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. . . FROM THE PUBLISHER

This issue, our final 1988 number, brings you an unusually broad range of pieces (a dozen in all), but we think you will find them not only interesting but also, well, interlocking—variations on our usual themes, with the abortion issue the constant factor.

Two of them are taken from new books, both of which we highly recommend. The first is from Professor Michael Levin's *Feminism & Freedom*, published by Transaction Books (address Rutgers, The State Univ., New Brunswick, New Jersey 08903). The second is fom Professor Marvin Olasky's *The Press on Abortion*, published by Lawrence Erlbaum Associates (address 365 Broadway, Hillsdale, New Jersey 07642).

The article by Mr. Bryce Christensen is reprinted from the Spring, 1988 issue of *The Public Interest*, a quarterly journal which consistently runs articles that are indeed of public interest. It is published at 1112 16th Street, N.W., Suite 545, Washington, D.C. 20036; subscriptions $18 a year.

An earlier version of Mr. Carl Anderson's article appeared in *The Family in America*, a publication of the Rockford Institute Center on the Family in America—as it happens, Mr. Christensen is the editor. It is published monthly by the Rockford Institute, 934 North Main Street, Rockford, Illinois 61103; subscriptions $21 a year.

Our next issue will begin Volume XV, by which time we hope to have more articles on the growing controversy over the use of "fetal tissue" for research, transplantation, and Who knows what else. We have already run a good introduction to the subject—Joan Frawley Desmond's "Will We 'Harvest' Fetal Tissue?"—in our Winter, 1988 issue.

You will find complete information on how to get a copy of that issue, and other back issues, bound volumes, etc., printed on page 112 in this issue.

EDWARD A. CAPANO
Publisher

THE HUMAN LIFE REVIEW

FALL 1988

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INTRODUCTION

WHO, IN OUR SEX-SODDEN AGE, would dare write about modesty? Why, our colleague John Wauck, who suggested that he might write "something different" for this issue. He has. It makes a most unusual lead article, but we thought you too would be impressed by it, and saw no reason to delay your getting right at it.

Of course John does not avoid the "sexual revolution"—nobody can nowadays. His point is, now that we have made sex "no big deal, who's cheering?" Our "liberation" from once-ingrained virtues such as modesty and restraint has been a Pyrrhic victory which has cost us plenty, not least a paradoxical "deadening of desire." We think you will find Wauck's thesis not only unusual but also very interesting. And we got a good laugh out of one quote—"Blushing is the most peculiar and the most human of all expressions"—we bet you'll guffaw too when you discover who *said* that.

Then our long-time contributor Joe Sobran brings us back to the immediate reality. Our political contests—certainly the current presidential campaign—now provide Americans with the opportunity to vote not for public virtues but rather for their private vices. And Dan Rather doesn't like this fact mentioned in public, so he sternly disapproved when Utah's Senator Orrin Hatch actually said that the Democratic Party is "the party of homosexuals." As usual, Sobran reports it all in good humor, which helps any argument. Especially here: what he describes is in fact pretty shocking stuff, emphasizing the great flaw in our "mass media" mentality—we no longer know what's actually going *on* beyond the soothing TV "news bites."

Sobran agrees that the sexual revolution is an accomplished fact "which has already captured our public language," so that Senator Hatch "affronted the whole revolutionary order with a single phrase. The order was quick to pillory him. The facts were on his side, but the ideology wasn't, and that's the way we live now." It's Sobran at his best, which is high praise.

Another frequent contributor, Frank Zepezauer, moves us on to another

"well-known"—but little-understood—controversy. Feminism, he says, has been quite successful at masking itself as just another "civil rights" movement, whereas in fact it is another revolutionary ideology that boldly agitates for a species of totalitarian state, for the obvious reason that nothing *less* can satisfy its rigid demands.

As you will see, Zepezauer is really exercised about it all, even though he has been writing rather calmly about the subject for years. What stirred him up? The new book *Feminism and Freedom*, by Michael Levin, which is a mind-opener. As Frank says, "no one has looked at feminism more closely, nor traced the consequences of its ideology more thoroughly." Quite a claim, given the previous works of, e.g., our friend George Gilder. And so is Zepezauer's conclusion: Levin convinced him that "behind the many masks of modern feminism" we find "the face of female fascism."

Naturally we hastened to read Levin's book, and are bound to say that we can well understand such a conclusion. Indeed, we highly recommend it to anyone concerned with the future state of the nation, not to mention many *other* institutions. (We noted that a Roman Catholic publication offered free copies to their bishops, now struggling with their own pastoral letter on women's rights; the editor tells us there have been no takers.)

And we've done something more than that. Levin methodically builds up his case (the book is *not* easy reading, it's scholarly stuff) to a powerful treatise on the relation between feminism, homosexuality, and abortion. He concludes that *both* are "central feminist concerns," and explains why in chilling detail. We can't recall reading a better summary of arguments to which this journal has devoted literally thousands of pages. Happily, it is also short enough for us to re-print here.

You will note that Levin himself does not claim to be anti-abortion, which makes his argument all the more compelling? In any case, we hope you will pay close attention to his logic. We were struck by this statement: "Since a government monopolizes the legitimate use of force . . . it must also forbid the forcible protection by private parties of any being it itself does not actively protect." That is the logical basis for what we now have: totally unrestricted abortion and, more specifically, a Joan Andrews treated like a dangerous criminal.

Needless to add, we owe it all to the Supreme Court, which legislated, as neither the Congress nor the several states would have done, the world's most "liberal" abortion law. The Court is a busy body: abortion is by no means the only part of our public morality into which it has intruded with tradition-shattering force.

Mr. Carl Anderson next describes the Court's impact on the *economics* of

the family. He knows his subject thoroughly. (The last time he appeared in these pages, he was a special assistant to President Ronald Reagan, dealing with just such matters.) And he too paints a grim picture, wondering "whether even so resilient an institution as the family can survive the widening gyre of substantive due process in the hands of the Supreme Court." You will learn a great many simple truths about questions which our liberalizing "reformers" describe (to avoid serious discussion of *results*) as "complex issues."

Divorce is also a favorite complexity, although its simplicities include a) undeniable and devastating damage to families, and b) yet another glaring example of court-induced chaos. But Mr. Bryce Christensen has discovered the simplest factor of all: that "marriage, no less than jogging and lowering cholesterol intake, is good for your health"! It follows that a common-sense society should do its darndest to encourage citizens to "get married and stay married."

It is amusing that traditional morality has nothing whatever to do with the arguments, which are based solely on statistics: broken marriages produce much greater health problems, at a time when our Welfare State is realizing that it can't *pay* for them all—certainly not in an aging society lacking, in effect, a new generation to tax—another effect of the decline (demise?) of traditional values, of course. So the problem becomes circular: "persons" won't do what's good for them, and the Liberal State cannot imagine *making* them do so. Mr. Christensen can only suggest using the tax system to, well, *bribe* citizens to stay married, have kids, and other old-fashioned things. You'll enjoy this one, if only for the irony of it all.

About here we always try to give you something refreshing, after so much serious matter. Reading *anything* by Ellen Wilson Fielding is just the right treat, as our long-time readers know (we're delighted that Ellen is back with us). By chance, however, what she has to say here seems the perfect follow-up to Mr. Christensen? Time was when it was simply assumed that "good" Catholics would have large families. Times have changed: you might say Catholics are just "good Americans" now, sharing the "modern" view of marriage everybody else has, etc. Yet marriage itself has not changed, as Ellen reminds us in her usual cool (and beautiful) style.

Then it's back to business. A major reason why our times *have* changed so drastically is, without doubt, the power of the Major Media to shape "opinion"—it's hard to remember what we *used* to think, etc. Abortion is a prime example, as Professor Marvin Olasky reminds us. Indeed, he has written a whole book on this *un*reported subject (Bless him, it's about time *somebody* did?), and we had a hard time deciding which chapter to reprint here, it's all good stuff, we wish we had space for all of it. But on balance, we think

you get the most salient part here. The press *preached* abortion from its bully pulpits, and effected a successful conversion of the flock. As the old newsboys used to say, read all about it.

Then you have another treat. Our old friend Erik von Kuehnelt-Leddihn has contributed a good many essays to this journal, all of them fascinating (Herr Erik can't write anything that *isn't*, he's a fount of knowledge the rest of us have missed). Here, he explains that what we thought was plain old murder is really one of those "complex issues"! As always, we recommend a careful perusal of his notes, which are likewise fascinating.

With so many articles, we don't have much space for our appendices this time, but what we do have is also worth your attention, beginning with Nat Hentoff's powerful report (*Appendix A*) on that "prisoner of conscience," Joan Andrews—about which we'll say nothing, because Nat says it all (the man can *write*). *Appendix B* is on abortion in Israel, and it's a shocker to us: if the facts are accurate, little Israel is "supporting" abortion at about *three times* our own ghastly rate (transposed, the figures would mean some five *million* abortions a year over here!). And this in a nation which desperately needs more people, *qua* people, to survive. Ironically, it is a Planned Parenthood official who sums up the reality in the single sentence which concludes this disturbing report: "You can't convince people to have children for nationalist reasons." He does not mention the alternative. *Appendix C* is, well, grim humor? Harvard Law Professor Alan Dershowitz, a leading light of the pro-abortion "community," faces the reality of what abortion has wrought in poor India, and he doesn't like it at all—but what is to be done? Nothing. Unless he admits that he is *wrong*, which is of course unthinkable.

* * * * *

A footnote: Senator Orrin Hatch is (see above) prominently featured in Mr. Sobran's article; he was also prominent in our previous (Summer, 1988) issue, in which Mr. George Gilder urged him *not* to support current "Day-care" proposals in the Congress. Mr. Hatch wrote us to say, in effect, that we should have printed *his* side of the story—his answer to Gilder appeared in *National Review* (May 27). He's got a point, and so we reprint here the principal point of his reply:

> . . . lest the readers of Mr. Gilder's article get the wrong information about my bill, let me assure them that the "Child-Care Services Improvement Act" is fundamentally different from Senator Dodd's "Act for Better Child-Care." My proposal invites local entities, including churches, to develop and operate their own child-care programs. It recognizes the importance of family-based child-care providers and encourages private business to provide child care through tax and liability reforms. My bill is not a freebie for privileged families, and it does

> not disturb informal child-care arrangements with family members or neighbors. Furthermore, Mr. Gilder's assertion that a compromise with Senators Dodd and Kennedy is my number-one legislative priority is quite incorrect. Compromise is not my objective—a sensible child-care policy is. Frankly, I resent the implication that I will acquiesce to a watered-down ABC bill just for the sake of getting a bill.
>
> Mr. Gilder was right when he said I was soliciting conservative support for my bill—I am. Thoughtful conservatives cannot afford to sit on the sidelines. If we respond to the child-care issue with inapt platitudes, our mutually held concerns about children and families will be ignored as the rest of America fashions a solution to the problem.

In fairness, we should perhaps remind the reader that Mr. Gilder is against *any* such bill—yet another costly federal program would mainly "benefit" a new bureaucracy, rather than families—whereas a tax-credit solution would benefit not only "hard case" parents but also those determined to care for their own children. As Gilder puts it:

> The stable families of America both sustain the American economy and produce virtually all the country's productive citizens (most of the rest are immigrants from stable families overseas). The child-free families of today are the freeloaders on Social Security tomorrow, for they have failed to produce the next generation of workers to support them in their old age. The female-headed families of today create an unending chain of burdens for tomorrow as their children disrupt classrooms, fill the jails, throng the welfare rolls, and gather as bitter petitioners and leftist agitators seeking to capture for themselves the bounty produced by stable families.

As you can see, it is a spirited argument, with direct bearing on the kind of thing Messrs. Zepezauer, Levin, Anderson, and Christensen are talking about: the society we *want* should determine the outcome—but that too is an old-fashioned idea, the "modern" answer is more bills, which of course the courts will interpret for us, on and on.

That's it for this issue, which concludes our 14th year of publishing. No doubt John Wauck will commend our modesty—we won't congratulate *ourselves*, but rather the ever-faithful readers who have made it possible.

J. P. McFADDEN
Editor

A Modesty Proposal

John Wauck

> *Gypsy, for her part, appeared far less impressed than myself by consciousness of anything, even relatively momentous, having occurred. . . . This imperturbability was inclined to produce an impression that, so far from knowing each other a great deal better, we had progressed scarcely at all in that direction; even perhaps, become more than ever, even irretrievably, alienated.*
>
> —from *A Buyer's Market*, the second volume of Anthony Powell's *A Dance to the Music of Time.*

IMPERTURBABILITY AND ALIENATION. Powell's hero Nick Jenkins is describing the disturbing malaise that follows his very unheroic sexual debut, with a young woman he does not love and barely knows. But his words might fairly describe the general state of affairs, the severe *ennui*, between the sexes today.

There are many reasons for this, but I believe all the reasons for alienation between the sexes can be traced to a more fundamental alienation: an alienation from the body itself. Indeed, not only *ennui* but also such phenomena as abortion, feminism and homosexuality can be seen as instances of this alienation, as women and men attempt to reject the nature their bodies imply. Today, the notion that one's body should dictate one's personal, social, and even sexual identity is widely disparaged as arbitrary and crudely physical. The modern body does not speak for the modern person; it implies nothing at all.

Of course, sex highlights this alienation, for when two alienated people attempt to forge a personal union through sex (their bodies maneuvered by, as it were, remote control) the inevitable result is a peculiar "nothing-happened" sensation. Is humor our society's public confessional? Not long ago, walking along Broadway, I spotted a T-shirt that pictured a man and woman in bed. The woman is saying to the man: "Did we have sex, or did I just see you on TV?"

One of the rallying cries of the sexual revolution, designed to *epaté le up-tight*, was that sex was "no big deal." Well, now that the revolution

John Wauck is now a contributing editor to this review.

is over, now that sex really *is* no big deal, who's cheering? Sexual liberation from modesty and restraint has been a Pyrrhic victory. As the psychologist Herbert Hendin observed more than ten years ago in *The Age of Sensation*: "Young people in our culture are creating new ideal men and women who can resist each other's impact." We are becoming anesthetized to each other, for to travel with any equanimity through an immodest society requires a certain calculated indifference, a deadening of desire. But no one profits from the deadening. It is perhaps worth asking whether a decline in modesty has necessitated this coolness in the face of sex, or whether indifference toward sex has simply rendered modesty irrelevent. Regardless, alienation from the body facilitates and fosters our imperturbability.

Imperturbability does not come naturally. In fact, the loss of imperturbability is the first recorded sentiment of human nature as we know it: shame at our nakedness. Having eaten the fruit of the tree in the Garden of Eden, Adam and Eve suddenly see their bodies in a new light, and the change in their vision of each other demands clothing. "And their eyes were opened, and they saw that they were naked. So they sewed together fig leaves . . ."—an unexpected and striking turn of events: the first blush, and the only clothed creature. The relation between the man and the woman is no longer innocent, either in thought or body; they have designs upon each other.

And this seems to reveal something essential about our humanity, an intuitive sense that there is something "wrong" with the naked body. Before they eat of the Tree of the Knowledge of Good and Evil, it is impossible for Adam and Eve to perceive anything as "wrong," for there *is* nothing wrong: the Biblical account of creation tells how "God saw all the things that he had made, and they were very good."

Modern science has its own version of Genesis in which the demigod Nature looks upon what it has made and finds it neither good nor bad. This is not a return to Eden's innocence, but it has one of the same results: from the point of view of modern science, it is impossible to perceive something as "wrong." Of course, it is also impossible to perceive something as "good," for whenever the account of science is mistaken for the whole story, nature becomes morally meaningless. This new nature includes a myriad of distinctions: big, small; solid, liquid, gas; light, dark; fast, slow; living, dead; organic, inorganic; square, circular; straight, curved. But about goodness and badness, reverence and

worth, the Nature of modern science has nothing to tell us; it tells us only "the way it is."

Modern science has transformed the way we see nature, especially that particular part of nature that is man. Of course, even nature itself, "the way it is," has no special prerogatives. Take the example of sexual reproduction, which has been "the way it is" for all of human history. The objectified Nature of modern science combines with modern technology to leave "the way sex is" behind. Human reproduction can now take place in a glass dish and human gestation may soon occur in a chimpanzee. Sexual reproduction may become "the way it was."

And if "the way it is" may not be "the way it should be," it makes no sense for technology to simply serve nature. Medical technology can begin to replace rather than serve it. And as "living" and "dead" are among the descriptive categories of this neutral nature, the transformation from life to death, once called killing, becomes (as in abortion or the disposal of extra embryos from *in vitro* experiments) just another bio-technical adjustment. Naturally, it serves not the neutral fact of life but the quality of life—that is, life inasmuch as one's consciousness finds it desirable, for no life is "good" (or "bad") in and of itself. Life, after all, is a biological fact. It has, in the past, been surrounded by reverence and a sense of sacredness. It has been assigned enormous moral value. But that too may become "the way it was."

Children learn to see nature in this "objective" way at school. At some point in their education all schoolchildren hear that man is 90% water plus $3.95 worth of garden-variety chemicals—or some such fact. There may be nothing false about it. But science's criteria for certainty and its mode of understanding tend to be generalized well beyond the material sciences to which they apply. Thus, when we claim to speak "objectively," we mean we're telling the absolute, unvarnished truth. In the end, the only *real* knowledge is that which can be scientifically tested. Inevitably, certain values fail the test. Whatever moral values children may also learn must appear, by contrast, irrational and less certain than science. We cling to these values, and pretend to justify them, but they lead a precarious existence.

The most severe damage caused by this "science" is among those things which have only been discovered under its aegis. Our understanding of the brain, of the developing fetus, and of the reproductive system, is *only* scientific, because it was never anything else. Because

they were born in a environment purged of all non-scientific values, the facts about neurology, embryology, and human reproduction never had a chance to be invested with a moral meaning. Unlike more basic facts such as birth, marriage, child-bearing, life itself and death, they were not surrounded by meaning, tradition and ritual. It has been especially difficult to see value or extra-scientific meaning in the new facts. They are morally opaque.

It is popular for sophisticated bio-ethicists to deride as "vitalists" those who will not tolerate the direct termination of any life, no matter how tenuous or painful it may be—even in cases where the patient would rather die. A vitalist has a blind devotion to merely physical life, a devotion that some bio-ethicists view as a childish obsession, an arbitrary taboo. The fact of physical life, especially when identified, as it is in the modern view, with the contraction of certain cardiac muscles and the transmission of certain electrical impulses, simply cannot be invested with an absolute or transcendental value. To the modern mind, it is like a totem, a natural thing that has been endowed with supernatural value. The real modern value is subjective; it comes from the conciousness of man, not from the object itself.

The old view makes a fetish of the bio-physical phenomena we call life, and ignores what really counts: the consciousness of pleasure, the feeling provided by "quality living." Because modern man identifies himself as consciousness, the great modern evil is not the objective evil of physical damage, but rather pain, the subjective awareness of the damage. Thus it makes a great deal of difference to the modern mind whether the fetus *feels* pain or whether a comatose patient *feels* himself being starved and dehydrated to death. The mutilation of the fetus and the withering of the comatose patient are not, in themselves, sufficent arguments against abortion and euthanasia, because the mutilation of the human body is OK if the fetus or patient doesn't "feel" it. How different is the Western tradition that disapproves of cremation, out of reverence for what *is* "only" a body—not alive, and, without question, not a person. In fact, all of our funeral customs—the fine clothes, the makeup, the plush casket—show a solicitude for a rotting corpse which must seem ludicrous from a truly modern perspective which sees the body as a chemical phenomenon. The body of a comatose patient who is starved to death in a hospital is sure to be treated more gently by the mortician than it was by his doctor.

What about our society's indulgence in fleshly pleasure? Can it be a sign of contempt for the body? Contempt for the body is not a new phenomenon. Nor has it been, in the past, incompatible with sensual indulgence. For instance, the Manichaeans, an early semi-Christian sect strongly influenced by gnosticism, believed that matter was evil; that only the spirit was good. The Manichaeans believed that, unlike Christianity, theirs was a religion of pure reason. In what was to become a popular project over the centuries, they sought to demystify Christianity, incorporating its more attractive doctrines, but rejecting certain cruder, mysterious elements. Because the gnostic Manichaean believed that the body is evil and at odds with the spirit, which represents the true man, he considered the sins of the flesh to be of no account. In fact, the degradation of the body served to reinforce the true evil character of matter. It reminded one of the independence of the true man, the conscious, spiritual, intellectual man. The body was an enemy, not part of one's identity. So violent asceticism went hand in hand with gross licentiousness.

This paradoxical impulse continued among such medieval gnostic sects as the Cathars (from the Greek word for "puritan") and the Albigensians. Although free love and unnatural vice were considered trivial faults, the Albigensians encouraged divorce, abstained from marriage, and especially avoided conception. Starvation, suicide and abortion were considered good acts. The Albigensians favored vegetarianism, condemned all war, and opposed capital punishment. They even advocated a sort of population control: the fewer babies the better. They were openly contemptuous of the dictates of modesty. Their moral code may sound peculiar but hardly unfamiliar; it is still with us. And we have our own modern forms of asceticism. They are, of course, nonreligious. We diet compulsively and exercise till we ache, as Jane Fonda urges us on: "No pain, no gain." The varieties of licentiousness have, so far as I know, remained more or less the same.

Modern science purports to represent reason, purified of superstitions and religious mystification. It claims to offer a key to understand reality. Though modern science does not preach the evil of material reality, it gives creation no value at all. It is assumed that we will give value to things, even though we have been denied any "rational" (i.e., scientifically-defensible) motive, outside of convenience, for doing so.

The practical result is that, of itself, material reality has no value at all. So the source of our modern alienation from the body is not a gnostic theology but rather a positivistic "science" that makes it difficult to see an inherent value in any material reality.

This alienation is at the heart of the abortion issue, because abortion is—above all else—about the human body. Science itself tells us that the developing fetus—with hands, feet, fingerprints, and eyes—is a human body, very small but as unmistakably human as the sadly twisted body of a very old person. Science also tells us that the fetus has the genes that make it human from the moment of conception. But science does not tell us if the fetus is a person, or if it has rights (nor does it tell us that an old man has rights).

People wonder about the consciousness of the fetus, about its awareness of pain. This is what most people mean when they express doubts about personhood. If the fetus could provide some obvious indication of conscious awareness ("Ouch, you're killing me!" in hand signs perhaps), their doubts would disappear. But no one wonders if the body of the fetus is a human body. And no one wonders if it is alive. The problem is that these living human bodies are not necessarily of any *personal* worth, because we have really only come to know them through the eyes of modern science. And so, far from knowing each other better, we even fail to recognize other persons in the womb.

The truth is that, though we have no doubts about their worth, we are not really conscious of newborn babies as "persons" either. We deal with them as living human bodies. The body is all there is to these new persons. Their "personality," beyond the fact of being the child of so-and-so, is purely potential. "How well do you know Susan?" is a nonsensical question when Susan is a three-month-old baby. We don't know babies that way. We can't admire a newborn's personality, or respond to its "personal" needs. We know them as needy human bodies. And yet the love and reverence we show babies, the care for their bodily needs—warmth, shelter, food, quiet, soft clothes, gentle play—is staggering. Indeed, it is normally much more than we show to grown-ups.

Abortion stifles the demands that these bodies make upon us, their claims upon our affections and our moral sense. The demands are indeed great. The fetal body changes a woman. It changes her body and her personality. In fact, it dissolves the barrier between the bodily and

the personal. The connection between the growing fetus in the womb and its mother is the very antithesis of alienation; they are physically continuous. The life of the mother flows into and through the life of the child. In abortion, the ultimate estrangement—deliberate killing—replaces the most intimate bond. The woman resists the change in her own identity that the fetus represents, a change that every pregnant woman becomes aware of: she is, in a real sense, already a mother; her new child is growing inside her. Through abortion she can "resist the impact" of the body developing in her womb. Killing the life that grows in and from her, she rejects not only the baby's body but also all that her own body implies about her.

We have to re-learn reverence for the body. This is less a matter of praising the body instead of the consciousness, than of seeing that the person is inescapably both. There is no need to decide between supposedly competing claims of bodily life and conscious life. The only conscious life we know on earth is in the human body.

Reverence for the body, of course, implies a renewed sensitivity to the obscene. Obscenity is the representation of the human form in a way that invites the perception of it as only an object. It might be said that modern science, by reducing everything to a material object, promotes this obscene perception; indeed, that it makes the notion of obscenity obsolete by making everything obscene. C. S. Lewis had this in mind when he wrote of the sinister bio-engineers in *That Hideous Strength*:

> The very experiences of the dissecting room and the pathological laboratory were breeding a conviction that the stifling of all deep-set repugnances was the first essential for progress. . . . What should they regard as too obscene, since they held that all morality was a mere subjective by-product of the physical and economic situation of man?

When pro-abortionists complain that pictures of bloody aborted babies are "obscene" they admit more than they intend. The human form mutilated by abortion *is* obscene. The pro-abortionists' accusations give them away; they are ones who degrade the body. Anti-abortionists want to be unable to show such obscenity.

Conventional obscenity, pornography, always implies an objectification of the body, sometimes (increasingly today) through images of violent degradation. It would be difficult to graph an increase in obscenity and a corresponding decline in modesty, but it is interesting that the

word "pornography" did not exist in English until 1850, and a recent scholarly history of pornography notes that the most noteworthy thing about porn before the 19th century was "how little of it there was." The word comes from the Greek for "representations of prostitutes," but there is only one recorded instance of the word's use in Greek. The word only came into its own recently, born, it would seem, for an age that needed it. It may be that a culture of alienation is required before porn can really catch on. In pre-scientific cultures, the obvious link between sexuality and fertility might make it difficult to completely divorce sex from the personal context of children, family, and society.

Alienation is an elusive disease. It can't be corrected with ideas; it's not an intellectual mistake. It must be fought by creating a different sensibility, a climate of modesty. Modesty is another name for reverence for the body. If it is to be effective, modesty must be understood as a virtue, a power to be perfected, not simply a condition to be met. It can't be defined in terms of what parts of the body are within view. Modesty on the beach is different from modesty at a dinner party, or modesty in a doctor's office. Modesty depends upon circumstances, for the body has different meanings in different contexts, meanings that can vary from age to age, and from place to place. In his account of his trip to Ireland in 1835, Alexis de Tocqueville makes an instructive observation:

> In Ireland where there are hardly any illegitimate children, and where, therefore, morals are very chaste, women take less trouble to hide themselves than in any country in the world, and men seem to have no repugnance to showing themselves almost naked. I have seen young girls bathing in the sea at a short distance from young men.
>
> In England where one birth in eighteen is, I believe, illegitimate, and where the morals of the lower classes are decidedly lax, decency is carried to the length of a ridiculous affectation.

Modesty must be understood as a virtue, because a negative understanding of modesty, as the avoidance of immodesty, rather than the pursuit of an ideal that can be lived with increasing refinement, will inevitably lead to a decline in modesty: the hemline inches up. That is the classic dynamic of modesty defined as the absence of immodesty. Eventually, people become inured to borderline provocation, and slightly more is needed to call in the censor. It is not simply a matter of clothing. One notes a gradual coarsening of speech. Physical intimacy means less and less. And sex itself comes to mean nothing beyond tem-

porary physical contact—a collision rather than a communion. Sex was once supposed to have a character very like a physical vow. It was the necessary physical dimension of a personal vow. But now it adds no certainty to the bond between a couple.

Modesty is the key to overcoming the alienation that afflicts our times. Its personal and moral message is simple: the body matters. As Roger Scruton writes in his recent book *Sexual Desire*:

> The most important root idea of personal morality is that I am *in* my body, not (to borrow Descartes' image) as a pilot in a ship, but as an incarnate self. My body is identical with me, and sexual purity is the precious guarantee of this.

Modesty is a guardian of purity. It protects the integrity (the privacy, so to speak) of the whole person, body and soul. It prevents the body and its sexuality from becoming, as Scruton puts it, something "curious and alien," first to ourselves and then also to others. Immodesty is like the unwanted confidences of a stranger. Married love, on the other hand, is the welcome confidence of the whole man and the whole woman. It speaks directly to our embodied nature against the voice of alienation.

Vices we don't see tell more than those we do see. It is often remarked that today the vice of envy is invisible because of the pervasive egalitarianism of our society, which has institutionalized it and given it a respectable home. We are unable to distinguish between envy and a sensitive social conscience. Likewise, immodesty is a forgotten vice because modesty is a forgotten virtue. We have forgotten what sort of creatures we are; that a person is inescapably body and soul; that reverence for persons in the abstract makes no sense without reverence for the human body. Nothing human is "merely" physical.

We tend to take for granted the many reminders of the unity of conscious life and physical life. The most characteristic human actions point to it. In a burst of laughter or of tears, the false distinction between the conscious self and the body, which is the essence of alienation, evaporates. The instinctive avoidance of nakedness and the blush of shame before others that are characteristic of modesty reinforce the awareness that what happens to my body happens to me; that I—and not just my body—am somehow exposed. We need the virtue of modesty if we want to be truly human, for as an unlikely authority in such matters, Charles Darwin, once admitted: "Blushing is the most peculiar and the most human of all expressions."

Voting Your Vice

Joseph Sobran

EARLY IN THE 1988 election campaign, Dan Rather reported, in tight-lipped disapproval, that Senator Orrin Hatch, Republican of Utah, had called the Democratic Party "the party of homosexuals." After citing Hatch's denial, Rather triumphantly played a tape recording of Hatch telling an audience that "they're the party of homosexuals, they're the party of abortion . . ."

Then Hatch was shown, slightly flustered, explaining the remark. There was some confusion over its meaning. Rather apparently construed it as an assertion that all or most Democrats were homosexuals, and it was unclear whether it was this construction or the phrase itself that Hatch was denying.

At any rate, Hatch amplified his intention by observing that the Democratic Party had wooed voters by taking pro-homosexual and pro-abortion positions. The 1988 Democratic platform supported him on both counts. He'd made many mistakes in his life, Hatch said later, but calling the Democrats "the party of homosexuals" wasn't one of them.

Rather's story, a specimen of "Gotcha!" journalism, would have been fuller and fairer if he had mentioned the Democrats' efforts to court the new bloc of homosexual voters. But he didn't. As a matter of fact, the major news media have been scanting this story for years. The Democrats' 1984 platform was even more explicit than the 1988 model, which, playing down the liberal ideology that had been so costly four years earlier, contained only a single quick reference to "sexual orientation" in a list of categories to be protected against "discrimination." But before and during the 1988 primary season, at least four of the seven contenders—Dukakis, Jackson, Gore, and Simon—made overt pitches for homosexual votes. Little of this was reported in the mainstream media, though it was headline news in the gay press, and in some conservative (especially religious) publications.

On this subject the mainstream media kept a conspiracy of silence, probably because of sympathy for the gay cause. Since the homosexual

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press and grapevines were keeping the homosexuals themselves well informed, major publicity for it would have served mostly to alarm the large middle of the population, which regards homosexuality with deep doubt and disapproval—as immoral, pathological, unsanitary, or otherwise ineligible for special state protection and favor.

In the cold light of common sense, the idea that homosexuals are targets of "discrimination" is dubious. They can't be spotted with any certainty unless they want to be. Even then, they are seldom denied jobs because of their "orientation." It's easier to think of lines of work where they predominate than where they are excluded.

The very fact that homosexuals have enough political clout to make such discrimination illegal is a sign that they probably don't have to worry about it anyway. Truly weak groups aren't courted by political parties or favored by special legislation. Accredited victimhood is itself an emblem of power.

The best illustration of how much power Sodom now enjoys in America may be the case of Georgetown University. A Catholic (and of course private) institution, Georgetown has been required under the District of Columbia's "human rights" ordinance to extend financial aid and the use of its facilities to student sodomite groups. A federal court upheld these requirements, though it ruled that Georgetown need not accord "formal recognition" too. Congress is debating a measure to restore the right of religious institutions to withhold their resources from homosexuals, but the case shows that in some locales, "gay rights" already trumps religious and academic freedom.

Personal discrimination against homosexuals is not even at issue at Georgetown. No student is denied admission or expelled for committing sodomy. The dispute concerns whether the university must accord Sodom corporate status. The pro-homosexual side accuses Georgetown of "bigotry" for upholding (very perfunctorily) traditional Catholic morality.

Throughout the controversy, it has gone without saying that "discrimination" is a Bad Thing. Homosexuals have been rhetorically defined as a suffering group, rather than as individuals who commit acts that others may rightfully disapprove of. The "freedom" of Sodom entails denying the freedom of others to dissociate themselves from it. A Catholic school may be forbidden to enact Catholic teaching, though

it may, however awkwardly, continue to teach. Georgetown has been denied the right to its *own* "sexual orientation."

The American Civil Liberties Union has joined the battle—not on behalf of religious and academic freedom or freedom of association, but on behalf of "gay rights." The National Conference of Catholic Bishops, on the other hand, is staying aloof, presumably seeing no important issue at stake.

The media have treated the drive for gay rights as a mere further step in the general cause of civil rights, and also as a corollary of the sexual revolution. This approach minimizes the controversy that might be provoked by the sheer ugliness of sodomy. It also obscures something else.

Until recently, homosexuality was what gay rights advocates say they want it to be: a "private" matter. Though technically illegal, it was rarely punished by law. It was hard either to prevent or detect.

A man whose inclination was homosexual wasn't sharply marked off from the rest of the population. It wasn't just a matter of being "in the closet." Most of the time, he didn't think as a homosexual, any more than others usually think as heterosexuals. On election day he voted like everyone else, for the candidate who seemed likeliest to govern well, not out of any calculation that one candidate or the other would be better for homosexuals. That idea probably never occurred to anyone until about 1970.

But now the Democratic Party has said, in effect, that being homosexual is a reason to vote Democratic. Which is just what Senator Hatch was saying. Somehow Dan Rather didn't think the proposition itself was newsworthy, but deemed it objectionable for Hatch to call attention to it on the other side of the moral divide. Hatch's *faux pas* was to take people at their word. It all recalls the irony of Chesterton, who marvelled that "the broad-minded" should rail bitterly against the Catholic Church for denying Catholic rites to men who had renounced the Catholic faith.

Given what "civil rights" has come to mean and what the sexual revolution has always meant, it's not strange that the cause of gay rights should be seen as an extension of both. That cause can also be seen as an extension of special-interest politics.

For some time now, conventional democratic politics has assumed that people "vote their pocketbooks." This is generally treated as natu-

ral, right, and proper. Today's pundits have pretty much abandoned the ideal of voting civic-mindedly, that is, voting for the general good, even if that happens to diverge from personal self-interest.

Voting your pocketbook has now begun to give way to voting your vice. Are you homosexual? Do you want to be able to get an abortion? In either case, says the Democratic Party, you should vote Democratic. But it remains vicious to say that the Democratic Party is the party of homosexuals and abortion.

Both practices have been traditionally considered deviant. And in order to become "rights," they first had to become constituencies. Large numbers of people had to set aside old notions of both morality and the common good and to organize themselves into groups agitating for these putative "rights" and, at the same time, for concrete group power.

The "rights" could hardly exist independently of the groups. The demand for legal abortion could not have been politically sustained in the abstract, since it offends most people's disinterested sense of right and wrong. This is equally true of homosexual rights.

The new groups themselves demand respect and recognition *as* groups: "women" and "gays." (It's interesting that liberals who resent the anti-abortion appropriation of the term "life" are willing to let a few doctrinaire feminists claim the term "women.") The "rights" these groups demand aren't rights in the old sense—moral claims that everyone is equally entitled to make—but something more like special properties, political spoils. The rhetoric of rights is only a cover for this fact.

A Democratic congressman at the 1988 convention was quoted as saying: "We're not going to blow it this time. Just shut up, gays, women, environmentalists. Just shut up. You'll get everything you want after the election. But just, for the meantime, shut up so we can win."

Conservatives often quoted this adjuration, as a frankly cynical admission of a hidden agenda. It also shows how different the new group claims are from genuine rights: *you'll* get eveything *you* want. This is hardly the tone of a promise that all human beings will more fully enjoy their natural birthright. It sounds more like a pirate promising a favorable split of the booty. It's the idiom of covertly deviant behavior. What would Robespierre have made of it?

But this is a natural way to talk when a deviancy becomes a constituency. On the other hand, one can hardly imagine anyone speaking in such a way to opponents of abortion. Their goal is not what "they

want" but what they believe everyone deserves: the right to live. Yet very few liberals seem capable of seeing that the withdrawal of protection for the unborn against violence constitutes a form of arbitrary "discrimination."

When the Democratic nominee spoke in his acceptance speech of his unborn grandchild (he used the word "child") who was due to be born on Inauguration Day, none of the network commentators seemed to notice the grotesquerie: Michael Dukakis had fought throughout his political career to make it legal to kill that child all the way to Inauguration Day—or, if it happened to be born a little late, on the anniversary of *Roe* v. *Wade*. Some of the commentators remarked that the speech as a whole was "short on specifics"; some noted the uncharacteristically emotional reference to his family. But none connected *this* "specific" to an issue the Democrats were eager to downplay in public. The commentators seemed to want to downplay it too.

It certainly would have jarred for Dukakis to mention abortion in his acceptance speech, especially in connection with his grandchild. With an instinct surer than his ideology, he realized that this was a moment for appealing to what Burke calls our "untaught feelings." According to his ideology, abortion is a "fundamental human and constitutional right," but not "fundamental" enough to be appropriate for inclusion in a solemn address to the American people. What a shameful sort of "right," that has to shut up until after the election.

The real character of these special-interest rights is implied in the charge the pro-abortion forces hurl at their opponents: of wanting to "impose their morality on everyone else." A morality is precisely something that should be binding on everyone, just as a right is a claim that everyone should be required to respect. A society is constituted by the things its members agree to "impose" on each other. The charge that some people want to impose their morality can mean only that whoever makes the charge wants to impose a different morality. The pro-abortionists are simply accusing anti-abortionists of disagreeing with pro-abortionists, which they presume is a peculiarly arrogant thing to do. It amounts to tautology in the service of abnormality.

But pro-abortionists must think they mean something by it. They appear to mean that the belief that human life in the womb deserves the same protection as human life in general is a sectarian belief, in the sense that belief that the Second Coming is due within a fortnight might

be called a sectarian belief; or even as belief in Christ might be called a sectarian belief. That is, they think it's something not everyone can be reasonably expected to agree on, and they contend that any such expectation violates the canons of "pluralism," which mandates tolerance of various views.

A form of this argument was also advanced in the Georgetown controversy. Some pro-homosexuals said that since Georgetown was willing to recognize Moslems, whose beliefs clash with Catholic teaching, it should also be required to recognize homosexuals who (they say) accept Catholic teaching in most respects. (Never mind that they evidently don't accept the Church's *authority* to teach, which is the central question.)

But American pluralism has always applied to differences of dogma, not practice. Mormon religion, but not Mormon polygamy, has been tolerated. Catholicism similarly distinguishes between matters of revealed truth and matters of natural law. The Moslem may be tolerated as an infidel, but not as a polygamist. And the Moslem *qua* infidel can be recognized by a Catholic institution in a way the Catholic *qua* sodomist can't be.

No doubt many or most Catholics believe abortion to be wrong because they have learned their morality through their church; they believe murder in general is wrong for the same reason. But it may be too much to ask of the convinced secularist that he suppose—just *suppose*—the Catholic moral tradition may happen to be right about something he is not disposed to accept.

After all, the Catholic moral tradition is old and rich. Many non-Catholics have seen Thomistic natural law, approvingly or not, as an attempt to "secularize" morality, to divorce it from revelation. To this day a strong strain in Protestantism rejects the idea of natural law for just this reason. But at any rate, supposing Christian revelation to be mere mythology, natural law may constitute a "back-up system" of morality that deserves at least a little consideration from the unbeliever. Its whole purpose is to formulate moral rules that can be matters of consensus among men who don't all agree in faith.

It's deeply ironic that a part of the Catholic moral tradition which seeks to reach out beyond the community of believers should be met by a stubborn bigotry that refuses to heed it, for no better reason than that it issues from within that community. To some of "the broad-minded,"

the fact that a position they dislike is held by the Catholic Church is proof enough that the position fails the test of "pluralism," in which all beliefs are to receive equal respect. Some of the broad-minded even disregard as irrelevant the further fact that many non-Catholics share that position. All that matters is that too many of the people who hold it seem to be Catholics. That makes it unconstitutional.

By the same token, the attitudes of feminists and sodomites are never held to be sectarian, even if they can be traced to concrete self-interest. These people are never guilty of imposing their views or violating the code of pluralism, even if they try to force Catholic hospitals to permit abortions or Catholic universities to give sodomite clubs parity with Rosary societies.

There is a strange primitiveness about many of the broad-minded. They adhere to what J. P. McFadden calls "that great religion of the twentieth century, non-Catholicism." It's as if they define their beliefs, step by step, in simple opposition to whatever the Catholic position happens to be on any disputed point. For them, all roads lead from Rome. So they compulsively reject the principle of natural law, Catholicism's great gift to secular society. As far as they're concerned, it's tainted at, and by, its source. They resemble a deaf man who out of personal suspicion ignores the frantic waving of a neighbor who is trying to warn him of an oncoming car. Whatever the Church is trying to say, it can't be up to any good.

As a result of this enlightened prejudice, modern man has lost the concept of a common good or general welfare. "Society" has come to mean a mere majority, in opposition to a (usually abused) minority or individual, and "good" is identified with some concrete self-interest. "Civil rights" has lost its old signification of the rights of citizens as such and has come to stand for the interests of particular minorities. The idea of universalizable rules that apply identically to everyone and in principle benefit all alike has fallen into disrepute, or rather incomprehensibility. The new test of a rule is whether it serves the supposed interest of a category of designated victims in the melodrama of social progress (in which religion is always a villain).

On this view, "society" can never be man in his social aspect, capable of a natural (though sometimes difficult to achieve) harmony, and clashes of interest can never really be resolved except by awarding one of the parties priority in presumptive victimhood. People who see

things this way describe the issue in abortion as "the rights of the mother versus the rights of the fetus," and, pathetically positing the grave inconvenience of an unwanted child, sacrifice the child's life to the mother's desires. Though it's "always a difficult decision," the mother's desires always prevail by right. Mother knows best, especially when aborting. Her interest is equated with "conscience" in these sentimental scenarios, so that you feel it would be almost an act of maternal irresponsibility *not* to abort.

What is strikingly absent in these hypothetical situations is any but the most superficial sort of balance: pitting one bogus right against another always produces a tie, so the mother's decision can never be wrong. Anyway, the only other interest at stake is incapable of asserting itself. Chesterton speaks of "the modern and morbid habit of always sacrificing the normal to the abnormal," which is simply another way of saying that for the sort of modern we are discussing, no norms exist. An alleged norm can only be the interest of a majority (or a dead tradition) seeking to impose itself.

And on this view, the mother's interest *constitutes* her right. The idea of a disinterested judgment, which survived in the necessity of a doctor's approval for a "therapeutic" abortion, has died, along with the rape-and-incest pretexts.

So it's natural, in a way, that abortion has moved from the realm of civilized agreement to that of interest-group politics, with feminists damning all limits on abortion as male tyranny, while disregarding as non-women the female opponents of the practice. How can women who don't represent the woman's self-interest be accredited Women? They are consigned to ideology's limbo, along with blacks who don't define "civil rights" in terms of narrow black self-interest.

In this way ideology defines who may and who may not be "spokespersons." Anyone who seeks an integrated view of society, based in the impartial norms of natural law, falls outside the false dialogue (actually a chaotic clamor) of special interests. Those norms are "impersonal," but only in the sense that they accord full respect to *every* person, never neglecting one by sentimentalizing another. They "lack compassion," but only in the sense that they give no favor to one passion over its rivals. They ask, not whether abortion is a "right," but whether abortion is *right.* Of course they do have a suspicious history of involvement

with the Catholic Church. But in the absence of such norms, all moral discussion dissolves into a series of lachrymose test cases. At the political level this means that a coherent public morality gives way to the self-serving stereotypes of various interest groups claiming historical hardship. And in every controversy, liberal sympathy flows predictably, reflexively, to a fixed roster of lobbies.

Ideology, as Kenneth Minogue observes in his book *Alien Powers*, divides the world into two simple categories: oppressors and victims. The specific stereotypes may be capitalists and workers, colonialists and natives, whites and blacks, men and women, majorities and minorities. In every version, the basic melodrama decides every controversy in advance, sparing the ideologists the necessity of complex moral reasoning about actual cases. We all feel the constant bullying pressure of other people's ideological simplifications; the demagogic politician happily succumbs to them. We know that the feminist will reduce the question of abortion to an issue of male oppression, and that the gay activist will reduce the question of sodomy to one of majority "preferences." After all, a deviancy is only a minority taste. In a normless world, why not?

But normless people have their own lurking moralism. They may delegitimate traditional order by annihilating norms; but they simultaneously delegitimate any other order, including the one they want. They may prove that the capitalist has no natural right to rule; but how does that prove that the working class has such a right? My preference for what you call tyranny is no more or less an interest than what you call liberation. Why should your interest prevail over mine? At this point, in American politics anyway, the ideologist falls lamely back on the Constitution, relying on my reverence for it to compel me to accept his strained interpretation of a clause in the Fourteenth Amendment. But how if I reject the Constitution along with all the discredited norms the Constitution presumes?

In short, there is no good reason for ideology's villains to accept the role ideology casts them in. The great reactionaries of the twentieth century have accepted ideology's premises and responded with counter-ideologies: Nazism, Fascism, Action Française, the Iron Guard. If there is no God, everything is permitted.

Ideology is therefore parasitic on the traditional sense of justice it scorns. It lives off what it kills. America has luckily had to put up with

only a half-domesticated version of it, a liberalism that is afraid to acknowledge its deepest premises and necessarily relies more on confusion than force to overcome its enemies. But for that reason, though we have been spared a great deal of violence, we have suffered from extreme confusion, created by ideologists who profess to reject ideology, and who try to intensify in the rest of us a sense of obligation they have released themselves from. This is the function of their equivocal "rights," which deceptively invite us to think we are all talking about right and wrong—at least until after the election.

In American politics, the Democratic Party has begun to institutionalize deviancy. This is what Orrin Hatch was saying. And of course there is no rational limit to it. If abortionists or sodomites can form a lobby and pressure for legal privileges, why not drug dealers or murderers? A child molesters' group already exists, though their endorsement is not yet coveted. (After the election, maybe . . .) A convocation of prisoners serving life sentences has formally approved Governor Dukakis' Massachusetts furlough program.

Not that these imaginable extremes will all come to pass. The point is to see what has *already* come to pass. A once-civilized society is allowing children to be literally torn to shreds. America has normalized their killers and criminalized their defenders. And middle Americans who might act in concert to stop the killing with their votes are paralyzed by the dire warning that to do so would be to betray our precious heritage of pluralism. (Do we really want to go back to 1955?)

I have always been personally skeptical of the argument that legal abortion may "lead to" something else, by implication, even worse, such as geronticide. This argument is not so much improbable as it is irrelevant. It makes me wonder what worse thing than killing a child in the womb there could be. In a grim way, it reminds me of the old joke that Methodists object to fornication because it leads to dancing.

But abortion *has* led to something that may be worse: the incapacity to see the evil of abortion itself. There is something insensate and downright idiotic in the spectacle of bishops putting a present abomination on a checklist of "life issues," along with assorted federal welfare programs. And these are men who, with perhaps more notoriety than they deserve, *oppose* abortion. This kind of opposition is more discouraging than feminist advocacy. It tells the flock not to get all ruffled up about the horrors of hell. It's all the man with the gory curette could

reasonably ask of the hierarchy; he couldn't exactly expect their blessing, could he? But this moderation . . . this sense of proportion . . . perfect! It prevents all but the lunatic fringe from pushing into the clinics and trying to wreck the machinery.

The bishops are constrained: their role requires them to disapprove of abortion. What else would a Catholic bishop do? But their public conduct has sent to Catholics and feminists alike the message that they have agreed to disagree on this "issue." As issues go, abortion is no more than *primus inter pares.* Some bishops have spoken up with real moral fury, and one, Austin Vaughan of New York, has even been jailed in a protest. But collectively, the American bishops have earned the gratitude of the broad-minded. Vain of their political opinions, resentful of papal authority, it's hard to see how, within the options of their office, they could have done much less. No wonder the conduct of Catholic politicians has been so disgraceful.

As deviancy has found its constituencies, the morally normal needs political vehicles too. The moral revolution has caught ordinarily moral people off balance. They are unsure how to cope with the necessity of fighting for civilized mores that used to seem beyond dispute. How much civility is appropriate? Is there some middle ground between agreeing to disagree and firebombing? Between trivializing politics and abandoning it completely?

To say that the Democrats are "the party of homosexuals" sounds like the ultimate partisan statement. That's probably why Dan Rather was so incensed by it. But it's actually the opposite of a partisan statement: it's a deeply felt complaint that someone has turned our common morality into a partisan issue. Something almost as sacred as it is sane has been defiled and perverted for political advantage. The crowning irony is that saying so can be interpreted as a sort of extreme of sleazy Republican rhetoric.

The sexual revolution seems to be the first revolution in which the side marked for destruction was expected to show good sportsmanship. But if it *is* a revolution, we can hardly blame the counterrevolutionaries for treating it as such. As Chesterton says, the revolutionary "is merely complaining of being treated as what he declares himself to be. It is as if a man were to say, 'My persecutors still refuse to make me king, out of mere malice because I am a strict republican.' Or it is as if he said,

'These heartless brutes are so prejudiced against a teetotaler, that they won't even give him a glass of brandy.'"

Is it, or isn't it, a revolution? The sexual revolutionaries can't have it both ways. They announce what they are doing, then complain that their own significant choice of the word "revolution" is treated as something more than a piece of advertising hype. But it is something more. It's the *mot juste.*

The revolution is easy to overlook. It isn't consummated in some theatrical act, like storming the Bastille or beheading a king. Its fulfillment arrives in the mundane habit of reducing all rights to interests, interests that political power alone can make stick; so that in the political scramble, the actual right of helpless human beings to live may count for less than the desire of a puissant lobby to commit sodomy with legal and social impunity.

"Sodomy" already sounds like a quaint word; it's a word Dan Rather avoids when delivering us the "facts." The revolution has already captured our public language, and Senator Hatch affronted the whole revolutionary order with a single phrase. The order was quick to pillory him. The facts were on his side, but ideology wasn't, and this is the way we live now.

The Masks of Feminism

Frank Zepezauer

FEMINISM WEARS MANY MASKS in modern American society, many of them beguiling, especially that one which projects the image that feminism is really just another "civil rights" movement—feminists have been enormously successful in comparing themselves to Blacks and other "minorities"—never mind that women are in fact the majority. But behind such masks there is a *cadre* of zealots as ideologically committed as Leninists to a revolutionary program that could lead to a totalitarian state.

A number of critics, notably George Gilder, have sounded the alarm. Indeed, Gilder's critique of the devastating effects of feminist ideology on the "traditional family" has made him a principle target of feminist wrath, causing major publishers to refuse an up-dated version of his classic *Sexual Suicide.* But no one has looked at feminism more closely, nor traced the consequences of its ideology more thoroughly, than Michael Levin. His recently-published *Feminism and Freedom* provides what may be the definitive study. It is a cool, often abstruse analysis, a professorial dissertation on an overheated social phenomenon.

The question is, will Levin's book also generate a heated response from those who, up to now, have had no idea how much feminism demands, how much it has already achieved and—if not halted—how much more it is likely to get? For on Levin's analysis, feminism is a "social movement" that wants it *all.*

For that reason, not only anti-abortionists, but everyone caught up in leftist-generated politics will profit from Levin's scholarship. Our debate on domestic affairs takes most of its direction from an ideological agenda which makes every social issue a woman's issue and every woman's issue a feminist issue. Welfare demands bi-partisan reform, but co-operation founders over illegitimacy because feminists have defined it away as a "woman's right." Divorce destabilizes our families, sending half our children into broken homes, most of them run by single mothers. But efforts to reduce it are frustrated by relentless femi-

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nist disparagement of men and marriage. The Black underclass struggles against a firestorm of problems, particularly its troubled and troublesome males. But feminists divert money and attention to upwardly-mobile white females selling the country and the Rainbow Coalition on the fantasy that "women and minorities" form one, indivisible "oppressed" class. Child care now reaches the front pages and the party platforms, but the debate is manipulated by the feminist demand for state parenting in a society structured around the needs of career women. And the quality of life culture pushes and pushes, as apparently unstoppable as a glacier, expanding now to the recently born and the nearly dead, sustained by fierce political passion: feminists want abortion with unabated intensity because everything else they want depends on it.

What, then, is this ideology that releases so much perverse radical energy? Levin helps with an answer in his second chapter where he identifies it *as* an ideology, a word often used but seldom defined. He quotes a definition around which philosophers like himself have reached some agreement: a system of beliefs which "describe present reality . . . explain present reality—that is, show how it has developed historically [and prescribe] in what ways it is good or bad [and] posit a plan for changing present reality."[1] It therefore offers itself as a definitive description of reality and a dogmatic assertion of moral principle, a blueprint for revolution, held with soul-capturing emotion, pushed with zealous will. In short, a secular faith, a quasi-religion. Moreover, ideologues believe that every belief is ideology, not only theirs but the assumptions of the traditional order which validate themselves on divine or natural law. The struggle for a society's destiny, therefore, begins in a clash of opinion and ends in a battle of wills. The implied relativism in the all-is-ideology concept should require a liberal open mindedness since, at the very least, traditional ideology is as good as its radical opponent. But liberal tolerance is swallowed up by radical morality rooted in gnostic insight. Only the revolution is true. All the rest is false faith, including liberal tolerance.

Despite their contempt for traditional methods of inquiry—nothing more, in their eyes, than a patriarchal trick to perpetuate itself—feminists claim intellectual respectability, and indeed their nostrums have been embraced by many in "academic circles." For this reason Levin aims his arguments at high-level intellectuals, taking his analysis

into esoteric mathematics and sciences which sometimes tax the patience of the "average" reader. Even so, most of his book is readable, and well worth the effort involved. Levin obviously hopes that some part of the American mind Alan Bloom thinks is now closed might still open to his challenge to feminist orthodoxy.

His analysis thus begins with some root assumptions. He identifies four feminist tenets:

> (1) Anatomical differences apart, men and women are the same. Infant boys and girls are born with virtually the same capacities to acquire skills and motives, and if raised identically would develop identically.
>
> (2) Men unfairly occupy positions of dominance because the myth that men are more aggressive than women has been perpetuated by the practice of raising boys to be oriented toward mastery, and girls to be oriented toward people. If this stereotyping ceased, leadership would be equally divided between the sexes.
>
> (3) True human individuality and fulfillment will come about only when people view themselves as *human* repositories of talents and traits, and deny that sex has any significant effect on one's individual nature. Traditional femininity is a suffocating and pathological response to women's heretofore restricted lives and will have to be abandoned.
>
> (4) These desirable changes will require the complete transformation of society.[2]

The first exposes feminism's radical "environmentalism," the belief that culture alone makes us what we are, liberating us to make culture whatever we want it to be. But within the four tenets we see an inexorable movement from freedom to despotism. If culture conditions us, we fall subject to the power that controls the conditioning mechanism, happy only in the thought that it is no longer governed by false faith.

The first tenet also explains why the "true" faith must be totalist. If everything separating the sexes is conditioned by human choice, then everything that touches us is complicit, from our perception of cosmic law to our culturally-shaped subconscious—how we talk or act or think or feel or dream—everything. Like some volatile gas, the ideology instantly fills every space it occupies. And if, according to the second and third tenets, the conditioning is evil, then everything must be changed. Keep this inexorable expansionism in mind as you hear the "moderate" voice of Betty Friedan:

> The changes necessary to bring about equality . . . involve a sex-role revolution for men and women which will restructure all our institutions: child rearing, education, marriage, the family, medicine, work, politics, the economy, religion, psychological theory, human sexuality, morality and the very evolution of the race.[3]

The litany translates visionary speculation into a plan of action, the feminist agenda. Today, twenty years later, you hear in it fulfilled prophecy, a mass of governmental directives that have translated a radical dream into official policy. Like Lenin, feminists keep their promises.

If the first three tenets explain why the ideology must be totalist, the final tenet tells us why it will "require" totalitarian methods. This conclusion forms Levin's thesis:

> It is not by accident that feminism has had its major impact through the necessarily coercive machinery of the state rather than through private decisions of individuals. Though feminism speaks the language of liberation, self fulfillment, options, and the removal of barriers, these phrases invariably mean their opposites, and disguise an agenda at variance with the ideal of a free society . . . . Feminism is an anti-democratic, if not a totalitarian ideology.[4]

And so much follows from that first "environmentalist" premise that it needs the most searching scrutiny. It is a return to the endless but inescapable nature/nurture debate. In his first four chapters, Levin demonstrates the case for a significant biological substratum in the formation of gender "di-morphism." Evidence in support of the assertion was already persuasive when the women's movement began. It has since been buttressed by an impressive volume of research, some of which has been conducted by feminists themselves. If empirical evidence and logical inference should guide us toward true belief, then we should affirm that we are male and female from conception, masculine and feminine as much in response to biological imperatives as to cultural conditioning.

However, the nature/nurture debate does not center on the strongly-demonstrated fact of biological involvement but on its reach, on the shadowy borders where one finally yields to the other or where both work in mysterious symbiosis. In this slowly-shrinking gray area where science must admit honest doubt and urge cautious action, ideological certitude tells us what we have to do. It nevertheless hides its absolutism behind a self-serving agnosticism.

A few feminists still preach total culturalism, but the rest concede what they'd be foolish to deny. They then finesse it by minimizing nature's influence, or ignoring it, or drowning it out with constant clamor for "possible" changes. Or they exploit the reality of nature by diabolizing it, seeing in the given world an original dimorphic sin from which feminist androgyny will redeem us. Thus, as Levin demonstrates,

they reveal their environmentalism not so much in what they say but in what they do. Their march through our institutions continues *as if* the nature/nurture debate had long ago been settled in their favor. And our compliance lends force to their contention. Any time we impose quotas, or institute "comparable worth" schemes, or tamper with our language, submit our children to "unisex" conditioning, or equate women with Blacks, we are—aware of it or not, willing or not—deferring to radical environmentalism.

The most disturbing example of this kind of ideological manipulation appears in Levin's survey of feminist influence in our armed forces. Here again you find a relevant issue, the role of women in the military, subtly subverted to radical purposes. Levin describes how feminism insinuated itself into our armed forces during an early Seventies window of opportunity when gender politics influenced the formation of the newly-emerging All Volunteer Force. Once in, feminism quickly took hold, protected by an ever-thickening wall of legal and political protection, guided by determined *apparatchniks* such as the Defense Advisory Commission on Women in the Service.

Such efforts turned a fighting force into one more social-service agency whose primary war was not against hostile foreign powers but against "sexism." A decade later the results are the stuff of scandal, a military Watergate. Compared to an almost invisible 10,000-woman Soviet complement in an army of 4,400,000 (all in sex-segregated units far back from combat zones), our military now integrates nearly all of its units with women and suffers constant pressure to integrate the remaining combat regiments. In the American armed forces, women now constitute 10% of *all* personnel, the largest in the world, the largest ever in a peacetime army, by far the largest ever integrated at so many levels of command and in so many domestic and foreign-based units. All this was undertaken in less than a decade, mostly in internal policy shifts far from public attention, in deference to ideological imperatives which pre-empted the long-standing mandate issued by a democratic state to its forces of order.

The costs, both in money *and* in "combat readiness," are staggering. Sexually integrating the armed force has meant redesigning equipment, reworking training procedures, revising disciplinary rules, bringing in specialized personnel, erecting new facilities, spending millions on

minutiae such as the width of combat boots and the form of helicopter seats, and adapting G.I. underwear to female "differences" (e.g., urinary infection). Entire divisions could be sustained with the time, money and effort now diverted to the needs of pregnant "soldiers," fully 10% of whom are *off* duty with that "disability" at any given time. Here again, military priorities fall hostage to civilian pre-occupations. Law now forbids the military from discharging pregnant or maternal women. Litigation now pending could stop it from denying them entry as recruits, adding the armed forces to the agencies now compelled to subsidize illegitimacy. Such ongoing assaults on the spirit of the military can only suggest the eventual cost in lost efficiency and lowered morale. Incidents of discipline eroded by "fraternization" (who could have expected anything else?) or by sexual-harassment complaints keep mounting. This "battle of the sexes" is exacerbated by the rancor of gender politics. Like some fifth-column subversion, they drain our armed forces of pride and strength and *purpose*, risking a day when they will not only stand impotent but also ridiculous before our enemies.

But if critics like Levin succeed in opening some eyes to what is happening, our civilian leaders might finally recognize that the greatest enemy the military now faces works within its ranks. They might even realize what the feminists are trying to do: they don't want to *equalize* our armed forces, they want to *emasculate* them. They want to destroy the military mystique, the ultimate male sanctuary, the ancient and enduring source of the masculine ethic. Feminists hate it, hate whatever turns male humans into sexually differentiated men. Feminism is as much feeling as idea, generating a politics of hate and rage in every institution it penetrates.

For this reason Michael Levin devotes his final chapter to the powerful emotions behind the feminist revolution. He sees in them a force beyond analysis or persuasion, which only sustained political *will* can overcome. I might add that his Roman Catholic readers may be especially interested in what Levin has to say: if he is right, then the current feminist assault on their Church is not intended to *reform* it, but to *replace* it?

Even after reading *Feminism and Freedom*, will we finally agree about who we have to fight? Levin paints an ugly portrait, alarming enough to generate an effective counter-movement. But does the portrait fit the subject? Feminists wear many attractive masks, the images

that most of us see on the public scene and by which many women, feminist or not, see themselves. They appear as victims, or freedom fighters, or indignant egalitarians and civil libertarians. Like a Grecian idealized form, their mask sometimes represents all womankind in those moments when each woman feels not only opposite but opposed to the sex with whom she shares humanity. But most often the feminist wears the mask of frustrated careerism now on the move, an image that has won the widest support, even the qualified sympathy, of political opponents.

It is in response to these expedient images that most of us confront feminists, accommodating them—or resisting them—mostly on their own terms. Levin invites us to dig deeper, to penetrate the shifting surface images that beguile us. He's done that work himself, scrutinizing a daunting mass of feminist literature, distilling its essence, tracing its push into public discussion, government policy and popular culture. And tracing it back. We eventually see feminism, he suggests, not so much by perceiving how it appears, but by examining what it says and does. If ideas have consequences, we can work back from consequences to ideas. By such a process Levin exposes a fixed and enduring face behind the many masks of modern feminism. It is the face of female fascism.

NOTES

1. Michael Levin, *Feminism and Freedom* (New Brunswick: Transaction Books, 1987), p. 22, quoting Claire Fulenwider in *Feminism in American Politics* (New York: Praeger, 1980), p. 56.
2. *Ibid*, p. 20.
3. Quoted in *Back to Patriarchy*, Daniel Amneos (Arlington House, New Rochelle, N.Y., 1979, Chapter 3).
4. Levin, p. 2.

Abortion, Homosexuality, and Feminism

Michael Levin

A MOVEMENT FOR LEGAL REFORM and broadened attitudes toward women would not be expected to say very much about abortion or homosexuality. The equitable distribution of resources to men and women for abortion is nonsense. And, while "justice for women" might include the identical treatment of lesbians and male homosexuals as a minor component, it cannot be stretched to include anything about the joint treatment of male and female homosexuals in contrast to that accorded heterosexuals. "Justice for women" would certainly appear to have no bearing whatever on male homosexuality.

Yet abortion and homosexuality are central feminist concerns. *Ms* magazine lists "the freedom to decide whether and when to have children" as one of the four "real issues facing women today." For Betty Friedan "the right to choose [an abortion] is crucial to the personhood of woman."[1] The 1982 National Convention of NOW adopted "Lesbian Rights Resolutions" warning of the "destructiveness of heterosexism" and promising legal action to "overturn discriminatory statutes," including limits on custody and adoption rights for homosexuals.[2] Feminist activist Frances Lear cautions that

> our fundamental need is for a collective feminist persona that radiates good will. Some feminists attack "special interest groups," primarily the lesbians, because their movement co-opts feminist resources. Although gay rights may belong on the humanist agenda, gay political activities need to be separate. Admittedly, such a division could prove a hardship on the movement, since lesbians make up a large portion of the volunteer work force.[3]

Other feminists heatedly deny that feminism has anything essential to do with homosexuality (they are less inclined to make this claim about abortion) and contend that statements such as these represent the fringe. But apart from the fact that NOW and *The Nation* are not fringe phenomena, the positions of organizations representing feminist legal interests reveal deep commitment to these causes. When the Wisconsin

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State Assembly Judiciary Committee was considering a state ERA in 1983, it reasoned that, since ERA supporters reject as canards the claim that an ERA would mandate state funding for abortion and protection of homosexuals, the ERA could be amended to leave the Wisconsin legislature free not to fund abortions and to limit the rights of homosexuals. The committee was only proposing to exclude from the ERA what its proponents had said were irrelevancies, yet the Wisconsin Civil Liberties Union, NOW, the League of Women Voters, and Wisconsin Women's Network testified against the amendments, with the WCLU promising to oppose it until it was freed of "anti-civil libertarian language." Feminist organizations have uniformly resisted similar clarifying amendments for other state ERAs and the proposed federal ERA. As legislation may be presumed to intend what it easily could but does not exclude, these organizations may be presumed to intend the ERA to protect homosexuals and require public funding of abortion.

These seemingly arbitrary positions become quite natural once the denial of innate sex differences is taken to heart. If sex differences do not exist, or can and should be indefinitely minimized, same-sex pairings very probably are not, and certainly should not be treated as, significantly different from heterosexual pairings. The best analogue to homosexuality is miscegenation, against which no reasonable objections can be raised. To deny a man a marriage license because the person he wants to marry is also a man, while granting a license to a similarly situated man who wants to marry a female, is to stigmatize the homosexual's intended just because he is a man, and that is discrimination on the basis of sex. Furthermore, if women are to conduct their lives with the same freedom from the consequences of sex that men do, abortion becomes a vital desideratum. In Janet Richards's words, "from the point of view of freedom, the mother's claims are paramount."[4] Justice Harry Blackmun made substantially the same point in characterizing the legalization of abortion as a blow for the "independence" of women. The full emancipation of women requires the universal acceptance of all forms of sexual behavior and, as a subsidiary goal, the universal subsidized availability of contraceptives to minors. According to Thorne and Yalom,

> The contemporary women's movement has worked to give women a choice *not* to mother—hence, struggles for birth control and abortion rights and for legitimization of all forms of sexuality, including lesbianism, separated from reproduction.[5]

Judith Lorber writes yet more sweepingly: "A feminist goal is total freedom of choice in sex partners throughout one's life."

These ideas resemble feminist proposals about day care in two important respects. First, they use "choice" in the sense in which government subsidies confer the "choice" to work. Since a woman can choose not to become a mother by refraining from sex, the "choice" conferred by abortion and universally available contraceptives is the ability to choose barrenness without having to accept its disagreeable consequences. Second, insofar as the demand that contraceptives be freely available covers minors, the argument displays the by-now familiar selective resignation to which feminists seem vulnerable. Feminists profess concern about the high illegitimacy rate among teenage girls, and propose free contraceptives along with sex education to stem it, two measures which treat it as unalterable that teenage girls will have sexual intercourse outside marriage. Why do proposals for curbing teenage illegitimacy make this assumption when, to judge by the far lower illegitimacy rates experienced by societies in which reliable contraception was unavailable, the current incidence of sex among teenage girls is unique in human history?

Abortion

Abortion is a hard question, and I have no easy answers. It is all the more important, then, that discussions of abortion be conducted in good faith, with a clear focus on the relevant issues. Whatever the ultimate disposition of the abortion issue, this is an obligation that feminists have not yet met.

The pivotal question about abortion is whether the fetus is a human life; most other issues are distractions. If the fetus is human, killing it is murder. It is irrelevant whether abortion reduces welfare and crime, since murder is an impermissible means of social control. Abortion may guarantee that every child is wanted, but murder is impermissible even when everybody, including the prospective victim, would be better off with him dead.[6] Rape and incest do not justify abortion if the fetus is human, since the avoidance of shame and heavy financial obligations do not justify murder. Abortion might be safer if it were legal, but, if the fetus is human, this is only to say that certain kinds of murder would be safer if they were legal. Mafia killings would be safer for triggermen if gang wars were legal, but that is no reason to decriminal-

ize gang wars. If the fetus is human it need not be a "person," in the sense of having neural organization sufficient for its being a continuing self-conscious being, to have a right against abortion. Neonates are not persons in this sense either, but few people recognize a right to commit infanticide.[7]

There are two arguments for abortion that grant that the fetus is a human life. The first is that abortion is permissible self-defense on the part of a pregnant woman or her medical surrogate if her pregnancy threatens her life. Many jurists have recognized a "right of necessity," but it is by no means clearly applicable to the case of life-threatening pregnancy. The right to kill innocents in self-defense justifies the killing of innocents in warfare as a means of preventing further attacks by a non-innocent aggressor. The right of self-defense likewise justifies attacks against hostages of terrorists (or attacks against terrorists in the certain knowledge that they will kill their hostages) as a means of preventing further attacks by non-innocent aggressors. The fetus, on the other hand, is an innocent non-aggressor who did not initiate the life-threatening situation. He did not ask to be conceived. Attacks against him cannot be justified in the way that attacks against the innocent in warfare can be justified.

Francis Bacon took the "right of necessity" to justify a drowning man's pushing another man off a floating plank at sea, even if the original possessor of the plank was not responsible for the drowning man's plight. This wide reading of the right of necessity would indeed justify medically necessary abortions, but it conflicts with the even more fundamental Kantian rule against initiating aggression. If you find yourself adrift with only a nearby plank in someone else's possession to save you, you are obliged to let yourself drown. I claim no certainty for my own moral intuitions in these difficult cases, but from a practical point of view the wide Baconian right has little bearing on the abortion controversy. Fewer than 1 percent of the 1.5 million abortions performed annually in the United States are done to save the life of the mother, and advocates of decriminalizing abortions do not regard the right to abortion as ending when threats to the life of the mother do.

A second defense of abortion consistent with the humanity of the fetus maintains that abortion is not murder because it is not killing.[8] A woman who aborts a fetus is simply *refusing to continue to help keep it alive*, just as a host who ejects an unwanted guest into a blizzard is

simply refusing to extend his hospitality, and just as a woman who awakens one morning to find herself attached to a violinist dependent on the use of her kidneys (Judith Thompson's example) is simply refusing to let him use her body if she rips out the tubes. Proper discussion of this argument requires a digression into metaphysics,[9] but the essential disanalogy between abortion and the other host cases is that in these other cases the person who withdraws his assistance is not completely responsible for the dependency on him of the person who is about to die, while the mother *is* completely responsible for the dependency of her fetus on her. When one is completely responsible for dependence, refusal to continue to aid is indeed killing. If a woman brings a newborn home from the hospital, puts it in a crib and refuses to feed it until it has starved to death, it would be absurd to say that she had simply refused to assist it and had done nothing for which she should be criminally liable.

So the question returns to the humanity of the fetus, and what else can the fetus be, if not human? If fetuses are not human, dog embryos are not canine, and cow embryos are not bovine, the entire taxonomy of nature would have to be duplicated pointlessly. There is a universally recognized continuity to fetal development which requires that a fetus be thought of as an early stage of a human being conceived as a four-dimensional entity, in much the way a thirty-year-old man is a later stage of that same four-dimensional entity.

We must tread carefully here, since many advocates of legal abortion appeal to this same continuity of fetal development. In reconstructing their argument, it is important to distinguish the *metaphysical* claim that there *is* no line to be drawn between fetus, neonate, and adult, from the *epistemological* claim that *nobody (now) knows how to draw the line*. The metaphysical claim cannot be used to defend the decriminalization of abortion and in fact undercuts it, by blurring any distinction between fetus and neonate which might be cited to justify radically different treatment of the two. Take, for instance, viability outside the womb as a trait fetuses lack but neonates and adults possess. In fact, viability is relative to environment: Adults are unviable at the bottom of the sea without proper life support equipment, while with proper life support equipment a late-term fetus can survive in the intensive-care ward. Newborns are somewhere in between. Perhaps then a newborn deserves special protection and an insufficiently developed fetus does

not because there is *some* extrauterine environment in which the newborn can survive and *no* extrauterine environment in which the undeveloped fetus can survive. But the developmental stage at which a fetus can survive in some extrauterine environment is retreating before technology. Within a century there may be artificial wombs capable of receiving embryos from the moment of conception. At that point the distinction in viability between fetus and neonate will have vanished, and the *only* difference between a fetus unviable *now* and an equally undeveloped fetus *then* is that nobody has actually gotten around to inventing an artificial womb. Surely, however, a distinction in moral status as profound as that between beings that it is permissible to kill and beings that it should be legally impermissible to kill cannot depend on circumstances completely external to those beings, such as what happens to have been perfected in a medical laboratory thousands of miles (or dozens of years) away.

So the appeal of abortion advocates to the continuity of fetal development must be epistemological. It is not best formulated as the claim that it is in principle impossible for anyone ever to draw the necessary line, for that would be to bet against science, which in the past has proven able to mark principled distinctions amid seeming flux. (Think of the classification of minerals.)[10] The argument, rather, must be that since no one can *now* tell when human life begins, the matter should (now) be left to private conscience. Proponents of this argument are often unclear as to whether they are making a claim about what is possible relative to our present knowledge or a claim about what is possible relative to all possible states of knowledge, but a great many defenders of decriminalized abortion clearly have some such argument in mind:

> As the Supreme Court recognized in *Roe* v. *Wade* . . . the concept of "fetal personhood" raises moral and philosophical problems that go beyond the capacity of legislative or judicial mechanisms to solve.[11]

I am confident that those who propose this argument would not apply it elsewhere. They would not approve of leaving the killing of Eskimos to private conscience on the grounds that no one can say when human life begins. But there is a deeper problem that has nothing to do with epistemology, and that is the *impossibility* of government neutrality about the status of the fetus. A fundamental function of government

is to protect its citizens from aggression. Essential to this function is a decision as to which beings within its territory are to count as the citizens it will protect. Since a government monopolizes the legitimate use of force within its territory, it must also forbid the forcible protection by private parties of any being it itself does not actively protect. You are allowed to attack somebody attacking an adult human being, but you are not allowed to attack somebody stepping on an ant, since at the moment ants have no legal rights. The government protects attacks on anything it does not positively protect. In choosing not to decide whether to protect some vulnerable being, therefore, the government chooses not to protect it. Its function forces the state to decide about every being. In urging the government to "stay out of" decisions about the fetus, abortion advocates are asking the government to decide not to protect fetuses.

In strictness, "government neutrality" is very far from the standard feminist position. Probably the majority of feminists hold that abortion should be publicly funded, which would not leave the matter to private conscience at all, since it would force taxpayers who do not approve of abortion to support it. Public subsidies are not necessary to secure a "woman's right to her body," even if that could be shown to be an adequate justification for legalizing abortion, since a right to the use of one's body is a right against the invasion of one's body by other people, not a right to the means to do with one's body what one wants to. My "right to my body" does not create a right to public funds for an airline ticket with which to fly my body to the Caribbean for a vacation.

But forgetting this breach of neutrality, one is again struck by the selectivity of feminist bafflement. The difficulties in determining the status of the fetus are supposed to place action based upon its status in the realm of private conscience. Yet the difficulties in detecting discrimination are said to require hiring quotas. The difficulties—impossibilities, really—of determining comparable worth are said to require state cancellation of "residues." Proper pedagogy, so notoriously a matter of dispute, is said to require the censorship of texts and the enforced sex integration of small children. The danger that landlords, bankers, insurers, teachers, and male coworkers will discriminate is said to be too great, and the harm of discrimination too great, for the government to tolerate conscience error. The only matter feminists are willing to entrust to private conscience—a matter in which, one

assumes, they find the harm done by conscientious error tolerable—is the killing of fetuses.

Civil Rights for Homosexuals

Pleas for the sovereignty of individual conscience become yet more puzzling when entered by supporters of laws banning private discrimination against homosexuals. The laws in question have nothing to do with guaranteeing homosexuals the right to do as they please in private; these laws, rather, would forbid the private use of "sexual preference" as a criterion for employment and housing decisions.[12] These laws forbid third parties to refuse to associate with homosexuals on the basis of beliefs about and possible aversion to homosexual practices. It is unnecessary here to decide whether homosexuality is "unnatural"[13] or whether distaste for homosexuals is "prejudice." The fact is that many people dislike homosexuals. They think homosexuality is intrinsically abhorrent, a violation of divine commands, a threat to their children. How is one to justify denying to such people the freedom to avoid homosexuals if they conscientiously feel that avoidance of homosexuality is desirable? Surely one's willingness to hire or rent to homosexuals can be seen as a matter of private conscience, one's "right to one's own body" (a landlord may not wish to rent rooms to a homosexual in the same building his own body is situated in), one's "right to choose."

The analogy often drawn between homosexuals, Blacks, and Jews is obviously less than perfect. A Black man cannot hide his race but a homosexual can hide his sexual impulses. True, a Jew can also remove his head cover if he is indoors with an anti-Semetic hiring officer, and perhaps has only himself to blame if he does not get the job—but if the Jew does choose to lose the job in preference to (as he sees it) offending God, that is a matter of religious conviction. It is hard to think of a comparable motive that could induce a homosexual to disguise his homosexuality from a prospective employer. The point is that the analogy impresses some people but not others. Blacks and Jews no doubt have their own opinion of it. Genuine respect for freedom of conscience would allow each person to make up his own mind about it, and about whether to ignore "sexual preference" in those situations in which he is required by law to ignore race and religion. Perhaps permitting freedom of conscience will permit mistakes; perhaps some people will choose (wrongly, in some eyes) to consider sexual preference important. Per-

haps as a result of such choices, many homosexuals will be worse off than they would have been had freedom of conscience been forbidden. Anyone who considers this possibility too awful for the state to countenance, but also supports decriminalizing abortion, must consider the happiness of homosexuals more important than the lives of fetuses.

NOTES

1. Betty Friedan, *The Second Stage* (New York: Simon & Schuster, 1981), p. 86

2. *Resolutions of the National Organization of Women (NOW)*, Indianapolis, Indiana, October 9, 1982.

3. Frances Lear, "Now Is the Time to Get Organized," *The Nation* (December 12, 1980): 635-36.

4. *The Sceptical Feminist*, p. 215. Richards lists freedom and the prevention of suffering as the two supreme values. She finds the possible suffering of the aborted fetus "intolerable," which she seems to take to require that the fetus be aborted painlessly. She believes the principle that life outweighs both functions solely to rationalize "a deeply entrenched wish to control and oppress women" (p. 218), and she does not consider the right of the fetus to be free from aggression.

5. *Rethinking the Family*, ed. Barrie Thorne and Marilyn Yalom (New York: Longmans, 1982), "Introduction."

6. Betty Friedan generously extends to the unwanted child the right to be aborted: "The value is life . . . the life of the women and the right of the child to be wanted in life." "Twenty Years After the Feminine Mystique," *New York Times Magazine* (February 22, 1983): 42-54. Not wanting a child before it is born is unrelated to postnatal bonding, see T. Berry Brazelton, "Effect of Maternal Expectation on Early Infant Development," *Early Child Development Care* 2 (1973): 250-73. For evidence that abortion facilitates rage against dependents, disinhibits aggressing the defenseless, and impairs the ability to mother future children, see A.D. and L.L. Colman, *Pregnancy: The Psychological Experience* (New York: Herder & Herder, 1971); R. Kuman and Kay Robson, "Previous Induced Abortion and Ante-Natal Depression in Primiparae: A Preliminary Report of a Survey of Mental Health Health in Pregnancy," *Psychological Medicine* 8 (1978): 711-15; W.G. Whittlestone, "The Physiology of Bonding," *Child and Family* 5 (1976): 36-42; M.H. Liebman and J.S. Zimmer, "Abortion Sequalae: Fact and Fallacy," in *Psychological Aspects of Abortion*, ed. D. Mall and W.F. Watts (Chattanooga, Tex.: University Publications of America, 1979); S. Lipper and W.M. Feigenbaum, "Obsessive-Compulsive Neurosis after Viewing the Fetus during Therapeutic Abortion," *American Journal of Psychotherapy* 30 (1977): 666-74; Phillip Ney, "Relationship between Abortion and Child Abuse," *Canadian Journal of Psychiatry* 24 (1979): 610-20.

7. Michael Tooley defends both abortion and infanticide in "Abortion and Infanticide," *Philosophy and Public Affairs* 2 (1972): 37-65. He argues that a person can only have a right to something he wants; since children and babies do not realize they have futures they cannot want to have futures and thus have no right to them. Tooley's premise implies, implausibly, that a person has no rights to undiscovered minerals on his property.

8. See Judith Thompson, "A Defense of Abortion," In Pearsall, pp. 368-79; Walt Block "Woman and Fetus: Rights in Conflict?" *Reason* (April 1978): 18-25; Robert N. Wennberg, *Life in the Balance* (Grand Rapids, Mich.: Eerdmans, 1985).

9. See Michael Levin, review of Robert N. Wennberg, *Life in the Balance*: *Constitutional Commentary* (forthcoming).

10. But do we not know *now* what we mean by "human," or at least what criteria we use for determining humanness? Not necessarily; people used water for a long time before discovering that water is hydrogen and oxygen, before being able to distinguish water from extremely diluted wine, and so on.

11. Petchesky, p. 331.

12. Among the measures to this effect introduced in recent sessions of Congress were H.R. 166, H.R. 13019, H.R. 451, and S. 2081. See Enrique Rueda, *The Homosexual Matrix* (Greenwich, Conn.: Devin Adair, 1981), chs. 5, 8 for connections between homosexual and feminist political organizations.

13. On this question see Michael Levin "Why Homosexuality Is Abnormal," *The Monist* 67 (April 1984): 251-83.

The Supreme Court and the Economics of the Family

Carl A. Anderson

WHILE PUBLIC POLICY DEBATES increasingly focus upon the effect of governmental action upon the family, very little attention has been paid to how public policy options have been structured by the United States Supreme Court. This is surprising since the Court, in a series of decisions, has not only transformed American family law, but dramatically changed the status of marriage and family in American life. During the last several decades, the Court has drastically reduced the ability of the larger community to protect marriage and the family.

Justice Harlan's 1960 dissent in *Poe* v. *Ullman* provides the best starting point for understanding the Court's approach to the family.[1] There, the Supreme Court refused to rule on the constitutionality of Connecticut's ban on the use of contraceptives by married couples. Justice Harlan dissented, arguing that the due process clause of the Fourteenth Amendment contained not only procedural rights, but substantive rights as well and that the marital activity at issue in *Poe* was just such a right. Harlan admitted that such "substantive" due process had "not been reduced to any formula" or "determined by reference to any code." Nonetheless, he argued that it should be applied by the Court as a judicially imposed balance between "respect for liberty of the individual" and "the demands of organized society."[2]

Since the new "substantive" due process rights are not specified by the terms of the Constitution, but by its "larger context," and since that "context is not one of words, but of history and purposes, the full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution."[3] In short, substantive due process is nothing less than subjective judicial review of legislative determinations with only the most modest connection to the text of the Constitution.

Connecticut defended its statute in *Poe* by asserting that it was the judgment of the state that the use of contraceptives, even in marriage, was immoral. Justice Harlan emphasized what lay ahead for the family

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under his substantive due process analysis when he asserted that "Connecticut's judgment is no more demonstrably correct or incorrect than the varieties of judgment, expressed in law, on marriage and divorce, on adult consensual homosexuality, abortion and sterilization, or euthanasia and suicide."[4]

Law by Leaps, Marriage by Mail

Rather than being a methodology to preserve and promote marriage and the family, substantive due process in reality contained the seeds of the destruction of traditional family law. If the correctness of a state's judgment on contraception, as stated by Harlan, "is no more demonstrably correct or incorrect" than are its judgments on marriage, divorce, homosexuality, abortion, sterilization, euthanasia, or suicide, how then are laws on any of those subjects to survive judicial scrutiny? What Justice John M. Harlan called in *Poe* v. *Ullman* the exercise of a "limited and sharply restrained judgment,"[5] Justice White slightly more than a decade later, in *Roe* v. *Wade*, would characterize as "an exercise in raw judicial power."[6]

Harlan's defeat in *Poe*, however, turned to victory five years later in *Griswold* v. *Connecticut* when the Court struck down the same Connecticut statute.[7] Justice Douglas, in defending the "sacred precincts of marital bedrooms," stated:

> We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred . . . . It is an association for as noble a purpose as any involved in our prior decisions."[8]

Justice Douglas sought to ground the Court's decision upon a "penumbra" relating to personal privacy emanating from the specific guarantees of the Bill of Rights. While four of his colleagues in concurring opinions sought an explicit substantive due process rationale for limiting state regulation of marriage, Justice Douglas simply acted within the substantive due process methodology earlier articulated by Harlan.[9]

Justice Black clearly perceived the transfer of lawmaking power that had occurred in *Griswold.* In dissent he wrote:

> I do not believe that we are granted power by the Due Process Clause or any other constitutional provision or provisions to measure constitutionality by our belief that legislation is arbitrary, capricious or unreasonable, or accomplishes no justifiable purpose, or is offensive to our notions of "civilized standards of conduct." . . .

> The use by federal courts of such a formula or doctrine or whatnot to veto federal or state laws simply takes away from Congress and States the power to make laws based upon their own judgment of fairness and wisdom and transfers that power to this Court for ultimate determination.[10]

While *Griswold* is usually seen as a landmark case in the area of human reproduction, it is equally important in regard to the formulation and dissolution of marriage, especially when considered with the Court's opinion in *Loving* v. *Virginia*.[11] In *Loving*, the Court struck down Virginia's long-standing prohibition of marriage between persons of different races. Essentially, *Loving* presented the Court with the long overdue opportunity to apply the standard of equal protection to prohibit racial classification (discrimination) in marriage.[12] However, the Court did not limit its opinion to the issue of equal protection.

In what John Hart Ely has termed an "unnecessary addendum,"[13] the Court declared the right to marry to be "a basic civil right of man."[14] By taking that additional step, *Loving* "created a new atmosphere for the further development in state law of the freedom to marry." Together with *Griswold*, "the decision raise[d] a challenge to state regulation of marriage and the freedom to remarry after divorce."[15]

Dean Robert Drinan, S.J., for example, argued that the Court's opinion in *Loving* recognized the "profound consensus in American society that the state and the law should say as little as possible about who should marry whom." For Drinan, the *Loving* decision required "a complete rethinking" of American marriage law. According to him, *Loving* so limited the community's interest in marriage that it was no longer appropriate for the state to even require a marriage license—registration in the clerk's office would do.[16] Thus, the *Griswold* and *Loving* opinions, while purportedly attempting to strengthen marriage and family, actually marked the beginning of a massive retreat by the law from its traditional protective role.

The effects of these decisions were soon to follow. The Uniform Marriage and Divorce Act of 1970, drafted by the National Conference of Commissioners on Uniform State Laws, provides for minimal community regulation of marriage. It states, "If no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the (marriage license) clerk."[17] The commentary explains that this provision "was designed to

take account of the increasing tendency of marrying couples to want a personalized ceremony without traditional church, religious, or civil trappings." Since the publications of the UMDA, cohabiting couples in a number of states may now marry simply by filing a certificate with the county clerk's office.

Another immediate consequence of the *Loving* and *Griswold* decisions was a rethinking of state divorce laws. Until 1969, when California became the first state to permit divorce on the basis of "irreconcilable differences, which have caused the breakdown of the marriage," a divorce could generally be obtained in the United States only on the grounds of spousal "fault," such as adultery, desertion, or cruelty. One year after California acted to change its law, the concept of marriage breakdown was incorporated in the Uniform Marriage and Divorce Act.

By 1971, the Supreme Court had occasion to apply its notion of the fundamental right to marry directly to state regulation of divorce and remarriage. In *Boddie* v. *Connecticut*, the Court struck down a state requirement that indigent persons seeking a divorce be required to pay the attendant court costs as a condition of obtaining the divorce. The Court stated that such restrictions were an impermissible limit on the fundamental freedom to marry. The original freedom to marry had now become the freedom to divorce without cost.[18]

Finally in 1979, in *Zablocki* v. *Redhail*, the Court left little doubt that, having established marriage as a fundamental right deserving substantive due-process protection, it would not tolerate significant community limitations on the exercise of that right in regard to entry, exit, or reentry into marriage.[19] In *Redhail*, the Court struck down a Wisconsin statute requiring that persons under a court-ordered obligation to support minor children be required to show as a condition for obtaining a marriage license that their remarriage would not interfere with their ability to continue to support their children. Writing for the Court, Justice Marshall cited *Loving* and observed that the freedom to marry is a fundamental liberty. He allowed state legislators to frame only "regulations that do not significantly interfere with decisions to enter into the marital relationship."[20]

State "no-fault" divorce laws combined with the procedural restrictions imposed by the Court in *Boddie* and *Redhail* establish a legal environment highly consistent with the notion that divorce at the will

of one of the spouses is a fundamental constitutional right. The Supreme Court has not yet gone so far as to directly confront the question of what constitutional limitations, if any, exist on the states' right to restrict the grounds for obtaining a divorce. But almost by definition, a substantive due-process analysis will conclude that the arguments in *Boddie* and *Redhail* are transferable to the question of divorce. Leonard Strickman argues for just such an outcome, contending that the dissolution of marriage at the will of only one of the spouses should enjoy full constitutional protection. In his view, "There is no protectable liberty interest in being married to the person of one's choice . . . . It is the party seeking divorce whose interest in marital choice is primary; the state may not categorically defeat his interest by interposing the wishes of a non-consenting spouse."[21]

From Wall Street Marriage to Skid Row Divorce

By shifting the interest of the state from strengthening the bond of marriage to facilitating its dissolution, the Court's decisions combined with state "no-fault" divorce laws have changed the expectations of many now entering marriage and in so doing have gone far to change the nature of marriage itself. When the institution of marriage is no longer perceived as "a status necessarily assumed for life, the relationship contemplated by parties is not dissimilar from that of other long-term contracts, such as partnership, cotenancy, and sometimes employment," in the view of Walter Weyrauch and Sanford Katz.[22] Indeed, Weyrauch and Katz suggest that many marriages may now more properly be viewed as a speculative joint venture for profit. Marriage as a simple contract terminable at the will of either spouse is strikingly similar to 19th-century laissez-faire employment law in which employment was terminable at will by either party for any or no reason. Curiously, at a time when such employment relationships are less and less frequent, a laissez-faire attitude has emerged in domestic relations.[23]

Indeed, during the ascendance of 19th-century laissez-faire contract theory, the view of marriage as a mere contract between two individuals was expressly rejected by the Supreme Court. In reviewing the power of the legislature to regulate divorce in *Maynard* v. *Hill*, the Court noted that marriage "is something more than a mere contract. The consent of the parties is of course essential to its existence, but

when the contract to marry is executed by the marriage, a relation between the parties is created which they cannot change. Other contracts may be modified, restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society . . . ."[24] Yet, it appears that the Court has reversed itself and now views marriage as a contract beween individuals under its substantive due-process methodology.

The emergence of marriage as a contract at will has had cruel results for the wife who sacrifices education and employment for the marriage commitment. An important aspect of the new "feminization" of poverty, which would more accurately be described as its "*maternalization*," is that the economic consequences of divorce now effect the spouses very differently. A study conducted at the University of Michigan reported that while men immediately following divorce lost 11 percent in real income, divorced women lost 29 percent. More dramatic are the long-term consequences of divorce: among former spouses studied seven years after divorce, the economic position of former husbands improved by 17 percent while that of former wives decreased by nearly 30 percent.[25] Figures published by the Bureau of the Census indicate that families headed by never-married and formerly married women account for 47 percent of the 7.6 million families with incomes below the poverty level.[26]

Viewed in economic terms, "A baby is a durable good in which someone must invest heavily long before the grown adult begins to provide returns on the investment."[27] It should be self-evident that the community has at least a rational if not compelling interest in fostering conditions which will lead people to make this heavy investment in the next generation. If so, several questions immediately emerge. Does not the spouse who makes this commitment in time and energy have a claim on the community to recognize and protect that commitment? Do not the children themselves, who bear a substantial emotional and psychological trauma from divorce and its aftermath (including in many cases a significantly lower standard of living), have a minimum right to the continuation of the family which ought to be recognized and protected?[28] If marriage is to be viewed as a long-term contract,

then why should not principles of equitable estoppel be applied to protect the spouse who has faithfully complied with a marriage vow and whose reliance upon it has now become the occasion for substantial injury.

According to Richard Posner, "the contemporary Court has simply 'deregulated' the family in much the same way that its discredited predecessors prevented states from regulating business. One can agree with the policy preferences of either or both sets of justices while questioning the constitutional basis for their actions."[29] What no one can question is that the application of the Court's doctrine of substantive due process to marriage and the family has resulted in untold economic hardship for millions of women and children.

While drastically reducing the community's ability to regulate and support the institution of marriage, the Court has also limited the ability of the community to legally distinguish between the family based on marriage and other living arrangements. Seven years after *Griswold*, the Court found in *Eisenstadt* v. *Baird* that the "sacred" precincts of the marital bedroom were really no more sacred than any other bedroom. "[W]hatever the rights of the individual to access to contraceptives may be," wrote Justice Brennan, "the rights must be the same for the married and the unmarried alike."[30]

The Court reasoned:

> It is true that in *Griswold* the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional make up. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision to bear or beget a child.[31]

Some who applauded the Court's apparent recognition of the sacredness of marriage in *Griswold* thought the Court's holding in *Eisenstadt* a digression. But Justice Douglas' opinion focused only upon a particular aspect of the institution of marriage which, while tremendously important, is by itself incomplete, as the *Eisenstadt* opinion made clear. In *Griswold*, marriage was "a coming together . . . intimate to the degree of being sacred."[32] For Douglas it was the "sacredness" of the intimate relationship within marriage which required protection, and, as the Court recognized in *Eisenstadt*, such intimacy may occur outside the bonds of marriage.

Eisenstadt brushed aside the centuries-old legal tradition which defined acceptable and protected sexual activity as that occuring within marriage. To say that the community's interest in the "decision to bear or beget a child" must be the same for individuals whether married or not is to drain from the institution of marriage its *raison d'être.* With the *Eisenstadt* decision, the Supreme Court removed the essential distinction between the institution of marriage and nonmarital cohabitation.[33]

Slippery Semantics and Illegitimate Logic

Not surprisingly, the Supreme Court has also sharply limited the ability of the community to define what constitutes a "family." The most important decision within this series of cases is *Moore* v. *City of East Cleveland.*[34] In it the Court directly confronted the issue of whether a local community could define the term "family" as an institution based on marriage involving the family of husband, wife, and children. Mrs. Moore, who was living with her two adult sons and their sons, challenged East Cleveland's zoning ordinance on the basis that it excluded her "family" and would force her to leave the community at considerable hardship. While the ordinance contained an explicit exception for cases of hardship, Mrs. Moore had refused to apply for it.

The Supreme Court chose to view the controversy as a conflict between the family and the awesome power of the State. However, as Justice Stewart noted in his dissent, although Mrs. Moore's "family" reflected the living pattern of the matrifocal-extended family of lower-income ghetto and welfare households, East Cleveland was itself a predominantly black community with a City Commission and City Manager who were also black.[35] Those facts should have suggested to the Court that something more complex was occurring in East Cleveland than the struggle of one family for self-determination against government oppression. As Professor Robert Burt points out: "The purpose of the ordinance was quite straightforward: to exclude from a middle-class, predominantly black community, which saw itself as socially and economically upwardly mobile, other black families whose life style was most characteristic of the lower-class ghetto."[36] However, Justice Brennan found the city ordinance "senseless and arbitrary . . . eccentric . . . [and reflecting] cultural myopia."[37] A harsh judgment on the black citizens of East Cleveland!

Writing for the Court in the *East Cleveland* case, Justice Powell put the matter very simply: "We cannot avoid applying the force and rationale" of precedents such as *Roe* v. *Wade* and *Griswold* v. *Connecticut* "to the family choice involved in this case." He concluded, "The Constitution prevents [the government] from standardizing its children—and its adults—by forcing all to live in certain narrowly defined family patterns."[38]

Asa Gordon has described the importance of the family for the intergenerational climb out of poverty for black Americans who "were given their start by hard-working mothers and fathers who literally 'bore the burden in the heat of the day.' These mothers and fathers worked without any hope that they personally would ever 'lay down their heavy load' of unrecompensed toil but they saw the triumph of their children from afar and they toiled unceasingly that their posterity might have a better, fuller, and freer life."[39] This experience, of course, suggests an alternative rationale for East Cleveland's ordinance which is the opposite of "senseless and arbitrary." It is quite possible that the black citizens of East Cleveland understood that the stable, nuclear family based on marriage is vital to a low-income family's chances of moving out of the ghetto welfare culture and attaining economic independence. It is also possible that this community understood that the stability of such traditional families is the best social guarantee of the economic welfare of the community.

East Cleveland had unsuccessfully argued that its ordinance was consistent with that found constitutional in *Village of Belle Terre* v. *Boraas*. There, a suburban ordinance restricted land use to one-family dwellings and defined "family" as one or more persons related by blood, marriage, or adoption *or* not more than two unrelated persons. The ordinance was challenged by six unrelated college students who argued that the ordinance was a violation of equal protection and their rights of association and privacy. The Court treated the students' claim not as one involving family interests, but as an alleged right to compel the acceptance of a boardinghouse or fraternity house within a subdivision's zoning scheme. The Court noted that "a 'family' may, so far as the ordinance is concerned, entertain whomever it likes." It was precisely the blurring of marriage and cohabitation that the Court found especially significant for constitutional purposes, observing that "the

provision of the ordinance bring[s] within the definition of a 'family' two unmarried people."[40]

The Supreme Court's assault on the family based upon marriage as a unique legal institution has directly affected American social policy, especially in reshaping federal and state income-transfer programs. Beginning with its decision in *King* v. *Smith*, the Supreme Court moved to apply its new substantive due-process outlook to eligibility requirements in various antipoverty programs.[41] In *King*, the Court considered Alabama's regulation denying eligibility under the Aid to Families with Dependent Children Program households in which an able-bodied man either cohabited with the mother without marrying her or regularly visited her for purposes of cohabitation.

Alabama advanced two justifications for its action. First, it cited the long-standing interest of the community in promoting family life. Second, Alabama argued that since it did not provide AFDC to families where the husband was able-bodied but unemployed, principles of equal treatment mandated that it also deny aid to families which had "substitute fathers." To do otherwise would clearly grant preference to informal cohabitation relationships over legally recognized marriage. The Supreme Court was not impressed and invalidated Alabama's "substitute father" rule. It did so, the Court said, on the basis of the legislative history of Title IV of the Social Security Act. But in the next two welfare-eligibility cases, the Court made clear it did not matter what the legislative history indicated.

New Jersey Welfare Rights Organization v. *Cahill* was the first of two cases in which the Court struck down considerations of "marriage" or "family" as criteria for the distribution of public assistance.[42] New Jersey's welfare program provided financial assistance to families consisting of a household composed of two adults who were married to each other and who had at least one minor child. New Jersey sought to exclude unmarried, cohabitating couples as part of its attempt to strengthen the institutions of marriage and family. Significantly, its program was financed entirely by state money and therefore was under no obligation to comply with the provisions of the Social Security Act as interpreted by the Supreme Court in *King* v. *Smith*. The Supreme Court invalidated the law. In the Court's view it denied equal protection of the law to those living together without marriage and to their children.

In *United States Department of Agriculture* v. *Moreno*, a lower federal court invalidated a provision of the national food stamp program which required that for a "household" to be eligible for assistance it would have to be composed of individuals related by blood, marriage, or adoption.[43] The lower court reasoned that "Recent Supreme Court decisions make it clear that even the states, which possess a general police power not granted to Congress, cannot in the name of morality infringe the rights to privacy and freedom of association in the home." The Supreme Court upheld the lower-court decision; in doing so it said that a restriction based on marriage was "wholly without any rational basis."[44]

The decisions in *Cahill* and *Moreno* run parallel to the series of cases in which the Supreme Court eliminated legal distinctions between legitimacy and illegitimacy. Beginning in 1968 with *Levy* v. *Louisiana* and *Glona* v. *American Guarantee and Liability Insurance Company*, the Supreme Court moved to establish legally enforceable rights between the illegitimate child and its natural parents. In *Levy* the Court held that illegitimate children have a right to a wrongful-death action for the death of their mother, and in *Glona* the Court maintained that the mother had the reciprocal right of a wrongful-death action on the death of her illegitimate child. Later, in *Gomez* v. *Perez* the Court ruled that illegitimate children also had a right to child support from their natural father. With these cases the Court ended the view of the common law that the illegitimate child was the "child of no one." Henceforth, members of such informal families could claim legal rights similar to those of persons related by marriage or adoption.[45]

The Court then extended equal treatment for the illegitimate child beyond its biological relatives to the larger community and the provision of social services. In *Weber* v. *Aetna Casualty and Surety Company*, the Court ruled that workman's compensation benefits cannot be limited to legitimate children only. In its *Weber* opinion, the Court rejected the view that "persons will shun illicit relations because the offspring may not one day reap the benefits of workman's compensation."[46] When the question is put in that absurd fashion, who could disagree? But the real issue is much broader: Given the fact that such a relationship has resulted in a child's being born, or about to be born, what are the parents going to do about it? Or further, what is the community going to suggest the parents do about it? The traditional

legal structure, reflected only in part by the workman's compensation program invalidated in *Weber*, tilted the couple's decision-making process toward marriage as the best way of providing for their child. But following *Weber* and its companion cases, it is difficult to see from a legal viewpoint to what degree a couple can believe that they are actually doing something for their child by marrying. Indeed, after the invalidation of the "substitute father" rule in *King* and the Court's subsequent rulings in *Cahill* and *Moreno*, many couples may conclude that to marry may be to their child's economic *disadvantage.*

The second justification offered by the Court for its decision in *Weber* is a more serious one. As the Court put it:

> Imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as unjust—way of deterring the parent.[47]

Certainly, we should be far from the view of the common law that the illegitimate child is the child of no one and without rights in relation to its natural parents. When the Supreme Court moves in the direction of protecting inheritance rights for all children as it did in *Trimble* v. *Gordon*,[48] we should find it easy to agree.

However, the recognition of a legal responsibility arising from a biological relationship does not by necessity require the abandonment of legal distinctions between legitimacy and illegitimacy before the larger community. If ineligibility under the food stamp program is an unjust legal burden, it is one very much different from that imposed by the legal status of nonpersonhood in regard to one's putative family. To equate the two, as the Supreme Court has done, profoundly changes the economic function of marriage and the family.

'More Perfect Union' or 'New Feudalism'?

Professor Mary Ann Glendon writes of "the modern attenuated nuclear family with looser blood *and* conjugal ties, where jobs and entitlements of various sorts are the most important forms of wealth, and a person's status in the 'feudalism of the new property' is derived from his occupation or his dependency relation with government."[49] The transition from reliance on marriage, family, and the status derived from belonging to a family based on marriage to dependency upon the

attenuated informal family largely dependent upon government is all too evident. All too evident as well is the fact that, through cases such as *Weber*, *Cahill*, and *Moreno*, the Supreme Court has advanced this transition.

Whether the "legal burden" which prevented entry into this new feudal system worked to the long-term detriment of the affected children is an entirely different question. Certainly, if the family based on marriage is the best social vehicle for the intergenerational climb out of poverty, depriving children of the legal mechanisms which direct their parents into that relationship and give them incentives to stay in it may do nothing more than trade short-term financial advantage for long-term financial dependency.

An underlying objective of the Supreme Court in *King*, *Cahill*, *Moreno*, and *Weber* was the alleviation of child poverty by broadening eligibility under various income transfer and compensation programs. Not only does this objective remain today unfulfilled, but child poverty has increased. While the poverty rate for children generally exceeds the overall poverty rate, the relationship between the two rates has shifted dramatically during the last three decades. In 1959, for example, the child poverty rate was 4.5 percentage points greater than the aggregate rate. By 1969, that difference had fallen to only 1.7 percent. By the next year, however, that trend had reversed and continued to widen until it stood at 6.6 percentage points in 1984.[50] Certainly a number of factors produced this reversal, but prominent among them are decisions of the Supreme court in *King*, *Cahill*, and *Moreno* which redirected both federal and state income-transfer programs to provide substantial economic incentives for the creation of nontraditional families.

On the one hand, then, the economics of no-fault divorce mitigate against the family's heavy investment of private resources for child rearing. On the other hand, the government now directs significant public resources toward the welfare-dependent, nontraditional family. A study for the Joint Economic Committee of Congress by Professors Lowell Gallaway and Richard Vedder of Ohio University finds that the government provides a substantial economic incentive to child rearing outside the traditional family. Drawing on data from the late 1970's, Gallaway and Vedder reach two important conclusions: first, until a poverty child reaches the age of 12, welfare benefits actually exceed the marginal costs of raising the child; and second, by the time the child

reaches the age of 17, those benefits will exceed the cost of raising him by $3,000.

According to Gallaway and Vedder, "It appears that poverty among children was over twenty percent greater than it would have been in the absence of the massive post-1969 growth in the number and size of federal programs." If correct, that analysis translates into 2.5 million more children in poverty because of increases in public assistance.[51] This increase in child poverty cannot be disassociated from the new directions imposed upon federal and state income-transfer programs by the Supreme Court. It would appear that the same economic incentives (that is, large cash benefits) which affect a woman's decision to begin a family outside marriage may also influence her decision to seek a divorce.

Nearly 12.5 million women are raising children without a father. In a 1983 report issued by the United States Commission on Civil Rights, researchers concluded that divorce and illegitimacy account for "essentially all of the growth in poverty since 1970."[52]

Former Chief Justice Burger has warned that "by placing a premium on 'recent cases' rather than on the language of the Constitution, the Court makes it dangerously simple for future Courts using the technique of interpretation to operate as a 'continuing Constitutional Convention.'"[53] Justice Black's dissenting opinion in *Griswold* remains essentially unanswered. "Any broad unlimited power to hold laws unconstitutional because they offend what this Court conceives to be the 'conscience of our people' . . . was not given by the framers, but rather has been bestowed on the Court by the Court."[54] American family law has especially felt this profound shift in legal power.

Justice Black recognized that in these matters discretion for the Supreme Court lay in preserving the traditional jurisdiction of States and local communities over family law. Any re-examination of these questions by the Supreme Court which may return authority to the States should include a review of the underlying rationale of its prior opinions.

In that review it will not suffice to simply speak as did Justice Douglas of the "sacred precincts of the marital bedroom" or to praise marriage as an institution which is "intimate to the degree of being sacred." To view sexual intimacy or one's expectation of privacy associated with it as the defining characteristic of marriage, is to misunderstand the

precise point on which the unique position of marriage has been based within Judeo-Christian culture.

St. Thomas Aquinas summed up this tradition when he wrote that matrimony was a natural institution and that one of its principal ends was the good of the offspring. "For nature intends," he wrote, "not only the begetting of offspring, but also its education and development." To reduce the procreative end of marriage to simple sexual activity as the Supreme Court has done is to fundamentally re-define the meaning of marriage. To so casually effect this transformation in a case dealing with the use of contraceptives is not only one of the great ironies of contemporary jurisprudence, but an action which gives new meaning to the phrase "contraceptive mentality." Having lost the connection between the unitive meaning and the procreative meaning of marriage in *Griswold*, the result reached in *Eisenstadt* of equating sexual activity within marriage with that occurring outside of marriage was virtually inevitable.

The unique position of marriage in Western culture arose as a consequence of the Christian insight that the commitment of the spouses to one another was "faithful and exclusive until death." This irrevocable gift of one person to another within marriage distinguished it from all other relationships. Yet, it is this commitment of the spouses to treat each other as irreplaceable and nonsubstitutable that is precisely denied by cohabitation outside of marriage. Sexual activity outside of marriage by its very nature communicates to the other that he or she is replaceable, that a substitute may be found in the near future. Thus, outside the marriage bond or within a bond that may be easily dissolved, sexual activity ceases to be the unique gift of one person to another person.[55]

Indeed, in the faithful and exclusive commitments of both spouses is found the special dignity not only of the institution of marriage, but also of the persons who make this commitment. The uniqueness which encloses the couple within their marriage is inseparably linked to the unique person begotten through their gift of one to the other. The dignity which unfolds from this mutual commitment is itself manifested in the new person who issues from their marriage and whose dignity itself reaches back to further uplift the dignity of the couple's marriage. Thus, the inseparable bond between the unitive and procreative meanings of marriage through time manifests the dignity of each member of the family and of the family itself as an institution.

The Judeo-Christian tradition, in holding that one of the principal ends of marriage included the good of the offspring, developed through time a comprehensive legal structure around the institution of marriage to protect children. That structure was premised on the realization that there existed a profound connection between the begetting, nurture and education of children. Now that this unity has been shattered, it remains to be seen whether the good of children may be maintained. The fact that more than 12 million children now live in single-parent households and that such households account for nearly half the families now living in poverty suggests that the outcome will not be promising.

Contemporary jurisprudence as reflected by many recent Supreme Court decisions suggest that the community may no longer concern itself with the prevention of moral harms, but may properly only deal with economic injuries. The lessons of the last decade surely make clear that in matters dealing with marriage and family life the dichotomy between moral and economic harm is a false one. Moral harms produce real consequences which often appear in economic terms.

"To form a more perfect union," the framers of our Constitution provided a federal system in which communities retained authority to articulate normative values. Foremost among those values has been a recognition of the rights of the first society, the family. By ignoring those rights, the Supreme Court has set the institutions of marriage and family adrift among a variety of legally coequal forms of cohabitation. This approach has had far-reaching social and economic consequences. Even though neither emperors nor revolutions have been able to alter the fundamental role of the family, it remains to be seen whether even so resilient an institution as the family can survive the widening gyre of substantive due process in the hands of the Supreme Court.

NOTES

1. 367 U.S. 497 (1960).
2. *Id.* at 542
3. *Id.* at 542-43.
4. *Id.* at 547.
5. *Id.* at 544.
6. *Doe* v. *Bolton*, 410 U.S. 179, 222 (1973).
7. 381 U.S. 479 (1965); for an analysis of the *Griswold* case, see Bork, "Neutral Principles and Some First Amendment Problems," *Indiana Law Journal* 47 (1971), 1; Henkin, "Privacy and Autonomy," *Columbia*

Law Review 74 (1974), 1410.

8. 381 U.S. at 486.

9. See, for example, opinion of Justice Goldberg at 488.

10. 381 U.S. at 513.

11. 388 U.S. 1 (1967).

12. See, Wadlington, "The Loving Case: Virginia's Anti-Miscegenation Statute in Historical Perspective," *Virginia Law Review*, 52 (1966), 1189.

13. J. Ely, *Democracy and Distrust: A Theory of Judicial Review* (1980), 221.

14. *Supra* note 11 at 12.

15. Glendon, "Marriage and the State: The Withering Away of Marriage," *Virginia Law Review*, 62, 663, 668-669; Foster, "Marriage: A Basic Civil Right of Man," *Fordham Law Review*, 37 (1968), 51.

16. Drinan, "American Laws Regulating the Formulation of the Marriage Contract," *Annals* 383 (1969), 48, 49; Drinan, "The *Loving* Decision and the Freedom to Marry," *Ohio State Law Journal*, 29 (1968), 358, 376.

17. National Conference of Commissioners on Uniform State Laws, Uniform Marriage and Divorce Act of 1970 (with 1971 and 1973 amendments). The American Bar Association approved the UMDA in 1974. For a copy of the UMDA and Commentary see *Family Law Quarterly*, 5 (1971), 205.

18. 401 U.S. 371 (1971).

19. 434 U.S. 374 (1978).

20. *Id.* at 386.

21. Strickman, "Marriage, Divorce, and the Constitution," *Family Law Quarterly*, 15 (1982), 259, 316.

22. W. Weyrauch & S. Katz, *American Family Law in Transition* (1983), 1.

23. Glendon, "The New Family and the New Property," *Tulane Law Review*, 53 (1979), 697, 699.

24. 125 U.S. 190, 210-11, (1888).

25. See United States Commission on Civil Rights, *A Growing Crisis: Disadvantaged Women and Their Children* (1983), 62.

26. United States Bureau of the Census, *Current Population Reports: Consumer Income* (Series P-60, No. 145, 1984), 4.

27. J. Simon, *The Ultimate Resource* (1981), 4.

28 See, e.g., Cochran & Vitz, "Child Protective Divorce Laws: A Response to the Effects of Parental Separation on Children," *Family Law Quarterly*, 17 (1983), 327.

29. R. Posner, *The Economics of Justice* (1981), 328; see also, Strickman, "Marriage, Divorce, and the Constitution," *Family Law Quarterly*, 15 (1982), 259 and Bratt, "Incest Statutes and the Fundamental Right of Marriage: Is Oedipus Free to Marry?" *Family Law Quarterly*, 18 (1984), 257.

30. 495 U.S. 438, 453 (1972).

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The Costly Retreat from Marriage

Bryce J. Christensen

THE COSTS OF PROVIDING medical care in America, it is frequently noted, have skyrocketed in the recent past, and promise to continue doing so in the future. There is, of course, at least a partial solution to this problem, one involving little or no expenditure of either public or personal funds. This solution calls for an increased emphasis upon preventive medicine: exercising and dieting today help to avert heart disease tomorrow; not smoking now increases the likelihood of avoiding lung cancer later.

My purpose in writing this essay is to suggest something else that Americans can do on their own to improve their health, something that government ought to do more to encourage—Americans can get married and stay married. Quite simply, marriage, no less than jogging and lowering cholesterol intake, is good for your health. Although it is obviously up to individual Americans to decide whether to marry, stay single, or divorce, it is nevertheless past time for policymakers to acknowledge the profound health benefits of marriage: the nation's runaway medical costs could be partially controlled were government to implement policies that did more to foster and encourage longer-lasting, child-producing marriages.

The new evidence linking health to marriage and family life is voluminous. Writing recently in *Social Service and Medicine*, Catherine K. Riessman and Naomi Gerstel observe that "one of the most consistent observations in health research is that married [people] enjoy better health than those of other marital statuses." Drs. Riessman and Gerstel note that compared with married men and women, the divorced, single, and separated suffer much higher rates of disease morbidity, disability, mental neuroses, and mortality. "This pattern has been found for every age group (20 years and over), for both men and women, and for both whites and non-whites." According to James Lynch of the University of Maryland Medical School, the health advantage enjoyed by the married over the unmarried has actually grown in recent decades.

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Only a small fraction of the statistical health gap separating the married from the single and divorced can be accounted for by the common-sense observation that sick people either don't get married or don't make satisfactory marriage partners. According to Dr. Lynch, married people are healthier largely because marriage per se "influences the general life-style of the individual." In a study published recently in the *Journal of Health and Social Behavior*, Debra Umberson of the University of Michigan finds that mortality rates are "consistently higher" for the unmarried than for the married, because marriage exerts a "deterrent effect on health-compromising behaviors" such as excessive drinking, drug use, risk-taking and disorderly living. By providing a system of "meaning, obligation, [and] constraint," family relationships markedly reduce the likelihood of unhealthy practices. Interestingly, Dr. Umberson's research also underscores the difference between the widowed and the divorced. Although both groups have poorer health habits then the married, the habits of the divorced are far worse than those of the widowed.

In his research into the effects of marriage on health, Harold Morowitz of Yale University concludes that "being divorced and a non-smoker is slightly less dangerous than smoking a pack or more a day and staying married," adding facetiously that "if a man's marriage is driving him to heavy smoking he has a delicate statistical decision to make."

Happily and healthily wed

The advantage that the married enjoy over the unmarried in death rates due to cancer and heart disease is astonishing. The lung-cancer rate for divorced men is twice that for married men, while the rates for some forms of cancer (genital, buccal, and pharyngeal) are three to four times as high among the divorced. The pattern among divorced women, while not quite so stark, is similar. Among both men and women, the single and divorced die from hypertensive heart disease at rates between two-and-a-half and three-and-a-half times those found among the married. Dr. Lynch reports that even when their diseases are not fatal, divorced and single people stay in the hospital longer than do married men and women suffering from the same illness. This pattern of longer hospital stays is costing America "uncounted billions of dollars" every year.

Just as impressive are the mental-health benefits bestowed by marriage. According to Peggy A. Thoits of Indiana University, "married persons have significantly lower anxiety and depression scores than unmarried persons, regardless of gender." Dr. Thoits notes that married individuals appear to enjoy better mental health even when they have experienced more potentially traumatic experiences than the unmarried. Surprisingly, even the mentally ill sometimes find psychological benefits in marriage. The British medical journal, the *Lancet*, recently reported that in some cases marriages between the mentally ill prove "stable and may even show improved function. . . . The support provided by a shared mental disability may have a beneficial effect."

Some feminists have claimed that marriage benefits only men; but available health statistics show otherwise. While men do realize a somewhat greater health advantage from marriage than women, both sexes are clearly healthier if married than if unmarried. The latest findings only partially confirm Emile Durkheim's famous hypothesis that marriage is more important for the mental health of men than for that of women, while raising children is more important for women than for men. According to Dr. Umberson's 1987 study, "marriage and parenting relationships work together to deter health-compromising behaviors" for both men and women. In fact, for at least one disease—breast cancer—marriage protects women's health in particular, by increasing the likelihood that they will bear two or more children: a recent study at the University of Bergen in Norway found a correlation between the number of children a woman has borne and her likelihood of developing breast cancer, with the childless and the mothers of only one most vulnerable.

Nor is it just husbands and wives whose health is affected by marriage. In a study published last year in the *New England Journal of Medicine*, researchers at the National Center for Health Statistics found that unmarried women, compared with married women, run "a substantially higher risk of having infants with very low or moderately low birth weights." Because birth weight is one of the best predictors of infant mortality, many more illegitimate than legitimate babies die. The NCHS researchers believe that marriage exerts no "direct causal influence on the outcome of pregnancy," but that a life course that includes marriage is likely to be healthier than one that does not. (For example, unmarried mothers are more likely to smoke than married mothers.)

Though divorce is less threatening to a child's health than is illegitimacy, it still takes its toll. The *Canadian Journal of Psychiatry* reports that divorce increases the likelihood of mental disturbances among children, with over a third of children still "troubled and distressed at the five year mark" (after their parents' divorce). According to John McDermott of the University of Hawaii, "divorce is now the single largest cause of childhood depression." Dr. Lynch believes that parental divorce not only causes mental neuroses among children, but also contributes to "various physical diseases, including cardiac disorders," later in their lives. The *Journal of the Royal Society of Medicine* reports that members of single-parent families also complain more frequently of less serious maladies, including "headaches, backaches, tummy aches, listlessness, . . . depression, [and] a host of other ailments," than do those in two-parent households. Finnish health authorities at the University of Tampere find that children from non-intact families are much more likely to require medical attention for psychosomatic symptoms than children from intact families. The ailments, real and imagined, of children from single-parent homes may well persist, creating sizable public costs in the decades ahead.

The flight from marriage

The latest health findings should foster concern about falling marriage rates. In recent years, as the national media have glamorized the freedom and excitement of the single "life-style," an unprecedented number of young people have decided that marriage should be avoided—or at least postponed. Since 1970 the American marriage rate has fallen 30 percent, while the divorce rate has climbed 50 percent. By 1983 the average age at first marriage had risen to 24.5 for women and to 26.8 for men. If current trends continue, one American in seven will never wed. But the statistics already cited suggest that the fern bar and health spa may serve as mere way stations for singles headed for the hospital—or the cemetery.

During the 1970s, Americans witnessed what Lenore Weitzman has called "the divorce revolution." Within a decade, legislators in almost every state replaced traditional divorce laws with new "no-fault" statutes that made it much easier to dissolve a marriage. Cultural attitudes changed, as divorce shed its stigma as a "calamity" or "tragedy" and came to enjoy widespread acceptance as a simple "uncoupling," or

even a laudable act of "courage," a valuable "growth opportunity." Although the divorce rate has shown signs of leveling off, it is still 50 percent higher than it was in 1970. Demographers estimate that 44 percent of all marriages formed in 1983 will end in divorce. Weitzman has documented the harmful, if unintended, economic consequences of the divorce revolution for both women and children.

Epidemiologists are now accruing data on the harm done to health by the divorce epidemic. A 1984 study by the National Center for Health Services concluded that divorced women were not only less healthy than married women, but also more likely to rely on public assistance in securing medical care. This finding is especially striking because "the divorced population is somewhat younger than the married." Researchers at Case Western Reserve University have also found that marriage tends to provide some protection against serious physical illnesses even when the marital union is strained. In looking at couples who had once filed for divorce but then retracted their petitions, the researchers found that these reconciled couples were "less likely than the divorced to be sick enough to be in bed."

Clearly, public-health officials have reason to worry about what demographer Robert Schoen has described as America's "retreat from marriage." The medical costs created by this social trend will surely strain government programs such as Medicare and Medicaid. Indirect effects ought also to be taken into account. The social retreat from marriage not only drives up the nation's future medical bills, but also reduces the number of future taxpayers available to pay those bills. In explaining why our national fertility rate has languished below replacement level for more than a decade, Ben Wattenberg points to the trend toward fewer, later, and less stable marriages. Although illegitimacy rates have risen significantly since 1950, unmarried women still bear far fewer children than do married women. While the birthrate for married women aged 18-44 stands at 92.0 per 1,000 women (an historic low), the birth rate for unmarried women in the same age group remains much lower (33.4 per 1,000). Fewer babies now mean a much smaller tax base in thirty or forty years. Wattenberg believes that the "birth dearth" could cause Social Security to fail early in the next century, if—as is widely predicted—the Social Security trust fund is combined with the Medicare trust fund.

As low fertility erodes the tax bases, it simultaneously imposes higher

public costs for institutionalization of the elderly. Recent surveys show that taxpayers bear the burden of institutionalizing the elderly far less frequently when they are married and have three or more children than when they are single or divorced, or when they have few or no children. Looking at statistics from 1976, Stephen Crystal concludes that "the more children an older person has had, the smaller the odds of institutional placement." Historians have noted a similar pattern in the early years of this century. A 1910 Massachusetts survey found that almost 60 percent of the aged poor then living in almhouses or benevolent homes had no living adult children; a Pennsylvania survey in 1919 found that almost two-thirds of those living in almhouses had no living children; comparable statistics were reported in a 1929 National Civic Federation Survey conducted nationwide. Clearly, if fewer American marriages ended in divorce and fewer American families were small, nursing-home care would not consume 41 percent of all Medicaid expenditures.

Worse, however, is in store. Writing in the *American Journal of Public Health*, researchers from Vanderbilt University predict that the increased future costs of providing nursing-home care for aging Americans without children able or willing to care for them in their homes will be troublesome. The anticipated increase of $6 billion (in 1982 dollars) in nursing-home expenses by the year 2012, they warn, will "exacerbate . . . intergenerational conflict."

Policy implications

Public-health officials are already beginning to rediscover the importance of marital and family relationships in their fight to contain ballooning health costs. Richard Morse of Kansas State University sees "some movement, at present, to deny welfare or Medicaid to those individuals whose families cannot prove they are unable to perform that responsibility." Alexa K. Stuifbergen of the University of Texas at Austin likewise believes that "policymakers are increasingly looking to the family as a hedge against the rising cost of health care services."

This rediscovery of family responsibility could mark a positive step in reshaping public-health policy. Unless, however, it is matched by some policies that help intact marriages, the rediscovery of family responsibility could create economic injustices: it could push intact families to the end of the line of those responsible for paying for those

benefits. One possible approach would be to restructure Medicare rates so that married recipients pay a lower monthly premium than the unmarried. But it is politically unthinkable and ethically questionable for government to favor the married over the unmarried directly: millions of older Americans are unmarried because of the death of a spouse; many others either had no opportunity to marry or divorced only for the most serious of reasons, after making every effort at reconciliation.

Yet policymakers could benefit most young marriages by framing a tax policy that offers greater advantages to households with children present. First, tax reformers could raise the personal federal income-tax exemption for dependent children from $2,000 to $4,000. (Even at $4,000 the personal exemption would remain hundreds of dollars below its 1948 value, when adjusted for inflation.) Second, the income ceiling for the Earned Income Tax Credit could be raised—to perhaps $25,000 or $27,500—and the benefits could be scaled to the number of children in the home (while still restricting the credit to no more than the total payroll taxes paid by the recipient). Third, the current child-care tax credit could be universalized, allowing households with a stay-at-home mother to share the benefits now received by dual-income homes.

Admittedly, such a child-centered approach would help unwed and divorced mothers, but not childless couples and older married couples with no children at home. Yet the young married couple remains the most fertile unit and would therefore receive most of the benefits. Although married American women now bear fewer children than in past decades, only about one married couple in twenty is both childless and infertile. Even a cohabiting couple is only half as likely as a married couple to have a child in its household. Moreover, improving the economic status of the nation's children is a worthy policy objective in itself, quite apart from the gain for marriage. The two objectives of helping children and encouraging marriage could actually prove mutually reinforcing: married couples might well choose to have more children if some of the economic hardship of childrearing were eliminated, while children arguably provide the strongest cement for a marital union. It is no accident that the divorce rate dropped during the baby boom of the 1950s.

Many of the forces fueling America's retreat from marriage are ulti-

mately cultural, hence not under the direct control of policymakers in a liberal democracy. Nonetheless, policymakers must cope with the rising medical costs created by the flight from marriage. In discharging this responsibility, simple prudence suggests the need for approaches that will reduce these medical costs by encouraging marriage. At the same time, justice dictates that those who build successful marriages and families be relieved of at least some of the public burdens created by those who repudiate marriage. Child-based tax benefits could help achieve objectives without unfairly penalizing those who are unmarried for reasons beyond their control.

Love and Marriage

Ellen Wilson Fielding

BEFORE OUR WEDDING, our priest sent us off on something called an Engaged Encounter weekend. In the company of one priest, two married couples, and about seven other engaged couples, we discussed the typical challenges that marriage presents. The idea, from the couples' point of view, was to check off yet another Thing To Do on the list of wedding preparations. The idea, from the program's point of view, was to encourage couples who might be headed for trouble to grapple with the important issues they had been evading.

On our second evening, almost casually, our moderator mentioned, ". . . and of course you all know that in order to enter into a valid marriage you must intend, at some point at least, to have children, if God gives them to you. You don't have to set about starting a family right away, if you have a good reason for waiting, but marriage, to fulfill the Catholic definition, must be open to children."

You could see the jaws drop. Then, since most of this crowd were barely out of their rebellious teens, and many had never been accustomed to respecting authorities in the first place, the questions and arguments began. Why should two people who are in love, "and are even willing to get married in Church, and not just live together," be "forced" to have children if they don't want them? What if they just wanted to be together? Who was the Church anyway to say that . . . I know plenty of people . . . What about the people who just don't tell anyone they don't want children . . . .

I spared a thought for my grandmother who, when a year of marriage had elapsed without her betraying any signs of pregnancy, was questioned by her parish priest as to whether she was "doing anything" to avoid a baby. Oh brave new world.

The interesting thing about the objections of these couples was that they didn't seem to be personal. I doubt whether any couple in that room intended *never* to have children. Some may have meant to put off child-bearing into the indefinite future, and many probably intended to use contraceptives to plan the timing of the Blessed Events. Judging

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from surveys I've seen, a large number were probably thinking along the lines of "a boy for you and a girl for me, and that's all, please." But surely almost all of them wanted children at some point. So why the insurrection?

A couple of reasons spring to mind. Already mentioned is a rebellious attitude toward authority, taking a particularly American tone to my ears. I was reminded of playground squabbles that always seemed to end with the words, "It's a free country, isn't it?"

Related to the first reason is a kind of rebellion against the idea of imposed or ordained sacrifice. Yes, most of these young people intended to have children at some point, under acceptable conditions. But what if things didn't go as planned? What if promotions didn't come through or houses were priced higher than expected, or a second Great Depression hit the country or—whatever? Well, perhaps under those unanticipated circumstances, some of them would reluctantly decide not to have children. Of course, if their *present* intent were to have children in the future, however distant or contingent that future might be, then probably these couples were "covered," and their marriages would be considered valid. But these young people had, with a kind of innate honesty, sensed a difference between their kind of intent and their Church's kind. That somewhat skewed honesty wasn't going to persuade most of them to change their minds or their wedding plans. But it *was* going to make them try to change their Church's mind, in the person of its designated teacher.

But something else very important was going on, something that can be seen throughout American society and, indeed, modern Western society. That is a personalizing of marriage to fit a couple's style—like the personalized stationery that is meant to convey the sender's distinctive character. Some of the young people at our Engaged Encounter weekend protested that the Catholic Church should count herself lucky because they were "bothering" to get married rather than living together. Judging from their remarks, they saw only a slight difference between Christian marriage and simple cohabitation. Parents and other punctilious folk would feel better, the paperwork would be in place for forthcoming children, the wedding would be a fun affair.

But would an essential change in the relationship of the man and woman, now man and wife, have taken place?

There is such a change, of course. Even people who never thought there would be, or whose marriages have failed, usually come to recognize the difference that a marriage license makes. But the change is not merely psychological; husband and wife are living a different life, in a different relationship with each other, with society, with God.

Ancient peoples and most citizens of Third World countries would never confuse sex or the conveniences of cohabitation with marriage, but we Western romantics do it all the time. The couples I listened to thought that marriage was about being in love, about being so much in love that you knew it was "for real," so you could afford to take the otherwise large gamble of promising to stay with one another 'til death.

Falling in love is wonderful. Being in love helps married couples weather the periods of pain, misunderstanding and hardship that a shared lifetime brings. And as G. K. Chesterton pointed out, true lovers always want to bind themselves by unbreakable oaths. But marriage as an institution, as something of keen and enduring interest to relatives, society, governments and God, is not about falling in love. It is about inaugurating a (loving) union between a man and a woman which may or may not conform to the ideal of a grand passion. That union is symbolized and realized in a sexual union, which demonstrates the willingness of the partners to give themselves to one another completely and irrevocably, ceding over not only the present but the future, in whatever form it takes. Children are part of that promise of unfettered self-giving—they are the fruit of that promise.

They are the part of the promise that makes marriage interesting to governments. If husband and wife weren't willing to be "tied down" by children, there would be little reason for states to bother issuing marriage licenses or divorce decrees. Likewise, if marriage didn't imply solemn commitments to a future generation, there would be little reason for friends and family to give greater weight to wedding oaths proclaimed from an altar than they do to the private oaths sworn to a high-school sweetheart. The private oath, even when dignified by the bestowal of a class ring, produces (from the parents' point of view) little beyond a perpetual busy signal on the phone. The official marriage oath marks the ground-breaking ceremony for a new family.

Children have always been at the center of our understanding of marriage. Consummation has always been the final seal on marriage, its absence obvious grounds for annulment, not because sex equals mar-

riage (otherwise fornication would be the equivalent of a wedding ceremony, and adulterers would be bigamists), but because the conjugal act ratifies the couple's acceptance of their marital and parental roles. Husband and wife become propagators of the species and guardians of their young, even before there are any young to guard. Though the young couple do not make love "just" to have children, the *logic* of the annulment rule suggests that conjugal lovemaking should be open to new life. Extramarital sex, with or without the use of contraceptives, is not open to new life in the same way. Marriage creates an institutional openness to new life.

But the logic of marriage and divorce laws—and of tax and inheritance laws, as they affect families—has grown increasingly muddled in the past generation. The sexual revolution and the subsequent movements for women's rights and gay rights have blurred the traditionally sharp distinction between different categories of loving or lusting couples. In the latter part of the sixties, books and magazines began announcing the death of marriage and the family, while at the same time propagandizing for equal recognition of homosexual marriages and cohabiting couples. Since then, the law has granted semi-official status to gay and heterosexual liaisons in a variety of ways, such as protecting survivors from eviction when their names do not appear on a lease. During the same period, the state has removed from traditional marriage some of its ancient prerogatives, diluting the family's official status as *the* central and essential social institution.

When a judge awards custody of a child to a parent who moves in with a homosexual lover, for example, he permits the couple to playact at being a real family in the eyes of the law. Meanwhile, by sidestepping the question of whether such a living arrangement is likely to affect the child's sexual preferences or his attitude toward marriage, the state demotes marriage and the family from their unique position of primary responsibility for each generation's upbringing. Either the family is crucially important to society or it is not. If it is, a non-suicidal society will support and encourage healthy marriages and families—or at least refrain from *dis*couraging them.

But the problem is not confined to exceptional cases. Most no-fault divorces lack the fireworks of the sexy custody suits that make headlines in the tabloids. But the concept of no-fault divorce undercuts traditional marriage by removing official acknowledgement that the aban-

donment of a spouse and perhaps children is a public injury, even when the principals do not consider it a private wrong. Without even a pro forma announcement that one or both parties are doing something blameworthy, there is nothing to demonstrate society's recognition that something is at stake when marriages fail. Marriage isn't pretty words recited with fingers crossed; it is the deliberate, solemn establishment of a family, with the understanding that any children resulting from the marriage fall under the special guardianship of the parents.

In a true marriage (as distinguished from homosexual or heterosexual liaisons), children are a natural progression, a kind of emanation from the husband and wife. The spouses have promised not just a loving loyalty until death, but a love that will be made physical, that will bind their bodies as well as their minds and hearts. And this complete expression of love will, in the ordinary course of events, result in children, the most visible and substantial symbol of the couple's union, as well as the guarantee that that union won't remain a tightly closed circle.

The stereotypical lovers of great romances—especially the star-crossed variety—are willing to give all for love: friends, family, position, all that is outside the narrow circumference of their love. In *The Four Loves*, C. S. Lewis pictures friends standing side by side, looking out on the activities and interests they hold in common. Lovers are pictured gazing into one another's eyes: it is the other, rather than a shared occupation or ideal, that captures their gaze.

Marriage completes romantic love by satisfying the lovers' desire for self-surrender and the pronouncement of life-long vows. But it also alters this love by opening it up. It exposes the couple, in their moments of greatest privacy and deepest physical union, to the possibility of conceiving a child who will break their charmed circle and remake it, enlarged and enriched.

Where does this leave infertile couples? Despite the superficial similarity, married couples unable to conceive are in a radically different position from homosexual or heterosexual cohabitors. They are not perpetually adolescent lovers, like the intentionally childless, because they have had to work through the great pain and disappointment of failing to conceive the children they would have welcomed. They have had to discover substitutes for the opening up of the affections that most married couples find thrust upon them. And most basically, cou-

ples unable to conceive children have not been engaging in perverse or inevitably infertile methods of lovemaking—methods which never under any circumstances could demonstrate self-giving through an openness to new life. These are critical differences which draw infertile couples immeasurably closer to other married couples than to cohabiting lovers, of whatever sexual persuasion.

But the general principle remains. Marriage holds its special position *only* because of children, although couples marry for many reasons, of which the desire for children may only be a minor one. Whatever the motivations of the couple, however beautiful and deeply satisfying their relationship, their marriage is still about the begetting and rearing of children, as farming is about the cultivation of crops. The farmer may farm because he derives great satisfaction from working on the land, but satisfaction and contentment are, from the point of view of the corn or the soybeans or the Department of Agriculture, mere side issues. So with marriage.

In one way married couples complete the self-surrender desired by the romantic lover. But they do so by offering up that very romantic union, that two-made-one-flesh.

Children will not ordinarily end or limit their parents' love, but they will break open the lovers' locked gaze. Husband and wife will not only see, in one another's eyes, an eternal present; they will also see in their children the future they have brought into being and the past that brought them into being. The very act that expresses the spouses' special love extends the circle of the beloved.

Homosexual unions cannot achieve this. And I don't mean that they fail merely as a matter of mechanics. Childless heterosexual couples, whether or not they adopt children, can experience a similar opening up. But the acts performed by homosexuals have no bearing beyond themselves or the present moment. They barely extend across the desert of each partner's perverse desires. At best, homosexual unions remain fixated in a parody of star-crossed lovers. Or else, fruitless passions spent, they subside into the friendship of roommates. That ultimate stage of self-surrender that offers up even the dewy self-absorbed love which makes a marriage is forever closed to homosexual lovers.

I think of those couples I met on that Engaged Encounter weekend. Though their choice differed from that of couples who live together

outside marriage, they nonetheless resisted, at least theoretically, the implications of love-and-marriage. In their youth and buoyancy and optimistic expectations of life, they possessed an attractive sweetness. But—didn't they want more? Was the current schedule of Fridays-we-go-to-the-movies and Sundays-he-goes-fishing-with-the-boys and Wednesdays-I-meet-my-girlfriends-after-work going to go on and on? Probably not forever, since most of them saw children somewhere in their future. But then why act as if that wasn't what marriage was all about: reaching outside yourselves by means of the love you share.

In marriage, you make an offering of that springlike love, hoping you will gain something so special it will redeem the loss of what you started out with. And you accept that risk because it is the best way to be true to the loving vows that bind you. So you give yourselves to one another in a way that will show you intend, as human things go, a total gift. And that gift opens up your marriage to the appearance of a third—a potent rival for your affections, a magnet for eyes and hearts that once were absorbed only in one another, but also a sign and seal of your love.

Pulpits for Abortion

Marvin Olasky

WRITING IN *Playboy* in 1970, Dr. Robert Hall, president of the Association for the Study of Abortion, complained that the anti-abortion side had an unfair communication advantage. "On several occasions during the legislative battle to repeal New York's abortion law," Hall protested, "the state's eight Catholic bishops issued a joint pastoral letter that was read from the pulpit of 1700 churches."[1] Hall stated that "The advocates for abortion reform had no such power. Two national groups were organized, but they had little money and no pulpits."[2]

Hall was wrong. In 1970, pro-abortion thought controlled the most powerful pulpits in the land—the front pages and editorial pages of leading newspapers. Overall, in 1970 newspapers gave so many sermons favoring abortion that, in a narrative history of this sort, there is room enough only to point out typical coverage and highlights. On editorial pages, for example, the Cleveland *Plain Dealer* proclaimed that "Ohio's present abortion law is inadequate, unfair and inhumane."[3] The Detroit *Free Press* opined, "Repeal of Michigan's abortion law is an idea whose time has come."[4] The New York *Times* and the St. Louis *Post-Dispatch* ran repeated pro-abortion editorials.[5] The Chicago *Sun-Times* ran at least five between April and August, 1970, and claimed that man, like animal, must abide by "the fundamental instinct for survival of the species. Today it is overpopulation, not underpopulation, that threatens the species and the public weal."[6]

Turning to the more crucial news pages, an examination of hundreds of stories shows a treacly tendency to make abortion seem easy. The Omaha *World-Herald* quoted "Betty" describing her abortion experience: "I had to stay quiet for 15 minutes. When I got up, I felt like a brand-new woman. I felt so happy."[7] The Long Island *Press* quotes "Susan" telling the abortionist when the operation was over, "Oh, thank you, thank you."[8] The reporter added, "Within the next half hour she will have some cookies and a soft drink in the recovery

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lounge, fill out a few forms, pay a fee of $200 and be on her way back home"—probably skipping, the article seemed to suggest.[9] The Hartford *Courant* reported that abortion "is safe and usually without complications,"[10] and the *Oregonian* called abortion in Portland "a simple operation" that symbolizes "society's concern about overpopulation, pollution and survival."[11]

Similarly, the San Francisco *Chronicle* discussed "products of conception"[12] and—having dismissed the second patient in an abortion—proclaimed that "abortions can now be performed safely, efficiently and economically."[13] The *Chronicle* told how a typical young woman "came back from the abortion smiling and saying, 'I feel fine.'"[14] The reporter portrayed the woman putting on a "bright scarf over her hair" and telling her patiently waiting mother, "I'm starved. Let's go to lunch."[15] The reporter added that the abortion "procedure is so simple and over so quickly that they [women undergoing abortions] have no feelings of guilt."[16]

Stories on abortion typically portrayed pro-abortionists as merciful and anti-abortionists as closed-minded. The Memphis *Commercial Appeal*, under a headline "Hand of Mercy Extends in Abortions," indicated that pro-abortionists counseling pregnant women "are answering these women's needs."[17] A Newark *Evening News* headline concerning the governor of New Jersey read, "Cahill Vows to Keep Open Mind on Abortion Law Liberalization," with the implication that those opposed to abortion have closed minds.[18] Anti-abortionists who wanted to reopen the debate in states that had liberalized abortion rules were not considered to be promoting open-mindedness, however; a Washington *Post* story, "K of C Injects Abortion Issue Into Md. Races," insinuated that the Knights of Columbus were ruining democracy by forcing candidates to deal with something already decided.[19]

Some news stories that might seem "balanced" showed subtle tilting in two ways. One could be called "differential vividness": when the Baltimore *Sun* ran back-to-back paragraphs presenting opposed positions on abortion, one paragraph vividly emphasized the "agony" of pregnant women and "unwanted" children, and the other noted in abstract terms the position that there is "a human being from the moment of conception."[20] The two paragraphs were hardly balanced. A second quiet biasing came through the "ABABCCC" method of structuring a news story: quotations from the warring parties (ABAB) fol-

lowed by quotation from "experts" who could tell the confused reader which side was right (CCC). The "experts" always seemed to be pro-abortion.

Some newspapers dispensed with the ritual of objectivity on their news pages and journeyed straight to advocacy. When pro-abortionists circulated petitions for a referendum on unrestricted abortion, the San Francisco *Chronicle* led the cheers and notified readers that "information and petitions may be obtained by writing the Abortion Initiative Project, Box 734, Sunnyvale or calling 241-7990."[21] The *Chronicle* news pages also presented a how-to guide to an abortion, complete with free advertising for Planned Parenthood, which had taken an ardently pro-abortion position, and telephone numbers for abortion referral services.[22] Even the few large city newspapers with anti-abortion editorial pages, such as the San Diego *Union*, seemed swept along by the front-page onslaught.[23]

To Lader's delight, newspaper articles frequently suggested that only Catholics opposed abortion. The New York *Times*, for example, covered the New York legislature's tumultuous abortion debate in 1970 by noting frequently which assemblymen were Catholics, what comments had been made in which Catholic churches, and so on. The *Times* did not provide this service concerning legislators of other religious persuasions, and did not note that pro-abortion leaders also were proceeding out of their own world-views. For example, the *Times* contended that the pro-abortion bill's sponsor, Constance Cook, became involved in the abortion question not because of her philosophy but because she has "a talent for grasping complex issues."[24]

The touch of pro-abortion public relations skill was evident in other parts of the country as well. Many newspapers, including two of the Texas leaders—the Houston *Post* and the Dallas *Morning News*—ran a series of articles that amounted to little more than pro-abortion propaganda. A six-part series in the *Post* began, "Though even legal abortion is not without a small risk, the illegal ones are the real medical problems."[25] The third article in the series began with a quotation from a pro-abortionist: "People say an aborted child might have grown up to be President. There's a better chance he would have grown up to be the one who shot the President."[26] The article attacked anti-abortion laws that were "passed before women could vote, based on ideologies conceived by men."[27]

The Dallas *Morning News* series in November, 1970, began with the contention that "abortion has become a simple procedure when performed in early pregnancy by a physician in proper surroundings."[28] The first article of the series assumed that abortion should be legal and then went on about "untold mental anguish borne by the women who must sneak around, undergo humiliation at the hands of the abortionists and break the law in the process."[29] The second article in the series criticized the "inept blundering" of officials in a California hospital who asked a woman to "sign a fetal death certificate as 'maternal parent of the deceased.'"[30] The final article in the series followed the Lader line in blaming Catholics for getting in the way of progress: "Does the Catholic Church, a powerful political as well as religious force, have the right to impose its beliefs on the rest of society?"[31]

Newspapers that did not want to propagandize for abortion had many options available to them. The realism of these options is shown by the handful of newspapers that did not fall in line. The Indianapolis *Star* provided useful information by publishing a diagram showing the growth of unborn children within the womb.[32] The Buffalo *Evening News* used public documents to tally death totals that included unborn children as well as maternal fatalities: one of its stories began, "A total of 877 fetal deaths, the majority due to abortions induced by physicians under the new liberal state law, were reported by Erie County hospitals to the County Health Department in July and August. There were no maternal deaths."[33] The Cincinnati *Enquirer* interviewed doctors troubled by abortion: "I thought that I'd react differently—that I'd think it was better for the mother," the *Enquirer* quoted one doctor as saying. "That's the way I feel when I sit around and chat. But no, when you're in the operating room and look down into the gauze and see the little hands there, you think, 'I've just killed something.' It's awful."[34]

Those were rare exceptions. An examination of hundreds of articles shows the accuracy of Judge John Noonan's appraisal:

> The press was for the abortion liberty. Virtually every major newspaper in the country was on its side, as were the radio stations, the news commentators, the disc jockeys. the pollsters, the syndicated columnists, the editorial writers, the reporters, the news services, the journals of information and the journals of opinion. With the notable exception of three or four syndicated writers . . . every major molder of public opinion in the press was pro-abortion or indifferent to the issue.
>
> There was a massive barrier through which any news or opinion contrary to

> the liberty had to travel. There was not a single large urban newspaper regularly carrying the anti-abortion viewpoint the way Horace Greeley's *Tribune* had carried the anti-slavery viewpoint.[35]

Why was there such journalistic unanimity? To judge from the stories, reporters accepted the ideology of both Madame Restell and late 20th century radical feminism. Their stories portrayed abortion as freedom from exploitation, and saw any restrictions on abortion as discrimination against those economically poor.

Reporters also responded to power. Upper middle class lawyers who formed the leadership of the American Civil Liberties Union, politically conservative doctors who wanted autonomy in their practice, and welfare administrators who needed to make their budgets politically acceptable; all were pro-abortion. So were many wealthy philanthropists, tithing with religious fervor (after the image of John D. Rockefeller III) to dismantle what they saw as a population bomb. Together, these groups of individuals formed a powerful alliance that dominated abortion policy in both political parties until 1972, when Republicans began to move toward their present anti-abortion stance.

Within the executive branch, for example, Richard Nixon in 1969 and 1970 made four critical appointments that affected abortion policy. John Ehrlichman, who was pro-abortion, became domestic chief of staff; Louis Hellman, a director of the Association for the Study of Abortion, took the key spot for abortion policy in the Department of Health, Education, and Welfare; John D. Rockefeller III, who spoke for and heavily funded the pro-abortion forces, became chairman for a "Commission on Population Growth and the American Future"; and Harry Blackmun became a Supreme Court justice.[36] Although Nixon himself made a few politically useful anti-abortion comments, his administration included ardent pro-abortionists such as Reimer Ravenholt,[37] who helped to fund many pro-abortion conferences. Of Nixon's 20 appointees to the commission chaired by Rockefeller, 16 were pro-abortion, and it predictably recommended abolition of all abortion laws.[38]

Arrayed against all this were the poorest of the poor: unborn children. But the 20th century journalistic tradition of not paying attention to such invisible creatures made it easy for reporters to ignore them; reporters could win plaudits from the powerful and feel like crusaders for justice at the same time. Without danger of significant social

rebuke, leading journalists could be part of a larger trend in world views summarized well by *California Medicine* in 1970: the ethic of "reverence for each and every human life . . . is being eroded at the core and may eventually be abandoned."[39]

The change in ethics evidently came faster in media, medical, legal, and other leadership circles than in the populace generally. In 1972, although Detroit newspapers heavily supported a Michigan referendum to legalize abortion on demand through the first 5 months, 61% of Michigan voters said no. In North Dakota, 77% of voters turned down a similar referendum. Overall, despite clever tactics, overwhelming press sentiment, and the support of powerful interests, pro-abortion forces by the end of 1972 had been able to win unrestricted abortion in only 4 states, and various stipulations concerning mother's health, fetal deformity, and rape or incest cases, in 15 other states. Thirty-one states resisted any liberalization. The press had contributed to setting the agenda, but a Gallup Poll in 1972 showed 66% of all Americans opposing elective abortion.[40] Other public opinion surveys, as well as the limited amount of legislative action, indicated that newspaper readers could be led to abortion but would not drink it in.[41]

Roe v. Wade

Journalistic agitation to change abortion laws continued to be furious until January, 1973. In that month the abortion world turned upside down as the U.S. Supreme Court in *Roe* v. *Wade* mandated abortion anywhere without restriction during the first 3 months, abortion in hospitals without restriction during the next 3 months, and abortion in hospitals following paperwork during the final 3 months. Justice Blackmun's decision ostensibly refused to declare when human life began, but in practice it did exactly that, because hunters do not shoot at an object in the forest if it *may* be a human being.

The most influential U.S. newspapers all cheered. The New York *Times* called the decision "a major contribution to the preservation of individual liberties . . . it wisely avoids the quicksand of attempting a judicial pronouncement on when life begins."[42] The St. Louis *Post-Dispatch* called the decision "remarkable for its common sense" and "its humaneness."[43] The *Christian Science Monitor* applauded the Court for its willingness to "stretch the application of the 14th Amendment," and ended its editorial with a sentence, "The Court continued to be unpredictable, and in this delicate case, we think it was right."[44]

The press verdict was not unanimous. The Indianapolis *News* called the decision "a shocking inversion of fact" and a "grim Orwellian reversal of the simplest ethical values."[45] Some smaller city newspapers, such as the Orlando *Sentinel*, were prophetic:

> The devaluation of morality induced by abortion on demand could, and in all likelihood will, have far reaching effects. Among them are the promotion of promiscuity, depersonalization of the concept of life and activating the destruct button on the family unit as we know it . . . And what of the woman herself? Abortion by whim could have grave future consequences to her. There is enough unavoidable pain in living without inflicting on oneself, in a period of extremity, the haunting memory of a child that might have been.[46]

A few newspapers raised constitutional questions: The Omaha *World-Herald* argued that abortion was a concern for "legislators, not of would-be legislators and sociologists on the nation's highest court,"[47] the Norfolk *Ledger-Star* proposed that it would have been "much wiser and safer for the court to have let the states continue to handle the problem,"[48] and the Birmingham *News* complained of "raw judicial power."[49] But most editorials examined for this chapter, and particularly those from nationally influential newspapers, were jubilant.

Many editorial writers wiped off their crystal balls and predicted an end to the abortion debate. The Des Moines *Register* said goodbye to "emotion-charged hearings" on abortion,[50] and the Louisville *Courier-Journal* praised the Court's "bold and unequivocal decision" for virtually ending the war.[51] The Milwaukee *Journal* declared that "politicians and policemen and judges" would no longer have to be concerned with the "distractive" issue.[52] The New York *Times* was less positive, but hoped that the "emotional and divisive public argument" concerning abortion would be over now that there was "a sound foundation for final and reasonable resolution" of the debate.[53]

The Brezhnev Doctrine of Abortion Politics

News pages followed the slant of the editorial column: abortion was part of the 1960s and early 1970s agenda and was now a dead issue. Just as Soviet leader Brezhnev proclaimed at this time that a nation brought under Communist control would never be allowed to leave it, so newspapers stated or implied that there was no turning back on abortion. For example, the Dallas *Morning News*, under a headline "Mechanics More Than Morality Main Concern," suggested that ethical issues would now be put to rest as questions of efficient provision of

abortion came forward.[54] The Milwaukee *Journal* reported that the abortion issue was "resolved."[55] The Fort Worth *Star Telegram* hailed abortion as a growth industry, "a booming reality at Fort Worth hospitals."[56] A Cleveland *Press* headline read, "Everyone seems calm about abortions here."[57]

And yet, opposition to abortion continued, and began to increase. In Cleveland, for example, anti-abortion partisans were staging protests a few days after the headline proclaimed calm. The story did not die, and news pages continued to run pro-abortion stories. Reporters typically described abortion as easy for women; the Oakland *Tribune* told of how women "can stay for a while if they like after the operation, but they can leave almost immediately if they want, as the procedure is very easy."[58] Newspapers cheered anticipated price reductions for abortion and complained when the prices did not come down as fast as expected.[59] The San Antonio *Light* provided free publicity for a Planned Parenthood Wine and Cheese Fest designed to raise funds for a lower cost abortion center,[60] and the Atlanta *Journal* publicized a "pregnancy termination clinic" described as "a clean modern facility": the last paragraph of that story read, "The pregnancy termination clinic is located at 81 Peachtree Place NW and the telephone number is 892-1553."[61]

The New Good Guys

Madame Restell had to pay for her advertising, but newspapers helped abortionists for free and refurbished their images, as Madame Restell had tried to refurbish her own by claiming experience in the great hospitals of Europe. A Chicago *Sun-Times* profile of abortionist T. M. Howard called him "a long-time civil rights advocate" and noted that he was director of the finance committee for Operation PUSH and Tabernacle Community Hospital. His clinic, soon to open a "division of pregnancy termination," was "as equipped as most hospitals—but its decor looks more like a Loop dress shop than a hospital. The entire place is carpeted."[62] The Cleveland *Press* quoted local abortionist Robert H. Schwartz as saying, "I enjoy helping people and therefore I enjoy doing abortions."[63] Anti-abortionists were not quoted.

The Detroit *Free Press*, under a headline "Abortion Pioneer Reflects On Years of Abuse, Shame," told of how one man "has been called killer, money-driven, cold, he has been jailed and beaten. But at 60, Dr.

Edgar Keemer still does what has been his life's work—he performs abortions."[64] The article described him as a saint who had undergone persecution but had persevered for humanitarian reasons. Now that many newspapers were trying to push the abortion issue off the agenda, reporters glamorized such "pioneers" and did not challenge assumptions that legal abortion meant safe abortion. When the Detroit chapter of the National Organization for Women gave a "good" rating to the "quality of abortion procedures in Detroit," the Detroit *Free Press* accepted that evaluation and did not bother to send out its own reporters to investigate.[65]

Abortion coverage immediately following the *Roe* v. *Wade* decision could have been handled very differently, and in a few cases was. One Milwaukee *Journal* article, "Abortion Business Here is Brisk and Efficient," described first the women in crowded abortion business waiting areas, and then the men: "About 30 men stood or sat against the walls, looking worried, guilty, or just stony eyed. 'The casket faced brigade,' an assistant at the clinic called them. The air was hot and thick with smoke. 'It's like cattle,' one girl said as she left after her abortion."[66] A second atypical article, published in the Dallas *Morning News*, noted that "Some psychiatric consequences ranging from mild regret to deep depression can be expected in the next few years as the Supreme Court's decision on legal abortion is implemented."[67] But such articles were rare, and were overwhelmed even in their own newspapers by pro-abortion coverage, and by attacks on "naively simplistic" anti-abortionists who "post the gory pictures on the wall."[68] Major newspapers declared on both their news and editorial pages that the abortion war was over.

Throughout 1974 and 1975, news pages continued to present abortion as a practice disliked largely by Catholic leaders and embraced by others; journalists distorted public opinion findings to the contrary.[69] Reporters assumed that legalizing abortion made it safe for women, even though abortion practices were not very different from when they were illegal.[70] They also continued to report, frequently, that the Supreme Court legalized abortion only in the first trimester, instead of noting that, according to *Roe* v. *Wade*, abortion could not be prohibited at any stage of pregnancy. As other Supreme Court decisions extending *Roe* v. *Wade* emerged during the mid-1970s, most major

newspapers stayed firmly in the pro-abortion camp. And yet, anti-abortion forces grew as more evangelicals entered Abortion War II.

In 1976, the Supreme Court voted 6-3 that states could not require a woman to obtain her husband's consent to an abortion, and 5-4 that states could not require all women under age 18 to obtain parental consent. Editorials in newspapers such as the Los Angeles *Times*, the St. Louis *Post Dispatch*, the Cleveland *Press*, and the Chicago *Daily News* praised the Court.[71] The Arizona *Republic* criticized the decisions as extreme,[72] but the Providence *Journal* took the typical press position of arguing that "The Supreme Court has taken a reasoned and moderate view."[73] A New York *Times* editorial provided a public tribute to pro-abortion public relations by proclaiming, "One would hope, with Ilse Darling of the Religious Coalition for Abortion Rights [a leading pro-abortion group], that the Court's reaffirmation of this most intimate of privacy rights might ultimately drain some of the heat from the abortion issue."[74]

During the 1976 election campaign, many reporters again tried to declare abortion off the agenda. The Washington *Post* stated that the abortion issue "has in fact got somewhat overblown and out of hand."[75] The Los Angeles *Times* urged "proper perspective"[76] and the Boston *Globe* wanted to place "the abortion question in perspective," which meant off page 1. Editors at the Cincinnati *Post* also wanted to sideline the abortion issue and replace it with "plenty of issues begging for definition and debate."[78] The New Orleans *States Item* complained that abortion is "one of those emotional, divisive issues."[79] The Milwaukee *Journal* editorialized that all should accept the Supreme Court's decisions and not urge a Constitutional amendment: "Certainly the wisdom of changing the nation's organic law to reflect one side of a closely divided moral controversy is questionable."[80]

Sometimes the same pro-abortion lines were visible in editorials from newspapers in different parts of the country. In 1977 a Rochester *Democrat Chronicle* editorial calling for federal payment for abortions quoted a Planned Parenthood director as saying that a woman "asked us which was the better method [for abortion], turpentine or a coat hanger."[81] The Memphis *Commercial Appeal* used the same line: "What do you do when a woman wants to know if it's safer to use a coat hanger or turpentine?"[82] When journalists were not pulling lines from Planned Parenthood press releases, it seemed they were asking

readers to send in money to pay for additional releases. For example, in Kansas City the *Times* suggested that readers contribute to "Planned Parenthood of Western Missouri and Kansas," because "the choice [is] between Planned Parenthood and the back-alley quacks of old."[83] The Kansas City *Star* similarly praised "the good work of Planned Parenthood."[84]

The press sermonizing, on both editorial and news pages, was virtually a constant. The Chicago *Sun-Times* even ended one news story with the reporter's homily about how "women who elect abortion show love . . . Abortion as love may be a bit much for anti-abortionists to understand, but the current movement is to regard abortion as a positive experience."[85] In retrospect, it seems remarkable that anyone stood up to the massive media barrage; but anti-abortionists did, as succeeding chapters in this volume show.

NOTES

1. *Playboy*, September, 1970, pp. 112-115, 272-276.
2. *Ibid.*
3. Cleveland *Plain Dealer*, March 29, 1970.
4. Detroit *Free Press*, January 20, 1970.
5. For example, St. Louis *Post-Dispatch*, April 12, 1970.
6. Chicago *Sun-Times*, July 31, 1970. The *Sun-Times* also used bandwagon appeals, noting that "the list of states with modernized abortion laws is growing. . . . We believe Illinois, a supposedly enlightened state, should not be at the tag end of this particular parade."
7. Omaha *World-Herald*, October 4, 1970.
8. Long Island *Press*, December 20, 1970.
9. *Ibid.*
10. Hartford *Courant*, October 9, 1970.
11. *Oregonian*, March 1, 1970.
12. San Francisco *Chronicle*, May 5, 1970.
13. *Ibid.*, April 11, 1970.
14. *Ibid.*, November 6, 1970.
15. *Ibid.*
16. *Ibid.*
17. Memphis *Commercial Appeal*, October 3, 1970.
18. Newark *Evening News*, March 11, 1970.
19. Washington *Post*, September 18, 1970.
20. Baltimore *Sun*, April 24, 1970.
21. San Francisco *Chronicle*, May 5, 1970.
22. *Ibid.*, May 6, 1970.
23. See, for example, San Diego *Union*, January 29, 1970, and San Diego *Tribune*, December 15, 1971.
24. New York *Times*, April 9, 1970.
25. Houston *Post*, September 27, 1970.

26. *Ibid.*, September 29, 1970.

27. *Ibid.*

28. Dallas *Morning News*, November 15, 1970.

29. *Ibid.*

30. *Ibid.*, November 16, 1970.

31. *Ibid.*, November 25.

32. Indianapolis *Star*, September 13, 1970.

33. Buffalo *Evening News*, September 29, 1970.

34. Cincinnati *Enquirer*, September 27, 1970.

35. John Noonan, *A Private Choice: Abortion in America in the Seventies* (New York: The Free Press, 1979).

36. Noonan (pp. 41-45) discusses the Nixon administration's role in abortion.

37. Head of the Population Affairs section of the Agency for International Development.

38. Commission on Population Growth and the American Future, *Population and the American Future* (Washington, DC: Government Printing Office, 1972).

39. *California Medicine*, September, 1970, pp. 67-68. The article urged doctors to adopt pro-abortion standards in order to become leaders "in what is almost certain to be a biologically oriented world society."

40. Judith Blake, "The Supreme Court's Abortion Decisions and Public Opinion in the United States." *Population and Development Review 3* (1977), p. 52.

41. *Ibid.*

42. New York *Times*, January 24, 1973.

43. St. Louis *Post-Dispatch*, January 28, 1973.

44. *Christian Science Monitor*, January 29, 1973.

45. Indianapolis *News*, January 26, 1973.

46. Orlando *Sentinel*, January 28, 1973.

47. Omaha *World-Herald*, January 28, 1973.

48. Norfolk *Ledger-Star*, January 23, 1973.

49. Birmingham *News*, January 28, 1973.

50. Des Moines *Register*, January 23, 1973.

51. Louisville *Courier-Journal*, January 24, 1973.

52. Milwaukee *Journal*, January 24, 1973.

53. New York *Times*, January 24, 1973.

54. Dallas *Morning News*, January 23, 1973. The lead was, "Immediate reaction to the Supreme Court's Liberalized ruling on abortion Monday seems to have People here more concerned about its mechanics than they are its morality." It was not clear which people the reporter interviewed, because the first 14 paragraphs of the story quoted speculations by unnamed doctors, and the two hospital administrators mentioned by name refused comment. The last three paragraphs of the story did quote a Catholic bishop and an anti-abortion group leader, both of whom expressed moral concerns.

55. Milwaukee *Journal*, January 23, 1973.

56. Fort Worth *Star Telegram*, February 13, 1973.

57. Cleveland *Press*, August 9, 1973.

58. Oakland *Tribune*, May 4, 1973.

59. Baltimore *Sun*, January 23, 1973; *Atlanta Constitution*, February 15; Dallas *Morning News*, February 19; Detroit *Free Press*, February 23; Des Moines *Register*, March 4, Milwaukee *Journal*, August 12. See also Dallas *Morning News*, July 2.

60. San Antonio *Light*, February 20, 1973.

61. Atlanta *Journal*, March 18, 1973.

62. Chicago *Sun-Times*, February 28, 1973.

63. Cleveland *Press*, March 14, 1973.

64. Detroit *Free Press*, May 7, 1973.

65. *Ibid.*, May 9, 1973. The *Free Press* did better in 1974, sending female reporters undercover to 12 abortion businesses. At those businesses all of the reporters were told they were pregnant, even though they were not. The *Free Press* did not see a general problem with the nature of the abortion business, however;

it praised one of the abortion businesses for being "caring, warm and sympathetic."

66. Milwaukee *Journal*, February 11, 1973.

67. Dallas *Morning News*, April 20, 1973.

68. Houston *Post*, June 20, 1973.

69. The Noonan and Burtchaell books examine poll data and press use of them.

70. Abortion, legal or not, was still blind surgery, generally performed by a doctor without knowledge of the patient or her medical history.

71. Los Angeles *Times*, July 5, 1976; St. Louis *Post Dispatch*, July 2; Cleveland *Press*, July 17; Chicago *Daily News*, July 2.

72. Arizona *Republic*, July 9, 1976.

73. Providence *Journal*, July 3, 1976. The view was "moderate" because the Court had said states could "require a woman to give her written consent before having an abortion."

74. New York *Times*, July 3, 1976.

75. Washington *Post*, February 11, 1976.

76. Los Angeles *Times*, September 12, 1976.

77. Boston *Globe*, September 20, 1977.

78. Cincinnati *Post*, August 6, 1976.

79. New Orleans *States-Item*, February 6, 1976.

80. Milwaukee *Journal*, September 5, 1976. The *Journal* did not point out that the Supreme Court had done exactly that in 1973.

81. Rochester *Democrat Chronicle*, October 22, 1977.

82. Memphis *Commercial Appeal*, December 9, 1977.

83. Kansas City *Times*, February 4, 1978.

84. Kansas City *Star*, March 11, 1976.

85. Chicago *Sun-Times*, January 21, 1974.

On Murder

Erik von Kuehnelt-Leddihn

MURDER IS EVIL, BUT THIS IS NOT as universally recognized as many of us assume. There are even linguistic difficulties in regard to this problem—not in English or German, but in many other languages. In English (and German) we distinguish neatly between murder (killing with malice aforethought), manslaughter (killing accidentally), killing or slaughtering (a beast). American laws distinguish between "first" and "second degree" murder. There is, moreover, the general term "homicide." The romance languages are less subtle; Russian is circumlocutory in its distinctions, Latin and Greek very simple, and Japanese has only one verb for all sorts of killing. Whether killing another person is legal or "socially acceptable" varies from one civilization to another and is usually conditioned by *religious* concepts.

Thus we have, at one end of the scale, the Indian *Jains* who sleep with a strip of gauze on their mouths in order not to inhale and thereby kill an insect. The *Jains* were "competitors" of the Buddhists who, if orthodox, always recoiled from taking a life. Pious Japanese Buddhists even today do not eat "four-legged animals," an attitude that is of Hindu origin. (A genuine Indian curry consists of vegetables, and some Hindus will not even eat eggs.) People who handle skins and furs (or produce leather goods) were rarely respected by Hindus and Buddhists,[1] but it would be naive to believe that this reluctance to kill animals automatically produced a pacific or humanitarian civilization. Indian history is by no means one of non-violence (Gandhi notwithstanding), and *suttee* (the burning of widows) was always practiced under strong social pressure.[2]

In certain primitive civilizations murder and manslaughter are widely practiced and sometimes institutionalized; among the Anuca Indians of eastern Ecuador a baby that cries too much is put into a hole in the ground and trampled on until it expires. ("Let's have another one that cries less," is the attitude.)[3]

One might be tempted to attribute such an attitude to mere savages, but nobody would call the Chinese, with their culture of more than

Erik von Kuehnelt-Leddihn, when not travelling the world, lives in the Austrian Tyrol.

5000 years, "savages," yet they traditionally killed baby girls as useless additions to the family (or threw them to their voracious cats). This practice continues, and may be even more widespread today because a Chinese couple is not permitted to have more than one child and if this happens to be a girl, she might "meet with an accident." (The cats are more or less gone!)

It is obvious that infanticide was widespread in non-Biblical civilizations: the Roman *pater familias* had the right to decide the fate of his newborn child, and the slave, according to Roman law was *res*, i.e., a thing that could be disposed of,[4] and we know of fishponds that were supplied with their flesh. In Christian Eastern Europe, the killing of a serf was always considered plain murder, and punished as severely as the murder of a freeman or a nobleman. Human nature after the Fall, being what it is, tends to bestial cruelty. The death of gladiators was sometimes manslaughter, but sometimes plain murder, especially if the public, with thumbs turned down, demanded the slaying of a poor wretch begging for grace.[5]

Capital punishment (almost always performed publicly), on the other hand, was used sparingly in South, Central and East Europe, more frequently in the North. Madame d'Aulnoy (1650-1703) in her *Relation du Voyage d'Espagne*,[6] tells us of only three or four executions annually in Spain; the condemned man appealed to the onlookers who usually protested the hanging as an infamy.[7] In the Papal States executions were equally rare, and the murderers condemned to the galleys (of which the Pope had none) were put to work on the roads where their families could visit them. The few condemned to the gallows were cared for spiritually by a fraternity founded for that particular purpose.[8]

In old Russia, where murder and manslaughter were quite frequent, the punishment was extremely mild. During the long stretch of history between Catherine the Great and 1917 there was frequently no capital punishment. The reader might recall the police commissioner in Dostoyevski's *Crime and Punishment* saying to a double-murderer: "You are still young and after a few years in Siberia, you might take up an ordinary life again!" Jurors often decided on manslaughter rather than murder if the accused was a "likeable person" (the Russian judges were given little leeway in meeting out punishments). Exile was a very mild form of punishment, primarily for political offenders. Lenin, who got

three years of *ssylka* (exile), thus had the time to write his only real scholarly work. His wife complained in a letter to the Governor in Irkutsk that she had only a simple maid and could not afford a cook in addition.[9]

The frequency of murder and manslaughter (as well as suicide) varies considerably in different parts of the globe. Even within a nation the data often vary from region to region. Taking the statistics of 1967,[10] we find the following low and high records: Spain, one in a million inhabitants; The Irish Republic, three; Great Britain, seven; Austria, ten; Germany, 12; Canada, 13; the United States, 53;[11] Mexico, 193; Colombia, 254; Nicaragua, 293; and El Salvador, 319. No less interesting is the study of statistical maps for the occurrence of crimes in pre-World War I Germany and Austria. There are remarkable varieties denoting *tribal* characteristics, but unfortunately these maps do not distinguish between murder and manslaughter. Tribal differences are, largely, also racial and have little to do with either political-ideological or denominational convictions.[12] In turn, however, religious convictions are one *factor* (among many) to be reckoned with, although here again one must warn against a crude identification of religiosity and ethics. Undoubtedly there must be Sicilian *mafiosi* who go to church regularly and consider their criminal activities as some sort of "warfare."[13] And remember the feuds of the Middle Ages, which the Church had the greatest difficulty in suppressing. The same was true of dueling which, in Catholic countries, disappeared slowly only in this century.[14]

It indeed takes centuries for Biblical moral precepts to take root in a nation—and how quickly they can be destroyed! Under the neo-pagan impact we have experienced delirious horrors in France, Germany, Russia and Spain, once the lands, respectively, of "the Most Christian King," the Holy Roman Emperor, Holy Mother Russia, and the Catholic Kings. And yet we can say that in our Western civilization Hebrew-Christian ethics roughly prevail and, at the beginning of this century, certainly still went unchallenged. This, however, is no longer the case. In a "permissive society" the sanctity of human life is under attack, as are all the other values of our common religious heritage: piety, marital fidelity, chastity, obedience, honesty, loyalty, honor, truthfulness, devotion, sincerity, charity. These values are not universally recognized but, because they are essential for a good society, they are accepted here and there even outside the fold.

Coming back to linguistics, we encounter an interesting fact: what about the words *assassin, assassinate, assassination*? They are not of Germanic, nor of Latin or Greek, but of Arab origin and derive from the word *hashish*. At the time of the Crusades the *hashashinim* (assassins) were a Shiite (Ishmaelite) sect in northern Syria where they ruled in small principalities. They practiced murder on a large scale and their method was to intoxicate young men with hashish under whose influence they were "taken care of" by beautiful girls. When they came out of their dreams they were entrusted with the killing of crusaders or suspect Moslems. "After all," they were exhorted, "you know what Heaven has in store for you and if you are killed in this glorious action, you will go there straightaway!" The young men were, of course, only too willing.[15]

Whereas the New Testament never ever encourages killing, never advocates war or capital punishment, *Sharia*, the Moslem law based on the Qurân, is very different.[16] It is a religion of fire and sword, insisting on the physical conquest of the world. The Biblical faiths, on the other hand, *permit* killing in war and self-defense, in the service of justice as a last resort, but never the killing of innocents. (The civil authority, however, as *Romans* 13:4 says, "carries the sword not in vain.") Capital punishment can be understood only as a self-defense of society, but it must be admitted that views concerning the gravity of guilt have changed in the course of the centuries. And one must not forget that Christianity, too, is not static, but rather a continuously-developing religion. A tree remains on the same spot and retains the same trunk while, due to the growth of branches, its shape will change, as will its shadow.[17] Thus the considered *gravity* of a crime (not its fact or the sin it represents) and the concomitant punishment do not remain the same. However, there are true invariables, one of them being murder, whereas (genuinely unintentional) manslaughter might not even be a venial sin. In the Middle Ages the culprit, in this case, was forced to pay an indemnity: the higher the victim's status, the higher the *Wergeld*. Interestingly enough, it cost as much to kill a Hebrew as to kill a priest or a knight, partly because a Hebrew was related to Our Lord, and partly because he was in many cases directly attached to a prince or a king.[18]

In the Hebrew as well as the Christian tradition, murder assumed a very special place among the various sins. In the Bible, it was the first *sin* recorded after the Fall: Cain slew Abel with malice aforethought. A

dialogue followed between God and Cain who was warned that the earth, soiled by the blood of Abel, would yield him no fruits and thus Cain built the first city. (This implies that cities are "Cainitic," in a way cursed, and only the countryside reminds us of Eden. Cain went "east of Eden"!) God does not smite Cain. On the contrary, He marks him with a sign telling people that he must not be killed, that his life must be spared in order to give him the chance to expiate his grave sin. He had destroyed a human being created in the image of God, and thus had turned against God Himself, Lord over life and death, with whose plans he had tried to interfere. During the early Middle Ages only murder, adultery and apostasy debarred a Christian from Holy Communion. At a later period more rigorous regulations set in due to monastic influence.[19] In the Catechism, murder figured as the worst of the four "sins crying to Heaven for vengeance," the others being sodomy, persecution of widows and orphans, and the refusal to pay due wages.[20]

While life on earth is not the greatest good (the Maccabees and, later, the Christian martyrs demonstrated this), it is nevertheless sacred and must not be taken wilfully from anybody who has not, through his own doing, "forfeited" it. This implies human judgment which, of course, is not infallible. Therefore capital punishment should be used very sparingly. The real problem concerning capital punishment, however, is *not* the death of the culprit, but the role of the executioner. We all have to die sooner or later, but we can avoid taking a life. It is difficult to see how the career of a hangman could lead to sanctity. In the old Christian tradition the executioner therefore asked forgiveness from his victim and (unlike the soldier)[21] lived in social isolation. To extinguish a human life, even in the service of justice and the State, was not considered a decent, socially-acceptable occupation. True, there is no dogmatically founded Christian tradition against capital punishment, nor is there such a pacifist tradition, as we have said before. Soldiers and officers often play an honorable role in the New Testament.[22]

The first strong and effective protest against the burning of witches came from a Jesuit and German nobleman, Friedrich von Spee (who was also the greatest German lyric poet of the 17th century), and the outstanding protagonist against torture and capital punishment was the Italian Marchese Beccaria, in the service of the Habsburgs.[23] A highly humanitarian tradition prevailed in Europe's south, and Tuscany, then

under Habsburg rule, was the first country to abolish capital punishment. Benjamin Rush, one of America's Founding Fathers, deplored that such a reactionary country preceded the United States in this humanitarian action.[24] For long stretches in modern history, as we said, Russia did not have capital punishment except for attempts against the life of the emperor and members of his family. (It was abolished by Catherine II, revived by Paul I and Nicholas I, abolished again by Alexander II and revived by Nicholas II after 1905.)[25] Capital punishment remained on the statute books of the Austrian Empire until its end, but Emperor Francis Joseph graced almost every criminal condemned to death from 1903 until the outbreak of World War I.[26] The Belgians retained the death penalty, but in recent history ceased to apply it. Portugal abolished it, as did Italy where, up to 1940 (even under the Fascist dictatorship), only a half-dozen executions took place.

In Britain, on the other hand, until the 1820s anybody who stole an object worth more than two Pounds was hanged or (for some a terrible alternative) deported to Australia.[27] Most of the Latin American countries do without it—quite a change from the time of the Incas and Aztecs. It happened that on the Teocalli of Mexico in one week up to 15,000 young men had their hearts cut out with stone knives by fanatical, homosexual priests.[28]

Yet the difficulty in dispensing with the death penalty grows with the increase of organized terrorism and the taking of hostages to enforce the liberation of fellow-criminals. Swift executions would nullify these speculations. And one of the worst evils one can lay at the door of the terrorists is that they virtually force governments to revive torture. It was, for example, the only way for Uruguay, under a relatively short-lived military dictatorship, to get rid of the Tupamaros, a decidedly middle- and upper-class terrorist organization which brought the country to the edge of an abyss.[29] The means of modern technology are such that in certain situations the lives of many could be saved only through the confessions (and/or the death) of a single individual. One of the very worst effects of terrorism is that it endangers the entire humanization of justice which has been going on ever since the end of the 18th century. It is, after all, the primary task of the state to preserve the common good of the nation, above all its physical survival and the lives of its citizens.

The author of this essay has always been opposed to capital punish-

ment, but toward the end of a long life he sees himself forced to recognize its necessity in the face of a total emergency, especially if it is used not as a deterrent (as which it often fails significantly), but as a blockage against a very great evil. We are referring here to the drug situation which in some countries appears like a deadly form of social cancer with endless ramifications. Certain organizations, bent upon naked profit, have declared war on entire nations who must rally in self-defense as in an armed conflict. This should not imply the execution of the victims, but certainly of the drug manufacturers and dealers, except for the few among them who are addicts themselves. (Their trial and perhaps even their walk to the place of execution should be shown on television!) This is a physical (and psychological) war we have to fight against large-scale murderers, whether we like it or not.

In another field, too, modern mass murder takes a huge toll: abortion, in a way, is worse than the mass extinction of ethnic, racial or social groups, such as we have seen in this godless century. It was heralded by the massacres of the French Revolution directed more against entire cities and regions of France than against social layers.[30] The fundamental cause of these horrors was the *preceding* decay of religion in the First Enlightenment. Here we must recall Dostoyevski's words: "If God does not exist, everything is permissible." In a way, these earlier bestialities[31] were qualitatively worse than anything we saw in our century, because they were carried out not in cellars or behind the walls of concentration camps, but in broad daylight and with the participation of the dear people: in other words, "democratically." Abortion, on the other hand, is today a "legalized" form of murder in most countries, often even financed by public money. And it has, *as mass murder always did and does*, its bloodthirsty devotees. At the German Evangelical *Kirchentag* (a large-scale bi-annual meeting) in 1987,[32] a building where a famous American anti-abortion film was shown was literally stormed by fanatical abortionists and the projector as well as the film destroyed. Discussions on this subject are always heated, violent and venomous.

Abortion is a very special, nasty form of murder by people who will not wait for their victim *in spe* to be born. As everybody knows, a woman who has a miscarriage, even a truly unwanted one, is often prone to a period of depression, and this is much worse in the case of an abortion. This seems to be due not only to the influence of Hebrew

and Christian teaching, but is plainly a natural reaction. (I remember the non-believing wife of a professor in one of America's leading universities who, having to choose between a new car and giving birth to her baby, chose the car. To her dying days she was in the hands of a psychiatrist.) A Chicago television show once featured a New York State Health Commissioner (abortion was then legalized in New York, but not in Illinois)[33] who explained how smoothly the abortion business was running in the Empire State. Questioned whether abortions do not create psychological problems for the women involved, he replied with a broad smile: "It does happen again and again, but I must remind you that back home in New York we have an excellent psychiatric service, better than anywhere in the United States." This reply, I believe, needs no comment.

The fact that abortion *is* murder, first degree murder, requires no further elucidation. It is obvious that, to set a time limit for the beginning of a human life is against all reason. *It can only be the moment of conception.* Is a babe ten minutes before birth a piece of flesh and ten minutes later a human being protected by the law? Only in our not only godless, but utterly irrational age, is it possible that parliaments, by counting noses, arbitrarily set the date at which an unborn child will begin to be legally protected against murder. We now see where legal positivism has led us, and where it might eventually lead us in the future. In genuine Hebrew and Christian ethics (regardless of what certain sects, ignoring the injunctions of *Romans* 12:2 tells us) abortion is murder.[34] In this respect the Old Testament is as emphatic as the New one (see Psalms 22:11, 71:6, 139:13; Isaiah 44:2, 46:3, 49:1; Jeremiah 1:5, 20:17; and Luke 1:15, and 2:21). All the passages emphasize the beginning of life before birth. Feminists may claim that their bellies are their own and so they are, but the human being within them is God's. If I leave my door open, do I have the right to shoot a person who accidentally steps over my threshold? If duly warned of his coming, I would plainly commit murder, not just manslaughter.

As we said, our century is one of mass murder heralded politically, intellectually and ethically by the French Revolution[35] which opened our age of the "Gs," of guillotines, gallows, gaols, gas-chambers, genocides, Gulags and the Gestapo—the guillotines being the first to put technology in the service of killing. And close behind them comes euthanasia, even if it appears in the relatively kind mask of suicide.

Abortion is homicide, not suicide,[36] but both are heralds of murderous euthanasia. It is by no means accidental that Dr. Francis Crick, a Nobel Prize laureate who once victoriously led the drive for abortion in Britain, has come out in favor of the extermination of octogenarians.[37] (How delightful a person's 80th birthday must be in Dr. Crick's vision: family, cake and candles, plus two strong men in attendance, ready to drag their victim into a black ambulance!)

The closeness of abortion to murder became terribly plain to me when in 1932, as a young assistant in the Department of Sociology of Budapest University, I visited the Tiszazúg region in Eastern Hungary. Two years earlier the village of Tiszarév had been the scene of a horrible discovery by an administrative officer: not only were very few children born, but the death-rate of males was inexplicably high. The Calvinist minister of this God-forsaken place (frequently cut off from the world through floods of the Tisza River) suspected nothing, but the authorities eventually did. So state troopers one day swiftly occupied the village. The midwife, a real witch, immediately committed suicide; she not only had been a skillful abortionist, but also a sophisticated poisoner. She extracted arsenic from fly-paper and gave it to the repeatedly-marrying wives who put it into the food of their husbands. Each couple had only one child. Thus the dwindling population got richer and richer, property being joined to property. Death and avarice celebrated an unholy alliance. We had long talks with the surviving men in the village who had suspected nothing until the bombshell burst and they discovered that for years they had been living under the shadow of two kinds of murder.[38]

The legalization of abortion started in Sweden,[39] followed by Britain under the Labour Government, and from there it spread. The perversity of its spreading lies in the fact that abortion became "fashionable" at a time when contraceptives were perfected to a high degree, at a time of plenty, of the booming Provider State[40] which took care of all emergencies and, on top of it all, when illegitimate birth was rapidly loosing its stigma.[41] Today unwed mothers are hardly discriminated against and there is an enormous demand for adoptions by childless couples.

In our godless century, human beings rather than domestic or wild animals have become the victims of mass slaughter. Oskar Sakrausky, Evangelical-Lutheran bishop of Austria, declared that we are back on the road to Auschwitz, and created an outcry among fervent Marxists.

The blood thirst of the Left is well documented by George Watson in a brilliant article.[42] He quotes Engels in favor of genocide, H. G. Wells leaning towards it and, above all, the old Socialist G. B. Shaw who in his preface to *On the Rocks* (1933) not only expressed clearly his approval of Stalin's wholesale murders of peasants and "bourgeois" but also congratulated Hitler (who just got into power) for his readiness to rub out undesirables *en masse.* (Shaw thought, however, that to exterminate the Jews would be a bit difficult, because they are racially not always distinguishable). The worst citation is that of Ulrike Meinhof of the German "Red Army Faction" who in her trial defended *Auschwitz.* Those Jews slaughtered there, the Red Maiden insisted, were "Money-Jews" and "Capitalists" who well deserved their fate. (This should remind us that the National Socialists belonged to the extreme Left!)

In 1919 Irving Babbit wrote in his *Rousseau and Romanticism* (doubtlessly with the French Revolution in mind) about the menace personified by "the most sinister of all types, the efficient megalomaniac." In that year Hitler and Stalin were not yet household words, but in the meantime the National and International Socialists together with the promoters and executors of a modern Childermas "improved the mystery of murder" (Babbitt[43], citing Edmund Burke).

NOTES

1. The *Eta* of Japan present an interesting historic and sociological problem. They look like Japanese, speak Japanese, but are being treated as a "strange" (rather than alien) minority. They are descendants of craftsmen who produced leather goods which is connected with killing four-legged animals. And thus they are looked down upon, even today.

2. There still are cases of "suttee." The higher the caste, the greater the pressure. (Even today widows are not very respected.) In Vindravan I saw a historic barracks-like home for widows who had been lacking in courage—mostly belonging to low castes. The practice was frequent because girls in Old India were usually married *before* the onset of puberty; thus the husbands were often markedly older. The abolition of suttee was one of the many "evils" of "colonialism."

3. Cf. Rosemary Kingsland, *A Saint Among Savages* (London: Collins, 1980). He who believes in the "basic goodness of man" (or the *effectiveness* of the Natural Law without the aid of Divine Revelation) will, reading this book, get the shock of his life. In 1985 I had the opportunity in Quito to meet with people who confirmed some details of this terrible volume.

4. The slave was also *res* in North America, but not in Latin America, where he was considered to be a prisoner of war. He had to be instructed in the Christian faith, could not be separated from his family, could own property, and could force his owner to release him if he returned the "ransom," i.e., the price paid for him. Cf. Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas* (New York: Knopf, 1947).

5. The horrors of the arena were unknown in ancient Greece. The Romans excelled merely in law and

military affairs. Cultured Romans spoke and sometimes even wrote in Greek, the language of the New Testament, and of the best translation of the Old Testament.

6. Cf. her book edited by Fouché-Delbosc (Paris: Klincksiecy, 1926), p. 466.

7. In the year 1811 in "Greater France" under Napoleon, 393 people were condemned to death. The population was then 42 million; in Britain with 17 million, no less than 6,400 criminals were condemned. Cf. Las Cases, *Mémorial de Sainte-Hélèbe* (Paris: La Pléiade, 1948), Vol. I. pp. 232-233.

8. Cf. Maurice Andrieux, *Daily Life in Papal Rome* (London: Allen & Unwin, 1968), *passim.*

9. When Lenin received the verdict, he asked for a week's delay, got married, received two tickets, chose one place out of several and travelled "on his own steam." Alexander Herzen, 60 years earlier, exiled to Perm was more brutally treated. He was made a civil servant and had to appear daily in his office where he had to associate with the "right people." Real criminals got jail and subsequent exile.

10. Cf. *Statistisches Jahrbuch für die Bundesrepublik Deutschland, 1968* (Stuttgart: Kohlhammer 1958), p. 43.

11. In the meantime the frequency of manslaughter and murder in the United States has percentwise nearly doubled. It has risen, however, in most countries. The high security of Spain, thanks to that country's democratization, no longer exists either.

12. Vorarlberg is the westernmost state in federal Austria, its population is German and Catholic, yet belongs to the Alemanic tribe, not to the German and Catholic Austro-Bavarians. Its social and economic statistics, as one might expect, are different.

13. In 1940 the United States were shocked by the existence of a criminal outfit: "Murder Incorporated." (They killed for as little as 5 dollars.) One of the defendants exclaimed: "Oh, God forbid!" The judge asked him why he invoked God, he could not possible believe in Him. The man was surprised: "Of course, I believe in Him!" "Then how could you commit all these murders?" "That's different. That was just business."

14. This attitude, however, also explains the readiness of Moslem terrorists to kill for Allah and thus to enter Heaven, which is a place of sexual gratification. Yet in Heaven are not only the (female) Houris but also the Vildans, beautiful boys, whose role two Islamic theologians could not explain to me.

15. The Emperor Charles I of Austria, whose case is now up for canonization in Rome, immediately after his ascension to the throne strictly forbade all forms of duelling. The Association of Catholic Noblemen in Austria exacted from its members a solemn promise not to engage in duels.

16. Some laws are based not on the Qurân, but on the Haddith, the recorded oral tradition. Love in the Qurân is mentioned only once—in 5:59 where it is stated that the people love Allah and Allah loves the people. The giving of alms to the poor is mentioned again and again, but not love. The punitive mutilations, as practiced in "modern" Pakistan, I have not found warranted by the Qurân, as, for instance, the amputation of limbs, which are now very hygenically carried out in hospitals. Such practices could only be reintroduced after "decolonialization." (They might be warranted on injunctions in the Haddith.)

17. Yet exactly this growth had been the very reason for the Reformation. Such a change was the incorporation of much of the ideas of Antiquity. The Reformers stood for an "unchanging Church," a notion thoroughly abandoned by most of their heirs.

18. Cf. James Parkes, *The Jews in the Medieval Community* (London: 1938), p. 184. Hebrews were also rarely tortured, p. 254. Actually as Geuido Kisch in his *The Jews in Medieval Germany* has pointed out, Hebrews, although "unpopular," were a privileged group. Their lot worsened when civilization became more "progressive."

19. Cf. Alfred Mirgeler, *Rückblick auf das abendländische Christentum* (Mainz: Grünewald, 1961), pp. 84-85.

20. This category already disappeared in catechisms published after World War I.

21. Many saints had been soldiers and warriors, expecially in their earlier years: Saint Francis of Assisi, Saint Ignatius, are only two examples. The same thing is true of the Eastern Church. Many of the bishops had actually participated in battles. The Knights Hospitallers of St. John (Knights of Malta) originally establishers and defenders of hospitals, became a truly fighting order, but later reverted to their original vocation.

22. Christianity quickly made headway among the Roman Armies. Cf. Adolf von Harnack, *Militia Christi* (Tübingen: J.C.B. Mohr, 1905).

23. Lombardy belonged in his times to the Austrian Dominions.

24. Cf. *Letters of Benjamin Rush*, Ed. L.H. Butterfield (Princeton: Princeton University Press, n.d.). Letter to Jeremy Belknap, Philadelphia, 13 October 1789.

25. Terrorism made it inevitable. After the murder of Grand Duke Sergei, his widow, Grand Duchess Elizabeth, sister of Empress Alexandra, desperately tried to make the murderer repent his crime, yet he only

APPENDIX B

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Abortion in Israel: A social, religious challenge

Joel Rebibo

Abortion has always been a controversial subject in Israel. For a religious, post-Holocaust society that prides itself on appreciating the value of life, abortion was an uncomfortable pill to swallow when it was legalized in 1977. Some warned that the country, faced with a demographic threat from the rapidly growing Arab population in Israel and in the territories, was committing "national suicide."

One religious Knesset member, Avraham Verdiger, went so far as as to predict that the abortion bill would tarnish Israel's image and destroy any prospects for large-scale Orthodox immigration.

Though few would blame abortion for Israel's small aliyah, many are expressing concern about teenage pregnancy, now at an all-time high, and about Israel's high rate of abortion.

"For every three children born in Israel, we lose one," says Dr. Yosef Shenkar, head of the gynecology and obstetrics department at Hadassah Hospital at Ein Kerem and a noted pro-life advocate.

Shenkar may actually be underestimating the problem. Though everyone agrees on the number of Jewish births each year—about 75,000—there are differences about how to calculate the abortion rate.

The Central Bureau of Statistics, in a report released last May, says that 15,000 were performed in 1987, bringing the total to 160,000 since 1977. But those figures include only legal abortions, those approved by committees according to guidelines set down in the 1977 law.

Women who don't meet these criteria, or who are afraid of being found out, opt for illegal abortions, which are not recorded. Nira Voghera, a social worker who sits on the abortion committee at the Beit Meir Hospital in Kfar Saba, estimates that there are three times as many illegal abortions as legal ones (citing a 1979 survey by the Institute for Social Research). That would raise the total figure to 60,000 annually, and 450,000 since abortion was legalized.

There are 30 abortion committees in Israel, from Eliat in the south to Kiryat Shemona in the north, with three members each: a gynecologist, a doctor from another specialty (such as psychiatry, pediatrics or internal medi-

cine) and a social worker. It costs about $23 to appear before a committee and another $150 for the abortion. Abortions can be approved until the 12th week, but in some cases as late as the 30th week.

The law authorizes them to approve abortions on any of the following grounds:

- Age of the woman—if she is under 17 or over 40;
- Family circumstances—if she is unmarried, if she has been raped or if the child would be the product of an incestuous relationship;
- Medical problems—if the birth would create a medical problem, physical or mental, for the mother, or if the child would be born with serious medical problems.

Though the original law contained a "social clause" that permitted abortion if "continuation of the pregnancy is likely to cause serious harm to the woman or her children, on account of the difficult family or social conditions of the woman and her environment," this clause was struck down in 1979 as a result of religious pressure. It has had practically no effect on the abortion rate and Knesset member Shulamit Aloni of the pro-choice Citizens Rights Movement is campaigning for its re-enactment.

Hadassah's Shenkar blames soaring abortion figures on the government for not providing sufficient education in birth control and family planning. "The establishment couldn't care less about the situation," he says.

Dr. Zvi Palti, head of the Israel Association for Family Planning and the head of the ob-gyn department at Hadassah Hospital on Mt. Scopus where he sits on the abortion committee, says the problem stems from religious pressure that prevents the various ministries from promoting a more aggressive "family education" campaign.

"Family education, including birth control and teaching about the responsibility of sex," he says, "should begin in school, and should also be taught at the Tipat Halav [community medical clinics for early childhood care]. Abortion should only be the birth control of last resort."

Palti says that committees approve about 95 percent of the requests. He confirms the findings of the Central Bureau of Statistics that most applicants are married (61 percent) and most are between 25 and 35. (Very few are Orthodox, and they come only with permission of their rabbis.) He insists that the committees' decisions are objective, based strictly on whether the woman meets the criteria laid down by the law.

Voghera disagrees. She conducted a study on the committees for her master's thesis and came up with these conclusions:

- Women committee members are more likely to approve abortions than their male counterparts.

- Social workers, who see the products of unwanted pregnancies, are more likely to approve abortions than physicians.
- Among physicians, gynecologists, who spend so much time trying to help women conceive, are less likely to approve abortions than other specialists.
- Doctors who come from religious backgrounds are less likely to approve abortions.

Though Voghera had no hard evidence to back it up, she also "sensed" that committee members who have a connection with the Holocaust or who have nationalist leanings are less likely to approve abortions.

Voghera recommends that committee members undergo special training to be made aware of these biases and to maximize the fairness of the these committees.

In the final analysis, everyone agrees that the only way to lower the number of abortions here is through education. Changing the makeup of committees, tougher legislation or increased child support payments from the National Insurance Institute (which pays child-rearing benefits to all citizens) will not stem the tide of abortions.

In fact, economics has little to do with the problem. Research presented recently in Ramat Gan at the Israel Association for Family Planning's seventh national conference showed that there is a greater incidence of abortion among higher income women. (The same study also shows that among the secular, those who have received higher education have more abortions, while among the religious, more education means larger families.)

Ideally, the solution may rest in family planning education that helps young people understand the importance and value of children to the country. Israelis average 2.4 children per couple, high by Western standards, but hardly enough for Israel. And it is only that high because of the Orthodox and ultra-Orthodox who average five children and more.

But as Mark Laskin, the assistant secretary-general of International Planned Parenthood Federation, who was here from England to attend the Ramat Gan conference, says, "You can't convince people to have children for nationalist reasons."

APPENDIX C

[*The following column appeared in the Boston* Herald, *on August 23, 1988, and is reprinted here by permission of U. F. Syndicate Inc.*]

Abortion leads to 'femicide'

Alan Dershowitz

Does a pregnant woman have the right to know the sex of her baby before it is born? Most reasonable people—certainly most feminists—would argue that a woman's right of reproductive freedom includes learning, if she wishes, the results of an amniocentesis, including whether the baby will be a boy or girl.

Does a woman have the right to terminate her pregnancy—to have an abortion—for any reason deemed sufficient to her? Although there is significant disagreement on this issue within the general population, most feminists would probably say yes.

But does a woman have the right to abort a fetus solely on the ground that it is a female? This is a tough one for feminists, and it is an even tougher one for the Indian government, because in some parts of India the issue is not at all hypothetical.

Tens of thousands of Indian women, poor and rich alike, have undergone amniocentesis for the sole purpose of learning whether their fetus is a boy or girl. If it is a girl, they have an abortion; if it is a boy, they don't.

The reason for this strong preference for male babies is both traditional and economic. In many parts of India, boys are perceived as an economic benefit; girls are perceived as an economic burden. Although marriage dowries are technically illegal in India (they are perfectly lawful in the United States), they persist. And the price for marrying off a daughter can run as high as $10,000—the equivalent of a year's salary for a middle-class Indian. Several daughters and no sons can be a prescription for bankruptcy.

It is not surprising, therefore, that private hospitals and clinics promote amniocentesis by the slogan: "Better to spend 500 rupees now than 50,000 rupees later."

The combination of modern technology and traditional values has created a situation in which women—or couples—can and do seek to determine, within limits, the sex of their children. If this is allowed to continue and expand, it could affect the natural balance between males and females.

Throughout history, of course, there have been other factors that have skewed the proportion of males and females: wars, certain sex-linked illnesses, even crime. Generally, however, these factors have decreased the number of

males. (More males are born, but their lower survival rate tends to even out the proportion during procreative years.) The technique practiced in India threatens to increase the number of males, which is a far more ominous development in light of the more bellicose nature of the male of the species.

In addition to upsetting the natural balance, the Indian phenomenon sends a terrible message about the perceived worth of males and females. It is difficult to imagine a more sexist practice. Indeed, it would be fair to characterize it as "femicide"—a sex variant on genocide.

For all of these reasons, it is obviously important to put an end to the process of selectively aborting female fetuses. But the difficult questions relate to the means employed toward this end. Obviously, education would be the preferred means.

But if egalitarian education and legislation fail to stem the tide of sex-selected abortion, would it be proper to prohibit pregnant mothers from selectively aborting their female fetuses?

This could be done by making it illegal to disclose to a pregnant woman the sex of her fetus. The government could also prohibit any abortion done for reasons to gender, but such a rule would be all but impossible to enforce, if abortion were permitted for a wide variety of other reasons—reasons that could be offered to mask the real basis for the decision.

The Indian state of Maharashtra has opted for a law that bans any prenatal test to determine a fetus' sex. This has driven the testing underground or to other states with no such laws. The economic pressures are simply too great on families with several daughters.

Not surprisingly, Indian feminists are divided over the new law. Some see it as endangering a woman's right to make a fully informed decision about abortion. Others view it as a necessary evil required to counteract the traditional sexism in Indian society.

As one Indian obstetrician asked: "The law has been changed, but what have we done to change social attitudes?"

The tragic situation in India demonstrates both the limits of law in affecting profound social changes and the necessity of using the law to control the most obvious manifestations of sexism. It also demonstrates the conflict between the right of a woman to terminate her pregnancy and the wrong inherent in terminating it on sexist grounds.

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