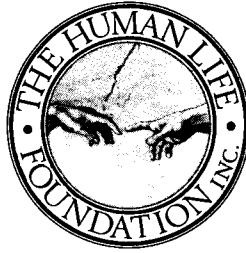


the HUMAN LIFE REVIEW



SUMMER 1992

Featured in this issue:

Mary Kenny on Ireland's Abortion Struggle
Maria McFadden on No Last Chance?
Rebecca Ryskind on The 'Fatal Tissue' Debate
Gov. Robert P. Casey on Abortion Politics
Prof. Leon Kass on Organs for Sale?
Susan Vigilante on A Family Affair

Extra: Joseph Sobran on *Planned Parenthood v. Casey*

"The Court in effect declared itself a party
to the controversy and ruled in its own favor"

Also in this issue:

Jo McGowan • *Buckley v. Humphry* • Charlotte Allen • Nat Hentoff
• Ray Kerrison • Dr. Irene Impellizzerri • William Murchison •

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. . . ABOUT THIS ISSUE

There may be more pieces packed into this issue (18 in all) than any previous one, but we think you will find them all not only of interest but also related to our “single issue” theme.

We are also pleased to give you Joseph Sobran’s fine article on the Supreme Court’s latest abortion decision (p. 75). Usually it is very difficult for us to provide timely coverage—a fixed schedule is a built-in part of publishing a quarterly—but in this case the High Court obliged us by acting on June 29, in time for our deadline. We appreciate the small favor.

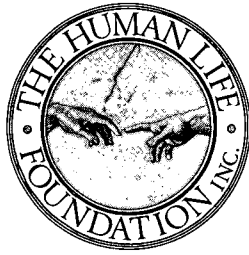
Some of the books noted in the article “No Last Chance?” (p. 14) may be of interest to our readers: *Final Passages*, by Judith Ahronheim and Doron Weber (hardcover \$18) and *Final Gifts*, by Maggie Callanan and Patricia Kelly (hardcover \$21) are both published by Simon & Schuster (New York, N.Y.) and should be available from your bookstore.

The article by Prof. Leon Kass (p. 47) also appeared in the Spring, 1992 issue of *The Public Interest*, which regularly publishes high-quality articles; it is a publication of the National Affairs Institute (address 1112 16th Street N.W., Suite 530, Washington D.C. 20036).

Also, Dr. Irene Impellizzeri’s address (*Appendix K*) was reprinted in full in *Catholic New York* (June 25), the official publication of the Archdiocese of New York.

Once again, we have reprinted a number of cartoons from the London *Spectator*, which seems to have an inexhaustible supply of funny insights from talented artists. We hope you enjoy it all.

MARIA MCFADDEN
MANAGING EDITOR



the HUMAN LIFE REVIEW

SUMMER 1992

Vol. XVIII, No. 3

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INTRODUCTION

JUST BEFORE THE IRISH REFERENDUM on the Maastricht Treaty, Mr. Charles Moore wrote (in *The Spectator* of London) that he believed a “yes” vote would mean that the “complete protection of the fetus that the Irish Constitution provides could be undermined by the common citizenship of the European Union,” adding, “If the process continues, the logic is that abortions will be available in every member state. This will be widely seen as a worthy achievement, showing that we are all modern now and have bestowed full rights on women. I wonder how that moral consensus will look to future generations.”

In our lead article, Mary Kenny (also a contributor to *The Spectator*) writes just *after* the referendum: the vote *was* “yes” and by a wide margin, meaning that Ireland is indeed in grave danger of becoming just another “modern” nation. It’s a sad story. The historic bastion of “Catholic values” is now plagued by all the pressures that the powerful, politically-correct Media Establishment can bring to bear. Worse, shortly before the referendum, there was a highly-emotional “hard case” news story that gave proponents of “reform” the kind of weapon they have used so effectively to legalize abortion on demand around the world. Add in the *economic* advantages promised by the treaty—some £2,000 pounds per Irishman—and you have an embarrassing mix of reasons why the vote went so heavily against Old Ireland.

Miss Kenny, an Irishwoman herself, naturally tells the story well, beginning with a memorable bit of history: in England a century ago, Irish immigrants—“poverty-stricken often to the verge of starvation”—resisted then-prevalent infanticide, which “was to the 19th century” what “abortion is to ours”—an “inevitable” crime practiced “everywhere” just as abortion is today. Perhaps, Miss Kenny says, the Irish will again hear “an old drum beating,” calling up that “palpable sense of the dead generations to which we owe our life and our faith,” which will weigh more than two thousand alien pounds sterling.

But abortion is by no means the only fashionable crime: euthanasia is also *chic* enough to have made the proud-to-be-unlearned Derek Humphry a best-selling “author”—his *Final Exit* dominated the “How-to” lists for much of the year. However uneducated, Humphry knows enough to cash in on a windfall:

he (or whoever) has quickly churned out a sequel, *Dying with Dignity: Understanding Euthanasia*. Our Maria McFadden checked midtown Manhattan bookstores, and found that Humphry's latest epic is indeed getting most prominent displays—at the expense of some *good* books on the very real problems terminal illness involves. So what you get here is not a book review of *Dying with Dignity*—it's not *worth* reviewing—but rather a thoughtful piece on some *solutions*, e.g., the growing “hospice” movement, which actually can and does provide for a dignified death.

Along the way, you will also get to know a great deal more about the “real-life” Mr. Humphry—in better times, he'd have been called an “unsavory character”? He certainly has had considerable experience with the deaths of *other* people (including two wives, as you will see). But the emphasis is on the *positive*, on “what is good and noble in human nature,” which includes the ageless human desire for that “last chance” to make dying better than it seems—in short, to achieve (to use another old-fashioned phrase) a “happy death.”

What about a little human dignity at the *other* end of life's spectrum? It's hard to come by nowadays: new life that once promised a “Blessed Event” now ends routinely in the “painful choice” of abortion, at the rate of some 1.6 million yearly in our own Land of the Free—meaning that literally tons of perfectly good (indeed, *superior*) “material” is simply discarded. Why not harvest it, for the benefit of born-but-diseased fellow humans? That's the nub of the “fetal tissue” debate and, as Rebecca Ryskind makes clear, what was only recently thought of as Nazi-style inhumanity is *back* in style as the “humane” solution (however un-final) to the degenerative diseases that plague us.

As she puts it, “fetal tissue research is no longer on the grotesque fringe of science”—an unborn baby may be no more than “potential life,” but it seems that its potential body parts “may be spectacularly regenerative” and “hence suitable for transplant into victims of diabetes, of Parkinson's and Alzheimer's disease for near-miraculous cures.” Such miracles remain unsubstantiated, true, but who would dare reject such “progress”? In fact, as Ryskind reminds us, the judgment of Nuremberg was “that ‘progress’ erected over the graves of the innocent is not worth achieving.” But that was *then*: our Abortion Mentality has obviously turned history's clock back; yesterday's “crimes against humanity” today whisper hopes of regeneration *here*, not hereafter.

At this point, some readers may be inclined to throw up their hands and moan: Have we forgotten everything we once knew? That's roughly the question Gov. Robert Casey, of the great Commonwealth of Pennsylvania, keeps asking his own Democratic party: What happened to our trademark championing of “the little guy”? Of course the littlest guy of all is the “fetus”—if anybody needs a champion, he-or-she does, it's a matter of life or death.

What you get here is the text of Gov. Casey's recent address to the Notre Dame Law School—more recently, he tried to deliver the same message to his

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party's convention in New York, but was denied a hearing, which the sharp-tongued Mr. Casey noted was hardly "small or Capital D" democracy (in his stead, the delegates were treated to a bevy of pro-abortion *Republican* women!). We add the standard disclaimer: not everything the Governor says necessarily represents the views of this journal—he really is a good and *partisan* Democrat—but we heartily endorse not only the main thrust of his argument, but also the intestinal fortitude (you know, *guts*) he displays so eloquently here. May his tribe increase!

Our next article is another address, delivered a year ago by Leon Kass, a *most* distinguished professor at the University of Chicago and, in our judgment, a man every American should listen to. We have titled it here simply "Organs for Sale?" but the original text added "Propriety, property, and the price of progress." Having read Rebecca Ryskind's report on the current controversy over "fetal research," we think you will agree that what Prof. Kass has to say is even more relevant now. No short description can do it justice—just start reading, and when you've finished, you will see what we mean. Much of it is chilling, e.g., "In the transplanting of human organs, we have made a start on a road that leads imperceptibly but surely toward a destination that none of us wants to reach." We are in fact seeing what Aldous Huxley's *Brave New World* anticipated: as Kass notes, one corporation which runs a large national chain of "nursing homes" for the dying is an obvious potential supplier of "body parts"—all that's needed is a "slight revision of the definition of death"—and the worth of that company's stock *quadrupled* in one year! Wall Street may someday trade "futures" in human organs?

But there are some problems that "science" cannot solve: even when "progress" is available, some of us resist the "obvious" response. Mrs. Susan Vigilante, for one. Here again, we won't attempt a description of her story, which she tells movingly and well. It's a sad story, true, but we'd say there is much inspiration in it, and of course *hope*—we trust that you will be pulling (and praying) for her yourself.

Regular readers may find our last article the *pièce de résistance*—it's certainly what you have come to expect from this journal, which has covered the abortion issue in great depth since shortly after the original 1973 *Roe v. Wade* decision. Many expected that the current Supreme Court would finally reverse *Roe*. But when it handed down its long-awaited *Planned Parenthood v. Casey* decision (on June 29, the very last day of the session), it did *not*. Both sides claimed *defeat*: anti-abortionists because they had convinced themselves that *Roe* would fall, pro-abortionists because *they* had convinced themselves that their *political* interests would be best served if it *did*.

What did the Court *actually* do? We naturally turned for the answer to our most prolific contributor, Joe Sobran, a writer who can explain anything whatever *via* the finest prose available. But even Sobran has his hands full here:

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the Court not only did the unexpected, but also did it in largely *unintelligible* terms. The *question*—or so everybody thought—was whether *Roe* itself was rightly decided; in *Casey*, the Court flatly refused to *say*, claiming that it remained the law, however wrong. It was a breathtaking *fiat*—in that sense *alone*, it surely is a “companion case” to *Roe*? Sobran calls it a “most stunning and disheartening” setback for the anti-abortion movement, and no doubt that is true, at least for the present historical moment. Fact is, we suspect that the decision is so *bizarre* that nobody knows what will happen next. But Sobran gives you a rousing description of it all, and draws this sharp conclusion: “The Court in effect declared itself a party to the controversy and ruled in its own favor”! If so, the *new* question is: Will Americans accept an Imperial Judiciary? At the risk of sounding optimistic, we’d say that the answer will be, in due course, *no*. Needless to add, we will have much more on all of this soon.

* * * * *

As usual, we conclude with an assorted batch of appendices—a particularly interesting lot this time—all related to our articles. For instance: if Irish Catholics are disputing the Church’s traditional sexual morality, so are their American brethren; in *Appendix A*, our friend Jo McGowan provides a good—and amusing—example of how the most “liberal” journal of our Catholic Press handles distasteful ideas.

Is Derek Humphry the unlettered opportunist Maria McFadden describes? Read *Appendix B* and decide for yourself: Humphry made the mistake of appearing on Wm. F. Buckley Jr.’s *Firing Line*, and the utterly predictable result makes marvellous—and often hilarious—reading (too bad *more* of Buckley’s TV shows aren’t printed). Does “fetal research” recall Nazi horrors, as Rebecca Ryskind says? Joe Sobran certainly agrees (*Appendix C*), and adds some arguments of his own.

Could Dr. Leon Kass be exaggerating the dangers involved in re-using human “body parts”? Read *Appendix D*, and discover what other marvels “science” is now capable of, keeping in mind the scientist’s First Law: If it *can* be done, *do* it. The London *Economist* might well have titled it “Beyond the Brave New World”?

Next you get three straight pieces on *Planned Parenthood v. Casey*—all written well before the Court’s *fiat*, but providing interesting background information. In *Appendix E*, Charlotte Allen notes that there was one very conspicuous *omission*—one part of *Casey* did not “appear” before the Justices. Then the redoubtable Nat Hentoff gives you a double dose (*Appendix F, G*) of his renowned *reportage*, here digging up a great deal that *we* never knew—and accurately predicting the *Casey* result!

Then you have another double treat (*Appendix H, J*) from another old-fashioned, fact-digging reporter, Ray Kerrison, who specializes in telling New Yorkers what nobody *else* tells them—especially about abortion. It’s amazing

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how much stuff Kerrison can pack into a short space: here you get a rapid-fire rundown on how the state's Attorney General used Operation Rescue for *his* political purposes—and how the media spikes all but the “politically-correct” abortion news (we trust it will make you as angry as Kerrison himself).

Appendix K is yet another speech (we can't remember ever having had *three* before), and an unusual one. The media *has* reported the long-running battle over the “AIDS curriculum”—and free-condom distribution—in New York City's public schools. But of course the stories never detail the awful filth (*re* the “Homosexual lifestyle” *et al.*) that “curriculum” spews out to nine-year-olds. And, like the Supreme Court, the School Board wants *no* opposition to its *diktats*. But they have got plenty, from the remarkable Dr. Irene Impellizzeri, a heroine to outraged parents who have *no* say in what is inflicted on their own children. The speech you'll read here caused yet another uproar—opponents demanded her resignation from the Board!—but she's still there, and still fighting hard. *Pace* the Feminists—who of course celebrate only pro-abortion and pro-Gay ladies in this, “The Year of the Woman”—we nominate Dr. Impellizzeri for Woman of the Year—she speaks the common sense of the Old Morality, eloquently.

So does our friend Bill Murchison, who concludes this issue (*Appendix L*) with more of the same common sense: the “Murphy Brown” syndrome may hype TV ratings, but it broadcasts a disastrous message. Did you know that there is now a national “support group” called Single Mothers by Choice? No doubt we'll see, in due course, Bastards for Revenge—the price of breaking the ageless rules is ruinously high, and mostly paid by “no-choice” kids.

Well, that's it—finally! This may be our most dizzying issue ever: *eighteen* separate pieces criss-crossing each other to paint the same old portrait of a society at war with itself. We of course are on the winning side—if not here, then surely hereafter. It's a comforting thought, the kind of thing that keeps you going on into the *next* issue, coming soon.

J.P. McFADDEN
EDITOR

Ireland's Struggle

Mary Kenny

Almost every foreign visitor who goes to Ireland remarks upon this truth: that the Irish are exceptionally nice to children, that they accept children naturally and gracefully as part of social life, and that young children seem so much safer in Ireland than elsewhere. Outside of Dublin—which has many of the problems of modern cities—crime is, in any case, very low (ten offences per 1000 of the population, and such “offences” include the crime of riding a bicycle at night without a headlamp), and small children are seldom attacked, molested or abused. Ireland is a child-loving society, and always has been. A Victorian observer, writing about the slums of Manchester in the 19th century, noted that however poor the Irish were, they scarcely ever resorted to infanticide.

Trodden, persecuted, poverty-stricken often to the verge of starvation . . . seldom do they dash from their breasts the innocent babe. The Catholic clergy have done their duty, and the Irish Catholic people benefit by their teaching to such an extent that, while the crime [of infanticide] is above, below and around them, they live in a happy exemption from its horrors and unalterable detestation of its nature.

What infanticide was to the 19th century, abortion is to ours: and when pro-abortionists today argue that abortion is “inevitable,” and practised “everywhere,” we might as easily reply that in former times infanticide was seen as “inevitable” and practised “everywhere.”

Humanitarian reformers in the 19th century had as hard a struggle reducing the killing and exploitation of children as pro-life groups have now. When Lord Shaftesbury began his campaign against using small children as chimney-sweeps, he had scant support from the comfortable bourgeoisie, who notoriously preferred the convenience of clean chimneys to the inconvenience of thinking about little boys being burned to death; when Josephine Butler led her battle against child prostitution she was widely castigated for *mentioning* such realities, which were considered “indelicate” and “inappropriate,” much as clinical photographs of abortions are considered so today.

Mary Kenny, a leading columnist for the London *Sunday Telegraph*, is a prolific contributor to many other papers and magazines (including the *Irish Independent* in Dublin, where she was born) and a frequent broadcaster on TV and radio as well.

Yet if civilisation means anything, it ought to mean progress against inhumanitarian practices, and as we have at least got to the point where we now recognise that infanticide is abhorrent—even if it was practiced—so the next logical step is to recognise the inhumanity of destroying the child in the womb.

As an Irishwoman, I am proud of the fact that the Irish, even at the depths of their immigrant poverty, “seldom dashed from their breasts the innocent babe.” And in times to come, surely it will be a sign of civilisation that the Irish, in 1983, voted by referendum to recognise the unborn child as a citizen, and to protect it and its mother. The wording of the referendum proposal was: “The state acknowledges the right to life of the unborn and, with due regard to the equal rights of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.” Of those who voted, 66% voted “Yes” to this amendment to the Irish Constitution and 32% voted “No.” The “No” vote was overwhelmingly concentrated in the east-coast “liberal” strip of Dublin and Kildare—in that area of Ireland traditionally called “the English Pale”—urban, metropolitan, more secularised in values. The rural areas sent an unambiguous message to the politicians that they affirmed the right to life of the unborn child: in Mayo the majority was over 80%, in Donegal over 82%, similarly in County Kerry.

The Dublin-based media had been bitterly opposed to the “Catholic values” represented by the countrywide vote. There has been, and remains, a strong cultural divide between the secularised values of the Dublin enclave and the rest of the country. (We are talking about the Republic of Ireland, and excluding the six counties of Northern Ireland, which are a troubled province of the United Kingdom and have different problems.)

The landmark of the Constitutional Amendment however has now been—by a quirk of unhappy circumstances—overturned, and the Republic of Ireland faces an uncertain future as a land where the abortion culture is now being introduced with relentless propaganda.

The tragic circumstances centered on the dreadful case of Miss X in February this year. Miss X was a pregnant teenager—she was not quite yet fifteen—who had apparently been made pregnant by an older man who was a neighbour of her family in Dublin. Because she was under the age of consent, it was automatically categorised as statutory rape, and it emerged that the girl had been sexually abused by this man for two years. I said that children and young

people in Ireland are, in general, more protected than in other nearby countries, and that is true, but of course there are individual horrifying cases, as there are anywhere. And it was an appalling case which elicited a huge wave of sympathy for the young girl in Ireland herself: money poured into a fund opened for her family, and even among the most stalwart anti-abortionists, it was felt that an exception could be made. And so, in a welter of controversy, it was. Although the Irish Attorney General had ruled that she was not entitled to travel to London for the abortion, the Irish Supreme Court overturned this ruling, interpreting the girl's suicidal threat as meaning that her life was in danger.

¶ In consequence, Miss X had the abortion in London, and charges are now pending against the man who impregnated her, since it is of course an offence to have sexual intercourse with a minor.

The sympathy was huge, and some of the attitudes towards Irish law were vitriolic. The *Irish Times*—which is to Ireland what the *New York Times* is to the United States—published an editorial comparing Ireland with the Ayatollah's Iran. A gaggle of European parliamentarians condemned Ireland, and many foreign commentators descended on Dublin, mostly to lecture the Irish about their “primitive laws” and “backward values.” “It was embarrassing,” says Nuala Fennell, a feminist member of the Dail (Irish Parliament), “to be scolded by all these Dutch and Germans and Scandinavians: it was mortifying; it was shaming.” In the British media, Peregrine Worsthorpe stood out in congratulating Ireland for sticking to its commitment to upholding the life of the unborn. For however harrowing the case of Miss X was, the legal wisdom remains that hard cases make bad law.

And yet this exceptionally hard case has, in effect, shifted the Irish law: a shift which has been endorsed by Ireland's attachment to the European Community.

As part of the E.C. Ireland has been under pressure, anyhow, to get into line with the other 11 countries over abortion. Abortion is described, by the European Community, as “a service”—the way the Dutch are going, no doubt euthanasia too will shortly join the list of “services” blessed by the E.C. Yet the Irish politicians had resisted this European pressure because they understood that their jobs were on the line, and, outside of Dublin, there is no grass-roots support for the notion of abortion on demand.

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In November of last year, the Europeans did issue a protocol assuring the Irish there would be no coercion in the matter of abortion. But as William Binchy, Regius Professor of Law at Trinity College Dublin (and a staunch supporter of pro-life movements) points out: "In any test case, European law would *automatically* over-ride Irish law. In any future conflict over employment, health or women's equality, the European Court would nullify Irish legislation."

Thus it was that another referendum was held on June 18 about Ireland ratifying the European Treaty of Maastricht, which signals a further step towards European federalism. Pro-life campaigners hoped that the Irish might vote against Maastricht because of the ambiguities about abortion. But a great deal was at stake economically. Subsidies (especially to farmers) of £6 billions—that is, over £2000 per head to every person in the country, were promised by an eager Government. The Government was keen to emphasise that abortion law would not be affected by the Maastricht Treaty, and many individuals chose to see it as something separate. And thus it was that the Irish voted by two to one to ratify the Treaty which proposes to bring about closer European Union. Abortion has, in a sense, been introduced by the back door: not by direct legislation, and not by the democratic will of the people, but by case law, and by the inevitable opportunities offered by the European Court.

And this, of course, is how abortion effectively on demand has been introduced in every western European country. It has always started with the poignant emphasis on the "hard case." Britain legalised abortion in 1967: *de facto* it had been available since the late 1940s where a medical practitioner had judged it necessary, and where he performed the operation "in good faith." The event which opened the floodgates to abortion was the scandal over thalidomide, where babies had been born without properly developed limbs because their mothers had been prescribed this drug in pregnancy (partly, ironically, to inhibit the risk of miscarriage). The plight of women travelling to Sweden to have abortions—because they had taken thalidomide—moved parliamentary opinion to accept legislation for abortion. (Although, as a footnote, it might be added that the children who were born disabled have grown up to lead "normal" lives, and many of them have now married and had children of their own.)

When I was working on a book about abortion in the 1980s, I examined the published material in Britain about the abortion argument. Time after time it was emphasised by the pro-abortion lobby that legalised

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abortion would only be for “special” cases, and that, indeed, with the introduction of better contraception, abortion would gradually decline.

The opposite has happened. Abortion rose, in Britain, from 14,000 in 1967, to almost 200,000 today; it rises, on average, by six percent a year. Far from being an “exceptional” service, it has become a routine one, cleverly marketed by the private abortion agencies who make a killing in more ways than one. One of the “market leaders” in London makes a profit of £4 millions annually. Advertising of abortion services is ubiquitous, and a useful source of revenue to magazines and, increasingly, newspapers. A coach and horses have been driven through the letter of the British law.

This specifies that a pregnancy may only be terminated if it is more dangerous for the woman to continue the pregnancy than to terminate it. This sounds absolutely kosher—except that it can be argued that it is practically always more dangerous to be pregnant than not to be pregnant, just as it is statistically more dangerous to get up and go to work by bus in the morning than it is to lie in bed all day: to take any action is more risky than to take no action. And thus the British law has come to mean that anything goes.

This, now, is the agenda that faces Ireland in the coming times. Through the melancholy case of Miss X, a breach has been opened, and, with the backing of the European Court, very soon the entire edifice will be under siege. Ireland is now the last frontier in the developed west for the pro-abortion forces, and they will be extremely active this year in their pioneering work. A fresh referendum will now almost certainly be held in November to examine abortion law once again. “It is clear,” writes a correspondent to the *Irish Independent* after the Maastricht vote, “that a majority of ordinary decent Irish people do not want a repetition of the X case and the nightmare scenario it posed.” The Miss X case is—like thalidomide in Britain—the star witness in this trial.

Naturally, the Catholic Church is coming under spectacular attack now, castigated daily in the Dublin-based media as “right-wing,” “oppressive,” “anti-women,” “patriarchal” and all the rest of the jargon with which we are so familiar. The controversy over Bishop Eamonn Casey has not helped, and is certainly seen as having diminished the church’s authority—at least according to opinion polls. It is pointed out daily that an estimated 3,500 Irishwomen travel to England annually to have abortions—which is hardly surprising when abortion

MARY KENNY

is now increasingly represented as a “service” and a “private choice.”

We all know that unsupported pregnancy can be a distressing problem for young women, and we all know that removing the pregnancy can be perceived as removing the immediate practical problem. Of course, abortion is *convenient*. And there are desperate cases of poor little teenagers exploited by abusive males. But the civilised answer still goes back to first principles: you work to stop helpless teenagers being exploited, you work to help unsupported mothers. In Britain, the excellent “Life” network, of which I have the honour to be a patron, answers over 80,000 calls a year from women seeking an alternative to the abortion-on-demand pressures. There is a huge field of radical social justice to be addressed here. Orders of nuns were founded in the 19th century—many by Irishwomen, indeed—to rescue, educate, and care for poor young girls: will the Holy Spirit not perhaps inspire a new generation of women to accomplish a similar task today, helping young mothers and their babies, imparting to girls the self-esteem necessary to resist the abortion culture?

For there remains in Ireland a strong grass-roots commitment to the pro-life cause which grows directly out of history and tradition.

The silt of history, of that long adherence to a child-care tradition, is still there. Those traditions are part and parcel of what Irishness *is*. There would have been no Irish nation at all if those “Catholic values” had not been imbued in the people. Poverty, persecution, famine, emigration did not separate the Irish in times gone by from the values they embraced: Can modern secularism accomplish what the Penal Laws—which penalised the native Irish over centuries—could not?

The President of Ireland, Mrs. Mary Robinson, is a feminist who is committed to the idea of a modern, European, pluralist state. She is genuinely not pro-abortion herself: she does sincerely adhere to the teaching of the Church on this issue. Yet she does want to see Ireland move away from the tradition of a “confessional state,” and place the country on a European footing. It is a fine line, however, for if Ireland’s values are not to represent its Christian past, what values are they to represent?

Come November, and the Irish people will vote again on this tormented issue: I believe that they will once again vote pro-life, which will make it more difficult, once again, for the European Court to over-rule. The Miss X case may have been harrowing, but events will show that, in the words of Maud Gonne, “Compromise

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never stands still”; even in the face of the most anguishing individual cases, principles must be upheld. If a poor couple steals money to feed their children, their circumstances may be held to be exceptional: but you cannot therefore legislate that stealing is in consequence to be legalised. Professor Binchy describes the Miss X case as “a stinker”: yet it must be added that many families came forward to offer to adopt that child.

There is, he adds, “an old drum beating,” when the Irish people are challenged about their historical values at the polls. I have heard that old drum myself, when I was in the West of Ireland during the 1983 abortion referendum: in that wild and lonely landscape, to which the native Irish were once banished by the ferocity of Cromwell’s armies, there was a palpable sense of the dead generations to which we owe our life and our faith. To have voted against their values, people felt there, was to betray them: starved and ragged, they did not dash the babe from the breast, and we should not crush it in the womb.

The old drum will return: but Ireland will also need all the help she can get from friends overseas who recognise the honourable ideals that the Irish people uphold in that enduring respect for unborn human life.



'I am troubled by doubts, Father.'

THE SPECTATOR 18 January 1992

No Last Chance?

Maria McFadden

When life and death lose their proper meaning, that is to say, when they are no longer experienced as what they really are, then the awful and empty power of death creeps into everything and sickens everything. So when death becomes most trivial, it also becomes more pervasive. It is only the end of life. "So all life ends. All is death. Why live?"

Thomas Merton

Derek Humphry, having received the status of Best Selling Author with *Final Exit*, his how-to book on suicide, has produced less than a year later another slim volume, *Dying with Dignity: Understanding Euthanasia*. The prominent display of his new book in local bookstores overshadows a number of good and thoughtful books on death and dying, but that is not surprising: just about everyone now knows who Derek Humphry is, and, though the publicity has been damaging as well as favorable, familiarity sells books.

Humphry himself is selling death. The new book claims to be about understanding euthanasia, but it and his previous books display little grasp of the complexities surrounding the issues of death and dying. One might even say that turning to Humphry on such matters is like asking a supermarket butcher to do delicate surgery. Humphry *is* skilled in the physical and medical aspects of an act of killing, and he is well-versed in the language of rights, but beyond that his work allows for no discussion of the human areas touched on when dealing with death: emotions, psychology, religion and metaphysics, the fallibility of human nature and the importance of the law for protection of humans, even from themselves. He also ignores or dismisses modern responses to terminal illness and dying: pain control information, the hospice movement, support groups and bereavement counseling. He is really only a demagogue of death, offering "solutions" that trivialize dying.

Derek Humphry was propelled, or propelled himself, into the right-to-die movement with the publication in 1978 of his book *Jean's*

Maria McFadden, our managing editor, regrets being the House Expert on Mr. Derek Humphry.

Way, in which the British native described how, three years earlier, he had assisted his terminally ill wife of 22 years to die—he gave her a lethal dose of barbiturates obtained secretly from a sympathetic doctor. Jean was in the final stages of terminal cancer, and according to Humphry's account, had asked her husband to help her die when *he* thought it was the right time. With the publication of *Jean's Way* came fame and notoriety; scores of people apparently wrote him with their own thoughts and stories on suicide or assisted death, many supporting him in his actions. (Police prosecution was considered but not pursued.)

Humphry had found his "cause." Within a year of Jean's death, he remarried an American, Ann Wickett, who then joined him in his right-to-die crusade. In 1978 the couple moved to Los Angeles, and in 1980 they and two others founded the Hemlock society, an organization which supports the right of the terminally ill to choose "self-deliverance." Hemlock material has instructions on suicide and tips for those who wish to assist a suicide without being arrested.

Ann and Derek Humphry assisted her ailing elderly parents to commit a double suicide in 1986. In September of 1989, Ann Wickett was diagnosed with breast cancer. She underwent surgery and started a six-month chemotherapy program. In October, Humphry left on a business trip, and never came home. He called to leave a message on their answering machine: he could not "go through this misery again."

Obviously disillusioned with her husband, Ann also became disillusioned with the society she had co-founded. The Humphry's split shook the organization, and Ann was quoted as saying the Society simply turned against her. She later alleged that Humphry had put pressure on her to commit suicide ever since her diagnosis. (Humphry and the Society responded by declaring Ann mentally ill). Interviewed in the *American Medical News* (February, 1990), Ann said of the Society: "I think maybe we've skipped a step along the way . . . There has been so much emphasis [in Hemlock] on dying when you have a life-threatening illness, that measures such as providing a supporting environment are overlooked . . ." She said she felt "totally and utterly betrayed" by Derek. She also started talking to the "other side," and said in the same *AMV* interview: "Ironically, through my own experience, I have come to understand the arguments" of the anti-euthanasia movement.

Ann even became friendly with a former adversary, Rita Marker,

who heads the International Anti-Euthanasia Task Force. Ann first contacted Marker in 1989, soon after her diagnosis and Derek's abandonment, and she and Marker remained in friendly communication. Ann herself went on with her life: she was pronounced cured of the cancer, she found and was reunited with a son she had given up for adoption, and she started dating. She initiated a libel suit against Humphry and the Hemlock society, and was determined to make known "the truth" behind the society for self-deliverance. Sadly, though, when the suit hit a major set-back, and apparently still grief-stricken by what had been done to her—and what she had assisted in—Ann Wickett Humphry committed suicide in October of 1991. She typed a bitter suicide note for Derek, and sent a copy of it to Rita Marker, with the extra handwritten message: "He is a killer. I know. Jean actually died of suffocation. I could never say it until now; who would believe me? Do the best you can. Ann."

Ann's suicide occurred at about the same time *Final Exit* was getting much publicity as a New York *Times* best-seller. (Keep in mind that *Final Exit* was a best seller for a long time in the how-to category, which is not quite the same as debuting on the top of the non-fiction list. It was at the top of the how-to-list for eighteen weeks, and on the top of the non-fiction list for two. The hype seldom makes that distinction.) Humphry and the Hemlock society answered Wickett's death with a full page ad in the *Times*, claiming that the Hemlock society did not condone suicide in cases of despondency, as was the case with Ann. Humphry and company received another set-back in November, with the defeat, albeit by a narrow margin, of Initiative 119 in Washington state, a proposed "aid-in-dying" legislation which would have allowed doctor-assisted suicide.

The damaging news of Ann's well-publicized suicide and the defeat of Initiative 119, plus the great success (for Humphry, over \$3 million) of *Final Exit* (several suicides of non-terminal persons found with the book near their bodies notwithstanding) insured the familiarity of the media-informed public with Derek Humphry and his Society, and provided a ripe opportunity for the publication of the new book. In addition, right-to-die activists are looking at another crucial referendum on legalizing assisted suicide this November, and *Dying with Dignity* is intended to influence the voters. Humphry and his publisher certainly want to capitalize on the success of *Final Exit* before anything else comes out about Humphry and the Hemlock Society. In a surprising turn of events *not* mentioned in *Dying with*

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Dignity, it was announced in February of this year that Humphry would retire as Executive Director of Hemlock on August 1. He purportedly wants to spend more time writing and lecturing. He is planning a new book on elderly suicides, as well as a book on his first two wives, entitled *The Two Faces of Suicide*.

Whatever the reason for the new book, it is painfully obvious that it was hastily assembled. The first thing one notices—after the fact that the book is dedicated “To Gretchen,” Gretchen being Humphry’s new, younger, (and I hope for her sake healthy) third wife is the amount of white space; out of 217 pages, 49 are entirely blank, 23 are half-filled, and there is a large number of sub-sections and sub-titles. The bulk of the book is a collection of previously-written essays, mostly written for the *Hemlock Quarterly* or the *Euthanasia Review*: there are several polls, a question and answer section, a sample “Request to Physician” document—all things that typographically require lots of white space.

The essays themselves haven’t even been updated for publication: Chapters 9-13 deal with the case of Roswell Gilbert, a seventy-six-year old man who shot his wife in an act of “mercy killing.” Gilbert was sentenced to life in prison, but was granted clemency in 1990 after serving five years. In Chapter 11 (entitled “Helping People to Die is the Right Thing to Do”!), we learn that “Roswell Gilbert . . . received twenty-five years imprisonment last week,” and two pages later there is a footnote that Gilbert was granted clemency in 1990.

The next Chapter has an “Abstract” which states that Gilbert “can never be paroled” from his twenty-five year sentence and, a few pages later, there is a footnote that the “case is now under appeal,” and then a *new* footnote reporting on the 1990 clemency. In Chapter 15, which is a Roper poll about the Gilbert case, the introduction to the poll states that Gilbert is serving a mandatory life sentence and does not mention the clemency. Some of these “articles” are taken from *USA Today*, but could easily have been updated or simply re-written (they are all very brief) or even organized into a coherent section on Roswell Gilbert.

But look and organization are not all-important: What about the “substance” of *Dying with Dignity*? In the introduction, Humphry muses: “Although we all try to deny it (some more vehemently than others), we know in our hearts that we all are going to die one

day. Therefore the voluntary euthanasia issue is both pervasive and pressing." The Karen Ann Quinlan case, Humphry writes, "hit us between the eyes" and suddenly the "right to die" became a problem. Since then, it has become clear that "an honest and compassionate society" must talk about and legislate active and passive euthanasia. He mentions the upcoming California referendum, and claims that the Washington referendum did not pass "because it lacked sufficient built-in safeguards to convince a majority of the voters that it would not be abused." Summing up, he declares: "The right to die in the manner, at the time, and by the means that a competent adult wishes is the ultimate personal liberty."

The move to Los Angeles seems to have made quite an American out of the British Humphry. Though we do not "all" deny we are going to die, we have made such strides in technology, cured so many diseases, and offer so much fantasy in our television, movies and glossy magazines that death has become unreal. As with the abortion issue, personal liberty and choice have superseded other human values, so it is natural that the blow of death can seem softened by talk of rights and liberty: death might not be so bad if one can choose where, when and how. The only fear, apparently, is that of abuse, meaning that legal permission for control over our own lives might open the door for control over *other* people's lives—but this danger, Humphry argues, can be easily avoided by appropriate legislation.

Recipes for Death

In the first chapter of *Dying with Dignity*, Humphry writes smugly about the success of *Final Exit*, citing the number of sales as proof that Americans fear uncontrolled dying (no argument there). He brushes off charges that the book makes it easier for the clinically depressed to commit suicide. He magnanimously mentions spoofs on the book and on himself (e.g., *Saturday Night Live*'s phony newscast item: "This week Dr. Kevorkian's Mercitron machine killed itself, and *Final Exit* jumped from the top shelf of a large bookstore"). He mentions that two Hollywood film companies telephoned to ask for movie rights. If they had bought a copy of the book, of course, they would have seen that *Final Exit* is purely a "How-to" manual, and could only be made into an instructional film (conceivably called *Killing Yourself: Do's and Don'ts?*).

Perhaps it would be helpful here to describe *Final Exit*. The manual

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is written in large print, so that the elderly can read it, and it cites just about every method anyone has ever employed to effect suicide—it doesn't recommend methods that are painful, violent or ugly, but it does describe them. For example:

SHOOTING: This is definitely not the exit of choice for believers in euthanasia. . . . reports indicate that the preferred method is to put the gun into the mouth and shoot upwards into the brain. Some who have aimed the gun at the temple have missed the vital spot and survived. . . . The larger the gun, the more likely it is to be effective; and a hollow point bullet makes a larger wound. . . . Unquestionably a gun produces a violent and bloody death, but it is preferred by many because of its speed, certainty, and painlessness. This method is not favored by the euthanasia movement because it is messy (who cleans up?) . . .

Methods not recommended are: electrocution, hanging, drowning, shooting, gassing, poisonous plants and domestic cleaning chemicals, freezing (though this is a method for which Humphry has respect) and non-prescription drugs. The suggested method of "self-deliverance" is the ingestion of a lethal dose of prescription drugs, washed down with alcohol; one is advised to place a plastic bag over the face and fasten it around the neck to guarantee the result. The prescription drugs must be obtained from a doctor: either a doctor sympathetic to one's plight who will give a patient enough pills at one time to do the trick, or the drugs can be hoarded without the doctor's explicit approval by repeatedly asking a doctor for sleeping pills of different types, claiming each time that the most recent prescription didn't work and so something stronger is needed. This last method is recommended even for healthy people, so that they will have a stash if they do someday become terminally ill. *Final Exit* has a detailed drug dosage table "for use in self-deliverance."

Flimsy Philosophy

Dying with Dignity continues with such chapters as: "AIDS and Euthanasia"; "Offering Euthanasia Can Be an Act of Love"; and "Don't Deny Each Other the Right to Choose." But most interesting of all is a two-and-a-half page chapter titled "The Ethicist" in which Humphry denounces this new profession, claiming that ethicists "make sweeping judgments about the quality of our lives, advise us how we ought to think." He fumes: "They are born out of various branches of academia. They are not quite up to calling themselves philos-

ophers . . . they are junior philosophers . . . instant philosophers.” He writes: “I have a vested interest here. The bulk of this nation’s scores of so-called ethicists are against euthanasia, which I support. The basis of their opposition appears to lie in ancient history (the Hippocratic oath, for instance) and an ingrained fear of breaking tradition.”

At the start of a *Firing Line* program with Wm. F. Buckley, Jr. last September, Buckley asked Humphry if he acknowledged any metaphysical principles. Humphry answered: “Hmm. Metaphysical. You mean, do I believe in God?” Later, after Humphry asserted that the Hippocratic oath is “nonsense,” Buckley asked whether any of the philosophers or ethicists Humphry had studied shared that view? Humphry named Joseph Fletcher, the man credited with popularizing situation-ethics (who is famous for such statements as: “We should look at every case on its merits and refuse to be bound indiscriminately by universal rules of right and wrong, whether they claim to rest on religious or pragmatic grounds.”), but Buckley pushed for the “real” philosophers that one studies in school: Descartes, Immanuel Kant, John Stuart Mill? No, Humphry said, “I’ve never studied philosophy. I never have read a book on philosophy, I don’t think.” And later yet: “I didn’t go to college . . . I’ve never read a book on philosophy.”

The self-proclaimed non-philosopher abuses ethicists for being “junior philosophers.” He neglects to point out that the professional ethicist arose out of the need created by advanced technology for complex ethical thinking in health centers and in the workplace. He expects that people will listen to him, and in some cases he is unfortunately correct, because he appeals to their fear, their distrust of doctors and technology, and their desire for control. He does not deem it an awesome responsibility that he, in his own words a “practical journalist and author,” should be advising people on life and death issues, with which real philosophers may have struggled for a whole lifetime.

Positive Choices

To reject Humphry’s cavalier attitudes and distasteful solutions is not to deny the tremendous difficulties involved in dying in our modern age. Some situations are morally excruciating, and an average person’s fear of losing control is well-founded. What Humphry denies in effect is that there *are* some positive answers.

Final Passages: Positive Choices for the Dying and their Loved

Ones is one of the recent books overshadowed by Humphry's in the bookstore. Written by Judith Ahronheim, M.D., and Doron Weber, the book has important information on the physical, medical, emotional, legal and financial aspects of terminal illness for the patients and their families. Although both authors are apparently connected with The Society for the Right to Die, the book is reasonable, balanced, and comes out strongly against suicide, assisted suicide, and euthanasia. The authors define the right to die as the right to refuse life-sustaining treatment if you are terminally ill or in an irreversible condition—one of the authors argues that “physicians should never play a role in honoring patients’ request for aid in dying.”

Ahronheim and Weber argue that “the overwhelming majority of people who resort to suicide [or assisted suicide] are unaware of the full range of medical options that are available to them—practical options that could provide assistance and hope for carrying on with their lives.” This is illustrated in several case studies, for example that of Jeanette, a patient with Multiple Sclerosis. Jeanette was diagnosed with MS in her twenties. Determined to fight it, she underwent medical care, married, had children, and pursued a successful career. In her forties however her symptoms worsened and her life started to fall apart—her husband divorced her and married a younger, healthy woman, her adult children moved away and became somewhat disaffected; she was asked to leave her strenuous advertising job, and she suddenly lost vision in one eye. Jeanette, having heard about assisted suicide cases in the media (thanks no doubt to Jack “Dr. Death” Kevorkian, who has made headlines hooking people up to his suicide machine), approached her long-time doctor and asked him to help her take her life.

The doctor refused. He told Jeanette that she was depressed because of the recent events in her life, that she was not dying, that her sight could possibly be improved, and that there were many experimental treatments for MS she had not yet tried. Jeanette was angry at first, and thought about going to another doctor for help, but eventually she went back to her doctor because he was also her friend. She took his advice and started more medical treatment, and her eyesight improved. She started therapy for her depression, and forged a new and better relationship with her children.

Although Humphry bows to his critics by writing that “the self-deliverance is not made at the first knowledge of the life-threatening

illness and that reasonable medical help is sought,” there is nowhere in his writings the distinction that is made again and again in *Final Passages*: suicide is in the majority of cases the result of clinical depression. Terminal illness does not necessitate depression. Thus, terminal illness in itself is not the cause of suicide, but terminal illness with depression added, and the depression can be treated. “People with serious illnesses such as cancer, Alzheimer’s, or multiple sclerosis rarely become suicidal unless they are depressed; whereas people without any of these diseases who are nonetheless depressed are at a higher risk for suicide than those with those diseases.”

In short, the terminally-ill often want to make the most of every day they have left; while persons without grave health problems can want to kill themselves. Who will stop them from reaching for Humphry’s books? And how many needless tragedies occur when the diagnosis of terminal illness results in depression and suicide, especially when one thinks of the possibilities of mis-diagnoses, remissions, and pain control. This short-circuiting of the natural progress of death may be convenient, especially if doctor-assisted suicide becomes legal, but it could, as the authors write, “. . . direct our efforts away from providing better pain relief and care for dying patients and giving patients and families more emotional support. It would put a halt to further research for cures and comfort care and act as a disincentive for government or private insurers to fund such measures. And given the crisis in our current health care system, it could lead to our treating life as a cheap commodity, too easily disposed of when it becomes less than perfect or too expensive to sustain.”

Final Passages has a thorough chapter on pain control, which explains that only a small percent of pain from terminal illness cannot be controlled. Ahronheim and Weber also describe what hospice and comfort-care entail, and how important emotional communication and support is to the patient and his or her family. The coma that precedes natural death is described by the authors as peaceful and painless, “nature’s anesthesia.” However, the discussion of a “persistent vegetative state” (PVS), will probably not please right-to-lifers. PVS is described as an unnatural suspension of the death process, and Nancy Cruzan is used as an example. Cruzan is described as having no awareness of herself or her surroundings—her death by starving and dehydration is not discussed. But the Center for the Rights of the Terminally ill claims that, according to the court records, Cruzan was not brain dead, could at times hear, see, smile, cry, and seemed

to try to form words. The Center calls her death a cruel act of killing. Still, as unsatisfactory as the section on Cruzan and PVS might be, there is none of the ideological rhetoric of a Humphry or Kevorkian. Furthermore, there *are* moral precedents for the cessation of some treatments even among those fervently protective of life: the Roman Catholic Church, which Humphry calls the greatest opponent of aid-in-dying legislation, allows its members to refuse extraordinary means if the burden on the patient is too great. Pope John Paul II wrote in his "Declaration on Euthanasia" that "When inevitable death is imminent in spite of the means used, it is permitted in conscience to make a decision to refuse a form of treatment that would only secure a precarious and burdensome prolongation of life."

Of course with the Cruzan case it could be argued that death was not imminent, and Nancy herself did not make the decision to refuse treatment. We all live in horror of these hard cases: if one has the misfortune of being in a horrible accident and is plugged in to life-sustaining machinery, and there seems to be little hope of awakening, what an awesome and frightening power it is still to enable someone to turn the machines off, thereby ending life. Also, the denial of food and water seems to be an act of deliberate killing (and involves painful dehydration).

The fact remains that people on both sides of the debate are deciding they want advance directives. *Final Passages* has information on Living Will and Durable Powers of Attorney for Health Care documents. Living wills most often refuse certain treatments, but they may also be used to *request* treatments. Responding to the prevalence of directives that refuse treatment, The National Right to Life Committee has drafted a "Will to Live" document, stating that medication, resuscitation, and other medical procedures will be taken, in a "general presumption for life." A person may tailor this document to withhold certain treatments if death is imminent, or under other specific circumstances. And the International Anti-Euthanasia Task Force has a "Prospective Medical Decisions Document" which combines "Instructions for my Health Care" with the appointment of an agent to implement these instructions. Food and water are required unless they would be ineffective in sustaining life. Other right to life groups have also created protective documents.

Contrast all this to the "Request to Physicians" document in the back of *Dying with Dignity*: it is a model bill introduced into the

New Hampshire legislature that would allow a patient to purposefully procure a lethal dose of drugs from his or her doctor—it aims at nothing less than legal, assisted suicide and euthanasia, all in the name of “rights protection.”

Final Gifts

There is an alternative to either suicide or lingering in a hospital attached to life support systems—the growing hospice movement. Hospice care in this country usually means a program at home, but there are hospice facilities for inpatients when necessary and possible. The hospice movement does not support the practice of active euthanasia or assisted suicide, but artificial means will not be taken to revive a dying patient. Hospice care entails pain and symptoms control, and the promotion of emotional, psychological and spiritual well-being for the dying and their families. Humphry flatly dismisses the hospice movement in *Dying with Dignity*: “Hospice cannot make dying into a beautiful experience although they do try hard.” Humphry claims that the euthanasia movement supports hospice work, but that hospice workers only “Make the best of a bad job.”

A “bad job” is not how the authors of *Final Gifts* would describe their work over the last twenty years. Another book that won’t get much media play, *Final Gifts* is written by Maggie Callanan and Patricia Kelley, two hospice-care nurses who have written on “Understanding the Special Awareness, Needs and Communications of the Dying.”

It is a fascinating and positive book. Contrary to Humphry’s assertions that terminal illness generally makes life unbearable, *Final Gifts* is filled with case studies describing terminally-ill persons who find resolution and peace by letting nature take its course. Humphry had written in *Let Me Die Before I Wake*: “Everyone wishes to die well, quickly, without pain, without anguish and sparing loved ones a protracted deathbed watch. . . . The only way to be reasonably certain of a good death is to plan it, and plan, if at all possible, when one is still in good health.” In sharp contrast, Callanan and Kelley ask:

Can this remaining time be used to share treasured moments of living, while coping with the many losses death brings? Rather than dying on a continuum, can this person be helped to live until he or she dies? Can this be a time of personal growth for all involved?

Yes.

Callanan and Kelley, through their years of working with and observing the dying and their families, have encountered something they call "Near Death Awareness." It occurs precisely in people who are dying slowly. There have been many claims of "Near Death Experiences"—from people of all walks of life who have been clinically dead for a minute or so, and who say they experience something like, for example, a tunnel with a brilliant white light at the end. The description of Near Death Awareness is a "special knowledge about—and sometimes a control over—the process of dying." People who are near death often talk or act in a way that seems to make no sense. But actually, the authors claim, the dying person may be trying to communicate what it is like to be dying, and what they need to die peacefully. Loved ones who are distressed at the apparent confusion may miss important communication. One may be skeptical, but research done in many differing cultures and societies has found similar phenomena with the dying: they see visions of religious figures or of loved ones who have died, and they may reach out to these people and speak to them; they see a warm and beckoning light; they often seem to have no fear of death, but may cling to life until some issue with a living loved one has been resolved.

Indeed, there are amazing stories in this book, many of them involving people who were despairing at first, but who gradually accepted their impending death and worked with themselves and their families to make their deaths peaceful. One woman, apparently in a deep coma, lived until her estranged daughter came to her bedside and told her that she really did love her. The mother had been hanging on for days, but died hours after that encounter. Another woman who was spending her last days at home suddenly became agitated. Her upset husband called the hospice nurse: his wife was staring into space, and saying strange things, she was restless and preoccupied. When the nurse arrived, she listened to "Laura," who was saying "It's time to get in line." When questioned gently, she said "Susan [her deceased daughter] is in the line" but that her husband Joe couldn't come. The hospice nurse sensed that Laura was ready to die but was worried about her husband, and when she expressed this feeling, Laura visibly relaxed.

The husband had never talked to Laura about what he would do when she died, fearing it would be cruel. But with the encouragement of the nurse, Joe went in, and told Laura that, as hard as it was

for him to think of living without her, he would be all right: he would go and live with his brother, there would be a garden (they both loved to garden), and he would do his best to remember all the children and grandchildren's birthdays. Laura's preoccupation and restlessness ended with that conversation, and she died peacefully a few days later.

Whether or not one chooses to give credence to these stories, *Final Gifts* is a testament to what is good and noble in human nature, and gives hope for those of us who believe in an afterlife and want to be with our loved ones again. Hopeful and spiritually uplifting are words to describe this book about the last gifts and the "last chances" people can have. Derek Humphry's books focus on human misery and distress. While he says that people who believe that God is the master of their fate should not read on in *Final Exit*, he likes to point out—he does it again in *Dying with Dignity*—that many religious people and "especially" Christians have a belief that a loving God wouldn't want them to suffer, and so they agree with his cause. But then he writes that if you believe that "suffering ennobles," then you are not a candidate for voluntary euthanasia and "it is not an option ethically." Only a non-philosopher with no understanding of Christianity would say that a person can be a good Christian and reject the idea of noble suffering. To reject that idea is to reject Christ. But of course Humphry's concern is not with the truth.

The hospice movement has yet to receive much serious media coverage. Nor do stories of peaceful deaths, reconciliations with loved ones, hopes and guesses about the afterlife. Thankfully, not everyone in America is ruled by the press, and as the "No" vote in the state of Washington illustrates, those opposed to euthanasia are working hard to prevent its legalization. But the Hemlock Society has certainly made its mark, as the growing "body count" shows. And Derek Humphry has become a millionaire. No matter: all good Christians wish him a decent "last chance" when his final exit comes.

Fatal Tissue: The Horror and the Lure

Rebecca Ryskind

The history of the natural sciences has two themes, one, the formation of their foundations, and the other, an account of their effects on society. Everyone who follows the calling of a natural scientist experiences pleasure, when his work is done, in studying the unfolding of knowledge in his science; . . . But how has genetics affected Man himself? . . . The recent history of these genetically oriented human sciences in action is as full of chaos and crime as a nightmare. Yet many geneticists, anthropologists, and psychiatrists have slipped from this dream into the deep sleep of forgetfulness.

Benno Müller-Hill, Introduction to Murderous Science

The deep sleep of forgetfulness fell heavily over our Congress this spring, as both the House and the Senate voted overwhelmingly to approve the use of tissue obtained from elective abortions for experiments at the National Institutes of Health. The question of whether the federal government ought to fund research on aborted children has recurred periodically since 1975, when an “Ethical Advisory Board” at the Department of Health, Education and Welfare approved experimentation on aborted—but still living—fetuses. Public outcry when the nature of such experiments was revealed brought a temporary end to the research, not only because of its grisly character, but also because the people recognized no clear purpose in experiments such as severing the heads from aborted babies and maintaining their brains alive.

But fetal tissue research is no longer on the grotesque fringe of science. Some researchers have suggested that fetal tissue—particularly fetal brain tissue—may be spectacularly regenerative and adaptable, and hence suitable for transplant into victims of diabetes, Parkinson’s and Alzheimer’s disease for near-miraculous cures. This unsubstantiated promise of relief for millions of sufferers has brought fetal research to the forefront of the abortion battle; many victims of disease have joined forces with the vociferous abortion lobby in order to lift an Administration-imposed ban on the use of tissue obtained from

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induced abortion for fetal research at NIH. And thus it is that an NIH Reauthorization bill proposing to overturn the fetal tissue moratorium became one of the most hotly contested political fights of the year.

In early May, a distraught HHS official called an emergency meeting with anti-abortion activists, pleading with them to intensify their efforts against the NIH bill, as the best White House estimates indicated that “pro-lifers” would not show “veto-strength” when the bill came to the floor of the House. More than ethics at NIH was at stake; there is a kind of mystique surrounding the Presidential veto, making it uniquely powerful until the first time it is overridden. The Democratic leadership on Capitol Hill, unsuccessful in attempts to override thirty Bush vetoes, felt confident that the NIH bill would be the one: the swing that would break the opponent’s serve. The momentum of one override could lead to more: the President would be weakened, and the anti-abortion movement declared dead—or at least not viable—just in time for the major party conventions in the summer.

Activists re-doubled their efforts. Senior HHS and White House officials, including the President himself, mounted a high-pressure campaign to woo marginal members; ads signed by major lobbies ran in *Roll Call*, the Hill magazine; disease victims opposed to fetal tissue research flew in to meet with Congressmen (countering to some extent the emotional pleas of disease victims lobbying *for* the research); and a major letter-and-phone-call effort was launched at the grass-roots level.

In spite of these efforts, anti-abortion forces still faced certain defeat in the House on the day of the scheduled vote. They were saved by what amounted to an act of God: Rep. Henry Waxman (D-CA), no stranger to House rules, made an unlikely procedural error. The vote was put off for another week—a week which permitted “pro-lifers” to shore up “weak” members with another round of personal visits. Mercifully, the extra week also brought additional protest from Americans for Tax Reform, which complained that the bill was over \$3.1 billion dollars *more* than the President’s budget request. Even certain animal rights groups weighed in, objecting to a part of the bill that would make some of their protest activities *felonies* (politics indeed makes for strange bedfellows!).

A few Congressmen otherwise inclined to support fetal tissue research voted against the bill on Constitutional grounds; it contained language that would withdraw from the NIH Director and the Secretary of

HHS the power to withhold funding from any project approved by “ethics advisory panels”—the same panels which approved decapitating aborted but living babies in the 1970s. This cynical attempt on the part of pro-abortion politicians to remove major ethical questions entirely from the realm of debate became a most important reason to oppose the legislation.

An Administration document released on Capitol Hill during the heat of debate denounced NIH Reauthorization on “ethical, fiscal, administrative, philosophical and legal” grounds. And the bill did indeed offer a veritable salad of reasons to reject it: pick an objection, any objection. Yet only 148 members of the House (and later only 12 members of the Senate) found the courage to oppose the initial bill. The margin of “victory” was slightly more comfortable during the veto override attempt (156 House members voted to sustain the President’s veto), but the numbers were too close to call until moments before the actual vote. To the stalwart opponents of the NIH bill, the “win” was sweet because hard won, but no one is gloating: they could well have lost.

Anti-abortion votes are now hard to come by in the U.S. Congress. But why should so many usually pro-life members have defected during this battle? Some pleaded political expediency: “My district has been redrawn and I can’t afford a controversial vote before the election” was commonly cited. Others maintained—against all the evidence—that fetal-tissue experimentation could somehow be separated from the abortion problem. Proponents of the bill met with surprising success marketing the issue as a question of “health” and not abortion. This in spite of the fact that its chief sponsor in the House was Henry Waxman, a man who never met an abortion he didn’t like, and whose enthusiasm alone ought to have raised the eyebrows of his colleagues. But the most obvious rebuttal of the “health” argument was this: If fetal tissue has nothing to do with abortion, why is the National Abortion Rights Action League—which has no *other* “public policy” interest—scoring the NIH bill as a major “pro-choice” vote?

Which brings us to the question that drew so many defectors, that confounded even usually pro-life legislators (notably Senator Strom Thurmond): Why not? Why not bring some good out of the tragedy of abortion?

When a group of “moderate” Republicans in effect posed the question “Why not?” to President Bush, he chose to counter with

another question: "Why?" The moratorium on fetal tissue research applies only to tissue obtained from *elective* abortions; an executive order has provided for the establishment of a fetal tissue bank that would collect *at least* 2000 usable sources per year from miscarriages or ectopic pregnancies. Some have tried to object that these tissues are genetically defective and unusable: in fact, the ratio of usable to unusable tissues is about the same—6 to 10 percent—for both naturally occurring and induced abortions. Moreover, NIH Director Bernadine Healy has said that ectopic tissue, because it must be removed surgically, is more apt than other sources to be both genetically normal and sterile. In a research field that has performed only sixty transplants in thirty years, 2000 usable sources per year would seem to be more than adequate. "Why," asked the President, "do we need the extra tissue? Tell me why."

Reports indicate that no one could answer him. Not surprising: the cause of the great push to expand the sources of fetal tissue to include those obtained from elective abortion—the reason for NARAL's keen interest—is that it will give legitimacy to the abortion industry. If that is not the express purpose of the abortion lobby, then why has it shown such energy in championing this research? Why such distortion of the facts? To wit: the hype notwithstanding, fetal tissue hasn't proved to be a miracle cure for diabetes, Parkinson's or Alzheimer's. The *Journal of Neurology* (May, 1990) reported that in over 100 fetal transplants worldwide, fetal tissue has rarely even survived the procedure. In cases involving Parkinson's patients, where improvements have been noted, it is not at all clear that the fetal cells were the reason. In fact, fetal tissue research has fallen far behind other therapies in terms of promise for curing Parkinson's disease; there is little evidence that transplants can do anything to help diabetics; and Dr. James Mason, head of the U.S. Public Health Service, says that no research with fetal tissue has even been *tried* to treat Alzheimer's in humans, so the reports that fetal tissue is "magically adaptive and regenerative" are, to say the least, overstated. Is it compassion for disease victims to raise their hopes with this cruel misrepresentation of the facts?

Even granting the argument that fetal research eventually may generate cures, was it compassion for disease victims that motivated Congress to strike from the NIH legislation a provision to allow transplant recipients to know how their transplants were obtained? A 1992 Wirthlin poll found that 63% of Americans oppose fetal

tissue research. Presumably some of those Americans themselves suffer from illnesses. Many would ask if it is compassionate to force those people—those plagued with disease yet ethically opposed to elective abortions—to choose between continued suffering and the taking of innocent human life when an ethically acceptable—and medically feasible—option is available.

When the facts of the case are laid out, it is evident that experimentation on aborted children has less to do with helping sick people than with justifying the abortion industry. The effect will not, of course, be immediate, and therein lies part of the problem. People who should know better have been persuaded that “safeguards” (e.g., preventing the aborting mother from specifying the recipient of her baby’s tissue) will prevent any abuse. But opponents point out that once the barrier between abortion and government funding is penetrated, it can be only a matter of time before the supposed safeguards are shunted aside. As Georgetown University Professor Daniel Robinson—a member of the 1988 NIH panel on fetal tissue transplantation—put it one evening on CNN’s *Crossfire*, we can establish safeguards in 1992, but “. . . if it turned out that a significant public health problem could be addressed by taking down that so-called impenetrable wall, how long do you think it would be before some progressive and right-thinking Congressman” would move to strike down the barriers? Come to think of it, what is the fetal tissue moratorium itself, after all, if not a safeguard? Abortion proponents can afford to be generous with “safeguards” because they know that safeguards never last long. They deride the notion of a slippery slope even as they take advantage of it in achieving their ends in Congress.

Some tactical ground may have been ceded to the abortionists when the Administration adopted as its chief argument against the bill the possibility that potential good coming from research would encourage women to have abortions. This triggered angry complaints from feminist groups that the White House was “patronizing” women, suggesting they choose to have abortions lightly. But no one has suggested that fetal tissue research will cause women to become cavalier about abortion; the issue is that abortion itself may become ennobled. As Professor Robinson put it, “To do something that will save other human lives is not to do something cavalier.” Again, fetal tissue experimentation is only the first step. Once it is tolerated it will be embraced. Once embraced, what then? How long before

we have an unregulated “fetus industry” in which the organs of unborn babies are bought and sold as commonly as pints of blood?

It is ironic that this debate was going on during and after Presidential primaries in which much attention was paid to neo-Nazis and fascists—both real and imagined. David Duke, a former American Nazi and Klansman tried to run. Columnist-candidate Pat Buchanan—no David Duke—was roundly defamed for his defense of John Demjanjuk, alleged to have been Ivan the Terrible of the Treblinka concentration camp. Buchanan’s dogged insistence that Demjanjuk was innocent may have saved the man’s life and has been entirely vindicated, but too late to save Buchanan from denunciation as a Nazi sympathizer in the syndicated columns. Several national publications saw fit to examine the issue of anti-semitism, presumably with an eye toward extinguishing it. There is plenty of concern in this country that the Holocaust happen “Never Again,” but precious little ability to recognize its spectre. What’s more dangerous: David Duke, an obviously phony and smooth-talking politician whose ideas are widely repudiated, or the ever-quickenening return to eugenics visible on the frontiers of our “Science”?

The New York *Times* once called the comparison between abortion and the Holocaust “obscene.” Contemporary researchers bridle at any analogy between themselves and Nazi scientists. The fact remains that, as Joseph Sobran noted recently (in a column titled “The Angel of Choice”), the Nazi researchers shared the premises of some of those who think they are exactly the opposite of Nazis. Writing of Dr. Joseph Mengele, the Nazi “angel of death” who spent the latter years of his life working as an abortionist in Argentina, Sobran says:

He saw himself as a progressive, and he was right. He had liberated himself from stifling moral traditions, and he was in the vanguard of change, seeking new scientific answers through experimentation. He shared the Darwinian materialism of his time, which is still our time, even if the Nazi wing has gone a little out of fashion. Abortion, fetal experimentation, surrogate motherhood, genetic engineering—he would have been right at home with these new developments. In fact, he could fairly consider himself a pioneer, a casualty of progress who was ahead of his time.

The “murderous science” of the Nazis didn’t begin with Hitler and it didn’t begin overnight. Eugenics programs—always begun in the name of high humanitarian principles—were well established during the Weimar Republic. Germany didn’t accidentally wake up evil one morning; the German people simply got slowly accustomed

to breaking down the safeguards separating science from atrocity.

The late Dr. Leo Alexander, a consultant at the Nuremberg trials, once interviewed a Nazi doctor who defended his experimentation on the carefully-removed brains of 100 holocaust victims. *He* was not a murderer, he argued, because *he* had not marked the victims for death. But it would have been a shame to squander “such wonderful material!” It would have been a pity not to get something good for humanity from their deaths!

Is that not the precise argument of those who ask with respect to fetal tissue experimentation: “Why not”? Wouldn’t it be a pity not to get something good for humanity from the babies marked for death in any case? With all due respect to Senator Thurmond, when he asked from the Senate floor, “If this is going to help humanity, why not do it? What could be the objection to it?” was he not rejecting the world’s collective verdict at Nuremberg? The world indeed decided at Nuremberg that it had numerous objections—chief among them the judgment that “progress” erected over the graves of the innocent is not worth achieving.

Not that progress doesn’t have its attractions. In her best-selling novel, *The Witching Hour*, Anne Rice explores the fascination and danger of fetal research from a scientist’s point of view:

“I saw it in the incubator, this little fetus. Do you know what he called it? He called it the abortus. . . . and this thing had been sustained, alive,” she said, “from a four-month abortion, and you know he was developing means of live support for even younger fetuses. He was talking of breeding embryos in test tubes and never returning them to the womb at all, but all of this to harvest organs. You should have heard his arguments, that the fetus was playing a vital role in the human life chain, could you believe it, and I’ll tell you the horrible part, the really horrible part, it was that it was utterly fascinating, and I loved it. I saw the potential uses he was describing. I knew it would be possible some day to create new and undamaged brains for coma victims. Oh, God, you know all the things that could be done, the things that I, given my talent, could have done!”

He nodded. “I can see it,” he said softly, “I can see the horror of it and I can see the lure.”

Is the real creed of our Science that what we can do, we must do? There is no question but that “progress”—no matter how achieved—can be enticing. But it is equally clear that by funding research on aborted babies, even under supposedly well-controlled circumstances, our Congress will be opening Pandora’s Box. As Daniel Robinson

REBECCA RYSKIND

noted (citing Hegel) in his debate on *Crossfire*: “What the state permits, it encourages.”

The day the House failed to override President Bush’s veto of the NIH Reauthorization bill, Henry Waxman re-introduced legislation to overturn the fetal-tissue moratorium, saying that he hoped to have the new bill ready for the President before the election. The vote was too close in the Spring to feel confident about the outcome in the Fall. Will fetal research—which renowned geneticist Dr. Jérôme LeJeune has called “the cannibalism of the young for the benefit of the old”—be permitted and hence encouraged? Or will our legislators, like the heroine of Anne Rice’s novel, foresee the horror of research unfettered by morality and bypass its lure?



M LACHLAN

THE SPECTATOR 30 May 1992

The Politics of Abortion

Robert P. Casey

Thank you for the introduction. And the warm welcome.

At least for today, I feel like I am back in law school myself.

I studied law at George Washington University. Ellen and I were newlyweds. We had a one bedroom apartment on Skyland Place in Southeast Washington.

To help make ends meet, I got a job selling encyclopedias. On commission. Door to door. In Beltsville, Maryland.

I lasted one week. I never sold a book. Not one. It was the hardest job I ever had. They'd slam the door in your face. They'd curse at you.

It was almost as bad as political fund-raising.

That's when I learned a lesson that has served me well all my life.

You can stand in the doorway with a sample case full of great products, but you'll never get the chance to sell them unless you get through the front door and into the living room.

That is a lesson the national Democratic Party needs to learn in 1992. Because in too many homes in this country, national Democrats have not been welcome because they fail the basic threshold test when voters ask them about values. They never get the chance to open their sample case full of "issues" like economic growth and jobs. Tax fairness. Health care. Protection of the environment.

This, then, is what I want to talk about today: What I believe the Democratic Party must do if it is to seize the best chance it has had in years to recapture the White House.

In my home state of Pennsylvania two watershed events have already helped define the political dynamic of this presidential election year.

The first event was underdog Harris Wofford's election last November to the United States Senate. That one election changed the political life of George Bush—perhaps permanently—by burying Bush's own Attorney General Dick Thornburgh in a landslide, one of the biggest upsets in modern American political history.

That is why the first presidential primary this year wasn't in New

Robert P. Casey is Governor of the Commonwealth of Pennsylvania. The text of his speech, delivered at the Notre Dame Law School on April 2, 1992, was provided by his office, and is reprinted here in full with his permission.

ROBERT P. CASEY

Hampshire. It was in Pennsylvania last November. And national politics hasn't been the same ever since.

The second watershed event is unfolding right now. It involves the high voltage "A" word. Abortion. The hottest button in American politics today.

You may have heard of the case that is before the Supreme Court called *Planned Parenthood versus Casey*.

Let me introduce myself. I'm Casey.

In less than three weeks, I will be in Washington when the Supreme Court hears arguments on the extent to which states like Pennsylvania can regulate abortion.

Remember the date: Wednesday, April 22. Because it is a case that has unleashed thunder on the right and lightning on the left. It is a case that goes straight to the heart and soul of our basic value system. What kind of a people, what kind of a society we want to be.

Let me tell you about *Planned Parenthood versus Casey* and where it comes from. It comes from Pennsylvania and its people. Take a picture of Pennsylvania and you have taken a snapshot of America.

On either end of our state we have two great urban centers, Philadelphia and Pittsburgh, with all the ferment of big city politics and big city problems. And in between are millions of people who are right at home in heartland America. Who live in dozens of smaller cities and hundreds of towns—surrounded by the largest rural population you will find anywhere in the country.

And from one end of Pennsylvania to the other, families still raise their kids with the same old-fashioned values that have been handed down from one generation to the next. Values that say, simply, that it's still okay to be a Boy Scout or a Girl Scout. It's okay to say the Pledge of Allegiance at school. To like the Reader's Digest. Where it's still okay to take your family to church, just like your mom and dad took you. Where it's okay to expect your kids to do the same thing with their kids when they grow up.

And when they *do* grow up, just like their parents, they take their politics seriously. In other words—Pennsylvania is heartland America.

And just like all over this country, when it comes down to electing a president, values and character are what make all the difference in the world. Because presidential elections are won not only on programs or policies.

Michael Dukakis had some good programs. So did Walter Mondale.

But good programs are only a part of what it takes to reach the heart and soul of America when it is time to pick a president.

Heart and soul—That's what presidential elections are all about. That's when people are moved more by the candidate's values than the candidate's programs.

And for the past 25 years, too many Democrats in this country have had a bad feeling in their hearts and in their souls about the national Democratic Party. Because the Democratic party broke its historic compact with mainstream America when it volunteered itself as the party of abortion on demand.

When the Democrats convene in New York this July, it will be 20 years since George McGovern "opened up the party's doors." In the two decades since then, the party's position on abortion went from open to closed. From dialogue to dictate. And millions of Democrats headed for those open doors and walked right out. And they never came back.

Despite one national defeat after another, the party's national hierarchy has been so tightly focused on their own agenda that the leadership has forgotten where the Democratic party came from. And where it should be going. Every four years they sacrifice the obvious long-term political prize—the presidency—for the short-term political and financial approval of a cluster of special interests.

Because it is the special interests who control the party's purse strings.

In the meantime they have turned the party away from the traditional values of millions of Democrats. I am talking about the so-called Reagan Democrats that both parties are saying are essential to victory in 1992. The same voters who were the backbone of the great coalition that voted Democratic as an article of faith for nearly two generations. That produced sure winners instead of sure losers. And this year the White House may once again be within reach. Because the people of this country have come to realize that they have been taken to the cleaners by the failed policies of the Reagan and Bush administrations.

But I am worried that the Democrats may once again be on their way to beating themselves. Because on the fundamental issue of abortion, the national Democratic Party doesn't speak for me. Nor does it speak for millions of pro-life Democrats just like me. Nor the millions more who are ambivalent—but who know they are against abortion on demand. Democrats that the party must have if they are to win in November.

Our national Democratic party has built a wall between itself and the values that define mainstream America—which is most of us. I strongly believe that more than any other issue, it is abortion that defines values in American politics today.

That is one reason why *Planned Parenthood versus Casey* commands so much national attention. And controversy.

It is a case the pro-abortion forces have seized upon as a vehicle to generate a decision by the high court before the November election. In a strange turnabout, they want to provoke—some might even say goad—the court into overruling *Roe v. Wade*, producing a result that the abortion lobby and their allies in the media predict will severely embarrass the Republicans nationally.

Here is their reasoning: The Republican Party is strongly pro-life. And the abortion lobby has conveniently convinced itself that America is strongly pro-abortion. Therefore, they argue, if the court overrules *Roe*, the decision will hang like a heavy stone around the Republicans' neck in the fall. I disagree.

If being pro-life is such a political negative, then will somebody please explain to me how Ronald Reagan and George Bush got elected in the first place? And if being pro-abortion is the political asset they say it is, then why have the Democrats lost every presidential election since 1968, except the post-Watergate election of Jimmy Carter?

I believe the pro-abortion forces seriously misread the mood of the American people. And I also believe they are deluding themselves if they really believe the tide of public opinion is moving in their direction.

The national Democratic Party either failed to understand—or chose to ignore—the seismic social and political shock waves generated by the *Roe* decision in 1973. A decision in which Justice Blackmun, by the stroke of a pen, transformed abortion, then a crime in most states, into a fundamental constitutional right.

And this is crucial: *Roe* was never accepted by tens of millions of Americans who felt the court was arbitrarily overriding their own deeply held values. Instead they banded together in what has been called the one truly authentic social movement of the 1970s. They saw *Roe v. Wade* at the very least as a metaphor for a host of anti-family policies. And at worst, they saw *Roe* as a direct frontal attack on traditional family relationships. Between husband and wife. Parent and child. An attack that short-circuited a consensus that had already formed among most of the states. A consensus that said abortion was a crime.

Roe was nothing less than a revolution pronounced from on high. And the massive response against it by voters all over the country has had a profound effect on every national election since then.

Consider this: on Election Day 1988, ABC News polled 100,000 voters as they left voting places in every one of the 50 states. They wanted to know what really went on in voters' minds once they were inside that voting booth. Once they were alone with just their conscience and their values. And fully one-third of the voters volunteered—without even being asked specifically—that the number one issue when they were making up their mind was abortion. One-third of the voters. Some were for abortion. Some were against it.

And of those who cited abortion as the most important issue, a strong majority—57 percent to be exact—pulled the lever for George Bush. Because he was pro-life. Because of what they perceived to be his values. They gave Dukakis high marks on the issues: the environment, health care. And these voters clearly preferred Dukakis to Bush when it came to caring about people.

But they chose Bush over Dukakis in spite of these so-called issues. Why? Because of values. That is why a strong case can be made that the winning margin of voters in 1988 rejected Michael Dukakis and the Democratic Party because of value issues—with abortion the preeminent factor. Dukakis lost 11 states by less than 4.6 percent. States like California, Maryland and Connecticut. Plus states with significant pro-life voting records like Pennsylvania, Michigan, Illinois, and Missouri.

If Dukakis had not given away the high ground on the value issues—especially abortion—a strong argument can be made that he could have beaten Bush in those same 11 states. Picking up enough votes in the Electoral College so that today he would be president—instead of a private citizen.

The news media routinely pronounces that polls show most Americans favor abortion. Just like that. Case closed.

It's just not so.

What the polls really show is that most Americans are enormously uncomfortable about abortion. In fact, abortion is so personal, so private an issue that most Americans won't discuss it publicly at all.

But when asked by pollsters, they do respond. Their answers depend on how the questions are phrased. And who is doing the asking. But certain conclusions emerge conclusively from the polling data.

For example, as many as 86 percent of all Americans favor restrictions on abortion, according to a Gallup Poll of a few weeks ago. Restrictions that are similar to those I signed into law in Pennsylvania.

Restrictions that say:

- A woman should know enough about abortion to give informed consent to the procedure itself.
- After a woman requests an abortion, there should be a 24-hour waiting period before she actually undergoes the procedure.
- Under most circumstances, a minor considering an abortion must obtain the consent of at least one parent.
- A wife should notify her husband, with exceptions, of course, to protect her safety.

These are limitations that I believe are within the *Roe* doctrine, as modified by *Webster*. They are acceptable to a majority of the people of Pennsylvania. In fact, they are acceptable to most Americans. And we should find out this summer if they are acceptable to the Supreme Court.

But we already know that they are not acceptable to the national Democratic Party.

We know that because the national party has embraced the most extreme position—abortion on demand.

In fact, the party won't even talk about it. They have shut off all discussion of the issue. The special interests controlling the party are absolutely intolerant of any view on abortion other than their own most extreme view. Just ask the 80 Democratic members of the House of Representatives who have voted against their party's pro-abortion position.

That's one-third of the Democrat's House majority, from states all over the country, who refuse to knuckle under to the party line. They have paid a price as a result.

Congressional Quarterly recently said of these pro-life representatives that "people who stick their heads up on the Democratic side get slammed." Congressional Quarterly quoted one Congressman this way, "Democrats have made it uncomfortable for other Democrats to be pro-life."

Three years ago there still seemed to be at least some room for diversity and dialogue, even dissent. And nearly 50 House Democrats wrote Party Chairman Ron Brown urging that the abortion plank be removed from the party's platform. The signers of the letter were liberal and

conservative, male and female, first-termers and committee chairs. They came from every region, from the cities and from the farms.

Let me read to you some of what they said, because it speaks directly to what is wrong with the party today. Here is what they wrote:

We, along with millions of our fellow Democrats, believe that the principle and practice of abortion on demand is wrong . . . (and) the platform plank is bad public policy.

. . . as good Democrats (we) simply cannot accept that plank as part of our Democratic heritage and philosophy.

. . . it is also poor politics.

A good case can be made that the last three presidential elections have turned, at least in large part, on the loss of traditional Democrats who have broken with the party over so-called social issues, particularly abortion.

. . . The Democratic Party is seen more and more as the party of abortion—a sure recipe for losing irretrievably a significant segment of our traditional base of support.

And how did Chairman Brown respond?

Sorry, he said. “I cannot revise nor alter the platform.” And then, with a straight face, he went on to tell the House Democrats—and here I quote again, “We have no litmus tests.”

No litmus test? Well, they sure do now. Certainly for the highest office in the land. The special interests who today control the national party impose—no, they insist on—a litmus test on abortion as a condition of nomination to national office.

Let me tell you why the national litmus test is dumb politics.

I am a pro-life Democrat. I beat a pro-abortion Republican when I was elected Governor in 1986. Then, in 1990, I was reelected over another pro-abortion Republican by over one million votes. The largest winning gubernatorial margin in Pennsylvania history. Against an opponent who spent \$2 million to beat me. At a time when the post-*Webster* spin from the abortion lobby and the national media held that pro-life candidates were doomed.

And I'll tell you something else: Pennsylvania is not the only battleground where pro-life candidates have succeeded.

Just look at what happened in other key contests in 1990.

In Kansas, pro-abortion advocates offered insurgent Democrat Joan Finney thousands of dollars to abandon her pro-life principles when she ran for Governor. Just like that old line, “I'd rather fight than switch,” Joan Finney chose to fight.

She walked right out of a meeting packed with people with their checkbooks already out. And on her own, went on to beat the pro-abortion incumbent Republican Governor Mike Hayden.

In Ohio, Democratic Attorney General Anthony Celebrezze for 25 years was a champion of the rights of unborn children. Until he ran for Governor, that is. That is when he flip-flopped, and endorsed a pro-abortion platform. And he lost the election to the pro-life candidate, George Voinovich.

The same thing happened to another Democratic state attorney general, Neil Hartigan of Illinois. Four months before the gubernatorial election, he announced he was pro-abortion, despite a long pro-life record. And he lost his election to Jim Edgar, a pro-life Republican.

In Michigan, the incumbent Democratic Governor Jim Blanchard vetoed dozens of abortion restrictions. And the voters replaced him with a pro-life candidate, John Engler.

There were other important pro-life victories, too:

- Hatfield of Oregon. Returned to the Senate.
- Andrus of Idaho. Reelected Governor.
- House Whip David Bonior. The highest-ranking pro-life Democrat in the House. Reelected from Michigan's 12th Congressional district.

For the winners, Republican or Democratic, there was a common factor in each case. All were pro-life. All were under attack. All stuck to their guns. And all won their elections.

Then there was 1989, when two of the biggest elections also involved pro-life candidates who waffled. Who flinched when they felt the heat. Do you remember Republican Jim Courter of New Jersey? Or Republican Marshall Coleman of Virginia?

Each was pro-life. Each was running for governor in a major state. Each panicked in the weeks and months after the Supreme Court's *Webster* decision in 1989. Each felt the pressure and pulled back from their pro-life positions. And each became an asterisk in the 1989 political almanac.

But even in the face of all this evidence—despite election after election—the national Democratic Party still doesn't get it.

One thing is crystal clear, though. If the Democrats hope to elect a president in 1992, they simply can't afford to lose states like Pennsylvania, Ohio, Michigan and Illinois, like they did in 1988. Nor can they afford to ignore the effect on voters all over this country of the party's radical position—abortion on demand.

But do they recognize the force of the pro-life issue? Not by a long shot. In fact, the crowd inside the Washington Beltway and the Democrats' national fund-raisers go so far as to actually punish those who disagree with them in the one way that hurts the most: they shut off the money.

As a result, any Democrat who is pro-life can't even get out of the gate. Because they are locked out of the fund-raising centers of New York and Washington, Miami and Los Angeles.

Just turn on your TV to see how it works.

A few months ago we all saw the big banquet in Washington that was sponsored by the National Abortion Rights Action League. And right in the thick of it, tripping over each other, were all of the Democratic presidential hopefuls. Making the obligatory pilgrimage that the party's nomination process demands. And you can bet that Mr. and Mrs. America watching at home knew full well that not one of them had been across town at the big pro-life rally on the mall that same day.

¶ It is this TV image that tells the whole story of what is wrong with the national Democratic Party on the abortion issue. It is a sad commentary that this system requires so many of the party's biggest names to switch from pro-life to what they call "pro-choice." Just to position themselves as national candidates. Just so they can pass the party's presidential litmus test. It seems more than mere coincidence that so many of the party's top names appear to have been forced in this direction in recent years. Like Joe Biden. Dick Gephardt. Sam Nunn. Bob Kerry. Jesse Jackson.

And every four years, those same special interests lead the misguided Democratic Party right off the same cliff. And the Republicans are right there to nudge them along every step of the way.

The tragedy of presidential campaigns over the past 20 years has been that the Republicans do such an effective job with their calculated appeals to Democrats who feel shut out. Twenty years ago they branded the Democrats as the party of "Acid, Amnesty and Abortion." Values. That's what they were talking about then. That's what they are still talking about today. The kind of values that can make or break a presidential campaign.

Three years ago, Speaker of the House Tom Foley assured reporters that there was no formal Democratic leadership position on abortion. My, how times have changed. Just listen to what he gratuitously

ROBERT P. CASEY

declared in his response to the President's State of the Union address. Even though the President made no mention of abortion, for some reason Foley could not resist issuing this prediction to the national television audience:

If the Supreme Court removes the guarantees of choice from the Constitution of the United States, this Congress will write it into the laws of the United States.

And with those 28 words, the Speaker of the House deeply offended large numbers of pro-life Democrats everywhere. Beginning with one-third of his own members of the house. Not to mention all those pro-life Democrats like me who see the party driving itself further and further from the people. And he should have checked first with his own majority leader in the Senate, George Mitchell, who—while pro-choice—opposes the very same “Freedom of Choice Act” that Speaker Foley says he will make into the law of the land.

Even as Foley spoke, all across America you could hear minds clicking off right along with their TVs. So that brings us to the big question: How do we get them to turn back on again?

By rededicating ourselves to the protection of the powerless in our society.

This is my message to my party in 1992.

Just as we fought so hard and so well for the rights of the workers of America, for the dignity and human rights of minorities, for women and children and families. For the poor. The disabled. The dispossessed.

Just as we fought for all of these, the time has come as well to fight to protect the most vulnerable, the most defenseless, the most powerless members of our human family.

The Democrats of 1992 are heirs to an historic legacy that wraps a protective embrace around those who have no means to protect themselves. The time has come for the Democratic Party to protect what should be a natural constituency—our unborn children.

Just feel the passion and the power of these words:

What happens to the mind of a person, and the moral fabric of a nation, that accepts the aborting of the life of a baby without a pang of conscience? What kind of a person, what kind of a society, will we have 20 years hence if life can be taken so casually?

Jesse Helms didn't say that. Jesse Jackson did.

In 1977. Four years after *Roe v. Wade*.

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We Democrats must remind ourselves in 1992 that the founder of our party is Thomas Jefferson. And more than 200 years ago, in Philadelphia, Jefferson wrote: "We hold these Truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness . . ."

I call on Democrats everywhere to become the party of life. And let this be clear: that in fighting for life, we have a corresponding obligation to do all we can to make life worth living, for both mother and child. To offer help and understanding for women who must endure difficult pregnancies. Good prenatal and neonatal care. Nutrition and health care. Family and medical leave. Child care. And a renewed commitment to adoption as a viable—and affordable—choice.

We must fight for life with the same passion that Democrats throughout history have fought for liberty. Now, more than ever, the Democratic platform should reflect the shared values of Democrats everywhere. Because this is more than an issue of rights. It is an issue of right and wrong. And millions of Democrats believe their party's dead wrong on abortion.

And the party will stay wrong until they open the party and open the platform process to dialogue and debate. Until they stop ignoring the millions of Democrats just like me who want to protect and preserve the lives of unborn children.

I believe it is time for the party to deliver a strong message to the American people that millions of Democrats believe in protecting unborn human life. And to deliver that message in the party platform. This is what the party must debate. And that debate must begin now.

Today I encourage like-minded Democrats everywhere to respond to this call to action. Especially those in positions of leadership. Senators and members of the House of Representatives. Governors. State Legislators. Delegates to the convention in July. Members of the platform committee. Rank and file voters all over this country.

The Democratic party may indeed offer the best economic message. And a health care program that'll work for everyone. Along with tax fairness. And social justice. And a strong commitment to protecting our environment.

But just like that encyclopedia salesman, my party will never succeed unless we can reach into the living rooms of America to make our presentation.

ROBERT P. CASEY

There is still time. The American people are waiting. They are watching. They are ready to open the door.

I believe that if the National Democratic Party and its candidates offer a strong value-oriented message, the people will welcome them back into their homes and into their hearts. And into the White House once again.

Thank you.



'It's amazing what a false impression one can give. Whatever made you think I was incorruptible?'

THE SPECTATOR 2 May 1992

Organs for Sale?

Leon R. Kass

Just in case anyone is expecting to read about new markets for Wurlitzers, let me set you straight. I mean to discuss organ transplantation and, especially, what to think about recent proposals to meet the need for transplantable human organs by permitting or even encouraging their sale and purchase. If the reader will pardon the impropriety, I will not beat around the bush: the subject is human flesh, the goal is the saving of life, the question is, "To market or not to market?"

Such blunt words drive home a certain impropriety not only in my topic but also in choosing to discuss it in public. But such is the curse of living in interesting times. All sorts of shameful practices once held not to be spoken of in civil society, are now enacted with full publicity, often to applause, both in life and in art. Not the least price of such "progress" is that critics of any impropriety have no choice but to participate in it, risking further blunting of sensibilities by plain overt speech.

It's an old story: opponents of unsavory practices are compelled to put them in the spotlight. Yet if we do not wish to remain in the dark, we must not avert our gaze, however unseemly the sights, especially if others who do not share our sensibilities continue to project them—as they most certainly will. Besides, in the present matter, there is more than impropriety before us—there is the very obvious and unquestionable benefit of saving human lives.

About two years ago I was asked by a journal to review a manuscript that advocated overturning existing prohibitions on the sale of human organs, in order to take advantage of market incentives to increase their supply for transplantation. Repelled by the prospect, I declined to review the article, but was punished for my reluctance by finding it in print in the same journal. Reading the article made me wonder at my own attitude: What precisely was it that I found so offensive? Could it be the very idea of treating the human body as a heap of alienable spare parts? If so, is not the same idea implicit in organ

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donation? Why does payment make it seem worse? My perplexity was increased when a friend reminded me that, although we allow no commerce in organs, transplant surgeons and hospitals are making handsome profits from the organ-trading business, and even the not-for-profit transplant registries and procurement agencies glean for their employees a middleman's livelihood. Why, he asked, should everyone be making money from this business except the person whose organ makes it possible? Could it be that my real uneasiness lay with organ donation or with transplantation itself, for, if not, what would be objectionable about its turning a profit?

Profit from human tissue was centrally the issue in a related development two years ago, when the California Supreme Court ruled that a patient had no property rights in cells removed from his body during surgery, cells which, following commercial genetic manipulation, became a patented cell-line that now produces pharmaceutical products with a market potential estimated at several billion dollars, none of it going to the patient. Here we clearly allow commercial ownership of human tissue, but not to its original possessor. Is this fair and just? And quite apart from who reaps the profits, are we wise to allow patents for still-living human tissue? Is it really necessary in order to encourage the beneficial exploitation of these precious resources, to allow the usual commercial and market arrangements to flourish?

With regard to obtaining organs for transplantation, voluntary donation rather than sale or routine salvage has been the norm until now, at least in the United States. The Uniform Anatomical Gift Act, passed in all fifty states some twenty years ago, altered common-law practices regarding treatment of dead bodies to allow any individual to donate all or any part of his body, the gift to take place upon his death.

In 1984, Congress passed the National Organ Transplantation Act to encourage and facilitate organ donation and transplantation, by means of federal grants to organ-procurement agencies and by the creation of a national procurement and matching network; this same statute prohibited and criminalized the purchase or sale of all human organs for transplant (if the transfer affects interstate commerce). Yet in the past few years, a number of commentators have been arguing for change, largely because of the shortage in organs available through donation. Some have, once again, called for a system of routine salvage of cadaveric organs, with organs

always removed unless there is prior objection from the deceased or after death, from his family—this is the current practice in most European countries (but not in Britain). Others, believing that it is physician diffidence or neglect that is to blame for the low yield, are experimenting with a system of required request, in which physicians are legally obliged to ask next of kin for permission to donate. Still others, wishing not to intrude upon either individual rights or family feelings regarding the body of the deceased, argue instead for allowing financial incentives to induce donation, some by direct sale, others by more ingenious methods. For example, in a widely discussed article, Lloyd Cohen proposes and defends a futures market in organs with individuals selling (say, to the government) future rights to their cadaveric organs for money that will accrue to their estate if an organ is taken upon their death and used for transplant.

¶ In this business, America is not the leader of the free-market world. Elsewhere, there already exist markets in organs, indeed in live organs. In India, for example, there is widespread and open buying and selling of kidneys, skin, and even eyes from living donors—your kidney today would fetch about \$25,000 rupees, or about \$1,200, a lifetime savings among the Indian poor. Rich people come to India from all over the world to purchase. Last summer, the *New York Times* carried a front-page story reporting current Chinese marketing practices, inviting people from Hong Kong to come to China for fixed-price kidney-transplant surgery organs—from donors unspecified—and air fare included in the price. A communist country, it seems, has finally found a commodity offering it a favorable balance of trade with the capitalist West.

What are we to think of all this? It is, for me, less simple than I first thought. For notwithstanding my evident revulsions and repugnances, I am prepared to believe that offering financial incentives to prospective donors could very well increase the supply—and perhaps even the quality—of organs.

I cannot deny that the dead human body has become a valuable resource which, rationally regarded, is being allowed to go to waste—in burial or cremation. Because of our scruples against sales, potential beneficiaries of transplantation are probably dying; less troubling but also true, their benefactors, actual and potential—unlike the transplant surgeons—are not permitted to reap tangible rewards for their acts of service. Finally, and most troublesome to me, I suspect

that regardless of all my arguments to the contrary, I would probably make every effort and spare no expense to obtain a suitable life-saving kidney for my own child—if my own were unusable. And though I favor the pre-modern principle, “One man, one liver,” and am otherwise disinclined to be an organ donor, and though I can barely imagine it, I think I would readily sell one of my own kidneys, were the practice legal, if it were the only way to pay for a life-saving operation for my children or my wife. These powerful feelings of love for one’s own are certainly widely shared; though it is far from clear that they should be universalized to dictate mores or policy in this matter, they cannot be left out of any honest consideration.

The question “Organs for sale?” is compelling and confusing also for philosophical reasons. For it joins together some of the most powerful ideas and principles that govern and enrich life in modern, liberal Western society: devotion to scientific and medical progress for the relief of man’s estate: private property, commerce, and free enterprise; and the primacy of personal autonomy and choice, including freedom of contract. And yet, seen in the mirror of the present question, these principles seem to reach their natural limit or at least lose some of their momentum. For they painfully collide here with certain other notions of decency and propriety, pre-modern and quasi-religious, such as the sanctity of man’s bodily integrity and respect owed to his mortal remains.

Can a balance be struck? If not, which side should give ground? The stakes would seem to be high—not only in terms of lives saved or lost but also in terms of how we think about and try to live the lives we save and have.

How to proceed? Alas, this, too, poses an interesting challenge—for in whose court should one conduct the inquiry? Shall we adopt the viewpoint of the economist or the transplant facilitator or the policy analyst, each playing largely by rational rules under some version of the utilitarian ethic: find the most efficient and economical way to save lives? Or shall we adopt the viewpoint of the strict libertarian, and place the burden of proof on those who would set limits to our autonomy to buy and sell or to treat our bodies in any way we wish? Or shall we adopt a moralist’s position and defend the vulnerable, to argue that a great harm—say, the exploitation or degradation of even one person—cannot be overridden by providing greater goods to others, perhaps not even if the vulnerable person

gives his less-than-fully-free consent?

Further, whichever outlook we choose, from which side shall we think about restrictions on buying and selling—what the experts call “inalienability”? Do we begin by assuming markets, and force opponents to defend non-sale as the exception? Or do we begin with some conception of human decency and human flourishing, and decide how best to pursue it, electing market mechanisms only where they are appropriate to enhancing human freedom and welfare, but remaining careful not to reduce the worth of everything to its market price? Or do we finesse such questions of principle altogether and try to muddle through as we so often do, refining our policies on an *ad hoc* basis, in light of successes, costs, and public pressures? Whose principles and procedures shall we accept? And on whom shall we place the burden of what sort of proof?

Because of the special nature of this topic, I will not begin with markets and not even with rational calculations of benefits and harms. Indeed, I want to step back from policy questions altogether and consider more philosophically some aspects of the *meaning* of the idea of “organs for sale.” I am especially eager to understand how this idea reflects and bears on our cultural and moral attitudes and sensibilities about our own humanity and, also, to discover the light it sheds on the principles of property, free contract, and medical progress. I wish, by this means, also to confront rational expertise and policy analysis with some notions outside of expertise, notions that are expressed and imbedded in our untutored repugnance at the thought of markets in human flesh. One would like to think that a proper understanding of these sentiments and notions—not readily rationalizable or measurable but not for that reason unreasonable or irrational—might even make a difference to policy.

Propriety

The non-expert approaching the topic of organ transplantation will begin with questions of propriety, for it is through the trappings of propriety that we normally approach the human body; indeed, many of our evolved conventions of propriety—of manners and civility—are a response to the fact and problem of human embodiment. What, then, is the fitting or suitable or seemly or decent or proper way to think about and treat the human body, living and dead? This is, indeed, a vast topic, yet absolutely central to our present concern; for what is permissible to do to and with the body is partly determined

by what we take the human body to be and how it is related to our own being.

I have explored these questions at some length elsewhere, in an essay entitled "Thinking About the Body,"* from which I transplant some conclusions without the argument. Against our dominant philosophical outlooks of reductive corporealism (that knows not the soul) and person-body dualism (that deprecates the body), I advance the position of psychophysical unity, a position that holds that a human being is largely, if not wholly, self-identical with his enlivened body. Looking up to the body and meditating on its upright posture and on the human arm and hand, face and mouth, and the direction of our motion (with the help of Erwin Straus's famous essay on "The Upright Posture"), I argue for the body's intrinsic dignity:

The dumb human body, rightly attended to, shows all the marks of, and creates all the conditions for, our rationality and our special way of being-in-the-world. Our bodies demonstrate, albeit silently, that we are more than just a complex version of our animal ancestors, and, conversely, that we are also more than an enlarged brain, a consciousness somehow grafted onto or trapped within a blind mechanism that knows only survival. The body-form *as a whole* impresses on us its inner powers of thought and action. Mind and hand, gait and gaze, breath and tongue, foot and mouth—all are part of a single package, suffused with the presence of intelligence. We are *rational* (i.e., *thinking*) animals, down to and up from the very tips of our toes. No wonder, then, that even a corpse still shows the marks of our humanity.

And, of course, it shows too the marks of our particular incarnation of humanity, with our individual and unique identity.

Yet this is only part of the story. We are *thinking* animals, to be sure, but we are simultaneously also and merely thinking *animals*. Looking down on the body, and meditating on the meaning of its nakedness (with the help of the story of man and woman in the Garden of Eden), we learn of human weakness and vulnerability, and especially of the incompleteness, insufficiency, needy dependence, perishability, self-division, and lack of self-command implicit in our sexuality. Yet while perhaps an affront to our personal dignity, these bodily marks of human abjection point also to special interpersonal relationships, which are as crucial to our humanity as is our rationality:

For in the navel are one's forebears, in the genitalia our descendants. These reminders of perishability are also reminders of perpetuation; if we understand their meaning, we are even able to transform the necessary and shameful into the free and noble. . . . [The body, rightly considered,] reminds us of

*Leon R. Kass, M.D., *Toward a More Natural Science: Biology and Human Affairs* (New York: The Free Press, 1985).

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our debt and our duties to those who have gone before, [teaches us] that we are not our own source, neither in body nor in mind. Our dignity [finally] consists not in denying but in thoughtfully acknowledging and elevating the necessity of our embodiment, rightly regarding it as a gift to be cherished and respected. Through ceremonious treatment of mortal remains and through respectful attention to our living body and its inherent worth, we stand rightly when we stand reverently before the body, both living and dead.

This account of the meaning of the human body helps to make sense of numerous customs and taboos, some of them nearly universal. Cannibalism—the eating of human flesh, living and dead—is the preeminent defilement of the body; its humanity denied, the human body is treated as mere meat. Mutilation and dismemberment of corpses offend against bodily integrity; even surgery involves overcoming repugnance at violating wholeness and taboos against submitting to self-mutilation, overridden here only in order to defend the imperiled body against still greater threats to its integrity. Voyeurism, that cannibalism of the eyes, and other offenses against sexual privacy invade another's bodily life, objectifying and publicizing what is, in truth, immediate and intimate, meaningful only within and through shared experience. Decent burial—or other ceremonial treatment—of the mortal remains of ancestors and kin pays honor to both personal identity and generational indebtedness, written, as it were, into the body itself. How these matters are carried out will vary from culture to culture, but no culture ignores them—and some cultures are more self-consciously sensitive to these things than others.

Culture and the body

The Homeric Greeks, who took embodiment especially to heart, regarded failure to obtain proper burial as perhaps the greatest affront to human dignity. The opposite of winning great glory is not cowardice or defeat, but becoming an unburied corpse. In his invocation to the Muse at the start of the *Iliad*, Homer deplores how the wrath of Achilles not only caused strong souls of heroes to be sent to Hades, but that *they themselves* were left to be the delicate feastings of birds and dogs; and the *Iliad* ends with the funeral of Hector, who is thus restored to his full humanity (above the animals) after Achilles's shameful treatment of his corpse: "So they buried Hector, breaker of horses."

A similarly high regard for bodily integrity comes down to us through traditional Judaism and Christianity. Indeed, the Biblical tradition extends respect for bodily wholeness even to animals: while

sanctioning the eating of meat, the Noachide code—widely regarded as enunciating natural rather than divine law—prohibits tearing a limb from a living animal.

Most of our attitudes regarding invasions of the body and treatment of corpses are carried less by maxims and arguments, more by sentiments and repugnances. They are transmitted inadvertently and indirectly, rarely through formal instruction. For this reason, they are held by some to be suspect, mere sentiments, atavisms tied to superstitions of a bygone age. Some even argue that these repugnances are based mainly on strangeness and unfamiliarity; the strange repels *because* it is unfamiliar. On this view, our squeamishness about dismemberment of corpses is akin to our horror at eating brains or mice. Time and exposure will cure us of these revulsions, especially when there are—as with organ transplantation—such enormous benefits to be won.

These views are, I believe, mistaken. To be sure, as an empirical matter, we can probably get used to many things that once repelled us—organ swapping among them. As Raskolnikov put it, and he should know, “Man gets used to everything—the beast.” But I am certain that the repugnances that protect the dignity and integrity of the body are not based solely on strangeness. And they are certainly not irrational. On the contrary, they may just be—like the human body they seek to protect—the very embodiment of reason. Such was the view of Kant, whose title to rationality is second to none, writing in *The Metaphysical Principles of Virtue*:

To deprive oneself of an integral part or organ (to mutilate oneself). e.g., to *give away* or *sell* a tooth so that it can be planted in the jawbone of another person, or to submit oneself to castration in order to gain an easier livelihood as a singer, and so on, belongs to partial self-murder. But this is not the case with the amputation of a dead organ, or one on the verge of mortification and thus harmful to life. Also, it cannot be reckoned a crime against one's own person to cut off something which is, to be sure, a part, but not an organ of the body, e.g., the hair, although selling one's hair for gain is not entirely free from blame.

Kant, rationalist though he was, understood the rational man's duty to himself as an animal body, precisely because this special animal body was the incarnation of reason:

[T]o dispose of oneself as a mere means to some end of one's own liking is to degrade the humanity in one's person (*homo noumenon*), which, after all, was entrusted to man (*homo phenomenon*) to preserve.

Man contradicts his rational being by treating his body as a mere means.

Respect for the living and the dead

Beginning with notions of propriety, rooted in the meaning of our precarious yet dignified embodiment, we start with a series of presumptions and repugnances *against* treating the human body in the ways that are required for organ transplantation, which really is—once we strip away the trappings of the sterile operating rooms and their astonishing technologies—simply a noble form of cannibalism. Let me summarize these *prima facie* points of departure.

- Regarding *living donors*, there is a presumption against self-mutilation, even when good can come of it, a presumption, by the way, widely endorsed in the practice of medicine: Following venerable principles of medical ethics, surgeons are loath to cut into a healthy body not for its own benefit. As a result, most of them will not perform transplants using kidneys or livers from unrelated living donors.
- Regarding *cadaver donation*, there is a *beginning* presumption that mutilating a corpse defiles its integrity, that utilization of its parts violates its dignity, that ceremonial disposition of the total remains is the fitting way to honor and respect the life that once this body lived. Further, because of our body's inherent connection with the embodied lives of parents, spouses, and children, the common law properly mandates the body of the deceased to next of kin, in order to perform last rites, to mourn together in the presence of the remains, to say ceremonial farewell, and to mark simultaneously the connection to and the final separation from familial flesh. The deep wisdom of these sentiments and ways explains why it is a strange and indeed upsetting departure to allow the will of the deceased to determine the disposition of his remains and to direct the donation of his organs after death: for these very bodily remains are proof of the limits of his will and the fragility of his life, after which they “belong” properly to the family for the reasons and purposes just indicated. These reflections also explain why doctors—who know better than philosophers and economists the embodied nature of all personal life—are, despite their interest in organ transplantation, so reluctant to press the next of kin for permission to remove organs. This, and not fear of lawsuit, is the reason why doctors will not harvest organs without the family's consent, even in cases in which the deceased was a known, card-carrying organ donor.
- Regarding the *recipients of transplantation*, there is some primordial

revulsion over confusion of personal identity, implicit in the thought of walking around with someone else's liver or heart. To be sure, for most recipients life with mixed identity is vastly preferable to the alternative, and the trade is easily accepted. Also, the alien additions are tucked safely inside, hidden from sight. Yet transplantation as such—especially of vital organs—troubles the easygoing presumption of self-in-body, and ceases to do so only if one comes to accept a strict person-body dualism or adopts, against the testimony of one's own lived experience, the proposition that a person is or lives only in his brain-and-or-mind. Even the silent body speaks up to oppose transplantation, in the name of integrity, selfhood, and identity: its immune system, which protects the body against all foreign intruders, naturally rejects tissues and organs transplanted from another body.

- Finally, regarding *privacy and publicity*, though we may celebrate the life-saving potential of transplantation or even ordinary surgery, we are rightly repelled by the voyeurism of the media, and the ceaseless chatter about this person's donation and that person's new heart. We have good reason to deplore the coarsening of sensibilities that a generation ago thought it crude of Lyndon Johnson to show off his surgical scar, but that now is quite comfortable with television in the operating suite, request for organ donation in the newspaper, talk-show confessions of conceiving children to donate bone marrow, and the generalized talk of spare parts and pressed flesh.

I have, I am aware, laid it on thick. But I believe it is necessary to do so. For we cannot begin in the middle, taking organ transplantation simply for granted. We must see that, from the point of view of decency and seemliness and propriety, there are scruples to be overcome and that organ transplantation must bear the burden of proof. I confess that, on balance, I believe the burden can be easily shouldered, for the saving of life is indeed a great good acknowledged by all. Desiring the end, we will the means, and reason thus helps us overcome our repugnances—and, unfortunately, leads us to forget what this costs us, in coin of shame and propriety. We are able to overcome the restraints against violating the integrity of dead bodies; less easily, but easily enough for kin, we overcome our scruple against self-mutilation in allowing and endorsing living donation—though here we remain especially sensitive to the dangers of coercion and

manipulation of family ties.

How have we been able to do so? Primarily by insisting on the principle not only of voluntary consent but also of *free donation*. We have avoided the simple utilitarian calculation and not pursued the policy that would get us the most organs. We have, in short, acknowledged the weight of the non-utilitarian considerations, of the concerns of propriety. Indeed, to legitimate the separation of organs from bodies, we have insisted on a principle which obscures or even, in a sense, denies the fact of ultimate separation. For in a *gift* of an organ—by its living “owner”—as with any gift, what is given is not merely the physical entity. Like any gift, a *donated* organ carries with it the donor’s generous good will. It is accompanied, so to speak, by the generosity of soul of the donor. Symbolically, the “aliveness” of the organ requisite for successful transplant bespeaks also the expansive liveliness of the donor—even, or especially, after his death. Thus organ removal, the partial alienation-of-self-from-body, turns out to be, in this curious way, a *reaffirmation* of the self’s embodiment, thanks to the generous act of donation.

We are now ready to think about buying and selling, and questions regarding the body as property.

Property

The most common objections to permitting the sale of body parts, especially from live donors, have to do with matters of equity, exploitation of the poor and the unemployed and the dangers of abuse—not excluding theft and even murder to obtain valuable commodities. People deplore the degrading sale, a sale made in desperation, especially when the seller is selling something so precious as a part of his own body. Others deplore the rich man’s purchase, and would group life-giving organs with other most basic goods that should not be available to the rich when the poor can’t afford them (like allowing people to purchase substitutes for themselves in the military draft). Lloyd Cohen’s proposal for a futures market in organs was precisely intended to avoid these evils: through it he addresses only increasing the supply without embracing a market for allocation—thus avoiding special privileges for the rich, and by buying early from the living but harvesting only from the dead he believes—I think mistakenly—that we escape the danger of exploiting the poor. (This and other half-market proposals seeking to protect the poor from exploitation would in fact cheat them out of what

their organs would fetch, were the rich compelled to bid and buy in a truly open market.)

I certainly sympathize with these objections and concerns. As I read about the young healthy Indian men and women selling their kidneys to wealthy Saudis and Kuwaitis, I can only deplore the socioeconomic system that reduces people to such a level of desperation. And yet, at the same time, when I read the personal accounts of some who have sold, I am hard-pressed simply to condemn these individuals for electing apparently the only non-criminal way open to them to provide for a decent life for their families. As several commentators have noted, the sale of organs—like prostitution or surrogate motherhood or baby-selling—provides a double bind for the poor. Proscription keeps them out of the economic mainstream, whereas permission threatens to accentuate their social alienation through the disapproval usually connected with trafficking in these matters.

Torn between sympathy and disgust, some observers would have it both ways: they would permit sale, but ban advertising and criminalize brokering (i.e., legalize prostitutes, prosecute pimps), presumably to eliminate coercive pressure from unscrupulous middlemen. But none of these analysts, it seems to me, has faced the question squarely. For if there were nothing fundamentally wrong with trading organs in the first place, why should it bother us that some people will make their living at it? The objection in the name of exploitation and inequity—however important for determining policy—seems to betray deeper objections, unacknowledged, to the thing itself—objections of the sort I dealt with in the discussion of propriety. For it is difficult to understand why someone who sees absolutely no difficulty at all with transplantation and donation should have such trouble sanctioning sale.

True, some things freely giveable ought not to be marketed because they cannot be sold: love and friendship are prime examples. So, too, are acts of generosity: it is one thing for me to offer in kindness to take the ugly duckling to the dance, it is quite another for her father to pay me to do so. But part of the reason love and generous deeds cannot be sold is that, strictly speaking they cannot even be given—or, rather, they cannot be given *away*. One “gives” one’s love to another or even one’s body to one’s beloved, one does not donate it: and when friendship is “given” it is still retained by its “owner.”

But the case with organs seems to be different: obviously material, they are freely alienable, they can be given and given away, and

therefore, they can be sold, and without diminishing the unquestioned good their transfer does for the recipient—why, then, should they not be for sale, of course, only by their proper “owner”? Why should not the owner-donor get something for his organs? We come at last to the question of the body as property.

Whose body?

Even outside of law and economics, there are perhaps some common-sense reasons for regarding the body as property. For one thing, there is the curious usage of the possessive pronoun to identify my body. Often I do indeed regard my body as a tool (literally, an organ or instrument) of my soul or will. My organism is organized: for whose use?—why, for my own. My rake is mine, so is the arm with which I rake. The “my-ness” of my body also acknowledges the privacy and unsharability of my body. More importantly, it means also to assert possession against threats of unwelcome invasion, as in the song “My Body’s Nobody’s Body But Mine,” which reaches for metaphysics in order to teach children to resist potential molesters. My body may or may not be mine or God’s, but as between you and me, it is clearly mine.

And yet, I wonder. What kind of *property* is my body? Is it mine or is it me? Can it—or much of it—be alienated, like my other property, like my car or even my dog? And on what basis do I claim property *rights* in my body? Is it really “my own”? Have I labored to produce it? Less than did my mother, and yet it is not hers. Do I claim it on merit? Doubtful: I had it even before I could be said to be deserving. Do I hold it as a gift—whether or not there be a giver? How does one possess and use a gift? Are there limits on my right to dispose of it as I wish—especially if I do not know the answer to these questions? Can one sell—or even give away—that which is not clearly one’s own?

The word property comes originally from the Latin adjective *proprius* (the root also of “proper”—fit or apt or suitable—and, thus, also of “propriety”), *proprius* meaning “one’s own, special, particular, peculiar.” Property is both that which is one’s own, and also the right—indeed, the exclusive right—to its possession, use, or disposal. And while there might seem to be nothing that is more “my own” than my own body, common sense finally rejects the view that my body is, strictly speaking, my property. For we do and should distinguish among that which is *me*, that which is *mine*, and that which is mine

as *my property*. My body is me; my daughters are mine (and so are my opinions, deeds, and speeches); my car is my property. Only the last can clearly be alienated and sold at will.

Philosophical reflection, deepening common sense, would seem to support this view, yet not without introducing new perplexities. If we turn to John Locke, the great teacher on property, the right of property traces home in fact to the body:

Though the earth and all creatures be common to all men, yet every man has a property in his own person; this nobody has a right to but himself. The labour of his body and the work of his hands we may say are properly his.

The right to the fruits of one's labor seems, for Locke, to follow from the property each man has in his own person. But unlike the rights in the fruits of his labor, the rights in one's person are for Locke surely inalienable (like one's inalienable right to liberty, which also cannot be transferred to another, say by selling oneself into slavery). The property in my own person seems to function rather to limit intrusions and claims possibly made upon me by others: it functions to exclude me—and every other human being—from the commons available to all men for appropriation and use. Thus, though the right to property stems from the my-own-ness (rather than the in-common-ness) of my body and its labor, the body itself cannot be, for Locke, property like any other. It is, like property, exclusively mine to use; but it is unlike property, not mine to dispose of. (The philosophical and moral weakness in the very idea of property is now exposed to view: Property rights stem from the my-own-ness of my body; but this turns out to be only relatively and politically my own.)

Yet here we are in trouble. The living body as a whole is surely not alienable, but parts of it definitely are. I may give blood, bone marrow, skin, a kidney, parts of my liver, and other organs without ceasing to be me, as the by-and-large self-same embodied being I am. It matters not to my totality or identity if the kidney I surrendered was taken because it was diseased or because I gave it for donation. And, coming forward to my cadaver, however much it may be me rather than you, however much it will be *my* mortal remains, it will not be me; my corpse and I will have gotten divorced, and, for that reason, I can contemplate donating from it without any personal diminution. How much and what parts of the bodily me are, finally, not indispensably me but merely mine? Do they thus

become mine as my property? Why or why not?

The analysis of the notion of the body as property produces only confusion—one suspects because there is confusion in the heart of the idea of property itself, as well as deep mystery in the nature of personal identity. Most of the discussion would seem to support the common-sense and common-law teaching that *there is no property in a body*—not in my own body, not in my own corpse, and surely not in the corpse of my deceased ancestor. (Regarding the latter, the common-law courts had granted to next of kin a quasi-property right in the dead body, purely a custodial right for the limited purpose of burial, a right which also obliged the family to protect the person's right to a decent burial against creditors and other claimants. It was this wise teaching that was set aside by the Uniform Anatomical Gift Act.) Yet if my body is not my property, if I have no property right in my body—and here, philosophically and morally, the matter is surely dubious at best—by what *right* do I give parts of it away? And, if it be by right of property, how can one then object—in principle—to sale?

Liberty and its limits

Let us try a related but somewhat different angle. Connected to the notion of private property is the notion of free contract, the permission to transfer our entitlements at will to other private owners. Let us shift our attention from the vexed question of ownership to the principle of freedom. It was, you will recall, something like the principle of freedom—voluntary and freely given donation—that was used to justify the gift of organs, overcoming the presumption against mutilation. In contrast to certain European countries, where the dead body now becomes the property of the state, under principles of escheatage or condemnation, we have chosen to stay with individual rights.

But why have we done so? Is it because we want to have the social benefits of organ transplantation without compromising respectful burial, and believe that leaving the matters to individual choice is the best way to obtain these benefits? Or is the crucial fact our liberal (or even libertarian) belief in the goodness of autonomy and individual choice *per se*? Put another way, is it the dire need for organs that justifies opening a freedom of contract to dispose of organs, as the best—or least bad—instrument for doing so? Or is the freedom of contract paramount, and we see here a way to take social advantage of the right people have to use their bodies however

they wish? The difference seems to me crucial. For the principle of autonomy, separated from specific need, would liberate us for all sorts of subsequent uses of the human body, especially should they become profitable.

Our society has perceived a social need for organs. We have chosen to meet that need not by direct social decision and appropriation, but, indirectly, through permitting and encouraging voluntary giving. It is, as I have argued, generosity—that is, more the “giving” than the “voluntariness”—that provides the moral ground; yet being liberals and not totalitarians, we put the legal weight on freedom—and hope people will use it generously. As a result it looks as if, to facilitate and to justify the practice of organ donation, we have enshrined something like the notions of property rights and free contract in the body, notions that usually include the possibility of buying and selling. This is slippery business. Once the principle of private right and autonomy is taken as the standard, it will prove difficult—if not impossible—to hold the line between donation and sale. (It will even prove impossible, philosophically, to argue against voluntary servitude, bestiality, and other abominations.) Moreover, the burden of proof will fall squarely on those who want to set limits on what people may freely do with their bodies or for what purposes they may buy and sell body parts. It will, in short, be hard to prevent buying and selling human flesh not only for transplantation, but for, say, use in luxury nouvelle cuisine, once we allow markets for transplantation on libertarian grounds. We see here in the prism of this case, the limits and, hence, the ultimate insufficiency of rights and the liberal principle.

Astute students of liberalism have long observed that our system of ordered liberties presupposes a certain kind of society—of at least minimal decency, and with strong enough familial and religious institutions to cultivate the sorts of men and women who can live civilly and responsibly with one another, while enjoying their private rights. We wonder whether freedom of contract regarding the body, leading to its being bought and sold, will continue to make corrosive inroads upon the kind of people we want to be and need to be if the uses of our freedom are not to lead to our willing dehumanization. We have, over the years, moved the care for life and death from the churches to the hospitals, and the disposition of mortal remains from the clergy to the family and now to the individual himself—and perhaps, in the markets of the future, to the insurance companies

or the state or to enterprising brokers who will give new meaning to insider trading. No matter how many lives are saved, is this good for how we are to live?

Let us put aside questions about property and free contract, and think only about buying and selling. Never mind our rights, what would it mean to fully commercialize the human body even, say, under state monopoly? What, regardless of political system, is the moral and philosophical difference between giving an organ and selling it, or between receiving it as a gift and buying it?

Commodification

The idea of commodification of human flesh repels us, quite properly I would say, because we sense that the human body especially belongs in that category of things that defy or resist commensuration—like love or friendship or life itself. To claim that these things are “priceless” is not to insist that they are of infinite worth or that one cannot calculate (albeit very roughly, and then only with aid of very crude simplifying assumptions) how much it costs to sustain or support them. Rather it is to claim that the bulk of their meaning and their human worth do not lend themselves to quantitative measure; for this reason, we hold them to be incommensurable, not only morally but factually.

Against this view, it can surely be argued that the entire system of market exchange rests on our arbitrary but successful attempts to commensurate the (factually) incommensurable. The genius of money is precisely that it solves by convention the problem of natural incommensurability, say between oranges and widgets, or between manual labor and the thinking time of economists. The possibility of civilization altogether rests on this conventional means of exchange, as the ancient Greeks noted by deriving the name for money, *nomisma*, from the root *nomos* meaning “convention”—that which has been settled by human agreement—and showing how this fundamental convention made possible commerce, leisure, and the establishment of gentler views of justice.

Yet the purpose of instituting such a conventional measure was to facilitate the satisfaction of *natural* human needs and the desires for well-being and, eventually, to encourage the full flowering of human possibility. Some notion of need or perceived human good provided always the latent non-conventional standard behind the nomismatic convention—tacitly, to be sure. And there’s the rub: In due course,

the standard behind money, being hidden, eventually becomes forgotten, and the counters of worth become taken for worth itself.

Truth to tell, commodification by conventional commensuration always risks the homogenization of worth, and even the homogenization of things, all under the aspect of quantity. In many transactions, we do not mind or suffer or even notice. Yet the human soul finally rebels against the principle, whenever it strikes closest to home. Consider, for example, why there is such widespread dislike of the pawnbroker. It is not only that he profits from our misfortunes and sees the shame of our having to part with heirlooms and other items said (inadequately) to have "sentimental value." It is especially because he will not and cannot appreciate their human and personal worth and pays us only their market price. How much more will we object to those who would commodify our very being?

We surpass all defensible limits of such conventional commodification when we contemplate making the convention-maker—the human being—just another one of the commensurables. The end comes to be treated as mere means. Selling our bodies, we come perilously close to selling out our souls. There is even a danger in contemplating such a prospect—for if we come to think about ourselves like pork bellies, pork bellies we will become.

We have, with some reluctance, overcome our repugnance at the exploitative manipulation of one human body to serve the life and health of another. We have managed to justify our present arrangements not only on grounds of utility or freedom but also and especially on the basis of generosity, in which the generous deed of the giver is inseparable from the organ given. To allow the commodification of these exchanges is to forget altogether the impropriety overcome in allowing donation and transplantation in the first place. And it is to turn generosity into trade, gratitude into compensation. It is to treat the most delicate of human affairs as if everything is reducible to its price.

There is a euphemism making the rounds in these discussions that makes my point. Eager to encourage more donation, but loath to condone or to speak about buying and selling organs, some have called for the practice of "rewarded gifting"—in which the donor is rewarded for his generosity, not paid for his organ. Some will smile at what looks like double-talk or hypocrisy, but even if it is hypocrisy, it is thereby a tribute paid to virtue. Rewards are given for good deeds, whereas fees are charged for services, and prices

are paid merely for goods. If we must continue to practice organ transplantation, let us do so on good behavior.

Anticipating the problem we now face, Paul Ramsey twenty years ago proposed that we copy for organ donation a practice sometimes used in obtaining blood: those who freely give can, when in need, freely receive. "Families that shared in premortem giving of organs could share in freely receiving if one of them needs transplant therapy. This would be—if workable—a civilizing exchange of benefit that is not the same as commerce in organs." Ramsey saw in this possibility of organized generosity a way to promote civilized community and to make virtue grow out of dire necessity. These, too, are precious "commodities," and provide an additional reason for believing that the human body and the extraordinary generosity in the gift of its parts are altogether too precious to be commodified.

The price of progress

The arguments I have offered are not easy to make. I am all too well aware that they can be countered, that their appeal is largely to certain hard-to-articulate intuitions and sensibilities that I at least believe belong intimately to the human experience of our own humanity. Precious though they might be, they do not exhaust the human picture, far from it. And perhaps, in the present case, they should give way to rational calculation, market mechanisms, and even naked commodification of human flesh—all in the service of saving life at lowest cost (though, parenthetically, it would be worth a whole separate discussion to consider whether, in the longer view, there are not cheaper, more effective, and less indecent means to save lives, say, through preventive measures that forestall end-stage renal disease now requiring transplantation: the definition of both need and efficiency are highly contingent, and we should beware of allowing them to be defined for us by those technologists—like transplant surgeons—wedded to present practice). Perhaps this is not the right place to draw a line or to make a stand.

Consider, then, a slightly more progressive and enterprising proposal, one anticipated by my colleague, Willard Gaylin, in an essay, "Harvesting the Dead," written in 1974. Mindful of all the possible uses of newly dead—or perhaps not-quite-dead-bodies, kept in their borderline condition by continuous artificial respiration and assisted circulation, intact, warm, pink, recognizably you or me, but brain dead. Gaylin imagines the multiple medically beneficial uses to which the bioemporium

of such “neomorts” could be put: the neomorts could, for example, allow physicians-in-training to practice pelvic examinations and tracheal intubations without shame or fear of doing damage; they could serve as unharmable subjects for medical experimentation and drug testing, provide indefinite supplies of blood, marrow, and skin, serve as factories to manufacture hormones and antibodies, or, eventually, be dismembered for transplantable spare parts. Since the newly dead body really is a precious resource, why not really put it to full and limitless use?

Gaylin’s scenario is not so far-fetched. Proposals to undertake precisely such body-farming have been seriously discussed among medical scientists in private. The technology for maintaining neomorts is already available. Indeed, in the past few years, a publicly traded corporation has opened a national chain of large, specialized nursing homes—or should we rather call them nurseries?—for the care and feeding solely of persons in persistent vegetative state or ventilator-dependent irreversible coma. Roughly ten establishments, each housing several hundred of such beings, already exist. All that would be required to turn them into Gaylin’s bioemporia would be a slight revision in the definition of death (already proposed for other reasons)—to shift from death of the whole brain to death of the cortex and the higher centers—plus the will not to let these valuable resources go to waste. (The company’s stock, by the way, has more than quadrupled in the last year alone; perhaps someone is already preparing plans for mergers and manufacture.)

Repulsive? You bet. Useful? Without doubt. Shall we go forward into this brave new world?

Forward we are going, without anyone even asking the question. In the twenty-five years since I began thinking about these matters, our society has overcome longstanding taboos and repugnances to accept test-tube fertilization, commercial sperm-banking, surrogate motherhood, abortion on demand, exploitation of fetal tissue, patenting of living human tissue, gender-change surgery, liposuction and body shops, the widespread shuttling of human parts, assisted-suicide practiced by doctors, and the deliberate generation of human beings to serve as transplant donors—not to speak about massive changes in the culture regarding shame, privacy, and exposure. Perhaps more worrisome than the changes themselves is the coarsening of sensibilities and attitudes, and the irreversible effects on our imaginations and the way we come to conceive of ourselves. For there is a sad irony

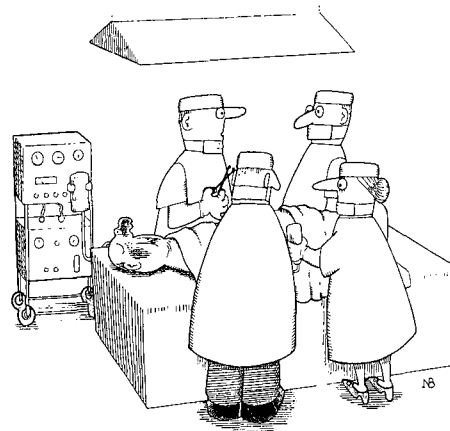
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in our biomedical project, accurately anticipated in Aldous Huxley's *Brave New World*: We expend enormous energy and vast sums of money to preserve and prolong bodily life, but in the process our embodied life is stripped of its gravity and much of its dignity. This is, in a word, progress as tragedy.

In the transplanting of human organs, we have made a start on a road that leads imperceptibly but surely toward a destination that none of us wants to reach. A divination of this fact produced reluctance at the start. Yet the first step, overcoming reluctance, was defensible on benevolent and rational grounds: save life using organs no longer useful to their owners and otherwise lost to worms.

Now, embarked on the journey, we cannot go back. Yet we are increasingly troubled by the growing awareness that there is neither a natural nor a rational place to stop. Precedent justifies extension, so does rational calculation: We are in a warm bath that warms up so imperceptibly that we don't know when to scream.

And this is perhaps the most interesting and the most tragic element of my dilemma—and it is not my dilemma alone. I don't want to encourage: yet I cannot simply condemn. I refuse to approve, yet I cannot moralize. How, in this matter of organs for sale, as in so much of modern life, is one to conduct one's thoughts if one wishes neither to be a crank nor to yield what is best in human life to rational analysis and the triumph of technique? Is poor reason impotent to do anything more than to recognize and state this tragic dilemma?



'It's no good — the kidney's rejecting him.'

THE SPECTATOR 27 June 1992

SUMMER 1992/67

A Family Affair

Susan Vigilante

Susan. Susan, right?”

I nod. The boy in the white coat grins. He’s maybe twenty-three, twenty-four years old. “Susan, cool. I’m just gonna ask you a few questions before Dr. D. sees you.” He glances at the forms in front of him. “Hey! It says here you’ve been married ten years!” He beams at me. “Ten years—that’s *excellent!*”

Again I nod, and try to smile back. This is not easy, as I am both nervous about my interview with Dr. D. and trying to fight off the sinking feeling that I have been left in the hands of Doogie Howser.

The young man (he’s a medical student, it turns out, doing a rotation in infertility therapy) picks up a pen and studies his clipboard. He asks me the same questions I’ve answered a hundred times already: how old am I (I’m 35), have I ever been pregnant (no), how long have my husband and I been trying to have children (ever since the wedding). But the difficult part of this interview is yet to come.

Suddenly we’re there. “And it says you—” He stops. He reads the line on the form again, and a puzzled look appears in his innocent blue eyes. “It says here,” he continues incredulously, “that you don’t want to do IVF.” He looks at me, baffled. “Gee!” He spreads his hands. “What’s the problem?”

I want to explain it to him. I really do. But how can I tell this eager young man of science that I think what he proposes is fundamentally dehumanizing? I know from experience exactly how far I would get if I attempted to explain any of this. So I give him my shorthand response instead. “Religious reasons,” I say. And now I hold my breath.

Happily, my rather blunt answer works its magic: he drops the subject. “Hmm,” is his only comment. He looks more confused than anything else, but he doesn’t ask me any more questions. He tells me Dr. D. will be in to see me shortly, and he leaves.

I sit back and try to relax, awaiting my ten minutes with the big boss of this major northeastern infertility clinic.

Dr. D. is the latest in a long line of specialists my husband and

Susan Vigilante, a writer living in New York, is currently working on a novel.

I have consulted over the years. To pass the time I reminisce about a few of them, including a courtly Chinese woman I saw early in my marriage who declared that all I needed to do was have more sex for a few more months (I can still see her as she shook my hand in farewell, bowing from the waist and admonishing, "More, Mrs. Vigilante! More!"); a man on Long Island, a leader in his field and a director of one of the oldest clinics in the Northeast who told me, "If I were you I'd just give up" (it would be four years before I learned he had neglected to do a basic test on me that revealed he had misdiagnosed the problem); and a New York City doctor who, a few days before my scheduled appointment with him, called to tell me he had decided not to see me after all ("I've had a look at your file, and I've decided you're just not a good risk").

I hope Dr. D. will be different.

I was sent to Dr. D. by my surgeon in New York, Dr. G. It was she who gave me the routine test the specialist on Long Island overlooked. This test revealed that both my Fallopian tubes were totally, 100% blocked. (This meant that all the drug therapy, all the examinations, all the timing and testing and hoping of the previous four years had been completely pointless.)

Dr. G. also performed the operation, called a laparoscopy, that is frequently used to unblock clogged tubes. But after I succumbed to the anaesthesia and she had a chance to examine the situation up close, she decided the laparoscopy was not the best way to attack my particular problem. So they stitched me up and brought me around and told me to come back as soon as I was feeling up to it.

A week later Dr. G. talked to my husband and me in her office in New York Hospital. She told us that my best hope was a laparotomy, an operation in which the blocked portion of each tube is cut out and the clear portion is reattached to the uterus.

But, she went on, while she could perform this operation, she was very reluctant to do so, for a number of reasons. A laparotomy is major surgery. It would involve general anaesthesia, a transverse incision a good six to eight inches long across the abdomen, at least a week in the hospital and a recovery period of up to six weeks. Dr. G., an intelligent, compassionate young woman with children of her own, is at a loss to understand why I would choose this ordeal over an attempt at in vitro fertilization.

I can see her point. Surgery is a risk for the patient and the surgeon

both; IVF is a non-surgical procedure. (The eggs are retrieved from the ovaries through ultrasound technology.) Moreover, because of a couple of episodes in my medical history (an appendectomy when I was in college, a bout with peritonitis a couple of years ago), there was a good chance my tubes could not be cleared by any means. And even if they were, there are other factors in my failure to conceive which a laparotomy would not affect, and which would be less of a problem in an IVF procedure. In fact, according to my surgeon (and to several other doctors I consulted), the laparotomy itself is fast becoming obsolete, due to the increasing availability and effectiveness of IVF.

Dr. G's is the most benign pressure to do IVF I have experienced, but this is certainly not the first time I have had to defend my decision against it. The pressure on infertile couples to do IVF, or any one of the related invasive procedures whereby an egg is fertilized outside of normal sexual intercourse, is enormous. Every one of the doctors I have consulted over the past six years has urged me to try IVF, some of them without so much as reading my records first. When I tell them I'm not interested, they usually give me a tolerant little smile and murmur something like, "Well, we'll talk about it again later." The going attitude seems to be that if I were just a little bit smarter I'd see things their way and willingly donate a handful of eggs to a waiting petri dish.

I never argue with them. I just let them talk while I remind myself how long it took me to find these specialists in the first place, how long it took me to get the appointment, how much older I'm getting, how foolish it would be to alienate them at this point—and I keep my mouth shut. After ten years of dealing with infertility specialists, especially surgeons, I know it is usually a waste of time to attempt a philosophical discussion with them.

It is always dangerous to generalize, but here goes: surgeons are bottom-line people. They see a problem, they see a solution, and they opt for the most direct route between the two. Surgeons are like the Marines: their job is to take the beachhead. Winning hearts and minds is somebody else's problem. If you are looking for an M.D. with whom you can discuss the deeper implications of technologically-assisted conception, I suggest you call a psychiatrist. He will at least humor you. He may even understand, if not agree with, what you are trying to say. The surgeon will probably stare at you with a baffled frown and start reciting percentages.

It is difficult for people who have not experienced the unique heartache of undesired childlessness to comprehend what the infertile couple must endure, not only in the clinics but every day of their lives. Infertility strikes at the very heart of who you are, or who you thought you were. Like most married women I assumed I would be a mother one day; my husband assumed he would be a father. We were looking forward to these roles. We never thought we would be excluded from what seemed like a natural and obvious end of married life.

The feelings of inadequacy can be overwhelming. Your friends all have children: Why not you? What test did you fail, why does your application keep getting rejected? You start to feel strangely isolated from normal human life. Normal people have kids.

This identity crisis eventually makes itself felt in the marriage. You look across the dinner table and think, There he is, the one person in the world I never wanted to let down. And look what I've done: I've turned his fondest dreams into a pathetic hope. I've failed him; I'm a failure as a spouse. You look back at that starry-eyed young couple in your wedding pictures and you wonder how you could ever have been so joyously hopeful.

Intellectually, you know that it is not your fault or your spouse's that you cannot have children. But really believing it can be hard work. It would be nice to say that no childless man or woman has ever blamed his or her spouse for what is no one's fault. But the sad and painfully human truth is that for some couples not blaming is very difficult; for others it is impossible.

Hurt feelings, misunderstandings, fights and brooding silences are all part of the infertile couple's ordeal. These episodes often have a nasty trick of occurring at the worst possible times: in the car on your way to a friend's baby's christening, say, or the morning the wife's ovulation predictor kit comes up positive. You may tell yourselves you're fighting over the traffic, or who left the cap off the toothpaste again, but who are you kidding?

This can drag on for years while you wait for children. You get sick of going to doctors, sick of the intrusive tests and the nit-picking details, sick of failure. Your supply of hope runs dangerously low.

Until finally, stressed-out, exhausted, at the end of your rope, you may start to fear for your marriage. You may decide it's time to start looking around for help. The trouble is there aren't many places you can look.

Especially if you do not believe in IVF and related procedures, you cannot hope for much support from the medical community. And turning to the pro-family movement—even if you consider yourself on their side—can be a very dicey proposition.

Many people in the pro-family movement seem to assume that anyone who does not have children does not have any real problems. When this myopia is pointed out to them, they are apt to respond “Oh, but we’re so embattled,” as if this condition were restricted to them.

Infertile couples know all about being embattled. We could enlighten parents on the subject. If you want to feel really embattled, try walking into a fertility specialist’s office some time. (After waiting six months or longer for the appointment, of course.) Take a shot at remaining calm while the specialist looks at you as if you were some kind of subspecies when he learns you are not interested in conceiving your progeny in a petri dish. Try begging the clinic director to reconsider when he says, “Well, in that case I don’t think there’s anything more we can do for you here.”

Another assumption popular within the pro-family movement is that any and every couple who cannot produce their own babies should immediately set about adopting someone else’s. Childless couples who do not adopt are looked upon with suspicion, accused of pathological vanity when it is assumed the reason they don’t adopt is that they don’t want children who do not resemble them physically; accused of being dyed-in-the-wool materialists who want to spend all their money or time on themselves. Sometimes they are scorned for simply not being Mother Teresa: I was once informed by a young lady who had travelled extensively in the Middle East that the fact that I was not trying to adopt orphaned Egyptian beggar children was proof that I was “just being selfish.”

What these people never understand, especially if they have children of their own, is that adoption is special; it is, in fact, a vocation. Like all vocations it is specific, particular. Not everyone has it. Moreover, this vocation is permanent; you cannot “try it out” for a couple of years and then change your mind later if you decide you are not cut out for it after all. It takes a lot of hope and self-confidence to adopt. Infertility takes a sledge hammer to both.

In the past ten years I have met precisely two people who understand this. One was a Catholic priest, the other a single woman who was herself an adopted child. Not that I haven’t tried to explain my

belief. But I got very tired of people telling me that if I did not hear the call to adoption I just wasn't listening hard enough.

Finally Dr. D. arrives, with Doogie Howser in tow. Dr. D. is short, bald, bursting with energy and, it turns out, optimism. "Balloon!" he cries. "You need a balloon tuboplasty!"

A balloon tuboplasty is another method of clearing blocked tubes. It is done under sedation but not anaesthesia, and it requires no surgery. When I saw Dr. D. the procedure was only available at four places in the United States; since then it has become more widely available.

Two weeks later I return to the same hospital. I surrender my clothes, my wedding ring and my eyeglasses to a nurse, don the unbecoming gown and sit idly in the one-day surgery waiting room. I can't see the television or read the magazines without my specs, but I am too distracted to concentrate on anything anyway.

I tell myself to calm down; I tell myself I have nothing to worry about, this procedure is going to work. I toy with the idea of calling my surgeon in New York one last time and forcing her to swear she will do the laparotomy if it doesn't. I even find out where the pay phone is. But then they call my name, and I follow a nurse to the operating room.

The nurse is very chatty. "Don't you worry, everything's going to be fine, now just hop up here and lie back, try to relax, take deep breaths, let me know when you start to feel groggy . . ."

I can just make out Dr. D. down there at the end of the table. (I figure he must be the short, bald one.) He works with another doctor, both of them masked and intent. I can feel cramps, a miserable sensation, but I can't moan, because my chest feels too heavy.

Trouble. They've stopped moving down there. They're talking. I hear someone say, "I don't know . . ." and "maybe not . . ."

I close my eyes. Oh God, I think, it's all for nothing. It's all for nothing . . .

"Heyheyhey." The nurse is punching me in the shoulder. "*Deep* breaths, I said *deep* breaths. Come on, now. Breathe."

I concentrate on breathing. It takes all my concentration just to inhale. Suddenly I feel deep, sickening pain, and I manage to moan at last.

But no one pays any attention. They are all too busy shouting.

"Look!" the nurse cries. She is pointing at the monitor. "Look at that! Isn't that beautiful? How do you feel now?"

SUSAN VIGILANTE

“Aw-ful,” I articulate.

“Awful! What do you mean? Don’t you see that?” She points to the screen again. “It’s all lit up! Don’t you get it? It’s all clear! They’re both clear!”

“I can’t see anything,” I mumble, “they took my glasses away.”

It is a two hour drive home from Dr. D’s clinic. I feel rotten from the anaesthesia but I could not possibly care less. For the first time in years I feel optimistic. No, I take that back. I’m more than optimistic. I’m ecstatic.

That evening, I lie on our livingroom couch watching a videotape of “Bill and Ted’s Excellent Adventure.” (I figure Doogie Howser would approve.) My husband obligingly pauses the tape every time I have to leave the room to be sick, an after-effect of the anaesthesia. I have never before been so miserable and so happy simultaneously.

Still I try not to get my hopes up. Infertility teaches you not to look too far ahead; it is dangerous to let your dreams get out of hand. It sets you up for more heartbreak and any couple who has been struggling to have a baby has enough of that as it is.

I also know I will get my hopes up. There is always the possibility that this time it will work, this was the last of the barriers between me and motherhood. My doctors keep telling me there is always a chance.

Maybe this time they’re right.



THE SPECTATOR 11 July 1992

The Court Rules for Itself

Joseph Sobran

On June 29, 1992, the anti-abortion movement received one of its most stunning and disheartening setbacks. By a 5-to-4 vote, the Supreme Court surprised everyone by reaffirming *Roe v. Wade*.

The most discouraging fact about the Court's ruling in *Planned Parenthood v. Casey* was that three Reagan-Bush appointees to the Court—Justices Sandra Day O'Connor, Anthony Kennedy, and David Souter—voted against the general expectation that they would vote to reverse *Roe*. This expectation had been the driving force behind support for their nominations and confirmations to the Court.

The three of them issued a joint opinion that gave the new ruling such rationale as it had. It seemed appropriate that they should speak together, since their defiance of expectations—the expectations of the presidents who had appointed them, and of the public that had trusted them—called for an explanation. And explain it they did, after a fashion.

“Liberty finds no refuge in a jurisprudence of doubt.” So the joint opinion began, in a tone at once ringing and mystifying. The meaning of this curious sentence emerged from what followed.

The 60-page opinion announced that “the essential holding of *Roe v. Wade* should be retained and once again reaffirmed.” To be sure, it went on to make modifications in *Roe* so drastic that advocates of legal abortion felt that the putative constitutional “right” to abortion had been fatally gutted. Nevertheless, the opinion reaffirmed that abortion was included by the nebulous constitutional right to “privacy” which an earlier Court had found in various penumbras and emanations. Remarkably enough, though, the opinion didn't argue that *Roe* had been correctly reasoned; in fact, it carefully sidestepped the question whether it had. Addressing the question of the state's interest in protecting fetal life, the three justices said:

We do not need to say whether each of us, had we been Members of the Court when the valuation of the State interest came before it as an original matter, would have concluded, as the *Roe* Court did, that its weight is insufficient to justify a ban on abortions prior to viability even when it is subject to certain exceptions.

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But, they added, this didn't matter, because "we are satisfied that the immediate question is not the soundness of *Roe's* resolution of the issue, but the precedential force that must be accorded to its holding." And they repeated their position in odd terms several times: "We conclude that the basic decision in *Roe* was based on a constitutional analysis which we cannot now repudiate." "We have twice reaffirmed it in the face of great opposition." "It is a rule of law and a component of liberty we cannot now repudiate." And so on.

The theme of the "great opposition" *Roe* had aroused proved central to the plurality opinion in the *Casey* case. It is fair to say that this theme became a functional substitute for any attempt to justify the reasoning of *Roe*. The three justices instead used the "opposition" to justify themselves. Their argument was consequently one of the strangest in the history of American jurisprudence.

The opinion included extraneous reflections on women, abortion, and liberty:

Men and women of good conscience can disagree, and we suppose some shall [*sic*] always disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage. Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code. The underlying constitutional issue is whether the State can resolve these philosophic questions in such a definitive way that a woman lacks all choice in the matter, except perhaps in those rare cases in which the pregnancy is itself a danger to her own life or health, or is the result of rape or incest.

The opinion called the decision to abort an "intimate and personal" choice, "central" to both "personal dignity and autonomy" and "the liberty protected by the Fourteenth Amendment." But this direct reference to the Constitution was lost in woolly metaphysical and social philosophizing. "At the heart of liberty," the trio said, "is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." (What does it mean to "define one's own concept . . . of meaning"?) "The ability of women to participate equally in the economic and social life of the nation has been facilitated by their ability to control their reproductive lives." "The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society."

The three obsessively repeated the words "intimate" and "personal."

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The pregnant woman's "suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and our culture." Different opinions about the morality of abortion are "intimate views" of a "deep, personal character." The apparent implication, nowhere argued with any rigor in the opinion, was that no law may properly be based on assumptions about an intimate, personal matter that are not shared by women they affect.

All of which sounded profound as all get-out, but what did it have to do with whether a given law was constitutional? The trio explained that there was a question of "reliance," in that women had come to count on *Roe*, and the Court must weigh "the cost of a rule's repudiation as it would fall on those who have relied reasonably on the rule's continued application." "Reproductive planning" would be upset by "any sudden restoration of state authority to ban abortions."

And here the trio arrived at the heart of its argument. The Constitution at last came into play, but only in a peculiarly negative fashion:

No evolution of legal principle has left *Roe*'s doctrinal footings weaker than they were in 1973. No development of constitutional law since the case was decided has implicitly or explicitly left *Roe* behind as a mere survivor of obsolete constitutional thinking.

That is to say, nothing has made *Roe* any more unsound as of 1992 than it was in 1973. This is a pretty weak claim. It means only that if *Roe* was wrong in the first place, at least time has made it no worse.

The rest of the argument was built on the premise that "*Roe*'s underpinnings" had been "unweakened":

While it has engendered controversy, it has not been unworkable. An entire generation has come of age free to assume *Roe*'s concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions.

Since no new "facts" had emerged to undermine *Roe*, the trio concluded,

the Court could not pretend to be reexamining the prior law with any justification beyond a present doctrinal disposition to come out differently from the Court of 1973. To overrule prior law for no other reason than that would run counter to the view repeated in our cases, that a decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided.

In other words, error is not enough. That the court has decided "wrongly" is insufficient reason for it to reverse itself!

Even in a matter as serious as abortion? *Especially* in a matter as serious as abortion, said the trio: “A terrible price would be paid for overruling.” A reversal “would seriously weaken the Court’s capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law.”

Having belittled the state’s interest in protecting life (or rather “potential life,” as the trio called it), the opinion in effect asserts the primacy of *the Court’s own interest* in maintaining the appearance of consistency, even where it has decided wrongly.

This is the real novelty of *Planned Parenthood v. Casey*. Not only the state’s interest, but those of mother, child, and father were declared secondary to that of the Court itself. *The Court in effect declared itself a party to the controversy and ruled in its own favor.*

Not that the opinion of the three justices put it quite that way, of course. Its rationale was that what was good for the Court was necessary for the country.

“The Court’s power,” the three explained, “lies . . . in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Nation’s law means and to declare what it demands.” Note that the Court’s “power” (rather than “powers”) is said not to derive from the Constitution, as some of us had supposed, but from “the people’s acceptance.”

The reader may suspect at this point that the three justices were thinking less in terms of law than of public relations. The suspicion is correct.

The trio acknowledged that any judicial act needs “principled justification:”

But even when justification is furnished by apposite legal principle, something more is required. Because not every conscientious claim of principled justification will be accepted as such, the justification claimed must be beyond dispute. The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.

This is a perplexing passage. The opinion has virtually admitted that it is shaped not by a principled belief that *Roe* was rightly decided, but by the social realities it thinks *Roe* itself helped create,

even if it was *wrongly* decided. And having admitted this, how can it imagine that “the Nation” will accept its oddly prudential thinking aloud about the impact of its present ruling as “principled justification”?

The opinion proceeds to argue that in certain extraordinary cases, such as the present one, “the Court’s interpretation of the Constitution calls the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution.” But this verges on the absurd. As Justice Scalia pointed out in his dissent, the Court enormously *intensified* the “national controversy” by its highhanded decision in *Roe*. The trio has a megalomaniacal concept of the Court’s authority if it thinks that a narrow 5-to-4 ruling now is going to “resolve” the most bitter division in American politics.

The trio’s opinion worries that a reversal of *Roe* would be seen as a surrender to political pressure, and an unjustified repudiation of the principle on which the Court staked its authority in the first instance. So to overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court’s legitimacy beyond any serious question.

Where have these three justices been? *Roe*, more than any other case since *Dred Scott*, has *already* wrecked the Court’s legitimacy, if that legitimacy is defined as public acquiescence.

As the dissents of both Justice Scalia and Chief Justice Rehnquist pointed out, the Court was under “fire” and “political pressure” from *both* sides to the dispute. To pretend that all the pressure was coming from the anti-abortion side was disingenuous—and could appear as an excuse for capitulating to the advocates of legal abortion. In fact, the three justices subtly adopted the reasoning, rhetoric, and studied agnosticism about the value of unborn life characteristic of that side in formulating their own opinion. Anyone who had hoped for an impartial ruling could only be disturbed by such prejudicial phrases as “right to choose,” “terminating a pregnancy,” and “control their reproductive lives,” as well as by the careful avoidance of such terms as “abortionist,” “kill,” and “child.”

The three justices also succumbed to the pro-abortion side in defining the issue as one of “morality” rather than of justice, since, as President Damian Fedoryka of Christendom College observes, morality concerns the rightness of one’s own conduct, whereas justice concerns behavior by one person that affects another. After all, to omit the possible

rights of the fetus from consideration is to beg the question. The trio's dictum that "our obligation is to define the liberty of all, not to mandate our own moral code" was merely a paraphrase of the cliché that one must not "impose one's views" on others.

If you want to create the appearance of being aloof from all public pressure, the most sensible course is to make no reference to public pressure. The worst course is to keep talking about it. If you repeatedly say you are ignoring it, the suspicion will grow that you are *not* ignoring it. By addressing the pressure from only one side, and then echoing the terms and arguments of the other side, the trio created the direct opposite of the impression it insisted it hoped to create. Besides, the best way to create an impression is not to discuss publicly the impression you are trying to create. In any case, the appearance of a solidly pro-*Roe* Court could hardly be made by three justices speaking for a five-man majority on a Court the whole world knew to be bitterly divided. Unanimity would have helped.

The trio held that the Court, in *Roe*, had given a "promise of constancy" and made a "commitment" such that to reverse itself would amount to "nothing less than a breach of faith, and no Court that broke its faith with the people could sensibly expect credit for principle in the decision by which it did that." Why not? If it gave plausibly principled reasons for reversal, it would get credit for them from fair-minded people, who would not deem it a "breach of faith" for one set of justices to refute the faulty reasoning of its predecessors. The trio's opinion here assumed a public that judges by outcomes alone, that neither comprehends nor cares about judicial logic, and that, incidentally, demands legal abortion regardless of constitutional justification.

In a grandiloquent climax, the trio's opinion spoke of Americans as a Nation of people who aspire to live according to the rule of law. Their belief in themselves as such a people is not readily separable from their understanding of the Court [as] invested with the authority to decide their constitutional cases and speak before all others for their constitutional ideals. If the Court's legitimacy should be undermined, so would the country be in its very ability to see itself through its constitutional ideals. The Court's legitimacy is not for the sake of the Court but for the sake of the nation to which it is responsible. . . . A decision to overrule *Roe's* essential holding would address error, if error there was, at the cost of both profound and unnecessary damage to the court's legitimacy, and to the Nation's commitment to the rule of law. It is therefore imperative to adhere to the essence of *Roe's* original decision, and we do so today.

This gravely exaggerated the extent to which Americans now look up to the Court. Thanks in large part to *Roe* itself, the reverence in which the three justices seemed to think they are held is a thing of the past. Yet they spoke as if they not only enjoy high popular esteem—as spokesmen for “ideals”!—but also as if they could sustain their lofty place in the hearts of their countrymen only by doggedly maintaining *Roe*, regardless of how erroneous it might be. In their minds, even the “rule of law” was at stake.

Yet the opinion went on to strike down, in effect, *Roe*’s trimester scheme for permitting the states to regulate abortion, replacing it with a new test: that regulations must not impose an “undue burden” on the woman seeking an abortion. The angry public reaction that ensued did not suggest that the nation had found the Court’s new “resolution” of the issue Solomonic, that it had taken reassurance in the stability of the “rule of law,” or that anyone’s “constitutional ideals” had been served. Both sides felt betrayed. And the 5-to-4 decision hardly left *Roe* secure. When one more vote could overturn it, five justices were in no position to guarantee a “commitment” or “promise of constancy” by the whole Court.

The Court as a whole had merely added more muddled layers to constitutional doctrine. It had further complicated what should have been clear, added more unpredictability to the great political guessing game of Court-watching, and further confused the rule of law by injecting yet more judicial idiosyncrasy into constitutional interpretation.

Justice Scalia addressed directly the central issue the joint opinion had so elaborately evaded. Abortion, he said, is “not constitutionally protected” for two simple reasons: “1) the Constitution says absolutely nothing about it, and 2) the longstanding traditions of American society have permitted it to be legally proscribed.”

In *The Federalist*, No. 78, Alexander Hamilton explains that the Supreme Court has “neither FORCE nor WILL but merely judgment.” That is, it must *persuade*, because, unlike the other two branches of government, it has no power to compel. This clearly implies that the Court is not to be bound by a bad precedent, and even that lower courts are not bound by Supreme Court decisions they find badly reasoned.

But the opinion of the three justices held in effect that if an earlier Court has once reasoned badly, the current Court must refrain from reasoning cogently—so as not to confuse the public! This is to give

the Court's rulings the status not of reason, but of revelation, infallibly delivered, beyond all criticism.

As I write, within two weeks of the *Casey* ruling, there is little prospect that the "contending sides" will "end their national division by accepting a common mandate rooted in the Constitution." Instead of the broad acceptance the three justices asked for, the reaction has been as sharply mixed as any reasonable observer would expect.

The columnist John Leo, of *U.S. News & World Report*, remarked acidly:

The plurality's argument that the Court can't back down because it has staked its authority and reputation on *Roe* is truly pathetic. It sounds like late 1960s rhetoric on why America couldn't afford to leave Vietnam. The adventure has been a giant mistake. It has torn the country apart, but we can't do anything about it or we'll lose face.

Another columnist, Garry Wills, welcomed the ruling for forestalling the "turmoil" that would have occurred "if the right to choose were again debated from the ground up in legislature after legislature." He continued:

There has long been a very conservative argument for leaving *Roe v. Wade* intact—the fact that any laws against abortion would now be as hard to enforce as Prohibition was in the 1920s. A consensus in favor of choice has been formed and the Court cannot defy that with impunity.

"Consensus"? He just admitted that the country is so divided that any other ruling would have meant "turmoil"! If there were really a consensus for "choice," it wouldn't have to be called "choice." It could be called "killing the unborn." This line of argument, moreover, does not even pretend to care about the constitutional issues at stake; it simply assumes that abortion should be legal as a matter of policy, and that the Court should therefore declare it so.

The New York *Times* rewarded Justice Souter for his surprising departure from the hopes of the president who appointed him by bestowing its usual accolade for the conservative who unexpectedly conserves liberal gains: it gave him a warm front-page profile, hailing him for "growing" as a justice. (Two days later the *Times* gave Justice Clarence Thomas an editorial scolding for having failed the test of "growth.")

Not everyone was surprised by Justice Souter's position. To Howard Phillips of the Conservative Caucus, it was foreseeable, and for a reason few had contemplated. Testifying at Judge Souter's 1990 confirmation hearings, he had pointed out that in 1973 the nominee

had voted as a member of the board of trustees of Concord Hospital to allow abortions to be performed on the hospital's premises. Later Mr. Souter had also served as an overseer of the Dartmouth Medical School at a time when its hospital had permitted abortions up to the end of the second trimester. Over a fifteen-year period, Mr. Souter had been affiliated with two institutions where abortion was a common practice, had never objected to it, and had even participated in establishing a pro-abortion policy. There was of course nothing even in *Roe* that required private hospitals to lend their facilities to abortion. These facts were not denied by Judge Souter and his supporters.

The *Times* mentioned nothing of this. It did quote a close friend of Justice Souter's as saying: "He has a great concern for stability and that things won't be overturned by a single voice or by demonstrations outside the Court." It noted with approval that he "view [s] the Constitution as a flexible set of principles that can evolve," and that the passage in the plurality opinion about the necessity of the Court's adhering to *Roe* "under fire" (which he read aloud from the bench) "appeared to represent his most deeply-held views about the role of the Court."

There was another way to look at the matter. Justice Souter joined the Court as the only justice who had actively participated in abortion—as, in Howard Phillips' words, "an accomplice to abortion." This gave him a stake in the issue that none of his eight colleagues on the Court had. Having voluntarily invited abortionists to use private property over which he had authority, he was implicated in the practice in a special way. He had blood on his hands.

Under the circumstances, is it likely that he would have voted to overturn *Roe*? Could he even rule impartially on it, when to reverse that decision might imply something awful about his own willing part in promoting abortion in private life?

This may not constitute a conflict of interest in the legal sense. But his role as a hospital overseer for many years makes problematic the propriety of his ruling on a question that could reflect so keenly on his own past. He came to the Court with a personal interest in the legitimacy of *Roe*.

If he was concerned about appearances, about "the people's acceptance" of the Supreme Court as the principled voice of the Constitution, Justice Souter should have recused himself from all

abortion cases brought before the Court. Why would he make the Court's interest in appearing consistent paramount over the great issues of life and liberty raised by the abortion controversy? Why should "stability" be the Court's overriding concern? Was it the Court he was so eager to vindicate, or his own personal record?

These are "intimate" and "personal"—some would say cynical—questions. But we are entitled to ask them, partly because the opinion Justice Souter signed, and even shaped, posited prospective questions of the Court's motives as justifications for letting *Roe* stand regardless of its merits, or even in spite of its errors.

One thing is clear. A man of Justice Souter's background is in no position to call on the "contending sides" to lay down their weapons and defer to the wisdom of the Court, in the absence of "principled justification" for *Roe* itself. This Court has axes of its own to grind, and Justice Souter is especially compromised.

The great irony of the situation is that the plurality opinion placed appearances over substance and, in doing so, made the Court an interested party in a way it did not intend. The same obsession with appearances forces the question whether the Court's members had other, more individual interests that made their ostensible concern for precedent for its own sake self-serving. This question is particularly relevant when the only argument they could muster for *Roe* was that overturning it would upset a lot of people's arrangements.

But the Court did serve its own interest very well. Its ruling in *Casey* ensures that nobody will henceforth know how to apply the Constitution without consulting the Court itself. Whatever the defects of the trimester criterion, it was clear. It was arbitrary and baseless, but everyone knew what it meant.

Only the Court, however, can say what an "undue burden" is. And so it is predictable that one state law after another will be challenged for imposing such a burden, thereby continuing—indeed expanding—the controversy and uncertainty the plurality opinion said it was resolving. The "undue burden" test lacks the prime quality of a good rule: definition. Anyone can apply a well-formulated rule. A badly-formulated one continually has to be referred to an interpreter.

For decades the Court has exalted itself by expanding its interpretative role, so much so that critics have often accused it of legislating rather than interpreting. The critics have been too kind. Legislation has an objective quality the Court's rulings tend to lack. A law does not keep people appealing to the legislature to explain what

it means. But the Court's decisions keep even legal scholars perplexed.

Planned Parenthood v. Casey seriously altered *Roe v. Wade*, while saying it was merely affirming it. As it has done with so many precedents it knew to be flawed, the Court held that *Roe* was right in principle, but proceeded to add "guidelines" that changed it fundamentally. The oddity of such guidelines is that they provide little guidance. They serve mostly as a point of departure for the Court itself in the next round of its endless wrestling match with its own rulings.

The Constitution is clear about abortion, because it is *silent* about abortion. This means that abortion is one of the innumerable areas reserved to the authority of the states. The Court has "interpreted" the subject into its own extensive self-made jurisdiction.

And in a way, the plurality opinion was right: to reverse *Roe* by ruling properly on abortion—to rule, that is, that abortion is not a proper concern of any branch of the federal government—would be to subvert the Court's legitimacy. It would be to confess how far the Court has exceeded its proper powers, not only in *Roe*, but in countless other cases where it has assumed authority beyond anything remotely implied in the Constitution. The kind of "legitimacy" the Court wants does indeed depend on the public's "acceptance," because it has no constitutional foundation. It is the kind of "legitimacy" that makes the interpreter superior to the document he is supposedly interpreting, so that his right to impute novel meanings to it passes unchallenged.

This is why the Court can simultaneously hold that the Constitution somehow "evolves" *and* that "stability" is a chief concern in deciding on cases. What must be stabilized is the public's acquiescence as the Court changes the rules. The Court can exercise its usurped powers "plausibly," to use its own revealing adverb, only as long as it reaffirms the usurpations of its predecessors. And the chief interest served by *Casey* is not the supposed "right" of abortion with which the public is naturally concerned, but the Court's own ill-gotten power over the Constitution itself.

APPENDIX A

[Our contributor Mrs. Jo McGowan, who now lives in Dehra Doon, India, also writes for a variety of other U.S. publications. She recently sent us the text of an opinion piece she submitted to the National Catholic Reporter, which duly ran an edited version as an Op-Ed article in its April 3, 1992 issue. While it may not be unusual for a paper to edit even opinion pieces, we thought this particular job of editing was very unusual, given the Reporter's well-known reputation as the leading organ of "liberal" American Catholic opinion. So we here reprint Mrs. McGowan's original text, indicating in italics those parts which the Reporter chose to leave out, in the expectation that our readers will find those choices as interesting as we did.—Ed.]

Condoms and the Church: No Sex with Latex

Jo McGowan

Living in India puts life in America in a different perspective. On a recent trip home, for example, I found that all the music went too fast. This was not a sign of middle-age—the music was the same stuff I listen to here in India—but in the U.S. it seemed so rapid. I could hardly keep up with it. Finally, I figured it out. In Dehra Doon, the voltage is low. We supposedly function at 220v, but in fact it is seldom more than 180, often less. The music drags a bit and the lights are dim, but you get used to it.

Maybe it's affected my mind, however. It doesn't seem as quick as it might be, not quite so able to leap from one level to another. Two *NCR* editorials from the recent past are a good illustration of the problem.

Both dealt with AIDS and the failure of the U.S. Bishops to promote or even condone the use of condoms as part of the fight against the disease. When I read the first editorial, I found it so amazing that my mind simply refused to deal with it. I did read it twice, trying to make some sense of it, but I finally put it away and persuaded myself that I had imagined it.

Two years later, when I read the second one, entitled "What does Magic Johnson have to teach us?" (*NCR*, Nov. 22, 1991), I was in the same predicament. Have they gone mad in Missouri, I wondered, or do I live on another planet?

I'm not sure of the answer, but I've read this editorial three times and I believe I understand it pretty well. It still makes no sense at all.

The *NCR* stance is simple: ". . . given the many sexual diseases that exist, is it ultimately responsible for anyone to deny condom-use information if taught within the broader context of Church teaching? We think it is not."

In other words, *NCR* believes that the Catholic Church should teach its people how to wear condoms.

This is hilarious, most especially the clause "if taught within the broader context of Church teaching." What can this mean? The broader context of

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Church teaching, which forbids extramarital relations, has absolutely no space, not even a millimeter, for a condom. The condom is antithetical to Church teaching on sex.

Everyone knows this, not least the editors of NCR. Where does this leave us? Either the Church must radically alter its position on sex or it must deliver two mutually exclusive messages.

Leaving aside the ridiculous nature of such a debate, the dilemma *NCR* is concerned with is purely fictional. Referring to the decision of the U.S. Bishops to remove mention of condoms from an AIDS teaching statement, *NCR* says that this “placed more than a few Catholic high-school principals and Catholic sex-education teachers in a painful bind—and countless young Catholics, denied this prevention information, in potentially tragic situations.”

Now, really. How many Catholic teenagers do you know who depend on their school principals for information on condoms? Denied this information, indeed. The dominant culture, and Catholics are a part of it, ensures that anyone who wants to know anything about condoms can find out—there are toll-free hot lines, full-page newspaper ads, special TV programs and talk shows and any number of giveaway schemes.

Even if it were true, this pathetic image of sex-mad teenagers hurling themselves into the abyss for lack of a condom is not the point. *The more dire the consequences of ignoring Church teaching, the less likely the Church is to reverse itself. What could be simpler or more logical? From time beyond memory the Church has taught that sex outside of marriage leads to misery and despair. Proved right as emphatically as the AIDS crisis does, is there any reason for the Church to temper its stark advice?*

DON'T DO IT! That is *NCR's* summing up of the U.S. Bishops' message and, clearly, it isn't good enough. It's too direct, too uncompromising, too plain. No hedging, no equivocating, no subtlety. “DON'T DO IT.”

But could we live with anything less? Would it be possible to respect a bishop who thundered “Don't do it! (But if you can't resist, the vending machines are in the back of the church.)”

To expect the Church to advise us how to conduct affairs we are forbidden to engage in is absurd. It is like expecting Jesus to provide information on stocks and bonds: “Sell what you have and give to the poor! (But if you want to make a bundle, buy 200 shares of IBM.)”

There is an endless chorus of voices clattering on incessantly about safe sex, condoms and at-risk behaviors. The Church is one of the few with the moral stature to rise above the rest and make its simple truth heard. The last thing we need is for it to cave in and begin parroting the nonsense that passes for wisdom today.

All this is very well, the editorial continues, but the consequence of AIDS is death. People are dying of AIDS, it points out. Doesn't that make a difference? It's interesting that when death becomes a risk to consenting adults it is a serious

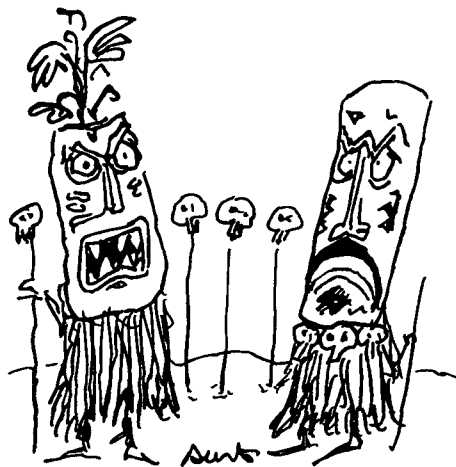
APPENDIX A

hazard. In another phase of the sexual revolution, when casualties were limited to unborn children (friendly fire, if you will), it was all part of the game, unfortunate, to be sure, but still tolerable. AIDS, however, is too close to home. All of us being born, we cannot be aborted, but we could die of AIDS.

But does it make any difference to the Church? Not as far as I can see. The Church's business is Life and Death. Death is nothing new here, nothing remarkable. It is going to happen to all of us eventually and the job of the Church is to help us prepare for it. In the context of Eternity, the fact that a person might die sooner would surely not incline the Church to advise her/him to carry on sinning.

The NCR editorial complains that since we all fail, what we need from the Church is not hard-line teaching but forgiveness and redemption. We might do well to remember the words of Jesus to the woman caught in adultery. Full of compassion and love, he said "Neither do I condemn thee." But then the hard teaching: "Go and sin no more."

The teaching of the U.S. Bishops is like the music here in India—slow, measured and easy to understand, if not to practice. For them to preach the use of condoms would be like hearing them at 78 RPM—shrill and meaningless, just one more shriek in our modern day Babel.



'Women priests would mean the end of civilisation as we know it.'

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[What follows is the transcript of Wm. Buckley Jr.'s *Firing Line* program, which was taped in New York City on September 17, 1991, and subsequently telecast nationwide by the Public Broadcasting System. *Firing Line* is a production of National Review Incorporated and is produced and directed by Warren Steibel. The transcript is reprinted here with the permission of Mr. Buckley.]

The Right to Death

William Buckley, Host and Michael Kinsley, Moderator

MR. KINSLEY: Welcome to *Firing Line*. I'm Michael Kinsley of *The New Republic* magazine.

The surprise best-seller of the Fall literary season is a book called *Final Exit* by Mr. Buckley's guest, Derek Humphry. *Final Exit* is not a Gothic novel or a politician's memoir. It is a how-to book on committing suicide. It contains detailed instructions and dosages and techniques for self-administering a painless death. Shortly after publication it shot to number one on The New York *Times* best-seller list and in fact, Mr. Humphry says there are 400,000 of them in print now.

Mr. Humphry, born in Britain, is executive director of the Hemlock Society, an organization dedicated to legitimizing people's right to commit suicide. In an earlier book Mr. Humphry described how he helped his first wife to kill herself when she was terminally ill with cancer.

To its supporters Mr. Humphry's book is a response to the depersonalization and technological obsession of modern medicine, which aims to prolong life at all costs, including the cost to the patient. By choosing death with dignity, a terminally ill person ironically regains control over his or her life, sparing himself or herself months of suffering and humiliation. Or so the argument goes.

Mr. Humphry's opponents argue that he is facilitating suicide by people who may be only temporarily depressed, not just terminally ill. Some even say that he is providing useful instructions for would-be murderers.

Mr. Buckley, can you imagine any circumstances in which you personally would wish to have a copy of Mr. Humphry's book handy?

MR. BUCKLEY: Well, I have an eclectic library. I even had a copy of de Sade when they were writing books called *Shall We Burn de Sade?* So the answer is I do have a copy of his book, which I find technically interesting. As a matter of fact, I find it philosophically interesting. But I would like to begin by asking you a question that you probably don't get asked too often: Do you acknowledge any metaphysical principles of [an] ethical nature?

MR. HUMPHRY: Hmm. Metaphysical. You mean, do I believe in God? Is that what you're saying?

MR. BUCKLEY: Well, that would include—

MR. HUMPHRY: Do I believe in a supreme being?

MR. BUCKLEY: If you do, you would, but a lot of people who don't believe

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in God still acknowledge metaphysical principles.

MR. HUMPHRY: No, I don't think I do.

MR. BUCKLEY: So therefore all laws, as far as you're concerned, are purely positive, that is to say, born purely of experience?

MR. HUMPHRY: Yes. There is civil law and there is moral law, moral justice. Doing the right thing.

MR. BUCKLEY: So that if it were provable scientifically, let's say, that a particular race had a higher incidence of evil habits than another race, you would not acknowledge any metaphysical reluctance to deal harshly with that race?

MR. HUMPHRY: You're getting into an area I know nothing of. I'm sorry.

MR. BUCKLEY: Oh, well. If you know nothing of that, a lot of things don't surprise me any longer. Most people are guided prescriptively, i.e., by what they were born acknowledging, and also by reference to a religion—usually a religion—or to a set of metaphysical principles. And one of those traditionally has been that nobody should kill anybody. Now your whole thesis is that it's okay to kill somebody provided you're convinced and he's convinced that you're doing strategically the kind thing, right?

MR. HUMPHRY: Correct.

MR. BUCKLEY: Now, but in order to do that, you trespass on, as I say, formally accepted metaphysical principles. The Hippocratic Oath is no longer exacted of everybody who becomes a doctor, but for thousands of years it was.

MR. HUMPHRY: Yes.

MR. BUCKLEY: You simply challenge that oath, don't you?

MR. HUMPHRY: I do. It's the nonsense of the medical world, devised—what?—two-and-a-half thousand years ago by a group of Greeks, has served the medical profession over the centuries, through the dark ages when medicine was so much connected with the occult and magic and so forth. But in this age I think the Hippocratic Oath is a nonsense. It has no application. It's been written that—

MR. BUCKLEY: Well, you talk about its being nonsense. Did Descartes or Immanuel Kant or John Stuart Mill object to it, or was it just you who discovered it was nonsensical?

MR. HUMPHRY: No, because very few doctors in America are asked to swear it. Most medical schools have dropped it long before—

MR. BUCKLEY: No, I'm asking you if it was nonsense, philosophical nonsense, who discovered that it was nonsense, other than yourself?

MR. HUMPHRY: Doctors and teachers of doctors.

MR. BUCKLEY: What about philosophers? I'm talking about ethical philosophers, who tend to be more interesting than doctors on subjects of this kind. Do you know any major philosophical figure who has spoken against the Hippocratic Oath?

MR. HUMPHRY: Joseph Fletcher.

MR. BUCKLEY: Who?

MR. HUMPHRY: Joseph Fletcher.

MR. BUCKLEY: Well, he's so distinguished I never heard of him. I mean, anybody

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that anybody else would have heard of?

MR. HUMPHRY: Well, we all have gaps in our knowledge and that's a gap in your knowledge.

MR. BUCKLEY: That might be a lacuna, yes.

MR. HUMPHRY: I mean, ethics—he is one of the major ethicists; situation ethics, his books on situation ethics have been the most important—

MR. BUCKLEY: Well, any situation ethicist would of course disagree on this particular point. But of the kind of people that one at least used to study when one studied philosophy at college, whether in England or here, was there anybody that you ever ran into who thought the Hippocratic Oath was, to quote you, nonsense?

MR. HUMPHRY: No, I've never studied philosophy. I never have read a book on philosophy, I don't think.

MR. BUCKLEY: Oh, is that manifest, do you think, in your writing?

MR. HUMPHRY: Probably, yes. I'm just a practical journalist and author. I didn't go to college, I didn't go to university, I've never read a book on philosophy. As such I've never read Schopenhauer or Kant or so forth.

MR. BUCKLEY: Well, might this be a reason why you feel so footloose in challenging some major postulates that have been arrived at by people who have studied the philosophical—

MR. HUMPHRY: No. I'm not footloose. It's my conviction, for instance, that the Hippocratic Oath is bunkum and many other people share that, so I'm not alone. I'm not an iconoclast in that sense.

MR. BUCKLEY: No, I didn't say you were alone. I said—

MR. HUMPHRY: But I'm not—I've derived my philosophy of life from what I've observed over the 60 years of my life and experience and observation, not based on philosophical study.

MR. BUCKLEY: But does it give you no sense of apprehension that you should use only your own experience to challenge postulates that were accepted by just about every important philosophical figure till the present time?

MR. HUMPHRY: No. No, it doesn't bother me. They may be right, I may be right. You take your choice.

MR. BUCKLEY: Well, the business of taking one's choice is a subject that's coming up legally, isn't it? That is to say, the law right now forbids the kind of activity that you advertise.

MR. HUMPHRY: Yes.

MR. BUCKLEY: And that is settled common-law practice that forbids doctors from killing. Now, what is your program to change that law?

MR. HUMPHRY: To ask the public to change the law. This is a decision society should take in a democratic manner. And the right-to-die movement is putting it in front of the public, notably in Washington state and in California and follow on in other states. Let the public decide, whether or not they've read the philosophers. Society makes laws. Philosophers make ideas and give input,

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but society makes and adapts and modifies laws.

MR. BUCKLEY: Well, we have in America a thing called the Constitution, which puts it a little bit less glibly. Society doesn't make certain laws. Laws can only be made—

MR. HUMPHRY: Oh, yes. You're right. I concede that.

MR. BUCKLEY: Yes, by—

MR. HUMPHRY: But laws connected with the sort we're talking about, society does lay down the rules.

MR. BUCKLEY: Well, you know, I'm not 100 percent sure of that. Have you done constitutional research on that?

MR. HUMPHRY: No.

MR. BUCKLEY: Suppose they were to authorize murder in the state of Washington. Would that satisfy you that murder was okay in the state of Washington?

MR. HUMPHRY: Certainly not. It would be both legally and morally wrong.

MR. BUCKLEY: But you're proposing what would now be classified as murder—

MR. HUMPHRY: No.

MR. BUCKLEY: When Dr. Jones tells her, "Okay, I'll kill you since that's what you want," that is classified as murder.

MR. HUMPHRY: At the moment it could be, yes.

MR. BUCKLEY: By common law.

MR. HUMPHRY: And I think it's time to take a more intelligent look at that definition that you made and say there are some occasions when death by request justifies the doctor killing the patient where it is societally approved—if it is, and I think it will be—and where it is done carefully and by request on a voluntary method.

MR. BUCKLEY: Well, why do you require social approval of this? You said a moment ago that you were guided by your own conscience and your own conscience says it's okay, so why can't you disagree with the society?

MR. HUMPHRY: Well, I speak for myself. You know, I have my own views, and then there is a wider view. And I am one of the leaders of a movement that says—of many thousands of people—which says that it's time to change the law. So I speak with two hats.

MR. BUCKLEY: Yes, but you feel free to exercise your executive capacity to kill, do you not, if you think that the surrounding circumstances are hospitable, irrespective of what the law says?

MR. HUMPHRY: Yes, I do. I mean, I broke the law on two occasions: when I helped my wife to die and when I helped my father-in-law to die. I regretted doing that very much, the actual breaking the law. I was glad to help them; I thought it was the decent and honorable and loving thing to do, to help them. I found it regretful that I had to break the law because I am not a hardened law breaker. I am a very law-abiding person. But I think that in this respect the law is wrong and I have set myself out in concert with others to modify this law to be more intelligent. The law, I believe, must move with the times and must move with public opinion, and I think there is a welter of evidence that public

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opinion seeks to modify the law on assisted suicide.

MR. BUCKLEY: Well, but aren't you assuming here that public opinion is reliable in matters? But public opinion has done some pretty dark deeds in this century.

MR. HUMPHRY: It's also done a lot of good things. It's the way in which we run this country, thank goodness. We have, you know, a democracy here. We do things by the vote. We vote in senators or presidents. We vote—on the West Coast particularly they have initiatives where they vote in laws or vote out laws and this is the route we choose, to ask the public body.

MR. BUCKLEY: Yes, I am in favor of self-government, but I am also in favor of constitutional prohibitions against impulsive actions—

MR. HUMPHRY: Yes, so am I.

MR. BUCKLEY: —because public opinion sometimes acts to its discredit. Now, when you committed—what would you call it, an act of civil disobedience, in respect of your wife and your father-in-law?

MR. HUMPHRY: It was a crime.

MR. BUCKLEY: It was a crime. Did they prosecute you?

MR. HUMPHRY: No, I wasn't prosecuted.

MR. BUCKLEY: Why?

MR. HUMPHRY: The first offense was in England, where the penalty can be up to 14 years imprisonment. When it became known that I had helped my wife to die, I gave the police a confession and said, "Yes, I did do it, no question, because I believed it was the right thing to do." There is a clause in English law which says that the prosecutor can use his discretion not to prosecute even if there is a hard and fast case. He can look at the facts and, in this particular crime, say, "No, I won't prosecute." In the case in America, where I helped my father-in-law to die, nobody knew about it, so it didn't come to the attention of the police.

MR. BUCKLEY: Well, it has now presumably.

MR. HUMPHRY: Yes. But this goes on—

MR. BUCKLEY: Has the statute of limitations—

MR. HUMPHRY: Hundreds of these cases go on all the time. This is the secret crime of our times. There are hundreds and hundreds of cases in America alone of helping people to die illegally, doctors also helping people to die illegally. And I think that cries out for a change in the law. Something is amiss with the existing law and we should put it to the vote, "Should this law be changed?"

MR. BUCKLEY: Well, is your appetite to do this because you would like to synchronize behavior with law or because you want to encourage what you say goes on rampantly anyway to increase—

MR. HUMPHRY: I don't want to encourage it. I want to legitimize it. It shouldn't be done secretly. This sort of thing is a very serious matter and it's wrong for it to be done covertly. It should be done in the open with proper responsibility. Secrecy should not obtain here, but it's done secretly because people fear prosecution.

MR. BUCKLEY: Well, assuming that it were licensed, you would then run into

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certain other obstacles obviously, such as how to establish that somebody was acting responsibly to himself or herself when he opted for death. There was that exhibitionist doctor from the West Coast—I forget his name—who sort of flew out to Montana or someplace to try out his death machine on some woman, with whom he spent 72 hours and then quickly did the deed.

MR. HUMPHRY: You're referring to Dr. Kevorkian in the Midwest.

MR. BUCKLEY: That's the guy, yes.

MR. HUMPHRY: The woman flew to him, not he to the woman.

MR. BUCKLEY: Flew to him, yes. Now, this is something which, under the ideal law as you envision it, would or would not be permitted?

MR. HUMPHRY: It would be permitted. Janet Adkins would have been able to ask her own doctor in her hometown if he or she would help her under the proposed law and that doctor could, if they felt like it, help her to die. She wouldn't have had to fly 2,000 miles to Michigan to this rebel doctor.

MR. BUCKLEY: But if you measure by some Benthamite calculus pleasure versus pain and decide that the pain outweighs the prospective pleasure, mightn't there be a very good philosophical case for killing people much earlier—for instance, let's say a teenager who faces life as a cripple? Would you draw the line at a particular point, saying, "It is wrong to assist this particular person to commit suicide on the grounds that he might very well simply be suffering from melancholia"?

MR. HUMPHRY: Yes, I do draw the line on that. Yes. I don't think unhappy people, disturbed people, people in temporary despondency—

MR. BUCKLEY: Democrats? [laughter]

MR. HUMPHRY: Pardon?

MR. BUCKLEY: Democrats?

MR. HUMPHRY: They do not deserve assistance in suicide. They deserve, you know, help to live where possible, as much help to live. And it is not in our credo, in our plans, to change the law to assist them.

MR. BUCKLEY: Well, what objection would you have if the state of Washington disagreed with you and the majority of the people said, "Since we're going in this direction, we will try to administer a pain-pleasure test and we'll apply that to everybody beginning, say, at age six. And those of them who convincingly believe that life bears more tears than laughter, they can ask their doctors to snuff it out."

MR. HUMPHRY: Well, I would argue against that, and I think most people would. I think the demand for assisted suicide is coming in a genuine way from people who are suffering or who have witnessed the suffering of their loved ones and they know it is avoidable. They are people who want the right to choose to die, to exercise their free will and their right to go when they wish.

MR. BUCKLEY: But this is a right—

MR. HUMPHRY: And any other variation, like the hypothesis you offer, wouldn't get off the ground. The public wouldn't accept it. The public is far more practical and realistic.

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MR. BUCKLEY: But don't you make it possible for people to avoid that inconvenience? Because in your book—you don't need a doctor to put you away. All you've got to do is read a couple of your chapters and you can do it yourself. So that you can take a 16-year-old girl who has been jilted and is convinced that she will never be happy again, and she simply opens the pages of your book and hesto-presto, she's not an unhappy girl, she's a dead little girl.

MR. HUMPHRY: Well, they've been doing it for years. I mean, suicide is endemic in mankind. People have been killing themselves since day one. The government records 30,000 suicides a year in this country. It's probably double that, because there are some—a lot are not detected. People who want to kill themselves because they cannot for some reason cope with life have always found a way to kill themselves. They've never needed a book and I don't think they will need a book. The plans, the ideas, put forward in my book use prescription drugs. They take time. Ideally you need somebody with you. The book says in very careful chapters, "Tell your family you are going to take your life and hear what the response is. Tell your doctor you are going to take your life."

MR. BUCKLEY: But they might—

MR. HUMPHRY: This is not a suicide manual. This is a step-by-step step through—

MR. BUCKLEY: Look, it may not have been intended as a suicide manual but do you doubt it will be used by very many people as a suicide manual?

MR. HUMPHRY: Some maybe. But then the world is full—Newspapers are full of reports of how suicides take place. There are numerous movies in which suicide is demonstrated. *The Bell Jar*, with Sylvia Plath, demonstrates how—you actually see that it is best to cut your wrist one way and not the other. In *Coming Home*, the movie, you see a young man injecting air into his veins. In newspaper reports which I collect, and they are there for all to see, there are numerous, detailed reports of how people commit suicide. So the information is there anyway. Same with the drug dosages. All bookstores have got—Technical bookstores have got the better books on drug dosages. You can walk into bookstores, especially those near a university, you can flick open the page to morphine or secobarbital, you can see what the lethal dose is, shut the book and go away. So this information is out there anyway.

MR. BUCKLEY: Sure. You don't need graduate study to discover that you will die if you jump off the top of the Empire State Building.

MR. HUMPHRY: Right. Well—

MR. BUCKLEY: So in that sense I think the case is conceded. But it is true, it seems to me, that just as you record there have been a lot of suicides, there are a lot of people who survived a suicide attempt and haven't tried a second attempt and a lot of those people die happy. But haven't you done your best to cut down the number of unsuccessful impulsive attempts at suicide?

MR. HUMPHRY: No. I don't agree. No. If a person is determined—All the psychiatrists I talk to and hear and listen to at conferences say if a person is truly determined to commit suicide, they will. And if they fail the first time,

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they will do it the second time. It's a very sad matter. My book is not addressed to this problem. My book is addressed to the two million people who die every year of terminal illness in this country. They apparently want access to my book. And we're talking of two million recorded terminally ill deaths against 30,000 suicides. I think the preponderance there is that these people, the two million, have the right, if they wish, to read my book and shouldn't be denied it because of the other problem—much smaller problem—of suicides, which must be tackled. We must resist, we must seek to prevent suicide of unhappy people as best as possible. That's another issue. The terminally ill people—

MR. BUCKLEY: You're distinguishing between suicide and euthanasia in other words.

MR. HUMPHRY: Yes, absolutely.

MR. BUCKLEY: But you said just a moment ago that suicide is something that people can bring off if they are determined—

MR. HUMPHRY: Yes.

MR. BUCKLEY: —or call it euthanasia. Why can't they bring off euthanasia if they are determined?

MR. HUMPHRY: Because—

MR. BUCKLEY: Unless they are physically crippled.

MR. HUMPHRY: Well, usually they are very crippled by the time they want to die. And that's part of our credo: You should fight for your life, you should use medical facilities as much as possible. And the sort of people that are in the euthanasia movement, or feel the same as I do, want to die gently in the presence of their loved ones. And the violent means of guns or knives or jumping do not appeal to them. They want to die together with their loved ones, and therefore they need drugs—

MR. BUCKLEY: Why—

MR. HUMPHRY: —and the proper dose of drugs.

MR. BUCKLEY: Excuse me. I'm happily married, but I have absolutely no anxiety to be physically present when my wife dies, nor do I think that she wants to be physically present when I die. Oh, in some of her moods she might be. But why is this a part of the conjugal termination scene in your understanding of it?

MR. HUMPHRY: Well, your statement runs contrary to—All the information I have ever picked up is that people do want to be with one another as they die.

MR. KINSLEY: Excuse me. I have to interrupt at this point. Mr. Buckley, 400,000 people have bought Mr. Humphry's book and I think most of them have not bought it just to have it in their library, as you perhaps did. Obviously it addresses some strongly felt need or problem in modern society. I wonder what you think that need is.

MR. BUCKLEY: No, I acknowledge that, and it seems to me plain that even strongly committed Christians can pray that such and such a person who is suffering will die. But we're dealing here with that ultimate authority of taking life away from somebody or making it convenient for somebody to do that. And I think that that poses moral questions of a very inhibiting kind.

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MR. KINSLEY: Sure. As your argument here for the past half hour has basically been the one of the slippery slope, obviously it can lead to all sorts of nightmare situations. But isn't there a problem that we should move a little bit further down that slope to address?

MR. BUCKLEY: Well, certainly I think in terms of public discussion, which the book certainly precipitates, as witness the fact that we are all here. Thank you very much, Mr. Humphry.

MR. HUMPHRY: Thank you.

MR. BUCKLEY: Thank you, Mr. Kinsley, and thank you, ladies and gentlemen of St. Elizabeth.



'Oh, Lucrezia, you must give me the recipe.'

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APPENDIX C

[The following syndicated column was issued May 28, 1992, and is reprinted here with the author's permission (©1992 by Universal Press Syndicate).]

Part-Time Relativists

Joseph Sobran

Washington—The congressional vote on federal support for fetal experimentation is another ghastly sign of what is happening to America. The Nazi doctors would be right at home in a country where unborn human beings can be killed for a few bucks, and their remains experimented on with state funding.

I've often wondered: Why is America today still haunted by the Nazis? Why do liberals still denounce a system that was vanquished in disgrace nearly half a century ago? Why are movies still made in which the villains are super-annuated survivors of the Hitler regime?

Denunciations of obviously bad people can be misleading. They don't necessarily prove that those making all the noise are totally opposed to the targets of their invective.

Most people are against, say, cannibalism, but they don't feel they have to keep reminding us how bad it is or reiterating their opposition. This doesn't mean they are soft on cannibals. It means they feel too remote from anthropophagy to feel it as a threat—or a temptation.

On the other hand, nobody denounced Stalin with more fervor than the Trotskyites. This didn't mean Leon Trotsky's followers were the polar opposites of Stalin; they merely wanted Stalinism with a different leading man. Rivals can be more violently inimical to each other than true opposites.

During World War II, C. S. Lewis noticed that those who were fighting Hitler didn't necessarily reject Hitler's premises. Many of them shared the Hitlerian belief in a state that didn't have to answer to an objective morality beyond itself and could therefore choose its own "values."

Belief in the fluidity of "values," as opposed to belief in the sheer reality of good and evil, is still the mark of the attitude we call "liberal" or "progressive." Even those who hold traditional moral convictions (like Vice President Quayle) speak of "values," a word that suggests relative options rather than immutable obligations.

We all talk like relativists now. Moral relativism has somehow become a duty. If you don't approve of those things liberal-minded people want tolerated, you are "judgmental." If you think the law shouldn't approve of them either, you want to "impose your views."

The odd thing about the liberal idiom is that nobody is more "judgmental" than liberals, who don't hesitate to censure a whole society and "impose their views" on it. America is corporately guilty of all sorts of sins, as defined by liberals. But those liberals never explain why, if all "values" are relative, their

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own values should be binding on the rest of us. They manage to be relativists on abortion but absolutists on racism.

Still, the liberal-minded display a little uneasiness about applying their program. They don't like to say bluntly that it's all right for an abortionist to kill fetuses, one after another. They always euphemize the killing in such gauzy phrases as "terminating a pregnancy."

Why? Obviously something is being killed. It's living and growing and distinct from its mother. If it's too insignificant to count as human, and amounts to nothing more than a pest or parasite, why should we shrink from talking of killing it? We speak without unease of killing everything from bacteria to whales.

But of course the relativist is trapped by his logic. It's not out of the question, in a universe of relative and subjective "values," that full-grown human beings should be killed too.

At their best, liberals are better than their philosophy. Many of them have helped their fellow Westerners to appreciate more fully the humanity of blacks, American Indians and Asians, whose lives and freedoms we've tended to take cheap.

But that kind of equality rests on the truth that human dignity is real. The cause of abortion rests on the belief that all unborn human life is equally worthless unless "valued" by those who have the power to destroy it. And this belief leads naturally to such grisly corollaries as fetal experimentation; some advocates of these practices even want to "reclassify" still-living fetuses as dead in order to justify keeping them alive until their organs can be harvested. All this can only remind us of the infamous regime in which progressive-minded science set aside all natural morality in order to pursue its diabolical research.

It's creepy the way the very people most intent on emulating that regime bad-mouth it so much, just as the very people who favor abortion on demand often rail against child abuse.



'He only thinks that he's dead — he took an overdose of placebos.'

THE SPECTATOR 15 February 1992

APPENDIX D

[The following editorial first appeared in The Economist of London (April 25, 1992) and is reprinted here with permission (© 1992, The Economist Newspaper Ltd.).]

Changing your genes

“Biology is destiny.” Though the years have been unkind to Sigmund Freud’s thought, that notion sounds fresher now than when he said it. In the 1950s the threads of destiny were given form when Crick and Watson elucidated the double-helix structure of DNA. In the 1960s the language of genes, in which the messages stored on DNA are written, was translated; biology, and much else, began to change. Genes are blamed for everything from cancer to alcoholism. People worry about being made ineligible for jobs because of disease susceptibilities they never knew they had; fetuses are aborted because of faults in their genes; criminals are defined by the bar-codes of their genetic fingerprints.

At first glance, genetic therapy—the nascent art of giving sick people new genes to alleviate their illness—looks like the apotheosis of this trend towards reducing human life to a few short sequences of DNA. But although its advent means people will be talking in the language of genes even more than they already do, the way they talk will change. They will not be passively reading out the immutable genetic lore passed down from generation to generation. They will not be receiving orders; they will be giving them. The birth of genetic therapy marks the beginning of an age in which man has the power to take control of his genes and make of them what he will.

New promises, new threats, old answers

At the moment, gene therapy is a small field on the fringes of medicine and biotechnology. Genes carry descriptions of proteins, the molecules that do most of the body’s work; if someone is missing a gene, they will be missing a protein, and may thus suffer a deficiency or disease. If a gene or set of genes runs amok, cancer can result. The gene-therapists aim to provide the body with genes to make good its deficiencies and problems. If their field had grown as fast as the stacks of ethical reports and regulatory procedures that surround it, it would already be big business. As it is, after years of discussion, it is only now starting to blossom. Therapies are being tried on people around the world (though in tiny numbers) and new ways of delivering genes are being devised. A torrent of raw material for tomorrow’s therapies is flowing from the human genome programme, which plans to have a description of every gene and every scrap of DNA found in the body by the early years of the next century.

Many hear echoes of eugenics at every mention of the gene, and look at this progress with fear. Present research, though, provides no cause for alarm, just an occasion for the routine caution with which all medical advances must be treated. From one point of view, gene therapies are transplants; from another,

they are just drug treatments with the added twist that the drug is being made inside the body. There already exist sets of rules for trying out drugs. The question of the drug's provenance is of secondary importance, as long as its manufacture can be shown to be safe. Experimental gene therapy has satisfied regulators on that count, so far.

"So far," though, is only the beginning. Beyond today's gene therapy, which is a specialised form of medicine not that dissimilar to others, lie far more controversial possibilities: changing genes for non-medical reasons, and changing genes wholesale in such a way that the new genes are passed on from generation to generation. At present, therapists aim at genes that are clearly villains, and the therapies last at most as long as the patient, and often only as long as a transient set of cells. But what of genes that might make a good body better, rather than make a bad one good? Should people be able to retrofit themselves with extra neurotransmitters, to enhance various mental powers? Or to change the colour of their skin? Or to help them run faster, or lift heavier weights?

Yes, they should. Within some limits, people have a right to make what they want of their lives. The limits should disallow alterations clearly likely to cause harm to others. Even if the technology allowed it, people should not be allowed to become psychopaths at will, or to alter their metabolism so that they are permanently enraged. Deciding which alterations sit in this forbidden category would have to be done case by case, and in some cases the toss may be passionately argued. But so it is with all constraints on freedom. Minimal constraint is as good a principle in genetic law as in any other.

People may make unwise choices. Though that could cause them grief, it will be remediable. That which can be done, can be undone; people need no more be slaves to genes they have chosen than to genes they were born with. To keep that element of choice, however, one thing must be out of bounds. No one should have his genes changed without his informed consent; to force genetic change on another without his consent is a violation of his person, a crime as severe as rape or grievous bodily harm. There may be subtle social pressures to choose certain traits; but there is often social pressure for all sorts of things, and it does not deny the subject free will.

Some will object, in the names of God and nature. Religious beliefs may strongly influence people's decisions about what, if any, engineering they undergo. They should not be allowed to limit the freedoms of unbelievers. In that it uses natural processes for human ends, gene therapy is as natural, or as unnatural, as most medicine. But even the artificial carries no moral stigma. The limits imposed by nature are practical, not moral. The body does not have infinite capacities—gains in one ability usually mean losses in others. Natural selection always seeks to fit the balance of abilities to a given environment, and abilities it has optimised may prove hard to enhance. Substantial improvements in human intellect, for example, may not be possible using genes alone.

All this refers to the engineering of cells in the bulk of the body, "somatic"

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cells which pass no genes to the next generation. But to influence the early development of embryos, or to create radically different types of person, requires a different approach, one that puts new genes into all cells—including the eggs and sperm, whence they can launch themselves into the next generation. This sort of “germ-line” therapy, with its long-term effects, brings to mind spectres of master races and *Untermenschen* that limited cell therapy does not.

One response to these worries, used by many scientists in the field, is to say that germ-line therapy is not an option. Prospective patients may disagree. Some conditions, which do their nasty work on small embryos, may for all practical purposes be treatable only by using germ-line therapy. As yet, no therapy for such conditions has been devised. If it is, it would not necessarily be ruled out; but it would be right to regulate it far more closely than regular, somatic-cell therapy. Germ-line therapy would be similar to major surgery on an unborn child incapable of informed consent. In such cases, it is commonly accepted that the parents are justified in acting in the child’s interests. If they can show they are undeniably doing so, there similarly seems no ground for denying the gene therapy. But that undeniable interest will have to be the avoidance of a clear blight that would prevent the child, if not treated, from ever being able to take a similar decision about its future.

If somatic-cell therapy becomes common, if biological understanding becomes far more profound and if people show an abiding interest in transforming themselves, then a less conservative approach may prevail—not least because people would know that a child with genes foisted on it by its parents might be able to change them itself, come the time. In such a world, changing children may look less worrying; or it may look unnecessary. Not all change is genetic. Surgery can transform people too, as many transsexuals will testify; increasing intelligence may be easier with prosthetic computers than with rewired brains. The proper goal is to allow people as much choice as possible about what they do. To this end, making genes instruments of such freedom, rather than limits upon it, is a great step forward. With apologies to Freud, biology will be best when it is a matter of choice.

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[The following editorial column appeared in *The New Republic* (March 9, 1992) and is reprinted here with the author's permission.]

Boys Only—Politically Incorrect Abortion

Charlotte Allen

There is one Pennsylvania abortion restriction that is not before the Supreme Court right now: the state's 1989 ban on abortions solely for the purpose of destroying a fetus of an unwanted gender. The American Civil Liberties Union, which represents several abortion providers in the case, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, has declined to mount a challenge to the sex-selection ban, so it will remain on Pennsylvania's books regardless of how the Supreme Court rules on other restrictions relating to notice, informed consent, and record-keeping.

The reason the ACLU gives for its decision not to include the sex-selection ban (which is the only specific one in the country) in its current lawsuit is that it could not find a client claiming injury from the law: a woman who wanted to abort her wrong-sex child (or who was willing to say so). "We couldn't find anyone who was affected," says Kathryn Kolbert, the ACLU lawyer who will argue the case before the Court, probably in April. "It's not a reality in Pennsylvania."

That may be, but elsewhere in the country, sex-selection abortion is becoming an issue among geneticists, medical ethicists, and some feminists. One reason is that sex-selection almost always means the abortion of a female fetus. There are other issues as well: trivializing abortion, creating "designer children" or designer birth order (first a boy, then a girl), and as prenatal genetic screening becomes more sophisticated, setting a precedent for aborting on the basis of mild genetic defects, undesirable physiological traits, and conceivably in the future, homosexuality or low IQ.

These are not entirely hypothetical concerns. Interviews with geneticists around the country suggest that there are at least several hundred requests a year from pregnant women to perform amniocentesis or the newer chorionic villus sampling (cvs) of placental tissue to determine fetal sex for reasons unconnected to transmitting a gender-linked disease such as hemophilia. The women are often under age 35, the recommended threshold age for screening for medical reasons. According to these geneticists, many of these women go on to abort a wrong-sex fetus. Most, although not all, of the abortions appear to occur among women from Asian countries where preference for male children is exceedingly strong and out-right female infanticide not unheard of.

Geneticists are also slowly losing their once-strong aversion to performing prenatal screening to determine fetal sex—62 percent would do it nowadays or refer a patient to another geneticist, in contrast to only 1 percent in 1973,

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according to a 1989 book by public health researcher Dorothy C. Wertz and bioethicist John C. Fletcher. Yet public opinion in America appears strongly opposed to sex-selection abortion. A 1989 Gallup Poll revealed that 80 percent of respondents thought it was not just unethical, but should be outright illegal.

The emergence of sex-specific abortion represents not merely a troubling social development, but an acute dilemma for pro-choice feminists. What's at stake is a clash of absolutes: a woman's right to an abortion for any reason versus sex discrimination of the most vicious kind. The response of many feminists, however, is simply denial. "It's an irrelevant issue," says Rosemary Dempsey, a vice president of the National Organization for Women. "It's something that doesn't happen. The mainstream media is being duped by the anti-abortion people." Suppose there were a few women who actually were aborting on the basis of fetal sex? Wouldn't now at least have a moral position on the subject? "You're not hearing me," answers Dempsey. "The right to decide whether to terminate a pregnancy belongs to the woman, and I don't think women make decisions of that kind."

"It's a bogus issue," says Judith Lichtman, president of the Women's Legal Defense Fund. "I'm not answering your question because I'm being cute but because it really trivializes a very momentous decision. There are a lot of real problems out there." "We think it's a red herring," says Barbara Radford, executive director of the National Abortion Federation. (The National Abortion Rights Action League wouldn't answer my request for an interview on the topic.) The only dissenter is Judy Norsigian of the Boston Women's Health Book Collective, author of *The New Our Bodies, Ourselves*. "Of course it happens," she says. "It's not a problem if you look at it in terms of numbers, but it still happens. Some are saying that if it happens once, it's a problem. Most of us in this group think of it as a questionable moral position."

Of the several hundred women a year who manage to slip through the ethical net and procure gender tests without medical need, some are referred to abortionists who will terminate otherwise normal pregnancies with no questions asked. "We do a few of these," says Digamber S. Borgaonkar, director of the Delaware Medical Center's genetic screening laboratory and author of several textbooks on human genetics. "Not that we are officially informed [about why the woman wants to terminate the pregnancy]. People are sufficiently discreet about it. But some people will talk about a preferred sex. I was raised in India, and there is a preference for the male sex there. There is also an interest in population control. So if a culture prefers a male child, they prefer a male fetus."

"I personally oppose sex selection," says Mark Evans, director of the prenatal diagnosis program at Wayne State University's medical center. "I believe it is sex discrimination. But you've got to be careful about pointing a finger at a woman. We have had women call us up and ask if we can do a vcs on her for sex selection. We'll say we don't do that. But we'll find out she's 37 years old, so we'll do it. I'll know who's going to have a girl, and we don't do

abortions for that reason. But we will help the patient if asked to find someone who will. A doctor has an obligation to present to the patient all her options. We have only a handful of these cases a year. Most people who want it are Third World—Arabs, Indians, Chinese.”

John D. Stephens, a geneticist in San Jose, California, last year patented an ultrasound technique that detects a fetus’s sex as early as eleven weeks into the pregnancy (conventional ultrasound does not reveal sex until the eighteenth week, when few women are willing to abort). Stephens markets his gender-spotting skills directly to the public via newspaper advertisements. He has built a practice among Sikh émigrés in this country and in Canada, despite the fact, he says, that most Bay Area obstetricians have stopped referring patients to him because he does sex screening. “I don’t do abortions, and I don’t do any counseling in the area,” says Stephens. “What happens is that apparently people will come back to me. I’ll see them again. I’ll ask about the first pregnancy, and they’ll say, ‘I’ve terminated it.’ It’s almost always a girl. Or else they’ll say, ‘I’ve had a lovely little boy.’ Who am I to make any moral judgment?”

This reaction from geneticists—disapproval of sex selection but a willingness to tolerate it and even participate passively in the process—has unsavory implications for the future. There have been recent scientific reports suggesting that homosexuality may have a genetic basis. What then? “I may be a Pollyanna, but we think that society’s attitudes will be completely changed and parents will warmly accept their lesbian and gay children” by the time screening for homosexuality-linked genes becomes feasible, says Gregory King, spokesman for the Human Rights Campaign Fund, the nation’s largest gay rights organization, which is also pro-choice.

The alternative, of course, is that the more people learn about their genes as time passes, the more picky they could become about the kind of children they want to have. Pre-conception sex selection via sperm separation is a growing business around the world. The public disapproval surrounding Los Angeles newscaster Bree Walker-Lampley’s decision to bear, not abort, a child carrying her genes for fused fingers, a mild disability if there ever was one, has led even some pro-choicers to wonder whether there actually might be some moral value to having anti-sex selection laws like Pennsylvania’s, even though a women could easily bypass them by lying.

“Our members are absolutely pro-choice,” says Andrew Kimbrell of the Foundation on Economic Trends, a non-profit group concerned with the economic and social effects of new technology. “But there’s a *Newsweek* poll showing that 9 percent [of the public] would abort for cystic fibrosis and 11 percent if the fetus was predisposed to obesity. This kind of thing is on the increase, and more and more doctors are strongly pushing it.” Kimbrell is in favor of laws banning sex-selection abortions, a position others in the pro-choice camp balk at. Part of their reason is that some Third World women face abuse from their husbands if they don’t abort daughters; and part is that once it

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becomes against the law to abort a fetus just because it is female, people may start asking why it should be permissible to abort a fetus just because it is disabled or because its parents do not want it for other reasons.

But almost everyone who has thought seriously about the sex-selection issue believes there is something wrong with the studiously non-judgmental attitude of many in the medical community. Neither the American College of Obstetricians and Gynecologists nor the American Fertility Society has taken a position on sex selection. The prevailing norm for counseling on the issue among geneticists, abortion clinic personnel, and even many physicians is the “non-directive” variety that is an offshoot of the values-clarification movement, which teaches that people should discover their own values instead of being told what is right and wrong. But this neutrality doesn’t always hold sway in practice. “They’re taught to try to be non-judgmental,” says Norsigian of the Boston Women’s Health Book Collective. “But when it comes to something like Down’s syndrome, most physicians have been extremely directive and even obnoxious. They will even say, ‘We’ll be scheduling an abortion for you.’ This happens even when the extent of the disability is very mild.”

As sex selection in America moves out of Third World ghettos and becomes an option for the control-obsessed upper middle class, it’s worrying that nobody—not doctors, not genetics counselors, not abortion counselors, and not most feminists—seems willing to discourage the practice and some even encourage it. Abortion is not just an abstract dilemma. It takes place in a context of consequences, some of which could eventually prove more harmful to women over the long term than bearing an unwanted child.

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SUMMER 1992

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"The Court in effect declared itself a party
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[The following column appeared in *New York's Village Voice* (April 21, 1992) and is reprinted here with the author's permission.]

The Perilous Journey of *Roe v. Wade*

Nat Hentoff

Jane Roe. Despite the use of the pseudonym, it is not suggested that Roe is a fictitious person. For purposes of her case, we accept as true her existence, her pregnant state as of the time of the inception of her suit in March 1970. . . . She, as a pregnant single woman, thwarted by the State's abortion laws, had standing to challenge them.

—First draft of Justice Harry Blackmun's eventual majority opinion in *Roe v. Wade*, 1973

We . . . conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.

—Final majority opinion by Harry Blackmun, *Roe v. Wade*, 1973

A chill wind blows as [the majority of this Court] casts into darkness the hopes and visions of every woman in this country who had come to believe that the Constitution guaranteed her the right to exercise some control over her unique ability to bear children.

—Harry Blackmun, dissenting, *Webster v. Reproductive Health Services*, 1989

*Has the Supreme Court overruled *Roe v. Wade* . . . holding that a woman's right to choose abortion is a fundamental right protected by the United States Constitution?*

—Petition to the Supreme Court by Planned Parenthood, represented by the American Civil Liberties Union on November 7, 1991, in *Planned Parenthood v. Casey* (oral arguments in the case on April 22 of this year)

Twenty years ago, during arguments before the Supreme Court in *Roe v. Wade*, Justice Byron White asked a cactus-like question of Sarah Weddington, the lawyer from Austin, Texas, who was representing Jane Roe in her attempt to strike down the punitive abortion laws of Texas. Any way that Sarah Weddington answered that question could get her and her case in trouble with one or more of the justices who were sitting above her.

White asked how far Weddington wanted the right of abortion to go: "Will that take you right up to the time of birth?"

She gave an honest answer rather than blowing smoke: "It is our position that the freedom involved is that of the woman to determine whether or not to continue a pregnancy. Obviously, I have a much more difficult time saying that the state has no interest in late pregnancy."

White: "Why? Why is that?"

Weddington: "I think it's more the emotional response to a late pregnancy, rather than it is any constitutional. . . ."

White: "Emotional response by whom?"

Weddington: "I guess by persons considering the issue outside the legal context. The Constitution, as I see it, gives protection to people *after* birth."

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Weddington was arguing that there are no rights of the unborn specifically enumerated in the Constitution before or after the Bill of Rights. Therefore, if the Court were to decide that it is a woman's constitutional right to choose whether to carry a fetus to term, there should be no legal—no constitutional—interference with that right. But it's understandable, she implied, that a lot of people might well be emotionally disturbed by the idea of a late abortion. That consideration, however, should not be part of a "legal context."

She was arguing for abortion on demand.

Weddington, by the way, did not base her argument before the Court on a constitutional right to privacy. She relied on the Fourteenth Amendment's right of "liberty." ("Nor shall any State deprive any person of life, liberty, or property without due process of law.")

She said that "liberty to these women would mean liberty from being forced to continue the unwanted pregnancy." Under the due process and equal protection clauses of the Fourteenth Amendment, she added, women should not be compelled to bear the fetus to term. "One of the purposes of the Constitution was to guarantee to the individual the right to determine the course of their own lives."

What happened then? What happened after the justices went into the conference room—in which no one else is allowed—and delivered their initial opinions and tentative votes?

Usually, there's no way of knowing, the Court being the most secretive governmental institution in the country. Occasionally, however, one of the few justices who gives interviews may provide some information or limited access to his or her papers.

One law professor, however, has done a lot better than that, and his illuminations will be quoted by writers on the making of constitutional law as long as there is a Supreme Court. Bernard Schwartz, a professor of law at New York University, has published a series of books that takes you inside the Court's conference room and also reveals the exchanges of initial drafts of opinions among the justices—along with memoranda, notes, and interviews with some justices and former law clerks.

In *The Unpublished Opinions of the Burger Court* (Oxford University Press, 1988), Professor Schwartz told how *Roe v. Wade* was born. It was a long, troubled pregnancy.

At first, justice Blackmun was not sufficiently convinced that abortion laws should be struck down on equal protection or privacy grounds. His original draft, as Schwartz notes, declared the Texas statute before the court to be unconstitutional "on the ground of vagueness and not because it restricted a woman's right to have an abortion."

During the months of exchanges of views—including drafts of opinions by some of the justices—William Brennan and William O. Douglas were the

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strongest voices for a woman's fundamental right to decide to have an abortion. And for the need to strike down the Texas law to achieve that result.

Brennan was and is a devout Catholic who attends Mass regularly. But he never let his own religious beliefs affect his constitutional judgments. Some years ago, I was in Washington covering an annual meeting of the National Conference of Catholic Bishops. A couple of days before, Brennan had delivered one of his customary majority decisions decisively separating church and state with regard to public schools. There was to be no connection of any religious institution with any public school.

As I watched, a series of bishops and archbishops denounced Justice Brennan in such scalding terms that it was as if he were the Antichrist. Around that time, one Southern cleric—a Baptist, as I remember—used to pray fervently, publicly, and regularly for Brennan's imminent death.

It was not only that Brennan's religion did not in any way affect his views on the constitutional right of women to choose abortion. He was also a feminist—the most passionate in the history of the Court. He used to interchange personal pronouns in his opinions—referring to the principal in a case interchangeably as “she” and “he.” I asked him why, and he said, “Why should we males be the only illustrious participants in whatever events we've been talking about?”

Also, more than anyone else on the Court, he tried to awaken a majority of his colleagues on a given case to the realization that women were *not* getting equal protection under the Fourteenth Amendment—and sometimes he succeeded. In a landmark opinion in a 1973 gender discrimination case (*Frontiero v. Richardson*), Brennan wrote scornfully of this country's tradition of “romantic paternalism,” which “in effect, put women not on a pedestal, but in a cage.”

So, on constitutional and feminist grounds, Brennan wanted the Court to liberate, as he saw it, Jane Roe. So did William O. Douglas. Unlike Blackmun, who at first shied away from the right-of-privacy approach, Douglas—with his customary force and clarity—embraced it. He did not, however, go all the way with Sarah Weddington. The right to abortion should not be unqualified. Not after the “early stages” of pregnancy. At some point, “the liberty of the mother,” although grounded in the Constitution, can be regulated by the state, said Douglas.

During the early rounds of debate on *Roe v. Wade* inside the Court, Blackmun spent a lot of time in the Court library. He was a slow worker to begin with, and he knew that this would be not only his first major case but also very controversial. I doubt if he knew how controversial it would be. He's been getting death threats ever since.

Douglas, meanwhile, was writing drafts and memos, emphasizing that this right of a woman to abort should come out as a *fundamental* constitutional right. Any right designated as fundamental by the Supreme Court—the right to vote, to interstate travel, to marry, to be free of racial discrimination—cannot

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be narrowed by government *unless* an agency of the state can show “a compelling state interest” to regulate that right.

When government comes before the Court claiming that a fundamental right has to be diminished in some respect, that claim by government is looked at by the Court with “strict judicial scrutiny”—the highest standard by which the Court classifies the cases before it.

Furthermore, as Douglas pointed out, even if the state does show a “compelling interest” in interfering with a fundamental right, any regulations should be narrowly and precisely drawn. Otherwise, he told his colleagues, “the police-power would become the great leveler of constitutional rights and liberties.”

In a subsequent letter to Douglas, while the deliberations were going on, William Brennan spoke of “three groups of fundamental freedoms that ‘liberty’ in the Fourteenth Amendment encompasses:

“*First*, freedom from bodily restraint or inspection, freedom to do with one’s body as one likes, and freedom to care for one’s health and person; *second*, freedom of choice in the basic decisions of life, such as marriage, divorce, procreation, contraception, and the education and upbringing of children; and *third*, autonomous control over the development and expression of one’s intellect and personality.”

The right to abort a pregnancy, Brennan went on, “fits directly within each of the categories of fundamental freedoms I’ve identified and, therefore, should be held to involve a basic individual right.”

Like Douglas, Brennan advocated no state interference in “the early part of the term.” And the state, he said, has no business judging the reasons for an abortion. “The decision is that of the woman and her alone.”

But even Jane Roe’s most outspoken defenders on the Court did concede that the state had some kind of interest in the life of the fetus after the “early part of the term.” For a time, however, that state interest largely receded. But eventually, a very “chill wind” came down on what Jane Roe had wrought, as the membership of the Court fundamentally changed. (To be continued.)

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[The following column appeared in the *Village Voice* (April 28, 1992) and is reprinted here with the author's permission.]

Eight Men and One Woman in Black Robes

Nat Hentoff

My greatest fear is that the Court will never provide a single dramatic ruling while the country becomes more and more accustomed to more and more women actually losing access to abortion.

—Duke University law professor Walter Dellinger

When lawyers prepare for oral arguments before the Supreme Court, they act much like handicappers before going to the track. You can pretty well figure that certain justices are on your side—but you could be wrong. And others, also based on their track records, have probably already decided against you, and will relish giving you grief. But almost always, there are some who, in the past, have taken some positions that you may be able to build on to your advantage.

So, in your briefs before you get to the Court—and in your oral argument—you will try to focus on the possibly friendly justices. You may quote from some of their previous opinions or dissents to show how you treasure their every judicial word.

Preparing for *Planned Parenthood v. Casey*, to be heard before the Court on April 22, Ernest Preate, attorney general of Pennsylvania—arguing for the constitutionality of a broad range of that state's restrictions on abortion—must have been quite optimistic.

But Kathryn Kolbert, his opponent, saw only two sure allies on the high bench. Still, there could be others who might at least pay attention to what she had to say. Kolbert, a very knowledgeable and determined staff attorney with the ACLU, was representing Planned Parenthood of Southeastern Pennsylvania and four abortion clinics.

This is what both Kolbert and Preate faced as they entered the small courtroom and looked up at the justices.

The two original dissenters in the 1973 *Roe v. Wade* decision—William Rehnquist and Byron White—are still on the Court. Through the years, there has been no evidence that Rehnquist, now the chief justice, has any pronounced religious or moral objections to abortion. Instead, as *Los Angeles Times* Supreme Court reporter David Savage says in his valuable forthcoming book, *Turning Right: The Making of the Rehnquist Supreme Court* (Wiley): “In (Rehnquist's) view, the Constitution neither gave women a right to choose abortion nor guaranteed the fetus a right to life. Because neither was decided by the Constitution, the states and their elected officials could decide for themselves.”

As for Byron White, his objection to making abortion a constitutional right

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seemed based in part on federalism, but unlike Rehnquist, he appeared to have strong moral objections to *Roe v. Wade*. In his original dissent, he accused the majority of exercising “raw judicial power,” but he also was much troubled that the Court had allowed abortion to “satisfy the convenience, whim, or caprice of the putative mother.”

Kathryn Kolbert knew that neither Rehnquist nor White had changed their minds since 1973. A newer justice, Antonin Scalia, was, if possible, even more determined to send the abortion question back to the individual states. He has no patience with what he sees as the Court’s slowness in this matter. He scornfully mocks those of his colleagues who are dismantling the fundamental constitutional right to abortion only “doorjamb by doorjamb.” Knock the whole damn house down, says Scalia.

Anthony Kennedy had an anti-abortion record when he was a practicing attorney, and I was surprised he was able to tap-dance away from it during his confirmation hearings. Before he became a judge on the Ninth Circuit Court of Appeals, Kennedy advised pro-life California legislators on the drafting of anti-abortion bills. He would not weep if *Roe v. Wade* were struck down. He would be among the wreckers.

In researching an article on David Souter’s nomination for the *Voice*, the only—very slight—indication I found as to his abortion views was the fact that he had been on the board of a hospital in New Hampshire which, during his tenure, had started to do abortions. There had been no objection from Souter.

On the other hand, a Republican congressman, who knows his way around the White House, swore to me last year that Souter was a thoroughly “dependable” anti-*Roe* vote. I asked if this was known before Souter was nominated. “Yes,” said my source. We shall see.

As for Clarence Thomas, a close friend of his told me after Thomas had been confirmed that he had no doubt Thomas would join Scalia—if the right case came along—to obliterate *Roe v. Wade*.

Left on the Court are the only two true believers in a woman’s fundamental right to choose an abortion. One, of course, is Harry Blackmun, who wrote the original majority opinion. The other is John Paul Stevens.

Sandra Day O’Connor is in neither camp. She has taken a position that requires turning down any regulation that would place an “undue burden” on a woman’s right to an abortion. But she has also approved of various regulations restricting abortion.

In her 1986 dissent in *Richard Thornburgh v. American College of Obstetricians and Gynecologists*, Justice O’Connor explained what she means by “undue burden”:

“An undue burden will generally be found in situations involving absolute obstacles or severe limitations on the abortion decision—not wherever a state regulation may inhibit abortions to some degree.” For instance, she has said

an “undue burden” would be a law that criminalizes all abortions except those to save the life of the mother, or that gives a husband a veto power over a woman’s ability to have an abortion.

To many pro-choicers, some of the regulations O’Connor has voted to uphold were actually severe limitations on a woman’s right to abortion. But in this, as in other areas of constitutional law—church and state, for instance—O’Connor goes her own way and sometimes becomes the deciding vote on a case.

I suggested to Kathryn Kolbert—before she went to Washington to argue before the Court—that although the votes to override *Roe v. Wade* appeared to be there, it was not likely that in this case, *Planned Parenthood v. Casey*, the Court would explicitly strike down *Roe v. Wade*. The impatient Scalia aside, various decisions in recent years had so weakened *Roe* that it might not be necessary to officially finish the job.

A fundamental constitutional right to an abortion, Kolbert said, can’t remain fundamental—even if it’s not explicitly overturned—once the Court stops looking at proposed state regulations of it under a “strict scrutiny” test. If any state tries to restrict a fundamental right, it has to—under “strict scrutiny”—convince the Court that it has a compelling interest in doing so. And if, under this tough test, the Court agrees, such regulations have to be narrowly and precisely drawn.

Since Justice O’Connor applies “strict scrutiny” only to those regulations that place an “undue burden” on abortion, one of the questions in this current case is whether she will regard any of the Pennsylvania restrictions as undue burdens. And if she does, can she bring a majority of the Court with her to keep enough of the “strict scrutiny” test to maintain abortion as a fundamental constitutional right?

That is what *Planned Parenthood v. Casey* comes to. If the majority of the Pennsylvania regulations are upheld, *Roe v. Wade*, even if it’s left alive, will slide downward until all that is required for a state to regulate abortion is the lowest standard of judicial scrutiny—the “rational basis test.”

Under that test, all a state has to do is show that it has a reason—a rational basis—to do what it wants to. Appellate courts do not often second-guess a state if that is the standard of scrutiny. Already, at least Rehnquist and Scalia on the Court have said that rules on abortion should be judged only on a rational basis standard.

The *Planned Parenthood* case, which could greatly eviscerate *Roe v. Wade*, comes from the Third Circuit Court of Appeals. That court has held—based in part on Justice O’Connor’s “undue burden” standard—that restrictions that do not *prohibit* abortions, either in their effect or explicitly, must now be judged on a “rational basis” standard. (Emphasis added.)

If the Supreme Court agrees, *Roe v. Wade* may still be breathing, but only barely. From then on, as Americans United for Life—a pro-life group—anticipates: “statutes pertaining to informed consent, waiting periods, reporting

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requirements, testing for fetal viability are all likely to be upheld” by future courts, following the Supreme Court.

Here are the four requirements of the Pennsylvania Abortion Control Act that the Supreme Court will be judging:

Informed Consent: “Prior to an abortion, the performing or referring physician must provide information regarding the nature of the abortion procedure, the alternatives to the procedure, the gestational age of the unborn child, and the medical risks of carrying the child to term. In addition, the physician or a counselor must inform the woman of the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care. . . .”

Waiting Period: “A 24-hour period between receipt of the informed-consent disclosures and the performance of the abortion is required.”

Informed Parental Consent: “The informed consent of one parent must be obtained prior to the performance of an abortion on an unemancipated minor. A minor who does not wish to obtain parental consent may use a judicial bypass procedure. . . .”

Confidential Data Reporting: “An abortion provider must provide to the department of health a report for each abortion performed. The reports are not publicly available and are subject to safeguards to protect against disclosure. . . .”

A fifth requirement was struck down by the Third Circuit Court of Appeals, but is on appeal by Pennsylvania before the Supreme Court. It would require that a woman—before an abortion was performed—sign a statement that she had told her husband what she was going to do. The requirement is waived if the husband is not the father of the child, cannot be found, or if the pregnancy was the result of a spousal sexual assault that had been reported to law enforcement. The woman’s statement is also not required if she believes that telling her husband will result in his beating her up.

If the worst fears of the pro-choicers are realized and the Court upholds all or most of the Pennsylvania restrictions, the next step is Congress and the Freedom of Choice Act, which aims at saving *Roe v. Wade*—not as a constitutional right but as a federal statutory right, with the power to prevent the individual states from interfering with that right. Stay tuned.

APPENDIX H

[The following column appeared in the *New York Post* (April 22, 1992) and is reprinted here with the author's permission.]

Abrams punishes pro-lifers to push social agenda

Ray Kerrison

State Attorney General Robert Abrams went up to Buffalo Monday and issued a warning to pro-life demonstrators on public safety. "Lawlessness and lawbreakers will not be tolerated here," said the chief law officer of the state of New York.

Abrams' message was the latest shot in a one-man crusade that has vaulted him into the most aggressive proponent of abortion in American law enforcement. He will travel anywhere, file a lawsuit or invoke his office any time to pursue a radical social agenda.

As I will demonstrate, public safety has no place in that agenda.

In anticipation of fireworks in Buffalo, Abrams filed suits seeking \$10,000-a-day fines against pro-lifers who cause a "nuisance" at abortion clinics. He sought to prohibit demonstrators from taking pictures or videotapes of anyone entering the clinics and harassing physicians or clinic staffers at their homes.

Abrams explained, "We certainly cannot stand idly by and sanction lawlessness and deprivation of rights of others."

That will be big news to the Jewish and black residents of Crown Heights, who saw their neighborhood turned into a bloody bonfire for three days last summer while the chief law officer of this state, the said Robert Abrams, saw nothing, said nothing, did nothing and appeared nowhere.

At the height of the fury, Jewish leaders cried out for Abrams, Cuomo, Dinkins, the National Guard—anyone—to quell the chaos. From the attorney general, not a word, not a hand.

Go back to December 1989, when radical homosexuals announced a plan to besiege St. Patrick's Cathedral. There was so much advance notice of this exercise in lawlessness that Fifth Avenue was jammed with cops, barricades and media waiting for it to happen.

Did New York's chief law officer rush into court and demand \$10,000 fines for homosexuals who become a "nuisance" at the cathedral? Did he file suit to keep homosexual protestors 100 feet away from the cathedral? Did he call a press conference to announce, "Lawlessness and lawbreakers will not be tolerated here . . . we cannot stand idly by and sanction lawlessness and the deprivation of rights of others?"

You bet he didn't.

I was in the cathedral that day and I had a constitutional right to worship in freedom. I was deprived of those rights and Robert Abrams didn't give a damn. Worse, the trashing of a holy place did not bother him. Later, radical

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homosexuals would disrupt the state Legislature itself in a brazen violation of law. Did Abrams demand \$10,000 fines? Not likely.

Yet there he was in Buffalo Monday demanding fines of \$10,000 for anyone who made a “nuisance” of themselves at an abortion clinic, where unborn babies are deprived of life.

Seven weeks ago, Abrams went up to Buffalo for a press conference to announce all the legal measures and penalties he was seeking against pro-life demonstrators. A reporter asked him why he was so preoccupied with proposed illegal activities outside the clinics but indifferent to the illegal activities inside the clinics. Abrams said he was not aware of such activities.

The reporter said that while Abrams was preparing to intervene in the Wichita abortion conflict last year, a doctor known as “The Butcher of Avenue A” was committing mayhem and maiming in a city abortion clinic. Abrams did not respond.

The reporter persisted, asking Abrams why he did not intervene when the Rochester Public School Board announced it intended to break the law, then broke it, by banning military recruiters from public high schools. Abrams said he was not aware of that situation.

But Abrams has had the time, manpower and funds to launch lawsuits against six New York pregnancy crisis centers, which are dedicated to saving unborn babies and providing medical, housing and employment help for the mothers. Abrams punishes those who uplift life and protects those who destroy it.

As the state’s top law officer, Abrams has a solemn obligation to uphold the law equally against all lawbreakers. To target one group (pro-lifers) with viciously punitive penalties and ignore another group (cathedral sackers) is reprehensible. It proves that Abrams is using his office to pursue a social agenda and not justice.

It is a terrible platform on which to launch a run for the Senate.

APPENDIX J

[The following column appeared in the New York Post (April 24, 1992) and is reprinted here with the author's permission.]

TV reporters skip the real abortion story

Ray Kerrison

The television network coverage of the Battle of Buffalo is similar to its reporting of the abortion war in Wichita last year: It is so shamelessly shallow and passive that the effect is gross distortion. They roam the streets with their cameras, shoot pro-life and pro-abortion groups shouting across a police barricade, hover over limp bodies being loaded into vans and grab a couple of sound bites. A monument to superficiality.

The heart and soul of the abortion controversy is not what happens *outside* an abortion clinic but what happens *inside* it—yet the television-news industry resolutely refuses to go inside and report the facts. Except for a segment on CBS-TV's "60 Minutes" last year, which probed an unregulated killer clinic in Maryland, I don't know of a single network TV show that has explored the following critical issues:

How many women are killed each year in legal abortions? How many are mutilated and rendered infertile by bungled surgery? How many are psychologically scarred—and sometimes haunted for life—by abortion? Who owns all those abortion clinics? How much money do they gross? What qualifications do their doctors have?

And now the most desperate and horrific issue of all: What happens to the products of abortion? The networks will not show tiny legs and arms and hearts and heads and torsos stuffed into trash bags and cans. Who collects this "waste" and where is it disposed?

There is an unspoken "conspiracy" in the media to conceal the appalling details of abortion. The practice survives only because tens of millions of Americans are unaware of those details or find them too dismaying to contemplate. When the debate is framed in impersonal medical terms like "fetus" the public conscience is not disturbed. But show them that the "fetus" is a real human being and they recoil in revulsion.

That's exactly what happened in Buffalo this week when a minister stepped into the crowds and cameras holding a tiny stillborn baby girl, 20 weeks in gestation.

It changed the face of the abortion debate. Since the networks will not go inside the abortion clinic, pro-lifers brought it out for the whole world to see. The effect was volcanic. Alone among the newspapers in this city, the New York Post published the picture of the stillborn. No one could look at it and deny that it was a human being in all its fragile totality. And no one could escape the conclusion that the willful destruction of such a being is an unconscionable act.

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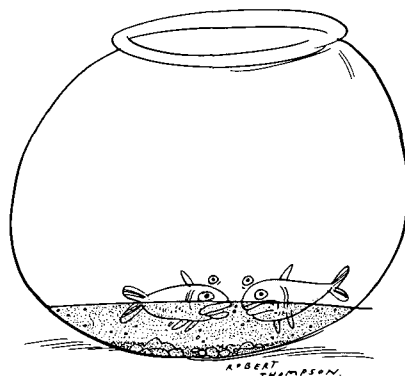
Indeed, the move to unmask the horrors of abortion through pictorial display may be spreading. Michael Bailey, a 35-year-old congressional pro-life candidate from southern Indiana has launched a TV campaign with commercials showing “aborted fetuses.” One TV station received 20,000 calls in six hours—61 percent of them in favor of airing the ad.

But the politically correct networks will not voluntarily expose abortion’s hideous underside. They will not tell you how Latachia Veal, a 17-year-old Texas girl, died during a two-day abortion procedure; how, in the words of an attorney, she was left to die “crying out in pain, her lifeblood oozing out of her, her calls for help ignored.”

The networks won’t tell you how radical feminist leaders not only tolerate “butchers” in the abortion industry but actually work to protect them from discovery and prosecution.

Finally, you can be sure the networks won’t cover the First International Gathering of Abortion Holocaust Survivors to be held in Ottawa at the end of this month. This event is expected to draw survivors of botched abortions from the U.S., Canada and many other nations. One participant will be Gianna Jessen, a California teenager whose mother underwent a saline abortion. The “fetus” survived the ordeal and after birth was diagnosed as having cerebral palsy. She was told she would never walk, but she did. With the aid of a walker, she toddled to the arms of her adoptive mother. Today, she travels the world telling her story.

No, the true story of abortion is never told by the TV networks. It is surely an ugly, bloody, brutal and repugnant story, but it should be told.



‘Gavin, your drinking is beginning to affect both of us.’

THE SPECTATOR 28 March 1992

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“Children Are Capable”

Dr. Irene Impellizzeri

[What follows is the text (except for a few introductory remarks) of the address by Dr. Irene Impellizzeri to the Cathedral Club of the Diocese of Brooklyn on May 28. Dr. Impellizzeri is vice president of the New York City Board of Education; she has had a distinguished career in teaching, and as a dean at the City University of New York. She is also a psychologist who does pro bono work with young people, many of them public-school students. But she is best known to New Yorkers for her principled stand against the controversial “AIDS curriculum” and condom distribution in the city’s public schools. The text is reprinted here with her permission.]

Tonight, I will not give you any oratory about why public schools are a good thing. It is a little late for me to be thinking about why public schools are a good thing: one way and another, I have served public education in New York City for 48 years.

Fortunately for you, I am not going to float any schemes for reforming school finance, or for getting more money for education out of the fiscal authorities (although we need all the money we can get), or even just for re-ordering national priorities. You will hear quite enough of that in this election year. I want to talk to you about morale in the schools and what has happened to it.

So I shall start with what we in public education in New York City felt . . . and I propose to use the word “love” for those feelings, because love includes exasperation, quarreling, and grief . . . the *love*, then, that we have felt over the years for the public schools of New York City.

Most of us who taught in the New York City public schools got into the habit of referring to the city’s schools simply as “The System”—as if there were no other system in the world.

“The System.” It does not sound much like a pet name. It is not one of the usual terms of endearment. All the same, if we define a system as “an arrangement of things in which the things themselves *gain meaning* from their mutual interaction,” then the public schools of New York were a powerful system. We and our students gained meaning—and we *felt ourselves* gaining meaning—by interacting with each other. We gained meaning from our interaction with administration that respected professional integrity. We even gained meaning by interacting with the Board of Examiners.

However, most people do not love a system just for being systematic, just for its definable scope, its mutual agency, its intelligible order, its standards. Such attributes are impressive rather than adorable. What was there about “The System” 50 or 40 years ago that enlisted such loyalty and effort and forbearance?

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Gratitude was part of it, of course; because during the Great Depression “The System” had offered status and security that the young college graduate could hardly find elsewhere. But I think it was really something else; it was the pervasive sense of sharing a mission—and in New York City the mission of the public schools was particularly rich in psychological and anthropological complexity. For in those days we professionals were not simply handed political solutions to sociological problems.

The difference between a living system and an inanimate system is that in the one we share a mission, in the other we are merely part of a process. In the one we exercise judgment and *act*; in the other we execute orders and *perform*.

But true as that statement is and important as it is, the most important truths about schools are not to be found in that sort of abstract statement. They are to be found only in the phenomenology of education. Let us start with some phenomenology—first, what it is (or was, and should be) like to teach school; second, what it is (or was) like to teach school in a city; and third, what it is (or was) like to teach school in New York City.

Obviously, people do not go into teaching because they want to discover new things about the universe (the way scientists do) or to create new images of the universe (the way artists do). Those are not the kinds of meaning I was talking about when I said we “gained meaning.” Most of us go into teaching because we want to mean something *to somebody*—specifically, to the young. We address ourselves to the young because the young of our species grow up by experience, so to speak. They do not grow up like larvae or pupae, or even like chickens and calves, according to some genetic program of maturation, modifiable chemically, perhaps, but more or less set. To use a sentimental figure of speech, it is thrilling to look at a child across a classroom or a counselor’s desk and glimpse two or four or a half dozen *possibilities* looking back at us out of two eyes—some good, some sad, some terrifying.

Our job is to interact with those possibilities, however faint they are, however flickering, however shy. If we do not interact differently with different moral possibilities in the same child, we are not teachers.

Among our chief rewards is to meet or hear of a former pupil who is (say) in a Broadway show, or who is a social worker, or who writes; who has achieved something—even if it is only a little decent happiness—and to think, “I stood by that possible actor when he was about to be overwhelmed by the possible thief or the blowhard—his rivals inside the same body.” Or “I helped that young professional woman hold out against the equally possible girl who would have been at the disposal of any violent young male. And I did it when I wished I could go home, get my shoes off, and relax.” Or “I corrected that potential journalist’s book report in a strict *and* encouraging way, when I *could* have written ‘Sp.’ and ‘Pct.’ three times each in the margin and ‘Keep up the good work, Lou!’ at the end and let it go at that.”

THE HUMAN LIFE REVIEW

In the nature of things, growing children can have very little experience of being what they are at any moment, and no experience, even in imagination, of what they might become. The possible selves offered for their consideration by the entertainment they now get are degraded, and never were very convincing. But sometimes a teacher can say later, "I knew he had it in him. I knew it before he did. Perhaps I helped him keep his courage up."

Egotism, of course. But school teachers are entitled to a little private and retrospective egotism. Hope is hard work and deserves its rewards.

That is the generic work of teaching. It goes on, or used to go on, and it should go on, in any working school, whether in the Bronx or in Greenwich, Conn.

But if the school happens to be in a community where many or most of the youngsters come from poor homes, it makes much more strenuous moral demands on teachers. For here the children have to escape out of poverty, with its culture of unblamable failure, into economic competence, with its culture of responsibility.

That is difficult enough in a small community, where there are some examples of social mobility. But in the inner city, a high proportion of poor children have to carry out their escape without having before them—in the round and really there, credibly and reassuringly *there*—any moral models *except their teachers*.

"Work without hope draws nectar in a sieve,/and hope without an object cannot live."

It may be that I am misapplying Coleridge's lines, but I am not trivializing them.

When I said earlier that the mission of the New York City public schools was particularly rich in psychological and anthropological complexity, I was thinking of the statue of Liberty and its verse about the tired, poor, huddled masses and the wretched refuse of Europe's teeming shore. No other city has so comprehensively and so massively welcomed—if you can call it welcome—surge after surge of immigration. For a hundred years, New Yorkers have seen them tumble out of the steerage and begin to work their way up into America: the Germans and "Bohemians," the Irish, the Italians, the Eastern European Jews . . .

They concentrated in neighborhoods, and some of them concentrated in certain occupations, but we could watch that sequence of nationalities—or recognizable parts of it—in politics, in the professions, even (Was it Diane Ravitch who pointed this out?) in organized crime. We certainly watched it among our colleagues in *The System*: the clusters of Irish and then Jewish names moving up from the ranks to the chairmanships, to the principalships, to Livingston Street and the superintendencies, and then making place for the next cohort.

There was plenty of jostling and plenty of narrow-eyed ethnic suspicion, but

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each group in turn did teach the children of the next group to arrive and did remove language barriers, and empathize, and provide models and—hope.

Of course, those were the days before society acquired the strange phenomenon of *non-ethnic, non-racial* minorities—self-defined minorities—such as the underclass—with agendas that had nothing—perhaps *less than nothing* to do with acculturation . . .

The emergence of the new minorities reminds us of the difference between a community and an aggregation which Disraeli noted in the industrialized society of his day. He said, “There is no community in England; there is aggregation, but aggregation under circumstances which make it rather a dissociating than uniting principle.”

He draws a terrifying picture of the formation of an underclass—a picture that is relevant today. In the city where we work, there is little or no community any more. There is aggregation—the forming of groups. And the difference is profound. Communities have consciences. Aggregations have programs. Communities work by civility. Aggregations get their way by stridency. (I might add that when an aggregation is particularly determined to get its own way, it announces itself as a “community.”)

The fundamental difference between a community and an aggregation is really the difference between what is in one’s *interest* and what one *desires*—between one’s hope and one’s appetites.

A community shares a hope; hope is an activity of the spirit. An aggregation simply *wants*, with a brutal urgency. The human mind is so complicated that intelligence and other gifts of the spirit can actually regulate desire—or it can be prostituted to desire.

A nonjudgmental culture—an indifferentist culture—a nominalist culture—a polymorphous-perverse culture, if you will—puts desire ahead of interest, because desire can be so readily expressed; it has that beet red infantile immediacy. In such a culture, hope is replaced by the arithmetical sum of appetites.

Those appetites have made their way into much of our lives in this city. They are a large factor in explaining the recent turbulent changes in the school system.

But before we go on to consider these changes, let us think for a few moments about the psychological preconditions of the past successes of the school system.

First, as to the personal progress of the child.

It depends on—it almost *consists of*—learning to reach decisively beyond the present. In 19th-century romantic language, it is the conquest of Time by the Will. (We shall return to the will a little later.) In classical terms, it is the seeking of a good more enduring than transitory gratification, more satisfying than the mindless indulgence of appetite. The saddest immaturity—the most stultifying, from the Latin *stultus*, foolish—is to accept appetite as

a rule of life. The most debilitating weakness is to be unable to defer gratification. The most grievous failure in life is the lack of self-discipline.

Self-discipline is not an instinct; it is learned from adults, sometimes subconsciously, sometimes painfully. Even when learned in childhood, it often falters in adolescence, when desire takes on new forms and an anarchic intensity, and when the young brain is awash with hormones and with the erotic imagery of popular culture. The adult who tells an adolescent “You have the *right* to obey your impulses” is guilty of treachery to the adolescent as well as to the community.

Second, as to the social and economic progress of the individual.

This also depends on a sober concern for the future and a respect for those institutions such as the family which provide for the future. That may not seem so pressing to the rich, who have a long way to slide, though not as long a way as they may think. But if the children of the poor are taught that they need not be constrained by the social order and its civilities and its prudential demands; that they have the *right*—unearned—to set their own standards, or no standards at all; that they are mysteriously able to “think for themselves”; without serving any apprenticeship to reality, without in fact learning to think—as distinct from feel or want—they will never, never escape from poverty.

Only recently have we begun to go behind phrases like “breaking the cycle of poverty” and to distinguish between the circumstantial poverty and normative poverty, poverty that becomes the norm, between the so-called “working poor” and the so-called “underclass.” The working poor may not be employed, but they are employable, or would be except for some bad luck or old age. The underclass is not really a class so much as a caste; it has its own way of life; it has the strange cultural property of reducing members’ desire to escape; or as Professor Banfield says, “Its members prefer the ‘action’ of the street to any steady job”—and I will add, to any commitment.

If we accept youngsters’ feckless or undisciplined behavior on the grounds that it cannot really be prevented—“You know they’re going to do it anyway”—we objectively (as the Marxists used to say) push them toward the underclass.

Third, as to the progress of ethnic groups.

The immigrant groups that have “made it” quickly in American society—various Asian groups are the latest—have had one striking characteristic in common: they brought to this country a strong sense of *family*, a simple respect for parental authority. It is characteristic of the various groups that have *not* fared so well that family structures and authority had, for one reason or another, been weakened. It is clear that any school policy that shields children from their parents’ traditional values and authority—any practice of addressing children over the heads of their parents—tends to hinder the progress of the group and to “emancipate” more and more of its children into the underclass.

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At no time have I been more aware of the danger to the family than during the episodes last year on the condom distribution policy that constituted what the media describe as the most bitter battle in the history of the city's public schools.

Anyone who attended the hearings in the hall of the Board of Education and heard the loud hissing when speakers used the words "family," "marriage," "man and woman" and "children" would agree that there are strong forces in this city opposed to the family.

The chancellor's program, passed by the seven-member board 4-3, distributes condoms without giving an opportunity for parents to refuse consent. In the recent Staten Island case, the court struck down the petition by parents that an "opt-out" provision be instituted.

Almost 100 years ago, Chesterton wrote that "the family instinct is the indestructible minimum of morality; the one germ of social consciousness. Whatever institution or idea we trust as a substitute for the family becomes a cold temple. The builder of that cold temple shall see his folly: the gradual dehumanization of his own children before his own eyes."

Well, the school system has survived political predators, *ex parte* theoreticians, social engineering by amateurs in large private foundations, the censorship of the past by the self-appointed future—and no doubt it will survive its present demoralization and the demoralization of society. But it will not survive intact. That is already clear.

I have used the term "demoralization" as a pun. I mean it to refer both to morality and to morale. I take as my text some often-quoted lines by one of the greatest of 20th-century poets:

"Things fall apart; the centre cannot hold;/Mere anarchy is loosed upon the world,/The blood-dimmed tide is loosed, and everywhere/The ceremony of innocence is drowned;/The best lack all conviction, while the worst/Are full of passionate intensity."

Yeats wrote those lines before I was born, and they have been applied at intervals to quite a number of different situations—in each of which they have seemed quite apposite. Our feelings turn out to be much the same when civilization is assaulted, no matter by whom. I shall apply the lines yet again to current affairs, and I beg you to observe that the application, though sordid enough, is not trivial.

There seems to be an extraordinary celebration going on around us, a celebration of the momentary, of the barren, of the terminal, of the involuntary, of the gross—a death-culture, in fact.

We still work hard to extend the time and the spaciousness of life; to reduce cruelty, toward animals as well as humans; to cure sterility and the natural forms of infant mortality. And yet we are inventing machines to make suicide less unattractive; establishing a broader right to "pull the plug" on the helpless; asking *why* we should not use fetal tissue to relieve the elderly—and *why* we should not break up a deformed neonate for parts; making movies that

dwell lovingly on death-agonies, decaying flesh, cannibalism, mutilation, torture. We are encouraged to collect orgasms—you have only to look at the covers of magazines that once guided young adults in the formation of families and which now guide them in the achievement of perfect orgasm—and to savor “climaxes” over and over on videotapes, because for us the orgasm is the end, not the beginning.

Any celebrity who lacked at least one alcoholic parent and who was never the victim of child abuse finds it hard to compete for our attention, because we consider a healthy family a contradiction in terms.

We cannot face the continuity of life because the continuity of life implies moral responsibility for our acts.

And to those who want to assume moral responsibility, the new “liberating” shibboleths are very daunting.

“The best lack all conviction . . .”

It is hard to act on one’s moral convictions in a society that has more and more withdrawn its protection from innocence and extended it to irresponsibility.

Recently, a leaflet made its appearance in the high schools of our System, this one published by the New York City Department of Health with funding from the Federal Centers for Disease Control. It is a practical little handbook for teenagers even suggesting techniques and equipment, such as condoms turned into “dental dams” for use in oral as well as vaginal sex. It suggests how boys may approach partners—presumably female, though perhaps not exclusively so—and those approaches have a certain endearing enthusiasm: “Getting down with you is great. It could be even better if we used rubbers. How about trying the red ones tonight?”

Now, the “gay” organizations, to do them justice, have been scrupulous about telling their clients and catechumens that while the condom is (I quote the instructional materials) “the only way to make (sex) safer, the condom does not make sex safe.” I have never seen them leave off the “R.” The implication is clear; we may take it as the expert’s judgment that there *is* no safe sex. And the implication is equally clear; anyone who takes youthful sex lightly is implicitly shrugging off a number of predictable and painful deaths. The New York City Department of Health (and the Centers for Disease Control) are also careful never to leave the “R” off “safer,” but their enthusiasm for condoms is wonderfully infectious: “Condoms can be sexy! They come in different colors, sizes, flavors, and styles to be more fun for you and your partner. You can put them on together.” These authorities, in fact, exhort the students, “Use your imagination!”

What is distinctive about this governmental educational material in pamphlet form is that it features “The Teenager’s Bill of Rights.” The rights are stated in the first person, presumably to avoid the offensive image of an adult telling a teenager what his rights are. Thus the first two rights are: “I have the

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right to think for myself. I have the right to decide whether to have sex and who to have it with.” (We may put the bad grammar down as verisimilitude.)

The sixth is: “I have the right to ask for help if I need it.” Those of us who have learned the new language of “concern” can translate that as: “I can go behind my parents’ back.”

Quite apart from the overweening circumvention of parents, quite apart from doctrinaire insensitivity to the needs of the children of the poor, how are we to evaluate someone in a position of trust who tells a child, “You don’t have to play Russian roulette, but if you do, as is your right—and *it’s so* exciting—it’s much, much safer if you take out most of the cartridges and leave only one or two”?

William Butler Yeats appeared to believe that each successive age in the world’s history had an ideal or *ethos* that could be summarized by one image; and in the poem I quoted, he says that the age which for nearly 20 centuries has revered the image of the baby in Bethlehem is now ending, and that a nightmarish new age, symbolized by a pitiless beast “with lion body and the head of a man,” is about to begin.

It is an interesting choice of images, is it not? Yeats was not exactly a Christian or a Jew, but when he says that the rocking cradle “vexed” this new creature with the animal body and the human head, and that this new creature will take charge of our souls, I sometimes fear he was a prophet.

Still, I am loath to engage in the sort of *self-fulfilling* prophecy that the New York City authorities engage in when they say of the children—in the children’s hearing—“Oh, they are going to do it anyway!” That’s a philosophy of despair. I reject it. Perhaps there still is some freedom of the will for institutions as well as for individuals.

I advance hope; hope that the people who love the New York City schools also will challenge the prophecies. I have confidence that the Cathedral Club will feel the implicit duty to help defend the institutions of education against expedient abuse.

Such defense cannot help but take a tortuous and uncertain path—mediating between the current requirements of “The System” and the abiding imperatives of our consciences. I do not have to review these issues of conscience for you. You know what they are. They are excruciating to us precisely because we are conscientiously trying to do what our system was originally designed to do.

And what should be our weapons in the defense of the schools? They are two in number. One is a conviction that the children of this era are as capable of being wholesome, productive members of society as any who have gone before them; the other is the courage to speak bluntly and truthfully about what is going on.

APPENDIX L

[The following column appeared in the *Washington Times* (April 18, 1992) and is reprinted here with the author's permission.]

Mothers choosing to go solo

William Murchison

The story, in one of our largest newspapers, speaks of American women who make their own choices, not just to become tax attorneys or astronauts, but boldly to bear children out of wedlock and, husbandless, to bring them up.

"It's the ultimate act of independence," the story says, "or the ultimate rejection of men." The moms in question are proud to have chosen a lifestyle generally condemned until a few years ago. They even have their own national support group, Single Mothers by Choice.

Choice? You can ignore that artful dodge. You can bet that, below the confident surface, most "single mothers by choice" are discouraged, anxious and confused.

They have every reason to be. The near-complete collapse of morality in our time took down with it most of the landmarks by which the pilgrimage through life used to be charted. To be lost is to be scared. To be scared is to reach out for reassuring hands.

Single-moms-by-choice are not triumphant heroines in the equal rights struggle; they are victims. As are the children they bring into the world, bearing the ageless stigma of—excuse me, Mrs. Grundy—the bastard.

What's wrong with bastardy, an ancient condition perpetrated by kings and commoners? And isn't it better than abortion, the great social evil of the age? The problem isn't bastardy per se; the problem is those who perpetuate and entrench it. Children need not just fathers and not just mothers. They need both. They need them together, and they need them permanently.

Modern people don't enjoy such "Victorian" precepts; but, as Walter Cronkite used to say, that's the way it is, and further, always will be. "Parents," writes Rita Kramer, a leading student of families, "can and should make a difference in their children's lives and the most effective way to do so is through the family as it has traditionally been defined—a married couple of different sexes living with their own children by blood or adoption and having certain hopes and expectations for their character, their education and their futures. Of course, there are variations on this ideal . . . but the traditional nuclear family . . . remains the chief agency—and the best one—for developing character in the individual and for transmitting the values of the culture."

Yet today 25 percent of all American births take place out of wedlock. It's commonplace for unwed celebrities, like Warren Beatty and Annette Bening, proudly to produce children and exhibit them for the world's admiration. Celebrities, of course, tend to be nut cases. More mainstream are the educated,

APPENDIX L

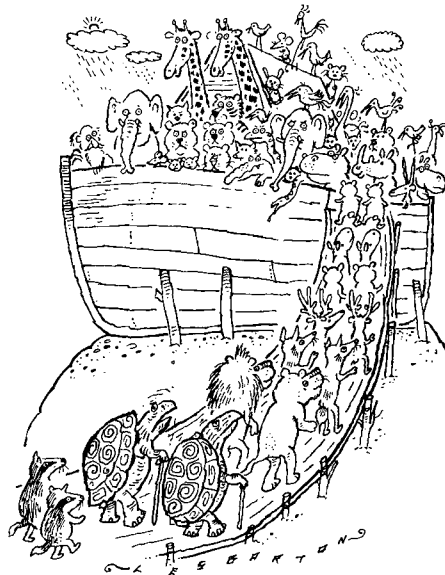
professionally successful women who, according to the National Center for Health statistics, constitute the fastest-growing group among unwed mothers.

Many of these, the newspaper story says, despair of finding the right mate, or, if they do find him, of holding onto him. Yet, being women, they want children, men or no men. If such a woman's, um, male companion impregnates her, she bears and keeps the baby, rather than letting a traditional family adopt him. Or there's the option of artificial insemination. Either recourse gives her what she wants.

Yes, what *she* wants. Forget the little mass of flailing flesh, he's not the expression of two people's love, he's therapy for disillusionment or rejection. Mom can do all the mommy things with him—zoo, concerts, photographs, story time—except model what it means to live in that strange, fundamental partnership called marriage. The lack of a male role model, attached formally if not also emotionally to the mother, assures the child only partial conditioning to real life.

Single-moms-by-choice are not pioneering new frontiers in human relationships; there are no such frontiers—only the old uplands and backwaters, all thoroughly explored. The old morality illuminated the terrain, taught one how to walk through it with a certain sure-footedness, but in our own time we've pulled up the moral lampposts and tossed them onto the Victorian scrap heap.

Single-moms-by-choice are stumbling into quicksand—and most of us are just too damned modern to call out a warning.



'It doesn't look as though we're going to get a wretched seat.'

THE SPECTATOR 13 June 1992 11

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