by their genetic composition, and by that measure the offspring of *Homo sapiens* cannot be anything other than *Homo sapiens*. Daniel Robinson has remarked on this point that

for a being to be a human being, it is necessary that its genetic composition be drawn from the gene-pool of homo sapiens. It is further necessary that this genetic composition be of such a nature as to sustain that form of biological maturation which culminates in the unique biochemistry and gross anatomy of homo sapiens. Neither of these criteria is satisfied by ducks or fish. The first criterion may be met by certain kinds of “growths,” but not the second . . .<sup>7</sup>

The fetus may be a *potential* doctor, a *potential* lawyer, or a *potential* cab driver; but he cannot be considered merely a *potential* human being, for at no stage of his existence could he have been anything else. That is also why it is futile to pick out phases in the development of an embryo or fetus and suggest that the offspring is more human, say, at nine months than it is at nine months and a day. The process of development is continuous; each step along the way will bring a further articulation of what is built into the nature of the offspring. But at no

point will the fetus *acquire* features that are essential to its standing as a human being. The force of that proposition seems to strike us more fully after birth, for we are not inclined to suggest that people cease to be human when they suffer the loss or impairment of these faculties. People may lose their breath with the collapse of a lung, or lose their consciousness with a blow to the head; they may even suffer a permanent loss of memory and speech. But our inclination has been to revive these people and remedy their disabilities where we can, and we have presumed all the while that we are ministering to injured humans, not merely to creatures who have suddenly become subhuman.

**T**he stages in fetal development cannot be taken, then, as landmarks along the path by which a nonhuman creature turns into a human. What we have come to know more precisely about the maturing of the embryo and the fetus tends to point up for us just how early the offspring manifests those properties which are widely identified with its human nature. Between the eighteenth and twentieth weeks of pregnancy, the fetal heartbeat can be heard with a simple stethoscope. After only twelve weeks, the structure of the brain is complete, and the heartbeat can be monitored with electrocardiographic techniques. By this time, as Bernard Nathanson has pointed out, the fetus is “a fully developed, functioning human body in miniature, 3 inches in length. . . . Its fingerprints and sole and palm lines are by now unique for each individual and remain for permanent identification throughout life.”<sup>8</sup> At the ninth or tenth week, the fetus has “local reflexes,” such as swallowing or squinting or moving its tongue. At the eighth week, fingers and toes are discernible (which would indicate, by recent records of performance, that the fetus would have about all the equipment that is necessary to manage the investment portfolio of my college). But if we go back as far as the second or third week after the fertilized egg has been implanted in the uterine wall, when the embryo is merely an elongated substance about one-third of an inch long—and when, as Paul Ramsey remarks, the woman may begin to wonder whether she is pregnant—the most important “decisions” have already been made. In rudimentary form there is already a structural differentiation of head, eyes, ears, and brain, digestive tract, heart and bloodstream, simple kidneys and liver, and two bulges where arms and legs will appear.



From the earliest moments, therefore, as Paul Ramsey has written, we become aware of the presence of “immanent principles and constitutive elements.” Not only is the humanity of the offspring established, but the genetic uniqueness of the individual has been determined. “In all essential respects,” says Ramsey, “the individual is whoever he is going to become from the moment of impregnation. . . . Thereafter, his subsequent development cannot be described as his becoming someone he now is not. . . . Genetics teaches us that we were from the beginning what we essentially still are in every cell and in every generally human attribute and in every individual attribute. . . .” For that reason, Ramsey adds, “any unique sanctity or dignity we have cannot be because we are any larger than the period at the end of a sentence.”<sup>9</sup>

At this point, of course, the argument against abortion would summon a large measure of moral indignation. Left to a common sense untutored by principle, it would be hard to treat the microscopic zygote as a “human being” having the same claims upon our concern as the humans we see all about us. Could the fetus, after all, have the same “moral presence” in our lives as an Immanuel Kant or a Mother Teresa? And yet, we must be clear that there is no disposition to claim for the fetus the special esteem that may be won through professional achievement and good works; nor is there any effort to claim privileges or rights that are unsuitable to the condition of an embryo. No one would suggest that a fetus could have a claim to fill the Chair of Logic at one of our universities; we would not wish quite yet to seek its advice on anything important; and we should probably not regard him as eligible to exercise the vote in any state other than Massachusetts. All of these rights or privileges would be inappropriate to the condition or attributes of the fetus. But nothing that renders him unqualified for these special rights would diminish in any way the most elementary right that could be claimed for any human being, *or even for an animal*: the right not to be injured or killed without the rendering of reasons that satisfy the strict standards of a “justification.” Our society already prescribes punishment for the wanton killing or torturing of animals, and as Daniel Robinson has argued, we may condemn the sadistic killing of animals—the willingness to inflict pain for nothing more than one’s own pleasure—quite as surely as we may condemn the taking of human life for the sake merely of pleasure or convenience.<sup>10</sup>

In this elementary claim not to be injured or killed “without justification,” the moral claim of the fetus cannot be less than that of any other person. The parity of its claim would be quite indifferent to distinctions in intellectual or physical development that would separate the fetus, say, from an Immanuel Kant or a Dick Butkus. No one should suppose that the tall and articulate are somehow “more human” than those who are short and cryptic; nor may it be supposed that any rights we may have to the protections of the law may be proportioned to our height or to the breadth of our vocabularies. Of course, we could hardly expect that any creature in its formative stages would be as dignified or impressive, as cultivated or attractive, as the same creature in the flowering of its maturity, when it is established in its competence and in command of its powers. But if we understand that our fundamental claims in the law are not proportioned to our size or to our gifts of language—that our right not to be harmed without justification is unaffected by our weakness or strength, by our “normality” or eccentricity, or even by our thoroughgoing disability—then we are compelled to judge the taking of a nascent life with the same severity of principle by which we would measure the justifications that are brought forth for the taking of other human lives. Our senses, we know, may resist at first the comparison of this nascent life with the mobile figures, endowed with mass and wit, whom we see around us. And yet, we would have then but another occasion in which a cultivated understanding of principle must summon our imagination to correct the untutored judgment of our senses.

I am reminded of a scene from Graham Greene’s *The Third Man*, where the two protagonists meet in a compartment on the big Ferris wheel in Vienna. It is immediately after the Second World War, with the city under military occupation, and one of these men, Harry Lime, is being sought by the military police for his part in a ring selling adulterated penicillin on the black market. His friend, Rollo Martins, has been pressed by the British police to lend them his help. Through an intermediary, Martins has been able to arrange a meeting with his friend at an amusement park, and when they are alone together in the cabin of the Ferris wheel, Martins asks, “Have you ever visited the children’s hospital? Have you ever seen any of your victims?”:

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Harry took a look at the toy landscape below and came away from the door. . . . “Victims?,” he asked. “Don’t be melodramatic, Rollo. Look down there,” he went on, pointing through the window at the people moving like black flies at the base of the Wheel. “Would you really feel any pity if one of those dots stopped moving—for ever? If I said you can have twenty thousand pounds for every dot that stops, would you really, old man, tell me to keep my money—without hesitation? Or would you calculate how many dots you could afford to spare?”

For that distance in space between the top of the Ferris wheel and the ground, one could substitute the distance in time that separates the embryonic “dot” from the offspring that comes out of the womb. And almost as surely as one dot will turn into a visible child when the wheel completes its circuit and the cabin returns to the ground, that embryonic “dot” will turn into a being that we would see, quite surely, as a child. In over eighty percent of all cases, barring abortion, a pregnancy will come to full term, and the infant, when it emerges, cannot be anything but a child.

But if the offspring of *Homo sapiens* cannot be anything other than human, we would still not establish that it would be wrong under all circumstances to take the life of a human fetus. As we have seen, the proper form of the categorical proposition here is not that “it is always wrong to kill,” but that it must be wrong, under all conditions, to kill “without justification.” Killing may find a ground of justification when it is undertaken as a necessary effort to resist an unjustified, lethal assault. In the case of abortion, however, that ground of justification is almost entirely absent, since the fetus can be the source of no intended harm to its mother. The child is without intention or malice; it is animated by no *mens rea*, or “guilty mind.” Its presence may be perceived by many people as a threat to the interests of the mother, and it cannot be gainsaid that the advent of a child, at an awkward time, may bring severe costs, financial and psychic. But neither can it be gainsaid that the child is wholly and inescapably “innocent”—innocent of any intention to harm, and innocent of any responsibility for creating the “problem” that inspires the interest in abortion.

That ineffaceable fact cannot help but burden the case for abortion even in those cases—exceedingly rare today—where the life of the mother might be threatened by the pregnancy. In those instances, at least, the life of the fetus is posed against the life of the mother; the interests at stake are on the same plane of gravity. This is not so evi-

dently the case, however, in most of the abortions that are now performed, in such massive volume, in the United States. That is not to say that there is anything trivial about the interests that seem to be threatened by an unwanted pregnancy. It is to say, rather, that those interests must be gauged with a new severity when they are weighed seriously as grounds of justification for the taking of human life.

No one could deny, for example, that the addition of another child to a household may strain the circumstances of a poor family or impose serious costs on the “psychological health” of the parents. No one who has seen a mother drawn to her limits by the demands of raising children would make light of the physical costs and emotional burdens that an added child may bring. Nor could one doubt the resentment that may be fostered in a family by the advent of an “unwanted” child. But we need not close our eyes to these things—or belittle in any way the hardships they may involve—in order to recognize that they cannot stand on the same plane with the kinds of justifications we demand in other instances for the taking of human life. The finances of the family or the psychological condition of the parents may be ravaged just as much by the addition of aged relatives to the home, or by the crashing arrival at puberty of the children who are already on the scene. The condition of the family could obviously be eased in these instances by “doing away with” the aged relatives or the spirited teenagers, and from the standpoint of strict justice, I suppose, one might be more justified in removing the 13-year-old who has already become the terror of the household rather than the offspring who has not had a chance yet to show any malevolence.<sup>11</sup>

A child may not be “wanted,” but we have never thought, on other occasions, that people lose their claim to live when they become unwelcome or unwanted. By that measure we would have lost Harold Stassen in his leaner years, to say nothing of Charles de Gaulle and Billy Martin. Not too long ago a court in Connecticut noted with sympathy that, as a result of bearing a child, “the working or student mother frequently must curtail or end her employment or educational opportunities,” and the unmarried mother may be condemned to suffer shame.<sup>12</sup> In the estimate of the court, those interests were apparently grave enough to warrant the freedom to choose an abortion. And yet, if the proposition were put to us explicitly, as a matter of principle, we

would not consider for a moment that people have a license to kill those who stand in the way of their education or the advancement of their careers. As for the matter of taking life for the sake of avoiding embarrassment or shame, the mere statement of the claim should be enough, among people of ordinary sensibility, to generate its own reproach.

The willingness to entertain arguments of this kind reflects a certain distraction of mind; and yet, with the recent doctrines of the court, distraction has been converted into a medical condition, which becomes the source of even more extravagant claims. Justice Blackmun declared, for the Supreme Court, that the interest of the state in protecting “potential life” may be overridden, at any stage in the pregnancy, “when it is necessary . . . for the preservation of the life or health of the mother.”<sup>13</sup> But he made it clear very soon that the “health” of the mother would encompass what has loosely been described these days as mental or “psychological health.” As Justice Blackmun was to put it, the health of the mother would have to be estimated in a medical judgment that took into account “all factors—physical, emotional, psychological, and the woman’s age—relevant to her well-being.”<sup>14</sup> As John Noonan aptly remarked, it would be a rare case in which a physician willing to perform an abortion would not be persuaded that the “well-being” of the patient would indeed be served by an abortion that she herself had requested.<sup>15</sup>

The sovereign consideration, then, in cases of abortion was whether the woman simply “wanted” one. With this kind of license there would be no obstacle to carrying out abortions, not only past the first trimester, and not only up to the moment of birth: it would become clear very soon that a child who survived an abortion could legitimately be destroyed *if the presence of the living child would be a cause of distress for the mother*. In one way or another, the courts would manage to render ineffectual legislation which forbade the abortion of fetuses that might be viable or which established an obligation for physicians to preserve the lives of children who survived the abortions.<sup>16</sup> In *Floyd v. Anders*, Judge Haynesworth refused to regard as a “viable” child, within the protection of the law, a fetus of seven months who had been treated and operated upon for twenty days after he had survived an abortion. For Judge Haynesworth, the medical facts about “viability”

were dissolved by the legal premises established in *Roe v. Wade*: a fetus that was not wanted by its mother would not be considered “viable” because it would not be regarded as a “person” with claims to the protection of the law.

In other words, the right to an abortion would be taken to mean *the right to a dead fetus*, not merely the removal of the child from the womb. After all, the prospect of giving up a child for adoption has always been present, and there has been no want of people in recent years who have been willing to come forward and adopt even children who are supposedly “hard to place” (children who may be black or retarded or infirm). If the right of the mother entailed nothing more than the right to be rid of a child she did not “want,” then the solution to an unwanted pregnancy could have been found rather easily without the need for a lethal operation. But there would be women who would find unsettling the prospect of carrying a child to term and then giving over the fruit of their own bodies to someone else. In this paradoxical morality there was a curious assertion of “property rights”: it was somehow easier to kill the fetus in the womb than to give away to others what was recognizably a child—and recognizably, also, a child of one’s “own.” The indulgence that has been accorded to this argument is a measure of how far the law has receded from moral judgment for the sake of honoring the claims of psychological “distress.”

We discovered in an earlier chapter why the teachings of utilitarianism could never supply the substance of a genuine categorical proposition in morals. What is good or just can never be equated with “that which makes most people happy.” The doctrine of the “greatest happiness of the greatest number” merely added another item to the inventory of spurious categorical propositions in morals, and it can be exposed as a spurious proposition simply by considering whether it is possible to satisfy the maxim even while engaging in acts that are in principle unjust. The argument over “psychological health” now offers an obverse statement of the same fallacy which afflicts utilitarianism. In this case, the spurious proposition would be that it is wrong or unjust to do that “which causes anyone distress or unhappiness.” And the proposition would be embarrassed by the same recognition that it is possible to comply with its terms while performing acts that are irredeemably wrong. There are people, as we know, who find sadistic pleasure in the

torture of humans and animals. They may even feel an intense frustration and psychic pain if their cravings here cannot be satisfied. And yet it could not be the responsibility of the law to gratify their appetites. As Daniel Robinson remarked, “A man who has a need to torture and destroy has an *inhuman* need which it is society’s task to eliminate, not to satisfy.”<sup>17</sup>

For that reason, it could not settle any question about abortion to report that the birth of a child would induce the most severe distress and that it would impair the “psychological health” of the mother. The decisive question in principle must be whether the mother would have a justification on other grounds for taking the life of the fetus. If she does not, there is nothing in her state of distress that would supply that justification. Even if she were subject to an enduring depression, we would still have to know whether the despair she feels arises from the fact that she is being frustrated in her desire to take a life that she has no justification otherwise for taking. If her despair can be relieved only by destroying a life she has no warrant in destroying, that is a despair the law cannot be obliged to remedy.

On this problem we often find pertinent stories in the advice columns of the daily newspapers. Not too long ago Ann Landers carried a report of a young man who had fallen into a deep depression—and even suffered serious acne—when his girlfriend broke off their relationship. The mother of the girl reported that her daughter was being harassed continually by the former boyfriend’s mother, who was naturally alarmed about the state of her son. In his depression, the young man was wasting away, and it was not beyond reckoning that he would move himself to the edge of suicide. The mother warned the former girlfriend that she would be responsible for the “consequences” if she remained adamant in her rejection of this lad. Ann Landers wrote back to the mother of the young woman and declared, quite aptly, that her daughter was not to be used as a skin remedy: she was not to be assigned against her will to this fellow, even if he were suffering the deepest psychological torment and even if he threatened suicide. That he might be willing, in his distraction, to take his own life for a trivial reason could not furnish a justification for abridging the freedom of the woman and making her the possession, in effect, of this young man. If those conclusions are

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inescapable, why should the same point not be equally clear in the matter of abortion? If the prospect of death was radically insufficient to justify the restriction of liberty in the case of the former girlfriend, why should the “distress” of a pregnant woman be sufficient not merely to restrict the freedom of the fetus, but to justify the taking of its life?

The common thread of fallacy that runs through most of these arguments for abortion is that people are willing to accept, as a justification for destroying fetal life, “facts” that have no bearing on whether the fetus *deserves* to live or die. That is to say, we find in most of these arguments an expression of the problem that was addressed in Chapter VIII:

No moral conclusion can be entailed merely by facts or by factual propositions of a nonmoral nature. Moral propositions are grounded ultimately in facts or truths, but they can be derived only from the necessary truth which affirms the existence of morals or explains its essential logic.

The fallacy addressed by this passage is perhaps the most common mistake in moral reasoning, and in the argument over abortion it keeps expressing itself in a succession of forms. Apart from the instances I have already reviewed, it may be found in the inclination to argue that human life begins when certain attributes are first manifested: e.g., the onset of “quickening,” in which the mother may feel the movement of the child within her (usually between the twelfth and sixteenth weeks); the detection of electrical activity in the fetal brain (as early as the eighth week); or the threshold of “viability,” when the fetus can be kept alive outside the womb of the mother.

André Hellegers once said of “quickening” that it is “a phenomenon of maternal perception rather than a fetal achievement.”<sup>18</sup> The child is the source of its own movement two or three weeks earlier. The child may become a more vivid presence to the mother when she feels its movement, but nothing in that feeling marks any transformation in the nature of the fetus itself. Only thirty years ago the conviction was still held in the medical profession that there was no electrical activity in the fetal brain through most of gestation. But in 1951, two researchers in Japan managed to take electroencephalographic (EEG) readings on fetuses between three and seven months; in the late 1950’s, studies in the United States produced EEG tracings as early as forty-three days.<sup>19</sup> It should be plain, on reflection, that it is not the nature of the human



fetus which has been changing over the past thirty years: fetuses are not developing activity in their brains earlier than they had in the past. The change, rather, has been in the sensitivity of the electronic equipment that has made the measurements possible. With further refinements, we may receive readings even earlier, but that will not mean that fetuses are becoming “human” much earlier.

It has been assumed altogether too casually that an ineffable something called “consciousness” is necessary to the definition of a “person.” Those who have proffered this standard have not been luminous in explaining what precisely this “consciousness” is supposed to be “conscious” of, but they seem to be sure—without any testing—that everyone running about the streets, well outside the womb, is in ample possession of this “consciousness.” But there are many young people (to say nothing of adults) who have yet to come to an understanding of the principled ground of their own acts and motivations. If we were to measure the “humanity” of “persons” by the degree to which they have attained “consciousness” of the highest implications of their own natures—their natures as *moral* beings—we would find that a large portion of our population would fail to qualify as persons. If we were to test for the presence of this “consciousness,” it would be appropriate to establish whether the subject had an awareness of the rudiments of moral reasoning. We may assume that the fetus lacks that awareness, but we would not be warranted in assuming that everyone else is in command of it. To be strict about the matter, we would have to apply the test to the putative “persons” who are ordering and performing abortions. Women in a comatose state have given birth, and in those situations, as Daniel Robinson has pointed out, the pregnant mother would display fewer “psychological attributes” than those already found in prenatal human beings. If the test of personhood is to be found in “consciousness,” we cannot infer consciousness from the condition of being pregnant; therefore, we cannot conclude, on the evidence of pregnancy alone, that a pregnant woman is a “person” who is competent to order surgery for herself or others.<sup>20</sup>

Of course, the point of these exercises in our public discourse has not been to arrive at an “empirical” measure of when the fetus makes a transition from nonhuman to human. As we have already seen, there can be no serious problem about the genetic provenance of this off-

spring. The dispute really is a *moral* one about the point at which a fetus is sufficiently close to the nature of an “authentic” human being that it can claim those protections we accord to human beings. Once we are clear on the nature of the question, it should be clear to us that none of these markings or attributes, none of these readings from the brain or heart, can be invested with that kind of moral significance. Whether a fetus *deserves* the protection of law, whether it may be killed without the need for a justification, cannot depend on anything as lacking in moral significance as the current state of the art in amplifier science.

What can be said in this respect about the tests of “quickening” and brain waves can be said in equal measure about the standard of “viability.” In *Roe v. Wade*, Justice Blackmun suggested that the fetus becomes “viable” somewhere between the twenty-fourth and twenty-eighth weeks, and he indicated that the state would have a stronger “logical and biological justification” to act, at this point, for the sake of protecting “potential life.”<sup>21</sup> He would subsequently make clear, however, that this “justification” would never be sufficiently compelling in any case to override the interest of the mother in having her abortion. In marking off the stages of pregnancy, it would appear that Blackmun’s concern was not to guide legislatures in protecting fetal life, but to establish a period, early in pregnancy, where the interest of the state in protecting nascent life could be denied altogether. With the standard of viability, Blackmun could declare—as a kind of judicial assertion of fact—that the fetus does not have “the capability of meaningful life outside the mother’s womb,” and therefore it cannot claim the protections of law. At the same time Justice Blackmun was handing down his pronouncements on biology, Dr. Bernard Nathanson was a member of the board of the National Abortion Rights Action League (which he had helped found in 1969) and a former director of the largest abortion clinic in the world. Nathanson, a trained gynecologist, had presided over an estimated 60,000 abortions before his reflection moved him to weigh the arguments on abortion much in the way we have weighed them here and he came to the judgment finally that he had been mistaken. Writing later about *Roe v. Wade*, Nathanson observed that Blackmun’s benchmark of twenty-four weeks was “a line unknown to obstetrics.” It was evident to an observer like Nathanson that Blackmun

and his colleagues had framed a momentous decision without even bothering to draw on the most informed technical understanding available to them. As Nathanson pointed out, the words of the Court were “not only inaccurate but obsolete even as they came out of Mr. Blackmun’s typewriter. The concept [of viability] is fluid and is constantly being pushed backward.”<sup>22</sup>

And in fact, not long after Blackmun’s opinion for the Court, doctors at Georgetown University Hospital and the medical school of the University of Colorado made some notable gains in advancing the point of viability. Through the application mainly of more intensive care, and with little help from new technology, the staff managed to improve dramatically the survival rate for fetuses weighing 1,000 grams (less than 3 pounds). Up to that time, only about 10 percent of these premature children had survived, but now doctors were saving 60-75 percent of these infants. At last report, they were seeking to extend the same rate of success to babies weighing 800 grams (less than 2 pounds). Within the next five to ten years, it is regarded nearly as certain that premature babies may be sustained outside the womb at a weight of less than 500 grams. Beyond that, the new technology may make it possible to nurture infants of 100 grams (1/4 pound) and 50 grams (1/8 pound). As Nathanson has commented, “This is no Huxleyan peyote dream; this is a medical certainty.” What stands behind this certainty is technology, which has produced new equipment, along with the specialty of “neo-natology” in caring for the newborn. Nathanson has ticked off the medical supports for this new system of care: “sophisticated incubators with efficient oxygenators, humidifiers, temperature controls, cardiac-monitoring systems, artificial respirators, ventilators, methods for determining arterial blood gases, complex new intravenous feeding solutions and equipment for administering them, and an infinite variety of new diagnostic techniques such as ultrasonography and computerized X-ray scanning. . . .”<sup>23</sup>

If the definition of “human” life were to depend, then, on the point of “viability,” we would again fall into the technological fallacy: in this case, the definition of a human being would be made to rest on the current state of the art in incubator science. And if *Roe v. Wade* really accepted the notion that fetuses may be protected by the law when they are “viable,” then that decision contains the grounds for its own disso-

lution as our technology makes it possible to rescue these threatened fetuses almost at the very beginning. Work has already been done toward the development of artificial placentas, and Nathanson sees the possibilities for the rescue of embryos prefigured in the remarkable advent of fiber optics and microsurgery: the blastocyst has been sighted at the point of implantation, and its age and health identified; with microsurgery, “the tiniest of blood vessels can be repaired, the gossamer strands of the retina can be woven together, and the tiny pituitary gland and its vessels can be explored and manipulated.”<sup>24</sup> What remains, then, as far as the embryo is concerned, is the development of “an instrument of sufficient delicacy that it can be threaded through the hysteroscope . . . and can then pluck [the new being] off the wall of the uterus like a helicopter rescuing a stranded mountain climber.”<sup>25</sup>

Would these new developments make some pregnant women more amenable to obligations they have resisted in the past? What if it were possible to remove the embryo in the first few weeks of pregnancy, with a thoroughly safe operation, when the being removed from the mother may not impress her so vividly as a “child”? But if the law could ask that much, why could it not reasonably ask her to carry the fetus to the current threshold of viability? The law could tenably invoke the principle of the “obligation to rescue” and point out that the mother has a unique capacity to preserve the life of a separate, living human until others would be able to take over the responsibility for nurturing the child. Of course, that is precisely what the law had done when it expected the mother to carry the child to term, even though she might later have been moved to give the child up for adoption. If Mr. Justice Blackmun and his colleagues saw no justification for imposing this obligation on the mother, they are not likely to alter their judgment if technology merely makes it possible to rescue the child earlier. They are more likely to follow the lead of Judge Haynesworth and regard the medical evidence as a collection of facts that must be blocked from judicial view by the presence of a new, decisive jural postulate: viz., the “right” of the mother to dispose of the fetus for any reason she regards as sufficient.

It would be a mistake to suppose, then, that the standard of “viability” invoked by the Court ever really depended on biological facts. Behind the standard of viability stood nothing more than an immense

political fact or a political persuasion which could be stripped to this proposition: that the fetus could not claim the dignity of a human being and the protection of the law until it could establish itself as a separate being, independent of its mother. Legions of citizens unadorned with judicial robes have managed to figure out for themselves that the child who emerges from the womb is still very much dependent for its care on those around him. The man on the street has often had the wit, also, to recognize that dependency has never been a justifiable ground for homicide. Apparently without even being aware of the proposition they were affirming, Justice Blackmun and his colleagues inverted the lesson taught by Rousseau: Might would indeed be the source of Right. The fact that the mother had power over the child—the fact that the child was dependent and at her mercy—was enough to invest the mother with the authority to do with this nascent life what she would. Now, contrary to Rousseau, power *was* the source of its own justification, and strength generated its own moral warrants. Once again, the Court fell into the fallacy of drawing a moral conclusion (the right to take a life) from a fact utterly without moral significance (the weakness or dependence of the child).

The Court discovered, in other words, that novel doctrines could be wrought by reinventing old fallacies. And the Court turned out to be more revolutionary than even Justice Blackmun suspected. For one thing, it sought to overturn the moral understanding that had been settled for generations in regard to the weak and infirm. The restraints of the law had been extended to parents in the past precisely because children were powerless and dependent, and therefore vulnerable to the strength of their parents. Their relative helplessness, then, provided the occasion for their defense. But now, by the explicit holding of the Supreme Court, the dependence and weakness of the offspring established its lack of dignity as a separate being and its lack of standing to receive the protection of the law.

In reversing the ancient understanding of Might and Right, the Court was striking at the logic of morals itself, and this new teaching of the courts could be secured only when the public discourse safely purged itself of any lingering attachment to the habits of moral reasoning. The “progress” of the public in accepting abortion could be measured, then, by the extent to which the the public seemed to absorb certain “neu-

tral” or “practical” arguments which promised to resolve the question on grounds that were divorced from any convictions of a “moral” nature. Two of the most prominent arguments in this vein were the argument for “leaving people free to follow their own moral convictions” and the plea, offered in the name of prudence, to rescue women from the hazards of illegal abortion by allowing physicians to perform abortions legally.

The first argument, of course, fell into the most fundamental error concerning morals—the reduction of moral questions to matters of subjective belief or private taste. It became common, in our public discourse, to equate moral judgments with religious convictions, which could not be regarded as true or false for anyone but the person who held them. Justice Douglas once quoted approvingly a version of this argument, put out in the name of a group of psychiatrists. For all its reliance on the expertise of psychiatry, it could have been written just as well by a team of podiatrists. “We submit that [the issue of abortion] is insoluble, a matter of religious philosophy and religious principle and not a matter of fact. We suggest that those who believe abortion is murder need not avail themselves of it. On the other hand, we do not believe that such conviction should limit the freedom of those not bound by identical religious convictions. . . .”<sup>26</sup>

If one were to indulge here the possibility that the lives taken in abortion are human lives, the preceding argument would reveal its own defect. If we found a group of parents who were willing to engage in the ritual sacrifice of their children, would we really have the law hold back from interference so long as the parents were claiming to act under the command of “religious” beliefs? This problem was actually addressed by the Supreme Court over a hundred years ago, when the Court refused to accept the right of a religious sect to engage in the far less lethal practice of polygamy. The case involved the Mormons, and after upholding legal restrictions on plural marriages, the Court went on to illustrate its point:

Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral [pyre] of her husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?<sup>27</sup>

As we have already seen, there are compelling reasons in principle why we cannot permit an exemption, on the basis of religious belief, from the obligation to obey a valid law. Ironically, there has been much alarm of late about the emergence in our politics of groups like the Moral Majority, who bring an explicitly religious perspective to their judgment of public issues. But, for all the fears that have been stirred, none of these groups has sought to establish in the law a premise as radical as the one that has already been emplaced by the proponents of abortion: namely, that people may take the life of a human being, without any need to render a justification, if they merely profess their “belief” that the being is not human.

And yet, even the most zealous partisan of abortion would not give license to people to commit homicide at will, so long as they declared, as a matter of “religious belief,” that Armenians or redheads or people with low scores on the Law School Aptitude Examination are not really “alive.” Why, then, should we treat as any more plausible the claims of those who concede that they are destroying a *living* being, but who profess to “believe” that an offspring conceived of human parents is not “really” human while it is still in the womb? The difference surely lies in the uncertainties that arise for many people about the life in the womb: we are evidently willing to honor professions of doubt about the offspring in the womb that we would never take seriously for a moment in regard to people who have moved beyond that dwelling. But then it should be even more apparent that this question does not pivot on religious belief. It must turn, instead, on the facts or considerations that make us more or less willing to regard the child in the womb as a human child. And if that is indeed the decisive point, it can be addressed only with the discipline of a principled argument: those who “believe” that the fetus is less than clearly human would have to bear the same burden of argument we would assign to anyone who would invoke the same kind of belief in regard to redheads, landlords, or auditors from the IRS.

The preeminent “practical” argument on abortion seeks to detach the issue from any moral ground of judgment and to recognize the practice of abortion as an irresistible “fact.” In this view, there are several hundred thousand women in America who will be seeking abortions each year and who will have those operations regardless of what the

law might forbid. If they are compelled to seek abortions covertly, the wealthy may be able to arrange, at a proper price, an operation performed in a respectable hospital by an established physician. Those who cannot afford the price may have to settle for the ministrations of paramedicals and midwives in the notorious "back room" abortions, where they may be hazarding their own lives. At one point, the partisans of legal abortion claimed that as many as 10,000 women each year lost their lives in these clandestine abortions. In short, then, the plea was that the law should not pass moral judgment in the face of a need so intensely felt and so desperately pursued. Rather, it should withdraw its prohibitions for the sake at least of saving the women who would be driven, incorrigibly, to risk their own lives in defiance of the law.

The answers that must be offered in response to this argument would arrange themselves in tiers, for they would raise a critical challenge over questions of fact as well as considerations of principle. The first thing that must be recognized is that the form of the argument advanced here would be instantly rejected as untenable if it were offered on any other matter of moral consequence. It might be contended, for example, that the laws which ban discrimination on the basis of race in the sale of private dwellings are very difficult to enforce, that many violations escape the notice of the law, and that the rich have more devices for evading the law than people who are not so well off. And yet, the response to this record has not been to seek the repeal of a law which large numbers of people seem determined to disobey, and which, as a practical matter, is enforced less strenuously on the wealthier classes. The response, rather, has been to demand ever more stringent laws and larger budgets to support the prosecution of these cases. The intractable question, of course, is whether there is a principle that justifies the laws on the books. If there is, then the *validity* of the principle cannot be affected in any way by showing that the laws are being widely disobeyed. At the most, statesmen would be cautioned to be prudent in enforcing the law until they could tutor the public in a more demanding sense of justice. But the flouting of the law cannot itself provide a moral justification for repealing the statute and pretending that the wrong we once condemned has ceased to be wrong.

Nor can our understanding of right and wrong be reduced, in principle, to that collection of maxims which the wealthy will find themselves



powerless to evade. To turn the problem around, it requires a radical misunderstanding of the notion of “equality”—or a critical detachment of “equality” from any substantive moral sense—to claim on behalf of the poor an “equal right to do a wrong.” Even apart from its moral incoherence, though, the argument for “equality” here would carry implications that would have to be untenable for the American polity. As soon as Japan and Sweden, for example, had legalized abortion, American women were flying abroad for the purpose of having abortions. At that moment, the rich were enjoying an access to legal abortions which were not available to the poor. Would we have been obliged then, in the name of “equality,” to have swept away all U.S. statutes and ordinances that made abortion any more restrictive than it was in Japan and Sweden? When its logic is carried through, this morally untethered sense of “equality” would ultimately deny the right of the American government to legislate on any subject with more restrictiveness than exists in legislation anywhere abroad—if these differences in legislation would create advantages that are more likely to be exploited by the rich.<sup>28</sup>

As for the number of deaths caused by illegal abortions, these portentous estimates have as much reality as any other set of figures that has been politically inspired. Christopher Tietze, an expert on population and a firm advocate of legal abortion, weighed the estimate of 10,000 deaths per year and branded it “unmitigated nonsense.” His own estimate put the figure at 500-1,000 before *Roe v. Wade* made abortions legal. John Finnis has reported other studies which place the figure, more realistically, between 400 and 600 deaths each year, and probably closer to 400.<sup>29</sup> The figure of 5,000-10,000 had been used by the National Abortion Rights Action League when Bernard Nathanson was one of its directors. “I confess,” he would later write, “that I knew the figures were totally false, and I suppose the others did too if they stopped to think of it. But in the ‘morality’ of our revolution, it was a *useful* figure, widely accepted, so why go out of our way to correct it with honest statistics?”<sup>30</sup> In reckoning the number of deaths resulting from illegal abortions, Nathanson came close to Finnis, putting the figure at around 500 each year.

Tietze had estimated that there were about 600,000 illegal abortions every year, and many supporters of abortion argued that its “legaliza-

tion” would merely bring these operations into safer settings, without adding to the volume of abortions. That argument was quickly embarrassed however by the news—reported by Tietze—that by 1974 the number of abortions had risen to 900,000 per year, 53 percent above their level in 1972, one year before *Roe v. Wade*.<sup>31</sup> By 1977, the annual number of abortions had risen to 1.2 million,<sup>32</sup> and by 1982 it was well over 1.5 million.<sup>33</sup> Clearly, then, the laws were not merely accommodating the abortions that would have been performed illegally; the laws were also teaching new lessons about the propriety of abortion, and it should not have been surprising that people who were taught to regard abortion as a legitimate medical procedure should be encouraged to make use of that operation when it seemed to suit their interests. The figures were altogether staggering, and the “practical” argument for legalizing abortion became all the more bizarre as soon as the possibility was seriously considered that what these figures were measuring was the taking of human life. In other words, for the sake of saving about 500 women who might die each year from illegal abortions, the law was asked to permit a practice that would take 1.5 million lives each year. With a simple calculus that compared the number of lives saved to the number destroyed, the argument should have revealed, instantly, its own vacuity. But with a serene willingness to believe that these abortions did not involve the taking of human lives, novel possibilities for “newspeak” sprang up overnight. Only in this spirit—with this high-minded filtering of the reality behind the figures—could the *New York Times* report the assessment of the city’s administrator of health services: that the legalization of abortion had helped “to bring . . . infant mortality to an all-time low.”

**B**ernard Nathanson has pointed out that, as a result of new technology, the number of deaths from illegal abortions each year might not be as high as 500 even if abortion became illegal again. One notable “advance” here was the introduction of suction curettage in 1970. With this device, it is no longer necessary to scrape the lining of the uterus with a sharp instrument. The nascent being in the womb—the “material” in the uterus—would be drawn out with a vacuum, and a curette would slice up the “tissue” that emerged. As Nathanson has remarked, “one can expect that if abortion is ever driven underground again, even

non-physicians will be able to perform this procedure with remarkable safety. No women need die if she chooses to abort during the first twelve weeks of pregnancy.”<sup>34</sup> Later in pregnancy, the legendary “coat hanger” would be replaced by prostaglandins, which will be available in the form of vaginal suppositories. With this step, the wonders of technology will have made possible a “do-it-yourself” abortion. The prostaglandins bring on contractions and cause the fetus to be expelled; and suppositories would leave no evidence to suggest that the woman suffered anything more than a spontaneous miscarriage.<sup>35</sup>

It is just that much more unlikely today, then, that a restrictive policy on abortion would produce many casualties from illegal operations. In fact, it is entirely possible that the number of women killed in abortions under a policy of legal restriction would be far less than the number being killed now each year in legal *and* illegal abortions. It seems to come as a surprise to many people that illegal abortions persist even after most of the legal restraints have been removed. But the dynamics of “legalization” have now become familiar on matters like gambling as well as abortion, and illegal abortions would be sustained by the same tendencies which account, say, for the persistence of illegal gambling even in such places as Las Vegas, where gambling is not only legitimate but a local industry.

In the case of abortion, the logic may express itself in this way. Once the courts have swept away the moral inhibitions which used to restrain people from seeking abortions—once they school people to the notion that there is nothing wrong with abortion itself—it simply becomes a matter, for many women, of finding the establishment that will provide the abortion at the lowest price. A lower price can usually be provided by the unlicensed practitioner or midwife, and the underground service can be especially attractive to the woman who does not wish to inform her husband or her parents, and who, for a number of weighty reasons, does not wish to leave a record behind. If a woman is also led to believe that abortion involves her sovereign “right over her own body,” she may invest herself as the sovereign judge of the risks she is willing to take with her body. She may be even more inclined to take that risk if her legal “right” to an abortion is hedged in with procedural restrictions that induce delays and raise the cost of the operation. Those effects may be generated, for example, if the woman and her physician

are required to appear before boards of review in order to justify a “medical need” for the abortion, or if the operation must take place in facilities inspected and licensed by the state.

These restrictions may interpose only the slightest barriers, and prevent no one from obtaining an abortion, and yet they may still be enough to encourage a movement toward illegal operations. In the late 1930s, as a case in point, Denmark and Sweden allowed abortions to be performed legally. But the legislation provided for medical boards of review to receive applications, and the boards refused to accept as a justification any claim of danger to the “mental health” of the pregnant woman. Almost half of the applications were rejected, and the result was a steady rise in the number of illegal abortions even under a regime of legal abortions. In 1964, Denmark registered 3,936 legal abortions, against an estimated 12,000-15,000 illegal abortions.<sup>36</sup> In Britain the laws on abortion have been far more permissive—as a practical matter, virtually any abortion performed by a qualified physician may be regarded as legitimate—but the volume of illegal abortions seems to have remained the same. According to recent testimony from Dr. Margaret White, the number of people discharged from British hospitals for the effects of nonlegal abortions held steady between 1964 and 1972 at a level of 50,000.<sup>37</sup>

In the United States, of course, review committees and most other serious impediments were swept away by the decision of the Supreme Court in *Roe v. Wade*. The Court indicated at the time that it might be willing to accept certain restrictions “reasonably related to maternal health,” and with that understanding it subsequently upheld a statute in Connecticut that required abortions to be performed only by licensed physicians.<sup>38</sup> That judgment made it clear that the decision in *Roe v. Wade* could not have been predicated on any “right” of the mother to do whatever she wishes with her own body. For if that premise were accepted, it would be hard to see how the Court could deny to any woman the right to take whatever risks with her own body she might regard as acceptable—including the risk of having her abortion at the hands of an unlicensed practitioner. But so long as restrictions are preserved in the law, there is likely to be an incentive to seek out illegal abortions: the price of legal abortions can always be undercut by paramedicals and inspired amateurs, who are able to operate without the

expensive overhead of a professional facility. And the market being what it is, there will always be “customers” who are willing to take more risks for the sake of a lower price.

We cannot say at the moment just how many illegal abortions are performed in the United States every year, for a decision has apparently been made, in the highest official circles of the medical profession, to “eliminate” the problem of illegal abortions simply by refusing to collect evidence on the point.<sup>39</sup> We can expect, however, that there will always be some illegal abortions, especially, as I say, if the “right” to an abortion is burdened with any restrictions. But apart from this matter of underground operations, we have had dramatic evidence recently that the atrocities identified with illegal abortions have simply been removed from the infamous “back rooms” and reenacted in scores of shoddy abortion clinics which have sprung up legally since *Roe v. Wade*. These establishments thrive on high volume and quick turnover; they are, one might say, the medical equivalent of McDonald’s, but without McDonald’s integrity and quality control. These businesses have become the legal version of abortion mills, and the character of their practice was brought to light in a series published by the *Chicago Sun-Times* in 1978. In the rush to achieve a high turnover in customers and perform more abortions each day, the operations in these clinics were carried out in as little as five minutes. They were often performed *before* the anesthetic had taken effect; at times they were done without an anesthetic; and on a few occasions they were performed on women who were not even pregnant! (The clinics had neglected to administer pregnancy tests.) The investigators reported twelve deaths that were attributable to four abortion clinics in their sample.<sup>40</sup> Those twelve deaths—from only four clinics—amounted to nearly half of the deaths that were reported officially for abortion in the nation as a whole.<sup>41</sup> And if, as we may suspect, the experience in Chicago can find even a modest replication in New York, Detroit, Los Angeles, and elsewhere, the total deaths from legal abortion may now exceed the number of deaths that were thought to occur each year as a result of illegal abortions.<sup>42</sup>

The casualties from these operations do not seem to register in the official statistics because the hospitals manage to report the proximate, rather than the ultimate, cause of death. A woman with a perforated

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uterus may be described later as suffering the effects of peritonitis or of a pelvic abscess. There are known cases in which the deaths resulting from abortions have been attributed to anesthesia or to “abnormal uterine bleeding”; and one physician in Los Angeles, who had a higher quotient of inventiveness than of shame, was willing to report that his patient died of “spontaneous gangrene of the ovary.”

Even on its own terms, then, the “practical” argument for abortion fails. A policy of legalized abortion will not eliminate illegal abortions, and it is not likely to reduce, overall, the number of women who die from abortion. In fact, it is likely to make matters far worse by the simple fact of enlarging the total volume of abortions. Ironically, there are likely to be far more maternal deaths and serious injuries under a policy of legalized abortion than under a regimen in which abortion, once again, is legally restricted.

But, of course, the question cannot be settled mainly as a “practical” matter of reducing the risks facing women who wish to destroy their fetuses. The issue cannot be abstracted from the question of whether human lives are taken in abortion, and whether anyone has a justification for taking those lives in the first place. But so long as the courts are free to insist, as a matter of judicial fiat, that human fetuses are not human, it is clear that the interest of an unborn child in preserving his or her life will not be accorded any weight against the interest that would move a pregnant woman to destroy that life, no matter how transient or even trivial her interest may be. Hence the state of affairs in which families decide to “interrupt” a pregnancy that would interfere with the “vacation out West” they were planning for the following summer. Or the situation in which an abortion is decided upon because it is discovered that the fetus is a girl and the parents wish to have a boy. In the sensibility that has been shaped in our culture of abortion, it is now possible for a human being to be destroyed for nothing more than the offense of being female.

In a burst of judicial novelty, Justice Blackmun and six of his colleagues created, in the law, a class of human beings whose lives may be taken virtually without the need to render a justification. Our current situation might be compared to one in which the law holds back and permits members of a certain minority group to be assaulted and murdered at will, in public settings or private. If 1.5 million members of

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any minority were being killed in that way each year, it is scarcely believable that the public would fail to notice; and if this carnage were taking place during a presidential election year, it would very likely be regarded as an issue at least as urgent as unemployment or inflation. Nor would there be any doubt that we were in the midst of a crisis that touched the moral premises of the political order itself. As Lincoln understood, it is a portentous act for a people to take upon itself the franchise of determining that human beings may be regarded as less than human and treated as “only the equal of the hog.” For when those humans are denied the protections of law that attach, by nature, to human beings, then (to paraphrase a venerable passage) the government will have become destructive of those ends for which governments are instituted among men.

But in this instance, the new laws on abortion have not been adopted at the urging of the people; rather, they have been imposed against their resistance and protest. And instead of acquiescing in the moral teaching of the new laws, a majority of the American public has become ever firmer in its opposition to the decisions of the courts and to the premises on which those decisions have been founded. The opposition of the public has been reflected in the most pronounced way in those branches of our government which are most sensitive to local opinion: it has been strongest in the state legislatures and in the House of Representatives; it has been weaker in the Senate, and weakest of all in the federal courts. This opposition has not enjoyed a course of continuous success; it has been stymied at several points where it has searched for a political breakthrough. And yet its influence, overall, has held steady or grown stronger. It succeeded in removing most of the public funding of abortion from the federal government and from many of the states. It helped to persuade the American government to withdraw from programs of foreign aid that promote abortions; and it may induce Congress to remove public grants and tax exemptions from private groups that sponsor abortions. It failed in its drive to overturn the holding in *Roe v. Wade*, and by a narrower margin it fell short in its effort to revise that decision through an act of ordinary legislation (the “Human Life Act”). But the movement has also helped bring to power a national administration that explicitly proposed to the Court the overruling of *Roe v. Wade*. And it may yet accomplish its end through the

steady efforts of the administration in appointing new judges to the federal courts. The existence of this movement represents far more than a *political* threat to the doctrines established by the courts. The very extent and persistence of the opposition pose a serious challenge to the premises on which the Supreme Court itself defined the ground of its own decision on abortion. For as the Court came to the question of whether a human fetus constituted a human life, it had two sources from which an answer could be drawn:

(1) The Court might have recognized that it was facing a rather old question—namely, whether it is possible to know the things in nature that are human. The institutions of a constitutional order were founded on the premise that it is indeed possible to know human things and the differences between the human, the sub-human, and the superhuman. If that question were inscrutable, then there could be no government by consent, no regime of law, no courts dispensing justice. The Court might have concluded, then, that the question before it was a question which had to lend itself to a “true” answer. And since the question concerned the things that are in nature, true or false, right or wrong, the answer could not depend in any way on the shape of public opinion or the state of the local culture.

(2) Alternatively, the Court could have argued that the question of human life is a question whose solution resides wholly in the domain of belief, and which therefore admits no “true” answer. In that event, the sense of what constitutes a “human being” would depend on the evolving sense of the culture, on the conventions and the collective perceptions of a people. For that reason it would have to depend, finally, on whatever the community might *choose* to consider a human being. And yet, if an authoritative answer to the question had to be found in the opinions or conventions of a people, then the decision of seven judges could not claim a sovereign authority. The opinions having a preeminent claim to authority—the opinions most likely to represent the dominant views within the culture—were the opinions held by a majority of the population.

The Supreme Court decided, of course, that the question of human life could not depend on any proposition that had the standing of truth. It understood the question as one that had to be answered, perforce, through the authority of “opinion.” With those premises, however, the Court established the ground for its own undoing if it failed to persuade a majority of the public to its own views. For once it established, as the ultimate ground of judgment, that ground on which majorities are most sovereign, to what standard could it appeal if the majority came to a judgment that differed fundamentally from the understanding held by the Court?

As it turns out, the opinion of the public has in fact settled in an



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understanding that differs notably from that of the Court on the nature of the fetus as a human being and on the justifications for abortion. A majority of the public has remained steadily opposed to the notion of abortion “on demand,” and yet that opinion of the public has been formed from different streams of conviction. For the public has not been uniform in its understanding of the grounds on which abortion ought to be regarded as wrong, and this uncertainty about the ground of judgment must complicate the task of the statesman who would frame a law that could at once tutor the public and gain its assent. Even when the public is convinced that abortion in general is wrong, it may be divided over the “exceptional” cases in which abortion might be justified. Would abortion be permitted to save the life of the mother? Would it be sanctioned in cases of rape or incest, or when the baby is likely to be “deformed” or retarded?

In its judgments on these matters, the public has mixed its reasons with its passions. It often shows a willingness to accept abortions in cases that could hardly be warranted if people were clear, in the first place, about the grounds of principle on which their opposition must rest. The statesmen who would frame laws for such a public cannot be heedless of these passions. It is the challenge of their art to help the public get clear on the main principles that must underlie its opposition to abortion. After that, they must find a prudent way of accommodating the passions of the people, while permitting those passions to recede over time. In the end, political men will have performed their highest service if they have helped the people to discover the fuller implications of the principles they have willed in the law, for themselves and for others. But before statesmen can deploy their arts in that task, they will have to come to a judgment themselves on the “exceptional” cases in which abortion may—or may not—be justified.

#### NOTES

1. 410 U.S. 113 (1973).

2. *Ibid.*, at 125.

3. *Ibid.*, 159.

4. *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler (New Brunswick: Rutgers University Press, 1953), vol. III, pp. 256-67. See also, *supra*, Chapter II, *passim*.

5. *Ibid.*, vol. II, p. 222.

6. Roger Wertheimer, “Understanding the Abortion Argument,” *Philosophy and Public Affairs* (Fall 1971), pp. 67-95, at 84.

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7. Daniel N. Robinson, "Reflections on the Rights of Fetuses and Other Animals," paper presented at the meetings of the American Political Science Association, Washington, D.C., September 4, 1977, p. 6. The argument set forth in that paper has been published in part of Professor Robinson's book, *Psychology and Law* (New York: Oxford University Press, 1980), ch. 6.
8. Bernard Nathanson, *Aborting America* (New York: Doubleday, 1979), p. 203.
9. Paul Ramsey, "Reference Points in Deciding about Abortion," in John Noonan (ed.), *The Morality of Abortion* (Cambridge: Harvard University Press, 1970), pp. 60-100, at 66-67.
10. See Robinson, *supra*, note 7.
11. The same answer in principle would have to be offered in response to the so-called population problem—a "problem" regarded with apocalyptic vision by some biologists, but which most economists do not seem to take seriously. A telling statement as to why economists do not treat this matter as a genuine "crisis" can be found in Julian L. Simon, *The Ultimate Resource* (Princeton: Princeton University Press, 1981). But even if the population crisis were more pressing, there is no ground of principle that could command us to solve the problem by killing the newest members of the population rather than the oldest.
12. *Abele v. Markle*, 342 F. Supp. 800, at 802 (1972).
13. See Blackmun in *Roe v. Wade*, 410 U.S. 113, at 164-65.
14. *Doe v. Bolton*, 410 U.S. 179, at 192.
15. John T. Noonan, Jr., *A Private Choice* (New York: Free Press, 1979), p. 12.
16. See *Commonwealth v. Edelin* (Mass.), 359 N.E. 2d 4 (1976); *Floyd v. Anders*, 440 F. Supp. 535 (1977); *Planned Parenthood v. Danforth*, 49 L. Ed. 2d 788 (1976); and *Colautti v. Franklin*, 58 L. Ed. 2d 596 (1979).
17. Robinson, "Reflections," *supra*, note 7, p. 10. Emphasis in original.
18. André Hellegers, "Fetal Development," *Theological Studies* (March 1970), pp. 3-9, at 8.
19. Nathanson, *supra*, note 8, p. 199.
20. See Robinson, *Psychology and Law*, *supra*, note 7, p. 186. Cf. L. W. Sumner, *Abortion and Moral Theory* (Princeton: Princeton University Press, 1981), pp. 197-98. Even some of our most accomplished writers may fail at times to recognize the same fallacy when it is arrayed in other terms, and it is curious in this respect to see the same mistake reproduced by a scholar as seasoned as Alan Gewirth. Gewirth has offered a defense for abortion on the assumption that the pregnant woman is a "purposive agent" (though, as Robinson has shown, that kind of inference could not be drawn from the mere fact of pregnancy). Gewirth assumed, with the same license, that a fetus must lack purpose while it lacks a "physically separate existence." On the strength of these premises Gewirth concluded that the fetus has no rights which can be protected against the mother, because the interests of a "purposive agent" would be "drastically subordinated [in that case] to a minimal possessor" of purposes. There is, of course, a difference between the presence or absence of purposes. But what is there, in that difference, which establishes a *justification* for the taking of life? By neglecting to raise that question, Gewirth joined a long tradition of writers who have been willing to draw moral conclusions—in this case, moral conclusions with lethal results—from facts that are wholly lacking in moral significance. Professor Gewirth has constructed the groundwork of a moral philosophy with painstaking care, and yet nothing in that structure of reason apparently made it relevant to consider whether the life being taken in abortion was "innocent" life, or whether it "deserved" to be destroyed. Did it make a difference, after all, if the fetus posed no threat to the life or health of the mother, or if it were animated by no intention to harm? And does a "purposive agent" establish, preeminently, his claim to "rights" when he places himself serenely beyond these kinds of moral questions? See Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978), pp. 142-43, 159-60.

What is said in this vein would have to raise similar doubts about the argument offered by Professor Bruce Ackerman in *Social Justice and the Liberal State* (New Haven: Yale University Press, 1980): viz., that a fetus cannot be a person within the protection of the law because the fetus cannot be a "citizen of a liberal state." In order to be a citizen of a liberal state, a person must be able "to play a part in the dialogic and behavioral transactions that constitute a liberal polity" (p. 127). It is one thing to note the capacity for moral reasoning that distinguishes human beings; it is quite another to say that the right of any person to live or die must depend on his "articulateness." By that measure, we might imperil the steelworker who is content to sit mute by his television or, for that matter, anyone who does not show a facility for participating in the public discourse on politics and law. We may reduce the circle of protected human beings mainly to professors and cab drivers. Ackerman admits, by the way, that a day-old infant has no more capacity than a fetus to engage in the dialogue of a liberal state. But it is revealing that he would not seek to protect the infant on any ground that depends on the dignity or worth of the child itself. Ackerman would allow infants to be protected by the state only because the failure to protect them might deprive certain "infertile" people of the pleasure of having children through adoption (p. 129). In this curious twist, however, the infant would be protected only by treating it as a commodity or an article of property that certain consumers might be deprived of unjustly.

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21. 410 U.S. 113, at 160, 163.
22. Nathanson, *supra*, note 8, pp. 207-208.
23. *Ibid.*, pp. 280-81.
24. *Ibid.*, p. 282.
25. *Ibid.*
26. "The Right to Abortion: A Psychiatric View," 218-19 (Group for the Advancement of Psychiatry, vol. 7, pub. no. 75, 1969), cited in *Vuitch v. United States*, 401 U.S. 62, at 78-79n (1971).
27. *Reynolds v. United States*, 98 U.S. 145, at 166 (1878).
28. For a fuller consideration of this issue of "equality" with respect to abortions, see my essay, "On the Public Funding of Abortions," in James T. Burtchaell (ed.), *Abortion Parley* (New York: Andrews & McMeel, 1980), pp. 239-64; reprinted in *The Human Life Review* (Winter 1980), pp. 86-107.
29. John M. Finnis, "Three Schemes of Regulation," in John T. Noonan, *The Morality of Abortion* (Cambridge: Harvard University Press, 1970), p. 186, n. 45. For Tietze's estimates, see the *New York Times*, January 28, 1968, and Tietze and Sarah Lewit, "Abortion," *Scientific American*, vol. 220 (1969), pp. 21, 23.
30. Nathanson, *supra*, note 8, p. 193. Emphasis in original.
31. *New York Times*, February 3, 1975.
32. *Boston Globe*, July 4, 1979.
33. *New York Times*, July 12, 1984.
34. Nathanson, *supra*, note 8, p. 194.
35. *Ibid.*
36. Finnis, *supra*, note 29, p. 183, n. 31, and pp. 191-92.
37. *Obstetrical and Gynecological News* (March 15, 1977), p. 38.
38. *Connecticut v. Menillo*, 46 L. Ed. 2d 152 (1975).
39. The omission was quite noticeable in a study of legalized abortion that was published under the auspices of the National Academy of Sciences; see Institute of Medicine, *Legalized Abortion and the Public Health* (Washington, D.C.: National Academy of Sciences, 1975).
40. See the Chicago *Sun-Times*, November 12 and December 6, 1978; and the special edition on "Abortion Profiteers," December 1978. For a more recent account, in the same vein, of an enterprising gynecologist in Virginia, arrested for performing "abortions" on women who were not pregnant, see the *Washington Post*, July 27, 1984.
41. The most recent figures are reported in *Vital Statistics of the United States, 1975* (Washington D.C.: Government Printing Office, 1977), vol. II (Mortality), pt. A, pp. 1-73.
42. Bernard Nathanson recalls a report he received from a founder of an abortion clinic in New York, complaining about the standards of performance in the clinic. As the founder scolded the managers of the clinic, she provided a telling portrait of the level of professionalism that prevailed at this *legal* facility: "[H]alf of [the doctors] don't even wash their hands anymore before doing an abortion, let alone scrubbing. They refuse to use masks or caps, and their mustaches are dragging into the suction machines. I swear, one of these days we're going to lose one of those guys right into the suction trap and the lab is going to tell us the tissue is pregnancy tissue and the abortion is complete. One guy refuses to take the cigar out of his mouth while doing the abortions. Even the counselors aren't *that* crazy." Quoted in Nathanson, *supra*, note 8, p. 99.

## When the *Times* Damned Abortion

*Marvin N. Olasky*

**T**HE NEW YORK *Times* is very proud of its history and the courageous positions *Times* editors have taken since the newspaper was founded in 1851. One such glorious crusade makes interesting reading today: the investigative reporting and hard-hitting editorials by the *Times* during the early 1870s which, in the face of powerful opposition, led to anti-abortion statutes that lasted a century.

To understand the role of the *Times*, we need a little historical background. From the 1830s through the 1870s many abortionists advertised in newspapers, even though abortion was illegal. Government officials and police tended to look the other way, and gazettes that profited from abortion ads did not bite the feeding hand. Newspapers were, in effect, legitimizing abortion.

The evidence shows that the legitimation process worked. For instance, one leading New York abortionist, Madame Restell, who began massive newspaper advertising in 1838, soon had a booming business, with branch offices in Boston and Philadelphia, and “franchise” sales in Newark, Providence, and five New York locations. By the 1850s she was spending \$20,000 a year in advertising, at a time when eggs were six cents a dozen and decent Manhattan apartments rented for \$5 a month. One newspaper reporter explained her lenient treatment by police: “She held in her keeping the dread secrets of many a high-toned family, and fear of exposure led those people quickly to defend her when she got into the toils.”

In the 1860s Madame Restell seemed untouchable. She was said to be worth over a million (non-inflated) dollars. She moved to a mansion at Fifth Avenue and 52nd Street which, according to the *Times*, “never fails to attract the attention of the passerby, on account of its architectural beauty and magnificence.” She traveled the avenues behind a handsome pair of matched grays and a coach driver with plum-colored coat lapels. Another writer said she also carried a small muff of mink in

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which she hid her hands, much like the ones “famous pianists or violinists use to protect their hands from harm.” Her “marketing” expenditures, including pharmacist tie-ins, thousands of handbills, and the ads running daily in the New York *Herald* and many other newspapers, were estimated at \$60,000 annually.

But the success of Madame Restell and other abortionists in New York and around the country led to opposition from three forces: ministers, doctors, and the New York *Times*.

The ministers were probably not very effective. One, E. Frank Howe, gave strong anti-abortion sermons, arguing that “in the ears of the thoughtless I would sound the cry of MURDER! so clearly that henceforth they cannot fail to think.” But many ministers who were personally opposed to abortion thought it impolitic to say so. One minister said that sermons on abortion would “turn the pulpit and church into a place that many people would not like to visit.” A New York reporter charged that congregations were hearing “rose water balderdash, politico-religious harangues and cream-cheese platitudes *ad nauseam*” from ministers who were silent on abortion “lest the namby-pamby sensibilities of fashionable fops should be hurt.”

Doctors from the 1840s through the 1860s apparently were more effective, both in writing and in lobbying. Dr. Gunning Bedford, in the *New England Journal of Medicine*, called Madame Restell “a monster who speculates with human life with as much cruelty as if she were engaged in a game of chance.” He wrote of one patient who told him that “Madame Restell, on previous occasions, had caused her to miscarry five times.” The patient also described one Restell abortion in which the aborted baby “kicked several times after it was put into the bowl.” Bedford wrote angrily that Restell’s “advertisements are to be seen in our daily papers . . . She tells publicly what she can do; and without the slightest scruple, urges all to call on her who might be anxious to avoid having children.”

Another medical leader, Dr. Hugh Hodge, told his University of Pennsylvania students that the unborn child “is truly a perfect *human being*, and that its destruction is *murder*.” Leaders of the American Medical Association insisted that abortion is “murder” and explained their strong anti-abortion stand by noting that “We had to call things by their proper name.” The New York Medical Society in 1867 sub-

mitted to the state legislature a strongly-worded resolution calling for tough abortion laws, since “from the first moment of conception, there is a living creature in process of development to full maturity . . . the intentional arrest of this living process . . . is consequently murder.”

In 1868 and 1869 the New York legislature, under continued prodding from doctors, passed tougher anti-abortion laws. But public opinion remained unexcited, enforcement was lax, and many abortionists were able to laugh all the way to the bank. Similar lack of concern prevailed in other states. Doctors in Missouri complained that no one seemed to care, and that “our clergy, with some very few exceptions, have thus far hesitated to enter an open crusade against . . . criminal abortions.” An Illinois anti-abortion doctor contended that ministers “have been very derelict in handling this subject too delicately and speaking of it too seldom.” He wondered if anyone would take leadership in arousing the public.

**I**n New York, the *Times* (then owned and edited by Protestants, and refusing abortion ads) decided to push ahead. In 1870, in a biblically-referenced editorial entitled “The Least of These Little Ones,” editor Louis Jennings complained that the “perpetration of infant murder . . . is rank and smells to heaven. Why is there no hint of its punishment? Are the Police under the delusion that they are appointed merely for the purpose of dealing with open and public offenses?”

Jennings gave ample coverage to two more abortion cases early in 1871, but not much happened. Jennings complained in another editorial that abortionists “have openly carried on their infamous practice in this City to a frightful extent, and have laughed at the defeat of respectable citizens who have vainly attempted to prosecute them.” Then he really went to work to arouse the public. In July, 1871, he told a *Times* reporter, Augustus St. Clair, to go undercover in order to gather information for an exposé. For several weeks St. Clair and “a lady friend” visited the most-advertised abortionists, posing as a couple in need of professional services. The result was a hard-hitting, three column article published on August 23, 1871.

St. Clair’s story, “The Evil of the Age,” began on a solemn note: “The enormous amount of medical malpractice [then the common euphemism for abortion] that exists and flourishes, almost unchecked,

in the City of New York, is a theme for most serious consideration. Thousands of human beings are thus murdered before they have seen the light of this world, and thousands upon thousands more of adults are irremediably robbed in constitution, health, and happiness.”

St. Clair then skillfully contrasted powerlessness and power. He described the back of one abortionist’s office: “Human flesh, supposed to have been the remains of infants, was found in barrels of lime and acids, undergoing decomposition.” He described the affluence of an abortionist couple, Dr. and Madame H. D. Grindle: “The parlors are spacious, and contain all the decorations, upholstery, cabinetware, piano, book case, etc., that is found in a respectable home.” He quoted Madame Grindle: “Why, my dear friend, you have no idea of the class of people that come to us. We have had Senators, Congressmen and all sorts of politicians, bring some of the first women in the land here.”

St. Clair gave figures on the economics of abortion, noting that a Dr. Evans spent \$1,000 per week on advertising, received 100 letters per day requesting services, and had amassed a fortune of \$100,000. And St. Clair named names of other abortionists: Madame Restell, Dr. Ascher, Dr. Selden, Dr. Franklin, Madame Van Buskirk, Madame Maxwell, Madame Worcester. He emphasized the constant coverup: “All the parties interested have the strongest motives to unite in hushing the scandal.” He ended with a call for action: “The facts herein set forth are but a fraction of a greater mass that cannot be published with propriety. Certainly enough is here given to arouse the general public sentiment to the necessity of taking some decided and effectual action.”

Newspaper crusaders know that once the basic facts are laid out and readers are becoming aware of a problem, a specific incident is still needed to galvanize public-opinion. Tragically for a young woman, providentially for the *Times*’ anti-abortion campaign, the ideal story of horror arrived within the week. St. Clair published his exposé on August 23; on August 27, the *Times*’ top front-page headline read, “A TERRIBLE MYSTERY.”

The general facts of the story were miserable enough: the nude body of a young woman was found inside a trunk in a railway station baggage room. The autopsy showed that her death had been caused by an abortion. But the *Times* provided evocative specific detail: “This woman, full five feet in height, had been crammed into a trunk two feet

six inches long. . . . Seen even in this position and rigid in death, the young girl, for she could not have been more than eighteen, had a face of singular loveliness. But her chief beauty was her great profusion of golden hair, that hung in heavy folds over her shoulders, partly shrouding the face.”

The *Times* description concluded: “There was no mark of violence upon the body, although there was some discoloration and decomposition about the pelvic region. It was apparent that here was a new victim of man’s lust, and the life-destroying arts of those abortionists, whose practices have lately been exposed in the *TIMES*.”

While the police struggled to find the perpetrators (among the leads: the boy who had helped carry the trunk into the station remembered that a man and a “mysterious” woman had delivered it), the *Times* gave the “trunk murder” full play. In a lead column every day on its back page (which functioned in those days as a second front page), the *Times* kept reminding readers that the murder showed what went on “in one of the many abortion dens that disgrace New York, and which the *TIMES* has just exposed as ‘The Evil of the Age.’”

On August 29 police arrested a Dr. Rosenzweig, a.k.a. Ascher, whose advertisement had been quoted in St. Clair’s August 23 story: “Ladies in trouble guaranteed immediate relief, sure and safe; no fees required until perfectly satisfied . . .” The following day a *Times* editorial, “Advertising Facilities for Murder,” quoted that article and noted “What a ghastly commentary upon such an announcement is the fate of the golden-haired unfortunate who lies, [now] a mass of putrefaction, in the Morgue?” The editorial attacked “the lying notices of men and women whose profession, if it means anything at all, means murder made easy,” and asked whether “the lives of babes are of less account than a few ounces of precious metal, or a roll of greenbacks?” The *Times* kept beating the drum: “It is high time that public opinion should be fairly roused. The law must take hold of the abortionists, as it very easily can, and public opinion must set its seal of emphatic condemnation upon every agency which aids and abets the shameful trade.”

Four back-page columns of the August 30 issue were devoted to a superbly-written followup by St. Clair, and accompanying stories. “A Terrible Story from our Reporter’s Note-Book” revealed that St. Clair,



while doing his undercover research for the exposé, had visited the accused Rosenzweig's Fifth Avenue clinic. Continuing his tactic of emphasizing the affluence of the abortionists, St. Clair described the "fine tapestry carpet . . . elegant mahogany desk . . . piano" and so on. The shocker, for those who had been reading the previous day's stories, was inserted subtly: "As we entered the room a young girl emerged therefrom. She seemed to be about twenty years of age, a little more than five feet in height, of slender build, having blue eyes, and a clear, alabaster complexion. Long blonde curls, tinted with gold, drooped upon her shoulders."

St. Clair then described his discussion with Rosenzweig, including the doctor's demand for \$200. When St. Clair asked what would happen to the aborted infant, Rosenzweig was quoted as replying, "Don't worry about that, my dear Sir. I will take care of the *result*. A newspaper bundle, a basket, a pail, a resort to the sewer, or the river at night? Who is the wiser?" When St. Clair asked more questions, Rosenzweig became suspicious and began to shout, "I'll kill you . . . you spy, you devil, you villain." St. Clair said Rosenzweig's hand then "moved to his breast pocket," and St. Clair had to draw a revolver to make good his escape.

On his way out, St. Clair glimpsed once again the beautiful young woman. This time, as a fitting conclusion to his story, he drove the point home: "As I passed through the hallway I saw the same girl who had left the parlor when I made my first visit to the house. She was standing on the stairs, and *it was the same face I saw afterward at the Morgue. I positively identify the features of the dead woman as those of the blond beauty before described.*

The *Times* kept at it, reporting other abortions and quoting (on September 8) a judge's charge to a grand jury that abortion is a crime "most foul in its character, making the heart grow sick at the contemplation of such fiendish depravity." The judge used the *Times* to send a message: "Let the warning word this day go forth, and may it be scattered broad-cast throughout the land, that from this hour the authorities, one and all, shall put forth every effort and shall strain every nerve until these professional abortionists, these traffickers in human life, shall be exterminated."

Rosenzweig's trial began in a crowded courtroom on October 26.

The *Times* reported: "Notwithstanding the period which has elapsed since the perpetration of the terrible tragedy, public attention has never been diverted from this extraordinary case." Of course the *Times* had been instrumental in focusing that public attention. On October 29, 1871, Rosenzweig was found guilty of causing death through medical malpractice and was sentenced to seven years imprisonment. The judge told him that he was getting off easy, for "You sent two human beings to their last account, deliberately, willfully, murderously." The judge said he would join others in recommending that the legislature pass harsher penalties.

The *Times* kept up the crusade. It regularly reported anti-abortion efforts by various medical and legal groups. On December 8, one medical board was reported to have recommended stiffer penalties; the *Times* also noted that "The Press and the Judiciary were thanked for their determined opposition to this crime." On December 15, the *Times* gave front page coverage to another medical group's urging that judges be given discretion to assign sentences of life imprisonment in abortion cases, since "The fetus is alive from conception, and all intentional killing is murder." The committee also suggested that passage of new legislation would be possible because New York had been "grievously shocked . . . by the terrible deeds of certain abortionists lately exposed."

With public attention aroused by the "trunk murder" case, Jennings editorialized that "The time is opportune to strike quickly, and to strike home." In January, 1872, a *Times* editorial once again emphasized that the fight against abortion was a fight against money and power: "Great mansions on grand avenues are occupied by disgusting 'practitioners' who continue to escape prosecution . . ." The *Times* recommended passage of a bill "far-reaching enough to catch hold of all who assist, directly or indirectly, in the destruction of infant life" and gave its recommendation a populist thrust: "The people demand it."

In 1872, the New York legislature did pass tough new anti-abortion laws, with easier rules of evidence and a maximum penalty of twenty years imprisonment. Enforcement was also stepped up. Abortionists stopped advertising, and some other New York newspapers ran anti-abortion editorials. The New York *Tribune*, for instance, called abortionists a "regular guild of professional murderers," and declared that "abortion at any period is homicide."

Now it was time to go after the most prominent of the abortionists, Madame Restell. She was smart enough to lie low for a while and spend time decorating her mansion. A description of the interior written by James McCabe in 1872 indicates the way she lived: “On the first floor are the grand hall of tessellated marble, lined with mirrors; the three immense dining-rooms, furnished in bronze and gold, with yellow satin hangings, and enormous French mirrors in mosaic gilding at every panel . . . more parlors and reception-rooms; butler’s pantry, lined with solid silver services; dining room with all imported furniture. Other parlors on the floor above; a guest-chamber in blue brocade satin, with gold and ebony bedstead elegantly covered . . . [many bedrooms and lounges] . . . Fourth floor—servants’ rooms in mahogany and Brussels carpet, and circular picture gallery; the fifth floor contains a magnificent billiards room, dancing hall, with pictures, piano, etc. The whole house is filled with statuettes, paintings, rare bronzes, ornamental and valuable clocks, candelabras, silver globes and articles of many origins and rare worth.”

Increasingly, her house became a symbol of ill-gotten gains. A new generation of officials did not automatically protect her. An assistant district attorney said that “Every brick in that splendid mansion might represent a little skull, and the blood that infamous woman has shed might have served to mix the mortar.” Madame Restell had to begin using her political clout to maintain her fortune. As public opinion hardened she became isolated: loud cries against “Madame Killer” would sometimes follow her carriage down Fifth Avenue, and the *Times* seemed accurate in demanding enforcement of anti-abortion laws because “the public demands it.”

Early in 1878, with Madame Restell now 65 but hardly retiring, the New York *Times* reported, “MME RESTELL ARRESTED” for “selling drugs and articles to procure abortion.” The *Times* repeated that “The residence of Mme Restell is one of the best known in New York. . . . Her wealth is entirely the proceeds of her criminal profession. Her patrons are said to belong to the wealthiest families.” But Madame Restell’s wealthy patrons were not able to protect her from *Times* reporters who followed every detail of her arraignment and trial.

Some of the developments were low comedy. Madame Restell could not immediately raise bail from her own funds, since her investments in

bonds and real estate were not liquid. But bondsmen said they would put up sufficient funds only if the judge would order reporters not to print the bondsmen's names in the newspaper. The judge refused, and the bondsmen refused. Madame Restell's lawyer turned to one bondsman and asked him to help, saying "Will you not allow a Christian feeling to govern you?" But there was nothing Christian about Madame Restell, the *Times* suggested, as it quoted the bondsman refusing not from opposition to abortion but from dislike of publicity: "I've got a wife and a family of girls, and I'll be hanged if I'm agoing to have my name in the papers as a bondsman for an abortionist."

Madame Restell eventually left jail, but she could not stop the newspaper attacks. She had lived by the press and was now dying by it. She asked her lawyers if there was some way to suppress the newspapers, but was told that nothing could be done, for the press was "without standards." One of Madame Restell's colleagues complained angrily: "Money! We've plenty of that. But what good is it with the newspapers against us?" Madame Restell's lawyer asked both judge and editor to have mercy on his client, a "poor old woman," but he was laughed at. Madame Restell claimed not to understand the judgment she was facing: "I have never injured anybody," she complained: "Why should they bring this trouble upon me!"

Madame Restell became an avid newspaper reader, but she found no peace. The *Times* described how she was "driven to desperation at last by the public opinion she had so long defied." She reportedly paced her mansion's halls at night like a latter-day Lady Macbeth, looking at her hands and bemoaning her plight. The night before her trial was scheduled to begin, Madame Restell was discovered in her bathtub by a maid, her throat cut from ear to ear, an apparent suicide.

This *denouement* was announced at the top of page one by the *Times*: "END OF A CRIMINAL LIFE. MME RESTELL COMMITS SUICIDE." The *Times* reported rumors that "Mme. Restell was murdered through the instigation of wealthy people who had patronized her in her criminal business, in order to prevent disclosures which they deemed inevitable at her trial." But this was never proven, and was termed "improbable" by reporters.

The *Times* reported the activities of a few other abortionists during the 1880s and 1890s. For instance, the *Times* told how Philadelphia

policemen, on a tip, dug in one downtown cellar and found “the bodies of 21 infants who had been killed before birth.” The abortionist was sentenced to seven years hard labor after a trial in which jurors were shown a cigar box containing the bones of the murder victims: “Whenever the box was moved, they rattled like hard withered leaves. There were many bits of skulls among them, some almost complete.”

In 1890 the *Times* wrote that an arrested abortionist, Dr. McGonegal, “has the appearance of a vulture . . . His sharp eyes glitter from either side of his beaked nose, and cunning and greed are written all over his face.” McGonegal’s accomplice, Fannie Shaw, was described as “wholly repulsive in appearance, vice and disease having made her a disgusting object.” The *Times* even sent a reporter to McGonegal’s neighborhood in Harlem to learn how he was regarded by the people he said he was trying to help. The reporter concluded, “To the good people of Harlem, and especially to the poorer classes, this grizzly old physician had long been an object of intense hatred. They were certain of his unholy practices, although he had escaped conviction, and when he drove through the streets in his old-fashioned, ramshackle gig, they hooted and jeered at him in derision.”

With public opinion cemented against abortion, the New York *Times*’ nineteenth century work on the subject was complete. In the 1960s, of course, *Times* writers would campaign against the anti-abortion laws their predecessors had helped to establish. They would be equally successful, making a crucial contribution to New York’s open abortion law of 1970 and the change in leadership opinion that underlay the Supreme Court’s *Roe v. Wade* decision in 1973.

# What Happened to the Doctors

*Richard John Neuhaus*

**A**PPARENTLY HE DID NOT INTEND to do it, but Robert Jay Lifton, professor of psychiatry at City University of New York, has raised again the question of parallels between the Nazi Holocaust and the current debate about abortion. More specifically, Lifton studies the “medicalization of death” in his widely reviewed *The Nazi Doctors: Medical Killing and the Psychology of Genocide*.

Let it be said at the outset that there is strong and understandable resistance to the drawing of any parallels between what happened under Hitler and developments related to abortion and euthanasia in the United States. Pro-choice forces dismiss as “hysterical” any hint of a suggested parallel. Some protectors of the memory of the Holocaust insist upon the absolute singularity of that tragedy, lest it be trivialized by too facile comparison with other terrors of our bloody century. The irony is that, by holding out for the unqualifiedly nonpareil nature of the Holocaust, the Holocaust may end up being viewed as irrelevant to a more general understanding of the horrors of history and of man’s capacity for evil. The Holocaust is at the heart of what Paul [2 Thessalonians] calls “the mystery of iniquity” in our time. Anything said about it must be said with painstaking care and, indeed, with reverence. Perhaps the most sober and nuanced treatment of the connections under discussion is “Abortion and the Holocaust” in James Burtchaell’s immensely important *Rachel Weeping*. Parallels are to be perceived, according to Burtchaell, not so much in comparing the relative status of victims—the unborn in abortion vs. the born in the Holocaust—as in the changed ways of thinking about human life, law, community, and medicine in both instances.

Lifton underscores that the way was prepared for medical participation in the Holocaust long before the “final solution” went into effect. “My argument in this study is that the medicalization of killing—the

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imagery of killing in the name of healing—was crucial to that terrible step. At the heart of the Nazi enterprise, then, is the destruction of the boundary between healing and killing.” The most prestigious medical authorities in Germany in the 1930s and earlier denigrated an excessively “individualistic” view of human life. The community’s “quality of life” must have priority. Pertinent to the pro-family/anti-family debates of today, the medicalization of killing was promoted as being supportive of the family. Lifton writes, “The physician, as genetic counselor and policeman, could be the vigilant ‘protector of the family that is free from hereditary defects.’” This was also a powerful argument for the sterilization of the “defective”—a step which was “the medical fulcrum of the Nazi biocracy.” (Rudolf Hess had declared Nazism to be nothing more than “applied biology.”)

#### Lives Unworthy of Life

“The Nazi project,” notes Lifton, “was not so much Darwinian or social Darwinist as a vision of absolute control over the evolutionary process, over the biological human future.” The mish-mash of Nazi ideology included both nature worship and the belief that leaving questions of life and death to “nature” was a piece of pre-scientific superstition. In this new world, doctors would play a critical role. “It is they who work at the border of life and death, who are most associated with the awesome, death-defying, and sometimes death-dealing aura of the primitive shaman and medicine man. As bearers of this shamanistic legacy and contemporary practitioners of mysterious healing arts, it is they who are likely to be called upon to become biological activists.” Of course the medicalization of killing required a moral justification. Such a justification was readily at hand in the simple concept of *lebensunwertes Leben* (life unworthy of life). Entire classes of human life—the unwanted unborn, cripples, mental defectives, and racial groupings such as Jews and Gypsies—were declared to be instances of *lebensunwertes Leben*. The medicalization of killing also required that medicine still be viewed as a serving and healing enterprise, even a kind of ministry. So it was proposed that doctors were rendering a service not only to the community but to the individuals themselves in relieving them of their unworthy lives. The analogy with today’s “wrongful life” cases in which those born defective are awarded damages for having had imposed upon them *lebensunwertes Leben* is chillingly suggestive. It is,

some American courts are saying, the obligation of the healing arts to terminate wrongful life.

The changes called for in a doctor's traditional understanding of his obligations are radical and must be introduced slowly, Lifton notes. In the Nazi case, "It seemed easier—perhaps more 'natural' and at least less 'unnatural'—to begin with the very young: first, newborns; then, children up to three and four; then, older ones." It is psychologically understandable that the less the life in question looks like "one of us," the easier it is to terminate that life. Because many doctors had qualms about this "transformation" in their role, the authorization for killing was at first kept under tight control and limited to "the most serious cases." But, the logic of the argument having been established, authorizations were "later to become loose, extensive, and increasingly known." The government and medical establishments increasingly favored administrators, pediatricians, and psychiatrists who had a "positive attitude" to what must be done.

#### **Breaking with Tradition**

Sterilization, abortion, euthanasia, positive eugenics, and, later, genocide all required a "clear break with medical tradition" in one critical respect. The government-medical establishments "mounted a consistent attack upon what they viewed as exaggerated Christian compassion for the weak individual instead of tending to the health of the group. . . ." The state embraced the argument advanced in a 1920 work by Dr. Alfred Hoche, professor of psychiatry at Freiburg, *Die Freigabe der Vernichtung lebensunwerten Leben* (The Permission to Terminate Life Unworthy of Life). Noting that doctors were permitted under some circumstances to kill a live baby at birth and to abort the unborn, Dr. Hoche invoked the concept of "mental death" to extend that permission to taking lives afflicted by various forms of psychiatric disturbance, brain damage, and retardation. Such people were "human ballast" (*Ballastexistenzen*) and putting them to death "is *not* to be equated with other types of killing . . . but is an *allowable, useful act*." As Lifton observes, "He was saying that these people are *already* dead." Of course there were various permissions and authorizations to be obtained in order to avoid wanton killing, and in discussing these, Dr. Hoche and those who followed in his footsteps were careful to provide for "the legal protection of physicians involved in the killing process."



Medical termination was not only a service to those suffering from “wrongful life” but was also clearly part of any rational calculation of the public interest. “Under the Nazis,” writes Lifton, “there was increasing discussion of the possibility of mercy killings, of the Hoche concept of the ‘mentally dead,’ and of the enormous economic drain on German society caused by the large number of these impaired people. A mathematics text asked the student to calculate how many government loans to newly married couples could be granted for the amount of money it cost the state to care for ‘the crippled, the criminal, and the insane.’” Of course all this was well before, but on the way to, Auschwitz. In its first years, the regime backed away at times from publicizing its approach to medicalized killing. There were sensitive souls who early took alarm at the implications of what was being proposed. Psychiatrist Lifton notes that what inhibited the regime “was not psychiatric resistance but rather general resistance among the German people, articulated and heightened by a few courageous Protestant and Catholic religious leaders.” Lifton adds: “I say this not to render the churches as a whole heroic: most Protestant and Catholic leaders either went along with the Nazis or did nothing. Rather my point is that the Nazi attempt at medical mystification of killing was given the lie not primarily by psychiatrists or other physicians, many of whom were directly involved in carrying out the program, but by a few church leaders, who gave voice to the grief and rage of victimized families with ethical passions stemming from their own religious traditions.”

The “Slippery Slope” Revisited

It may be objected that the above is suggestive of the old, and presumably discredited, “slippery slope” argument. That argument has it that abortion inexorably leads to euthanasia and then to positive eugenics and, at least potentially, to the elimination of entire classes of people deemed to be undesirable. That logic was challenged and, in the view of many, refuted by Daniel Callahan’s influential 1970 book, *Abortion: Law, Choice and Morality*. Callahan points out that, in fact, the legalized killing of the unborn in a number of societies has not been followed by further sliding down the slippery slope. But the time frame invoked by Callahan is very short. In addition, he relies heavily, although not exclusively, on the experience of totalitarian societies where culture is politically controlled and ideas are not permitted to

work their own way. Then, too, in instances such as China and the Soviet Union, not to mention Nazi Germany, the slippery slope has been confirmed in all too dreadful historical fact. Leon Kass of the University of Chicago (*Toward a More Natural Science*) makes a more convincing case that there is an element of inexorability in the way people and societies behave. When a course of action becomes technically possible, when cultural changes make it morally, politically, and legally permissible, and when that course of action is in the immediate self-interest of those whose decisions matter, then it becomes very likely, if not inevitable, that that course of action will be pursued. With specific reference to medical practice, Kass believes we are disturbingly far along the way toward what C. S. Lewis called “the abolition of man.”

We can and must speculate about the “lessons” of the Holocaust. In his treatment of the medicalization of killing, Lifton draws some lessons for our time. His lessons have to do with U.S. war crimes in Vietnam, various nefarious activities of the CIA, torture in Pinochet’s Chile, and complicity in the threat of nuclear war. Almost incredibly, Lifton not once mentions any possible analogy with current debates about *lebens-unwerthes Leben* in connection with abortion, eugenics, and euthanasia in our society today. Equally astonishing, there has been no mention of these current debates in the half-dozen or more reviews we have seen of *The Nazi Doctors* to date. Lifton has much to say about the reality-denying capacities of doctors engaged in killing-as-medicine during the Nazi era. The omission of any mention of disputes closer to home—which are in moral and medical logic and sometimes in the very language used *identical* with key disputes of the Nazi era—says much about the reality-denying capacities of prestige authors, reviewers, and journals in our time.

#### **And Our Doctors**

In fact we are not limited to speculation about how the questions posed by *The Nazi Doctors* find expression today. Jonathan Imber, sociologist at Wellesley College, examines some of the questions in a searching new book, *Abortion and the Private Practice of Medicine*. Imber himself is moderately pro-choice in the abortion debate. “If a referendum were taken tomorrow proposing to make abortion illegal again, I would vote against it,” he writes. “Nevertheless, the heart of

the matter is that our society stands witness to well over one million abortions each year. For many patients and doctors, abortion is a personal tragedy and an individually agonizing decision to make. From a societal standpoint, however, its routine accomplishment is now an accepted fact of life." As Imber later and more accurately notes, however, while abortion has been technically and legally routinized, it has not been morally routinized. This is painfully evident in his interviews with doctors in "Daleton," a mid-sized town in the Northeast. Most of them seem to know, sometimes intuitively and sometimes after much reflection, that something very fundamental and very troubling is happening in our understanding of the medical profession.

Imber first surveys the history of abortion law in the U.S. in the last century and this. He notes, as have others, that it was the medical profession, almost unanimously convinced by growing scientific evidence of the continuity of human life from the moment of conception, which pressed for the legal protection of the unborn. And of course the medical guild was also interested in driving non-certified practitioners out of the field of maternal and child care. Faced by the rise of Nazism, some doctors early drew "the analogy between the right to life with respect to people under dictatorship and the right to life with respect to the unborn." So, at least for the discerning, the question of analogies or parallels between abortion and Nazism has been with us for nearly 50 years.

#### *Still a Stigma*

In reporting his interviews with doctors in private practice, Imber underscores the importance of religion as a determinant in whether or not they are willing to do abortions. As might be expected, the correlation was pronounced in the case of Roman Catholic doctors but was evident across the denominational board. As Imber's tables show, "a high degree of religiosity correlated significantly with a physician's unwillingness to perform elective abortions." Among doctors who did such abortions, there was also a correlation in attitudes about "quality of life" and the ways in which "environment" determines life chances. "The 'positive program' of birth control also evoked eugenic sentiments. Some doctors favorably disposed to abortion advocated it as a solution to 'so many damn welfare programs' and to 'slow suicide.' [Abortion] was both a social improvement and a social necessity."

One doctor says, "I hate doing them, but I do them every once in a while. But the real reason we try to avoid them is that I don't want to be known in the community as a local abortionist. I want to be known as a doctor who loves mommies and their babies. I don't care what is said, there is a stigma attached to doing abortions." The doctors in private practice refer to abortion as "dirty work" and are glad to refer people to the abortion clinic in the next town where they specialize in that kind of thing. Lifton also discusses at length the phenomenon of "psychological doubling" among Nazi doctors who simultaneously despised and excused what they did. If I didn't do it, someone else would, they told themselves, adding that the *real they* were not doing these things, except in the most literal and technical sense. Similarly, one doctor tells Imber: "I don't enjoy doing them. It is legalized murder, which has a place in society, but Ob/Gyn is antithetical to committing murder. There are rare mitigating circumstances, such as rape or incest, or a patient I have known. I don't know when life *is*, but quite frankly, hands and arms [of a fetus] are just that. I'm a right-to-lifer who believes in abortion." Even those doctors who worked in the abortion clinic wanted to believe that *they* were not really doing what they were doing. And apparently others are prepared to see it that way as well. Imber writes, "In the specialized clinic setting, the physician did not acquire the reputation of performing abortions; the *clinic* did." Again, Lifton too emphasizes the ways in which doctors in the death camps habitually spoke of what the *camp* did.

**A** doctor in private practice who did 30 to 50 second trimester abortions a year explained to Imber: "To prohibit abortions would lead again to kitchen-table abortions, and ladies dying. I don't think the physician needs to be any part of the controversy. The physician is just a technician." On the other hand, a continuing theme since the 19th century is that physicians should have the responsibility for making the critical decisions regarding child care and abortion. Yet these physicians are remarkably passive in the face of the law. "All physicians in Daleton indicated that if elective abortions were made illegal again, they would not perform them. It would appear that the legacy of illegal abortion still asserted itself in their responses to the prospect of a constitutional amendment giving states the right to determine when abortion

could be performed. The bold autonomy of professionalism, the physician's right to decide, was given up without hesitation in the face of the law. Complications of a legal kind were feared most: the ever higher premiums on malpractice insurance are perhaps one of the few real social taxes for the privilege of professional autonomy."

Doctors who performed abortions seemed remarkably insouciant with respect to their explicit violation of the Hippocratic oath. Some said the oath's prohibition of abortion was a result of then primitive technology: "In those days there was an 80 percent mortality rate for induced abortions." (Referring, of course, to the mortality rate for the women in question.) Asked about the oath, a younger doctor allowed, "You can't believe everything you say. We all say lies." A Roman Catholic physician observed, "You've got to qualify it today. It doesn't hold one hundred percent. In our own church we have concepts which wouldn't have been accepted ten years ago." Still another frankly stated that "the oath is so old that in time it has deteriorated a little. You must establish your own ethics."

*Nazism and Now*

In trying to make moral sense out of what happened to the doctors then and what is happening to the doctors now, it is imperative to underscore that the United States is not Nazi Germany, nor Stalin's Soviet Union, nor any place or other time. The United States is the United States, and now is now. And yet American "exceptionalism" should not be pushed so far that we assume we are exempt from the evils endemic to the human condition. For those who believe that every unborn child has a life worthy of life and that society has an obligation to protect that life, it not only can happen here, it is happening here. It is happening at the rate of 1.5 million lives per year; almost 20 million since the abortion decision of 1973. Of course many do not share that view of the unborn or, if they do, believe there is no acceptable alternative to the present policy of unlimited access to abortion. Even they, however, cannot honestly deny what is happening here with respect to the medicalization of killing. Advances in medical technology inescapably bring with them greater control over who shall live and who shall die. What is technically routinized will become legally and morally routinized unless, through the democratic process, citizens stand up and say No. Only the willfully blind can continue to dismiss as hysterical

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and alarmist the analogies between Nazism and now. The rapidity with which medicine is now being redefined, and our society's apparent inability to make a principled case for asserting control over technology and self-interest, indicate that we are already well on our way down the slope. One must carefully note that this does not mean that we are on our way to Nazism. The horrors of the past are the horrors of the past. The brave new world that we are becoming will no doubt be distinctly American.

## The Most Common Death Chamber

*William M. Bulger*

Most of us were born into a world where the ages of man met prosaic patterns: we associated vigor with youth, familial happiness with middle-age—and we accepted the fact that death, and perhaps even wisdom, waited at the end of the road.

Much has changed in the thirteen years since an activist Supreme Court legalized abortion at will in this nation. Now the greatest incidence of death occurs at what should be the beginning of life. The most common death chamber is the womb.

It is difficult to measure the precise extent of this anomaly. Some statistics are grudgingly shared. But what we are able to piece together makes it clear that, in Massachusetts, the younger the life, the greater its peril.

Did you come here tonight from north of Boston? If so, you should know that in the last twenty-four months the number of unborn killed by abortions in our Commonwealth is greater than the population of the city of Lowell.

Did you come from the west? Then know that the number slaughtered here in that period of time exceeds the combined populations of Waltham and Natick.

Did you come from the south? More young lives were lost through abortion in Massachusetts in that time period than the total of men, women and children in Braintree and Weymouth together.

And if you are from Boston itself, you should know that during the same period abortions destroyed the unborn to an extent equal to twenty percent of the city's population.

Thomas Jefferson once said: "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical."

How much worse to require one to pay the cost of carrying a

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detested opinion into actual practice!

Next Tuesday we will have an opportunity to correct such an evil. Then we will be able to vote *Yes* on Question One. A *Yes* vote for that constitutional amendment is a demand that we not be forced to pay for at-will abortions with our taxes.

If the *Yes* votes prevail, the Amendment will not stop the slaughter of the unborn—but it will slow it down.

The Amendment is by no means certain of passage. It is opposed by a large, determined group consisting, for the most part, of the uninformed led by the unprincipled. But even if there are enough *Yes* votes to free us of forced complicity in this evil activity, that will only be a beginning.

**T**here can be no peace for men and women of good will until the regulation of abortion is restored to what it was prior to the grotesque decision of the United States Supreme Court in the case of *Roe v. Wade*, the decision that made abortion on demand the law of the land.

And time is of the essence. It is literally a matter of life and death. Since that decision in 1973, those killed by abortion in the United States exceed twenty million. That is almost forty times the number of American dead in all wars from the Revolution to and including Vietnam. It is a number almost equal to the entire population of Canada. It is twice the number of humans murdered by the regime of the depraved Adolph Hitler. And ninety-six percent of those abortions had nothing to do with rape or incest or the life-safety of the mother—they were a form of birth control. They were for convenience. For convenience! More than twenty million killed—mostly for somebody's convenience!

The case for abortion on demand is based on eight lies. Eight great lies. Lies that must be challenged and exposed for what they are. Then, and only then, will this nation be able to awake from this sanguinary nightmare.

The first of the lies supporting abortion on demand is the fiction that it is solely a Catholic issue.

The first laws making abortion a crime were passed in the dawning days of this nation, when Catholics were a distinct minority. Catholics were still a minority in the nineteenth century when abortion was condemned as a serious crime by national consensus—a view that con-



tinued, irrespective of the distribution of Catholics, until the decision was handed down in *Roe v. Wade*.

The criminal statute against abortion in Massachusetts was enacted by Protestant legislators and a Protestant governor.

The fact is that abortion is opposed today by Catholics, Protestants, Jews, Atheists and Agnostics—by a majority of Americans. Obviously, a civilized society must repress a broad range of human conduct from murder to child abuse—and to most of our citizens abortion borders on the former, and must be the ultimate form of the latter.

The second great lie is that abortion on demand is a product of philosophical evolution and enlightenment. Thus anti-abortionists have been referred to as Cro Magnons—indicating a cave man intellect.

Like most big lies, that is exactly the opposite of the truth. The practice of abortion is at least 4,600 years old. During the era of the Persian Empire, abortions were performed by both chemical and mechanical means. It was common in Greece, though some philosophers opposed it, as evidenced by the Hippocratic Oath.

Ancient Rome was a pro-choice society: abortion—and its logical corollary, infanticide—were prevalent. Like most pagans and pantheists, Romans deemed both practices efficacious in dealing with a wide range of social and economic problems. Nero is said to have found the activities amusing.

Two thousand years ago the only meaningful and substantial opposition came from Jews and Christians. They shared the canonical tenet that man was made in God's image and that human life—*from the time of conception*—was sanctified. The Romans considered Christians to be effete. They dismissed Jews as religious cranks. But, of course, it was the Judeo-Christian ethic that eventually shaped the philosophy of the Western world.

Because of that tradition, abortion was—for more than a thousand years—not only a major sin to religious Jews and Christians, but a crime in every nation of Europe. As our nation developed, abortion, in one or another context, was made a felony in every state.

Thus, the inviolability of life was recognized by Catholics, Protestants and Jews throughout Western history. Only recently, with the spread of secular humanism and Marxism, has the conception of a Godless universe passed through the Iron Curtain to be urged upon us by

social engineers to whom a human being is a mere member of the animal world: brother to a flatworm, sister to a slug.

It is the “Pro-lifer” who reflects the ethic that ennobled and illuminated modern civilization. It is the at-will abortionist who is a throw-back to the ancient red-handed killers of infants, the elderly and the unborn.

The third great lie supporting abortion on demand is the falsehood that only Catholics have ever believed that human life must be respected from the moment of conception.

That is an Orwellian exercise in the re-writing of history.

The venerable Hippocratic Oath, traditionally taken by graduates of medical schools, contained a pledge to respect human life—and I quote—“from the time of conception.” Christianity did not exist when that oath was written.

In September, 1948, the General Assembly of the World Medical Organization developed a new oath. It has been adopted by an increasing number of medical schools. It differs in some respects from the old Hippocratic Oath—but not where abortion is concerned—it includes this language: “I will maintain the utmost respect for human life *from the time of conception.*”

It was not until 1971 that such language began to disappear from the oath taken by doctors. First to drop the reference to conception was the University of Pittsburgh. It was followed by the University of Toronto. Since 1971, other medical schools have adopted oaths that allow doctors to perform abortions.

Countless things changed during the millenium ending in 1970: business, industry, clothes, food, the structures in which we worked and lived—they all changed. New means of transportation and communication were developed. More important, forms of government and the rights of individuals changed. But the basic values of the Judeo-Christian ethic remained constant on moral issues. That was because those standards were based on the Bible—and the Bible did not change. And those standards shaped our conceptions of right and wrong and were reflected in our laws and statutes. That is why the often-heard statement that you cannot legislate morality is ridiculous. Our criminal laws against murder, rape, larceny, perjury and so on are mere restatements of the moral values of scripture.

But by the 1970s the consensus of our society was challenged by Humanism, a doctrine that rejected God and held man to be “the measure of all things.” It sought to secularize society. It supported a radical theology. It was embraced by atheistic totalitarian states because it devalued the human being. By contrast, our Founding Fathers had recognized as unalienable certain rights recited in our Declaration of Independence. The Declaration is part of our founding law. It is placed at the head of the statutes-at-large of the United States Code and described therein as organic law.

But if the rights to life, liberty and the pursuit of happiness—which our Declaration held to be unalienable because they came from God—in fact came from man, then they could be *withdrawn* by man.

The most important of those rights was, of course, the right to life, since without life no other rights could exist. But with Humanism, the right to life, no longer unalienable, could lawfully be denied by man—by the abortionist or the political executioner in a prison cell.

The fourth lie supporting on-demand abortion is the pretense that opposition to abortion involves contempt for the Constitution and the Supreme Court.

The Supreme Court of the United States on January 22, 1973, in deciding *Roe v. Wade*, held that a new personal right or liberty existed in the Constitution—the right of women to procure an abortion at any time. The right of privacy was given a completely new interpretation.

The Court held that the fetus was not a person possessing the right to life guaranteed by the 14th Amendment. The competing interests, the Court held, were the woman’s right to decide about child bearing and the state’s interest in the “potentiality of human life” of the fetus. But the state’s interest in the potentiality of human life did not become compelling until the fetus’s viability because “the fetus then presumably had the capability of meaningful life outside the mother’s womb.”

The Court went far beyond the juridical question before it and overthrew the common law of centuries and the statutory law of fifty states. It ignored the democratic tradition of assigning great weight to traditional legal criteria and procedures. It re-wrote law according to the personal values of its members. The decision violated the original charter of the nation, without even the mandate of an election or a vote in Congress.

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John T. Noonan, Jr., then a professor of law at the University of California, Berkeley (and now a federal judge), said:

“Some of the legislation affected was old, going back to the mid-19th century; some was recent, reflecting the wisdom of the American Law Institute or containing explicit statements of intent to protect the fetus. Some of the legislation had been confirmed by recent popular referenda, as in Michigan and North Dakota; some of the legislation was in the process of repeal, as in New York. Old or new, compromise or complete protection from conception, passed by 19th century males or confirmed by popular vote of both sexes, maintained by apathy or reaffirmed in vigorous democratic battle, none of the existing legislation on abortion conformed to the Court’s criteria. By this basic fact alone, *Roe v. Wade* . . . may stand as the most radical decision ever issued by the Supreme Court.”

Noonan said that because of *Roe* “human life has less protection in the United States today than at any time since the inception of the country.” Because of the decision, he said, “human life has less protection in the United States than in any country in the Western world.”

Archibald Cox, the Watergate prosecutor, said (in his book *The Role of the Supreme Court in American Government*): “The decisions plainly . . . sweep away established law supported by the moral themes dominant in American life for more than a century in favor of what the Court takes to be the wiser view of a question under active public debate . . . The Court failed to establish the legitimacy of decision . . . to lift the ruling above the level of political judgment.”

*The Wall Street Journal* summed up the views of Justice Douglas as, “If the Supreme Court does it, it’s all right.”

The late Professor Alexander M. Bickel of Yale, one of the foremost legal scholars in the nation, protested that the decisions of the Court were such that—and I quote—“In effect, we must now amend the Constitution to make it mean what the Supreme Court says it means.”

Yet the same court that made possible the slaughter of millions of unborn babies stopped construction of the \$116-million Tellico Dam in Tennessee to protect the life of a three-inch fish called the snail-darter. The same court that showed such elaborate disdain for human beings also held up the building of a power plant in Maine because of a perceived threat to the welfare of the lousewort plant. The same court

intervened to stop construction of a San Francisco power plant when the orange-bellied mouse was threatened. And it blocked a \$340-million project while careful steps were taken to provide for the welfare of the daddy-long-legs spider.

But all signals were *go* and it was full-speed-ahead where abortion was concerned.

When, in effect, the Court went rummaging through the cupboards of the Constitution to find a “right” to commit abortion at will, it announced that it had found what it was looking for in the 14th Amendment. It could not have picked a more incredible source—which is one of the reasons so many commentators have condemned the decision.

To begin with, the 14th Amendment was passed in 1868, after the emancipation of the slaves, and its purpose was to make the black person a person by law. A strange vehicle for denying the personhood of the unborn.

Secondly, those who wrote the 14th Amendment can hardly have intended to sanction abortion on demand. At the time of its enactment there was an obvious consensus against abortion: 28 of the then-37 states had already passed criminal laws against it. During the next 15 years, seven more states declared abortion a felony. (By the time *Roe v. Wade* was decided, *all* the states held abortion to be evil.) In view of the near universality of opposition to abortion at the time the 14th Amendment was passed, and the continued loathing for the practice thereafter, the Court’s decision is without discernible basis in law or logic. Indeed, if the 14th Amendment has any bearing on abortion, it must be to reverse *Roe v. Wade*.

It might well be said that when Mr. Justice Blackmun wrote that tragic decision, he got too close to the clause to see the Constitution.

The fifth great lie supporting abortion on demand is the inane allegation that opposition to abortion is anti-democratic.

Once again, precisely the opposite is true.

In cases involving abortion, infanticide, and euthanasia, proponents of those facile solutions have increasingly relied on *litigation* rather than legislation and the elective process—they are the ones who have consistently avoided democratic procedures. As plaintiffs before an unelected judiciary they have been able to achieve what was otherwise

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denied them by the will of the majority acting through the *representative* institutions of government.

In 1976, a measure that would have banned the use of taxpayers' money to pay for abortions on demand passed the Congress and became law. A single federal judge sitting in Brooklyn struck down the legislation as unconstitutional. The Supreme Court, by refusing to reverse that decision, gave a district court judge the power to frustrate the expressed will of the Congress in a matter of appropriating tax funds—which, as a Congressman observed, “turns the doctrine of separation of powers on its head.”

In the summer of 1977, ignoring the efforts of the electorate to stop the abortion nightmare, ignoring the administrative and legislative branches of both state and federal governments, the Court reaffirmed its position. It went further: it ruled that doctors were not required to give the same level of care to a living product of abortion that would be expected for a living baby delivered in a situation where the intent was to have a baby.

Massachusetts never chose by democratic process to pay for convenience abortions. The Supreme Court had left it up to the states to decide whether taxpayers had to finance abortions for others, and thirty-six states had voted a resounding *no*. Two-thirds of Massachusetts' elected state representatives also voted against public funding. But their legislation was overturned by the Massachusetts Supreme Judicial Court—which is the reason for the Amendment question in next Tuesday's election.

The federal government pays for abortions in all fifty states, but only when the life of the mother is threatened. Massachusetts, however, spends four times as much as the federal government because it must make convenience abortions available. The records here show women having three, four, even five abortions. In Boston, about 40 percent are repeaters. Your taxes are helping to pay for them.

No—the pro-abortionists should be discreetly silent on the subject of democratic processes.

The sixth great lie supporting abortion at will is the argument that a fetus is better off aborted than born with a physical handicap.

That is the rationale for what has come to be called “selective” abortion. Tests are now available which can detect up to 200 handicaps in

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the unborn. The main purpose of such tests is to enable the mother to decide whether she wants her imperfect baby killed. That, presumably, is what is meant by “advantaging” the unborn. I wonder how many adult humans would be judged perfect specimens when tested for 200 physical problems? The procedures ignore the fact that a doctor treating a pregnant woman has two patients. And one may better appreciate the “benefits” of these procedures by imagining the roles reversed: Would the mother consider herself “better off” if she were tested for 200 imperfections with the same dreadful consequence should she be found to “fail”?

Soviet Russia discourages the preservation of handicapped children. Hitler’s nightmare state slaughtered them in its quest for a race of supermen. But our society is richer for them. Some of the greatest artists and scientists the world has known have had physical handicaps. In our time, we have learned that handicapped persons are among the most dependable and valuable members of society. And they lead full and happy lives. Would they *really* have been better off dead? Would we be better off without them? Most of us find the suggestion horrifying.

The next great lie supporting abortion at will is the insistence that a fetus is not a person. Some of the more militant pro-abortionists refer to the unborn as mere parasites.

It is absurd to become involved in semantical differences in a matter of such importance. They seem to mean by this argument that a fetus is in a state of development. What human is not? A fetus is developing into a self-sustaining baby. A baby is developing into a child. A child is developing into an adult. I know of no time in anyone’s life when he or she is not in the process of physical development. That does not seem to me a basis for execution.

The pro-abortionist tells you that the fetus is entirely dependent on its mother, and cannot be considered a person until after birth, when he or she can survive in the outside world. But no baby ever born can “survive” in the outside world without requiring much more attention and support than was required before birth.

The next argument is that doctors disagree over when a fetus can be called human—and therefore we cannot condemn abortion until we answer that question. The obvious response to that is that we do not

allow a drug to be issued until we have proved it is safe. We don't take a chance of being wrong. Should not doubts about whether we are killing human beings be resolved with comparable caution?

Proponents of abortion insist that the unborn are not persons. The Supreme Court of the United States once ruled that slaves were not persons—that they were chattels, mere items of property. They tell us with a weary air that the issue is settled—the Court has held for thirteen years that abortion is lawful. But slavery was “lawful” for more than a century. And *Roe v. Wade* is as fatally flawed as was the *Dred Scott* decision that claimed to reduce blacks to the level of farm animals—and like its predecessor it cannot survive a futile attempt to deny unalienable rights.

The next lie supporting at-will abortions is the allegation that the practice is reducing child abuse because children are not being born into homes where they are not wanted.

**I**n 1972, the year before the Court's abortion decisions, 60,000 child-abuse incidents were brought to official attention. In the three years after the decision, abuse cases had soared to more than a half-million, and the number has continued to increase every year since then. Authorities say improved methods of reporting account for a percentage, but by no means all, of the increase. The plain and indisputable fact is that there are millions more battered children in the United States today than there were a few years ago, when abortion was a crime.

Many of the cases are horrible. No purpose can be served by describing them here. But by the late seventies, child abuse had become the fifth most frequent cause of death among children—substantially ahead of most of what we consider the dreaded diseases that afflict children.

(In addition to the cases of physical cruelty and even torture, the Child Sexual Abuse Treatment Center in San Jose, California, has reported that incest is epidemic in the United States. And what could better illustrate the dehumanization of children than child pornography? Why hasn't public outcry insisted that films depicting child pornography be withdrawn, and the purveyors punished? Why does our society stand by while it is seriously argued that our constitution guarantees the right to exhibit seven-year-old children engaged in sex acts



with adults. In our society the people, if they *will*, can accomplish anything. Anything! Everyone in political life knows that. The fact that this has not happened merely reflects the temporary clouding of our moral tradition by the debasing mechanistic conceptions of “humanism.” It will pass.)

Clearly, then, abortion on demand has not brought a reduction in child abuse.

These are the lies we must rebut. And the struggle to do so is difficult—and often lonely. Many in public life *approve* of abortion on demand. We must confront them. We know they are supported by powerful forces in our society, and that we will be targets of venom and ridicule because of that confrontation. But we cannot flinch. We must pay the price, whatever it is.

For example, we will be called single-issue voters and single-issue candidates. In one sense, both allegations are absurd. In another sense, *all* political campaigns in which there is a genuine difference between candidates come down in the final analysis to a single issue. It might be taxes one year. Or the economy. It might be character traits. Certainly if one’s opponent in a political contest were unwilling to oppose larceny, rape, or murder, that fact might well assume decisional importance. One thing is sadly clear: to the unborn, whose cause we champion, there is indeed only a single issue—because without life there are no other issues.

And, finally, we must prevail without help from those who profess to be “personally opposed” to abortion on demand, but add that they won’t try to inflict their view on others. One assumes they are personally opposed to slavery: would they refuse to inflict *that* view on others? Would any of them refuse to oppose slavery because slavery is also opposed by their religion? And those among such bystanders who truly *do* feel a sense of moral outrage at the slaughter of the unborn—will they continue to pay that price of silence in order to win or hold public office? It was Dante’s view that the hottest place in hell was reserved for those who maintained their neutrality in times of moral crisis.

But *we* are not neutral. We *can* do something, and we *must* try. For our constituency is the unborn—a constituency without voice or vote. In a nation divided by this dreadful issue, we must stand for those *fragile beings* who today wait in helpless silence for the awful judgment

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of life or death . . . a judgment based often on economics, or cosmetics, or just human caprice.

To desert them would be to accept the view of a Godless universe, impersonal as a stone, ruled by arrogant and insensitive social engineers. It would be to accept the notion that the Judeo-Christian ethic is dead, that the cosmos is one huge Las Vegas where all is chance and coincidence—a roll of the dice—and you and I mere accidents of nature and time.

So we must try. And we must do so with confidence, no matter how strait the gate, how charged with punishment the scroll. For if the rights we seek for these helpless children are, in fact, unalienable—and they are—then in the end we cannot lose.

## APPENDIX A

[We reprint here several excerpts from “The Family: Preserving America’s Future,” a report issued last November by the Working Group on the Family, a presidentially appointed “task force” which included officials from the White House (among them Mr. Carl Anderson, whose article appears in this issue) and other government agencies. The group, which spent seven months on the report, was headed by Mr. Gary Bauer, then Under Secretary of the U.S. Department of Education. The report was approved by the White House Domestic Policy Council, and by President Reagan. These excerpts are taken from the “final” text supplied us, but we reprint them before the official printed text is available: any inconsistencies are therefore inadvertent. The full document is many times larger than our excerpts—we regret that we could not reprint more of it—but the printed report is available upon request (see “From the Publisher” in this issue).]

### The American Family

*“Strong families are the foundation of society. Through them we pass on our traditions, rituals, and values. From them we receive the love, encouragement, and education needed to meet human challenges. Family life provides opportunities and time for the spiritual growth that fosters generosity of spirit and responsible citizenship.”<sup>1</sup>*

—RONALD REAGAN

The American people have reached a new consensus about the family. Common sense has prevailed. After two decades of unprecedented attacks upon it, the family’s worth—indeed, its essential role—in our free society has become the starting point in a national effort to reclaim a precious part of our heritage.

We are all “pro-family” now, but it was not always so. Only a few years ago, the American household of persons related by blood, marriage or adoption—the traditional definition of the family—seemed to be in peril. In academia, in the media, and even in government, radical critiques of family life were conspicuous. It was trendy to advocate “open marriage,” “creative divorce,” “alternate lifestyles,” and to consider family life as a cause of “neurotic individualism.”

Some experts taught that parenthood was too important for amateurs, that children should be raised in State-approved clinics, that a license should be required for procreation, that tax penalties should be levied against those with large families. Husbands and wives were urged to kick “the togetherness habit.” A radical redefinition of “family” was underway.<sup>2</sup> It reached its peak of confusion in 1980, when the White House Conference on Families foun-

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dered on the fundamental question of what constitutes a family and what makes for good family life.

This hostility toward the family was new to Americans, even as we experienced its devastating impact upon our communities, our neighborhoods, our circles of friends and relations, and in many cases, our own homes. But it was not entirely new. It was merely a manifestation during a period of domestic strife and social dislocation, of an animus at war with the values and beliefs of democratic capitalism.

It is no accident that every totalitarian movement of the 20th Century has tried to destroy the family. Marx and Engels viewed family life as Cato viewed Carthage: it was to be destroyed. Their disciples in state socialism, from the Petrograd Soviet to the Third Reich, from Hanoi to Havana, have sought to crush family life. The essence of modern totalitarianism has been to substitute the power of the State for the rights, responsibilities, and authority of the family.

Everywhere the equation holds true: Where there are strong families, the freedom of the individual expands and the reach of the State contracts. Where family life weakens and fails, government advances, intrudes, and ultimately compels.

That was the anti-family agenda of many in the 1960s and 1970s: a governmental solution to every problem government had caused in the first place. Because government had fostered welfare dependency, more government programs were needed. Because government imposed crushing economic burdens upon families, more governmental redistribution of income was required. Somehow the bottom line was always the same: government would take resources from the families of America in order to "help" them.

\* \* \* \* \*

That we need [a new] policy is clear. The statistics on the pathology impacting many American families are overwhelming. Consider the following statistical portrait of the 3.6 million children who began their formal schooling in the United States in September of 1986.

- 14 percent were children of unmarried parents.
- 40 percent will live in a broken home before they reach 18.
- Between one-quarter and one-third are latchkey children with no one to greet them when they come home from school.

Other trends are equally disturbing. For example:

- In 1960, there were 393,000 divorces in America; by 1985, that number had increased more than threefold to 1,187,000.

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⊙ Births out of wedlock, as a percentage of all births, increased more than 450 percent in just 30 years.

The family needs help!

*That is the reason for this report: to attempt to distill the essentials of what government should, and should not do concerning the family.* To individuals and organizations of all shades of opinion earlier this year, we posed a question: “What can we do to help America’s families?” The response was overwhelming; and while the specific suggestions differed greatly, it became clear that there is a new awareness among the American people of a basic truth many had forgotten or overlooked. *It is as simple as this: private choices have public effects. The way our fellow citizens choose to live affects many other lives. For example, there is no such thing as private drug abuse. The abandonment of spouse and children hurts far beyond the home. Illegitimacy exacts a price from society as well as from the individuals involved. Child pornography and obscenity degrade the community, especially its women and children, as well as those who patronize it. The casual disregard of human life ultimately imperils all those who are weak, infirm, and dependent upon the compassion and resources of others.*

*It simply is not true that what we do is our business only. For in the final analysis, the kind of people we are—the kind of nation we will be for generations hence—is the sum of what millions of Americans do in their otherwise private lives.* If increasing numbers of our children are born and raised outside of marriage and if youth drug and alcohol abuse remains at current levels, there will be staggering consequences for us all: greater poverty, more crime, a less educated workforce, mounting demands for government spending, higher taxes, worsening deficits, and crises we have only begun to anticipate.

If an ever larger percentage of adults choose not to marry or choose to remain without children, there will be public policy implications. For example, the withering of the American family has already had unexpected demographic consequences. With current fertility levels and without immigration, our population will decline—a problem we share with much of the western world. We can foresee the graying of America, with new strains on social security, the manpower needs of the economy, and the viability of the volunteer armed forces. For another example, our entire society is now confronted with the fallout from the sexual revolution of the last quarter-century. Was it really just a matter of private choice that has ravaged the country with an epidemic of sexually transmitted diseases, many of them new and virulent? Is it a private matter that results in staggering medical bills distributed among consumers (through higher insurance premiums) and among taxpayers (through

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taxes to support medical research and care)?

Who pays the bills? In this as in so many other cases, the American family pays, even when it stands apart from the pathologies that inflict such costs, economic and social, upon the body politic.

*The family has paid too much. It has lost too much of its authority to courts and rule-writers, too much of its voice in education and social policy, too much of its resources to public officials at all levels.* We have made dramatic progress, during the past six years of economic reform, in turning back those resources to the men and women who earn them through labor, invention, and investment. Now we face the unfinished agenda: turning back to the households of this land the autonomy that once was theirs, in a society stable and secure, where the family can generate and nurture what no government can ever produce—Americans who will responsibly exercise their freedom and, if necessary, defend it.

It is time to reaffirm some “home truths” and to restate the obvious. Intact families are good. Families who choose to have children are making a desirable decision. Mothers and fathers who then decide to spend a good deal of time raising those children themselves rather than leaving it to others are demonstrably doing a good thing for those children. Countless Americans do these things every day. They ask for no special favors—they do these things naturally out of love, loyalty, and a commitment to the future. They are the bedrock of our society. Public policy and the culture in general must support and reaffirm these decisions—not undermine and be hostile to them or send a message that we are neutral.

\* \* \* \* \*

### **Legal Status of the Family**

We venture the guess that most Americans, if asked about the legal status of the family, would respond that it has a special place in our jurisprudence, a hallowed role in our constitutional system. The disconcerting truth is that judicial activism over the last several decades has eroded this special status considerably.

That is a radical departure from our national heritage. The Anglo-American legal tradition always recognized the family’s central role in begetting, nurturing, and educating children. Under the Common Law, and under our State laws based upon its spirit, the family was the legal expression of the closest human relationships from childhood through old age. When the framers of the Constitution drafted the legal blueprint for the nation, there was no need to enumerate the rights of the family or its unique role as mediator between the individual and government; for everyone knew that and took it for granted.

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Family law, moreover, was a matter for the States, where the family unit, the household, was the basis of social identity and public standing.

For almost two centuries thereafter, the nation changed in many ways, some of them nothing short of revolutionary. But the legal status of the family remained secure, and the interest of the community in protecting that status was affirmed by Supreme Court decisions in *Maynard v. Hill* (concerning divorce in the Oregon Territory) and in *Reynolds v. United States* (upholding the law against polygamy). Perhaps the reason why there were not more cases affirming the legal status of the family is that few challenges to that status ever arose.

In the 1920s, however, two significant challenges did arise, and the Supreme Court's response to them affirmed our long tradition of legal respect for family life. Striking down a Nebraska law in 1923, the Court held that the liberty protected by the Fourteenth Amendment "without doubt" includes the right "to marry, establish a home and bring up children."<sup>3</sup> Two years later, the Court voided an Oregon law, which required all children between the ages of 8 and 16 to attend public schools. Under the Fourteenth Amendment's protection of liberty, the Court insisted, this law "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."<sup>4</sup>

In matters of economics, the Court at times veered in different directions concerning substantive due process under the Fourteenth Amendment. But in family law, there was no deviation: the natural rights of the family were never in question, and it was entirely predictable, in *Skinner v. Oklahoma* in 1942, that the Court would strike down a compulsory sterilization law, which violated the human right to beget children.

It was not predictable—indeed, it was a shocking surprise—that the Supreme Court 25 years later would hand down a series of decisions which would abruptly strip the family of legal protections and pose the question of whether this most fundamental of American institutions retains any constitutional standing. The common thread in these decisions has been the repudiation of State or Federal statutes or regulations based upon traditional relationships between spouses and between parents and children.

We cannot say that all the invalidated measures were sound public policy. Some of them may have been outdated, others may have been out of step with national public opinion. But these were matters for the people themselves to decide, through their elected representatives in State legislatures and in the Congress. Instead, the Supreme Court decided; and it did so on a philosophical basis which left little room for legal recognition of the family.

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In *King v. Smith*, *New Jersey Welfare Rights Organization v. Cahill*, and *USDA v. Moreno*, the Court gutted attempts to enforce the moral order of the family as the basis for public assistance. *Levy v. Louisiana*, *Glon v. American Guarantee and Liability Insurance Company*, *Gomez v. Perez*, and *Weber v. Aetna Casualty and Surety Company* put an end to legal preference for the intact family. The Court has struck down State attempts to protect the life of children *in utero*,<sup>5</sup> to protect paternal interest in the life of the child before birth, and to respect parental authority over minor children in abortion decisions.<sup>6</sup>

In *Moore v. City of East Cleveland*<sup>7</sup> (431 U.S. 494, 1971), the Court denied to the citizens of that predominately black community the power to zone their town to limit occupancy of dwelling units to members of a single family, in order to protect residents from the downward drag of the welfare culture. In so doing, Moore in effect forbade any community in America to define “family” in a traditional way.

The Supreme Court has turned the fundamental freedom to marry<sup>8</sup> into a right to divorce without paying court costs.<sup>9</sup> It has journeyed from protection of the “intimate relation of husband and wife” in its contraception cases<sup>10</sup> to the dictum that “the marital couple is not an independent entity with a heart and mind of its own. . . .”<sup>11</sup>

The cumulative message of these cases reverberates today. In some respects, the family stands outside the law or more specifically, familial relationships may not be given preferential standing in law. Taken together, these and other decisions by the Supreme Court have crippled the potential of public policy to enforce familial obligations, demand family responsibility, protect family rights, or enhance family identity.

*Yes, economic remedies are important for helping the American family; but they cannot by themselves tilt the balance of public policy back in favor of family life. That will require something more fundamental: returning to communities the authority to set norms and affirm values, while protecting at the Federal level those fundamental rights which undergird our system of ordered liberty.* This approach may be foreshadowed in a recent Court decision upholding an anti-sodomy law in Georgia. In that decision, the Court expressly refused “to take a more expansive view of our authority to discover new fundamental rights.” To do that, would be for the Court to “take to itself further authority to govern the country without express authority.” It would, as Justice White put it in another case, leave the Federal judiciary “roaming” at will in “an exercise of raw judicial power” over the ruins of the American family.



Some will say that is a simplistic solution, and that simple solutions don't work. We disagree. We affirm the prophetic declaration of a losing but cheerful presidential hopeful as he stood before his party's nominating convention in 1968: "There *are* simple solutions. There are just no easy ones."

*So where do we begin? We urge the Federal courts to permit the States wide latitude in formulating family policy. Judges should resist the temptation to write their own favored notions of marriage and family into Constitutional law.*

State courts, with specialized family forums, have superior competence in adjudicating and monitoring family disputes. The intrusion of Federal courts into controversial matters regarding divorce, alimony, custody, and so forth could result in incompatible Federal and State decrees in cases which are normally subject to ongoing court supervision. Severe restraint by the Federal judiciary will be necessary to avoid problems that would strike to the heart of the administration of justice.

*The States, for their part, should not hesitate to promote family goals for fear of, or in deference to, the Federal Government. Rather they should feel free to protect the family according to their own sense of goals and priorities, consistent with the relatively few limitations imposed by Federal statute.*

In the final analysis, however, a fatally flawed line of court decisions can be corrected, directly or indirectly, through mechanisms created by the Constitution itself. These include the appointment of new judges and their confirmation by the Senate, the limitation of the jurisdiction of Federal courts, and, in extreme cases, amendment of the Constitution itself. *All these have been proposed in response to judicial tendencies of the last quarter century, and we do not presume to endorse or oppose any of them here.* But we do anticipate that the good sense of the American people, through one means or another, will generate the means and the will to restore the legal standing of the American family.

#### Divorce

One legal issue regarding the family demands particular attention. Ironically, it is a subject over which the Federal Government has—and, we believe, should have—no jurisdiction. *Divorce is a State matter, and its inclusion in this report is not to suggest a Federal role in its regulation.* The fact is, however, that the Federal Government—or more accurately, the Federal taxpayers—are directly affected by the level of divorce in our country.

Our discussion of this subject is not judgmental of individuals. The target of our censure is a trend, an attitude, a pattern, and the way that pattern has been instigated by unwitting legislation.

When the authority of the State declares a marriage ended, there is usually

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more than enough pain to go around. That is particularly true when children are involved. For those reasons, traditional divorce laws inhibited easy separations. They recognized the interest of the community in encouraging marital stability. They provided disincentives to dissolution of the marital bond. In so doing, they sometimes made things difficult, and changes in divorce law may well have been overdue. But in a relatively short period of time, almost all the States adopted a model divorce law that established, in effect, no-fault divorce.

Not surprisingly, already high divorce rates skyrocketed even further. While it is true that one in five couples who marry can anticipate reaching their 50th anniversary, it is also tragically true that, in recent years, there has been one divorce for every two weddings. We have throwaway marriages, like paper towels, summed up by a recent cartoon of bride and groom in their honeymoon suite, with the former saying, "I'm sorry, Sam, I just met my dream man in the reception line."<sup>12</sup> One distinguished social scientist extrapolates to a startling conclusion: "If we continue to dismantle our American family at the accelerating pace we have been doing so since 1965, there will not be a single American family left by the year 2008. While I frankly believe that some force will set in to reverse the course and save the American family before this time, we should not disregard that the trend has been going on for more than a decade and a half."<sup>13</sup>

This is not a matter of cold statistics. For millions, the divorce rate means emotional trauma and economic distress. Reporting to the American Academy of Child Psychiatry on a ten-year study, Judith Wallerstein concludes that divorce can so disturb youngsters that they become psychologically unable to live happy lives as adults. A study by Stanford University's Center for the Study of Youth Development in 1985 indicated that children in single-parent families headed by a mother have higher arrest rates, more disciplinary problems in school, and a greater tendency to smoke and run away from home than do their peers who live with both natural parents—no matter what their income, race, or ethnicity.<sup>14</sup>

A two-year study funded by Kent State, the William T. Grant Foundation and the National Association of School Psychologists, found that there were substantial differences between children of intact families and those of divorced families. "Children of divorce also are absent from school more frequently and are more likely to repeat a grade, to be placed in remedial reading classes and to be referred to a school psychologist, says the study of 699 randomly chosen first-, third- and fifth-graders in 38 states."<sup>15</sup> In addition, John Guidubaldi, Professor of Early Childhood Education and director of the

study, noted, “‘far more detrimental effects’ of divorce on boys than on girls. Disruptions in boys’ classroom behavior and academic performance increased ‘noticeably’ throughout elementary school. Boys, he speculated, are much more affected by their parents’ divorce because children fare better with single parents of the same sex, and 90 percent of all custody rights go to mothers. Out of 341 children from divorced families in the study, fathers had custody in only 24 cases.”<sup>16</sup> *Education Daily* reported that “Children from divorced families are much more likely than their peers from ‘intact’ families to score lower on IQ, reading and spelling tests, get lower grades and to be rated less favorably by teachers and peers.”<sup>17</sup>

*The divorce epidemic has not only devastated childhood. It has brought financial ruin to millions of women. Divorce reform was supposed to be a panacea for woman trapped in bad marriages. It has trapped many of them in poverty.* A widely respected study of one State’s landmark no-fault divorce law found that the effect of the average divorce decree was to decrease the standard of living of the woman and her minor children by 73 percent, while increasing the man’s standard of living by 42 percent.<sup>18</sup> Behind those horrendous statistics are real people, like the lady in New Hampshire who, after 23 years of marriage and eight children, was left by her husband for a younger woman. Her household income plummeted from \$70,000 a year to just over \$7,000.<sup>19</sup>

What are we to say to her and to millions like her? That they are victims of a sexual revolution in which public policy has no interest? That apart from efforts to enforce child support, government has to stay neutral toward the endurance of the marital relationship? And are we to say the same to the taxpayers, who pick up the bills for other people’s break-ups through more spending on remedial education, law enforcement, mental health programs, drug and alcohol abuse programs? As one State jurist (Richard Neely of the West Virginia Supreme Court) recently noted, “In families of average income or less, the burden of divorce-related poverty falls on society as a whole. Welfare payments, subsidized housing, public sector make-work jobs, and salaries for lawyers who collect support for women and children are but a few of the mounting costs we pay for other people’s divorces.”

*Clearly, we all have an interest—whether ethical or economic—in reversing the recent trend toward automatic divorce. In part, this is a matter of self-interest: the dissolution of households imposes heavy strains upon our society. But in a more important part, it is a matter of selfless compassion: for the weak and the young, the abandoned and scorned, the cheated and tossed aside.*

We will never be able to rectify the wrongs of the last two decades. There

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are injuries beyond the scope of government to heal. We can, however, both as individuals and through our institutions of community, help those who have suffered by the collapse of their own households. And what is most important, we have the power, as residents of the separate States, to demand the rectification of those laws which have allowed, and even encouraged, the dissolution of the family.

### **A Culture Crossroads**

American society has reached the point at which it must choose between two fundamentally opposed solutions to the problem of adolescent sex. We must either make a massive, and open-ended, commitment of public resources to deal with the consequences of promiscuity (including illegitimacy, abortion, venereal diseases, AIDS, teen suicide); or we must explain to the young, for their own good, one clear standard of conduct which tells them how we expect them to grow up.

We have chosen the latter course with the drug plague and with teenage drinking. We are choosing it, after years of wandering the other way, with regard to teen street crime. We have, under President Reagan's leadership, chosen it in education. No more excuses for misconduct; we're getting back to basics. The cultural relativism, the value-neutral approach of the '60s, has been dumped.

Except for teen sex. Incredibly, some would continue, and expand upon, the mistakes of the past through programs to make it easier for teens to become sexual statistics. Usually in the face of bitter resistance from parents, some public officials want to use our schools for dissemination of contraceptives, counseling and abortion referrals. Secretary of Education William Bennett points out the defects in this approach. He asks, "What lessons do they (the clinics) 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 on teaching right and wrong to you, there is nothing we can do. Here take these things and limit the damage done by your action.' 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."

In addition, there is little in the record to suggest that *value free* sex education courses or the availability of contraceptives to minors has helped—in fact the evidence is quite to the contrary.

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For example, a July 1986 study by Joseph Olsen and Stan Weed of the Institute for Research and Evaluation found that greater teenage involvement in family planning programs appears to be associated with higher, rather than lower, teenage pregnancy rates. They note that most studies of clinic effectiveness only measured change in birth rate. Their own study discovered that there were 30 fewer live births for every 1,000 teenage family planning clients. However, to their surprise, they also found a net increase of 50 to 120 pregnancies per 1,000 clients. In short, enrollment in a family planning program appeared to raise a teenager's chances of becoming pregnant and of having an abortion.<sup>20</sup> In fact, the number of teenagers "using family planning services climbed 300 percent for blacks between 1969 and 1980 and 1,700 percent among whites. In the latter year, 2.5 million adolescents received contraceptive services from PPFA clinics, private physicians, and other sources. Nonetheless, the teenage pregnancy crisis only seemed to worsen."<sup>21</sup>

There is a good deal of research evidence that seems to be ignored in the public policy debate. For example, two researchers discovered that when measuring the relationship between family structure and premarital sexual behavior black girls from father-headed families were twice as likely to be "non-permissive" sexually as compared to those from mother-headed units. Graham Spanier of Pennsylvania State University found that when mothers served as their daughters' primary source of sex information, the latter were significantly less likely to have engaged in coitus; when clergymen filled a similar role, the same was true for men. Other studies have shown significant correlations linking father-headed family structure, parental control over the sex education of their children, and traditional values to lower rates of adolescent sexual behavior.<sup>22</sup>

None of this should surprise us. It is the common wisdom of the grandparents of America. It is what average people always understood before the experts of the '60s told them their inherited code of traditional values was oppressive and out of date. Americans understood that strong family life *is* sex education, of which physiological details are only a small and relatively insignificant part. Americans understood that parental example could never be completely replaced by programs external to the home. They knew that children who play with fire sooner or later get burned, and no amount of assistance after the fact can make up for the suffering or remove the scars.

Most Americans still know these things. They wait for their leaders, in religion and business and entertainment, as well as in government, to reassert them.

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[The following article appeared in the Wall Street Journal (October 14, 1986), and is reprinted here with the author's permission. Mr. Weed is director of the independent Institute for Research and Evaluation in Salt Lake City.]

### **Curbing Births, Not Pregnancies**

*Stan E. Weed*

More than a million teen-agers—most of them unmarried—become pregnant each year, and the number is rising. The belief is widespread that the number will be reduced by opening more “family planning” clinics and making them more accessible to teens. However, research a colleague and I have done suggests otherwise.

As the number and proportion of teen-age family-planning clients increased, we observed a corresponding increase in the teen-age pregnancy and abortion rates: 50 to 120 more pregnancies per thousand clients, rather than the 200 to 300 fewer pregnancies as estimated by researchers at the Alan Guttmacher Institute (formerly the research arm of the Planned Parenthood Federation). We did find that greater teen-age participation in such clinics led to lower teen *birthrates*. However, the impact on the abortion rate was exactly opposite the stated intentions of the program. The original problems appear to have grown worse.

Our research has been under way for two years, and analyzes data from such reliable sources as the Centers for Disease Control, the Guttmacher Institute, and U.S. Census data for all 50 states and the District of Columbia. Since pregnancy, abortion and birthrates also vary with such factors as urbanization, mobility, race and poverty, these variables were also taken into account for each state. Our findings have twice sustained formal review by specialists in the field.

Our interest was prompted by the rising trends in teen-age pregnancy rates, despite large federal expenditures to help fund family-planning clinics and extend contraceptive services to teen-agers. In 1971 the annual national expenditure (federal, state and local money) for these clinics was \$11 million, and 300,000 of their clients were teen-agers. By 1981, the numbers were \$442 million and 1.5 million clients. In 1972, the pregnancy rate for 15- to 19-year-olds was about 95 per 1,000. In 1981 the rate was 113 per thousand in that same age category. In that time period, when the size of the teen population was little changed, teen abortions went from 190,000 to 430,000. One must reconcile the rise in teen pregnancies with major program efforts that saw a

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fivefold increase in teen-age clients and a twentyfold constant-dollar increase in funding.

Have the clinics just not reached enough teen-agers with these services to make a difference yet? Is the true and expected effect of family-planning services somehow being masked by other factors? Are clinics simply placed in the areas of greatest need, and therefore shouldn't we initially expect to see higher pregnancy rates associated with higher clinic availability? Would the teen-age pregnancy rate have been still worse without the clinics?

The importance of these questions and our original findings prompted a second study using additional time periods, data sets and analysis strategies. The findings and conclusions were very similar to those from the first study: lower teen-age birthrates, higher abortion rates, no reduction in teen-age pregnancy rates. All of the qualifying questions posed above were answered in the negative.

Apparently the programs are more effective at convincing teens to avoid birth than to avoid pregnancy. Birth avoidance can certainly be accomplished by resorting to abortion. Unfortunately, that is not what the effort was set up to do nor the basis on which it was funded.

These findings would seem to be at odds with a recent widely carried report from two school-based clinics in Baltimore. But the studies are difficult to compare, in part because the published report from the school-based clinics is very brief, and therefore difficult to assess. In addition, ours is a national study looking at the net social effects of a broadly implemented program of community-based clinics. The Baltimore study evaluates one program in two all-black inner-city schools. A single study of any one particular program has inherent limitations, both as a scientific statement and as a reliable guide for policy decisions.

Although the Baltimore study appears to be the first serious and rigorous attempt to evaluate a school-based clinic program, it leaves many questions unanswered. For example, over 30% (338) of the female sample dropped out between the first and last measurement periods. The size of the sample was small (96 girls had the full three-year exposure to the program). The reported survey data combine the clinic and non-clinic students, making it difficult to know exactly what the program effects were. The measurements of pregnancy, abortion, sexual activity and program involvement are not well specified and documented. All of this leaves us with questions about the results.

In a general way, however, both our data and the Baltimore study address the fundamental premise that greater accessibility and utilization of clinics is sufficient to reduce teen pregnancy. Our analysis of the national data suggests



that any program based primarily on the notion of increased availability of contraceptive services must be examined and evaluated very closely, preferably by an independent party. This, as Planned Parenthood marks the 70th anniversary of its beginning this week, could trigger a significant shift in the nation's approach to the matter.

What are the policy options available, given a recognition of the very real pregnancy problem at hand? First of all, we must be willing to admit past failures. Given the emotional and financial investment in the family-planning approach, that admission may be extremely difficult. But family planning for teen-agers is clearly not the first federal effort to be less successful than hoped nor the first to have effects other than those intended.

Second, the debate must turn to effectiveness. The various controversies and secondary issues attached to this subject can be addressed adequately only in this context. For example, clinic advocates maintain that parental notification and consent requirements will dissuade teens from utilizing the clinics and cause a major increase in teen-age pregnancies. Others argue that without this notice, parents are excluded from their rightful role and responsibility, and sexual activity is legitimized. But this argument becomes more relevant when we have clearly answered the effectiveness question.

Finally, future efforts must move beyond the narrow and unsubstantiated set of assumptions upon which previous efforts were based. The medical/technical solution of "responsible contraceptive behavior" appeared to be a simple and straightforward solution to a pressing public health problem. It was assumed that a trend toward greater sexual activity was inevitable and irreversible and that providing relevant information and contraceptives would be the optimal response. It hasn't been.

If future efforts are to be successful, they must take into account a broader set of influences and examine a wider variety of potential solutions to the teen-age pregnancy problem. Many factors in society are likely to have more influence on pregnancy rates than the lack or availability of contraceptive services. For example, other research has shown that enhanced educational and occupational aspirations (along with genuine opportunities for success) may well be more important than having access to birth control. These future efforts must also pay greater attention to the emotional and social development of teen-agers, how their value systems are acquired and changed, the emotional and economic incentives and disincentives to pregnancy, and teen-agers' sense of self-determination and control with respect to sexual behavior.

Awareness is growing that teen pregnancy is probably symptomatic of more fundamental factors in our society. There is also an increasing recognition that

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teen-agers may be more impulsive, have a shorter time perspective, and may be less likely to utilize adultlike decision-making processes. We can't expect teen-agers to use birth control devices and seek counseling in the same manner as mature adults acting rationally about sexual intimacy. Even married adults are not always consistent and rational when it comes to something as volatile as sexuality.

Any new directions in this effort will face the familiar, emotionally charged political and religious climate that surrounds the issues of teen-age sexuality, pregnancy and abortion. The teen pregnancy problem is real, however, and cannot be ignored. Lasting solutions will require more cooperation and a sense of common purpose, and less clinging to and defending of the current programs. Our youngsters and their children, born and unborn, will be the losers if we fail to break free of an ideological power struggle.

## APPENDIX C

[The following syndicated column was released November 25, 1986, and is reprinted here with permission (© 1986 by Universal Press Syndicate).]

### **The Unrepentant Rescuer**

*Joseph Sobran*

Joan Andrews is in a Florida prison, beginning a five-year stretch for burglary. She tried to break an electrical cord on a suction machine in an abortion clinic.

Five years for that. It's hard to believe that if she'd actually broken into a house and stolen a TV set, she'd have gotten five years. But Miss Andrews was trying to prevent abortions from being performed, as is her habit, so the judge threw the book at her. The prosecutor had asked only for a one-year sentence.

The incident occurred last March, when she and five others were arrested at the Pensacola, Fla., abortuary (the word "clinic" should be reserved for places that heal, not kill) during what they call a "rescue," or sit-in. At first two of the men involved were charged with battery, and Miss Andrews and three other women were charged with "conspiracy to burglarize structure with assault." She could have gotten a life sentence for that one, but it was so absurd that after she had been held without bond for four months, it was dropped. The prosecution decided she was only a burglar.

Well, she did break the law. She tried to damage someone else's property. And the judge felt it wasn't his place to ask what the law was doing, or what that property was being used for.

Miss Andrews is serving her term in a maximum-security prison in Lowell, Fla. She is a surpassingly gentle woman, single at the age of 38, who melts in tears at the idea of babies being harmed. But the other inmates are tough, violent lawbreakers, and Miss Andrews' lawyer has been told that she will be lucky to live through five years in the place. It's that violent.

Her sister, who lives in Delaware, drove down to Florida to bring her home after the trial, expecting that even if convicted, Miss Andrews would receive a suspended sentence. The five-year sentence came as a total shock to Susan Brindle, the sister, though not to Miss Andrews herself. She had prepared herself for the worst.

Mrs. Brindle, carrying her baby, personally picketed the judge's house. His next-door neighbor, another judge, came outside in his shirt-sleeves, brandished a garden rake at her, and cursed her and her sister in obscene terms.

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The judge who did the sentencing justified the stiff term by observing that Miss Andrews was “unrepentant.” She would neither promise to stop doing “rescues” nor pay restitution to the abortionists.

Granted, we want criminals to display contrition, and this mitigates our desire to punish them. But all this rests on the assumption that the positive law and the moral law are in alignment. Murder is both wrong and illegal. We expect the murderer to repent.

But what if murder were legal? Would someone, then, who interfered with a murder by illegal means be expected to “repent” in order to receive clemency? Most of those who favor legal abortion do so uneasily. They are well aware that the issue is, at best, morally murky, and that it would be presumptuous for them to call it a “right” and expect everyone else to agree. Very few people really think that the legalization of abortion has made the law more moral, even if they think it has made it more workable.

Well, Joan Andrews, for one, is evidence that an immoral law can’t be workable. Legalizing abortion has made lawbreakers out of otherwise law-abiding people, and has caused patriots to feel deeply ashamed of their country. But when such people act on their convictions, the legal authorities are expected to treat them as criminals, to incarcerate them with hardened criminals, and even to sentence them more harshly than criminals are usually sentenced.

The law is topsy-turvy, and never more so than when it demands that an abortion foe “repent” for doing what she regards as her duty as a human being. It is grotesque for an agent of the state to demand of her a display of conscience. Joan Andrews has shown her conscience in acts of courage and sacrifice. The state has shown no more conscience than an abortionist. It is her prosecutors and judges who should repent.

## APPENDIX D

[*Prof. James Hitchcock, our Editor-at-Large, was a long-time friend of Ann O'Donnell. He wrote a column about her which appeared in the St. Louis Review (October 31, 1986). We asked if he would expand upon that column for this issue, and he sent us the following remembrance. —Ed.*]

### **Ann O'Donnell, R.I.P.**

*James Hitchcock*

It always seemed to me appropriate that Ann O'Donnell was best known as a leader in the “pro-life” movement, because I never knew anyone more full of life than she was.

When she entered a room, she filled it. This was not done by calculation, and perhaps not consciously at all. Just by being who she was she imparted vitality to every situation. She never monopolized conversations, nor was she ostentatious or dramatic. In her presence things simply took on a kind of glow. She recalled the root meaning of “charm”—not superficial glitter but the ability to enchant. She was a spiritual presence.

Ann and I were exactly the same age and both grew up in St. Louis. As it turned out, we had numerous mutual friends and acquaintances, and in high school I knew one of her brothers. But I never met her until we were in our thirties, sometime after *Roe v. Wade*. If that infamous decision can be said to have produced any good at all, it is unlikely my wife and I would have met Ed and Ann O'Donnell were it not for the anti-abortion movement.

Our acquaintance quickly became a genuine friendship. Ann and I sometimes made up for lost time by comparing notes about all the points at which our lives must have come close to intersecting but never quite did. The O'Donnells were the kind of people—fortunately not so rare as one might think—who were not only philosophical and political allies but simply good to be with. We could confer intensely about the issues of the day, but we could also forget about them and enjoy each other's company.

Ann's background was such that she could have been a debutante. I don't know if she actually was, because it was not the sort of thing she would have talked about nor considered important. She was truly democratic in a way few people are (and dogmatic democrats never are)—completely at home with all kinds of people. She approached everyone in terms of their personal worth, irrespective of social status or reputation.

About much of her earlier adult life she was vague, joking about the various colleges she had dropped out from, and about a period of her life when she was, as she put it, a “heretic.” (That period was the subject of her last

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published article, in *Crisis* magazine.) I gathered that she had not been an avid student in college, and she was not an intellectual in any formal sense. But she grasped the import of ideas with great quickness and was equally at home talking with philosophers and with blue-collar people she came to know through the pro-life movement.

Among the pictures on her wall was one of which I suspect she was the proudest—of herself in handcuffs, being loaded into a police wagon during an early demonstration at an abortion clinic. I was not present on that occasion, but it was easy to imagine the casual insouciance with which she allowed that to happen.

Her involvement in the pro-life movement reinforced a natural realism, perhaps even a cynicism, about human beings, not only professional abortionists and others of that ilk but the only kind of people whom I think she truly despised—ostensibly devout Catholics, especially priests and religious, who in various ways gave aid and comfort to the abortionists.

But this realism always managed to be good-humored and in perspective. It never made her disillusioned. It was for her simply part of the sometimes bitter comedy of human life, more than balanced by the often secret heroism which she also found in people.

After we had been friends for awhile, I realized that her life was lived in various circles, which overlapped one another only at points. Probably only her husband knew all of them, or knew how she managed to do justice to all of them, as assuredly she seems to have done.

Besides being an activist against abortion and in favor of authentic Christian values, she had substantial identity as a hostess, not just in the sense of someone who threw parties or invited people to dinner but someone whose house was literally always open. She and Ed would sometimes entertain out-of-town visitors for weeks at a time, and Ann was indefatigable in showing them all the places around St. Louis which she thought they ought to see.

Apparently there developed a network of people around the country who had met Ann, or heard of her, who contacted her to say they were coming to town, and were invited to stay. Several times a month my wife and I would get invitations to the O'Donnells', to meet now perhaps an executive of a major newspaper chain, now a Jesuit political philosopher, now a former California hippie who had found his way into the Catholic Church. An occasional unfamiliar face might turn out to be a pregnant young woman staying with Ed and Ann until after her baby was born.

Any stereotype which people had about the pro-life movement Ann inevitably shattered. There was about her not even a whiff of the fanatic's grimness.

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Whatever else she was, she was always humorous, as in returning from a speaking tour laughing about the burly security guards who accompanied her at a Midwestern college where her life had been threatened. The fact that she took pregnant young women into her home was merely one instance of the ways in which she was “pro-life” in the fullest sense. Perhaps better than anyone I ever knew, she had the instinctive ability to hate the sin and love the sinner. She was unyieldingly tough with people trying to sell mischievous ideas, while at the same time infinitely sympathetic towards those who were trying to correct their mistakes.

It was ironic, as she knew, that she was so often pitted—on television and elsewhere—against militant feminists, since she was herself exactly the kind of woman feminists say they would like to be. In talent, in courage, in integrity, she was the equal of any man I ever knew. She was indeed the woman of the eighties who could “do it all”—get involved in causes and take care of her family, be both tough and tender.

Ann and my wife Helen were among the small group of St. Louis women who in 1984 started the organization called Women for Faith and Family, to provide a voice for women who accept the fullness of Catholic teaching. It was characteristic of Ann that, after watching a Phil Donahue television program featuring pro-abortion nuns, she immediately contacted his producers and got herself, Helen, and two “real” nuns onto a subsequent program, where they more than held their own against Donahue’s open hostility.

Women for Faith and Family has been literally run off people’s dining room tables, mostly from small donations. Ann, Helen, and their friends often reflected wryly on what they could accomplish if they had even a fraction of the resources Catholic feminists seem to command, often through official Church agencies like religious orders.

Ann was not a sentimentalist, and she casually dismissed the contemporary fashion for canonizing the recently deceased. But, if I can allow myself Dantean liberties, I suspect that, as one who saw the parallels between the fight against abortion and the fight against slavery, she smiles down at the arrangement whereby she is buried in the same cemetery as Dred Scott, and not far from his grave.

There is a formula for the remission of sins which asks God’s forgiveness on the penitent for “whatever good you have done, whatever evil you have endured.” The good which Ann did was incalculable, and in her last illness she endured a great deal of evil. I will always feel as though God took her from us in the midst of telling a funny story, and some day we will get to hear her finish telling it.

## APPENDIX E

*[The following article appeared in the New York Times Sunday Magazine (November 2, 1986). Mr. Blumenthal, we're informed, teaches at Harvard; the Times noted that his "fourth book of poetry, 'Against Romance,' will be published by Viking" in April of this year. Reprinted with permission (©1986 by the New York Times).]*

### The Clinic

*Michael Blumenthal*

There is nothing here to suggest that this is, in any way, a man's place. Though we men have been equal partners in the act itself, though the throbbing, nearly-human thing whose life is about to be prematurely expunged is of our own blood, nothing suggests that we have had anything at all to do with this choice.

The waiting room is filled almost entirely with women—women alone, women with other women, women attendants, doctors, nurses and counselors who float in and out of the room, occasionally calling out for a "Miss Brownstein" or a "Miss Doyle" and then accompanying the named client down a corridor to what The Clinic's literature calls "the procedure."

I have been here before. Not to this particular clinic, but to one just like it, in Washington, some six years ago. I remember—not with pride, but with shame and humility—how I behaved then, how in a masculine haze of anger and self-involvement, terrified of my own neediness, overwhelmed by my own fears, I failed to offer emotional support to a woman who deeply needed me. This time, I resolved, it will be different.

I tried, from the moment the words "It's positive" first issued from my friend's lips, to share in this ritual with her as she dealt with the vicissitudes of nausea, depression, anger and (I assume) loneliness that must accompany an unwanted pregnancy. Offering to accompany her to the interview that precedes the procedure and then to the procedure itself, I am politely turned down. "Why don't you just wait here, sir," I am told. "Someone will be down after it's over to let you know how she's doing." My friend, too, suggests that this is what she prefers, and so I sit here reading a copy of *Boston Business*, which, I notice, not without a trace of irony, seems to be the only magazine The Clinic subscribes to.

As I contemplate the glaring contrast between my original complicity and my present extraneousness, I feel a wave of anger well up. But there is also a certain relief: it is, after all, not *my* body into which, perhaps at this very moment, a vacuum hose is being inserted and the power turned on.



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It is some 37 years now since my biological parents—in a time long before there were openly such places as The Clinic, long before “the procedure” was a legal alternative—must have contemplated taking a similar measure. Myself the product of an unwanted pregnancy, it is impossible for me, however ardently I may support legally available abortion, to be emotionally neutral on the subject. I cannot—nor should I, it seems to me—react with equanimity when a life that might have been my own, a child that might have been mine, is sucked from the walls of a woman’s womb, no matter in whose or in what’s name. No matter how clear to me it may be that the choice ought, indeed *must*, be a woman’s to make (for it is her body that is endangered, hers and the child’s futures that are most clearly jeopardized), it is also clear to me that there is something of mine here that is dying too, some pain and complicity of my own that must be dealt with.

Very much like the women I know, primarily those in their early and late 30’s who have not yet had children, I too hear a clock ticking, though its digits are neither as clearly defined nor as biologically intractable as are a woman’s. Adopted by parents who were well into their 40’s when I was born, having occasionally resented my father for his advanced age and ill health when I was growing up, I have little desire to inflict a similar fate on my own sons or daughters. I, too, feel yet another opportunity gone by as I imagine the power surging through the vacuum hose and into my friend’s womb.

I am suddenly roused from these reflections by the reappearance of The Clinic’s attendant who informs me: “Your friend is doing fine. She’ll be down in a few minutes.” Unseen by me, untouched by me, the act is done. What might have been is not. Who might have spoken is forever still. The life I might have passed on remains entirely my own.

My friend enters the waiting room and walks over to me.

“How’d it go?” I ask.

“Fine,” she answers. “But I’m starving.”

We stop on the way home at the International House of Pancakes, conveniently situated near The Clinic. She orders blueberry pancakes. I order French toast. The bill comes to \$7.35.

Back in Cambridge, we walk into my apartment, and my friend heads right for the sofa to pick up her flute and book bag.

“I think I’ll go practice awhile before my lesson,” she says, heading toward the door.

“Well . . . would you like to come back here and take a nap later? You might feel a little weak.”

“No, thanks,” she answers. “I think I’ll just go back to my room.”

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“Well . . . can I call you later?”

“No,” she says, “I think I just want to sleep for a while.”

She opens the door, walks out into the bright, breezy Massachusetts morning and is gone. Somewhere in the bushes outside my window, I hear a pair of nesting cardinals singing to each other. A terrible sadness sweeps over me, like a cold wind. It is my 37th year. I am learning, I say to myself, something of what it means to be a man.

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