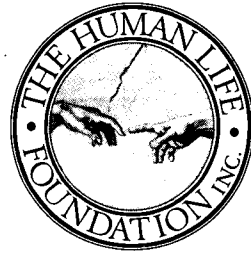


the HUMAN LIFE REVIEW



WINTER 1989

Featured in this issue:

Joseph Sobran on Owning & Belonging
John Wauck on Frankenstein's Great-grandson
Lori Brannigan Kelly on Ethics & 'Fetal Tissue'
Francis Canavan on The Civil Rights Game
Gerard V. Bradley on Caesar's Religion
Stephen Heaney on What Would Aquinas Say?
Steven F. Seidman on The Physician's View
Brian Harradine on A New Era for Life
Iain Benson on Canada's 'Pro-Choice' Problem

Also in this issue:

Patrick J. Buchanan • Katha Pollitt • Michael Levin • Julián Marías

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... FROM THE PUBLISHER

This issue begins our fifteenth year of publication. It's amusing to recall that, when we began in early 1975, we were worried about finding enough new material on our "single issue"—abortion—to put out a regular full-sized quarterly. So we decided to look for "old" stuff as well, including articles already published elsewhere.

In fact, we have been deluged with fresh material ever since—far more than we can publish, sad to say. But it quickly hit us that we had stumbled onto an unusual formula: the mix of new, old, and "borrowed" pieces provided a balance we couldn't achieve otherwise. So we've continued using our special mix, by choice (if you'll pardon that word here!).

This issue is a typical example: we lead with seven new articles, followed by two important pieces that most readers would never see if we did not reprint them here. The four Appendices provide more of the same: some of you *might* have read the columns and reviews when they first appeared, but most of our readers probably never saw the originals, which in any case are well worth including in our continuing "permanent record" of the anti-abortion saga. And what we *didn't* get in this time is enough for another issue . . . we did indeed choose the "issue that won't go away"!

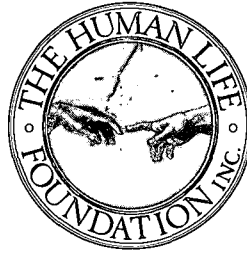
There is another fact of publishing that also won't die: typographical errors. Having been in this trade all my professional life, I know that *no* proofreader is perfect and, as wondrous as the new computer technology may be, it can cause goofs so inexplicable that only another machine can figure them out.

One such howler happened in our last (Fall, 1988, p. 67) issue: in Mr. Bryce Christensen's excellent article, "The Costly Retreat from Marriage," the original contained the following: "Unless, however, it is matched by some policies that help intact marriages, the rediscovery of family responsibility could create economic injustices: it could push intact families to the end of the line of those *eligible for federal benefits, while keeping them near the front of the line of those* responsible for paying for those benefits." We somehow managed to omit the italicized words, thereby "confusing—practically reversing—the meaning of this sentence," as Mr. Christensen kindly reminds us. Our Beg Pardon to him, and to you.

You will find complete information on how to get a copy of that issue, and other back issues, bound volumes, etc., printed on page 128 in this issue.

EDWARD A. CAPANO
Publisher

THE HUMAN LIFE REVIEW



WINTER 1989

Introduction	<i>J. P. McFadden</i>	2
Owning and Belonging	<i>Joseph Sobran</i>	7
The Great-grandson of Frankenstein	<i>John Wauck</i>	20
The Ethics of "Fetal Implants"	<i>Lori Brannigan Kelly</i>	33
The Civil Rights Game	<i>Francis Canavan</i>	44
Caesar's Religion	<i>Gerard Bradley</i>	52
Aquinas and the Humanity of the Conceptus ...	<i>Stephen Heaney</i>	63
Abortion: The Physician's View	<i>Steven F. Seidman</i>	75
A New Era For Life	<i>Brian Harradine</i>	79
On Canada's "Pro-Choice" Problem	<i>Iain T. Benson</i>	91
Appendices		111

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INTRODUCTION

“**A**N ABORTION IS A KILLING. It’s indisputable that something is alive, growing, developing, even moving its limbs, until that life is violently ended. Proponents of legal abortion shrink from the word ‘kill,’ though an abortion kills an embryo or a fetus as surely as an antiseptic kills germs. But to use the word ‘kill’ is to acknowledge a kind of life that is hard to dismiss, a life separate from the mother’s and, because she *is* a mother, a life somehow like—and equivalent to—hers. If it’s a life, moreover, it’s *not* her life, for she survives it. So the act of abortion presupposes her ownership of—her right to dispose of—another life.”

There he goes again. Our old friend and colleague Joe Sobran has contributed some two score and ten finely-honed essays to this review on our “single issue” of abortion; if there is another writer who argues the case for the unborn more effectively—or more movingly—than Sobran, we’d love to meet him. The amazing thing is, Joe never fails to provide a fresh formulation of the fundamental issues involved, as he does yet again in our lead article, which takes you on an expertly-guided tour of the difference between owning and belonging (you *belong* to a family), and what horrors can happen when that vital difference is ignored. This is another example of Sobran at his best—which is what we find ourselves saying about *every* piece he has done for us. Long may he write!

And may he inspire the kind of competition in skillful argument that we get from John Wauck, our youngest regular contributor. Like Sobran, John’s viewpoint is refreshingly different, as he demonstrated in a previous issue (see “A Modesty Proposal” in our Fall, 1988, number). Here, he starts out with fabled *Frankenstein*, a book we all “know” but undoubtedly haven’t read as Wauck reads it—as a kind of parable on “modern science”—to ask the crucial question our scientific “advances” raise: *ought* we to do everything we *can* do? Few would quibble about the current reality: most “Scientists” do indeed claim the right to pursue any result that knowledge and technology

THE HUMAN LIFE REVIEW

make possible. But can we remain fully *human* without self-imposed limits? And do most of us realize just how many limits and barriers can be broken—how many once-unthinkable things are *already* being done? Or have we lost the capacity to recognize monstrosities of our own making? We modestly predict that you will find Wauck's article as fascinating as we do, and perhaps as scary as the famous Monster itself.

What better than a “real-life” story to illuminate the kind of dilemma Wauck describes? That's exactly what we next provide. Lori Brannigan Kelly is a young wife and mother who very much belongs (as Sobran would put it) to her family. As it happens, the father she dearly loves suffers from a fatal condition that might well be “treated” by the current rage in medical possibilities, “fetal-tissue implants.” But there is a problem: “For my father, moral rules are absolutes, not variables determined by personal values or current norms”—in short, he wouldn't *have* the treatment if he could get it—hardly the “norm” nowadays. As legalized abortion reminds us, hard cases make bad law. But they can also recall us to that higher law which holds that we must all die once, to live forever after. There *are* limits to what we ought to do.

Another current craze is the notion that our “civil rights” are autonomous, and infinitely expandable, if only we can get the American Civil Liberties Union on our case. True, that notion suffered a rude setback in last year's presidential campaign: one candidate had to spend much time explaining why a “card-carrying” (his *own* description) ACLU member was fit to lead the nation—the voters evidently were not impressed. Our veteran friend (and regular contributor) Francis Canavan provides, in his patented cool-prose manner, the reasons why the ACLU gospel is wilting under critical analysis. Once again, it's a question of limits: the ACLU simply *overdoes* it, which is of course the trademark of True Believers and their, well, ilk. (We note that *Professor* Canavan is now retired from teaching at Fordham, but will be teaching this year at Santa Clara University and, we hope, writing more pieces for us—we wish we could have him in every issue.)

Father Canavan provides just the right stage-setting for Prof. Gerard Bradley, who describes the assault on *civility* in our rights-obsessed society, in which unelected judges have replaced the representative government envisioned by The Founders with limitless *fiats* from the bench. Naturally, the abortion cases are a prime example, precisely because they focus the question: Can a “secular society”—one that rigorously proscribes *all* religion and even “natural law” wisdom from public consideration—survive? No doubt you will laugh heartily (as we did) when you read Prof. Bradley's concluding quote, from a Princeton professor concerned about where our new “reproductive

INTRODUCTION

technology” rights could lead us (we might wipe out some apes!). In fact he makes a chilling point: an utterly secular society, comprised of utterly “private persons,” must become an inhuman society—just what Messrs. Sobran and Wauck (not to mention Mrs. Kelly) are talking about.

Time was, of course, when philosophers thought it was their business to limn the “good” society. Surely nobody worked more diligently at that task than the great Aquinas, that marvel of disputation who donated to his opponents dazzling arguments that only he (or so it seemed in those glorious days when we first read him) could refute? Professor Stephen Heaney takes on the formidable task of wondering what St. Thomas would have said about the “personhood” of the unborn, had he known all that “modern science” tells us (which Aquinas certainly *didn’t* know). As we say, it’s amazing how the “single issue” of abortion penetrates to the core of virtually every moral question we confront. Certainly Mr. Heaney’s arguments—which evolve from a decidedly Roman Catholic perspective—should lay to rest the notion that abortion is merely a “Catholic issue”—a canard used effectively by pro-abortionists for so many years.

Dr. Steven Seidman is not a Catholic, but he now serves at a well-known New York City hospital which *is*—and where no abortions are performed—which suits the good doctor fine. He had his fill of that medical “procedure” while training as an obstetrical resident: “I saw abortions clearly under the glaring lights of an operating room. I did not like what I saw.” Indeed, he begins with a description of how a proper report on the “cause of death” would read: it gave *us* quite a jolt to read it; it may shock you as well.

Seidman also makes, bluntly, the point glossed over by all the euphemistic jargon (“termination of pregnancy” *et al.*) designed to mask the reality: “The object of the procedure is to kill the fetus”—and that objective is diligently, mercilessly pursued by the abortionist. Even though, perhaps just down the hall, other doctors and nurses may be giving “round-the-clock care” to a *wanted* fetus of the same age. So much for the Supreme Court’s “viability” standard, or New York’s “24 week” law which, as a practical matter, is meaningless. Abortion on demand is the reality.

Next Brian Harradine injects another dose of reality into the argument. We have never actually met the redoubtable Mr. Harradine, but we have been receiving his published anti-abortion speeches—he is a Member (from Tasmania) of the Australian Senate—for years. It is no surprise that his eloquence has made him an internationally-recognized spokesman for the defense of human life. So we are glad to reprint here major excerpts from his address to a “pro-life” conference held in Manila last year. He too provides grim evidence of the “new era of death” in which we live, for instance a new test for

THE HUMAN LIFE REVIEW

Hemophilia in the unborn that “could give hope” to mothers—not of a *cure*, just “timely” warning that she should abort the child—another exciting new “medical advance,” of course. Yet the Senator sees better times ahead, and even predicts that a “New Era for Life” has begun. Naturally, we hope he is as good a prophet as he is a fighter for his beliefs.

But things don’t seem to be moving in that direction to our north, where the Canadian Supreme Court has in effect struck down all laws against abortion on demand. True, as Mr. Iain Benson says, the action ends a situation “in which the law said one thing on paper but turned a blind eye to what occurred in practice.” It is now up to Parliament to pass a *new* law, and an acrimonious debate has already begun.

Mr. Benson hopes that the lawmakers will take this opportunity to re-think the whole abortion question, which he analyzes in impressive depth. Virtually everything he says applies as well to our own far-from-decided abortion debate, so we hope his arguments will receive a fair hearing down here. We fear it requires Senator Harradine’s stalwart optimism to believe that this will happen, but we are certainly happy to make Benson’s essay available to American readers—it is powerful stuff.

* * * * *

As usual, we give you several interesting appendices to round out what we trust is our impressive array of regular articles. *Appendix A* is another hard-hitting column by our friend Pat Buchanan (does he write any *other* kind?), commenting on a story that made national news: the “suicide” of a Florida woman who had terminal cancer. Her husband was brought to trial on murder charges—at Pat’s writing, the trial was still in progress—the case dramatically illustrates the truth about what the Abortion Holocaust has unleashed upon us. As you will note, we have the word of those who “assisted” in the death that it was for “love”—a defense that raises chilling questions about the whole notion of “mercy-killing”—Who is to decide what motives justify deliberate killing? How do you know what they really *were*? (The prosecutors contended that the husband hoped to profit financially by writing a book about the case!) In the event, he was acquitted shortly after (on Dec. 1 last), but the issues raised by the case remain all too much alive.

Appendix B is another gem that richly deserves to be included in our permanent record of the “Abortion Question”—Why *do* most women choose abortion? Ms. Katha Pollitt, described by the *New York Times* as “a poet and writer who lives in New York,” wipes away all the standard rhetoric about “hard cases” and “painful choice” to argue that, in fact, abortion is exactly what its opponents say it is, “a bloody, clumsy method of birth control.” She

INTRODUCTION

adds that nobody *she* knows—"not one of them"—regrets "her choice." Because sensible women simply "do what they need to do in order to lead reasonable lives," which nowadays includes killing their own babies. We can't remember having seen the truth put more bluntly—her description is as stark as Dr. Seidman's description of what actually *happens* when a pregnancy is "terminated."

Appendix C is, as it happens, what might be called a scholarly discussion (certainly by today's standards) of the "Feminist" roots of Ms. Pollitt's adamant manifesto. Regular readers will recognize Prof. Michael Levin as the author of the controversial book *Feminism and Freedom*, excerpts of which were published in our last (Fall, 1988) issue. Levin's own conclusion is that "the pith of the abortion debate actually raging today is the fetal right to life versus certain notions of sexual equality"—no doubt Ms. Pollitt would adamantly agree?

Appendix D is also a gem, albeit of a different philosophical order. As we note in introducing it, a longtime reader in Puerto Rico (Mr. Jorge Cordova) translated it from the Spanish, and sent it along in the hope that we would admire it as much as he did. We do, and trust that you will too. Surely it is a fitting conclusion to this issue, which begins our fifteenth year of wrestling with the "single issue" that will not die, despite all the killing. "Choose life," the Scripture tells us: it's good advice, we recommend it heartily.

J. P. McFADDEN
Editor

Owning and Belonging

Joseph Sobran

IDEALLY, AND IN PRINCIPLE, the rule of law protects the weak. By its nature law exists to prevent differences from being settled by immediate force.

The institution that best illustrates this is property. Simple physical possession can be had without the support of law, as long as your possessions don't interest an aggressor who is strong enough to take them from you. But law makes possession transcendent. It enables you to own things over an extended period even when you are far away from them. It can even enable you to bequeath them after you die.

Ownership is not a simple matter. You own your body, in some sense. You can own the house you live in. You can own abstract property, like stocks and bonds. You can own a song you write (or have bought from the composer). In some societies you can own other people. The paterfamilias of the classical world effectively owned every member (even by marriage) of his family, in that he had the legal power to put any of them to death.

Communism has tried to resolve the complexities and alleged inequities of ownership by abolishing private property. But this merely converts everything into state property. In reality, ownership is not done away with at all. Somebody has to have the social power of deciding how the objects of desire are to be disposed of, and under communism this power belongs to the highest state official who takes an interest in a given object.

In societies where the institution of private property was taken for granted, there have always been disputes as to the actual form of private property. Could perpetual entailments be attached to it? Was the oldest son to be the sole heir? Could the state regulate commerce? Was slavery to be permitted? Could interest be charged on loans? How long should a copyright last? Should the state limit the amount of land one man could acquire? Should there be a minimum wage? Could a merchant refuse to do business with a willing customer? Was prostitution

*Joseph Sobran, a Senior Editor of *National Review*, is a well-known commentator on political, social, and cultural affairs.*

permissible? Did the state have a power of eminent domain?

Your answers to such questions about property ultimately depend on your conception of human nature, though of course other considerations enter in. By the late nineteenth century most people strongly agreed that slavery was intrinsically wrong, because it offends human dignity to treat a man as another's property. But in the twentieth century, a man could be the slave of a state, even if his formal title was "comrade": an extreme of private ownership had been replaced by an arguably worse extreme of public ownership. (The mortality rate for "comrades" was far higher than the rate for plantation slaves.)

The long and bitter dispute over abortion revolves around the question of whether a woman owns a child growing within her. When she pays an abortionist to kill it, is she "controlling her own body," i.e. asserting the most elemental right of ownership? Is she having a sort of alien invader removed? Is she destroying another human being, perhaps one with an immortal soul?

An abortion is a killing. It's indisputable that something is alive, growing, developing, even moving its limbs, until that life is violently ended. Proponents of legal abortion shrink from the word "kill," though an abortion kills an embryo or a fetus as surely as an antiseptic kills germs. But to use the word "kill" is to acknowledge a kind of life that is hard to dismiss, a life separate from the mother's and, because she *is* a mother, a life somehow like—and equivalent to—hers. If it's a life, moreover, it's *not* her life, for she survives it. So the act of abortion presupposes her ownership of—her right to dispose of—another life.

But this is hard for the abortion advocate to admit, just as the communist state's ownership of the "comrades" is hard to admit. The ownership of one human being by another is thoroughly discredited. If it continues to exist in spite of our civilized sensibilities, the fact has to be verbally disguised.

How can we say that a woman's body is "her" body, while denying that a fetus's life is "its" life? To hold both these positions is at least logically and psychologically awkward. To be alive at all is to have a life of your own, a life that can be nobody else's. Nobody else can possibly live it, and nobody else can rightly take it.

Does a woman's "right to control her own body" mean that she could, for example, cut off her arm and sell it to a medical researcher?

THE HUMAN LIFE REVIEW

The question is silly. Nobody would do that to herself. And nobody would unhesitatingly answer yes to the question. Self-mutilation makes no sense, because an arm, severed and sold, could never “belong” to anyone else in the same way it belongs to her. There is no need to legislate against women cutting off their own limbs. But if, for some reason, there were such a need, society would not be bashful about doing it.

Everyone understands that abortion is not self-mutilation. It’s the destruction of someone else intimately connected to the self. A civilized person can only will it by deliberately abridging her own power of imagining the victim.

Your body is so profoundly “yours” that it would be odd to speak of it as property. We usually reserve the term for things it would be possible *not* to own. You “own” it so completely that you are forbidden to treat it as property. You may not buy and sell your own body parts, except blood, hair, and other replaceable items. To engage in prostitution is to make your own person an object of commerce, and where this is not forbidden by law it’s at least despised.

For similar reasons the abortionist is despised too. He is engaged in a morally loathsome trade, and gentility forces even abortion advocates to refrain from calling this indispensable figure an “abortionist.” He is usually referred to simply as a “doctor.” Better yet, he is not mentioned at all. In the last presidential campaign, Michael Dukakis spoke monotonously of “a woman exercising her own conscience and religious beliefs,” an image of odd abstraction in which neither killer nor killed appears, but only an isolated “woman” struggling to do what is right.

The reality of the situation is that a new property right has been created. Human life at its most dependent stage has been reduced to the property of the person it directly depends on, its mother. She may treat it as she would not be allowed to treat her limbs.

But the word “property” is also avoided. It would too clearly imply that what is being destroyed has a distinct identity, separate from, not just a part of, the woman. The fetus is diminished to the status of a mere object, but even its objective existence has to be clouded. The subjectivity of the woman—her “right to choose”—has to be made the sole focus of discussion. The slightest admission of other considerations instantly endangers the claim of absolute power to have the fetus killed.

“Choose” becomes an intransitive verb; what is being chosen isn’t specified.

In the body of decisions constituting the right to have a fetus killed, the Supreme Court has avoided speaking of property. Instead it has constructed, by artful generalization, a “right of privacy.” The word “privacy” nowhere appears in the text of the Constitution. The word “property” occurs several times; so do synonyms, along with closely related words such as “owner.”

The “right of privacy” had to be laboriously fashioned from “penumbras” and “emanations,” as the late Justice William O. Douglas called them, from rights explicitly mentioned. Douglas and his colleagues have suggested that the “right to privacy” is a sort of underlying principle of rights that are specified, as if the concept had been struggling to be born in the minds of the Framers but had to await their more articulate successors in order to be delivered.

But the Framers weren’t exactly men who had to grope for words and ideas. They were fully acquainted with the concept of privacy, and as a value it is certainly felt in the Constitution. As a *value*—not as a *right*. Like freedom and justice, privacy can be a governing principle. But it is almost nonsense to speak of it as a “right,” at least in a legal sense. “The right to freedom shall not be infringed:” how could such a provision possibly be applied to the real world? Substitute “privacy” for “freedom” and you face the same problem. As law, it’s so general as to be useless. The Framers avoided stipulating a “right of privacy” not because they were less intelligent than the modern Court, but because they had more sense.

The right to own property is more concrete than the right of privacy, which is particularly hard to define. But the Framers, who were highly partial to property rights, also avoided anything as general as a provision that “the rights of property shall not be infringed.” Instead they said that soldiers may not be quartered in private houses “without the consent of the owner”; that the people should not be subjected to “unreasonable searches and seizures”; that nobody should be “deprived of life, liberty, or property, without due process of law”; that private property may not be taken for public use “without just compensation.” This is all abstract enough to cover many cases, but specific enough to be clear in its application, while leaving room for judgment. It would not be an improvement on it to say, “Aha! What they were *trying* to

express was *property rights*! Let's have no limits on *property rights*! *Property rights* is what it all means. We know a penumbra when we see one!"

But this is more or less how the Court derived "the right of privacy" from scattered passages. If anything, its reasoning was even sloppier, since privacy is even vaguer than property. It deduced a general right—arbitrarily, since other general rights could have been deduced from the same text—from certain specifics, then deduced another specific—the right to abortion—from the generality. "Let's see . . . no soldiers quartered in private houses, no unreasonable searches and seizures, freedom of religion . . . Aha! *Privacy* rights is what they meant to say. That would cover abortion, too!"

Reading the Court's opinions in such cases, I am reminded of Samuel Johnson's observation about a mediocre poet: "A man might write such stuff forever, if he would *abandon* his mind to it." This kind of reasoning can eventually produce any "right" it wants, depending on what level of free-floating abstraction it chooses to ascend to. The notable fact is that the Court has chosen to pass by a general "right to property," even though the Framers do speak clearly of property, and to assert instead an even more general "right of privacy," even though the Framers say not a word about privacy as such. But the Court's "privacy," unlimited for some purposes, doesn't include private property.

The Court's choosiness is remarkable. Liberals often praise the Court for "expanding our constitutional protections," but it has chosen *not* to expand certain protections: not only property rights, but the right to bear arms, which might with equal justification be invoked to strike down gun control laws. The principle of choice that guides the Court is not to be found in the text of the Constitution but in the contemporary liberal agenda. This agenda mandates a general "sexual freedom" and abortion rights in particular, and "privacy," as the Bork confirmation hearings demonstrated, is pretty much a code-word for these things.

Justice Harry Blackmun has rather ingenuously admitted as much. He has boasted that *Roe v. Wade* is "the most liberal decision the Court has made in many years," and during the 1988 election campaign he fretted publicly that a Bush victory might result in a Court that would undo much that he regards as progressive in the Court's recent legacy. The Court is reputed to follow the election returns, but

this is the first time it has tried to influence them.

The Supreme Court has been increasingly “activist” for more than a century. Its activism falls into two general stages. At first it acted aggressively in favor of property rights; it struck down as unconstitutional many state laws that attempted humane reforms of capitalism (e.g. laws limiting the number of hours laborers could be required to work). Since the New Deal, it has reversed itself, letting stand almost all legislation that curbs property rights while striking down laws upholding traditional community morality; that is, it has followed the broad contours of liberalism and socialism.

The drift can be summed up this way: the modern state weakens our duties to our families, while imposing new duties to our fellow citizens. In practice this means simply that we have new obligations to the state itself, and fewer and fewer duties to the social communities we actually live in. The basic instrumentality of the change is increased taxes designed not to pay for our own share of the benefits all of us receive from a limited government, but to redistribute wealth and create a collectivist order. It amounts to a rough trade-off of economic freedom for sexual freedom.

If this sounds like an approximately even exchange, with no net loss in personal liberty, it should be remembered that the same trade-off was made long ago in Soviet Russia. Private property was abolished, but the comrades received easy divorce, free love, and abortion on demand. Certain pleasures of the moment were allowed, but the possibility of building a life for one’s family through patient work, thrift, and accumulation was utterly destroyed. The numbers who perished in purges and labor camps are estimated in the tens of millions; but the numbers of other victims of socialism—those who drank themselves to death in quiet frustration, for example—are beyond tabulation. Enlightened Western opinion doesn’t even recognize such ordinary people, for whom common ambitions of self-improvement have been made impossible, as victims. They are perhaps not very different from the people in our slums, whose incentives to live productively with long-term purpose have been overwhelmed by the temptations of welfare, sexual promiscuity, alcohol, and drugs. On both sides of the world, abortion is offered as the easy way out of even worse misery. It also relieves the state’s burden.

The modern state is a concerted attack on private property, which is

the material basis of family life. Without the assurance of personal ownership, it is futile to plan for the future. This is not at all to sentimentalize family life: it produces plenty of strains of its own (cf. Sophocles and Shakespeare, *passim*) without additional pressure from the state. It needs all the support it can get. And these days it isn't getting much. Liberals regard it as a bastion of privilege, feminists condemn it as "patriarchal," gay activists attack it as an arbitrary model, and swingers dismiss it as *passe*. Only Catholic priests, as Mort Sahl observes, seem to want to get married.

The liberals, at least, have a point. The family *is* a bastion of privilege. That's what it's supposed to be: a "new society," to borrow a good old socialist phrase, whose members are not all equal, but all special. Families are created for the purpose of having children and giving them things, even things children in other families may not be lucky enough to receive. If all parents did their best, all children would be blessed, though in widely differing ways. Comparing benefits is irrelevant and invidious. To limit the generosity of parents in the interest of a crudely measured equality would be to frustrate people's best energies. That generosity deserves the fullest freedom.

Parents can be possessive and demanding, but no parent in his right mind regards his children as his property, to do with what he likes. The normal love of parents for children is neither selfish nor altruistic. It only appears selfish to those who expect people to love "mankind" (typically represented, in their minds, by the state) with a sort of undifferentiated benevolence. But to have a child is also to experience a deep change in the individual self. The new parent feels related to the world in an entirely new way that he could never have imagined before, even in his hopeful anticipation of the child's birth. He sees another person who is both someone else and part of himself. At the peak of emotion, even the simple pronoun "we" has a warm concreteness it never had when it referred to, say, the bowling team. The idea of sharing and sacrifice becomes a joy. No selfish pleasure begins to compare with the rapture of belonging to this "we."

Of course this is only the peak of emotion, and it can wear off fast. But to feel it once (and it does come back often, for most parents) is to be permanently changed. And it isn't only an emotion, but also a recognition: that the individual self of adolescence is not the only real self, let alone the ideal self.

To avoid any suspicion of sentimentalism, I admit the worst. This love can give way to selfishness again. It can even turn incredibly bitter in the sense of disappointment or betrayal. Family life can give us our deepest wounds as well as our richest satisfactions. Parents and children can both turn into monsters in more ways than Dostoyevsky could shake a stick at.

All the same, parental love is one of the most basic human motives. More than any other experience, it gives the sense of belonging without any sense of owning or being owned. Belonging to a family and belonging to a slaveowner are not analogous but opposite sensations. But this common human experience is all but incommunicable to anyone who has never felt it. I repeat, neither “selfish” nor “altruistic” captures it. Nor is it something intermediate. Caring for your own child is neither self-indulgence nor charity.

Unfortunately, all our social and political discussion seems unable to take account of this. The way we talk about social problems and social order seems to be based on an incomplete conception of the individual that most nearly resembles the adolescent self. It imagines children only as the burdens they would be to an adolescent, or as consumer goods, desirable only insofar as they give pleasure to the parent.

One mark of the immature parent is the inability to think of the child as destined to be an adult. And this is the most typical error of parents: to think of childhood as the child’s essence, rather than as the stage of the moment. Even very good parents may find it hard to let go and allow the child to become what he is destined to be, which unhappily may include an adolescent phase.

In the same way, abortion advocates think of the “fetus” as if it had no *telos* of its own but were destined to perpetual fetushood. Its only potentialities are ominous for the mother’s interests. Woman in her role as mother—the very crux of all human society—is imagined, and empathized with, only as a self-centered adolescent, for whom pregnancy is an unmitigated misfortune and an unbearable responsibility.

On this view, the child is either a possession or, worse, a competitor with the parent whose demands for satisfaction impede the parent’s pursuit of his own satisfactions. It’s fundamentally a Hobbesian conception of procreation, in which, when you come right down to it, parent and child are at war by nature (though the war has something of the tone of sibling rivalry), and their rights are irreconcilable because they

are reducible to raw desire. The only reconciliation available is to make the child the parent's property. What abortion advocates call "balancing the rights of the mother and the fetus" has no balance at all: they mean giving absolute sovereignty to the mother's desires. There is no qualitative or moral difference, for them, between choosing to bear the child and choosing to have it killed. "Choice" itself is the thing.

The most ardent apostle of property rights in recent memory was the philosopher-novelist Ayn Rand, who also happened to be a fanatical advocate of abortion. For her these two positions were one: she proclaimed "the virtue of selfishness," and the hero of her popular novel *The Fountainhead*, the architect Howard Roark, announces in a famous scene that he owes not a single minute of his life to any other human being. Miss Rand's libertarianism opposed not only the collectivist state but society itself, "society" for her being a mischievous abstraction that in reality could justifiably mean nothing but an aggregate of free individuals. You might say that for her, the only purpose of government is to preserve anarchy.

In more prosaic terms, Miss Rand recognizes no *tertium quid* apart from individual and state. None of the heroes and heroines of her three long novels—*The Fountainhead*, *We The Living*, and *Atlas Shrugged*—has children or even thinks of having them. Her characters experience wildly passionate erotic love, with strong elements of generosity, worship, and sacrifice (all of which she and they insist is purely "selfish"), but parental love, never. Their own parents, when they even exist, appear the way parents do appear to teenagers, well-meaning but uncomprehending, mostly weak but potentially tyrannical. None of Miss Rand's characters feels any *debt* to his parents, or even interest in what they have to say (and Miss Rand gives them nothing interesting to say). She can't even imagine a serious conversation between generations. Naturally, these essentially parentless heroes have no interest in children of their own. Even when they fall in love as they always do, they don't yearn to merge with the beloved in procreation.

If Miss Rand were merely writing romantic novels, this might not be a serious criticism. But she is writing philosophical novels that purport to present the essence of human life, and she has countless admirers who subscribe to her views as the truth, not only about politics but about man himself. Yet her panorama omits without discussion or

explanation a whole dimension of man so profoundly intrinsic that her characters, in failing even to confront it, are hardly men at all: they are more like mythic beings, mysteriously self-created. We are also left to wonder why such creatures should be divided into two genders.

Randian man, being self-complete, never needs an Other. "Need" is a dirty word for Miss Rand. For her heroes, falling in love is never a gradual process, followed by deepening intimacy, discovery, and self-discovery. It is always instantaneous recognition of a heroic equal, love at first sight (in *The Fountainhead*, quickly followed by ecstatic rape) that never leads to a vow. The lovers maintain their freedom, as if belonging to each other would mean being owned. So far as their love continues, it continues by sheer free choice, uncomplicated by the least trace of obligation. Inevitably, her physical descriptions of her heroic men liken them to the gods of Classical statuary.

Miss Rand's outlook has a powerful emotional appeal, especially to young people at the late phase of youth when they are discovering their independent powers of achievement and don't feel ready for family ties, having recently escaped them. It's a phase when the sense of one's own contingency is at its weakest. Intelligence (though more clever than wise) peaks, sexual energy meets opportunity, income rises sharply, and every day happy new possibilities present themselves. Good health, of course, is taken for granted; mortality is strictly a concern of old people. Responsibility means the mildly unhappy memory of taking orders from parents and teachers, from whom one is blessedly liberated. Love is all charm and no patience. It's when you experience the world this way that you are ripe for Ayn Rand.

Miss Rand herself was a refugee from Bolshevik Russia, and her clanging prose has the tone of a prolonged anti-Bolshevik polemic. Liberals who still retain traces of sympathy for the socialist project (while deploring its "excesses") often accuse her of having fallen into pure reaction against her own unhappy experience, compulsively contradicting communism at every point. But this criticism is inadequate. Other refugees have reacted just as strongly, but in different forms. Some are devoutly religious, for example, and object to communism because of its atheism and persecution of religion. But Miss Rand herself was an atheist, and religious persecution is one feature of communism she never complains about (though she clearly believed it was wrong in principle). In fact she sees communism as an extension of

“mysticism”—her term for religion, especially Christianity—in its morality of “altruism,” or living for others.

Like many progressive-minded Christians, in fact, Miss Rand associated Christianity with socialism, except that unlike them, she rejected both. She committed the same elementary fallacy of confusing the ideal of an individual *renunciation* of wealth with a state program of *expropriating* wealth. “Give all that thou hast to the poor” is a Christian counsel; “Give all that thy neighbor hath to the poor” is not. “Some call it socialism,” Senator Kennedy said recently; “I call it the Sermon on the Mount.” Miss Rand would agree, from a different perspective.

Miss Rand has something else in common with communism. It’s something deeper than agreement over a proposition; it is a shared blindness—stark, insensate unawareness—of realities that constitute most mature people’s inner lives. She has absolutely no conception of what it means to belong to an intimate “we.” For her, “we” is the pronoun of collectivism; the hero of her novelette *Anthem* lives in a collectivist society and has to *coin* the first-person singular “I.” It’s mildly surprising that she didn’t title *We the Living* something else: maybe *You and I, the Living*. Kira, the heroine of that novel, rebels against her parents (benign though they are) before she rebels against the state. Childhood is a version of slavery; what self-respecting adult, then, would want to be a parent? That would mean belonging to others, and having them belong to you; and either is intolerable.

So even sexual intercourse has to be separated from belonging. Free love was one part of the Bolshevik program Miss Rand brought with her to America. She herself was married, but she was openly unfaithful to her husband. Her biographer Barbara Branden relates that when Miss Rand began an affair with *her* husband, Nathaniel Branden, she ceremoniously announced the fact to both spouses together. The affair ended in a sort of volcanic farce when Miss Rand discovered Branden’s affair with yet a third woman, a fact poor Mrs. Branden had tried to help conceal from the hot-tempered philosopher.

In her truly spectacular naivete about human nature, Miss Rand could expect fidelity of a lover much younger than herself who happened to be married to another woman in the first place, even as her own husband tolerated *her* adultery. At times her unique moral code is hard to decipher. Eventually, I suppose we have to write it off to

eccentricity—the oddness of a strangely brilliant woman who lacked normal human connections. It’s probably not incidental that she had no children, though one doesn’t quite know what to make of this.

Be that as it may, Miss Rand’s novels make it clear that socialism is no guarantor of unselfishness. *We the Living* is set in the world she left in 1925, the pre-Stalin Soviet Union, and it shows vividly that the conditions of tyranny, terror, shortage, and scapegoating that were subsequently blamed on Stalin were already everyday facts of life during the golden age of Lenin. The story takes for granted the ubiquity of the secret police. Most of the characters are grovelling toadies and base traitors, the worst side of their natures brought forth by the nature of communism. The system is both all-powerful and utterly lawless, and what little wealth exists is up for grabs by anyone who knows how to work the system. Any true sense of belonging is absent: the “we” of the proletariat is totally superficial and false, a violation of everyone’s inner life. Hypocritical “class consciousness” is mandatory. Those who refuse to be hypocrites perish.

The atmosphere of constant dread is created with real power, and largely because Miss Rand brings home to the reader that the most common peril, in this world without property rights, is not arbitrary arrest but sudden confiscation. The state can dispossess you at any moment—of savings, job, living quarters. No amount of effort can give security against this; you have to stay on the right side of the right people, and the competition for favor is as intense as it is debasing. Everything is up for grabs, but some people are especially well situated to do the grabbing.

But the story contradicts Miss Rand’s philosophy. If most of the characters are base, it’s because they are shamelessly selfish. Kira rises above them by sacrificing for love. Some might call this altruism.

Miss Rand’s own life contradicted her philosophy in another way. She thought that love itself could remain up for grabs, even after marriage—an institution that makes no sense anyway, from her point of view. The individual of her imagination is forever flying solo; there can never be the security of permanent belonging to a very few intimate others, because that would be too much like ownership. After all, nobody can owe anyone else a single minute of his life. Finally she met the man she deserved: a sexual Howard Roark.

THE HUMAN LIFE REVIEW

A libertarian world is a world of fungible persons. By putting sex on the level of the free market, in a key respect it resembles communism, in which no aspect of the person is sanctified and no relation is holy. The family is the institution in which people try to make themselves inalienably each other's. This doesn't reduce them to each other's property. On the contrary. It elevates belonging to a level that mere property can never reach.

The Great-grandson of Frankenstein

John Wauck

Learn from me, if not by my precepts, at least by my example, how dangerous is the acquirement of knowledge and how much happier that man is who believes his native town to be the world, than he who aspires to become greater than his nature will allow.

—Dr. Victor Frankenstein

WHY IS MARY SHELLEY'S *Frankenstein* a horror story, and not a harmless science fiction *a la* Jules Verne—ahead of its time, far-fetched perhaps, but essentially benign?

More precisely, what was horrible about the work of Dr. Frankenstein? He was not a wicked man, but rather a brilliant and high-minded scientist making a phenomenal scientific breakthrough. As the good doctor himself put it: "My imagination was vivid, yet my powers of analysis and application were intense; by the union of these qualities I conceived the idea and executed the creation of a man." And what's wrong with that? He had no intention of making a "monster." No, he had the best intentions for his creature: "His limbs were in proportion, and I had selected his features as beautiful." The possible benefits of his research were vast and unquestionable.

Dr. Frankenstein's methods were quite similar to modern biotechnical procedures. You wouldn't know it from the movies, but he got much of his "raw materials" and expertise from dissecting rooms and experiments conducted upon animals. In the original tale, there is no Igor, no gloomy castle, no lightning flash to galvanize the creature, no gruesome bolt in the creature's neck. Dr. Frankenstein works within the sheltered walls of academia, in his university lodgings. Anything but a "mad scientist," he is what we now call an academic researcher.

You may imagine that the real horror in the story is the sheer ugliness of the creature, or Dr. Frankenstein's handling of dead bodies. The many *Frankenstein* films certainly dwell on grotesquerie. But decent modern biologists also experiment upon dead bodies, in the name of

John Wauck, our Contributing Editor, is a young critic with an unusual viewpoint (see, e.g., his "A Modesty Proposal" in our Fall, 1988, issue).

science. True, Dr. Frankenstein did not have permission to do what he did, but the modern reader is not revolted simply because the corpses involved hadn't been freely "dedicated to science." In our own day, aborted babies do not dedicate their bodies to science, yet their corpses have been used in tissue transplants and cosmetics.

Despite his good intentions, things didn't turn out as Dr. Frankenstein had planned. But the havoc eventually wreaked by his creature was not the source of the horror. As soon as his creature opened its eyes, he realized that he had done something dreadful. Results and benefits aside, in his own eyes, and in those of Mary Shelley (not to mention the yellowish eyes of his monstrous creature), there was something horrifyingly wrong with his entire project: "Frightful must it be," wrote Shelley in her introduction, "for supremely frightful would be the effect of any human endeavour to mock the stupendous mechanism of the Creator of the world." Dr. Frankenstein had, by his own admission, overstepped the bounds of his nature.

It would seem that *Frankenstein* finally has the audience it deserves. I don't mean that today's bio-technicians will produce another Frankenstein monster, or that they are involved in exactly the same sort of experiments. But Shelley's book is about the limits of science, and though we instinctively applaud the limits that Dr. Frankenstein perceives in hindsight, we neither accept his account of where those limits come from, nor know of any other account to replace his.

Although Frankenstein's story still horrifies, twentieth-century men are not so sure that there exists a Creator to mock. Nor do we really believe that knowledge is dangerous (only bad men are dangerous), or that there are limits upon man's nature, beyond which it is "wrong," much less *blasphemous*, to aspire. Despite our misgivings, we have no reasons to condemn Dr. Frankenstein's project. This is our dilemma. *Frankenstein* reminds us that the issue is not a new one.

Because public concern over bio-technology is recent, Shelley appears remarkably prescient (she was only 19 when her novel was published in 1818), but in fact the dream of remaking man through medicine has been a central feature of modernity from the beginning. The spirit of bio-technology hovered over the waters, as it were, at the dawn of modern consciousness. Because modernity is characterized by skepticism toward not only the precise identity but also the very exist-

ence of transcendental goods, modern man's aspirations are directed toward material goods, of which physical life is the most obvious.

Doubtful of the higher targets, we lowered our sights. In the absence of any *summum bonum*, we at least identified death as our *summum malum*. Thus Descartes declares the "preservation of health" to be our "chief blessing . . . in this life," and, among the many drawbacks which Thomas Hobbes perceives in man's natural state, the worst is the "continued fear and danger of violent death." Rational self-preservation is the only "natural law" that Hobbes and modern man can recognize. Central to this self-preservation is what Francis Bacon termed "the conquest of nature for the relief of man's estate."

The modern consciousness (created not by Yahweh's "Let there be light," but by the *cogito ergo sum* of Descartes, by whose light we've been seeing ever since) locates the essence of man in self-conscious rationality. It casts into doubt the rightful position of the body within human nature. Somehow extraneous to the essential, rational man, the body is now very nearly part of that Baconian nature to be conquered. The willingness to scientifically manipulate the bodily nature of man, in order to preserve life at all costs or to relieve man's sometimes painful "estate," is fundamental to modern bio-technology.

The ideal of remaking man through bio-medical means was no mere theoretical disposition among the fathers of the modern sensibility. Both Francis Bacon and Rene Descartes conducted extensive biological experiments, and expected medicine to reveal the secret to immortality. Descartes set the modern agenda when he concluded: "If it is possible to find a means of rendering men wiser and cleverer than they have hitherto been, I believe that it is in medicine that it must be sought."

Today we have the technology to fulfill much of Descartes' dream. Unfortunately, the technology has been delivered while we are undergoing something of an identity crisis, for modern man is uncertain of who he is in three important ways: as a *living* creature; as a member of a species with a particular nature; as a unique person.

It may sound extreme to say we do not know what it means to be alive, but I believe this is the case. It is often remarked that Descartes understood the body as a machine manipulated by a conscious spiritual soul. What is less frequently noted is that machines, as we ordinarily think of them, are not alive. It is the soul then that truly lives, while the body is in some sense not alive: the animate soul manipulates the essen-

tially inanimate body. To one degree or another, we all live with this mind/body dichotomy. It is easy enough to look upon a skeleton as the inanimate struts of a human machine (after all, we can replace bones with plastic prostheses). Consider too that when we say a phenomenon has a “natural” explanation, we usually mean an explanation that involves no “supernatural” spirits—souls presumably included. But if only the soul is truly alive, then life itself must not be “natural.”

The fact that complex chemical reactions occur, parts move, and energy is transferred within the human body does not, of itself, make the body alive. The same could be said of many natural phenomena—a thunder cloud, for instance. But thunderclouds are not alive. Crystals, which are, by all accounts, inanimate, grow and replicate themselves. Though they seem to move on their own, electrons do not “live.” Nor do protons and neutrons. And yet, men are made of these things. At what point then does a collection of inanimate protons, neutrons, and electrons become a living thing?

If the phenomena of life are explicable in terms of physio-chemical systems, why speak of “life” at all? Perhaps there is something to the old animist view that everything in nature is alive. After all, if a live dog is just a complicated sort of dead thing, it would be just as true to say that the thundercloud is a simpler sort of live thing; that protons and electrons are among the simplest living things. If everything is dead, it is equally true to say that all is alive.

At this point, someone will surely object that I cannot explain *all* of life’s phenomena in physio-chemical terms. That’s true, I can’t—though there are some scientists who claim they could. I cannot, for example, explain in strictly material terms why I am typing this article. But I can come uncomfortably close: when I type, the bones in my fingers move; the bones are moved by the movement of the muscles attached to them; the muscles, in turn, are moved by chemical reactions stimulated by an electrical impulse from my brain, caused by . . . well, here I run into the problem of free human decisions—the realm, if you like, of the soul.

But the troubling thought remains: even granting the soul’s role in decision-making, what exactly has the soul done? Somehow it triggers an electrical impulse. It starts the ball rolling. But the ball, onced rolled, follows its own properties, over which the decision-making soul has no say whatsoever. From that point on, the act of typing is chemistry and physics. Which brings us back to Descartes’ soul pushing around a

cadaverous machine. And how is the soul's eventual effect upon the bone in my finger (at the end of this chain reaction) fundamentally different from the next step in the chain, the soul's effect upon the typewriter key, which is—by most standards—neither alive nor part of the soul's "own" body?

Thomas Hobbes likewise conflated the notions of life and machine:

For seeing life is but a motion of limbs, the beginning of which is in some principle part within; may we not say, that all *automata* . . . have an artificial life? For what is the heart, but a spring; and the nerves, but so many strings, and the joints but so many wheels, giving motion to the whole body, such as was intended by the artificer?

What's more, scientists can now freeze embryos and other living cells to be thawed back to life later. Of these frozen cells, a Swiss neurologist recently confided to me: "Of course, they aren't living—but they're not dead either." This new science of cryogenics has created a class of beings somewhere between the living and the dead.

Because inanimate nature is well-accepted fodder for technology, the blurring of the distinction between what is alive and what is dead, and thus between the human body and inanimate nature, has two paradoxical effects: the parts of nature that were "off-limits" for technology (human beings with rights) are drawn closer to the laboratory; at the same time, the traditional objects of technology are offered rights once reserved for humans. Animals and plants are now given rights; conversely, human beings are deprived of rights, starting predictably with the most vegetative: the fetal and the senile. Naturally, it is difficult for us to define the beginning and end of life—we don't know what life is.

We are also unsure of our identity as *homo sapiens*. Dr. Frankenstein's notion that there are limits upon human nature, NO TRESPASSING areas into which we ought not venture, is not popular in the scientific world. The well-known psychologist B. F. Skinner has written: "A scientific view of man offers exciting possibilities. We have not yet seen what man can make of man." This is undoubtedly true: for example, it should soon be possible, with the judicious addition of a firefly gene, to create humans with eyes that glow in the dark. Some philosophers maintain that the "nature" of man is precisely his ability to fashion himself as he wills, which is, of course, another way of saying that man has *no* nature. Presumably, such a man would also be free to turn himself into a creature incapable of determining his own nature.

THE HUMAN LIFE REVIEW

The question facing us is not the familiar chestnut: What is man? Instead we ask: What do we want him to be? Not only do we not know the nature of man, but—what is truly revolutionary—we are no longer interested in knowing it. We want to know what we desire, for it is not our nature but our desires that will determine the new shape of man. The ability to genetically manipulate the nature of man has pushed the old question off the table.

Lastly, because of our Cartesian dichotomy between mind and body, we are unsure of who we are as individual persons. We do not know where personal identity resides, in the body or in the soul. I used to hear homosexuals claim that they were “women” trapped in male bodies, as if it were possible to have a sexual identity independent of the body. It is more common now, especially among feminists, to claim that the person as such has *no* sexual identity; thus the modern person is a sexless wraith attached by fate to a sexually-equipped machine. First of all, you are a person; then you are a man or a woman.

As the modern body/appendage derives all its rights from this ill-defined, abstract “person,” a person can do what he likes with his “own” body. Nevertheless, there remains an instinctive reverence for the human body as such, one of those atavistic instincts of human nature that Dr. Frankenstein successfully overcame in his effort to make a man. As he related afterwards, to his shame:

. . . often did my human nature turn with loathing from my occupation . . . I collected bones from charnel-houses and disturbed, *with profane fingers* [my italics], the tremendous secrets of the human frame. . . . a churchyard was to me merely the receptacle of bodies deprived of life, which, from being the seat of beauty and strength, had become food for the worm.

To his credit, Dr. Frankenstein was obliged to fight against his better instincts. I am not sure that we, who do not hesitate to probe the “tremendous secrets of the human frame,” have many better instincts left to fight. Today, the notion of a scientific profanation is inconceivable. Among a team of scientists in clean lab coats, with stainless steel instruments, in a sterilized operating theatre, “profane” has no meaning.

But we define ourselves not only as embodied individuals but also by our relationships with other people. Here, the technology of cloning and *in vitro* fertilization raise more identity crises. Who is my clone, and what is his relationship with me—that is, if he isn’t me? Defined genetically, he is just more of me. But if my wife conceives a child *in*

vitro, doesn't it make any difference for the identity of the child if the sperm is mine or my clone's, even though the child may get the same genetic package either way? It may one day be possible for a child to be conceived from one woman's egg, carried in a second's womb, and raised by a third. If we perfect the techniques of embryo freezing currently used for other mammals, the child could be delivered, after some years in the fridge, by the first woman's daughter, who would thus give birth to her sister! If this is more than an unusual form of adoption, we shall need new names to describe our identities: mom-sister, brother-nephew, etc.

Francis Canavan has observed that "plastics" is the operative word in cutting-edge anthropology. As the exact meaning of life, humanity, and personal identity becomes hazy, we are entering the age of the plastic man, infinitely malleable in terms of what and who he is. Man has often been characterized by the malleability of his soul. In his *Oration on the Dignity of Man*, the Renaissance humanist Pico della Mirandola has God say to man:

The nature of all other creatures is defined and restricted within laws which We have laid down; you, by contrast, impeded by no such restrictions, may, by your own free will, to whose custody We have assigned you, trace for yourself the lineaments of your own nature. . . . as the free and proud shaper of your own being, fashion yourself in the form you may prefer.

Pico was speaking of the spiritual nature of man, who, alone among creatures, is capable of acting contrary to God's intentions. Now, however, we can make the body imitate the soul: a new beastly body can serve the bestial soul that wants to revel in its appetites and lusts. In this phenomenon, Russell Kirk sees "the oratorical aspirations of the humanists transformed into the technological aspirations of the modern sensual man."

As technology subordinates chance to human desire, in a world where any wish can be fulfilled, we will get whatever we want, but we will also get *only* what we want; there will be no nasty shocks—but no pleasant surprises either. It is time to face the possibility that the best things in life might be those which, if left to our own devices, we would lack the imagination or the virtue to desire. After all, in most men, the imagination is a pretty paltry business—occupied with trivialities at best. We are quite likely to run out of ideas.

What's more, it is not clear that it is good for man to get whatever he

wants. Common sense rejoices in the limitations that chance and nature place on the knowledge, energy and power of men. Such limitations can be a blessing when we are motivated by baser instincts. In a world where we get what we want, nobility will not get any easier, and we will not be protected from our own baseness. Viewing the matter from a Christian perspective, C.S. Lewis wrote that modern know-how, and bio-technology in particular, provides “a real chance for fallen Man to shake off that limitation of his powers which mercy had imposed on him as a protection from the full results of his fall.”

As technology brings Francis Bacon’s ideal of a “conquest of nature for the relief of man’s estate” closer to fruition, something curious is revealed: while our “estate” is becoming more comfortable and controllable, men are not correspondingly happier. Forced to account for this persistent dissatisfaction, an obvious answer springs to mind: it is dissatisfying to be a man; the problem is not with man’s “estate,” but rather with the state of being a man. One “relief” in such a situation is to stop being a man—a troubled creature with a spirit and a body all tangled together. Suicide has always been an option for those dissatisfied with man’s estate, but now you can kill your humanity without ceasing to exist completely. For a long time, we’ve been able to do this temporarily with drugs. But now, with better drugs and perhaps through genetic manipulation, we can provide permanent relief by changing *man’s* estate into the estate of some other creature—some version of that placid new species: *homo plasticus*.

Once medicine becomes the satisfaction of desire by biotechnological means, it has no natural boundaries. Without a natural norm toward which to aspire, medicine becomes an infinite therapy, not in pursuit of health but in an endless pursuit of total happiness, the satisfaction of desire. And the only final end to human desire is to cease being a man.

Expanding the horizons of humanity has serious consequences, for if man does not have to be any particular way, why does he have to be a creature with rights? How can anything be *naturally* due to a natureless creature? Influenced by the political theories of Hobbes and Locke, we have depended for our rights on a combination of two motives: fear and convenience. We fear violent death and anarchy, and we appreciate the convenience of an orderly society based on mutual consent

and contracts. We recognize that it is advantageous to uphold the rights of the weak, lest one day we find ourselves weak and in need of rights which we cannot enforce by ourselves. But what will happen when the strong and technocratic have nothing to fear, when they consider the rights of equal justice inconvenient, and they are willing to risk the small possibility that the tables will one day be turned? About this world where man wields ultimate powers over nature and chance, the late George Parkin Grant asks the pertinent questions:

Once we have recognized "history" as the imposing of our wills on an accidental world, does not "justice" take on a new context? . . . As we move into a society where we will be able to shape not only non-human nature but humanity itself, why should we limit that shaping by doctrines of equal rights which come out of a world view that "history" has swept away? . . . Does not the production of quality of life require a legal system which gives new range to the rights of the creative and the dynamic? Why should that range be limited by the rights of the weak, the uncreative and the immature?

The wielding of such power will not represent a new era of freedom; rather it will be, in a certain sense, the end of history. "The real picture," wrote C.S. Lewis, "is that of one dominant age . . . which resists all previous ages most successfully and dominates all subsequent ages most irresistibly, and thus is the real master of the human species." Will we respect "equal rights" when the majority decides the greatest happiness for the greatest number requires, for instance, that we sterilize or abort the carriers of certain genetic diseases (everyone carries several lethal but recessive diseases), or that we terminate the life of all persons over a certain age? And who will decide which diseases and what age? In our own day, Christian Scientists have been brought to trial for denying their children "standard" medical treatment which they believe to be immoral. If genetic "therapy" ever becomes standard practice, will it be a crime to have a "defective" child?

Of course, it would be possible for a "master generation" to create an entirely new species within the genus *homo*, a thought that had once appealed to Dr. Frankenstein: "A new species would bless me as its creator and source," he said. "Many happy and excellent natures would owe their being to me." On April 16, 1987, the U.S. Patent and Trademark Office decided that genetically-engineered animals could be patented. Some advocates of patent rights for animals claim that, since men have always owned animals, this was nothing new. But they miss the point: we are no longer talking about owning this or that animal,

but about having rights over a *kind* of animal simply because it exists as that kind of animal. There is a difference between owning red things and owning the color red. Moreover, because only large corporations or the state have the technology and capital to create new animals, and because the new animals will presumably be improvements over the ones we've got, they will probably replace nature's standard models. Thus, it is quite possible that Genentech, Inc. could have a monopoly control of, for instance, a nation's livestock. Will a company, or state, or perhaps the individual "inventor," be liable for any damages their species causes?

The patenting of animals is part of a slide toward ownership of human beings. Of course, the final step will not be taken precipitously. Perhaps a scientist will first invent some being that is *almost* human, a variation on humanity that can be owned. But from there it will be a small step to the ownership of genetically-modified humans, especially since our society is not sure what defines humanity to begin with (which genes are essential, and which are not?).

The current talk about the "right to children," used to justify *in vitro* fertilization, with its suggestion that children exist and can be genetically shaped to satisfy their parents, is also part of the slide toward ownership. Although it is not our custom, it is unclear why it *couldn't* be the custom that a husband and wife, who own their own bodies and provide both the raw material and the labor to assemble a new human being, should own the "product" to which they claim to have a right. Is there something missing from this equation that would *require* human beings to be free? Must we drag God into the picture to ward off the threat of ownership over humans?

Though we certainly do not earn them, we think we own our bodies. It is common to assume that, in matters where ours is the only body involved, we are answerable only to ourselves. As a consequence, we can do what we like with our own bodies.

We can even make them part of someone else's body. Transplants, by which part of one man's body becomes part of someone else's body, are among the more routine technologies of modern medicine. Indeed, there have always been societies in which it was acceptable to incorporate the organs of another (often dead) person into one's body for certain socially-sanctioned motives, health among them. I am thinking of cannibal societies. Obviously, the method of incorporation differs, but

what exactly is the difference (the possibility of preliminary murder aside) between cannibalism and organ transplantation? Can we speak of voluntary, therapeutic cannibalism? And what about the case of fetal-cell transplants, where the issues of antecedent murder and involuntary cannibalism return? To complicate matters, imagine that it were better for Alzheimer's patients to consume fetal adrenal tissue rather than have it grafted into their own bodies. Would we have good reasons for condemning this practice? What if such "cannibalism" were done intravenously? Lastly, consider blood transfusions. The famous Count from Transylvania had serious health reasons for sucking other people's blood. Was his only crime that he did not ask permission?

I do not mean to suggest by these ghoulish analogies that we are a society of cannibals and vampires. I only suggest that we have forgotten, if we ever knew, the reasons why cannibalism, vampirism, and Dr. Frankenstein's attempt to "create" a man must be condemned. Although we still feel the force of these taboos, we probably could not defend them if it were necessary. When it comes to bio-technology, our society is like the girl who can't say no.

Transplants also raise questions of personal identity. Imagine that it is possible to transplant the brain, and, in my hospital room, in the midst of a massive brain hemorrhage, I am about to need a brain. In the emergency room of the same hospital, you lie at death's door, your body mangled in a terrible car accident. Your brain, however, is healthy. A clever intern familiar with both our cases intervenes, and a "brain transplant" takes place. In the recovery room, as the doctors look into the patient's shining eyes, one surgeon asks another: "The lights are on—but who's at home?" Indeed, who survived? Did I get your brain, or did you get my body? Was it a "body transplant" or a "brain transplant"? What sort of "I" am I, when I have your brain? And what sort of "you" would you be with my body? What is a "person," and where does he reside?

These dilemmas represent the inheritance of Descartes' view of the body as a machine, an extraneous tool of the conscious man. In this view, the body helps a person get things done. Legs, for instance, help us travel. But it is part of our nature as intelligent animals to devise other effective ways to travel: cars, trains, planes, rockets, conveyor belts. Are legs unnecessary as long as we can satisfy our urge to locomote? Or, on the other hand, are legs good for man to have, even if he

can travel in other equally-effective ways? If so, are legs good for man in simply an aesthetic sense, or do they correspond also to some truth about man—his “nature”? Do they not only look good but also look *right*?

My grandmother likes to remind people, with the weary wisdom of many years: “What’s natural isn’t wonderful.” One goal of modern medicine is to prevent the natural decline and death of man. Doctors have begun to see the aging process as a congenital defect, a collection of treatable genetic diseases. We have repudiated the second-childhood of old age as unworthy of Man; there is nothing to admire in helplessness and decrepitude. One can’t help but wonder, however, whether we won’t we be tempted to skip over, or at least hurry through, the helplessness of our first childhood. Why not start out mature? If there is no point in patiently enduring our decline, what is the point in patiently waiting for growth? Babies may often look nice, but do they look *right*?

Much of the latest bio-technology has been directed toward finding efficient ways to produce new human beings: *in vitro* fertilization, artificial wombs, artificial insemination, cloning. The new methods “serve the same purpose” as the human reproductive system. They seem either just as good, or at least reasonable back-up methods. But we forget that it may be good for man to reproduce sexually. Sexual reproduction may not only be a means to make new human beings; it may be for our own good too (and I don’t mean simply as a pleasant sensation). Breast feeding provides an fine example of another thing that once seemed useful but not really necessary. Bottles and formula were thought to work just as well. Yet it turns out that breast-feeding not only feeds infants but also is important for maternal health as well (it reduces the risk of breast cancer).

Artificial insemination, *in vitro* fertilization, cloning—they represent the end of sex as we know it, as surely as the artificial womb represents the demise of the belly-button. With the advent of sperm banks, men are already unnecessary for human reproduction. When cloning and artificial wombs are perfected, women will be unnecessary too. Of course, the end of sex, or—if you like—the separation of the pleasures we call “sex” from reproduction, has already taken place. Though there is a difference between intercourse without babies (a common natural phenomenon) and babies without intercourse (something unprece-

dented), the separation accomplished in contraception reduced the shock of the new birth technologies. Contraception took children out of having sex; the new birth technologies take sex out of having children.

It now appears that the religious condemnation of contraception and *in vitro* fertilization, which once seemed a rejection of two different things (the “sexual revolution” and reproductive innovations), was really a rejection of the “technological revolution,” the remaking of man’s nature, whether by the Pill or *in vitro* fertilization. What seemed to be a “no” to casual sex and another distinct “no” to new-fangled reproductive techniques was really a single “no” to the technological disfigurement of human nature in one of its most profound dimensions, an insistence that man remain a sexual creature, not merely a creature with what George Gilder has referred to as “vestigial procreative deformities.”

Modern bio-technology provides a wonderful chance to serve the health of man. We have discovered the genetic source of diseases such as Duchenne’s muscular dystrophy, retinoblastoma (an eye cancer), and chronic glaucomatous disease (once uniformly fatal). But the same bio-technology also provides the chance to kill our sexuality, personal identity, human nature, and even our understanding of what it means to be alive. It could blur the distinctions between men and women, between one man and another, between man and other creatures, and finally between men and robots or fancy computers.

Having begun with the words of Dr. Victor Frankenstein, it is only fair to give to his stupendous but miserable creature the final say, to ask ourselves the question he asked his brilliant and well-intentioned creator: “How dare you sport thus with life?”

The Ethics of “Fetal Implants”⁹⁹

Lori Brannigan Kelly

IN SEPTEMBER 1987, an operation took place at the La Raza Medical Center in Mexico City in which the tissue of a spontaneously-aborted fetus was transplanted into the brains of two patients suffering from Parkinson’s disease. The recipients, a fifty-year-old man and a thirty-five-year-old woman, reportedly experienced marked relief from the symptoms of their illness.¹

It is not difficult to imagine the great current of hope that must have passed through the hearts of our nation’s one million Parkinson’s victims when they heard that news. Although the La Raza procedure used tissue from a miscarriage, many people considered the possibility of similarly utilizing tissue from some of the one and a half million fetuses aborted voluntarily each year in the U.S. alone. Even before the Mexican implants, the American Parkinson Association reportedly received thousands of requests from Parkinsonians seeking related treatment. According to Frank Williams, national director of the Association, “The majority of people with the disease could care less about the ethical questions—they just want something that works.”²

But we may assume that there are individuals with Parkinson’s disease who *are* concerned with the moral ramifications of this procedure. I can personally assure you at least one man in that minority cares deeply.

My father was diagnosed as having Parkinson’s disease nine years ago. Since then, he has watched his faculties fall away from his control, slowly and mercilessly, one by one. The common Parkinsonian symptoms—rigidity, tremor, speech difficulties, aphasia—have forced a once robust, alert, confident man to become frail and dependent. It is common for the condition of a Parkinsonian to fluctuate from month to month—even day to day. During my father’s “bad times,” each activity of every day is a major challenge: rising from bed, shaving, dressing, walking to the mailbox are all enormous tasks accomplished with tremendous effort.

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Not long ago, I took a close friend out for a birthday luncheon in Alexandria. She asked about my father's condition. We discussed the ethics of fetal implants, and what promise the procedure might hold for my father. I told her that I was adamantly opposed to using fetuses from elective abortions, and that I know my father felt the same way. "What if it could save your father's life?" she asked. I answered that, if it were my decision, I could not justify the procedure, even if it were the only treatment available. I would have to let my father die. My friend was shocked: "It would be a *sin* to let your father die," she said.

I remember the way those ten words—and all the challenge and criticism packed within them—seemed to be suspended for one vivid moment in mid-air. Each syllable then made a sharp dive straight through the center of my heart. The shot was on the mark, I felt then, because it was irrefutable.

My friend's argument seemed more potent than all my strongest convictions to the contrary. If fetuses are available through legal abortion, she asked, why not put them to good use? On a more personal level, if I truly advocate life, how could I staunchly defend the life of a fetus while denying life-saving treatment for my father?

I wasn't very satisfied with my performance in the debate. Here, then, for my father, is a second try.

My father is certainly aware of the fetal-implants possibility, and the ethical debate surrounding the procedure. And yet, for him, the case is closed. When medical or technological breakthroughs involve activity that approaches moral ground, he has said, moral law has to be a fundamental responsibility as to the practicality of accepting a scientific approach. For my father, moral rules are absolutes, not variables determined by personal values or current norms. As C. S. Lewis wrote:

In reality, moral rules are directions for running the human machine. Every moral rule is there to prevent a breakdown, or a strain, or a friction, in the running of that machine. That is why these rules at first seem to be constantly interfering with our natural inclinations."³

Initially, it may seem perfectly licit to use aborted fetuses: Is it not right and natural to create some good out of a bad, even evil, situation? But, in matters of truth and morality, the tug of our conscience must pull us back from our inclinations. Can anybody approach this debate without hearing some inner voice saying "something is terribly wrong here"? Like it or not, one simple fact remains. The existence of tissue

for fetal implants is, for all intents and purposes, a consequence of *elective* abortion. Except in rare cases, it can be said that if “elective” abortion did not exist, viable fetal tissue would not be available. The abhorrence of abortion and the deep respect for the sanctity of human life give rise to the two strongest moral arguments against fetal implants.

First, it is contended that the success of implants will perpetuate abortion by legitimating abortion. Second, we learn by precedent—and, if we are to be honest, we sense innately in our souls—that a just society can never justify profiting from inherently immoral actions.

If research continues, and fetal implants prove “successful,” new momentum will be given to the pro-abortion movement. No, vast numbers of women will not become pregnant for the sole purpose of aborting their fetuses and donating them to victims of disease. But, as Lutheran Pastor John Neuhaus points out, when moral standards are relaxed, in due course the “prohibited becomes the permissible becomes the expected.”⁴ Any discussion that examines the social ramifications of utilizing fetal tissue must look beyond the justifiable benefits of research and cure toward the potential for ethical misconduct and moral erosion within a society. The old arguments—that we can depend on the innate goodness of individuals, the noble aims of science, and the careful judgment of the courts to protect us from moral disaster—just won’t hold here.

In the April, 1986, issue of *Commentary*, Paul S. Appelbaum and Joel Klein note that, in landmark quality-of-life/euthanasia cases affecting the fate of terminally-ill patients,

Both judges and physicians were confronted with situations that seemed to cry out for relief, and they did what they could to provide it. The problem is that these decisions in the extreme cases began to legitimate a logic and soon a set of practices that took on a momentum of their own.⁵

They argue that the Supreme Court’s constitutional defense of individual autonomy—originally intended, among other things, to make “hard case” abortions legal—has become the dominating principle involved in all medical decision-making. As the courts place more and more value on the supremacy of self-determination, universal precepts of morality become meaningless. It is not difficult to see why hard cases make bad law. Sixteen years and twenty-two million “hard cases” later, we see the tragic outcome of a decision intended chiefly to accomodate individual exceptions.

While Appelbaum and Klein deal exclusively with the euthanasia issue, their arguments seem to me equally applicable to the fetal implant debate. The promotion of fetal implants does not, in and of itself, legitimate abortion. But exploiting the fetus—albeit toward a positive end—certainly helps relax our consciences to the point where the heinousness of abortion becomes a non-issue. As Neuhaus points out, medical ethicists stand ready, with the courts as willing accomplices, to “produce ever more sophisticated rationalizations for turning the unthinkable into the routinely do-able.”⁶ The speed with which such rationalizations develop is always inversely proportional to the present strength of society’s moral fiber. Thus, we must fear that fetal harvesting and research will proceed with unchallenged momentum. If propelled by the success of Parkinson’s transplants, and motivated by results, the results-motivated medical community will further shift the focus of the abortion debate off the wrongfulness of the act, highlighting instead the tremendous benefits of fetal implants. Such a shift will legitimate a logic wherein abortion is less and less considered a grave and reprehensible evil, and more and more a “regrettable event” that can nevertheless deliver a positive outcome.

Some bioethicists have even argued that, by donating her aborted child’s tissue to help someone else, a mother may facilitate her own difficult process of grieving and bereavement.⁷ So the fetal harvesting business offers yet another blessing: it can help relieve all the unnecessary guilt that still stubbornly clings to abortion. If the aborted child is being put to good use, there’s really nothing to feel guilty or sad about, is there?

Last year, the Reagan administration issued a ban which prevents scientists at the National Institute of Health from conducting experiments with aborted fetal brain tissue. The decision, which followed an NIH proposal to implant fetal tissue into the brains of Parkinson’s patients, caused widespread criticism throughout the medical community. Many physicians consider this field of “research” to be too promising to halt.⁸

Commenting on the administration’s decision, Dr. Bernard Liebel, professor of medicine at the University of Toronto, noted that “NIH sets the pace, and [the ban] will cripple fetal research in the United States.” Fetal tissue, notes Liebel, “is an extraordinarily valuable

research tool with immense potential. Depriving research scientists of this material is a great disservice to humanity.”⁹

One cannot help but wonder where in the chronology of events the greater disservice occurred. Can we readily afford to dismiss any sense of loss attached to the child whose death delivers so great a subtraction from humanity? When we treat the fetus more like a pharmaceutical than a child, we further eclipse its inherently human characteristics and help weaken any future arguments for its defense.

The Vatican’s recent “Instruction on Respect for Human Life in its Origin” clearly stated that corpses of human embryos and fetuses, whether the product of voluntary or involuntary abortion, must be respected in the same way as the remains of other human embryos.¹⁰ To my father, the harvesting of fetal remains—even for the noble aim of research and treatment—is an activity which falls outside the natural parameters of such respect.

The potential success of fetal transplants in treating Parkinson’s patients has cleared the path for similar treatment of other diseases. It is believed that transplants may help alleviate symptoms of Alzheimer’s disease, Huntington’s chorea, diabetes, stroke ailments, leukemia and spinal-chord injuries. In the near future, transplants may even prove successful in the treatment of mental retardation, depression and schizophrenia.¹¹

The number of people suffering from such conditions is quite large. In addition to the million Parkinsonians, there are an estimated two to three million Alzheimer’s victims, six million diabetics—if all the listed “possibilities” were added up, the total would probably be some *twelve million* “beneficiaries.”¹²

With so many patients desperately seeking cures, and doctors wanting to do all that’s possible to provide them, fetal tissue could become a hot commodity in the years to come.

After the polio virus was isolated in the early 1950’s, millions of dollars were poured into the development of the Salk vaccine and the oral Sabin vaccine. Once these vaccinations proved to be successful, no one spent much time in the lab trying to figure out another cure—the job was done.

If fetal implants were to deliver a high success rate, it seems unlikely that researchers will seek out additional—or alternative—paths of experimentation. If we put all our proverbial eggs in one basket, Par-

kinson's patients seeking relief will have no choice but to consider fetal transplantation. The most common drug currently used to alleviate Parkinson's symptoms is levo dopamine, or L-dopa. Fifteen percent of all Parkinsonians derive no benefit from L-dopa, however, and in two-thirds of all Parkinson's victims, the effectiveness of L-dopa wears off after 10 to 15 years.¹³ When it comes to treating Parkinson's disease, other methods and therapies have already become inferior. We soon might not be able to "do without" implants, so we wouldn't be able to do without abortion, either.

Remember that fetal tissue is "marketable" only when it is viable; that is, only when it is capable of living and developing under favorable conditions. The viability which makes fetuses perfect candidates for transplantation is the same viability which would, if given a chance, allow the fetus to survive and thrive outside the womb. Transplant proponents seem all too eager to dismiss this fact.

Furthermore, abortion methods that are best for the health of the mother are not necessarily the best means for insuring the viability of fetal tissue.¹⁴ Most (91 percent) of elective abortions are performed in the first trimester of pregnancy; only eight percent are performed in the second trimester, when fetal tissue is considered "best" for transplantation.¹⁵ Consequently, we may fast be approaching an age when abortion techniques grow ever more specialized to ensure the existence of the most desirable tissue for implantation. Some physicians, counseling mothers who have decided to abort their children, may encourage their patients to "wait it out" until the developing embryo reaches its most viable stage for transplantation.

While many people have no problem in using tissue from a miscarriage, such tissue is usually unacceptable. Human tissue is medically useless unless taken quickly after death, and determining the exact moment of fetal death has long been problematic.¹⁶

One physician, Dr. Arthur Caplan, director of the University of Minnesota Center for Biomedical Ethics, argues that the supply of fetuses from miscarriages alone is neither suitable nor sufficient for medical research:

By confining yourself to a spontaneous abortion, you raise the question of is the material normal. The danger of using tissue that is abnormal or deficient in ways that are not understood is an additional risk, and recipients should be made aware of that.

THE HUMAN LIFE REVIEW

Dr. Bernard Nathanson estimates that ten percent of all conceptions in the U.S. end in miscarriage; which would mean approximately 400,000 miscarriages per year. But tissue and organs obtained from these spontaneous abortions are unsuitable for three reasons:

1. In a spontaneous abortion, the fetus usually dies two to three weeks before it is expelled from the womb. Such "dead" tissue is unsuitable for transplantation.
2. Half of all miscarriages involve fetuses which are genetically abnormal; either they have too many or too few chromosomes. Even if this tissue is "fresh" when obtained, it is considered genetically unacceptable for transplantation.
3. The vast majority of miscarriages occur in the first 8 weeks of pregnancy—the tissue would not be mature enough for use (the "best" tissue comes from fetuses aborted in the 16-24 week period).¹⁸

Thus it would be virtually impossible to establish an adequate supply of fetal tissue exclusively from spontaneous abortions. Few women would actually bring their miscarried child to the hospital in time for a donation, and recruiting potential donors is, well, inconceivable. It follows, then, that fetal implants will remain a reality only if elective abortion remains both acceptable and legal.

At a 1986 conference sponsored by the Center for Biomedical Ethics at Case Western University in Cleveland, a group of doctors, lawyers, and ethicists endorsed the use of fetal tissue, but cited specific restrictions. First, the panel suggested that the physician who is involved in the initial decision regarding the abortion be the same doctor who conducts any subsequent procedure that utilizes the aborted fetal tissue. Second, the ethicists urged that anonymity be maintained between the donor and the recipient, and that the involved parties not be related. All agreed that conception for the sole purpose of aborting the fetus to obtain tissue, although not illegal, would be morally wrong.¹⁹

Implant proponents are quick to point out that the question of the ethics of abortion is separate from the question of what to do with the remains. They compare the utilization of fetal tissue with the use of organs obtained from deceased adults, and suggest that the same ethical and legal criteria that is used to regulate the latter also be used to regulate the former. For those who consider abortion to be murder, yet another parallel is drawn between the aborted fetus and individuals who have died of a violent crime: because murder victims are accepted as organ donors, aborted fetuses should be.²⁰ All that's needed is the informed consent of the mother.

Does this follow? Regardless of the conditions that inspire her decision, the mother who aborts her child is responsible for an intentional death. Does she not therefore relinquish all authority of consent?

The superiority of viable fetal tissue in treating Parkinson's disease highlights what many consider to be the supreme—and unacknowledged—irony of the controversy. Scientists acknowledge that the most promising cells for brain implants can be found in the embryonic brains of aborted human fetuses.²¹ Compared to adult tissue, fetal tissue grows faster, is more adaptable, and causes less immunological rejection.²²

Moreover, unlike the nerve cells of deceased adults, those of dead fetuses retain the capacity to divide and grow.²³ All studies indicate thus far that, on even the cellular level, the fetus is a strong, viable and regenerative force. Obviously, then, the implant is not an artificial elixir. By the rapidity of its growth and its unique adaptiveness to the adult brain, the fetus demonstrates its communion with creation and its affinity with mankind. By acknowledging that the fetus possesses an embryonic brain, we acknowledge that it is endowed with all the characteristics manifested by the presence of a central nervous system—the ability to interpret sensory impulses, to coordinate body activities, and to exercise emotion and thought. Even after its destruction, then, the fetus leaves behind an imprint that is uniquely and unmistakably human.

Despite all this, one bioethicist recently stated publicly that “A society that would throw fetal remains into a dumpster or an incinerator without offering them to save other young lives is morally suspect.”²⁴ It is now a common sentiment. Many do consider it intolerable—even immoral—to make people suffer when treatment is available. But must we not also admit that it can be mortally dangerous if taken to extremes? Although fetal implants may improve the “quality of life,” the procedure itself, in my judgement, contradicts all precepts of natural law because it is facilitated by an inherently immoral act. The implant controversy demands that we remain vigilant against any form of Epicureanism which—despite its worthy aims—ultimately belies any true respect for the sanctity of human life.

When you exploit a tragedy, you help perpetuate it: what was once a horror is legitimized.

Last March, the Environmental Protection Agency prohibited inclusion of data gained from experiments conducted at Nazi concentration

camps in an EPA report. The data involved an experiment in which 40 concentration-camp inmates were exposed to phosgene gas to examine its effects. Since phosgene gas is currently used in making plastics and pesticides, the information was included in the EPA's draft study.

When the draft appeared, 22 agency officials and scientists expressed concern.²⁵ It is illicit, they argued, to use knowledge obtained from criminal experiments on human beings.

If we argue that abortion is a criminal attack on a human being, then must we not also consider science to be unjustified when it seeks to use both the knowledge and the remains gained from an abortion? Since *Roe v. Wade*, nearly five times as many deaths as occurred during the Holocaust have been caused by legalized, elective abortion. Should we exploit what many believe is the most immoral episode in history?

Much has been written recently about the case of a woman who offered to help her father, an Alzheimer's victim. She wanted to conceive a child with her father's sperm, abort the fetus, then offer the fetal tissue for transplantation into her father's brain.

Whenever I read about this case, I think of my own daughter. It is a moot question—an unthinkable notion, really—but occasionally I wonder if her life would have been better served if I had sacrificed her for my father.

My daughter celebrated her first birthday not long ago. In each of the too-many photographs taken of the event, I notice a striking familiarity in her face. It is my father's face: forehead, cheekbone and chin. The subtler features of her personality which already endear her to me—the uncomplicated trust, the discriminating affection—are the same features that endear my father to his family. Such sublime comparisons remind me that my daughter, like any child, is more than just my own. Her life helps to sustain the memory of her forebears and the greater progeny of God which so inextricably link one generation to the next. Any disruption of this progeny is, to me, a violation of the natural and sacred order of the world.

In Dante's system of hell, souls that in life committed acts of treachery against lords and benefactors join Satan in the lowest zone of Cocytus. The soul that endures the greatest punishment here is Christ's betrayer, Judas Iscariot. Judas, however, is accompanied by Caesar's assassins Brutus and Cassius. As Dante conceived it, these three con-

LORI BRANNIGAN KELLY

demned men endure the Inferno's most severe torture because they were responsible for undermining Church and Empire; for destroying "the authority and grace which are the divine order of the world."²⁶

It is the presence of Brutus' soul in Cocytus that teaches us our most valuable lesson. Brutus was a man of virtue and character, an individual who, despite his principled allegiance to the state, his stoic sense of morality, and his strict adherence to the precepts of justice, nevertheless became an accomplice to murder. But Brutus' gravest sin is not murder. His guilt stems from the fact that he used reason to justify Caesar's killing to the public. Because he labored to give the conspiracy the "color" of morality, Brutus is banished eternally from Paradise.²⁷

The success of fetal implants will endow the act of abortion with a certain degree of morality. As our reason labors further to justify the questionable conspiracies of science, however, our true morality becomes fainter and fainter. We have indeed become like gods; eager still to take yet another bite from the apple that exiles us further from the Garden and sinks us ever lower into the dolorous depths of Cocytus.

NOTES

1. Larry Rohter, "Implanted Fetal Tissue Aids Parkinson's Patients," *New York Times*, January 7, 1988. (Note: The author wishes to call attention to the name of the Mexico City hospital in which the landmark implant operation took place. Of the several Spanish translations of "La Raza," two seem pertinent here. The first definition suggests a "race or breed" of men. The second interpretation is defined as "a ray of light; a crack or fissure.").
2. Tamar Lewin, "Medical Use of Fetal Tissues Spurs New Abortion Debate," *New York Times*, August 16, 1987.
3. C. S. Lewis, *The Joyful Christian*, (New York: Macmillan Publishing Company, Inc., 1977), p. 11.
4. See Neuhaus, "The War Against Reason," *Human Life Review*, vol. XIV, no. 1 (Winter, 1988), pp. 109-110.
5. Paul S. Appelbaum and Joel Klein, "Therefore Choose Death?," *Commentary*, April 1986, p. 26.
6. Ibid.; *Human Life Review*, vol. XIV, no. 1 (Winter, 1988).
7. Ibid.; *New York Times*, August 16, 1987.
8. Michael Specter, "NIH told to Stop Use of Aborted Fetuses," *Washington Post*, April 15, 1988.
9. Ibid.
10. See also Dinesh D'Souza, "The Pope and the Petri Dish," *Crisis*, January 1988, pp. 24-28. (Note: It needs to be said here that my father is a devout Roman Catholic. For the record, he was born on May 18, 1920—the same day as Pope John Paul II. My father embraces Church doctrine without question. As such, he questions neither the paternal authority of the Pope nor the Divine Law of God. My father's argument against fetal implants, however, while supported by the teachings of the Catholic church, is fundamentally rooted in the universal, nondenominational precepts of morality.)
11. Larry Thompson, "Brain Implants: The Controversial New Approach to Treating Parkinson's Disease," *Washington Post Health Magazine*, July 14, 1987.
12. Ibid. See also Dr. Bernard Nathanson, *Liberty Report*, December 1987.
13. Ibid.; *Washington Post Health Magazine*, July 14, 1987.
14. Ibid.; *New York Times*, August 16, 1987.
15. Ibid.; *Liberty Report*, December 1987.

THE HUMAN LIFE REVIEW

16. Ibid.; *New York Times*, August 16, 1987
17. Ibid.; *New York Times*, January 7, 1988.
18. Ibid.; *Liberty Report*, December 1987.
19. Ibid.; *New York Times*, August 16, 1987.
20. Joan Frawley Desmond, "Should We 'Harvest' Fetal Tissue?," *Human Life Review*, vol. XIV, no. 1 (Winter, 1988), pp. 76-77.
21. Ibid.; *Washington Post Health Magazine*, July 14, 1987.
22. Ibid.; *New York Times*, January 7, 1988.
23. Joyce Price, "Fetal Cells Working in Brains of Recipients," *Washington Times*, January 7, 1988.
24. Ellen Robinson Haynes, "Ethical Questions Cloud Use of Fetal Tissue to Fight Illness," *The Sacramento Bee*, November 20, 1987.
25. "Good From Evil?," *Time*, April 4, 1988.
26. Dante Alighieri, *The Divine Comedy I: The Inferno*, Italian text with translation and comment by John D. Sinclair, (New York: Oxford University Press, 1939), p. 428.
27. Allan Bloom with Harry V. Jaffa, *Shakespeare's Politics*, (Chicago: University of Chicago Press, 1964), p. 95.

The Civil Rights Game

Francis Canavan

AS EVERY SEASONED debater knows, the way to win an argument is to beg the question.

This most ancient of fallacies, technically known as *petitio principii*, establishes a conclusion by using as an argument for it the very thing it seeks to establish. The conclusion, often in a cleverly disguised form, is taken as a premise from which the conclusion follows. To give a crude and very simple example, the government should subsidize the export of my brand of widgets because it is the government's duty to help American business by subsidizing exports. Or, conversely, in the industry in which I work, the government should protect wages from foreign competition because it is government's duty to protect the income of American workers. Each of these arguments is a non-argument because it assumes the very thing that it purports to prove. It may be arguably true that government should subsidize exports and maintain wage levels, but the argument ought to prove that instead of taking it for granted.

Nowhere, perhaps, on the current American scene is the question more consistently begged than it is by the American Civil Liberties Union. We are all in favor of protecting civil rights, aren't we? Well, the ACLU is single-mindedly dedicated to the impartial protection of the civil rights of all Americans. Therefore, to oppose the policies of the ACLU is to oppose civil rights. But this argument begs more than one question.

For one thing, it assumes that all intelligent persons know just what civil rights are, so that failure to acknowledge them is due to ignorance, stupidity, or malice. It further assumes that the ACLU is interested only in protecting these universally acknowledged civil rights, and has no agenda beyond that. Finally, it assumes that the ACLU carries out its self-appointed mission impartially, whether or not it likes or agrees with the persons whose civil rights it defends. The most frequently-cited example of this impartiality is the ACLU's defense of the right of Amer-

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ican Nazis to march through the largely Jewish neighborhood of Skokie, Illinois. All of these assumptions, however, are highly questionable.

First, the term, "civil rights" does not stand for a Platonic idea with a fixed, necessary, and eternal content which everyone will recognize if only he takes the trouble to think. Etymologically, civil rights are those rights that belong to a person because he is a *civis*, a citizen, and such rights are defined and established by the *civitas* or state of which he is a citizen. More broadly, civil rights are those rights which a state protects as belonging to all persons within its territory, whether they are citizens or not. But, because the rights are civil, they depend upon the laws of the *civitas*.

Civil rights are to be distinguished from natural rights (now often called human rights), which belong to a person in virtue of his nature as a human being or, more broadly, in the words of *Black's Law Dictionary*, natural rights are "those which, by fair deduction from the present physical, moral, social, and religious characteristics of man, he must be invested with, and which he ought to have realized for him in a jural society," i.e., a society "organized on the basis of a fundamental law, and existing for the recognition and protection of rights."

The difference between natural rights (however defined) and civil rights is that civil rights are established and protected by laws which the state makes, while natural rights are the morally valid claims of the individual on other individuals or on the community. The state may and certainly sometimes should translate these moral rights into legally enforceable civil rights. A civil right, however, is enforceable in a court of law because the law has defined it and created a procedure for enforcing it. But until that is done, natural or human rights are not civil rights, and it is begging the question to call them civil rights on the ground that that is what they ought to be.

The reason for rejecting this question-begging assumption is not that natural or human rights are unreal or unimportant, or that the state should not protect them. It is, rather, that jumping to the conclusion that they are already civil rights assumes that we already know and agree upon which rights 1) are truly human rights and 2) have been established as legal rights enforceable by the courts. Discussion of those two crucial issues is thereby neatly foreclosed. Anyone who ventures to disagree can then be accused of being against civil rights.

Once these initial questions have been successfully begged, the ACLU can move on to claim that it is only trying to defend civil rights, which belong to all of us alike and which it is in everyone's interest to defend. The ACLU can then assert that it has no objective other than defending those rights, which we would all acknowledge if we could get over our bigotry, prejudice, and unenlightened conception of our interests.

That having been established, the ACLU can and does claim impartiality in carrying out its mission as the defender of our rights. Like a wise and patient parent, it knows that we shall often object to the stands it takes. But it is confident that, as we mature in our understanding of civil liberty, we shall come to see that the ACLU was only trying to educate us in what it means to be free and equal citizens of a democratic republic in a pluralistic society. What the ACLU seems to do against us, it really does *for* us, because it does it for the good of all Americans.

There are those who really believe that. During the 1988 presidential campaign, for instance, Walter Shapiro wrote in the November 7 issue of *Time*: "On virtually every issue from abortion to school prayer, Dukakis upholds the liberal values of tolerance and a deep concern for civil liberties." Support of abortion on demand and opposition to school prayer manifest deep concern for civil liberties. Governor Dukakis may believe that; the ACLU certainly does.

Others, however, who are normally in the liberal camp, are not so sure. On October 11, 1988, *The New Republic* published an article by Mark S. Campisano, in which he said that in the last thirty years the ACLU has adopted a new agenda, in addition to its previous one of defending those civil rights that are necessary to the functioning of a constitutional democracy. The new agenda, said Campisano, "includes support for racial quotas and a virtual elimination of religion from public life. It also calls for substantial expansion of abortion rights, prisoners' rights, criminal defendants' rights, rights of the mentally ill, and other rights of similar ilk."

Some people, says Campisano, will object to these and other substantive positions taken by the ACLU. He himself is more alarmed by the ACLU's constant effort to by-pass the processes of constitutional democracy by having issues of public policy settled by the decisions of courts rather than by the acts of legislatures. In other words, the ACLU has a

political agenda, certainly not agreed to by all or most citizens, which it tries to turn into binding law through the decisions of courts rather than through the political process. This agenda, Campisano says, is something other than the defense of civil rights: "The ACLU of 1988 has about as much to do with civil liberties as the AT&T of 1988 has to do with telegraphs; maybe they're still in the product catalog, but they're certainly not where the action is."

But why rely on the courts rather than on legislatures to enact the agenda? First, because the chances of getting a legislature, which must face re-election, to enact it are much slimmer than those of persuading unelected judges to do it. Secondly, because there are clauses in the constitutions of the several States and of the United States amorphous enough to allow a court so minded to create whatever rights it chooses and call them civil rights.

There are a number of such clauses, but two clauses in particular in section 1 of the Fourteenth Amendment to the U.S. Constitution are a never-failing fountain of rights. They forbid any State to "deprive any person of life, liberty, or property without due process of law," or to "deny to any person within its jurisdiction the equal protection of the laws." In its effort to give substantive and concrete meaning to the terms, liberty and equality, the U.S. Supreme Court has created an unending series of allegedly constitutional rights (the highest form of civil rights in this country), whose connection with the meaning of the constitutional text or the intentions of its framers is often tenuous. Not surprisingly, organizations such as the ACLU, which have an agenda that they cannot get through the legislatures try to persuade the courts to accept the agenda as being implicit in the constitutional concepts of liberty and equality.

During the New Deal, the Supreme Court was forced by political pressure to give up its habit of finding labor legislation enacted by the States unconstitutional on the ground that it deprived workers and employers of "freedom of contract," which was said to be implicit in the word "liberty" in the due process clause of the Fourteenth Amendment. But the Court continued a process (which it had begun before the New Deal) of finding the substantive content of "liberty" in the first eight amendments to the Constitution.

On their face, these amendments (popularly called the Bill of Rights) are limitations only on the power of the U.S. Congress. But the Court

has turned them into limitations on the power of the States by “incorporating” them into the meaning of “liberty” in the Fourteenth Amendment’s due process clause. Thus, for example, under the Court’s interpretation, a State deprives a person of liberty without due process of law if it prohibits his free exercise of religion, abridges his freedom of speech or press, subjects him to unreasonable searches and seizures, or compels him to be a witness against himself in a criminal proceeding. In incorporating the Bill of Rights into the Fourteenth Amendment, however, the Court confined itself to finding the meaning of “liberty” in the words of the first eight amendments.

A breakthrough in the interpretation of the due process clause came in 1965 in the case of *Griswold v. Connecticut* (381 U.S. 479). In this case, the Court found that a Connecticut law forbidding the use of contraceptives violated a “right of privacy” implicit in the “liberty” protected by the due process clause. But, since a “right of privacy” is nowhere mentioned in the first eight amendments, the Court found it in “emanations” from those amendments, plus the Ninth Amendment, which refers to other rights “retained by the people.” In effect, the Court declared that the written text of the Constitution imposed no limit on the rights which it could find in the word “liberty.” For this reason, the late Justice Hugo L. Black dissented from the Court’s opinion, saying: “The adoption of such a loose, flexible, uncontrolled standard for holding laws unconstitutional, if ever it is finally achieved, will amount to a great unconstitutional shift of power to the courts, which I believe and am constrained to say, will be bad for the courts and worse for the country.”

That shift of power from legislatures to courts has to a large extent been achieved, and creates an open field for judicial activists who want to read their agenda into the Constitution. They can find rights not specified in the Constitution in “liberty” and “the equal protection of the laws.” They can also stretch the meaning of terms that are in the Constitution, such as “an establishment of religion” and “the freedom of speech, or of the press,” to encompass the political objectives that they want to attain. This open field is one that the ACLU is happy to play on.

Let us cite a few examples of particular interest to readers of this journal. Last year, the parents of a 31-year old Missouri woman, who had been kept alive in a comatose state by feeding her through a tube

implanted in her stomach, sued as her legal guardians for permission to order the tube withdrawn, so that she could die. Their lawyers' services, according to the *New York Times*, "without charge, were arranged for the family by the American Civil Liberties Union." The parents won their case in the trial court, where the judge declared: "There is a fundamental natural right expressed in our Constitution as the 'right to liberty,' which permits an individual to refuse or direct the withholding or withdrawal of artificial death-prolonging procedures when the person has no more cognitive brain function."

The Missouri Supreme Court, however, on November 16, 1988, reversed this decision on the ground that the asserted natural right was not in the Constitution. "We find no principled legal basis," the court said, "which permits the co-guardians in this case to choose the death of their ward. In the absence of such a legal basis for that decision, and in the face of this state's strongly stated policy in favor of life, we choose to err on the side of life, respecting the right of incompetent persons who may wish to live despite a severely diminished quality of life." The issue, as the Missouri Supreme Court saw it, was not the moral one of whether and when life-sustaining measures may be discontinued, but the legal one of whether the right to have them discontinued was a civil right implicit in the constitutional term, "liberty." The State's highest court refused to make a legal decision based on what could possibly be read into that term, but the ACLU constantly urges courts to do just that.

The ACLU does not lose all its cases, however. In a suit filed by the ACLU, a federal appeals court decided in June 1988 that foster agencies run by the Catholic archdiocese of New York must provide access to contraceptives for adolescents for whom it cares under contract with the City of New York. To allow the Catholic agencies to refuse to do this, it seems, would be an unconstitutional "establishment of religion."

Pushing the concept of an establishment of religion even farther, the California Legislative Office of the ACLU in May 1988 sent a memorandum to the California State Assembly's Education Committee. Stating its opposition to SB 2394, a sex-education bill then before the committee, the ACLU said:

It is our position that teaching that monogamous, heterosexual intercourse within marriage is a traditional American value is an unconstitutional establishment of a religious doctrine in public schools. There are various religions

FRANCIS CANAVAN

which hold contrary beliefs with respect to marriage and monogamy. We believe SB 2394 violates the First Amendment.

That is to say that, in forbidding an establishment of religion, the First Amendment forbids accepting as the basis of law any moral belief that anyone disagrees with. The Amendment thereby turns the results of the Sexual Revolution of the 1960's into civil rights guaranteed by the Constitution, and makes the ACLU's brand of libertarianism the established religion of the country.

Further details on what the ACLU wants to establish as our public morality appeared in an article by L. Gordon Crovitz, which the *Wall Street Journal* published on October 3, 1988. This article listed a number of ACLU policy positions, which Crovitz had culled from the ACLU's own publication, *Policy Guides*, 1986 edition. A few of them, of particular interest here, are the following.

Churches and synagogues should lose their tax-exempt status, because it "breaches" the non-establishment of religion. The ACLU, Crovitz remarks, "has litigated against the Catholic Church in particular. One complaint against the Catholics is that they oppose abortion and thus the church is a political entity."

Policy Guides also informs us that "the ACLU opposes any restraint on the right to create, publish or distribute materials on the basis of obscenity, pornography or indecency." Such materials are said to be absolutely protected by the freedom of speech and press clause of the First Amendment. On the same ground the ACLU opposes the industry rating system that classifies movies from X- to G-rated. "Rating systems," according to *Policy Guides*, "create the potential for constraining the creative process" and "inevitably have serious chilling effects on freedom of expression." One of these effects is that "hotels, airlines, pay television . . . frequently refuse to accept X-rated films."

We also learn from the same source that "the ACLU supports the decriminalization of prostitution and opposes state regulation of prostitutes of both sexes." Prostitution, you see, is an exercise of civil rights, "the right of individual privacy" under the due process clause and solicitation under the freedom of speech guaranteed by the First Amendment.

Crovitz does not mention which constitution clause is said to cover the next item, but presumably it is the equal protection of the laws

THE HUMAN LIFE REVIEW

clause that, in the words of *Policy Guides*, ought to “qualify gay and lesbian couples for benefits and rights enjoyed by married persons, including the right to become foster parents,” and the right to marry one another.

All of these ACLU policy positions beg the question by assuming that what the ACLU advocates is a civil right which is already guaranteed by the Constitution, but which we have hitherto been too blind or too bigoted to see. Another example of this question-begging technique was reported by Michael Levin in an article in the Fall, 1988 issue of this Review:

When the Wisconsin State Assembly Judiciary Committee was considering a state ERA [Equal Rights Amendment] in 1983, it reasoned that, since ERA supporters reject as canards the claim that an ERA would mandate state funding for abortion and protection of homosexuals, the ERA could be amended to leave the Wisconsin legislature free not to fund abortions and to limit the rights of homosexuals. The committee was only proposing to exclude from the ERA what its proponents had said were irrelevancies, yet the Wisconsin Civil Liberties Union [and certain feminist organizations] testified against the amendments [to the ERA], with the WCLU promising to oppose it until it was freed of “anti-civil libertarian language.”

But to call the language “anti-civil libertarian” assumes that state funding for abortions and “gay rights” are already civil rights. Once again, an assumption about the point at issue is taken as a premise for an argument to decide the point at issue.

The civil-rights game, as played by the ACLU, is a confidence game that promotes a political agenda under the pretense of defending civil rights. We need not question the ACLU’s right to advocate policy positions. But we are fools if we allow ourselves to be gulled into believing that the ACLU’s policies are what the Constitution and the laws command. They are only what the ACLU would like the Constitution and the laws to command, in order to establish its own secular, utilitarian, and highly individualistic philosophy as the basis of public law and morals in this country.

Caesar's Religion

Gerard V. Bradley

THE LUTHERAN THEOLOGIAN Pastor Richard John Neuhaus argues, in his recent book *The Naked Public Square*, that our society suffers from a “political doctrine and practice that would exclude religion and religiously grounded values from the conduct of public business.” He calls this secularized forum, where religion is anathema, the “naked public square.”

Two of the more intriguing pieces of campaign rhetoric in last fall's presidential election revealed both candidates locked in a warm embrace of that naked public square. Someone on the hustings asked George Bush for his thoughts that 1945 day when Japanese anti-aircraft fire cut short his bombing run.

Was I scared floating around in a little yellow raft off the coast of an enemy-held island, setting a world record for paddling? Of course I was. What sustains you in times like that? Well, you go back to fundamental values. I thought about Mother and Dad and the strength I got from them—and God and faith and the separation of church and state.

One can readily imagine what Bush was thinking that day on the campaign trail: “Uh-oh, these people will think I'm a fanatic, or at least Pat Robertson. Better reassure them that my religion is ‘safe for democracy,’ that my ‘church’ is unconnected to my ‘state.’”

Greek Orthodox Church officials thumped the same theme when asked about Michael Dukakis' church standing. It was none of the public's business, and the Archdiocese scolded inquirers in terms that must have struck a responsive chord in the Governor's heart:

With regret, we have observed recent attempts being made to inject religion into the political life of this nation, in direct contradiction of the First Amendment, and we will not become party to this effort.

These comments reveal a lot, although not about the subjects they address. Pardon me, but I doubt that Bush actually thought about “the separation of church and state” that day in the South Pacific. It is hard enough to believe that he even *said* that he did. The anecdote is at best

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lame, at worst silly. And the Greek Orthodox Archdiocese's use of the Constitution is as lame, or as silly, as Bush's story. "Good standing" and regular church attendance are not determinants of a candidate's position on even the "social" issues like abortion and euthanasia. The churches themselves are all over the lot on them.

Nevertheless, it is all quintessentially American silliness. Bush knows his audience, and his fudging is a forgivable bow to popular sensibilities. The Archdiocese wrapped itself in an oft-repeated (though no less absurd) reading of the First Amendment. Together, these comments reveal what I call the First Law of Public Discourse (FLPD), and it threatens to become—if it is not already—as American as Mom, apple pie and baseball. The FLPD holds that religion is an illegitimate consideration in deciding how to order our common life. And not only religion. Religiously-grounded *morality* is similarly—and more seriously—evicted from the public square. After all, while religious assent to (say) the Trinity is hardly relevant to common life, religious teachings about the dignity of the human person (and what that implies about marriage, procreation and human sexuality) certainly *are*.

Another example of the FLPD appeared in a New York *Times* opinion piece on turmoil over ads for birth control. The *Times* capsulized the issue thus: "Is the use of television to promote birth control in the public interest, or does it intrude upon religious and moral values?" From which follows your choice of silly implications: one, there is some magic divide between "religious and moral values" and the "public interest"; or two, if the ads intrude upon such "moral values," then it's not in the "public interest" to air them. And why not? I suppose it's because we want to define the public interest in some (technocratic? pragmatic? scientific?) way which leaves out religious and moral values.

Allow me one more example. The Supreme Court (in June, 1988) temporarily let stand the Adolescent Family Life Act, which funded "chastity" counselling by, among others, religious organizations. Detectable in the Court's frequently opaque opinion is the same misguided separationism embraced by George Bush. It seems that a religious group *may* be deputized to teach chastity, but not to preach it. In other words, a "religiously" motivated counselor may urge youngsters to be chaste, but cannot tell them why. *That* might involve propagation of religious doctrine: chastity must be sold as conducive to physical or

mental health—which it *is*—and “legitimate” or “public” reasons for being chaste are thus limited to health and safety. Given the state of popular culture, I fear Planned Parenthood is going to win this “health and safety” battle for the hearts and minds of teenagers. All of which points to the FLPD: religious morality—that is, the traditional morality of the American people—must disguise itself as something else, provisionally called “secular morality,” in order to participate in public life. Georgetown’s Mark Tushnet, an astute observer of things church-state and no political conservative, put it this way:

... if enough people take religion seriously, they cannot enact their programs, but if they favor the same program for other reasons, they can enact it. It seems fair to say that this rule does not accept the view that religion should play an important part in public life.

If we are not yet in Wonderland then we are surely tumbling down through the tree that leads there. I propose to trace the disfiguring effects of this odd turn of events in a democratic polity composed overwhelmingly of believing Christians inhabiting what (until quite recently) they all proudly believed to be a Christian nation. The cases examined involve constitutional law, which superintends public life and is also a compact statement of the dominant elite’s worldview. The two relevant aspects of this constitutional worldview are “privacy” and church-state relations, particularly the First Amendment stricture against “establishment of religion.”

But this is not our analytical destination. Both of these constitutional doctrines—privacy and non-establishment—have imbibed the same organizing principle. That principle is modern liberal individualism. Modern liberal individualism (or subjectivism) is that “secular morality” which orders not only our common life but also the discussion of what our common life should be. It is the vernacular language of the naked public square. Contrary to its pretensions, it tolerates no dissent. “Pluralism” stops at the statehouse door.

The Constitution nowhere mentions “privacy,” much less a right to it. The only cognate reference occurs in the Fifth Amendment’s “takings” clause, which forbids the “taking of private property” for “public use without just compensation.” This means that the government can condemn a farmer’s land in order to build a highway, but that it must pay the farmer a fair price for it. Other constitutional provisions protect aspects of privacy without using the words “private” or “privacy.”

Neither the text, nor the structure, nor any other traditional aid to constitutional interpretation yields a “general” right to privacy, that right “to be let alone” or to “personal autonomy” from which our Supreme Court has deduced its far-reaching “reproductive freedom” doctrine. So where does it come from? The line of privacy cases involving sexual morality and procreation, a line that winds through *Roe v. Wade* to the present moment, began there. But this pedigree conveniently (at least for Judge Bork’s “liberal” adversaries) obscures an earlier line of privacy precedents typified by the 1905 decision in *Lochner v. New York*. *Lochner* was the highwatermark of a Supreme Court awash in libertarian economics, a court which struck down state and federal laws (like minimum-wage and maximum-hour provisions) intended to assuage the unhappy side-effects of rapid industrialization. Both *Griswold* and *Lochner* were “privacy” cases, celebrating the right of consenting adults to be let alone in certain transactions. They differ only at a more specific level. Liberals now champion an interventionist economy and an unregulated sexual/procreative environment. Classical liberals in the *Lochner* vein believed in a *laissez-faire* marketplace but also in legal enforcement of traditional moral norms. All of which confirms that one man’s privacy is another man’s public interest, that what ought to be left to individuals is a matter of serious philosophic dispute.

Some serious people think that abortion and the new procreative technology should be matters of public regulation. Other serious people disagree. That is distressing. But it’s positively frightening when those other serious people are federal judges who read their philosophy into the Constitution. Then the first group is effectively disenfranchised, stripped of political power. That is pretty much what has happened.

The *Lochner* cases were discredited and overruled long before *Griswold* came along. Due to “liberal” (as in Justice William Brennan) dismay with *Lochner*, the *Griswold* Justices strove mightily to find a convincing textual basis for their brand of privacy, one they contrasted with the condemned “activism” of *Lochner*. The result was comic. A “right of privacy” covering home contraceptive use by married couples was variously located in the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments. Or all of them. Or, in Justice Douglas’s memorable phrase, “emanations” from the “penumbras” of these rights. No matter. The Twilight Zone rhetoric could not conceal simple *Loch-*

nerizing, which is all *Griswold* was. This time judicial activism inserted modern subjectivist individualism into the Constitution.

Roe v. Wade, the next major case in the *Griswold* line was not comic, but tragic. It said lots of things about medicine, history, theology, ethics, and assorted alleged current social “facts” in its effort to persuasively rule that abortion is a fundamental “right.” But it said *nothing* about constitutional law. There is no “analysis” in *Roe* which explains the discovery of the abortion “right.” Rather, there is the simple declaration that the “right of privacy . . . is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” That’s it. And that, by the way, is why there is no prospect of overturning *Roe* except by “overturning” the Court—that is, by appointing people opposed to *Roe*. Since legal abortion is the foundational commitment in *Roe*, there is no ulterior or more fundamental commitment to which effective appeal may be made.

My constitutional law students prove this anew each semester. By the time we finish with *Roe*, almost all agree with me that *Roe* is unconstitutional, that no reasonable canon of constitutional interpretation supports it. They would agree with Stanford Law Professor John Ely’s remark that *Roe* is not constitutional law, and shows little evidence that it wants to be. But a large majority of my students then decide to abandon not *Roe*, but rather constitutional law. Most would even rather have abortion on demand than (and this is precisely what it amounts to) a regime that cares about the legitimate exercise of government power. More skilled diagnosticians are invited to pass informed judgment on this phenomenon, but it seems to me an act of colossal social irresponsibility, one unfortunately not confined to students. The bench, bar, and professorate teem with persons similarly devoted to abortion. The previous generation of students may have adopted *Brown v. Board of Education* (the landmark desegregation case of 1954) as their litmus, against which all constitutional thinking was measured. Now it is *Roe*. If a proposed method or theory of interpreting the Constitution (“original intent,” for instance) does not give you *Roe*, then that theory or methodology is discarded.

These considerations suggest some observations on the privacy right. The “right of privacy,” as such, cannot be taken literally, or very seriously. It has stylized meaning in our society, a society characterized (on the whole) by intensely-regulated social relations. For instance, our

law elevates fornication, abortion, nude dancing, and other erotica into fundamental constitutional rights at the same time that “unwelcome” sexual gestures—even a pat on the back—are grounds for an employment-discrimination lawsuit.

Now, there is a liberal logic to these distinctions. That it is quite troubling is not the point. The point is that the right is not so “general” after all, nor is its content a matter of intuition. It is not built upon an observational scaffold, upon “private” in contrast to “public” actions as the layman understands those terms. There is nothing solitary or secluded about an abortion or *in vitro* fertilization. “Privacy” is a legal term of art symbolizing a *conclusion* that certain activities or decisions should be none of the government’s business. If the right of privacy is a conclusion, what is it a conclusion *to*? Well, not to constitutional analysis—*Griswold* and *Roe* show that—but to something else which is not included in the published derivation of the right, the judicial opinion.

It is pretty clear that these rights stem from the worldview of the Justices, and the elite circles which they inhabit, just as those of the *Lochner* Court did. Elite thinking has changed; the Court’s relationship to it has not, and the present worldview is the “liberal” one. In brief, “perfectionist” or natural law thinking regards all these acts—from the unwelcome pat to abortion—as objectively disordered in moral terms, and so must search further for the grounds of distinction. Liberal theory knows no “objective moral disorders.” All of these behaviors are “good” or “bad” insofar as human subjects authentically choose them. The pat on the back is lamentable—or “sexist”—solely because it is “unwelcome”; that is, both parties did not consent to it. Therefore it is prohibitable.

The upshot of it all is that, notwithstanding protestations that only “constitutional Neanderthals” like Judge Bork can’t appreciate the right of privacy, that right is a highly specific, though widely subscribed philosophical position. Its distinguishing features (as the preceding examples suggest) are the “harm” and “neutrality” principles: the state must remain “neutral” about “good” for persons, and the manner in which they perfect their being. It is not worthwhile to object that individuals may choose not to perfect themselves. That would violate the First law of Public Discourse: Who am I (or you) to suggest that life itself imposes moral demands upon other persons? Law may intervene in the

individual's affairs solely to prevent "harm" to non-consenting third parties. Since the fetus was officially relegated to constitutional oblivion by *Roe*, and the "harms" of contraception and other morally-illicit sexual practices are largely to the self, liberal vision condemns opposition to abortion, homosexuality, artificial insemination *et al.* as intolerant, paternalistic (read: fundamentally illegitimate) attempts to "legislate morality."

Pornography is a good example of liberalism's choke-hold on public discourse. Because of the neutrality and harm principles, anti-porn arguments must demonstrate third party detriment. Here strange bedfellows meet. Radical feminists and former Attorney General Ed Meese both argue that there is harm to non-consenting third parties—women. The feminists have the more subtle argument: pornography sustains a patriarchal culture which inevitably breeds rape as an extreme but nevertheless endemic component. Meese goes right from cause (dirty pictures) to effect (rape): at least some men must put down their copy of *Hustler* and seek out the nearest woman to ravish if we are to regulate pornography.

Thus modern liberalism explains our freedom to build a culture which institutionalizes human degradation. Were it not for the harm and neutrality principles, one could publicly identify the obvious evils of pornography. Pornography corrodes the dignity of its user and renders more difficult (even impossible) a dignified sexuality. Pornography undermines whatever sexual relationship, including marriage, the user has already established. But it is not likely that anyone (including the Attorney General) will persuade judges that third-party harm is demonstrable. The problem with these arguments is not the First Amendment. Or rather, it is, but not the amendment's actual text, or its "original intent," which many (including Bork) have shown to be concerned with protecting political discourse.

Elsewhere I have argued that the only way to understand the last forty years of jurisprudence regarding the First Amendment's religion clause is to view it as one gigantic judicial effort to privatize religion. "Privatization" dictates that religious beliefs have no political relevance, that religion is a personal affair without objective—that is, social—validity. What I failed to appreciate then is how fully the framework of privatization is constructed of unalloyed liberal dogmas about the range of human experience. Indeed, if you conceive religion as liberal theory

does, privatization almost necessarily follows.

Liberalism admits to no objective truth, so religious claims to possess it are, for the liberal, unfounded projections. Thus, attempts to make religious insights the measure of public policy are the mischievous aggressions of one person's subjective preferences upon other people's lives, trampling the "equal respect and dignity" properly due others—a matter of "imposing one's values upon society" which, in the liberal world, is self-evidently untenable.

Religion may not be "true," but it can be emotionally and psychologically satisfying for those who need it. And so long as it is confined to solitary cells, religion may flourish, and be exercised freely. But as Burke said, "liberty, when men act in bodies, is power." The Supreme Court is quite aware that "collective religious activity" translates into "political power of religion," and this the Justices will not allow. Hence the otherwise puzzling, and perverse, judicial solicitude for fanatical individual dissenters, whose "religions" are at war with any notion of civil order, and the same courts' inveterate hostility to organized religion—especially the Roman Catholic Church—whenever it wanders close to the public square. Dissenting individuals are politically impotent, therefore they are safely permitted liberty. Wherever religion becomes politically potent, it not only loses constitutional protection, it becomes a constitutional villain. The practical result is the banishment of religious morality from public debate about how to order our common life.

As Mercer Law School Professor Fred Gedicks writes, this exile underscores a central defect of modern liberalism—its subversion of the unity of moral and political life. Liberal thought characteristically bifurcates individual existence into "public" and "private" selves. The "private" self is protected in all its glorious—or decadent—liberty, including the freedom to deny or affirm God or the Devil. (Don't laugh: self-professed Devil worshippers are protected—so say our courts—by the Free Exercise Clause of the Constitution.) The "public" realm is a tightly regulated arena of performances to which religion—because of its inherently subjective nature—is irrelevant. By now, the practical conjunction of "privacy" and "nonestablishment" jurisprudence under the liberal banner should be clear.

A more mundane level of constitutional doctrine follows in the wake

of theory. How has this liberal view of religion worked itself out in the case law? Well, it is still Supreme Court doctrine that a law which “coincide[s] with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause.” Obviously, abandonment of this principle would doom society, since laws against theft and murder “coincide” with religious tenets. In a sense the bare fact that Supreme Court litigators—in this case, the abortion lobbyists—seriously propounded such an argument suggests a deep intellectual decay in the law. Even “pro-choice” advocates believe in laws against theft and murder, so that their argument, more carefully stated, amounts to warmed-over liberalism: laws coinciding *solely* with the tenets of (say) Roman Catholicism (and *not* with the “harm” and “neutrality” principles) violate the Establishment Clause. Which is to say that where religious morality exceeds liberalism, the liberal constitutionalism of our Establishment Clause overrules it.

“Religious” morality is effectively banned from public discourse, but morality itself is not. Something called “secular” or “community” morality remains a legitimate ingredient of law. The question then becomes: what distinguishes “secular” from “religious” morality? The answer is liberalism. Here it helps to wonder why the Roman Catholic Church would, since 1947, have been the main subject of non-establishment jurisprudence—which it has—only recently to be rivalled by Protestant fundamentalism. How many times do you think the *most* politicized churches, or the National Council of Churches, have been sued for injecting religious morality into public debate? As far as I know, never. What’s more, why don’t the Catholic Bishops’ Pastorals on Economic Justice and on War and Peace provoke lawsuits, when the Church’s views on sexual morality do? Why, for another example, was the Pope’s recent visit punctuated by lawsuits, including one against the Postal Service for minting a commemorative stamp, as an Establishment Clause violation? Why are the obviously-religious sanctuary, anti-apartheid and civil-rights movements treated so differently from the anti-abortion movement? Why does Mario Cuomo get liberal plaudits for keeping his “personal” Catholic beliefs on abortion out of his public position *and* for vowing to stay execution of every death sentence in New York because he thinks it immoral?

I suggest that these few examples—there are many others—suggest highly stylized use of the sword of “church-state” anxiety in the public

square. The Roman Catholic Church is easily the most formidable institutional carrier of the basic alternative to liberalism—"perfectionist" morality which *is* quite concerned with the harms that men inflict only on themselves. The pronounced anti-Catholicism of the judicial elite is the hostility of a natural antagonist. Consider the ongoing effort of abortion proponents to strip the Church of its tax-exempt status. It is more than just the latest battle over *Roe*. A better way to see the case is in tandem with *Harris v. McRae*, the famous "Hyde Amendment" case. It is an attempt to conclusively label the anti-abortion position "sectarian," which means, in the reigning idiom, politically illegitimate. It would stigmatize abortion opponents by denying that they support the humanity of the only third-party available: the unborn child.

The map of litigation thus suggests an implicit liberal framework. How would this affect current legal dilemmas? The Hyde Amendment case said that coincidence "without more" was no Establishment Clause problem. What "more" must be added to "coincidence" to violate the Clause? Take as an example *in vitro* fertilization. The "privacy" status of *in vitro* fertilization is at least questionable since it introduces a complex problem of identifying the father of a child so conceived. Is it the husband of the gestational mother? The sperm donor (if different)? Or is it the lab technician who actually joins gametes in the dish? Let's say that, for these reasons and also because of significant lobbying by Catholic groups and the votes of many Catholic lawmakers, the technique is banned in your state. Is the Establishment Clause violated?

Yes, according to the June, 1987 decision in *Edwards v. Aquillard*, the "Creation Science" case. Sure, many people say that Creation Science is Genesis with a scientific veneer. Maybe it is, but I think there's more to it than that. The critical thing here is that the Supreme Court struck it down without ever concluding that it was religion and not science. Put differently, despite the characterization many others would place on it, the Supreme Court treated Creation Science as a mere coincidence with Genesis, and not as a religious point of view. (Actually, the law in question neither required nor forbade the teaching of evolution or Creation Science, requiring only that where one was taught the other be given equal time.) What "more" turned this into an Establishment of Religion? The *Edwards* court decided that the lawmakers had to adopt the law with a secular legislative purpose, which meant that if one or more legislators were actuated by religious

motives, there was *more* than a coincidence. That is, an element of purposefulness was supplied by the reasons at least one lawmaker had for passing the act: some basic desire to promote religion. In short, as Justice Scalia said in dissent, religio-political activism now poisons any resulting law.

This means that opponents of (for example) *in vitro* fertilization must publicly make their case on “secular” grounds. Otherwise, the religiousness of either legislators or their arguments will nullify their labors. But that’s no solution. First, some arguments can’t be made on “secular” grounds since “secular” means “liberal” and liberalism has never been able to condemn self-mutilating evils. Second, a public discourse sanitized of religious language and beliefs will sooner or later produce a public philosophy and public “persons” similarly sanitized. That will mark the conclusive triumph of privatization, and with it the demise of perfectionist and natural law thinking as a social force in our society.

That is hardly a happy ending. My suspicion is that only some terrible shock—an ethical catastrophe—will alter the course the elite class is setting for us. And a sizeable shock it will have to be for a society which is complacent—even self-congratulatory—about 1,600,000 abortions a year. My hope is that statements like the following by Dr. Lee Silver, a Princeton professor who testified before Congress on the new reproductive technology, may do the trick. In what I am assured by parties present was *not* (repeat *not*) a tongue-in-cheek comment, Silver opined:

There is also the possibility of using chimpanzees or gorillas as gestational surrogates for human embryos. The feasibility of this approach is supported by analogous experiments in other mammals that are as similar to each other as humans are to chimpanzees. For example, horses have given birth to zebra babies, and sheep and goats have carried each other’s offspring to term. I imagine that surrogate apes would only be considered if the use of surrogate women was made illegal. However, this is one technology that I hope is never used. Aside from the psychological impact on the child, an equally important consideration is the diminishing number of great apes alive in the world today. If we require them to gestate our children instead of their own, we will only hasten their extinction.

Aquinas and the Humanity of the Conceptus

Stephen J. Heaney

TO THE PREDICTABLE STORM of controversy, the long-awaited “abortion pill,” RU-486, was finally marketed in Europe last Fall. The drug works by interfering with implantation of the embryo on the wall of the uterus, and is effective for much of the first trimester. Such an “advance” in the development of easy and “safe” abortion once again brings into focus certain crucial questions in the abortion debate. In a society where a woman will be able to eliminate an embryo from her body as easily as a headache, the question of the personhood of that embryo becomes even more pressing. If it *is* a person, its rights must at least be taken into account? Of course if it is *not* a person, the situation is decidedly different.

The polarizing nature of abortion makes many people label themselves and their opponents as broadly as possible: “pro-life” vs. “pro-choice,” and so on. There is a tendency to assume that there is little dissension among members of the two camps, which is not the case. Many who consider themselves “pro-life” regard abortion before implantation as morally permissible, arguing that there is not yet a person before this time.

This debate spills over even into Catholic circles. Abortion is often labelled a “Catholic” issue. Because, according to recent polls, more self-labelled Catholics have abortions than any other religious persuasion,¹ and due to the prominence of those within the Church who pronounce the “Catholic position on abortion” as “not monolithic,” it is not surprising that the alliance of “Catholic” and “pro-life” is often taken with a grain of salt. That alliance, of course, is the result of the Catholic Church’s long-standing teaching that the unborn are to be treated as persons from the moment of conception.

Equally important, the Catholic Church has come to be identified with the abortion issue because it has, over the past few decades, tried to provide a forum for intelligent and careful debate of the question of when human life begins, and when personhood is established. But by

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no means is there universal agreement among the more renowned and respected Catholic minds on this issue. At this time in history, when we make the destruction of embryos as painless to the mother as swallowing an aspirin, we may perhaps learn a great deal by listening in for a moment on this debate.

As noted, the Catholic Church teaches that the unborn are to be *treated* as persons from the time of conception.² The key element in ascribing personhood, according to this position, is the presence of the rational, immortal soul. The Church herself admits that the time of ensoulment is uncertain—that is, the moment when God infuses a rational, immortal soul into the entity, thus making it a human person, is not known beyond a shadow of a doubt.³ There is not enough empirical evidence (since the soul cannot be sensed) or revealed evidence to completely substantiate the moment.

Those who disagree with “the Vatican’s” position zero in on this weakness, arguing *via* this uncertainty that abortion may be permissible during the early stages of fetal development. While there are some who propose that the time of ensoulment could not take place until relatively late in development—for instance, in a fetus with a cerebral cortex⁴—the usual focus is on the time when cell differentiation begins, and twinning can no longer take place. Vatican theologians and philosophers find themselves in a particularly sticky situation when the philosophy of Thomas Aquinas is used *against* Church teaching, especially when one considers the place of honor accorded Aquinas by the Catholic Church.

Aquinas held that the human, rational soul is created directly by God, since it is spiritual. A material soul, which cannot continue to subsist separately from its body, can be generated materially by the reproductive process.⁵ This is not the case for a spiritual soul, which can subsist separately.⁶ This soul is infused—i.e., created directly into—the embryo. It is important for our purposes to recognize here that Aquinas does not say that the spiritual, intellectual soul is infused at the time of conception. He says rather that “the embryo has first of all a soul which is merely sensitive, and when this is removed, it is supplanted by a more perfect soul, which is both sensitive and intellectual.”⁷ He emphasizes this point: “The intellectual soul is created by God at the end of human generation, and this soul is at the same time sensitive and nutritive, the pre-existing forms being corrupted.”⁸

Those who would like to see a relaxation of the Vatican's stand on abortion often use this argument, coming from an authority so revered by the Catholic Church, to support their position. Even Aquinas, they point out, allowed that there is time between conception and the infusion of a properly human soul. Prior to that infusion, there is not, properly speaking, a human being, but only a *potential* human life. Of course, this potential human being is to be granted some value, but should circumstances warrant it, aborting such a being could be permissible, since there is no human person here. The Vatican's refusal to grant this point is thus seen as an inconsistency within its own position.

The response to such an argument is, by this point in time, predictable (which is not to say that it will prove ineffective). One need not accept every detail of a philosophy or theology in order to accept it as basically sound. In regard to the philosopher and the question at hand, one can accept the hylomorphic (matter & form) view of the relationship between body and soul, and a creationist view of the origin of the human soul, without the necessity of espousing Aquinas' position of the replacement of one type of soul by another. The question one must ask about such a theory is: Why would Aquinas propose it in the first place?

The answer to this question lies in Aquinas' continuing attempts to establish a metaphysical explanation in keeping with the "known facts" as presented by the science of his day. The biology of the middle ages, however, was admittedly primitive compared to a twentieth-century understanding. Aquinas accepted the testimony of Aristotle who, so many centuries after his death, was still considered a reigning authority in the field. And Aristotle had said that the embryo is an animal before it is a human being,⁹ and that the fetal matter is provided by the female (menstrual blood), while that organizing power is provided by the seminal fluid of the male.¹⁰ Aquinas also had to deal with the generally-accepted theory of spontaneous generation of animals from putrefaction.¹¹ Given such a theory, Aquinas found it "apparent to the senses" that "through many generations and corruptions we arrive at the ultimate substantial form,"¹² as the putrefying matter went from decaying matter, to living (and apparently vegetative) matter, to animal. Applying the principle consistently throughout nature, Aquinas held that this was true "both in man and other animals."¹³

Would Aquinas have come to the same conclusions given a late-twentieth-century understanding of human reproduction and embryology? It seems unlikely. From a strictly visual perspective, we can *see* the developing life, not only after it has left the womb, but *in* its own original environment. We can now see what it looks like, as a very early fetus, as an embryo, as a zygote, and even as a new conceptus before implantation. In fact, we can watch the process of fertilization, not only *in vivo*, but also *in vitro*, where we can more closely control it. From its earliest stages in the womb, we see this small living being developing its circulatory and nervous systems, its limbs and bones, its brain and eyes, and we see it all developing in a uniquely human manner. Surely Aquinas would see that this life is not a vegetative life, or an animal life, but a distinctly human life, and so it must have a human soul?

Not so fast!, comes the reply. It is not perfectly clear that this life *is* uniquely human so early. You certainly cannot tell whether this early cell mass is a salamander or a human being in these early stages, just by looking at it. At the very least, this argument runs, there are serious questions about the very earliest stages of the conceptus, in the first two to three weeks. As James Diamond puts it:

I simply cannot find in the biological order any reason not to distinguish radically and categorically between the preimplanted entity's vital capacity and that of the implanted entity. In short, the biologist holds that the numerous biological events converging in the general time area of the 14th to 22nd day weigh extremely heavily in any calculus of the beginning of the life of a homo.¹⁴

Two major roadblocks to the theory that there is an immortal human soul in the embryo from the time of conception are lack of early cell differentiation, and the possibility of twinning and fusion.¹⁵ Let us now explore each of these areas.

Cell Differentiation: The Argument from Organization

The first argument says that a certain level of physical organization is required before a human rational soul could be joined to a body. Carol Tauer synthesizes the thought of several writers as follows:

It is the antidualistic orientation of the Thomistic theory which is most significant for our purposes. In this theory the human being is regarded as a body-soul composite wherein the human soul acts as the life principle of the body, or as the form which makes the being what it is. A human soul or form can only be joined to matter (or a body) which is human, because it cannot provide human life or humanness to a lower level of material life. Thus, for the soul to be

present, the matter must have achieved a suitably advanced state of development. Since the human soul is characteristically rational, it appears necessary that the physical structures be developed to the level where there is some capability for supporting minimal rational activity.¹⁶

Such a theory seems to call for a body organized enough to have a brain and sense organs.¹⁷ At the very least, there would seem to be a necessity of some minimal and recognizably human organization. Such organization, the argument goes, does not take place until after implantation on the uterine wall, and cell differentiation begins.¹⁸

After fertilization takes place, the conceptus begins a process of cell division, always doubling in number—first two cells, then four, then eight, and so on—without increasing in total size. During this time, all the cells are the same. A little less than a week after fertilization, the zygote implants on the uterine wall, and the first cell differentiation takes place, when the earliest placental cells form. There are not yet any specific tissue cells; no cell has yet the characteristics of bone or muscle or nerve. This stage of differentiation does not begin until about 14 days after fertilization, when the first brain and cardiac cells appear (the heart begins beating by about day 23). Prior to this, any undifferentiated cell, it would appear, could differentiate into any of the various kinds of cells in the human body.¹⁹

It would seem, then, that there is no specifically *human organism* prior to cell differentiation. Differentiation and organization of the cells does not begin until the primary hominal organizer appears.²⁰ The undifferentiated cell mass can be identified as human, but in the same way that a sperm cell or a blood cell can be so identified, i.e., it is *from* a human being, but it is not itself organized as a human being. This analogy between types of cells can be drawn further. Like a free-floating unfertilized ovum, or a blood cell, or an unattached tissue graft, the conceptus, before organization, “feeds” off itself. Unless it begins to provide for itself an exterior source of nourishment, it dies. For the conceptus, this occurs after implantation and differentiation.²¹

For these reasons, some commentators believe they are within bounds to “distinguish radically and categorically” between these two stages, and to refuse to call this early undifferentiated cellular being a human being properly speaking. Albert DiIanni says that “we are not dealing with the presence of a human body, but with the *formation* of a human body.”²² Philip Devine suggests that these conceptuses are

“things which are becoming human organisms.”²³ The thrust of this argument, then, is that there can be no human rational soul in the unimplanted and undifferentiated conceptus because it is not *ready* for it, because it is not yet organized enough to receive such a form. For a form, according to Aquinas, cannot be the form of just any body, but only of matter suitably disposed to receive such a form.

Twinning and Fusion: The Argument from Individuation

The second argument against “immediate hominization,” or the infusion of a rational human soul at fertilization, is based on the phenomena of twinning and fusion of early zygotes. Before cell differentiation takes place, it is possible for the zygote to split into two identical cell masses, each of which can develop into a normal, fully-developed adult. It is also possible for two undifferentiated cell masses to join together, the result being *one* normal adult. These results can be induced in a laboratory; cell masses can be teased into splitting or recombining.²⁴ The conclusion that follows from this observation, the argument states, is that, prior to cell differentiation, there is not an individual human being; hence there can be no human, rational soul present. As the Rev. Charles Curran puts it:

In this context we are talking about individual human life, but irreversible and differentiated individuality is not present from the time of fecundation. The single fertilized cell undergoes cell division, but in the process twinning may occur until the fourteenth day. This indicates that individual human life is not definitely established before this time.²⁵

Carol Tauer, referring more explicitly to Aquinas, states the argument as follows:

In other terms, such a being cannot have a human soul, if one accepts the metaphysical notion of the soul as an indestructible, indivisible supposit. For if two early embryos were to fuse, and if each had a soul before fusion, then what would become of the extra soul? Souls (like selves) cannot fuse, nor can they be destroyed; neither can a soul split if one embryo divides into two or more.²⁶

The Soul-Body Relationship

These are powerful arguments, and not to be taken lightly. They may, however, illustrate some misunderstandings of Thomistic anthropology, or accept too readily the explanations proposed by Aquinas under the influence of primitive biology. We must, therefore, give an account of Aquinas’ understanding of the relationship between soul and body.

The theory of hylomorphism understands all material things as being the result of the conjunction of two metaphysical principles, form and matter (*hyle* = matter, *morphe* = form). The *form* is the actualizing principle of the substance. It makes the things *to be*, and to be *this kind* of thing, a kind of thing that exhibits these particular characteristics or activities. Primary matter is a metaphysical principle which contributes a thing's materiality, but nothing else. *As matter*, it has no characteristics, but is capable of receiving *any* form. Of course, in the actual world, we cannot encounter primary matter, because everything has *some* form. Therefore, we must be content with the observation that, in order to receive any particular *new* form, a body must be disposed to, or capable of receiving, such a form.²⁷

How do we identify the form of a thing? We do this by observing the operations or activities of the substance (*operatio sequitur esse*). Since it is the form which makes for the varying operations of material things, we can identify the form by the operations.

The same relationship of form to matter applies to soul and body in a living thing. We identify the kind of substance a creature is, hence its form, by the type of activities it exercises. The types of operations unique to humans are rational thought and free choice. Hence, what makes us to be human beings is that which makes these operations possible: the human rational soul. In other words, the soul is the *form* of the body.²⁸

It is vitally important to understand here that this human rational soul is not responsible *only* for thought and free choice, as though it were added on to other forms already existing which would account for bodily operation. No, it is rather the case for Aquinas that there is only *one* substantial form for any material thing. Thus, the rational soul, as the substantial form of the human body, is responsible for *all* actualizations and becomings of the human being: for the fact that it *is*, that it is *bodily*, that it is *living*, *growing*, *sensing*, and *knowing*. This is why Aquinas explained the development of the embryo in terms of the *replacement* of one type of soul by another. One substance has only one form.²⁹

Since certain of the operations of the human soul (abstract thought and free choice) do not require a body (i.e., are spiritual), the soul is able to perform these operations—to *live*—apart from the body. There-

fore, with the destruction of the human being as a whole, the soul is not destroyed, but is naturally indestructible, and continues to live.³⁰

It is equally important to understand by this how radically Aquinas differs from a dualistic theory, say that of Plato or Descartes. For the dualist, the body exists independently of the soul, and the rational part is added to, and controls, the body. Here, the soul, if you will, exists for the sake of the body; that is, the soul is not helped at all by their union, but the body benefits a great deal, since it can now perform its functions. Not so for Aquinas, who holds that the *body* exists for the sake of the *soul*.³¹ In this way of thinking, the human being has the organs and construction it does, not on its own account, but because they are necessary for the activities of the soul.

What is the operation of the conceptus? In the earliest stages, it multiplies its cells, and attaches itself to the uterine wall. It then forms the placenta, and begins differentiation of its cells. In other words, its operation is to develop into a fully grown human being. In a broad sense, however, this is precisely the same operation performed by the later fetus, the child, the adolescent. The organism is developing the organs necessary to perform its multiple operations of nourishment, growth, reproduction, sensation, locomotion, and thought. This, again, is important to understand. The reason the conceptus-zygote-embryo-fetus develops the organs it does is for the sake of the soul. The *soul* is the informing principle of these organs. *It* is responsible, not simply for their being sustained in operation, but for their being *at all*. Without the human rational soul's need, for example, for the types of sense and thought organs it has, there is no *need* for their development; they would have no reason for being.

Response to the argument from organization

This explanation of the relationship between body and soul provides the response to the various arguments favoring "delayed hominization." The argument from organization fails because it does not account for the *reason* why the human organism develops as it does. Basically, it puts the cart before the horse. For those who suggest that a high level of organization is necessary before a rational soul can be infused by God, one must ask the question, how did this high level of organization come about? Nothing less than a human rational soul is necessary for such a properly-human physical organism to come to be at all. A

highly-developed nervous system and brain—which, as we know, develop in the human embryo and fetus in a uniquely human way—cannot be the result of a lower type of soul. The truly human soul must be there to make this organization possible.

This same response applies to the suggestion that there cannot be a human soul before cell differentiation and organization begin. Such uniquely human organization from this very early stage—the truly human quality of which Aquinas could not have known—require a human soul *in order for* the organization to even begin to take place.

Perhaps, however, that is precisely the point of this cell-differentiation argument. Perhaps it means that, until this point, there is no evidence for a human soul, because the cell mass is not recognizably organized as a human being, but the infusion of the soul *starts* the organizational process. Before this, the cell mass is simply a free floating entity, just like an unfertilized ovum, or any other human cell: identifiable *from* a human being, but not *itself* a human being.

This argument cannot hold, however. Unlike the conceptus, these other human cells are, and become, *parts* of a whole. The conceptus is itself a whole being—not a complete or fully developed being, but a whole being, *not* part of something else. Other human cells, when failing or ceasing to be part of a whole, perish. Their life is subsumed into the life of a larger entity. The conceptus' life has a different orientation—to become a fully developed human being, or perish in the attempt. This is its overarching operation, the same as for any other stage of human development. All other operations are its ways of reaching this goal—and the conceptus *does* have operations aimed at full development. The cell division, differentiation into placental cells, and implantation may be processes other creatures undergo, but the human conceptus performs and undergoes them in a specifically human way—following human genetic patterns, forming a blastula that can be differentiated from other species, developing a primary organizer that begins development of higher *human* organs. The suggestion that the change that takes place at differentiation is a radical one before which there is no human being is controverted by the biological evidence. A radical change in form takes place when sperm and ovum unite. Each ceases to be what it *was*, and a new entity comes about. Such a change does not happen with the change from undifferentiated to differentiated cells. All changes after fertilization take place from *within* the entity—

development of the blastocyst, appearance of the primary organizer, differentiation of cells. These changes are part of the developmental process. It does not become a different entity, only a more mature one.

Thus the arguments from organization fail. It seems to this writer that, given modern embryological knowledge, Aquinas would have recognized that this entity, from conception, is a uniquely human being, developing consistently in a uniquely human way the physical organism necessary for the exercise of its powers. This calls for a properly human form—a human rational soul—from the beginning. So when Aquinas agrees with Aristotle that the soul is “the act of a physical organic body which has life potentially,” he does *not* mean that no soul can be present until the body is already formed.

Whence it is clear that when the soul is called the act, the soul itself is included; as when we say that heat is the act of what is hot, and light of what is lucid; not as though lucid and light were two separate things, but because a thing is made lucid by the light. In like manner, the soul is said to be the *act of a body*, etc., because by the soul it is a body, and is organic, and has life potentially [i.e., has the capability of performing living operations].³²

There is no requirement that matter predisposed to receive such a form already *have* this form. In fact, as we have seen, this is impossible. The penetration of ovum by sperm, on the other hand, is a logical candidate for the moment when matter is disposed to receive a human form, for it is at this time that it begins its movement toward full human development.

Response to the argument from individuation

The argument based on the phenomena of twinning and fusion of the undifferentiated cell mass is more easily answerable based on Thomistic principles. Since a person, or a self, and obviously an indivisible soul, cannot split or fuse, the argument concludes that there can be no person or self or soul until such splitting or fusing becomes impossible.

Obviously, a *person* cannot split, nor can a *soul*. This does not mean, however, that the material stuff cannot be divided between two (or more) souls. As Robert Joyce puts it, “the evidence would seem to indicate not that there is *no* individual present at conception, but that there is at least one and possibly more.”³³ Another possibility is that matter from one individual splits off to become a second, with the simultaneous infusion of a second soul.

As to the problem of recombination, this is really no problem. It is

THE HUMAN LIFE REVIEW

not the case that two persons, with two souls, fuse into one being. Rather, the fusion of the body of the second into the first results in the *death* of the second. Its soul, like that of all the human dead, separates from the body, and moves on to its eternal destiny.³⁴

Conclusion

In response to a primitive biology, and attempting to find a metaphysical explanation consistent with it, Aquinas found himself in the position of proposing a late infusion of the human rational soul, using a replacement of souls to explain the movement from vegetative life to animal life, to human life. What we have discovered, however, is that the conceptus, from fertilization, is not a plant or an animal, but a uniquely human being. Employing Thomistic principles, while abandoning misguided conclusions, we find that the biological evidence can only receive its proper metaphysical explanation with an understanding of the human rational soul as present from conception. Thus, despite the lack of an empirical test for, or a revealed statement about, the time when the soul is infused, the metaphysical evidence is clearly in favor of the theory of immediate hominization, and Catholic Church cannot be accused of inconsistency in holding this position as highly probable.

NOTES

1. Stanley E. Henshaw and Jane Silverman, survey for the Alan Guttmacher Institute, *Family Planning Perspectives*, July/August, 1988.
2. See Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* (Boston: Daughters of St. Paul, 1974), para. 13.
3. Ibid. The Church does hold the probability of ensoulment from conception. See note 19 of the *Declaration*.
4. Joseph F. Donceel, S.J., "Immediate Animation and Delayed Hominization," *Theological Studies* 31 (1970), p. 80.
5. *S. Th.* I, 118, 1, corp.
6. *S. Th.* I, 118, 2, corp.
7. *S. Th.* I, 76, 3, ad 3.
8. *S. Th.* I, 118, 2, ad 2.
9. *De Gen. Anim.* ii, 3; cf. *S.T.* I, 76, 3, 3 and ad 3.
10. *De Gen. Anim.* ii, 3; cf. *S.T.* I, 118, 1, ad 4.
11. *S. Th.* I, 118, 2, ad 2.
12. Ibid.
13. Ibid.
14. James Diamond, M.D., "Abortion, Animation, and Biological Hominization," *Theological Studies* 36 (1975), p. 316.
15. For my introduction into this problem, and an excellent outline of the principles involved, I am grateful to Carol Tauer for her article "The Tradition of Probabilism and the Moral Status of the Early Embryo,"

STEPHEN J. HEANEY

Theological Studies 45 (1984), pp. 3-33.

16. Tauer, p. 30.

17. Donceel, p. 80.

18. It is to Diamond's article that I owe the debt for the following description.

19. Diamond, pp. 310-11.

20. *Ibid.*, pp. 314-15.

21. *Ibid.*, p. 316.

22. Albert Dilanni, "Is the Fetus a Person?" *American Ecclesiastical Review* 168 (1974), p. 324.

23. Philip Devine, *The Ethics of Homicide* (Ithaca: Cornell University Press, 1978), p. 83.

24. Diamond, p. 312.

25. Charles Curran, "Abortion: Law and Morality in Contemporary Catholic Theology," *Jurist* 33 (1973), p. 180.

26. Tauer, p. 5.

27. *De Prin. Nat.* II; cf. *In I Phys.*, lect. 12, no. 104.

28. *S. Th.* I, 76, 1, corp.

29. *S. Th.* I, 76, 4, ad 1; *S.C.G.* 58.

30. *S.Th.* I, 75, 2, corp.; 6, corp.

31. *S. Th.* I, 51, 1, corp.; 76, 3, corp.; 89, 1, corp.

32. *S. Th.* I, 76, 4, ad 1.

33. Robert E. Joyce, "When Does a Person Begin?" in Thomas Hilgers, Dennis Moran, and David Mall, ed., *New Perspectives on Human Abortion* (Frederick, MD: Aletheia Books/University Publications of America, Inc., 1981), p. 352.

34. Some people find the thought of many such embryos doomed so early in their existence a disturbing one. A parallel and even more disturbing situation is encountered in the prediction that perhaps half of all "fertilized ova" do not reach the stage of implantation. As Karl Rahner puts it: "Will he [today's moral theologian] be able to accept that 50 per cent of all 'human beings'—real human beings with 'immortal' souls and an eternal destiny—will never get beyond this first stage of human existence?" ("The Problem of Genetic Manipulation," in *Theological Investigations*, Vol. IX (New York: Seabury Press), note 2, p. 226.) Two points should suffice in response to such a concern. 1) We are concerned here with the cogency and consistency of the arguments, as opposed to the possible consequences for those who are or are not considered persons. 2) Is it legitimate to suggest that a group of people are not persons because many have died? Until recently, in this country, the infant mortality rate was extremely high (it still is, in other countries). Were infants to be declared non-persons on this account?

Abortion: The Physician's View

Steven F. Seidman

THE CAUSE OF DEATH? Multiple blunt instrument trauma to the body, profound blood loss, massive intra-cranial hemorrhage and depressed skull fracture, laceration of the liver, ruptured spleen, lung collapse, profound shock.

That description could be the pathologist's report for an accident victim, or victim of a violent crime, and in a way it is. It lists the causes of death for an aborted fetus. All those assaults on the innocent, unknowing fetus take place during an elective abortion and, as a physician, I find this reality very disheartening. My oath, to heal the sick, implores me to speak against the offense of abortion.

Having trained in a New York City hospital for two years as an obstetrical resident (before beginning my training in anesthesia), I am well aware that abortion in New York State is legal until the fetus reaches 24 weeks of development, the magical point at which—according to the Supreme Court—the fetus becomes “viable” and *may* be protected by the state.

But I did not review the facts surrounding abortion from an oak lectern or by reading legal briefs in the tidy environment of a law library. I saw abortions clearly under the glaring lights of an operating room. I did not like what I saw.

The procedures for an abortion appear simple. Women are admitted to the hospital with a 23-week-old fetus alive in their womb. They request an abortion. Often prostaglandin vaginal suppositories are given. Prostaglandins, a synthetic abortifacient, induce labor, causing strong uterine contractions artificially. The uterus will contract its strong musculature taut during this premature labor until the fetus is expelled.

No fetal heart monitor is used. The object of the procedure is to kill the fetus, not to monitor the labor, or the delivery of an infant. Women lie in hospital beds and are given pain medication as they wait out the long hours until the abortion is complete. A tiny wet fetus slides into a

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waiting bedpan and lies there until a nurse takes the small form away to be disposed of without ceremony. Small moist hands and glistening miniature feet lie in amniotic fluid.

No one checks for breath sounds, but perhaps there are the signs of life for a moment. The fetus at 24 weeks weighs approximately 600 grams (1.3 pounds) and measures 32 centimeters (1 foot) from head to heel. Just down the hall from where women have abortions is the hospital's Neonate Intensive Care Unit (NICU) where 750 gram (1.6 pounds) infants are worked over furiously by the medical staff to save their lives.

Nurses and physicians, expertly trained, are cleanly dressed in blue scrub uniforms and white gowns, ready to offer round-the-clock care to the premature infants that lie struggling valiantly in small isolettes under the glare of hospital lights. Some infants are born at 25 or 26 weeks gestation and look hardly different from their fellow human beings purposely left to lie in the bedpans down the hall. What is discarded in those bedpans might have been diligently hooked to a respirator, intravenous lines, and a cardiac monitor in the NICU.

"D & E" is another method used for abortion in hospitals and outpatient clinics. Using abbreviations seems to take the edge off the real name of the procedure—dilation and evacuation. The cervix is gradually dilated, using a laminaria, the day before the procedure. This makes entrance into the womb easier. The cervix is shut tight, Nature's way of keeping infection out of the womb, and her way of telling us that it simply isn't time for the fetus to enter into this world.

The patient is given anesthesia the day of the abortion. A probe is inserted through the now dilated cervix and a small arm is caught in the grip of a suction tube and torn away in one swift motion. More suction will remove the remaining contents of the womb. The procedure takes only about fifteen minutes.

Masses of neonatal tissue are compressed into the cylinder of the suction machine. The pinkish tinge in the interior of the canister betrays the truth about its warm contents. The machine is turned off. The abortion is over, and the woman is free of her pregnancy. The life in her womb has been sucked out.

There are several ways to determine the "age" of the candidate for removal. Some physicians will use a sonogram to ascertain the maturity of a fetus before an abortion. Nagele's rule may be used: you add seven

THE HUMAN LIFE REVIEW

days to the first day of the last menstrual period, subtract three months and add a year. This roughly gives the estimated date of confinement, or the “due date” of the pregnancy.

Since the due date is only an estimate, a 23-week fetus could well be a 25-week fetus. A sonogram helps to gauge the approximate age of the fetus by taking certain body measurements, such as the bi-parietal diameter (measurements of the head). The shadow on the sonographer’s screen moves slowly in warm amniotic fluid and hears sounds.

The tender swimmer drifts. I’ve watched fetuses retreat from the pressure of the sonogram transducer as it is pressed on the mother’s round stomach. Sound waves will outline a small body complete and helpless at the same time. Small arms and legs will move, and the tiny baby looks like a delicate chalk drawing. The tiny bones of the vertebral column are as visible as stars on a clear summer night.

But the poetry of seeing the child *in utero* is a more profound sight to me. The chambers of the heart pump rhythmically. I’ve seen the “fetus” contentedly suck its thumb. This life has its photograph taken and examined by a sonographer and physician only to be dismembered during an abortion a few minutes later. But a court has decreed that the right to privacy is a more fundamental right than the right to life.

In every abortion, the desired result is the death of the fetus.

In my medical training, I studied how to heal the sick—to preserve life. Antibiotics, advanced pharmacology, new surgical techniques, and sophisticated knowledge about cardiac resuscitation led me to an ability to save lives. Today, I work in a Catholic hospital, very comfortable with the fact that we do no abortions in that institution. We strive only to save lives. But the reality is different in other health-care institutions.

I cannot see these tiny human beings as “not viable.” The Supreme Court’s 24-week “cut off” standard—even if it were enforced—seems absurd. I’ve heard a fetal heart beat at ten weeks *in utero*—my daughter’s. The doppler machine amplified the strong, steady heartbeat of my children at a time in their lives when, if we accept the Court’s *fiat*, they are not living human beings.

As a physician, I will as diligently care for a 23-week neonate as I do for a 28-week or 38-week newborn. They are all human beings, and I have a compelling interest in preserving life. All life is meaningful.

STEVEN F. SEIDMAN

I have read *Roe v. Wade*. I have read the Justices' ideas about viability. Perhaps a 23-week fetus can't survive outside the mother's womb and needs mechanical assistance to breathe, but it cannot be said that life with mechanical assistance is not meaningful. Advances in neonatology should force the Court to re-examine "viability" as medical skills and new knowledge about premature infants save the lives of previously "non-viable" babies.

I have seen abortions first hand, and what I have seen will stay with me forever. I am committed by my own oath as a physician to save lives. I am committed to dissent against *Roe* until it is overturned.

A New Era for Life

Brian Harradine

AS WE GATHER HERE and reflect on how the events of recent decades have treated life, we can be excused for wondering whether, in fact, the world is entering into a new anti-life era. Fifteen years ago an international family planning guru, Professor Derek Llewellyn-Jones, passed his own death sentence on life with these words:

To reduce the plethora of people which threatens to overwhelm us, our objective must be to change the present pro-natalist attitude into an anti-natalist attitude with the least delay.¹

We cannot but acknowledge his frankness, his clear and unambiguous statement of policy. We hear such a statement and we know where he stands, and we know where we stand. But, as we look back over the past two decades, how have honesty and truth fared?

On the fourth of June, I picked up a local Australian newspaper and read this headline: "Hemophilia can now be diagnosed in the unborn."² The article triumphantly proclaimed that "a test to detect hemophilia in unborn children has been developed which could give hope to hundreds of Australian families which carry the genetic disease." According to the press article, this exciting new development means that a cure has been found. But that cure is death. Eliminating hemophilia, not by curing the disease, but by killing the defenseless human beings unfortunate enough to be deemed imperfect. So, this was what "giving hope to hundreds of Australian families" really means. This is what the proud scientist announcing the "breakthrough" really meant. Not a "New Era for Life." But, a new era of death for "Life Deemed Unworthy of Life." It was this very concept of "Lebensunwertes Leben" [life unworthy of life] which the Nazi health bureaucracy used to justify sterilization programs, and later direct medical killing.

It is becoming increasingly clear that the impetus for these disturbing present-day trends in reproductive technologies rests in the *values* deceptively promoted by those who sought, and are still seeking, to

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impose an anti-life mentality upon the peoples of our world. And I stress the word “impose.” For just as the technological imperative is propelling some science technologists on to the discovery and application of more efficient and comprehensive techniques to search for and destroy unborn human beings with genetic diseases, so, too, is it leading the anti-life population establishment to unleash upon an unsuspecting world new, more efficient, and ever more deadly means for the extinction of unborn human beings.

But let us, for a moment, step back from the battle front, from the cutting edge of technology, and consider the particular type of development model of which this anti-life mentality is but one element.

In most countries of the world today, the need for development is the key motivator of government policy. There is, indeed, nothing intrinsically wrong with this. Who would wish to deny to any single one of the world's people improved health, freedom from debilitating disease, adequate nourishment and housing, access to education and learning?

However, there is a particular view of development which, over the past few decades, has come to be accepted as the orthodox wisdom of the age. It is an approach to development which has as its goal only the material future of *economic* man, and sees population growth as the prime obstacle to achieving this objective.

In the middle decades of the current century mortality rates in many developing countries declined markedly, and population growth rates began to rise. Development “experts” predicted that such trends would wreak havoc for their economic development strategies. Two lines of reasoning were regularly advanced: the needs of an increasing population would outstrip available food and other resources; and investment required to provide schools and other services for a growing population represents investment that could otherwise be used to expand production and wealth.

Such a diagnosis is fundamentally flawed. It is not seriously argued today that there is an absolute shortage of food in the world. Growth in food production in recent decades—even in the three largest developing countries, India, China, and Indonesia—have made nonsense of this Malthusian spectre. Nor can one deny the fact that geographic density of population will tend to substantially *reduce* per-capita investment requirements. This is quite apart from the obvious, but almost invariably neglected fact that investment in children is not wasted investment,

but represents investment in the future productive capacity of the nation.

In addition to diagnosing the “problem” as increased population growth rates, many development “experts” have also prescribed their solution—the widespread introduction of artificial means of birth control.

It is a sad fact that many of the officials of major development funding agencies have come to agree with this “expert” diagnosis and prescription. For, over time, the provision of foreign aid has come to be linked to the introduction in many countries of birth control programs. In economic terms, the acceptance by international funding agencies of this basic, but mistaken, “diagnosis” has proved to be very costly. Not only has the provision of high-tech, high-cost artificial birth control drugs and devices made the recipient more dependent on the donor, but the diversion of scarce local medical and administrative expertise to these programs is, to this very day, placing an unacceptable burden on the rest of the development effort of the receiving country.

The greatest costs, however, are not economic. They are social, moral, and political. Social costs include the intrusion into family and cultural settings of a foreign ideology. They involve the introduction of a poisonous anti-life mentality that imagines that the world should revolve around the self-centered wants of an individual to the ultimate detriment of that individual’s growth and happiness and of social cohesion, and, indeed, to the detriment of responsible parenthood. Moral costs are perhaps the most significant. The imposition of an anti-life mentality, of a contraceptive culture, means the imposition of an impersonal philosophy which views as irrelevant and unimportant the delinking of the unitive and procreative aspects of sexual intercourse. It means paving the way for the disastrous health and behavioral effects that have become so evidently widespread in the Western world with the advent of such devices as the contraceptive pill and the IUD and the tragic, increased rate of abortions. And to touch upon just one political cost: can a country’s national pride—a necessary element of development—allow foreign experts, and their local “clones,” to develop programs relating to the most intimate aspects of the behavior of a nation’s citizens, especially where the adverse economic, social, and moral consequences of such programs can be seen?

We must proclaim to the world that a view of development which diagnoses *people* as the “problem,” and prescribes artificial *birth control* as the “solution” is not authentic development. It is not development which promotes the good of every person and of the whole person. Development is never authentic if it focuses solely upon economics to the neglect of the political, cultural and spiritual dimensions of the whole person. It is never authentic if it treats people on the basis of their place in a statistical table, an approach which loses sight of the real, ordinary men, women and children who live real lives full of real customs, laws, traditions and values.

Paul Ehrlich was the hero of the early wave of anti-natalism which swept the world against what he termed the “teeming millions.” After a quick trip to India he returned to the United States full of insights into the population “problem,” and wrote that “population control is the conscious regulation of the number of human beings to meet the needs, not just of individual families, but of society as a whole.”³ Concerning Ehrlich’s Indian adventure, Germain Greer notes in her book, *Sex and Destiny*, that his advocacy for population control stemmed from what he saw in India and didn’t like. What he didn’t like was the heat, the state of repair of cars, and the people. Particularly the people.⁴

Ehrlich’s comment is cause for concern. Who will consciously regulate the number of human beings? Are individuals and families to be sacrificed for the benefit of the policies promoted by population control “experts”? Authentic development does not attempt to transform society by trampling upon the rights and the needs of the individual human lives and of the individual human families of which society is comprised.

Yet such perverse notions remain alive among the population establishment. Only last September at a Commonwealth Parliamentary Association meeting, the Isle of Man’s Minister of Local Government and the Environment emphatically endorsed the use of birth control to limit population growth regardless of what were termed “religious taboos.”⁵

In the face of such a narrow vision of the human person, we must restate with ever-fervent conviction that authentic development never seeks to divorce men and women from the values they hold dear. The onus rests on all leaders at all levels within society to identify their own priorities and needs according to the needs of the people in their cultu-

ral, religious and economic dimensions. And to judge and lead in light of this understanding. Failure to do so may bring with it the danger of national development being hijacked by a minority, brainwashed by a foreign anti-life culture, who might not have the authentic development of the people at heart.

It is, indeed, high time that this question be asked: Do the so-called development "experts" who diagnose "people" growth as "the problem," and prescribe population control as "the solution" really have the authentic development of the people at heart? And why is it that nowhere is this deceptive population control mentality more alive than in the international funding agencies, various non-government organizations, and in the very United Nations bodies which are generally held in high esteem?

To seek answers to these major questions let us consider one of the more prominent, and generally respected of such United Nations bodies: the World Health Organization (WHO). We all know its motto: "Health for All by the Year 2000." An admirable objective. But let us for a moment turn our attention to one of the means by which the World Health Organization is seeking to achieve this objective, and examine whether this seeks to promote authentic development.

Let me go back to the early 1970's. The era of Paul Ehrlich and the *Population Bomb*, of the Club of Rome and *The Limits to Growth*. And in this climate of fear and hysteria the World Health Organization took a most significant step and established the WHO Extended Programme of Research, Development, and Research Training in Human Reproduction. The name "Extended Programme" was later changed to "Special Programme," but its aims remained the same:

... to increase understanding of the human reproductive process leading to the development of a variety of safe, acceptable, and effective methods for the regulation of human fertility.⁶

Eighteen years later we now know how, in effect, the World Health Organization defines "safe, acceptable, and effective methods of fertility regulation." It means destroying unborn human beings. Who is behind the development and testing of the anti-hCG [anti-birth] vaccine? The WHO Special Programme's Task Force on Vaccines for Fertility Regulation. And why? Their 1985 Annual report may give us a clue as to the values by which they allow themselves to be guided:

BRIAN HARRADINE

The embryo . . . represents an ideal target for immune attack since it comes into contact with the maternal circulation at a very early stage in its development.”⁷

Who is behind the attempts to test the abortifacient drug RU-486? WHO’s Special Programme’s Task Force on Post-Ovulatory Methods for Fertility Regulation. The World Health Organization’s Global Strategy is “Health for All by the Year 2000.” But not for the unborn child!

It is no accident that WHO is so deeply involved in such anti-life research. Its Director-General, in an address to a 1983 conference in Stockholm, made the significant point that WHO’s perceived neutrality made it “a most appropriate instrument to deal with an area as sensitive as that of family planning research.” It could use and abuse its good name to cut across sensitive political and cultural boundaries promoting collaborative research, coordinating and disseminating information.⁸

Such so-called “neutrality” is not neutral. It is fundamentally anti-life. Far from providing unbiased and impartial assessments, this Special Programme is actively developing and promoting new weapons of chemical warfare to be unleashed upon an unsuspecting world and aimed at unborn human beings.

It is clear that the world is having the belief gradually imposed upon it that “Health for All by the Year 2000” will require that the inherent right of the unborn child to life itself be extinguished.

But the World Health Organization is not alone in the respected international bodies abusing their perceived neutrality, and engaging in the deceptive anti-life activity which threatens to forever tarnish their hard-earned reputations. In its 1988 *State of the World’s Children* report, UNICEF, the United Nations Children’s Fund, defines “high-risk pregnancy” as “becoming pregnant before the age of 18, . . . before the last-born child is two years old, . . . after having more than four children, or after reaching the age of 35.”⁹ There is nothing new in this. Those involved with Natural Family Planning counselling will be familiar with the conditions which are conducive to the health of mother and child. What is new is the solution UNICEF offers. To overcome the health risks associated with pregnancy, UNICEF demands that parents be “empowered with *today’s* knowledge about safe pregnancy and childbirth.”¹⁰ Will safe pregnancy come to mean the necessary elimination of those unborn human beings unfortunate enough to be conceived outside of the “safe pregnancy” conditions?

According to an address by World Bank President Conable in Kenya

on February 10, 1987, even the World Bank's "Safe Motherhood Initiative," which laudably aims at large-scale improvements in maternal health, sees birth control programs as a major element in implementing the initiative. Will their officials find a place in economic assistance packages for the anti-life birth-control weapons being developed by WHO?

The World Bank, WHO, UNICEF, together with the United Nations Development Program and the Rockefeller Foundation comprise the Task Force for Child Survival. A meeting of this Task Force took place in Talloires, France from March 10-12 this year and a major session of the meeting was devoted to "state of the art family planning for child survival and safe motherhood."¹¹ The question must be asked: Will this result in more coordinated and deceptive measures to push anti-life birth-control packages labelled "child-survival"?

But what is the bottom line? Are we being asked to accept without question an ideology, which, as the years advance, will come to mean that the inherent right to life of the unborn child *must* fall victim to the perceived demands for "better health" made by the rest of the population? Will the unborn child be sacrificed so that his or her older brothers and sisters can have better health, faster growth, and even have, as a Johns Hopkins University report recently claimed, higher levels of academic achievement?¹² Can this be termed *authentic development*?

Some officials and advisors in the World Bank, UNICEF, and the World Health Organization may sincerely believe that the increased use of more "efficient" birth control technology will improve maternal and child health. One assumes that they mean well. But meaning well is not good enough! It is not sufficient when one is dealing from a position of strength and of trust with other countries and with other peoples. I sincerely ask of these officials: Have they ever stopped to consider whether "improved health," and the offering of "neutral" advice is really the bottom line? Have they ever taken the time to discover what the ultimate objective and rationale is of those who are devoting their talents to the abuse of medicine for the extermination of unborn human beings? Are they aware that the population establishment may be using such respected organizations as a means by which to impose their own anti-life mentality upon an increasing number of the world's people, particularly in the developing countries? And of most significance, do the thousands of loyal UNICEF, WHO, and World Bank workers who

have devoted their lives to promoting the health and authentic development of the people of the world, wish to see the reputation of the organizations they serve tarnished by the actions of a handful of anti-life elites?

As an indication of the extent to which the anti-life mentality of the population establishment is showing signs of engulfing these hitherto reputable organizations, let us consider what the scientists contracted by WHO to develop the [anti-birth] vaccine have to say about it.

Professor Vernon Stevens of Ohio State University, a man who has worked with WHO on the vaccine since the early 1970's, was in Australia in 1986 when Professor Warren Jones was conducting the first ever Australian trial. And Professor Stevens had this to say:

The vaccine will revolutionize family planning in developing countries . . .¹³

Commenting on the importance of the trial, Professor Stevens said that it was the "most important of its kind ever conducted in Australia." And why? Because of its "potential impact on population overgrowth in developing countries."¹⁴ And what did Professor Jones tell the world about the new vaccine?

The vaccination could . . . prove to be extremely effective in solving the problems of birth control in developing countries. The vaccination principle is very attractive in developing countries—they have already been introduced to vaccines and they know that it is "good medicine."¹⁵

Such statements raise fascinating and fundamental questions. Is exterminating early human life "good medicine"? Is it "good medicine" when those developing it believe that the vaccine's best selling-point is that mothers from the developing countries will be led to believe that, just like any other vaccine, this one will be "good for their health"? Is it "good medicine" when it is designed so as to "protect" the mothers of the Philippines and other developing countries against the "disease of pregnancy"? Has "good medicine" and world health policy come to this: that for the first time in human history our newest members of the human race are to be regarded as a disease for which a vaccine must be found?

The dangers are real and imminent. Professor Jones has completed the Phase I trial in Australia on previously sterilized women. The Phase II and Phase III trials will involve fertile women. Professor Jones has said, and I quote, that "a Phase III trial . . . will look at the effects of

the vaccine on several thousand women from different backgrounds, but primarily from third-world countries.”¹⁶

You have all heard, no doubt, of the controversy which surrounds the drug Depo Provera. I raised the issue of its dangerous side effects ten years ago in the Australian Parliament. Although the drug has fallen into disrepute in some industrialized countries, it is still being used in a number of developing nations with the connivance of the international population control establishment. Allegations have recently emerged about its use on teenage girls in remote areas of at least one country under the guise of State-run immunization programs. As they lined up for their shots, their parents were told that it was just part of the routine immunization program.

The new [anti-birth] vaccine will turn such abuses into an art form. Unless we make our voices heard today, this new and sinister weapon of the new cultural imperialism will, within the next few years, be unleashed upon the people of the developing world. Authentic development, development which promotes free but responsible parenthood, and which respects the economic, cultural and spiritual dimensions of the human person, will suffer a devastating blow.

Let us turn to what the World Health Organization has had to say about so-called “post-ovulatory” methods of fertility regulation like RU-486. We read in the Special Programme’s 1985 Report that such methods “constitute a more pragmatic approach by offering fertility regulation if and when needed.”¹⁷ Eventually the authors of the report dispense with any pretensions of “neutrality,” and inform the reader that the post-ovulatory methods being developed are “essential to remedy the consequences of contraceptive failure.”¹⁸

Again, is health the bottom line? Is it the bottom line when Professor Beaulieu, the father of RU-486, claims that the new drug will bring about a completely different attitude to sex, and will help, so he believes, to bring about the real freedom of rural women?¹⁹ The interpretation one must place upon such deceptive use of language by the World Health Organization is that their research in the field of population control represents not efforts to improve health care, but a calculated attack on life itself! Health for all, but not for the unborn child.

This is part of the new cultural imperialism. The imposition of anti-life, anti-child values and unauthentic development under the guise—the often heavy guise—of “improved” health services. The new cultural

imperialism—the relentless drive towards rendering infertile the women of the developing world; to make them slaves to drugs and anti-life devices; to control human population, in the words of the anti-life Professor R. V. Short, by controlling the women's *corpus luteum*;²⁰ and the relentless imposition of anti-life, anti-child values.

It is in the face of these anti-life threats that I salute the constitutional recognition given by the Government of the Philippines to the unborn child. This is a most significant and praiseworthy achievement! Truly a "New Era for Life"! For it recognizes what many scientists attempt to ignore: that human life begins at conception, and human life as a basic human right deserves the full weight of legal protection that a government can provide. Rights embody principles we cherish. They form the basis for action, for the adoption of measures designed to promote them. For far too long we have allowed the population establishment to dictate to the people of the world what rights they should possess.

In United Nations resolutions and declarations dating from the mid-1960's and at UNFPA, International Planned Parenthood, and Population Council conference after conference the world has been informed of its reproductive rights. We have learned of the rights of parents to information about, and access to, all the means of contraception available. We have learned of the rights of parents to a healthy child, and the rights of every post-birth child to be wanted. Yet these are slogans. Powerful slogans in the armory of the population establishment. Slogans which promote *unauthentic* development, and which seek to rationalize and legitimize the elimination of those tiny unborn human beings not wanted because of their timing, their health, their nuisance-value, and more recently, because of their sex. This is why the Constitutional recognition of the right of the unborn child to life matters. This is why we must be unashamedly pro-life, and reject the unauthentic values which seek to promote rights in such a way as to extinguish the rights of others.

Although the right to life of the unborn is now enshrined in the Constitution by the Philippines people, you must be aware of institutionalized forces of powerful elites which are bent on undermining this democratically-expressed principle. One of the problems I have faced in Australia in attempting to secure legislative protection for the human embryo against destructive experimentation has been the concerted opposition mounted by the health and scientific bureaucracy and by the

research establishment. A prominent member of the international embryo research establishment is Professor R. V. Short. Professor Short gave evidence before the Senate Committee set up to examine the legislation I had proposed to outlaw destructive experiments on human embryos. When I asked him why the experimental tests were not being undertaken on non-human higher primates such as gorillas, chimpanzees, and orangutans, he replied: "Because they are endangered species." I then asked: "So, you are able to do it on humans?" Professor Short replied: "We are not endangered."²¹ It was this same Professor Short who, in 1985, served on the WHO Special Programme's Scientific and Technical Advisory Group. The same Advisory Group which belittled Natural Family Planning and decreed that the high priority research areas must be the anti-life vaccine and RU-486. Only a few days ago I was informed that a Western development funding agency had received an application from the International Women's Health Coalition in New York for money which would enable two people from the Philippines to attend the "Christopher Tietze International Symposium 'Women's Health in the Third World: The Impact of Unwanted Pregnancy'" in Brazil in October. One of these organizations, the Ford Foundation, stated in 1985 that its "overseas offices will be encouraged to fund projects that . . . support better access to safe, humane, legal abortion."²²

These are the sorts of challenges being mounted by the international population control establishment, and their local clones, against the New Era for Life we are celebrating here today.

I refer, finally, to the Draft Convention on the Rights of the Child. Is this not an example of what has happened in the area of basic human rights over the last three decades? As late as 1959, the institutional health and human rights environment was such that the UN Declaration of the Rights of the Child was adopted and specifically applied to rights "before as well as after birth." In 1988 these words are missing from the Draft UN Convention on the Rights of the Child. I wish to pay tribute to the International Right to Life Federation for its strenuous efforts to remedy this inhuman state of affairs. And I would ask Mr. Sherwin to convey appreciation to those other human rights supporters with whom he is working towards this end.

It is our democratic right and duty to demand of our governments that our representatives and observers insist that the words "before as

BRIAN HARRADINE

well as after birth” as contained in the 1959 Declaration be restated in the Draft Convention which is due for its second reading towards the end of this year.

As the era of darkness for the right to life of the unborn had just commenced prior to the 1959 Declaration, so the New Era for Life has now begun. Let us celebrate it there, proclaim it when we return to our homelands, and work together to expose the machinations of the population control elites, to resist their cultural imperialism, and to work for authentic development of our nations and for human rights for all—including the unborn.

NOTES

1. Llewelyn-Jones E., in *Zero Population Growth* ed. Ann Turner, South Yarra, Heinemann Educational, 1974, p. 27.
2. Hobart (Australia) *The Mercury*, March 6, 1988.
3. Ehrlich P., *The Population Bomb*, New York, Ballantine. 1968, p. xiii.
4. Greer G., *Sex and Destiny*, New York, Harper & Row, 1984, p. 474.
5. Hon. Dominic Delany MHK, cited in *The Parliamentarian*, Journal of the Parliaments of the Commonwealth, Vol. LXVIII, No. 4, October 1987, p. 218.
6. Referred to again in *Special Programme of Research, Development and Research Training in Human Reproduction*, 14th Annual Report, World Health Organisation, Geneva, 1985, p. 1.
7. *Ibid.*, p. 54.
8. WHO Director-General H. Mahler, “Support to Research on Fertility Regulation: Global Needs and Priorities,” in *Research on the Regulation of Human Fertility*, proceedings of an International Symposium in Stockholm 1983, Copenhagen, Scriptor, 1983, p. 359.
9. *The State of the World's Children 1988*, UNICEF (Oxford University Press), 1988, p. 33.
10. *Ibid.*, p. 34.
11. *Newsline*, United Nations, September 3, 1988.
12. Cited in *Population Headliners*, No. 27, October 1985, p. 1.
13. Cited in *The Canberra Times*, February 9, 1986.
14. *Ibid.*
15. Cited in *Interpharma/Healthfile*, December 1986, p. 3.
16. *Ibid.*, p. 6.
17. WHO *Special Programme 1985 Annual Report*, *op. cit.*, p. 40.
18. *Ibid.*
19. Cited in *Asia-Pacific Population Programme News*, Vol. 13, No. 2, 1984, p. 47.
20. R. V. Short, “Recognition of Pregnancy,” in *Proceedings of Ciba Foundation Symposium of Foetal Autonomy*, December 1968, J. A. Churchill, 1969.
21. R. V. Short, in *Senate Select Committee on the Human Embryo Experimentation Bill 1985: Transcript of Evidence*, Australian Government Publishing Service, Canberra, 1986, p. 2168.
22. *The Ford Foundation's Work In Population*, A review of past and present emphases and a discussion of plans to expand the Foundation's population programs based on current work, New York, Ford Foundation, August 1985, p. 32.

On Canada's "Pro-Choice" Problem

Iain T. Benson

THE SUPREME COURT OF Canada in striking down the abortion section of the *Criminal Code* in the *Morgentaler* decision on January 28, 1988, effectively brings to an end a long period in which the law said one thing on paper but turned a blind eye to what occurred in practice. In some areas of Canada abortions could be obtained for the asking; in others, even if life was threatened, they could not be obtained without, in some cases, journeys to other communities. Few people were pleased with the old law or the manner in which it was operating. People who have been seeking change in either direction wait expectantly to see what the politicians will do. Whatever happens, the abortion issue will not be settled in Canada; for both sides, it will be an ongoing struggle but, with advances in medical technology, what we say now about the early stages of life will have influence once the issues which now seem pressing have shifted.

Other issues than abortion itself have arisen in the aftermath of the decision: one of these is the manner in which the Press report on important issues in Canada. In a democracy, we place importance on having an "informed electorate" and the various media are important in this regard; the way in which the decision has been reported must cause concern no matter what one's perspective is on the abortion issue itself. In some instances, the results of the decision (no law on abortion) were elevated to the reasons (that there should be no law on abortion). A certain degree of misreporting of the decision was not surprising given its length and the fact that four separate judgments were given.

However, confident press pronouncements to the effect that "the Supreme Court said that abortion should be an issue between a woman and her doctor" (when the majority of the Court did nothing of the sort) suggest either ignorance or something worse. It is apparent that confusion regarding the decision has, for whatever reason, found its way into what parliamentarians believe the decision to have said. Thus,

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those who should be in a position to know better have themselves perpetuated the confusion, whether knowingly or unknowingly.¹ I make no mention of how lawyers may have been implicated in the misreporting.

Careful review of the decision reveals that, far from vesting an untrammelled right to abortion, the Court has left Parliament leeway to change the law in ways that are significantly more favorable to the preservation of fetal life² than the law which the Court struck down. All of the majority judges, while expressly leaving open the content and extent of fetal rights, suggested that the state will, at some point, have an interest in balancing the rights of the woman and the fetus; how this should happen the Court did not say, leaving this up to legislators.³

In this paper, I propose to examine certain of the arguments used by proponents of the “pro-choice” position in the abortion debate. Since, in the debate, we are concerned even arguably, with when our society chooses to protect life by law, anyone concerned with human rights must be concerned with the arguments that allow the taking of life. Some will immediately disagree with the statement that the abortion debate involves the taking of developing human life; to these people, and those who say that human life and animal life are morally the same, I have nothing to say. For others, this paper will suggest that certain arguments often used by those advocating the “freedom of choice” side of the debate are insufficient to allow the taking of fetal life. It is not the place of this paper to describe the limited circumstances in which abortion may be morally acceptable.

I will examine the use of “freedom of choice,” “some terms regarding the nature of the fetus,” “pluralism,” “the life or health of the woman,” “compromise” and “the woman’s right to ‘control her own body.’” I will argue that “choice” itself should not be determinative in moral debates and that several other terms frequently relied upon by “pro-choice” advocates are unacceptable. We must make no mistake; when philosophers such as Canada’s George Grant say that “this is one of the crucial issues of our time,” it is incumbent on all fair-minded members of society to examine their own argument and their presuppositions.

The Place of “Choice” in Moral Debates

What is meant by the phrase “pro-choice”? It is my view that due to its central position in the abortion debate (it seems to have assumed, for

some, the status of a self-evident, self-contained justification) this phrase must be examined; once examined, it is evident that it is not a valid position to take in a moral debate at all and that because it is unsound, arguments can easily be developed to show that the term itself is of no use in moral debates.

To those who have followed the abortion debate from its inception, it is clear that this phrase is the one preferred by its adherents to the earlier term "pro-abortion". The latter phrase was dropped as indicating approval of abortion when, it is argued, the proponents of "freedom of choice" are not, really, in favor of abortion itself but favor "the right to choose;" those who oppose abortion are, then, said to be "anti-choice." What is behind all this terminology?

I argue that to approach the abortion issue on the basis of choice is, simply put, poor philosophy, and that those who say they are pro-choice are using an argument which they themselves would not allow in other areas of moral debate.

Choice itself is morally neutral, and can only be evaluated as right or wrong in terms of the framework of rights in which it is exercised. Thus, to ask "should I have the freedom of choice to fire my pistol?" can only be evaluated *morally* in terms of what you intend to shoot and in what setting. Another example which will strike a chord with many of those in the "pro-choice" camp in the abortion issue is the issue of pornography.

Is one who wishes to restrict the pornography producer's right to produce pornography "anti-choice"? In one sense, of course he is, yet many of those who are "pro-choice" in the abortion debate are also "anti-pornography" in the sense that they recognize the fact that there are "moral" factors which are a part of the issue of the pornography debate that would be completely ignored if "choice" alone was the focus. There is another aspect of the "choice" debate that is used where abortion is at issue but would scarcely be permitted in other areas.

It is sometimes said that those who are against abortion are "seeking to enforce *their* moral views on other people." It is important to note what this statement implies. It implies that moral views may be held personally but have no applicability between individuals. This in turn suggests that morals are purely subjective, and that no person should attempt to force his view of what is right or wrong on other people. I am not going to discuss here the relationship between morals and law

except to say that there is a difference between saying that law and morality are not coextensive (a proposition which I accept), and that law is not concerned with morality (a proposition which I deny).

Most of our criminal law is based on moral notions of what is "right" and "wrong" and that such rules should apply regardless of the views of individual citizens. Furthermore, it is worth asking whether people who say that "no one should attempt to force his view of what is 'right' or 'wrong' on others" really function in accordance with this themselves? I would say that they do not.

Over a whole host of issues, advocates of particular moral positions expect the law to restrict behavior of certain types; one here might list sexual abuse, discrimination of various sorts, as well as matters such as restrictions on the production of pornography. In so doing, they are seeking to enforce through law their notions of what should or should not be in society.

In the pornography debate, for example, those who oppose the pornographer's freedom of choice (to produce pornography) do, in fact, attempt to assert their moral views on those who want the freedom of choice to produce pornography. It is particularly interesting to examine the reasons why some feminists, for example, are against pornography. It is for reasons that have to do with a moral evaluation, not simply "choice" itself; thus the issue for them turns on the "victimization" or "degradation" of women, and these terms *are moral evaluations* that turn on standards of, for example, "right" views of women, the "correct" way of portraying and treating women, etc. No person who views the pornography issue in terms other than choice can view the abortion issue solely in terms of choice, without undermining his own method of moral evaluation in the pornography debate. A person who holds a "pro-choice" view on the abortion issue, but an "anti-choice" view as regards pornography is unlikely to respond favorably to the suggestion that pornography is not a moral issue, but is, rather, an issue of choice between a pornographer and his distributor (or his purchasing public).

In all areas of moral debate, one must evaluate what the rights are that are at issue and in the abortion debate this necessarily involves an evaluation of what the fetus is and whether it has an interest to be taken into account. Since human rights are the property of those who are alive and being a member of the human species undeniably begins at conception (as a matter of scientific fact), whether the fetus is

deemed to have moral and legal rights is a matter of critical concern which ought not to be avoided by a philosophically unsound use of "choice."

The real issue in the abortion debate (and all debates involving when we should protect life by law) is "when and on what basis do we recognize the right to have rights?" The onus is on those who would seek to remove rights to indicate why the right should be removed. This leads to the question (regarding the rights of the fetus) "what is the morally relevant distinction between the fetus before birth and a child after birth such that we say one has a right to life and the other doesn't?" Various attempts, some of them exceedingly ingenious, have been made to devise a morally significant distinction.⁴ I have never heard a satisfactory answer to this question, and until one is given must support the "presumption in favor of life" referred to by the Law Reform Commission of Canada in another setting.⁵ To conclude on this point therefore, we have seen that "choice" itself is incapable of providing a satisfactory resolution in the abortion debate. Since the debate involves, even arguably, the most central of "rights" issues, we must proceed carefully and with an honest philosophical approach: "choice" itself will not do in this or in any other area of moral debate.

Some "Pro-choice" Arguments Regarding the Nature of the Fetus

Apart from avoiding the issue altogether, one of the most common techniques to avoid dealing with an issue is to say that what is at issue is not an aspect of the problematic category. Thus, in the abortion debate where the "pro-life" side is continually talking about the "right to life"⁶ of the fetus and the fact that abortion pits the life of the fetus against the life or will of the woman, one of the techniques used by the "pro-choice" side is not to mention the fetus at all.⁷ This failure to address the developing fetus becomes even more striking in the "fetal intervention" cases in which certain feminists have argued that intervention to save the life of the late term fetus is never justified over the will of the woman no matter how unreasonable the position taken by the woman. Thus, no matter how great the risk to the fetus or how minimal the risk to the woman, nothing should interfere with the decision of the woman. Such an approach, though it does not address the issue, would seem to suggest that birth is the relevant point at which to attribute rights. This approach effectively denies any rights in the fetus despite the fact that, when a late-term case is concerned, the "fetus" is

in all respects except location, identical to a newborn child.⁸ Given that determination of the moral status of the fetus in the abortion issue is bound to affect the way in which the fetus is treated within the whole gamut of advancing medical technology, the denial of status until birth is ominous.

A second method used by “pro-choice” advocates is to deny that the fetus had rights because it lacks some quality necessary to the holding of rights. The most common manner in which this is done is to say that the fetus does not have standing in the matter of “life-rights” because it is not yet a person and does not have moral personhood. Another similar argument says that the fetus is not “human,” while yet another, referred to by one of the Judges of the Supreme Court of Canada, says that the fetus is “potential life” merely and therefore has a lesser interest or no interest at all, its “right” to protection accruing, somehow, at a later stage of its development.⁹

Attempts have been made to suggest that the fetus’ rights should exist only from a certain point, whether it be development of the central nervous system, viability, birth itself or some version of the trimesteral approach taken by the U.S. Supreme Court.¹⁰

All of these arguments turn on two conceptual errors; these are first, ignoring or confusing the “potential” of the fetus and second, ignoring that its genetic individuality remains unchanged from the moment of conception through to death (whenever this occurs).

A good example of the way in which commentators confuse the “potentiality argument” may be seen in Jane Fortin’s article.¹¹ In discussing the argument, which she says “has great popular appeal,” Fortin suggests that the fact that sperm and eggs equally have “the potential for life” is “persuasive criticism” of the potentiality argument. Fortin and others have failed to recognize that it is not “the potential *for* human life” that “pro-lifers” argue for protecting; it is *the unique developing human life itself* (and it is *already*, after conception, unique, needing only time and nutrition to be fully developed).

Some commentators, like certain judges in both the Supreme Courts of Canada and the United States, have failed to note an ambiguity in the use of the term “potential.” The error is a failure to distinguish between a thing that has the present capability for something (needing only time for it to occur) and the possible future achievement of a thing, in which the thing itself will never become anything else. It is not

true of the sperm or the egg to say that it is potentially a unique individual in the same way that it is true of the fetus to say that it is potentially a fully developed adult.

A failure to recognize this improper use of “potential” is what leads some writers into a failure to differentiate between contraception (about which it is possible to speak of a particular sperm and egg as containing the constituent elements of life and therefore being “potential life” in the “possible future achievement” sense, above) and that particular unique genetic entity that exists after conception (about which we can only speak correctly as “life,” “developing life,” or “life with potential” in the “present capability” sense). Thus, for Fortin to speak of the Warnock Committee’s minority opinion as opposing the use of human embryos for research purposes, “since this would obviously deprive them of *their potential for life*”¹² highlights the absurdity of the confusion. An embryo that is only potential life cannot be deprived in a way that is morally offensive of what it only has potentially. If the minority of the Committee objected to research on human embryos, it must have been because they, “having accepted the potentiality argument,” recognized that research on a human embryo would deprive that embryo of its developing life, not its “potential life.”¹³

Another common example of this failure to distinguish the two senses of “potential” is when it is said of the fetus that it is merely “potential life,” meaning that because it does not have some factor considered relevant (life), it is not a wrong to terminate it. But this means that the fetus must not yet be alive and therefore, logically, it cannot be terminated because it cannot be deprived of life that it does not already have. If termination in the sense of ending something is the issue, “something” must have begun. If nothing is alive, there is nothing that can be, properly speaking, aborted.

The developing fetus is not “potential life”; it is, much more significantly, life with potential (in the present capability sense). It is, without argument, “a developing life.” The absence of life has generally been considered to be death. If one wants to say that it is “a potential rights holder” and that, prior to a certain point, the fetus has no rights, then this, as far as it goes, makes some kind of sense; but to say that the fetus is “potential life” is, literally, nonsense.

All the changes after conception are changes of degree, not of kind; the fetus is merely the beginning stage of all of us at the start of the continuum of life; as unique individuals we are the same from conception onwards. To hold otherwise is bad science.¹⁴ The fact that criminal law has said that life begins, as far as murder is concerned, only after the child has proceeded in a living form outside the mother does not mean that it is unworthy of consideration prior to this point. This is precisely why the law has historically criminalized abortion,¹⁵ due to the realization that the fetus prior to birth was in need of protection.

The “Life or Health” of the Woman

It is important to recognize that the Supreme Court, in the *Morgentaler* decision, has not defined either what it means by the life and health of the pregnant woman or the content or extent of fetal rights. This is central due to the fact that the Court has said that it is likely that Parliament will want to recognize a balancing between the rights of the fetus and the rights of the woman. This means a definition of the rights involved and this in turn requires a delineation of the interests of the respective “parties.” The interest of the fetus will be to be left to develop.¹⁶ The interest of the woman will vary along a whole spectrum from emotional trauma (over a wide range of severity) through physical risks and dangers up to actual threat to her continued existence itself.

The Supreme Court has recognized that the fetus has some interests and that the protection of the fetus would be a valid legislative objective. One cannot say much more than that the fetus has “some interests” because the Court expressly did not address the extent of these rights; it addressed itself, rather, to evaluating then striking down section 251 of the *Criminal Code*, largely on grounds relating to the manner in which the section was operating procedurally. Parliament must therefore decide the extent of any limitation on the fetus’ right to life; taking into account, one hopes, principled reasons setting out clearly what circumstances will allow the termination of the life of the fetus; it is critical that the interests of the fetus to the continuance of its *life* be weighed against well-defined and strictly delineated criteria before abortion is allowed. The current vagueness surrounding the term “health” and the grounds on which abortion is allowed are unacceptable and were, in fact, part of the procedural unfairness which the Supreme Court ruled had infringed the *Charter of Rights*.

The term "health" contained in the section of the *Criminal Code* that was recently struck down by the Supreme Court was not defined in the *Code*. Obviously, if abortions are going to be allowable in certain "life and health" situations, it is necessary to give some substance to these terms. The definitions of "health" that were used by therapeutic abortion committees functioning under s. 251 of the *Criminal Code* varied considerably. Where abortions were liberally available, the working "definition"¹⁷ of "health" was often the World Health Organization's statement of health. That statement says that health is "a state of complete physical, mental, emotional and social well-being, not simply the absence of illness and disease." This, it need scarcely be observed, is a definition of almost complete elasticity and impracticality. While it may be a positive statement of objectives in the area of health, it is useless as a working definition for purposes of abortion. Daniel Callahan has commented as follows:

Its attractiveness as an ideal is vitiated by its practical impossibility of realization. Worse than that, it positively misleads, for health becomes a goal of such all-consuming importance that it simply begs to be thwarted in its realization. The demands which the word "complete" entail set the stage for the worst false consciousness of all: the demand that life deliver perfection.¹⁸

In one of its Working Papers, the Law Reform Commission of Canada itself voiced concern over the W.H.O. "definition" in the following terms:

Those general terms of wide public use have ethical, social and political implications and their reach extends to every element of human happiness. The concept of "social well-being" far exceeds the meaning presently contemplated in Canadian criminal law for it includes political injustice, economic scarcity, food shortages and unfavorable physical environments. *All human misfortunes and disorders are not forms of illness from which one must be saved under the rubric of health in criminal law . . .* [A] state of well-being, in law, ought first to be notionally sufficient to cope with the ordinary living in modern society, but does not carry a guarantee of stress-free, non-responsible life-style, because stress as well as responsibility for one's behavior are incidents of living in society.¹⁹

If, in the future, Parliament makes any attempt to draft a law "taking into account the interests of the fetus," it will be necessary to ensure that pivotal definitions are clearly expressed. At the least, the danger to life or health must be grave and potentially permanent and should expressly *exclude* social health reasons such as familial, social or economic well-being, all of which were used under the World Health

Organization's statement of health. Particular care should be taken to avoid the use of definitions which would allow abortions for "psychiatric" reasons where the "threat" is not related to some meaningful criterion of health. Quite apart from the lack of a meaningful definition of health is the fact that evidence exists which suggests that most of the vast medical literature available on abortion is seriously deficient in various areas, making it impossible to speak without doubt about *any* situations in which abortion is psychiatrically indicated: in a study prepared at the behest of the scientific council of the Canadian Psychiatric Association, B. K. Doane and B. G. Quigley, after reviewing approximately two hundred and fifty journal articles and books on the psychiatric and related aspects of therapeutic abortion, had the following comments:

. . . both the antagonists and the protagonists of therapeutic abortion should be aware that no scientific evidence exists to show that emotional risks vary in accordance with legislative restrictions on abortion . . . [and that] despite the large number of articles and studies in the literature, there are insufficient data on which to base planning of medical and social programs for the management of undesired pregnancies.²⁰

In a more recent article in the same Journal, following a review of all the available literature on the incidence of complications of pregnancy in women who had been denied abortion, an editorial writer raised several important points as follows:

Few interventions are accepted without systematic evaluation. Drugs shown to be effective in the laboratory are evaluated in clinical trials, and surgical procedures are constantly criticized and revised. Even diagnostic tests must be shown to be safe, to cause only minor side effects and to have adequate test validity. Therapeutic abortions appear to be a major exception; they apparently have been "privileged" to bypass evaluation. *Why are they being done without clinical validation, even in the face of mounting evidence that they are not necessary for the prevention of maternal disease or the birth of unwanted children?* . . . Physicians must take a more scientific approach to unwanted pregnancies and realize that abortion is not the answer to social ills. *Legislators should base their decisions on clinical reviews rather than succumb to public pressures.*²¹

Finally, given that the initial response of some provincial governments to the striking down of the *Criminal Code* provisions appears to involve issues related to the funding of abortions, etc., it is essential to distinguish between the primary issue (the morality of abortion itself) and those which are secondary (funding and access to abortion). A failure to distinguish between these two types of questions can result in an ongoing failure to address the primary issue and a disproportionate

THE HUMAN LIFE REVIEW

expenditure of time and energy on secondary aspects. This was clearly seen under the old law in the emphasis placed by some upon the "problems of access to the procedure" between one area of Canada and the next. The Supreme Court of Canada decision requires that governments address the primary issue of *when and in what circumstances should abortion be permitted*. The *manner* of the provision of abortion services is clearly a secondary issue which can only be answered once the primary issue has been addressed.

Canada as a Pluralistic Country

The statement is sometimes made that Canada is a pluralistic country and that, therefore, one must acknowledge each person's differing beliefs. As a recognition of Canada's multi-cultural make-up this statement is accurate; where it becomes unacceptable is when a valid recognition of cultural diversity is confused with *moral* pluralism. To postulate moral pluralism from ethnic and social diversity amounts to stating that because different groups have different cultural and ethnic beliefs and practices, *morality* is various and therefore relative. This proposition is incorrect and I will argue that it is imperative to distinguish between cultural/ethnic plurality and notions of "moral pluralism." This claim is important because we recognize that morality and the wishes of the majority are not necessarily related.

When one considers the appeals made to polling results by both sides of moral debates, one sees the danger in failing to distinguish between "what people want" and the moral correctness of the position at issue. In short, one should be aware that poll results are neither here nor there in moral debates whatever utility they may have elsewhere. The Law Reform Commission consultation document "Options for Abortion Policy Reform" also comments upon the technical unreliability of poll results. Use of polls in areas of moral concern is therefore questionable in practice as well as principle. I would like now to explore a notion that I believe underlies many people's use of appeals to pluralism: moral relativism.

Throughout the centuries, many of the greatest thinkers have discussed the importance of learning and preserving the central truths which define the society. These truths are not relative or subjective but transcendent. Michael Polanyi has written that:

. . . the adherents of a great tradition are largely unaware of their own premises, which lie deeply embedded in the unconscious foundations of practice . . .

if the citizens are dedicated to certain transcendent obligations and particularly to such general ideals as truth, justice, charity, and these are embodied in the tradition of the community to which allegiance is maintained, a great many issues between citizens, and all to some extent, can be left—and are necessarily left—for the individual consciences to decide. The moment, however a community ceases to be dedicated through its members to transcendent ideals, it can continue to exist undisrupted only by submission to a single centre of unlimited secular power.²²

That many people in our society “are largely unaware of their own [moral and ethical] premises” is a fact. That it should be the function of all who believe in transcendent moral values to try to change this state of affairs is also the case.

At this juncture I would like to refer to C. S. Lewis’ brilliant short work *The Abolition of Man*.²³ Written in the context of a critique of a school text-book, Lewis sub-titled his work “Reflections on Education . . .”. It is impossible here to give more than a brief survey of this book. However, I think this book is of *great* importance because of its convincing argument in support of objective values. It also provides a rational structure within which one may argue that “fundamental values” should be recognized and used as a basis for legislation without offending current notions of pluralism.

Contrary to received opinion, Lewis’ analysis of the central tenets of world civilizations shows that their religions and ethical codes (that are not properly speaking “religions”) share a core of objective values. He terms this set of values the “*Tao*,” or “way”; it should not be confused with the religion Taoism.²⁴ With regard to the *Tao*, Lewis writes that:

. . . what is common to [all accounts of the *Tao*] is something we cannot neglect. It is the doctrine of objective value, the belief that certain attitudes are really true, and others really false, to the kind of thing the universe is and the kind of things we are . . .²⁵ Only the *Tao* provides a common human law of action which can over-arch rulers and ruled alike. A dogmatic belief in objective value is necessary to the very idea of a rule which is not tyranny or an obedience which is not slavery.²⁶

Lewis argues that the *Tao* alone contains the criteria for moral judgments. He states that “from propositions about fact alone no *practical* conclusion can ever be drawn.” Thus, the proposition that “this will preserve society” cannot lead to the prescription “do this” except by the mediation of the objective principle “society ought to be preserved.”²⁷ With the word “ought,” the *Tao* reappears and we are back where we started. This is the case for every moral judgment.

Lewis argues that moral advance is possible, but that it must be distinguished from mere innovation:

There is a difference between a real moral advance and a mere innovation. From the Confucian “Do not do to others what you would not like them to do to you” to the Christian “Do as you would be done by” is a real advance. The morality of Nietzsche is a mere innovation.²⁸

He further argues that an understanding of the *Tao* is fundamental to any modification:

Those who understand the spirit of the *Tao* and who have been led by that spirit can modify it in directions which that spirit itself demands. Only they can know what those directions are. The outsider knows nothing about the matter. His attempts at alteration, as we have seen, contradict themselves. So far from being able to harmonize discrepancies in its letter by penetration to its spirit, *he merely snatches at some one precept, on which the accidents of time and place happen to have riveted his attention, and then rides it to death—for no reason that he can give.* From within the *Tao* itself comes the only authority to modify the *Tao*. This is what Confucius meant when he said “With those who follow a different Way it is useless to take counsel.” This is why Aristotle said that only those who have been well brought up can usefully study ethics: to the corrupted man, the man who stands outside the *Tao*, the very starting point of this science is invisible . . . An open mind, in questions that are not ultimate, is useful. But an open mind about the ultimate foundations either of Theoretical or of Practical Reason is idiocy . . . Outside the *Tao* there is no ground for criticizing either the *Tao* or anything else.²⁹

It will be clear from the discussion of the way certain people use the notion of “choice” in the abortion debate that this is just such an impermissible “snatching” of one precept and “riding it to death—for no [acceptable] reason.”

Alasdair MacIntyre, like Lewis, is concerned that once the *Tao*, which MacIntyre refers to as “some version of the Aristotelian notion of virtue,” is abandoned, one is at the mercy of power divorced from principle.³⁰ This is not alarmist. One should note the eminence of the thinkers such as George Grant who are pessimistic about our future if the learning and teaching of transcendent truths is further abandoned. George Grant sets out certain of the contradictions which underlie current liberal thought. He also discusses the fact that remnants of the *Tao* (he does not use this word for it) are utilized by liberals. He writes:

When contractual liberals hold within their thought remnants of secularised Christianity or Judaism, these remnants, if made conscious, must be known as unthinkable in terms of what is given in the modern. How, in modern thought, can we find positive answers to the questions: (i) what is it about human beings

that makes liberty and equality their due? (ii) why is justice what we are fitted for, when it is not convenient? Why is it our good? The inability of contractual liberals (or indeed Marxists) to answer these questions is the terrifying darkness which has fallen upon modern justice.³¹

In any society concerned with justice, it is imperative that all citizens be concerned, as individuals, with justice. To be knowledgeable about what is just and unjust, one must have the elementary tools of how to think about and discuss moral issues in the belief that there are “rights” and “wrongs.”³² One frequently encounters people who deny that things can be “right” or “wrong,” yet who promptly complain of an injustice done to others, or to them personally. It is this type of contradiction which shows just how far from the *Tao* we have come.

If we believe that there are “rights” and “wrongs” which underpin our society and our laws, then any appeal to pluralism as a justification for abortion is unacceptable until the evidence is presented that the core principles of world religions and ethical codes support abortion.³³ More importantly, a review of laws must be done within the context of moral evaluation and must not simply be a catalogue of “the World’s increasingly liberalized abortion laws” in, for example, the Commonwealth countries. It is self-evident that doing a thing does not make it morally correct. Therefore, the fact that many countries may have enacted liberal laws in an area does not serve as a moral justification for the practice so “liberated.”

The Idea of Compromise

In addition to notions of “pluralism,” one occasionally hears people argue that in a country which has such divided views on a moral issue, “compromise” is the only way to “solve” the social debate. What is missed in such an approach is that it assumes both approaches to be morally acceptable prior to the compromise. Thus, where fundamental presuppositions are not shared, the attempt at resolution may be morally impossible because what one side deems moral is to the other side immoral. In such a situation, “compromise” is meaningless and, potentially, dangerous. If one opposes the murder of people and is told by others that due to debate on the issue, they have decided to make a law which allows the killing of small people, one could be excused for concluding that the law fails to make moral sense; to those who view abortion as the killing of the innocent allowing abortions until some arbitrary point is arrived at cannot be an acceptable “compromise.” To

allow wife-beating on Saturdays but not on other days would be similarly unacceptable to those who think it wrong in all circumstances; to allow some people to be slaves over the objections of those who believe there should be no slavery at all would not be a satisfactory “compromise.” A gestational approach is not a “compromise” in the abortion issue. As with arguments using notions of “choice,” there is often a failure to note that “compromise” is only useful once one has established whether or not the subject is one that admits of “compromise” at all. A failure to recognize that there are various forms of compromise, some of which vitiate one of the positions at issue, like a failure to see the limitations of “choice” in moral debates, is another example of poor thought.

The Woman’s Right to “Control her Own Body”

It is sometimes asserted that the fact that the fetus is inside a woman means that it cannot have any rights separate from the wishes of the woman. These arguments all turn on notions of “power” or “control” and it is suggested are unacceptable for several reasons. In the first place, to ignore the fetus for the sake of power seems to me eerily like arguments used to deny the personhood of women (the husband’s right to control his own wife, the two, perhaps, being “one flesh”), though even this control did not allow a right to terminate life. There is something counter-intuitive about attempts to square this kind of control over life with notions of “life-nurturingness.”

Secondly, such arguments amount to weighing *any* reason (or no reason at all) against what is, undeniably, a life right. The emphasis on control rather than life is more clearly seen as the fetus develops and will be most difficult to justify in late-term abortions or situations such as the *Baby R* case.³⁴ Where power or control is seen as the significant issue, predictably, concern for the fetus is not expressed. This is seen very clearly in the approach taken by those who view abortion merely as another means of contraception.³⁵ Power trumping life becomes no more moral because it is being done by the historically disadvantaged. Such approaches raise uncomfortable questions.

If the fetus is merely “tissue,” as some would have it, then why should we have any scruples about using, not to say farming, such “tissue” for the good of society? What reasons can there be for restricting such research on the unborn? The Medical Research Council in recently released guidelines states that it is unwise and unjustified to

ban embryo research, but that such research should not be allowed on embryos older than seventeen days; one must ask “why the hesitation *after seventeen days*?” Surely if fetuses are going to be disposed of, they should be used if possible “for the good of society” and, given that viability is somewhere between five and six months of gestation, seventeen days seems rather frugal, not to say, arbitrary.³⁶

Lest anyone think that he can dispose of such arguments by simply stating that they are of the “slippery-slope” variety, it should be pointed out that categorizing a concern is not the same thing as answering one. In life areas where medical technology is increasingly allowing us to do what we have never done before, the realization that technology is not its own moral guide must inform all our steps where life issues are concerned.

Conclusion

Where life is concerned, or even arguably concerned, all who claim to be civilized and interested in human rights or civil liberties must make principled arguments to support their positions. I have shown that certain prevalent arguments often used in an attempt to justify the “pro-choice” position are unacceptable. Those vested with the responsibility of making laws for the social good must formulate laws based on correct moral approaches that are not based on erroneous philosophy. Those who have torn down the philosophical walls which historically protected the unborn and seek now to protect that life at some other point with walls of sentiment can have no moral basis for complaint when sentiment changes.

Given developments over past decades, it is likely that technology will sooner or later provide a way in which the whole human generational process can be accomplished “artificially.” Once this occurs and the issue of fetal development is separated, on one level, from issues of “control by the woman over her own body,” what is and has been said about the nature of the fetus and how and why we do (or do not) respect it, will inevitably color future developments (and the way to those developments). However, if arguments based on “control” have so denuded the values historically considered to be innately worth protecting, it remains a matter of speculation on what basis any future protection can be non-arbitrarily erected. If “control” has, as suggested, a limited time-frame given the advances of technology and does not provide a consistent ethic of protection of life, then it is foolhardy to

THE HUMAN LIFE REVIEW

embrace “control” arguments until such an ethic is (if it ever could be) established. If there is any doubt, we must err on the side of life and presume, if at all, in favor of it.

NOTES

1. For example, the Parliamentary Report of Mary Collins M.P., (P.C., Capilano), sent to constituents the end of April 1988, states the following:

Some suggest, as *did the Supreme Court*, that while the mother's rights should be paramount in the early stages of the pregnancy, abortions should rarely be allowed in the later stages when the state should have the responsibility of protecting the developing fetus (at 16, emphasis added).

Appended to this Report was an Abortion Questionnaire to be filled out and sent to Ottawa. The fact that no competent legal analysis of the decision could come up with such a conclusion (as being the view of “the court” as opposed to the decision of Madam Justice Wilson, and *obiter* comments form a minority of others) does not seem to have reached all the members of the government members by the Department of Justice.

2. Though the term “fetus” may be objected to as being somewhat “clinical” and for some may be seen as leading to a de-humanizing of the unborn, it is the term used by the Supreme Court and will be used throughout this paper.

3. It would seem necessary, in any meaningful attempt to discuss the “competition” of interests in abortion, to delineate the two “rights” that are in conflict. The fetus's right is to the continuance of its developing life; this “interest” begins at conception. Any argument that suggests that a “competition” or “balancing” between fetal and maternal rights begins at some other point must explain what the fetal interest is, since the “developing life right” is not being considered *at all* for some period; there is not, therefore, any “competition of interests” or “balancing” in such approaches. As far as I am aware, no satisfactory answer to this problem with the trimesteral or gestational approaches exists; they must, therefore, be seen as incompatible with notions of a “competition” or “balancing” of interests.

4. For a review of the various approaches see, for example, L. W. Sumner *Abortion and Moral Theory* (Princeton: Princeton Univ. Press, 1981). Sumner himself advocates a “third way” between the liberal and conservative positions which focuses on “sentience” (or consciousness). This approach itself has been criticized as focussing on a *philosophical* preference rather than a scientific one in that it shows a preference for *qualitative* conceptions of personal identity; see Oliver O'Donovan *Begotten or Made?* (Oxford: Clarendon, 1984) at 57 ff. Another approach that should be considered is that discussed by the Spanish Constitutional Court in its recent abortion decision. R. Stith states that in this approach:

... the Spanish Court considers the fetus neither a person possessing rights, as U.S. pro-life people argue, nor subject to a person possessing rights, as pro-choicers argue. *Instead, unborn life is treated as a distinct constitutionally protected legal good. Infra*, note 9 at 514.

5. “The Commission believes that *any reform having to do with human life* must begin by admitting a firm presumption in favour of life” (at 36, emphasis added) Law Reform Commission of Canada, (Wording Paper No. 28) *Euthanasia, Aiding Suicide and Cessation of Treatment*.

6. Though it is outside the direct scope of this paper, it must be stated that any approach to the issue of abortion that purports to be moral must perceive and attempt to provide solutions for the very real difficulties faced by women with unwanted pregnancies. The principles upon which a “pro-life” position ought to be based are well set out by S. Callahan in *Abortion: Understanding Differences* (New York: Plenum, 1984) at 329. Another more recently published essay sets out, from a “pro-life” perspective, a holistic framework within which to approach the problems for which abortion is sometimes seen as the solution. After setting out three underlying concerns (the brokenness of male-female partnership, the abdication of men from fatherhood and the dilemma of single mothers), the author sets out the need for twelve positive measures for enhancing the “free choice of women to bear children.” Some of these measures include education, housing, transportation, welfare, child support payments, childcare and the need for “just labor laws.” Dianne Marshall “The Decision to Bear a Child” in Denys O’Leary ed, *The Issue is Life* (Burlington: Welch, 1988) 28 at 37-43.

7. Sumner, *supra* at 57 notes that “in feminist treatments of abortion few meaningful steps have been taken toward clarifying the status of the fetus, locating the threshold of moral standing, developing a general criterion, or deploying a theory that can support such a criterion. By and large the fetus has simply been ignored or forgotten.”

IAIN T. BENSON

8. Apart from the abortion issue, it is apparent that courts, legislators, or both, are going to be faced with the necessity of specifying at what point prior to birth the fetus/child is to be protected. The law relating to the status of the unborn is in disarray. It will be interesting to see how the higher courts deal with *Re. "Baby R,"* unreported decision, B. C. Prov. Ct. No. 876215 (Davis J.) Sept. 3, 1987 in which the Court recognized an interest in a fetus (by making it a ward of Court) when its mother refused to have a cesarean section in circumstances in which both the mother and child were in peril. The case is under appeal.

In *D. v. Berkshire C.C.* [1987] 1 All E.R. 20., the English House of Lords, in a unanimous decision, recently ruled that when considering the need to make a care order in respect of a baby girl born with drug withdrawal symptoms, the juvenile court had quite properly considered events occurring and circumstances existing prior to the child's birth. Both sets of reasons in the decision of the Lords stated that the justices should be entitled to have regard to events which occurred before the child was born and that broad and liberal construction must be given to the language of the *Children and Young Persons Act 1969* lest its purpose be thwarted. That Act defined a "child" as "... a person under the age of fourteen. . ." A useful comment on the *Berkshire* decision, and current inconsistencies with regard to the manner in which the fetus is viewed at law and by moral philosophy, may be found in Jane E. S. Fortin "Legal Protection for the Unborn Child" (1988) 51 Mod. L. Rev. at 54. I shall argue below, however, that in certain key respects, Fortin's support of certain philosophical positions is somewhat questionable.

9. The approaches taken by the Constitutional Courts of West Germany and Spain provide a different manner of evaluating the abortion issue. Both should be considered more fully by Canadian Courts in the future. For the West German approach, see the Decision of 25 February 1975, [1975] 9 BVerfGE 1. Translated into English by Jonas & Gorby, "West German Abortion Decision: a Contrast to *Roe v. Wade*—with Commentaries" 9 John Marshall J. of Prac. and Proc. 551 (1976). For the Spanish approach (and useful comments on the West German decision) see, R. Stith "New Constitutional and Penal Theory in Spanish Abortion Law" (1987) 35 Am. J. of Comp. Law 513. This latter article points out, for example, that the Spanish Court, in evaluating the constitutional word "everyone," specifically held that the term "... includes 'everyone living' and that no distinction can be made, with regard to the right to life, between unborn and born life" (at 527).

10. *Roe v. Wade*, 410 U.S. 113 (1973). To describe this decision as heavily criticized is an understatement. Two notable criticisms from what may loosely be described as "non-pro-life" positions are John Hart Ely "The Wages of Crying Wolf: A Comment on *Roe v. Wade*" (1973) 82 Yale L.J. 920 and Mark Tushnet "The Supreme Court on Abortion" in J. D. Butler and D. F. Walbert *Abortion, Medicine and the Law* (New York: Facts on File, 1986, 3rd ed.) at 161-71. Tushnet makes the following statement by way of conclusion: "In short, philosophers have provided some strong secular arguments against restrictions on abortion, but even the strongest seem open to question" (at 171).

11. *Supra*, note 8 at 59.

12. *Idem* at 59, emphasis added.

13. The various ways and metaphors with which writers have attempted to debunk the potentiality argument would make a fine basis for a humorous, if sardonic, essay. A future writer may use, as a starting point, the following: "a brick is not a house" in Henry Morgentaler (*Abortion and Contraception*, 1981); "a potential president of the United States is not Commander-in-Chief [of the U.S. Army and Navy]," Stanley Ben, quoted by Joel Feinbert (T. Regan ed. *Matters of Life and Death*, 1980); "Prince Charles is a potential King of England, but he does not now have the rights of a king . . ." Peter Singer (*Pactical Ethics*, 1979); "if it is a cake you are interested in, it is equally a pity if the ingredients were thrown away before being mixed or afterwards" J. Glover (*Causing Death and Saving Lives*, 1977); "a woman [who believes moral relevance begins at conception] should pray over her menstrual fluids because there will be fertilized eggs discharged in the toilet quite often" Arthur Schafer (C.B.C. Television News Forum "Abortion: the Fight for Rights" Sat. March 5, 1988); "an acorn is not an oak-tree" (ubiquitous).

14. A review of the language of the abortion and euthanasia debates and how terminology is manipulated in questionable ways is to be found in two essays by George and Sheila Grant, "Abortion and Rights" and "The Language of Euthanasia" in George Grant, *Technology and Justice* (Toronto: Anansi, 1986) at 103 and 117. Given the way in which the term "person" has been used historically to deny the rights of women and blacks, we should be more than a little sceptical about denials of fetal rights based on a lack of "personhood" in the fetus. On use of the term "person" in the abortion debate, see Oliver O'Donovan "And Who Is a Person?" in *Begotten or Made?* (Oxford: Clarendon, 1984) at 49-66; and "Again: Who is a Person in *Abortion and the Sanctity of Life*, ed. J. H. Channer, (Exeter: Paternoster Press, 1985) at 125-37. Finally, a quotation from J. Glover is apposite here: "There is often an immense resistance to killing [which must be overcome] by attempts to make the enemy seem less than human" *Causing Death and Saving Lives* (London: Penguin, 1977) at 115.

15. There have been recent attempts (to little effect in terms of historical accuracy, but of rather greater effect on the Supreme Court of the United States) to suggest that, historically, other reasons for prohibiting abortions were more important than the concern for the fetus; for a critique of the methodology of histori-

THE HUMAN LIFE REVIEW

cal reviews in the area of abortion and, particularly, how many discussions of the history of abortion laws have failed to consider the impact of technology on law, see: Joseph Dellapenna's "The History Of Abortion: Technology, Morality, and Law" (1979) 40 University of Pittsburgh Law Review 359.

16. Here one must point out what many have considered obvious: that there is a difference between "things that happen naturally," and "doing things." Thus, there is a moral distinction between spontaneous abortions (which happen "in nature") and abortions that are the result of the interposition of human action. People do die occasionally (or even often) as a result of having heart attacks; this is not a sufficient reason to allow a person to induce a heart attack in another with impunity.

17. I thank Bernard Dickens of Toronto for bringing to my attention the fact that use of the W.H.O. statement of health by therapeutic abortion committees was largely a matter of "default" due to the fact that Canada had not got a working definition of "health" to use. It scarcely needs stating that it is high time a sound, workable, definition of "health" is available for the guidance of physicians in Canada, particularly since the Canadian Medical Association, as early as 1978, petitioned the Federal Government about "... the need for a definition of the term 'health' as used in the *Criminal Code* relative to the legal grounds for therapeutic abortion" ("The Canadian Medical Association and Abortion," July, 1978).

18. Daniel Callahan, "The W.H.O. Definition of Health" (1973) 1 Hastings Centre Studies 90 at 95.

19. Law Reform Commission of Canada, Working Paper No. 26 "Medical Treatment and Criminal Law" 1980 at 7 (emphasis added). I am indebted to lawyer Colleen M. Kovacs of Victoria, B.C., for bringing this to my attention; her "A Response to *Options for Abortion Policy Reform: A Consultation Document*," April 1987, unpublished, contains many perceptive criticisms of the Federal Law Reform Commission's consultation document which, itself, contains no definition of "health."

20. "Psychiatric Aspects of Therapeutic Abortion" (1981) 125 Canadian Medical Association Journal 427 at 431.

21. Carlos Del Campo, "Abortion denied—Outcome of Mothers and Babies" (1984) 139 Canadian Medical Association Journal 361 at 362, emphasis added.

22. *Science, Faith and Society* (Chicago: Chicago Univ. Press, 1966) at 76.

23. (London: Oxford Univ. Press, 1944; New York: MacMillan, 1947; Glasgow: Collins (Fount Paperbacks) 1978, 6th impression July 1986); quotations are from the first American edition 1947.

24. Lewis was widely read in philosophy and religion from Plato to the present. His book, in support of his thesis, appends the results of a review he made (from the *Encyclopedia of Religion and Ethics* and elsewhere) of world religions and ethical systems including: Ancient Egyptian, Ancient Jewish, Old Norse, Babylonian, Hindu, Ancient Chinese, Roman, Christian, Anglo-Saxon, Greek, North American Indian, Australian Aborigine, Stoic and Ancient Indian teachings. He grouped these traditional objective values in eight categories as follows:

- 1) The Law of General Beneficence
- 2) The Law of Special Beneficence
- 3) Duties to Parents, Elders, Ancestors
- 4) Duties to Children and Posterity
- 5) The Law of Justice
- 6) The Law of Good Faith and Veracity
- 7) The Law of Mercy
- 8) The Law of Magnanimity. Appendix, at 51-61.

25. *Idem* at 12.

26. *Idem* at 46.

27. *Idem* at 20.

28. *Idem* at 30.

29. *Idem* at 30-31 footnotes omitted; emphasis added. For another particularly useful examination of natural law and other relevant matters: see, George Grant, *Philosophy in the Mass Age* (Toronto: Copp Clark, 1966).

30. *After Virtue* (London: Duckworth, 1981).

31. *English-Speaking Justice* (Toronto: Anansi, 1985) at 86.

32. Cicero once said: "Only a madman could maintain that the distinction between honorable and dishonorable, between virtue and vice, is only a matter of opinion" (quoted in George Grant, *Philosophy in the Mass Age*, *supra*, note 29 at 35-36). In a book which is bound to be influential and which splendidly describes the slide into value-begging subjectivism, Allan Bloom has written that: "true openness is the accompaniment of the desire to know, hence of the awareness of ignorance. To deny the possibility of knowing good and bad is to suppress true openness." From *The Closing of the American Mind* (New York: Simon and Schuster, 1987) at 40.

33. This evidence is unlikely to be forthcoming; for historical reviews of the laws governing abortion, see Dellapenna, *supra*, note 15 and Dickens *Abortion and the Law* (Bristol: MacGibbon and Kee, 1966); and R.J. Gerber "Abortion: Two Opposing Legal Philosophies" (1970) 15 American Journal of Jurisprudence

IAIN T. BENSON

1-24; and J. D. Butler and D. F. Walbert eds., *Abortion Medicine and the Law* (New York: Facts on File, 1986). On the religious and ethical history, see: G. Grisez, *Abortion: The Myths, The Realities and the Arguments* (New York: World Publishing, 1970); and D. Granfield, *The Abortion Decision* (New York: Doubleday, 1969). For a useful review of Christian, Jewish and Pagan attitudes to abortion in the Greco-Roman world, see M. J. Gorman, *Abortion and the Early Church* (Downer's Grove: I.V.P. 1982). For a review of the Roman Catholic Church's position, see J. Connery *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola University Press, 1977).

34. *Supra*, note 8.

35. See, for example, A. and A. T. McLaren, *The Bedroom and the State* (McClelland and Stewart: Toronto, 1986).

35. See "New Guidelines control Research on Human Embryos" *Globe and Mail*, (Saturday, March 5, 1988) A3. The English Warnock Committee decided that the period beyond which embryo research should not extend ought to be 14 days. The difference between the two recommendations supports suggestions that such a period is arbitrary and not based on any sound philosophical approach. Whatever the reasons, a point made by Fortin (*supra*, note 8) is equally applicable to the Canadian setting. Discussing the 14 day period chosen by the Warnock Committee, Fortin notes:

The Report implied that since it had a greater potential, [a more developed fetus] had a greater right to protection than a younger one, but ironically, the form of protection envisaged is the embryo's destruction (at 60).

It is a strange kind of concern that insists on destruction for those it wishes to protect.

APPENDIX A

[The following syndicated column appeared in the New York Post on Nov. 19, 1988: it is here reprinted by permission of Tribune Media Services.]

The Right to Die? Or Right to Kill?

Patrick J. Buchanan

On Jan. 14, 1986, Patricia Rosier, 43, terminally ill with cancer, held a formal dinner for her family in Fort Myers, Fla. Then, she went to bed, swallowed the 20 Seconal tablets her doctor-husband had provided for her suicide, went to sleep and waited to die.

The Seconal failed to work. So a panicked Dr. Peter Rosier then injected large doses of morphine into his wife. Still, she did not die. So her stepfather went into her bedroom, put his hand over her face and mouth and smothered her.

Did Patricia Rosier commit suicide—or was she murdered? Did she kill herself—or did her husband and stepfather kill her? A jury in St. Petersburg will decide.

Alan Dershowitz, the Harvard barrister and “human rights” activist, has, however, already rendered his verdict on national television. Describing Mrs. Rosier’s death in almost sacramental terms, he called it an act of beauty, an act of love, with which government ought not to interfere.

Derek Humphrey, national president of the Hemlock Society, describes it as an “ultimate act of love,” carried out in the “sanctity of the bedroom.” The more shocking the deed, the more extravagant the rhetoric required to dress it up.

As details of Patricia Rosier’s death emerged at trial, however, the portrait of Dr. Rosier as noble, loving husband appears a bit of a forgery.

According to the stepfather, Vincent Delman, who finally smothered his adopted daughter, Dr. Rosier was in a panic, almost irrational with fear that the botched Seconal suicide, compounded by his morphine injection, would leave his wife a “vegetable.”

According to an assistant prosecutor, one week after his wife’s death, Dr. Rosier reportedly was out at a party, complaining about his lack of female companionship, even though he was “the most eligible bachelor in Fort Myers.”

APPENDIX A

Now, unless words have lost their meaning, Mrs. Rosier did not commit suicide. She tried—and failed. Whereupon, her husband and stepfather alternately poisoned her and smothered her.

Legally, this is murder, and it is time to stop mincing words. As Rita Marker of the International Anti-Euthanasia Task Force writes in USA Today, “This case is not about the right to die. It’s about the right to kill.”

According to the organic documents of the American union, all Americans are endowed by their Creator with the inalienable right to life, which cannot be taken away without due process of law. Mrs. Rosier was not treated, however, as a child of God or citizen of the Republic, but like some diseased household pet, to be put out of its misery.

Because she may have wanted to die gives no one, not even her husband or father, the right to kill her. The end—putting a stop to her suffering—does not justify the means.

That the Rosier case should have become a national controversy, tells us that many Americans are coming to share that Hemlock Society view that the assisted suicide is, indeed, the “ultimate act of love.”

While America is less “advanced” along this road than, say, Holland, where, Mrs. Marker writes, “Medical students are trained in the techniques of killing and where some physicians who attempt to admit elderly patients are told, ‘to give them a lethal injection instead,’” we are not that far behind.

Hubert Humphrey once said a society should be judged on how it treats those in the dawn of life, those in the twilight of life and those in the shadows of life.

In America in 1988, we abort 4000 children a day, our doctors are into “fetal research” and the warm bodies of dead fetuses are cannibalized for spare parts.

At the end of life, we are now being told, “assisted suicide” and “rational suicide” are the reasonable way out for the incurably ill and the very old and very sick. What a splendid message this sends to America’s elderly: Why not be reasonable, and move aside, instead of being unreasonable and staying alive?

Dershowitz says that the barrier we must never cross is between voluntary and involuntary death. But, excuse me, Alan, we crossed that line 20 million deaths ago. No one who has seen Dr. Bernard Nathanson’s film, “Silent Scream,” would ever describe that child recoiling from the abortionist’s probing needle of death a volunteer.

This case will soon go away, but the issue will be with us the balance of our lives because the conflict is rooted in warring concepts of who man is and what is right and wrong.

THE HUMAN LIFE REVIEW

On the one side of this divide is Mother Teresa, answering the despairing cries of AIDS victims and the incurably ill with love, compassion and care until God calls them home. On the other side is Derek Humphrey, advancing with his hemlock.

APPENDIX B

[The following article appeared as the "Hers" column in the New York Times Sunday magazine on Nov. 20, 1988, and is reprinted here with permission (©1988 by the New York Times).]

Children of Choice

Katha Pollitt

There were a lot of kids at our housewarming party—babies, toddlers, even one or two who were big enough to pointedly inform their parents how bored they were. The last time we moved, seven years ago, there hadn't been any. So here we are, I thought, almost 40, and really it hasn't turned out so badly for a lot of the women I know: we've got nice husbands—maybe not the first man we married, but everyone makes mistakes—work that interests us and (except for the writers among us) pays a grown-up living, and adorable healthy children we love to bits.

I don't mean to say that our numbers have all turned up in the Grand Happiness Lottery—who knows what even your best friend is thinking at 4 in the morning?—but no one's drinking or drugging or sunk in a sour mist of frustration and rage, and no one's sanity is fraying around the edges, as happened to some of the women on the block where I grew up. There's another thing we have in common: no one had a baby before she was ready, wild to be a mother. And birth control being what it is, that means that many of the women in our living room that day had had abortions.

It's a measure of the changing national climate where abortion is concerned that I feel uneasy about writing this for publication. The so-called right-to-lifers have not yet scored a direct hit against abortion, unless you count clinic bombings, which I do. But they've done something that may in the long run have an even more serious effect: they've set the terms of the debate. Have you noticed? It's not about women's bodies anymore, or family planning, or sexual freedom. It's about women's "convenience," to use the pro-life buzzword, versus babies' lives. Framed like that, the abortion debate can turn out only one way. If the fetus is a person, how can its life be less important than a woman's liberty and pursuit of happiness?

Faced with the tremendously emotion-laden image of the vulnerable, innocent preborn baby, defenders of legal abortion tend to respond with another set of emotional images: pregnant schoolgirls, rape and incest victims, those who die in pregnancy or childbirth or give birth to infants with horrendous, fatal conditions like Tay-Sachs disease or AIDS. The images are real, all right—I know a woman who got pregnant from a date rape, and another with a heart condition that could have killed her had she been forced to carry a

child to term. But look how much ground they concede. What if it's not your life that's at stake but "just" your health? Or your diploma? Or your job. Or your marriage? What if you weren't forced to have sex, and you're not 15, but 25—or 35?

But constantly placing abortion in a context of extreme situations—sexual crime, maternal deaths, doomed babies—one labels it an extreme response. And that sets the stage for someone—George Bush, for example—to propose a "compromise": permit abortion for limited classes of "hard cases" and forbid it for everybody else. But unwanted pregnancies are the stuff of everyday.

Here are some reasons why women I know became pregnant: because her IUD came out one morning; because her husband failed—once, in 13 years!—to put on his condom in time; because she and her live-in trusted to the calendar and had a diaphragmless tryst on the beach; because she thought breast-feeding prevented ovulation and, anyway, she'd given birth just six weeks before. Stupid trivial reasons, the same sort of reasons you might give for missing a train. (I'm sorry, you apologize later, I misread the schedule, I couldn't find a taxi, the meeting ran late.)

Most of time, people catch their trains, and most of the time, adult, middle-class, sensible women take care of birth control, and birth control takes care of them. (I'm not talking about teen-agers or the poor or the helpless here.) But a woman has about 30 years of potentially fertile sex—that's a long time to go without a slip-up. That's one reason why more than half the pregnancies in this country are accidents, and why, if you follow 100 women over their reproductive lives, 46 of them will have had an abortion by menopause, and many will have had more than one.

The abortion rate is always discussed in terms of values, to use the current cliché. Are Americans (by which is really meant American women) too promiscuous, too selfish, too frivolous, too in love with control? But surely we are not more so than Swedes, those fabled hedonists, or less so than the tradition-bound Greeks. Why, then, do Swedish women have fewer abortions than Americans, and Greek women more than twice as many?

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. A society's abortion rate is a measure of its failure to meet these imperatives straightforwardly: by making it easy to get contraception that works, by demystifying sex, by making children the responsibility of all.

Moralists, including some who are pro-choice, like to say that abortion isn't or shouldn't be a method of birth control. But that's just what it is—a bloody, clumsy method of birth control. Those who find abortion immoral have a

APPENDIX B

duty to come forward with other solutions to the unwanted-pregnancy problem. But where are the pro-life voices raised in support of increased funding for contraceptive research, sex education, flex time and paid parental leave?

Here are some reasons why friends of mine had abortions: they were in college and wanted to graduate. They were in graduate school or professional training and wanted to finish. They could not care for a child and keep their jobs. They were not in a relationship that could sustain parenthood at that time. They were not, in short, ready or able to be good mothers yet, although those who have children are good mothers now. Hard-hearted calculations of “convenience”? Only if you think that pregnancy is the price of sex, that women have no work but motherhood, and that children don’t need grown-up parents.

The fact is, when your back is to the wall of unwanted pregnancy, it doesn’t matter whether or not you think the fetus is a person. That’s why, in this country, Roman Catholic women, who are less likely to use effective birth control, have a higher abortion rate than Jews or Protestants. Women do what they need to do in order to lead reasonable lives, and they always have. Nowadays, a reasonable 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.

My friends who had abortions believed that having a baby at that time of their lives would be a disaster. Not an inconvenience, a disaster. Five, 10, and 15 years later, not one of them regrets her choice, just as not one of them regrets her decision, five or three or two years ago, to become a mother.

Looking around my living room, I didn’t see a problem with that. And I still don’t.

APPENDIX C

[What follows is the second part of a (lengthy) review of the book *Life in the Balance: Exploring the Abortion Controversy*, by Robert N. Wennberg, a professor of philosophy at Westmont College in Santa Barbara; it was published by William B. Eerdmans Publishing Co. (Grand Rapids, Michigan) in 1985. The reviewer, Michael Levin, is a professor of philosophy at City College and the Graduate Center of City University of New York, and the author of *Feminism and Freedom*, published by Transaction Books (New Brunswick, New Jersey) in 1987; an excerpt from Levin's book appeared in our Fall, 1988 issue under the title "Abortion, Homosexuality, and Feminism." Prof. Levin's review first appeared in the journal *Constitutional Commentary* (1986, Vol. 3:500), and is reprinted here with permission.]

On *Life in the Balance*

Michael Levin

The reader of this review has probably assumed by now, as did its author up to page 150 of *Life in the Balance*, that Wennberg is carefully and honestly presenting a not unfamiliar case against legalized abortion. In fact, the penultimate chapter of *Life in the Balance* defends legalized abortion in terms so sweeping as to lead the reader to forget that Wennberg thinks there is something wrong with abortion.

The heart of Wennberg's defense is the individual's sovereignty over his own body. No one has a right to make one person put his body at the disposal of another, so in particular the other members of society have no right to use the law to make a pregnant woman let her fetus use her body. If I understand Wennberg correctly, he does believe a pregnant woman would indeed help her fetus to term, especially if her pregnancy is a result of intercourse voluntarily undertaken, but such generosity cannot be forced from her. Wennberg recognizes that her right to deny the use of her body to her fetus entitles her only to evict her fetus, not to kill it—it is one thing to oust an unwanted houseguest by forcing him to leave, knowing he will die in the storm raging outside, quite another to oust him by shooting him and dumping his body. Abortion procedures in which the abortionist induces labor by first killing the fetus are therefore impermissible, and Wennberg apparently believes that such procedures should be illegal.¹ Wennberg also recognizes that a pregnant woman will retain a right only to transfer her fetus to an artificial womb if and when such devices become available, and not to leave her fetus in environments in which it is more vulnerable—just as a man who can conveniently show an unwanted guest to the door may not defenestrate him. These admittedly important caveats aside, Wennberg's position is the one encapsulated by the bumper-sticker appeal to "a woman's right to her own body."

APPENDIX C

What is most curious about this position, in view of Wennberg's route to it, is that the right to life of the fetus has become irrelevant to both the legality *and the moral propriety* of abortion. For if abortion is only the refusal of the pregnant woman to help her fetus stay alive, the woman (or her medical surrogate) who aborts her fetus in no way transgresses the fetus's right to life. Why Wennberg has taken such pains to establish a fetal right not to be killed when he will defend the legalization of abortion on the grounds that abortion is not killing, is something of a mystery.²

Wennberg reaches his conclusion via a revised edition of Judith Harvis Thomson's familiar argument about the woman and the violinist.³ Professor Thomson asks the reader to imagine a woman waking up one morning to find that the "Society of Music Lovers" has attached her to a famous violinist suffering from a kidney ailment. If the woman lets him remain attached to her for nine months he will live; if she unhooks him he will die. Most people will agree that the woman ought to be legally free to unhook herself. Whether to donate the use of her kidneys to the violinist is nobody's business but hers. But, the argument continues, the fetus is to its host just as the violinist is to the woman kidnapped by the music society. Therefore, anyone recognizing the woman's right to unhook the violinist must also recognize the pregnant woman's right to unhook the fetus.

Wennberg is aware that the two cases as presented are wildly divergent, but before turning to his attempts to align them, two comments need to be made about Professor Thomson's argument in its original form. First, it is a revealing unconscious expression of the feminist attitude toward reproduction: bringing a fetus to term is a Kafkaesque nightmare imposed on a woman by strangers entirely indifferent to her own desires. The point of keeping the woman forcibly attached to a famous violinist is, presumably, that she is being forced to support someone important to *other people* but whose existence may be meaningless to her—the victimized woman may, as the reader semi-consciously registers, be completely indifferent to classical music. Feminists have lately taken to protesting that the man-hating and child-hating of which they were accused in the early years of their movement was all a misunderstanding; anyone who rereads Thomson's original article will see just how accurate that first impression was. Second, while appeal to an absolute right to the disposition of one's body coheres well with other strongly libertarian positions (*laissez faire* in the marketplace, parental autonomy in the education of their children, freedom of private association), this appeal is most commonly made by feminists who are antilibertarian on just about every other issue. Feminists who advocate state-mandated quotas, state-mandated comparable worth pay scales, the censorship of "sexist" textbooks in the public

schools, laws against “sexually harassing speech” and legal limitations on private association excluding homosexuals, will go on to advocate abortion on the basis of an absolutist libertarianism at odds with every one of those policies. It is remarkable that this inconsistency has not been more widely noted.⁴

Considered in itself, the plight of Thomson’s exploited woman differs from that of the unraped expectant woman insofar as the violinist is a stranger, whom the woman has not volunteered to help and whose dependency on her is not her doing. Wennberg’s effort to strengthen the analogy is easily the most interesting and important section of his book. Wennberg has no trouble repairing the first two defects: he stipulates that the violinist is the woman’s son, and that she has volunteered for the hookup. Wennberg also wisely stipulates that the hookup is much less onerous than the one Thomson describes, but he inexplicably retains the proviso that the parasite is a violinist. As noted, this proviso serves only to carry along the feminist assumption that women have no special feelings toward their babies, and its equation of a fetus with a dependent adult (for the typical famous violinist is an adult) muddles Wennberg’s argument at its most delicate point.

This point is reached when Wennberg attempts to inject the mother’s responsibility for the dependency of her son:

Let us suppose that a violinist is unconscious and dying, with only a few hours to live, and that the only thing that can save him is a serum made by fluids produced by his mother’s body. Let us suppose that his mother takes the initiative, produces the serum, and has it applied to the violinist, with the result that he is cured of the disease that otherwise would have killed him. Let us now suppose, however, that this serum is a mixed blessing, that although it saves the violinist from dying of the disease he had contracted, it also produces a dependency upon the use of the woman’s body such that if her body is not periodically available to him for nine months he will die.

In saving her son from certain death by a deadly disease, the woman does much the same thing for him that she had done in conceiving him in the first place. In both cases had she not acted . . . her son would not now exist. And in both cases, because she *does* act, her son receives biological life and becomes dependent upon her body for a period of time . . . [I]n the one instance the woman brings into existence a person that did not previously exist, whereas in the other instance she grants an already existing but moribund person a second lease on life, but this does not appear to constitute a significant moral difference . . . I also think that most people would agree that it would be wrong to force her to remain connected if she wished it otherwise . . .

The imperfections in Wennberg’s analogy remind the reader, once again, that the only state remotely like pregnancy is pregnancy. Wennberg must assume, to preserve the analogy, that the mother was fully aware before agree-

APPENDIX C

ing to donate the serum that her son might become addicted to it if it saved him, just as a woman is fully aware when consenting to intercourse that any fetus that may result will be dependent on her. Wennberg should also say that such occurrences as he describes are commonplace, and that most women in the course of their lives routinely act so as to make intimates dependent on sera from their bodies. I suspect that Wennberg would squirm a bit at having to say that the violinist's mother should still be free to withhold the serum, but he probably would stand his ground.

But even extended in this way, Wennberg's argument seriously misrepresents the responsibility of the pregnant woman for her fetus's dependency on her. Creation makes more difference than Wennberg supposes; in initially saving her son, the violinist's mother does something quite different than she did in conceiving him. For although the violinist's mother creates a dependency by giving her son the serum, her son's original kidney problem was presumably not her fault. Independently of her, her son was on a trajectory toward death when she first intervened. If she reneges on her agreement about the serum, her son will be no worse off than he would have been, had his mother never offered to help him in the first place. That is why his mother's subsequent withdrawal of the use of her body can plausibly be construed as a failure to save, rather than killing. If you catch a vase that has fallen from a window, hold it for a second, and then drop it, you are arguably not liable for damages, because the vase owner's property ends up in no worse shape than it would have been had you never interceded. However, if the vase was on its original trajectory to destruction because of you, you are properly liable. Releasing the vase is not a mere failure to save it, if you were the one who threw it out the window. In general, the agent who initiates a causal chain may be obligated to intercede. By the same principle, the agent can be legitimately forced to make whole any damage he causes in the course of interceding. Frisbees are unique among missiles in that they can be outrun by their throwers. Suppose I launch an explosive frisbee at your head. Clearly, I can be *forced* to intercept it—I will face much stiffer charges if I don't catch it than if I do, and I won't be able to plead that I merely failed to save you. Suppose too that the only path I can take to intercept the frisbee carries me over your foot, and my stepping on your foot somehow makes you dependent on my body for nine months. I should most certainly not be free to deny you the use of my body, for without it you will be much worse off than you would have been had I never intervened in your life.⁵ We might say in a case like this that I am completely responsible for your dependency.

So there is an important difference between the relation of a pregnant woman to her fetus and the relation of the violinist's mother to her addicted

son: the fetus, which did not exist before becoming dependent on its mother, was not already on a trajectory toward death when his mother first intervened. However, the relation of the pregnant woman to her fetus is also unlike that of the frisbee thrower to his target. The fetus, which did not exist before becoming dependent on his mother, was also not on a trajectory toward a state preferable to death when his mother first intervened. However, the relation of the pregnant woman to her fetus is also unlike that of the frisbee thrower to his target. The fetus, which did not exist before becoming dependent on his mother, was also not on a trajectory toward a state preferable to death when his mother first intervened. Since nothing can be done to what does not exist, the conceiving woman does not *make* her fetus dependent on her, hence she is not responsible for her fetus's dependency in the way the violinist's mother is, nor is she completely responsible for her fetus's dependence. All that can be said is that the mother is responsible for there being something dependent on her.

Only by examining other test cases involving creation is it possible to decide whether this sort of responsibility for dependence justifies enforcement of assistance. Here are three cases which suggest that the mother's failure to sustain her fetus *is* killing and hence legitimately preventable. The remoteness from reality of the first two is perhaps another reminder that the only thing remotely like pregnancy is pregnancy itself.

1) You can will vases into existence, but only in mid-air. After you will a vase into existence it obeys natural laws, so its continued existence depends on your catching it. Since the vases you create would not have existed at all but for your intervention, it makes no sense to say that they would have been tougher had you never intervened; therefore, you do not make the vases you create fragile. You are, however, completely responsible for there being a fragile vase when you create one, and even though it makes no sense to ask what fate would have awaited one of your vases had you never created it, it does seem that the shards on the floor are *your doing* if you fail to catch a vase you create. Are you a vase-breaker? Well, suppose someone has agreed to buy one of your vases for \$5,000, with the understanding that he has to pay if something happens to the vase after you create it, so long as you are not the one who destroys it. You will a vase into existence with your hands at your sides, watch it smash, and demand payment from your patron. Surely no court would require that he pay up—which means that, in the eyes of the law, you smashed the vase. Similarly, you would have killed any living thing you created high in the air and failed to catch. Were you able to create a potential person in mid-air at will, you would violate its right to life if you let it fall.

APPENDIX C

Such are the consequences of complete responsibility for the existence of a dependent thing.

2) Many theists wish to excuse God for man's sinful ways by pointing out that free beings are necessarily prone to sin. God does not make his creatures sinful; that's the way they have to be if they are to have free will. Skeptics unwilling to exempt God reply that it was still up to God whether to create creatures with free will; since he could have refrained from making man altogether, he is completely responsible for the sinfulness of his creatures, even if he did not make his creatures sinful. Therefore, it has been traditionally argued, God has caused suffering, and not merely refrained from preventing suffering, by not curbing the sinfulness of his creatures. The sceptic surely has a strong case.

3) Wennberg, it will be recalled, rightly holds that we should be free to do to newborns what we should be free to do to fetuses. Now, while newborns do not depend on the bodies of their parents in the way fetuses do, they do depend on the bodies of their parents in less direct ways. (The health of nursing infants does depend directly on a substance manufactured by the mother's body, and their lives depend upon it if formula is unavailable.) Suppose a couple put their newborn in a crib, unlock the front door—to allow the baby to seek its own food and to allow strangers to feed it—and do not move from their easy chairs until the baby starves. This would normally be considered murder—but suppose the couple claims that they merely failed to help their newborn. What if the couple went on the offensive and cited their right to the use of their own bodies? How can other people force them to assist their baby? By threatening them if they do not at least fetch some formula from the refrigerator, other people are making the couple use their muscles and metabolize stored carbohydrates just so that someone else may live. By what right does the state put their bodies at the service of their child? Wennberg, for one, has no answer.

All child-support laws make the parental body an indirect resource for the child. If the father is a construction worker, the state will intervene unless some of the calories he expends lifting equipment go to providing food for his children. Philosophers are paid for spinning arguments out of their neocortexes, and are subject to state intervention if they do not share their pay with their offspring. If I refuse to feed my young children, the state will seize them and use other people's tax money, coercively collected, to feed them. To be sure, the courts will not force a parent to donate bone marrow to his dying child, but such cases involve an unusual dependency upon the parent's body, as do the Wennberg-Thomson cases. Our moral intuitions respond to their unusualness. Such cases obscure society's willingness to back by force the

expectation that parents will meet their children's ordinary need for food and clothing by the ordinary process of metabolizing stored carbohydrates. If serum transfers were a standard phase of reproduction, mankind would have evolved tolerance for the coercion of serum from parental bodies.

The present reviewer has no quarrel with libertarianism—he would like to see it applied to affirmative action, comparable worth, civil rights and other items on the feminist agenda—but it must be understood somewhat differently for children than it is for adults. Children, infants, and fetuses are too dependent on others and too little capable of reasoned choice for coercible obligations toward them to end at nonaggression. While the ordinary person may not have carried his inquiries as far as the metaphysics of creation, he intuitively understands that to fail to care for a totally dependent being you created is to harm it.

The impulse to hurt people who neglect their children is an essential part of the mores of any society that hopes to survive. It may possibly have enhanced inclusive fitness when mankind was evolving and gotten itself selected into our genes. Considering how deep this impulse runs, it is perhaps surprising that a writer as thoughtful as Wennberg should make the legality (and morality) of abortion turn on abstruse metaphysical issues about causation. After all, in past decades, when the libertarian sentiment was much stronger in the United States than it is now and a person's "right to his own body" was otherwise axiomatic, abortion was deemed entirely beyond the pale. Wennberg himself seems worried about the replacement of this attitude by the current "abortion mentality," which sees abortion as a morally neutral convenience to be used by a woman whenever she feels like it. The turning point, I suspect, was the moment sexual egalitarians became convinced that biology was unfair. Egalitarians were scandalized that sexual intercourse should be riskier for a woman than for a man, and outraged by the assumption (which they regarded as a social artifact) that it would be the woman who cared for the infant she bore. Abortion was thus seen by egalitarians not as a hitherto unrecognized affirmation of libertarian values, but as a way to "liberate" women from childbirth and motherhood. We will have to wait and see whether the consequent devaluation of the unique female biological role has liberated women or set them adrift. But in any case that is the way the issue of abortion has evolved in the United States during the last third of the twentieth century. Feminists and their juristic allies who appeal to a woman's right to her own body do not characteristically base this appeal on the killing/letting die distinction; they seem willing to allow that abortion is killing, but hold that the woman's right to her own body justifies it. Admirable as is Wenn-

APPENDIX C

berg's philosophical craftsmanship, and accurate as is his pinpointing of the conceptual abortion issue as fetal right to life versus libertarian values, the pith of the abortion debate actually raging today is the fetal right to life versus certain notions of sexual equality.

NOTES

1. "What follows is not that the mother can't disconnect herself from the son but that a procedure for disconnection that does not involve killing him first must be followed. The implication for abortion would be that procedures that also share this restriction must be used." Unfortunately, Wennberg does not say whether he intends the "must" here to mean "must morally" or "must legally." One might wonder if any abortion procedure really avoids aggressing against the fetus. Wennberg mentions hysterectomy, the induction of labor by exogenous prostaglandin, and the induction of labor by severing the umbilical cord. Do I avoid aggressing against you if I cut off all the air to a room you are trapped in?
2. After rereading the relevant sections of *Life in the Balance*, I am confident that Wennberg quite sensibly uses "A has a right to life" to mean "It is wrong to *kill A*"; see especially pages 100-101, 166-67 n. 13. He observes elsewhere that the right to abortion does not include a right to the use of public funds to purchase an abortion, since the right to abortion is the right not to be interfered with in having an abortion, while the right to public funding is a right to be helped to have an abortion. By parity of reasoning the right not to be killed does not include a right to be helped to stay alive, and it must be assumed that Wennberg recognizes this. If I have somehow misread Wennberg and he does believe a right to life entails a right to be helped to stay alive, abortion so patently invades this more inclusive "right to life" that all of Wennberg's arguments for legalizing abortion immediately break down.
3. See Thomson, *A Defense of Abortion*, 1 Phil. & Pub. Aff. 47-66 (1971).
4. For a fuller discussion of why feminism wars with personal liberty, see M. Levin, *Feminism and Freedom*, *supra* note 3.
5. As this example shows, the killing/letting die distinction is logically posterior to, and cannot be used to decide, what actions can and cannot be prevented by force. I kill you by failing to catch the frisbee because failure to do so would be killing rather than letting die.

APPENDIX D

[Julián Marías is one of the most renowned philosophers in the Spanish-speaking world. The following article was published on August 17, 1988 in Nuevo Día, the leading newspaper in San Juan, Puerto Rico. A Puerto Rican lawyer friend, having taken the trouble to translate it into English, brought it to our attention. The article is reprinted with the author's permission.]

Maternity

Julián Marías

It is surprising how some of the deepest dimensions of man, those we could term the roots of human life, enter into crisis on certain occasions. After some time, what had long been the norm has paled or has been extinguished, and people have commenced to live naturally with a very different situation. Sometimes it is a matter of millenary realities, which in a short span of time seem to dissipate and become shaken or discredited. Almost always it is a case of something prepared, planned with skill and tenacity; what is most strange is that over a short term an attitude or conviction is transformed whose origins are lost in the most remote past.

I have long held that the most serious thing which has happened during the twentieth century, without exception, is the social acceptance of abortion. Not the exceptional fact, which has always occurred, but its consideration as something admissible, even a "right" with total disregard for the fact that deliberate abortion consists simply in killing the child before birth. And all this, the transformation of the dominant attitude, has been produced in a quarter of a century. The 1964 Encyclopedia Britannica speaks of spontaneous abortion as a pathological manifestation, indicates that therapeutic abortion, required to save the mother, is absolutely exceptional in modern medicine; and mentions in passing that provoked abortion is something unlawful, condemned by legislation universally. How has it been possible to travel such a long road in such a few years?

It is evident that the manipulation of opinion, the transformation of the moral criterion, has been possible only because it has coexisted with real variations of man in our times, that which I have called the roots of human life. Very specially, the sense of maternity, so powerful throughout history. And this change can have been produced only by a previous crisis of imagination, to which very limited attention is paid, but on which almost all profoundly human things depend.

In a book of poems, *Inventory of Solitude*, written by the young Puerto Rican writer Elsa Tió, I have found an admirable poem "Prayer of my inner-

APPENDIX D

most being,” dedicated “To my first child, before birth.” It is, rigorously, an exercise of the imagination, an experience of maternity before its fulfillment. I have requested her permission to quote it, and she has authorized me to give it whatever diffusion I wish.

The poem reads:

Thy heart trembles in my womb
each time thou movest,
thou soarest as a star in its universe,
and I am thy universe,
thy infinite niche and thy horizon.
Thou knowest the depths of my being,
thee I do not know.
Thou shalt be my horizon,
I am thy territory,
thy piece of land, of root, of homeland.
I sense who thou wilt be, and I love thee
with a strange fear of losing thee
and an ineffable desire to look into thine eyes,
to unveil to thee the trees, the moon.
Would but that I could know thee in words
but thou hast yet nor mood nor memory.
Thou livest in the depths of absence
surrounded by the voices of silence.
Thou dost embody my own flesh and blood,
a little of my tears and of my joy
of the dark solitude of Earth,
of the implacable love that does devour me.
Prayer of my innermost being,
parcel of my soul,
destined to feel all that I feel.

It is difficult to find a deeper or more poetic expression of maternity. But what seems to me most interesting is that it is addressed, not to a child who is *present*, visible, caressed, but to its *latent* reality, as imagined. The formulas are of rare beauty, even more rare in their aptness. “Thou knowest the depths of my being, thee I do not know.” “Thou shalt be my horizon, I am thy territory.” And the poem, because it is the result of the imagination, reveals a *personal* relationship, rigorously human, between the mother and the unborn child. It is full of expectations, of projects, although “thou hast yet nor mood nor memory.” It anticipates a future life together with a child still unknown “destined to feel all that I feel,” that is, to be a full-fledged person.

And perhaps most interesting is the vocative, the use of the “tu” (thou), by the mother, to address, to invoke the child. How could it be possible, given

THE HUMAN LIFE REVIEW

that attitude, to think of abortion, of an alien and hostile growth, of a tumor? How could a tumor which is to be extirpated be addressed as “tu”?

Almost everything degrading, inhuman, cruel which man does is due to failure to imagine the significance of what he does; he accepts any notion with which he has been inoculated and acts, following passively, inertly, whatever derives from that notion. Our time needs many things, but perhaps most urgently the rebirth of imagination. With it would come lyricism and, of course, the capacity to love.

[Translator's note: Julián Marías is a noted Spanish writer and philosopher who many say is heir to the mantle of the late great Spanish philosopher Ortega y Gasset.]

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