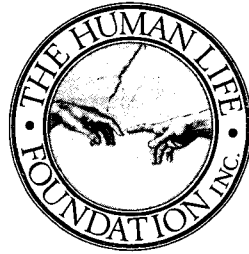


the HUMAN LIFE REVIEW



SPRING 1989

Featured in this issue:

Joseph Sobran on Surprising Friend & Foe
Sean Donovan on The Pain Goes On
David Alton on A Woman & Her Doctor
Kenneth Craycraft Jr. on 'Gender' Abortions
Faith Abbott on The Soft Shrew Routine
John Wauck on The Feminist Rationale
Paul Johnson asks Is Totalitarianism Dead?

Special Supplement: The Webster Case

Robert Destro, Joseph E. Schmitz and Robert J. Crnkovich

Also in this issue:

Mike Perry • Cardinals Bernard Law & John O'Connor • Rev. Paul
Stallsworth • Nat Hentoff • Michael Novak • Laurence Lynn Jr. • Ruthe
Stein • Jo McGowan • Tamihiko Tonomura • Francis Canavan S.J. •

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. . . FROM THE PUBLISHER

Herewith our fifty-eighth issue which, while not our largest in pages, must be our most “diversified” to date: a score of pieces covering not only our usual issues but also some that are *unusual* for us. But we think you will agree that it all somehow fits together.

One of the pieces I hope our readers do not overlook is the editor’s introduction, which has become a kind of article in itself. In our early years the introductions were rather perfunctory (“Here’s what we have, hope you like it”) affairs. Most other journals (we can’t say comparable ones—there are none!) don’t even do *that* much, but the more we thought about it, the more we thought it was a mistake to just serve up so much stuff without saying what it was all about, why we chose this or that, and so on. Having started doing that, we found that the introductions were also useful for supplying additional information that isn’t (and often can’t be) in the articles themselves. For instance, who would know—unless we told you—that Jo McGowan, author of the *Newsweek* column (see *Appendix I*), “appeared” in this journal as perhaps the first person ever arrested in a “rescue” type sit-in at an abortion clinic? As we say, you will find this and much more in these introductions, for each issue *is* quite different, and we trust our readers appreciate the preview before they read it all (you *do* read it all, surely?).

As usual, we are indebted to a good many people for granting permission to reprint various items (e.g., Cardinals Bernard Law and John O’Connor). And special thanks go to Mr. David Alton, MP, for his kind permission to reprint a chapter from his book *Whose Choice Anyway?* (which he wrote with Alison Holmes). It was published in England by Marshall Morgan and Scott Publications Ltd. (3 Beggarwood Lane, Basingstoke, Hants RG23 7LP, UK). We hope that it will be published here in due course.

Also as usual, you will find complete information on how to get our back issues, bound volumes, etc., printed on page 128 in this issue.

EDWARD A. CAPANO
Publisher

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INTRODUCTION

“**Y**OU CAN FEEL IT in the air. In 1989, major changes are occurring in the way Americans regard abortion. The nation has now had 16 years of experience with the dramatic change in U.S. law wrought by *Roe v. Wade*. Restlessness abounds. Let us hope that reason prevails.” So writes Mr. Michael Novak, in a column you will find reprinted in this issue. You will also find a supplement on the *Webster* case, which many think will be used by the Supreme Court to “reconsider” its fateful *Roe* decision later this year. And you will read several other articles that would seem to confirm Novak’s feeling that “something will be done” about abortion in America.

But we’re getting ahead of ourselves. Our lead article is by our most faithful contributor, Joseph Sobran, who again demonstrates his talent for providing fresh insights on familiar subjects—sex, for instance. And along the way he ruminates on many other matters as well, such as the strange change in U.S. Surgeon General C. Everett Koop, the erstwhile “pro-life” crusader whose transmogrification into the favorite public spokesman of Planned Parenthood *et al.* is surely one of the wonders of our time. As Sobran says, Koop has won praise for his “remarkable ability to separate his professional conduct from his moral and political beliefs,” and Sobran wonders *why* it is “praiseworthy to act in office without reference to principles, political and even moral, that you hold to be true”? Having ourselves lavishly praised the “old” Dr. Koop (we even ran his anti-abortion articles some years back), we too wonder.

As it happens, our second article also concerns Dr. Koop, who as everybody knows made headlines by refusing to comply with President Reagan’s order to produce a report on the effects of abortion on women. Sean Donovan, a young doctor we know, turns out to be quite familiar with the medical literature that was available to (but in effect rejected by) Koop, and he has some pertinent questions about the Surgeon General’s peculiar methodology. We think that you will find it most interesting reading—it’s certainly timely, for the controversy provoked by Koop’s “non-report” is far from over.

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Then we have yet more on doctors, by Mr. David Alton, the young Liberal in the House of Commons whose “Private Member’s Bill” to restrict abortions caused an uproar in England. In fact, it was a modest proposal: Alton merely suggested setting an 18-week limit on abortions, which are currently legal through 28 weeks. But it ignited not only fierce opposition but also surprising support as well. It is generally believed that, had his opponents not used parliamentary tricks to keep the bill from coming to a vote, it “would undoubtedly have passed,” as noted in the London *Spectator* (Jan. 28), the well-known journal that was a leader in supporting Alton (we ran several of its articles in our Winter, 1988 issue).

Mr. Alton has now written a book, *Whose Choice Anyway?*, which has also caused a stir over there, not least because of its blunt language. For example, the chapter we reprint here begins “Abortion has been offered to women as a universal remedy. It actually solves no problems: just ends lives.” Alton is particularly hard on doctors for abandoning their original strong opposition to killing the unborn—“It is quite remarkable how much medical ethics have changed in the past 20 years,” he writes—few would dispute the truth of *that* statement. Indeed, Alton’s is a book that we hope Dr. Koop will read, for he has much to say about the “overwhelming sense of guilt” expressed by women who wrote him about their own abortions. (We hope to give you more from the book, including a sampling of those letters, in a future issue.)

Our regular readers will recall that we reprinted (Winter, 1988) a column by Mr. Alan Dershowitz, the well-known legal scholar who is dismayed that, in India, abortion has led to “femicide”—the deliberate killing of unwanted females who pose a great “dowry” burden on the parents. Dershowitz is adamantly pro-abortion, yet thinks it is wrong to terminate life on “sexist grounds.” Well, Mr. Kenneth Craycraft here asks the question: On what “principled moral ground” can Dershowitz make such a distinction? He finds none. The truth is, Indian women do indeed face financial problems far greater than those cited by many American women as justifying their own indiscriminate abortions. The *wrong* is abortion itself.

As is our custom, we next provide a respite from the previous heavy going: our Faith Abbott is back, this time with a look at the “new” *Ms.* magazine. Long the feminist flagship, *Ms.* is now under new management, as they say, and trying to become . . . well, not exactly just another Women’s mag, but not the old “cause” journal either. It seems that the search for a new image isn’t going smoothly. It’s hard to tone down the trade-mark shrewishness, especially when *abortion* remains the Jewel in the Groan, so to speak? For instance, Actress Anne Archer makes for glamorous copy—she was one of the *Ms.* “Women of the Year”—but it seems “her most challenging role” is now

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“spokeswoman for Planned Parenthood,” a shrill story not exactly likely to attract many new subscribers. It’s amusing stuff, and Faith bets that “A kinder, gentler feminism” is a bad bet.

Then another colleague, John Wauck, weighs in with a thinkpiece on the rationale of feminism itself, beginning with a good question: Why hasn’t “the movement” produced more hostility from men? Founderperson Betty Friedan has wondered about that too—it’s a bad sign when “revolutionary threats to patriarchal privileges” are supported by “a flagrantly chauvinistic magazine like *Playboy*”? Wauck’s point is, feminists need to do a lot more thinking about what their “success” really means to *them* (not to mention what it is *costing* them). For instance, Friedan has written “A woman cannot find her identity through others—her husband, her children”—yet in fact we all *do* identify ourselves through others. As Wauck says, identity is largely “given, not made . . . when a woman becomes a mother, her identity is irrevocably changed.” In short, the “heart” of feminism is a radical individualism that, in its terror of dependence, rejects *love*, which can cause us to find fulfillment in *willing* sacrifice for others. It’s good stuff, we think you’ll enjoy it.

And we’ll be amazed if you don’t enjoy the next piece, by the redoubtable Paul Johnson, eminent historian and social critic (and, by the way, the regular press columnist for the same London *Spectator*—he too stoutly supported the Alton Bill). At first blush, it might not seem to be “our” kind of thing—an avowed Christian’s look at the failures of Marxist-Leninist Totalitarians—but read *on*: Johnson provides a sweeping survey of what ails our declining Western civilization, not least the abortion plague that “strikes at the center of Christian values not only because it involves a form of murder but because it severs the sexual act—designed to express human love in its most powerful form—from its physiological consequences, and in the most brutal manner.” Powerful stuff. And an excellent wrap-up of the issues raised in detail by Sobran, Wauck *et al.* We might add that, if you have not read Johnson’s best-selling *Modern Times*, you’ve missed a rare treat *and* a single-volume education (it’s still available in most bookstores).

Which brings us to the promised analysis of the *Webster* case, by three Washington legal experts (including our “old” friend Robert Destro, whose memorable article “Abortion and the Constitution” dominated our Fall, 1976 issue—Bob was then a student of Professor John T. Noonan at the University of California, Berkeley—small world). In fact, the trio joined in writing one of the two-score pro-*Webster* briefs submitted to the Supreme Court; we first thought of reprinting *that*, but on reflection decided that the formal *amicus curiae* style would be less illuminating than a first-rate article telling the *Webster* story. It’s a fascinating story, and Messrs. Destro, Schmitz, and

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Crnkovich do indeed give you a first-rate recounting of it all. It concludes with a short sermonette which we recommend highly to all involved, including (*oremus*) the High Court itself.

* * * * *

As is also our custom, we conclude with our appendices—but rarely have we provided so many or so varied a lot as this time. Fact is, we could provide a good many more: whereas once we had to hunt for the kind of thing we liked, nowadays we see for more good stuff than we can print. Without question, our friend Michael Novak is correct; both here and abroad, there is a major change in the way abortion and related problems are perceived.

We begin (*Appendix A*) with a short column by Mr. Mike Perry, who echoes Novak's point, specifically in regard to the way "churchmen" now view the situation. "For years," he notes, "mainline Protestant denominations were staunch supporters of legalized abortion." Now, there is widespread "rethinking" going on.

The Roman Catholic church was of course an exception, but even within its ranks there is a growing movement toward ever greater opposition to abortion. For instance, Boston's Cardinal Bernard Law (*Appendix B*) virtually endorses the new (and, some would say, radical) tactics of "Operation Rescue"—not for everybody, maybe, but a noble effort nonetheless. And Cardinal John O'Connor (*Appendix C*) does pretty much likewise—adding that, even if Dr. Koop can't find evidence of abortion's effects, "I hear more and more from women who have been victimized by abortion."

Then we hear from the Rev. Paul Stallworth (*Appendix D*), a Methodist minister whose sermon illuminates precisely what Mr. Perry says is happening—the three churchmen certainly differ greatly in style, but you might say they agree on the fundamentals?

Appendix E brings you two columns by another redoubtable reporter, Mr. Nat Hentoff, whose columns appear regularly in New York's *Village Voice*. We have run a great deal of Hentoff's work in these pages, for two good reasons: first, Nat may well be the *premier* chronicler of all the latest news in the abortion/euthanasia "field"—but very few of our readers are likely to read the *Voice*—so we consider it a kind of public service to give Hentoff the wide audience he richly deserves. Here, he ranges far and wide over *Webster*, *Roe*, back to *Dred Scott*, on to Operation Rescue, and the Rev. Jesse Jackson's too-little-reported switch from "pro-lifer" to opponent of civil rights for the unborn—you get a panorama of facts and opinions that we expect you will find as invigorating as Hentoff's prose.

Appendix F is, at long last, Michael Novak's column, quoted above. As you

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will see, Novak is by no means writing to the converted: his appeal is for “civic unity” while a “reasonable” solution is found to the abortion dilemma which, he argues, *must* be solved. You might call it a gentle reminder that “*Roe* must go”? Some will find it too gentle, of course, but the question is: Is Novak right about the crucial change in public *perception* of what legalized abortion means for America?

Supporting evidence is certainly growing apace: *Appendix G* is, in our judgment, a remarkable example, if only because it appeared in the *New York Times*, the flagship of the pro-abortion media. And also because the author, Laurence Lynn, is professor of public policy at the University of Chicago? *Appendix I* is a column from *Newsweek*, by Mrs. Jo McGowan, an American now living in India where, as we know, “femicide” is the growing problem—obviously it is a fitting supplement to Mr. Craycraft’s article. Amusingly, *Newsweek* describes McGowan as “A Roman Catholic writer”—a throwback to the “Catholic issue” terminology popular in the early post-*Roe* days. In our *Spring*, 1988 issue, Mary Meehan gave a somewhat different profile in her article on the origins of Operation Rescue: “Possibly the first person sentenced to jail [for a 1977 “sit-in” at an *aborttoir* in Amherst, Mass.] was a 19-year-old college student named Jo McGowan.” The judge asked: “How do you plead—guilty or not guilty?” McGowan answered; “I plead for the lives of unborn children.” Refusing to pay a \$25 fine, she spent eight days in jail, where “she fasted until her release.” Again, it’s a small world?

Appendix J comes from Japan (abortion is truly a world-wide problem) where more than a million abortions a year have produced a “lucrative” business in atonement rituals for “the repose of the dead child’s soul”—one Buddhist temple reportedly charges \$5,000 for “perpetual prayer.” (Perhaps Dr. Koop should investigate?) The final item (*Appendix K*) is by our colleague Francis Canavan, S.J., who writes a regular column in the interesting little newsletter *catholic eye*. Here, he comments on a “Hers” column by Katha Pollitt which ran in the *New York Times Sunday Magazine* (Nov. 20, 1988—we reprinted it in our *Winter*, 1989 issue). As usual, Canavan gets to the heart of the matter: Would you agree with your mother if “the life she ended were your own?” Quite right, you couldn’t say.

So much for this issue—not *too* much, we hope—we will be back with much more in due course.

J. P. McFADDEN
Editor

Surprising Friend and Foe

Joseph Sobran

EARLY THIS YEAR, Surgeon General C. Everett Koop was the subject of enthusiastic encomia in the liberal press. As a conservative Christian, he had long been opposed to abortion and homosexuality. But now he was taking new public positions in tension with his earlier ones, if not in downright contradiction to them.

Conservatives were as appalled by Dr. Koop's new stance as liberals were delighted by it. He was now supporting sex education that included the instruction of children in the use of condoms to make sodomy "safe." He was saying that a woman receiving publicly funded health benefits was entitled to be informed of her legal right to abortion. Finally, directed by President Reagan to submit a report on the medical and psychological effects of abortion on women, he wrote the President a letter instead, in which he called the evidence inconclusive, but mentioned pointedly that many women called their abortions the best thing that ever happened to them.

"Koop's Stand on Abortion's Effect Surprises Friends and Foes Alike," announced a headline in the *New York Times*. This became a frequent refrain in the press. And it was true that Dr. Koop had "surprised friend and foe alike." The surprise was more pleasant for the foes than for the friends, but the foes played this fact down.

One article in a liberal magazine hailed Dr. Koop for his "remarkable ability to separate his professional conduct from his moral and political beliefs." This odd phrase left readers to wonder why it's praiseworthy to act in office without reference to principles, political and even moral, that you hold to be true. One suspected that liberal opinion would withhold this compliment from, say, a civil rights leader who, appointed to office by a conservative president, proceeded to subordinate his publicly-stated convictions to his boss's policies. Such an appointee would be expected by liberals to put his beliefs into action, not put them on the shelf.

Dr. Koop's new popularity among liberals caused wry smiles among

Joseph Sobran, our long-time Contributing Editor, is a prolific commentator on political, social and cultural issues.

conservatives. They were familiar with the pattern. A conservative public figure who veers leftward is routinely celebrated in the media for “growing,” for “surprising friend and foe alike,” for “putting pragmatism ahead of ideology,” for “a new sensitivity to the complexities of the issue,” and so forth. A very different ensemble of phrases meets the liberal politician who moves in the other direction: he is said to be “appeasing antiabortion forces,” or “responding to political pressure,” or “pandering to the right wing.”

Granted that we all have an inclination toward hypocrisy, double standards, and self-serving inconsistency, how is it that intelligent liberals can so baldly hold two different sets of expectations for liberal and conservative public figures? After all, conservatives take it for granted that liberals in office will act like liberals, and conservatives like conservatives. Why do liberals expect conservatives in office to disregard what they believe to be true, and act like liberals?

In old-fashioned party politics, the two parties may detest each other but still recognize their opponents’ right to pursue their own interests. But today’s liberals appear to think that only their own interests are fully legitimate. And they not only believe they have a monopoly of political legitimacy, they expect their opponents to believe it too. Robert Frost defined a liberal as a man who won’t take his own side in a fight, but this now more aptly describes the liberals’ ideal conservative. Dr. Koop fills the bill nicely. He accepts liberal ground rules for conservative behavior.

Under these ground rules, conservatives must never “impose their views” on the rest of society. “Choice” and “consent” are the sovereign principles. Prohibitions on abortion are as bad as forced abortion (or worse, to judge by some liberals’ excuses for Communist China’s forced-abortion policy). Social pressure for chastity is wrong in principle, as rape is wrong in principle. The American Civil Liberties Union holds that it is unconstitutional, under the establishment clause of the First Amendment, for public schools to teach monogamy as the model for family life.

The stricture against “imposing one’s views” is a lopsided rule, since politics is a perpetual exercise in rule-making, in which one side or the other, in the absence of consensus, imposes its will, which usually derives from its “views” on social and moral good and evil. The liberal stricture would permit the economic conservative to impose his raw

will, provided he was acting only on self-interest, but would not allow the “social” conservative to impose a will informed by moral principle. Only an amoral sort of conservatism would be constitutionally permissible.

Liberal opinion has developed a set of rhetorical gimmicks by means of which it contrives to keep potential conservative forces submissive. The slogan against imposing one’s views is just one of them. Other slogans include the shibboleths of the “pluralistic society” and “separation of church and state.” Lurking in all these phrases is the idea that conservative morality is at bottom Christian and therefore disqualified from participation in public life, except when it can be shown to serve a “clear secular purpose.”

Liberalism over the last generation or so has deliberately alienated conservatives, *qua* Christians, from the political process, and it has seen their militant re-entry into that process since about 1980 as sinister and dangerous. To call a position on social issues “religious” has been enough to stigmatize it politically and cast doubt on its right to win by normal political means. But a reaction against the liberal ground rules has set in. The popular form of the reaction, typified by the Moral Majority, simply ignored liberal strictures and tried to roll right over them. The more sophisticated reaction, typified by Richard John Neuhaus’s widely-quoted book *The Naked Public Square*, brought those ground rules under critical scrutiny.

The entire movement, centering on the abortion issue, has proved too strong for liberalism to contain. It is self-assured and armed with both popular support and intellectual leverage. It has helped elect Ronald Reagan and George Bush, and its most important consequence has been a change in the composition of the Supreme Court, formerly the key political stronghold of liberalism. It now appears likely that the Court will overturn or at least modify *Roe v. Wade*, and liberals and feminists admit that legal abortion may soon be seriously restricted or banned in most states.

Even so, nothing much has been resolved. A return to the *status quo ante* of 1973 would still leave abortion legal and easily available in several states. Moreover, nobody expects other major changes in the general landscape of American public morality. Pornography, for instance, will still be ubiquitous. The tone of popular entertainment will

remain about what it is now. Conservatives who would like to change these things too will find themselves on the defensive.

The unhappy fact of the matter is that what the conservative regards as the liberal's cheap rhetorical tricks don't seem cheap tricks to the liberal himself. He finds them deeply persuasive. And so do millions of other Americans, who aren't in most respects liberal at all. Why is this?

Liberalism has won a major victory in American public opinion that will be extremely difficult for conservatives to reverse. It has convinced most Americans that "religious" values have no place in public life. At a merely verbal and logical level, this idea is easy enough to refute. Dislodging it from people's psyches and moral habits is another matter altogether.

The ordinary American is susceptible to the liberal slogans because they resonate with what he thinks of as his own religious tradition. If he is a Protestant, he is likely to think of both worship and morality as affairs of individual private conscience. Moral laws may be divine commandments, but it is up to the individual to respond to them, not the state to coerce them. If he is a Catholic or a Jew, he is likely to think of the moral law as something confided to his minority, which it would be presumptuous, futile, dangerous, and simply irrational to expect the majority to accept. In morals as in ritual, it seems safer and more civil to let every citizen go his own way.

Obviously this attitude can't be acted on consistently. The commandments against murder and theft are still enacted in secular law, because we are in the habit of accepting as "secular" whatever the major religions agree on, provided liberalism is willing to accept it too. I should stress that the attitude is purely psychological; it has no firm basis in any of the three religious branches. But most Americans have only a weak acquaintance with their own religious traditions.

Because religious education today is so poor, most people now hold stereotypical ideas of what "religious" morality is. In this they are encouraged by liberalism. They have a crude mental picture of religion as the reception of alleged divine commandments, more or less irrational from a human point of view, passed along by Scripture, priests, or rabbis to believers but unavailable and probably senseless to nonbelievers.

On this view, it would be overweening for religious people to expect their fellow citizens of differing faiths, or no faith, to accept "their"

morality. When organized liberalism decides to dispute some article of our common moral tradition, it immediately brands it “religious” in provenance and warns that religious people are “forcing” others to accept it, in violation of the separation of church and state.

According to liberalism, sexual behavior is strictly “private.” Religious people are of course entitled to live by their own codes, but they make a category mistake when they try to make their codes public, authoritative for everyone. This infringes the right of others to formulate their own morals and live by them. The rare conservative who seems to grasp this, like Dr. Koop, is assured of extravagant praise from liberals.

Liberals aren’t consistent libertarians. They don’t favor private choice in matters of commerce and race, where they are willing to apply coercion when they can, without regard for private or religious reservations. Nor, notoriously, do they grant exemptions for taxpayers who object to subsidizing abortion.

Liberalism tries to meet the charge of inconsistency by making a distinction between public and private that parallels the separation of state from church. It also parallels the distinction between this world and the next one (if any exists, which the liberal privately doubts). Liberals generously concede the next world to religious people, but want to keep sovereignty over this world for themselves; this seems to them a fair division of authority.

Liberals want to secularize society and relativize morals. They never tire of pointing out that morality varies from culture to culture, and they tend to think that this is all we know on earth and all we need to know where morality is concerned. But of course this is a serious oversimplification. Any society, in order to *be* a society, needs a common morality. It’s true that morality has to make some sort of sense in secular terms. But this, surprisingly, is where secularist liberalism fails its own chosen test.

At first sight, local variations in morality are striking. Some societies allow infants to be exposed to die; some do the same to old and sickly people. Some permit slavery; some treat women as chattels. But all have *some* form of morality, and what they share is finally much more impressive than their points of difference. No society permits wanton killing, rape, or looting among its own members, though non-members may be fair game. All have highly developed rules of conduct that are

inseparable from their very language. No anthropologist has yet discovered a society without a moral code.

These various rules all serve secular purposes, even when they have supernatural underpinnings. The whole liberal picture of “religion” is misleading. Morality is never a mere matter of arbitrary revelation, without relevance to social life. The Mosaic commandments against murder and adultery presupposed that the Israelites knew what murder and adultery meant. The news Moses brought was not that these things were wrong, but that they were serious enough for the Almighty to forbid them specifically.

Even if we regard Jesus merely as a historical figure, it is notable that he was no moral innovator. He deepened and subtilized the commonly received morality of the Jews; he did not repeal it. He taught by parables that appealed to the moral intuitions of his listeners. Often he ended his stories with rhetorical questions: “Which of them was his neighbor?” “Which of them went away justified?” His audience, he implied, already knew the answers. So do we. The parables still speak directly to the most naive child. But they also continue to command the respect of the most sophisticated adults. Time has not made them objects of irony; they are impossible to parody. Tolstoy is dated by now; Kant is dated; Shakespeare is dated. Jesus is not. His moral injunctions may be too hard for us, as they were for most of his contemporaries, but we never think of speaking of them as things of “those days,” as words that have lost their power or plausibility with the passage of centuries. Their force does not depend on any “belief” Jesus may have held, or on any belief *about* Jesus. There is nothing arcane or sectarian or local about them.

Our religion and our morality have always been intertwined, but this is true for all societies. A moral rule is not invalidated because it also happens to be an article of religion. When St. Paul condemns drunkenness and fornication, he is telling us that those things that are bad for your health and bad for society generally are also threats to salvation. Disbelief in the soul would hardly make such things harmless.

Judaism and Christianity have survived in part because their morality serves “secular purposes” very well. If we deny their divine origin, this may be the *only* explanation for their survival. Many religions that include bizarre elements, such as rites of human sacrifice, have come and gone over and over again.

This is not to minimize the differences between the two religions. It is only to point out that they don't differ on fundamental morals. In fact they accept and concentrate whatever is sound in human morality generally. This is why they retain their power to convert millions after the passage of thousands of years. A morality repugnant to common sense could hardly tug both the African tribesman and the Western intellectual.

Modern secularist liberalism has everything backwards. It is not "religious" morality that leads to strained and artificial positions, but the liberal attempt to distill a supposedly non-religious morality. Seeking to justify abortion, for example, liberals have been forced to hold that when life begins is a "religious" question—though religious people have given the same simple answer as the biology textbook. Pretending to distinguish between the moral and the legal, liberals say they are only arguing for legalization, when their arguments imply that abortion is morally unobjectionable—even, in some cases, desirable.

In one respect the liberals themselves are inhibited by religion. The Western moral-religious tradition has moved steadily toward affirming the value and dignity of all human life: women, slaves, infants, and the unborn have all come under legal protection. It is anomalous for us to remove this protection. A pagan like Aristotle could say frankly that some human beings were slaves by nature, or that some infants and unborn children should be left to die or aborted. For him, the mere fact that they were all human—which he never thought of denying—was no compelling reason against enslaving or killing them.

But our civilization has made the human the morally decisive category: so much so that we can only accept an argument for slavery on grounds that the slave population is "subhuman"; for abortion, on grounds that the unborn child is not "fully human"; and for geronticide on grounds that the patient has become a "vegetable." We do not like to admit that we are contemplating doing these things to human beings.

Liberalism also leans too hard on the largely artificial distinction between public and private, as if the difference were both natural and absolute. Its slogan "Keep abortion legal—get government out of the bedroom" makes as much sense as a call to legalize cannibalism in order to get government out of the kitchen. In the first place, few abortions are performed in bedrooms. In the second place, the government

is not prevented from invading bedrooms, if it has reason to think crimes have been committed in them.

The whole liberal thesis that sexual morality is purely private can't be sustained. Many private acts have public dimensions. Use of the bathroom is private, but it is connected to a public sewage system. Sexual acts are private by nature, but they have public consequences too. Only a few years ago, liberals considered sodomy and drug consumption "victimless crimes." This phrase has already fallen into disuse. The spread of AIDS and the devastation of our inner cities by cheap narcotics has made the old liberal attitudes untenable. But instead of admitting error, most liberals have retreated to their familiar prescriptions, "education," hygiene, "safe sex," free needles.

Liberalism's false disjunction between the public and the private can be seen in its arbitrarily differing classifications of three different types of behavior:

1. The libertarian philosopher Robert Nozick has quipped that he wants to legalize "private capitalist acts between consenting adults." Liberalism accords little "privacy" to commercial transactions. Even when the parties to such a transaction don't intend to affect others, liberalism typically insists that they do, citing "neighborhood effects" and "externalities." For the liberal, "the economy" is a single thing, subject to state supervision, regulation, and taxation, with expropriation not excluded.

2. Communist cell meetings, on the other hand, *are* intended to affect third parties. That is their whole purpose. But liberalism insists on regarding such conspiratorial activity against a whole society as "private," and militates against government surveillance of it. Liberals have developed an arsenal of pathetic rhetoric to imply that subversive meetings are essentially innocent and official inquiries and sanctions totally unjustified: "persecution of ideas," "unpopular views," "witch hunts," "paranoia," "freedom of association," "ruined lives," and so forth.

3. Liberalism is most dogmatic in its insistence that sexual acts are so purely "private" that no third party, let alone the state, can have any legitimate interest in them. This notion takes its plausibility from the fact that *everyone* agrees that these acts are, in some important sense, private by nature. But even this proposition is not unequivocal. The individual sexual act should occur in privacy. But it is far from true that a sexual *relationship* between two people is of no legitimate interest to

others. If one of the two parties is married, his or her spouse is an interested third party. Even the apostles of Safe Sex agree that both participants in a sexual act should know their partner's sexual history; the possibility of sexually transmitted disease has arguably made this a legitimate public health concern too. But of course the most basic consideration of all is that sexual acts, unlike capitalist and Communist acts, don't merely affect third parties: they *create* third parties.

Liberalism has been strangely reluctant to acknowledge the life-giving nature of sex. It shrinks from admitting a fact that most societies have celebrated with elaborate ceremony. With supreme artificiality, it insists that sexual acts be regarded purely as momentary events, with no permanent or public meaning, with no social consequence. If life results from the act, it must be considered an accident, not something intrinsic to the nature of the act. Any consequences it may have probably should have been prevented.

Nearly every society is organized in such a way as to manage the interplay between the public and private dimensions of sex. This is what wedding rituals are all about, with their imagery of bridal modesty hinting at hidden fecundity: from now on, they tell us, we know which man this woman's children also belong to. And establishing paternal identity and responsibility is one of the first practical necessities of any society. Our liberal society isn't doing very well at it.

Marriage as a socially recognized institution represents the public aspect of sex, the means by which parental relations are established. But even liberalism can't wholly avoid the public aspect, and the surest proof of its morbidity is that it is so uninterested in the normal means of dealing with fertility and so preoccupied with counteracting it. For liberal society as for all societies, man's sexual nature presents itself as a problem to be coped with somehow, and liberalism's program is one of sex education, contraception, and abortion, all of which are hard to set to music.

Liberalism's alienation from the real nature of sexuality, far from being its much-advertised "new candor," is actually a desperate attitude, sustained only with strenuous evasion. The "sexual revolution" is, as its name implies, a public reality, not a mere aggregate of unrelated private encounters. It has had its worst impact on the very people liberalism professes most concern for, the poor of the cities. The sentimental

picture of hedonist happiness exists only in the liberal imagination, and in the movies. Liberalism's determination to treat sex as morally and socially inconsequential is a vivid example of ideology holding out against the obvious.

Nevertheless, liberal ideology has become the semiofficial common sense of American life. Educated people are mentally trained to filter out of their consciousness the most plain and overwhelming evidence against it. The biological *fact* that life begins at conception—a fact that nobody bothers doubting with respect to canine, feline, or bovine life—is subordinated to the felt imperative that sex be inconsequential, so that consenting adults may be irresponsible.

And here lies the point. Liberalism does not derive its position on abortion from data about the fetus. It works the other way around: liberalism's passionate desire to isolate the sexual act from its natural consequences dictates that the living child in the womb be negated. The "new morality" does not issue from the facts: it precedes any facts, and decides which facts are admissible. It performs such intellectual contortions as the nonsensical assertion that the unborn child is only a part of its mother's body, without explaining how, after nine months, it can suddenly become biologically related to its father. Unwelcome realism on the subject is dismissively ascribed to "religion." If sex turns out to have third-party effects, liberalism conveniently declares the third-party non-existent.

If we look at the real world around us, the evidence of fatherless children, mangled fetuses, and wasting diseases the sexual revolution has produced may suggest that the community has at least as strong an interest in sexual relations as it has in commercial ones. To liberal ears, of course, this will sound like a call for "bedroom police," just as any proposal to restore our old abortion laws is liberally translated into "branding women criminals for getting abortions." A certain kind of mind can never hear of restoring a broken tradition without imagining nightmarish extremes that were never part of that tradition. The pertinent tradition here is no more than the old common-sense morality that assumed that marriage, though difficult, is normal, and fornication, though tempting, is wrong; and that the law need not condone what it can't prevent.

The major work of mending the tradition can't be placed on the law and the police. The hardest part of restoration will lie in correcting

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public opinion by constant, patient assertiveness. It should focus its attack on the false paradigm of the isolated sex act.

Put very simply, we should get back into the habit of reasoning about sex in the same practical way we reason about other subjects. To point out that most illicit acts of sexual intercourse don't result in pregnancy is no more relevant to the issue than to point out that most acts of reckless driving don't result in injury. The familiar whine that "society should not force women to bear unwanted children" should be rebuked as the infantile complaint it is; "society" is responsible for neither the nature of the act nor the decision to engage in it (to engage in it, moreover, without regard for its foreseeable results for society).

Nonsense is nonsense. It should not enjoy a privileged position when it happens to be nonsense about sex. And the children we beget are our children, however strong our motives may be for wishing they were something less.

The Pain Goes On

Sean Donovan

There are almost 250 studies reported in the scientific literature which deal with the psychological aspects of abortion. All of these studies were re-viewed and the more significant studies were evaluated by staff in several of the Agencies of the Public Health Service against appropriate criteria and were found to be flawed methodologically. In their view and mine, the data do not support the premise that abortion does or does not cause or contribute to psychological problems . . .

Surgeon General C. Everett Koop,
letter to President Reagan, January 9, 1989

The patient was an attractive 17-year-old, upper middle class white girl who attempted to kill herself while driving under the influence of alcohol and 29 Bufferin tablets. She smashed her car into a bridge overpass repeatedly, damaging the car beyond repair. The patient had had an elective abortion approximately seven months prior to the suicide attempt. During the abortion process she calculated the birth date had the fetus been allowed to come to term. The date of the accident was on the perceived birth date of the child.(34)

AT A WHITE HOUSE press conference, on July 31, 1987, President Ronald Reagan said he had instructed Surgeon General C. Everett Koop to prepare a report on the medical and psychological *sequelae* of abortion. But Dr. Koop did not carry out his President's order. Instead, almost a year and a half later, he sent Mr. Reagan the letter quoted above.

Dr. Koop is wrong. And women who have had abortions are paying for his errors—some even with their lives—at the hands of his, and *my*, fellow physicians. Fortunately, the victim whose tragedy is related above did not have to pay with hers. She survived, her life scarred in ways neither she nor any “health professional” may ever know. (Or perhaps she may know already, or will in a year, or a decade hence.) And of course she is not alone.

Sean Donovan, an Ensign in the Navy (Annapolis, '78), will soon begin his surgical residency in Oakland. The opinions expressed here are his own. (*N.B.*: the numbers-in-parentheses “foot-notes” refer, in medical-journal fashion, to the numbered studies listed at the end of the article.)

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More women are now suffering and dying from abortion because we in the medical profession have failed to use what we know, failed to draw sound conclusions, and failed to do what is right. Dr. Koop's January letter to the President exemplifies these failures. Psychiatric problems such as those suffered by the young woman who attempted suicide on the anniversary of her baby's expected birth are the obvious, glaring evidence of how far wrong the Surgeon General is; but the degree of psychological suffering is far greater than that demonstrated by a few horrifying anecdotes.

As yet, there is no clear-cut syndrome into which women who have had abortions handily fit, with neat groups of symptoms. Rather, each patient has an *individual* outcome, with her own losses, not necessarily restricted to any given length of time, type or intensity. Nor are women the only ones affected. The psychological outcomes of abortion touch all the survivors of the "procedure": spouses, and those who are known in medical parlance as "significant others," children, parents, friends, even the nurses and doctors involved.

However, the *existing* literature on the psychological and psychiatric implications of abortion *does* go far to document the complexity and extent of these implications—and, therefore, likewise documents the enormity of their being described by the Surgeon General as not clearly contributory to the nation's burden of mental illness.

Of course Dr. Koop does not see it that way; in fact, he evidently does not see it at all. *Why* he fails to do so is hardly possible to know. *How* he fails can be seen by examining the literature, and thinking about it; in short, by using the known data and drawing logical conclusions from them. Koop has done neither. He has not amassed all the available information. Although this deficiency is probably not as serious as the drawing of poor conclusions, it is indicative of a carelessness which has apparently pervaded his approach to the problem at hand.

Koop's letter states there are "almost 250" abortion studies and all were allegedly reviewed by the staff of the Public Health Service. In reality, 250 books and articles on abortions' psychological *sequelae* were available *in 1981*; counting all the references in these 250 to English-language scholarly "articles on the psychologic and social aspects of voluntary abortion" yields a reference total exceeding

1,000.(10) The standard medical-literature reference, the *Cumulative Index Medicus* (CMI), by my own count contains references to another 77 studies from 1982 on, not to mention the foreign-language materials, which are nearly as numerous as those in English. The CMI does not include any books, theses, or pertinent papers published in journals other than those specifically medical or medicoscientific.

The Surgeon General did not state which 250 the PHS staff reviewed, nor whether his staff did any better at reviewing the studies they *did* find than they did in finding all available studies in the first place. Also, while all of the studies reviewed by the PHS are accused (in another January letter from Dr. Koop to organizations concerned with post-abortion psychologic *sequelae*) of being “flawed in design or . . . carry[ing] the bias of the author,” the possibility of bias in the PHS review is *not even mentioned*. This latter possibility is the more striking in that *every* one of *so many* studies was dismissed as valueless at a single stroke—a feat the completeness of which has hardly been seen in Washington since the *Roe* court so memorably did the same thing to the abortion laws of all 50 states in '73.

However, Koop's inexplicable conclusions in this instance probably would not have been remedied by his having *all* the evidence: the chances of reading any given 250 studies out of the existing literature *and* missing entirely the evidence connecting abortion and psychiatric illness are as slim as the chances that the suicide attempt recounted above was unrelated to the victim's abortion. There are far greater problems in Dr. Koop's analysis of what he *has* seen.

These problems are several-fold. One is in considering the caliber of a study's design, and the possibility of author bias. A second is neglecting to evaluate the raw facts produced by these investigations. As to the first, we have the Surgeon General's word on it that the “significant studies” were reviewed against “appropriate” criteria; so 250 were reviewed (presumably most all of the larger studies, and many of the smaller, more focused ones were covered) and *all* were found wanting. Can we do as Dr. Koop would ask of us, and accept that the study designs, data collection methods and analyses of some two hundred academic scientists *and* their hundreds of co-authors were *all* so flawed and biased as to be completely inconclusive? Were we considering the Soviet Union, the answer might be a prompt “Yes.” In the United States, Great Britain, Canada and Australia—sources of the over-

whelming majority of the English-language studies—the answer is likelier negative. This is so for three reasons.

First, most authors, including every one referenced in this article, admit to demographic and other methodological skewings and shortcomings, subject their work to statistical review, *and confine the scope of their conclusions accordingly*. That the studies are not perfect does not necessarily make them useless. Second, criticism of studies among authors is common; piranha are as innocuous as goldfish compared with an academician who spots a major weakness in another's published work. While virtually every author in the medical literature on abortion *accepts* (with few reservations) the unfettered right to abortion, they are not unwilling to take issue with each other over technical matters—a significant quality control. Poorly-designed studies are, if not inevitably, at least usually weeded out. Third—and this is a key to establishing the value of the existing work in demonstrating negative psychological outcomes from abortion—since so many of these authors are at least implicitly “pro-choice,” and many are avowedly pro-abortion,(4, 8, 10, 25, 36) data they produce which are negative in terms of abortion's psychological outcome are *not* likely because an author wanted it, or because he inadvertently set up his study to produce it. Dr. Koop may reply that his rejection of present studies on the grounds of bias deprives pro-abortion authors of any *imprimatur* for their claims that abortion is psychologically beneficial; my response is that they were neither looking for nor expecting *that*, but rather for a gnashing of unsettling arguments to the contrary—which Koop has certainly given them. But as we shall see, such unsettling data has been produced, again and again.

Substantial accidental bias, and authors' political bias which would invalidate studies' adverse data about abortion outcome, are thus largely ruled out for practical purposes. Technical credit is due to the scientists who, however objectionable their personal views, do know how to set up and conduct academic studies at least as skillfully as Josef Mengele. Dr. Koop would apparently give them no credit at all.

If the reader agrees that the results of existing studies are *at least* worthy of examination, rather than mere summary dismissal on such weak grounds, then we may begin to review some of the studies themselves. Before doing so, however, and before departing the subject of bias, a curiosity. In addition to concluding that the present literature is

inconclusive on abortion's contribution to psychiatric problems, the Surgeon General—continuing in the very same paragraph quoted at the outset of this article—reminds us of the “well-documented, low incidence of adverse mental health effects” associated with delivery of full term pregnancy, “*wanted* or unwanted” (emphasis mine). This reminder, a none-too-veiled version of the “pro-choice” canard that pregnancy is psychologically riskier than abortion, shows Dr. Koop's true colors—and puts him in a difficult position, because the *same* literature he rejects on abortion's psychological impact is that which describes the incidence of adverse mental health outcomes of pregnancy.(3, 10, 18, 37) The Surgeon General cannot have his uniform and wear it too, so to speak. The reader may draw his own conclusion as to whether Dr. Koop is quite as perfectly unbiased as he demands that others be.

The heart of the matter is that the literature *does* present some striking information about abortion's psychological outcome. “Anecdote” is a medical term which connotes a single case-study of a given disease state; these abound. Anecdotes on the types of psychiatric disorders associated with abortion are too numerous to list; they include conversion disorder,(35) obsessive compulsive neurosis,(27) developmental regression, anniversary reactions,(34) and actual suicide.(36) But anecdotes provide evidence only one case at a time; the studies of large groups decide public policy.

Overall, in studies of large numbers of patients, abortion has been found by many scholars to be of some “mental health benefit” to most of those who undergo it, though longterm outcomes are unknown. Ewing and Rouse's 1972 study described 92% of its otherwise-healthy patients as self-describedly in better emotional health several weeks after abortion, with 96% of those who had been previous psychiatric patients reporting similar benefits.(12) But few other studies have been so one-sided.

More typical is the report of Friedman, *et al.*, who in a review of 17 studies described a 7-43% *immediate* negative reaction to the abortion experience, and *persisting* negative reactions (guilt, psychoses, suicide attempts, regret, sadness, depression) in up to 26% with an *average* of about 10% *persisting* negative reactions as long as a year after the “procedure.”(10, 15) In 1986—13 years after abortion's legalization nationally and 19 years after its legalization in California—a retrospec-

tive California study reported about 50-60% of patients markedly improved in psychosocial terms. But, up to 18 months post-abortion, 17% were experiencing *worsened* social adjustment, and 9-12% had physical symptoms of depression. There was no indication that the bulk of these adverse outcomes were related to conditions or events other than abortion. The more recent study is, of course, significant in that the changed legal and social climate might be expected to markedly reduce the incidence of guilt in women undergoing abortion. It did not. Similar results have been found in England.(7) Even if the 10% figure exaggerated the truth *tenfold*, because abortion is now so common the total number of women suffering in these ways would still equal 1% of 1,500,000 or *15,000 every year*.

David, *et al.*, measured formally the rates of psychiatric hospitalizations in Denmark,(9) basing their study of the *entire* female population of the country, a sample of over one million women. Rates of such hospitalizations were thought to be more clear-cut indications of women's mental health, although only obviously measuring more extreme illness. In ages 15-49, post-abortive women led post-partem women and *all* women—a formidable control group, possibly even by Dr. Koop's exacting standards—with 18.4 per 10,000 admitted within three months, versus 12.0 and 7.5 for the latter two groups. In the David study, a check of the admission rates for separated, divorced or widowed women showed a 63.8 per 10,000 post-abortion psychiatric admissions rate versus only 16.0 per 10,000 among those carrying to term. (The capability to perform so complete an investigation is intrinsic to a socialized system; it could not be done in the U.S.) For comparison, the rate of abortion's severe medical complications, including but not limited to fever over three days, embolus hemorrhage, bacterial sepsis, and death, is about 40-50 per 10,000 cases *in a hospital setting in the first trimester*—the optimum condition.(9) Over 10,000 women have these complications every year.

Thus, in the views both of post-abortive women reporting their own responses, and of psychiatric specialists evaluating them medically, there seems to be at least some association in a great many cases. And if the overall figures are not grim enough, this last, very frightening statistic underscores yet another feature of the problem of post-abortion mental health: not everyone having an abortion is at the same risk of adverse results. An analogy may be made to driving a car; most people

who drive cars do so safely; the rate of traffic deaths in the U.S. is about two per 10,000 per year. But the risk for drunk or drugged drivers is, of course, far higher; alcohol is involved in *half* of all accidents. So it is with abortion; there is extensive literature on the greater risks undertaken by certain groups of women, and only one surprise; the frankness with which “non-pro-life” scholars in many cases identified those at risk, and demonstrated the dangers to them:

Repeat Abortions: women who undergo multiple abortions (17-35% of all who have abortions), are not magically exempted from the risk of psychological *sequelae*.(19) There is no evidence that they are somehow toughened by the experience; rather, each time she undergoes an abortion, a woman experiences about the same risk she did previously. As in tossing a coin, the chance is taken; if the coin is tossed often enough, it will come up heads at least once.

Second trimester abortions: in addition to the higher risks of purely medical complications—which themselves can lead to psychological ones—and the much greater discomfort of prostaglandin/saline abortions described by Kaltreider,(21) women having abortions in the second trimester are markedly ambivalent about their pregnancies, likelier to regard the fetus as a child, and likelier to have felt fetal movement before the abortion or to have seen fetal parts during the procedure.(10, 27) All of these features add psychological risks. Second-trimester abortions still number some 11% of all abortions, meaning 170,000 women a year are exposed to the increased dangers.

Abortion before a wanted pregnancy: an English study, by Kumar and Robson (1978), showed statistically-significant differences between rates of new-onset depression for women who become pregnant after an abortion—38%—versus women newly pregnant for the first time—(only 8%).(24)

Adolescents: Dr. Frank Biro showed in his 1986 study that for those less than 19 years old, the rate of second-trimester abortions may be twice that of older women.(4) Therefore they are at higher risks of *medical* complications (again, with ensuing psychologic problems) which are *about the same* for women having second trimester abortions as they are for full-term delivery.(37) Lewis (26), and Olson (30) in 1980 described the higher risks of repeat pregnancy in adolescents who have had abortions. Biro has summarized risks for particular groups of adolescents: “The teenagers especially at risk . . . are those with pre-existing mental illness, strong religious beliefs, limited coping skills, limited support, or abortions at later gestational ages. If the adolescent feels pressured by her family to terminate her pregnancy, she is also at high risk for psychological *sequelae*.”(4)

Genetic Indication: extensive literature describes the devastating effect on parents (6, 11, 14, 22) of the abortion of a wanted child, with incidence of depression found by Blumbing and Golbus (1974) as high as 92% among mothers and 82% among fathers.(5) Forty-five per cent of women in another English study (1977-1981) required psychiatric support up to six months after an abortion for neural tube defects.(28) The parents’ tragedy in these cases is not only the loss

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of the child, but also the further sorrow of difficulties with their other children's responses to the decision. As Calahan describes it: "Knowing one's parents let your little brother die because he wasn't 'normal' or was sick would create deep insecurity in a child. 'Will I be done in if I don't measure up?'"(14) Research on children's responses is only beginning.

The evidence of tragedy for these and other groups (6, 25, 29) has accumulated to volumes—not only of anecdotes but also studies. Even if the *overall* risk of psychological disorder after abortion is considered low, it is certainly a surprise neither to the thoughtful layman nor to most experts—including many who are pro-"choice" but presumably excepting the Surgeon General—that a woman in any one of these groups is at high risk of post-abortion psychiatric *sequelae*.

Dr. Koop is right inasmuch as there *are* gaps and inaccuracies in existent research—most notably that for *long-term* consequences. His letter to the President was inexplicably silent on the possibility that abortion, like radiation exposure or child abuse, may be experienced but once, and only many, many, years later manifest itself in forms little imagined at the time of the initial event. More can and must be known.

But *today*, to accede in the promotion of the myth that abortion is psychologically safe, even in the short run, is a deceit, no matter how well-intentioned. "Pro-choice" organizations, generally well-pleased with the Surgeon General's refusal to give the President the report he expected, are now doing the promoting, and Dr. Koop, in his latest but most lasting failure, the acceding.

The problem is that, as usual, the *victims* do the suffering. For the pre-born victims, it sears the skin, then it is over. For the woman, seared in mind and heart, it goes on.

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A Woman . . . and Her Doctor

David Alton

ABORTION HAS BEEN OFFERED to women as a universal remedy. It actually solves no problems: just ends lives. We have all been deceived by smooth talking medics who have willingly prescribed abortions and played down the consequences. One pro-abortion gynaecologist actually said in a Sunday newspaper that an abortion is just like having a dose of penicillin.

It is quite remarkable how much medical ethics have changed in the past 20 years. The Hippocratic Oath and its commitment to defend life seems to mean little to many doctors today. The hierarchy of the British Medical Association—fierce opponents of David Steel's Bill—are twenty years later the stoutest defenders of abortion. I suppose that to be otherwise would be an admission of some degree of responsibility for what has happened. To be otherwise would be an admission of the profession's abject failure to protect both of the patients involved in an abortion.

During 1987 an unmarried woman consulted her doctor. After confirming her pregnancy, the doctor offered her an abortion on social grounds. The woman declined. The pregnancy continued well but it was discovered that the father of the child was affected by a rare genetic condition. The mother was referred to a consultant at the nearby Carlisle General Hospital. He told her that the child would be born severely handicapped. What he did not tell her was that the condition, Ehlers Danlos syndrome, is, in reality, so minor that many affected are not even aware of it. In fact, it is impossible to tell whether or not the unborn baby suffers from the condition. There is a 50% chance that the child will be affected, and the 1967 Act allows abortion on the suspicion of disability. The consultant advised an abortion and late in the pregnancy at an estimated 21 weeks, the abortion was begun.

David Alton, MP, introduced a bill in the House of Commons in 1987 to restrict abortions (currently legal through 28 weeks) to 18 weeks. While the bill failed to pass, it caused a new national controversy in England, about which Mr. Alton has written a book, *Whose Choice Anyway?*, from which this article is adapted, with permission (©1988 by David Alton). [For more information see the Introduction to this issue—Ed.]

DAVID ALTON

This was a National Health Service Hospital and therefore the emphasis, unlike the situation in a private clinic, was not on production-line speed. This partly affects the choice of method used for the abortion. Instead of dilatation and evacuation (D & E), the woman was aborted using prostaglandins. Such drugs are usually used in conjunction with a poison such as urea, but in this case the poison was not used because the baby was not expected to survive beyond the birth; 21 weeks is alleged to be too young for the lungs to function unaided. When unpoisoned, the young child is usually battered to death by the severity of the contractions and the chances of survival are slim. The mother endures a more painful labour than normal because her cervix does not gradually dilate as in a normal birth. She does give birth, but to a dead baby.

The operation, however distressing for mother and staff, was routine. The registrar induced the birth and then left the hospital for the night. The consultant was not at the hospital. The woman was left in the care of the nurses and a junior doctor. All should have proceeded normally. The mother gave birth during the night. The nurses placed the baby's body in a kidney dish and covered it with a cloth. The doctor was called from his sleep and checked that the mother was in good health. No one checked the baby. This is usual procedure. The doctor returned to his bed.

He was called about forty-five minutes later by the nurses. They were extremely distressed. The baby, a little girl, was gasping for breath and struggling for life. Could he come to the ward urgently? On arrival, the doctor examined the baby. Breathing was slow, spasmodic, and gasping, but her pulse and heart beat were unusually high. If he was going to treat her she would need artificial help to breathe, but would she survive? The gestation was assumed to have been 21 weeks, but that might be wrong. She had survived birth for forty minutes, but the respiratory equipment was in another building, it would take time to carry her there; she might already be starved of oxygen, she might be brain damaged; was it worth it?

No one can criticise the doctor for his decision. With hindsight we can all say that more should have been done. It is impossible to imagine the pressure he must have been under. He might have been on duty for hours and had been roused from his sleep. Perhaps at the back of his mind was the thought that the baby was an abortion, not meant

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to survive. He decided to do nothing. The baby was left and he returned to bed.

He was called back by the nurses about an hour later. The baby was still alive and he had to do something. He examined her again. The option of phoning the consultant was considered and rejected. The doctor again decided to do nothing, and so after three hours, without aid of any kind, the baby girl gave up her struggle for life. The body was bundled into a sack and incinerated—usual procedure for an abortion.

It was decided that the mother should not be told what had happened. The birth was never registered, the death never certified. When the case became public knowledge, Douglas Hogg MP, a minister in the Home Office and a hostile opponent of my Bill, refused the local coroner's request that an inquest be held. For all intents and purposes the baby girl never existed except as a figure in the abortion statistics. Her birth was not acknowledged, her death was unrecorded.

The story of the Carlisle baby graphically illustrates the horrors of abortion for medical staff who approve and conduct them and for their patients. When a woman goes to her family doctor to confirm her pregnancy she is usually excited at the prospect. However, in the present climate, many women feel pressure from the moment of this announcement. They are expected to decide if they "really" want a child, and if not, their doctor may arrange a social abortion. Anyway, there are always the tests to see if the child is disabled and then the disability clause would enable her to abort the child. Amniocentesis and chorionic villus sampling are increasingly used as the first part of a search and destroy mission. Mothers who refuse these tests are looked at askance; some doctors have even suggested that women who refuse tests and give birth to a disabled child should not be eligible for State aid. If mothers agree to tests, for whatever reason, it is assumed that they will also agree to the abortion. Some hospitals, it is said, even refuse the tests unless the parents agree beforehand to the abortion should the test be positive. The current attitude of the medical profession seems to be less one of interest in how the mother feels about the pregnancy than one of imposing quality or perfection controls on life.

In Britain we are brought up to trust doctors as professionals to be respected. We believe that a doctor will always have our best interests at heart. When a pregnant woman goes to her doctor she also assumes

that the best of care will be available for her. Rarely will a woman realise that in the mind of her doctor, care may include killing.

It used to be a medical axiom that a pregnant woman presented the doctor with two patients. It was believed that all the care and support that could be given by medical science should be granted to both patients. Since the Abortion Act this has ceased to be the situation. What does a pro-abortion doctor see before him? One patient and one product of conception. The pro-abortion lobby within the medical profession has taken great pains to deny the existence of the baby as an individual human being. They have used medical terms and phrases to mislead the lay public. When the technology of photography enabled that same public to see the human form of the unborn, it was not the form that was questioned but the humanity. The child was accused of not being able to survive unaided, of being unable to feel pain, of being subhuman, less important. It could be disposed of without recrimination or guilt. But now modern science can record the pain felt by an unborn child, and viability is a poor test of humanity.

How do pro-abortion doctors justify abortion? They propose two justifications: sub-humanity or utility. If viability is a prerequisite for according human rights, then the non-viable can be disposed of without many qualms. Or the doctor can plead utility, the putting of another's possible happiness or convenience above the subhuman's life. An American, Dr. Nathanson, who is featured in the film *The Eclipse of Reason* which has now been seen by over a million people, wrote that it was impossible to deny the existence of a separate human life when you felt its movements "like electricity" down the forceps, both before and during dismemberment. After bearing ultimate responsibility for 75,000 abortions, Nathanson gave up his practice. For those who continue, they must ignore the part of their mind that tells them that abortion is obscene by replying that it is necessary. Those specialists who can perform more than one thousand abortions in a year become inured to it.

Can a pregnant woman know the value her gynaecologist places on the life of her baby? Only if she knows his attitude to abortion. As one professor of gynaecology said to me: "When I treat a pregnant woman, I am concerned with the best interests of my patient, the woman."

It was not always so. The Hippocratic Oath included a promise not to procure an abortion. The act itself had, for centuries, been regarded

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with horror and disgust to the extent that the 1861 Offences Against the Person Act prescribes life imprisonment as the penalty for procuring an abortion. It was in Nazi Germany that abortion became common for the first time in a modern nation. Under the remorseless logic that demanded the "perfect" human race, the same principles were extended to euthanasia of the incurably ill, the unwanted or unnecessary of society, and eventually led to the final obscenity of "socially useful experiments" on these unwanted people.

In the aftermath of the trials of medical war crimes, the World Medical Association drew up the declaration of medical ethics, the Geneva Declaration. It included the undertaking, "I will have the utmost respect for human life from the moment of conception." It was in the spirit of that declaration that so many doctors opposed the introduction of the 1967 Act. That opposition to abortion remained the norm in medical establishments well into the seventies. In 1967 every medical college except the College of Psychiatrists opposed the Abortion Act. In 1988 every medical college has changed its view and supported the 1967 Act and opposed life saving reforms. What has changed over those twenty years?

Firstly, the personnel. After 1967, pro-abortion doctors went out of their way to gain office in, and control of, the medical establishment. In this plan they were aided and abetted by the government of the day. Under the Act, doctors have the right to refuse to participate in abortions on the grounds of conscience. The Yellowlees Letter from the Chief Medical Officer to the Area Health Authorities set out to thwart that protection by informing authorities that they should not employ pro-life doctors in gynaecological positions if there was a demand for abortion in their area. Effectively the instruction ruled out promotion and a career for any doctor specialising in gynaecology who pleaded the conscience clause. A whole generation of doctors was lost to the speciality. Meanwhile, pro-abortion doctors were given the important posts and consultancies.

This about-face of the medical profession also has a rather more sordid side to it. Under the 1967 Act, abortions are allowed to take place in "a place approved by the Secretary of State." This led to the establishment in the seventies of private clinics specialising in abortions. For many, this was a licence to print money. Proprietors could, and still do, operate both a counselling service, advising pregnant women, and a

clinic where they could be aborted. Since this practice began, various committees in the House have recommended that this financial link be broken. It still exists. For doctors, the clinics opened a profitable source of private practice. In 1986 eleven doctors specialising in abortion performed 60% of late abortions grossing at least £2 million. The profit motive seems to be clearly in play more than the Hippocratic Oath. The more abortions they performed, the more profit. Throughout the private abortion business about £12 million changed hands last year. The emphasis in these clinics has become “day care” abortions. The method used is D & E. An experienced doctor can perform a D & E in minutes. One private practitioner has developed a system of cutting the umbilical cord in the womb in advance of the operation. He discovered that this procedure made the baby’s body more pliable and so it could be extracted in larger pieces.

The victims of this particular end of the trade are predominantly non-resident women. One article in the *Sunday Mirror* called “The Charter of Tears” explains what happens to women who come from overseas to have an abortion in London:

A young girl walks into a travel agency to book a cut-price package tour. She seems anxious and afraid. The trip includes a jet flight and a stay in a tourist hotel—but this is no carefree holiday in the sun. Instead, the girl is embarking on a lonely charter flight of heartache. She travels from Madrid . . . she is driven to a hotel in central London. Later, she takes a forty-minute car ride to an elegant Victorian house in a smart suburban street. The house is an abortion clinic—or in the words of its critics, an abortion factory. . . . An abortion at Parkview costs between £130 and £385—the more advanced the pregnancy the higher the charge. The clinic is run by London Nursing Home Ltd, which last year had a £2 million turnover. Most of the girls are from Spain or France, though some travel from Algeria. Many are past the 22-week pregnancy phase regarded as late abortions but not past 28 weeks. The 30-bed clinic was at the centre of a Department of Health investigation in 1985 after one of its clients, a 21-year-old Spanish student, bled to death when her abortion went wrong. . . . One girl said, “I had my operation at 11 am and I was out by 2 pm.”

Because Britain allows abortion later than any other Western European country, there has always been a stream of women arriving from abroad willing to pay for an abortion. The impartiality of the counselling they receive is dubious, even if the clinics could provide an interpreter for every nationality. It is doubtful whether any medical notes are seen. Late abortion carries a complication rate as high as 10%. We are exporting women who are uninformed, and at risk, every day from

the abortion clinics. Private clinics carried out nearly 88% of all late abortions in 1986. And of the 8,276 abortions in 1986, 45% were on non-resident women. By performing these abortions which would be illegal in the women's country of origin, we have truly become the back-street abortionists of Europe.

At the time of writing, no national study of post-abortion disorders has been completed in Britain, but we can establish something of the scope of the psychiatric turmoil abortionism has fostered by looking at the studies done elsewhere. David, Rasmussen and Holst tracked all admissions to psychiatric hospitals in Denmark for a three year period after delivery or abortion. Their findings make depressing reading. There was a 50% increase in the percentage of women admitted to such hospitals following an abortion, compared with those completing pregnancy. Even more disturbing were the results for those women who did not have the support of a stable relationship. The numbers admitted to psychiatric hospitals nearly quadrupled compared to the numbers who completed pregnancy. It is likely that the percentages would be even higher the later the abortion, for from the moment a woman feels her baby move, at about 18 weeks, bonding has begun. In a poll done by Horack and Associates on 22 January 1988, published in the *Independent*, 79% of women and men said they would feel guilt if they aborted their child after quickening had occurred.

As an American doctor put it, "You can scrape the baby out of the mother, but you can never scrape the baby out of the mother's mind." The conclusions of the Danish study state that "at all parities the women who obtained abortions are at a higher risk for admission to psychiatric hospitals than women who deliver," and yet during the campaign opponents of the Bill said that post-abortion stress disorders were an invention of the pro-life movement and quoted Denmark's abortion on request system as a suitable model for British abortion law.

The symptoms of post-abortion stress are all too common, and all too obvious in some of the letters [received by the author]: tears and an overwhelming sense of guilt, the feeling of betrayal of the child and betrayal by a partner and family, or that the woman is not worthy of her partner. Finally there is the constant memory. What would the baby have been like? But post-abortion stress doesn't stop at the woman who has the abortion. Her partner or parents can also be

affected, as can the existing children. McAll and Wilson, in *Ritual Mourning for Unresolved Grief After Abortion* (Southern Medical Journal, Vol. 80, no. 7, July 1987), gave case reports on such sequelae from the United States. They recommended ritual mourning as a means of dealing with what they described as “unresolved grief,” “a frequent sequel to induced abortion,” and point to religious devotions as an important element.

The purely physical complications [discussed in the previous chapter] are not surprising in the light of the doctor’s perspective on the techniques of abortion. How many women would want to be operated on by the doctor who said: “I thought I was an expert, but by the time I had done 5,000 (abortions) I realised I was learning a lot. At this point having done around 12,000 procedures I am beginning to think I am reasonably competent.”

Our opponents were quick to emphasise delay as a major reason for late abortions and continually misquoted the findings of a RCOG survey (*Late Abortions in England and Wales*, 1987) by claiming that one in five women aborted after twenty weeks had been referred eight weeks before, but had been subjected to medical delays which they claimed were either the fault of an increasingly underfunded Health Service or of secretly pro-life doctors imposing a delay to make it more difficult for the woman concerned.

The evidence indicates an entirely different interpretation. The figure quoted above is taken, not from the whole sample of the RCOG study, but from a small sub-group. The same study recorded that “Failure by a doctor to refer the patient to the NHS was given as a reason for difficulty in access in less than 2% overall.” Or again: “Difficulty of access due to the presence of a waiting-list for out-patient appointments was reported very rarely, in less than 3% for any of the gestational age groups.” In fact the report listed the main reasons for delay and late presentation as denial, apprehension, indecision, financial difficulty and relationship change.

One of the most distressing features of late abortions is those performed on very young girls. They carry greater risks of medical complication. But how does a twelve-, thirteen- or fourteen-year-old decide to have an abortion? The truth is that others decide for her, particularly parents. The wishes of parents, however well-intentioned, is nowhere mentioned in the Abortion Act and the sad fact is that many late abor-

tions are performed on young girls and women who disguised and hid their pregnancies in the knowledge that when others discovered them they would be pressurised into abortion.

We are at an important cross-roads for the medical professions. We know more about the nature of the unborn child, its remarkable development, its ability to sense, hear and feel pain; 90% of the current body of medical knowledge has been learned over the last twenty-five years. Ethical practices have not kept pace with technological advances. Our medical techniques allow us to operate inside the womb on the unborn baby after fifteen weeks' gestation. In film and photography we have the confirmation of what doctors have always known, that the unborn child is alive and has undoubted humanity. There is massive pressure, both political and social, for the medical professions to use criteria of utility and expediency in the way in which we deal with human life. By allowing decisions of life and death to be based on such criteria the medical professions have retreated from an ethical, principled view of their work and skills. If we as a society allow this to continue we can only have less and less confidence in doctors as people with the best interests of the individual patient at heart.

Much has been made of the "slippery slope" but we can at least note that the MPs who voted for the Abortion Act never realised exactly what they had unleashed. They were told that the Act would end back-street abortion and even child abuse. The first report of the Select Committee on Violence in the Family paints a bleak picture of the ever rising number of cases of cruelty to children. Child abuse is no longer a question of isolated incidents but part of a pattern of gathering violence in the home. It is the fifth most frequent cause of death among children. The violence begun with abortion now extends beyond the womb on a scale commensurate with the inexorable increase in the number of abortions. In recent years we have also seen calls for experimentation on human embryos, for legalised euthanasia and the development of "nursing care only" for newborn disabled babies.

From opposing the Abortion Act the medical profession has tacitly accepted and condoned it. If Parliament and the public are not able and not allowed to do so, it is time that the profession set its own house in order.

Gender-Specific Abortion

Kenneth R. Craycraft Jr.

ON September 17, 1959 William F. Buckley Jr. stood before a near capacity crowd at Carnegie Hall to protest the visit to New York of Soviet leader Nikita Khrushchev. Buckley noted that New York Mayor Robert Wagner had welcomed Khrushchev, but had denied the same courtesy to King Saud of Saudi Arabia because of King Saud's discrimination against Jews. "Nikita Khrushchev not only discriminates against Jews," declared Buckley, "he kills them. On the other hand he does much the same thing to Catholics and Protestants. Could this be why Mr. Wagner consented to honor Khrushchev? Khrushchev murders people without regard to race, color, or creed . . . and therefore, whatever he is guilty of, he is not guilty of discrimination."¹

Thirty years later, it seems that the image makers of America are even more convinced that the only absolute rule in our society is that one must not discriminate—even when it comes to killing. At least that is the impression one gets from recent reports of "gender-specific" abortion: the media has been reporting that amniocentesis is now used mainly to determine the sex of the fetus; in cultures where males are more highly prized than females, for instance, it has become common to abort female fetuses and try again for a male.

In a column which first appeared in the *Boston Globe* (August 23, 1988—it was reprinted in the Fall 1988 issue of the *Human Life Review*), Harvard Law School Professor Alan Dershowitz protested the practice in India of having amniocentesis performed to determine sex, and then aborting fetuses only if they are female. Dershowitz asks: "Does a woman have the right to terminate her pregnancy—to have an abortion—for any reason deemed sufficient for her?"² Of course; this is a tenet of reproductive choice. "But does a woman have the right to abort a fetus solely on the ground that it is a female?"³ No, says Dershowitz. In fact, he intones, there is a "wrong inherent in terminating [a pregnancy] on sexist grounds."⁴

Dershowitz's complaint is only about this practice in India; he com-

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pletely ignores the very same atrocity right here in the United States. Presumably he thinks that in the U.S. those who are enlightened enough to exercise their “reproductive choice” are also enlightened enough not to violate the last American taboo: discrimination. Not so, according to the Christmas Day, 1988 issue of the *New York Times*. In a front-page article Gina Kolata reported that as many as 20% of geneticists approve of prenatal diagnosis for the sole purpose of selecting the sex of the child.⁵ While no figures were cited as to the frequency of these gender-specific abortions, nor on the number of women who seek geneticists for the purpose of determining the sex of the fetus, Kolata reported that “every one of more than a dozen geneticists interviewed said they regularly receive” such requests.⁶

Kolata says some geneticists, physicians and medical ethicists are unwavering in their view that a woman should be able to abort her child for any reason, quoting Dr. Michael A. Roth, a Detroit obstetrician, as stating bluntly: “I have no ethical problems with it, absolutely not.” In fact, Kolata says, Dr. Roth criticizes those who decline to abort for sex selection because they are “selectively picking out who they want to do [abortions] on and who not. I haven’t turned anybody down.”⁷

Others seem to have no problem with gender-specific abortions being done, but do not want to be associated with the practice. Dr. Mitchell Golbus of the University of California (San Francisco) notes that “it is very hard to make a moral argument about terminations for sex when you can have abortions for any reason.” Dr. Golbus’s solution? “I am willing to tell people that there are other centers in California that will” do a prenatal gender screening for the purpose of abortion.⁸

But others suffer the Dershowitz dilemma. George Annas, professor of health law at Boston University School of Medicine (and arguably the dean of American medical ethicists), openly acknowledges his acceptance of abortion, but thinks gender-specific abortion should not be allowed. “I think the profession should set limits,” he says, “and I think most people would be outraged and properly so at the notion that you don’t want a boy or don’t want a girl.”⁹

Like Dershowitz, Annas opposes the notion that one might kill a child because it is a boy or girl, but has no problem with killing it if the sex is unknown. A closer look at the implications of such a view seems in order.

Of course the most obvious implication is that sex discrimination is a greater moral transgression than arbitrarily killing an unborn child. Or that killing the child arbitrarily is “value neutral,” while killing it because it is a certain sex is immoral. It is hard to escape the further implication that, in fact, *arbitrarily* killing the unborn child is a much more praiseworthy choice than killing it because it is a certain sex. If one aborts Baby Jane Doe because one has enough children and wishes to have no more, that is acceptable. But if one aborts the *same* Baby Jane Doe because one wanted a Baby John Doe, that is a social and moral sin. Killing *qua* killing plays absolutely no role in such a judgment. The only criterion for establishing the rightness or wrongness of the killing is the sex of the dead child.

Abortion, in this theory, is a perfectly acceptable social phenomenon, as long as it is done indiscriminately. This “liberal” mind-set believes only in killing on an equal-opportunity basis. The sex of the child comes before the humanity of the child. Whether one is killing a human person is not the deciding factor, but rather whether one kills the human person without regard to its gender.¹⁰

“But wait,” an adherent to the Annas/Dershowitz objection might say, “I am not subject to this analysis since I do not believe that the fetus is a human person.” But that argument makes the entire abortion argument wobble at its very foundations. The typical pro-abortion argument has two prongs, *viz.*, that the aborted fetus is nothing more than parasitic tissue, not a person at all; and that a woman has the right to do with her body what she pleases.

While there are many variations on the pro-abortion argument, abortion-at-large advocates usually come down to one or both of these two positions. And here the wobbling house crumbles in upon itself. A pro-abortionist who appeals to *either* of these positions (and most appeal to both) cannot possibly have a principled objection to aborting a fetus simply because it does not happen to be the gender a person wants. If these are the principles for advocating abortion, then one has no ground whatever for objecting to gender-specific abortion.

A Blob of Tissue?

If a person agrees that when one obtains an abortion, one is doing nothing other than ridding the body of some mass of tissue, how could that person object when the abortion is based solely on the sex of that

mass of tissue? If this mass of tissue is merely a potential human, what difference does it make what sex it *potentially* would be? Is it even coherent to consider, for the purpose of some moral statement, the sex of a blob of tissue? Of course in all three questions a negative answer must obtain. If the fetus is only a blob of tissue—a parasite in some abortion apologetic systems—its sex is inconsequential. If it is only a person *potentially* (which *any* pro-abortionist must concede, else he or she sanctions murder, by its accepted legal definition), then the potential again makes no difference.

The only way the non-discriminatory abortion advocate can maintain a morally and logically-consistent position is by stipulating that this would-be aborted life is indeed a human person. Otherwise what sense would it make to talk about its sex? The very notion of ascribing gender *for the purpose of making a moral statement* must imply that the fetus is a person—a *human* person.¹¹

Surely anti-sex discrimination sentiments do not extend into the realm of non-humans. Would they object to hunting laws that forbid shooting female deer? Hardly. Here again, the pro-abortion argument collapses under its own weight. If the fetus is a human person, endowed with gender such that to discriminate arbitrarily against one sex in favor of the other is a moral evil, then by all Western codes, abortion *would* be murder.¹²

A Woman's Right?

Now if ascribing gender to the fetus for the sake of making a moral judgment constitutes personhood for the fetus, the abortion argument based upon the absolute right of a woman to control her body fails as well. No longer are we talking about the right of one person over against a mass of impersonal tissue. Rather, we are talking about the right of one person over against the right of another person. Of course some pro-abortionists will stipulate that the fetus is a person, and then take the somewhat softer position that the abortion “dilemma” poses a conflict of rights, to be worked out within the context of rights language.¹³

But if one indeed has stipulated that the fetus is a person—and one must if one is to make the anti-discrimination argument—then the “rights conflict” argument is also refuted. Now we are not talking about one human person with an absolute right to control her body, but rather *two* human persons, each with a competing right, one negative

and one positive. The woman has the alleged positive claim to rid herself of this intrusion; the fetus has the merely negative claim not to be killed. Surely Professor Dershowitz, of all people, understands that when two competing right claims meet head on, right claim "A" which makes a positive demand against right claim "B" should yield to "B" if its demand is only negative, especially when the positive claim will harm—much less kill—"B"? The fetus's negative claim merely to maintain its life must have precedence over the positive claim of the woman which would infringe upon that life. QED: abortion is an immoral act, based upon the right of the female (or male) person who would be aborted *not* to be aborted.

To be consistent, abortion advocates cannot protest gender-specific abortion in India, Asia, the United States, or anyplace else. If a woman has the right to do with her body what she wills—and if the fetus within her is mere tissue—then one argues against one's own position by objecting to sex-discriminate abortion. There is no principled moral ground for making such a distinction. One must, as Dr. Annas implies he is prepared to do, simply make an arbitrary decision against gender-specific abortion which, as noted, is evidently based upon the alarming moral theory that sex discrimination is a greater transgression than taking innocent life.

Those who try to claim some moral ground for objecting only to gender-specific abortions may find themselves forced to abandon their entire pro-abortion rationale. At one point in his column, Alan Dershowitz announces that for all the reasons he has listed, "it is obviously important to put an end to the process of selectively aborting female fetuses."¹⁴ But for all the reasons stated above, if he wants to have a morally-principled and consistent objection he (and those like him) must object to abortion for *any* reason. Professor Dershowitz may just have to re-write the sentence so that it reads: "It is obviously important to put an end to the process of aborting all fetuses." Morally, it is the only logical conclusion.

NOTES

1. *National Review*, September 17, 1959. Cited in John B. Judis, *William F. Buckley, Jr.: Patron Saint of Conservatives* (New York: Simon and Schuster, 1988), p. 176.
2. Alan Dershowitz, "Abortion leads to 'femicide,'" *Human Life Review*, 14, no. 4 (Fall 1988): 110.
3. *Ibid.*
4. *Ibid.*, p. 111.

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5. Gina Kolata, "Fetal Sex Test Used as Step to Abortion," *New York Times*, December 25, 1988, p. 1, col. 1.
6. *Ibid.*, p. 38, col. 1. Interestingly, Kolata points out that all the doctors interviewed for the article said that a woman from India or Asia is more likely to openly seek sex selection. She cites a physician in Philadelphia who says that virtually all of the babies born to his Indian patients are male. For all other patients, the ratio is about 1 to 1 (*Ibid.*, cols. 2, 3).
7. *Ibid.*
8. *Ibid.*, col. 3.
9. *Ibid.*, col. 2.
10. One can apply the principle to other issues, *pace* Buckley above. Why do liberals complain about human rights abuses in, say, South Africa, but ignore the same in the Soviet Union? Might it be that the Soviet Union abuses human rights across the board, while the South African government only abuses the rights of certain races? While one certainly cannot attribute such reasoning to those persons discussed here, the odious principle used in this abortion argument seems to have seeped into the arena of other social and political arguments. Often those who complain about human rights abuses seem to only object if the guilty state discriminates: indiscriminate abuse is winked at or ignored. Seemingly, the evil is not in the abuse, but in the discrimination.
11. This is not to say that the anti-abortionist must base his or her position on the foundation of personhood of the fetus. Whether or not the fetus is a "person" is inconsequential in the argument of some anti-abortionists. The point here is only that making the type of moral statement about aborting the fetus necessarily implies ascribing to it something like what we usually mean by "personhood."
12. "Murder" being defined as "the unjust taking of an innocent human life."
13. It should be noted that I neither consider this position to be "softer" than the wholesale position, nor do I consider such a situation an abortion "dilemma" (if indeed the notion of a moral dilemma is even legitimate). Further, I do not believe that the abortion question, but for the rarest of circumstances when the life of the mother is threatened, ever is to be argued within the moral category of a conflict of rights. See Kenneth R. Craycraft Jr., "Abortion and Justice," *Reformed Journal*, Vol. 37, No. 5 (May 1987), p. 8.
14. Dershowitz, p. 111.

The Soft Shrew Routine

Faith Abbott

JUST WHEN WE LADIES thought it was safe to go back into the kitchen, we discover that the kitchen is where you are *sent* back to if you haven't been a good feminist. Anyway, that's the impression you'd get if you read the interview with Anne Archer in *Ms.* magazine's "special" Double Issue (January/February '89).

Who is Anne Archer, and why is she saying these things? And what *is* she saying, really? Well, she's an Academy Award-nominated actress who was one of *Ms.*'s Women of The Year 1988: she has now taken on "her most challenging role as the reproductive rights spokeswoman for Planned Parenthood." (Gee—maybe *Ms. has* changed: "spokeswoman" rather than "spokesperson"?) Anne was chosen "For her courageous public pro-choice advocacy at a time when the fight to control our bodies is becoming bitter and violent. Archer's calm presence gives a deserved dignity to the struggle."

Those two sentences were printed in all-capital letters underneath a full-page photo of the actress. After I'd glanced at the photo, I did a double-take and looked again. Sure enough, I'd missed something I think I was supposed to notice right away: there she sits, her left arm resting on a glass-topped coffee table, her left hand in the forefront. Very *much* in the forefront: it looks disproportionately *large*, reminiscent of those Hitchcock films which startled the audience with sudden larger-than-life close-ups of a gun or a poisoned glass of milk. Anne Archer's ring finger is bare. Presumably one *is* supposed to notice this. But she has a husband and two sons, so what is the message? That she's her own person? That she's not "owned"?

If you've seen the movie *Fatal Attraction*, you know that Anne portrays the "prototypically old-fashioned, all American wife and mom who's lost her security, her serenity, and is about to lose her life to her husband's quickie-run-amok." (I quote from writer Bonnie Allen, a "media critic" who covers the entertainment industry; she interviewed Archer for *Ms.*). "With *Ramboesque accuracy*," says Bonnie, the

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heroine of *Fatal Attraction* “aims her gun and blows her nemesis to the eternal one-night stand in the sky, thereby assuring herself of peace, justice, and a forever faithful husband. *Score one for motherhood, family, and the American way.*” [Italics mine, because that phrase is to be used again soon.]

What you might *not* have known about Anne Archer is that she spoke at last summer’s Republican National Convention, and that’s where she used the K word: “Once you deny women privacy and choice, you put them back in the kitchen. If they cannot control their reproductive systems, they can’t control their destiny.” Now in case the casual reader might have skimmed over that, *Ms.* put the quote in a large box smack in the middle of the page.

You can see why *Ms.* chose Archer as a Woman of the Year. She is attractive and articulate and it is now that they need her . . . “Now, when the image of the reproductive rights movement has been as much under attack as its political position. Now, when the presumption is that anyone who is pro-choice cannot also be pro-family, pro-motherhood, or, by a giant leap of logic, pro-American,” gushes Bonnie Allen, who explains that Archer is the National Public Advocacy Chairman (man?) for Planned Parenthood, in which capacity she spoke at the GOP convention. She spoke at the Democratic convention too, but the Republican one was more significant because it took place “in that part of Schlaflyland where reproductive reactionaries who feel free to thrust bottled fetuses in your face are assured a place on the party platform” and where the audience contains some of those elements who “wouldn’t mind frying Betty Ford at the stake for being a radical feminist.”

Interviewer Allen uses the present tense: “Archer appears at the podium looking about as radical as Princess Di at a ship’s christening” and Conservatives who have come mainly to see the woman who zapped Glenn Close “are made to see a different perspective on family planning.” Those who came just to perhaps “touch” a real live movie star are “touched” by “new information.”

“Armed with in-depth understanding and remarkable fluency, Archer—aiming her facts with *Ramboesque accuracy*—effectively and elegantly communicates her information. *Score one for motherhood, family, and the American Way.*” (See what I mean?)

The medium, says Bonnie, is as important as the message, because

“Appeals to logic have no impact when the audience doesn’t find the messenger appealing.” And “For those who still mistakenly define the reproductive rights movement as only for the Birkenstocked and wire-rimmed eyeglasses set, ignoring the millions of ‘everyday’ women firmly committed to controlling their bodies’ destiny, Archer represents a vitally new public identity.” Well, yes indeed: here *is* a new role model. Have you seen those clever ads for *Ms.*? The photo-spread showing how feminist hippie goes to svelt yuppie in just seven frames? Anne Archer goes one frame further.

An aside on the subject of role models, and the reference to “Schlaflyland”: In an article titled “Still Crazy After All These Years” (*Chronicles*, July, 1988), Janet Scott Barlow writes:

Whatever happened to the supposed feminist role model, the self-possessed woman of assurance and purpose? She exists. In fact, she has always existed. It just happens that feminists don’t like her. If organized feminism had the courage of its convictions, it would give its highest award to Phyllis Schlafly, a woman who, against great odds and with skill, determination, and confidence, took on a big bully and won. The problem is, the big bully Mrs. Schlafly took on was organized feminism and its pet project, the Equal Rights Amendment. Might not that fact of itself have given feminists, even in defeat, some measure of pride? But this was war; and you don’t conduct war with a taste for irony or pride in your adversaries. Possessing only the courage of its prejudices and jealous always of its own political power, the women’s movement looked at Phyllis Schlafly—a self-realized female if ever there was one—and saw not a role model but an enemy.

(No doubt the late Clare Boothe Luce belongs in this category, too. You would have thought *The Women* would have been proud of Clare’s numerous first-time-for-a-woman achievements, but you’d be wrong: *she* also turned out to be the enemy.)

True, Anne Archer doesn’t look like an “activist,” and she says she’s *not* one: in fact, she “gets embarrassed” when she hears actors talking about things “other than their art.” She wouldn’t seem to be a candidate for the front lines, so why did she take on this new role? Why, she was asked, isn’t she reluctant to risk a career backlash by speaking out as a high-profile reproductive rights advocate, as many actresses in her position would be afraid to do?

She dismisses this possibility: she “doesn’t care” about “anti-choice” women. “They’re a minority. They’re vocal, but it’s not really based on intelligent thinking or real caring. If we bowed to radical and fanatical thinking, I don’t know *where we’d be in this country*. (Italics mine—

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more about this later.) Mainly, it was the “recent intensity of the battle for reproductive rights” that drove her to take an up-front position in a high-risk sector where, claims Planned Parenthood, bombings and arson attempts are frequently launched against family-planning clinics, patients and reproductive-health-care workers are assaulted and harassed, clinic personnel receive death threats, and “murder has been tried.” (Murder has been *tried*? Now *that’s* an ironic statement—every abortion produces a dead body.) Explains the interviewer: “The opposition, committed to life as long as it’s before birth, takes itself seriously. Archer doesn’t consider herself in any a way part of their agenda.” Note that that Archer “doesn’t care” about them, but says *they* are “uncaring”: note further that the pro-choicers’ agenda now includes accusations that pro-lifers, or “anti-choicers,” don’t care about kids *after* they’re born. An angry letter-writer to *Ms.* says that “Pro-lifers don’t want to help women have babies, they want to prevent them from not having them.” (This quote was bold-faced on the Letters page.)

Never mind all the rhetoric: Anne Archer, says Bonnie Allen, is “clearly on the side of truth, justice, and the American way of individual freedom.” And “For every Martin Luther King, Jr., or Betty Friedan with a pure sense of mission, there are thousands of unexpected heroes who, when finding their basic freedoms challenged, feel compelled to turn their private feelings into public action.”

Couldn’t that be said by advocates of, say, Operation Rescue? Not by *Ms.*—of *course* not, because Operation Rescue is on the *wrong* side. But even if one thinks that participants in Operation Rescue are fanatics, how can one say they don’t have “a pure sense of mission”? Don’t *they* also have the right to “turn private feelings into public action?”

And what does *Ms.* think of Operation Rescue? It has “restaged the Siege of Atlanta, and is moving on to other parts of the country, using its terrorizing tactics to undermine our constitutionally guaranteed freedoms.” *That’s* what.

Anne Archer, the “prototypically working woman, mother and wife” whose “viewpoint is ultimately pro-family” can indeed produce “off the cuff” a “scathing indictment of the current state of reproductive rights.”

What’s next for Anne Archer, in her new role? As *Ms.* went to press, she was “awaiting her next assignment from Planned Parenthood.”

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After I had read this wildly enthusiastic Anne Archer interview (and some other pieces in that *Ms.*, including all the letters *Ms.* had seen fit to print) I was a bit confused. Wasn't *Ms.* supposed to be lightening up? So I'd heard; and then I found a most interesting article by Susan Katz Keating in *Insight* magazine ("Shifting Appeal in Women's Slicks," January 9, 1989) which begins:

Once defined by the familiar "Seven Sisters" and their housewife formula, the mainstream women's magazine industry has moved through the flash of the Cosmo Girl era to become a more broadly construed, and sometimes confusing, business. Titles often focus on a target audience, while inside they send conflicting signals on sex, love and offspring. However, shrill feminism is definitely passe.

So the "old" feminism projected by the women's movement's flagship *Ms.* is *out* and what's *in* is the *new* feminism because, says the editor of *New Women*, feminism has changed "and there is a general trend against man bashing. . . . There will be an embracing of men, children, family and work life . . ." Keating says "Perhaps the most striking indicator of differences among women's magazines is not so much their treatment of sex, but their approach to pregnancy and child rearing. Some merely avoid the issue. *Vogue* is quite happy to accept motherhood but treats an unwanted pregnancy as if it were no more than an annoying wart."

Among several women editors quoted in the article (and some men, too: a Washington-based media consultant says "it's a terribly schizophrenic market") is one Patrice Adcroft, former writer for *Good Housekeeping* and now editor of *Omni*, who says that the new *Ms.* people "are saying it's OK to admit your femininity now. At one point, they were so strident in tone. A lot of people were turned off Now, you don't have to be embarrassed to pick up *Ms.* and *Vogue* at the same time." (Still, I felt self-conscious when I bought the copy of *Ms.* in my neighborhood: I hoped no one I knew was watching—silly, but true.) Indeed, says Keating, "The *Ms.* woman seems more light-hearted. She jokes about dying her hair; she talks about the cute stewards on Air France. But in other ways, she is still *the same old shrew.*" [Italics mine.]

Yet *Ms.* does *seem* less thrill and strident these days: remember, *Ms.* was the feminist bible born of the political turmoil of the '60s. Now it's OK to call a spokesperson a *spokeswoman* (but where is her wedding

ring?) and men are not to be bashed, motherhood not to be trashed. However, the important thing that we should *never* forget is that women must remain in control of their reproductive rights and must “stand firm against the bad old days when women were forced into back alleys to have the abortions denied them by law . . .” And “*Ms.* remains the only magazine for women that understands the profundity of these changes in our lives, that empathizes with women . . .”

“We started out to change the world and sixteen years later we’re still doing it,” wrote *Ms.*’s editor in the magazine’s sixteenth anniversary issue (July 1988). “*Ms.* will continue . . . to be the magazine for women who make a difference to our world.” Compare that with: “A NEW KIND OF WOMAN WITH DEEP-ROOTED VALUES IS CHANGING THE WAY WE LIVE . . . THERE’S A REBIRTH IN AMERICA.”

Where did *that* all-capital-letters quote come from? From *Good Housekeeping* magazine. While *Ms.* presumably thinks there’s never been a better time for *Ms.*, the current *Good Housekeeping* ad campaign proclaims that “There’s never been a better time for *Good Housekeeping.*” In fact, “America is coming back to *Good Housekeeping.*” Have you seen those ads? While *Ms.* was updating its image (from hippie to yuppie, etc.) *Good Housekeeping* was, and still is, reaffirming its traditional image.

Market research apparently indicates that there has never been a better time for *Good Housekeeping* to feature “The New Traditionalist.” There continue to be ads in various magazines: in New York, they appear from time to time on the back page of the *NY Times*’ financial page—huge, full-page ads, with portrait-style pictures of smiling mothers with one or two small children, and sometimes teenagers: in one ad we see a mother with her teen-aged daughters. (“Her children think she’s a little ‘old-fashioned.’ They’re right . . . but she is at the leading edge of America’s newest life-style.”) The texts under the photos vary somewhat in each ad—here’s a composite:

THE NEW TRADITIONALIST . . . is a contemporary woman who finds her fulfillment in traditional values that were considered “old-fashioned” just a few years ago. She is part of an extraordinary social movement that is profoundly changing the center of American life, oatmeal is back on the breakfast table . . . There’s a rebirth in America . . . a renewal, a reaffirmation of values. We have seen it happening, it has begun to affect our lives . . . Market researchers call it “neo-traditionalism.” To us it’s a woman who has found her identity in herself, her home, her family. She is the contemporary woman whose values are rooted

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in tradition . . . The quality of life she has chosen is the embodiment of everything *Good Housekeeping* has always stood for.

All these ads conclude with the sentence: "That's why there has never been a better time for *Good Housekeeping*."

But back to Anne Archer's statement: "If we bowed to radical and fanatic thinking, I don't know where we'd be in this country." Well, where *are* we in this country? And who is "we"? Obviously she means *women*, but certainly not the female half of the 22,000,000 *we's* who have been aborted since the *Roe v. Wade* decision, some of whom would now be old enough to be the "we" of 1989. Who would have been a part of our "society." Who might have been readers of, eventually even contributors to, *Ms.* magazine.

Where are we in this country? John Leo, in his column "Baby Boys, to Order" (in *US News & World Report*, January 9) writes that the current search for the "perfect" baby now extends to getting rid of a fetus for being the wrong sex. Leo asks: "If we do this, what sort of society do we become?" Columnist Pat Buchanan has a pretty good answer: in his New York *Post* article, (November 19, 1988) he says "In America in 1988, we abort 4,000 children a day, our doctors are into 'fetal research' and the warm bodies of dead fetuses are cannibalized for spare parts."

The "good news," says Leo, is that there is a growing opposition to sex selection as a basis for abortion, and this is likely to cut across the usual battle lines on the issue: that tens of thousands of fetuses, or perhaps hundreds of thousands, have already been destroyed in Third World countries for "the offense of being female." This is not, he thinks, pleasing to feminists, some of whom are actually using the term *femicide*. "Femicide: a rare appearance of the suffix 'cide' in a movement that tends to regard abortion as the simple shedding of an unnecessary body part, such as an appendix or a hangnail." (Remember *Vogue* and the wart?) Furthermore, Leo goes on, "Some feminists are now willing to say, in effect, that pro-choice is a laissez-faire system that does not automatically advance the common good or even the interests of women."

Perhaps if the editors of *Ms.* had read *that* they would have thought twice before they included the Pope in their Double Issue, which celebrated not just its Women of the Year but also "The women (and men) who made us laugh, cheer, cry, and cringe in '88." The "cringe" cate-

gory is divided into smaller groups, such as “Men Who Tried Our Patience” and in this category there is a small photo of John Paul II with the caption: “The Pope, Miracle Worker? No abortion. No contraception. No women priests: and for his next trick, he’ll make all women . . . disappear!”

Back again to role model Anne Archer: did she say anything *political* in the *Ms.* interview? Well, yes—that the Reagan administration had hurt women in a lot of ways. “It’s been a rough time . . . we seem to be reverting back for the sake of rigid morality, not for the sake of what is intelligently needed in our society.” And how did *Ms.* envision the then-coming Bush administration? Well, along with small photos of other women, Barbara Bush’s was there too on the cover and there’s an “open letter” to her inside—it’s just a mild, friendly “humor” piece. They seemed to *want* to like Barbara.

But a recent letter-writer to the New York *Daily News* did *not* like the Barbara (*or* the Marilyn) as portrayed by the media during its Inauguration coverage. The *News* featured her letter in its special box under the title “Misplaced priorities?” on January 28th. “As an American woman,” she found “embarrassing and appalling” the focus of the media reports on the wives of the new President and Vice President, which “centered on their attention to laundry rooms, decorating and clothing” and she asks: “Aren’t women in these influential positions supposed to be our role models?” She accuses the Bush team of trying to create a “folksy image” which, she declares, “is straight out of the long-dead past.” If these women have no more serious or pressing concerns, then “keep them at home where they belong and let our media report on some real women.”

As for *George*: How did the ladies (pre-Inauguration) see *him*? Did they have any fears, hopes, predictions? Apparently all of the above.

Over the weekend of January 8 there was a Women’s Agenda Conference in Kansas City which reportedly included some thousand women representing over sixty organizations. In a “Special to the New York *Times* article (January 8) we read that “Many delegates said they expected the Bush administration to be more responsive to women’s concerns than its predecessor.” Why?

“So far, his gestures indicate he will make real his ‘kinder, gentler nation’ and we are here to help him along,” said Irene Natividad, who

is president of the National Women's Political Caucus. But Eleanor Smeal, president of the Fund for the Feminist Majority, predicted "It will simply be more of the same under Bush." *Most* pessimistic was Kate Michelman, executive director of the National Abortion Rights Action League. There had been, you see, an "impassioned discussion," during the conference, about the Missouri Case: the Supreme Court has agreed to hear a case involving a Missouri abortion law that defines human life as beginning at conception—the Reagan Justice Department had asked the Court in effect to use the case as a "vehicle" to overturn the 1973 *Roe v. Wade* decision—but at the time the Court had not yet decided to hear the case. "We are," said Kate Michelman, "in danger of losing our vital right to decide whether and under what circumstances to bear a child."

Now this story actually appeared in the January 9 edition of the *Times*, the very day on which the Supreme Court did indeed decide to review the Missouri Case. Call Kate prophetic.

Reported the *Daily News* the same day: "The move alarmed pro-choice forces, prompting a feminist leader to declare a 'state of emergency' for the women of America." She was Molly Yard, president of the National Organization for Women, who could be seen that night on TV screaming: "This is war!"

So—what now, *Ms.*?

Every issue of the magazine has, up front, the "Editor's Essay." The editor, Anne Summers, ended her January/February essay with this: "I know 1989 will be a better year for us all. I will continue to listen to you and to evolve your magazine so it reflects what's happening in your life. That's my New Year's Resolution! Happy New Year!"

Faced now with this challenge (you might call it the Dred Missouri Case?), how will *Ms.* "evolve"? Will there be a kinder, gentler *Ms.*, or will "the old shrew" re-evolve?

A kinder, gentler feminism? Don't bet on it.

The Reasons for Feminism

John Wauck

“**E**ven in the beginning, there wasn’t the hostility I had expected from men.” So wrote Betty Friedan in her 1973 epilogue to *The Feminine Mystique*, the book credited with launching modern American feminism. She assumed that men would hate feminism. Instead they don’t seem to mind it at all. But absence of hostility isn’t the half of it. What must Mrs. Friedan think of the enthusiasm with which feminist causes, supposedly such revolutionary threats to patriarchal privileges, are applauded by male politicians and pundits or—more remarkably still—by a flagrantly chauvinistic magazine like *Playboy*, which has been a vociferous and generous supporter of pro-abortion groups and the Equal Rights Amendment for women, which was defeated chiefly by—of all people—women!

By now, feminists must be accustomed to surprises. Who would have thought that twenty-five years of feminist agitation would leave women poorer than they were to begin with? And what a nasty surprise it must have been when the editors of *Ms.* magazine asked the new woman-president of the Philippines, Corazon Aquino, to name the greatest obstacles to equality for women in her society, and she responded: “There are no real inequalities women suffer in our society. Some people even refer to our system as somewhat matriarchal”—oops, no more interviews for Cory.

While there are no signs that men hate Mrs. Aquino because she’s a woman involved in politics, it is true that another female politician, Margaret Thatcher, has been attacked for her willingness to “sacrifice her family on the altar of ambition”—but that attack came from a feminist, the British journalist Polly Toynbee, for Mrs. Thatcher, the longest-reigning Prime Minister—male or female—of this century, is not a feminist. And how strange that Mother Teresa, probably the best-loved woman of this century, and equipped with impeccable credentials as a friend of the oppressed, should be a Roman Catholic nun and a relentless foe of abortion and birth control.

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The behavior of males can be surprising too. About that curious male habit of supporting families, the feminist celebrity Barbara Ehrenreich marvels: “In fact, considering the absence of legal coercion, the surprising thing is that men have for so long, and on the whole, so reliably, adhered to what we might call the ‘breadwinner ethic’”—she is shocked, *shocked* to find that men love and support their wives and children. It seems rather odd for a feminist to suggest that men have been suckers all along, but—as it happens—she is not alone in her wonderment, although her companions are not women: the boys at *Playboy* have long puzzled over the gullibility of American husbands. The same year Betty Friedan published *The Feminine Mystique* (1963), *Playboy* ran a satirical advertisement:

Be Your Own Boss!!!

Yes, an Assured Lifetime Income can be yours *now*, in an easy, low-pressure, part-time job that will permit you to spend most of each and every day as *you please!*—relaxing, watching TV, playing cards, socializing with friends! . . .

Yes, be a wife. Unlike Betty Friedan, *Playboy* does not pity the housewife’s supposedly boring, comfortable existence. *Playboy*’s women exist for men. In fact, *Playboy*’s motto is also its definition of the perfect woman: “Entertainment for Men.” The goal of every playboy’s life is to “enjoy the pleasures the female has to offer without becoming emotionally involved,” because, as every good playboy knows: “All woman wants is security. And she’s perfectly willing to crush man’s adventurous, freedom-loving spirit to get it.” The playboy wants a pay-by-the-hour, no-strings-attached woman—no wives allowed. Indeed, when they’re not playmates, women are the enemy. Back in the ’50s, *Playboy* invited its readers to “Take a good look at the sorry, regimented husbands trudging down every woman-dominated street in this woman-dominated land.” You may sense a certain animosity toward the female sex here; you might even suspect that *Playboy* is an essentially misogynistic magazine. And you’d be right—even though Playboy Enterprises is run by a successful career woman, Hugh Hefner’s daughter Christie.

Politics does make strange bedfellows (sometimes quite literally), but whatever the differences between *The Feminine Mystique* and *Playboy* magazine, the two agree on one thing: the cozy contemptibility of being

a housewife. So perhaps it isn't so strange that pornography's flagship should join Betty Friedan's disciples to fight for the ERA and abortion rights; they share an antipathy for the family home, which Betty Friedan insensitively—considering the general taboo on Holocaust analogies—calls “the comfortable concentration camp.”

In fact, feminism has little to do with new perceptions of the specific dignity of women. Far from affirming women, it sends a depressing message: you are abused and ill-treated; men despise you; your culture is biased against you; economic cards are stacked against you; your church is against you; your language is against you; your biology is against you; other women (simple-minded Midwesterners like Phyllis Schlafly) are against you. What's a poor girl to do? She could be forgiven for feeling paranoid.

But as Betty Friedan's surprise suggests, the greatest irony of feminism has been its success, the ease with which a supposedly male-dominated society agreed—in public principle if not always in actual practice (perhaps especially among women)—to feminism's analysis and demands. There is a good reason for this: the message of feminism is not unique to women. It really reflects other trends in the modern world which are gradually affecting everyone: the demands of democracy; the materialistic forces of capitalism and socialism; a general elevation of the political over the private; an alienation from the non-rational dimension of persons (the body, in particular) and personal relationships; and finally, radical individualism.

It seems worthwhile, for example, to ask whether women's suffrage indicates a change in the status of women or the changed status of voting in modern societies where democratic participation is the essence of citizenship. And perhaps the encouragement of women to work outside the home indicates less a change in the status of women than a new status for wage-earning work in an egalitarian capitalist society, in which one's professional standing and salary are among the few measurements of personal and social worth.

Betty Friedan's simple solution to women's lack of self-esteem is a job outside the home. To be a full human being, she argues, you need a career, for women “only find their identity in work that uses their full capacities,” implying that housework and child-raising do not use a woman's full capacities—which may be true, though it's even more true that being a banker does not use the full capacities of women or men.

Friedan's view of feminism is similar to *Playboy's* view of itself: "*Playboy* exists, in part," writes Hugh Hefner, "as a motivation for men to expend greater effort in their work, develop their capabilities and climb higher on the ladder of success"—a wonderfully crass, "yuppie" theory of human achievement which has not suffered under the reign of feminism. In fact the rise in female enrollment in college corresponds to a rising concern for economic rather than humanistic ideals: in 1987, twice as many college freshman as in 1970 named "being very well off financially" as their goal in life.

Of course, not all feminists share these bourgeois ideals. Simone de Beauvoir, the first philosopher of feminism, admired Stalin's Soviet Union where "women are given the dignity conferred by productive labor." This left-wing form of feminism may reveal less a new-found appreciation for women than a new-found love for the modern state, which especially honors productive labor in the public domain. The feminist is no threat to the primacy of politics, because feminism rejects the primacy that women tend to give the private realm, and which led Hegel, the great philosopher of the State, to identify them as enemies of the state: "Woman—the eternal irony in the heart of the community—changes by intrigue the universal end of government into a private end . . . and perverts the universal property of the State into a possession and ornament for the family." The contempt for family and home displayed by some feminists is another expression of modern statism.

Hegel and Simone de Beauvoir call to mind another feature of modernity: the alienation from nature which often leads to an alienation from femininity, perhaps through the common perception of nature as a woman: Mother Nature. The modern mind has adopted an adversarial or aggressive attitude toward Mother Nature. To those who follow his scientific model of reasoning, Francis Bacon promises: "I am come in very truth leading you to Nature with all her children to bind her to your service and make her your slave." Modern science uncovers the truth aggressively; it tackles problems, and solves them with technology; it penetrates and dissects; in its grasp of a subject, it is discursive and fact-filled. The pre-modern ideal of reason, wisdom, views things whole; it contemplates in silence and receives the truth from reality; in its relation to being, it is relatively passive; when interrogated, it responds not with a list of facts but with a story.

The entire endeavor of rationalistic philosophy, the triumph of

science over *sophia* (wisdom), has been a sort of intellectual sex-change operation, for while *sophia* has always been a woman, science has always been a man. In the novel *Frankenstein*, one of the first books about modern science's threat to *human* nature (written, fittingly, by a woman), Dr. Frankenstein provides a telling description of himself and his fiancée which highlights the difference between feminine *sophia* and masculine science: "While my companion contemplated with a serious and satisfied spirit the magnificent appearances of things, I delighted in investigating their causes . . . I pursued nature to her hiding places."

Traces of this alienation from Mother Nature and women can be seen in many modern intellectuals. It probably took its most extreme form in the thought of the Marquis de Sade:

Nature averse to crime? I tell you, nature lives and breathes by it; hungers at all her pores for bloodshed . . . with the lust of creation she is burned up, and rent in vain with travail until she brings forth change . . . she feeds with fresh blood the innumerable insatiable mouths suckled at her milkless breasts; she takes the pain of the whole world to sharpen the sense of vital pleasure in her limitless veins.

Needless to say, the Marquis wasn't a great friend of women, though among modern thinkers Schopenhauer may have been the most misogynistic:

Only the male intellect befogged by its sexual urge could regard as beautiful the undersized, narrow-shouldered, broad-hipped, short-legged sex. . . . all the power which [Nature] has given Man in the form of physical strength and reason, she has lent to woman under the guise of deceit.

Admittedly, Schopenhauer and the Marquis de Sade are extreme characters, but the same horror at nature and femininity can be found in the thought of a more recent and influential thinker, Jean Paul Sartre, who is especially important because Simone de Beauvoir, his colleague, disciple and intermittent mistress, explained the intellectual basis of feminism in her book *The Second Sex*, published in 1953, ten years before *The Feminine Mystique*. Sartre was the *eminence grise* at the birth of feminism, and his thought is crucial for understanding it. In Sartre, the rationalistic mentality seems to have led to a preference for ideas, especially his own abstract mental constructions, over things. Indeed creation disgusted him profoundly. In his novel *Nausea*, the clearly autobiographical hero, Roquentin, finds himself overwhelmed by queasiness at the sight of a tree root. It is a sort of negative epiphany. Instead of seeing that nature is good, he decides that it is bad:

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. . . the root, the park gates, the bench, the sparse grass . . . were only an appearance, a veneer. This veneer had melted, leaving soft, monstrous masses, all in disorder—naked, in a frightful, obscene nakedness. . . . All these objects . . . how can I explain? They inconvenienced me; I would have liked them to exist less strongly, more dryly, in a more abstract way, with more reserve. . . . If you existed, you had to exist all the way, as afar as mouldiness, bloatedness, obscenity were concerned. In another world, circles, bars of music keep their pure and rigid lines. . . .

Sartre's hero longs for a world transparent to mathematical reason and abstract philosophy—a world of modern masculine science. Another example of Sartre's attitude toward nature—here with a more explicitly anti-female tone—is his discussion of Baudelaire, in which he writes approvingly of Baudelaire's "deep intuition of that amorphous, stubborn contigence called Life—exactly the opposite of Work—and he is in horror of it. . . . [Of Nature's] warm dampness, of that abundance, he has in perfect horror . . . he praises absolute sterility."

It is Sartre not Baudelaire who draws the distinction between Life and Work: life is disgusting, fertile and messy; work, man's free and rational action upon nature, is noble. Man finds meaning and transcendence not through living but through working, not through growth but through construction. According to Sartre, man is not essentially a living human body (Sartre clearly finds the body distasteful); man is essentially *freedom*, a disembodied choice waiting to be made. And because this free choice is the source of all goodness, Sartre might be called the original "pro-choice" advocate: a choice is good simply because you make it, regardless of what it is—a live baby or a dead one, for example—that you are choosing. The root of the awfulness of existence is that we do not choose it or shape it on our own; we do not control it, and it comes to us freely, of its own accord: "If man is terrified at the bosom of Nature," writes Sartre, "it is because he feels trapped in a huge amorphous and gratuitous existence." He seems incapable of perceiving the goodness of anything that is not his own idea or choice: nature, biology, family, the body—all necessarily abhorrent. At the heart of this attitude is a rejection of the "given," and a preference for the "made"; but the rejection of the given is ultimately nihilistic, since being itself is given not made.

Sartre claims that female sexuality is essentially disgusting: "The obscenity of the feminine sex is that of everything which 'gapes open' . . . a voracious mouth . . . which can easily lead to the idea of castration."

His confidant, Simone de Beauvoir, demonstrates her independent mind by devising a theory of her own: "Every woman feels a repulsion towards her own body." Given this view of the female body, it comes as no surprise that the sex life of Jean-Paul and Simone became—how shall we say?—stale: "Two human beings associated in their transcendence," Simone de Beauvoir writes, "no longer need the carnal union, and because this union has lost its meaning, they find it repugnant."

Disgust with female sexuality may be one reason why feminism has failed to offer an adequate definition of sex from the female perspective. Many feminists simply adopt male approaches to sex. It is clear, for instance, that envy for male sexuality is behind much of the popularity of abortion and contraception among feminists. Barbara Ehrenreich writes: "Contraception and access to abortion means we can separate sex and reproduction. . . . Men always could." The desire to imitate men can be embarrassingly explicit—and the males some feminists choose are often crude models. Simone de Beauvoir cites one ideal for women: "to enjoy agreeable sexual adventures." The authors of the recent feminist tract *Re-making Love* seem terrified by the thought that somewhere some male is getting more sex than they are. One of its co-authors, Elizabeth Hess, a New York art critic, writes:

Men have always been allowed to have as much sex as they want both inside their marriages and out. The fact that women are doing that now gives them an independence absolutely crucial to their lives. I don't think it trivializes the women's movement. I think it's a major issue for the women's movement.

Do feminists simply want their share of the sexual lifestyle of immoral males? Sigmund Freud, who had his own ideas about such envy, believed that for women a baby was a substitute for the male organ they lacked—a strange notion, but one that suggests a test for gauging a woman's allegiance to feminism and sexual liberation: On any given day, which would she rather have?

One recent writer who does consider the unique character of sex from the woman's point of view is George Gilder. In *Sexual Suicide* he compares the brief rhythm of a man's sexuality to the extended cycle of a woman's sexuality, and concludes that, in a certain sense, female sexuality is always "on," while male sexuality is usually "off" and only briefly "on." Moreover, he claims that it is the adaptation of uncivilized males to the long-term demands of female sexuality that makes civilized life possible, and keeps societies alive. This is not an original idea.

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Henry Adams put it even more expansively: “These questions [of the power of Woman] are not antiquarian or trifling in historical value; they tug at the heart-strings of all that makes whatever order is in the cosmos.” At the end of John Ford’s film *The Grapes of Wrath*, as the Joad family drives along the California coast in their seemingly endless search for farm work, there is a remarkable bit of dialogue:

PA JOAD: You’re the one that keeps us going, Ma.

MA JOAD: Well, Pa, a woman can change better’n a man. A man lives sorta . . . well, in jerks. A baby’s born or somebody dies and that’s a jerk. He gets a farm or loses it, and that’s a jerk. With a woman it’s all in one flow like a stream—little eddies and waterfalls, but the river it goes right on. A woman looks at it that way.

It sounds as if the Joads had been reading Gilder’s book.

The bias that denies the body and its cycles their essential human dignity is apparent in the common feminist complaint that without abortion and contraception a woman is a “slave to biology”—which is a bit like Michaelangelo’s David complaining that he is a “slave to marble,” since human beings *are* biology, without which we wouldn’t exist. Feminists view reproduction as a crude, animalistic function of the body—not an essential activity of the human person. Abortion is proof of human control over the animal body; it subordinates “biological” urges to the rational decision to control one’s own life. In actual practice, abortion is often a capitulation to a male imperative: either the rationalistic irreverence toward merely biological “things,” or the demands of a selfish boyfriend.

Feminists used to claim that the fetus is part of a woman’s body, an extension of her biology. Though the genetic facts demonstrate otherwise, there is something—both intuitive and psychological—to be said for this view. My child is, to a certain extent, “flesh of my flesh.” It is true that the fetus is physically connected to the mother; it is inside her. What the mother eats also feeds the baby. This unparalleled union between two lives, the intimate bond between fetus and mother, is a part of the unique sexual nature of women; the fetus has a relationship with its mother’s body that it will never have with anyone else’s. Women who have had abortions intuitively recognize this. One says: “Like when you have an abortion, you just destroying [sic] a part of yourself.” Another writes: “It’s not just babies that abortion kills. It’s mothers too.”

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On the other hand, this “part of a woman’s body” is different from all the others. Unlike her fingernails or hair, it is not dead or dying. It is quite alive. And unlike fingers or toes, the fetus doesn’t have its mother’s genes, and in the normal course of nature it will grow into a completely independent adult human being.

Inasmuch as the fetus is part of the mother, abortion must be seen as a form of self-mutilation, which though not necessarily a legal crime, is surely an aesthetic offense. It might be possible to use the law to discourage women from a “similar” offense like, say, cutting off their toes, especially if 22 million women had recently cut theirs off. But the developing child is more than a woman’s toe, more intrinsically related to her nature as a woman. Indeed, if the fetus is an extension of her body, it is an extension of the organs of sexual reproduction, and abortion on demand is an epidemic of sexual mutilation, a violent disruption of a woman’s “ecology.” Abortion may be to the advantage of a woman as a genderless person, but it cannot serve her as a woman, for it is a pointed negation of what makes that abstract, genderless person female. This may explain why women who have had abortions (if one compares the former-aborter membership of the National Abortion Rights Action League to that of the National Right to Life Committee) are six times more likely to work against abortion than for it.

Modern rationalism is responsible not only for a depreciation of things bodily but also for a depreciation of values and knowledge that are not scientifically demonstrable. In the last century, Henry Adams already perceived this development in American society. In his autobiography, *The Education of Henry Adams*, he dwells on the contrast between “the Virgin and the Dynamo,” between the power of Woman and the peculiarly modern power of scientific reason shaping nature through technology. He detects a general depreciation of true sexual power:

The force of the Virgin was still felt at Lourdes but in America neither Venus nor Virgin ever had value as force—at most as sentiment. . . . Symbol or energy, the Virgin had acted as the greatest force the Western world ever felt . . . creator of four-fifths of his [Man’s] noblest art, exercising vastly more attraction over the human mind than all the steam-engines and dynamos ever dreamed of; and yet this energy was unknown to the American mind. . . . American art, like the American language, and American education, was as far as possible sexless. Society regarded this victory over sex as its greatest triumph. . . . In any pre-

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vious age, sex was strength. Neither art nor beauty was needed. Every one, even among Puritans, knew that neither Diana of the Ephesians nor any of the Oriental goddesses was worshipped for her beauty. She was goddess because of her force; she was the animated dynamo; she was reproduction—the greatest and most mysterious of all energies.

According to Adams, there is something in the modern mind, especially the American mind, that finds feminine power incomprehensible. “The scientific mind,” he wrote, “is atrophied, and suffers under inherited cerebral weakness, when it comes in contact with the eternal woman—Astarte, Isis, Demeter, Aphrodite, and the last and greatest deity of all, the Virgin.” For Adams, the Virgin represents a mode of knowledge and behavior that was at odds with rationalism; her judgment follows not the logical rigors of justice but the personal magnanimity of love:

She knew that the universe was unintelligible to her, on any theory of morals, as it was to her worshippers. . . . To her, every suppliant was a universe in itself, to be judged apart, on his own merits, by his love for her—by no means on his orthodoxy, or his conventional standing in the Church, or according to his correctness in defining the nature of the Trinity. . . . This general rule of favour, apart from law, or the reverse of law, was the mark of Mary’s activity in human affairs.

The “rule of favor” is not properly speaking “irrational,” but it depends upon a type of knowledge quite different from the scientific knowledge. When I claim to know a thing—say, the history of the Peloponnesian Wars—I mean that, as a consequence of study, I have accumulated a certain number of facts, and can answer questions about armies, battles, and political sources of conflict. The more facts known, the better I know the history of the Peloponnesian Wars. But when I claim to know a person—say, Michelle—I do not mean that I have studied her and know what she is made of. I mean that we have met and spoken; there exists a sort of personal intimacy between us. No years of study can substitute for meeting Michelle, and to know more facts about her is not necessarily to know her better. I may know little about her family history and her chemical composition, and I may be unable to articulate my knowledge in words, but who would deny that, having spent sufficient time in her company, I really do know Michelle? Here, experience and knowledge are indistinguishable.

From such a knowledge/experience of other people comes bonds and motivations that are impossible to explain rationally, but which are

indispensable for civilization. Whether we call them instincts or salutary taboos, the family is the special source of these bonds and motivations that are neither logical nor contractual. There is no rational calculation that would make a man and a woman plight their troth "for better or for worse"; this is the logic of love, not of contracts and justice. No syllogism will prove that a mother must love her child. The love of parents for their children, or of children for their siblings, is not logically deduced. These are relationships of love that we do not choose on our own; we find ourselves thrown into them; they are given to us. A mother does not love her son because he has done her a favor; she loves him because of who he is, her son. But who can say why this particular identity causes love?

Love is irrational because it corresponds to a law beyond science and inaccessible to discursive reason. The heart, as Pascal said, has reasons that reason knows not, reasons that are nonetheless real, and this is the appeal that Henry Adams perceived in the Virgin: "In the bankruptcy of reason, she alone was real."

The Spanish philosopher Ortega y Gasset once observed: "Everything he [man] does and achieves, he does and achieves for a reason, especially for a practical reason. A woman's love . . . is perhaps the only thing which is not achieved by reasoning . . . If the male is the rational being, the woman is the irrational being." This idea might seem a male chauvinist fiction if it weren't proposed and even overstated by feminists themselves. Some feminists reject any enterprise that seems to value theory over experience; they claim that criticism (analysis, logic, etc.) is itself a form of chauvinism. Others even object to grammar, logic, syntax, and narrative organization. The French feminist Luce Irigaray argues that female biology makes women "temperamental, incomprehensible, perturbed, capricious"; another famous French feminist, Julia Kristeva, calls women writers "hysterics" (after the Greek word for womb) and traces their style to "drives related to . . . childbirth." The Harvard psychologist Carol Gilligan has echoed Henry Adams' observation that women seem to stress relationships over rules, and the impression that women excel at "instinctual" tasks is reinforced by an observation by one Judy Miller, a vice president for a Los Angeles public relations firm that hires women from business schools: "The new generation of M.B.A.'s has been trained like men and they

come in and act like little automatons, as if they've rejected their instinctive skills."

The "prove-it" mentality of modern science has a corrosive effect on instinctive skills, healthy taboos and *raisons du coeur*, and is partly responsible for the devaluation of the unborn that has allowed legal abortion to flourish in America. How do you *prove* that life is worth protecting? How do you *prove* that you are a person, or that a mother should love the child in her womb? Today, the unborn are being killed "on a technicality"—a philosophical question that no one seems able to answer—one that overrides the *raisons du coeur*, for to kill a fetus a woman must overcome her, so to speak, gut feelings. This explains the refrain in accounts of women who have had abortions or worked in abortion clinics: "I shut myself down emotionally"; I can turn off my feelings; I overcome my instincts . . . and in a burst of rationality, the fetus is killed. Abortion is the "rational" engineering of relationships of the heart.

"A woman," writes Friedan, "cannot find her identity through others—her husband, her children." In fact, we do identify ourselves through other people: both genetically and socially we are "named" by others—to a significant degree, our identity is given, not made. And when a woman becomes a mother, her identity is irrevocably changed. At the heart of feminism is radical individualism, a refusal to define ourselves in terms of relationships with other people. It is a terror at the possibility of dependence. Betty Friedan acknowledges that while writing *The Feminine Mystique* she was caught in "a marriage that was based no longer on love but on dependent hate . . . [and] the anger . . . was beginning to erupt now, more and more violently." Small wonder that a book written in a rage spawned a movement so full of bitterness and devoid of humor.

There is little room in the feminist world for love (how little they speak of it!), for the possibility that people may willingly sacrifice themselves for others and find this fulfilling, little room even for the idea that people give things to people they like, and that the greatest gift is one's own independence, the gift that husbands and wives make to each other and their children. The notion that one could be fulfilled through serving another person is *verboten*. Whatever happened, one wonders, to the superiority of spiritual virtues like loving and giving? Apparently it is no longer better to give than to receive.

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Feminism adopts a dialectical view of personal relationships, as a war of all against all. As usual, Sartre said it first: "Hell is other people." That is why his hero Roquentin longs for a world of rational patterns and geometrical forms—a world he can comprehend and master, unlike the real world full of other autonomous beings. When one's highest ideal is individual freedom, it makes it difficult to love, because love is always a limit upon personal autonomy and choices; it is a welcome interference with our independence. The only "love" relationship Sartre appreciated was a power game, a way to dominate others:

Nothing is dearer to me than the freedom of those I love, but the fact is this freedom is dear to me provided I don't respect it at all. It's a question not of suppressing it, but of actually violating it . . . that's what the desire to be loved means: to hit the Other in the Other's absolute freedom.

Thus love itself is part of the war of all against all, and true sexual love, the need for another person, is only a frightening reminder of personal incompleteness and a threat to one's autonomy. If one desires to be perfectly free, the life of a child in the womb—that nameless, looming presence of "the Other"—is clearly an obstacle. At first glance one might think that the mother has nearly total control of her infant. But the child does absolutely nothing for the mother, while the mother does everything for the child; in fact, the mother is very nearly the servant of her child, forced by the reasons of the heart to perform time-consuming and unpleasant tasks: changing of diapers, midnight nursing, constant attention. For a mother to fall in love with her baby is the worst sort of threat to autonomy: a willing capitulation to the needs and happiness of "the Other," without the Sartrean pleasure of hitting the baby's absolute freedom; at least for while, this love is a one way street. And nothing can be more horrifying for the would-be sovereign than the realization that she is designed, biologically and instinctively, to accommodate "the Other"; that we are *made for* others; that it is not good for man to be alone.

It is not millennia of oppression that are the source of feminism, but this individualism and fear of dependence—along with alienation, rationalism, materialism, and the triumph of the public over the private. It is not that women are only now doing important things; rather, it is only now that the things feminists want to do seem so important, and only now that the things women alone can do are despised. In fact, the

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historical record is quite consistent with the thesis that women have always got pretty much what they wanted from men.

As I type, a young woman (the best worker, by the way, in the office) reading over my shoulder asks indignantly: "Oh yeah? Then why are we working, when we'd rather be at home?" I ask her what feminism is really about, and she tells me, "It's about men not making enough money, that's what."

I hadn't thought of that.

Is Totalitarianism Dead?

Paul Johnson

CHRISTIANS WHO SURVEY the world political scene, and who debate how the insights and guidance of their faith should teach them to respond to it, should beware above all of rigidity. For the political scene is never static. It moves all the time. The threats to Christian life posed by secular politics are always there, but they are always changing. They must be identified and analyzed, and the response to them worked out in the light of the new evidence. At all costs Christians must avoid trying to fight new wars with the weapons and tactics of the old.

For many decades the chief political threat to Christian life has come from the realized idea of a materialistic, totalitarian, collectivist society organized on Marxist-Leninist lines. Many such societies have been implanted by force, and everywhere they exist they have, in varying degrees, persecuted Christians, and indeed all religious faiths, and denied to individuals the free and open practice of their personal beliefs. Collectivist ideas have also threatened to undermine, even in democratic societies, established liberties which guarantee each individual the rights of conscience and free will that lie at the heart of Christian culture. Who can deny that, for half a century, Christians have been wise to regard this form of totalitarianism as the primary global force to be resisted?

Is Marxism Dead?

But we must learn to face a new situation. No one would be so foolish as to suppose that Marxism-Leninism has ceased to be a threat to Christian culture. But there is now real doubt whether it still constitutes the principle challenge, especially within our free societies. For the 1980s have been a disastrous decade for socialist collectivism. These years have brought to a head all the doubts about its viability and efficiency which have been accumulating for half a century. For the

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1980s, socialism was the God That Failed. The reason for this change of mood has been largely materialistic. Adherents of collectivism still do not question the basic morality of their system, the use of compulsion and the suppression of individual will which are inseparable from it. But they now increasingly concede that in many ways the market system is most effective at delivering the goods.

So all over the world, socialists of various shades have been hoisting tentative flags of ideological surrender. In places as diverse as France, Britain, Scandinavia, Australia and New Zealand, democratic parties have all been moving away from state-direction and, with different degrees of enthusiasm, embracing the market. This movement has found strong echoes in Asia, Latin America, and, not least, in Africa, where the destructive consequences of unbridled state socialism, including some of the worst famines in history, have been noted and the virtues of the market belatedly discovered.

Above all, in the Communist world itself, all the efforts at doctrinal face-saving and the continued insistence that Marxism-Leninism is the right way to organize society, cannot conceal the fact that party leaders are trying to resuscitate their exhausted economies by abandoning cherished aspects of their collectivist faiths and injecting growing doses of the market elixir. Mikhail Gorbachev's Russia presents the confused but fascinating picture of a long-entrenched regime struggling to loosen the ideological bonds which are strangling it.

Some countries, notably China, are making their escape from Marxist-induced poverty faster than others. But almost all of them are plodding in the same direction: towards a market system which, with all its faults, fills the shops and gives the mass of ordinary people a chance of the good life. The truth is, during the twentieth century, large parts of the world have subjected the collectivist economic alternative to a long, thorough, and staggeringly costly trial, and it has failed absolutely everywhere. It was during the 1980s that this realization dawned, even in quarters most reluctant to admit it.

But if Marxism and its offshoots are in retreat, and Christian concern must, to some degree, be re-targeted, that does not mean that the danger of totalitarianism, of which Marxism is only one form, has disappeared. It is worth restating one or two fundamental facts about the nature of ideology and the human craving for solutions. We live, we shall always live, in an imperfect world, and the human spirit, with its

strong element of idealism, will always be tempted to devise means to perfect it. The imaging of utopias is part of the human condition. Indeed, in a sense you might argue that Christianity itself is a form of utopianism.

But Christianity's utopia is a spiritual concept, for Christians have the insight to grasp that man, in his earthly existence, is an incorrigibly flawed creature, that his earthly constructs inevitably end in disappointment at best, that he cannot, in fact, attain satisfaction and fulfillment on earth, and that the utopian kingdom is not of this world. Christians, therefore, should be in no danger of first supposing that perfection can be achieved in human societies, and then advocating the appalling measures which invariably mark efforts to erect earthly utopias.

The Utopian Itch

But we have to recognize that a large proportion of mankind, and more to the point a majority of the intelligentsia, do not accept the Christian vision of another world—or any similar religious alternative—and therefore will continue to feel the itch to utopianize on earth. Such restless spirits will always be numerous, active, ingenious, and persistent to the point of fanaticism. Not for nothing were they called, in the eighteenth century, the Illuminati. They seek a light which will reveal the secrets of perfection in the here-and-now, and if the light of Marxism-Leninism is currently seen to be failing them, they will turn to other sources of illumination and possibly to even more dangerous ones.

For we have to appreciate that the drive to secularist perfection—the earthly utopia—is a continuing force. It has its roots in the eighteenth century, the first true age of secularity, but it shows no sign of faltering even after two centuries of failure. The particular Marxist variety of it which has been in existence a hundred years or more, can be discredited—and is being discredited—without undermining the phenomenon as a whole. For Marxism itself is a mere offshoot of Hegelian idealism, with its notion of an advance towards a higher form, and Hegelian ideas themselves spring from Rousseau's assertion that it is possible to effect fundamental improvements in mankind through the actions of the state. Whatever new forms utopianism now takes, and however it threatens Christian values in consequence, we can be certain

first, that state compulsion will play a part in the new forms, and second, that the forcing of human individuals into idealized state molds will be a salient characteristic.

Rousseau the Culprit?

I want, therefore, to turn first to Rousseau, partly because he stands at the origin of the modern effort to use the state to perfect humanity, and partly also because his own life and behavior shed light on the immorality of this endeavor. I believe that men's ideas cannot be separated wholly from their actions, indeed from their moral characters, and that each has a direct bearing on the other. The immorality of an idea and so of the institutions to which it gives birth, may thus itself be rooted in a moral flaw. This impression of mine was strongly confirmed recently when I undertook a study of leading intellectuals, to examine their moral and judgmental credentials to give advice to humanity on how to conduct its affairs. Time and again I found a link between the moral invalidity of an idea and the moral weakness of the man who propagated it. Rousseau is an excellent case in point.

Jean-Jacques Rousseau was an unhappy, self-pitying, and exceptionally self-centered man. His behavior towards the people with whom he had dealings was often infamous, but his greatest cruelty was towards his own children. He had five, by his long-suffering mistress, Therese Levasseur, whom he refused to marry. As each child was born, it was promptly deposited, unnamed and unbaptized—we do not even know the sex of any of them—at the Paris orphanage, the *Hospital des Enfants-Trouves*. Owing to the huge numbers of abandoned infants with which the orphanage had to cope, conditions within it, as Rousseau knew, were appalling. Two-thirds of the children died in the first year. Only 14 in every 100 survived to the age of seven, and of these five grew to maturity, most of them to become beggars. Rousseau was thus condemning his five children to death or at best to a life of vagabondage.

When Rousseau's conduct was exposed, he defended himself, using different and ingenious arguments. These arguments, brazenly concealing the guilt he must surely have felt, hardened into a theory about the upbringing of children. This was expressed in his book *Emile*, and then broadened into the general theory of government in which Rousseau laid the theoretical foundations of the totalitarian state.

In order to justify his inhuman act of handing over his children to the state, in the shape of the official orphanage, Rousseau was led to argue that the state ought to be responsible for all children, if society was to be improved. For education was the key to any social and moral advance. That being so, it was the concern of the state. The state must form the minds of all, and not just as children—as it had done with his own in the orphanage—but as citizens. The state, by a systematic process of cultural engineering, would inculcate virtue in all. The state was the father, the *patrie*, and all its citizens were the children of the paternal orphanage. This was what Rousseau meant by patriotism, and it explains a remark by Dr. Johnson which has puzzled many but which cut straight through Rousseau's sophistries—"Patriotism is the last refuge of a scoundrel!"

Rousseau argued that there was an irradicable conflict between man's natural selfishness and his social duties, between the Man and the Citizen, and that conflict made men miserable. The function of his social contract, and the state it brought into being, was to make men whole again. He wrote: "Make man one and you will make him as happy as he can be. Give him all to the state or leave him all to himself. But if you divide his heart, you tear him in two." You must, therefore, treat citizens as children and control their upbringing and thoughts, planting "the social law in the bottom of their hearts." They then become "social men by their natures and citizens by their inclination—they will be one, they will be good, they will be happy, and their happiness will be that of the Republic."

Such a process involved total submission of all individuals to the state. When Rousseau complied with a request to write an ideal constitution for the Corsican nation, he obliged all to swear "I join myself, body, goods, will and all my powers, to the Corsican Nation, granting her ownership of me, of myself and all who depend on me." The state would thus "possess men and all their powers," and control every aspect of their existence. In a number of ways the state Rousseau thus proposed anticipated the one the Pol Pot regime actually tried to create in Cambodia—in the process killing between a fifth and a third of the population. Nor is this surprising, since the Paris-educated middle-class intellectuals who created the regime had all absorbed Rousseau's ideas.

Rousseau assumed that such state-drilled citizens would be happy, since they would all have been trained to like it. He did not actually use

the word “brain-wash,” but he wrote: “Those who control a people’s opinions control its actions; and such control is established by treating citizens from infancy as children of the state, trained to consider themselves only in their relationship to the Body of the State”: “For being nothing except by [the state], they will be nothing except for it. It will have all they have and will be all they are.” Again, this anticipates Mussolini’s central Fascist doctrine: “Everything within the state, nothing outside the state, nothing against the state.” The educational process was thus the key to the success of the cultural engineering needed to make the state acceptable—the axis of Rousseau’s idea was the notion of the citizen as child and the state as parent. Thus by a curious chain of iniquitous moral logic, Rousseau’s cruelty as a parent was linked to his ideological off-spring, the totalitarian state.

Rousseau is notable not only because his wickedness as an individual is so clearly connected to the immorality of his state theory but because through his influence on both Hegel and Marx, he set in motion the great stream of ideas which produced the ruthless regimes of the twentieth century. Neither Lenin nor Stalin, Mussolini nor Hitler, Mao Tse-tung nor Ho Chi Minh, neither apartheid in South Africa nor the appalling destruction wrought by the Dergue regime in Ethiopia—to mention only some of the more obvious examples—are untouched by Rousseau, since they all practiced the social and cultural engineering of which he was the ideologist.

Indeed his influence went wider still, for it is axiomatic in his theory of the state that men and women can be made better creatures by the political process. The legislator, who is also the teacher, the pedagogue, is a kind of Messiah capable of solving all human problems by creating New Men. “Everything,” he wrote, “is at root dependent on politics.” Virtue is the product of good government, and “Vices belong less to man, than to man badly governed.” The political process, and the new kind of state it brings into being, are the universal remedies for the ills of mankind—politics will do all. Rousseau thus drew up the blueprint for the principle delusions and follies of the twentieth century.

It would be foolish to suppose that these delusions will disappear with the retreat of Marxism-Leninism, or that we are not in danger of fresh follies; indeed, they are already making their appearance. Some time ago I was discussing with a leading intellectual of the British left the failure of state socialism—which he conceded—and what was to

take its place in the credo of the progressive intelligentsia. He saw no difficulty: the vacuum was already being filled. "With the new politics of the late twentieth century—sexual politics, race politics, arts politics, earth politics, to mention only four." He thought all four offered opportunities for changing and improving mankind, and that the left was more likely to make progress in these areas than in the field which Marxism had made—mistakenly, as it now appeared—the center of political action, the organization of the economy.

Four New Horsemen

So let us look at the four in turn and consider them in relation to Christian culture. In each, we should note, the underlying thrust expresses Rousseau's notion of the moral sovereignty of politics—the belief that the political process can be used to make men and women fundamentally better creatures. In the case of sexual politics, the object is to use the legislative process to rewrite the rules of sexual behavior. Throughout the West, these rules—based essentially on the unique legitimacy of the monogamous unions, on fidelity within marriage and chastity outside it, and on the notion of reciprocal duties between spouses and between parents and children—are designed to preserve the family as the ideal social unit, and as such reflect basic Christian moral theology. They would be inconceivable without Christianity, and Christianity would be inconceivable without them.

Now these rules are under attack. The assumption is that the traditional sexual code—like, say, the feudal system or industrial capitalism—is responsible for a huge aggregate of human misery, and if it can be changed, not only will that misery cease but individual men and women will become better creatures in consequence. How should the code be changed? Four proposals are already on the agenda and are in the process of being enacted in many countries.

First is what I term the exaltation of homosexuality. This is a continuing process. It began in the 1960s, when the criminal penalties for homosexual behavior "between consenting adults in private" were lifted, though it was assumed society in no way condoned such acts. Most people thought that was the end of the issue, but it was only the beginning.

In the 1970s began the process of legitimizing homosexual behavior as a normal and acceptable form of sexuality. In the 1980s the principle

that practicing homosexuals have equal rights with heterosexuals—on the analogy of racial equality—was applied with growing bravado to demand rights in jobs and housing, the right to proselytize and to propagandize through the educational system and local government, and even to benefit from “positive discrimination” in favor of what orthodox Christianity continues to regard as unnatural vice. Decriminalization, legitimization, privilege—here was the process of sexual politics, in effect moral engineering, at work.

Equally significant was, and is, the legalization of abortion on demand and on an enormous scale. The unwanted infant was no longer even as with Rousseau’s procedure, consigned to oblivion and probably death after birth, but condemned to certain annihilation even before it. Abortion strikes at the center of Christian values not only because it involves a form of murder but because it severs the sexual act—designed to express human love in its most powerful form—from its physiological consequences, and in the most brutal manner.

What is most disturbing about the huge growth in legal abortions throughout the world is that it is taking place against a rapid expansion in our knowledge of pre-natal life which has made it clear beyond any possible argument that to abort a fetus is to kill a human creature. That entire societies are being conditioned by the political process to regard such killing as acceptable—and profitable—is an act of moral engineering of a most regressive and horrific kind.

Moreover, to pass to the third point, this total lack of concern for the fate of millions of unborn children by the enforcers of the progressive agenda is, with a breathtaking contempt for logic, linked with an aggressive concern for children’s rights once they have been permitted to be born. The political object, of course, changes at this point: the thrust is directed against the family, and one way in which the family can be devalued is by taking the child away from it. This aim lies behind the astonishing growth in what can only be called the Child Abuse Industry.

The Child Abuse Industry

In a number of places, Britain, the United States, and Scandinavia, for instance, the number of central or local government workers involved in various aspects of this recently identified “problem” has sharply increased; so have the number of children classified as abused

by newly-invented and controversial techniques of detection; and so, above all, have the number of children taken away from their parents, by administrative order rather than by recognized judicial procedure, and placed in the care of the government. Here again, the echoes of Rousseau, and the shadow of social engineering, are all too obvious.

The systematic pursuit of women's rights is a fourth major aspect of sexual politics and this, like children's rights, is used to weaken and devalue the family. The pursuit takes many forms, and I will draw attention to only one, as characteristic. In the European Community, which will have a single market in 1992—that is, will become something close to a single economic unit—and which is evolving into a superstate many of whose powers override national parliaments, a policy report will shortly be adopted which links child care with equality of opportunity for women. The thrust of the new policy is that it is in the interest of the state and society that women should be relieved of the burden of caring for young children in order to pursue their working careers on the same basis as men. Hence tax relief should be granted to them so that children can be put into day care centers. Clearly, if it is state policy that all women, including mothers, should be available for the work-force at all times, it is only a short step to provide state facilities to look after the children. Here again the echoes of Rousseau are ominous.

Racial Politics

Sexual politics is probably the area where those who seek to defend Christian principles will have to be most active in the decades to come. But we must not underestimate the importance of other sectors. Race politics is a field which offers rich opportunities for social engineering: positive discrimination, regrouping of children to achieve the approved "racial mixture" in state schools, and alterations in school curricula to "reflect" the supposed "multi-cultural" nature of society are only three examples. In some countries, bilingualism or multilingualism—though identified by historians as one of the most serious sources of violent communal discord—is being deliberately fostered by the authorities.

It is not uncommon in some large British cities, for instance, for children of indigenous origins to be obliged to learn Asian languages, and even to be taught standard subjects in them. The concept of "plural societies" and multi-culturalism has been and will be exploited by the

social engineers to dismember the elements of existing societies, especially those of the West with their deep Christian underpinnings, and reconstruct them according to new blueprints—to provide legal accommodation, for example, to such practices as polygamy. It is difficult to resist such efforts without exposure to the charge of “racism.” At the same time it must be said that “anti-racism” has been used as a kind of burglar’s jimmy, to break into the heart of traditional society and despoil its moral furniture.

I see similar dangers in the field of Arts politics, another item which occupies a high place on the progressive agenda. The creation of a public culture sector, heavily subsidized by the state, has always been a prominent feature of totalitarian societies, especially Marxist-Leninist ones, the clear aim being to use the arts to justify the moral posture of the regime and to assist it in any schemes of cultural and social engineering it decides to pursue. But public culture sectors have also been growing in the West, as affluent societies have been persuaded to extract rapidly increasing sums of money from the taxpayers to subsidize the arts. These public culture sectors in the West have by no means served to underpin governments—quite the contrary. What they tend increasingly to do is to use the arts to promote progressive objectives, not least in the field of sexual and race politics I have already described. Indeed the way in which these various forms of political activism interlock and sustain each other is one of their most significant aspects, part of an overriding ideology of change. In a wider sense, public culture sectors are used by radical artists of all kinds—who could not get their messages across in the market culture sector—to challenge the traditional assumptions of society and Judeo-Christian morality. So in the West publicly subsidized arts are becoming the handmaidens and drum-beaters of the social and moral engineers.

Environmental politics are also on the progressive agenda, though in this field there are confusions which make the ideological pattern much more difficult to discern. Some environmental concerns, such as the “Greenhouse Effect,” are apparently being established as scientifically valid, requiring action, and have been expressed by such stern and unbending upholders of the traditional moral order as Margaret Thatcher. But it is significant that those who have made it their business to wage environmental politics have sought to associate pollution and other anti-social effects of modern industry exclusively with capitalism

and the profit-motive, and have virtually ignored the often far more serious ravages of state-owned industries in the Communist block and third world socialist states.

The “Green Factor” in politics has a long and checkered history, but it has usually been associated with extremist groups who wish to use the power of the state to arrest or reverse developments within the market economy they regard as noxious. In Germany, for instance, radical authoritarians of the right had a “Green” program even in the early nineteenth century, and Hitler’s Nazi party emerged from a political culture which associated pollution, big cities, and the destruction of the natural environment with what was called “Jewish cosmopolitanism.” Hitler indeed remained a Green in some respects throughout his life, and his notions of how the environment should be protected played a part in his vast schemes of social engineering. But equally, the “rights of nature,” as we may call them, have figured on the agenda of the radical left for at least a century, and have likewise been accompanied by far-reaching plans to reconstruct society in order to protect them.

Indeed, those concerned with upholding Christian principles should be highly suspicious of any philosophy which accords “rights”—on a par with the rights that Christian teaching accords to human beings—to natural objects.

Perhaps the most important single thing which the Judeo-Christian tradition established was the principle of monotheism and the concomitant rejection of natural phenomena—sun, moon, trees, river, woods, and symbolic animals—as objects of worship. There is among the more active environmentalists an element of pantheism, one might almost say of paganism, a tendency to see themselves as children of some enveloping Earth Mother, whose expressions—whether ice-caps, ionospheres, or tropical rain forests—have inalienable claims to justice. There comes a point at which concern for the environment slips over the border into irrationality and its claims become metaphysical rather than scientific. But it is at precisely this point that it presents enormous opportunities for political manipulation, with the object of increasing the negative power of the state to interfere in the market process and its positive power to conduct social engineering.

I have indicated only four areas in which the secular utopians—those who believe that politics can be used to promote fundamental and permanent improvements in human nature and social behavior—have

regrouped following the strategic setback to socialism. These are areas we have to watch carefully for they are likely to become theaters of ideological conflict just as intense, in their own way, as the long contest between market capitalism and collectivism.

But other topics are certain to be added to the progressive list. It would not at all surprise me, for instance, if Health politics, the use of the state to promote long-term improvements in the physical and mental health of citizens, was to make its appearance, or rather reappear-ance, for under its old name of eugenics, health politics was once a leading concern of radicals across the ideological spectrum. That, too, interestingly enough, has its roots in Rousseau's notion that state power can be used to produce the New Man.

But equally, we cannot assume that what I call the setback to socialism will be fatal to its appeal. The reform forces in Soviet Russia—and Communist China too, for that matter—may lose the internal battle, and state socialism may be resumed with Stalin-like ferocity. Marxism, by its nature, lends itself to osmosis—it is protean—and may be presented, by some ingenious spirit, in a new, more sophisticated and attractive guise, to charm the radicals of the West. Or a quite novel and more plausible theory of collectivism may suddenly present itself.

In short, the ideological scene, already complex, may become still more complicated by the turn of this century and in the early years of the next. But whatever forms the conflict of ideas take, we can be confident that the radicals will continue to insist that human behavior can be transformed by the political process and that the state must play the leading role in this transformation. Hence, those of us who remain skeptical of this contention, and who believe that historical experience proves it to be impractical and destructive, must continue to focus on two fundamental points—the natural imperfection of human beings and the limits which must be imposed on state power.

Special Supplement:

The Supreme Court and the *Webster* Case

On January 9, the U.S. Supreme Court agreed to hear the so-called *Webster* case, involving a statute passed by the Missouri legislature in 1986 which, among other things, declared that "life begins at conception" and prohibited public funding for abortions, or abortion counselling. It also required physicians to "determine if the unborn child is viable" before performing abortions at 20 or more weeks of gestation. The statute was challenged by abortionists in the case *Reproductive Health Services v. Webster* (William L. Webster is Missouri's Attorney General), and lower courts struck down key provisions, preventing the law from taking effect. The statute does not directly challenge the 1973 *Roe v. Wade* abortion ruling, but rather attempts to assert the state's powers within the *Roe* framework. U.S. Attorney General Richard Thornburgh (late last year) asked the Supreme Court to hear an appeal on *Webster*, arguing that it would provide "an appropriate opportunity" for the Court to "reconsider" *Roe* itself. When the Court accepted the appeal, there was a wide-spread public perception that the Justices would indeed use *Webster* to reconsider *Roe*. Interested parties on both sides of the abortion issue bombarded the Court with *amicus curiae* briefs supporting their respective positions.

As we write, the number of such briefs approaches four score: it is obviously impossible to summarize them here. But the controversy is of obvious interest to our readers, so we asked three authors of one brief to write an article outlining their arguments. Thus what follows is adapted from the *amicus* brief filed with the Supreme Court on behalf of American Collegians for Life, Inc., and the Catholic League for Religious and Civil Rights, in support of the state of Missouri. Robert A. Destro is a professor of law at the Catholic University of America, and a member of the U.S. Civil Rights Commission; Joseph E. Schmitz is a practicing attorney in Washington, D.C., and Robert J. Crnkovich, who also practices in Washington, is general counsel of American Collegians for Life.—Ed.

Federalism: Reconciling a 'Human Life' and 'States' Rights' Approach to the Legal Protection of the Unborn

Robert A. Destro, Joseph E. Schmitz & Robert J. Crnkovich

WHEN THE SUPREME COURT legalized abortion up to the time of birth in *Roe v. Wade* and *Doe v. Bolton*¹ ("the Abortion Cases"), the conventional wisdom was that the Court had conclusively settled an issue that was not only extremely controversial, but also unsuitable for resolution through the usual processes of representative democracy. For the Court, an unspecified constitutional "right to privacy" located in either the Ninth or Fourteenth Amendments (the Court was not certain

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which) was enough to empower the judiciary—and the judiciary alone—to determine whether state and federal policies designed to protect the unborn are, as the Court stated in *Roe*, “consistent with the relative weights of the respective interests involved, with the lessons and examples of medical and legal history, with the lenity of the common law, and with the demands of the profound problems of the present day.”²

Thus, in addition to legalizing abortion, the Court’s decision in the Abortion Cases “federalized” the entire value-of-life debate. After *Roe*, it was no longer possible to predict with any degree of confidence that life-protective legislation adopted by either Congress or a State legislature would survive judicial scrutiny. As a consequence, there were, in addition to the life questions so central to the abortion controversy, two other important constitutional issues: federalism and separation of powers.

Ever since, the legal and scholarly debate has been concerned with two basic questions: first, the desirability of affording legal protection to the unborn; and second, the Court’s right to decide such fundamental questions of public policy in the first place. At the legislative level, the pro-life movement has often viewed these questions as mutually exclusive: a “states’ rights” approach versus one centered on the value of human life. At the judicial level, however, they are inextricably intertwined.

This article will summarize the relationship between the “human life” and federalism issues raised by the Missouri statute at issue in *Reproductive Health Services v. Webster*.³ The case has attracted widespread attention because both the State of Missouri and the United States government have urged the Court to overrule *Roe*. It is currently scheduled for argument before the Court on April 26, 1989, and a decision will probably be handed down at the end of the Court’s term in early July.

1. The Constitutional Background: Amendments Nine, Ten and Fourteen

Since *Roe*, abortion has been held to be part and parcel of a more generalized constitutional “right to privacy.” Though the right to privacy does receive explicit protection in several state constitutions,⁴ the federal right to privacy is commonly understood in constitutional terms as referring to two distinct concepts: 1.) the inviolability of one’s per-

son, home or things from unreasonable governmental intrusions; and 2) individual autonomy or liberty with respect to certain matters important to one's person or the course of one's life (e.g., marriage, sex, childbearing). The protection for the locational aspect of privacy is found in the Fourth Amendment,⁵ whereas the Due Process Clause of the Fourteenth Amendment is generally held to be the source of the rights of individual autonomy which the United States Supreme Court has recognized over the years.⁶ It is the latter sense—individual autonomy—that the term “right to privacy” is used in bioethics cases, including those involving abortion and euthanasia.

When the Supreme Court decided *Roe* it left open the question of where the right to abortion might be found in the Constitution:

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.⁷

The Ninth Amendment is simply worded: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Its meaning, however, is disputed. All agree that the Bill of Rights does not protect the entire range of human and civil rights, and that the Ninth Amendment was the primary means utilized by the Founding Fathers to make that point. The real controversy is over state power to define and protect human rights. While the Tenth Amendment is specifically addressed to the distribution of power between the federal government on the one hand, and the people and their representatives at the State level on the other, some commentators also argue that the Ninth Amendment was intended as an additional limit on the power of the federal government to restrict rights that the people would recognize under state constitutional or statutory law. Others see the Ninth Amendment as authorization for the federal judiciary to recognize rights not enumerated in the Constitution and to invalidate laws which conflict with them.

The primary difficulty with the latter argument in the abortion context is the language of the Tenth Amendment. While the Ninth Amendment declares that unenumerated *rights* are reserved by the people, the Tenth Amendment reserves *powers* not granted to the federal government for the States and the people: “The powers not dele-

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gated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Since the federal constitution neither expressly prohibits the States from protecting the unborn, nor limits their authority to make abortion policy by delegating it to Congress or expressly prohibiting its exercise, the Abortion Cases represent a claim of federal judicial supremacy on both human life issues and regulatory policy touching abortion. By resting its decision on an expansive, pro-abortion view of liberty under the Fourteenth Amendment, the Court ignored the Ninth and Tenth Amendments which protect the right of the people to govern themselves.

II. The Ever-Expanding Right to Abortion

With the notable exception of its refusal to force either Congress or the States to pay for abortions, the Court’s decisions until 1983 can best be described as a “mopping-up” operation, making clear what was implicit in *Roe*: state interference with either the mother’s decision to abort or the means by which the abortionist performs the operation would not be tolerated. The Court has invalidated laws designed to require parental and spousal consent, parental and spousal notice, informed consent, a waiting period, protection of the fetus during late-term abortions and humane disposal of fetal remains, as well as regulations designed to ensure that abortions are performed under conditions that will maximize the safety of the mother.

Nevertheless, both Congress and the States have continued to legislate regarding abortion, making it equally clear that they do not share the Court’s view of either the respective “weight” of the interests involved, or the judiciary’s right to impose its views on everyone else. The result has been that the Court has been forced to consider nearly one abortion case per year since 1973.

The constant stream of cases has taken its toll on the Court. Though it continues to hold that it “settled” the abortion issue in 1973, there are signs that some of the Justices have had their doubts about the wisdom of trying to resolve a controversy which requires consideration of highly-charged moral issues in an ever-changing, high-technology setting. Justice Sandra Day O’Connor, for example, found the Court’s “trimester” approach to be on a technological “collision course with itself.”⁸ Writing for the Court in the same case, former Justice Lewis

Powell acknowledged that “Legislative responses to the Court’s decision [in *Roe*] have required us on several occasions, and again today, to define the limits of a State’s authority to regulate the performance of abortions. And arguments continue to be made, in these cases as well, that we erred in interpreting the Constitution.”⁹ Notably, however, he did not directly address the arguments that *Roe* was wrong as a matter of constitutional law. He relied instead on the view that the rule of law requires adherence to settled precedent, even though “the doctrine of *stare decisis* [is] perhaps never entirely persuasive on a constitutional question.”¹⁰

With the retirement of Justice Powell and the appointment of Justices Antonin Scalia and Anthony Kennedy, the stage was being set for a constitutional showdown, not between pro- and anti-abortion forces (as is today’s conventional wisdom), but between those charged with the duty to *make* the law (legislators) and those whose job is merely to interpret it (the judiciary).

So, when the Supreme Court agreed to decide the constitutionality of a Missouri statute which, among other things, requires abortionists to test for viability before any abortion at twenty weeks or later, declares that “The life of each human being begins at conception,” and states that “unborn children have protectable interests in life, health and well-being,” it was widely reported in the press as though the long-awaited “high-noon” of the judicial activism phase of the abortion controversy had arrived. Whether it has remains to be seen.

What makes the *Webster* case significant is that it raises—for the first time since 1973—the constitutionality of legislation which seeks explicitly to protect the unborn “to the full extent permitted by the Constitution of the United States [and] decisions of United States Supreme Court.”¹¹ Thus *Webster* is the first case in many years to pit the Ninth and the Tenth Amendment powers of the people to regulate abortion against the lower court’s contrary claim of judicial authority under the Fourteenth.

A. Protection for the Viable Fetus: Illusion or Reality?

While most pro-life arguments focus on the humanity of the unborn and the necessity to protect their lives at every stage of pregnancy, the standards established by the Court in *Roe* do appear to recognize that the States have some important and legitimate interests in protecting

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fetal life from conception until birth. It is only at viability, however, that the States are said to have a “compelling” (i.e., important enough) interest in its preservation to forbid abortion under some circumstances.

Because the Court held in *Roe* that a State “may go so far as to proscribe abortion . . . except when it is necessary to preserve the life or health of the mother” after viability,¹² Missouri’s viability testing statute is a critical test of whether a State really does have any authority to protect the viable unborn.

If the State’s interest in the protection of fetal life becomes compelling at viability, it necessarily follows that a State should have the power to require that the point of viability be determined. Without that determination, the State would be unable to ascertain the point at which it could regulate or proscribe abortion, and the protection of its compelling interest would rest with the unfettered discretion of an abortionist whose fee depends upon the performance of the abortion. It is arguable that *Roe* does not require this result, and it is equally arguable that the Tenth Amendment does not permit it.

If the compelling nature of the State’s interest in unborn human life—not to mention the undeniable interest of an unborn child in the preservation of its own life—is to be anything more than illusory, then *Roe* and the cases which followed it should be read to permit States desiring to protect fetal life to require that a physician determine whether the fetus is viable. The Court itself has stated that “because the [viable] fetus presumably has the capability of meaningful life outside the mother’s womb . . . regulation protective of fetal life after viability thus has both logical and biological justification.”¹³

Nonetheless, the Court has consistently rejected attempts by States to determine legislatively the point at which viability occurs. Even though the States’ compelling interest in the life of the unborn under *Roe* ripens at that point, the Court requires that the determination of viability be made by the abortionist:

It is not the proper function of the legislature or the courts to place viability, which essentially is a medical concept, at a specific point in the gestation period. The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is, and must be a matter for the judgment of the responsible attending physician.¹⁴

In keeping with what the Court has held, the first sentence of Missouri’s fetal viability testing statute provides that “before a physician

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performs a abortion on a woman he has reason to believe is carrying an unborn child of twenty or more weeks gestational age, the physician will first determine if the unborn child is viable . . .”¹⁵ by using such skills and tests as are necessary in his or her professional judgment to reach a conclusion.

If, as the Court held in *Roe*, viability is *the* relevant criterion to be examined in weighing the power of the State to regulate or prohibit abortion, it logically follows that a State wishing to protect fetal life by regulating or prohibiting abortion must proceed through the following two-step process. First, there must be a determination as to whether the fetus is viable. If viability has not been reached, the State’s interest is not compelling and it may take no steps to protect the child. If, however, the fetus is viable, then the need for the second step arises: a determination of whether the abortion is necessary to preserve the life or the health of the mother.

By enacting its viability testing statute, Missouri attempted to require abortionists to perform the first step of the *Roe* two-step process. Nevertheless, the United States Court of Appeals for the eighth Circuit invalidated the statute because viability tests entail additional cost and there are “risks” inherent in amniocentesis to determine lung maturity.¹⁶ The appeals court’s approach suggests that even if the child were viable, cost and risk factors (however minimal) would outweigh the State’s interest in determining whether the time had come when it could protect the child.

By relying on maternal cost and potentially minor health risks as the basis for holding the viability certification procedure unconstitutional, the Court of Appeals eliminated the linchpin of then-Chief Justice Burger’s assertion in *Roe* that the Court had not accepted “abortion on demand.”¹⁷ If cost and potential risk to maternal health are sufficient justification to snuff out the life of a viable unborn child, there are no limits on abortion in this country. Unless the States “compelling” interest in post-viability fetal life is really an illusion manufactured by the Court for public consumption, *Webster* should be reversed. If it is not reversed, abortion on demand for all nine months of pregnancy really is, as *Roe*’s critics have charged, the law of the land and honesty requires that the Court simply admit it.

Webster thus places the Court on the horns of a dilemma. If a majority puts teeth in *Roe*’s trimester approach without overruling it, they

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will ensure that some States will put strict limits on all post-viability abortions except those necessary to save the life of the mother. In short order, the Court would be faced with the hardest-to-defend abortion case of all: one that seeks the court's constitutional blessing for the right to kill a viable child for a reason other than to save the life of its mother (e.g., the gender of the child or the financial burden of raising it). That hypothetical case would be even harder to defend than *Roe*. If, on the other hand, the Court refuses to permit viability testing, *Roe*, as so interpreted, would stand as naked authorization for abortion-on-demand at any time until birth.

B. Human Rights for the Unborn and the Ninth Amendment

The Supreme Court's opinion in *Roe* rests on a view of the abortion controversy as a clash between State regulatory authority and individual liberty. The right of "privacy" (better understood as "personal autonomy") on which *Roe* rests was said to be "broad enough to encompass a woman's decision whether or not to terminate her pregnancy"¹⁸ only because the unborn were not "persons" under the Fourteenth Amendment. The Court itself admitted that "if [the] suggestion of personhood is established, the . . . case [for legal abortion], of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment."¹⁹

Thus, even though the Court's opinion in *Roe* holds that the humanity of the unborn is constitutionally irrelevant to the question of whether an unborn child should be considered a "person" under the Fourteenth Amendment, the Court has never held that the point at which life begins and the human nature of the child are irrelevant to the manner in which the State formulates and executes policy not directed at prohibiting abortion.²⁰ In fact, the Court's willingness to recognize only what it considered to be "the less rigid claim that . . . at least potential life is involved,"²¹ should not prevent the States from recognizing the more substantial claim that an *actual* human life is involved.

So why then was the statute held to be unconstitutional? The preamble in *Webster* does nothing more than state Missouri's public philosophy that the unborn should be protected to the extent possible under federal and state constitutional law. There are no rights of pregnant women at stake because "preambles to statutes do not impose substantive rights, duties or obligations."²² To answer the question, one must

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compare the actual holding in *Roe* with the reading (arguably proper) it was given in *Webster* by the lower courts.

In *Roe*, the Supreme Court argued that the judiciary should not take a position on “the difficult question of when life begins.”

When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.²³

As unequivocal as this statement appears, it is disingenuous. The “essence” of *Roe* is that the humanity of the unborn is constitutionally irrelevant. Whether human life has begun or whether it has not, the Court held that a State may not, “adopting one theory of life, . . . override the rights of the pregnant woman that are at stake.”²⁴

The rationale employed by the federal district court to strike the preamble was that “this legislative pronouncement by the Missouri General Assembly clearly conflicts with the essence of *Roe v. Wade*.”²⁵ Under this view, Missouri’s statutory proclamation that life begins before birth is an affront to the power of the Supreme Court to “settle” such questions, and should not be tolerated. The United States Court of Appeals in St. Louis invalidated the preamble, not because it violates anyone’s rights, but because “the statute is simply an impermissible state adoption of a theory of when life begins”²⁶

Though the lower courts are quite correct in their belief that the “essence” of *Roe* is inconsistent with Missouri’s preamble, their holdings that it is unconstitutional for that reason alone are evidence of a serious political imbalance at the heart of the American constitutional system. Since there can be no injury to the rights or interests of pregnant women by a mere statement that a State respects the rights of the unborn, the lower courts’ holdings represent a bold assertion that the federal judiciary has the power to police not only actions which are alleged to interfere with abortion, but societal *attitudes* as well. Such a claim is, by any standard of constitutional analysis, an extraordinary one; for if the elected representatives of the people of Missouri may not even *proclaim* that their constituents are in fundamental disagreement with the Court’s views on the beginning of human life or the interests of the unborn, what powers of self-government remain?

Fortunately, the answer to that question lies in the Constitution itself. The Founding Fathers wisely anticipated that there would be times

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when federal willingness to protect fundamental human rights would be narrower than that of the States, and provided in the Ninth Amendment that “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

Since the Constitution says *nothing* about either the right of an unborn child to life or the rights of a woman to have an abortion, the real question for decision in *Webster* is not whether one takes precedence over the other, but whether the federal judiciary’s opinion that the humanity of fetal life is irrelevant to law-making takes precedence over Missouri’s right to state that it is not.

While most of the recent scholarly commentary on the Ninth Amendment focuses on the degree to which—if at all—the Ninth Amendment supports judicial review of legislative decisions,²⁷ it would be impossible to conclude from the language of the Amendment, its history, or the holdings of the Court (including all the abortion cases since *Roe*), that the people, acting through their elected representatives at the State and federal levels, are not free to declare the existence of unenumerated or judicially “unrecognized” or unprotected interests.²⁸

The Ninth Amendment expressly provides that the States may go farther than the federal government in the recognition of legal rights and interests,²⁹ and the Court has already held, in another context, that “when an issue involves policy choices as sensitive as those implicated by public funding of non-therapeutic abortions, the appropriate forum for their resolution in a democracy is the legislature.”³⁰ The fact that the Court has not construed the Constitution to protect the interests of the unborn in the abortion context is therefore irrelevant to a decision concerning the validity of Missouri’s attempt to do so within the boundaries set out in *Roe*.

Because Missouri expressly stated that its law was designed to protect the unborn “to the full extent permitted by the Constitution of the United States [and] decisions of the United States Supreme Court,”³¹ the *Webster* case does indeed present a constitutional showdown of sorts. Unless it overturns *Roe*, the Court will find itself between Scylla and Charybdis; for it stated in *Roe* that its “task . . . [was] to resolve the issue by constitutional measurement, free of emotion and of predilection.”³²

If the Court upholds the Missouri declaration without overruling *Roe*, it will have been true to its word, but at the expense of demon-

strating the constitutional and intellectual bankruptcy of the central holding of *Roe* itself: that an unborn human child is not entitled to constitutional protection. If it does not, the Court will preserve what the district court called the “essence” of *Roe* at the expense of demonstrating that it is intolerant of principled democratic dissent from its rulings. The choice will not be an easy one.

III. The Abortion Controversy: Study in Judicial Usurpation of Self-Government

At the heart of the controversy over the continued validity of the Abortion Cases is the federal judiciary’s usurpation of legislative power “reserved to the States respectively, or to the people” by the Tenth Amendment. The Tenth Amendment will not save a statute that otherwise violates the subsequently enacted Fourteenth Amendment,³³ but since neither Missouri’s preamble nor its viability testing statute, properly construed, violates the Fourteenth Amendment, the Tenth Amendment requires federal judicial deference to Missouri’s legislative judgment.

The American system of government is based upon the consent of the governed. The Declaration of Independence proclaims that “Governments . . . deriv[e] their just powers from the consent of the governed,” the opening words of the Constitution are “We the people,” and Article V requires the consent of three-fourths of the States for amendments to the Constitution. The Tenth Amendment simply formalizes a principle otherwise implicit in the language and structure of the Constitution: unless a power retained by the States or the people has been delegated to the federal government, relinquished in its entirety, or forbidden, the federal government may not prevent its exercise.³⁴

The substantive content of the Constitution and its amendments is derived from the consent of the governed; if the people have not consensually abdicated the power to make certain policy choices which do not otherwise violate the federal constitution, such as Missouri’s moral pronouncement concerning the value of unborn human life, the Court cannot constitutionally deprive the people of their sovereign right of self-government to take such action.

In *Marbury v. Madison*,³⁵ the bedrock case for American judicial review, Chief Justice John Marshall wrote that “the framers of the constitution contemplated . . . [it] as a rule for the government of

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courts, as well as of the legislature. . . . Courts, as well as other departments, are bound by that instrument.”³⁶ Since the federal judiciary is a department of the United States government, it is bound by the federalism principles incorporated in the Tenth Amendment.³⁷

Although the Court has never expressly invalidated a federal judicial decision on Tenth Amendment grounds, it has recognized that its own powers are limited by the federalism principles inherent in the Tenth Amendment. In *Garcia v. San Antonio Metro. Transit Authority*,³⁸ for instance, the Court refused to invalidate Congressional restriction on state-run transit operations because the method it had used in the past for deciding such cases was to classify governmental functions as “‘traditional,’ ‘integral,’ or ‘necessary.’” The Court expressly rejected its prior approach and deferred to the Congressional judgment because to do otherwise “inevitably invites an unelected federal judiciary to make decisions about what state policies it favors and which ones it dislikes.”³⁹ The Court explained that “the essence of our federal system is that within the realm of authority left open to them under the Constitution, the States must be equally free to engage in any activity that their citizens choose for the common weal, no matter how unorthodox or unnecessary anyone else—including the judiciary—deems state involvement to be.”⁴⁰

To the extent that *Garcia* mandates federal judicial deference to otherwise proper state or federal legislation, it supports the Missouri legislature’s enactment of the preamble and the viability testing statute. Even if *Garcia* can be read to limit the responsibility of the Court to enforce the Tenth Amendment against arguably unconstitutional federal legislative encroachments on otherwise proper state policy-making functions, it should not be read to limit the responsibility of the Court to enforce the Tenth Amendment against encroachment by the federal judiciary which seeks to do the same thing. What Missouri has done constitutes a legitimate exercise of its legislative powers.

Conclusion

The distinction between a Supreme Court case and a legislative debate is an important one, and the failure of many commentators to appreciate the difference lies at the heart of the current hysteria over the Supreme Court’s decision to review the Missouri statute at issue in *Webster*. The wailing from the pro-abortion side was predictable, but

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some pro-life activists have encouraged them by wishing aloud (and unrealistically, in our view) that the Court might “settle” the abortion controversy on pro-life terms by simply inverting the *Roe* holding and declaring that unborn children are “persons” protected by the Constitution. In our view, such a result is unrealistic and ill-advised.

As pernicious as it is, *Roe* is only a symptom of a deeper problem affecting American democracy: judicial distrust of the good will and common sense of the American people. If pro-life forces want to *win* the value-of-life controversy which is currently raging over abortion, euthanasia, fetal experimentation and other bioethics issues, they cannot rely on the shifting sands of judicial opinion. They will have to achieve their goal the old fashioned way—they will have to earn it by convincing a majority of their elected representatives that respect for human rights permits no other conclusion.

If the continuing controversy over abortion since *Roe* demonstrates anything, it is that judges cannot settle political controversies. Victory comes through the political process at the federal, state and local political levels. Judicial short cuts don’t work. They don’t last, either.

NOTES

1. *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973).
2. *Roe*, 410 U.S. at 165 (1973).
3. *Reproductive Health Services v. Webster*, 662 F. Supp. 407, 413 (W.D. Mo., 1987), *att’d*851 F.2d 1076 (8th Cir. 1988), *prob. Juris. noted* 109 S.Ct. 780 (1989) (No. 88-605).
4. E.g., Ariz. Const. art. 2, section 8; Fla. Const. art. 1, section 23; Wash. Const. art. 1, section 7.
5. U.S. Const. Amend. IV (1791): “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
6. See, e.g., *Lochner v. New York*, 198 U.S. 45 (1905) (autonomy of contract in the employment setting; invalidating state law regulating bakers’ hours); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (autonomy to make educational decisions; invalidating state law which forbade teaching any language other than English); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (autonomy of married persons to use contraceptives; invalidating state laws prohibiting the use of birth control devices); *Roe v. Wade*, 410 U.S. 113 (1973) (autonomy to choose abortion; invalidating state laws protecting the life of the unborn child). But see *Bowers v. Hardwick*, 478 U.S. 186 (1986) (refusing to recognize autonomy of homosexuals to engage in consensual sodomy, but reserving decision with respect to sodomy by married couples).
7. *Roe*, 410 U.S. at 153.
8. *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 458 (O’Connor, J. dissenting).
9. *Id.*, 462 U.S. at 419 (majority opinion).
10. *Id.*, 462 U.S. at 419-20 & n.1.
11. Mo. Rev. Stat. section 1.205.2.
12. *Roe*, 410 U.S. at 163-64.
13. *Roe*, 410 U.S. at 164.
14. *Planned Parenthood v. Danforth*, 428 U.S. 52, 64 (1976).
15. Mo. Ann. Stat. section 188.029.
16. 851 F.2d at 1075 n.5.

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17. *Roe*, 410 U.S. at 208 (Burger, C.J., concurring).
18. *Roe*, 410 U.S. at 153.
19. *Roe*, 410 U.S. at 156-57.
20. See e.g., *Planned Parenthood v. Ashcroft*, 462 U.S. 476, 483 (1983) (recognizing the State's compelling interest in preserving life during post-viability abortions); *Harris v. McRae*, 448 U.S. 297 (1980) ("Abortion is different from other medical procedures, because no other procedure involves the purposeful termination of a potential life.").
21. *Roe*, 410 U.S. at 150.
22. *National Wildlife Fed'n v. Marsh*, 721 F.2d 767, 773 (11th Cir. 1983). *Yazoo & M.V.R. Co. v. Thomas*, 132 U.S. 174, 188 (1889) ("the preamble is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous"); *Association of American Railroads v. Cosile*, 562 F.2d 1310, 1316 (D.C. Cir. 1977) (Preamble "is not an operative part of the statute and it does not enlarge or confer powers.").
23. *Roe*, 410 U.S. at 159.
24. *Id.*, 410 U.S. at 161.
25. *Reproductive Health Services v. Webster*, 662 F. Supp. 407, 413 (W.D. Mo., 1987).
26. *Reproductive Health Services v. Webster*, 851 F.2d 1071, 1076 (8th Cir. 1988).
27. See e.g., *Symposium on Interpreting the Ninth Amendment*, 64 Chi.-Kent L. Rev. 37-268 (1988).
28. See e.g., National Defense Authorization Act of Fiscal years 1988 & 1989, 101 Stat. 1086, Pub. L. No. 100-180, title V, section 508 (passed in response to the Supreme Court's holding in *Goldman v. Weinberger*, 475 U.S. 503 [1986] that a soldier had no constitutional right to wear a visible religious symbol—a yarmulke—with his uniform); *Katzenbach v. Morgan*, 384 U.S. 641, 651-52 n.10 (1966).
29. Compare Levinson, *Constitutional Rhetoric and the Ninth Amendment*, Chi.-Kent L. Rev. 131, 154-171 (1988) with Sager, *You Can Raise the First, Hide Behind the Fourth, and Plead the Fifth, But What on Earth Can You Do With the Ninth Amendment?*, 64 Chi.-Kent L. Rev. 239, 237-251 (1988).
30. *Maher v. Roe*, 432 U.S. 464, 479-80 (1977).
31. Mo. Rev. Stat. section 1.205.2.
32. *Roe*, 410 U.S. at 116.
33. *Hunier v. Underwood*, 471 U.S. 222, 233 (1985).
34. See *The Federalist* No. 22, at 58 (A. Hamilton) (R. Fairfield ed. 1981): "The fabric of American empire ought to rest on the solid basis of *the consent of the people*. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority" (emphasis in original).
35. 5 U.S. (1 Cranch) 137, 179-80 (1803).
36. *Id.*, 5 U.S. (1 Cranch) at 179-80 (1803) (emphasis added).
37. See *The Federalist* No. 82, at 252 (A. Hamilton) (R. Fairfield ed. 1981); Exec. Order No. 12, 612, 52 Fed. Reg. 41,685-6 (1987).
38. 469 U.S. 547 (1985).
39. *Id.*, at 546.
40. *Id.*, (emphasis added).

APPENDIX A

[The following syndicated column was released January 28, 1989, and is reprinted here with permission (©1989 by the Public Research Syndicate).]

Churches Back Off Abortion

Mike Perry

The nation finally seems ready to reconsider the propriety of abortion on demand. The most obvious sign is the Supreme Court's announcement that it will consider a major abortion case—raising the possibility that it may abandon or at least modify *Roe v. Wade*, its landmark 1973 ruling invalidating state laws against abortion.

But the court's impending review is merely symptomatic of a more general soul-searching in American society. Even many of those who once fervently favored legal abortion are beginning to have second thoughts. This is particularly true in the religious community. For years, mainline Protestant denominations were staunch supporters of legalized abortion. "Pro-choice" forces capitalized on this fact, even organizing a "Religious Coalition for Abortion Rights." The situation has changed dramatically. Last year virtually every major denomination made some change in its abortion stance.

The trend began in 1985 at an American Baptist convention, where 91 percent of the delegates approved a "statement of concern" objecting to their denomination's abortion stance.

Last May, after five years of study, American Baptists approved a resolution "opposing abortion as a means of avoiding responsibility for conception, as a primary means of birth control, without regard for the far-reaching consequences of the act." Gloria Marshall, head of the task force that developed the resolution, noted that "The great proliferation of abortions has made us stop and look at what's happening here."

That same month, the General Conference of the United Methodist Church added to its Social Principles a clause condemning abortion when used as a means of birth control or sex selection.

A similar change came in July at the national convention of the Episcopal Church. After three years of study, the convention approved a resolution stating that Episcopalians "emphatically oppose abortion as a means of birth control, family planning, sex selection or any reason of mere convenience."

The Presbyterian Church in the USA is following the same path. At its annual General Assembly in June, over 2,000 delegates packed a special meeting to hear Mother Teresa tell them that "abortion has become the greatest destroyer of love." The assembly subsequently initiated a three-year study of the church's official stand accepting abortion.

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The importance of these changes cannot be overstated. Only a small percentage of abortions are for “hard cases” such as rape and incest. Roughly 97 percent are for reasons now opposed by a broad spectrum of churches: Catholic and Protestant, liberal and conservative.

One reason for the change of heart is the aggressive effort by abortion supporters to bolster their cause with religious backing. Now that abortion has become so controversial, many mainline Protestants are uncomfortable appearing in public to accept abortion on demand. In 1985, for instance, American Baptists were outraged to discover that their name had appeared first (alphabetically) in newspaper advertisements by the Religious Coalition for Abortion Rights. The result: American Baptists became the first member denomination to withdraw from the coalition.

Nor is it just discomfort that is driving mainline Protestants away from the abortion movement: Many of them have themselves become disenchanted with abortion. During the late '60s and early '70s abortion was promoted as a necessary resource in a social context of teen pregnancy, child abuse and female poverty. Twenty-five million abortions later all those problems have worsened, leading many to wonder about its efficacy as a palliative for social problems.

Finally, the changes in policy are the result of patient work by pro-life groups within liberal denominations. The persistent efforts of groups like the National Organization of Episcopalians for Life, Presbyterians Pro-Life, American Baptist Friends of Life and the Task Force of United Methodists on Abortion and Sexuality have made the abortion issue too noticeable to ignore.

The change of heart about abortion on the part of the nation's churches is yet another indication that the past consensus favoring legalized abortion is disintegrating and that restrictions on the practice must be adopted. Indeed, the question is no longer *whether* abortion on demand should be curtailed, but *how much* it should be restricted.

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[*The following address was delivered by Cardinal Law to the Rally for Life at Faneuil Hall in Boston on Jan. 22, 1989, and is reprinted here with the Cardinal's permission.*]

‘Grant Us the Grace Never to Forget’

Bernard Cardinal Law

Slavery scarred the soul of this nation. The justification of that evil system dehumanized thousands of Africans torn from their families and continent to be brought in shackles to become the engine of other people's wealth and ease. Long after Emancipation, the lie continued that blacks were something a little less than human, and so a system of legal racial segregation found justification in a denial of the obvious fact that all human beings of whatever race or culture are inherently equal.

Within this past week I had a depressing conversation with a prominent Massachusetts' politician whose remarks evoked the memory of the segregationist politicians of the old south. This leader of the Commonwealth indicated to me that he did not believe that abortion is the taking of innocent human life.

It is important to underscore his remark, for it places starkly before us the enormous challenge to the pro-life movement. Again: *He did not believe that abortion is the taking of innocent human life*—he did not believe that that which is destroyed by abortion is human life.

Analyze with me this remark. Notice how the statement is framed as a matter of *belief*. He did not *believe* that abortion is the taking of innocent human life. So often in the past the pro-life position has been characterized solely as a position of religious belief. More often than not, it has been characterized as a *Catholic* position. For those who support abortion, it is most convenient to isolate the pro-life stance as a matter of religious judgment. Once this is done, then the position can be safely dismissed as a question of personal belief which is quite separate from the realm of the state and its laws.

Politicians find in this tactic a ready means to evade responsibility for the protection of human life in the womb. If the pro-life position is a question of belief, then each citizen should be free to follow his or her own belief. The state, after all, is not to canonize a particular system of belief.

Our task is to say and say again that it is not a matter of belief that the expectant mother carries human life within her womb—it is a matter of fact. We are dealing in abortion not with one life, but two—the life of the mother, and the life of the child within her womb. It is not faith which reveals that human life begins at conception, it is the inescapable conclusion manifest in

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the empirical biological evidence.

The depressing truth is that the evidence is either unknown or ignored, and that many people, like that politician, justify their position by placing the issue in the realm of belief. We cannot assume, as the public discussion of abortion accelerates in the coming months as it will, that the reality of abortion is understood. It is not. I know it and you know it as a fact that chills our bones that each year in this country one and one half million human lives are put to death through abortion. There are many people, however, who do *not know* this. Just as in the past there were those whose consciences were anesthetized to the evil of slavery by the fiction that blacks were less than human, so today there are those who, like my politician friend, have their consciences anesthetized by the fiction that abortion is not the taking of human life.

The task of the pro-life movement is to present the facts of abortion. The facts are not pleasant. The facts are not tasteful. The willful taking of human life by means often violent cannot be presented in an inoffensive way. Indeed, what could be more offensive to the human conscience than abortion? It is imperative that the curtain of ignorance, real or feigned, which hides the reality of abortion from popular consciousness be pulled down, and that we begin to deal with the fact that abortion is the taking of innocent human life.

A second objective of the pro-life movement is to make it unmistakably clear that our opposition is not simply to *legal* abortions—it is an opposition to all abortions. A recent editorial cartoon on the announcement that the Supreme Court would consider a decision of the Missouri Supreme Court portrayed Lady Justice peeking over her blindfold, with one of the scales in her hand weighted down by a hanger. How often has the albatross of back alley abortions been hung around the neck of the pro-life movement! I resent that caricature, and I am certain you do. It is abortion which we oppose. It is the taking of innocent human life, which is a crime sapping the moral fiber of this nation. Whether the abortion mill has the dubious sanction of *Roe v. Wade*, or the abortion mill is in a back alley—in both instances it is dealing out death—and those responsible should be held accountable by the law for their crime.

If the legality of abortions were to end, the work of the pro-life movement would not be over. As long as innocent human life within the womb is threatened by abortion, legal or otherwise, so long will the pro-life movement continue.

Some would criticize the pro-life movement as too singular in its focus. While it is certainly necessary to situate our concern for the right to life of the unborn in that continuum of life which ends with natural death, and while it is essential to recognize our concerns as one with concern for the poor, the

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disabled, the homeless, the sick, the elderly, new peoples, and whomever it is who suffers assaults against human dignity, and while it is essential to be actively concerned for the mother—and the father, we need not apologize if our efforts are particularly directed to protect the unborn, for they are those whose life is most vulnerable.

While the pro-life cause is an eminently righteous one, it is imperative that we not be self-righteous. More than anything else we must be armed with compassion and love. We are about the business of affirming the right to life of the unborn because we are convinced of the dignity and worth of every human person. Every abortion is a tragic drama, and never more so than when those involved—the mother and father, the medical agents of the abortion—are impervious to what it is they are doing. Our effort must be to speak the truth in love to all those who have fallen victims to an abortion culture—for this is what we have developed—an abortion culture. Having envisioned the procuring of an abortion as a right, we have created a new culture, a culture which is built on the right to kill the unborn. The elites of our society have transformed what once was universally considered a crime into the lawful exercise of a right to choose—to choose one's convenience over another's right to life.

It might well be argued that the saddest victims of this culture are the mothers and fathers of the aborted, the medical agents of abortion, and our society as a whole. To speak the truth in love means to show the face of compassion to *all* who are victimized.

It is clear that the pro-life movement is here to stay. There is no way in which the human spirit will long endure a moral evil like abortion. Those of us who recognize abortion as the taking of innocent human life do not find that with the passage of time and millions of more deaths we are less committed. Far from it. I find myself today more convinced than ever that the killing must stop.

Operation Rescue expresses in one way, a way not suited to all, the frustration in the hearts of thousands of us as we realize that with each passing day more human lives are being destroyed through abortion. It is imperative that all forms of physical violence be avoided. Ours is not a movement of violence, and it must never be that. Ours is a movement of justice, of compassion, of love, of life. Those who engage in prophetic action—such as Operation Rescue—need special discipline to ensure that our message of love and life is in no way distorted. Having said this, I must also add that those whom I know personally who have been involved in Operation Rescue are women and men outstanding in their desire to act non-violently in compassion and love. They have my admiration and prayerful support. They do not sanction

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physical violence, nor do they sanction the destruction of property. Any who might be involved in such negative acts are a discredit to the pro-life movement. We who gather here deplore all forms of physical violence and destruction, but must be relentless in championing the right to life of the unborn.

Today our President has asked that we pray for the nation. We do so gladly. We pray that we may become a kinder, gentler nation by living out the promise expressed in our Declaration of Independence when it speaks of life as an inalienable right with which each person has been endowed by God.

I began by stating that the pro-life position is a matter of fact, not a belief. This is certainly so. I began by pointing out that abortion, like slavery, rests on a denial of fact about the inherent dignity of every human being. For many of us, however, the facts revealed by empirical, biological evidence are illumined by faith. Faith, as it were, carries us beyond reason, and reinforces the facts revealed by the empirical evidence. How poignantly is this so in this passage from Isaiah in which the inspired prophet attempts to express in human categories the love which God has for every man, woman, and child—the love which we are to strive for in our relationships with one another. Isaiah writes:

Can a mother forget her infant, be without tenderness for the child of the womb? Even should she forget, I will never forget you.

May God grant us the grace never to forget.

APPENDIX C

[*The following letter, from John Cardinal O'Connor, was distributed in churches in the Archdiocese of New York on Sunday, January 22, 1989, and is reprinted here with the Cardinal's permission.*]

‘When Will It All End?’

John Cardinal O'Connor

Dear Friends in Christ,

One evening recently, at Saint Agnes Church, in Manhattan, I joined in praying the Rosary with a church-full of people about to engage in Operation Rescue. I was profoundly moved by their prayerfulness and humbled by their extraordinary sacrifices.

Many individuals, of various religious persuasions, have felt compelled in conscience to engage in the non-violent protests called “Operation Rescue” in the immediate vicinity of abortion clinics. This has rapidly become a national phenomenon. Many have been arrested, fined and imprisoned, including priests, religious and laypersons and at least one bishop. In my judgment, some of the imprisonment and fines have been disproportionate to the civil offenses with which participants have been charged. I am sadly reminded of the days when the law was used “violently” against civil rights demonstrators protesting segregation. Despite false charges to the contrary, I have seen no evidence that participants in Operation Rescue have in any way fostered destruction of property or the endangering of human lives. They do what they do to *save* lives. They use a method that has become a commonly accepted form of protest against unjust laws and policies—a form of protest which in recent years the law has responded to only by “pro forma” arrests. Why is the law now being used so drastically? Apparently because the issue is abortion. Unborn babies are helpless. Unborn babies couldn’t protest what the Supreme Court did in 1973. Unborn babies can’t vote against legislators who claim that they are personally opposed to abortion, but that this is a pluralistic society, so they continue to vote funds to support abortions and continue to refuse to work legitimately toward changing or reinterpreting the law through the legislative and judicial process.

When will it all end? When will the wanton destruction of defenseless human life in the womb come to an end? I can not for the life of me understand how a society can rest easy as long as it accepts the death of a child as a constructive and appropriate solution for a woman confronted with an unplanned pregnancy.

Something is wrong, something is very wrong when a civilized society tolerates daily deaths of over 4,000 children in their mothers’ wombs. Something is wrong when a civilized society has become so misguided that it tolerates, as the

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“compassionate” thing to do, the destruction of innocent and defenseless human life. Something is wrong when a civilized society accepts the false logic that says a mother has the right to destroy the sacred life that dwells within her.

Whatever the Surgeon General of the United States has found, *I* hear more and more from women who have been victimized by abortion. They are coming forth to tell their personal stories of pain and trauma; stories which reveal the psychological and spiritual scars that can be caused by abortion. I hear from women who were misled into thinking that destroying their children was the right thing to do. Now they realize it was wrong, and with that realization can come a lifetime of pain and sorrow.

On this sad anniversary, the 16th anniversary of the Supreme Court’s decision, I encourage and applaud and pray for all those who are attempting to right the wrong of abortion. I applaud and pray for all those who are providing help and support for the mothers-to-be who are in need. On this day, I renew my pledge to provide Archdiocesan support and counsel to any pregnant woman, *anywhere*, who needs help. If she is financially unable to meet medical and hospital costs and related expenses, she need only contact us to be taken care of.

I urge all who come in contact with women who have already had an abortion to be compassionate and understanding. If they need help, assure them that the Archdiocese wants to provide such help through Project Rachel. We are not interested in condemning anyone. We are dedicated to reconciliation and to helping people get a fresh start in life.

I return for just a moment to Operation Rescue. It is not for me to advise anyone to participate in or not to participate in this kind of activity. I want to make clear my admiration and respect for those who sacrifice so much on behalf of the unborn and their mothers, in response to the demands of their own consciences. I am particularly impressed that Operation Rescue has attracted participants of all ages, including many young people. They may well turn the thinking of our country around.

At the same time, I continue to respect and admire every individual who participates in the Pro-Life movement in any way—through quiet prayer, through discouraging others through quiet personal persuasion from having abortions, through joining the Pro-Life march in Washington, or in whatever way seems best suited to their own conscience, way of life, or other responsibilities. There is room for all in the Pro-Life Movement. No one need follow the way of others, nor should any of us criticize the way of others. United we stand; divided, babies die.

Thank God for all of you, wherever you are at this moment in your own conscience. Pray for me, please.

APPENDIX D

[The following sermon was delivered by Rev. Stallsworth at the Simpson Memorial Chapel in the Methodist Building, Washington, D.C., on Jan. 23, 1989, and is reprinted here with his permission.]

The Woman at the Well

Paul T. Stallsworth

Sisters and brothers in Christ, this is an important moment, a significant moment, perhaps even a historic moment. For we have gathered together to worship God—the Father, the Son, and the Holy Spirit. That is the most important thing that we can do in this life and in this world. Also, we have gathered together to consider how the United Methodist Church might better respond to one of the most humanly destructive and devastating realities of our day—abortion in America.

Sixteen years ago, on January 22, 1973, the United States Supreme Court, located across the street, handed down its *Roe v. Wade* decision. This decision effectively eliminated abortion law from American law. This decision, for all intents and purposes, made it legal for any pregnant woman to obtain an abortion. *Roe v. Wade* is still the law of the land, legally permitting 1.5 million abortions in America per year. The Supreme Court has yet to overturn it, though the best guesses are that an overturning, in whatever form, will take place in the next year or so.

But the legality of abortion is not the primary concern of the Taskforce of United Methodists on Abortion and Sexuality. Nor is the politics of abortion our primary concern here this morning. Our mission is not to change abortion law in America through the courts or through the Congress. Our primary concern, our mission, is to alert United Methodists to the suffering that abortion is inflicting on women, men, and children in our churches and in our society today. Our primary concern, our first goal, is to encourage United Methodist churches and Christians to be a neighbor to those tempted by and/or wounded by abortion.

The Sermon

1. Let us pray. “O Father, you have, through your unknown and mysterious ways, brought us to this time and this place to worship you. Take now this scriptural Word and the weak words that will follow, and, through them, speak your Word to us. In the power of your Holy Spirit, bless all of us with a true and grace-filled and obedient hearing. Through Jesus Christ we pray. Amen.”

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2. This morning's Gospel lesson is taken from the fourth chapter of the Gospel According to Saint John, verses 5 through 30. Listen now to the Word of God and for the Word of God. [Read John 4:5-30 (RSV).]

3. During His public ministry, Jesus creates a crisis most everywhere He goes. When Jesus encounters the real people of His day—the clergymen and the pagans, the elderly and the kids, the soldiers and revolutionaries—He brings on a crisis. In the presence of Jesus, people experience a crisis because they have to decide. They have to decide whether to say Yes or to say No to Jesus, and to what He offers them.

At some length the Fourth Gospel describes how Jesus brings a crisis, or a moment of decision, to an anonymous Samaritan woman. The encounter takes place during the lunch hour, during the heat of a Samaritan day. Tired from His travels and thirsty, Jesus stops at Father Jacob's well. Lacking the wherewithal to draw a drink of water from the well, He sees a local Samaritan woman doing her daily, water-drawing chores.

In approaching her, Jesus brings a crisis to this woman at the well. He offers her "living water." So she must decide whether to refuse the living water or to accept the living water. If she refuses the living water, she stays with well water, and her life will not change. She will continue in her same old ways—changing husbands and lovers every so often, running and hiding from the women of the town, paying lipservice to her religion. But if she accepts Jesus' offer of living water, she will be a changed woman, a new woman, a born-again woman, a "new creation." The Spirit of God will change her from the inside out, from head to toe. But she must decide. To refuse, or to accept. No living water, or living water. No, or Yes.

This woman faces her crisis head-on. She decides. She leaves her water jar beside the well and goes into town to tell people about the One she has just met. She is a different woman, a new woman, thanks to the living water. Thanks to the Holy Spirit.

4. The Gospel According to Saint John emphasizes, again and again, that the ministry of Jesus goes on in this world even after Jesus has bodily departed from this world. That is, even after the body of Jesus is gone, His ministry goes on. His words continue to be spoken and heard; His deeds continue to be accomplished and seen. "But how is that possible?" we ask. It is possible, says the Fourth Gospel, because the Resurrected Lord uses His Church to speak His words and do His deeds. So, the ministry of Jesus continues even into the late twentieth century, according to Saint John.

If the full ministry of Jesus is going on right now—and that is John's claim—then the Church, like Jesus, should be encountering the woman at the well and offering her living water. Yes, the Church—including the United

Methodist Church—should be meeting the woman at the well and offering her a drink of living water.

5. In our day, we certainly have our woman at the well. Of course today she will not be found drawing water from a deep well. But she will be found working in a New York publishing house, or shopping the aisles at the *A&P*, or browsing in the self-help section of the mall's bookstore, or doing the laundry in the apartment building's basement, or paying a visit to the local "women's clinic."

In fact, I think that today's most crucial woman at the well is the woman seeking the services of an abortion clinic. She is running from a mistake and from a future with a child, or another child. Perhaps she is running from a man who has used her and is finished with her. She wants to keep her deeds secret. Usually she does not want her own mother or father, brothers or sisters, or priest or minister to know what she is doing. So she goes, quietly and fearfully, to a clinic. She is a woman at the well.

6. Now, if the Church carries on the ministry of Jesus, the Church will meet that woman at the clinic, or before she gets to the clinic, or after she visits the clinic. Indeed, the Church, in the power of Jesus' Spirit, will bring a crisis on the woman. The crisis will not come from the Church yelling "Murderer!" at the woman, as Jesus did not yell "Adulterer!" at the Samaritan. The crisis will come when the Church offers the woman a drink of living water. Then the woman will have to decide to stay with the well water and the same old life, or take the fire water of the Spirit and new life in Christ.

Again, if the Church faithfully carries on the ministry of Jesus, the Church will meet this woman and offer her living water and new life.

7. What about our church, the United Methodist Church? Is the United Methodist Church meeting the woman at the well? In the midst of 1.5 million abortions each year in American society, thousands of which are surely performed on United Methodist women, are we encountering the woman at the well?

The answer is No. Most United Methodists, it seems, are silent at best, apathetic at worst, about abortions that are actually occurring. Most United Methodist leaders—bishops, district superintendents, agency executives, and high-steeple preachers—think of abortion as an "issue" that is too hot to handle. It is "controversial" and "divisive," they say. So they attempt to hush the discussion of abortion. And they themselves are quiet on abortion. They see abortion as a non-problem.

And then there are some United Methodists, though not many, who engage the woman at the well. But they do not offer her living water. They offer her well water by encouraging her to abort. They understand abortion as a solu-

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tion to problems—financial, educational, and psychological problems. But abortion, unfortunately, is never a solution; it is just another problem.

Generally speaking, the United Methodist Church is ignoring today's abortion plague. We have few homes that care for an unwed mother. We have few programs that support a woman with a difficult pregnancy. We have few ministries that help a woman through post-abortion traumas. We have made no concerted effort to teach and exemplify chastity to our youth. In short, the United Methodist Church is not meeting the woman at the well with an offer of living water.

8. Let us be clear about this ministry at the well. It is a difficult, often thankless, ministry. It is difficult for several reasons. For starters, the United States Supreme Court has declared abortion legal and a woman's choice. Therefore, with Supreme Court legitimation, the woman considers abortion a private matter and nobody else's business. Also this ministry is made difficult by the common reasoning that confuses what is legal with what is moral. Since abortion is legal, many faultily reason, it is morally acceptable. This ministry is difficult for a third reason: We United Methodists do not find it easy to talk about sex-related questions. Yes, this ministry at the well is tough. It requires that we talk to a woman who does not want to talk, about something that is hard for us to talk about.

Still, this ministry at the well must go on. This woman must be offered living water. The Great Tradition of the Church, from the earliest centuries, has always understood abortion as an evil. We United Methodists must now join the Great Tradition of the Ministry of Jesus—which offers living water to the woman at the well—no matter how difficult it is.

9. Do you see? Do you hear?

By not meeting the woman at the well, the United Methodist Church is sinning gravely in two ways. First, we sin by not carrying out the ministry with which our Lord has entrusted and blessed us. We thereby resist Him and disobey Him.

And second, by not meeting the woman at the well, we deny her living water and new life. We deny her the joy of salvation.

10. On the back wall of this chapel is a striking painting of Jesus encountering that Samaritan woman during a noon hour so long ago. He is offering her living water that she must either refuse or accept.

The Church, brother and sister United Methodists, should continue Jesus' ministry at the well. Today Jesus wants to give living water to the woman who goes there. He wants to give new life to her when she is thinking about inflicting death. And He wants to reach the woman at the well through His Church, even the United Methodist Church, even us.

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United Methodists, living water has blessed us mightily. Living water poured out of the side of our Lord, while He hung on the Cross, in our direction. Living water bathed us and washed away our sins. Living water came to us and filled us at Pentecost. And now living water sustains us on our way to this rail, where we will meet the living Jesus Christ in the bread and the cup.

Now we need to learn to offer, and to offer, the living water that we have received to the woman at the well.

O Lord, use your Church again to meet the woman at the well!

O Lord, use us, the United Methodist Church, to meet that troubled woman at the well and to offer her living water, so that she can truly live and offer life to her little one! Amen.

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[The following columns appeared in New York's Village Voice, the first on February 14, the second on Feb. 21, 1989; they are reprinted here with permission of the author.]

How Viable Is *Roe v. Wade*?

Nat Hentoff

Webster v. Reproductive Health Services is the name of a case that is causing great apprehension among the pro-abortion forces—and guarded optimism among the pro-lifers. The Supreme Court has agreed to review the case, and I have been told by the Court's press office that oral arguments will probably be scheduled for April. That means a decision will come down by June or, if the term goes long, by early July.

The case comes out of Missouri. In 1986, the legislature passed a law intended to severely restrict abortions. There was even a preamble—a legislative finding—that life begins at conception.

Among the provisions of the statute is the banning of abortions at public hospitals or any other public facility unless the woman's life is in danger. There is also a provision that, in my view, flatly violates the First Amendment: no public funds can be used not only for abortions but also "for encouraging or counseling a woman to have an abortion not necessary to save her life."

Furthermore, physicians who do abortions in Missouri would have to first perform various tests to determine whether fetuses who appear to be 20 weeks or older are viable.

This goes back to the original 1973 Supreme Court decision, *Roe v. Wade*, which said that while a woman's right to privacy gives her the accompanying right to have an abortion, the state may regulate or even prohibit abortions once the fetus is viable. That is, once the fetus is sufficiently developed so that he or she has a reasonable likelihood of surviving outside the womb—with or without artificial support.

There are two basic problems with the "viability" concept. One is that in 1973, the medical consensus was that a fetus could not be viable until he or she was between 24 and 28 weeks old. (There were a few hardy exceptions, but they decidedly were exceptions.) But 10 years later, as Sandra Day O'Connor noted (*Akron v. Akron Center for Reproductive Health*), the marvels of technology had come to the point where "the *Roe* framework . . . is clearly on a collision course with itself. . . . As medical science becomes better able to provide for the separate existence of the fetus, the point of viability is moved further back toward conception."

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What O'Connor was saying, of course, is that thanks to science, the state would be able to regulate abortion sooner and sooner under the terms of *Roe v. Wade*. William Brennan, a strong supporter of abortion rights, foresaw this "collision" in 1973. He urged Justice Harry Blackmun, the author of *Roe v. Wade*, not to tie the state's interest in protecting the fetus too closely to "viability." The fetus won't always wait until the third trimester to be viable, Justice Brennan said, and so the viability threshold could make abortions harder to get. Blackmun was not persuaded.

The irony, however, is that "viability" died as a factor in regulating abortion on the very day *Roe v. Wade* was decided. On the same day, the Court ruled on *Doe v. Bolton*, in which Harry Blackmun, speaking again for the majority of the Court, declared that while the state had the power to limit abortion after a fetus became "viable," it first had to consider whether an abortion was necessary anyway to preserve the "mother's life or health." He then said that medical judgment on these matters "may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient. All these factors may relate to health." And therefore, may allow the fetus to be destroyed.

In *Roe v. Wade*, moreover, Blackmun, for the Court, spoke of such other psychological stresses as the pressures of child care when there are already other kids at home, unwanted children, and the stigma of unwed motherhood. These too are related to a mother's health.

And that's how we have abortion on demand in this country. There's always a doctor who'll certify it's necessary for the mother's health. Few abortions take place in the third trimester, but it can be lawful to abort on the very eve of birth.

So Justice Brennan needn't have worried. A "viable" fetus has essentially no more protection from the state than an embryo.

Anyway, getting back to Missouri's strictures on abortion, the law was supposed to go into effect in August 1986, but it was challenged by two abortion clinics, Reproductive Health Services in St. Louis and Planned Parenthood in Kansas City. Also part of the suit—in view of the prohibitions the statute placed on public employees—were a publicly employed social worker, a nurse, and three physicians.

In March 1987, a federal district judge in Kansas City declared the major sections of the statute to be unconstitutional infringements of *Roe v. Wade* as well as of subsequent pro-abortion Supreme Court decisions. In July 1987, a three-judge panel of the Eighth Circuit Court of Appeals agreed, for the most part, with the lower court.

Now we get to the question of why the Supreme Court would want to

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review *Webster v. Reproductive Health Services*. (William Webster is the attorney general of Missouri, and it should be noted that in his appeal to the Supreme Court, Webster said that if the Missouri statute is found to be unconstitutional under *Roe v. Wade* and its progeny, the Court should consider whether *Roe v. Wade* itself is constitutional.)

On September 13, 1987, Harry Blackmun, talking to a group of law students, predicted that his most renowned achievement on the Court, *Roe v. Wade*, "could go down the drain . . . this term. You can count the votes."

It may be presumptuous of me, but I do not agree with Blackmun that *Roe v. Wade* will be shot down this term. Eventually, it will be, but not now. The Missouri case is probably going to be the beginning of the end for the constitutional right to have an abortion on demand, but it is not the end of that right.

Let's look at the votes. Four Justices unshakably support the right to an abortion: Blackmun, William Brennan, Thurgood Marshall, and John Paul Stevens. On the other side are the original two dissenters in *Roe v. Wade*: Byron White and William Rehnquist. They have not changed their minds. The fact that Rehnquist has since become Chief Justice gives him added weight. The Chief, if he is in the majority on a case, has the power to decide who will write the opinion for the Court. He can either assign it to himself or to a Justice he feels will shape it the way the Chief wants it shaped. If there is a majority to affirm the Missouri restrictions on abortion, Rehnquist is likely to see to it that the language of the opinion will send a resounding message to other state legislatures that they can go ahead, if they like, and impose their own restrictions on abortion.

Not on the Court in 1973 were Sandra Day O'Connor, Antonin Scalia, and Anthony Kennedy. O'Connor has been increasingly critical of *Roe v. Wade*. She is a cautious jurist, however, and is not likely—yet—to vote to scrap that landmark decision. She is very likely to approve of restrictions on abortions, and has in the past.

Scalia, by temperament and conviction, is not a main-streamer among so-called conservatives on the court. He likes to leap where his logic leads him, and I would count on him as a definite vote to overturn *Roe v. Wade*, maybe in this case.

Anthony Kennedy, it is generally believed, will be the swing vote in the Missouri case—and in future abortion cases so long as the present membership of the Court remains intact. On most of the key issues so far, Kennedy has been to the right of the Court's center. Since O'Connor is that center, it is hardly on the 50-yard line.

Kennedy—I have been told by sources in California who have been accu-

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rate in the past—helped draft pro-life legislation before he became a judge out there. Maybe he's changed his mind since then, but I doubt it. On the other hand, like O'Connor, he is not one for bold moves. So Kennedy is likely to join a majority to vote to overturn the lower courts that struck down much of the Missouri restrictions on abortions. If a majority later overturns *Roe v. Wade*, he'll jog along.

The eventual leader of that majority is likely to be the Chief. Rehnquist, after being the Lone Ranger during much of his first term as Chief Justice, has learned how to "mass the Court"—forge a majority—on important issues. My guess is that he may wait for a full assault on *Roe v. Wade* until one or more of the three Justices over 80 (Brennan, Marshall, and Blackmun) retire. In view of the impact a reversal of *Roe v. Wade* will have on the country—mass protests and long-term civil disobedience—Rehnquist may prefer to have a 7 to 2 or an 8 to 1 vote with which to abolish the constitutional right to an abortion.

As for now, in order to review the Missouri case—or any other—four Justices had to vote to grant *certiorari*. Those votes did not come, I would think, from Blackmun, Brennan, Marshall, and Stevens. Their point of view had already won when the lower courts scuttled the Missouri anti-abortion law. What did they have to gain by bringing the case up to the Court? Especially with Anthony Kennedy now in place of Lewis Powell, who believed in abortion rights.

And that is why the pro-abortion forces are right to be apprehensive. Some are planning large-scale demonstrations and barrages of mail to tell the Court in no uncertain terms that it will be going against the popular will and justice and fairness if it weakens *Roe v. Wade* in any way in deciding this most unwelcome case from Missouri.

However the Court decides, this kind of public-relations assault—as contrasted with sending in strong *amicus* briefs that can be influential—may boomerang. The one thing that unites all members of the Court is their deep sense that when they decide constitutional issues, polls and plebiscites and lobbying must be excluded. If the Court went by popular will, there wouldn't have been a *Miranda* decision, an exclusionary rule, the declaration that all public segregated schools are unconstitutional, and the holding that residential covenants barring blacks and Jews are also unconstitutional.

I was in the Court one day when a huge demonstration was going on out front against the appalling *Hardwick* decision (largely removing homosexuals from the protection of the Bill of Rights). Over 600 people were arrested right in front of the Court, cops were all over the place, and the chants outside could be heard in the marble halls.

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In those halls, in the Justices' chambers, and later, in the courtroom where oral arguments went on as scheduled, no attention was paid to the fury outside. It had no impact.

Dred Scott, Abortion, and Jesse Jackson

Nat Hentoff

... human kind cannot bear very much reality.

—Burnt Norton, T.S. Eliot

Two of the clearest distillations of a woman's right to an abortion appeared in a January 29 *New York Times* editorial and a February 4 letter to the *Washington Post*. Said the *Times*: "Strip the issue of rhetoric . . . and it comes down to a simple question: Does society have the right to force a woman to incubate a fetus against her will?"

In the *Washington Post* letter, Kate Michelman and Dawn Johnsen of the National Abortion Rights Action League quoted from a 1986 ruling by the Supreme Court: "Few decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman's decision . . . whether to end her pregnancy."

You will notice that the fetus is mentioned only as something that can be disposed of by decision of the mother. This means, of course, that the fetus is not a "person" under the Constitution. It has no rights under the Constitution. If he or she had rights, the 14th Amendment would save the fetus from being executed: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

A while ago, I discussed this matter with a Justice of the United States Supreme Court (not Harry Blackmun). He knows that I am pro-life, and he knows that I am an atheist, so no religious underbrush had to be cleared away.

"Soon after conception," I said, "there emerges a distinct human identity—a unique constellation of genes and chromosomes, unlike any human being before or after. Obviously, this is a developing being, but he or she certainly is human. Yet you and a majority of the Court keep on saying that the fetus has no constitutional rights."

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"I know the argument," the Justice said. "I've heard it many, many times. I can assure you there was considerable discussion of just that point when *Roe v. Wade* was written, and after. But the fact is that the Constitution defines a 'person' as someone *born*. Obviously, Nat, the fetus is not born until it is delivered."

And there it is—the same reasoning—in Harry Blackmun's 1973 majority opinion in *Roe v. Wade*. Blackmun said that if the "personhood" of the fetus were established, its "right to life would then be specifically guaranteed by the [14th] Amendment." But, said Blackmun, there is no previous case "that holds that a fetus is a person within the meaning of the 14th Amendment."

He pointed to the three places in the 14th Amendment where the word *person* appears. As we've seen, it's in the due-process clause, and in the guarantee of equal protection of the laws. The other place—and this was probably the convincer for Blackmun—is in this line: "All persons born or naturalized in the United States . . . are citizens of the United States and of the State wherein they reside."

So, said Blackmun, "the word *person* as used in the 14th Amendment, does not include the unborn."

A woman's right of privacy to abort would not be enough without that ruling that the fetus is a non-person.

Once before, in 1857, the Supreme Court also excluded an entire class of living beings from the protection of the Constitution. In the *Dred Scott* case (1857), Chief Justice Roger Taney emphasized that those of African descent, whether free or slaves, had "never been regarded as a part of the people or citizens of the State." They "had no rights or privileges but such as those who had the power, and the Government, might choose to grant them."

Accordingly, people of African descent were not "persons" under the Constitution. They were private property. Their owners could do whatever they pleased with them. (Just as now—*Times*, December 25, 1988—women are increasingly undergoing prenatal testing to find out the gender of the developing property inside them. If the gender is the wrong one, the fetus is destroyed.)

The Abolitionists—the civil rights workers of the 19th century—fiercely fought against the horrendous consequences of that rule of law—as distilled at New York's Academy of Music in 1859 by Charles O'Connor:

"As a white nation, we made our Constitution and our laws, vesting all political rights in that race. They, and they alone, constituted, in every political sense, the American people."

And that other nation, though it breathed and felt pain, a lot of pain, was not a people at all. It consisted only of clumps of property. Owned in privacy.

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And when killed in privacy, that was no one else's business but the owner's.

In this century, a renowned civil rights leader used to say that he had a very personal interest in abortion: "I was born out of wedlock and against the advice that my mother received from her doctor."

He also had a personal interest in the argument that a constitutional right to privacy justified killing a developing human being. In 1977, Jesse Jackson wrote:

"There are those who argue that the right to privacy is of a higher order than the right to life. . . . That was the premise of slavery. You could not protest the existence or treatment of slaves on the plantation because that was private and therefore outside of your right to be concerned."

Jackson, in addition, was much intrigued by what he called "the psycholinguistics of abortion"—finding a parallel between pro-abortion newspeak and the masking of the actual intent of language in matters of race.

"If," said Jackson, "something can be dehumanized through the rhetoric used to describe it, then the major battle has been won. . . . That is why the Constitution called us three-fifths human and then whites further dehumanized us by calling us 'niggers.' The first step was to distort the image of us as human beings in order to justify that which they wanted to do and not even feel like they had done anything wrong. Those advocates of taking life prior to birth do not call it killing or murder, they call it abortion."

In the 1970s, Jackson, moreover, thought way ahead of most of the rest of the right-to-life movement. He was prescient enough to make the connection between the death-by-privacy that had been made constitutional in *Roe v. Wade* and the coming use of that very same decision to justify euthanasia at any stage of life after birth. (And so it came to pass last year in *Gray v. Romeo*, when a federal district judge used *Roe v. Wade* to end the life of a woman who was not terminally ill but whose husband and children thought would be better off dead.)

The logic of abortion, Jesse Jackson wrote, could lead to "killing . . . other forms of incompleteness . . . crippleness, old age."

Jesse Jackson is no longer a pro-lifer. It may be a genuine conversion, or it may have had something to do with his decision to run for national office. It figured that he would have lost the votes of many liberals if he had kept talking—as he did in 1978—about "defending human life in its most defenseless state, in its unborn condition, where it is so inhumanly exploited by abortion."

You don't hear Jesse saying that anymore. But on January 23, he was one of 13 distinguished civil rights leaders who were assembled by Planned Parenthood to sign a statement excoriating those pro-lifers—particularly the

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Operation Rescue forces—who have the utter gall to claim they have a moral connection with the traditions of the civil rights movement. Why, these singing protesters—said the 13 signers—are more like the segregationists who fought desperately to block black Americans from access to their rights.”

Among the accusatory 13 were: Julian Bond; James Farmer; John Jacob, president of the National Urban League; Mary King, author of *Freedom Song: A Personal History of the 1960s Civil Rights Movement*; Dr. Joyce Ladner, former field secretary, Student Nonviolent Coordinating Committee; Roger Wilkins; and Andrew Young.

These civil rights leaders attacked the pro-lifers for trying to “deny Americans their constitutional right to freedom of choice. They want the Constitution rewritten.”

So did the Abolitionists. And these very 20th century civil rights leaders fought ceaselessly to deny racist whites their freedom of choice to segregate just about everything in sight. And where there were laws saying that whites had that privacy right to exclude blacks, those in the civil rights movement marched and demonstrated and blocked entrances and eventually brought new life to the Constitution.

Obviously, the pro-lifers have different goals but their means are similar. And from their perspective, they too are engaged in a massive civil rights movement, for there have been some 20 million developing human beings—as Jesse Jackson used to say—killed since *Roe v. Wade*.

There has been isolated, utterly indefensible violence—as in the bombings of clinics—that could have killed people. But nonviolence is both the principle and strategy of such groups as Operation Rescue. They know that if they are associated with violence, they will have greatly strengthened the pro-abortionists.

There has indeed been violence at some Operation Rescue demonstrations, but it has been violence inflicted on those pro-lifers by the police—most viciously in Atlanta, where Andrew Young is mayor. One of the members of the Atlanta City Council is Hosea Williams who, like Young, was a close associate of Martin Luther King. When he saw what the cops were doing, Hosea Williams said:

“We who were the leaders of the movement in the '50s and '60s are now political leaders. And we are doing the same thing to demonstrators that George Wallace and Bull Connor did to us.”

But these demonstrators are “zealots,” as a Boston *Phoenix* reporter calls pro-lifers who block entrances to what they regard as places where developing human beings are being killed.

Professor Mary Ann Glendon of Harvard Law School, author of *Abortion*

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and Divorce in Western Law (Harvard University Press), spoke—during a recent conversation with Bill Moyers on public television—of what she calls “developing life—what the Supreme Court of the United States has refused to call either human or alive or a person. Somehow the [whole] story [of abortion] has got to take account of that.”

This doesn't mean that abortion is never necessary. It was called for, however sadly, in the recent Long Island case in which the husband of a pregnant woman in a coma fought to become her guardian so he could authorize an abortion. Medical opinion was divided in this case, but since the mother, without an abortion, might have been at further risk of death, her life had precedence. By contrast, the vast majority of abortions are not performed to save the mother's life.

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[The following column appeared in the *Washington Times* on Feb. 3, 1989, and is reprinted here with the author's permission.]

What Does the Future Hold for Abortion

Michael Novak

You can feel it in the air. In 1989, major changes are occurring in the way Americans regard abortion. The nation has now had 16 years of experience with the dramatic change in U.S. law wrought by *Roe v. Wade*. Restlessness abounds. Let us hope that reason prevails.

Today, 4,100 abortions are taking place every day, 29,000 a week, 125,000 a month, 1.5 million every year.

In 1985, for the first time in history, Americans over 65 outnumbered Americans under 18—but more than 22 million youngsters from that younger cohort have been aborted.

Eighty-one percent of abortion-obtainers are unmarried. Only three percent of abortion-obtainers cite health as their major reason for seeking abortion. “Most were concerned about how the baby would change their lives,” feminist Judy Mann concedes, “about not being able to afford a child, not being ready for the responsibility of a child, and not being in a stable relationship in which to raise a child.”

It is difficult not to feel sympathy for young women pregnant outside of marriage. But do we really want a nation in which easy and cheap abortion encourages so many pregnancies outside of marriage, in which 30 percent of all pregnancies end in abortion, mostly to the unmarried? Is that what *Roe v. Wade* intended?

Feminist Erica Jong writes that the movement against abortion in 1989 is “about political power,” in which “women’s bodies are the first to be marched on.” She is wrong on both counts. In the march of feminist political power, the bodies of infants in the womb were the first to be marched on—22 million of them.

And, unlike the elderly, the unborn have no political power. They depend on respect for their human rights from the rest of us. Thus, the civil rights movement taught us that political power does have a role to play in defending human rights. Rising political power does command attention, in this case quite unselfishly—for the human rights of others unknown.

In addition, even those who in 1989 defend *Roe v. Wade* rarely try to defend the procedures, the industry or the unpleasantness of abortion. They have retreated a lot since 1973. They are defending, they say, only the right of

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a woman to choose. But they fall silent about the right of the human individual being formed in the womb to be protected, and the interest of society in that individual's inalienable right to life. The woman's right is important, but not solitary.

Again, scientific knowledge has advanced tremendously since 1973. In 1972, a male journalist told me on the presidential press bus that abortion didn't matter much to him, since it involved only a "glump" of a woman's body. No informed person can say that today.

Now we know beyond the shadow of a doubt that the life within a pregnant woman is very early a separate human individual, of a determinate sex. Each little he or she has a unique, utterly individual genetic code.

I sympathize thoroughly with those who try to argue that this separate individual is not yet a "person," protected by constitutional rights. At what moment, they ask, should constitutional "personhood" be reasonably assigned?

To make this determination is not a matter of religious faith. It is a matter for reasoned inquiry. Until our generation, virtually all Americans concurred in a long tradition, both humanistic and religious, which held that the most reasonable path is to give the benefit of any doubt to individual life. This tradition has honored the moment when ovum and sperm from two other individuals (mother and father) form a new individual. To be crystal clear: the moment of conception.

Others, who seek a little more room for maneuver, may argue that the criterion now widely used for determining death should be applied: the detectable beginning of a heartbeat or a brainwave. This occurs four to six weeks after conception—before most women are sure they are pregnant.

The courts already have been obliged by medical advances to recognize that birth at the full term of nine months is far too inadequate a criterion, since a living child may now be born prematurely even at five months.

Indeed, nurses and doctors have often been the first to bear the stress of working mightily in one operating room to save a premature baby, and immediately thereafter of tending to the abortion of another of similar age. This clash has been for some unbearable.

What we have learned, in 16 years, is that the constitutional criterion for the beginning of individual life cannot be anything nearly so rough as that used in *Roe v. Wade*. The clear direction of medical advances is to drive a reasonable criterion back ever earlier. Those who argue that individuality begins at conception may be regarded by others as being too "generous" to the unborn. But in the light of contemporary science the reasonableness of that "generosity" can scarcely be impugned.

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A woman's right to choose should by no means be limited except by the beginnings of the rights of other human individuals. Sexual activity is fraught with seriousness. When it issues in pregnancy, a conflict of rights becomes inevitable. *Roe v. Wade* has been on a collision course since its conception.

Maintaining civic unity during the public search for the beginnings of constitutional rights will not be easy. To see things as those with whom we disagree see them—to walk in each other's moccasins—is almost superhuman, but necessary. The issue is not one of clashing faiths. It is a serious search for a reasoned social obligation.

APPENDIX G

[The following article appeared on the Op-Ed page of the New York Times on March 26, 1989, and is reprinted here with permission. Mr. Lynn is professor of public policy at the University of Chicago. (© 1989 by the New York Times).]

Now, I'm Against Abortion

Laurence E. Lynn Jr.

I want to come out of a closet in which I have hidden for years. The decision to do so has been difficult, for I will lose old friends and probably not gain many new ones. My hope is that some good will come of it.

I oppose abortion. Though I have tried to convince myself otherwise, I believe a human fetus to be a human life and that we should not be permissive concerning the taking of human life. I was once permissive. I would not be again.

Wouldn't I allow exceptions to the "no abortion" rule? Yes. When the mother's life is at stake and we must choose between fetus and mother, I would favor the mother. Her life matters to those who love and need her—and to herself—and if saving her life required abortion, I would condone it.

But I would not make exceptions in cases of pregnancy resulting from rape or incest, much less when the pregnancy is simply unwanted, where the only life at stake is that of the fetus.

As children and adults, we are all vulnerable to the unconscionable or deranged acts of others. Through random violence or calculated exploitation, our lives may be changed forever. Moreover, we make personal mistakes of all kinds that have adverse consequences. Our vulnerabilities do not, in my mind, justify the taking of life.

Millions of Americans oppose abortion. Why, then, have I hesitated to declare my position on this issue? The reason is that opinion concerning abortion has become so polarized that to take a position is, quite literally, to choose one's friends. For me, this choice has painful consequences.

Most of my friends are "pro choice" and favor abortion. To them the question is simple: Should we force a woman to incubate a fetus against her will? To believe, as I now do, that the answer is yes, that there is a morally superior claim—the sanctity of human life—is to alienate these friends. Their anger will not be assuaged by assurances that I am committed to equal rights for women. The abortion question is not one, apparently, on which people can disagree and still be regarded as morally responsible by their opponents.

How, these friends inquire, in view of my concern for the poor, can I justify the bringing of unwanted children into the world, often into dreadful circum-

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stances in which they may fail to thrive or even die? My answer is that, more than unwanted children, I fear edging too close to profoundly dangerous moral ground: deciding who shall live on the basis of criteria that presuppose our ability to predict the social consequences of such decisions.

If I am worried about losing friends, what about the prospect of new friends among those who are “pro life”? Many are unlikely to be so friendly when they realize that I also oppose capital punishment. I have no qualms about finding guilt or imposing harsh punishment, only about the taking of a life. There are other ways to deter crime.

Furthermore, my opposition to abortion is not based on sectarian religious conviction. I have been a Presbyterian all my life, but I strongly favor separation of church and state, and I distrust arguments that the state must act in accordance with religious teachings. My views on abortion are secular.

My position, then, is that, to bring out the best in us as a society, we must affirm the sanctity of human life and the obligation, insofar as it is within our power, to make life worth living. I believe that being permissive concerning abortion is inconsistent with such an affirmation.

My hope in coming out of the closet on this divisive issue is that others who are not part of the “pro life” movement—feminists, political independents, advocates for the poor—but who, for personal, nonsectarian reasons, oppose abortion, will be more willing to declare themselves. In doing so, it may make the debate less polarized and the issue more complex. Proponents of abortion who also see the issue as profoundly complicated might do the same.

The issues surrounding abortion are, for many, morally complex and personally wrenching. We should not want it to appear otherwise or to decide the matter as if the question were a simple one.

APPENDIX H

[*The following article appeared as a "First Person Singular" column in the San Francisco Chronicle Feb. 20, and is reprinted with permission (© San Francisco Chronicle, 1989).*]

Abortion and the Law of Nature

Ruthe Stein

For years I have tried to stay out of discussions on abortion. However, that is getting harder to do now that the issue is in the news again, and everybody seems to want to talk about it.

The reason I haven't wanted to is that my opinion is almost certain to rile up the people with whom I would likely be having this discussion. On other issues, I wouldn't hesitate to argue with them, but abortion is just too personal.

My concern is that they may have had an abortion or accompanied their girlfriend to an abortion clinic. How could I say what I really think—which is that abortion is terribly wrong—without sounding as if I'm attacking them?

So I have said nothing. But I can't keep quiet any longer, not when I see the numbers—300,000 abortions performed in California a year, 1.5 million in the United States, 50 million around the world—and am forced to confront the magnitude of what is being allowed to happen.

I suppose another reason I haven't spoken up is that I know I would be hit with questions for which I have no answers: Do you think abortion should be illegal? Would you want women to go back to having back-street abortions at the risk of infertility or death? What about women who have been raped? What about crack babies?

The Law of Nature

As real as these issues are, they don't change my gut feeling that abortion goes against the law of nature, which takes precedence even over the Supreme Court. I'm reacting emotionally, not rationally, to the thought of the babies who might have been.

I have never had to make a decision about whether to terminate a pregnancy. I'm not sure what I would have done when I was younger. I'm very sure what I would do now. There is no way I could have an abortion, no matter what the circumstances.

The turning point for me came in 1984, when I was in Los Angeles following the anti-abortion demonstrators who were following Geraldine Ferraro everywhere she campaigned. I suppose I assumed they would be a little strange (which is my assumption about anyone who is seriously into a cause).

I was drawn to one of the women on the picket line, probably because we had on the same jacket. The more we talked, the more similarities between us I saw. Why, she wasn't strange at all.

Her involvement had come about because of a personal experience. When she was just out of college and newly married, she had accidentally become pregnant. She was going to have an abortion without telling her husband (he had started a new business, and she didn't want him to have the added pressure of supporting a family), but had a change of heart at the last minute.

After giving birth, she was unable to have more children. She was still having nightmares that the abortion had taken place and that she was childless.

She showed me a photograph of her son—a cherubic-looking 10-year-old. I know theologians argue about at what point life begins, but looking at that picture I was suddenly struck with the inarguable fact that if his mother had had the abortion, he would not be alive.

The Irony of It

I wonder what percentage of married women who are unable to conceive in their 30s and 40s had abortions when they were younger and single. There is a profound irony in their desperate search for babies to adopt. They are looking for an unmarried woman brave enough to do what they could not bring themselves to do: carry a baby to term.

I have actually heard women say they could never go through with a pregnancy and give the baby up for adoption. This was their rationale for having an abortion. To me it sounds like the woman in the Old Testament who told King Solomon she would rather have the baby she claimed to be hers cut in half than give him to another woman.

My generation has not had to take responsibility for its actions. If we didn't like a spouse, we could easily get a divorce. If we wanted to have an affair, we had it. If we conceived a child at an inconvenient time, we could get rid of it.

I wish that all abortions would stop and that men and women, who are, after all, equally responsible, would accept their responsibility. While others may define it differently, I view my position as pro-choice. I choose life.

APPENDIX I

[The following column appeared in the January 30, 1989, issue of Newsweek, and is reprinted here with permission (©1989 by Newsweek).]

In India, They Abort Females

Jo McGowan

Beware what you set your heart upon, for it surely shall be yours. Feminists would be wise to heed this old-fashioned warning. By insisting upon the right of every woman to have an abortion, they have opened a Pandora's box of which they are only now realizing the depths.

I say this as an American resident of India where an updated version of female infanticide is being practiced. Amniocentesis, a medical procedure used to detect certain fetal abnormalities, almost always reveals the sex of the unborn child—a side benefit doctors in India now put to use in a culture that prizes sons. Or, as one doctor was quoted in the Indian Express last year: “Yes, I do sex-determination tests. It's better for an unwanted girl not to be born than to suffer later.” The birth of a boy is cause for great rejoicing, but given modern technology that of a daughter can lead to a request for an abortion.

In India, being female is an economic handicap. A girl means trouble. She must be married off at great expense (the custom of dowry was outlawed in 1961 but is still prevalent), only to be lost to her family. Anything she earns belongs to her in-laws. Her parents, who may incur a lifetime of debt to pay for her wedding, can expect to see her only once or twice a year and then in strained, formal visits. The more daughters they have, the worse off they become. It's no wonder then that the idea of sex determination, with abortion as an option if the sex turns out to be “wrong,” is so popular here that sex-selection clinics have become a big business.

But as amniocentesis has become widely available in the subcontinent, it has also become more and more controversial. Feminists decry its inherent sexism—their vigorous fight against its use for sex selection won them a victory recently when the western Indian state of Maharashtra (of which Bombay is the capital) outlawed the procedure for any but strictly defined medical reasons.

To undergo amniocentesis in Maharashtra now, a woman must be at least 35 years old or must have a medical history that suggests the possibility of a genetic disease. The new law, applauded by women's groups, is seen as a promise of things to come. In my opinion, however, the victory it represents will remain an isolated one simply because the feminist position on this issue is illogical and inconsistent.

What is the feminist position? Very simply put—it is wrong to abort babies just because they are girls. In making their arguments, women in India use highly emotional terms like “feticide” and marshal grim statistics (out of 8,000 cases of abortion in Bombay, 7,999 involved a female fetus, according to one study) to support their case.

All very sad and very compelling but for one large fact: feminists (in India and all over the world, for the feminist community is at one on this issue) are speaking out of both sides of their mouths. When the issue is sex determination and the “selective” abortion of girls, they call it female feticide. But when the issue is reproductive freedom and the abortion of male and female fetuses, they call it a “woman’s right to choose.” It won’t work. They can’t have it both ways. Either they accept abortion or they don’t.

For years now, feminists have made the abortion issue a top priority and have worked tirelessly to create a climate in which the destruction of unborn children is acceptable. They have done their work well: millions of fetuses are aborted all over the world and very few people give it a second thought.

The basic principle of the abortion-on-demand movement is that the decision to abort should rest entirely with the woman. No special-interest group or individual (be it the church, the state, her parents or her husband or lover) should have any say in the matter. Free choice means just that—the woman chooses.

Yet some mothers, indeed many mothers in India and other countries and cultures where males are highly prized, have very legitimate reasons in believing that giving birth to a girl is unacceptable. What gives anyone the right to tell them they are wrong? Certainly no traditional feminist should dare, any more than she would tell the mother of a hemophiliac that she should carry her pregnancy to term.

“Selective” is the term used to describe the specific targeting of girls for abortion, as if the word somehow proves the essential evil of the act. But which abortion is *not* selective? The handicapped fetus of the mother who only wants a perfect baby, the third child of a mother who only wants two, the unplanned baby of a mother who wants total control of her life—all of these can be “selectively” aborted. What changes in each case is only the mother’s view of what is acceptable and what is not.

From where I sit, feminists have no moral standing from which to speak out against the selective abortion of girls. In insisting that they do, they have become just another special-interest group, like the church or the state, trying to prevent women from exercising their right to choose. Once it is permitted to kill some fetuses for some reasons, I don’t see why it isn’t permitted to kill all for any reason.

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As a woman who is opposed to abortion, I would almost have welcomed this turn of events, were it not so tragic and wrong. But perhaps now the real nature of abortion will be revealed in all its horror. Perhaps from the undeniable truth that it is wrong to kill a baby simply because she is a girl will emerge the larger truth that it is wrong to kill a baby at all.

APPENDIX J

[The following article appeared January 30, 1989 in the Japanese newspaper Asahi Shimbun and was translated by The Asia Foundation's Translation Service Center.]

Atoning for Abortion

Tamihiko Tonomura

Japanese women who have aborted, miscarried or had stillborn babies find solace in religious services, called "mizugo kuyo," for the repose of the dead child's soul. Since about 1 million abortions are performed annually, this is a common—and lucrative—sideline for some Buddhist temples.

"Anguished by their loss but guilt-ridden, most Japanese women are unable to talk about their abortion with anyone else. But they are comforted by this ancient rite," said Elizabeth Harrison, a Ph.D. candidate at the University of Chicago who is studying the practice.

Harrison recently discussed mizugo kuyo and contemporary Japanese perceptions of life at a seminar for inter-religious dialogue in Kyoto attended by Christian clergy, Buddhist monks and scholars in related fields. Very little research has been done on the subject.

Harrison's interest in the custom was piqued by an advertisement in a train for a mizugo kuyo doll, and she soon realized that the practice met a very real need for women.

At the seminar, Harrison described different memorial services and the role played by the Buddhist deity of mercy and the guardian of children.

Some bereaved women, for example, spend a day at a temple in Kyoto's Yamashina ward and pray for the repose of the fetus. Although they mingle with female college students who are there from curiosity about convent life, personal motivation is not discussed. The time is devoted to religious observances.

In another sect, the unborn child is given a name and the woman carries a small wooden tablet inscribed with the name for one month. She is instructed to talk to the tablet, to place it on the table at mealtime, and to take it with her wherever she goes. She even bathes with the memorial, wrapping it carefully in a plastic bag.

After a month, the woman deposits the tablet at her temple. If she does not yet feel at peace with herself, the therapy is continued for another month.

Bardwell Smith, a specialist on Asian religions at Carlton College who is studying this custom, also spoke at the seminar.

The two American scholars agreed that Japanese women practice the ritual to atone for losing a child. In the United States, women who have had abortions or miscarriages often join support groups and discuss their innermost

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feelings. Japanese women tend to keep their agony private and seek comfort through purchasing a small Buddhist icon or having prayers said in perpetuity.

In Japan, Smith and Harrison opined, past misdeeds are believed to affect what a person is now and to have evil consequences in the future.

This fear of retribution can be exploited by unscrupulous religious groups out to make money from mizugo kuyo. A temple in Osaka, for example, charges \$5,000 for a Buddha image and perpetual prayer.

But Harrison reported that judging from the responses to her questionnaire, very few women are afraid of being cursed by the spirit of the unborn. They act from remorse.

APPENDIX K

[The following article appeared in the January 19, 1989 issue of *Catholic Eye*, and is reprinted with permission (© 1989 by the National Committee of Catholic Laymen, Inc.).]

What If the Life Was Your Own?

Francis Canavan

A lady with whom I have long been acquainted told me that at a recent dinner party, an old family friend came up to her and announced: "I think every woman has a right to an abortion if she wants one." She replied, "I think abortion is murder," and walked away. Just as well, too, for he was only looking for an argument and, since he is not one of the brighter lights that gleams amid the encircling gloom, it was not going to be a good one.

But, I thought to myself afterwards, the conversation might have gone like this:

He: I think every woman has a right to an abortion if she wants one.

She: How fortunate for you that your mother didn't exercise that right and abort you.

He: But I was not unwanted. She *wanted* me.

She: Suppose you had been unwanted and she had aborted you at, say, three months, or three weeks, or three days after conception, who would be dead today?

He: I don't get you.

She: Wouldn't the life she ended by abortion have been your life, and wouldn't it be you who were dead today?

He: I suppose so.

She: Have you ever thanked your mother for not aborting you?

He: That would have been indecent. Besides, I can't thank her now; she died some years ago.

She: But you would agree with her having aborted you, if that is what she had decided to do, because you believe she had the right to do it?

He: Absolutely. Every woman has that right.

She: You must have loved your mother very much.

He: How so?

She: Greater love than this no man hath, that he lay down his life for a friend. But it seems to me an even greater love if a son is willing to have laid down his life for his mother's right to abort him.

He: What does love have to do with it? We're talking about rights.

That conversation never took place, of course, and I doubt if it ever would take place in real life. As Plato knew, the advantage of composing a Platonic dialogue is that Plato writes all the lines and can make them come out as he

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wants them to. Real dialogues seldom come out as either participant planned. Nonetheless, the above dialogue, contrived though it is, does make a valid point.

If you insist on a universal right to abortion, the life that was aborted could have been your own, and the mother who bore you could have been the mother who killed you. Granted, she would have had her reasons (for she was not a capriciously evil woman), but would you have been willing to die for them?

Abortion, after all, involves killing and dying. Technically, it is true, every premature expulsion of a child from the womb is an abortion, and would be an abortion even if removing the child from the womb managed to save its life as well as the mother's. But such an abortion is rare, if it happens at all. It is not the reality we are talking about when we discuss abortion in the contemporary United States.

According to the figure that is now routinely reported in the secular press, there are about one and a half million abortions performed every year in this country, and they terminate from a quarter to a third of all pregnancies. The point of virtually all of them is to kill the baby or, if you insist, to kill the living being in the womb before it becomes a baby. Either way, a human life is deliberately and intentionally ended; if your mother had aborted you before you became a baby, you'd be just as dead. The right to abort is the right to kill, and in abortion as it is actually practiced, a living human being always dies.

The ultimate pro-abortion answer to that proposition is, So what? Take Katha Pollitt, who is identified as "a poet and writer who lives in New York." In a column in *The New York Times Magazine* for November 20, 1988, she argues the pro-abortion case in terms that make it clear that she does not care who or what dies in an abortion.

Let us stop talking, she suggests, only about the hard cases of "pregnant schoolgirls, rape and incest victims," etc., and meet the real issue head-on: "All over the industrialized West, women want education and jobs, couples want small, planned families, and people—men and women, married and unmarried—want sexual intimacy." These "imperatives" are the premises from which all moral reasoning in this area of life must begin, the absolutes to which all other considerations must yield.

We need not pretend that "abortion isn't or shouldn't be a method of birth control." Let us face it, "that's just what abortion is—a bloody, clumsy method of birth control." It is fully justified because the women who resort to it are confronted with "disaster," not "inconvenience": "Women do what they need to do to lead reasonable lives, and they always have. Nowadays, a rea-

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sonable life does not include shotgun weddings, or dropping out of school, or embracing the minimum wage for life. Still less does it include bearing a baby for strangers to adopt, as George Bush blithely suggests.” In the face of such disasters, “when your back is against the wall of unwanted pregnancy, it doesn’t matter whether or not you think the fetus is a person.”

That seems clear enough, does it not? Person or not, you kill it when it gets in the way of a reasonable life. But would you still agree with that if the reasonable life were your mother’s, and the life she ended were your own?

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