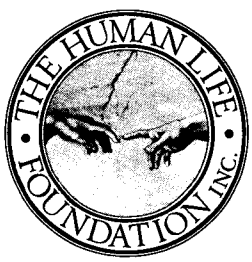
# the HUMAN LIFE REVIEW




FALL 1989

*Featured in this issue:*



*Also in this issue:*

Ray Kerrison • William B. Allen • Pamela Sebastian • Craig Lerner • William Safire & a *cartoon* by S. Kelly •

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This, our 60th issue, brings you a Baker's Dozen of articles and appendices, plus (please don't faint) a cartoon as well, thus ruining our otherwise perfect record, maintained for 15 full years, of bringing you nothing but uninterrupted lines of *type*. An era has ended, and we face the new decade with trepidation.

So enjoy *this* issue, which we think is a good and lively one. As our editor notes, Joe Sobran is at his best, and Faith Abbott charming, etc. (By the way, Abbott mentions, on page 39, the now-famous "Frozen Embryos" case; as we go to press, the news is that a Tennessee judge—declaring that "Life begins at conception," awarded them to the former Mrs. Davis.) Another bit of late news: Mr. Justice John Paul Stevens announced that he will not participate in *Turnock v. Ragsdale*, one of the three abortion cases now before the High Court—but we hope he reads Francis Canavan's fine article (see page 53) anyway—we *know* you will. And we also recommend highly Father Canavan's latest book, *Edmund Burke: Prescription and Providence* (Carolina Academic Press, P.O. Box 51879, Durham, N.C. 27717; $24.95 the copy).

Also, if you find Prof. Leon Kass's article (page 93) as interesting as we did, you might want to know more about *The Public Interest*, the quarterly in which it originally appeared. It is published by National Affairs, Inc., 1112 16th Street N.W., Suite 530, Washington D.C. 20036 ($18.00 a year). Likewise James Bowman's article, which ran in *The Spectator*, published at 2 Princeton Court, 53/55 Felsham Road, London SW15 1AZ, England ("Airspeed" to USA, $99.00 a year).

You will find complete information *re* how to obtain back issues and bound volumes of this review on the inside back cover. Note that the latest volume (1988) is now available for a mere $40.00, while our supply lasts. It will make a handsome addition to your permanent library—hardbound, indexed, gold lettering, the works—don't miss it.

EDWARD A. CAPANO
*Publisher*

# THE HUMAN LIFE REVIEW


FALL 1989





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# INTRODUCTION

"THE LONG AND THE SHORT OF IT is that the exaltation of pleasure entails the annihilation of the child. But insisting on the consequences of actions has come to be known as 'imposing one's views.'"

We suspect that our regular readers will recognize that prose style: it is our colleague Joe Sobran again, rippling through another peerless essay on abortion. We don't know of anybody else who has written so well or so much on "our" issue. And although Sobran has contributed more than fifty essays to this journal alone (this issue completes our 15th year) he always seems able to find new ways to remind us of the truths we forget, as for instance:

> And it was then that I realized that never once, in the 16 years since *Roe*, have I heard a man espousing abortion for the most obvious of motives: his own self-interest. No man says simply: "I want abortion kept legal in case I get my girlfriend pregnant." No man ever admits having pressured a woman into getting an abortion. Yet it must happen all the time. In fact it must be fairly typical.

Another peculiarity: every time we feast on a new Sobran entry, we're tempted to say it must be "his best yet." This time, we think it *is*—it's a brilliant compendium of where the argument now stands "after *Webster*." Needless to add, he convinces *us*.

But there remain many who are not so easy to convince—who view the Abortion Holocaust from a quite different perspective. Not surprisingly, the sharpest differences seem to exist among women, however friendly. On the very day *Webster* was handed down, another faithful contributor, Faith Abbott, got a letter from a childhood chum. Despite their unusually similar upbringings (both had been involved in the strongly-ideological Moral Re-Armament movement) Faith suspected that her friend would not agree with her *re* abortion. How right she was. It makes a good *story*, told in Abbott's rolling "Hope I'm not forgetting anything" style. It all comes down to her

friend's "We'll just have to agree to disagree." But Faith can't agree: *nothing* can change, she concludes, "the nature of the hidden, helpless little beings at the heart of this argument"—we think you'll enjoy this one.

It also provides just the right preface for what follows: Jo McGowan's "reaction" to Mary Meehan's "Joan Andrews and Friends" (in our Spring, 1988 issue). Mary had said that Jo was possibly "the first person sentenced to jail" for what is now popularly known as "Operation Rescue" activity, and reading that (in India, where she now lives) brought it all back to McGowan, who tells her own story here. It's another good one. But there's more to it: McGowan is also unusual for being both ardently "pro-life" *and* a Feminist, of which there are very few indeed on the anti-abortion side. The reason is not hard to understand: the twin passions cause not only "tensions" (the current catch-all euphemism for *trouble*) but also paradoxes. We doubt that *you* will doubt the truth of that after reading her story, which includes, as you will see, the tale of a close friend who evidently had an abortion because she *believes* in abortion.

You might also agree that our first three pieces comprise a sort of trilogy: Sobran tells tales about *men* that somehow go "unreported" in the public debate; Abbott's friend gives reasons for her abortion-is-*good* position that are also generally muted; McGowan illuminates, perhaps unintentionally, the crucial dichotomy among women—between those who view abortion as "women," and those who feel it as *mothers*.

Time was (the Bible tells us so) when the love of a mother for the child of her womb was the paradigm of earthly love; nowadays we speak nonchalantly of "a mother's right" to abortion. Times certainly have changed, as Sobran says, and given the once-unthinkable abandonment of beliefs commonly shared, it's hard to imagine how the *status quo ante* might be restored. Yet who would have believed—even a year ago—that the Red Empire would be in its present condition? Strange things can happen when ideas are played out to their consequences—and the notion that abortion is a *good* has enormous consequences.

The Supreme Court is now wrestling with those consequences. Last term, the *Webster* decision confirmed that the Court's new "conservative majority" is reconsidering the foundation of *Roe*: Is there in fact any basis in our Constitution for a woman's "right" to legal abortion? That is the question our friend Francis Canavan wrestles with in our next article, and as usual he goes straight to the heart of the matter:

> The Court in the *Webster* case did not deny that the right to abortion has some foundation in the Constitution and therefore enjoys some constitutional protection. But, as everyone interested in the case immediately recognized, it

> makes a great difference on what footing the Court sets this alleged right, because the foundation determines how much constitutional protection the right can enjoy and to what extent bodies can regulate and limit it.

Canavan concludes that it all comes down to how the majority on the "new" Court will interpret the "true" meaning of the Due Process Clause on which the so-called "right to privacy" depends. Need we add that the lives of unborn millions will also depend on that interpretation?

As we write, Mr. Barney Frank, Democrat of Massachusetts, is perhaps the most-widely known member of the U.S. House of Representatives. What in the world has he got to do with this journal? Well, he reputedly coined the phrase about anti-abortionists only caring about children "from conception to birth." It's an effective barb: it *is* hard to plan Utopia for all children when the overwhelming priority is to get them *born* to enjoy it? In reality, the same folks who brought us abortion on demand are prominent among those who also have draconian notions about how the survivors should be treated.

The current rage is "child-care" legislation, some form of which the Congress is expected to pass in due course. The current—and controversial—proposal is the so-called "ABC Bill" that, argues the well-known constitutional lawyer William Ball, could "deliver America's children into rigidly-controlled, secularist governmental custody." Mr. Ball's article is one we hope will receive due attention: while most Americans are at best dimly aware of what the child-care controversy involves, proponents of *federal* (rather than local or private) programs have a well-defined agenda inspired by the grimly-utopian Swedish "social policy" planners. Implementing such social-transformation policies over here, Ball warns, would have revolutionary effects "upon family life, upon parental and religious freedom—indeed, upon our whole constitutional fabric." If all this sounds startling, read on: we think you will find that Ball has done his homework, and reaches conclusions of vital importance to what he calls "our largest religious bodies" which seem surprisingly unaware of just how much secularist "child-care" schemes could cost them.

Then Professor R. V. Young focuses on what might be called another social disaster caused by secularism: the AIDS plague. The current wisdom has it that AIDS is "everybody's problem" and, says Young, in a sense that's true: the "wide acceptance, or at least condoning, of heterosexual promiscuity preceded the 'gay rights' movement and made it almost irresistible." So that homosexuals dying of AIDS really are victims of our failure to maintain "traditional moral beliefs." His article provides a companion-piece to

Sobran's lead—Young too writes with that kind of compelling clarity which produces a "He's got it just right" response. It's refreshing to read somebody so out of tune with the *Zeitgeist.*

As is our custom, we next provide something quite different. We found it in one of our favorite journals, the London *Spectator*, which specializes in the sort of short essay that English writers seem to dash off so easily and so well. Mr. James Bowman provides a good example here, complete with catchy title ("Green Grows the Rousseau—O!"). But you will find much more than enjoyable reading. His timely point is: After Communism, What? The "spiritually deracinated" will need "a new secular creed to live by"—he says it may be "environmentalism," that Green will replace Red.

It's a good bet, and Rousseau is certainly the patron sage for the New Age: with his famous preference for "what is not" over what *is*, that Philosopher of Feeling probably did more than anyone else to chase *reason* out of "modernity"? What struck us is how perfectly a Green Utopia would serve those who justify abortion, euthanasia *et al.* Unspoiled Nature must not be cluttered up with the unwanted or the inconvenient. And of course only a totalitarian *regime* can enforce such unreasonable perfection. As Bowman puts it, to those who would worship nature, the idea "that man was made in the image of God is simply incomprehensible."

Our final article is also reprinted, from another consistently-interesting journal, *The Public Interest.* Its author, Professor Leon Kass, M.D., is a well-known commentator on medical and biological ethics, and he has a great deal to say to his fellow doctors who, he argues, are today in mortal danger of becoming "dispensers of death"—which means "abandoning their posts, their patients, and their duty to care"—whereas they have a unique opportunity not only to rescue their venerable profession "but also, by example, the failing moral health of modern times." *Amen.*

* * * * *

Also as usual, we add a number of appendices, all of them bearing in one or several ways on our articles. In *Appendix A*, Columnist Ray Kerrison provides another example of saying what everybody knows is true but few are willing to admit: the "Major Media" is "blatantly biased against pro-lifers" (his label, not ours). *Were* the media un-biased, Kerrison's facts would be *news*—you know, a good story going unreported. Kerrison himself is a good story: he writes on everything from horse racing to racial politics with admirable *panache.* His conclusion here: "One thing intrigues me. I've never yet heard any abortion advocates say their mothers should have aborted them. They only favor abortion for others." *Amen* again.

*Appendix B* is a document that belongs in our permanent record of the Abortion War. Mr. William Allen is the chairman of the U.S. Commission on Civil Rights; he is also a black who knows his civil-rights history. His point is one we've often made: when the issue is *abortion*, the ordinary rules don't apply—certainly not in the courts, nor even, alas, in the "law-enforcement" community. We commend Allen's honesty.

*Appendix C* may or may not amuse you—it did us, however wryly. We run it as a fitting complement to Mr. Bowman's ruminations on a Green Paradise, where "the perfect is the enemy of the good." As you will see, in New York, that Mecca of Compassion, a perfectly good kitten can have death *chosen* for it because of some human's perceived imperfections. But all is not lost: evidently kittens make good *soap*, useful to scrub up a perfect Environment. Mere living, by contrast, would be "cruel and inhumane"! Again, this one belongs in our permanent record.

*Appendix D* complements Professor Young's hard truths about "Safe Sex." It was written by a then-Harvard student, Craig Lerner, who is now, as it happens, a student of Professor Kass at the University of Chicago.

Finally, *Appendix E* is excerpted from Columnist William Safire's regular New York *Times* column "On Language"—Safire himself is hardly anti-abortion (he's "Pro-compromise" in favor of the pro-abortion position), but he makes a point we readily endorse: euphemisms, however clever, are dangerous because "Words count." For instance, Cardinal Joseph Bernardin's "Seamless Garment" doctrine (a devastating blow to the anti-abortion side, in our judgment) could never have been draped over an unadorned *anti-abortion* position, whereas it fits a "pro-life" one from the unborn to the snail darter. Yet again, the perfect is the enemy of the good?

Not *quite* finally: our extra offering ("*Appendix F*") will no doubt *shock* regular readers, certainly those who have suffered with us through our 60 issues of uninterrupted words. A *cartoon*? It may seem unthinkable, but it also neatly summarizes much if not *all* that we've struggled to say, Lo these endless 15 years. Perhaps we'll have more surprises in the next issue.

J.P. McFADDEN
*Editor*

# After *Webster* What?

*Joseph Sobran*

THE SUPREME COURT'S RULING in the *Webster* case has finally ended the long first phase of the national struggle over abortion. Though the Court stopped short of overturning *Roe v. Wade*, it effectively returned the issue to the arena of popular politics. That in itself was a great victory for the anti-abortion side.

Recognizing this, the pro-abortion forces are nearly hysterical. Feminists greeted the ruling, issued on July 3, by burning the American flag on the Fourth of July, thereby demonstrating that their skills in the arts of persuasion had grown somewhat rusty during the 16 years when the Court was making things easy for them. Burning the flag is not the recommended method of winning the hearts and minds of the American people.

The controversy has begun a new phase even more intense than the first. Nobody supposes anymore that the issue can be swept under the rug or treated as a marginal dispute. It has moved into the very center of American politics.

What follows are some desultory thoughts on four major aspects of the dispute.

### The Abortion Advocates

The pro-abortion forces, sensing the ugliness of what they espouse, prefer to be called "pro-choice." But this self-awarded epithet begs the question, since the aborted child has no choice and it can't seriously be maintained that the decision to kill it is somehow made in its behalf. Moreover, the advocates of legal abortion don't want the father to have a say in the decision, and they typically want the taxpayer to have no choice about paying the abortionist who caters to poor women.

The usual response of abortion advocates is to say, "We're not pro-abortion; we're pro-choice. We're not saying that *everyone* should have an abortion, only that each woman should be free to decide." By this reasoning, it is a misnomer to call defenders

Joseph Sobran is a Senior Editor of *National Review* and our faithful contributing editor.

of slavery "pro-slavery," since none of them ever held that *everyone* should own slaves, only that the option should be legal. They merely begged the question of whether the option itself violated the legitimate options of others. They asserted a single freedom for one person that negated all the freedoms of another person.

The pro-abortion forces have used, *ad nauseam*, a series of trite phrases whose very uniformity is suspicious. If one or two people spoke of an abortion as a "termination of pregnancy," it might sound authentic, if a little eccentric. When a million people repeat it, you feel like a detective listening to a group of people suspected of colluding in a crime who not only have identical alibis, but describe their whereabouts and activities at the hour of the crime in the same unlikely combinations of words. ("Before retiring, I perused a slender volume of essays.")

Moreover, the abortion advocates keep repeating arguments too absurd to be used in any other context. One feminist is quoted as saying: "Women will continue to get abortions with or without state approval." *Some* women will, of course, just as *some* men will continue breaking into houses and stealing jewelry, with or without state approval. But to omit the word "some" suggests that getting abortions is a regular inclination of the entire sex, which is no doubt the impression abortion advocates want to create.

Again, we are told, over and over, that "if abortion is made illegal, only rich women will be able to obtain them." This verges on tautology: to pass any law is to ensure that it will be circumvented only by those who have the means to circumvent it. You might as well argue that if we ban assault rifles, only the rich will be able to get them. Even if it were true, so what?

Besides, one eventually suspects that this concern for the poor is largely histrionic. Invoking the poor is a sort of rhetorical trump card that has been played a little too often, like Elmer Gantry's invocations of the Lord. It is done all the time by people whose solicitude for poor folk seems to begin and end with seeing to it that they can get an abortionist when they need him. (The word "abortionist" is carefully avoided by *all* advocates of legal abortion, with no exception whatsoever. The term of choice, as it were, is "doctor"—or even "provider"!)

A deeper motive for associating the poor with the cause of abortion

occasionally shows through. Molly Yard of the National Organization for Women recently told Oprah Winfrey of her admiration for the Chinese policy of mandatory birth control, which of course includes forced abortion: "I consider the Chinese government's policy among the most intelligent in the world. . . . It is a policy limited to the heavily overpopulated areas and it is an attempt to feed the people of China. I find it very intelligent."

This was an imprudent confession for the head of a group that professes to stand for "choice" and "reproductive freedom." Apparently the abortion option is not an absolute right after all. It may be strictly optional for white middle-class women, but there are evidently circumstances that can justify its being imposed on poor and non-white women, for their own good of course. Miss Yard has inadvertently reminded us that the feminist movement has roots and ties in a collectivist vision of society, in which the rights of the mother are ultimately no more sacred than those of the child.

Other too-familiar phrases come to mind. We often hear of the pathos of an "unwanted pregnancy." But to speak of an unwanted pregnancy is a little like speaking of an unwanted hangover: it raises the question of how you got it in the first place, and whether it is really quite fair to treat it as an unprovoked act of fate. We also hear politicians saying they are "personally opposed" to abortion, which never quite seems to mean they regard it as downright immoral, and is invariably prefatory to calling for its legalization and, almost as often, its subsidization by the state.

Another line of well-worn argument is the appeal to "pluralism." With a fatalistic sigh, the personally-opposed politician laments that we do not all agree on this sensitive matter, so that it behooves us to "respect the conscience and beliefs" of those who favor abortion. This implies a sort of duty to treat the lowest common denominator as morally authoritative. By implication, if enough people believe in infanticide it would be wrong for the rest of us to prohibit it. The logic of this is never applied to other issues, such as capital punishment and racial discrimination, where most of the liberals who favor abortion not only disregard rival beliefs but try, when they can, to change them by education and social pressure. No liberal would settle for a candidate who said he was

"personally opposed" to racism but felt it would be wrong to "impose his views" on those with differing attitudes.

All these anomalous arguments betray, in their sophistry, the insincerity and evasiveness of those who make them. They are ashamed to say what they really mean, which is that they want a certain form of convenience killing to be permitted by law. Ordinarily it is unfair and even unrealistic to question the motives of one entire side in a controversy. In this case an entire movement is distinguished by the singular dishonesty of its language, its systematic preference for euphemism, and its resort to forms of illogic and irrelevance it would itself reject if offered by its opponents in other debates.

One of the chief illogical and irrelevant arguments is the *ad hominem* attack. The pro-abortion forces smear their opponents as "religious fanatics" and "extremists," which, setting aside the falsity of the charge, fails to address the essential point of difference, namely, whether the unborn deserve to be allowed to live. (That John Brown was fanatical is no justification for Simon Legree.) There is a special euphemism for the unborn child: "fetus." This word is meant to sound scientific, as if to suggest that the pro-abortion position is based on some sophisticated researches that have cast doubt on the humanity of the unborn—by contrast with the religious dogma that presumably causes fanatics to think otherwise. In point of fact, all research tends to increase one's awe at the intricacy and individuality of the unborn person, and the pro-abortion forces resent the use of pictures that make this shockingly clear. Here again one of the pro-abortion leaders has made an unintended confession: Kate Michelman of the National Abortion Rights Action League, appearing in a televised debate with Randall Terry of Operation Rescue, slipped up and used the forbidden word "child." Even abortion advocates can't always observe their own taboo against plain talk. Now and then the truth flares through the verbal fog. With one syllable, Mrs. Michelman had given away the game.

The pro-abortion forces greeted the *Webster* decision with boasts of popular support for their position that were belied by their very anger at the Court for returning the issue to the people. Miss Yard threatened to "turn this country upside down," a phrase

of violent alienation that hardly expressed a sense of solidarity with the country's prevailing sentiments, any more than flag burning did. She should have welcomed the chance to make her case to the electorate, rather than have to rely on a Court that had been turning increasingly skeptical of her cause.

One other fact showed how empty the pro-abortion boasts were. The anti-abortion forces had instinctively reacted to *Roe* by seeking a constitutional amendment, a response that showed their faith, rightly or wrongly, that they could muster a consensus. But it did not even occur to the pro-abortion side, after *Webster*, to seek an amendment. The votes weren't there. Everyone knew that they would be lucky to keep abortion legal in more than a dozen states, if it came to the kind of democratic contest the abortion advocates had been so desperately avoiding all along.

Nevertheless, after *Webster* a few polls indicated that a majority of the country wanted to keep abortion legal, and the pro-abortion forces made the most of them. Still, these polls probably reflected only the superficial sentiment generated by a media blitz following the decision. The public was given heavy-handed cues that "choice" was the respectable position of the moment.

Many other polls showed strong majorities opposed to abortion on demand. Late abortions, convenience abortions, and even economic hardship abortions seem to fill most people with repugnance. Large numbers will *excuse* abortion for such causes as rape and incest, but the notion of abortion as a "fundamental constitutional right"—the feminist position—has failed to gain cultural purchase, despite its promotion by the Court for many years and the incessant repetition of pro-abortion propaganda.

Politically, the contest will be decided less by the sort of numbers that show up in opinion polls than by intensity—the priority each side gives to the cause. The "fanaticism" of anti-abortionists is nothing but the conviction that every abortion is a life-and-death matter. This conviction has already proved capable of inspiring a spirit of sacrifice in those who hold it. It is hard to see what can match this on the other side. Most people who favor abortion consider it no more than a legitimate option, one among many, and one they neither hope nor expect to have to exercise. It is also a selfish act, and as such can hardly enlist much in the way

of altruism. Passion in its behalf seems disproportionate, even embarrassing, to normal people.

**The News Media**

Even before the *Webster* ruling was delivered, the news media had begun to abandon any pretense of neutrality. The huge pro-abortion march in Washington last April was not only heavily reported but promoted in advance by the major media. The Washington *Post*, which often consigns anti-abortion marches to its Metro section *after* they happen every January 22, gave extensive attention to the April march *before* it happened, helpfully publishing a map of the march's route on the day it was to occur. The event was also publicized on network television in the several days leading up to it, on the evening news and in a special broadcast on ABC's *Nightline*. The tone of nearly all the coverage was celebratory, with frequent expressions of astonishment at the size of the crowd (so much larger than the January crowds!).

The reports neglected to mention that the march had been conveniently scheduled for a spring weekend, in contrast to those January 22 marches, which usually occur on frigid weekdays. Much attention was given to the presence of several movie stars, another factor in boosting attendance, but the reports did not suggest that this gave the event any odor of the meretricious. (A few days later, the *Post* did publish a letter from a reader who noted that the actresses who led the march—including Jane Fonda and Glenn Close—habitually glamourized on the screen the very sort of behavior that results in untimely pregnancies.)

More important, the media modestly forgot to take note of their own role in bringing out the crowd. They implicitly refused to acknowledge that they had provided what amounted to millions of dollar's worth of free advertising.

In connection with the march, a minor controversy broke out within the journalistic community when the Supreme Court correspondent of the New York *Times*, Linda Greenhouse, joined the marchers. Her employers felt that this was somewhat improper; she could hardly appear objective in her reporting if she had openly taken sides. Miss Greenhouse and her defenders insisted that it was perfectly possible to keep her convictions separate from her

role as a journalist. At any rate, her participation in the march did not prevent her from filing her dispatches in the *Times*'s standard deadpan style. It was hard for an outsider to see how her work could be affected by a disclosure of her commitment made on her own time; the commitment might shape her work whether it was admitted or not. The more interesting point, never mentioned during the dispute, was that the problem had never arisen before. Not once during the 16 years of annual marches against abortion had a reporter wanted to join the protestors.

Apart from promoting the march, the media were pitching in for the cause in other ways. *Newsweek* ran a cover story on Sandra Day O'Connor, the burden of which was that as the first woman justice on the Court, she had a special obligation to support the certified Women's Interest. The story made a glancing reference to "the pro-lifers' powerful pictures of aborted fetuses," causing one to wonder why such graphic evidence of what abortion does is the exclusive property of "pro-lifers," and to reflect that none of the major news media in memory has chosen to show pictures of the central subject of the whole debate: the aborted.

NBC, meanwhile, broadcast a movie based frankly on the plaintiff in *Roe*, the implication of which was that her fate, not her child's life, was all that mattered. Dramaturgically, *Roe v. Wade* became *Women v. Men.*

In addition, the media almost unanimously adopted the terminology of the pro-abortion forces. The two sides are now routinely identified as "pro-choice" and "anti-abortion," with overtones of freedom in the one case and negativism in the other. The anti-abortion side's preferred self-designation, "pro-life," is avoided or subtly derided. No word embarrassing to the pro-abortion side—"child," "abortionist," "kill"—is likely to appear in a major news story.

Now that the tide has turned, the news media have finally acknowledged the importance of the issue. But the timing of the acknowledgment in itself serves the purposes of the pro-abortion movement. During the years when the anti-abortion movement was struggling to keep the issue alive, it was played down or dismissed as "single-issue politics"—a phrase that has vanished now that the other side insists on maximum attention.

In all the new saturation coverage, the target of abortion has yet to make its debut. The focus of the media is on "women," as defined by feminist ideology, and "choice." The unborn child is kept out of view, dead or alive. It is *Hamlet* without the prince. Nor do anti-abortion protestors rate the sympathetic personal profiles accorded to women who have had abortions. The arrests, beatings, and severe sentences the protestors endure have not engaged media attention like those of earlier protestors in "progressive" causes. The reason, of course, is that the media generally see anti-abortion activism as "reactionary," contrary to the approved flow of history. The actual scale and intensity of events counts for less than the myth of progress, according to which the real story is women's struggle for control of their own lives. In the grip of progressive mythology, the media are less interested in recording what is actually happening than in collecting illustrations of what they regard as the meaning of it all.

Thinking they deal in unmediated data, journalists are hardly aware of their own tendency to interpret prematurely, which comes perilously close to outright advocacy. To assume you know how the story will end can become a covert assessment of how it *should* end. The foreordained winners turn into heroes and heroines, the obstinate losers into villains. The immense achievement of the anti-abortion forces to date, signified by the result in *Webster*, against all odds, has yet to convince the news media that the anti-abortion movement is anything but historically futile. And to the progressive mind, whatever is futile can never be admirable. It can only be irritating. Coverage of anti-abortion protest is imbued with a feeling that these people are refusing to accept their destined role.

**The Court**

The victory of the anti-abortion movement consisted in having forced the gradual personnel changes in the Supreme Court that eventuated in the *Webster* ruling. The "right-to-lifers" had been a key part of Ronald Reagan's constituency in 1980 and 1984, and he had kept his word to appoint, as far as possible, new justices who seemed likely to reject the sort of "activist" jurisprudence that had produced *Roe*. (The only partial exception was Sandra Day O'Connor, whose views and record on *Roe* were ambiguous.)

The movement had been entirely a grass-roots affair, with little support or encouragement (before Reagan) from government officials, the two political parties, leading politicians, the judiciary, the academy, the intellectuals, the media, or even the mainline churches. Everyone who mattered treated it as an irrelevance or a slight distraction from the serious business of the day. But it inexorably reshaped the Republican Party, the presidency, and finally the Court itself.

By the time Reagan named Robert Bork to the Court in 1987, the movement was finally being acknowledged, however grudgingly, for what it was. Liberals and Democrats realized that Bork's confirmation would probably mean the end of both abortion on demand and the Court as an agent of "social change," meaning liberal *fiats*. The left opposed Bork bitterly and scurrilously, and he was defeated; but an almost equally conservative justice, Anthony Kennedy, eventually ascended to the seat denied to Bork.

This set the stage for *Webster*. As a practical matter the anti-abortionists had little choice but to be preoccupied with the question of the Court's personnel and attitudes, as if the justices were nine elected officials making public policy. Even serious political analysts now discuss the Court more as a quasi-legislative body than as interpreters of the Constitution and statutory law, praising or blaming it not on jurisprudential grounds but according to whether the social impact of its rulings is "progressive" or not. And some of the justices themselves have explicitly understood their mission in these terms; as it happens, the three aging liberals, Brennan, Blackmun, and Marshall, have all denied or disparaged the pertinence of the framers' "original intent."

We have settled into a concrete-bound frame of mind in which it has become quite normal for people to assert that if laws are bad, the Court ought to strike them down, never mind whether they are actually unconstitutional. The very meaning of "unconstitutional" has changed radically. Justice Brennan comes close to saying that whatever is reactionary is *ipso facto* unconstitutional. That a justice of the Court can hold this is a measure of how far we have come.

"Unconstitutional" used to mean *ultra vires*: the federal government or the states acted unconstitutionally whenever they went beyond

the powers the Constitution endowed them with. This meant that the federal government was much more likely to act unconstitutionally than the states, because the Constitution imposes many more limitations on it than on them, but also, and more importantly, because the federal system endowed the federal government with only a few powers, whereas all others were reserved to the states and the people at large, as the Tenth Amendment says. In Madison's words, federal powers were "few and defined," while state powers were "numerous and indefinite."

The Tenth Amendment has become not only a dead letter but one of the Constitution's more obscure provisions. This in itself is one of the most significant facts of our constitutional and national history. Until fairly recently, everyone knew what the Tenth Amendment meant, and the Court invoked it and gave it force. The Sixteenth Amendment, adopted in 1913 to enable Congress to impose an income tax, was necessitated because of the Court's rulings that Congress had no such power under the Constitution.

The radical change came under the New Deal. As late as 1935, the Court was still invoking the Tenth Amendment to strike down Franklin Roosevelt's ambitious federal programs (notably the National Industrial Recovery Act, which created sweeping federal and executive powers over the nation's entire economy, on the Italian Fascist model). The Court did not find that these programs trespassed on such personal rights as the freedoms of speech, religion, and contract; it simply said that the federal government had assumed powers not granted to it by the Constitution.

Roosevelt, enraged, resolved to fight back. A constitutional crisis followed, from which the original Constitution did not emerge unscathed. Roosevelt was unable to "pack" the Court by expanding its membership, but the retirement and death of several justices allowed him to fill the vacancies with enough of his own sort of men to give him, in effect, the Constitution he wanted: one in which the powers of the federal government were almost unlimited.

By 1940, the new Court declared the Tenth Amendment a mere "truism." It did not confine the federal government to its enumerated powers, said the Court, but was only "declaratory" of the relationship between the federal government and the states. In effect, it was a tautology: the states could have any powers the federal government

didn't choose to claim. This was false to history, logic, and the manifest intention of those who wrote and ratified the Constitution, as well as the understanding that had prevailed in the judicial branch before the New Deal. It made the Tenth Amendment puzzling nonsense. Unfortunately, the willful misreading has stuck. The Tenth Amendment might almost as well have been repealed.

This enormous centralization of power inverted the federal system. All power now came from the top, rather than from the traditional base, the people and the states. And during the period of federal consolidation, the Court has enacted a change of almost equal importance.

Under the doctrine of "incorporation," the Court has come to hold that the Bill of Rights (excluding the now-meaningless Tenth) is binding on the states as well as the federal government. This doctrine is imputed to the Fourteenth Amendment, though it is doubtful that the amendment was meant to have any such broad meaning as the Court has found in it. The practical result has been that the Court can freely strike down state laws that it alleges violate the rights enumerated in the Constitution—and what is more, the rights, alluded to in the Ninth Amendment, that are *not* enumerated in the text of the Constitution itself.

So the Court, by merely asserting on its own authority the existence of a right nowhere else mentioned, can strike down virtually any law that it finds in conflict with its own version of unenumerated constitutional rights. This, of course, is the basis of *Roe*. The Court had declared a constitutional "right of privacy" formed by "penumbras" and "emanations" from explicitly mentioned rights, then simply found that all 50 states were in violation.

In theory, the Court could strike down acts of Congress on similar grounds. The practical difference is that Congress might be aroused to curb the Court; the states can't do anything. The principle of checks and balances doesn't apply between the federal judiciary and the states. So the Court rarely strikes down an act of Congress, while it strikes down state legislative acts very frequently.

Liberals applaud this process as the progressive expansion of our constitutional rights. But the rights that are expanded in this way are only those prerogatives liberals themselves prefer; the rights of life and property have been narrowed rather than broadened

by the Court's peculiar pattern of overruling and declining to overrule.

Seen from another angle, the Court's conduct since 1940 is merely another aspect of the amassment of federal power and the destruction of restraints on that power. The Tenth Amendment might almost have been replaced by a provision that read: "The states shall have only those powers not claimed by the federal government, nor denied to them by the Supreme Court."

*Roe* bears witness that the Court has actually become one more organ of overweening federal power, and *Webster*, though limiting the force of *Roe*, did nothing to lessen that power. Some of the justices merely expressed their view that the Court should exert its power with more restraint in the matter of abortion. Whatever rights the states may regain will be by the Court's sufferance. The original federal system has not at all been restored.

After all, the Bill of Rights was anything but a charter for enlarged federal authority over the states. On the contrary, it was ratified for the purpose of reassuring the people and their sovereign states that the adoption of the Constitution would not threaten their freedoms and prerogatives.

In a sense, the Bill of Rights does not "amend" the Constitution at all. It retracts nothing in the body of the Constitution. Ratified concurrently with the Constitution's adoption, it can best be understood as a *clarification* of the Constitution's meaning. It says in effect: "In establishing this new Constitution, we do *not* authorize the federal government to establish a national religion nor to restrict the freedoms of religion, speech, press, and assembly or the right to bear arms, etc. Nor does the federal government have any power to compromise the right to a trial or to compel testimony against oneself or to inflict excessive punishments. In short, the people retain their traditional rights, including many not listed here; and the federal government has no powers except those that *are* listed here."

What has happened over the past fifty years has been a gradual but thorough reversal of the Constitution's clear intent. The federal government has become a lion that eats whatever it can catch; the states are jackals that get the leftovers.

*Roe* did not, strictly speaking, declare abortion itself to be a constitutional right (though Justice Blackmun seems to have forgotten

this, and his opinions from the bench partake at times of feminist rhetoric rather than the language of jurisprudence). It reasserted the right of privacy it had announced in the 1965 case of *Griswold v. Connecticut*, and found getting an abortion to be an exercise of that right. This is a distinction the pro-abortion forces have refused to make as have some members of the Court in subsequent cases.

What *Roe* did was to claim for the Court superiority to every political body over which the American people held control. This is what Justice Byron White meant when in his dissent, he called *Roe* an exercise of "raw judicial power." It is extremely improbable on its face that every single state government had been misconstruing and violating the Constitution as regards abortion or anything else. It simply isn't plausible. Yet the Court expected its opinion to stick.

And it did, for a while. The president, Congress, state legislatures, and lower courts all treated *Roe* as authoritative law, even if they expressed strong disagreement with it at times. But the Court had stretched its authority too far, and a huge backlash was generated. The anti-abortion movement gathered force like a tidal wave, increasing in momentum year by year.

On the eve of *Webster*, the Court seriously damaged its own prestige by ruling that burning the American flag may be a constitutionally protected form of free expression. The immediate outrage of most of the American public showed that the Court had overstepped itself. The most notable fact about the reaction is that the people showed none of their former respect for the Court's wisdom in constitutional matters, no sense that perhaps, after all, the Court knew best. Whatever the First Amendment might mean, it didn't mean *that*.

For decades liberals had supported the Court's mystique. Letting the Court impose drastic change in the name of the Consitution was the easiest way for liberals to get what they wanted. Deference to the Court in the role of constitutional oracle, endowed with mysterious, quasi-divine insight, was equated with reverence for the Constitution itself, even when it was really more nearly the opposite. The flag ruling marked the end of that mystique for most Americans. Ironically, *Webster* almost simultaneously ended

it for the liberal minority, which could no longer afford to give the Court the last word, now that the Court, dominated by conservatives, had ceased to enact a liberal agenda and threatened to repeal major liberal gains.

But the Court is not quite ready to give up its own mystique. Except for Antonin Scalia, the most dynamic and trenchant thinker on the Court, the *Webster* majority was unwilling to directly reverse its predecessors and acknowledge that *Roe* was bad constitutional law. The justices preferred to sustain the fiction that the Court is virtually always consistent and right. So *Webster* modified *Roe* without overturning it. The Court is still reluctant to admit that justices may be as fallible in their way as, say, state legislators.

The Court is in the awkward position of having kept its power while losing much of its legitimacy. Confirmation fights over its appointees on purely political grounds threaten to become a regular feature of our national life. Constitutional law will become even more unpredictable, contingent on the Court's membership as determined by struggles between the president and the Senate.

Of course constitutional law hasn't been very predictable anyway these last fifty years. What should be the foundation of all other law has been up in the air, at the mercy of the Court's whims. In the weeks before *Webster* was handed down we saw the strange spectacle of a nation, so proud of its 200-year-old fundamental law, waiting and guessing at what that fundamental law was going to be. The Court still has enormous power, but that power is up for grabs.

The bitter divisions created by the Court's arrogance were bound to have this result in the long run, and the long run is here. In the days when the Court acted as a modest referee, there were no such contentions. But when each team wants to make sure the referee is on its side, the whole game is unsettled and corrupted. To be sure, the anti-abortion side would gladly settle for a neutral Court that interpreted the law narrowly, but such a Court has become a thing of the past. Since Roosevelt the criteria for justices have changed. Political commitments now count for more than judicial competence.

The essential constitutional problem *Roe* represents—excessive judicial power, owing to excessive federal power—is still with

us, and there is no prospect of its going away. It may recede and become less urgent. But as long as the Court feels bound to uphold the innovations of the past half-century as sacred precedents, it will remain, potentially explosive. For the time being, however, the Court is likely to be dominated by justices who feel that *Roe* really was an excessive and imprudent judicial *coup de main.*

### A Women's Issue?

Throughout the abortion debate, one interest has been strangely silent. Feminist propaganda has led us to assume that abortion is the "women's issue" *par excellence.* We have been told incessantly that restrictions on abortion are only a facet of "male oppression." Women who support those restrictions don't really count, since they are reactionary, unliberated, priest-ridden.

And what about men who favor legal abortion? In the realm of public rhetoric, they appear as males of raised consciousness who respect the freedom of women. That there might be a hidden angle to this occurred to me only very recently, as I read a column by a certified liberal.

The columnist recounted an occasion when he had helped a woman get an illegal abortion. He was proud of having done so, he said, and if abortion was banned again, he would do it again. But, he lamented, what about poor women who lacked his knowledge and access?

Once more, the touching concern for the deprived. The column implied that its author's circle of acquaintance didn't include many actual poor women, which somehow came as no surprise. I have always suspected that this sort of altruism is highly rhetorical anyway. Nobody these days seems to want anything for himself; only for women and/or the poor.

I also noticed that the columnist went out of his way to make it clear that the woman he had assisted to the abortionist (my word, not his) was pregnant by someone else, not him. The impression he wished to create of himself as a benefactor would have been undermined somewhat by any hint that he had been arranging to have his own child aborted.

And it was then that I realized that never once, in the 16 years since *Roe*, have I heard a man espousing abortion for the most

obvious of motives: his own self-interest. No man says simply: "I want abortion kept legal in case I get my girlfriend pregnant." No man ever admits having pressured a woman into getting an abortion. Yet it must happen all the time. In fact it must be fairly typical.

Here is what I imagine is a common situation. A girl dates a man, maybe a man slightly older and more experienced than herself, and before long they start going to bed, on his initiative. She falls in love, hoping this is the real thing. But one day she finds herself pregnant.

So she goes to him and tells him. She is rattled. Now she really has to count on him in a way she is not sure she can. She hopes he will "be there" for her, with an offer of marriage, or at least wanting to do whatever is best for her and the child. But the news rattles him too. Instead of responding with love or generosity, he acts remote. He asks her what *she* plans to do. His manner implies that it's her concern and decision, not his. He may suggest an abortion; or he may let her raise the subject. Either way, she realizes that she is carrying the child of a man who doesn't want to be a husband or a father. His love was only good enough for a "relationship" that suddenly seems very, very empty.

She has several choices. She can carry the child to term and give it up for adoption, a grueling experience. Or she can keep it herself, and maybe get child support from him, though that may require permanent and wrangling contact with a man she wishes she had never laid eyes on. Or she can go to the local Women's Health Clinic.

It is true enough, as the feminists say, that this is not an "easy decision." Any decision she makes will be harder on her than on him. But the abortionist represents the path of least resistance, the hope of getting a horrible situation over with and putting it all behind her.

In a case like that the man hopes she will get the abortion. That is best for him, as he sees it, though he is more likely to say it is best "for everyone." In the days before legal abortion, he would not have been able to dodge responsibility by dismissing the problem as "her decision." Now he can pressure her to get an abortion she doesn't want, if only by acting passive.

Both sides in the abortion debate tend to picture the woman who chooses abortion as a tight-lipped feminist intent on asserting her sovereignty over her own body. She is more likely to be a young woman who has been used and betrayed and doesn't know what to do, and winds up doing something she dreads. At that point she may *become* a feminist.

The demand for abortion was not spurred by either constitutional imperatives or new discoveries about the nature of the "fetus." It was required by the logic of the "sexual revolution," which was always the agenda of men who wanted sexual intercourse without responsibility. Once men were relieved of responsibility, it was hardly fair to make women bear all the natural consequences. Legal abortion was supposed to distribute irresponsibility equally between the sexes. Though it can never really do that, it was a concession certain men were only too happy to make.

"Sexual freedom" has been constantly celebrated in the entertainment media, while gaining legitimacy elsewhere in the culture, especially in law. Its common results are esthetically—or anesthetically— suppressed in its depiction in films and TV shows. No movie star wants to be shown finding a sore on his genitals or wondering why her period is late. A new form of censorship prohibits such unseemly details from appearing in popular art.

Unfortunately, there is no way to prohibit them in real life. The revolution has arrived, devouring its children in two generations at once. The inner cities have been especially devastated by the results of what we were only recently being encouraged to call "victimless crimes."

American society has been amazingly reluctant to admit the results of it all. It is practically impossible to hold males responsible once you have introduced the supposed right to have sex with any consenting partner. Peer pressure rushes into the vacuum left by parental, religious, social, and legal authority. When lechers are glamourized on the movie screen, it is hard to punish or even disgrace them in the world of flesh and blood.

The revolution has had exactly the results you would expect, unless you were hypnotized by its advertising. If we made life easy for reckless drivers by abolishing traffic laws and liability and insuring everyone out of a common fund, we would expect

the accident rate to soar. We have made life easy for reckless males, but we have yet to draw the appropriate inferences from the sexual accident rate.

Legal or not, abortion will remain a serious problem as long as we treat the sexual revolution as an irreversible fact of life. Women never asked for this revolution; in various ways, from the traditionalist to the feminist, they have been begging for protection from it. It will not be easy to reverse, but the principle is simple: people have to be made to take responsibility for what they do.

A theme of the sexual revolution as of the pro-abortion movement, is that traditional sexual morality is of purely religious provenance. The tacit premise is that unlike the rules proscribing theft and murder, rules of sexual conduct have no earthly rationale, and must have been thought up by celibate ecclesiastics. More likely they were thought up by mothers. We do know that the principal promoters of the sexual revolution were all men, men who also enthusiastically endorsed a "woman's right" to abortion. None of them ever announced himself an enemy of women; on the contrary, protestations of love and concern for women were their favorite refrain.

The long and the short of it is that the exaltation of pleasure entails the annihilation of the child. But insisting on the consequences of actions has come to be known as "imposing one's views."

The anti-abortion movement has made enormous progress, even if it is not exactly a liberal's notion of progress. Abolishing legal abortion is an important end in itself. But it is also the first major step toward declaring the sexual revolution a fraud and restoring the obligations of men toward women.

# On Agreeing to Disagree

*Faith Abbott*

How ironic that my friend's letter should arrive on the very day the Supreme Court handed down the *Webster* decision. When the mail arrived that morning, I was watching the live TV coverage from Washington, so I put the letter from California aside for reading later—wondering, as I did so, if my friend might also be watching the news, and suspecting that if so she would not be happy about it.

I hadn't seen this friend since before we both got married and had children; our correspondence has been limited mostly to notes on Christmas cards. So why, I wondered, was she writing to me in July?

Well, it seems that she and her husband had been in China—were there, in fact, during the beginning of the student uprising—and they had had first-hand experience with China's "over-population problems." The first part of her letter was about the political scene: they had been living and studying in Beijing during March and April, then traveled around various parts of China before they returned to the U.S. on May 29th—just before things got really bad.

"But this," she says, "is not really why I'm writing at this time. There is a small thread of connection, but what I'm really prompted to write to you about comes from my coming across the *Human Life Review* that you sent to me long ago . . ." (I had sent her the Fall, 1986 issue of HLR in which my "Ghosts on the Great Lawn" appeared) and she had just re-read it, and says that one of the reasons she hadn't responded at the time was that basically she doesn't like to "ruffle the waters."

"I still don't really want to argue, so maybe it will just have to suffice to say that I believe that abortion should not be forbidden. I guess I have always believed that. I certainly concurred with the 1973 Supreme Court decision, and my ob/gyn knew it was a 'back-up' if our birth control methods failed us. . . . The 'small thread of connection' between my telling you a bit of our experience in

Faith Abbott, our Managing Editor, is also the mother of five children.

China and a mention of the 'Choice' and 'Life' debate is because we experienced what life is like in an over-populated society." (At the end of her letter, she said "We'll just have to agree to disagree.")

When people agree-to-disagree, they usually harbor a small, secret hope of "conversion." There is always the possibility that yet another expression of strong conviction, or another fact, might put even a hairline fracture in the other's foundation. Human nature being what it is, no one likes to think that the other guy has had the last word: therefore, most disagreement-agreements are hedged by a "but," as in "But just hear me out, first—I've got to say *this*." You may not actually *say* that, but you think it. At least, you hope the opposition will concede that you have a valid point.

Thus my friend "challenged" my position on abortion with her first-hand experience of an "over-populated" society ("which can happen here") and thus, in my reply ("Sure, let's agree to disagree, but there's no reason why we shouldn't continue to communicate") I sought to challenge *her* dogmatic statements about the threat of the population explosion. But I am not an expert on demographics; I had to do a bit of research, and I remembered that this journal had recently run an article on the subject, which had impressed me. And so, having read my friend's letter over several times, I re-read again the *Human Life Review* article with a more *personal* interest. The article (Winter 1989) was adapted from Australian Senator Brian Harradine's address to a "pro-life" conference held in Manila last year. Senator Harradine said that

> In the middle decades of the current century mortality rates in many developing countries declined markedly, and population growth rates began to rise. Development "experts" predicted that such trends would wreak havoc for their economic development strategies. Two lines of reasoning were regularly advanced: the needs of an increasing population would outstrip available food and other resources; and investment required to provide schools and other services for a growing population represents investment that could otherwise be used to expand production and wealth. . . . Such a diagnosis is fundamentally flawed. It is not seriously argued today that there is an absolute shortage of food in the world. Growth in food production in recent decades—even in the three largest developing countries, India, China, and Indonesia—have made nonsense of the Malthusian spectre.

I remember having skipped over "Malthusian spectre" on first reading (I always think of Mathus-u-la!) making a mental note to look this up later, which I didn't. Now, Webster informed me

that it was a theory that "population tends to increase at a faster rate than its means of subsistence and that unless it is checked by moral restraint or by disease, famine, war, or other disaster widespread poverty and degradation inevitably result."

Then Harradine mentioned Paul Ehrlich as "the hero of the early wave of anti-natalism which swept the world against what he termed the 'teeming millions.' After a quick trip to India he returned to the U.S. full of insights into the population 'problem' and wrote that 'population control is the conscious regulation of the number of human beings to meet the needs, not just of individual families, but of society as a whole.'"

Harradine also mentions that the erstwhile militant-feminist Germain Greer had noted in her book *Sex and Destiny* that Ehrlich's advocacy of population control stemmed from what he saw in India: "What he didn't like was the heat, the state of repair of cars, and the people. Particularly the people."

My friend had said that "We lived on the campus of the Academy, not in fancy joint-venture hotels; we rode the public buses; we rode bicycles; we rode the trains 'though we could not bring ourselves to travel hard seat midst the mobs, the cigarette smoke, the likelihood that if you had to bring yourself to use the train toilet—yuk!—you'd not get your seat space back and you'd have to sit on the floor, probably in someone's spittle." They visited and shared meals in the homes of some of their teachers and friends; the crowded conditions, the low standard of living, the loss of courtesy—"It's all so demeaning . . ." (I did wonder why she thought that if there were fewer Chinese, behavior on trains, etc. would be improved—why not just *fewer* trains with the same kind of people on them?)

Harradine says that Ehrlich's comment is cause for concern, for "who will consciously regulate the number of human beings? Are individuals and families to be sacrificed for the benefit of the policies promoted by population control 'experts?'" And he says that "investment in children is not wasted investment, but represents investment in the future productive capacity of the nation." Harradine worries about the *values* being promoted by those who seek to *impose* an anti-life mentality upon the peoples of our world "and I stress the word 'impose.'"

Even from "the other side" there are concerns about the anti-life mentality: *Washington Monthly* editor Jason DeParle (who is pro-abortion—see the Summer, 1989 *Human Life Review*), writing about the oft-heard argument that without abortion there will be a more intense scramble for food and all the world's natural resources, says that "Quality-of-life arguments stop focusing on quality and start frowning on life. Concerns about population control have their place; but whether abortion is a fit means of seeking it raises questions that go well beyond environmental impact studies."

I ran into more about Malthus when I read (in *National Review* magazine, August 18, 1989) an article by Ray Percival, doctoral student in philosophy at the London School of Economics, titled "Malthus And His Ghost," which begins:

> If there is a sure way to invite ridicule it is to deny that population growth is dangerous. Malthus still carries authority, and his illustrious specter is invoked by what we might call the "neo-Malthusians" to silence impertinent doubt. But Malthus should not be confused with his ghost, and the confusion would not obscure the fact that both Malthus and his ghost are wrong in asserting that population growth rules out a rising standard of living.

It seems that Malthus' argument was not based on the premise of an *ultimate* limit to the earth's resources: "No limits whatever are placed to the productions of the earth; they may increase forever and be greater than any assignable quantity."

Percival's article debunking (or demystifying?) Malthus is full of mathematics, but some parts my non-mathematical mind can grasp, such as: "Both jayhawks and men eat chickens, but whilst more jayhawks means fewer chickens, more men means more chickens." And "Malthus' picture of man the parasite just does not fit the facts; man produces more than he consumes."

Mr. Percival also mentions Paul Ehrlich (the man who didn't like India). Do actual *data* interest Ehrlich, Mr. Percival wonders? "After all, who wants to be reminded of reality when you're telling your favorite horror story?" Ehrlich, he says, made much of the time it takes a population to double in size, calculated from the annual rate of growth, and chose doubling time as "the best way to impress you with numbers."

In the last decade, says Percival, the growth rate of world population has shrunk from 2 per cent to 1.7 percent, which puts it well *below* replacement level; the UN now expects world population to stabilize

at about ten billion near the end of the twenty-first century, "and this given *only* the behavior of the population and not external physical constraints. But still the anti-baby crusade continues with the same old refrain about geometric growth leading to disaster. To Ehrlich the macro-mathematics of growth are everything, and he loses sight of the people behind the arithmetic."

Percival concludes that "Both the prophets of doom and the sober pessimists have foundered on the rocks of scientific research. It is now time to lay to rest both Malthus and his troubled ghost, in the knowledge that population growth does not impede but actually contributes to man's rise from poverty and hardship."

So much for poor old Malthus.

Another "prophet-of-doom" is Molly Yard, the National Organization for Women's current president. In her vigorous efforts to galvanize the sisterhood and seek out new allies in the wake of *Webster*, she is urging links with "environmentalists" because "the abortion question is not just about women's rights but about life on this planet." A worldwide population explosion, she warns, would lead to an environmental catastrophe. (I thought of sending her Mr. Percival's article, but I doubt she'd read it: she wouldn't like to be confused by facts.) On the Oprah Winfrey show (July 6), when China's forced-abortion/female infanticide programs were brought up, she called them "among the most intelligent in the world . . . an attempt to feed the people of China." She did not explain how "a woman's right to control her own body" could include forcing pregnant women to have abortions against their will.

Picking up on this, an Oprah-watcher wrote a letter to the editor of the New York *Daily News*, pointing out that Molly insists that whereas American women must have the right of "choice" and our government has no right to restrict abortion, "Yet she applauded quite strongly the 'intelligent position' of the Chinese government, which restricts families to a limit of one child; and she asks: "How is it, Molly, that Chinese women do not deserve your strong stand on choice?"

My friend mentioned (in her list of deplorable things in China) "the lack of arable land." So presumably she thinks, as do a lot of people, that we have already stretched our use of land to the

limit. However, writes Mr. Percival, the Food and Agriculture Organization estimates that there are nearly eight *billion* acres of arable land lying idle in the world—*four times* what is now being cultivated. Yes, it's a stretch of the imagination to imagine this; but as Percival says, "Imagination is the only limit, and more people means more minds and therefore more imaginations."

Furthermore, "With a larger population, there are more Edisons and Einsteins to contribute to production." One could indeed imagine that to be the case; one could also imagine that a good number of *potential* Edisons and Einsteins perished in Hitler's gas chambers. And Hitler *does* come to mind, in the context of the Who is to live and who to die argument—though I'm sure Hitler was not at all in my friend's mind when she wrote me. Her mind was focused on China; and she had concluded that because of all those deplorable conditions she had experienced, it is "imperative that the implementation and continuance of a one-child family policy be practiced." (And, remember, she's always been for abortion—if birth-control failed, she'd use it as a back-up.)

I answered that I failed to see how her having one or two fewer children could help change the demeaning conditions in China, or prevent global overpopulation, except perhaps *symbolically*. I asked her if she remembered how, when we were kids during World War II, we were always told to eat everything on our plates on account of the Starving Armenians. (Maybe it wasn't Armenians, but that's what sticks in my mind.) More recently, kids hear about starving Ethiopians: What kid wouldn't want to send his leftovers to them? But how?

Speaking of Ethiopia, Brian Harradine had this to say about the Ethiopian famine: that, "occurring in one of the least densely populated regions of the world, [it] is a problem not of population but of repressive government." Surely my friend should see some connection between repressive government and China's problems?

I thought it worth mentioning that even if she *could* do anything about the situation in China, well—if her mother had aborted *her*, she wouldn't be here to do anything about *anything*. And that I couldn't really believe she'd be willing to sacrifice her own flesh and blood on the altar of Better Standards of Living—arable land, courtesy on trains, etc. If some Big Brother had confronted her

when she was pregnant with her first, second or third child, would she really have made the supreme sacrifice? Even *if* she thought that by so doing, she would be setting an example, or actually helping the rest of the world by contributing to the under-population of America?

"A second child in China in this day is an act of total selfishness," she had written. But she'd also pointed out that having a second child (in the quest for a son) involved a *sacrifice* on the part of the parents: fines, loss of promotion for years, etc.; so how could it be "total selfishness"? This, I said, is what *I* would call "selfish": what the well-known feminist Barbara Ehrenreich wrote in a "Hers" column (in the New York *Times*):

> The one regret I have about my own abortions is that they cost money that might otherwise have been spent on something more pleasurable, like taking the kids to movies and theme parks.

Along with "selfish" my friend uses the word "unfair." "It doesn't seem fair that there is even such an 'escape' route . . ." (meaning paying fines *et al.* for having a second child) and it's equally unfair that "there are others who hide the second, third or more children when a census is being taken—mostly those in the countryside." She predicts that the 1990 census will not accurately disclose *our* population: that the number of illegals who won't get counted will be "astonishing."

"Abortion," she says, "is right for China, and if it's right for China, it's right for anywhere in the world."

I replied that, on the other hand, if abortion is wrong, period, then it's wrong anywhere, for whatever reason.

So there's our basic disagreement: whether killing innocent unborn humans is ever justified.

"We can learn lessons from China's over-population problems. It can happen here. And it's a global concern, not regional only. . . . As the U.S. comes to feel more the crush of urbanized life, then better it would be not to have an unwanted conception in the first place, but good to have the choice of an abortion," my friend wrote.

*Good*? I had read about "good" in the context of a new sort of "morality" currently being espoused by some feminists. A senior editor of the *Village Voice*, for one, thinks that it is "a *good* thing

to have an abortion rather than to have a child that you don't want. Women *should* feel good about it." Perhaps this woman is part of the new wave of honesty that is sweeping through the pro-abortion ranks? I told my friend that I was impressed by *her* honesty: that her letter was quite free of the usual "pro-choice" rhetoric, the euphemisms which have turned into meaningless cliches—for she had stated, bluntly, that "I don't care about the arguments of when life begins, whether it's murder or not." It does seem that the pro-choice movement is dropping euphemisms by the wayside as it forms its new strategy. While some "abortion rights supporters" continue to maintain their "personal" opposition to abortion, others (like that *Voice* editor) have dropped moral neutrality and elevate abortion to the status of a positive good. (Remember: it is important to feel *good* . . .) They want it seen that beyond the personal or even the "ideological," there are more "relevant" reasons for supporting "choice." The emphasis now must be less on a woman's reproductive rights and more on the moral superiority of the woman over her unborn child. Another editor at the *Voice* wrote that although she wasn't "looking to have an abortion," neither did she have any "moral qualms" about it: in her own "belief system" abortion was not in the least bit unethical. And feminist historian Linda Gordon doesn't think we should waste time debating ethics: "Abstract ethical arguments over when life begins are not very illuminating. They inevitably carry the implication that people who support abortion are less moral than other people. When women are able to be self-assertive, that to me is a step toward moral, emotional, and intellectual growth. When I had an abortion that's what it represented to me." (Isn't it nice to know what her abortion meant to her? We know what it meant to her baby.)

On the other hand, the new-wave-honesty practitioner, poet and writer Katha Pollitt, may have shocked some readers when she wrote (again in the New York *Times*) that "Moralists, including some who are prochoice, like to say the abortion isn't or shouldn't be a method of birth control. But that's what it is—a bloody, clumsy method of birth control."

Anyway, my friend—perhaps to mitigate her rather harsh statement about not caring if abortion is murder, added that one should

think of all the unwanted babies and even adults "who die little by little because of the lack of the basic nutrition: love."

I thought of Mother Teresa. She also has much first-hand experience with over-populated societies, the teeming masses, squalid conditions (Wouldn't you agree? I asked by friend). Yet she refuses to be guided by demographics. That, she says simply (probably too simply for our sophisticated ears) is God's business. Hers is to save the unborn, the sick and poor born, the dying—to improve their "quality of life" one miserable individual at a time. Not because of "ideology" but because these people have been put there, in her path *a la* the Good Samaritan, who didn't set out to save the world, but simply did what came to *him*. I wondered if my friend thinks we shouldn't leave things up to God (I think she does believe in God) or if she thinks that that is a cop-out: she might rather think that "God helps those who help themselves." It seems to me, I wrote, that people who leave God out are *ipso facto* playing God themselves. Hitler comes to mind again, and others before him—doctors, no less—of the Weimar Republic, who wanted to expunge "life unworthy of life." There were large-scale abortions, euthanasia and elimination of the malformed and the unfit (all very scientific, of course) and sterilizations. Then direct "medical" killing, and eventually the Holocaust, with Who knows how many potential Einsteins—or Mother Teresas?—who might have helped find an answer to all that besets us now—literally gone up in smoke.

"It can happen here," wrote my friend about over-population in China. Novelist Walker Percy thinks that what can happen here is the *gas chamber* (more about that later).

When my friend said that the when-life-begins argument is irrelevant, I wondered if it wasn't rather that *she* didn't want to be confused by facts. Here is a person who invoked "facts" in a letter to the New York *Daily News* on July 28, 1989 (which the *News* titled "Weakness"):

> Nowhere do the "right-to-life" advocates show more clearly how weak their case is than when they resort to the use of such misleading terms as "child" referring to a fetus or "mother" when they're discussing a pregnant woman. . . . A woman is not a mother until she has borne at least one baby. And, contrary to the people on Oprah Winfrey's show the other day, a fetus is no more a child than a 4-year-old is an adult.

That very same "Voice of the People" column had another letter, from a man who is *un*confused by the facts. One Soloman Goldman wrote that any high school biology student can tell you that at conception the identifying chromosome pattern of a new and unique human being, quite distinct from the mother or father, is undeniably established; all discussion for or against abortion must, he says, begin from this fact. And

> It follows logically then that if we are to permit the destruction of one human being by another, be it mother or doctor or Hitler, we may as well release all murderers from jail, because they exercise their choice of destroying another human being.

And there is a woman who is also unconfused about the facts of life, and about what—well, you might say "what her abortion meant to *her*." This is a worst-case-scenario story which I read in the July-August, 1989, *Ms.* magazine, just at the time one of our daughters had her wisdom teeth extracted. How convenienntit would be, I thought, if "the fetus" were no more than an intrusion: an abortion nothing more than an extraction. Pro-choice people who carry posters of coat hangers abhor the other side's visual aids—fetuses in jars. We now have two wisdom teeth in a jar: they weren't going to *develop* into anything but big trouble.

About this woman: writing under the pseudonym of Sarah Mills (she's a single, free-lance writer based in Los Angeles and was, when this happened, a television reporter) she explains first that she wasn't pro or anti anything unless she could be considered "pro-contraception." In ten years of what we nowadays call "sexual activity" she'd never had "unprotected sex," but she became pregnant anyway. For her, it was an "extremely dangerous" situation. She has a chemical imbalance, and depends on lithium carbonate to control it. Were she to suddenly stop medication, she'd have to be hospitalized: left on her own, she would probably become suicidal. Consultation with specialists confirmed her worst fears: if the baby (now two months along) lived it would probably be deformed. The fetal nervous system forms during the first trimester, so the embryonic heart was probably already irreversibly damaged. There was therefore only "one solution," although "I couldn't silence the part of me that whispered, 'Murderer!'"

After she'd made the abortion appointment, "the dams broke"

and she became hysterical: "No, this can't happen to me!" she screamed, hurling everything within reach across the room. Then: "Finally, I sank to the floor and cradled my abdomen. "I'm sorry, baby,' I cried. 'Mommy's so sorry.'"

I'm sorry too.

It isn't true that "pro-lifers" lack compassion, that we don't care about women faced with hard choices. It *would* be good to feel that this woman would not feel guilty. Mother Teresa has said that "Abortion is the terrible destroyer of peace, of love, of unity, of joy. For every abortion there are two killings—the child, and the conscience." Perhaps she means that the conscience is deadened—but how long does a conscience stay dead? Will Sarah Mills remember her farewell to her baby? No matter how you look at it, suffering is involved and it is not "compassionate" to wish suffering on anyone. But can any suffering be worse than that involved in killing?

Evidently some people think that *quantity* is a dilutant. For instance, does my friend think that the Chinese, because there are so many of them, have diluted feelings about their unborn offspring? Does the milk of human kindness get skimmed because of over-population? Aren't the teeming masses made up of individuals, over half of them females? And doesn't a woman get pregnant (usually) one baby at a time? Perhaps my friend would answer: Yes, they have feelings, but they should subjugate them for the Greater Good. "The educated Chinese," she says, "do try to practice birth control, to prevent conception, but there is no question or qualm about having an abortion should an unplanned conception occur." Right after that, she said what I've quoted earlier: that as we face the crush of urbanized life, it's better *not* to have an "unwanted conception" but *good* to have the "back-up" of abortion. (There's that word "good" again.)

My friend's worries are indeed global, not regional, when she says we should think of all the unwanted babies, even adults, who die little by little because of lack of the "basic nutrition" which is love; in reference to this she penned in a marginal note about "all the brain-damaged, retarded babies born to addicted mothers, many of them teens—practically babies themselves. That's life???"

"Life" in this context of course means "quality of"—as for "love," well, this translated itself into "tenderness." Why? Probably because I had just read about "tenderness" leading to the gas chambers. Not just tenderness: compassion, too. *Crisis* magazine (July-August, 1989) had an interview with the famous novelist Walker Percy. He was asked:

> Why are abortion rights so central a feature in the ideological canon of groups who are usually committed to what we would call compassion or tenderness? . . . And what does "tenderness leads to the gas chamber" mean?

The idea was a *leitmotif* in Walker Percy's best-selling 1987 novel *The Thanatos Syndrome.* Scott Walter, the interviewer, surprised Percy: Had he known that it was actually Flannery O'Connor (they had been discussing her) who had *first* used the phrase? Said Percy: "Did she say that? I'm amazed. I would happily admit that I did that consciously because I'd love to give her the credit." Then Walter says that O'Connor's passage begins with: "In the absence of faith, we govern by tenderness."

"Absolutely," says Percy, adding "That's the Christian scandal: the emphasis on individual human life."

> Absent that, what's wrong with getting rid of people who get in the way? What's wrong with getting rid of badly handicapped, suffering children. Once you're on that slippery slope, where does it end? It ends in the gas chamber.

*The Thanatos Syndrome* is set in the near future; the government, by authority of the Supreme Court, practices "pedeuthanasia and gereuthanasia"—which honor "the rights" of the unwanted child not to have a life of suffering and abuse and "the rights" of the unwanted, failing oldsters to "death with dignity." The Court has approved mercy killing of "prepersons"—defective children up to 18 months, which is when "personhood" is thought to be attained: the killing takes place in the Quality of Life Division at Fedville—the Federal Complex housing the Qualitarian Center, the Communicable Diseases Control, and the AIDS quarantine.

As for the rest of this society, it has achieved a near utopia: because of a secret scientific experiment in altering human behavior on a mass scale, Feliciana Parish is turning into a calm paradise where today's most unpleasant realities have been eliminated. The

social engineers who are the masterminds of this project genuinely believe themselves to be doing good—to be serving the interests of society as a whole. The Quality of Life program has both an open and a secret agenda. The novel's hero, psychiatrist Dr. Tom More, finds out what is going on and realizes that the thin line between good and evil is easily crossed; and he has conversations (or you might say he is instructed by) the eccentric, slightly crazy, but prophetic old priest, Father Smith (who now spends most of his time in the fire tower). He tells Tom about his visit to Nazi Germany in the '30s, where he had seen a meeting of distinguished psychiatrists—"not Nazis, quite the contrary; [they] had in fact been famous as psychiatrists and eugenicists in the old Weimar Republic" and only *later* became killers for the Nazis.

"I guess I have to agree with Father Smith," says Percy about his own creation:

> Of course, the point he was making was that the Nazis didn't come out of nowhere. . . . There were German doctors in the Weimar Republic who were very advanced scientifically and who had ideas about improving the quality of society . . . who were getting rid of retardates and older people and various sorts of people. And for humane reasons, you know, to put them out of misery, or to improve the general quality of life. . . . The point Fr. Smith was making was that it's a slippery slope when you go to euthanasia and removal of the unfit. Once you ignore the uniqueness and sacredness of the individual human and set up abstract ideals of the improvement of society, then the terminus is the gas chamber. . . . I'm not getting into any debate about pro-life or pro-choice. . . . But what I am saying is that this is the way it could be, this is what can happen. As Ivan says (in "The Brothers Karamazov"), "without God, all things are permitted."

Walker Percy himself was in Germany when he was in his late teens, with his German professor from the University of North Carolina. He says it occurred to him then that it might be a good idea to draw a comparison between the pre-Nazi mentality of "doing what's best for society" and what's happening now, with the terrific increase in technology. "I wanted to issue a warning: You had better remember what happened."

For many pages of *The Thanatos Syndrome*, Dr. Tom More is Father Smith's sole audience; but then author Percy, well after the climax of the story, arranges a larger audience: he has the old priest/recluse climb down from his fire tower and preach a

homily. The occasion is the reopening of a hospice. On hand are physicians, service clubs, politicians, and various clergy; also a television crew—which departed abruptly when it became clear that what was happening wouldn't "run well" on the six o'clock news.

It is an odd, disjointed kind of sermon, which ends with this impassioned plea:

> Listen to me, dear physicians, dear brothers, dear Qualitarians, abortionists, euthanasists . . . Please do this one favor for me, dear doctors. If you have a patient, young or old, suffering, dying, afflicted, useless, born or unborn, whom you for the best of reasons wish to put out of his misery—I beg only one thing of you, dear doctors! Please send them to us. Don't kill them! We'll take them all—all of them! Please send them to us. Don't kill them! We'll take them—all of them! Please send them to us. . . . God will bless you for it and you will offend no one except the Great Prince Satan who rules the world.

"Weigh that," wrote reviewer Edmund Fuller in the Wall Street Journal (March 24, 1987) "with the book's title, which means the death syndrome, and you are at the heart of the matter. It is the meaning of Father Smith's repeated paradoxical question and answer: 'Do you know where tenderness leads? Tenderness leads to the gas chamber.'"

Sometimes I think that we Americans are obsessed with Answers. We seem to feel that not having The Answer to every problem is a secular sin. In our age, with all our technological advances, there should be no incurable diseases, no poverty—no anguish, no suffering: we should have the answers for all these. It's almost as though it's a constitutional *right.* We have the right to bear arms, and the right not to bear unwanted or imperfect children. And there's the notion that we have a right to parenthood (except in China?) and so infertile couples are, in increasing numbers, going the *in vitro* route. Which is not always successful, as we know; but when it *is,* not to worry: "Tube babies OK" headlined the New York *Daily News* (August 10, 1989). Based on a recent study by the National Instituute of Child Health and Human development, published in the August 1989 *Journal of Pediatrics,* the *News* report informed its readers that "Test tube babies are just as apt to be healthy and mentally alert as infants *conceived the old-fashioned way,* say researchers." [Emphasis mine.]

The "old-fashioned" way didn't work for one Tennessee couple: The Case of the Seven Frozen Embryos is, as I write, making big news, under such headlines as "New factor in when-life-begins issue." It's the first of its kind, this case, since the "custodians" of the embryos have been going through a divorce trial. Who gets the frozen embryos? The seriousness with which these frozen embryos are being taken must surprise people who "don't care about" when life begins. It's fascinating: in this *extra*ordinary case, these frozen specks are getting more attention than the *ordinary* "fetus." The "ordinary" matters, such as how the couple will divide the house, the mobile home and the furniture, have been settled. Now the judge is left with this question: Can Junior (yes, that *is* his first name) Davis stop Mary Davis from trying to have a child with seven embryos "made in a Knoxville clinic with his sperm and her eggs?" (Note the "made.")

Junior doesn't want to have any juniors; he doesn't want to be the biological father to any child that might result if Mary gets pregnant after implantation. It is, he says, his right to decide if and when to procreate, and he wants the embryos to remain frozen indefinitely. But Mary, who tried for most of her nine married years to have a baby "the old-fashioned way," says it's her right to try to bring a pregnancy to term: the embryos should be hers to use. She claims that they are a form of potential life; therefore they're subject to a custody determination.

"This is the first time we've litigated over an embryo, so it's like we're starting from scratch here," said the chairman of the genetic engineering committee of the American Bar Association. (Interest in this case has been so intense that the judge says he's reminded of the Scopes "monkey trial" that thrust another small Tennessee court into the national limelight 64 years ago, over the issue of evolution.)

Mary Davis says that when Junior gave up his sperm, he agreed *then* to become a father, and he can't change his mind now, any more than he could if she were actually pregnant. And, no, should she *have* a child (obviously she's not counting on all seven) she would *not* want Junior to pay child support—she says there is no reason why she couldn't be a competent single mother.

Meanwhile, there's that *other* case, where the issue isn't so much

about *when* life begins, but *where.* A New Jersey couple moved to California but their one embryo is in storage in Virginia. They have been trying for a year to get it out of the Jones Institute for Reproductive Medicine in Norfolk so that they could have the implant procedure performed at a clinic in California—not only is it more convenient, but also (they say) the "success rate" is higher there. But the Jones Institute refuses to release the embryo, on the grounds that it could thaw en route *or* that the "courier" could hold it for ransom! The Virginia Institute contends that, contractually, the embryo must remain part of the clinic's study, or be donated to an infertile couple, *or* be allowed to expire in the clinic if implantation doesn't take place there. The couple's attorney, who is also a specialist in "alternate human reproduction," says the couple is *shocked*: "They really feel the Jones Institute is holding their child hostage."

So there are obviously problems involved in having babies the new-fashioned way, plus suffering and anguish when it doesn't *work*. Last March, there was a column in the New York *Times* by writer Anne Taylor Fleming: "When a Loving Nest Remains Empty." She and her husband wanted children: she is, she wrote, "a walking cliché of my generation, a woman on the cusp of 40 who put work ahead of motherhood and now longs for the latter." She belongs to "the sisterhood of the infertile." She wrote this article just after she'd undergone her second surgical procedure (which is apparently available only in California) called intro-Fallopian transfer, or ZIFT. It has, she reports, a very high success rate compared with other techniques like in-vitro fertilization. So Fleming was "pregnant with optimism" throughout the two weeks of fertility drugs before the procedure, and the two weeks after "as you hold your breath for fear of dislodging any embryos that might have nestled within. . . . Your womb seems to be calling you to account, making you heed its emptiness. . . . 'At last I've got your attention,' it seems to be saying. 'Where have you been all these years?'"

On Day One of her ZIFT, Fleming found that they'd retrieved eleven eggs from her ovaries. She was elated at first but then was in despair: what if none of the eggs fertilized? What if "on the most basic level my husband and I were hopelessly incompatible,

our sperm and eggs unwilling to conduct their extra-corporeal courtship; what if by morning we had no zygotes?"

But they did. The nurse phoned early the next morning: four eggs had fertilized. "'Come get them,' the nurse said; and my heart leaped at the invitation. I dressed carefully and washed my hair, as if I were about to meet somebody special."

Somehow, though, the embryos didn't take hold: they vanished and "I myself vanished for a while into a fetal curl of grief. This was hardly a death, not even a miscarriage, just a noncarriage. . . . But I mourned my embryos as if I'd known them, and yes, I did think about the perverse symmetry with abortion. You can't not think about such things. That, in fact, is the unexpected benefit of this kind of journey; you find yourself reckoning with everything, the big things—life, death, marriage, children; what matters, what doesn't." What's next for her, she wonders?

Well, there was still her remaining frozen embryo. "It (he, she?) will be thawed and inseminated into my uterus in another month or so, after my body recovers from this last assault. The odds of its taking are very low—only a seven percent live birth rate out of all inseminations with a frozen embryo. Out beyond that, I can try another ZIFT. . . . The woman who went through it the same day I did is pregnant. With clenched teeth, I rejoice for her. . ."

I think again about my friend, who says she doesn't care about when life begins, and wonder if she too is reading all these stories about frozen embryos, this new factor in the when-life-begins issue. And I wonder if Linda Gordon still thinks that "Abstract ethical arguments over when life begins are not very illuminating." There are, reports the American Fertility Society, an estimated 37,000 "pre-embryos," as they're called, in storage around the country. "What are those frozen specks being fought over in a Tennessee court?" asks columnist Joan Beck. "Are they human beings—'pre-born children'—whose future should be decided by applying precedents of abortion, adoption or child custody? Or are they property, subject to the usual property divisions that mark a bitter divorce?"

So now it seems that people who didn't want to be "confused by the facts" are in danger of becoming *un*confused because of

this "new" fact: and people do pay attention to anything labelled "new." One news story factually informs us that "genetic material *is* there" and so of course "confounding issues are being raised" over its social and legal status, and who has the right to it. The parties directly involved in this case are finding the issue of when-life-begins far from "abstract." Rather suddenly, Linda Gordon's contention becomes obsolete: and "Suddenly," wrote columnist Ellen Goodman, "in this wholly unique context, we were arguing again about contraception, fertilization, life, biology and beliefs."

That column (see the Washington *Post*, August 15) was titled "Frozen Embryos: fetuses or babies?" It seems a bit of a mystery why frozen genetic material is being taken so seriously: unfrozen embryos have never enjoyed this kind of limelight. "Fetuses" are routinely done away with, but this mysterious frozen material evokes something like *reverence.* There may be those who wonder, Why all the fuss? But it's unlikely that even *they* would volunteer to simply wash these frozen specks down the drain. Is it because frozen microscopic material has now officially entered the realm of Science that it is being viewed with such awe? Because it *might* possibly be *life*?

Some pro-abortionists hold that "If you want it, it's a baby: if you don't, it's a fetus." It would seem much more difficult to feel personal, to "feel" anything in fact, about your frozen embryos than about your "fetus"; one is growing in your womb, and the other isn't. But feelings don't count here, for what we have now is an objective fact which, because what it's about is so tiny, is all the more awesome and mysterious. Frozen embryos are now in the limelight, on center stage, while "the fetus" is still in the wings, waiting to be identified. Reason and logic don't apply to *them*: we don't trust our senses. We trust Science in the case of frozen genetic material: we don't pay attention to Science when it deals with things we've already made up our minds about.

There is apparently something awesome about frozen life.

All this new technology is providing wonderful opportunities for cartoonists. I have one in front of me: a mother and her little girl are sitting on a sofa. The mother is turning the pages of the Family Album, and explaining: "This is the geneticist with your

surrogate mother. Here's your sperm donor and your father's clone, and this is me holding you when you were just a frozen embryo."

O Brave New World. O Pregnancy, the new-fashioned way.

At the end of her letter (and it *was* quite a letter: my friend managed in just two pages to elicit from me many more thoughts than I have written about here) she repeated her pre-conclusion: "We'll just have to agree to disagree." And "In time the French pill or Chinese herbs will change the nature of the argument."

Indeed I do disagree. Pills and herbs will not change the nature of the argument. Nothing can change the nature of the hidden, helpless little beings at the heart of this argument, whose nature is unmistakably human.

# What Other Eyes See

*Jo McGowan*

I READ Mary Meehan's article "Joan Andrews and Friends" in this review (Spring, 1988) with a somewhat personal interest. I wanted to see what she said about me.

> Possibly the first person sentenced to jail for the activity (clinic sit-ins) was a 19-year-old college student named Jo McGowan. A peace activist who had engaged in civil disobedience against nuclear weapons, McGowan felt that "a lot of people in the peace movement seem to have a blind spot" on abortion. She walked into the waiting room of an abortion clinic in Amherst, Mass. in June of 1977 and said she would fast there until the clinic stopped doing abortions. To the police who came to arrest her, she explained "It has gotten to the point where people have to put there bodies on the line and really suffer over this because things are not going to change otherwise."
>
> When the judge asked, "How do you plead—guilty or not guilty?" the single-minded McGowan replied, "Amherst Medical is an abortion clinic and I plead for the lives of unborn children." Found guilty of trespassing and fined $25 dollars, she said that she could not "pay a fine to a state that sanctions murder." Jailed for eight days, she fasted until her release. All of this was classic, political-prisoner behavior—and a preview of Joan Andrews' approach several years later.

Reading Meehan's article was indeed an interesting experience. Those events of the far-off past were suddenly vivid again and I spent that evening reconstructing the entire sequence. While I appreciate her portrait of me as a single-minded political prisoner, the reality was a bit different. It may be worth sharing that reality here, to lend a bit of perspective and humor to what is otherwise a fairly serious scene.

To begin with, I was terrified. I had been arrested and jailed several times before (in fact, just one month earlier I had been released from a New Hampshire prison after participating in the occupation of the Seabrook Nuclear Power plant site), but never alone. This time, I had no choice. To be honest, I was deeply embarrassed about what I planned to do. Nevertheless, I felt compelled to do it. I tried and tried to think of a way out, but something kept driving me on.

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**Jo McGowan**, the mother of two children, now lives in Dehra Dun, India.

On the day of my sit-in, one of my dearest friends had had an abortion. I had gone with her a week earlier to Planned Parenthood for the pregnancy test and as I sat in the waiting room, I could hear her talking with the counselor who had just told her the test was positive. When asked what she would do, Abby (not her real name) said she thought she would have an abortion. I heard this plainly, and yet I did not take it in as a true—or even a possible—statement. Now, of course, 12 years later, abortion is much more common. I am sure that nearly half the women I know have had one. But in 1977, with *Roe v. Wade* only four years old, we were all more innocent. I heard Abby say she intended to have an abortion and I simply dismissed it as unthinkable.

In the next few days, however (we lived in the same house, along with the father of the baby), I began to have doubts. Abby was emphatic about her decision. No amount of pleading or arguing on my or her lover's part would dissuade her. She was certain that an abortion was her only option. Both of us offered to keep the baby, but she was determined and refused, after a point, even to discuss it.

When nothing was said on the subject for a day or two, I reverted to believing that she didn't really mean to have the abortion. Then one afternoon, a friend of hers from another state came to visit. She slept on the floor in my room that night and the next morning Abby came to wake her very early. Half asleep, I said jokingly: "Is this any way to treat your guest?" They left the house a few minutes later, and I went back to bed.

At work later that morning, I suddenly realized where they had gone. Even now, it's hard to believe I was so deluded. What I didn't want to believe, I chose not to see. I called her boyfriend, who confirmed my fears. When I hung up the phone I realized I had to do something.

She had been gone for nearly five hours, so there was no question of saving the baby. But still I was overwhelmed by this desire to act. I left work, went out on the road, and hitchhiked into town. All the way to the abortion clinic (the first car to stop was—of course—going right by the street it was on) I tried to convince myself I was being ridiculous. What was the point? The

baby was dead. I knew I would not be brave enough to actually disrupt proceedings, to prevent any other abortions from taking place. What did I think I would be accomplishing?

These arguments occupied me throughout the half-hour ride (I don't think I said a word to the driver) and continued after I got out, and walked down the road to the clinic. Just outside the big glass doors, I remember telling God rather crossly that if I *had* to go through with this, I should at least be told what to do.

Then I was inside. There were three people in the waiting room—a young couple, obviously expecting a baby, and a woman a little older than me who sat reading a book. I walked hesitantly to the receptionist, cursing the fact that I would have to make a public announcement, and asked (in a squeaky voice) if they did abortions. I'll never forget the look of sympathy and concern which her face instantly expressed. "Yes, we do," she said softly, obviously assuming that I was there to get one.

I felt so many things at that moment: horror at this case of mistaken identity, fear of the chain of events I was about to set in motion, amazement (abortion still was not real to me) that I was actually standing in a place where babies were killed and, oddly, sadness that the expression on this nice woman's face would change instantly into rage when she heard what I had to say.

And I did have to say it. In a voice that sounded quite desperate, I told her abortion was wrong and I intended to sit in their waiting room until they stopped performing them. I then sat down in the nearest chair and tried to control my trembling. The young couple just look puzzled, but the other woman positively glared at me. After a minute or two, she strode up to the desk and inquired loudly about her friend who had had an abortion an hour earlier. I went on trembling.

The director of the clinic then appeared and asked me to step out into the corridor to discuss the situation. I did so, and she gave me a lecture on trespass and her legal rights. I found her intimidating and was only able to mutter something inarticulate about different kinds of law and higher authorities than the police. She said we would see about that and then informed me she was calling the police. I said that was *her* decision; *mine* was to stay

put until they stopped doing abortions. I then returned to the waiting room.

Ten minutes later, two policemen walked in. The one who did all the talking was a large, cheerful man who turned out to be a Lithuanian Roman Catholic. I didn't have to do much persuading, but he was, of course, adamant about the "real issue." He told me I was absolutely right, but what I was doing was wrong. We debated the question for ten minutes and then I was arrested, quietly and without drama.

I felt guilty about getting up and walking out so cooperatively. "Classic political prisoner" code requires going limp and being dragged, after all, and it was what I had always done in the past . . . but never alone. I had not realized until then how much the expression of moral outrage depends upon community support. As part of a group I was capable of making principled stands and exposing myself to both ridicule and pain. (At Seabrook, for example, those of us who non-cooperated were humiliated and mistreated by the police. I was dragged by my hair, thrown against walls and forced to be fingerprinted.) Now alone, I was reduced to social niceties and plain old embarrassment. "It isn't polite to make these poor men drag me out of here." Polite! Babies were being killed just down the hall and I was worried about manners.

At the police station, I did non-cooperate by refusing to give my name and address or to be fingerprinted. There are many reasons why political prisoners refuse to cooperate with the legal machine. In my case it was both a general antipathy for the prison system and a specific conviction that in this instance the law was protecting the wrong party. Refusing to cooperate meant refusing to grant the system its right to exist. The practical result of non-cooperation is that the police cannot offer personal recognizance (release until trial with only one's word as bond). So I was taken to the neighboring town where I spent the night in jail.

In the morning I appeared in court and uttered my immortal line: "I plead for the lives of unborn children." What Mary Meehan didn't report (because I have never admitted it until now) is that the judge growled in reply "I won't have any nonsense in my courtroom. Answer guilty or not-guilty or you'll be found in

contempt." Chastened, I said "Not guilty." Trial was set for a few weeks later and I was free to go.

Leaving the courtroom, I was approached by a reporter from the local newspaper who seemed delighted at the chance to write something more interesting than the usual dry court-news-listing of names and offenses. He interviewed me and promised there would be a feature in the next day's edition.

At the moment, however, I was more concerned with Abby's reaction. Just before taking off for the sit-in the day before, I had written her a note explaining what I planned to do, and why. My boyfriend, who had come to take my place at work, had given it to her—he had also come for the arraignment, and the moment we were alone I asked him how Abby had taken it.

"She's pretty upset," he said. "Are you surprised?"

No, I wasn't surprised. In fact, as we drove home, I grew more and more surprised at myself for imagining that our friendship could survive this double trauma—her having the abortion and my standing so obviously in judgement over it. As we approached the house, I felt, if possible, more afraid than I had when approaching the clinic. What had I done? Principles were one thing, but love and compassion quite another? It didn't take much sense to realize that my self-righteous act would not have been Jesus' response. I could almost feel the stone in my hand.

For the first 24 hours, Abby did not say a word to me. The one time our eyes met, though, I saw not anger, but hurt. Within three days, however, it was as if it had never happened. Our "return to normalcy" was so complete and so natural that I cannot even recall the actual moment of reconciliation. This process of healing is still a mystery to me, but I believe she was responsible for most of it. She was, and is, pro-choice in the deepest sense of the term, willing to forget her own personal suffering in defense of the larger issue of my right to speak out. Two weeks later she accompanied me (along with my parents and a few other friends) to the trial.

Like most civil disobedients, I was tried in a traffic court, along with a motley assortment of petty criminals who were certainly unprepared for the spectacle of my trial. Alerted by the newspaper account, a small contingent of "right-to-lifers" had also shown up for the event, well supplied with signs and literature. My case

was called early on, and I informed the judge that I would be acting in my own defense. I had done no legal preparation, trusting in the Biblical promise that, hauled as I was before the judge, it would be given me what I was to say.

I soon learned, however, that courtroom language and mores were totally beyond my comprehension. There was obviously a trick in getting a witness to give damning evidence, but I hadn't a clue as to what it was. When the director of the abortion clinic got on the stand, I was unable to get her to admit what abortion actually entailed. Her replies were so vague as to be meaningless and though I persisted doggedly, I felt more and more foolish. Finally I turned to the judge in a rage (I felt like stamping my foot!) and asked "Can't you *make* her answer me?" When he showed no inclination to intercede on my behalf, I gave up and said I would just take the stand myself.

The doctor made a brief closing statement, the Lithuanian policeman gave his evidence (cut and dried, just the facts) and then at last it was my turn. As far as the prosecutor was concerned, my testimony (a brief explanation of why abortion was wrong and why it was crucial for the human race to reject it) was so beside the point, he could not be bothered to cross-examine me. He asked one question: Did I admit to having trespassed?

Five minutes after my affirmative reply (my attempt at explanation was cut off peremptorily and I was left there with my mouth hanging open, looking like Perry Mason's most recent conquest), I was found guilty and fined $25. When I said I couldn't pay, the judge looked quite startled and asked if I meant I couldn't *afford* to pay. I had to smile, thinking of my parents sitting right behind me who would have paid far more to keep me out of jail. "No," I said, "I mean I won't. I refuse to pay a fine to a state that sanctions murder." I was sentenced to eight days in jail.

We were all very surprised. I turned to face my family and as my father threw his arms around me I realized he was sobbing. Just over his shoulders, I could see a policewoman moving toward me with a pair of handcuffs, but in a flash my Lithuanian friend intercepted her. I overheard him saying "Not in front of her parents! Can't you see how upset they are? What do you think, she's going to try and escape?"

He then ushered my parents and me into a small office where we could say goodbye in privacy. After some time he came in looking very pleased with himself. He had arranged, with some difficulty, to get me booked in the Berkshire County House of Correction—"The nicest jail in the state!" he practically crowed. It would take two hours to get there, but it was definitely worth the time. "It could have been Springfield," he said ominously. He carried on for some time, reassuring my parents and praising my character (though not my sense). "She's a good girl, high ideals," he kept saying. All his efforts paid off—my parents managed fairly convincing smiles as I was bundled into the back seat of a patrol car, and Abby said goodbye with a big bear hug.

I was handcuffed before we had gone two blocks ("Those are the rules," the policewoman said when I protested). Driving through small-town America on a perfect summer day as a prisoner on the way to jail is eerie. All the mundane aspects of life which one normally passes by without even noticing suddenly become charged with meaning. Here I was having this momentous experience and there was that guy over there pumping gas and that one mailing a letter and those children chasing each other across the park. The thought then struck me that even as I was caught up in my own drama, other more truly dramatic things, of which I was totally unconscious, were happening: women were giving birth, for example, and babies were being aborted. Life was suddenly so multi-layered and complicated that my head began spinning. At what level does one engage?

Arriving at the jail brought me down to earth a bit. I was no longer afraid but I was a bit apprehensive. Two of my recent imprisonments had involved strip searches, vaginal examinations, lice-shampoos (another unshakeable rule, I hasten to add, enforced regardless of the presence of lice), and solitary confinement until the V.D. test results were in. Not a pleasant experience—I was hoping not to be subjected to it here.

I should have known my Lithuanian friend wouldn't steer me wrong. The prison matron was welcoming and cordial, albeit a bit surprised at the charges against me. She disapproved of my plans to fast, but seemed sure I'd change my mind soon enough. There were no admission procedures beyond the filling out of

forms and I was soon ushered to my "room." It was a private cell with just a bed and a desk—the bathroom was down the hall. The cells were in a long row and opened onto a common area which held a dining table, a television and several comfortable chairs. I was introduced to the two other inmates, both of whom cheerfully informed me that they were prostitutes. They found me both amusing and mystifying, in the beginning, and simply could not see the sense of someone willingly going to jail. But they were both against abortion and impatient with the very idea of it. We had long conversations and they told me far more about their work than I cared to know. They spoke with unbelievable affection about their "Daddies." One of these pimps came to see his "baby" while I was there and I could see him arriving as I stood at the barred window of the common room. He was a small, portly man, neatly dressed in a suit and tie, hurrying into the jail as if he were a busy lawyer on his way to meet a client. Not at all my image of a pimp.

While I was there a woman who had just been convicted of murdering her own daughter was brought in for one night, en route to the Framingham State Prison. She was very small, and looked no older than twenty. She didn't speak a word for the duration of her stay, and she ate her meals as if ravenous. Her eyes were enormous and devoid of any emotion. The tension while she was there was palpable, even for the two street-wise prostitutes. Looking at her, I was both frightened and moved. None of us were sorry when she left.

The radio played constantly, a top-40 station which had a news broadcast every half-hour. On my second day there, the news of my imprisonment was announced as the top news item for the entire day. My two cohorts must have heard the story at least eight times before they realized it was about me. Several journalists came to interview me during my stay and after awhile it became quite embarrassing. I was only in for eight days, after all, while they both had several-month sentences, but I kept getting celebrity treatment. I was sure they must have been irritated by it, but they remained pleasant throughout.

While in jail, and for weeks after my release, I was deluged

with letters and phone calls from well-wishers. My aunt's church group sent a dozen red roses, a lawyer from my city wrote to offer his services free of charge should I decide to continue my life of crime, newspapers and magazines did features on me and the NYPLC flew me to Wisconsin to accept its annual "courage award." I was asked to speak at schools and workshops, and to write opinion pieces for publication.

The fact that I was still living in the same house with Abby made the whole business almost impossible to bear. I can remember giving telephone interviews while she sat in the next room, and feeling so moralistic and self-righteous I made myself sick. Everything I said seemed to carry a personal accusation; phrases I could have tossed off casually had she not been there listening I suddenly heard for the first time. The peculiar situation I was in literally forced me to change my point of view. I began to weigh my words with care, to consider the impact of my rhetoric on women who believe in and/or have had abortions.

Gradually, my concerns deepened and I began getting in touch with other pro-life feminists, searching for ways to make connections with women on the "other side." Although I have never been able to bring myself to do another sit-in, I have worked with friends involved in the sit-in movement, exploring non-violent ways to use civil disobedience in the struggle.

To this day I remain closest of friends with Abby and to this day I remain in awe of her goodness and her grace. My experience with her transformed the nameless woman in every abortion from evil incarnate to a human being just like me—living her life in accord with principles as sacred to her as mine are to me. Abby is still adamantly pro-choice, while I am more convinced than ever of the pure evil of abortion and the absolute necessity of opposing it. I expect we will both go on doing what we can to advance our views. Speaking only for myself, I believe my vision is clearer for the occasional use of her eyes.

# A Liberty Interest

*Francis Canavan*

AGNES REPPLIER ONCE REMARKED on "that sincere regard for the obvious which is the most popular characteristic of the pulpit." If the reader will indulge me in that popular clerical characteristic, I will present a homily in which I expound the obvious and expand upon a point I made in an earlier and very brief article in this journal (Summer 1989).

The point was that in the recently-decided Missouri abortion law case (*Webster v. Reproductive Health Services*), the real constitutional issue was the following: does the "right of privacy" (which includes the right to abortion, according to the U.S. Supreme Court in *Roe v. Wade*, 410 U.S. 113) constitute what the late Justice Hugo Black once called "a great unconstitutional shift of power" from legislatures to courts? Or, to state the same issue in other words, what is the constitutional basis of a woman's right to a legal abortion?

The Court in the *Webster* case did not deny that the right to abortion has some foundation in the Constitution and therefore enjoys some constitutional protection. But, as everyone interested in the case immediately recognized, it makes a great difference on what footing the Court sets this alleged right, because the foundation determines how much constitutional protection the right can enjoy and to what extent legislative bodies can regulate and limit it.

The lower federal courts had declared several provisions of the Missouri law unconstitutional in the light of *Roe v. Wade*. The Supreme Court reversed their decisions and upheld the constitutionality of all of the law's provisions that came before it on appeal. What those provisions were and why the Court upheld them, however, I need not explain here, since I want only to point out what appears to me to be the significance of one remark which Chief Justice William Rehnquist made in announcing the judgment of the Court.

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**Francis Canavan, S.J.**, is Professor Emeritus of Political Science at Fordham University; his latest book is *Edmund Burke: Prescription & Providence* (Carolina Academic Press).

He made it in a passage in which he said that he, and the justices who joined him in this part of his opinion, were *not* going to address what I have called the real constitutional issue involved in this case. He admitted that "to the extent indicated in our opinion, we would modify and narrow *Roe* and succeeding cases." But he refused to accept the challenge which Justice Harry Blackmun uttered in his dissenting opinion, namely, to engage in "the true jurisprudential debate underlying this case: whether the Constitution includes an 'unenumerated' general right to privacy as recognized in many of our decisions, notably *Griswold v. Connecticut* (381 U.S. 479, 1965), and *Roe*, and more specifically, whether and to what extent such a right to privacy extends to matters of childbearing and family life, including abortion."

It was unnecessary in the present case, the Chief Justice said, "to elaborate the abstract differences between a 'fundamental right' to abortion, as the Court described it in *Akron* [*v. Akron Center for Reproductive Health*] (462 U.S., n. 1), a 'limited fundamental constitutional right,' which Justice Blackmun's dissent treats *Roe* as having established, . . . or a liberty interest protected by the Due Process Clause, *which we believe it to be* [*emphasis added*]." We do not have to decide among these different understandings of the right to abortion, said Rehnquist, in order to sustain the constitutionality of this law, and therefore we will not do it.

Who are the "we" of whom he speaks? In this section of his opinion, they are himself and Justices Byron White and Anthony Kennedy. Two other justices, Sandra Day O'Connor and Antonin Scalia, agreed that the Missouri law was constitutional, and so there was a majority on that point. But they refused to put their names to this section of the Chief Justice's opinion, Justice O'Connor because she thought that the Court did not have even to modify *Roe v. Wade* in order to uphold the Missouri law, and Justice Scalia because he thought the Court's decision effectively reversed *Roe* and should have done so explicitly.

Nonetheless, the passage in which the Chief Justice declined Justice Blackmun's challenge strikes me as highly significant. We may conclude that three members of the Court certainly, plus Justice Scalia very probably, and Justice O'Connor possibly, think that abortion is not a fundamental constitutional right but at most

"a liberty interest protected by the Due Process Clause." If that is so, then the future of "a woman's right to choose," as defined in *Roe v. Wade*, is dim.

Now to expound the obvious, as promised. There are, of course, two Due Process clauses, which are, however, in effect one. The first of these clauses is in the Fifth Amendment and provides that "no person shall be deprived of life, liberty, or property, without due process of law." This clause was intended to be a restraint upon the powers of only the federal government, and not on those of the States. After the Civil War, in order to force the Southern States to treat the recently-emancipated blacks as they treated white citizens, the victorious North imposed the requirement of due process on the States (all of them) in these words of the Fourteenth Amendment: "nor shall any State deprive any person of life, liberty, or property, without due process of law." For practical purposes, then, we may speak of a single Due Process Clause which binds the federal and State governments alike.

What this clause means has been the single most fruitful source in the entire Constitution of litigation and constitutional adjudication by the Supreme Court. It has also been the source of the Court's most extensive power over the legislation of the States. In the words of Leonard W. Levy, "The States in our federal system can scarcely act without raising a Fourteenth Amendment question."[1] Almost anything a State does furnishes a potential ground for a lawsuit alleging a deprivation of life, liberty, or property without due process of law—whatever that may mean; and what it means is ultimately for the Court to decide.

All of the things of which a State can deprive one can be reduced to the three headings of life, liberty, or property. Due process originally meant that the State could execute a person, imprison him, or take his property only through legal procedures available to all persons and designed to treat them all fairly. In the present century, however, the court has focused its attention more and more on the "substance" of the liberty of which the State may not deprive persons by prohibiting or limiting certain kinds of action. What kinds of action are thus rendered immune from governmental regulation, either wholly or only for very serious

public reasons, has become the central issue in interpreting the Due Process Clause. The more stringently the clause is interpreted by the Supreme Court, the more power is shifted from legislatures to courts.

From 1897 to 1937, the Court held that the liberty protected by the Due Process Clause included "freedom of contract," i.e., the right to dispose of one's goods and services through contracts freely entered into. Thus, in 1905, in *Lochner v. New York* (198 U.S. 45), it struck down a New York law that limited the hours of labor of bakers to 60 hours a week. This law, the Court said, was "an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty" to work as many hours as he chose. Similarly, in 1923 (just 50 years before *Roe v. Wade*), the Court discovered in "freedom of contract" a woman's right to choose to work for less than a legal minimum wage, and declared that a District of Columbia statute setting minimum wages for women was "so clearly the product of a naked, arbitrary exercise of power, that it cannot be allowed to stand under the Constitution of the United States" (*Adkins v. Childrens Hospital*, 261 U.S. 525).

In these and other cases the court found that due process of law required not only that the State should act through proper procedures, but that it must respect a "substantive" content of "liberty," namely, "freedom of contract," which was immune from governmental regulation except in special cases where, for example, serious threats to the health of workers justified the regulation.

As I said in my earlier article, it was not until 1937, in *West Coast Hotel v. Parrish* (300 U.S. 379), that the Court finally admitted:

> The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation, the Constitution does not recognize an absolute and uncontrollable liberty. . . . Liberty under the Constitution is necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.

This passage gives a good definition of what is meant by "a liberty interest protected by the Due Process Clause." It is an immunity from arbitrary and unreasonable governmental regulation, but it is not an absolute or almost absolute immunity, since it can be

limited by legislation which is "reasonable in relation to its subject and is adopted in the interests of the community."

Having surrendered freedom of contract in 1937, the Court in 1965 discovered in the word "liberty" another right whose substance the Court alone can define: the "right of privacy." Like freedom of contract, privacy is a right of which the Constitution does not speak, on the boundaries of which the text of the Constitution gives the Court no guidance, and which has only such content as the Court finds by peering into the crystal ball of "liberty."

The Court discovered (or invented) the right of privacy in the case of *Griswold v. Connecticut* in order to declare unconstitutional a Connecticut law which made the use of contraceptives illegal. Even before *West Coast Hotel v. Parrish*, since 1925 in fact, the Court had been seeking the meaning of due process of law in the first eight amendments to the Constitution, the so-called Bill of Rights. In themselves, these amendments are limitations only on the powers of the federal government, but through the Due Process Clause of the Fourteenth Amendment, the Court found that they were part of the "liberty" of which the States were forbidden to deprive persons. Thus, for example, a State was prohibited from abridging the freedom of speech, or of the press; from unreasonable search and seizures; and from compelling anyone to be a witness against himself in a criminal case, as the First, Fourth, and Fifth Amendments require. Now, however, the Court was confronted with a Connecticut law which it wanted to find unconstitutional, but which did not violate any of the first eight amendments. What was the Court to do?

Five justices agreed in an opinion written by Justice William Douglas, in which he admitted that the marriage relationship "is not mentioned in the Constitution nor in the Bill of Rights." But, he said, the "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees," which "create a zone of privacy." Add the Ninth Amendment, and we have a "zone of privacy created by several fundamental constitutional guarantees." We thus arrive at a right of privacy which is guaranteed by the Constitution, even though the Constitution does not mention it, and marital relations fit into that zone.

On this basis the court declared unconstitutional the Connecticut law forbidding the use of contraceptives, as applied to married persons. A few years later, in *Eisenstadt v. Baird* (405 U.S. 438, 1972), the Court determined that "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 whether to bear or beget a child." In the following year, in *Roe*, the Court found that the same right of privacy included a right to abortion which, as subsequent Court decisions showed, was virtually absolute. In 1986, in *Bowers v. Hardwick* (478 U.S. 186), the Court came within one vote of holding that homosexual relations are also included in the right of privacy.

Privacy, in the eyes of the Court's liberal wing, turns out to be a right detached from the text of the Constitution, but which is rendered sacrosanct or quasi-sacrosanct by the Constitution. This was the "loose, flexible, uncontrolled standard for holding laws unconstitutional" that Justice Black, in his dissenting opinion in *Griswold*, called "a great unconstitutional shift of power to the courts which I believe and am constrained to say will be bad for the courts and worse for the country."

As was said above, five justices agreed in the *Griswold* case on a right of privacy not mentioned in the Consitution but somehow emanating from the Bill of Rights. Two other justices agreed that the Connecticut law was unconstitutional, but without depending on the Bill of Rights to arrive at that conclusion.

One of them, John Marshall Harlan, said that the law deprived persons of liberty without due process of law because it "violates basic values 'implicit in the concept of ordered liberty'" (a phrase taken from the 1937 case of *Palko v. Connecticut*, 302 U.S. 319). As later cases showed, however, the concept of ordered liberty easily merged with the emanations and penumbras of the Bill of Rights, and yielded the same result, a right of privacy whose content was determined by the Court alone.

Justice White's concurring opinion in *Griswold* sketched a different approach to due process of law. He agreed that the Connecticut law was unconstitutional, but not because it violated something in the Bill of Rights or merely because it "invades a protected

area of privacy." "Such statutes," he said, "if reasonably necessary for the effectuation of a legitimate and substantial state interest, and not arbitrary and capricious in application, are not invalid under the Due Process Clause."

What White found lacking in the Connecticut law was a reasonable relation between the law and the state interest it was supposed to serve. As he understood the arguments presented by Connecticut's lawyers to the Court,

> the State claims but one justification for its anti-use statute. There is no serious contention that Connecticut thinks the use of artificial or external methods of contraception immoral or unwise in itself, or that the anti-use statute is founded upon any policy promoting population expansion. Rather, the statute is said to serve the State's policy against all forms of promiscuous or illicit sexual relationships, be they premarital or extramarital, concededly a permissible and legitimate legislative goal. . . . [But] I wholly fail to see how the ban on the use of contraceptives by married couples in any way reinforces the State's ban on illicit sexual relationships.

We may infer that White might have been willing to uphold the Connecticut law if Connecticut's lawyers had made a reasonable case for it. Whether or not they could have made such a case, White's interpretation of due process lays much less rigid restrictions on the legislative power of the States than does the right of privacy.

As is well known, Justice White dissented vehemently from the Court's decision in *Roe v. Wade*, calling it "an exercise of raw judicial power" without foundation "in the language or history of the Constitution." More immediately relevant to our theme here, however, is the dissent from *Roe v. Wade* written by Justice Rehnquist, who by then had joined the Court. He agreed that

> the "liberty," against deprivation of which without due process the Fourteenth Amendment protects, embraces more than the rights found in the Bill of Rights. But that liberty is not guaranteed absolutely against deprivation, but only against deprivation without due process of law. The test traditionally applied in the area of social and economic legislation is whether or not a law such as [the Texas statute] challenged [in this case] has a rational relation to a valid state objective. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 491 (1955). The Due Process Clause of the Fourteenth Amendment undoubtedly does place a limit on legislative power to enact laws such as this, albeit a broad one. If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective under the test stated in *Williamson, supra.* But the Court's sweeping invalidation

> of any restrictions on abortion during the first trimester [of pregnancy] is impossible to justify under that standard, and the conscious weighing of competing factors which the Court's opinion apparently substitutes for the established test is far more appropriate to a legislative judgment than to a judicial one.

The above interpretation of what Rehnquist has more recently called "a liberty interest protected by the Due Process Clause" has two effects. On the one hand, it abandons Justice Black's thesis that the clause protects only those rights that can be found in the Bill of Rights. On the other hand, despite what Rehnquist said in the *Webster* case that he was not going to do, he has clearly rejected Justice Blackmun's "'unenumerated' general right to privacy," the effect of which is to turn the Supreme Court into a legislative body. Under Rehnquist's interpretation of due process, the Court will still ride herd on legislation, but the test of the constitutional validity of legislation will only be whether it has "a rational relation to a valid state objective." Protecting prenatal human life is arguably such an objective.

If a majority of the Court accepts that understanding of the meaning of the Due Process Clause, then the whole edifice of constitutional law erected by the "right of privacy" will collapse. What will take its place remains to be seen. Some restrictions on legislation regulating or prohibiting abortion there will undoubtedly be, but they will depend on what the majority of the Court considers to be valid state objectives and the rationality of laws in relation to them. At the very least, the wall of separation which the *Roe* Court erected between abortion and the law will come down. So much seems clear; beyond that, the crystal ball (mine at least) is cloudy.

## NOTE

1. "Foreword," in Howard Jay Graham, *Everyman's Constitution* (Madison: State Historical Society of Wisconsin, 1968), p. vii.

# Swedish Leviathan: Religion and Federal Child-Care Legislation

*William B. Ball*

PAUL JOHNSON, the well-known English author (writing in the February, 1989 issue of *Crisis* magazine), warns against too much rejoicing over the present discrediting of Marxist-Leninism, lest we fail to see that it is but one offshoot of secularist totalitarianism. Even more dangerous, he warns, may be other secularist programs aimed at erecting earthly utopias to be achieved by measures, humane in appearance, but appalling in effects upon human freedom. Enactment of the controversial "ABC Bill"—the "child-care" proposal pending in the Congress[1]—may represent the biggest step that the United States can conceivably take to bring about the latter form of totalitarianism of which Johnson speaks, for ABC has the potential to deliver America's children into rigidly-controlled, secularist governmental custody.

The implications of such a social transformation are revolutionary, especially in terms of the effect upon family life, upon parental and religious freedom—indeed, upon our whole constitutional fabric. That such legislation could be adopted also illuminates the failure of major religious groups to protect fundamental liberties, to define the "child-care" problem, and to support practical, workable, and realistic solutions to it.

### The 100th Congress, 1988

My introduction to ABC resulted from an inquiry I received from the Association of Christian Schools International, a Protestant organization with a particular interest in early childhood education and home-based child care, which had heard that major measures to help children and their working parents were now before the Congress. Rep. Dale Kildee's office provided a copy of the bill along with the "Dear Colleague" letter, signed by its chief sponsors, asking other Congressmen to support it. The letter spoke of "a

William Bentley Ball is a well-known constitutional lawyer specializing in issues of religious freedom; he has been lead counsel in 19 cases in the U.S. Supreme Court (including the landmark decision in the "Amish" case of *Wisconsin v. Yoder*).

growing national crisis in child care," saying that "swift action must be taken"—swift *federal* action. Appended to the letter was a list of members of an "alliance" of 75 national organizations which had "come together to support a comprehensive child care bill—'The Act for Better Child Care Services' ('ABC')." Among these were Americans for Democratic Action, NOW Legal Defense and Education Fund, the AFL-CIO, a cluster of child-care "action" organizations, 16 religious organizations, and such diverse groups as the Association of Junior Leagues, Inc., American Association of University Women, and Girls Clubs of America. I was especially interested in the religious supporters, because so much child care in our nation is under religious auspices. Among these were Catholic Charities USA, the National Council of Churches of Christ, the National Council of Catholic Women, B'nai B'rith Women, Inc., Lutheran Office for Government Affairs, Presbyterian Church (USA), and three United Churches of Christ ministries.

Acting for this massive array of national bodies were 128 members of the house as sponsors of H.R. 3660 and 23 members of the Senate as sponsors of S. 1885. Senate and House hearings on ABC took place early in 1988. If the phalanx of organizational and Congressional support for ABC had not sufficed to impress the nation that ABC was urgently needed for resolving the "national crisis in child-care," the hearings, show-casing the crisis and the legislation, created an atmosphere of inevitability for ABC. The televised Senate hearings (March 15, 1988), in a packed Room 639 of the Hart Office Building, saw four panels of witnesses backing ABC to the hilt. In the first, titled "Parents and Families," a string of witnesses told moving stories of disasters, physical and financial, which they had encountered through "unregulated" child care. Bruised babies and battered children were exhibited to the Senators. The witnesses (often indiscriminately lumping together non-profit and for-profit child care as the "child care industry") conveyed the impression that private child care is inherently unsafe unless totally regulated by government. Witnesses in a panel of "Business Representatives" said that "day care is a money issue," that "improved productivity" by employees was needed, and that the way to get that (and thus to increase profits) was to create day-care centers within business establishments. All these witnesses highly favored

ABC. A third panel, composed of "Policy Makers" (e.g., the Lieutenant Governor of Minnesota and the Mayor of Hartford), conveyed the impression that our cities desperately need "a national child care system," federally funded. The fourth panel dealt with "Costs," with representatives of the Institute for Women's Policy Research and the National Association for the Education of Young Children citing, at great length, surveys, studies and statistics, all of which, said the witnesses, proved the need for the ABC.

Having found ABC to be thoroughly bad, I found myself the sole witness opposing ABC at the hearings. Called to testify at the very end of the long hearing day, and playing to an empty house before Senator Christopher Dodd only, I attacked the two worst features of the bill. First and foremost was its aim of delivering all child care (including religious child care) into the hands of the state. This, as we shall see, can well be called the bill's "Leviathan" feature. Second was its lesser fault of excluding "sectarian" child care from the bill's benefits.

The first feature was founded on the premise that "high quality" child care (the stated aim of the bill) would be whatever government would say it is. But the bill contained no definition of "high quality," the basic term on which the whole bill depended. Ignoring, then, the essential fact that there are many methodologies of child care and (especially considering religious child care) differing ideas of what "quality" is, the bill went on to provide for a single federal regulatory design: a National Advisory Committee which would have unlimited power to create a compendium of "minimum standards" covering every aspect of the care of children. States, to participate in generous federal funding, would have to comply with these standards, as would other child-care providers. The U.S. Secretary of Health and Human Services would be forbidden to relax the standards, and allowed only to increase their stringency. Total governmental surveillance of private religious child care was required, even governmental assessment of the "effectiveness" of child care work of religious agencies (but how would the *government* assess the effectiveness of religion upon the well-being of a child?)

Though employees of most religious child-care endeavors serve

children and parents at sacrificially low salaries, government would determine the "adequacy" of those salaries. Not lacking in the ABC Bill was careful provision, *via* "childhood development programs," for the introduction of governmentally-determined values. Indeed, Section 2(a)(5) went so far as to state a finding that "high quality childhood development programs" are "cost effective" because they can reduce the chances of "adolescent pregnancy." Here was an express legislative vehicle for installing a universally applied, federally-supported sex education program.

The nation's major religious organizations had evidently ignored this first feature of the bill—its design for comprehensive governmental absorption of child care. Indeed, the National Council of Churches, Catholic Charities, the Presbyterian Church and other major church bodies, heartily endorsing the bill, stoutly supported its Leviathan feature. Dispute came only in reference to the second, or lesser, fault of the bill—its "sectarian" exclusion. Sections 19 and 20 said that "No funds authorized by this Act shall be expended for sectarian purposes or activities," which meant "any program or activity that has the purpose or effect of advancing or promoting a particular religion or religion generally" or, as to child-care services performed on the premises of a pervasively-religious institution, services in classrooms where "religious symbols and artifacts" had not been removed or covered up. Further, a religious child-care facility could not select students or even employees on the basis of religion.

While the mainline Protestant bodies substantially agreed with these exclusions, the U.S. Catholic Conference, the national public-affairs organ of the nation's largest religious body, did express concern over it. But by May the USCC felt able to put its concerns aside on the basis of "compromise language" proposed by the Children's Defense Fund, chief advocate of the leviathanizing of child care and a prime proponent of ABC. The main feature of the "compromise" was that the Senate and House committee reports which would accompany passage would state that any "issues raised" by the "no funds for sectarian purposes or activities" wording would be more properly resolved "in other forums, such as the regulatory process." In other words, the basic exclusion would

stand, with any questions that might later arise to be resolved by the government agencies charged with enforcing the Act. Worse, the "compromise language" went on to *add* a restrictive concept not found in Sections 19 and 20: that child-care certificates should not be used to purchase religious child-care services. A seasoned neutral observer of the "sectarian" exclusion dispute remarked:

> The Children's Defense Fund wrote this rather ineffectual stuff to buy off the church groups without giving in. This report language is a throwaway. It resolved nothing and makes clear the ABC coalition's desire for federal control of child care supply and disdain for church-run centers.

The USCC, however, found the "compromise" acceptable and, on July 22, 1988, publicly stated its support of the ABC Bill.

ABC did not pass in 1988, but it represented the second great stage of the intended revolution in American child care (the pre-1988 "networking" which created the ABC alliance was the first public stage). No doubt ABC's sponsors rightly perceived that a second year of public relations, networking and legislative development would be needed in order to install ABC's intended New Order. In fact, ABC has actually been at least twenty years in the making. Dr. Elizabeth Ruppert, an authority on that history,[2] in an important 1988 article, described ABC's core concept, the idea of a national "working family" or "corporate family" economy:

> . . . a simple policy based upon behavior technology. It uses bureaucratic control over the distribution of tax-subsidized services as an incentive-based, carrot-on-the-stick tool to encourage families to use government child care. Thus, while services are financed through taxation of all families with children, they are made available only to families in which mothers and fathers are absent from the home during the day and whose children are enrolled in government-controlled child care facilities. Over time, all families are to be forced to have both parents in the workplace and to enroll their child(ren) in the national child care system in order to meet their basic needs.[3]

Ruppert noted the insistence of "corporate family" economy advocates (centers in the National Academy of Science's Committee on Child Development) that "science" must govern public policy decisions respecting families, that "science" dictates the necessity of the "corporate family" policy, and that the Congress must heed "science's" findings and produce national legislation establishing

that policy. While Ruppert also noted heavy criticism of the claims of the National Academy that its behavioral science was in any sense real science,[4] she thought it important to expose to the light of day two *political* factors essential to public comprehension of the "corporate family" economy plan.

First was the role of the federally-funded National Academy in political *promotion* of the plan; the Academy was described as playing "a unique role in advising executive branch agencies and Congress on vital national issues."[5] Second was the importation of Swedish social policy as the chosen model for American policy. Ruppert traces the history, beginning with seminars in the U.S. sponsored by the Swedish Embassy and Information Service in 1984 on "The Working Family: Perspectives in Sweden and the U.S." She quotes Monica Boethius, of the Swedish Cooperative Union, who explained the "working family" policy:

> . . . its characteristics are that the grown-ups (or one, in a one-parent family) spend most of their working day outside the home, and that time spent together at home is mainly leisure time. This means that the children have to be cared for by somebody else and in most cases somewhere else . . . [t]he Swedish income tax system has a basic concept that every grown-up shall support himself or herself.[6]

The National Academy, Ruppert points out, used the Swedish policy as its research model. In 1980, its Panel on Work, Family and Community "interlocked its agenda with the U.S. Department of Education's National Institute of Education to establish a national legislative model for what is now the proposed 'Act For Better Child Care Services of 1987'."[7]

Thus what the Congress had before it in 1988 was not so much a bill as a *program*—and *not* a simple, recently-developed "answer" to meet a sudden "crisis" in child care. Perhaps the national religious bodies might be pardoned for not knowing the actual genesis of ABC. But what was surprising was that they seemed oblivious to the fact that, on its very face, ABC imposed total government controls upon their ministries (while doing nothing to benefit parents who wanted to be able freely to choose religious care for their children). In 1989, ABC—now cosmetically changed—would be presented again to the Congress, and religious bodies would be granted a fresh opportunity to seek its defeat—or to demand *sound* legislation.

The 101st Congress, 1989

The renewed push for ABC at the opening of the 101st Congress came in the face of mounting doubts that the real "child-care crisis" was the one which the ABC coalition claimed as the justification for ABC. While (true to the Swedish model) ABC was focused on center-based child care, most child care in the United States is not of that kind. As Robert Rector has established, "contrary to popular wisdom, the use of day care centers is, at present, quite rare"[8]—in reality, the care of children is taking place elsewhere. It serves the purposes of ABC advocates to obscure the fact that only 46 percent of children under the age of five have employed mothers, with less than one pre-school child in three having a mother employed full-time.[9] As Rector points out:

> . . . traditional parental care for young children is not only the most common, it is also the overwhelming preference of parents. More than eighty percent of mothers state that they would prefer to stay at home with their own children if they could afford to do so. And by a ratio of two to one, mothers under the age forty-four state that they do not regard the increased enrollment of young children in day care centers as a positive development.[10]

The 1989 Senate ABC Bill (S. 5), along with its cousin in the House (H.R. 3),[11] ignored these basic facts and provided, instead, that most of the money related to child care would go to centers, not to parents, and not *through* parents. The clear purpose was to use the financial power of the government as an irresistible magnet to induce parents, hard-pressed by increasing taxation, to give over their children to government-controlled centers.

But as the drumfire for the ABC bills intensified early this year, bills were introduced presenting an opposite option for parents: to aid them through forms of tax relief (including "refundable" tax credits for lowest income parents). The tax-credit options in President Bush's proposed legislation (S. 601, S. 602, H.R. 1466, H.R. 1467) or Rep. Holloway's Child Care Tax Credit Reform Bill (H.R. 3944) provided for substantial and *direct* aid to parents (including low-income parents) and to stay-at-home mothers. While these bills were targeted on *real* child-care needs, they were also free of the religiously-discriminatory features of ABC as well as its *governmental monopoly* of child care. But, as to center-based

care, it was also conceivable that legislation would be advanced which would be free of religious restrictions on the use by parents of "certificates," or vouchers, in order to obtain such care.

The tax-credit bills (and several others which were similar in concept) appeared to meet well a series of Criteria For Evaluating Child Care which the Catholic Conference, apparently revising its 1988 position, published in March, 1989. These salutary criteria stressed the need for *any* child care legislation to aid families "in caring for their own children," especially families with the fewest economic resources—that it support "care at home, in homes of relatives, in family day care[12], in day-care provided by religious organizations," and "maximum participation of religious and other non-profit and community groups in the provision of safe and affordable child care." The Criteria warned that "new legislation should not erect barriers or statutory limitations which prevent families from choosing the kind of care they believe most appropriate for their own children." The statement also warned against "broad licensing requirements" by government.

The new ABC bills fail to meet these criteria in three critically important ways: 1) they would not aid families providing care in their own homes,[13] 2) their most obvious feature is broad regulatory requirements, and 3) they continue to treat religious child care (probably the commonest form in the land) as an alien endeavor which, while needing to be totally regulated, must be quarantined as a source of aid to those parents wishing to choose it.

The USCC, in May, opened up a vigorous attack on the third fault of the bills. Resisting any departure from the religiously-discriminatory provisions of ABC was a union of all of the organizations which, historically, have lobbied and litigated against forms of public aid to parents needing such aid in order to exercise conscientious religious choice in education.[14] But thanks to the USCC's leadership, a coalition of religious organizations was formed to back a "Parental Choice" amendment to the Senate ABC Bill.[15] This amendment, proposed by Senators Wendell Ford and David Durenberger—while it left standing the prohibition against financial assistance "for any sectarian purpose or activity, including sectarian worship and instruction"—added the provision that this prohibition should not apply to funds received by a provider "resulting from

the distribution of a child care certificate to a parent." It was the USCC's view that this amendment so modified the "sectarian" exclusion as to allow parents to use a voucher ("certificate") in exchange for child care afforded by a religious center.

A further amendment to the Senate bill came in June, substantially modifying the bill's original provisions prohibiting child-care providers from discriminating in employment or admissions on the basis of religion (i.e., denying a religious child-care provider the right to choose its employees or to select its children upon the basis of conscientious religious conviction). A religious child-care center could also require that all of its employees adhere to its religious teachings.

But such liberalizing amendments—even *if* they become part of the ultimate legislation—will not, of course, bar courts from holding unconstitutional the funding of certificates for religious child care, or of a religious child-care center's exercising religious preferences in admissions or employments. And a proviso added to the above amendment respecting certificates stated: "Financial assistance provided under this title shall not be expended in a manner inconsistent with the Constitution." This loose end in an otherwise valuable exemption will not likely escape the future attention of litigious secularists. Further, regardless of any statutory provisions aimed at assuring the availability of certificates for religious child care,[16] *state* constitutional provisions barring aid to sectarian religious organizations may be successfully invoked by secularists to deny such availability. Finally, as of mid-August, 1989, the House bill (H.R. 3) did not contain the USCC-backed liberalizing provisions. But based on its notable achievement in securing those provisions, the USCC endorsed the Senate bill anyway, while hoping to achieve like revisions in the House bill (H.R. 3).[17] The USCC's failure, again, to target the primary evil of the bill, and its decision to endorse it once its sponsors had agreed to a partial resolution of the "sectarian" exclusion, was a mistake which the future may well show to have been tragic.

As I write this, it cannot be predicted which of the ABC proposals now before the Congress will be enacted into law. They are, as of September 1, three bills (S. 5, H.R. 3 and H.R. 3150—introduced by Rep. Dan Rostenkowski on August 4); a likely fourth measure

will be some form of combination of these bills through action of a joint Senate-House conference committee. The chances of a possible sustained presidential veto appear remote. Two remarkable facts stand out as we face the threat of a new national child-care law on the ABC model.

*First*, such a law will not be responsive to the real child-care problem in America—that is, aid to parents for providing *at-home* care—S. 5 does contain modest tax-credit features which will benefit, in a limited way, only the very poorest families, but it remains totally tilted in favor of care outside the home. In short, it not only does not help family life, but also militates *against* family life. Except for the extremely poor, it does nothing to help sustain the traditional family mode of millions of financially-hard-pressed middle-income parents. And H.R. 3 stiff-arms both the religious child-care provider *and* parents who desire to care for their own children. Rep. Rostenkowski's H.R. 3150 has the feature of affording earned income tax credits utilizable by parents for at-home care. But neither the Rostenkowski bill, nor S. 5 or H.R. 3, provide the meaningful relief which would result from the reduction of income and Social Security taxes (taxes which, it should be remarked, the poor also pay). All three bills would siphon precious public financial resources away from parents and into the creation, maintenance, and inevitable *expansion* of the bureaucracies which the bills will erect as the mechanisms for enforcing their regulations.

*Second* (and this is the supreme consideration), whatever good-or-bad minor modifications are made to any of the prospective ABC bills, their disastrous common central feature will apparently remain: the subjection to total government regulation of all child-care providers to whom the legislation's assistance is extended.[18] Given the fact that the emphasis of all the bills is on care in *centers*, the social impact is unavoidable. The following pattern shapes up: present *anti-family* taxation policies will be both continued and extended; parents who need child-care assistance will have but one way to get it—by enrolling their children in centers—and the centers will be houses of the state—i.e., government-run facilities with a government-determined regime.

Yet those religious organizations which were initial members of the child-care "alliance" are enthusiastic over the congressional

developments: the USCC, as noted, has now given its support for the Senate ABC Bill (which, after inclusion of the religious-discrimination amendments, passed the Senate June 23). The largest national religious organizations flatly deny that this legislation poses any real threat to religious liberty. They maintain, first, that all the ABC bills have now discarded the 1988 ABC scheme creating *federal* regulation; instead, the 1989 bills shift control to the states, where private child-care providers are presumed to be familiar with their state welfare and education departments—and the states can be counted on to jealously guard their rights and to decide their own standards. Second, the major religious bodies seem not to comprehend the significance of government regulation of religious endeavors or the implications of the government controls imposed by the ABC bills.

While it is true that the bills would now make the states the child-care regulatory agents, that fact is irrelevant to the "Who controls?" question. *Federal* control (and saturating state control) of religious providers are what the bills not only allow but absolutely require. They expressly provide that to be able to receive federal child-care funds, a state must adopt a comprehensive written state plan for complying with *federal* requirements. The National Advisory Committee on Recommended Child Care Standards, to be created under ABC, is to develop *national* standards. After these have been submitted to each state's "lead agency" and to each state's subcommittee on licensing for comment, "The Secretary shall . . . not later than 180 days after publication of such standards, issue rules establishing recommended child-care standards for purposes of this title." In short, the states will either toe the federal line or they won't get their money. Historically, nothing shows that state welfare and educational bureaucracies will be reluctant in the pursuit of regulation. Under ABC, federal money will encourage this.

For under ABC, the state must ensure that all providers that receive public funds are licensed or otherwise regulated by the state, which will in turn establish enforcement policies applicable to all licensed or regulated providers. These policies must include provisions for comprehensive state inspections, even of internal matters (e.g., complaint procedures which will involve the state,

consumer education, employment policies, etc.). Noncompliance by the state with "any provisions or any requirements in the plan approved" by the Secretary will result in a cut-off of state funds or in additional sanctions. Hence the state is forced into a vigorous regulatory role. Only superficially, therefore, can it be argued that ABC has been shifted from being a federally-controlled program to being a state-controlled program.

Irrespective of the locus of control, are the regulations themselves in any way threatening? What is missed by some religious endorsers of ABC is the significance of certain of the regulatory provisions and the "blank check" effect of the regulatory scheme as a whole. One example: mandatory federal standards, under ABC, are to be created with reference to "staff qualifications and background requirements." The Government Manual style of the quoted language is laughable when in it considered that myriad child-care "centers" are informal, church-housed ministries with little paid help, much volunteer help—no "staff" in the governmental sense—and "requirements" based on religious character, love for children, and maturity. Thrusting the above mandatory regulation into the picture poses restrictions of choices by the ministry based upon *its* judgment, and opens up wide latitude for secular-government agents to determine who shall teach or offer care in religious child care.

Also, ABC requires that each employee of a child-care facility must complete an annual in-service training, the subjects and adequacy of which will be specified and judged by government regulators. This conferral of power to the secular government over the training of those who work in a religious child-care facility is one which only the most naive would say is without serious consequences.

Perhaps worst of all, the setting by government of salary scales for "child care workers" is directly contemplated. A small-budget parish or congregation which has day care in its church for 20 children, and whose employees work sacrificially at low salaries, will face the likelihood of requirements of financial reporting and wage-setting by outside agents who are not part of the ministry.

And ABC requires governmental inspections of religious child-care sites, without limitation as to the number of times per year or the scope of examination (i.e., going beyond reasonable health

and safety considerations). Hence the whole mode of conducting religious child care, its teaching, its discipline, its judgments as to policy—all will be subject, under ABC, to governmental scrutiny.

These are but a few examples out of many requirements for state intrusion and pressures for conformity which ABC provides. What has gone unnoticed (or been ignored?) by the religious bodies which now support ABC is that each of the intrusive powers given in ABC is *open-ended*—utterly without limitation.

The ABC comes down to this: *it is aimed at converting all religious child care into essentially a government program at the price of parental choice and as the price for its existence.* It is not justified by any showing that comprehensive control of non-profit religious child care is necessitated by any public danger which traditional religious volunteerism in the field has brought about. ABC is the fulfillment of a skillful campaign to establish a society of secularist design. That is the social and constitutional evil of ABC.

* * * * *

The lesson that the ABC controversy teaches—which has yet to be learned by our largest religious bodies—is that exteme care should always be exerted in allowing religion to come under governmental jurisdiction. That allowance is surely an irrevocable step: when all of a private organization's governance powers, or important aspects of them, are ceded in favor of open-ended governmental power, the expansion of those governmental powers *always* ensues, and the leverage to resist that expansion is utterly gone.

A related lesson is this: secularist victories are inevitable only because they are perceived as inevitable. There is no political necessity for the triumph of ABC. A coalition of Catholics and Evangelicals[19] could prevent it, and could have immense impact in properly defining the child-care problem, and achieving a sound solution to it.

## NOTES

1. "Act For Better Child Care Services." Identical "ABC" bills were introduced November 19, 1989, by Senator Christopher Dodd in the Senate (S. 1885) and by Rep. Dale Kildee in the House (H.R. 3660). In this article, the term "ABC" is also used to embrace the 1989 bills (S. 5, H.R. 3 and H.R. 3150) which are essentially the same as the 1988 ABC bills.
2. Formerly Washington Liaison, Society For Research on Child Care Development; special assistant

to executive director, International Year of the Child; research associate, National Institute of Education.

3. Elizabeth Ruppert, *The Absent Parent: Targeting the Issue*, Family Research Council of America, Inc., 1988, pp. 1-2.

4. "Human beings have values and goals that give meaning to their lives and influence their behavior. Social scientists are simply unable to cope with goals and values in any scientifically predictable way. Nor can they use scientific methods to determine which goals are better or worse." Robert Pitchell, "Social Scientists Are Not Real Scientists," *Washington Post*, July 28, 1987, cited in Ruppert, *supra*, p. 3.

5. Ruppert, *supra*, p. 3, citing Frank Press, "Social Scientists Are Real Scientists," *Washington Post*, July 4, 1987.

6. M. Boethius, "The Working Family," *Social Change in Sweden*. New York: Swedish Information Service, May, 1984. Cited in Ruppert, *supra*, 4.

7. Ruppert, *supra*, p. 4.

8. Robert Rector, "Fourteen Myths About Families and Child Care," 25 *Harvard Journal on Legislation*, p. 526 (1989).

9. Rector, *supra*, pp. 519-520.

10. Rector, *supra*, p. 520.

11. H.R. 3, introduced by Rep. Augustus Hawkins, was entitled "Child Development and Education Act of 1989." Since in all key provisions it was identical to S. 5, I continue to refer to it as an "ABC" bill.

12. A USCC press release of May 15, 1989, stated that most of the day care in the country is currently provided in private homes.

13. "Though it is sold as broad based relief for financially strapped families, it actually benefits only a tiny minority. A majority of families with children under five do not have mothers in the workforce. And since the Dodd Bill only covers 'licensed' day-care, it excludes some 90 percent of providers from eligibility. All told, ABC would give help to about one in ten American families.

"And the small number of children that are helped, ironically, do not come from lower income families, but from wealthier, professional ones. When low income families use day-care at all, they seldom use the professional, licensed facilities that would get money from ABC. Their choice, more often than not, is a relative or a neighbor. Mothers in professional or white-collar jobs are three times more likely to put their children in 'professional' group care than mothers in blue collar or service jobs. Lower income families would not benefit from ABC, but they would help foot the bill in taxes." Statement of Senator Dan Coats (R., Ind.) before Senate Committee on Finance, April 18, 1989.

14. Among these were American Jewish Congress, American Humanist Association, American Association of School Administrators, Americans United for Separation of Church and State, National Education Association, National Council of Churches of Christ, (USA), American Ethical Union, Anti-Defamation League of B'nai B'rith, American Civil Liberties Union, Unitarian Universalist Association, American Association of University Women, National Council of Jewish Women, and Baptist Joint Committee.

15. The coalition consisted of Agudath Israel of America, American Montessori Society, Christian Schools International, Council for American Private Education, Evangelical Lutheran Church in America Department of Education, Friends Council on Education, Knights of Columbus, Lutheran Church-Missouri Synod, National Association of Episcopal Schools, National Catholic Educational Association, National Council for Hebrew Day Schools, National Council of Catholic Women, Seventh-Day Adventist Board of Education and Solomon Schecter Day School Association.

16. An amendment to S. 5 to this effect, proposed by Senators Helms and Domenici, was adopted in June, Senator Domenici pointing out that not all states have a certificate mechanism, hence they must be required to furnish parents certificates, as a condition for participation in the Act. 135 Cong. Rec. S.7438 (daily ed. June 23, 1989).

17. In addition, USCC was widely concerned over language in that bill which could be used to require child care centers to include abortion coverage in all health benefit plans for employees.

18. The bills contain no clear limitation of their regulatory reach to *assisted* providers. And as will be seen, they will encourage the wide expansion of present regulation.

19. Early in 1989, the National Association of Evangelicals, a powerful and energetic Protestant body, faced by the ABC crisis, changed its historic position on church-state separation by coming out in favor of "parents rights and religious freedom in child care" and endorsing the tax credit care proposals.

# Safe Sex and the AIDS Martyrs

*R. V. Young*

IT WAS ONCE routinely taken for granted that acts of homosexual sodomy constituted a perversion of human sexuality. This view presupposed, however, a set of beliefs governing marriage and procreation, from which sexuality could not be separated; and these beliefs, in turn, grew out of an overall vision of the meaning and purpose of man's earthly life. To be sure, sexual morality was often neglected, evaded, and even flouted by individuals, groups, or even entire social classes—chastity is not an easy virtue. But it is only in recent decades that Western society as a whole has been subjected to a relentless campaign, on the part of its most powerful and influential members, to jettison traditional morality altogether and to re-define the very nature of sexuality, severing any necessary connection of erotic gratification to procreation and marriage. The pestilence of AIDS—especially as it has been treated by the political authorities and the principal news media—may be taken as the culmination, the bitter fruit, of this assault on normal sexual morality.

Homosexual activists and their media allies never weary of insisting that AIDS is "everybody's problem," that its casualties are "victims." In fact they are correct. Those who die of AIDS, however, are victims not of the hard-hearted traditional moral beliefs, but of the war on morality launched by "heterosexuals." A wide acceptance, or at least a condoning, of heterosexual promiscuity preceded the "gay rights" movement and made it almost irresistible. Once hopping from bed to bed for mere personal gratification becomes a matter of moral indifference, then it is difficult to maintain any rational morality concerning the gender of bedmates and the specific activities engaged in. Promiscuity is promiscuity, and it has the effect of making any rules at all seem arbitrary. Homosexuals who die of AIDS are victims of society, then, only insofar as the majority with normal sexual inclinations has failed to restrain its appetites.

R. V. Young is an English professor at North Carolina State University and a regular contributor to this and other American journals.

The dismantling of customary decorum and common decency has virtually institutionalized sexual intemperance and irresponsibility, thereby unleashing a plague of venereal diseases of which AIDS is but the worst.

Perhaps I can clarify my point with a digression—a reflection both personal and literary. I came of age during the sixties, attending high school and college amid the throes of the "sexual revolution." Like many young men of my generation, I was then much taken with the phrase and the concept, "free love." To my adolescent mind it seemed an unexceptional and altogether affirmative notion: If love is the most important experience in our lives, then surely it should exist in and for itself, a purely personal relationship between two individuals, unencumbered by institutional rules and societal expectations? Or so I reasoned then. Real love, real marriage, above all real children—more forcefully than the most skillful moralist's argument, these *genuine* facts of life disabused me (and, I suspect, many others) of that most foolish of humanity's recurrent illusions. Whatever love is, it is certainly never "free." Once a man has *known* a woman carnally, once he has become *one flesh* with her, a commitment is established, whether acknowledged or not. Only an inveterate gnostic dualism would suppose that our souls could be "free" of the "knowledge" thus inscribed in our flesh, of the bond thus established by our bodies. Love only frees when it is the ultimate love of self-abandonment: "Greater love hath no man than to lay down his life for his friend" (John 15:13).

I had thought little about "free love" for many years until recently when it occurred to me that, during the eighties, this most cherished delusion of the sixties has been replaced by another, no less perilous and considerably cruder: "safe sex." For all its dreams of free love for free spirits, what the sexual revolution has finally brought us is symbolized by a bit of greasy rubber. And just as love is never really "free," even so sex is never really "safe." Risk, of one kind or another, is an essential element of human sexuality, which, in its primary procreative function, is a reminder of our inevitable mortality. Slogans encouraging us to "practice safe sex responsibly" could only come of a sterile materialism ignorant even of the rueful prudence of paganism. Virgil's shepherd Corydon,

burning with unrequited desire for the boy Alexis, recognizes that his obsession borders on madness:

> me tamen urit amor; quis enim modus adsit amori?
> ah, Corydon, Corydon, quae te dementia cepit?
>
> *Eclouges* 2:68-69

> yet still I am aflame with love; what measure is there to love?
> ah, Corydon, Corydon, what mindlessness has seized you?

Sexual desire, Virgil suggests, is a furious energy universal in animal life; in human beings, uncontrolled, it leads to disaster:

> Omne adeo genus in terris hominumque ferarumque,
> et genus aequores, pecudes pictaeque volucres,
> in furias ignemque ruunt: amor omnibus idem.
>
> *Georgics* 3:242-44

> Truly every race on earth, men and beasts alike, and the nations of the seas, cattle and brightly colored birds, plunge into the fires of passion: love is the same to them all.

These lines from Virgil give poetic currency to a realization that is virtually universal among human cultures: sexual desire is a powerful, dangerous force that must be constrained and given some "measure" by social, political, and religious institutions because, as poor Corydon has learned to his sorrow, the isolated individual can become helpless against its mastery. Keep in mind that the healthy fear of sexuality expressed by Virgil does not seem to take into account sexually transmitted diseases.

Perhaps at no point in history has there been a more cogent demonstration of the "dementia" occasioned by the erotic imperative than now. At a time when an epidemic of these "sexually-transmitted diseases" is spreading throughout the world, public health officials and medical authorities seem bent on de-emphasis, if not outright exoneration, of the principle cause: sexual promiscuity. AIDS is obviously the most striking example of this curious response, because it now is inevitably fatal to its victims—and because its rapid diffusion has resulted from activities that are not only irresponsible and self-indulgent but also immoral and, in most places, illegal. The vast majority of AIDS cases are contracted through acts of

homosexual sodomy, with intravenous drug use a distant second. Sodomites and drug users pass the disease on to spouses and more conventional lovers, and mothers to their unborn children. Only a few cases have occurred among persons receiving transfusions of blood from infected donors.

Obviously this is a disease tied to specific groups of persons who *define themselves* in terms of behavior that, at the very best, can be called antisocial and irresponsible. Indeed, there is an extraordinary parallel between sodomy and drug abuse: both actions are engaged in for excitement and self-gratification that necessarily reject the constraints and obligations of normal social and familial life; both involve unnatural and destructive assaults on the human body. To gauge the extent to which our society has abandoned moral wisdom, one need only consider that our most influential politicians and public health officials have responded to the AIDS epidemic by attempting to make sodomy and drug abuse "safe" through the mass distribution of condoms and sterile syringes.

Such patently feeble public-health measures can only be explained as a manifestation of the ideological imperative of secular materialism. Freely-available condoms and hypodermic needles—whatever fragile, temporary protection they may afford—will, in the long run, only serve to increase the plague by encouraging what causes it. "Safe sex," then, is not merely a slogan; it is a prayer, a petition in the litany of a mock religion whose worshippers are as seriously devoted to unfettered erotic hedonism as primitive cults were to priapic idols and fertility goddesses. As many have observed, the secular ideologies of the modern world are variants of the ancient Gnostic tradition. The contemporary version of Gnosticism accepts the materialist premise that the entire universe, including its human denizens, can be reduced to physical phenomena. A universe comprising only the random interactions of matter and energy is necessarily meaningless; hence the concept of natural law, of intrinsic norms of good and evil, is called into question. Among the ancient Gnostics the material creation was condemned as utterly evil and wholly alien to the realm of pure spirit. The arbiters of spiritual transcendence were an elite rgoup of "Pure Ones" (*Cathari*), distinguished by their secret knowledge (*gnosis*). The obvious contemporary counterparts of the Gnostic Pure Ones are

the left-wing intellectuals who dominate the media and academic life. The modern intellectual is ordinarily characterized by a moral sanctimoniousness not in spite of, but *because* of his flouting of traditional moral standards. These standards are, after all, based on an understanding of the nature of reality, and it is reality that the modern ideologue, like the ancient Gnostic, most vehemently rejects.

One extreme manifestation of this rejection of reality has been the efforts of Communist regimes to dismantle human nature and create the "New Marxist Man." The genocidal slaughter carried out by Hitler, Stalin, Mao Tse Tung, and Pol Pot are examples of what happens when ideology rejects reality (the Beijing Massacre is the latest example). The AIDS crisis is an equally extreme and bizarre denial of reality. A recent Los Angeles *Times* story reports that the opening of a medical conference on AIDS in Montreal was delayed by "a raucous demonstration involving several hundred people with AIDS and AIDS-related conditions. The protesters paraded to the podium and presented a 10-point 'Montreal manifesto' calling for, among other things, protection of the rights of infected people, faster access to promising treatments and an end to the use of inactive placebos in drug trials" (Raleigh *News and Observer*, 5 June 1989). Such incidents have by now become routine—the story further reports that "the protest has been approved in advance by the conference organizers"—but how often do groups of terminal cancer patients or victims of other incurable diseases get together in order to protest their treatment by society, and the procedures used by medical science to find a cure?

Ironically, an AP story on the very same page of my local newspaper shows what very deferential treatment has been accorded AIDS carriers: "Poll Finds Most Favor Reporting AIDS Infection." This is of course a poll of the general public, which favors reporting infected persons only to their spouses and public health officials. However, those same officials (as well as other medical personnel) are very often opposed to reporting the infection to *anyone*, and in fact there is no policy of notifying either sexual partners or public authorities in most jurisdictions. To get a marriage license, a man and a woman must be tested for syphilis, and a physician

who diagnoses a case of this disease (which can be cured) must notify the spouse and other "sexual contacts" of the patient. Children with *curable* communicable diseases are routinely quarantined. Recently the faculty of my own university (North Carolina State) was required to dismiss from class any student who could not produce evidence of a measles vaccinaion after *one* case was reported on campus (a few others turned up in neighboring high schools and universities). It would seem only prudent to apply these and similar measures to curb the spread of AIDS, an incurable disease with a 100 per cent mortality rate. In fact, the judicious use of quarantines and the discouragement of activities by which AIDS is spread (most of which are illegal) might stop the spread of the epidemic *now*. Except for unborn children and recipients of blood transfusions, virtually no one contracts the AIDS virus through inadvertent activity.

Even to suggest such things, however, is to court the accusation of bigotry and a lack of compassion. For the most part physicians and public officials have fallen in line with the endless propaganda of Gay Rights activists and their media allies. Not only are all AIDS victims routinely given the status of martyrs, but society as a whole is regarded as guilty in some obscure fashion, as if the disease were the result of a conspiratorial plot to persecute the "Gay community." The treatment of AIDS victims as if they were fallen war heroes is exemplified by the "national quilt" with panels dedicated to individual deaths. North Carolina participation in the project was highlighted in a feature story in the Raleigh *News and Observer* (Nov. 30, 1988) timed to coincide with World AIDS Day observances. The story concluded with detailed listings of local ceremonies, and telephone numbers and addresses for anyone who wished to get involved.

The fostering of guilt is usually more subtle, but occasionally it is quite blatant. About two months before World AIDS Day in 1988, *The Independent*, a leftist weekly published in Chapel Hill, ran this headline on its cover: "Fatal Politics: Is David Flaherty Spreading AIDS?" The obvious assumption of a casual reader unacquainted with North Carolina politics would be that David Flaherty is the operator of a Gay bathhouse, a publisher of homosexual pornography, or a heroin pusher. In fact, Mr. Flaherty is Secretary

of the State's Department of Human Resources, appointed by Republican Gov. James Martin. Flaherty is "spreading AIDS" by his reluctance to encourage the right kind of "education":

> The best way to reach at-risk people, AIDS experts say, is to show them how to modify their own behavior: by cleaning their needles and syringes, and by wearing condoms during sex. Preaching abstinence, they say, is ineffective.
>
> AIDS education needs to be in the language the target groups use, even if that language is crude, and even if it means discussing illegal activities like sodomy and intravenous drug use.
>
> "Our state leaders have to be willing to give a very bold message to people engaging in high-risk behavior, even if it's offensive to their constituency," says Leah Devlin, director of the Wake County Health Department.
>
> *The Independent*, Sept. 22, 1988

It would seem that Mr. Flaherty is "spreading AIDS" by an understandable disinclination to involve the state financially and administratively in criminal activities. If the situation were not so terrible, it would be absurdly comic: in the course of breaking the law and offending common morality, groups of persons bring down upon themselves a dire plague which now threatens the populace as a whole. Public officials are then accused of bigotry and of furthering the disease when they hesitate to foster the actions which gave rise to the problem in the first place. There are eerie parallels with the propaganda in favor of abortion: make it legal because women will do it anyway.

Mr. Flaherty's critics were most disturbed by his refusal to appoint one Les Kooyman to the department's AIDS Task Force. Mr. Kooyman had been unofficially involved in the Task Force, and his formal appointment was in the works, when the Rev. Joseph Chambers complained about a safe-sex "calling card" distributed by the Charlotte Metrolina AIDS Project ("considered a leader in frank education"), of which Les Kooyman was director. *The Independent* declines to describe the "calling card" itself, but it does not challenge the account given by Mr. Flaherty in a radio station interview:

> It's nothing but a solicitation card. It says, "Hi, I'm [blank] and I would like to play with you safely. I would like to soap you up in the shower, erotically massage you from your toes to your nose, cuddle up and see what comes up, grease up and jack off . . . [page 9]

*The Independent* sympathetically cites Mr. Kooyman's explanation that it was just "a marketing gimmick" with "a more traditional list of safe and unsafe activities" on the back. "Traditional" seems an odd word in this context; in any case, *The Independent* gives the last word on the Kooyman incident to Wendee Wechsberg, director of adult services for Drug Action of Wake County: "There are a lot of religious, moralistic people out there [who want to] interfere with the reality that we need to teach people about safe sex." Like the director of Wake County Public Health, Ms. Wechsberg is evidently a bureaucrat who does not worry about offending a constituency.

Of course a local weekly like *The Independent* simply lacks the resources of the major national publications. Surely the most grandiose treatment of the AIDS issue was the *Newsweek* feature story "The Faces of AIDS" (August 10, 1987). It is a remarkable example of sophisticated rhetorical manipulation; it plays on the guilt of society while glorifying the victims of AIDS. The centerpiece comprises fifteen pages of color photographs—302 individual snapshots—of people who had died of AIDS during the preceding twelve months. The selection of victims is plainly devised to reflect a cross-section of American society, a diversity according to race, sex, ethnic background, and age.

There would appear to be a disproportionate number of women and children represented among the pictures; those who have been infected by medical procedures or by spouses obviously have a very great claim on our sympathy. But *Newsweek* is at pains to suppress any distinctions that most observers would make among the victims. "A sizable majority," the magazine concedes, "are male homosexuals or drug users, the groups at ground zero of the devastation; they make up 90 percent of the known casualties." Despite the overwhelming association between AIDS and sodomy or illegal drugs, we are encouraged not to attribute the disease to the behavior: the "ground zero" metaphor suggests that the "casualties" are as random and unpredictable as the victims of a nuclear explosion. "Some commentators," the article continues, with evident disapproval, "have found a degree of comfort in the statistics, as if AIDS had been satisfactorily contained in an alien population. It has not been; it has struck the quick of American life."

The message is that homosexual practices and, apparently, even the use of illegal drugs should not be regarded as "alien"—as significantly different or abnormal behavior. How could it be when such a vast array of affluent professionals and celebrities have been drawn into the net: "But there are doctors here and lawyers, bankers and brokers, scholars and preachers, athletes and war heroes, a member of Congress and a bishop of the church."

*Newsweek* gives the last word to a man who had recently died of AIDS when the issue went to press, printing long excerpts from a video tape left behind by James Hurley, a Connecticut real estate lawyer:

> I got AIDS in a sexually promiscuous time, in the late '70s in New York, when we didn't know what was out there. People like myself, who've grown up in a technological society, believed that there would be a pill or a drug or an antibiotic that would cure any sexually transmitted disease that I had. And this worked for many years. So I caught AIDS, so to speak, out of ignorance. And I caught it at a time when no one else knew about it. It galls me when I hear one of these reporters mention that babies who contract AIDS through their mother are the *innocent* victims of AIDS, as though the rest of us are somehow *guilty* victims. There's no such thing as an innocent or guilty victim of AIDS.

It would be unfair to regard this man as typical of everyone who has suffered from AIDS. Many are truly victims of circumstance; many are deeply penitent. But he is typical of a Gnostic mentality which refuses to acknowledge personal responsibility. Obviously James Hurley saw himself as a martyr—a witness to a belief—in more ways than one. He was a martyr to a secular determinism that assumes that our fates are in no way in our own hands: it was, thus, the "time" that was "promiscuous," not the people. He was a martyr to the great god technology in his simple faith that there would always be "a pill or a drug or an antibiotic that would cure any sexually transmitted disease that I had." Finally, he was a martyr to what has been called the "therapeutic" view of human life that seeks to remove guilt, not by avoiding sin, but by denying its reality. In his final assertion he insists that he is, literally, as innocent as a newborn baby; but only because guilt and innocence are irrevelant, meaningless to human life.

Hurley can be called a genuine martyr to these "faiths" because he evidently died a true believer. His closing words reveal that

he displaced the ideal of innocence with an almost touching naiveté: he advocates "educating people" to use condoms because "we know enough to prevent another person from ever contracting AIDS, and we discuss whether to put the information out. We have 30,000 cases, it's 1987, and we sit around debating whether condoms should be advertised on TV." Hurley died with his faith in the determinism of *Zeitgeist* and in the "technological society" intact: "It's 1987," and if we can't cure AIDS with "a pill or a drug," then we'll do it with TV and condoms. Here is a paradigm case of blind faith, that a device which is notoriously ineffective as a contraceptive will somehow prove to be a thoroughly effective barrier against a fatal virus.

The AIDS martyrs, the "witnesses" to the virtues of "education" in safe sex, represent an inversion or parody of martyrdom in the traditional Christian sense. The Christian martyr willingly sheds his blood as a testament to his faith in the power of God to grant eternal life. The AIDS martyr does not lay down his life, but loses it involuntarily; James Hurley "caught AIDS . . . out of ignorance," the victim of "a sexually promiscuous time." While the death of the Christian martyr is a voluntary sacrifice, he nevertheless subjects his own will to the will of God and regards salvation as the fruit of God's grace, not within the compass of human power. The AIDS martyr, for all his sense of individual helplessness, still exhibits boundless confidence in the power of human technology to conquer nature and make *anything* possible for mankind. Finally, the Christian martyr sees his own suffering as a redemptive participation in the sacrifice of the incarnate God, which atones for the sin and guilt of the world. For the AIDS martyr suffering is meaningless because the notion of sin is meaningless: "There's no such thing as an innocent or a guilty victim of AIDS." The safe sex cult is thoroughly utilitarian: the only good is the gratification of desire; the only evils are pain and death. "It doesn't make any difference how it was contracted," Hurley says. "To have it is to have a disease that will end your life."

Obviously, *Newsweek* as well as other propaganda organs for a secularism that regards sodomy as the special practice of just one more "lifestyle," is engaged in a cunning rhetorical strategy.

The sympathy that goes out to the innocent victims of AIDS (*pace* James Hurley) and the admiration bestowed upon a martyr devoted to an ideal are ascribed to men and women who suffer as a result of their own foolish and immoral behavior. In this way public resistance to the behavior and the "lifestyle" is eroded. At the same time, these guilty victims of AIDS are indeed martyrs in at least one sense: they are witnesses to an entire complex of attitudes and assumptions that develop in a completely secularized, materialistic society. It is, then, fair to say that AIDS victims bear the brunt of the guilt that pertains to such a society as a whole.

The AIDS epidemic should not, therefore, provide an occasion for casting special opprobrium on homosexuals or even intravenous drug users; these are, after all, men and women who have simply carried to the limit the logic of a culture which encourages promiscuity and self-indulgence. If they are an "alien" population, they are alien in a way that a caricature or a distorted mirror image that highlights flaws is alien. *Newsweek* is certainly correct in asserting that "our response to AIDS will in important ways define us as a society." However, the response favored by the magazine is questionable. The epidemic offers us the opportunity to show compassion by helping people to escape from compulsive, perverted, and self-destructive behavior. But so far our official response has not been heartening. Even as we offer the violence of abortion as a "solution" to crisis pregnancy, so we offer the lie of "safe sex" as a panacea for AIDS. In each case we treat our flesh and our sexuality not as symbolic embodiments of spiritual realities, but as mere things, to be used wantonly and willfully for our pleasure and then cast aside.

# Green Grows the Rousseau—O!

*James Bowman*

COMMUNISM'S OBITUARY, in eight pages, appeared in the *Sunday Times* a few weeks ago. The Russian dissidents, of course, have been saying for years that, within the Eastern bloc, no one still believes in the official ideology. Like other commodities that can be sold for hard currency, it is strictly for export. It is sold to the dwindling number of believers in the West and the Third World for whom it still remains a living faith. Among the spiritually deracinated, however, in need of a new secular creed to live by, its place has been taken by environmentalism. This is a fact that needs to be taken to heart by the new Secretary of State for the Environment, Chris Patten, as he attempts to turn the Tories Green with nothing more in the way of gardening tools than the traditional British political methods of reason and compromise.

For you only have to talk to a dedicated Green partisan for five minutes to realise that his programme is about far more than just tidying up after ourselves, which is an old and not intrinsically very interesting problem. One party leader said recently that voting Green is "like taking a vow," and the religious language is apposite. Like fundamentalist Christianity, Greenery requires that we be born again from the sinfulness of industrial materialism. Like fundamentalist Islam, it inspires single-minded, sometimes fanatical devotion in its followers. It is even beginning to acquire its own mysticism, if James Lovelock's "Gaia hypothesis" is anything to go by. Lovelock, a research chemist who did pioneering work for NASA on the chemical preconditions for life on other planets, attributes to the biosphere a quasi-conscious interaction with the earth itself for the self-regulation of our peculiar chemical soup. This is so delicately poised on the edge of an imbalance which would make life impossible that it is as if life is sustained by a sort of pantheistic god whose hobby is chemical engineering.

**James Bowman** writes for the London *Spectator*, in which this article first appeared (Aug. 12, 1989); it is reprinted here with permission (©The Spectator 1989).

Lovelock's use of a Greek name associated with primitive nature worship is perhaps not accidental.

Where did this faith come from? Christianity, Islam, even communism grew out of more or less precisely identifiable historical events. Greenery, appropriately enough, "just growed." But the Green family tree does repay study nevertheless. For its roots are to be found in the revolutionary 18th century alongside those of socialism: they grow in the same soil even if they are not branches from the same trunk. Over 50 years ago, Edmund Wilson's *To the Finland Station* traced the intellectual genealogy of Leninist communism back to the historians and philosophers of the French revolution. What we need today is someone who can do the same job for environmentalism.

He would begin with the family resemblances between environmentalism and socialism. Both are committed to a view of the world as static rather than dynamic. The socialist believes that wealth may be taken from the rich and given to the poor without any other effect upon either than their relative impoverishment or enrichment; in the same way the environmentalist believes that the fact that population is increasing or ozone diminishing is *ipso facto* dangerous, since, of course, both will continue to increase or diminish, unaffected by their own growth or decline, until disaster supervenes. Therefore, both socialism and environmentalism require an élite of planners and technocrats to determine the allocation of resources and the level of growth in production. For this reason, both appeal to intellectuals, the natural members of that élite, and lend themselves to highly abstract theoretical elaboration. Both can be seen, however, as stratagems by the élite for limiting economic growth and the social mobility which goes with it and which would otherwise threaten their exclusive status.

The socialist and the environmentalist also share the same view of the natural moral order, which they tend nostalgically to identify with an ideal condition of primitive, pre-industrial man. This moral order is constantly being threatened by bad men—profiteers or polluters—whom it is the duty of the good men to bring to justice. Both are supremely confident in man's capacity to put that order to rights (the environmentalist is spite of his otherwise determinedly non-anthropocentric rhetoric); both are apocalyptic about what

happens if they are not heeded and naïve about what happens if they are. Both tend to be associated with a mystique of "the soil" and consider that agrarian life is superior to urban and cosmopolitan—though we haven't seen anything quite as extreme in this respect as a Khmer Vert. Yet.

Most importantly, both creeds are based upon an indisputable good: that the materially fortunate should assist the less fortunate; that those who foul a common benefit such as air or water should be made to clean up their mess. Because all men of good will agree with these basic principles in natural equity, the socialist and the environmentalist also share a perch on the high moral ground from which it is very difficult for their opponents to dislodge them. Both, however, must be dislodged. For any social order which selects a single good principle, whether that of equality or of tidiness, and ruthlessly makes all other good principles subordinate to it results in a tyranny.

The tyrannies into which both socialism and environmentalism are always, by the rigid application of their logic, threatening to turn are also closely related historically. Both could be said to have their origins in different but related aspects of the thought of Jean-Jacques Rousseau, the intellectual godfather of the French revolution. The socialist passion for equality derives from the basic principle that it is the *natural* condition of humankind: *L'homme est né libre, et partout il est dans les fers.* The corollary of this insight is the starting point of environmentalism: that the state of nature is benign.

Aldous Huxley once wrote an amusing essay entitled "Wordsworth in the Tropics" in which he pointed out just how far removed from the state of nature one has to be to make such an assumption:

> To us who live beneath a temperate sky and in the age of Henry Ford, the worship of Nature comes almost naturally. It is easy to love a feeble and already conquered enemy. But an enemy with whom one is still at war, an unconquered, unconquerable, ceaselessly active enemy—no; one does not, one should not love him. One respects him, perhaps; one has a salutary fear of him; and one goes on fighting.

Thus it is just possible that it is something more than greed and perversity which makes the Brazilians hack down their rain forests with such alacrity. Keith Thomas, in his fascinating study

*Man and the Natural World*, finds that, even in England and long after Wordsworth, Gladstone's favourite pastime of chopping down trees was, like his rescuing of fallen women, of a piece with his liberal progressivism: such exhibitions "were the last relics of the long tradition that to cut down trees was to strike a blow for progress."

Of course, Rousseau and the Romantics had strong precedents for their belief that nature on the hoof was to be preferred to that which was merely for slaughter. As understanding of nature had grown with the burgeoning of modern science in the preceding two centuries, so the primitive religious urges either to fight against or to propitiate a dangerous and capricious nature were giving way to a more rational view of it as uniform, predictable and, above all, manageable by man's own ingenuity. Sir Isaac Newton was as responsible as anyone for the rise of Deism—a species of natural religion one of whose chief differences from Christianity is that its emphasis on the system, the machine, of creation first made it possible to see human beings as a part of creation not different in kind from other parts.

Rousseau, then, was only engaging in the popular pastime of the 18th century, which was designing a natural religion; and putting Nature into the vacant slot previously occupied by God was presupposed by the century's progress towards the domestication of wild nature by science and industrial technology. The result was a faith in natural goodness which makes Candide sound like Timon of Athens—and, in fact, Rousseau said, in response to Voltaire's poem on the 1756 Lisbon earthquake, that he was going to take him in hand *de lui prouver que tout était bien.*

Rousseau's real originality, however, lay in the dethroning of reason which, under the Deist dispensation, continued to guarantee human uniqueness, and substituting for it feeling and intuition, *inward* nature, which man shared with the rest of the sentient creation. To such a way of looking at the world, the statement that man was made in the image of God is simply incomprehensible. It must eventually entail the end of human privilege in nature as surely as it meant, more immediately and explosively, the end of aristocratic privilege in society.

But it took practical revolutionaries a long time to realise these larger implications. Socialism, as the name implies, was a kind

of humanism of societies and always anthropocentric. Like Christianity it assumed that the rest of the natural world was there to serve man. Where Christianity's justification for this assumption was that God had given man dominion over the rest of creation, socialism had Marx's Labour Theory of Value, which, in addition to dignifying human labour, was a means of economically and politically marginalising not only capital but also nature itself. Darwin also gave powerful support to the assumption of human privilege by showing—or being taken to show—that man stood at a pinnacle of evolutionary process and was, indeed, the object that that process had been tending to produce. And if, like Wagner's gods, man had eventually to acquiesce in his own supersession, that pinnacle wasn't a bad place to be for the next million years or so.

Throughout the 19th century the time-bomb planted by Rousseau kept ticking away. Darwin's grandfather, Erasmus Darwin, first conceived of the theory of evolution in his epic, *Loves of the Plants*, written in heroic couplets and published in the revolutionary year, 1789; it looked forward not only to 19th-century science and its ultimate triumph in firmly placing man within and not above the natural order but also to the anthropomorphising of nature to be found in Wordsworth, whose example resonated through 19th-century English culture. The latter's great sonnet "The world is too much with us" could be taken up today, and without alteration, as the anthem of what we might call the respectable Greens:

> Great God! I'd rather be
> A pagan suckled in a creed outworn;
> So might I, standing on this pleasant lea,
> Have glimpses that would make me less forlorn;
> Have sight of Proteus rising from the sea;
> Or hear old Triton blow his wreathèd horn.

Nostalgia for primitive nature worship is rather innocuous stuff, however, in comparison with the dark forces that lie in the backgound of the less respectable sort of Greenery. For conservationists read Greenpeace, for Wordsworth read Blake. To Blake, nature was no more benign than man was—and a good thing too:

> Without contraries is no progression. Attraction and repulsion, reason and energy, love and hate are necessary to human existence.

But he shared with Rousseau an admiration for unmediated

psychological reality—or what Lionel Trilling called "authenticity"—and unrestrained energy: "Damn braces; bless relaxes." This was nature worship that was ready to forsake the pleasant lea and that was not afraid to plunge its hands up to the elbows in nature's blood and filth. Moreover, Blake's passion for liberty, like Rousseau's, was readily extended to cover non-human victims:

> A Robin Redbreast in a Cage
> Puts all Heaven in a Rage.

In our own time, Blake and Rousseau were updated by that greatest of all Romantics, Freud, whose assumption that the shackling and binding of nature within ourselves was a sort of "repression" that could and should be done away with was so influential through most of this century. Civil society itself, in fact, became contemptible not only because it acted as a restraint upon natural impulses in man, not only because it characteristically destroyed other forms of life for its own convenience, but because it represented almost by definition otherness in respect to nature.

The 20th century's casting off of traditional, "civilised" restraints has manifested itself in such diverse forms as the German National Socialists' love of animals, their attachment to vegetarianism and "naturist" pursuits, and the architectural orthodoxies by which the cities that their primitivism had destroyed were rebuilt. Le Corbusier stretched tentacles of green into the heart of his new cities—and, by his influence, many of our old ones—and strangled them as cities, as it seems to many people nowadays, out of sheer spite towards man's pretensions to a supranatural environment. Or to a nature that was distinctively human. His heirs are still at work, ruthlessly underscoring the point that man builds nothing more than "machines for living."

In poetry the primitivism of D.H. Lawrence took up more stridently and without mysticism the Blakean theme—"We might spare a million or two of humans/ And never miss them," he wrote, so much as a single mountain lion—and led on to Heathcote Williams's threnodies on the whales and elephants. Once again and most emphatically, what partook of the divine and the numinous were those aspects of nature which were most visibly and inevitably opposed to man in the mass, man in society. "In wilderness is

the preservation of the world," as the old Sierra Club's gnomic motto had it.

Whatever "the world" was, it was obviously not *le monde* of 18th-century Europe, out of whose fashion for sensibility and senimentality about nature Rousseau had forged the revolutionary creed from which are descended both socialism and environmentalism in their militant and distinctively political forms. If now the last of the socialist line appears to be moribund in its Eastern fastnesses, the title of mankind's revolutionary faith will pass to the more vigorous collateral line. And God help us all when the heir begins to take the estate in hand.

# Neither for Love nor Money: Why Doctors Must Not Kill

*Leon R. Kass*

Is THE PROFESSION of medicine ethically neutral? If so, whence shall we derive the moral norms or principles to govern its practices? If not, how are the norms of professional conduct related to the rest of what makes medicine a profession?

These difficult questions, now much discussed, are in fact very old, indeed as old as the beginnings of Western medicine. According to an ancient Greek myth, the goddess Athena procured two powerful drugs in the form of blood taken from the Gorgon Medusa, the blood drawn from her left side providing protection against death, that from her right side a deadly poison. According to one version of the myth, Athena gave to Asclepius, the revered founder of medicine, vials of both drugs; according to the other version, she gave him only the life-preserving drug, reserving the power of destruction for herself. There is force in both accounts: the first attests to the moral neutrality of medical means, and of technical power generally; the second shows that wisdom would constitute medicine an unqualifiedly benevolent—i.e., intrinsically ethical—art.

Today, we doubt that medicine is an intrinsically ethical activity, but we are quite certain that it can both help and harm. In fact, today, help and harm flow from the same vial. The same respirator that brings a man back from the edge of the grave also senselessly prolongs the life of an irreversibly comatose young woman. The same morphine that reverses the respiratory distress of pulmonary edema can, in higher doses, arrest respiration altogether. Whether they want to or not, doctors are able to kill—quickly, efficiently, surely. And what is more, it seems that they may soon be licensed and encouraged to do so.

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Leon R. Kass, M.D., is Henry R. Luce Professor of the Liberal Arts of Human Biology in the College and the Committee on Social Thought of the University of Chicago. This article is reprinted with permission of the author from: *The Public Interest*, No. 94 (Winter 1989), pp. 25-46. 

Last year in Holland some 5,000 patients were intentionally put to death by their physicians, while authorities charged with enforcing the law against homicide agreed not to enforce it. Not satisfied with such hypocrisy, and eager to immunize physicians against possible prosecution, American advocates of active euthanasia are seeking legislative changes in several states that would legalize so-called mercy killing by physicians. A year ago the editor of the *Journal of the American Medical Association* published an outrageous (and perhaps fictitious) case of mercy killing, precisely to stir professional and public discussion of direct medical killing—perhaps, some have said, as a trial balloon.[1] So-called active euthanasia practiced by physicians seems to be an idea whose time has come. But, in my view, it is a bad idea whose time must not come—not now, not ever. This essay is in part an effort to support this conclusion. But it is also an attempt to explore the ethical character of the medical profession, using the question of killing by doctors as a probe. Accordingly, I will be considering these interrelated questions: What are the norms that all physicians, *as physicians,* should agree to observe, whatever their personal opinions? What is the basis of such a medical ethic? What does it say—and what should we think—about doctors intentionally killing?

**Contemporary ethical approaches**

The question about physicians killing is a special case of—but not thereby identical to—this general question: May or ought one kill people who ask to be killed? Among those who answer this general question in the affirmative, two reasons are usually given. Because these reasons also reflect the two leading approaches to medical ethics today, they are especially worth noting. First is the reason of *freedom* or *autonomy.* Each person has a right to control his or her body and his or her life, including the end of it; some go so far as to assert a right to die, a strange claim in a liberal society, founded on the need to secure and defend the unalienable right to life. But strange or not, for patients with waning powers too weak to oppose potent life-prolonging technologies wielded by aggressive physicians, the claim based on choice, autonomy, and self-termination is certainly understandable. On this view, physicians (or others) are bound to acquiesce in demands not only

for termination of treatment but also for intentional killing through poison, because the right to choose—freedom—must be respected, even more than life itself, and even when the physician would never recommend or concur in the choices made. When persons exercise their right to choose against their continuance as embodied beings, doctors must not only cease their ministrations to the body; as keepers of the vials of life and death, they are also morally bound actively to dispatch the embodied person, out of deference to the autonomous personal choice that is, in this view, most emphatically the patient to be served.

The second reason for killing the patient who asks for death has little to do with choice. Instead, death is to be directly and swiftly given because the patient's life is deemed no longer worth living, according to some substantive or "objective" measure. Unusually great pain or a terminal condition or an irreversible coma or advanced senility or extreme degradation is the disqualifying quality of life that pleads—choice or no choice—for merciful termination. Choice may enter indirectly to confirm the judgment: if the patient does not speak up, the doctor (or the relatives or some other proxy) may be asked to affirm that he would not himself choose—or that his patient, were he *able* to choose, *would* not choose—to remain alive with one or more of these stigmata. It is not his autonomy but rather the miserable and pitiable condition of his body or mind that justifies doing the patient in. Absent such substantial degradations, requests for assisted death would not be honored. Here the body itself offends and must be plucked out, from compassion or mercy, to be sure. Not the autonomous will of the patient, but the doctor's benevolent and compassionate love for suffering humanity justifies the humane act of mercy killing.

As I have indicated, these two reasons advanced to justify the killing of patients correspond to the two approaches to medical ethics, most prominent in the literature today: the school of autonomy and the school of general benevolence and compassion (or love). Despite their differences, they are united in their opposition to the belief that medicine is intrinsically a moral profession, with its own immanent principles and standards of conduct that set limits on what physicians may properly do. Each seeks to remedy

the ethical defect of a profession seen to be in itself *a*moral, technically competent but morally neutral.

For the first ethical school, morally neutral technique is used morally only when it is used according to the wishes of the patient as client or consumer. The implicit (and sometimes explicit) model of the doctor-patient relationship is one of *contract*: the physician—a highly competent hired syringe, as it were—sells his services on demand, restrained only by the law (though he is free to refuse his services if the patient is unwilling or unable to meet his fee). Here's the deal: for the patient, autonomy and service; for the doctor, money, graced by the pleasure of giving the patient what he wants. If a patient wants to fix her nose or change his gender, determine the sex of unborn children, or take euphoriant drugs just for kicks, the physician can and will go to work—provided that the price is right and that the contract is explicit about what happens if the customer isn't satisfied.[2]

For the second ethical school, morally neutral technique is morally used only when it is used under the guidance of general benevolence or loving charity. Not the will of the patient, but the humane and compassionate motive of the physician—not as physician but as *human being*—makes the doctor's actions ethical. Here, too, there can be strange requests and stranger deeds, but if they are done from love, nothing can be wrong—again, providing the law is silent. All acts—including killing the patient—done lovingly are licit, even praiseworthy. Good and humane intentions can sanctify any deed.

In my opinion, each of these approaches should be rejected as a basis for medical ethics. For one thing, neither can make sense of some specific duties and restraints long thought absolutely inviolate under the traditional medical ethic—e.g., the proscription against having sex with patients. Must we now say that sex with patients is permissible if the patient wants it and the price is right, or, alternatively, if the doctor is gentle and loving and has a good bedside manner? Or do we glimpse in this absolute prohibition a deeper understanding of the medical vocation, which the prohibition both embodies and protects? Indeed, as I will now try to show, using the taboo against doctors killing patients, the medical profession

has its own intrinsic ethic, which a physician true to his calling will not violate, either for love or for money.

### Professing ethically

Let me propose a different way of thinking about medicine as a profession. Consider medicine not as a mixed marriage between its own value-neutral technique and some extrinsic moral principles, but as an inherently ethical activity, in which technique and conduct are both ordered in relation to an overarching good, the naturally given end of health. This once traditional view of medicine I have defended at length in four chapters of my book, *Toward a More Natural Science.*[3] Here I will present the conclusions without the arguments. It will suffice, for present purposes, if I can render this view plausible.

A profession, as etymology suggests, is an activity or occupation to which its practitioner publicly professes—that is, confesses—his devotion. Learning may, of course, be required of, and prestige may, of course, be granted to, the professional, but it is the profession's *goal* that calls, that learning serves, and that prestige honors. Each of the ways of life to which the various professionals profess their devotion must be a way of life worthy of such devotion—and so they all are. The teacher devotes himself to assisting the learning of the young, looking up to truth and wisdom; the lawyer (or the judge) devotes himself to rectifying injustice for his client (or for the parties before the court), looking up to what is lawful and right; the clergyman devotes himself to tending the souls of his parishioners, looking up to the sacred and the divine; and the physician devotes himself to healing the sick, looking up to health and wholeness.

Being a professional is thus more than being a technician. It is rooted in our moral nature; it is a matter not only of the mind and hand but also of the heart, not only of intellect and skill but also of character. For it is only as a being willing and able to devote himself to others and to serve some high good that a person makes a public profession of his way of life. To profess is an ethical act, and it makes the professional qua *professional* a moral being who prospectively affirms the moral nature of his activity.

Professing oneself a professional is an ethical act for many reasons.

It is an articulate public act, not merely a private and silent choice—a confession before others who are one's witnesses. It freely promises continuing devotion, not merely announces present preferences, to a way of life, not just to a livelihood, a life of action, not only of thought. It serves some high good, which calls forth devotion because it is both good and high, but which requires such devotion because its service is most demanding and difficult, and thereby engages one's character, not merely one's mind and hands.

The good to which the medical profession is devoted is health, a naturally given although precarious standard or norm, characterized by "wholeness" and "well-working," toward which the living body moves on its own. Even the modern physician, despite his great technological prowess, is but an assistant to natural powers of self-healing. But health, though a goal tacitly sought and explicitly desired, is difficult to attain and preserve. It can be ours only provisionally and temporarily, for we are finite and frail. Medicine thus finds itself in between: the physician is called to serve the high and universal goal of health while also ministering to the needs and relieving the sufferings of the frail and particular patient. Moreover, the physician must respond not only to illness but also to its meaning for each individual, who, in addition to his symptoms, may suffer from self-concern—and often fear and shame—about weakness and vulnerability, neediness and dependence, loss of self-esteem, and the fragility of all that matters to him. Thus, the inner meaning of the art of medicine is derived from the pursuit of health and the care for the ill and suffering, guided by the self-conscious awareness, shared (even if only tacitly) by physician and patient alike, of the delicate and dialectical tension between wholeness and necessary decay.

When the activity of healing the sick is thus understood, we can discern certain virtues requisite for practicing medicine—among them, moderation and self-restraint, gravity, patience, sympathy, discretion, and prudence. We can also discern specific positive duties, addressed mainly to the patient's vulnerability and self-concern—including the demands for truthfulness, patient instruction, and encouragement. And, arguably, we can infer the importance of certain negative duties, formulable as absolute and unexceptionable rules. Among these, I submit, is this rule: Doctors must not kill.

The rest of this essay attempts to defend this rule and to show its relation to the medical ethic, itself understood as growing out of the inner meaning of the medical vocation.

I confine my discussion solely to the question of direct, intentional killing of patients *by physicians*—so-called mercy killing. Though I confess myself opposed to such killing even by non-physicians, I am not arguing here against euthanasia per se. More importantly, I am not arguing against the cessation of medical treatment when such treatment merely prolongs painful and degraded dying, nor do I oppose the use of certain measures to relieve suffering that have, as an unavoidable consequence, an increased risk of death. Doctors may and must allow to die, even if they must not intentionally kill.

I appreciate the danger in offering arguments against killing: even at best, they are unlikely to be equal to the task. Most taboos operate immediately and directly, through horror and repugnance; discursive arguments against, say, incest or cannibalism can never yield the degree of certitude intuitively and emotionally felt by those who know such practices to be abominable, nor are they likely to persude anyone who is morally blind. It is not obvious that any argument can demonstrate, once and for all, why murder is bad or why doctors must not kill. No friend of decency wants to imperil sound principles by attempting to argue, unsuccesfully, for their soundness. Yet we have no other choice. Some moral matters, once self-evident, are no longer self-evident to us. When physicians themselves—as in Holland—undertake to kill patients, with public support, intuition and revulsion have fallen asleep. Only argument, with all its limitations, can hope to reawaken them.

### Assessing the consequences

Although the bulk of my argument will turn on my understanding of the special meaning of professing the art of healing, I begin with a more familiar mode of ethical analysis: assessing needs and benefits versus dangers and harms. To do this properly is a massive task. Here, I can do little more than raise a few of the relevant considerations. Still the best discussion of this topic is a now-classic essay by Yale Kamisar, written thirty years ago.[4]

Kamisar makes vivid the difficulties in assuring that the choice for death will be *freely* made and adequately *informed*, the problems of physician error and abuse, the troubles for human relationships within families and between doctors and patients, the difficulty of preserving the boundary between voluntary and involuntary euthanasia, and the risks to the whole social order from weakening the absolute prohibition against taking innocent life. These considerations are, in my view, alone sufficient to rebut any attempt to weaken the taboo against medical killing; the relative importance for determining policy far exceeds their relative importance in this essay. But here they serve also to point us to more profound reasons why doctors must not kill.

There is no question that fortune deals many people a very bad hand, not least at the end of life. All of us, I am sure, know or have known individuals whose last weeks, months, or even years were racked with pain and discomfort, degraded by dependency or loss of self-control, isolation or insensibility, or who lived in such reduced humanity that it cast a deep shadow over their entire lives, especially as remembered by the survivors. All who love them would wish to spare them such an end, and there is no doubt that an earlier death could do it. Against such a clear benefit, attested by many a poignant and heart-rending true story, it is difficult to argue, especially when the arguments are necessarily general and seemingly abstract. Still, in the aggregate, the adverse consequences—including real suffering—of being governed solely by mercy and compassion may far outwiegh the aggregate benefits of relieving agonal and terminal distress.

**The "need" for mercy killing**

The first difficulty emerges when we try to gauge the so-called "need" or demand for medically assisted killing. This question, to be sure, is in part empirical. But evidence can be gathered only if the relevant categories of "euthanizable" people are clearly defined. Such definition is notoriously hard to accomplish—and it is not always honestly attempted. On careful inspection, we discover that if the category is precisely defined, the need for mercy killing seems greatly exaggerated, and if the category is loosely defined, the poisoners will be working overtime.

The category always mentioned first to justify mercy killing is the group of persons suffering from incurable and fatal illnesses, with intractable pain and with little time left to live but still fully aware, who freely request a release from their distress—e.g., people rapidly dying from disseminated cancer with bony metastases, unresponsive to chemotherapy. But as experts in pain control tell us, the number of such people with truly intractable and untreatable pain is in fact rather low. Adequate analgesia is apparently possible in the vast majority of cases, provided that the physician and patient are willing to use strong enough doses and with proper timing.[5]

But, it will be pointed out, full analgesia induces drowsiness and blunts or distorts awareness. How can that be a desired outcome of treatment? Fair enough. But then the rationale for requesting death begins to shift from relieving suffering to ending a life no longer valued by its bearer or, let us be frank, by the onlookers. If this becomes a sufficient basis to warrant mercy killing, now the category of euthanizable people cannot be limited to individuals with incurable or fatal painful illnesses with little time to live. Now persons in all sorts of greatly reduced and degraded conditions—from persistent vegetative state to quadriplegia, from severe depression to the condition that now most horrifies, Alzheimer's disease—might have equal claim to have their suffering mercifully halted. The trouble, of course, is that most of these people can no longer request for themselves the dose of poison. Moreover, it will be difficult—if not impossible—to develop the requisite calculus of degradation or to define the threshold necessary for ending life.

### From voluntary to involuntary

Since it is so hard to describe precisely and "objectively" what kind and degree of pain, suffering, or bodily or mental impairment, and what degree of incurability or length of anticipated remaining life, could justify mercy killing, advocates repair (at least for the time being) to the principle of volition: the request for assistance in death is to be honored because it is freely made by the one whose life it is, and who, for one reason or another, cannot commit suicide alone. But this too is fraught with difficulty: How free or informed is a choice made under debilitated conditions? Can consent long in advance be sufficiently informed about all the

particular circumstances that it is meant prospectively to cover? And, in any case, are not such choices easily and subtly manipulated, especially in the vulnerable? Kamisar is very perceptive on this subject:

> Is this the kind of choice, assuming that it can be made in a fixed and rational manner, that we want to offer a gravely ill person? Will we not sweep up, in the process, some who are not really tired of life, but think others are tired of them; some who do not really want to die, but who feel they should not live on, because to do so when there looms the legal alternative of euthanasia is to do a selfish or a cowardly act? Will not some feel an obligation to have themselves 'eliminated' in order that funds allocated for their terminal care might be better used by their families or, financial worries aside, in order to relieve their families of the emotional strain involved?

Even were these problems soluble, the insistence on voluntariness as the justifying principle cannot be sustained. The enactment of a law legalizing mercy killing on voluntary request will certainly be challenged in the courts under the equal-protection clause of the Fourteenth Amendment. The law, after all, will not legalize assistance to suicides in general, but only mercy killing. The change will almost certainly occur not as an exception to the criminal law proscribing homicide but as a new "treatment option," as part of a right to "A Humane and Dignified Death."[6] Why, it will be argued, should the comatose or the demented be denied such a right or such a "treatment," just because they cannot claim it for themselves? This line of reasoning has already led courts to allow substituted judgment and proxy consent in termination-of-treatment cases since *Quinlan*, the case that, Kamisar rightly says, first "badly smudged, if it did not erase, the distinction between the right to choose one's own death and the right to choose someone else's." When proxies give their consent, they will do so on the basis not of autonomy but of a substantive judgment—namely, that for these or those reasons, the life in question is not worth living. Precisely because most of the cases that are candidates for mercy killing are of this sort, the line between voluntary and involuntary euthanasia cannot hold, and will be effaced by the intermediate case of the mentally impaired or comatose who are declared no longer willing to live because someone else wills that result for them. In fact, the more honest advocates of euthanasia

openly admit that it is these nonvoluntary cases that they especially hope to dispatch, and that their plea for *voluntary* euthanasia is just a first step. It is easy to see the trains of abuses that are likely to follow the most innocent cases, especially because the innocent cases cannot be precisely and neatly separated from the rest.

Everyone is, of course, aware of the danger of abuses. So procedures are suggested to prevent their occurrence. But to provide real safeguards against killing the unwilling or the only half-heartedly willing, and to provide time for a change of mind, they must be intrusive, cumbersome, and costly. As Kamisar points out, the scrupulous euthanasiasts seek a goal "which is *inherently inconsistent*: a procedure for death which *both* (1) provides ample safeguards against abuse and mistake; and (2) is 'quick' and 'easy' in operation." Whatever the procedure adopted, moreover, blanket immunity from lawsuits and criminal prosecution cannot be given in advance, especially because of the ineradicable suspicions of coercion or engineered consent, and the likelihood of mixed motives and potential conflict, post mortem, among family members.

### Damaging the doctor-patient relationship

Abuses and conflicts aside, legalized mercy killing by doctors will almost certainly damage the doctor-patient relationship. The patient's trust in the doctor's wholehearted devotion to the patient's best interests will be hard to sustain once doctors are licensed to kill. Imagine the scene: you are old, poor, in failing health, and alone in the world; you are brought to the city hospital with fractured ribs and pneumonia. The nurse or intern enters late at night with a syringe full of yellow stuff for your intravenous drip. How soundly will you sleep? It will not matter that your doctor has never yet put anyone to death; that he is legally entitled to do so—even if only in some well-circumscribed areas—will make a world of difference.

And it will make a world of psychic difference too for conscientious physicians. How easily will they be able to care wholeheartedly for patients when it is always possible to think of killing them as a "therapeutic option"? Shall it be penicillin and a respirator one more time, or perhaps just an overdose of morphine this time? Physicians get tired of treating patients who are hard to cure,

who resist their best efforts, who are on their way down—"gorks," "gomers," and "vegetables" are only some of the less than affectionate names they receive from the house officers. Won't it be tempting to think that death is the best treatment for the little old lady "dumped" again on the emergency room by the nearby nursing home?

Even the most humane and conscientious physician psychologically needs protection against himself and his weaknesses, if he is to care fully for those who trust themselves to him. A physician friend who worked for years in a hospice caring for dying patients explained it to me most convincingly: "Only because I knew that I could not and would not kill my patients was I able to enter most fully and intimately into caring for them as they lay dying." The psychological burden of the license to kill (not to speak of the brutalization of the physician-killers) could very well be an intolerably high price to pay for physician-assisted euthanasia, especially if it also leads to greater remoteness, aloofness, and indifference as defenses against the guilt associated with harming those we care for.

The point, however, is not merely psychological and consequentialist: it is also moral and essential. My friend's horror at the thought that he might be tempted to kill his patients, were he not enjoined from doing so, embodies a deeper understanding of the medical ethic and its intrinsic limits. We move from assessing the consequences to looking at medicine itself.

**The limits of medicine**

Every activity can be distinguished, more or less easily, from other activities. Sometimes the boundaries are indistinct; it is not always easy, especially today, to distinguish some music from noise or some teaching from indoctrination. Medicine and healing are no different; it is sometimes hard to determine the boundaries, both with regard to ends and means. Is all cosmetic surgery healing? Are placebos—or food and water—drugs?

There is, of course, a temptation to finesse these questions or to deny the existence of boundaries altogether: medicine *is* whatever doctors *do*, and doctors do whatever doctors *can*. Technique and power alone define the art. Put this way, we see the need for

limits: Technique and power are ethically neutral, usable for both good and ill. The need for finding or setting limits to the use of power is especially important when the power is dangerous; it matters more that we know the proper limits on the use of medical power—or military power—than, say, the proper limits on the use of a paint brush or violin.

The beginning of ethics regarding power generally lies in nay-saying. Small children coming into their powers must be taught restraint, both for their own good and for the good of others. The wise setting of boundaries is based on discerning the excesses to which the power, unrestrained, is prone. Applied to the professions, this principle would establish strict outer limits—indeed, inviolable taboos—against those "occupational hazards" to which each profession is especially prone. *Within* these outer limits, no fixed rules of conduct apply; instead, prudence—the wise judgment of the man on the spot—finds and adopts the best course of action in light of the circumstances. But the outer limits themselves are fixed, firm, and nonnegotiable.

What are those limits for medicine? At least three are set forth in the venerable Hippocratic Oath: no breach of confidentiality; no sexual relations with patients; no dispensing of deadly drugs.[7] These unqualified, self-imposed restrictions are readily understood in terms of the temptations to which the physician is most vulnerable, temptations in each case regarding an area of vulnerability and exposure that the practice of medicine requires of patients. Patients necessarily divulge and reveal private and intimate details of their personal lives; patients necessarily expose their naked bodies to the physician's objectifying gaze and investigating hands; patients necessarily entrust their very lives to the physician's skill, technique, and judgment. The exposure is, in all cases, one-sided and asymmetric: the doctor does not reveal his intimacies, display his nakedness, offer up his embodied life to the patient. The patient is vulnerable and exposed; the physician is neither, or, rather, his own vulnerabilities are not exposed to the patient. Mindful of the meaning of such nonmutual exposure, the physician voluntarily sets limits on his own conduct, pledging not to take advantage of or to violate the patient's intimacies, sexuality, or life itself.

The reason for these restraints is not just the asymmetry of power and the ever-present hazard of its abuse. The relationship between doctor and patient transforms the ordinary human meaning of exposure. Medical nakedness is not erotic nakedness; palpation is not caressing; frank speech is not shared intimacy and friendship; giving out diets and drugs is not hospitality. The physician necessarily objectifies, reduces, and analyzes, as he probes, pokes, and looks for latent clues and meanings, while curbing his own sentiments and interests, so as to make a diagnosis and find a remedy. The goal that constitutes the relationship requires the detachment of the physician and the asymmetry of exposure and communication, and legitimates the acquisition and exercise of power. Yet it also informs the limits on how the power should be used and the manner in which the patient should be treated.

The prohibition against killing patients rests also on a narrower ground, related not only to the meaning of the doctor-patient relationship, but also, once again, to the potentially deadly moral neutrality of medical technique—the problem of the two vials. For this reason, it stands as the *first* promise of self-restraint sworn to in the Hippocratic Oath, as medicine's primary taboo: "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. . . . In purity and holiness I will guard my life and my art." In forswearing the giving of poison, the physician recognizes and restrains the godlike power he wields over patients, mindful that his drugs can both cure and kill. But in forswearing the giving of poison *when asked for it,* the Hippocratic physician rejects the view that the patient's choice for death can make killing him right. For the physician, at least, human life in living bodies commands respect and reverence—*by its very nature.* As its respectability does not depend on human agreement or patient consent, revocation of one's consent to live does not deprive one's living body of respectability. The deepest ethical principle restraining the physician's power is not the autonomy or freedom of the patient; neither is it his own compassion or good intention. Rather, it is the dignity and mysterious power of human life itself, and, therefore, also what the Oath calls the purity and holiness of the life and art to which he has sworn devotion. A person can choose to be a physician, but he cannot choose what physicianship means.

**The essence of medicine**

One way to define medicine—or anything else—is to delimit its boundaries, to draw the line separating medicine from non-medicine, or its ethical from its unethical practice. Another way to define medicine—or anything else—is to capture its center, to discern its essence. In the best case, the two kinds of definitions will be related: the outer boundary will at least reflect, and will at best be determined by, what is at the center. Some practices are beyond the pale precisely because they contradict what is at the center.

To seek the center, one begins not with powers but with goals, not with means but with ends. In the Hippocratic Oath, the physician states his goal this way: "I will apply dietetic measures *for the benefit of the sick* according to my ability and judgment. I will keep them from harm and injustice." In a more thorough explication of the Oath in my book, I have argued that this little paragraph, properly unpacked, reveals the core of medicine. For example, the emphasis on dietetics indicates that medicine is a cooperative rather than a transformative art, and the physician an assistant to the immanent healing powers of the body. And because a body possessed of reason is a body whose "possessor" may lead it astray through ignorance or self-indulgence, the physician, as servant of the patient's good, must advise, and exhort to keep him from *self*-harm and injustice. Here I focus only on the modest little phrase, "the benefit of the sick."

The physician as physician serves only the sick. He does not serve the relatives or the hospital or the national debt inflated due to Medicare costs. Thus he will never sacrifice the well-being of the sick to the convenience or pocketbook or feelings of the relatives or society. Moreover, the physician serves the sick not because they have rights or wants or claims, but because they are sick. The benefit needed by the sick qua sick is health. The healer works with and for those who need to be healed, in order to make them whole.

Healing is thus the central core of medicine: to heal, to make whole, is the doctor's primary business. The sick, the ill, the unwell present themselves to the physician in the hope that he can help them become well—or, rather, as well as they can become, some

degree of well-ness being possible always, this side of death. The physician shares that goal; his training has been devoted to making it possible for him to serve it. Despite enormous changes in medical technique and institutional practice, despite enormous changes in nosology and therapeutics, the center of medicine has not changed: it is as true today as it was in the days of Hippocrates that the ill desire to be whole; that wholeness means a certain well-working of the enlivened body and its unimpaired powers to sense, think, feel, desire, move, and maintain itself; and that the relationship between the healer and the ill is constituted, essentially even if only tacitly, around the desire of both to promote the wholeness of the one who is ailing.

**Human wholeness**

The wholeness and well-working of a human being is, of course, a rather complicated matter, much more so than for our animal friends and relations. Because of our powers of mind, our partial emancipation from the rule of instinct, our self-consciousness, and the highly complex and varied ways of life we follow as individuals and as members of groups, health and fitness seem to mean different things to different people, or even to the same person at different times of life. Moreover, departures from health have varying importance depending on the way of life one follows. Yet not everything is relative and contextual; beneath the variable and cultural lies the constant and organic, the well-regulated, properly balanced, and fully empowered human body. Indeed, only the existence of this natural and universal subject makes possible the study of medicine. The cornerstone of medical education is the analytic study of the human body, *universally* considered: anatomy, physiology, biochemistry and molecular biology, genetics, microbiology, pathology, and pharmacology—all these sciences of somatic function, disorder, and remedy are the first business of medical schools, and they must be learned before one can hope to heal particular human beings.

But *human* wholeness goes beyond the kind of somatic wholeness abstractly and reductively studied by these various sciences. Whether or not doctors are sufficiently prepared by their training to recognize it, those who seek medical help in search of wholeness are not

*to themselves* just bodies or organic machines. Each person intuitively knows himself to be a center of thoughts and desires, deeds and speeches, loves and hates, pleasures and pains, but a center whose workings are none other than the workings of his enlivened and mindful body. The patient presents himself to the physician, tacitly to be sure, as a psychophysical unity, as a *one*, not just as a body, but also not just as a separate disembodied entity that simply *has* or *owns* a body. The person and the body are self-identical. To be sure, the experience of psychophysical unity is often disturbed by illness, indeed, by bodily illness; it becomes hard to function as a unity if part of oneself is in revolt, is in pain, is debilitated. Yet the patient aspires to have the disturbance quieted, to restore the implicit feeling and functional fact of oneness with which we freely go about our business in the world. The sickness may be experienced largely as belonging to the body as something other; but the healing one wants is the wholeness of one's entire embodied being. Not the wholeness of *soma*, not the wholeness of *psyche*, but the wholeness of *anthropos* as a (puzzling) concretion of *soma-psyche* is the benefit sought by the sick. This human wholeness is what medicine is finally all about.

### Wholeness and killing

Can wholeness and healing ever be compatible with intentionally killing the patient? Can one benefit the patient as a whole by making him dead? There is, of course, a logical difficulty: how can any good exist for a being that is not? "Better off dead" is logical nonsense—unless, of course, death is not death at all but instead a gateway to a new and better life beyond. But the error is more than logical: to intend and to act for someone's good requires his continued existence to receive the benefit.

Certain attempts to benefit may in fact turn out, unintentionally, to be lethal. Giving adequate morphine to control pain might induce respiratory depression leading to death. But the intent to relieve the pain of the living presupposes that the living still live to be relieved. This must be the starting point in discussing all medical benefits: no benefits without a beneficiary.

Against this view of healing the whole human being, someone will surely bring forth the hard cases: patients so ill-served by

their bodies that they can no longer bear to live, bodies riddled with cancer and racked with pain, against which their "owners" protest in horror and from which they insist on being released. It is argued that it just isn't true that we are psychophysical unities; rather, we are some hard-to-specify duality (or multiplicity) of impersonal organic body plus supervening consciousness, what the professionals dub personhood: awareness, intellect, will. Cannot the person "in the body" speak up against the rest, and request death for "personal" reasons?

However sympathetically we listen to such requests, we must see them as incoherent. Strict person-body dualism cannot be sustained. "Personhood" is manifest on earth only in living bodies; our highest mental functions are held up by, and are inseparable from, lowly metabolism, respiration, circulation, excretion. There may be blood without consciousness, but there is never consciousness without blood. The body is the living ground of all so-called higher functions. Thus one who calls for death in the service of personhood is like a tree seeking to cuts its roots for the sake of growing its highest fruit. No physician, devoted to the benefit of the sick, can serve the patient as person by denying and thwarting his personal embodiment.

To say it plainly, to bring nothingness is incompatible with serving wholeness: one cannot heal—or comfort—by making nil. The healer cannot annihilate if he is truly to heal. The boundary condition, "No deadly drugs," flows directly from the center, "Make whole."

**Analogies**

The reasonableness of this approach to medical ethics is supported by analogies with other professions. For example, we can clearly see why suborning perjury and contempt of court are taboos for lawyers, why falsifying data is taboo for a scientist, or why violating the confessional is taboo for a priest, once we see the goals of these professions to be, respectively, justice under law, truth about nature, and purification of the soul before God. Let me expand two other analogies, somewhat closer to our topic.

Take the teacher. His business: to encourage, and to provide the occasion for, learning and understanding. Recognizing this central core, we see that the teacher ought never to oppose himself to the student's efforts to learn, or even to his prospects for learning.

This means, among other things, never ridiculing an honest effort, never crushing true curiosity or thoughtfulness; it also means opposing firmly the temptations that face students to scramble their minds through drugs. And even when the recalcitrant student refuses to make the effort, the teacher does not abandon his post, but continues to look for a way to arouse, to cajole, to inspire, to encourage. The teacher will perhaps not *pursue* the unwilling student, but as long as the student keeps coming to class, the true teacher will not participate in or assist him with his mental self-neglect.

Now consider the parent. These days only a fool would try to state precisely what the true business of a father or mother is, qua father or mother. Yet it must be something like protection, care, nurture, instruction, exhortation, chastisement, encouragement, and support, all in the service of the growth and development of a mature, healthy, competent, and decent adult, capable of an independent and responsible life of work and love and participation in community affairs—no easy task, especially now. What will the true parent do when teenagers rise in revolt and try to reject not only the teachings of their homes but even the parents themselves, when sons and daughters metaphorically kill their parents as parents by un-sonning and un-daughtering themselves? Should fathers acquiesce and willingly unfather themselves; should mothers stand against their life-work of rearing and abandon the child? Or does not the true parent "hang in there" in one way or another, despite the difficulty and sense of failure, and despite the need, perhaps, for great changes in his or her conduct? Does not the true parent refuse to surrender or to abandon the child, knowing that it would be deeply self-contradictory to deny the fact of one's parenthood, whatever the child may say or do? Again, one may freely choose or refuse to become a parent, but one cannot fully choose what parenthood means. The inner meaning of the work has claims on our hearts and minds, and sets boundaries on what we may do without self-contradiction and self-violation.

### When medicine fails

Being a physician, teacher, or parent has a central inner meaning that characterizes it essentially, and that is independent both of the demands of the "clients" and of the benevolent motive of

the practitioners. For a physician, to be sure, things go better when the patient is freely willing and the physician is virtuous and compassionate. But the physician's work centers on the goal of healing, and he is thereby bound not to behave in contradiction to that central goal.

But there is a difficulty. The central goal of medicine—health—is, in each case, a perishable good: inevitably, patients get irreversibly sick, patients degenerate, patients die. Unlike—at least on first glance—teaching or rearing the young, healing the sick is *in principle* a project that must at some point fail. And here is where all the trouble begins: How does one deal with "medical failure"? What does one seek when restoration of wholeness—or "much" wholeness—is by and large out of the question?

There is much that can and should be said on this topic, which is, after all, the root of the problems that give rise to the call for mercy killing. In my book I have argued for the primacy of easing pain and suffering, along with supporting and comforting speech, and, more to the point, the need to draw back from some efforts at prolongation of life that prolong or increase only the patient's pain, discomfort, and suffering. Although I am mindful of the dangers and aware of the impossibility of writing explicit rules for ceasing treatment—hence the need for prudence—considerations of the individual's health, activity, and state of mind must enter into decisions of *whether* and *how vigorously* to treat if the decision is indeed to be for the patient's good. Ceasing treatment and allowing death to occur when (and if) it will seem to be quite compatible with the respect that life itself commands for itself. For life is to be revered not only as manifested in physiological powers, but also as these powers are organized in the form of *a* life, with its beginning, middle, and end. Thus life can be revered not only in its preservation, but also in the manner in which we allow a given life to reach its terminus. For physicians to adhere to efforts at indefinite prolongation not only reduces them to slavish technicians without any intelligible goal, but also degrades and assaults the gravity and solemnity of a life in its close.

Ceasing medical intervention, allowing nature to take its course, differs fundamentally from mercy killing. For one thing, death

does not necessarily follow the discontinuance of treatment; Karen Ann Quinlan lived more than ten years after the court allowed the "life-sustaining" respirator to be removed. Not the physician, but the underlying fatal illness becomes the true cause of death. More important morally, in ceasing treatment the physician need not *intend* the death of the patient, even when the death follows as a result of his omission. His intention should be to avoid useless and degrading medical *additions* to the already sad end of a life. In contrast, in active, direct mercy killing the physician must, necessarily and indubitably, intend *primarily* that the patient be made dead. And he must knowingly and indubitably cast himself in the role of the agent of death.

**Being humane and being human**

Yet one may still ask: Is killing the patient, even on request, compatible with respecting the life that is failing or nearing its close? Obviously, the euthanasia movement thinks it is. Yet one of the arguments most often advanced by proponents of mercy killing seems to me rather to prove the reverse. Why, it is argued, do we put animals out of their misery but insist on compelling fellow human beings to suffer to the bitter end? Why, if it is not a contradiction for the veterinarian, does the medical ethic absolutely rule out mercy killing? Is this not simply inhumane?

Perhaps inhumane, but not thereby inhuman. On the contrary, it is precisely because animals are not human that we must treat them (merely) humanely. We put dumb animals to sleep because they do not know that they are dying, because they can make nothing of their misery or mortality, and, therefore, because they cannot live deliberately—i.e., humanly—in the face of their own suffering or dying. They cannot live out a fitting end. Compassion for their weakness and dumbness is our only appropriate emotion, and given our responsibility for their care and well-being, we do the only humane thing we can. But when a conscious human being asks us for death, by that very action he displays the presence of something that precludes our regarding him as a dumb animal. Humanity is owed the bolstering of the human, even or especially in its dying moments, in resistance to the temptation to ignore its presence in the sight of suffering.

What humanity needs most in the face of evils is courage, the ability to stand against fear and pain and thoughts of nothingness. The deaths we most admire are those of people who, knowing that they are dying, face the fact frontally and act accordingly: they set their affairs in order, they arrange what could be final meetings with their loved ones, and yet, with strength of soul and a small reservoir of hope, they continue to live and work and love as much as they can for as long as they can. Because such conclusions of life require courage, they call for our encouragement—and for the many small speeches and deeds that shore up the human spirit against despair and defeat.

Many doctors are in fact rather poor at this sort of encouragement. They tend to regard every dying or incurable patient as a failure, as if an earlier diagnosis or a more vigorous intervention might have avoided what is, in truth, an inevitable collapse. The enormous successes of medicine these past fifty years have made both doctors and laymen less prepared than ever to accept the fact of finitude. Doctors behave, not without some reason, as if they have godlike powers to revive the moribund; laymen expect an endless string of medical miracles. It is against this background that terminal illness or incurable disease appears as medical failure, an affront to medical pride. Physicians today are not likely to be the agents of encouragement once their technique begins to fail.

It is, of course, partly for these reasons that doctors will be pressed to kill—and many of them will, alas, be willing. Having adopted a largely technical approach to healing, having medicalized so much of the end of life, doctors are being asked—often with thinly veiled anger—to provide a final technical solution for the evil of human finitude and for their own technical failure: If you cannot cure me, kill me. The last gasp of autonomy or cry for dignity is asserted against a medicalization and institutionalization of the end of life that robs the old and the incurable of most of their autonomy and dignity: intubated and electrified, with bizarre mechanical companions, helpless and regimented, once proud and independent people find themselves cast in the role of passive, obedient, highly disciplined children. People who care for autonomy and dignity should try to reverse the dehumanization of the last stages of life, instead of giving dehumanization its final triumph

by welcoming the desperate goodbye-to-all-that contained in one final plea for poison.

The present crisis that leads some to press for active euthanasia is really an opportunity to learn the limits of the medicalization of life and death and to recover an appreciation of living with and against mortality. It is an opportunity for physicians to recover an understanding that there remains a residual human wholeness—however precarious—that can be cared for even in the face of incurable and terminal illness. Should doctors cave in, should doctors become technical dispensers of death, they will not only be abandoning their posts, their patients, and their duty to care; they will set the worst sort of example for the community at large—teaching technicism and so-called humaneness where encouragement and humanity are both required and sorely lacking. On the other hand, should physicians hold fast, should they give back to Athena her deadly vial, should medicine recover the latent anthropological knowledge that alone can vindicate its venerable but now threatened practice, should doctors learn that finitude is no disgrace and that human wholeness can be cared for to the very end, medicine may serve not only the good of its patients, but also, by example, the failing moral health of modern times.

## NOTES

1. "It's Over, Debbie," *Journal of the American Medical Association*, 259: 272, January 8, 1988. See, in response, Willard Gaylin, Leon R. Kass, Edmund D. Pellegrino, Mark Siegler, "'Doctors Must Not Kill,'" *Journal of the American Medical Association*, 259: 2139-40, April 8, 1988.

2. Of course, any physician with *personal* scruples against one or another of these practices may "write" the relevant exclusions into the service contract he offers his customers.

3. Leon R. Kass, M.D., *Toward a More Natural Science: Biology and Human Affairs*, New York: The Free Press, 1985; paperback, 1988. See Chapters Six to Nine.

4. Yale Kamisar, "Some Non-Religious Views Against Proposed 'Mercy-Killing' Legislation," *Minnesota Law Review* 42: 969-1042 (May, 1958). Reprinted, with a new preface by Professor Kamisar, in "The Slide Toward Mercy Killing," *Child and Family Reprint Booklet Series*, 1987.

5. The inexplicable failure of many physicians to provide the proper—and available—relief of pain is surely part of the reason why some people now insist that physicians (instead) should give them death.

6. This was the title of the recently proposed California voter initiative that barely failed to gather enough signatures to appear on the November 1988 ballot. It will almost certainly be back.

7. For a fuller discussion of these prohibitions, both in relation to the Hippocratic Oath and to the meaning of the doctor-patient relationship, see my essays, "Is There a Medical Ethic? The Hippocratic Oath and the Sources of Ethical Medicine," and "Professing Ethically: The Place of Ethics in Defining Medicine," in *Toward a More Natural Science.*

# APPENDIX A

[*The following column appeared in the New York* Post *on July 5, 1989, and is reprinted here with permission of the author (©1989 by the New York Post).*]

## News is blatantly biased against pro-lifers

*Ray Kerrison*

Turning the abortion issue back to the states will set off a long and passionate public debate from New York to Hawaii. Militant feminists have already declared war.

A crucial factor in that war will be the role of the media. Well, this is one battle the unborn have already lost. The media generally is overwhelmingly sympathetic to the abortion cause, demonstrated by its unrelenting bias, slant and propaganda—and I'm not referring to columnists who are paid to express their views.

Here's the evidence.

In the press, on TV and radio, abortion advocates are designated "pro-choice." Abortion opponents are being called "anti-abortionists" even though they refer to themselves as pro-life and used the term long before others countered with pro-choice. To be consistent, the media should call pro-choicers "abortionists." Instead, they resort to subtle propaganda favoring—guess who?

A recent poll, taken by a private company, showed that 90 percent of the media favor abortion.

Some of the most influential media outlets—the New York *Times*, Washington *Post*, *Newsweek*, *Time*, and *People*—gave saturation coverage to the April 9 pro-abortion march in Washington. *USA Today* gave it a front-page color picture. The Washington *Post* even published a route map. TV network news billed the march days in advance. ABC's 'Nightline" devoted a program to it. But the other side's March for Life, which has been held on January 22 for the last 16 years, is all but ignored. I wonder why.

Female reporters for the New York *Times* and Washington *Post* participated in the abortion march, thereby surrendering all claim to impartiality and objectivity.

Predictably, the media highlighted the coat hanger syndrome after the court's decision Monday, to symbolize the alleged bloody mayhem of illegal back-alley abortions. The implication is that legions of women died or were maimed in illegal abortion. Not true. In the year preceding the legalization of abortion, 29 women died in illegal abortions, according to the Centers for Disease Control. That's 29 too many, but it's nowhere near the toll the abortionists and the media would have the public believe. Equally

predictable, no one in the media sought to find out how many women were killed last year in legal abortions, or how many had their uteruses punctured or were rendered barren. No one interviewed film director Martin Scorcese's wife, who has filed a million-dollar lawsuit against a legal abortion mill for alleged butchery. Why do we get only one side?

In a recent *Wall Street Journal* interview, Barbara Corday, executive vice president of prime-time programs for CBS Entertainment, who has had an abortion, admitted that an episode of the CBS series "Cagney & Lacey," which she co-created, was based on her experience of illegal abortion. So here was the highest ranking woman in network television promoting her personal convictions in favor of legal abortion under the guise of entertainment. Propaganda, anyone?

The *Wall Street Journal* some time ago devoted a major story to the abortion and birth-control history of Planned Parenthood. Nowhere did it mention that PP's founder, Margaret Sanger, was a notorious racist, anti-Semite, anti-Italian who, among other things, denounced maternity care for poor women as "the most insidiously injurious philanthropy" and espoused a master-race breeding theory.

Whenever the media dives into the Supreme Court's original abortion decision, known as *Roe v. Wade*, it invariably hauls out Norma McCorvey, the real-life Jane Roe. She was back on TV again Monday denouncing the latest decision. But nowhere was it said or written that McCorvey's whole abortion case was a lie. She said she wanted it because she had been raped. The rape never happened, as she subsequently confessed. No matter. What the hell is a little perjury? She remains the darling of the media.

In the months ahead, the slant and bias are going to get more blatant. Make book on it.

One thing intrigues me. I've never yet heard any abortion advocates say their mothers should have aborted them. They only favor abortion for others.

# APPENDIX B

[*The following Op-Ed piece appeared in the* Wall Street Journal *on August 18, 1989, and is reprinted here with permission (©1989 by the* Wall Street Journal*).*]

## Police Brutality—but No Outrage

*William B. Allen*

Selma, Ala., 1965: Blacks trying to register to vote are stopped at the courthouse steps by police using billy clubs and cattle prods to beat the non-violent demonstrators into submission and retreat. The brutality of the confrontation reaches its climax with the first attempt to march from Selma to Montgomery, a march that is aborted when state troopers charge the marchers, swinging billy clubs and firing canisters of tear gas into the fleeing crowd. Soon mounted police armed with bullwhips, ropes and barbed wire wrapped in rubber join in the unprovoked attack. Hosea Williams is among the first knocked down by excessive police force.

Martin Luther King Jr. begins sending telegrams from his office in Atlanta before the day is through. He calls the event a "vicious maltreatment of defenseless citizens of Selma, where old women and young children were gassed and clubbed at random."

The news media quickly convey the images to a horrified American people. The Department of Justice is pressed to investigate, and to send federal marshals to Alabama to protect the marchers. Within two weeks, President Lyndon Johnson introduces legislation later known as the Voting Rights Act. Within a month, a full-scale march to Montgomery, under the protection of federal officers and a nationalized Alabama national guard, is conducted peacefully, and the tactic of peaceful demonstration is firmly secured in the American conscience.

Washington, D.C., 1984: Scores of people—including several high-ranking government officials—protesting the apartheid policies of the South African government block the doors of the South African Embassy. The protesters are gingerly arrested, released on their own recognizance. The national media cover the protests extensively, and for more than two years similar demonstrations occur throughout the country, with hardly a single act of excessive force on the part of the police.

Pittsburgh, Pa., 1989: 121 members of the group Operation Rescue are arrested while peacefully protesting outside an abortion clinic. The group is trained in the same types of passive resistance techniques employed by the civil rights protests a generation ago. Police, who had removed their badges and name plates, respond with "pain compliance" techniques—twisting the protesters' ears, bending the hands backwards to the wrist, and carrying the

protesters off by inserting billy clubs between their handcuffed hands and the small of the back—are employed to force the protesters into submission.

Women—from college age to grandmothers—are dragged by the bottoms of their blouses, their breasts exposed to hooting male prisoners. One affidavit reads: "He grabbed me between my breasts and dragged me up the stairs by my wire-rimmed bra. My breasts were fully exposed as I was being dragged up the stairs." Complaints are filed with an assistant district attorney, who does not process them, allegedly on orders from her superiors. Several of the protesters report that other attempts to file complaints with city, county and federal officials are similarly unsuccessful.

West Hartford, Conn., 1989: Nonviolent Operation Rescue protesters and several reporters are arrested outside an abortion clinic. The film and notes of reporters are confiscated by police. "Pain compliance" techniques are once again used, and again by police who do not wear identifying name plates or badges.

Los Angeles, Calif., 1989: This time, the police use "nunchakus," as well as "pain compliance" techniques, upon the nonviolent Operation Rescue protesters. The nunchakus, a weapon consisting of two night sticks connected by a chain, is wrapped around the protester's wrist and arms. The great pain that follows when pressure is applied forces the protester to walk. One man's arm is grotesquely snapped in two by a police hold.

These are but a few, and not the most ghastly, of the stories from the nearly 50 cities throughout the country where allegations of police brutality have been made by members of Operation Rescue. Hosea Williams, one of the civil rights leaders who witnessed firsthand the brutalities in Selma, participated in a news conference in Pittsburgh to decry the brutality of the police there. To date, no national news organization has deemed the allegations worthy of coverage.

The U.S. Department of Justice found that the Pittsburgh allegations I transmitted to them "lack the indicia of prosecutive merit necessary to warrant further investigation," though it did agree to investigate some of the charges and did acknowledge that the use of excessive force by police would violate federal civil rights laws. The head of the section in charge of the investigations stated that the group was violating a court injunction, as if such a violation made perfectly reasonable the kind of treatment to which the anti-abortion protesters have been subject.

In July, I placed on the agenda of the U.S. Commission on Civil Rights a resolution to recommend to the president that he direct the Department of Justice to undertake an investigation of these allegations at the earliest possible moment. My resolution did not condone the illegality of Operation

Rescue's actions. Nor did I associate myself with their cause. Rather, I sought to affirm the continued support of the government and the people of the U.S. for the rights of all protesters. After lengthy and sometimes hostile scrutiny, my resolution was dropped from the agenda.

My colleagues argued that the resolution was a "back door" way to discuss abortion, as if the subject matter of the protest determined the legitimate police response. Rep. Don Edwards (D., Cal.), chairman of the commission's oversight committee in the House of Representatives, joined in—not coincidentally during the middle of the debate over reauthorization of the commission—with a direct threat: "Consideration of this issue," which "appears to violate the Commission's authorizing statute" prohibiting "the Commission from studying issues relating to abortion," would "seriously erode Congressional confidence in the Commission."

Neither has any committee in Congress decided to take up the matter. No hearings have been held, or scheduled, and the likelihood of any hearings being scheduled in future is slim. The same zealous advocates for civil rights who criticized the officers stationed outside the Naval Weapons Station for their treatment of anti-nuke protesters, or who themselves participated in the South African Embassy protests without so much as an unkind word from police, have not uttered a syllable about these allegations.

Meanwhile, the courageous few congressmen—Bob Walker (R., Pa.), Clyde Holloway (R., La.), Chris Smith (R., N.J.), Guy Molinari (R., N.Y.), Bob Dornan (R., Cal.) and Bob Traxler (D., Mich.)—who have spoken out have gone largely unnoticed by the press.

In the aftermath of the Supreme Court's *Webster* decision—which substantially returns the abortion debate to the states—we can expect more anti-abortion demonstrations. We ought to guarantee that we will not also see more police violence in the handling of them. It is imperative that we as a nation assert our commitment to equal treatment before the law. Nonviolent protesters should all be accorded the same treatment no matter what the subject of protest. To do less is to destroy the most prized achievement of the civil rights movement—the recognition of the rights of everyone. And we will have destroyed that achievement, not just for Operation Rescue, but for all.

# APPENDIX C

[*The following article appeared in the* Wall Street Journal *on August 8, 1989, and is reprinted here with permission (© 1989 by the* Wall Street Journal*).*]

## The Kitten Killers

*Pamela Sebastian*

Only in New York could a kitten end up as a bar of soap merely because a would-be owner doesn't have a spare bedroom.

In its zeal to find the best people to adopt the 30,000 or so dogs and cats that end up at its shelter here on the East River each year, the American Society for the Prevention of Cruelty to Animals is making some enemies over its definition of "a good home."

The debate is impassioned because the alternative to adoption might well be a lethal injection and a truck trip to a rendering plant in New Jersey. There, erstwhile pets (along with meat scraps and fish parts) are boiled down to byproducts used in cosmetics and other products.

Helen Davis of Manhattan is one rejected cat lover who is furious at the ASPCA, a New York City outfit not to be confused with the local, autonomous SPCAs, which have their own and different ideas about who is suitable to adopt.

### On the Blacklist

Recently, Ms. Davis ended six months of mourning for her 19-year-old cat, Madame, and began to look for a new feline companion. She quickly fell in love with an affectionate 12-week-old ASPCA kitten—a little brown female with a caramel-colored diamond on its forehead. After filling out forms and awaiting reference checks, Ms. Davis was cradling the cat in her arms and making plans to take her home. Then it happened. Ms. Davis let it slip that she has a job downtown. The cat was plunked back into its cage, and Ms. Davis went on the ASPCA's blacklist.

The ASPCA doesn't give young kittens, which are more in demand than cats, to people who are away from home during the day. That is one of several, usually iron-clad rules. Some others: No cats to homes without screened windows; no pets to people who are about to move (it is upsetting to the animal); no two animals of the opposite sex to the same home (it risks mating); no pets to any home until every adult in the household has been contacted and approves.

Finally, everyone must be checked against The List—in reality, a bookcase of black binders bulging with names of everyone who has been rejected or "restricted" by the ASPCA.

Ms. Davis, who says she was told that it had been "cruel and inhumane"

of her even to leave her now deceased cat alone all day, admits to having been pretty upset to be spurned in this way. "I was vulnerable," she explains. "This kitten was reaching out to me and purring, I was thinking of my old cat." She is contemptuous of the ASPCA's notions. "You come home from work at 6 o'clock, and they call it 'abandonment.'"

But the ASPCA has no apologies to make for its policies. "We aren't a pet shop. We're not concerned with making a 'sale,'" says Christopher Hamm, the director of animal placement at the ASPCA's Manhattan headquarters. "We're concerned with the animal's life [after] it leaves here. It has to go into a home where someone will provide adequate care," he says.

Jeffrey Hon, an ASPCA spokesman, describes the society's policy from a different perspective: "A humane death is sometimes preferable to a life of neglect or abandonment."

Because the private, nonprofit organization is New York's official animal-control arm (and gets money from the city), the ASPCA is inundated with stray animals. Last year it managed to spare the lives of more than a third of its charges. That is, it either found new homes or returned animals to their rightful owners. The others—about 20,000—were put to death in accordance with the rules.

A recent visit to the shelter on one of the hottest days of the year found there a hard-working staff, a steady (though thin) stream of pet-seekers and a placement rate low enough to explain why some people feel they have to lie to the ASPCA in order to get a pet and others leave in a tearful rage.

**Today's Episode**

Consider the case of Brenda Brock. Ms. Brock, who plays Brenda McGillis on the television soap opera "One Life to Live," came to the shelter seeking a pair of kittens. Completing the scene is Ms. Brock's nine-year-old niece, Hilly.

The two neatly fit anybody's stereotype of responsible pet owners, but Julie Bank of the ASPCA is, as the rules require, suspicious. For starters, Ms. Bank, who is 22, phones Ms. Brock's employer, ABC, and finds out that it is OK for Ms. Brock to have a pet at the studio. Her plan is to take the kittens to work, where several other actors also have their pets on the set.

"Basically," says Ms. Bank, "we don't give kittens to people who work. Kittens need socialization." Once a kitten is more than four months old, it is considered mature enough by the ASPCA to be on its own during the day.

Ms. Bank, a sometime-viewer of the soaps, approves of the ABC

arrangement and escorts Ms. Brock to the adoption room. Remarkably clean and hospital-like, it is, nonetheless, a despairing place. There are maybe 60 cats, including several litters of kittens, in facing rows of cages. No fools, they poke little paws between the bars and purr when the door opens for a closer look.

No Mating

Ms. Brock is first drawn to two little black kittens, then to a pair of white ones. She considers taking one of each, but she is summarily informed by Ms. Bank that they are of different sexes, which is forbidden even though they are to be neutered. "You might not catch it in time, and you'll have lots more," explains Ms. Bank.

Ms. Brock perseveres. She doesn't want an over-groomed, over-priced pet-store pet. She wants ASPCA cats because, she says simply, "they don't have a home and I do."

Eventually, she settles on a gray-and-white kitten who seems a bit under the weather. Because ASPCA rules require that a sick cat be kept away from other pets, in a separate room that Ms. Brock can't provide, she ends up with just this one kitten, after a long visit with the shelter vet.

Ms. Bank moves on to her next interview: a young man who was turned away the previous day because he wanted to find a Chihuahua for his girlfriend. The ASPCA, you see, frowns on the concept of animals as gifts.

Lab Work

Now he is back with the girlfriend, Bonnie Tucker of Tarrytown, N.Y. Ms. Tucker, just out of high school, lives with her parents, but so does a Labrador retriever and there's a rule against letting pups go home to big dogs that might have them for breakfast. "We'll put your application in the Chihuahua file" says Ms. Bank, as the two leave empty-handed.

One fib ASPCA detectives don't catch comes from a Manhattan woman who, to get a kitten, maintains that she works at home. The woman (who askes that her name be withheld to protect the innocent cat) is a cat lover from way back and is well aware of the no-work rule, so she has arranged for a friend to corroborate her story.

Saved by a white lie, Ernie (not his real name) had what looked to be a short leash on life. His little adoption ticket was marked with a code "2," which isn't as good as a "1," the rating for a healthy, outgoing newly arrived pet. But even a "1" gets only about a two- or three- week stint in the adoption rooms. An animal in the direst straits—a sick or old or ill-tempered creature unlucky enough to come in when the shelter is packed, may get just a few days on display. The average is about a week.

**Poor 'Ernie'**

Now at home with an active, playful pet, the "liar" says facetiously: "How awful for Ernie to be left alone during the day with the stereo playing soft music and the air conditioner on, watching the boats go by on the river."

Still, the ASPCA's Mr. Hamm defends the policy of withholding kittens and puppies from people who work. "A small kitten needs to be fed three or four times a day. There's also the socialization of the animal [to consider]. It's going to be very bored [if left alone] and start knocking things around."

Veterinarians say the rule makes sense for dogs, who need much more attention, but they challenge the theory as it is applied to cats, who can easily be left with enough dry food to get them through the day. And since the alternative is death, some animal lovers protest the rule per se, as bizarrely inhumane. Says Jane Bicks, a veterinarian and the education director for Fauna Foods Corp., a pet food company in Long Island City, N.Y.: "You have to make rules, but you have to be able to bend them."

# APPENDIX D

[*The following article appeared in the* Harvard Crimson *on February 11, 1987, and is reprinted here with permission.*]

## Safe Sex and the Last Man

*Craig S. Lerner*

About a century ago, Friedrich Nietzche made some terrifying predictions about the fate of man. He foresaw man's descent into a despicable creature—the last man, a beast whose only goal is comfortable self-preservation.

The 20th Century largely has been a confirmation of Nietzsche's most horrible fears. Modern man is increasingly incapable of conceiving of any end higher than mere life, or at least mere life with a second car. The sacrifices of old, committed in the name of love of God, or of nation, or of woman, are no longer understandable.

The only things modern man can grasp are that he possesses a body and that this body has desires which must be satisfied and a life which must be prolonged. In the desolate landscape of modernity, any concerns other than those of the body have no place. Man's rate of descent into this wretched condition picked up noticeably some 20 years ago here in America. Around that time, hedonists and idealists converged as flower children and whined about giving peace a chance. When John Lennon imagined a world in which there was "nothing to kill or die for, no religion too," etc., this descent was, as modern political scientists say, "institutionalized."

Of late, the descent has become a veritable free fall. I realized this a few months ago when I came across a slogan at once simple and profound, a slogan which defines The Great Ambition of our age. The slogan, the ambition, is, of course, safe sex.

There was a time when men and women consulted Shakespeare and Dante for guidance in their relations with one another; now they consult Dr. Ruth and Masters and Johnson. That says a lot. One need only be a Dr. Ruth to speak intelligently about sex, but one would need to be a Shakespeare to speak intelligently about love.

But "what's love but a second hand emotion," modern man sings. Sex is where it begins and ends. Modern man doubts the existence of love, which is okay, because he is incapable of it.

The word love derives from the Greek *eros*, meaning longing. Love presupposes a recognition of one's own incompleteness; it is a passionate search for completion. Modern man, however, is satisfied with himself. He is endlessly instructed and has come to believe that one must, at all accounts, feel good about oneself—as an individual.

What passes for love nowadays might more properly be termed an alliance between men and women endlessly groping to "find themselves," each with their own "lifestyle." That a man might define himself with reference to a woman, and vice versa—and, by extension, with reference to a family—is an alien notion.

What continues to draw men and women together is the sharing of a common pleasure, not a common passion. I'm talking about sex. But "sex" alone is not the anthem of our age. Actually, this would be preferable to the one we have adopted. For "sex" alone implies "free and uninhibited sex," as the idealistic hedonists of an earlier age proclaimed.

But there can be no Bacchic revelry for modern man: our sex must be safe. It is impossible to speak of safe love. Falling in love, like falling off a cliff, involves risks. Modern man dislikes risks. Love can't be made safe, but sex can. Modern technology helps out. It has succeeded in making sex safe and sterile. Just like modern man himself.

The need to qualify sex with safety is, of course, a result of the proliferation of sexual diseases. These diseases are typically dismissed as accidental; perhaps, however, they are pregnant with meaning. Consider: underlying modern man's promiscuity is the notion of man's natural shamelessness. We have been taught that sex is man's sole and overpowering desire. Shame generally and Victorian conventions specifically are, the argument runs, radically unnatural. But maybe this teaching is wrong. Maybe it's shame that's natural, not shamelessness. The modern effort to free man from shame would then be an effort to make him something other than what nature had intended. Sexual disease could then be said to be nature's scourge against shameless sexual promiscuity. But liberal orthodoxy prevents me from saying such a thing. So I won't.

But I will say this: it would be ridiculous to expect men and women simply to disdain sex: sex is, after all, a natural desire. Yet there is something peculiarly repugnant about the form this desire has assumed. There used to be a certain coyness about sex. Along with that coyness went a recognition that sex—expecially sex with passion—pointed to something beyond sex.

Modern man, however, suffers from anomie. He is alienated. In short, he is unhappy. His tenet of faith is that what you see is all there is. He lives his life accordingly. Woody Allen once remarked that sex without love may be an empty experience, but that as far as empty experiences go, it's in the top five. He may be right. But the question we need to answer is whether a life filled with empty experiences is a life empty of meaning. And whether modern man, in his preoccupation with safe sex, has begun to resemble Nietzche's last man.

# APPENDIX E

[*The following excerpt is from William Safire's "On Language" column in the July 30, 1989 edition of the New York* Times Sunday Magazine*, and is reprinted here with permission (©1989 by the New York Times Sunday Magazine).*]

## Pro-anti or Anti-pro?

Consider the word *abortion*. The root is poetic, from the Latin *oriri*, "to rise," as a sun rises. Prefixed by *ab-*, which turns the word into its opposite, *abortion* has the meaning of "to set, or cause to fade away." Two generations age, this noun, primarily meaning "removal of a fetus," was rarely spoken above a whisper in polite company; one generation ago, it surfaced in debate but was treated as an ugly and offensive term.

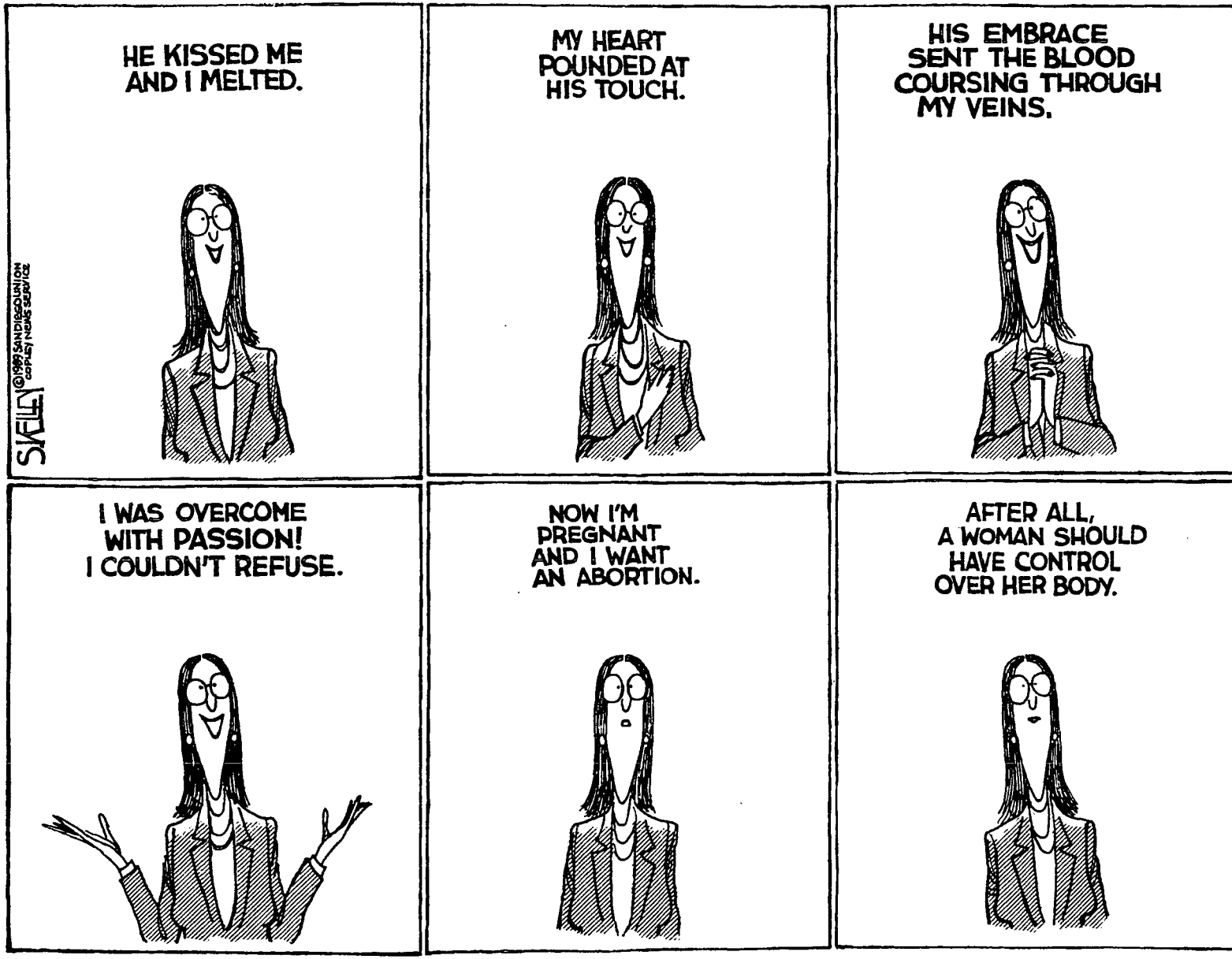
Advocates of making abortion legal chose not to call themselves "pro-abortion" for two reasons: 1) the word had a negative connotation, and it was unwise to try to persuade people to assert support of what seemed like a "dirty" word, and 2) the decision was made not to encourage abortion itself, but the right of a woman to choose it without breaking the law. They came up with the term *pro-choice*, an inspired selection because most people are in favor of *choice*, a word associated with *freedom*. People surveyed by pollsters identified themselves as being "in favor of a woman's right to choose" more than "in favor of legal abortion."

Anti-abortion advocates then made a linguistic mistake, in my opinion. In an effort to appear positive, and not only *anti-*, as well as to put themselves on the side of the fetus, they followed the format of their opponents and chose the term *pro-life*.

Thus we had *pro-choice* versus *pro-life*, rather than *pro-abortion* versus *anti-abortion*. The word *abortion* was shunned by the disputants, which better suited the persuasive purpose of the side that was in favor of legal abortions. In their effort to be positive, *pro-*something, the anti-abortion advocates gave away their advantage of the public's aversion to the word *abortion*.

That is apparently now changing. The news media have been writing and saying *anti-abortion activists* and the pro-life forces have not been correcting them, because they are now willing to be labeled *anti-* something widely perceived as wrong or at least distasteful. Contrariwise, whenever a reporter says *pro-abortion forces*, pro-choice advocates must make a defensive point that they are not *pro-abortion*, only *pro-choice*.

In the coming political struggles in state legislatures, watch the anti-abortion forces belatedly try to change the terms of the debate from *pro-choice v. pro-life* to the starker *pro-abortion v. anti-abortion*. Watch the pro-choice forces resist this mightily. Words count.


HE KISSED ME AND I MELTED.
MY HEART POUNDED AT HIS TOUCH.
HIS EMBRACE SENT THE BLOOD COURSING THROUGH MY VEINS.
I WAS OVERCOME WITH PASSION! I COULDN'T REFUSE.
NOW I'M PREGNANT AND I WANT AN ABORTION.
AFTER ALL, A WOMAN SHOULD HAVE CONTROL OVER HER BODY.
SYKELLY
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