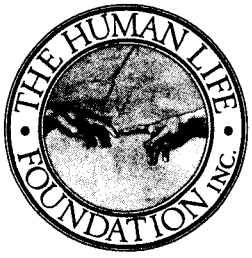
the HUMAN LIFE REVIEW



SUMMER 1996

Featured in this issue:

Special Section: "Raw Judicial Power II"

Prof. Yale Kamisar • Prof. Lino Graglia • Judge John T. Noonan, Jr.
Amici Curiae • Rev. Harold O.J. Brown • Malcolm Muggeridge

Also in this issue:

The Hon. Robert J. Dole • Tom Bethell • Thomas Sowell • Clarke D. Forsythe • John Leo • Maggie Gallagher • Paul Greenberg

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ABOUT THIS ISSUE . . .

. . . The summer of '96 will likely bring no relief from the heat of election-year politics, and abortion remains one of (if not *the*) most hotly debated issues. The Republican convention seems certain to involve a major platform battle over the issue, and President Clinton's veto of the "partial-birth" abortion ban has been resoundingly condemned by, among others, the Pope, the National Conference of Catholic Bishops and the Christian Coalition. We thought it timely to reprint here what one of the candidates wrote for us back in the Fall of '86—*Appendix A* is a reprint of then-Senator Robert Dole's article "Taking the Initiative for Life."

We also have an amazing article sent to us by a faithful reader: "The Wrong of Craniotomy Upon the Living Fetus" (p. 93), written by an obstetrician *in 1888*. It is startling in its relevance to today's partial-birth abortion debate.

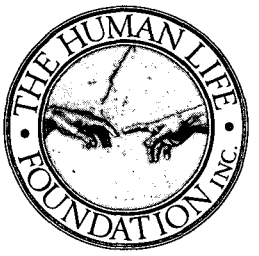
We would like to thank Naomi Wolf for her interview with our editors (back in February), following up on her controversial article in *The New Republic* (October 1995), "Our Bodies, Our Souls." (See our *Winter* '96 issue for that article and the related symposium.) We print virtually the entire interview here, along with an article by Roy Rivenberg on Ms. Wolf which appeared in the L.A. *Times* in May—we thank the *Times* for permission to reprint it.

Two recent court decisions on assisted suicide, *Compassion in Dying* vs. *Washington State* and *Quill* vs. *Vacco*, are of unquestionable importance for the moral future of our country. We have gathered here a number of commentaries of considerable force. We would like to thank *First Things* magazine for granting us permission to reprint Michael Uhlmann's compelling article. *FT* is a Monthly Journal on Religion and Public Life edited by Richard J. Neuhaus (for subscription information write to *First Things*, 156 Fifth Avenue, Suite 400, New York, N.Y. 10010).

We thank the *American Spectator* for permission to reprint Tom Bethell's column in *Appendix B*. Maggie Gallagher, whose column is reprinted in *Appendix F*, has a new book, *The Abolition of Marriage: How We Destroy Lasting Love*, available from Regnery Publishing Inc., 422 First Street, S.E., Washington, D.C. 20003.

We are grateful, as usual, to the *London Spectator* for providing us with some much-needed humor. We wish our readers—after they have read all the weighty matter here—a well-deserved summer respite.

MARIA MCFADDEN
EXECUTIVE EDITOR



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INTRODUCTION

Almost twenty years ago, Malcolm Muggeridge said "Of course, it would be quite wrong to think that the offensive which is being mounted on our Christian way of life will stop at abortion," adding "already there are the rumblings of a new, strong push in the direction of euthanasia."

Without question, that strong push is now upon us, spearheaded by recent court decisions advocating "assisted suicide" legislation. What took it so long? Well, "St. Mugg" credited Adolf Hitler with giving euthanasia "a bad name"—there had to be a decent interval before the crimes of Nuremberg could be advocated as "compassionate" social policy. Even so, when the Supreme Court legalized abortion on demand in 1973, there were many who held that legalized "mercy killing" would follow ineluctably.

Needless to add, such "Slippery Slope" predictions were labelled "extremist" then, so it is fittingly symmetrical that one of the two "assisted suicide" *fiats* is based squarely on *Roe* v. *Wade*, invoking the same "liberty" to kill. As regular readers know, this journal has from its beginning considered euthanasia to be abortion's fraternal twin; although our primary focus has been on abortion, we have by no means neglected the many faces of the "Right to Die" movement, both here and abroad (including of course Holland, the acknowledged World Leader in modern "final solution" applications). Thus the reader will find frequent references to this long history in what follows.

But we begin with a freshly-minted overview of the new situation by our resident wordsmith, William Murchison. Like Muggeridge, he sees the "cultural war" we are in as fundamentally an assault on traditional religious beliefs: "America had more than a religious founding," he writes, "it had a religious upbringing" which has been repudiated by, for instance, the judges who have now baptized suicide. As Murchison puts it, "No such decisions could have come down from American courts in what we might pleasantly call the old days."

As noted, pushing for euthanasia has become a worldwide affair. Just a few years ago, Britain looked ripe for legalization; indeed, the 1993 "hard case" of one Anthony Bland had made "change" seem inevitable, and the customary Select Committee was set up by the House of Lords to confirm the new consensus. But as Anthony Fisher relates here, a funny thing happened: although the Committee as selected was considered overwhelmingly favorable to legalization, the good Lords dutifully did what few expected—they actually *investigated.* They even went over to Holland, to see for themselves just how modern compassion worked.

And they were appalled by what they saw. So in Britain at least, "progress" has for the moment suffered a setback: it's quite a story, which Father Fisher—he's a Dominican priest who was studying at Oxford at the time—tells like a good lawyer (he's *that* as well) should.

Next we hear from Mr. Michael Uhlmann, also a lawyer (he was an Assistant Attorney General in the Reagan Era) who doubles as a first-rate journalistic commentator. As you will see, he provides an expert's analysis of the two "assisted suicide" court decisions which are the subject of the *ad hoc* symposium that follows. As Uhlmann says, the burning question is: What will the Supreme Court do? If the Justices follow the "logic" of the lower courts, will they not ignite "a passionate political and moral controversy every bit the equal of the one they generated with *Roe* v. *Wade*"? Uhlmann clearly thinks that they will.

So do we, which is why we've titled our informal symposium "Raw Judicial Power II"—recalling Justice Byron White's description of the "logic" of *Roe*. It begins with a brief commentary by Professor Yale Kamisar, widely acknowledged as *the* authority on euthanasia, who fixes the judicial starting point for "assisted suicide" and explains the great leap forward the courts have now made. Next comes Professor Lino Graglia, who pinpoints what it all *means*, namely, that there is a "pressing need" to take policy-making—and the power to subvert the rights of the people—away from unelected lawyer-judges who are usurping those rights.

As Mr. Uhlmann explains, the "assisted suicide" decisions have not escaped opposition within the judicial system; as it happens, the judge who presided over one appeal was John T. Noonan, Jr., who before his appointment (by President Ronald Reagan) to the U.S. Court of Appeals was a regular contributor to this journal. In Uhlmann's opinion, Judge Noonan "completely demolished" the arguments in *Compassion in Dying*; having read the opinion ourselves, we not only agree but also think that our readers would like to see for themselves, so we have reprinted Noonan's *Analysis* in full here (citations and all), just as it appeared in the *Federal Reporter*.

It is followed by excerpts from an *Amici Curiae* brief filed in the "other" (i.e., New York) suicide case by some prominent civil-rights supporters. Again, we think you will want to see it yourself—perhaps especially if you are unfamiliar with all the legal "niceties" involved?—so we have reprinted it *verbatim*, along with details about Who's Who, etc.

The next commentary comes from another old friend, Rev. Harold O.J. Brown, who summarizes the "deadly similarities" whenever killing is considered to be the "solution" to a problem. And we conclude with the text of the late great Malcolm Muggeridge's address to a "pro-life" group in Canada. The year was 1977, but what Muggeridge said then rings even more true now, as you will see.

We then swing back to our "twin" abortion issue, specifically to a magazine article to which we have already devoted a great deal of attention in our two

previous issues: Ms. Naomi Wolf's "Our Bodies, Our Souls." Anyone who has not read our previous coverage will be brought into the picture—and then some—by Mr. Roy Rivenberg, who covered the whole controversy for the Los Angeles *Times*. So we trust you will be prepared for the lengthy "conversation" with Ms. Wolf herself, which our editors recorded earlier this year. We think it explains Ms. Wolf's "new" position better than anything else we've seen, and we hope you will find it all as illuminating as we did.

We also hope you're ready for more, because there is a *lot* more. As we write, the "hottest" controversy is over "partial birth" abortions, which the U.S. Congress voted to ban, but which were "saved" (unlike the babies involved) by President Bill Clinton's veto. But surely you know all this—it's been one abortion story the media could *not* ignore. What you may not know is, the crushing of fetal skulls is by no means a new "issue"—we didn't know it either until we were sent a copy of an address delivered in *1888* by a then-leading gynecologist (fittingly, he spoke in Washington, D.C.).

How we got it is also interesting: quite unbeknownst to us, a professor at a famous women's college has been a (secret?) reader for over a decade; coming upon the yellowed text during research, he "naturally" thought of us, and sent a copy. Of course we wouldn't think of revealing his "true identity" lest he suffer the consequences of his rash action, but we assure you he does exist! And we bet you will find it fascinating reading as well. To be sure, it *is* 108 years old; back then formal addresses were expected to be both long and flowery, and the distinguished Dr. Samuel Busey did not disappoint his audience. So we thought to ask our friend Ellen Wilson Fielding to give you a commentary on it all, which she has done in her accustomed style (i.e., gracefully). Indeed, Ellen's piece is a gem on its own; Dr. Busey's speech is a piece of history that has leapfrogged more than a century to become "news" again.

* * * * *

Our appendices this issue are fewer than usual—with all that has come before, we simply ran out of room—so we've tried to pick the most interesting of the many available pieces. Indeed, *Appendix A* might have run as a lead article, which in fact it did, in our *Fall* '86 issue. At that time, then-Senate Majority Leader Robert J. Dole was contemplating another run for president (in 1988), so we were not surprised that he would send us something (as a number of other "hopefuls" did as well) for our unique audience. But on re-reading the piece, we concluded that featuring it here might be construed as intended to embarrass Mr. Dole, who has, as you will see, changed his anti-abortion position since that time. That is not news: he may well have changed it again by the time you read this—the pressures of this year's campaign are much different from those of the Reagan Era. What this decade-old article does make clear is, Bob Dole was closely involved in The Issue throughout most of his long Senate career; if he does not "really" understand it even yet, he *ought* to?

You might say that *Appendix B* is also about the "meaning" of the Abortion War; Mr. Tom Bethell (one of our favorite journalists) ranges widely over the battlefields, from the current "partial birth" offensive to the long-term strategic factor—as Bethell puts it, "Abortion could be a very conspicuous thing" were the media to actually show "those horror pictures of aborted babies" because they might well "stir our deadened consciences and turn the country against our ongoing holocaust"—*amen*. Along the way, Bethell reminds us of another well-kept secret: blacks have been the disproportionate victims.

He is followed by Columnist Thomas Sowell (*Appendix C*), whom we'd call the nation's most articulate "African-American" spokesman, except that it wouldn't *fit*: we're reminded of Graham Greene's retort when branded a "Catholic novelist"—he was, Greene insisted, a novelist who happened to be Catholic. That *does* fit. Here, Mr. Sowell unblinkingly examines the "rhetoric" of abortion, specifically *re* the "partial birth" controversy; it certainly requires no comment from us.

Appendix D also zeroes in on the media's peculiar habit of *mis*-reporting the abortion story; in this case, Clark Forsythe, Esquire, attempts to dispel the "legal nonsense" written about "a constitutional amendment that would ban abortion" which, it is routinely alleged, is embedded in the Republican Party's platform. *Nonsense*, says Mr. Forsythe; the plank actually declares that the unborn child is a *person*, and therefore due the protections of the 14th Amendment—no specific amendment, nor any language for it, is in that plank. Nor is an amendment a criminal code: in the first and most famous of the "Baby Doe" cases, the poor little Bloomington Baby was a born citizen of the United States, yet Indiana's Supreme Court denied him his 14th Amendment rights, and in effect sentenced him to death for being imperfect (his crime was Spina Bifida, remember?).

In short, the media has been "reporting" not the facts but rather its own *fears*. Mr. Forsythe also performs anothers public service: he tells you what the 1992 Republican and Democratic platforms actually *said* about abortion—another rarely-reported story.

Of course the public focus has been on the GOP platform *only*; it is a given that the Democrats are The Party of Abortion—it's never *put* that way, but it surely could be—whereas Republicans are cast in the role of unbelievers in their own official position. As we write, Mr. Bob Dole explains this strange situation by claiming that, *because* abortion is "a moral issue," Republicans must tolerate "different" views. Would this "compromise" have worked with slavery? In *Appendix E*, Columnist John Leo fantasizes on that very question—a daunting thing to attempt in so short a space—and pulls it off, expertly. It may make you do the unimaginable: laugh while grinding your teeth.

In *Appendix F*, Columnist Maggie Gallagher brings us back to the "assisted suicide" craze, and wastes no words in getting to the heart of the matter: what it *means* is, "physicians have a right to kill" and no "euphemistic trappings" can

hide that awful truth. The question is: Why would doctors—of all people—*want* such a right? As Gallagher tellingly puts it, "it is keeping patients alive, not helping them die, that requires extensive medical training"—executioners can be much more cheaply obtained.

We conclude (*Appendix G*) with another syndicated column, from Paul Greenberg, who might be called President Bill Clinton's home-town pundit—he's the editorial page editor of the Little Rock Arkansas *Democrat-Gazette*. He begins by reminding us of Mr. Clinton's most notorious appointment, ex-Surgeon General Joycelyn Elders, who once told a U.S. Senate committee that "the number of Down syndrome infants" was now *much* lower (down 64% in Washington state) than "it would have been without legal abortion." *Think* about that, Greenberg says, and the "ever-expanding culture of death" it symbolizes. And then consider that, in the Ninth Circuit Court's pro-death ruling on "assisted suicide," there is the "almost offhand observation" that "The slippery slope fears of *Roe*'s opponents have, of course, not materialized."

You might say that Mr. Greenberg's column, brief as it is, summarizes all that has come before it in this issue—which is, we think you will agree, a very great deal, a broad swath of disparate "issues" that meld into the Culture of Death which the Pope of Rome can see clearly, while it passes unseen through our infallible courts.

As luck would have it, there is less room than usual for our "welcome relief" cartoons, nor can we find many that really fit such ultra-serious subjects. So we've simply indulged our funny-bones, and run the ones that made us laugh, in the hope that they will do likewise for you, our most-deserving reader. We'll try to have more room in the next issue, coming soon.

J. P. McFADDEN
EDITOR

What Elections *Won't* Fix

William Murchison

Defenders of school prayer are fond—and rightly so, I might add—of spicing their arguments with language that shows the high regard in which earlier American statesmen held religion. For instance, there is George Washington's declaration, in the Farewell Address: "Of all the dispositions and habits which lead to a political prosperity, religion and morality are indispensable supports."

"Moral habits," we hear the resonant voice of Daniel Webster intoning, ". . . cannot safely be trusted on any other foundation than religious principle." There is Abraham Lincoln, as well: "Intelligence, patriotism . . . and a firm reliance on Him who has never yet forsaken this favored land are still competent to adjust in the best way all our difficulty." This, in 1861, before Honest Abe knew the full measure of that difficulty.

The implication was decidedly plain: The American people were a people trustful of God, alert to His purposes, respectful of His ordinances. A *religious* people, in short. Because they were such, so were their democratically-chosen leaders, raised up from the same family situations, the same schools, the same cultural context. By none of which do I imply that the ordinary American politician, stretching out his legs at the Council of Constantinople or the Synod of Dort, would have passed without notice. A lot of vague theological acquiescence underlay American culture. On the other hand, it remains demonstrable—the Harvard history department couldn't prove otherwise—that the God of Abraham, Isaac, and Jacob; the God of the Prophets, personified in due course as Father, Son, and Holy Ghost, informed the moral consciousness of the United States for generation upon generation. America had more than a religious founding; it had a religious upbringing.

What has so transparent a matter to do with the questions at hand—namely, decisions by the federal judiciary this past spring concerning assisted suicide and homosexual rights? The connection, I hope, will become clear. Since the Sixties, the religion-saturated society of the past has ceased to exist. The decisions in question virtually prove as much. No such decisions could have come down from American courts in what we might pleasantly call the old days. The new decisions are marks of new times—

William Murchison, our contributing editor, is a nationally-syndicated columnist based at the Dallas *Morning News* and author of *Reclaiming Morality in America* (Thomas Nelson Publishers).

paganized times. Not fully paganized, of course. Not for us yet the marble statues, the pinch of incense in the fire, the temple virgins, the sacrifices. Not to date. And yet the moral atmosphere of the United States in the 1990s—an atmosphere still and stale and stifling—is post-Christian. As are the elites whom that society raises up to power: conspicuously, the power exercised by the judiciary.

About all this we have to be very clear. Otherwise we miss the thread connecting the two federal-appeals court decisions upholding the right to assisted suicide; the U.S. Supreme Court decision striking down a Colorado referendum cancelling and forbidding special protections for homosexuals and lesbians; and last, but far from least, *Roe* v. *Wade*.

The thread is a view of human life as contingent, as divorced from responsibility to its author, known conventionally as God; life as a power relationship. It is a profoundly non-, not to say anti-, religious view. We embrace it at peril to our souls. (Souls? Quaint concept. Nothing in the Constitution about *that*!) The old moral consensus saw life as interconnected through the common relationship in which living beings stood to a Creator. The modern consensus is . . . there *isn't* a consensus. The religious view of life persists without dominating life. It grows weaker in the public square, where laws are made and interpreted, because the elite which shapes those laws (and perforce our viewpoints) is on the side of the pagans. Not so much in form perhaps as in spirit. George Washington himself would be hard pressed to predict for modern Americans a "political prosperity" based on their religious habits. Those habits are seriously attenuated.

That will do for preliminaries. It is time to look at the decisions that are the subject of this discourse. Apart from *Roe* v. *Wade*, 23 years old now, there are three decisions worth our notice—all quite recent.

In March, a panel of the U.S. Court of Appeals for the Ninth Circuit, sitting in San Francisco, ruled unconstitutional a 140-year-old Washington state law making physician-assisted suicide a crime. How so? Because the law in question, according to the court, transgressed the Fourteenth Amendment's guarantee of due process of law. In other words, the old law constricted human freedom in a fundamental sense. It was the first time a federal court had signified support for what might be called a constitutional *right* to die.

The following month, in Manhattan, the U.S. Court of Appeals for the Second Circuit struck down portions of a similar law. The New York court's rationale was different. The New York statute, dating, like Washington's from the 19th century, supposedly violated the Fourteenth Amendment's

guarantee of equal protection of the laws. In other words, a patient who wanted his doctor to kill him, using some drug or other, was unfairly handicapped, compared with a dying patient who could simply wave off a doctor administering unwanted treatment. This disparity would never do, constitutionally speaking.

The third case under consideration likewise involved the Fourteenth Amendment; it had to do, however, with homosexuality rather than suicide. Colorado voters, in a statewide referendum in 1992, had approved an amendment meant to prevent communities from according homosexual behavior special and specific protection—as if homosexuals labored under much the same civil-rights deprivations as blacks formerly did in the South. The U.S. Supreme Court disagreed with the amendment's purpose and thrust, six to three. Justice Anthony Kennedy declared that no state could "deem a class of persons a stranger to its laws."

Constitutionally, the shadow of *Roe* v. *Wade*, which institutionalized abortion on demand, lay across the assisted-suicide decisions. As Michael M. Uhlmann writes in *First Things*, "Slippery slope arguments are often overdone, but the fact remains that virtually every argument for taking a human life *in utero* can be applied to a human life *ex utero*, including yours and mine." Indeed, the Washington state case "turned precisely on the point that abortion and assisted suicide share a common rationale," found in the Due Process clause.

We see here *how* the courts moved on a straight line, from one point on the slippery slope to the next; what we fail to see, from learned analysis, is *why* they moved in this fashion and direction. The *Roe* decision, the assisted suicide decisions, the gay-rights decision—all are painfully modern decisions. None would have been possible prior to World War II. That is not because such daring legal logic was too great to attempt; it is because, thoughtfully contemplating such logic, the larger society would have laughed—or regurgitated. That society, with important qualifications and exceptions, was Christian.

The society receiving the new doctrines from on high is in the process of paganizing itself: divorcing itself from traditional religious witness and constructing a sort of new religion based on the satisfaction of whim and impulse. That is why the new doctrines, on landing, settle gently atop the soil. If many find the doctrines alarming, others deem them appropriate.

Assisted suicide—a horror? A 1996 poll by Michigan State University and the University of Michigan showed 66 percent in favor of precisely that horror, with most Michigan doctors concurring. (Michigan is the state

whose most famous resident since Jimmy Hoffa is the suicide doctor, Jack Kevorkian.) It was not so, just a few years ago. As for abortion, polls customarily show as much support for it—though not without restriction—as they show hostility. Yet at the time of *Roe* v. *Wade*, every state in the Union protected unborn life with greater or lesser stringency.

Homosexuality, studies show, is the "lifestyle" affected by a tiny percentage—no more than 2 percent. Yet tolerance for that lifestyle has made the lifestyle itself wholly, almost monotonously, visible. The Colorado amendment struck down by the high court drew opposition from 46 percent of the voters—most of whom (because the homosexual population is low) evidently deemed homosexuality a thing not to get worked up about.

Where is the pagan element in all of this? Below the surface, certainly. Polls show the United States to be, at least nominally, a religious country. Large majorities of us profess belief in God; around half point to some kind of church affiliation. On the other hand, there is the question of how deeply-rooted are such beliefs. The growing embrace of abortion, euthanasia, and gay rights is hardly what one would expect in a culture devoted to the religious view of life.

There is good reason one would not expect such a result. It is that all three phenomena contravene the Jewish and Christian understanding of life as proceeding from the mind and power of God. *Genesis* 1 is the operative text: "So God created man in his own image, in the image of God created he him; male and female created he them" (an account retraced a few short verses later in Chapter 2). Freeborn Americans may make up their own minds as to the scientific premises, if any, behind the account of man's creation—just so long as they (or anyway those who profess Jewish or Christian conviction) embrace the idea of life as sprung from God.

The implications of such an idea, in their working out, require only a very little consideration. To wit: God, the giver, imposes on man, the recipient, certain terms, certain obligations. Reverence is at the top of the list. Man withholds it, and God, in *Genesis* 7, breaks up the fountains of the great deep. God gives to the Israelites a set of tablets on which are engraved 10 Commandments. The first of them soars above the rest: "I am the Lord thy God . . . Thou shalt have no other gods before me." Not even one? Not that even.

The body formed (according to the *Genesis* narrative, so beguiling it becomes unforgettable) out of dust. On that showing, whose body is it? The occupant's? Ah, but if so, how explain the Lord himself, poking around the Garden of Eden, reproaching and punishing his fresh creations for taking

too much on themselves? What about personal autonomy? Can't a man do what he wants with his own body? Evidently not. Nor with someone else's. Murder comes early in primordial affairs. Out goes the murderer—a mild enough punishment, death penalty foes should note with gratification—to the Land of Nod.

So *everything* is the Lord's—the earth and the fulness thereof. To man is left the respectful use of those commodities. Such a dispensation involves the narrowing of choices, starting with those that involve the primary gift of life. The gift is to be cherished; it is to be protected and honored. Early on, the Christian church saw the inconsistency of honoring God and spoiling his creation through abortion. The church moved swiftly and effectively to accord unborn life the protection it (mostly) enjoyed up to recent times.

Suicide—the discarding of one's own body before the Lord's call to a higher estate—also met with reprobation. One recalls the great Florentine in Dante's Inferno, consigned there because, his body racked by torture, he had killed himself. A hard case, of the sort that proverbially makes bad law, but an arresting one, too. The owner of the body—so Christian witness would have it—is not the same as the tenant. The owner is God, the tenant is the particular recipient of the gift of life. The owner's rights take precedence, as would be the case in a rental property where major alterations require advance approval. If that sounds stringent, it must be remembered that the teaching of the church always held that life is good. There is nothing surprising in this. In the religious understanding, a gift of God, requested or otherwise, is *ipso facto* good—a thing over which to rejoice. Would we suspect God—come on, now—of bestowing something questionable or worthless?

Not perhaps in prior times. The late 20th century is of another turn of mind. Looking the divine gift horse in the mouth is our speciality: accepting his offerings with skepticism or, sometimes, simply turning them back untouched, untasted. What is abortion in the end but the rejection of the fundamental gift, which is life itself? To the offer that humanity should become in some sense a co-creator of life, 1.5 million mothers each year reply, in effect, thanks but no thanks.

Life, in the Nineties, is biology: pure process, a marketplace transaction. No wonder "choice" makes a beguiling slogan. Choice is at the heart of modern living. In a marketplace transaction the buyer chooses freely. The din of the great bazaar—buy this, buy that; wait, what if I throw in . . .?—is as nothing to the consumer. The rupees in the consumer's purse are her

own. No agency (particularly an invisible one) can oblige her to buy. Nor do the proffered goods remain the same year after year. Like automobiles, moral fashions change. Who changes them, God? Not at all. The moral fashions evolve in accordance with consumer preferences. Wisdom for one age isn't wisdom for another—unless you wish to regard it as such; which is certainly your right in this diverse, pluralistic culture. Just don't expect other denizens of the culture necessarily to agree.

The transformation of life, from divine gift to marketplace commodity, began naturally in the human mind—in the argument, more widely accepted as time went on, that there is freedom to accept and freedom to reject. However, it required the U.S. Supreme Court to convert this interpretation into national policy. Now the federal courts bid to reinforce the tenant's rights. A life begun through choice may be ended by choice. There is logic if you put it that way. Non-divine in origin and shape, life becomes—would "dispensable" be the word? Numerous Americans certainly appear to regard life as useful and worthwhile only under restricted circumstances, such as good health and prosperity. That this view of things overthrows the religious order hardly troubles them. Theirs is the pagan view. Life belongs to *them*, not to anyone else: certainly not to some distant God, however insistently He may claim proprietary rights.

The disconnection between God and life is patent in court decision after court decision, including, conspicuously, *Planned Parenthood* v. *Casey*, which in 1992 upheld *Roe* v. *Wade* ("At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.") Whatever religious understanding may have formed our thinking in the past, no such understanding cuts the least ice with modern secular-minded jurists, who would be embarrassed to act on a principle that might be described as resting on a religious assumption. Granted, God isn't in the Constitution. (Nor has anyone suggested, now or two centuries ago, that He be placed there.) The larger point is that there was never any compelling need to place Him there. The sense of His authority was embedded in all—or anyway nearly all—hearts and minds. The religious consensus was an impenetrable barrier to judicial experiments such as go on right now in the euthanasia cases.

It is, to say the least, otherwise in the diverse, pluralistic Nineties. The religious consensus is gone. There is a gingerliness, a delicacy regarding God. Beliefs about life and the universe, the court claimed in the *Planned Parenthood* case, "could not define the attributes of personhood were they formed under compulsion of the state." Not that compulsion had hitherto been the indicated technique. The old consensus made compulsion largely

unnecessary. As for homosexuality, here again a "life" issue arises, if in pronouncedly different circumstances. The Supreme Court, refusing a state the permission to rebuke sodomy, yawns at the Christian moral understanding. The logic of the court's decision is that homosexuality and heterosexuality stand in an equivalent relationship. Society—despite a Supreme Court precedent 10 years ago upholding Georgia's sodomy statute—can't judge between the two conditions. We have to take them both, the court seems to be saying (however inconsistently, given the Georgia precedent).

But why can't we judge? Our religious tradition bids us judge. God, the creator of life, was assumed—at least until a few years ago—as competent to define through his earthly spokesmen those uses of the body which were permissible and those which were not. This right of definition He exercised on more than one occasion, as Scripture makes plain. Heterosexual marriage, and to just one partner at a time, was the norm—which norm the secular society had every right, and duty, to appropriate and protect. But, as is frequently noted these days, that was then, this is now. Perspectives, it seems, are evolving. There are new ways of apprehending truth. What is wrong—runs the question—with a serious and loving homosexual relationship? And who are these religious rightists who seek to impose their morality on everyone else? We see how things stand: the human body, never mind its origin and destination, is for pleasure and personal satisfactions. The prescriptive nonsense of some long-ago and faraway deity doesn't wash.

Even various progressive churchmen get in the secular spirit. A panel of Episcopal bishops recently acquitted a colleague on the charge of having illegally, and unscripturally, ordained a noncelibate gay man to the diaconate. Views on gay noncelibacy, according to the bishops, are—you guessed it—evolving. What we believed yesterday is of doubtful relevance today.

Such is the cultural climate in which federal jurists operate as they ponder basic questions having to do with the meaning and purpose of life—questions in which jurists, to say the least, cannot pretend to specialize. The paganization of the culture aids their search for "values." Without a deity as touchstone of right and wrong, propriety and impropriety, the judges fasten on the standards of the marketplace. One might on such grounds exculpate the judges. They can't help it, can they, if the society for which they supposedly act is confused? Of course they can't. What they can resist is the impulse to enter the empty public square, whistle up a crowd, and start laying down new law.

The times are as confused as any times have been for 2,000 years (an

indication, perhaps, that clarity, a more normal state, lies not too far over the horizon). But that state of affairs imposes a different obligation on judges—especially unelected judges—than the one they imagine. Rather than rubber stamp the doctrines of the new paganism, the judges owe us the duty of caution and restraint. In times like these, the need to rely on precedent is immense. As Mr. Justice Scalia observed in the Colorado case, "This Court has no business imposing upon all Americans the resolution favored by the elite class from which the Members of this institution are selected, pronouncing that 'animosity' toward homosexuality is evil . . ."

As it is, the judges have undertaken our moral reformation—the scrubbing away of social scourges like prejudice and superstition. Their honors do not quite get away with it because the "prejudices" and "superstitions" of the larger society—e.g., respect for life—remain rich and vibrant in various sectors of that society. On the other hand, the judges haven't exactly been routed horse, foot, and dragoons: not by the scathing wit and brilliance of Antonin Scalia, not by the steadfastness of Clarence Thomas.

The exponents of a religious worldview are weak and disorganized: unsuccored indeed by the very churches whose spiritual claims they defend. Opposition the religious can whip up when they want to, which is often; restoration of the old consensus is a task for which they have not yet found the handle. Consider what they are up against: the joys of indulgence, intemperance, and self-worship. These glitter in the sunset of the old civilization. The old, vital connection with God sags like the flesh of an octogenarian facing up to a once-unthinkable question: Is it time to go? Today? This minute?

The proponents of "cultural change" as a countermeasure against abortion meet with occasional scorn on the part of supposed allies who prefer political tactics. The reproach in principle is false. Cultural change of a deadlier, more squalid sort is what brought the judiciary, and the nation, to this present pass. All the presidential elections in the world won't fix it, nor the congressional elections either; nor any proposed constitutional amendment you might name. What will fix it is broad and general and public recovery of the sense that—well, why not go straight to the source?—"In the beginning God created the heaven and the earth;" and, that done, took a pinch of dust, sifted it perhaps; weighed it in His hand; formed a discernible shape; "and breathed into his nostrils the breath of life; and man became a living soul."

Imagine that. Yes, just imagine.

Why the Lords Rejected Euthanasia

Anthony Fisher

In the early 1990s pressure for the legalisation of euthanasia in Britain was mounting. Euthanasia bills had failed to gain parliamentary support in the past, but new bills were now proposed. The climate of opinion seemed to be changing, and British supporters of the European Community offered the Netherlands as a model.

While euthanasia remains a crime under the Dutch Penal Code, there is an agreement between the principal medical association, the courts, law enforcement agencies and the parliament that doctors who perform voluntary euthanasia within certain guidelines will not be prosecuted. In 1991 the European Parliament's Committee on the Environment, Public Health and Consumer Protection adopted a resolution in favour of voluntary euthanasia.

In the following year a consultant rheumatologist, Nigel Cox, gave a lethal dose of potassium chloride to a 70-year-old patient who was in severe pain, terminally ill, and had asked to be killed. He was convicted by the Winchester Crown Court of attempted murder, given a one-year suspended prison sentence, severely reprimanded by the General Medical Council, and required to do retraining in palliative care before returning to practice. His case became a *cause célèbre* and he was presented in the popular press as a martyr for the enlightened cause of active euthanasia, called by the American euphemism "physician aid in dying."

Meanwhile a young victim of the Hillsborough football stadium disaster, Anthony Bland, had been diagnosed as being in a state of persistent unconsciousness; an application by the local health authority led to a declaration in 1993 by the English courts that continued tube-feeding (and by implication, continued living) was not in the young man's best interests. All food, water and antibiotics were withdrawn from him and, as expected, he died nine days later.

The courts were clear that this was not a matter of simple withdrawal of futile or overly-burdensome medical treatment—something which is morally and legally unproblematical: the judges all declared that the proposed course of action was to be undertaken *with intent to hasten death.* Once again, the case was celebrated in the liberal press as a triumph of enlightened

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reason over benighted superstition about the inviolability of life, and Tony Bland's doctor and lawyer became patron saints of another euphemism, "benign neglect by physician." A number of other cases of court-condoned passive euthanasia followed quickly thereafter in the United Kingdom.

Although the English courts were unanimous in their support for the withdrawal of Tony Bland's food and water, two of the Lords of Appeal in Ordinary were clearly queasy about their own decision. Apart from filling their judicial speeches with hints of dissent from or even open protest against the new orthodoxy, they called for Parliamentary review of the issues involved. It was against this background that the Lord Privy Seal moved in 1993 that there be established by the House of Lords a "Select Committee on Medical Ethics."

Despite the innocuous sounding title, the Committee was appointed to consider whether euthanasia, passive and active, should be legalised. The Committee members were hand-picked, so it seemed, with a view to their reporting in favour of some "liberalisation" of the law: the chairman, Lord Walton of Detchant, was a member of the parliamentary voluntary euthanasia group; the only philosopher appointed, Baroness Warnock, had recently published in favour of euthanasia and had given the pro-life lobby no joy in her notorious enquiry into IVF and embryo experimentation; the only clergyman appointed, Archbishop Hapgood of York, had been an outspoken supporter of embryo experimentation and was expected to be tame on the matter of euthanasia; the only judge appointed was one of those who had decided in favour of the passive euthanasia of Tony Bland; and so on.

In fact, as we shall see, the Committee ultimately reported unanimously against any change in the law or any move toward the practice of euthanasia. The report, though not flawless, was a great victory of the pro-life cause, a great set-back to the smaller but doggedly vocal pro-euthanasia lobby, and a shock to the liberal *cognoscenti.* Why did the Committee change its collective mind?

Some have suggested it was because the committee was constituted of and by members of the House of Lords, a group many of whom were soon to be geriatric candidates for euthanasia themselves; and a number of the Lords were said by their detractors to be already permanently comatose! These jokesters were right, up to a point. That the committee was drawn from members of the House of Lords turned out to be very fortunate, though for a different reason. The reason is that that House includes many life-peers drawn from the leaders of the professions: from these they were

able to appoint significant representatives of the practices of philosophy, religion, medicine, nursing and law, among others.

I suspect that such people are less likely to be persuaded by opinion polls and slick rhetoric, and more likely to be persuaded by careful argument, than would be many of our own politicians, of indeed many of those elected in Britain to the other house of Parliament.

If it was reason which persuaded them, what were the reasons? Three, I think. First, those opposed to euthanasia campaigned very intelligently and in a united way. They demanded and achieved some representation on the Committee itself which was originally to have been so stacked with pro-euthanasia people that it offended the British sense of fair play. They arranged for the pro-lifers on the committee to have full-time parliamentary research staff support. A non-religious, anti-euthanasia lobby group was formed to speak publicly, to lobby, and to publish materials. Ecumenical meetings produced joint statements from the churches. There was an anti-euthanasia day conference in Parliament. There were tens of thousands of petitions both to parliament and to God. And probably a thousand and one other things behind the scenes. The pro-euthanasia lobby did not take all this lying down—but they were perhaps a little cocky and, in retrospect, ineffective.

The submissions that the Lords received were the second reason. As one of those who had the privilege of appearing before the Committee, I must say that I was mightily impressed by the quality of the Committee's deliberations. Wonder of wonders, they seemed to have read the numerous written submissions they had received; and more wonderful again, they had understood them! The Chairman of the Committee has since proudly declared that he had never chaired a body "so thoughtful, so dispassionate, so dedicated and so judicious."

Their questions were intelligent and fair. So were their answers in their final report. They admitted that it was the submissions which swung them. Most influential of all had been that of the Linacre Centre, a highly respected London bioethics institute originally established by the Catholic Archbishops of Britain. The centre's submission was written by its director Mr. Luke Gormally, by Professor John Finnis (of the Universities of Oxford and Notre Dame), and Dr. John Keown (of the University of Cambridge, an expert on the Dutch euthanasia situation). A great deal of other evidence was received by the Committee, including mildly anti-euthanasia submissions from the British Medical Association and the Royal College of Nursing, and stronger submissions from the churches and the pro-life

groups. Once again, the pro-euthanasia lobby were not backward in coming forward, producing a powerful array of academic philosophers and medicos, but these proved fairly unimpressive in the parliamentary committee room. I will return to the arguments which swayed the Committee later.

The third reason, it seems, why the Committee was converted was that it made a visit to the Netherlands. There to its surprise it discovered (1) that despite long practice of euthanasia in Holland and many bills to legalise it, the Dutch parliament had refused to take that step; (2) that an extreme emphasis on personal autonomy and a decline of the sanctity of life ethic among doctors were crucial ideological factors behind the practice in the Netherlands; (3) that many believed that a drive to save money on care of the elderly, demented and comatose was a factor in the practice of euthanasia in that society; (4) that standards and availability of palliative care in the Netherlands were much lower than in Britain; (5) that many doctors were concerned about the effect that euthanasia was having upon the profession; (6) that despite all the guidelines regarding voluntary euthanasia in certain specific, if rather elastic, circumstances, a significant proportion of euthanasia in Holland was contrary to the guidelines, including an alarming number of cases of non-voluntary euthanasia; and (7) that euthanasia advocates openly admit that watertight safeguards against abuse had proved impossible to devise or implement.

Dutch health officials have rather cleaned up their public relations act since then, but at the time they were probably rather too frank with the visiting Lords, who seem to have returned to safety across the channel somewhat shaken by what they heard and saw in the world's euthanasia capital.

So what did they decide?

> We recommend that there should be no change in the law to permit euthanasia . . . We consider that [the law] should not [make a distinction between 'mercy killing' and other murder]. To distinguish between murder and 'mercy killing' would be to cross the line which prohibits any intentional killing, a line which we think it essential to preserve . . . As far as assisted suicide is concerned, we see no reason to recommend any change in the law. We identify no circumstances in which assisted suicide should be permitted, nor do we see any reason to distinguish between the act of a doctor and of any other person in this connection. (§§237,260,262)

What arguments persuaded the Lords that euthanasia must not be legalised? First, the sanctity of inviolability of life. The Committee was well aware, and was reminded by many of those who made submissions to or appeared before it, that the proposal to legalise and to practice euthanasia

runs contrary to the common morality of the great civilisations, as expressed in the Christian, Jewish, Muslim and great Eastern religions, in many of the best secular philosophies, in the common law tradition, in international human rights instruments, and in the best traditions of healthcare as expressed in codes of medical and nursing ethics for the last several thousand years to today. They therefore concluded:

> Belief in the special worth of human life is at the heart of civilised society. It is the fundamental value on which all others are based, and is the foundation of both law and medical practice. The intentional taking of human life is therefore the offence which society condemns most strongly . . . Society's prohibition of intentional killing . . . is the cornerstone of law and social relationships. It protects each one of us impartially, embodying the belief that all are equal. We do not wish that protection to be diminished and we therefore recommend that there should be no change in the law to permit euthanasia. . . . (§§34,237)

But do not people have a right to decide for themselves how and when they should live and die? The argument from autonomy was put very strongly to the Lords by such leading lights as Professor Ronald Dworkin and Sir Ludovic Kennedy. But the Lords refused to swallow the line that freedom or autonomy is absolute: it is in fact properly confined by moral reason (such as the principle of not killing the innocent) and by the requirements of the common good. Regarding the latter they observed:

> Dying is not only a personal or individual affair. The death of a person affects the lives of others, often in ways and to an extent which cannot be foreseen. We believe that the issue of euthanasia is one in which the interest of the individual cannot be separated from the interest of society as a whole. (§237)

The Lords were too well-informed by half to be swayed by the rhetoric of a supposed right to be killed by doctors or anyone else, or a supposed right of doctors or anyone else to kill. No such right has ever been recognized by common morality, secular and religious, nor has it ever been known to the law, or to medical ethics. It had been rejected by the World Medical Association, the British Medical Association, and by every other medical and nursing association outside Holland—even if some are becoming rather mute on the matter. It has also been rejected by every church to speak of, and these have in general been far from mute on the matter. The supposed "right" to euthanasia is a curious invention, and a very recent one at that—the product, I would suggest, of that cultural disintegration and moral morass recently tagged by one wise commentator "the culture of death."

The Lords took the view that terminally ill, handicapped and frail elderly people have the same worth and dignity as everyone else and deserve

the equal protection of our laws. Legalised euthanasia, they knew, sends out a clear message that such people are expendable. And any culture which adopts this notion is likely soon further to reduce the opportunities and self-esteem of sick, elderly and dying people and to put tremendous pressures upon both patients and health professionals to seek and engage in euthanasia. As the Lords put it:

> We are also concerned that vulnerable people—the elderly, lonely, sick or distressed—would feel pressure, whether real or imagined, to request early death . . . We believe that the message which society sends to vulnerable and disadvantaged people should not, however obliquely, encourage them to seek death, but should assure them of our care and support in life. (§239)

Far from expanding patient autonomy, therefore, legalised euthanasia undermines it: for in the very name of "autonomy" many people's real freedom would in fact be narrowed further and their very lives—the premise for all autonomy—put at risk. So, too, for healthworkers: as the BMA argued, far from increasing provider autonomy, legalised euthanasia pressures or even requires health professionals to compromise their most cherished skills and ethics. Indeed, as the Lords discovered in the Netherlands, doctors there have been disciplined for failing to perform euthanasia in circumstances where it was "reasonably" expected that they would do so.

Thus the advocates of euthanasia found themselves hoist on their own petard. It was the very concern for autonomy, to which the Lords had been alerted and sensitized by such enlightened liberals as Dworkin, Kennedy and the Dutch enthusiasts, which led the Lords to reject euthanasia.

The experience in Holland had demonstrated all too clearly that the practice of euthanasia is profoundly corrupting and ultimately uncontrollable: from being tolerated in a few "hard" cases it has gradually been extended there from voluntary to non-voluntary, from the terminally ill to the physically sick, from the physically sick to the depressed and lonely, from competent adults to the unconscious and children, from being a course of last resort to an increasingly common course for many patients.

The Lords were quite emphatic:

> We do not think it possible to set secure limits on voluntary euthanasia . . . It would be impossible to frame adequate safeguards against non-voluntary euthanasia if voluntary euthanasia were to be legalised. It would be next to impossible to ensure that all acts of euthanasia were truly voluntary, and that any liberalisation of the law was not abused. Moreover to create an exception to the general prohibition of intentional killing would inevitably open the way to its further erosion whether by design, by inadvertence, or by the human tendency to test the limits of

> any regulation. These dangers are such that we believe that any decriminalisation of voluntary euthanasia would give rise to more, and more grave, problems than those it sought to address. (§238)

But is not euthanasia really the compassionate way to deal with some cases of terminal or chronic illness? That argument has been common in recent years and has powerfully influenced some politicians, especially those who have had bad experiences with dying relatives. The Lords were not untouched by this themselves:

> Many of us have had experience of relatives or friends whose dying days or weeks were less than peaceful or uplifting, or whose final stages of life were so disfigured that the loved one seemed already lost to us, or who were simply weary of life. Our thinking must inevitably be coloured by such experience. The accounts we received from individual members of the public about such experiences were particularly moving, as were the letters from those who themselves longed for the release of an early death. Our thinking must also be coloured by the wish of every individual for a peaceful and easy death, without prolonged suffering, and by a reluctance to contemplate the possibility of severe dementia or dependence. (§236)

Ultimately, however—and this seems to me to mark a difference between statespersons and mere politicians—the Committee was unwilling to allow such personal and emotive experiences to control public policy. Not that they were without compassion. But they were convinced that we need to look for *creative* responses to illness, suffering and dying, and be very loathe to embrace *destructive* ones, such as discrimination, abandonment and homicide.

Once again, the proponents of euthanasia were hoist on their own petard: having alerted and sensitized the Lords to the needs of suffering patients in the hope of exploiting fear and compassion, these lobbyists actually cleared the path for the submissions of the world leaders of palliative care. The Lords concluded:

> There is good evidence that, through the outstanding achievements of those who work in the field of palliative care, the pain and distress of terminal illness can be adequately relieved in the vast majority of cases. Such care is available not only within hospices: thanks to the increasing dissemination of best practice by means of home-care teams and training for general practitioners, palliative care is becoming more widely available in the health service, in hospitals and in the community, although much remains to be done. With the necessary political will such care could be made available to all who could benefit from it. (§241)

The Report of the House of Lords Select Committee on Medical Ethics was a victory for common sense and the common good, for respect for the

dignity and autonomy of persons, and for genuine compassion. It was consistent with findings of parliamentary inquiries in other countries such as Australia, and has in turn recently been echoed by a New York State Task Force and a Canadian Senate inquiry—but the American Federal Courts have not proved so wise.

The question remains: What will the U.S. Supreme Court do?

'Rinse!'

THE SPECTATOR 30 December 1995

The Legal Logic of Euthanasia

Michael M. Uhlmann

Critics of *Roe v. Wade* have long contended that the principles used to justify abortion would soon or late be used to justify other forms of medical killing such as voluntary and, eventually, involuntary euthanasia. Slippery slope arguments are often overdone, but the fact remains that virtually every argument for taking a human life in utero can be applied to a human life ex utero, including yours and mine. Is the person "unwanted"? Medically compromised? Unwilling or unable to lead a "meaningful" life? A heavy economic burden? A hindrance to another's health or happiness? Abortion advocates, of course, dismiss the analogy as so much tendentious rabble-rousing, definitely not the sort of thing serious people should take seriously. A woman's "right to choose" bears no relation to euthanasia, and only a fool or a demagogue would argue otherwise.

What that suggests about the U.S. Court of Appeals for the Ninth Circuit, I do not know, but its March 6 opinion in *Compassion in Dying v. State of Washington* turned precisely on the point that abortion and assisted suicide share a common rationale. That rationale will be found, the court said, in the liberty guarantee of the Due Process Clause of the Fourteenth Amendment ("No State shall . . . deprive any person of life, liberty, or property without due process of law"). Citing abundant Supreme Court precedent, the court pointed out that liberty is an evolving concept whose content cannot be limited by historical understanding, customary usage, or, for that matter, the words of the Constitution itself. Although the specific content of one's "liberty" at any given time may be difficult to assess, we know at least this much: choices central to personal autonomy are also central to liberty under the Fourteenth Amendment. A right of autonomy broad enough to cover a woman's right to kill her offspring, declares the Ninth Circuit, is broad enough to cover (at the very least) a terminally ill person's right to determine the time and manner of death. And thus it is that the American Proposition, which began with the declaration that all men are endowed by their Creator with an unalienable right to life, now means that they are also endowed (by whom it is not clear) with the right to die.

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Two weeks after the Ninth Circuit's decision, what had been done with abandon in San Francisco was done more carefully—and perhaps more seductively—in New York City. There, the Second Circuit Court of Appeals handed down its decision in *Quill v. Vacco*, a case brought by three doctors against New York State's ban on assisted suicide. The court struck down the law as applied to terminally ill patients, but refused to follow the Ninth Circuit's reliance upon the Due Process clause. Instead, Judge Roger Miner ruled that the prohibition violated the Fourteenth Amendment's Equal Protection Clause ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws"). Precisely because it is less abstract and high-flown than the Ninth Circuit's embrace of autonomy, the implications of the Second Circuit's opinion may seem less radical. The "softer" language of equal protection, however, cannot mask the fact that precious little room is left for states to assert their traditional interest in protecting human life. In either circuit, the most vulnerable of patients are now at risk.

The Ninth Circuit's case grew out of a complaint filed by four doctors and three terminally ill patients against a Washington State statute making it a crime to knowingly cause or aid an attempted suicide. A federal district court, Judge Barbara Rothstein presiding, noted a long line of Supreme Court cases protecting "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." She was particularly impressed by the Court's reasoning in *Planned Parenthood v. Casey*, the 1992 case that sustained the result in *Roe v. Wade* while refabricating the entire constitutional argument on which it had rested. *Casey* cashiered Harry Blackmun's right-to-privacy rationale, which had hovered in the constitutional air for nearly two decades without a satisfactory textual landing spot. Henceforth, the right to abort was to be understood as a liberty interest under the Due Process Clause, which included (so the plurality opinion of the Supreme Court said) "the right to define one's own concept of existence and to make the most basic decisions about bodily integrity."

As a tour de force of semantic gymnastics, *Casey* has few equals in the annals of modern jurisprudence; it is, next to *Roe* itself, perhaps the starkest reminder of the extent to which our Constitution has become, at the hands of the Court, a thing of almost infinite plasticity. Indeed, it was precisely the open-ended and mushy quality of *Casey*'s language that Judge Rothstein found so comforting when she analogized the right to die to the right to abort. She cited as "highly instructive and almost prescriptive" a passage from the *Casey* decision:

> These matters, including the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Critics call this the "Mystery Passage." But Judge Rothstein thought it ideally suited to her purposes, and who could blame her? If indeed choices "central to personal dignity and autonomy" are what lie at the heart of the liberty protected by due process of law, how can it be said that a terminally ill person's decision to end his or her life is any less "intimate and personal" than the decision to have an abortion? Judge Rothstein, believing she was following the implications of High Court logic, became the first federal judge to find the right to die in the Constitution.

Not all of her colleagues agreed. On the first of two appeals to the Ninth Circuit, Judge Rothstein's opinion ran into a three-judge panel headed by the formidable John Noonan, a prolific author and scholar who has spent a lifetime studying common, canon, and natural law. Judge Noonan completely demolished the ruling. Whatever the Court may have intended by its *Casey* language, he said, one simply cannot excise it from context and apply it willy-nilly to facts that were not even remotely at issue in the case. Judge Rothstein conveniently ignored the fact that virtually all states forbade assisted suicide, either by express statute or well-settled common law precedent—which fact the Supreme Court noted without reservation in the one case it has heard dealing, albeit peripherally, with a so-called "right to die." Rothstein further failed to distinguish between suicide and refusing treatment, a distinction long recognized in medical practice, justified by an extensive and sophisticated literature, and endorsed by every important medical society in America. She radically underestimated the potential risk that licensed killing would pose to the poor, the elderly, and the handicapped, for whom the Fourteenth Amendment ought to be particularly solicitious. In short, Judge Rothstein's invention of a constitutional right to die was dangerous as a matter of policy and unfounded as a matter of law. "Unless the federal judiciary is to be a floating constitutional convention," Noonan added, "a federal court should not invent a constitutional right unknown in the past and antithetical to the defense of human life that has been a chief responsibility of our constitutional government."

There was more to Noonan's opinion, but you get the idea. Unfortunately, the tale did not end there. Those who are enamored of floating

constitutional conventions are also the Energizer Bunnies of constitutional litigation. After regrouping, the plaintiffs filed an *en banc* appeal (a motion to have the case reheard by a larger group of judges from the same court). Their motion was granted and the case reargued before eleven judges (not including the first three), who voted eight to three to reverse Noonan and reinstate Rothstein's ruling. This time the pen was wielded by Judge Stephen Reinhardt, a sharp-tongued liberal activist only too happy to discover new rights in the penumbras, emanations, and hitherto undiscovered corners of the Constitution.

In his 109-page dissertation, Judge Reinhardt seeks to do for assisted suicide what Harry Blackmun tried (but failed) to do for abortion: fix a place for it in the Constitution, but in such a way as to obscure its radical implications. To the legally uninitiated, Reinhardt's conclusion will appear to be the inexorable fulfillment of a legal process that began decades, if not centuries, ago and flows ever so naturally and gradually out of recent Supreme Court precedent. It is a clever piece of work, designed both to give the newly minted right a plausible historical pedigree and to demonstrate its similarity and proximity to already recognized constitutional guarantees. Reinhardt clearly wishes to convey the impression that he is advancing the law only a tiny millimeter beyond where it had rested yesterday. He also wants to box the Supreme Court (where this case will almost certainly end up) with the logic of its own precedent.

Reinhardt's opinion may seduce those who are unwilling to pay close attention. He begins by noting the agonizing nature of the decision before him and the necessity of prudent caution. No radicals here, just some compassionate judges trying to do their sworn duty as they wrestle with their consciences and empathize with the suffering of others. There are no easy answers to such a complicated problem, he says. Clearly, a balance will have to be struck between individual rights and the interest of the state in protecting life. In pondering just where and how to strike that balance, Reinhardt says he is marvelously struck by "the compelling similarities" between this case and the abortion cases: both involve matters of life and death; both arouse similar moral and religious passions; in both, the strength of the state's interest may vary with the circumstance (age of the fetus in one, mental and physical condition of the patient in the other); and both raise fundamental questions about an individual's right of choice. There is one other similarity, he claims: as with abortion before legalization, assisted suicide is widely although secretly practiced.

The message is, if they are going to do it anyway, what possible purpose, other than the further misery of suffering patients, will be served by

our continuing to forbid it? (If that sounds familiar, it's because the same argument was made twenty-five years ago in the early stages of the battle over legalized abortion.)

Having analogized assisted suicide to abortion (and thereby segued into a body of law that can be ever so flexibly adopted to his purposes), Judge Reinhardt undertakes an historical exegesis of opinions about the ethics and legality of suicide. About the best that can be said of his effort is that it would be laughable were the subject not so grave. As with Harry Blackmun's bowdlerized history of abortion laws in *Roe v. Wade*, Judge Reinhardt's abridged intellectual history seeks to show that there never was any real consensus on the subject and that much opposition to suicide is based on foolishness or hypocrisy. Legal prohibitions against assisted suicide have no genuine intellectual foundation; they are but the arbitrary moral sentiments of prior eras that make no biding claim upon us. We have no choice but to make our own rules for our own time.

With the stage thus set, Reinhardt returns to the jurisprudence of the abortion cases and concludes that denying a terminally ill patient the right to assisted suicide may work an even greater injustice than "forcing a woman to carry a pregnancy to term." And just in case you miss the point, he then recounts the gruesome details attending the death of an AIDS patient. The example stirs our compassion, as it should, but hardly settles the moral or legal question of assisted suicide in the way Reinhardt obviously thinks it does.

He fashions the final brick in his constitutional edifice by turning to the Supreme Court's opinion in *Cruzan v. Director*, a 1990 case brought by parents who wished to remove the life-sustaining feeding tube from their daughter, a patient in a persistent vegetative state. The Missouri Supreme Court denied permission because there was no "clear and convincing, inherently reliable evidence" that the patient would have wished such a fate for herself. On appeal, the U.S. Supreme Court affirmed the Missouri judgment but drew up far short of recognizing a right of individual patient autonomy. The most that can be said is that the Court's decision presumed for the sake of discussion a competent patient's right to decline food and water, but did so without examining the implications of such a right or its constitutional status.

Consider now what Judge Reinhardt does to *Cruzan*: (1) he cites it as if the Supreme Court had already ruled that there was a constitutional guarantee to refuse life-terminating treatment; (2) he notes that the Court expressed no objection per se to the removal of Nancy Cruzan's feeding

tube; (3) he thus concludes that the High Court has implicitly recognized a due process right to bring about one's own death. That's the kind of reasoning that used to get you into trouble in legal method courses during the first year of law school for failing to distinguish between the actual holding of a case and the obiter dicta of the judges. If *Cruzan* had in fact held what Reinhardt says it held, he would not have had to write a 109-page opinion to justify his own ruling.

At every turn, Reinhardt gives the appearance of being led to his conclusion by the logic of governing precedent, but upon closer examination his reasoning is little more than ex post facto rationalization of a conclusion already arrived at. Thus, he provides us with a generic history of recent constitutional jurisprudence as it relates to liberty interests under the Fourteenth Amendment, but emphasizes only those features that tend to make the Constitution a servant of autonomous individualism. He serves up a Procrustean history of suicide and the laws against it, but only to suggest the absence of persuasive argument. He craftily recasts the one case decided by the Supreme Court that is even arguably on point. And of course he wraps himself in the logic and rhetoric of the abortion cases, especially *Casey*, because they make of the Constitution an open-ended invitation to enact a postmodernist rights agenda.

Judge Reinhardt does one more thing: he dismisses as improvident, antiquated, or unwarranted all of the traditional arguments asserted by medical professionals, courts, and legislatures against assisted suicide. He is particularly dismissive of arguments making use of the slippery slope, even as he unwittingly makes them credible. Throughout his opinion, Reinhardt is at pains to note that the right he is carving into constitutional stone is carefully circumscribed. Specifically, he says (sometimes) that the right will be limited to mentally competent, terminally ill adults seeking to determine the time and manner of their death. The particular examples he cites reinforce the same impression. Then a startling passage occurs:

> Our conclusion is strongly influenced by, *but not limited to*, the plight of mentally competent, terminally ill adults. We are influenced as well by the plight of others, *such as those whose existence is reduced to a vegetative state or a permanent and irreversible state of unconsciousness.* [Emphasis added.]

That's the kind of language that could get a person killed. Precisely. Those two sentences, which may end up being the most important in the opinion, send a chill up the spine. All the talk about the limited and completely voluntary nature of the right now appear as so much dissembling. Clearly the compassion of the courts is going to reach far and wide under

the new dispensation, even unto those who cannot speak for themselves because they are "in a vegetative state or a permanent and irreversible state of unconsciousness."

As amended by the Plight Passage, *Casey* and *Cruzan* taken together now have the power to erase the line between voluntary and involuntary death. You will want to choose your doctors carefully, particularly with respect to their attitudes toward suicide and the use of the medical profession in hastening death. Doctors are not inherently less virtuous than the rest of us, but they are conspicuously more powerful. No one knows for sure what the medical world will be like once the legal shackles against assisted suicide are removed, but we can guess. The example of the Netherlands is not reassuring. About twenty years ago, the Dutch "reformed" their laws against assisted suicide, and the latest data from Holland now confirm what was once only a dark suspicion: thousands of patients a year are now being killed without their consent by doctors.

You may even want to choose your relatives with care. Much common and statutory law has been erected over the centuries on the possiblity that some of your family may love you less than they love your possessions. Once Reinhardt's Rule gets set in law, you will have to take very special care about who will be attending to the details of your hospital stay.

Close students of the Supreme Court will tell you that they could see this coming: *Compassion in Dying* is only the first of many cases based on claims of autonomous individualism that the Court invited with its loose and grandiose *Casey* language. It is also the logical culmination of a process that began some decades ago when the Court untethered itself from the text of the Constitution and began to sit like an omniscient council of elders uniquely empowered to intuit and act upon the aspirations of the people.

Central to this Court-led revolution is the idea that the Constitution is in a state of more or less perpetual evolution, whence it follows that judges need not be bound by the precise words of the document, or by prior precedent, or by settled historical meaning. Once this predicate of a Plastic Constitution has been conceded, it is child's play for Reinhardt and his colleagues to reach the conclusion they do. To them, it is simply irrelevant that no federal judge (prior to Rothstein) had ever before found a right to die in the Due Process Clause, just as it is irrelevant that every state in the union, save one, forbids assisted suicide. What appears to be supremely relevant is that the *Casey* language incorporates the concept of autonomous individualism and places it at the center of the liberty interests said

to be guaranteed by the Constitution.

Though the Second Circuit did not follow the Ninth Circuit's metaphysical flight into autonomous individualism, its own decision, based on the Equal Protection clause, and apparently safer, may in fact be more dangerous. Generally speaking, the Equal Protection clause requires that similarly situated people must be treated alike. If members of the affected class are treated differently, the state must provide and defend a rational basis for the distinction.

In the case at hand, Judge Miner and his colleagues determined that the relevant class was "all competent persons who are in the final stages of fatal illness and wish to hasten their deaths." Under New York law, patients may legally refuse treatment and authorize the withdrawal of life-support systems, including nutrition, even in those instances where such steps would undoubtedly hasten death. To ban assisted suicide, however, means that some members of the class, i.e., those who wish to hasten their deaths with the help of their physicians, are being treated differently. Because he could not find that the state had demonstrated a legitimate state purpose in making such a distinction, Judge Miner ruled that an unconstitutional discrimination had taken place. In short, New York's distinction between passive and active measures was a distinction without a difference.

It is worth noting that Judge Miner's inability to parse that distinction was not shared by the New York State Task Force on Life and the Law, a twenty-four member commission appointed by Governor Cuomo in 1985 to advise on questions of biomedical ethics. In 1994, the Task Force recommended unanimously *against* the legalization of assisted suicide and said why in an exceptionally thoughtful two hundred-page report. Few states have ever provided a more cogent explanation for any public policy, and none has ever furnished a more coherent defense of the ban against assisted suicide. If the Task Force Report couldn't pass muster with the Second Circuit, it is virtually impossible to think of a rationale that would.

Be that as it may, Judge Miner's reasoning may be more attractive to the Supreme Court than Judge Reinhardt's aggressive candor, and that is exactly what makes it more dangerous. There is precious little to prevent an expansion of Judge Miner's logic. Given the class interests as he defined them, and given his dismissal of the Task Force Report, what "rational basis" might the state have for restricting the right of assistance to doctors? And what is the "rational basis" for limiting the class to those who are "terminally ill" or to mentally competent adults? It is only a matter

of time before non-doctors, non-terminally ill patients, and guardians of incompetent individuals will be arguing that state restrictions violate *their* equal protection rights. And there is little if anything in the Second Circuit's rational that can stop such a progression.

Perhaps anticipating just such a possibility, Judge Guido Calabresi joined in the court's conclusion while departing from its reasoning. In a lengthy concurrence, he invited New York to enact new laws against assisted suicide. He also implied that to analyze the issue as if it were solely one of class discrimination was a subterfuge that begged important underlying questions. It is a slim reed that Calabresi extends, but he is at least open to the possibility that the state might be able to demonstrate—in a way he thought it had not adequately done—a sufficient rational for prohibiting doctors from killing.

What will the Supreme Court do with all this? There are both political and legal reasons why it may not want to address this issue at this time, and both cases could be sent back for further adjudication. On the other hand, when the two most important federal circuits in the country have taken on an issue of this gravity, the Court may find itself duty-bound to provide definitive constitutional guidance. In the event, the justices are going to find themselves in a bit of a pickle. Judge Miner's cautious, essentially procedural approach may appear to offer a "safe" way out because it denies that patients have a substantive right to die while permitting them to exercise such a right in fact. On the other hand, if the Justices embrace the substantive approach of Reinhardt and Company, they could put themselves in the middle of a passionate political and moral controversy every bit the equal to the one they generated with *Roe v. Wade*. No matter which way the Court goes, it will risk opening another door to the bottomless pit of constitutional litigation based on claims of individual autonomy, whether it is called by that name or not. In short, unless the Court is prepared to think about this issue with greater care than was evinced by the Ninth and Second Circuits—and there is little in its opinions of late to suggest that it has the moral imagination to do so—the question will be not how far we slide down the slippery slope of legally sanctioned killing, but how fast.

"Raw Judicial Power II"

In Volume I, Number I (*Winter*, 1975) of this journal, John T. Noonan argued for a constitutional amendment to reverse *Roe* v. *Wade* which, as he noted, then-Justice Byron White (in his dissent) had described as an exercise in "raw judicial power." Noonan began:

> On January 22, 1973, the Supreme Court of the United States announced that a new personal liberty existed in the Constitution—the liberty of a woman to procure the termination of her pregnancy at any time in its course. The Court was not sure where the Constitution had mentioned this right, although the Court was clear that the Constitution had not mentioned it explicitly. "We feel," said Justice Blackmun for the majority, "that the right is located in the Fourteenth Amendment's concept of personal liberty," but he thought that it also could be placed "in the Ninth Amendment's reservation of rights of the people."
>
> Vague as to the exact constitutional provision, the Court was sure of its power to proclaim an exact constitutional mandate. It propounded a doctrine on human life which had, until then, escaped the notice of the Congress of the United States and the legislators of all fifty states. It set out criteria it said were required by the Constitution which made invalid the regulation of abortion in every state in the Union, the District of Columbia, the Commonwealth of Puerto Rico, and the City of New York. Not one of these bodies had read the Constitution.

At that time, we judged that abortion would be our primary concern, as indeed it has been, for Lo these 22 succeeding years. But we were also convinced that the High Court's abortion *fiat* had set our nation on the proverbial "slippery slope"—that legalizing the killing of "unwanted" human preborns would inexorably lead to killing off other humans who, in due course, would be awarded "unwanted" status by the courts.

In the preceeding article, Mr. Michael Uhlmann has summarized the new situation most perceptively: we add here a series of commentaries and reflections from a variety of sources—from recognized authorities to that famous "vendor of words," Malcolm Muggeridge—all related, most directly, to the dramatic scene Uhlmann sets out.

The reader will note that, like Judge Noonan and Mr. Uhlmann, many of the "players" in our drama have been connected, in one way or another, with this *Review* over the years. We'd say this merely demonstrates yet again that the "legal logic" of euthanasia was inescapably inherent in *Roe*—as we and our associates never doubted.

J. P. McFADDEN

It Started With Quinlan:

The Ever Expanding "Right to Die"

Yale Kamisar

Few rallying cries sound more straightforward than the "right to die"—but few are more fuzzy or more misunderstood. This becomes all too evident when comparing the right-to-die decision handed down by the U.S. Ninth Circuit Court of Appeals earlier this month and the New Jersey Supreme Court's decision in the Karen Ann Quinlan case twenty years ago. At different times, the "right to die" has embraced significantly different rights.

On March 6, in *Compassion in Dying* v. *Washington State*, the Ninth Circuit held that because a Washington state statute prohibiting assisted suicide prevents physicians from providing assistance to competent, terminally ill patients who want to end their lives, the law violates the due process clause of the 14th Amendment. As the author of the majority opinion, Judge Stephen Reinhardt, put it, the Constitution "encompasses a due process interest in controlling the time and manner of one's death—there is, in short, a constitutionally recognized 'right to die.'"

Supporters of assisted suicide and some civil-liberties groups view this decision as an important breakthrough that will allow more terminally ill patients to end their lives with dignity. But religious leaders and medical groups have voiced alarm that an expansive "right to die" poses great dangers for individuals who are ill and vulnerable—particularly those who are elderly or socially disadvantaged.

Reinhardt acknowledged that, in a future case, it might be difficult to make a principled distinction between physician-assisted suicide (where the patient performs the act that brings about death) and physician-administered voluntary euthanasia (where the physician performs the death-causing act), but this did not seem to trouble him as long as, in both instances, the patient desires to end her life: "We consider it less important who administers the medication [that causes death] than who determines whether

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Yale Kamisar, the Clarence Darrow Distinguished Professor at the University of Michigan Law School, is widely regarded as the leading authority on euthanasia and related issues. He wrote a definitive study titled "Some Non-Religious Views against Proposed 'Mercy-Killing' Legislation" which first appeared in the *Minnesota Law Review* (May, 1958); it was reprinted in various other publications, and has been frequently—regularly—quoted in most serious articles on euthanasia ever since. This journal reprinted the entire original in two installments (*Spring* and *Summer*, 1976—it ran to 74 pages). We thank Prof. Kamisar for sending us this article, which first appeared in the Los Angeles *Times* (March 31, 1996).

the terminally ill person's life shall end."

This month, indeed this very day, marks the 20th anniversary of the New Jersey Supreme Court's much-publicized decision in the Karen Ann Quinlan case. *Quinlan*, too, is considered a ground-breaking case, but, in some respects it was a far narrower decision than the Ninth Circuit's. Indeed, most of the judges who supported the opinion in the Quinlan case 20 years ago would probably have been taken aback by the Ninth Circuit ruling.

The New Jersey Supreme Court held that Quinlan, a young woman in a persistent vegetative state, had a right to decide to be taken off the respirator that was maintaining her and that this right could be asserted on her behalf by her guardian and family. The court that decided the Quinlan case, and all the parties involved, operated on the premise that Quinlan would die shortly after the respirator was turned off. But this did not happen. She actually remained alive another ten years. For two reasons: first, because the nun in charge refused to disconnect the respirator until Quinlan had been carefully weaned from it, and because one life-support device was never removed—Quinlan's feeding tube.

Perhaps because they viewed feeding as "natural" or "basic" care, Quinlan's parents did not request permission to remove the naso-gastric tube that was to keep their daughter alive for another decade. Indeed, Karen's father voiced surprise when asked whether he wanted the feeding tube removed. "Oh, no," he said, "that is her nourishment."

If the Quinlans had sought permission to remove their daughter's feeding tube, they probably would have been rebuffed—even if they could have provided convincing evidence that this was their daughter's wish. For at the time, and as recently as the early 1980s, the idea that fluids and nutriment might be withdrawn from a comatose patient would have been repudiated, if not condemned, by most health professionals.

If removing a feeding tube from a patient would have been strongly resisted at the time of the Quinlan case, disconnecting a respirator produced far different reactions. To more than a few, the feeding tube symbolizes the essence of care and compassion. But to many people, removing a patient from an MA-1 respirator—a cold, gray, computer-programmed machine that clicks into service when the patient does not breathe voluntarily—symbolizes humankind fighting against imperious modern technology.

In the decade following the Quinlan decision, views of health professionals, courts and the public changed. By the late 1980s, the once formidable psychological and symbolic distinction between respirators

and feeding tubes had virtually collapsed. In the 1990 Nancy Cruzan case (the only U.S. Supreme Court case involving death, dying and the "right to privacy"), Chief Justice William H. Rehnquist, who wrote the majority opinion, attached no significance to the fact that the life-saving measure involved was artificial feeding. Concurring Justice Sandra Day O'Connor explicitly rejected any distinction between the feeding tube and other forms of life support.

Neither the Quinlan case nor the Cruzan case establishes the kind of "right to die" that the Ninth Circuit found in the Constitution—a right to determine the time and manner of one's death and a right to the active intervention of another to bring about one's death. The only right or liberty that the Quinlan ruling established and the Cruzan decision recognized is the right under certain circumstances to refuse life-sustaining medical treatment or, as many have called it, the right to die a natural death.

Indeed, the Quinlan case explicitly distinguished between letting her die, on the one hand (what it called "the ending of artificial life support systems"), and both direct killing and assisted suicide, on the other. No less prominent an advocate of assisted suicide and active voluntary euthanasia than the Hemlock Society's Derek Humphrey contends that the Quinlan case is "significant," among other things, for "distinguishing between suicide and the passive withdrawal of life supports."

But even the judge who writes the majority opinion in a case cannot limit the impact of his words. In the last half-dozen years, lawyers throughout the land have been using the now firmly established right to reject life-saving medical treatment as a launching pad—as an argument for expanding the "right to die" to include assisted suicide and, some time in the near future, active voluntary euthanasia. With the Ninth Circuit's decision, they achieved a smashing victory.

Unlike the court in the Quinlan case, the federal court earlier this month could "see no ethical or constitutionally cognizable difference between a doctor's pulling the plug on a respirator and his prescribing drugs which will permit a terminally ill patient to end his own life." According to the Ninth Circuit, "what matters most is that the death of the patient is the intended result as surely in one case as in the other."

The U.S. Supreme Court is still to be heard from. Whether the higher court will agree with the Ninth Circuit or whether it will find a constitutional distinction between terminating a patient's life support and actively intervening to promote or to bring about death remains to be seen. But however the Supreme Court ultimately resolves this issue, one point

remains clear: There is a good deal of distance between the "right to die" promulgated by the New Jersey court in *Quinlan* twenty years ago and the "right to die" adopted by the Ninth Circuit this month in *Compassion in Dying.*

[*Three years ago Professor Kamisar published another in-depth article titled "Are Laws against Assisted Suicide Unconstitutional?" (see* Hastings Center Report, *May-June, 1993), in which he argued that the Supreme Court was rightly reluctant to find new constitutional rights in divisive social issues; Kamisar urged the Court to maintain the tradition of both discouraging suicide and criminalizing its assistance. We quote below several selections from the "final thoughts" of his article.—Ed.*]

I cannot believe that any court will recognize a constitutional right to suicide on request. But unless we carry the principle of self-determination or personal autonomy to its logical extreme—assisted suicide by any competent person who clearly and repeatedly requests it for *any* reason *she* deems appropriate—we have to find a "stopping point" somewhere along the way. Any such stopping point will be somewhat illogical, somewhat arbitrary. So why not maintain the line we have now?

* * * * *

If, as has well been said, "the history of our activities and beliefs concerning the ethics of death and dying is a history of lost distinctions of former significance," what reason is there to think that that history will come to an end when we sanction assisted suicide for the terminally ill? What reason is there to doubt that in the not-too-distant future the distinction between assisted suicide and voluntary euthanasia or the distinction between the terminally ill and other seriously ill people would become still other "lost distinctions of former significance"?

I can hear the cries of protest: "slippery slope" arguments are a common debating tactic. Yes they are—about as common as the technique of overcoming opposition to a desired goal by proceeding step by step.

"No More Pressing Need"

Lino A. Graglia

Three recent decisions, one by the Supreme Court and two by courts of appeals, demonstrate again, with shocking clarity, the role federal judges have been permitted to assume in our society as the ultimate arbiters on the most fundamental moral issues. In *Romer* v. *Evans*, the Supreme Court in effect granted to homosexuality ("sexual orientation") the level of constitutional protection previously established to disallow discrimination on the basis of race. With a stroke of the pen, the Court removed from the states the right to protect the interest of their citizens in declining acceptance of homosexuality by refusing to enter into various associations and transactions with homosexuals.

In *Compassion in Dying* v. *Washington*, the United States Court of Appeals for the Ninth Circuit (California, Washington, Oregon, Arizona, Nevada, Idaho, Montana, Hawaii, Alaska) and *Quill* v. *Vacco*, the Court of Appeals for the Second Circuit (New York, Connecticut, Vermont) created by an act of pure will a right to physician-assisted suicide. As in the abortion cases the Court took from the states the right to protect human life at its beginning, in these cases the Court began a process of taking from the states the right to protect human life as it nears its end. The parallel between the two issues was seen as so close, indeed, that the courts of appeals rested their decisions almost entirely on the authority of *Roe* v. *Wade* and *Planned Parenthood* v. *Casey*, the abortion decisions.

The abortion decisions preclude us from further amazement at what our courts are able and willing to do. Having seen their power to create a constitutional right to terminate innocent life, it is difficult to claim surprise at further demonstrations of their power. These new demonstrations do, however, provide new occasions to raise again the question of the source of that power and its consistency with the system of decentralized representative self-government created by the Constitution. Most basically, they raise the question of the wisdom of permitting fundamental issues of sexual morality and, literally, life and death to be determined for the nation as a whole by unelected, life-tenured judges and ultimately the nine justices of the Supreme Court.

Lino A. Graglia, a professor at the University of Texas School of Law, is a prolific writer on legal and social issues, and a frequent participant in public and TV debates (e.g., opposite Alan Dershowitz on William F. Buckley's *Firing Line*).

In handing down their decisions in these cases, the justices did not and could not announce that they disapprove of the moral choices made by the citizens of the states involved—directly by referendum on the homosexuality issue in *Romer*, and through their elected representatives in the other two cases—and were therefore substituting what they considered their own superior moral judgments. They have no possible claim, of course, to a legal or moral authority that could enable them to do that. They therefore announced, instead, that they were exercising their authority to enforce the United States Constitution. It was the Constitution, we are to understand, not the justices, that took from the people of each state the right to determine policy on these moral issues.

It cannot be too bluntly stated, strongly emphasized, or frequently repeated that the courts' claim of constitutional warrant for their decisions is a fraud. There is perhaps nothing more important to the continuation of our society, our civilization, and our form of government than that ordinary American citizens understand that this is so. Nothing more is required, it would seem, for them to resume control of their government, their society, and their lives.

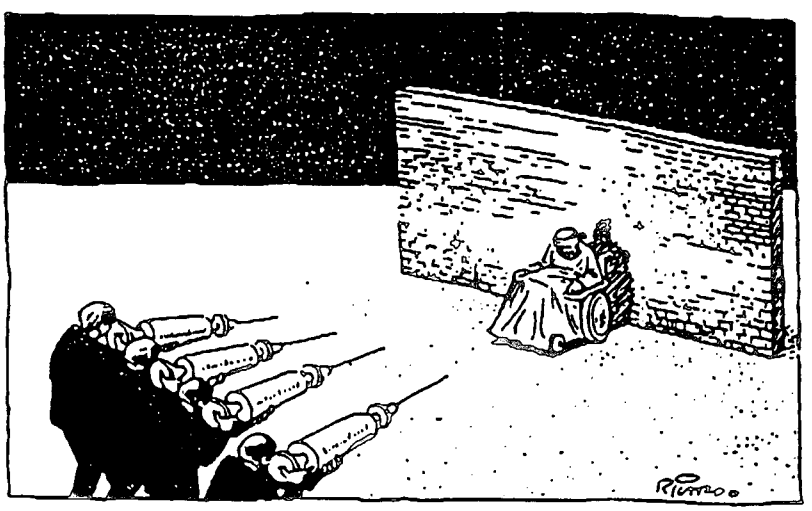
The central fact of decision-making by courts in the name of the Constitution is that it has virtually nothing to do with the Constitution and is in fact inconsistent—undemocratic and totally centralized—with the system of government created by the Constitution. The only connection of the courts' so-called constitutional decisions to the Constitution is that nearly all of them, like the three here in question, purport to be based on either the "due process" or the "equal protection" clause of the fourteenth amendment. The meaning and purpose of these clauses is not in doubt: the due process clause was meant to assure procedural regularity and the equal protection clause was meant to guarantee equality to blacks in regard to basic civil rights. Apart from the issue of racial discrimination, the clauses were meant to limit the policy-making power of the states very little. Under the rubrics of "substantive due process" and "new equal protection," however, the courts have made them grants of authority to the courts to act as the final policy makers on any or all issues as they may choose.

The result, as Judge Learned Hand long ago pointed out, is to convert the American system of government into government by something like Plato's philosopher kings. A basic difference, however, is that our ultimate policy makers on fundamental moral issues are not moral philosophers but lawyers. Lawyers are in a sense the antithesis of moral philosophers, persons whose profession is not the determination and pursuit of the good but

to serve clients whose interest may be to frustrate achievement of the good. The professional training and skill of lawyers is in the manipulation of language and manufacture of arguments to produce results frequently, perhaps typically, counter to the common good.

It is not likely that we can devise a better system of government than the Constitution's system of government by the people, acting for the most part in local units. It is hardly less likely that we can devise a worse system of government than the system we have substituted, government by the Supreme Court, policy-making on fundamental social issues by majority vote of a committee of nine lawyers sitting in Washington, D.C. and unaccountable to the people whose lives they govern. The only reason this strange form of government has arisen and continues to be deceptively defended and maintained is that it is the only available means in this country of keeping policy-making out of the hands of the people. It places policy-making power, instead, in the hands of lawyer-judges who serve for the most part as the mirror and mouthpiece of our liberal academic and media elite. The result of the courts' intervention in these cases, as in nearly all of its controversial "constitutional" decisions, is as Justice Scalia put it in *Romer*, "to take the victory away from traditional forces . . . by verbally disparaging as bigotry adherence to traditional attitudes."

The country has no more pressing need than to find a means of changing this situation.



Cartoon by Albert Ricardo, *The Herald Sun*, Melbourne, Australia

Compassion Is Not Law

John T. Noonan, Jr.

ANALYSIS

[1] The conclusion of the district court that the statute deprived the plaintiffs of a liberty protected by the Fourteenth Amendment and denied them the equal protection of the laws cannot be sustained.

First. The language taken from *Casey*, on which the district court pitched its principal argument, should not be removed from the context in which it was uttered. Any reader of judicial opinions knows they often attempt a generality of expression and a sententiousness of phrase that extend far beyond the problem addressed. It is commonly accounted an error to lift sentences or even paragraphs out of one context and insert the abstracted thought into a wholly different context. To take three sentences out of an opinion over thirty pages in length dealing with the highly charged subject of abortion and to find these sentences "almost prescriptive" in ruling on a statute proscribing the promotion of suicide is to make an enormous leap, to do violence to the context, and to ignore the differences between the regulation of reproduction and the prevention of the promotion of killing a patient at his or her request.

The inappropriateness of the language of *Casey* in the situation of assisted suicide is confirmed by considering what this language, as applied by the district court, implies. The decision to choose death, according to the district court's use of *Casey*'s terms, involves "personal dignity and autonomy" and "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." The district court attempted to tie these concepts to the decision of a person terminally ill. But there is no way of doing so. The category created is inherently unstable. The depressed twenty-one year old, the romantically-devastated twenty-eight year old, the alcoholic forty-year old who choose suicide are also expressing their views of the existence, meaning, the universe, and life; they are also asserting their personal liberty. If at the heart of the liberty protected by the Fourteenth Amendment is this uncurtailable ability

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John T. Noonan, Jr., a judge on the U.S. Court of Appeals for the Ninth Circuit in San Francisco, wrote the opinion in *Compassion in Dying* v. *State of Washington*; this article is the entire text (including references as listed) of Judge Noonan's analysis, and his reasons for reversing the lower court's decision. (The entire case is available in the *Federal Reporter*.) Before his appointment to the federal judiciary, then-Professor (at the University of California, Berkeley) Noonan was for many years a contributor to this journal and a member of our editorial board.

to believe and to act on one's deepest beliefs about life, the right to suicide and the right to assistance in suicide are the prerogative of at least every sane adult. The attempt to restrict such rights to the terminally ill is illusory. If such liberty exists in this context, as *Casey* asserted in the context of reproductive rights, every man and woman in the United States must enjoy it. See Yale Kamisar, "Are Laws Against Suicide Unconstitutional?" 23 *Hastings Center Report* 32, 36-37 (May-June 1993). The conclusion is a *reductio ad absurdum.*

Second. While *Casey* was not about suicide at all, *Cruzan* was about the termination of life. The district court found itself unable to distinguish between a patient refusing life support and a patient seeking medical help to bring about death and therefore interpreted *Cruzan*'s limited acknowledgment of a right to refuse treatment as tantamount to an acceptance of a terminally ill patient's right to aid in self-killing. The district court ignored the far more relevant part of the opinion in *Cruzan* that "there can be no gainsaying" a state's interest "in the protection and preservation of human life" and, as evidence of that legitimate concern, the fact that "the majority of States in this country have laws imposing criminal penalties on one who assists another to commit suicide." *Cruzan*, 497 U.S. at 280, 110 S.Ct. at 2852. Whatever difficulty the district court experienced in distinguishing one situation from the other, it was not experienced by the majority in *Cruzan.*

Third. Unsupported by the gloss on "liberty" written by *Casey*, a gloss on a gloss, inasmuch as *Casey* developed an interpretation of "liberty" first elaborated in *Eisenstadt v. Baird*, 405 U.S. 438, 453, 92 S.Ct. 1029, 1038, 31 L.Ed.2d 349 (1972), and implicitly controverted by *Cruzan*, the decision of the district court lacks foundation in recent precedent. It also lacks foundation in the traditions of our nation. See *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934) (Cardozo, J.); *Lochner v. New York*, 198 U.S. 45, 76, 25 S.Ct. 539, 547, 49 L.Ed. 937 (1905) (Holmes, J., dissenting). In the two hundred and five years of our existence no constitutional right to aid in killing oneself has ever been asserted and upheld by a court of final jurisdiction. Unless the federal judiciary is to be a floating constitutional convention, a federal court should not invent a constitutional right unknown to the past and antithetical to the defense of human life that has been a chief responsibility of our constitutional government.

[2, 3] *Fourth.* The district court extrapolated from *Casey* to hold the statute invalid on its face. That extrapolation, like the quotation from *Casey*, was an unwarranted extension of abortion jurisprudence, often unique, to

a very different field. The normal rule—the rule that governs here—is that a facial challenge to a statute "must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 2100, 95 L.Ed.2d 697 (1987). The district court indeed conceded that there were circumstances in which the statute could operate unconstitutionally, for example to deter suicide by teenagers or to prevent fraud upon the elderly. The district court did not even attempt the calculation carried out in *Casey* to show that in "a large fraction of the cases" the statute would operate unconstitutionally. From the declarations before it the district court had at most the opinion of several physicians that they "occasionally" met persons whom the statute affected detrimentally and their recitation of five case histories. There was no effort made to compare this number with the number of persons whose lives were guarded by the statutes. The facial invalidation of the statute was wholly unwarranted.

[4] *Fifth.* The district court declared the statute unconstitutional on its face without adequate consideration of Washington's interests that, individually and convergently, outweigh any alleged liberty of suicide. The most comprehensive study of our subject by a governmental body is *When Death Is Sought. Assisted Suicide and Euthanasia in the Medical Context* (1994). The study was conducted by the New York State Task Force, a commission appointed by Governor Cuomo in 1985, which filed its report in May, 1994. The Task Force was composed of twenty-four members representing a broad spectrum of ethical and religious views and ethical, health, legal, and medical competencies. Its membership disagreed on the morality of suicide. Unanimously the members agreed against recommending a change in New York law to permit assisted suicide. Washington's interest in preventing such suicides is as strong as the interests that moved this diverse commission to its unanimous conclusion. A Michigan commission, set up in 1992, by majority vote in June 1994 recommended legislative change in the Michigan law against assisted suicide and set out a proposed new statute as a legislative option; the commission did not challenge the constitutionality of the exisiting Michigan legislation. Michigan Commission on Death and Dying, *Final Report* (1994). Neither the New York nor the Michigan reports were available to the district court. We take them into account on this appeal as we take into account the legal and medical articles cited by the parties and amici as representative professional judgments in this area of law. In the light of all these materials, Washington's interests are at least these:

1. The interest in not having physicians in the role of killers of their

patients. "Physician-assisted suicide is fundamentally incompatible with the physician's role as healer," declares the American Medical Association's *Code of Medical Ethics* (1994) § 2.211. From the Hippocratic Oath with its promise "to do no harm," see T.L. Beauchamp and J.F. Childress, *Principles of Biomedical Ethics* (1993) 330, to the AMA's code, the ethics of the medical profession have proscribed killing. Washington has an interest in preserving the integrity of the physician's practice as understood by physicians.

Not only would the self-understanding of physicians be affected by removal of the state's support for their professional stance; the physician's constant search for ways to combat disease would be affected, if killing were as acceptable an option for the physician as curing. *See* Alexander M. Capron, "Euthanasia in the Netherlands: American Observations," 22 *Hastings Center Report* 30, 32 (Mar.-Apr. 1992). The physician's commitment to curing is the medical profession's commitment to medical progress. Medically-assisted suicide as an acceptable alternative is a blind alley; Washington has a stake in barring it.

2. The interest in not subjecting the elderly and even the not-elderly but infirm to psychological pressure to consent to their own deaths. For all medical treatments, physicians decide which patients are candidates. If assisted suicide was acceptable professional practice, physicians would make a judgment as to who was a good candidate for it. Physician neutrality and patient autonomy, independent of their physician's advice, are largely myths. Most patients do what their doctors recommend. As an eminent commission concluded, "Once the physician suggests suicide or euthanasia, some patients will feel that they have few, if any alternatives, but to accept the recommendation." New York State Task Force, *When Death Is Sought*, 122. Washington has an interest in preventing such persuasion.

3. The interest in protecting the poor and minorities from exploitation. The poor and minorities would be especially open to manipulation in a regime of assisted suicide for two reasons: Pain is a significant factor in creating a desire for assisted suicide, and the poor and minorities are notoriously less provided for in the alleviation of pain. *Id.* at 100. The desire to reduce the cost of public assistance by quickly terminating a prolonged illness cannot be ignored: "the cost of treatment is viewed as relevant to decisions at the bedside." *Id.* at 129. Convergently, the reduction of untreated (although treatable) pain and economic logic would make the poorest the primest candidates for physician-assisted and physician-recommended suicide.

4. The interest in protecting all of the handicapped from societal indif-

ference and antipathy. Among the many briefs we have received from amici curiae there is one on behalf of numerous residents of nursing homes and long-term care facilities. The vulnerability of such persons to physician-assisted suicide is foreshadowed in the discriminatory way that a seriously-disabled person's expression of a desire to die is interpreted. When the nondisabled say they want to die, they are labelled as suicidal; if they are disabled, it is treated as "natural" or "reasonable." See Carol J. Gill, "Suicide Intervention for Persons with Disabilities: A Lesson in Inequality," 8 *Issues in Law & Med.* 37, 38-39 (1993). In the climate of our achievement-oriented society, "simply offering the option of 'self-deliverance' shifts a burden of proof, so that helpless patients must ask themselves why they are not availing themselves of it." Richard Doerflinger, "Assisted Suicide: Pro-choice or Anti-Life,?" 19 *Hastings Center Report* S. 16, S. 17 (Jan.-Feb. 1989). An insidious bias against the handicapped—again coupled with a cost-saving mentality—makes them especially in need of Washington's statutory protection.

5. An interest in preventing abuse similar to what has occurred in the Netherlands where, since 1984, legal guidelines have tacitly allowed assisted suicide or euthanasia in response to a repeated request from a suffering, competent patient. In 1990, approximately 1.8 percent of all deaths resulted from this practice. At least an additional .8 percent of all deaths, and arguably more, come from direct measures taken to end the person's life without a contemporaneous request to end it. New York State Task Force, *When Death Is Sought*, 133-134.

Sixth. The scope of the district court's judgment is, perhaps necessarily, indefinite. The judgment of the district court was entered in favor of Jane Roe and John Doe although they were dead. This unheard-of judgment was a nullity. The judgment in favor of James Poe lapsed with his death pending appeal. The judgment in favor of Doctors Glucksberg, Halperin, Preston and Shalit was "insofar as they raise claims on behalf of their terminally ill patients." No such patients were identified by these doctors except patients who were already deceased. Presumably, then, the judgment was on behalf of terminally ill patients that these doctors might encounter in the future. The term "terminally ill" was not defined by the court. No class was certified by the court. There is a good deal of uncertainty on whose behalf the judgment was entered.

It was suggested in argument that a definition of the terminally ill could be supplied from the Washington statute on the refusal of life-sustaining treatment which does define "terminal condition." Wash.Rev.Code 70.122.020(9). There are three difficulties: "terminal condition" and

"terminally ill" are different terms; the examples given by the plaintiffs show considerable variation in whom they considered terminally ill to be; there is wide disagreement in definition of the terminally ill among the states. See New York State Task Force, *When Death Is Sought*, 23-35. Life itself is a terminal condition, unless terminal condition is otherwise defined by a specific statute. A terminal illness can vary from a sickness causing death in days or weeks to cancer, which Dr. Glucksberg notes is "very slow" in its deadly impact, to a heart condition which Dr. Preston notes can be relieved by a transplant, to AIDS, which Dr. Shalit declares is fatal once contracted. One can only guess which definition of the terminally ill would satisfy the constitutional criteria of the district court. Consequently, an amorphous class of beneficiaries has been created in this non-class action; and the district court has mandated Washington to reform its law against the promotion of suicide to safeguard the constitutional rights of persons whom the district court has not identified.

Seventh. At the heart of the district court's decision appears to be its refusal to distinguish between actions taking life and actions by which life is not supported or ceases to be supported. This refusal undergirds the district court's reading of *Cruzan* as well as its holding that the statute violates equal protection. The distinction, being drawn by the legislature not on the basis of race, gender or religion or membership in any protected class and not infringing any fundamental constitutional right, must be upheld unless the plaintiffs can show "that the legislature's actions were irrational." *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 458, 108 S.Ct. 2481, 2487, 101 L.Ed,2d 399 (1988). The plaintiffs have not sustained this burden.

[5] Against the broad background of moral experience that everyone acquires, the law of torts and the law of the criminal offenses against the person have developed. "At common law, even the touching of one person by another without consent and without legal justification was a battery." *Cruzan*, 497 U.S. at 269, 110 S.Ct. at 2846. The physician's medical expertness is not a license to inflict medical procedures against your will. Protected by the law of torts, you can have or reject such medical treatment as you see fit. You can be left alone if you want. Privacy in the primordial sense in which it entered constitutional parlance—"the right to be let alone"—is yours. *See Olmstead v. United States*, 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting).

Tort law and criminal law have never recognized a right to let others enslave you, mutilate you, or kill you. When you assert a claim that another—and especially another licensed by the state—should help you bring

about your death, you ask for more than being let alone; you ask that the state, in protecting its own interest, not prevent its licensee from killing. The difference is not of degree but of kind. You no longer seek the ending of unwanted medical attention. You seek the right to have a second person collaborate in your death. To protect all the interests enumerated under *Fifth* above, the statute rightly and reasonably draws the line.

Compassion, according to the reflections of Prince Myshkin, is "the most important, perhaps the sole law of human existence." Feodor Doestoevsky, *The Idiot*, 292 (Alan Myers, trans.) (1991). In the vernacular, compassion is trumps. No one can read the accounts of the sufferings of the deceased plaintiffs supplied by their declarations, or the accounts of the sufferings of their patients supplied by the physicians, without being moved by them.

No one would inflict such sufferings on another or want them inflicted on himself; and since the horrors recounted are those that could attend the end of life anyone who reads of them must be aware that they could be attendant on his own death. The desire to have a good and kind way of forestalling them is understandably evident in the declarations of the plaintiffs and in the decision of the district court.

Compassion is a proper, desirable, even necessary component of judicial character, but compassion is not the most important, certainly not the sole law of human existence. Unrestrained by other virtues, as *The Idiot* illustrates, it leads to catastrophe. Justice, prudence, and fortitude are necessary too. Compassion cannot be the compass of a federal judge. That compass is the Constitution of the United States. Where, as here in the case of Washington, the statute of a state comports with that compass, the validity of the statute must be upheld.

For all the foregoing reasons, the judgment appealed from is REVERSED.

To Protect the Poor *and* Doctors

[At this writing the U.S. Supreme Court has not acted on either of the cases decided by the Second and Ninth Circuit Courts; it is possible that it will order further ajudication in one or both. However, a motion for leave to file an Amici Curiae *brief* in re *the Second Circuit decision was presented to the Supreme Court (October term, 1995) on behalf of "Seven present and former Commissioners of the United States Commission on Civil Rights and a former Chairman of the Equal Employment Opportunity Commission" in support of the Petitioners (i.e., New York State). Among the reasons presented for granting the petition were the two we reprint in full here, just as they appeared in the original.]*

a. The Second Circuit's Decision Does Not Adequately Consider the Threat Posed By Physician-Assisted Suicide to the Poor, Persons with Disabilities, and Racial Minorities Who Historically Have Suffered Discrimination in the Provision of Medical Services.

The Court of Appeals ignored as a rational basis for New York's law prohibiting assisted suicide, the State's desire to protect its most vulnerable citizens from the most extreme consequences of medical exploitation or neglect. To the contrary, the court's concern with such persons was not that their deaths might be encouraged or unduly facilitated by the medical establishment, but that they might not have sufficient access to the right to embrace suicide: "[W]ith respect to the protection of minorities, the poor and non-mentally handicapped, it suffices to say that these classes of persons are entitled to treatment equal to that afforded to all those who now may hasten death by means of life-support withdrawal." *Quill v. Vacco*, 80 F.3d 716, 730 (2d Cir. 1996). *Amici* respectfully submit that this conclusion reflects an inadequate awareness of the history of discrimination in the provision of medical services to the poor, persons with disabilities, and racial minorities. Moreover, *amici* suggest that the Court of Appeals' partial invalidation of New York Penal Law Sections 125.15(3) and 120.30 poses an unprecedented threat of exploitation in the delivery of health care.

In reviewing the specific issue of physician-assisted suicide, the New York State Task Force on Life and the Law ("New York State Task Force"), convened in 1985 by Governor Mario Cuomo, rejected the proposed repeal or amendment of the New York law on assisted suicide for precisely this reason. Its conclusion could not be any clearer or more deliberate:

> [I]t must be recognized that assisted suicide and euthanasia will be practiced through the prism of social inequality and prejudice that charaterizes the delivery of services in all segments of society including health care. Those who will be most vulnerable to abuse, error, or indifference are the poor, minorities, and those who

> are least educated and least empowered. This risk does not reflect a judgment that physicians are more prejudiced or influenced by race and class than the rest of society—only that they are not exempt from the prejudices manifest in other areas of our collective life.
>
> While our society aspires to eradicate discrimination . . . we consistently fall short of our goal. The costs of this failure with assisted suicide and euthanasia would be extreme. Nor is there any reason to believe that the practices, whatever safeguards are erected, will be unaffected by the broader social and medical context in which they will be operating. This assumption is naive and unsupportable.

New York State Task Force on Life, *When Death is Sought: Assisted Suicide and Euthanasia in the Medical Context* (May 1994).

Amici agree entirely with this conclusion of the New York State Task Force. Indeed, this conclusion is strikingly consistent with findings of the the Civil Rights Commission itself in its multi-year study of discrimination in the provision of medical services to children born with severe disabilities. *See* United States Commission on Civil Rights, *Medical Discrimination Against Children with Disabilities* (1989). (For the convenience of the Court several copies of this report have been lodged with the Clerk.) The Civil Rights Commission found that "[a] significantly high incidence of medical discrimination against children with disabilities exists that is part of a much larger pattern of medical care discrimination against people with disabilities." *Id.* at 8. In addition, the Commission reported that:

> The grounds typically advanced to support denial of lifesaving medical treatment or food and fluids are based on erroneous judgments concerning the quality of life of a person with a disability or on social judgments that such a person's continued existence will impose an "unacceptable" burden on his or her family or on the Nation as a whole. These judgments are often grounded in misinformation, inaccurate stereotypes, and negative attitudes about people with disabilities.

Id. at 12. Although *amici* realize that certain circumstances of disabled patients denied medical services at the beginning of life may differ from circumstances pertaining to disabled, or other, patients facing life-and-death decisions at the end of life, nonetheless, like the New York Task Force, *amici* respectfully suggest that it is "naive and unsupportable" to suppose that decisions affecting physician-assisted suicide would not be subject to the same pressures and attitudes.

Amici assert that the context in which such decisions will be made cannot be separated from the historic reality of unequal health care and the health status of minorities in American society. In 1984, Secretary of Health and Human Services Margaret Heckler established a departmental Task Force on Black and Minority Health to conduct the first comprehensive review of national minority health issues compiled into one federal report. See United States Department of Health and Human Services, Report of the Secretary's Task Force on Black and Minority Health (August 1985).

This report stated that:

> Despite the unprecedented explosion in scientific knowledge and the phenomenal capacity of medicine to diagnose, treat, and cure disease, Blacks, Hispanics, Native Americans, and those of Asian/Pacific Islander heritage have not benefited fully or equitably from the fruits of science or from those systems responsible for translating and using health sciences technology.

Id at 1. The report continued that there has been "steady improvement in overall health status, while at the same time, persistent, significant health inequities exist for minority Americans." *Id.* at 2. What Secretary Heckler, in issuing this report, called this "tragic dilemma" remains with us still.

Perhaps it should be acknowledged, in light of the Second Circuit's inability to perceive any possible distinction between suicide and decisions of a patient to forgo or discontinue life-supporting medical treatment, that, in the sphere of life support decisions, as well, the poor, persons with disabilities, and racial minorities face disparate treatment. That problem, too, entails issues of the deprivation of civil rights and needs to be addressed. But the persistence of serious risks in one sphere is a poor reason to strike down effective protections already existing in another sphere. Such an action makes as little sense as demolishing fire houses and police stations in affluent suburbs, in the name of equal treatment, because there may be insufficient fire and police protection in the inner city.

Given the tragic vulnerability of the poor, persons with disabilities, and racial minorities to medical exploitation and neglect, the Second Circuit erred in failing to perceive the protection of these citizens as a rational basis for New York's decision to ban all assisted suicide.

b. The Second Circuit Has Created Dangerous Dual Roles for Physicians—to Promote Life and Health on Some Occasions and to Act Deliberately to Bring About Death on Others

Our nation faces difficult choices today with regard to the provision of medical care. Many of those choices derive from the interplay between the high costs of various medical procedures and the limited resources which many patients can command. There are strong and disturbing tendencies to allow full compassionate care to gravitate toward dollars, insurance companies to court the healthy and avoid the sick, and persons with diminished physical or mental capacities to be considered imprudent destinations for the allocation of more than minimal medical resources.

The young, the old, the sick, persons with disabilities, the poor, and racial minorities are dependent now more than ever before on the high ethical standards of medical professionals. In the absence of such high standards, the physical and mental impairments experienced by such persons when

they are in dire need of medical care (compounded by age-related inabilities to act aggressively in their own defense) are likely to subject them to the devaluation of their incommensurable worth as human beings. Doctors and nurses must be the champions of last resort of many who lack any other advocates.

The Second Circuit has now accepted the proposition that patients themselves can rationally conclude that their physically or mentally diminished lives are no longer worth living and be entitled to a physician's assistance in committing suicide. If such conclusions are deemed rational when made by one person about himself, they cannot be considered any less rational when made about others. Whatever the medical factors may be that are deemed to justify suicide, they can be perceived by third parties and used to justify a decision for death, whether or not the patient may concur.

This poses a dreadful danger of infecting physicians' attitudes, in both subtle and less subtle ways. *Amici* see ample evidence of a pre-existing propensity in some doctors to be negatively influenced by various defects and disabilities in their treatment decisions, as reflected in the Civil Rights Commission's 1989 report *Medical Discrimination Against Children with Disabilities, supra.* Involving doctors both as accessories in acts of suicide and as evaluators of the rationality of patients' suicide decisions seems likely to exacerbate the danger of more doctors drifting away from a pure and strict allegiance to the ancient Hippocratic Oath. Instead, we are likely to see doctors becoming more inclined (as well-educated professionals prone to value highly their own judgments) to reach their own conclusions about which cases appropriately call for the exercise of their skill as healers and which for their unique legally conferred authority to grant final surcease. Even if there is no dramatic embrace of nonvoluntary euthanasia, there is bound to be a dangerous tug in that direction as habits of mind and practice change. In the judgment of *amici*, states are wholly justified in refusing to countenance anything which contributes to the dilution or contamination of a physician's single-minded devotion to fostering the life and health of his patients.

[*The seven "present and former" members of the U.S. Civil Rights Commission are Carl A. Anderson, Robert P. George, Constance Horner, Russell G. Redenbaugh, William B. Allen, Esther Gonzalez-Arroyo Buckley, and Robert A. Destro; the former chairman of the Equal Employment Opportunity Commission is Evan J. Kemp, Jr. Both Messrs. Anderson and Destro have been longtime contributors to this* Review. *—Ed.*]

Deadly Similarities

Harold O.J. Brown

Early in the history of the *Human Life Review*, we published an essay by the German psychiatrist and attorney Prof. Helmut Ehrhardt of Marburg University detailing similarities between abortion and euthanasia.[1] Then, it may have seemed alarmist; twenty-one years later, it seems unduly optimistic. The similarities are now unmistakable; indeed, there is even a parallel to a seemingly-unrelated phenomenon, the practice of homosexuality.

The Austrian economist Prof. Hans Millendorfer of Vienna puts it bluntly: "Abortion, like euthanasia, is a method in which killing represents a solution."[2] If people are the problem then such a method represents a solution. (And if people are the problem, then homosexuality, which does not produce more of them, is also in a sense a solution.) Prof. Ehrhardt defined as one of the similarities between the two procedures "usurpation of authority": in the case of abortion, the authority of the unborn child to determine whether life is worth living is usurped by the would-have-been mother or her "advisors." In the case of involuntary euthanasia, that of the sick person is usurped by relatives or "care-givers." In the case of "voluntary" euthanasia and physician-assisted suicide, the sick person supposedly is acting autonomously, but it is becoming increasingly apparent just how vulnerable to suggestion, not to say outright pressure, dangerously-ill or handicapped people can be. Apparent autonomy may really be only submission to usurpation of authority over his or her own life and death by someone else, of course always with the person's "best interests" at heart.

In the early days of the "abortion-rights" movement, appeal was always made to hard cases. Abortion, it was assumed, was generally undesirable, even criminal, but in certain selected hard cases, it was a sad necessity. However, once *Roe* v. *Wade* legalized abortion nationwide—throughout all nine months of pregnancy—it suddenly was generalized, to the point where virtually one-third of all "conceptuses"—babies conceived—in the United States are "terminated, safely and legally" instead of being born into the world. At the present time, euthanasia is always argued on behalf of the hard cases, just as abortion once was.

Generally, it must be conceded, this is easy to do with euthanasia, for all

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the cases are harder and more heart-wrenching than most abortion cases.

But in virtually all of the hard cases put forward in arguing for abortion, other alternatives are available. In the hard cases of euthanasia, there usually is no long-term alternative to the *exitus lethalis*: the only questions are "How long?" and "How painful?" If there is any analogy to abortion—and the Ninth Federal District Court in California recently based its doctor-assisted suicide decision explicitly in part on *Roe*—then it is certainly reasonable to expect that what is permitted in the hard cases will rapidly spread to more general cases and that euthanasia will suddenly take off in the United States as abortion did after 1973—as it has already done in the Netherlands. The expression "slippery slope" is too weak to describe what happened to abortion on demand after *Roe*; it was more like free fall, or even an air-to-ground missile. With respect to euthanasia, the development may be slower, but it is inevitable that what is permitted will soon become common and, ultimately, even obligatory.

One of the more puzzling developments in the current presidential election campaign is the way in which the Republican governors of New Jersey and Massachusetts, Mrs. Christine Whitman and Mr. William Weld, in their zeal to make abortion rights acceptable in the Republican Party, praised President Clinton's veto of Congress' ban on late-term craniotomy, i.e. "partial birth" abortions. Why should Republican leaders rally to an opponent who has placed himself squarely behind a procedure for which there are no plausible medical indications and which most of those who know it find detestable? It would have been more in keeping with the "moderation" they advocate to say, "We're pro-choice, but partial-birth abortions go too far!"

Why did they not do so? There seem to be two reasons. First, they cannot just be seeking a space for moderate abortion rights advocates in the party, because there is no such thing as "moderate" abortion rights advocacy. If any abortion is to be accepted, *every* abortion must be.

The second reason explains the first: it was pointed out by a *Chicago Tribune* columnist, Eric Zorn, on June 13.[3] The only really telling reason for outlawing the partial-birth procedure is not its gruesomeness; after all, certain life-saving surgical procedures are very gruesome. It is instead the fact that if this procedure is to be outlawed, it will be because one has admitted that the gruesomeness is being perpetrated on a human being, on a member of our species, such as every one of us once was. In other words, to outlaw abortion at any time in pregnancy, even at the very end, is to admit what everyone actually knows but so many cannot admit, namely, that the child *en ventre de sa mère* is a human being.

This is precisely the thing that one cannot admit at any point in pregnancy, for if one does, then one is faced with the impossible task of defining the point in pregnancy at which that which was not yet human, and thus subject to elective abortion, becomes human and deserving of legal protection. It can be argued that very early in pregnancy, before the first brain waves have appeared, the embryo is "not yet human." This argument is flawed, but not totally absurd. However, if it is ever admitted to be human at any point while still in the womb—and this is the implicit reason for banning the partial-birth procedure—then it will have to be admitted that it has been human for a while, and that many or most abortions, even earlier in pregnancy, irresponsibly and indefensibly take human lives. Mr. Zorn is an advocate of abortion rights, but he acknowledges that this line of thinking, which he himself has now brought to public attention, has greatly disturbed him. Because Governors Whitman and Weld do not want to be disturbed, they support President Clinton's advocacy of abortion at any time during pregnancy: it's never too late, if it's not human. But if it is *ever* human, it will get too late far too *soon* to suit them.

A final "deadly similarity" can be seen in the exaltation of autonomy. The term autonomy, from Greek *autos*, self, and *nomos*, law, means that one is a law unto oneself, that there is no external law of God or of nature by which one is bound. In *Our Right to Choose*,[4] Professor Beverly Wildung Harrison, of New York's Union Theological Seminary, argues that a woman is not treated as a responsible moral agent if she is not allowed to terminate a pregnancy at wish. The laws of biological nature determine that in the great majority of cases, a pregnancy will result in birth; this is a violation of a woman's autonomy, and abortion removes her from subjection to this law. Restrictive human laws against abortion would likewise violate her autonomy: therefore they must be relentlessly opposed, not just in the hard and difficult cases, but in every case, even when the arguments in their favor might seem most compelling, as immediately prior to or in the course of the delivery of the child. The iron laws of nature demand that each of us die; we cannot violate the law by living indefinitely, but we can in a way preempt it, by determining that we shall die before it requires us to do so: again, an assertion of autonomy.

Here too, there is a parallel to homosexuality and the "gay rights" movement: here too individual autonomy has to be preserved and exalted, regardless of the laws of nature, of society, of religion, or of tradition. The latter three kinds of laws can be set aside by human enactments, but the laws of nature cannot be. As the late Dr. Jérome Lejeune used to say,

"*Seul Dieu pardonne vraiment; l'homme pardonne parfois; la nature ne pardonne jamais*" ("Only God truly pardons, man sometimes pardons, nature never pardons"). A consequence of male homosexuality, unintended, it is true, but nevertheless one that occurs with regularity if not inexorably, is the transmission of the lethal immune deficiency disease AIDS as well as of many other serious and even fatal illnesses.[5] The spread of AIDS and of several other destructive maladies could be dramatically checked by obedience to certain moral laws, those of the Bible, for example. Unfortunately, those who obey laws, whether they be the laws of nature, of God, or even of hygiene, cannot claim to be autonomous.

Autonomy, being a law unto oneself, has a very bad name in Christian and other religious circles, but Christianity—and any other religion with a strong component of law—has a bad name in contemporary society.

Thus we see that three of the major social and biomedical issues of our day, abortion, euthanasia, and AIDS, possess several deadly similarities. The first two are, as Professor Millendorfer says, "methods in which killing represents a solution." Homosexuality may not kill, but if people are the problem, at least it produces no more of them. All three depend on the concept of autonomy, which is contrary to common sense, to the realities of nature, and to most religious doctrine, but which has become the battle-cry of our "late, degenerate sensate society"[6] at the end of the millennium.

It is autonomy that justifies abortion at will, at any time; it is autonomy that justifies the taking of one's own life, rather than leaving the time to nature and to God. And it is autonomy that authorizes the reshaping of sexuality in ways unintended by nature or by God, and that demands of government and the medical profession extreme efforts to forestall its common consequences. "There is a way which seemeth right unto a man, be the end thereof are the ways of death" (*Proverbs* 14:12).

NOTES

1. See "Abortion and Euthanasia: Common Problems," in our Summer, 1975 issue (Vol. I, No. 3); the article was adapted from Prof. Ehrhardt's address to the Third World Congress for Medical Law (held in Geneva in August, 1973), with revisions reflecting changes in West German abortion law in 1975.
2. From a lecture delivered at a Pro Vita conference in Vienna in Easter Week, 1987.
3. See the *Chicago Tribune*, June 13, 1996, Section 3, p. 1.
4. Boston: Beacon Press, 1982.
5. It may be objected that male homosexual acts can transmit disease only when one or more of the participants carries the infection; this is true, but it is also true that the general pattern of male homosexual behavior exposes those who practice it to multiple contacts, with the predictable consequence that not only AIDS but other sexually transmissible diseases become epidemic.
6. The expression was coined by Pitirim A. Sorokin in *The Crisis of Our Age* (Oxford, England: Oneworld, 1992; first edition, 1941) and will be discussed in detail in my own [forthcoming, due July 23] work, *The Sensate Culture* (Dallas: Word, 1996).

The View from 1977

Malcolm Muggeridge

Of course, it would be quite wrong to think that the offensive which is being mounted on our Christian way of life will stop at abortion, and already there are the rumblings of a new, strong push in the direction of euthanasia.

I have absolutely no doubt that this will be the next great controversy that will arise. The fact is that because it's so costly in money and personnel to keep alive people about whom the medical opinion is that their lives are worthless, the temptation to get rid of the burden by killing them off will be even greater. And thus disposing of them will of course be dressed up in humanitarian terms as an act of humanity and compassion. Almost all the evil things that have been done in the world in the last decades have been done in the name of justice, equality, compassion, etc. There's a wonderful saying of Dr. Johnson—that wise and good man—that I like very much: "Why," he asks, "Is it that we hear the loudest yelps for liberty among the drivers of slaves?"

And this is of course true: it is in the name of humanitarianism that these terrible proposals are made. There would, I feel sure, have been an intensive pressure for euthanasia before now had it not been for one circumstance—that the only government so far in the history of the *world* to put a euthanasia law into effect is the goverment of the Nazis. *No* other government in the *whole* of recorded history has ever actually *enacted* a euthanasia law. But the Nazis did. And to a considerable extent the German medical profession cooperated with them.

The law, I should add, was widely applied throughout the Reich. I happened a few years ago to be visiting a Lutheran settlement for sick and deranged people at Bethel near Bielefeld in West Germany. And there they told me all about how this monstrous piece of legislation had been enforced. They, in common with all such institutions, were asked to produce particulars of the patients that they had in their care. And they refused to do this, because they knew quite well that it would be a prelude

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Malcolm Muggeridge, for many years Britain's best-known TV personality, was an internationally-renowned journalist, author, editor (of *Punch*) and social critic (he was also an early contributor to this *Review*, and our long-time Editor-at-Large). In May, 1977, he addressed the Festival for Life held in Ottawa, Canada, and we ran an article adapted from that address in our *Fall*, 1977 issue. We have reprinted here the latter half of that article, just as it appeared almost 20 years ago. Mr. Muggeridge died in 1990, aged 87.

to getting rid of a lot of them. So, in due course they were visited by an official who wanted to know why they hadn't set the required particulars, explaining to them that the definition of a person whose life was useless was an inability to communicate. In that case, they said, there was no one in their institution who was in that category. And they proved it, demonstrating that, because their institution was run on the basis of Christian love, *all* the patients in response to love answered with love, and so were able to communicate.

Anyway, the long and short of it was, that almost alone in the whole of Germany, their institution escaped the application of the Nazi euthanasia law.

But we shall not be so fortunate when the agitation for legalized euthanasia really gets going in our part of the world. In the first place, it will be argued—which is, alas, true—that in many hospitals in the Western world the lives of patients considered unfit to live are already *being* terminated by the administration of excessive sedation. So, the contention will be that there's no point in retaining a legal prohibition which is already being disregarded.

Secondly, the argument will be used that the resources needed for disabled people—not just the old and the senile, but also the Mongols and others who are badly disabled and not fully conscious—can be better employed in other ways. The quality of life, it will be argued, requires that the drastically handicapped should be got rid of. We shall of course resist this, we should all—every single Christian—find such a proposal utterly abhorrent. But I feel certain—and I think everybody should get ready for it—that before long euthanasia will be legalized like abortion, like Family Planning, because all these things are closely related. They're all a slippery slope, one leading inexorably to the other.

I wanted to tell you about a little playlet that some friends of mine devised, because I think it illustrates what I'm talking about better than any kind of argument. The scene is a doctor's consulting-room in Vienna round about 1770. A peasant woman comes in and tells the doctor that she is in her second month of pregnancy, that her husband is an alcoholic and has syphilitic infection; that one of her children is mentally incapacitated, and that there is a family history of deafness.

The doctor listens, and finally agrees that there is a case for her to have her present pregnancy terminated. And so he has to fill in a form. Filling in the form he asks her name, but he can't quite hear when she tells him, so he says: "Please spell it out." And she spells out" "B-E-E-T-H-O-V-E-N."

And then the Sixth Symphony strikes up.

Now I think that little drama tells what we're concerned with. *How* can we ever know that such a life shouldn't be born? Or, that such a life should be terminated? On what conceivable basis can we in our arrogance make such decisions as that? It is out of all relation to the great Christian traditions in which our society was born, and on the basis of which it has grown up, becoming a great civilization.

We have a duty, in all circumstances, to say that men are not bodies; men have souls. That our narrow, self-interested human values cannot be applied to decide the fitness, or otherwise, of a God-created human being to go on living. That in the womb, when this marvellous process of gestation takes place, a life comes into existence that, like all other lives, is an infinitesimal particle of God's creation. And that that particle of creation contains within itself all the potentialities that exist in every other God-created life.

If we *ever* depart from seeing it so, then it is *not just* that we've abandoned our religious faith and that we can no longer participate in the great drama of the Incarnation from which our whole way of life is derived, but we have ceased to deserve to be known as civilized men and women. That is the issue. The attack has been made in terms of this terrible legalized abortion which is upon us. It *will* be followed up, in terms of legalized euthanasia.

First, of getting rid of the old and senile, and then of deciding that such and such and such persons don't rate being allowed to go on living. Out of the Christian notion of a human family has come all that is most precious to us. We have to guard it. We have to treasure it. We have to stand up for it, whatever may happen governmentally and administratively. That is our essential duty and our privilege.

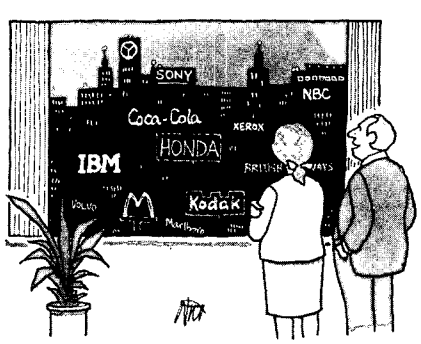
I am an old man, and I shall soon be dead. Old men have a strange thing that happens to them. They often wake up in the middle of the night, at two or three o'clock, and they can see between the sheets the battered old carcass that they will soon be leaving, and it seems like a toss-up whether you go back to it to live through another day, or whether you make off.

It's a moment, dear friends, of very good perceptiveness, this moment when in a weird sort of way you stand between life here and life in eternity, and you see in the distance, like you see when you're driving, the glow of a city. You see the lights of St. Augustine's City of God. And in that situation, you have some very sharp convictions.

One of them is of the sheer beauty of our earth—the beauty of its shapes and its foliage and its animals and its trees and its rocks—*everything*, the incredible beauty of it. Also, of the great beauty of human relationships: between parents and children, between husband and wife, between friends, between sweethearts—all these beautiful human relationships. Of the wonder of human work and human creativity. Of all that human beings have been able to achieve.

But you also see that all this wonder derives not from *men*, but from the participation of men in a creation which has been provided for them by a Creator. And that therefore, in existing even at the fag-end of a life, existing as this tiny, tiny part of God's creation, you are a participant in God's purposes. And that these purposes are creative, and not destructive. These purposes are loving, and not hating. These purposes are universal and not particular. *Above all*—and this relates so closely to what's drawn us here together today—*above all*, they relate to a *surrender*, an abandonment to God's purpose for men, so that on *that* relationship reposes all that is wonderful in our life. And that whenever we arrogantly, or seemingly with good intentions but still with the dreadful conceit of scientists, think to intervene *ourselves*, shape our genes, rearrange our genes as we want them, make sure that all the creatures that come into the world are beauty queens and Mensa I.Q.'s; when we seek to do all those things, to eliminate from the world whatever seems to *our* eyes imperfect or askew, that *then* we shut ourselves off from that wonderful light that awaits us.

Then we shall relinquish our citizenship of the City of God, which is our precious, unique birthright. That's what I have to say to you, and God bless you all.



'How could anyone look out there and doubt the existence of a Supreme Being?'

THE SPECTATOR 2 March 1996

A Decision between a Woman and God

Roy Rivenberg

Just when it seemed the debate over abortion was hopelessly deadlocked, along comes feminist author Naomi Wolf with a magazine article that has stunned supporters of legalized abortion and pleasantly surprised some abortion foes.

Writing in the New Republic, Wolf touched off an international uproar by suggesting that abortion-rights backers are guilty of "self-delusions, fibs and evasions" and that "the death of a fetus is a real death."

"By refusing to look at abortion within a moral framework," she says, "we lose the millions of Americans who want to support abortion as a legal right but still need to condemn it as a moral iniquity . . . . And we risk becoming precisely what our critics charge us with being: callous, selfish and casually destructive men and women who share a cheapened view of human life."

If the words had come from another quarter, they might have been ignored. But Wolf, 33, holds impeccable feminist credentials, not only as the author of such seminal works as "the Beauty Myth," but as a strenuous advocate of unrestricted access to abortion, a view she hasn't abandoned.

So her article, seven moths after its October publication, continues to make waves. Newsweek, USA Today, "Firing Line" and various overseas media are among the print and TV outlets to have taken notice. And in recent weeks, the essay has been hashed out on a syndicated radio show, in a religious journal and at a conference of the National Abortion Federation, which represents clinics and doctors who perform more than half of the nation's 1.3 million annual abortions.

Some observers downplay the long-term impact, but a few predict that Wolf's commentary—along with several other magazine pieces published around the same time—might help dent the stalemate on abortion.

"Usually when I debate on this topic, I feel like I'm behind a podium speaking French and the other person is behind a podium speaking Finnish," says Helen Alvare, who represents the National Conference of Catholic Bishops on the issue. "There's no common ground. But Naomi Wolf allows a conversation to begin."

Roy Rivenberg is a staff writer for the Los Angeles *Times*, in which this article first appeared (in the *Life & Style* section, May 24, 1996).

Both sides, however, seem rattled by the direction Wolf wants that conversation to take.

To the dismay of those who favor liberal abortion laws, Wolf devotes the first part of her 6,700-word essay to a blistering critique of the rhetoric used to defend the procedure. In short, she contends that scientific advances since Roe vs. Wade—including "Mozart for your belly, framed sonogram photos [and] home fetal-heartbeat stethoscopes"—have made it absurd to argue that a fetus is somehow less than human.

"What will it be?" she asks.

"Wanted fetuses are charming, complex, REM-dreaming little beings whose profile on the sonogram looks just like Daddy, but unwanted ones are mere 'uterine material'? How can we charge that it is vile and repulsive for pro-lifers to brandish vile and repulsive images [of aborted children] if the images are real?"

She also shreds the idea that women who choose to end a pregnancy do so only with the purest of motives or under the most dire of circumstances.

Too often, she says, the true explanation is laziness in using birth control (the "I don't know what came over me, it was such good Chardonnay" abortions) or, simply, selfishness ("not so unlike those young louts who father children and run from the specter of responsibility—except that [this] refusal to be involved . . . is as definitive as a refusal can be").

In the U.S., she notes, repeat abortions account for nearly half the annual total. And 11% of all abortions are procured by women in households with yearly incomes of at least $50,000.

"There are degrees of culpability, judgment and responsibility involved in the decision to abort a pregnancy," she writes. "Pro-choice advocates tend to cast abortion as 'an intensely personal decision.' To which we can say, No: One's choice of carpeting is an intensely personal decision."

Abortion, on the other hand, is a good deal more than that: It's not just a matter between "a woman and her doctor," she insists: It's between a woman and *God.*

But the cartwheels and cheers from abortion opponents tend to stop here.

Because Wolf, despite calling the procedure "an evil," goes on to say it is a "necessary evil."

"Sometimes the mother must be able to decide that the fetus, in its full humanity, must die," she writes. And how does Wolf reconcile "the humanity of a fetus, and the moral gravity of destroying it, with a pro-choice position"?

Partly by urging acts of redemption.

"In all of the great religious traditions, our recognition of sin, and then our atonement for it, brings on God's compassion," she writes. In the case of abortion, proper atonement might mean donating money to prenatal care for the poor, providing contraception and jobs for young girls, or having feminists and abortion doctors hold candlelight vigils at clinics to "commemorate and say goodbye to the dead."

Reaction from antiabortion forces has ranged from cautious praise to bitter condemnation.

"Listen—with hope—to a voice from the 'other side,' " wrote activist Carol Aronis in the Cincinnati Enquirer, one of many to quote the essay favorably. Wolf's article also has been debated on William F. Buckley's "Firing Line" and reprinted in full by the Human Life Review, which dedicated much of an entire issue to a symposium on it.

But some abortion foes find Wolf's "honesty" about the topic chilling.

"The movement which looks at a sonogram and sees 'tissue' or 'material' to be disposed of casually may be lying to itself, but at least it is still unwilling to take innocent life," writes Rebecca Ryskind Teti, of the Wakefield Women's Institute, in the Human Life Review. "If that same movement looks at a sonogram and sees a baby—and disposes of it anyway—it may be more honest, but its heart is of stone."

Another commentary assails Wolf's idea of atoning for abortion through community service as "a user's tax on sin: Pay the penalty . . . and you are free to sin another day."

First Things, a weighty journal of religion and public life, goes further, suggesting that Wolf's proposal to "admit that [a fetus] is a baby and then kill it, but regretfully," lays a philosophical groundwork for "the extension of the abortion license to born babies and other inconvenient persons."

Wolf derides the First Things editorial as demagoguery: "That's the first thing anyone has said that offends me."

Nevertheless, conservatives have generally been kinder to her than abortion-rights advocates, for whom she has become *persona non grata.*

"We'd rather grapple with enemies we know than so-called friends in Wolf's clothing," wrote Planned Parenthood's acting co-president, Jane M. Johnson, in a letter to the New Republic.

Other feminists knock Wolf for being "judgmental" about why some women get abortions.

"She doesn't give women the credit they deserve," complains Vicki Saporta, executive director of the National Abortion Federation. "She hasn't

been in operating rooms thousands of times supporting women as they grieve their lost pregnancies . . . [or seen that] they choose to have abortions after careful thought and make deeply moral, personal decisions."

Kate Michelman of the National Abortion and Reproductive Rights Action League, concurs: "Her discussion of women is demeaning and insulting. I don't think she can say she likes some abortions and doesn't like others. I would never presume to render judgment about a woman's decision."

Michelman contends Wolf has played straight into the hands of the enemy: "You can judge someone by who their friends are [and] Naomi Wolf has been embraced by the anti-choice movement. She's made an enormous contribution to them."

Perhaps stung by such criticism, Wolf has recently sought to bolster the abortion-defense portion of her essay. In a radio debate with feminist writer Katha Pollitt last month, for example, she rephrased her description of the fetus to "a version of life" and stressed that it doesn't possess the constitutional rights of a "person."

And in a telephone interview from her home in Chevy Chase, Md., she compares laws that would "force a woman to bear a child against her will" to having the government "force someone to donate bone marrow to save the life of a stranger."

Yet, Wolf remains adamant that backers of legalized abortion are slitting their own political throats if they don't add a moral dimension—a dialogue about *life* and *death*, *right* and *wrong*—to their defense of abortion.

She says she has "beseeched the sisterhood"—specifically Ms. magazine and NARRAL's Michelman—to discuss her ideas, "even if it's to tell me why I'm wrong," but has been turned down.

(Ms. Editor Marcia Gillespie says Wolf asked the magazine to reprint her essay but "we don't reprint articles." And Michelman spurned Wolf's request for a debate because "I'm not interested in helping her . . . promote herself.")

Some abortion-rights groups seem to wish Wolf and her essay would simply fade away. Three organizations declined to comment and representatives at others invariably asked, "Why are you writing about this?"

"The only uproar," fumed Michelman, "is in the press."

But other evidence suggests Wolf has tapped into something deeper than that.

Although the argument she spins is complex, provocative and seemingly

illogical at times, that may align it well with the conflicted views of abortion held by much of the American public, a group that her article refers to as "the mushy middle."

"There's a lot of foment on the issue right now," says John Green, director of the University of Akron's Bliss Institute, which studies grassroots politics. "And [Wolf] is reflecting the largest piece of public opinion."

Conservatives have also been angling for the mushy middle.

Responding to Wolf's piece, Rupert Murdoch's Weekly Standard magazine advised dumping the Republican Party's Human Life Amendment plank in favor of a new moral argument that would be a "Democrat's nightmare."

"Imagine a united Republican party that dares to do this," the magazine dreamed: Urge abortion and adoption agencies to join forces by compiling a national registry of potential parents and distributing it to abortion clinics. Then, ask Democrats to "join us in this voluntary, noncoercive effort to save and enrich human lives."

The effect? Democrats would either kowtow to to the left and denounce it, thus "marginalizing themselves as extremists," the magazine predicted, or they would endorse it and risk alienating one of their chief fund-raising bases.

To further split the Democrats, the magazine recommended arguments tailored for feminists and homosexuals: First, point out that "abortion by choice is anti-woman" because "throughout Asia, with its traditional preference for boys, ultrasound scanners . . . are being used to check the sex of fetuses so that females can be aborted." Second, argue that if a gay gene could be detected in prenatal testing, even liberal heterosexuals might ask themselves, "Well, do I want my child to be gay?"

Several other recent essays—from the left and right—have also argued for a middle ground, but it is Wolf's article that seems to be generating the most heat.

Will it last?

Clyde Wilcox, an associate professor of government at Georgetown University, doesn't think so: "Those kind of arguments don't work in the real world. . . . You can't build a movement [for legalized abortion] by saying a fetus is human life."

Even Wolf concedes it's "difficult to have a moral discussion about abortion . . . [without everyone thinking] Congress has to get involved."

But others say the essay has already far outlasted the normal shelf life

for a magazine piece. And a few observers predict more fireworks to come.

"In the pro-life community, there are 10 to 12 articles we can name as having had a big effect over the last 20 years," says Catholic bishops' spokeswoman Alvare. "My educated guess is that this article will have a long life."

Indeed, some abortion foes believe Wolf is headed down the same path followed by Norma "Jane Roe" McCorvey, who recently renounced her role in the famous Supreme Court case, and Bernard Nathanson, the abortion doctor and co-founder of NARRAL who quit to narrate the documentary "Silent Scream."

"Naomi's on the way to our side," exulted Missouri Right to Life President Mary Kay Culp, in an interview with the Kansas City Star. "She doesn't know it, but she'll be here soon."

Wolf, however, dismisses such predictions as wishful thinking.

"For women to have equality in society, they need to have some measure of control in their reproductive lives," she says. "No amount of right-wing love bombing is going to dislodge me from that position."

THE SPECTATOR 6 June 1992

A Conversation with Naomi Wolf

[*In our* Winter *'96 issue, we featured a Symposium on Naomi Wolf's* New Republic *article "Our Bodies, Our Souls," which many considered a stunning surprise—as Mr. Roy Rivenberg makes clear in the preceding article here. In due course Ms. Wolf appeared on William F. Buckley Jr.'s* Firing Line *program, which was broadcast nationwide on public TV stations (we published a transcript of the entire program in our* Spring *'96 issue). Her opponent was Mrs. Helen Alvaré, a director of the Secretariat for Pro-Life Activities of the National Conference of Catholic Bishops. After the program we invited both participants to comment further for us; Mrs. Alvaré sent us a brief written commentary, which appeared (along with the transcript) in our* Spring *issue. Ms. Wolf preferred a discussion, and on February 22 our editors Maria McFadden and Anne Conlon met with her in a Washington bookstore (Ms. Wolf brought along her daughter Rosa, aged one). What follows is the transcript of virtually the entire conversation, less only a few extraneous comments/pleasantries (we did not attempt to translate Rosa's occasional but enthusiastic interpolations). In the final comments, an article by Candace Crandall is mentioned; it too was reprinted in our* Spring *issue.—Ed.*]

HLR: Miss Wolf, we've prepared some questions, but before we begin, is there anything that, having read the transcript, you would like to add?

Ms. Wolf: Not add, but contextualize. One thing that comes out very clearly in reading the transcript is how coherent [Helen Alvaré's] prose is, and how chaotic my prose becomes in trying to convey the position I'm taking. It's easy to see that, and to think of Alvaré's position as coherent, it is coherently expressed and it's linear and seamless and here's Wolf, grasping and groping. And it's true, but, in a way, that linguistic tension and lack of harmony in my own voice I think is very much a metaphor for what's missing in the debate. The position I'm taking is not as smooth and, as I kept saying in the transcript, not as clean as the one that Alvaré is taking, but like life, you know, like life, it's ambiguous. It draws from a life experience that may not be easily translated into smooth and eloquent paragraphs. I think that it's a mistake to—I guess what I'm trying to say is that I think there's a great deal of richness in looking at language that is struggling. I don't think that because it's struggling, it's not true. I think there's a particular truth in the hardness of articulating this position. To sum up, I think people can be very much misled or seduced by smoothness or a superficial coherence of a position even when their own life experience would suggest a more complicated reality.

***HLR*:** One thing seems to follow up on that, one of Bill Buckley's points is: Are you surprised that the pro-abortion lobby would try to justify its cause, I mean I guess you are saying that they've become too simplistic—

Ms. Wolf: Look, I think you guys are too simplistic—

***HLR*:** Right, but—you talk about things like forging a unity, common ground, and the problem with the pro-abortion clinic and adoption clinic on the same floor—and that both sides had a problem with that. What do you see as the real pro-abortion lobby? Do you see the same sort of refusal to look at the complexity?

Ms. Wolf: I understand your question. I take issue with your phrasing; I don't think anyone I know or work with or stand with legislatively is pro-abortion—no one likes it. No one celebrates it—

***HLR*:** Right, pro-choice, not pro-abortion.

Ms. Wolf: Pro-abortion rights. I'm for abortion rights to a certain point in the development of the fetus and I think we need to, again, stop using euphemisms. As I argued in my initial essay, there is a wealth of possibility to actually do something to solve the problem as well as a wealth of human truth that stands between the sometimes too simplistic slogans of the pro-choice movement and the sometimes—fairly often, certainly often as far as I'm concerned—far too simplistic solutions of the pro-life movement.

***HLR*:** You said you had grown up to perceive people on the pro-life side as a group of fanatics and misogynists, and you seemed to be saying that you had no experience really of people who were pro-life. Is that what you were saying—

Ms. Wolf: No that's not exactly what I was saying—

***HLR*:** What was it like going to school, going to Yale, Oxford? It's been such a heated debate for so many years.

Ms. Wolf: Right. I think it's one of the great tragedies of public debate anywhere, but it's a particular tragedy in the United States, which should be so pluralistic: people are surrounded by their friends, and so reality is constructed by the opinions of your friends and your cohort and your demographic—

***HLR*:** What about your mom?

Ms. Wolf: My mom is pro-choice, but she loved my article. She thought it was important to say and that it articulated something that she believed. I guess what I'm trying to say is I spent my life in a liberal, progressive

environment and the faces of the pro-life movement that I saw, certainly represented in the media, were scary, unsympathetic, repressive faces. I guess what first began to make me think there is so much stereotyping on both sides—and of course the stereotyping of liberal feminists is outrageous as well, and I've written a great deal about that. But it started with the beginning of the last book, where I called for feminism to recognize that many women who care about raising the status of women are not social liberals. They're religious or conservative, and we lose our moral high ground by not speaking to them and honoring them. And we also lose politically. I think that the events of the last few years on the national, political level prove that this prediction has been borne out. Because I'm seeing that the Republicans have done something that they never did before, they've started to put "women's issues" on the agenda. I think that that's a key reason they prevailed in '94 when in fact, it was their failure to speak respectfully to women of their own party that led, I think, to Clinton's victory in '92. And now we have a situation where finally both parties are highlighting to an extent that was unprecedented five years ago, "women's issues," which are, of course, human issues. Having said that, I first began to realize that there was a two-dimensionality to the representation of religious women and socially-conservative women in the world I was moving in when I started to travel and speak to different communities about my first book. I encountered a lot of women who I respected a lot, who were ethical, who were thoughtful, who were not in any way anyone's caricature. Who described their longings for a more socially-just world with an end result that I did not want legislated, but with motivations that I recognized from the bottom of my heart.

HLR: You said you'd gotten a lot of letters from people in relation to this article.

Ms. Wolf: Yes, I had some very—I don't want to turn this into a lovefest for the pro-life movement—I've had a lot of very eloquent letters from both sides and this is what I'm trying to say—that you can't—it's not enough for my side to say, wow, we're not hearing some voices here. I'm challenging you all to recognize that you're not hearing some voices as well, and to modify your rhetoric and to modify your demonization of the other side. This is not a one-way conversation I'm trying to initiate here. But there is no doubt that certainly I've received so many eloquent letters from pro-lifers that I feel very hopeful that there are people out there who *want to solve the* problem, and if some of their ways of solving the problem can overlap with some of our ways of solving the problem, and we

can actually alleviate suffering, which is, I think, the primary goal. I want to stress that, just like their letters have persuaded *me* that there's a depth and complexity to their position, I'm going to keep trying to insist on persuading *you all* that if you really hate this tragedy you can deal with it better not by fetishizing a legislative ban or constitutional ban, but by joining forces in solving the problem. But having said that, as many times as I've been surprised by the eloquence and the moral coherence of pro-lifers, I've certainly had at least as many moments when I've been talking to social conservatives and they say with astonishment, "Gee, this is not the view—we had no idea that liberal feminists cared about babies."

***HLR*:** What has been the reaction from some of what you call your liberal feminist friends to your article? We saw Camille Paglia's letter in the *New Republic*, but there hasn't been much response. Was there any angry backlash from anyone? I thought I would see more from the other side attacking it, but I really didn't.

Ms. Wolf: Right. Well, let me just add a sentence to the paragraph I just spoke because I want to make sure it comes out on the page the way I intended to conclude that thought. There's stereotyping going on on both sides, and it's not helpful, and doesn't advance a solution to the problem, okay? There's been some very angry response from liberal feminism in a public capacity representing some pro-choice communities, a few, very few. A handful, and I'm sorry about that. I'm disappointed in that. But I understand it. Just like I'm certain that you all would face reflexive and unhelpful screaming and yelling from your side if someone were to stress finding other solutions to the problem rather than this fetish of criminalization. Far more frequently, though, I've had letters from ordinary liberal feminist women in the street who have said, "You know, this is what's missing from this struggle," or "You know, the heart has been missing," or "I'm the mother of three kids and I'm passionately pro-choice and this is what I've been waiting for women to say." And I don't think that in that respect my essay was particularly revolutionary in a sense that this is a conversation that many, many liberal feminists and their husbands and boyfriends and their families and friends have been having for years. It's just a matter of do you go public with it. That silence has been broached to some extent, I mean other people have broached it before. What I am seeing is very constructive responses to it; I'm disappointed of course that *Ms. Magazine* isn't creating a forum. But *Tikkun*, which is the progressive Jewish communitarian magazine, is talking about a round-table discussion, with Rabbis, for instance, representing the Jewish approach to abortion

rights, which I think is very rich, a rich approach. I'm involved right now with Common Ground, this amazing organization—I'm sure you know of it—which is having the, as far as I know, first national conference bringing together pro-choice and pro-life groups to critique their own movements and to try to find an agenda that they both agree on. I get letters from abortion providers, liberal feminists, left-wing feminists, who say, "I am now creating materials to teach women about the stages of the evolution of the fetus to let them really look at the choice that they're making, to try to contextualize their religious feelings, their moral feelings, about what they're doing." Because, as one woman very eloquently put it—she's been an abortion provider for twenty years—when women come in for abortions because they truly have no choice, she says that's not what she was setting out to do.

HLR: Talking about the Jewish tradition, we sent you Rabbi Jakobovits' article—did you read that?

Ms. Wolf: I haven't had a chance to read it.

HLR: Could you expand on what the conservative Jewish position would be on abortion; or maybe your Rabbi's? When you talked about "quickening," that was before sonograms—quickening was the first sign that the fetus was definitely alive. My impression, from the Jakobovits article, is that in the Jewish tradition it has to be a very serious reason, and social or economic reasons wouldn't be justifiable. What would you say?

Ms. Wolf: I can't speak for the Jewish tradition, because one of the great things about the Jewish tradition is, you know as they say, "Two Jews, three opinions." There are many, many, at least two main, very different Jewish traditions in relation to the permissibility of abortion, and I am speaking from having been educated by my Rabbi, who is very much not in a patriarchal conservative tradition. She's a very devout and accurate theologian, but she's a progressive, feminist Rabbi and her understanding is that until 40 days they're called something very similar to "water children"—I mean they have a—fetuses have a—one acknowledges their not being disposable, not being insignificant, not being inert, but it is not forbidden to end the pregnancy up until the 40th day. I would refer you to her because I'm not an expert on this at all.

HLR: You and Helen Alvaré were talking about the difference between Catholic and Jewish senses of sin. There's a difference in looking at sin; certain things for Catholics are just forbidden period, whereas in the Jewish tradition there's more of a sense of a necessary evil?

Ms. Wolf: Well, let's put it this way: This really struck me—one of the

themes that I keep getting in letters from people who are very religiously conservative but particularly Catholics is "There is no right to do wrong." You can't intend to do something that you know is wrong. That's a very Catholic position and I think it's specifically a Catholic position. I mean I'm not saying it's not common to other traditions. Buddhists, in contrast, though, say "You have to go where the least suffering is." They use the example that if someone is brandishing a weapon at a bunch of people and you have to choose whether all those people die or *this* person dies, it is right to choose the lesser evil. This isn't about if he's killing you, this is if you make the choice between that one person dying or 10 people dying. I think quite unfortunately, the moral debate has been entirely, in this country, defined by Christianity and Catholicism and that has its value, but that's not the only tradition that has legitimacy obviously, and I was very struck by her saying unequivocably that in the Jewish tradition you can choose—you must choose—the lesser of two evils.

***HLR*:** Yes, in that article we were just referring to, in the Jewish tradition it was forbidden, essentially, for a woman to sacrifice herself for her unborn child.

Ms. Wolf: That's right, my Rabbi stressed that. She said absolutely there's no question that the mother's life comes first.

***HLR*:** Whereas in Catholicism, if she chose to do that, she would be considered saintly. If her life was really in danger then it could be considered self-defense—but there is a feeling that the saintly thing to do would be to—

Ms. Wolf: Yes, and I hear this from Catholic undergraduates who say that this is their position—why they reached this position on being pro-life—that there is a glory in sacrificing yourself for another person. Let me stress that in Judaism we don't have the same sense that suffering is good for its own sake. We actually aren't big fans of suffering for its own sake. We think that it's not redemptive.

***HLR*:** Right, that'a a major difference.

Ms. Wolf: A very big difference in terms of the whole abortion debate. You know, I think that's profound. We're a very family oriented religion, we're a very child-oriented tradition. But we do not think that suffering for its own sake is redemptive.

***HLR*:** Which is the whole Christian story.

Ms. Wolf: Right. Exactly. I mean we think of suffering in service of

something else is redemptive, but for its own sake it's not cleansing.

HLR: You can't offer it up for people you don't know—a lot of Christians believe that you can do that—So along that line, with your understanding of your Jewish faith, would you want to say where you would draw the line for abortion that would be moral. For instance, you say in the transcript that you're uncomfortable with second and third trimester abortions. Would you be in favor of legislation restricting both at all, or is it that Helen was saying moral *and* legal, and you were saying forget about legal and work on the moral suasion. Do you think that any sort of restrictions would help people see that, as you say, it's a tragedy and that the decision shouldn't be taken lightly?

Ms. Wolf: Right. In a way I'm very reluctant to set myself up as someone who can make a proscription about that and that's where the reluctance to even talk about legislation comes in. I guess what I'm trying to say is there is something to me that's profoundly amoral or immoral about the way that this debate has been constructed. Which is we're assigning to the *State* the role of the policeman of our conscience, and that's a profoundly un-Jewish thing to do. I mean it really abdicates responsibility, and I think a deeply Jewish response would be to say let's look at our communities. You know, is there a real alternative if you're six months pregnant? Will I take this baby into my home? You know, do we give money—"*tzedakah*" it's called—enough to charity so that there are safe, good places for these unwanted children to go and be taken in? Do we subsidize contraception? Is contraception available? As a Jew, we don't have any qualms about contraception; there's contraception mentioned in the Bible. I have to say I feel it's profoundly immoral for people to so fetishize keeping contraception out of peoples' hands that suffering comes in the train of that.

HLR: Do you really think that in our society as it is today a lack of access to contraception is creating this huge number of abortions, or do you think that it's the use of abortion as back-up birth control? I don't see a lack of access.

Ms. Wolf: You see, there I really disagree with you. I really deeply disagree with you. Let me tell you what I've seen with my own eyes. When a tube of Ortho-Gynol costs $10 and you know this stuff is made up of a few cents worth of ingredients; you go to a clinic for poor people who are not covered by insurance and women wait all day for a prescription for birth control pills or for prescriptions for diaphragms—because not everyone can tolerate the harsher, more invasive forms of contraception—and there's such a paternalistic approach to letting women have access to contraception

through the State and I think this is the result of a hostility toward female sexuality and the desire to control and punish poor women. They can only have a prescription for two weeks and then they have to come back and sit all day long to get a prescription filled, and meanwhile there's no day care and their kids are running around the room, and it is extremely difficult for women who are not affluent to get their hands on a steady supply of contraception. Apart from the power imbalances in so many sexual relationships that make it very difficult for women to ask men to use condoms or to insist on condom use during intercourse. But the point is if you can't compel your partner to put on a condom, and a tube of Ortho-Gynol costs basically what you need to feed your kids with for half a day, we're creating a situation which initiates unwanted pregnancies and which raises the level of abortion in this country to one of the highest in the industrialized world. I don't think it's an accident, and I think it's interesting, I think your side has its myths circulating, and one myth I've heard from people on your side is this: Is it so difficult to get contraception? Isn't contraception available everywhere? Well, you know, no, and quite apart from that studies have shown that adolescents are completely pig-ignorant about how to use contraception. Well, they are the ones having sex. You know, a substantial number of unwanted pregnancies and abortions are women under eighteen, certainly women under twenty-one. There is, I think, a lot for us to learn from the fact that in Northern European and in Scandinavian countries where contraception is cheap or free, they have infinitely lower rates of unwanted pregnancy and abortion. And so I'm challenging your side to get over your issues about contraception. Much as you dislike contraception, or much as you may have a problem with the idea of premarital sex or extra-marital sex, it is a lesser evil than the abortion rate we've got right now. And I'm challenging you to see that it's a lesser evil, I think, unethical for you to cling to this rigid, right and wrong view of how people should behave, meanwhile letting the abortion rate escalate and skyrocket.

***HLR*:** Well, the *Human Life Review* (which is not a religious quarterly) usually stays away from contraception because we see a big moral difference. But on the whole question of sexual morality and abstinence as an option, *that* has a lot to do with the escalating abortion rate as well. So I would say that if you are challenging us to think about contraception in a new way, we would challenge you also that sexual education that doesn't include abstinence as the smartest way for a teenager to live is contributing just as much.

Ms. Wolf: As far as I know every state-supported sex education program

mentions abstinence as one choice.

HLR: But our society, for instance the television sit-com "Friends" which is on at 8 o'clock, and my ten-year-old niece tells me, "All the kids at school watch it . . ."—all they talk about is who they are going to sleep with—none of them are married.

Ms. Wolf: I would agree. You and I agree there has to be a strong push from schools to stress responsible sexual conduct. But what are you suggesting? That we only teach abstinence and not teach kids how to use contraception?

HLR: No, I'm suggesting that there needs to be a lot more said about abstinence.

Ms. Wolf: I agree. But let me draw one—actually this is a very important conclusion because this is somewhere we can actually go. My research into the history of sexuality in America shows that until fairly recently, until the middle of the century, there was a strongly-entrenched tradition in many communities of, I guess you could call it "sexual gradualism," among unmarried people. It was taken for granted that there would be only spooning or petting before marriage. All kinds of non-penetrative sexual exploration before marriage was considered socially normative and not inappropriate. And in fact it was considered in some communities appropriate because the communities recognized that that was a way to relieve the pressure of adolescence without the dangerous and de-stabilizing result of diseases, unplanned pregnancies, forced marriages. And this was normative. Now, since the sexual revolution, we've lost this tradition of sexual gradualism. You know, my mother would describe it as "first base, second base, third base," and you didn't go further unless you were not a nice girl. But you had quite a long way to go.

HLR: Now it's either do it or don't.

Ms. Wolf: Exactly. And so what adolescents have lost is a peer culture in which they can practice "sexual gradualism," a practice which is in many ways ideal. It's good for women because it teaches them about their own sexuality in a way that is not—that doesn't jeopardize their rights in terms of diseases, or unplanned pregnancies or abortions. It is a way to practice restraint and be used to restraint. It is a way to be intimate; it is a way to explore your sexuality which I think is necessary and healthy without putting your life on the line, and in an age of AIDS it's more important than ever. But adolescents now don't have that culture at all, they've lost it. So I'm challenging you, there is a way we can go. I am happy to support a

push in schools to say, "You know, penetrative sexual intercourse can be really problematic right before you're, you know, you're a really big kid. But let me teach you about sexual gradualism. You can do this, you can do this, you can do this—all of these are safe, inexpensive, free alternatives to the kind of sex that transmits diseases and pregnancy."

***HLR*:** But we also have to face the fact that there are a tremendous number of abortions every year. As you pointed out in your article, the "I had a couple too many Chardonnays last night, what happened to me?" set. And the "rite-of-passage" abortions that you mentioned. So I think we aren't just talking about an economic-social problem. The biggest group of aborting women are, I believe, middle class, college-educated white women between 18 and 30, and many of them have had more than one abortion. But the problem that you really brought out, and which rang true in your article, was that for instance, you can pick up a woman's magazine and read, "Well, I was engaged and I got pregnant, I didn't want to look bad in my dress so I had an abortion because I knew we could have a baby next year."

Ms. Wolf: Well, I agree with you that those abortions—which I'm still certain are the exception rather than the rule—that we have to change a mindset about that, I entirely agree. But I think it's interesting that you moved so quickly off the hot and difficult subject—

***HLR*:** No, we'll get back on to it. I want to ask you to talk about Norway. I don't know about the laws in Norway or other Scandinavian countries, but I know that Europe does have more restrictive [abortion] laws. A woman has to wait at least a week, I believe, in Switzerland, meet with a psychologist. These things are encouraged by society. Do you think that any of those restrictions would fit in here? Here, if you suggest a 24-hour waiting period there's a big outcry—

Ms. Wolf: Look, first of all, I just want to point out that your questions are phrased in terms of women and one thing that's always puzzled me about the Right is this simultaneous hostility towards abortion rights and a kind of reflexive anti-feminism, which does not go very far in challenging men and the education of men to transform itself to really respect women and female sexuality.

***HLR*:** If you think that Europe has a lower abortion rate, or has a better attitude even though it's legal, couldn't that be because they have some of these restrictions?

Ms. Wolf: I think it's the other way around. I mean, I'm happy to consider

that these can work together, but I think it's an environment that's much more supportive of the fact of female desire, which is something we're very uncomfortable talking about in this country. Their contraceptives are state-subsidized. It's an atmosphere in which kids in high school get exhaustive, positive education about sexuality as well as abstinence. And when I say positive—I read a very interesting summary of sociological literature on sex education that points out that messages about sexuality in northern Europe are that it is a positive force that should be responsibly directed, whereas messages to young girls, especially about sexuality, in this country, are a victim discourse, where, you know, there's no discourse about the positive nature of female sexuality in particular. It's either all about rape or date rape or pregnancy or disease, but there's no space for young girls to say, "Oh, this is something positive. How do I deal with it constructively," or for young boys to say, "This is something positive. How do we deal with it respectfully and constructively?" So I'd like to see that transformation as well, and what I'm saying is any society in which the respect for women, and female sexuality and female reproductive capacity, is that much stronger all the way down the line, then restraints like "Take a week to think about it," are not punitive. They're equally respectful. I'm asking you to think of this society we're living in as one in which basic supports for women do not exist. For many women, the cost of getting to clinics is prohibitive. There isn't a clinic in their state; they have to go to another state; they can't feed the kids they have already; they're in an abusive relationship. All the way down the line our society has *failed* them in providing the kinds of support they need to make another choice or to think about it without the "thinking about it" being punitive and controlling. And that's where you get this outcry, and if you want to work together on really addressing this problem with pro-choicers, you guys have got to face the fact that in many, many situations the "waiting period" is punitive because of the absence of other supports that women and children deserve in this culture.

HLR: You wouldn't be in favor of any legal restrictions?

Ms. Wolf: I didn't say that.

HLR: Rabbi Jakobovits' article says that it's traditional to consider a child that's conceived in rape or incest as "marked" because in the Jewish faith it's a way of scaring people away from proscribed sexual activity, because it's so bad and it will mark the child for life—

Ms. Wolf: Or adultery—

HLR: —Or adultery. How do we let men in this country know that abortion

is a tragic thing so sex should not be taken so casually. It's available so easily *for men* as a way of getting out of the problem.

Ms. Wolf: I understand what you're saying and it's an interesting question because that's where the radical feminists' and the religious conservative argument dovetails or comes together. I think there's a lot wrong with the way that boys are taught to look at girls sexually in this culture and I would like to see a curriculum in the schools that suggests that for a young man to bring about an avoidable abortion—meaning an abortion that came about without using contraception—which I think is particularly egregious—is shameful. I'd like to see education aimed at talking very constructively at a very young age about sexual communication as a way to avoid date rape, right? Talking about sexual boundaries, about sexual alternatives. But when feminists try to advance this, the Right wing, your guys, say, you know, "Crazy feminists." The reflex when feminists try to raise the issue of sexual respect from men is, you know, "repressive prudes, they're curtailing our rights," and what I think is a contradiction in the Right's point of view is the sort of libertarian approach to sexual access to women held in conjunction with a moralizing approach to female sexuality. And I think they have a contradiction to resolve there.

***HLR*:** But men are probably the largest pro-choice group for obvious reasons; men, as you say, need to be educated as well, because they get hurt, too.

Ms. Wolf: Now there you're talking. I mean, you know, I believe that it's extremely sad when a man doesn't choose the abortion and the woman does—

***HLR*:** He has no choice—

Ms. Wolf: —He has no choice, and in a way, that's as it should be. But let's not dismiss his pain either. I guess what I think you're leaving out or not seeing, and I've seen a lot of this, is men who are pro-choice because they have lived through a pregnancy that was untenable—that there was no room in anyone's life or really no alternative—and they've stood by their partner, their wife or their girlfriend, and seen how hard it was and seen how much harder it would have been on her in a world that has shut every door to her and I think a lot of male support for abortion rights comes out of compassion.

***HLR*:** I can't help but remark that you seem to have a view of women that they are—not exactly helpless—but quite victimized in our culture. Do you really think that in the last 30 years the women's movement has not brought about any changes in that respect? I sometimes think it has brought

about just the opposite—this is a personal observation on my part—but some of the women I see in the movies of the thirties and forties look a lot stronger than some of the "broads" we have prancing around today. The way you are talking about women, whether you are talking about poor women, or when you get off that subject and we get on to other women, then it becomes a matter of they're in an abusive relationship. I mean, is it impossible to consider that perhaps many women, perfectly middle-class women who have not been victimized in their youth, who had good parents and good educations, have just started to take sex a little too casually for their own good?

Ms. Wolf: And men, too.

HLR: And men as well. But women have, in some ways, more to lose. The whole society has a lot to lose.

Ms. Wolf: Alright. First, I think it's remarkable that you would ask this question about my view of women considering that in the last book I wrote my position was that enough women have enough power now that we have to transform the discourse of victimization.

HLR: I'm just talking in terms of what I'm hearing right now.

Ms. Wolf: Right. Let me talk about audience, okay? Women are obviously a huge population and that population extends from women like us who have extraordinary amounts of power and in effect have no excuse for some decisions that, we agree, are beyond the pale—all the way to women who are probably a much bigger majority in this country who are poor, so poor that they have pressures we can't even begin to imagine, and they have much less free agency than we do. They have free will, but money buys the privilege of many choices; it buys many choices in education. Many women who choose abortion for financial reasons cannot see their way out of it. They just cannot, and a check for ten thousand dollars would allow them breathing room to think about alternatives, and you and I both know that that's true. So when I talk to my own constituency, when I talk to liberal feminists, I stress the women who have choices and who make choices that I don't respect, as well as the men who have choices and make choices I don't respect. And that's what my last article was about. It was really aimed at my own people. When I talk to you, and to your audience, I'm going to stress the women who need more compassion from society in order to be truly free to make better choices, choices that are less tragic.

HLR: You're assuming that our audience has a lot of people in it who

don't like women.

Ms. Wolf: No, I didn't say that and I don't believe that. I'm saying that when I talk to—well, like we just had this conversation about whether a waiting period imposes hardship and I felt the need to convey to you that, as I understand it, in many, many cases of economic pressure, it does impose considerable hardship, and so that's what I'm stressing, the ways in which women still need supports from society, that they are not getting what they deserve to get. That isn't saying that women are victims or that they should highlight the discourse of victimization, it's saying that we still don't have adequate laws against battery in the home; we still don't lock up men who beat the hell out of their wives; we still don't have, you know, real penalties for rape. You know, rapists who get *convicted* are a small, small minority. We still don't have the pre-natal care that women deserve. Inner-city kids are born with low birth-weights and slow development because the State didn't help their mothers eat oranges when they were pregnant. This is our failing as a society, okay? It's not saying women are victims, it's saying we're not as good a society as we should be.

***HLR*:** Along that line, and this is something that has always puzzled me about the pro-abortion lobbyists. And I think it's better in Europe, but in this country there seem to be no guidelines for clinics—you can go to a good clinic where they use anesthesia—and you can go, maybe on your lunch hour, somewhere else, and maybe end up dead. And there are a lot of women who are still maimed or killed by legal abortionists.

Ms. Wolf: Well, I'd have to see your evidence.

***HLR*:** I'll be happy to send it to you. For instance, the girl in Manhattan who was fifteen—because New York has no parental notification law, she went to a place on East 30th St. and she wound up dead.

Ms. Wolf: I have no doubt that—

***HLR*:** Shouldn't we have parental guidelines? Should there maybe be at least laws to protect minors? Do you think nothing like that would help?

Ms. Wolf: Again, you're asking me to talk about legislation and I'm quite adamant about wanting to move the conversation to the moral arena. I keep saying: it lets us have a short-cut to a clean conscience to fetishize the legislation because you know what? If we outlawed abortion tomorrow, the same women you just told me about who die on legal abortionists' tables are going to die in back alleys. They're going to die, they're going to die in the tens of thousands over the course of decades.

***HLR*:** As you say, things are complex. We're not talking about outlawing—

I'm saying that if my daughter is fifteen and she's going to be afraid to tell me and she goes around the corner and ends up dead, I'd much rather—

Ms. Wolf: Should there be guidelines for safe and clean practices for abortion clinics? Absolutely. And I believe that there are. There's got to be, if they fall under ordinary medical—

HLR: I don't believe that, because as *60-Minutes* exposed a couple of years ago, you don't even necessarily have to be a doctor to perform abortions. . . I sometimes think that people are so afraid that if they let one law like that get in, it'll wash in to repeal *Roe* v. *Wade*. But we're not being sensible. As you say, at least—

Ms. Wolf: —at least have them be safe.

HLR: You know when you go to a hospital it will be safe, but if you go to a clinic which is making a lot of money—

Ms. Wolf: I entirely agree that they should be safe—I mean safe and legal. Safe is critical. But let's not forget how unbelieveably unsafe the situation was when women were desperate and terminating their pregnancies with knitting needles and, you know, rusty hangers. The fetuses died and the women died.

HLR: I'd like to ask you about something that came up in the debate; Helen Alvaré brought up the proposition that you might be creating a whole new set of moral problems by saying "It's wrong, but I'm going to do it anyway, and I'm going to feel bad about it for a while."

Ms. Wolf: That's an argument which has been in a lot of letters I've gotten from religious readers. And I'll say again that that argument is certainly very persuasive, especially in the post-Enlightenment Western reality that we inhabit, where you're supposed to be that linear. And I'm going to go back again to reminding us that there is more than one religious tradition. And I did not say that—I think that your summary of my argument is reductive. What I said is that it is always sad, it's always to be avoided if possible—

HLR: —a moral transgression.

Ms. Wolf: Right. But that there are moral transgressions even worse—forcing women in certain pressures to give birth where there is no social support, where there are no alternatives, where, substantively, the inability to exert control over your reproductive life legally is going to keep you from being equal in society. And what I'm asking us to do is to recognize the profound sadness that we cannot eradicate without doing even more

violence and creating even more sadness. And all you have to do is look at the history of women's lives before *Roe* v. *Wade* to see some. I think that what we should do is go back to where we agree, which is we agree that abortion is being taken too lightly. You know, and I can say it's always going to be sad—it is always sad, but, you know, in some circumstances it's far more sad than others. I don't feel that, you know, a morning-after pill is the destructive thing that a third trimester abortion is—I just don't feel that—it is not as sad as later abortions, it's not as sad as a baby who spends its life in the hell of child abuse and neglect. And so I think that it's much more constructive to build on common ground—instead of looking for contradictions in each side's position—and they are rife. I mean I concede that you can say that there's this contradiction in my position. I think it's a recognition of the complexity of human experience and that sometimes there are a series of sad choices, some sadder than others. There are contradictions in the pro-life position that are rampant—I mentioned two in the *Firing Line* interview—but maybe it would be much more constructive to agree that abortion is sometimes taken too casually, it shouldn't be used as back-up; we should be doing a lot more to address the problem rather than to claim sweeping, exculpatory, *faux* solutions on both sides.

***HLR*:** Mr. Buckley started off by asking you why you were surprised that the pro-abortion side would seek justification for abortion—

Ms. Wolf: How do I account for the tendency that I criticized in the *New Republic* of the pro-choice movement using a morally-neutered language about abortion. Right? And I can answer that. The other question is: Don't you create a problem by taking my position because people are going to do something that they are persuaded that they should feel bad about instead of doing something they comfortably didn't feel bad about.

***HLR*:** As Helen Alvaré said, doesn't it create a kind of hypocrisy in the culture?

Ms. Wolf: Right. Your first question: I do not think that it is from a pernicious—or even a "human nature likes to defend itself from feelings of guilt" cause that led the pro-choice movement—some members of it—to neuter the moral language around abortion. I think it is fear. And we are afraid of you people, and our fear is that if we tell the truth about the moral complexities of abortion as we perceive them subjectively, you guys will outlaw abortion and then we'll be dying in back alleys. And part of my argument is a political one, which is if your discourse is dictated by fear rather than by truth, you lose more people than you keep. So, don't

celebrate my argument that much because, I caution you, I'm truly arguing strategically as well as morally. Strategically, if we keep not telling the truth about what many people experience in their encounters with abortion we will lose them to you. Also, do you understand that we fear you more than you fear us? I know you think that that's not true because you see us, perhaps, I don't mean personally, but many members of your cohort see us as representing very terrifying forms of social decay. And I know that that can be scary but when it comes to abortion, we see you as wanting to do something to our lives, whereas if we have our way, we're not necessarily doing something to your personal life. We're doing something to your value system, but we're not doing something to your life. So understand that a lot of our language comes out of the fact that we are rightly, understandably, more afraid of you than you are of us.

HLR: Okay.

Ms. Wolf: The second question I thought we addressed as much as it can be addressed earlier, but, I'll have one more go at it. Do we not impose a hypocrisy? You know, in my writing I'm not being a legislator of attitudes. Any writer's job is just to tell *their* truth, subjectively, as they see and hear it, from other voices. If people think that what I say resonates then I'm articulating feelings that they have themselves. If they don't think it resonates, they will ignore it. People who believe that the fetus is a mass of protoplasm won't be swayed by what I have to say, although I hope they will be. Okay. Let me step back a minute and think this through—imposing a kind of hypocrisy. . .

HLR: Not necessarily imposing, but what would evolve in a situation where you tell somebody it's okay to do something wrong.

Ms. Wolf: But—you keep phrasing it that way and that's not what I'm doing. It is ideal to live your life in such a way that you never cause pain to someone else, right? But you've caused pain to other people, I've caused pain to other people. It's not hypocritical for me to say to you that in your life you're probably going to continue to cause pain to people sometimes. And that's not great, I don't endorse it, I don't celebrate it, I'm not going to pretend it's morally empty. But I recognize that that's something you're probably going to do, or even need to do, at some moments, or not be able to keep yourself from doing. I urge you to avoid it as much as possible. I think that's the analogy. It's a recognition that a human life, especially one that so devalues—in this society that so devalues women's reproductive capacity people are going to face things that are really not ideal in which they make choices that don't come out of the selves that could have

emerged in a much more sacred society. And that it's not happy, it's not empty, it's not morally inert. It's something we must always learn from. But in my view, it's a necessity to have that option and to, when you are in the very sad place of having to make that choice, to do it with your eyes open. I mean you—this discussion keeps being focused on sin, which is very much a Christian focus—

***HLR*:** [not sin but] wrong—rape is wrong. Murder wrong. Stealing wrong. And other things that are in our laws, you would not argue that we should take the law against rape away and depend on everyone in society, right? And to give those who want to rape someone the sanction of, "Gee, it was the best choice I had at that moment." So with killing, we have self-defense, but our law says killing is wrong, and that it is incumbent on you to prove the self-defense.

Ms. Wolf: No, I don't endorse your analogy all the way because you cannot get away from the fact that that *being* is involved in the woman's body. The liberal argument—and I mean liberal, not current liberal, but the Eighteenth century, English liberal argument that people need some measure of autonomy—I insist upon. Because in my view it is more wrong to impose child bearing on women against their will—it is more wrong. I would love for this whole conversation to be about the wrongness of imposing things on women that we don't impose on men, or expecting women to put up with constraints that we don't expect men to put up with *because* they are women. In particular, we should be talking about the way that patriarchal society is organized to use women's childbearing capacity to impose on them, to subjugate them, when it should be something that is held in reverence by the whole culture. Let me make an analogy. Sometimes people can be kept alive by other people donating their bone marrow. Donating bone marrow can be painful, and can be dangerous, as I understand it. So here's "X" in a foreign city who needs bone marrow and here are you and you may not want to give your bone marrow to "X." Now I don't think you are a particularly nice person, but in a liberal society, I have to respect that the State can't come and hold you down and take your bone marrow. You know, I don't think Mr. Buckley would like to have the jackboots at the door and people coming in and holding him down and taking his bone marrow. There's something about boundaries—you know, physical boundaries—that have got to be recognized as being inviolate for women as well as for men. And women are constructed as less than human because society so often determines that their boundaries are violable. This is true of rape, it's true of—in Moslem countries it's

true of dress codes. You know, if a woman doesn't adhere to a specific dress code then anything can happen to her in effect. It's true in Jakarta, where women are stopped randomly and given internal examinations, you know, theoretically to make sure that they're not prostitutes. All over the world women are constructed as those beings who don't have physical boundaries that are inviolate, and unfortunately, the pro-life movement too often sounds like they're doing the exact same thing.

HLR: That's your argument about rape and incest, that—

Ms. Wolf: It's also my argument about why I'm still pro-choice. That, as sad as it is, women's autonomy, to a certain point in the pregnancy, demands that she be entitled to make this decision—the way that someone who could keep someone else alive by donating bone marrow should be entitled to decide that their own need to not give up part of their body, even if it sustains another person, has to come at the expense of this other person's need.

HLR: In our experience, most people in the pro-life movement are motivated by a desire for the rights of another person—the baby—not to punish women. Okay, you don't want to get pregnant and you don't want to have this other life—but you open the door and there's a baby on the doorstep, what do you do? You know, it's another person, and that's what—

Ms. Wolf: Well, the person in Omaha who needs your bone marrow is another person, too.

HLR: Yes, but it's not *your* person.

Ms. Wolf: Well, that's an interesting distinction you make, I could say if I were truly a saint, if I were truly evolved spiritually, then every person is equally precious and equally dear to me as my own baby. Right?

HLR: If that person in Omaha—if you were the only person in the entire world who could save that person's life—that's a much harder decision than if you're one of a hundred, it's a different thing.

Ms. Wolf: I agree with you and I agree that you should give the bone marrow. But I'm asking should the State determine that that person has the right to say, okay, knock on her door and take her bone marrow. Does the State—is the State the person making the decision?

HLR: The State could say that that is a separate person inside your body, not you, but you can't kill it. Bone marrow and a fetus aren't the same.

Ms. Wolf: You're arguing that it's a life, right? And if this person is going to die unless you give him your bone marrow—does the State have

the right to come and tell you that you have to do so?

HLR: Of course not. But a person dying is not the same thing as killing a person.

Ms. Wolf: Actually, you are killing him.

HLR: But it's not killing under the law. I think there is a significant difference between a person being deprived of a medical procedure dying, and killing a human being.

Ms. Wolf: But the person who is going to die because you aren't going to give him your bone marrow feels like you're killing him, and you are.

HLR: But that's not a really fair analogy.

Ms. Wolf: I think it's a perfect analogy; I think I have yet to hear you tell me why it's not a fair analogy.

HLR: Well, if I were the only person in this world, I would do it.

Ms. Wolf: Yes, but should the State compel you to?

HLR: I don't think it's a fair analogy because you say that women should be allowed to do what they want with their own bodies and I totally agree with you—it's their body. What I saw when I had a sonogram of my child—he was kicking against my bladder, it was a separate person, a separate heart and brain, so I'm almost just sticking up for us—we're not a bunch of people who don't like women—we're people who feel that there's a life being forgotten—one who also has constitutional rights.

Ms. Wolf: I hear you, and I'm interested that we can make all these arguments about the person who needs the bone marrow—he's a person, you know—he has constitutional rights. You know, you're depriving him of life. And the State should legislate, by using your analogy, that you should give him the bone marrow and it's nice that you're willing—

HLR: But that other person doesn't have anything to do with you, your child is in you—

Ms. Wolf: I'm going back to my saints argument. If we were saints, does that mean that a born child is dearer than an adopted child? Does it mean that your first cousin deserves the bone marrow more than your second cousin?

HLR: Once you begin judging between lives, then that's when you have a problem. Should we kill—

Ms. Wolf: Isn't that interesting? That you judged that "X" in Omaha—that his life had less of a claim on you than your own baby and that's

exactly the kind of relativistic view of human life that you all argue that we hold.

HLR: You see you can't prove your case because there's one person who will live or die by my bone marrow, whereas there are 1.5 million abortions per year.

Ms. Wolf: I don't think that that's an argument. Actually, there are people who die because they don't have bone marrow donors, and actually, if you really valued human life, you could argue that the State should do a search for a compatible donor to compel them to give their bone marrow. I'm using your arguments . . . I really have to go.

[*By this point the conversation had gone on well past the allotted hour, the well-behaved Rosa, becoming restless, was in her mother's lap, and the Editors took their leave, with a few parting comments, including the following.*]

HLR: Did you have a look at the symposium?

Ms. Wolf: It was wonderful. I was so honored. I couldn't believe that you got these big shots to write about my essay.

HLR: Glad you liked it.

Ms. Wolf: Very, very much. I thought it was provocative. I was only sorry it wasn't in a huge, mainstream publication.

HLR: You'd be surprised at how many people read the *Human Life Review.*

Ms. Wolf: I would like people who, you know, are not likely to subscribe to the *Human Life Review*—

HLR: But that's why your article is important. It's very hard to get these discussions into the mainstream. With *The Atlantic*—the George McKenna article—wow, that's in *The Atlantic.* And then with you [in *The New Republic*]—it was amazing to us because it's very difficult to get any crossover, there's no meaningful dialogue—it keeps people away from each other.

Ms. Wolf: I have to say I think your forum was one of the richest discussions I've seen of this issue in—I can't remember anything analogous in the public sphere. It wasn't the usual soundbites and—I thought it was really wonderful.

HLR: And you weren't the only pro-choice person. There was one other.

Ms. Wolf: [Laughing] Right, there was one other—It was very rich, it was very subtle—and, as I say, I was very honored to have these people respond to my essay.

***HLR*:** Well, I think you must know that you've provoked many people to think—we see it constantly referred to.

Ms. Wolf: Really? No kidding?

***HLR*:** Did you look at the appendices, all the reprinted columns that mentioned it?

Ms. Wolf: Those I had seen.

***HLR*:** And the piece we're reprinting by Candace Crandall from *The Women's Quarterly*—she's pro-choice, she talks about you—

Ms. Wolf: —that's very interesting—

***HLR*:** I'll fax it to you.

THE SPECTATOR 21 October 1995

The Good Doctor

Ellen Wilson Fielding

Haing Ngor, the late Cambodian refugee who starred in "The Killing Fields," wrote one of those gruesome autobiographies of totalitarian terror that the 20th Century will leave as its major literary legacy. Last spring, President Bill Clinton's veto of the partial-birth abortion ban brought to mind Haing Ngor's harrowing account of a high-risk pregnancy in Cambodia under the Communist Khmer Rouge.

The author's seven-months-pregnant wife was, like everyone else in the famine-stricken region, emaciated and physically and psychologically run down when her dangerously-early labor began. Haing Ngor was a medical doctor in pre-Revolution days, but he had desperately tried to conceal it: educated people and professionals, even useful ones like doctors, were executed in droves in the suicidally-radical regime of the Khmer Rouge.

Here is the scene: Haing Ngor has no drugs or medical supplies, no instruments or painkillers, and there is no nearby clinic or hospital. He and the equally helpless midwife watch the unfolding of a nightmare labor in which the contractions fail to dilate the cervix enough for delivery. "Caesarian?" the midwife asks doubtfully, but they both know they could save neither mother nor child under these circumstances. Besides, there would be follow-up trouble from the authorities. "Craniotomy?" she asks softly. Ngor cannot face the attempt. The baby is doomed in any event, but he has nothing to help the mother survive the procedure and the same objections apply. Paralyzed by helplessness, he watches as his wife and baby die. He will never remarry; he will die childless.

This horrific story is the kind of thing I think of when I consider what would justify the brutal procedure that President Clinton has preserved for the American people. Haing Ngor did not perform a craniotomy on his never-to-be-born child, but if he had done so I would have understood. A doomed child, a (genuinely) endangered mother, no better options—all these make it a morally, if not imaginatively tolerable option.

But the situations addressed by partial-birth abortions in America today would make no moral sense to Haing Ngor's Cambodian midwife or to Western practitioners of medicine only a generation ago. Even now most physicians—even those who swallow elective abortions—are sickened by it.

Ellen Wilson Fielding, our sometime contributing editor and author of *An Even Dozen*, writes from Davidsonville, Maryland, where she lives with her husband and four children.

At the Congressional hearings on the partial-birth abortion ban, a leading practitioner of the procedure, Dr. Martin Haskell, testified that 80 percent of those he performed were "purely elective"—neither the mother nor the baby's life was endangered, and the child had no known handicaps. Another practitioner, Dr. James McMahon, said he had performed partial-birth abortions for comparatively minor and non-disabling handicaps such as cleft palate. Others have conditions such as Down's Syndrome—restrictive, but hardly life-threatening to either parent or child.

But many Americans are now accustomed to the idea of abortion on demand, however uneasy they are about the trivial reasons many women give for ending a life. What chiefly shocked ordinary people about partial-birth abortions was the callous brutality of subjecting these fetuses to a painful death when they had almost made it past the barrier to birth. Qualified witnesses at the hearings, many with no objections to legalized abortion in general, testified that there was no obstetrical reason for choosing this method of aborting even late-term fetuses to preserve the mother's health. Caesarian section, the obvious alternative that comes to mind, actually offers few health risks to the mother. And those women whose chief object is a dead baby could be serviced in ways less painful to the baby and safer for the mother.

Making the case against partial-birth abortion is difficult not only because of the gruesomeness of the subject matter but also because one rebels against the need for doing so. If it is not self-evidently wrong, what is? Presenting facts and figures seems almost an act of cooperation with the very devaluation of human life under which a procedure as heinous as this can be repeated 1,000 times a year.

One hundred years ago, the era of what we might call routine emergency craniotomies was drawing to a close in the West, supplanted by the increasingly safe Caesarian section. In this period of transition, the president of the Washington obstetrical and gynecological society emerged as a forceful advocate of Caesarian sections, and in an October 1888 address (reprinted in this issue), he put his case.

Dr. Samuel C. Busey's fierce moral light shines unforgivingly on our own sorry age. He was speaking shortly after the medical establishment had reached a high water mark in its campaign against abortion, and in this spirit he can say:

> If a pregnant woman possesses the natural and inalienable right to terminate the life of her child at term, she cannot be denied the right to terminate it at any period of gestation, and criminal abortion would then become an accomplishment of the highest significance.

Kate Michelman and Bill Clinton would certainly agree with that.

By contrast, Dr. Busey argues with those in the medical profession who share his disgust at abortion ("No one of you would produce an abortion to conceal an illegitimate pregnancy") but are reluctant to abandon craniotomies in favor of Caesarian section in very difficult labors which appear likely to cost the mother her life.

Near the close of the 19th century, Dr. Busey's specialty had progressed to the point where the survival rate of women undergoing Caesarians was approaching that of women surviving fetal craniotomies (about three quarters versus 90%). Given the likelihood that the mother could be saved by either method, the ability of the fetus to survive close to 100% of the Caesarians argued conclusively in its favor, despite the slightly increased risk to the mother.

A century later, even a pro-lifer may feel slightly embarrassed laying the doctor's argument before modern readers that bluntly, because he is accustomed to the need for a diplomatic treatment of issues like sexual freedom, individual autonomy, an array of modern legal choices that would have been unrecognizable in 1888, and complaints about the unfair burdens placed on women simply by reason of their sex.

We hear in the back of our minds the accusations of pro-abortionists that we care nothing for the mother, that quality of life must be considered, that a woman has the right to choose whether to have a baby, that unwanted children become abused children, and though we have answers for these arguments, they weigh us down and often add a defensive tone to our voice.

Dr. Busey spoke after the triumph of his profession over abortion. But in addition he spoke at the high point of "Victorian" reverence for woman as "the helpmate of man and the emblem of all that is pure and good in life." His assumption throughout is that women will not mind a slightly higher risk of mortality for themselves in exchange for the delivery of a live baby. He complains that the craniotomy "loads the mother's heart with sorrow and taints her life with guilt," and his arguments are directed toward convincing the *doctors* that Caesarians should routinely replace craniotomies as the preferred procedure in obstetrical emergencies.

The moral clarity of the 19th century medical mission is bracing: the goal of medicine is the preservation and healing of human life. Period. There is none of the self-doubt and shades of gray we are so accustomed to. The doctor is not viewed as a glorified plumber, there to give the patient what he or she wants, with no questions asked.

In Dr. Busey's view, the doctor does not perform his mission in a moral or cultural vacuum. However intoxicated he may be at the 19th century's progress in medicine, he does not worship at the shrine of pure science. "There can be no higher obligation of professional duty than the promotion of the welfare and the saving of the lives of those committed to the care and judgment of a Christian physician."

Like Aquinas, he sees no chasm separating religious and scientific truth:

> All lives are of equal value in the eyes of the true scientist and the true Christian, and the divine art of healing can have no safer guide than this: That nothing can possibly justify the taking of a human life unless it be the absolute certainty that, by this means alone, another human life can be preserved—and this is the answer of both religion and science.

He is not presenting novel doctrine. As Samuel Johnson said, mankind more often needs to be reminded than instructed, and Dr. Busey is offering this reminder of the duty to, as we would say, "choose life," in order to shore up the confidence and resolve of doctors resistant to learning a new medical technique.

This great push toward more Caesarians strikes contemporary ears a little strangely because books and articles on childbirth today stress the excessive number of these operations performed on American women in difficult or dilatory deliveries. American obstetricians, it is said, have too little experience in delivering breech births or monitoring stalled labors, and rush to Caesarians when normal vaginal deliveries would be both possible and preferable.

Dr. Busey sends a single clear message based on the moral claims of both baby and mother. The modern uneasiness with the high rate of Caesarians derives from mixed motives. One is a concern for the health of the baby and the quicker recovery of the mother. But the other, which appeals to feminists and anti-authoritarians as well as those repelled by the coldness of modern medicine, exalts the primal, "empowering" experience of childbirth and resists any interference with it. There is something to this instinct for the natural, if it is not pressed out of all recognition of our fallen and faulty reality. But we should recognize a certain self-centeredness and self-indulgence in this second motive for pushing natural childbirth. No mother making the argument wants to endanger her child. Still, like those who choose home births, they are focusing as much on their own desire to have a certain kind of experience of childbirth as on the needs of the child. We are so spoiled by the progress in Dr. Busey's field of obstetrics that it is hard to realize that something can go wrong.

"The Wrong of Craniotomy Upon the Living Fetus"—that is Dr. Busey's title, and its challenge shows that he knows his speech is, if not controversial, then something close to it. But the controversy does not lie in his opposition to sacrificing fetal for maternal life. It lies in his conviction that science has just about reached the point where such a sacrifice is not at issue. Dr. Busey has no doubt that obstetricians now have the obligation to attempt to save two lives by Caesarian rather than one by craniotomy. That is why much of his speech (including portions which do not appear here) summarizes studies and statistics. He is exhilarated by his glimpses of a bright new obstetrical dawn. We on the other hand are sickened and demoralized by the cannibalistic reality of our Brave New World.

The progress of medical science in the West was fueled by many things—faith in the rationality of the universe, belief that history is not merely cyclic, and that linear progress is possible, to name a few. One of the sources powering this progress was belief in the value of the individual life, and in the medical practitioner's obligation to preserve life insofar as possible. In Dr. Busey's time, this belief was considered not only consistent with medical science, but the necessary foundation for it. In his eyes, it is the force behind the medical innovations he describes. Many people today would smile at this as a simplistic way of looking at the claims of science and the boundaries of what we can know.

Today, largely unburdened with the moral absolutes of an earlier era, medical research continues to achieve dazzling successes, finding cures for many deadly and deforming diseases, uncovering treatments for many more, using technology to help the handicapped gain more independence.

And yet, detached from the moral mission of Dr. Busey's time, medical science sacrifices millions of unborn babies; it experiments on fetuses, and engages less and less surreptitiously in euthanasia. Surely it is an indication of our spiritual troubles that some of those who allow themselves to be troubled by this juxtaposition of lives gained and lost want to resolve the matter by comparing figures, for costs and the "quality of life."

Dr. Busey compares figures also, but with a very different purpose. He recognized the ancient vow of the physician to "first, do no harm." Do not sacrifice the child when it will in most cases not even be necessary to preserve the mother. Attempt to save both: that is the business of medicine—its high calling. These two lives are not meant to be in conflict with one another. The doctor can be the means by which neither becomes the aggressor against the other. As he puts it:

> It cannot be that the complex processes of conception and utero gestation, the

> organization, construction, and equipment of a new being for an independent life, and the agony and danger of parturition mean nothing more than the right of life by consent of mother and the will of the accoucheur.

I would love to see the speech a Dr. Busey could deliver to a group of contemporary obstetricians and gynecologists. But I would hate to bring him face to face with a present so unworthy of his past.

How easy it would have been, in the late 1800's, when so many discoveries were being made, so many limitations of time and space and physical capability being breeched, so many noble causes being won, to assume that his upward curve was the ineluctable line of human destiny. Slavery was outlawed, democracy spreading, religious wars appeared at an end. Non-Christian nations were safely under the civilizing influence of the Europeans. There were societies for prison reform, hospital reform, better conditions for the mentally ill. What would Dr. Busey have imagined the world a hundred years from his to look like? Did he believe that man's moral nature could improve as dramatically as his command of his physical circumstances? Did he, like many educated people of his time (and some in ours) think that the theory of evolution explained more than the history of the physical world (if it does that much!)?

It's hard not to envy him his optimistic world, though that is a romantic view of a time that still held far more physical pain and poverty than our own. What this century has taught is that not all forms of progress march together. Hitler's doctors (and Holland's doctors, for that matter) could perform Caesarians with ease. Our own doctors wouldn't think of a craniotomy to rescue a mother from the risky birth of a wanted child.

Has such power over material circumstance made them peculiarly inhuman, peculiarly exempt from the calling of conscience? Of course not. Doctors are not the only category of people with coarsened or elasticized consciences. We are all much more accustomed to dictating terms to the world than our forefathers were, and this no doubt encourages grown-up temper tantrums against the seemingly vestigial demands of fate or God or whatever people choose to rebel against. ("I won't die a lingering death if I don't want to! I won't have a baby I don't want! I won't put up with senile parents or handicapped children! I won't, I won't, I won't!")

Several years before his death, Malcolm Muggeridge was asked what one should do to protect oneself either from being euthanized or having one's life mindlessly prolonged by machines and procedures. Muggeridge did not hesitate in giving his answer: Find a good Christian doctor.

Dr. Busey and I see his point.

THE WRONG OF

CRANIOTOMY UPON THE LIVING FETUS.

SIXTH ANNUAL ADDRESS OF THE PRESIDENT, DELIVERED BFORE THE WASHINGTON OBSTETRICAL AND GYNECOLOGICAL SOCIETY, OCTOBER 19TH, 1888.

BY

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Washington, D. C.

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Contra Crushing Fetal Skulls

Samuel C. Busey

In my first annual address, delivered before this society five years ago, I predicted that the discussion of the relative propriety of the operation of craniotomy upon the living fetus and the Cesarean section, then in progress, would result in a modification of the views held by a majority of obstetricians, and that the time would come when the Cesarean section and other conservative procedures, which offered the chance of saving two lives, would supplant the killing of the fetus that the chances of the mother's recovery might be improved.

I did not then anticipate the rapid progress of the revolution which I felt assured had begun, nor that, at this early date, science would have so nearly accomplished that result. After five years' submission, without remonstrance, to adverse criticism, you will pardon me if I give expression to the pleasure it gives me to recur to this subject, not, as then, a postulant, canvassing the issue of justifiability, but now as a predicant, asserting the wrong of craniotomy upon the living fetus. This proposition advances a step beyond the inquiry discussed in my first address, and involves the question of moral responsibility as well as the issue of scientific investigation and result.

It may be that my views are extreme, but if advances in the science and practice of obstetrics are limited to the domain of long established usages and generally accepted principles, progress must cease. If the early followers of McDowell had laid aside the scalpel at the bidding of their assailants, abdominal surgery would not now be crowned with the brilliant success of the great ovariotomists, whose achievements are known in every land where medical and surgical science is cultivated. Nay, more, if they had been discouraged by the unfavorable results in the beginning, ovariotomy would long since have been consigned to the catalogue of unjustifiable operations, and the unnecessary sacrifice of woman's life would have continued as a memorial of the inadequacy of scientific medicine.

To state the issue plainly, the averment must be made that no conscientious

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Dr. Samuel C. Busey was, in 1888, president of the Washington Obstetrical and Gynecological Society, as the original cover page reproduced on the preceding page shows. We reprint here the text of his address to the Society, except for one middle section listing a long series of facts and statistics which, in our judgment, would mean little to present-day readers. But as Ellen Wilson Fielding suggests in her introductory article, what Dr. Busey had to say 108 years ago is quite relevant to the present-day "partial birth" abortion controversy.

physician would deliberately and wilfully kill a fetus if he believed that the act was a violation of the commandment, "Thou shalt not kill." It has been well said by Barnes,[1] the highest authority on operative obstetrics, and the ablest and most conservative defender of craniotomy, "It is not simply a question for medicine to decide. Religion and the civil law claim a voice—a preponderating voice. In the whole range of the practice of medicine, there arises no situation of equal responsibility, of equal solemnity." Maintaining[2] the affirmative of the proposition that the profession can and must escape from such a solemn responsibility, I hold that we must strike directly at the root of the evil, which declares that "it is the mother's right to save her life, even at the sacrifice of her child;" and abolish a plan of treatment which the experience of past ages has handed down to us, and vindicated by the assertion of the right to take one life rather than leave two to die.

We must, in the interest of a broader humanity and a far wider field of usefulness, accept the progress of science, and offer chances to two lives reather than take the one which cannot assure the safety of the other. In the remote past, when obstetric operations were, at best, performed with rude appliances and in a bungling and unscientific manner, by operators lacking in knowledge and experience, such interpretation of the moral law must have been cherished as a blessing to humanity, but "under the new regime the interest of the living child[3] will constitute a more important factor," and the public will demand the highest skill attainable in obstetrics.

Directly opposed to such progress is the assertion of right to take life at will, supported by the equally untenable assertions of easy accomplishment[4] and small mortality of mothers. With the issue thus made up, I proceed.

The right or wrong of craniotomy upon the living fetus forces itself into the foreground of this discussion because this unsettled issue is the obstacle thwarting the advance in the methods of conservation of human life. Until the unjustifiability of the alleged right to kill a fetus at will to enhance the chances of life to the mother is fully demonstrated, and the wrong of it laid bare in the fulness of its enormity, the law of justification will be invoked to cover the plea of expediency.

I will not characterize craniotomy upon the living fetus as a crime in the ordinary acceptation of the word, that is a deliberate, wilful, and malicious malefaction. Nor would I invoke the enactment of penal laws upon the subject.[5] Nor do I assume censorship of professional conscience. Neither do I maintain that one who may differ with me is necessarily wrong. I

concede to every qualified obstetrician the right of private judgment, and recognize the moral responsibility of every one for his own acts. Nevertheless, I would seek to cultivate and disseminate a higher and broader conception of moral duty than that which reposes in conscientious security upon the assumed right to kill and unborn child "in the interest of the life of another, responsible for its existence," when there is sufficient evidence to justify other procedures "equally in the interest of both mother and child."[6]

Whilst I forbear to characterize the sacrificial operation as a crime, I will antagonize the charge of sentimentality so frequently and flippantly made against those who would offer chances to two lives rather than take the one which cannot assure the safety of the other, with the countercharge that those who claim the right to take life as the mere choice of obstetric or surgical procedure assert a prerogative as arbitrary in its conception as it is cruel in its execution.

An operation which, in a spirit of evasive defence, has been admitted by its advocates and defenders to be abominable, repulsive, horrible, detestable, and execrable, must partake more of the nature of a sacrilege than a sacrifice; and that sentimentality which, by its abolition, would relieve obstetric science from the necessity of such dreadful admissions, needs no other defence than the courage to assert itself.

The killing of the unborn fetus must be intentional and deliberate, and executed intelligently, or otherwise it is manifestly a crime. In the present state of medical and obstetrical science, ignorance, haste, convenience, and want of preparation cannot be offered as pleas in abatement of the wrong. Incompetency to do that which others can do, cannot justify a feticide. Intentional and deliberate killing must find its justification in some law, either civil, scientific, or moral.

Self-preservation is the first law of nature. But neither the civil nor the moral law will accept the arbitrament of any one man's judgment on so momentous a question. Criminal law assumes to ascertain and measure the degree of guilt by defined methods of judicial procedure. Established usage may constitute an adequate plea in justification or abatement of many wrongs committed in the ordinary concerns of human life, but it offers no escape from the responsibilities of criminal acts, even though it may mitigate the punishment of penal offences. Custom and usage may excuse, and civil and criminal law may acquit the accused, but neither of these avenues affords escape from the moral responsibility of intentional and deliberate killing.

I do not introduce the references to the civil and criminal law to degrade the alleged wrong of craniotomy upon the living fetus to the level of

an ignominious offence, but to exclude the argument of justification based upon the absence of common law or statutory prohibition, and to re-assert the principle of moral responsibility above and beyond any legislative definition.

It is established by the consensus of professional opinion that the operation has been frequently performed in cases where delivery could have been safely accomplished by the forceps, turning, or even by the unaided powers of nature. A dogma that accepts and justifies a procedure conducive to results so repulsive to Christian civilization and humanity, and so obstructive to the progress of science, should seek defence upon a higher plane of professional duty than the mere assertion, without proof, of the right to take the life of one innocent human being to increase the chances of the recovery of another.

The wrong of craniotomy on the living fetus is a more complex offence than a wrong act inflicted upon one's self. If the moral dereliction could be limited to the responsibility of the operator, it might be submitted to the arbitrament of his own conscience; but this greater offence is committed against the purest type of an innocent and defenceless human being—an unborn child which has reached that stage of its development which fits it for an independent life—at the will and on the judgment of one whose office and duty it is to preserve that life.

Conception is the product of cohabitation. With cohabitation and insemination, the function and office of the male in the production of a new being terminates. Not so, however, with the female. The laws of procreation entail upon the woman the obligations and responsibilities of maternity, which are equally as high in the scale of natural attributes, and more imperative in all the requirements for their complete fulfilment.

It must then follow that the child is entitled to life, even at increased risk to[7] the mother. The doctrine of responsibility of the operator for his own act cannot condone the composite offence. He may but play the part of accomplice in the final act of the drama of wrong, but the bloody hand may be none the less guilty, for complicity and connivance are, at least, accessory wrongs. Women in travail are not infrequently terrorized at the mere suggestion of the necessity of manual or instrumental interference, but accept with alacrity any alternative which promises to terminate their agony. It quite as often happens that the grief of a disappointed and blighted maternity can only be solaced by the coming of another.

If the improved Cesarean section is not necessarily fatal to either mother or child, and offers fair promise of life to both, and craniotomy falls far

short of such a promise, while it loads the mother's heart with sorrow and taints her life with guilt, surely the accomplice of such a deed of evil cannot ransom the wrong with the dogma of absolution by virtue of his doctorate in medicine.

The mother's love of offspring is the most acute and intense passion of human life and animal instinct. No obstetrician need be reminded of the anxious inquiries concerning the safety of her child so often made during the agony of her travail, her joy at the first cry of independent life, her devotion to the infant at the breast, and her willing sacrifice of strength, health, comfort and pleasure during the after-life of the fruit of her womb. Are such qualities mere exhibitions of emotion induced by the current, passing, and evanescent events of her life, or are they attributes of that divinity of soul that makes her the helpmate of man and the emblem of all that is pure and good in life?

The attributes of maternity find their beginning in the innate qualities of human life; manifest their obvious presence in the amusements, pleasures, and pastimes of infancy and childhood; grow with pubertic development; intensify with adolescence; and attain fruition with the birth and care of a living child. From its beginning to the end of intellectual life, maternity is a ceaseless passion, enshrined in truth, virtue, sincerity, forgiveness and self-abnegation, and hallowed "in devotion of the heart in all its depth and grandeur."

The sublimity of such natural endowments carries with it the force and conviction of condemnation of wilful assent to and complicity in the destruction of a fetus at maturity, and asserts the prerogative of a child to live at increased risk to the mother. It cannot be that the complex processes of conception and utero-gestation, the organization, construction, and equipment of a new being for an independent life, and the agony and danger of parturition mean nothing more than the right of life by consent of mother and the will of the accoucheur.

There can be no higher obligation of professional duty than the promotion of the welfare and the saving of the lives of those committed to the care and judgment of a Christian physician.

This duty cannot be wholly discharged short of the conscientious and intelligent application of such resources of art and science as may be known to promise the best result. When two beings are in equal danger, the killing of one not necessary to and not assuring the safety of the one responsible for the existence of the other and the danger of both, cannot fill the measure of such duty, when a less violent procedure offers a reasonable

prospect of saving both lives. In rebuttal, the logic of fallacy alleges that the killing of the first child may preserve a life which may so multiply that the aggregate saving of infant and maternal life will surpass anything that is likely to be obtained by the Cesarean section.

This sophism takes no account of the uncertainties of events, encounters the danger to both mother and child of premature labor induced at varying periods of fetal viability, and suppresses the rule of successive breeding and killing at the pleasure of the woman and the will of the operator. It wholly ignores the fact that the Cesarean section may, with slightly less percentage of chance to the mother, save both lives, and restore to the woman incapacitated by pelvic deformity the privilege and power to give birth to an indefinite number of children,[8] and that Porro's modification may save both lives and prevent subsequent pregnancies.

But such illogical reasoning finds its complete refutation in the absence of any clinical data upon which their allegation could be based, and the numerous instances in which women have preferred Cesarean section rather than permit a repetition of craniotomy. There is no case known to me, where a woman upon whom the section has been successfully performed, has refused to submit to its repetition in a subsequent pregnancy.

The sentence of condemnation has long since been pronounced against criminal abortion. No one of you would produce an abortion to conceal an illegitimate pregnancy, nor for any reason, except such as would, in your conscientious judgment, make the death of the mother and, consequently, of the fetus, otherwise inevitable. Neither would you induce premature labor at any stage of fetal viability, except to save the mother, and to offer a reasonable—in many cases an increased—chance of life to the child. The death of a pregnant woman necessarily causes the death of an undelivered child. According to the latest review of the subject[9] maternal mortality is 8.2 per cent, two tenths less than that of craniotomy.[10]

Whilst the maternal mortality is but a fraction in favor of induced premature labor, the saving of life in the aggregate has so magnified the importance and advantages of the procedure that it has become an accepted and established alternative of craniotomy, especially applicable in conditions of pelvic contractions in which the craniotomists insist the latter is the elective operation. The mortality of weak and immature children is very large, but the invention and application of the incubator of Tarnier has reduced it to 36.6 per cent. So that the ratio of lives saved is as 155.2 in 200 to 91.6 in 200 by craniotomy. It is then evident that the induction of premature labor has acquired priority in the chronological order of

alternative procedures because of the aggregate saving of life; and its universal acceptance gives emphatic expression to the supreme and dominating passion of maternity, and to the widespread abhorrence for the dogma and practice of craniotomists.

From this there is no escape, for there is no one capable of conscientious reflection who would offer the condonement of two-tenths of one per cent less of maternal mortality in favor of induced premature labor for the deliberate killing of one hundred unborn children. But fairness even to such a reprehensible practice demands the statement that the artificial provocation of labor at a selected time is only applicable to such cases in "which previous clinical knowledge, confirmed by exploration made before and during early gestation, has demonstrated the incapacity of the woman to bear a living child at term." Nevertheless, the obligation to possess such knowledge at the earliest practicable period of pregnancy is not less imperative than it is to conduct her safely through the perils of her travail.

"The brutal epoch of craniotomy" has certainly passed. "The legitimate aspiration and tendency of science (Barnes[11]) is to eliminate craniotomy on the living and viable child, from obstetric practice;" and it may be that the realization of the dream of Tyler Smith[12] will be the crowning achievement of the surgery of the nineteenth century.

Craniotomy is the oldest capital and most deadly obstetric operation. It was devised in the infancy of the art, to rescure women from the difficulties then regarded as otherwise insuperable. The history of obstetric progress since that remote period points with significance to the fact that every great discovery (Tyler Smith) in this branch of medicine is in direct "opposition to it, and has invariably tended to diminish the frequency of its performance where the child was living."

Even the Cesarean and Sigaultean sections, which in the beginning were but a little less fatal to the mother than perforation is to the child, were attempted to escape the "massacre of the innocents." Then followed in chronological order the discovery of turning, the forceps, and the induction of premature labor; and, subsequently, the application of oxytocics and auscultation to obstetrics; the discovery of the physiology and mechanism of labor; numerous minor improvements; anaesthesia, antisepsis, laparoelytrotomy by Thomas, axis-traction forceps, Porro's operation, and, finally, the improved Cesarean section by Saenger.

As century after century has slowly rolled into the oblivion of the past, so has the opprobrium of obstetrics receded before the gradual evolution of mere handcraft into a science which has saved empires of lives; which

now commands the admiration of the civilized world, and daily receives the blessings of millions of women.

The present has surpassed any previous century in scientific discovery and advancement. In no department of science has this advance been more than in medicine; in no branch of medicine more than in obstetrics, and in none of the subdivisions of obstetrics more than in the saving of materal and infantile life. Nevertheless, this barbarous relic of a pre-anatomic period, with its annual sacrifice of six thousand eight hundred and eighty lives in this country alone[13] remains a blot on the marvellous progress of the nineteenth century, and a reproach to our profession so progressive in all other directions.

The frequency of the operation is so dependent upon variability of judgment that this estimate may be more or less, according to the number, will, and judgment of the operators—the sentence and its execution being alike asserted prerogatives. Collins performed the operation once in 141 cases of labor; Clark once in 248; and Ramsbotham once in 805; whereas Siebold only performed it once in 2,095; Baudelocque only once in 2,898 cases, and More Madden, in a long and large experience in hospital and private practice, has never once recognized its necessity or countenanced its performance.[14]

The extraordinary frequency of the operation in the practice of competent obstetricians is explicable only upon the theory of an automatic belief in its justifiability, which invokes the more "sweeping doctrine of necessary blamelessness[15] for erroneous conclusions," or the favorite and broader doctrine of Ingersoll, "the immunity of all error in belief from moral responsibility."

The discovery of McDowell encountered bitter prejudice and reproach, based upon the alleged unjustifiable sacrifice of the lives of women who were afflicted with a disease otherwise incurable.[16] It is true that some lives are shortened by a period varying from a day or a week to a year or two, but even in the beginning such mortality was less than fifty per cent, and since 1809 ovariotomy has rescued from protracted suffering and premature death fully 75 per cent of the cases, and has added thousands of years to the lives of women. In each of such cases but one life was at stake. The Cesarean section, or some of its modifications, is performed in the interest of two lives, upon women who cannot give birth to their offspring per *vias naturales.*

The opposition in this case is not less clamorous and unreasonable than in the other, notwithstanding the first fifty Saenger operations in Europe

saved 80 per cent of mothers and 96 per cent of children, or 88 per cent of all the lives imperiled, while the best possible result in craniotomy—never, however, attained—would give but 50 per cent. This contrast exhibits the complex and contradictory methods which good and competent men, who have become set in their views, will employ to thwart and obstruct the advance of science.

In the former instance, it was the possible shortening of the life of a woman fatally sick that aroused the fierce vituperation and denunciation; now it is the saving of 96 per cent of children at a slightly increased risk to the life of the mothers that fires the heart of the philanthropist who claims the natural right to destroy one half of the lives that the chances of saving the lives of the other half may be improved. The iron-clad conscience which sought to drive the early followers of McDowell into ignominious retirement lives only in the history of its futile efforts to obstruct progress, and ovariotomy has risen to the dignity of universal acceptation.

The conscience which is today seeking to condone the wrong of craniotomy with the good that evil may bring, will read a like history in the near future when the world will know the possibilities of science, and the child will be saved without enhancing the danger of the mother. As Tait[17] has accomplished the brilliant success of one hundred and thirty-nine consecutive ovariotomies without a death, we need not hesitate to give full credit to his opinion that one hundred Porro operations should not yield more than five per cent maternal mortality.[18]

* * * * *

[*Here Dr. Busey states "to meet the charge of casuistry, the logic of words must be re-inforced by the demonstration of facts"—whereupon he details a long list of such facts, with copious accompanying notes (many from the* British Medical Journal *of that era)—the section covers some five pages in the original article—but we doubt that present-day readers will gain much from his recitation (the original text is available on request). His point is that, on the* worst-*case scenario, Cesarean section had already become very nearly as safe for the mother as the then-preferred option.—Ed.*]

The foregoing figures present the alternatives of Cesarean section in their most favorable aspect. The ratio of maternal mortality in craniotomy is 2.8 per cent, and yet nearly twice as many lives are saved by section. Nor should we overlook the facts that one-half of the maternal mortality of Cesarean section was due to causes beyond the control of the operation, and that in every case a living child was delivered.

These statistics show that craniotomy saved 5.6 per cent more mothers than section, but the latter operation offsets this small increased loss of mothers by giving us all the children living at deliver, and eighty-seven per cent of them alive at the time of discharge from the clinic. The issue then resolves itself into the simple question of the actual or relative value between the lives of five or six women and eighty-seven children. If we base our conclusion upon the universally accepted apothegm that "that only is right which produces the greatest good to the greatest number," the conclusion is self-evident—the eighty-seven must be saved—and this conclusion is re-inforced by the fact that the five or six lives lost are those of women who cannot give birth to a living child *per vias naturales*. If there is any obligation[19] of duty or maxim of the moral law which demands the sacrifice of eighty-seven lives to improve the prospects of saving five or six women in labor, the time had surely come for its abrogation.

But the argument *ad hominem* replies with the specific citation of the daughter or wife of some high official, conspicuous in social life, possessing marked beauty and intelligence, with ample wealth which she devotes to charity and benevolence, and holding in her physique and constitution the highest probability of a long and useful life, and demands to know if the life of such a woman should be submitted to the 5.6 per cent chances of death, with the eighty-seven per cent chances of life to her child, rather than to the 2.8 per cent[20] chances of death with deliberate killing of her child.

The picture is pathetic and moving, but the answer is simple and plain. Both science and religion deal with exceptional cases as such. The broad principles of truth, humanity, progress, and development are not to be stayed or hindered by the special pleading of imaginary cases of isolated hardship, however much of pathos or tears they may suggest. All lives are of equal value in the eyes of the true scientist and the true Christian, and the divine art of healing can have no safer guide than this: That nothing can possibly justify the taking of a human life unless it be the absolute certainty that, by this means alone, another human life can be preserved—and this is the answer of both religion and science.

It is true that the ration of mortality is less, but the uncertainty of life remains the same. Each woman operated upon by either method takes all the risks of the operation. Those dying after craniotomy might have been saved by section, and *vice versa*. The saving of the child is the only compensation for the uncertainty of life and possible error of elective procedure. The unflinching discharge of unavoidable duty is the only guide of

conduct. The behests of a long accepted dogma should not thwart the progress of science which promises divorcement of the profession from lay opinion, which claims the destruction "of the lesser for the benefit of the greater life."

The right of an individual to select the alternative of certain death rather than submit to an operation which may shorten, but, more probably, will effect a cure and prolong life, is not absolute. In such case, but one, and that the life of the victim, is involved. Such right cannot, however, be conceded to a woman in labor who is responsible for the existence of her child and the danger of both, since by it she imposes upon an innocent operator the act of killing, that her prospect of life may be slightly improved. The conviction of right in the first cannot carry with it the concession of right in the latter instance.

If a pregnant woman possesses the natural and inalienable right to terminate the life of her child at term, she cannot be denied the right to terminate it at any period of gestation, and criminal abortion would then become an accomplishment of the highest significance. The early destruction of embryonic life would be the simplest and surest escape from the perils of utero-gestation and parturition; would effectually withdraw from further scientic pursuit the advances in obstetrics which seek the elimination of craniotomy; more certainly extinguish the instincts and attributes of maternity; nullify the laws of reproduction; and reduce woman to a level more degrading than any to which the most barbaric of primitive people consigned her.

The argument that craniotomy upon the living and viable fetus is the indirect killing of an unjust aggressor is a trivial sophism. The killing is the immediate, and even more direct object than the end sought to be accomplished, for that is necessarily attended with the chance of safety to the mother. It is a curious, but interesting historical fact that embryotomy found its beginning in the intuitive obstetric practice of primitive peoples[21] who believed that all difficulties were referable to the evil disposition of the child, and that "a child so perverse as to refuse absolutely to appear deserved death, as did the mother who carried such a child."

Obstetrics has advanced from the epoch of intuitive practice, through the religious and pre-anatomic epochs, and the first three hundred and fifty years of the scientific period, and yet there are very many eminent obstetricians practically holding fast to the doctrine of merited death or justifiable killing of the fetus for a like cause and a like method, which the primitive peoples could justify only upon the theory of the evil disposition, perverseness, and unjust aggression of the unconscious and passive child.

Nevertheless, the savage inhumanity of such a doctrine evinces a broader sense of justice than the craniotomists of to-day, in that it recognized the culpability of the mother to be equal with that of the child.

It will be charged, notwithstanding the equally favorable results of craniotomy, that the maternal mortality of the alternative procedures in the Dresden Clinic are less than the ratios of mortality of the operations in general. The utmost fairness, therefore, requires that comparative ratios shall be obtained from larger numbers, which will comprehend the experience of numerous operators. To this end the following analyses are made:

In a private letter, dated August 20th, 1888, Dr. R.P. Harris informs me that 131 improved Cesarean operations had "been performed in 11 countries by 73 operators, with a saving of 95 women and 118 children."

In 15 German cities, 32 men had had 65 cases and saved 56, a percentage of 86⅔; only 9 deaths in all.

In 5 Austrian cities, 7 men operated 21 times, saving 15, or 71³/₇ per cent.

In 9 American cities, 16 men operated 20 times, with 9 saved, or 45 per cent. The first 5 were all fatal.

Russia saved 4 out of 6.	England saved 0 out of 2.
Holland saved 4 out of 4.	Denmark saved 1 out of 1.
France saved 2 out of 4.	Switzerland saved 1 out of 2.
Italy saved 2 out of 4.	India saved 2 out of 4.

71 saved out of first 100.
33 saved out of first 50.
38 saved out of second 50.
34 men saved out of 45 cases, in 1887, 36 women, or 80%.

This aggregate in its most unfavorable aspect, with its 73 operators in 11 countries, and including the educational and experimental cases in this country, shows a saving of 72.52 per cent of women and 90.84 per cent of children. In other words, it shows a saving of 165.36 lives out of a possible 200, being 65.5 more lives saved than is possible by craniotomy, even admitting that it is absolutely free from danger to women. As yet no one has claimed that any group of 73 craniotomists has saved 100 per cent of the lives of the women operated upon, even though they sacrificed 100 per cent of the lives of children. Further comment is unnecessary.

Later statistics:—Caruso (*Archiv frü Gynäkologie*, Band 33, Heft 2) has collected the cases of the modern Cesarean section up to October 1st, 1888, "comprising 135 cases; 6 successful cases, in addition, are known to Caruso, but the details necessary for publication were lacking.

"German operators have performed 74 of these operations; Americans, 18; Austrians, 16; the results by Americans are inferior to those of the Germans and Austrians. The results are 74.44 per cent of recoveries among mothers in all cases, and 91.73 per cent recoveries among children; in three cases in which the operation was done a second time, both mothers and children recovered. It may, therefore, be said that a mother has three chances out of four, and her child nine out of ten, for life with this operation.

"A careful estimate of the results of craniotomy, under antiseptic precautions shows that 93.4 per cent of the mothers recover. Selecting similar cases on which section was performed, the percentage of recoveries in these cases was 89.4, and 100 per cent of children. Caruso concludes, therefore, that craniotomy on the living fetus is to be superseded by the conservative operation."—*Amer. Jour. Med. Sci.*, Vol. XCVII., p. 99.

NOTES

1. British Medical Journal, October 2d, 1886, p. 624.
2. The improved operation has given results in Germany so satisfactory that possibly the day is at hand when craniotomy upon the living fetus will be very rarely performed, if done at all. Parvin, Med. News, Vol. lii., p. 652.
3. Prof. Miller, Trans. Ninth Internat. Congress, Vol. ii., p. 304.
4. "To reduce the bulk of the child, or to extract its mutilated remains through a pelvis of two and one-half or less conjugate, is an operation of extreme difficulty, one occupying a very considerable period of time and needing for its successful accomplishment, as far as the mother is concerned, a very great experience, and an amount of manual dexterity hardly to be acquired outside of a large city; while, on the other hand, the Cesarean section is an easy operation, capable of successful performance by any surgeon of ordinary skill." Kinkead, British Med. Journ., October 2d, 1886, p. 626. "The argument, that such operations as that of Porro would fall largely, of necessity, into the hands of men inexperienced in abdominal surgery, was not of much value; for exactly the same thing was true of bad cases of craniotomy, and he felt certain, of the two classes, under similar circumstances, the resulting advantages would be largely on the side of amputation of the uterus." Tait, British Med. Journ., October 2d, 1886, p. 627.
5. "I would welcome the enactment of laws against this practice in all civilized countries." Wathen, Trans. Ninth International Med. Congress, vol. ii., p. 372.
6. Mr. Tait feels certain that the "decision of the profession will be before long, to give up the performance of those operations destructive to the child in favor of an operation which saves it, and subjects the mother to little more risk." British Med. Jour., October 2d, 1886, p. 624.
   The operation of amputation of the pregnant uterus, I venture to predict, will revolutionize the obstetric art, and in two years we shall hear no more of craniotomy or eviscerations, for this new method will save more lives than these proceedings do, and it is far easier of performance. It is the easiest operation in abdominal surgery, and every country practitioner ought to be able and always prepared to do it. Lawson Tait, Med. Record, Nov. 10th, 1888, p. 557.
7. Thomas.
8. See the collection of cases of multiple Cesarean section by Lungren, AMER., JOUR OBST., Vol. xiv., p. 78.
9. Wyder, Ann. de Gyn. et d'Obst., Jan., 1888. Quoted from New York Med. Jour., Vol. xlvii., p. 641.
10. Ibid.

11. Barnes, Brit. Med. Jour., Oct. 2d, 1866, p. 623.
12. Obst. Trans., London, Vol. i., p. 21
13. This result is obtained by a calculation made upon the basis of sixty millions of people, with a ratio of thirty-six births (U.S. Census, 1880) to every one thousand of population, and the proportion of one craniotomy (Tyler Smith) in every three hundred and forty labors, the maternal mortality after craniotomy being 8.4 per cent.
14. British Med. Jour., Oct. 2d, 1887, p. 627.
15. Gladstone.
16. It is probable that occasional instances of cure resulted from the haphazard methods which have been long since abandoned.
17. British Med. Jour., May 15th, 1886, p. 921.
18. "If I had one hundred Porro's operations to do, before craniotomy or any other turbulent proceedings upon the child had been attempted, I would not have a mortality of more than four or five per cent." British Med. Jour., Oct. 2d, 1886k p. 624.
19. "How long must we be forced by lay opinion to destroy the lesser for the benefit of the greater life, when it can be conclusively shown that the Cesarean section, resorted to in time, may with almost absolute certainty result in the saving of two lives?" AMER. JOUR. OBST., Vol. xxi., p. 672.
20. A later abstract (AMER. JOUR. OBST., Vol. xxi., p. 779) of a paper by Wyder (Archiv f. Gyn., Vol. xxxii., i.) states the maternal mortality of craniotomy and induced premature labor, at the Clinics of Berlin, Halle, and Leipzig as follows:

    Berlin, 104 cases of perforation, 5.8 per cent.
    Halle, 35 cases of perforation, 5.7 per cent.
    Leipzig, 76 cases of perforation, 5.3 per cent

    Premature labor: 306 cases; mortality, 3.9 per cent
21. Engelmann, "System of Obstetrics" by Hirst, vol. i., p. 25.

APPENDIX A

[The following was the lead article in our Fall, *1986 issue; we reprint it here without alteration, and in full. At that time, then-Senator Dole was serving (for the first time) as the Majority Leader of the United States Senate; he was also contemplating a 1988 presidential bid, which may have been why he (and several other "hopefuls") sent us articles during that period. Some of Mr. Dole's subject matter is of course dated, but we think our readers will be interested in the views Dole held then, as well as his description of the "seemingly-endless" abortion controversy in which he was so deeply involved. —Ed.]*

Taking the Initiative for Life

Robert J. Dole

It is an ancient truism that where leaders have no vision, the people perish. Thomas Jefferson had both vision and leadership when he wrote, more than 200 years ago, "The care of human life and not its destruction . . . is the first and only object of good government."

In 1973, our nation's highest court abandoned Jefferson's vision, and as a result of its decision in *Roe* v. *Wade*, at least seventeen million children have not been born in the United States.

But something else *was* born: a spontaneous outpouring of the American conscience, as millions of people rallied to the defense of life itself.

They have been in the forefront of this historic movement: acting upon their right, as American citizens, to work to change any law they believe contradicts the God-given rights on which our nation was founded. They have lifted the banner of life and with it, the consciousness of all who love liberty.

For thirteen years, they have sounded no uncertain trumpet; they have refused to compromise principles which are beyond compromise. And throughout that thirteen year period, I, too, have been privileged to be a part of the fight against abortion on demand.

Many people do not realize how long and hard this fight has been. In fact, it began in the Congress almost immediately after the Supreme Court's *Roe* v. *Wade* decision. At first, federal abortion funding was the battleground. To cite just some of the more important votes, I voted to bar use of Social Security funds for abortion way back in 1975. In 1977, I voted against a proposed amendment that would have allowed federally-funded abortions, and (later that year) voted *for* an amendment, sponsored by Sen. Jesse Helms, to prohibit the use of taxpayers' money to fund abortions except when the mother's life would be in danger.

In 1981, I again joined Sen. Helms to table an amendment that would have deleted the Hyde Amendment from a funding bill. The next year I voted against another attempt to "table" a Helms amendment to restrict federal funding. In 1983, I voted for Sen. Orrin Hatch's constitutional amendment to overturn *Roe* v. *Wade*. The next year we had to defeat yet another amendment that would

have allowed abortion in some cases. Last year, the fight was over abortion funding in the District of Columbia: I voted for Sen. Gordon Humphrey's amendment to deny such funds.

Some of my colleagues have been dismayed by the seemingly-endless "showdown" voting on abortion, and I can understand that feeling. But it must also be remembered that the Congress did not create the issue: it stemmed from that day in January, 1973, when a majority of Supreme Court Justices decided to enshrine their private views on abortion in that most public of documents, the United States Constitution, a stunning example of what can truly be called "judicial legislation."

With *Roe*, the Court invalidated the abortion laws of all 50 states, from the most protective to the most permissive. It held, in effect, that not a single state had correctly read the Constitution for almost 200 years! The result, as the Senate Judiciary Committee recently concluded, is that under *Roe* v. *Wade* "No significant legal barriers of any kind whatsoever exist today in the United States for a woman to obtain an abortion for any reason whatever during any stage of her pregnancy."

In fact, there is nothing in the text or history of the Constitution to suggest that the Framers intended to grant Constitutional protection to feticide. Indeed, many of the state legislatures which ratified the Fourteenth Amendment (on which the Supreme Court would base its 1973 ruling) also enacted strict anti-abortion statutes during the same period.

I know many prominent legal scholars, including some who are personally inclined to support legalized abortion, have criticized *Roe*. To cite only one, Professor John Hart Ely (then at Harvard, now Dean of Stanford University Law School) has called *Roe* "a very bad decision . . . because it is bad constitutional law, or rather [because] it is *not* constitutional law and gives almost no sense of an obligation to try to be."

Testifying before the Senate Judiciary Committee in 1981, then-professor (and now Judge of the U.S. Court of Appeals for the District of Columbia) Robert Bork said: "I am convinced, as I think [almost] all constitutional scholars are, that *Roe* v. *Wade* is an unconstitutional decision, a serious and wholly unjustifiable usurpation of state legislative authority."

Supreme Court Justice Sandra Day O'Connor repeated these concerns in a decision handed down June 11, 1986, when she wrote: "Today's decision . . . makes it painfully clear that no legal rule or doctrine is safe from *ad hoc* nullification by this court when an occasion for its application arises in a case involving state regulation of abortion."

Justice Byron White wrote: "In my view, the time has come to recognize that *Roe* v. *Wade* departs from a proper understanding of the Constitution, and to overrule it."

And there is no doubt that then-Chief Justice Warren Burger had a change of

attitude when he declared: "If today's holding really means what [it] seem[s] to say, I agree we should reexamine *Roe*."

So it is clear that *Roe* is not the final solution to the abortion question. And in the Senate of the United States, we are going to continue our efforts toward a final reversal of that decision. The Majority Leader has the power to set the Senate's agenda. I have brought up President Reagan's nominees for Federal judgeships and tried to move them through the Senate, but it has been difficult.

Look at what happened to Daniel Manion. Editorials and critics said "He's not qualified. He can't spell. He didn't go the 'the right schools.' He's only a country lawyer"—as if there's no room in America for anybody who does not come from the cities.

The real reason, of course, is that his opponents believed he had the "wrong" philosophy. But, as President Reagan has said, there should not be a restrictive *caveat* in the Constitution that says qualified conservative judges need not apply. True, we finally won the fight to confirm Judge Manion, but by a terribly narrow margin.

Obviously the selection of judges is very important. I believe President Reagan's position is exactly right. It is certainly the policy I will follow as Majority Leader—and in any other position I may hold in government.

I know that some are discouraged that we have not already won our abortion fight, and indeed it is far from over. But it *can* be won if the many organizations and individuals who support our cause remain unswervingly true to the moral imperative—and end legalized abortion on demand. And one of the most important means of achieving that imperative is by continuing to press for the appointment of judges who will interpret, rather than invent, the law.

In the public forum, we must demonstrate to the mass media and our concerned fellow citizens that, while our opposition to abortion is principled and absolute, so is our affirmation of human life in all its wonder.

Sometimes it is indeed difficult to support life. Recently, when I accepted an invitation to address the National Right to Life Committee's convention in Denver, there was considerable criticism. Some called asking "Why are you going to Denver?"

My answer: "Why, is there something wrong in Denver?"

They said: "If you go, you are pandering to the pro-lifers!"

I said "Well, it's a little late for that; I've been voting with them for the last thirteen years!"

The anti-abortion movement is often called the modern-day equivalent of 19th century abolitionism. Those who wanted to end slavery were criticized too. As a National Right to Life Committee past president, Jean Doyle, wrote: "Today's emergency pregnancy service[s] must . . . be likened to that era's underground railroads . . . the way station to a safe place where life is given a chance. Not every troubled pregnant woman is fortunate enough to find a refuge."

The traditional refuge for most Americans is the family. And the economic problems of our families are often a critical part of the reason why a woman chooses abortion.

For years, we have tolerated a tax code in this country which has not favored the family—it has actually worked against it—and no society can remain strong if its basic unit, the family, is left weakened and unprotected. But the Senate has taken several giant steps toward genuine tax reform—reform which should not be measured simply in dollars and cents, but in concepts like basic fairness and stability.

As a result, I hope that one of President Reagan's most cherished goals will become reality. By increasing the personal exemption to $2,000, we will finally stop *penalizing* the family—we will be giving people with children a break that is long overdue. (Also, with just two tax rates—15% and 27%—about 80% of all the American people will find themselves taxed at the lower figure. And even the 27% top rate is lower than at any time since 1931.)

This is a pro-family bill. It's a pro-*child* bill. The families that need help the most will receive it. More than six million of the working poor will be taken off the rolls altogether. For a family of four, income up to $13,000 will be subject to no tax at all. Also, the earned income credit will rise from the present 11% to 15% and it will be indexed to inflation. So, finally, the working poor will enjoy the benefits of tax indexing, the most pro-family tax reform in decades.

But a fair tax code for the family is not enough. Recognizing the stress abortion can bring into a young person's life, pro-life counselors are now trying to identify not only the pressures that drive a woman to *consider* abortion, but also those impelling her to *choose* abortion over adoption.

A young woman's decision to abort is most often an act of desperation. Can anyone doubt this? She may feel driven to the decision by an overwhelming sense of confusion and a host of conflicting emotions—fear, shame, her own parents' disapproval, apprehension over her prospects for education and employment, and often a sense of helpless abandonment, particularly if the child's father has walked away from his responsibility. And she may lack money for adequate food and housing, for medical expenses, and for a baby's many other needs.

Clearly these women—like their unborn infants—are abortion's victims. Realizing this, some have established special counseling and support groups to help others like themselves confront the issue, and to dissuade still other women from ever facing so painful a situation.

It is an affirmation of life when church-related and other groups institute "maternity homes" or "pregnancy centers" to offer services ranging from food and shelter to adoption counseling and education or job training.

One volunteer network "fights abortion with adoption" by sponsoring homes for unwed mothers. Addressing pro-abortion audiences, the group's founder tells

them: "If you don't want the babies, [we] do."

Another very successful program places unwed mothers with existing families. These volunteer households offer the young woman the environment she needs and provide for her material needs as well.

One unique program in the South offers a "General Educational Development" program for young mothers who want to earn their high school diplomas, and alternative schools for younger girls.

These are just a few examples I know about. But there is no question that such volunteer efforts can make a vital difference on a nationwide scale. According to one recent survey, more than three and a half million women have received pro-life counseling and, I'm told, the result is sometimes astonishing: between 50 and 80 percent of the women involved decide not to have abortions. And as President Reagan said in his own message to the Denver convention, "Each child saved is an immeasurable victory."

We must work to ensure that no woman in such a desperate situation will find herself alone and without hope. That is why the network of volunteer maternity services should be expanded, and why these efforts deserve the vigorous support of all caring people.

No, these efforts can never take the place of needed legislation, or a constitutional amendment to overturn *Roe*. However, they can convey our compassion for women in need, and our resolve to see human potential where some can see only problems.

Clearly, the fight for life must address the whole range of issues surrounding abortion with a broad range of actions: working for changes in the laws, strengthening families, supporting the President's judicial nominees, electing pro-life candidates, promoting alternatives to abortion for needy women and their children—all this and more must be done.

And the fight must be continued until it is won. As a young Marine defender of Khe Sanh put it: "For those who fight for it, life has meaning the protected will never know."

APPENDIX B

[*The following first appeared as a* Capitol Ideas *column in* The American Spectator *(June, 1996), and is reprinted here with permission (© The American Spectator, 1996)*].

Roe's Disparate Impact

Why abortion's not just for Catholics anymore

Tom Bethell

Earlier this year, I went to the Mall for the March for Life. Ever since the *Roe v. Wade* decision, usurping the legislative power of all fifty states with respect to abortion, it has been an annual event. I felt it was the least I could do. An impressive array of bishops, both Catholic and Orthodox, was on hand, not to mention senators and congressmen. They hadn't come to get their names in the papers, that's for sure. There was very little notice of anything the following day. We saw the same indifference more recently when two cardinals and four bishops held a vigil outside the White House in the pouring rain, hoping to persuade the Clintons not to veto the partial-birth abortion ban.

Politically, the anti-abortion movement has lost ground since the 1980's, mainly because the Republican leadership has cared less for pro-life than the Democrats have for the pro-abortion side. Presidents Reagan and Bush didn't even dare ask their own Supreme Court nominees what their position was on *Roe v. Wade*. Perhaps they didn't really care. Only two out of their five nominees opposed *Roe*, which remains in force despite all the heroic efforts of the pro-life movement. The indifference or veiled hostility of Republican higher-ups is such that the pro-life forces today would be only too happy to desert the GOP. But Bob Dole has shown support, so the rupture has not yet come. This issue alone gives ground for hoping that he wins in November. But notice that Dole, like Bush, has already said that he will have no "litmus test" in appointing judges. The superior zeal of the pro-abortion forces is again evident. Clinton made no such promise, and does have a litmus test.

Abortion returned to the headlines with Clinton's veto of the partial-birth ban. The attention was discomforting to Democrats, who have relied on the issue remaining inconspicuous. The gory details of dismemberment and extraction, scissors jammed into the baby's head, suction tubes extracting brains, might alert people to what has been going on. And for the first time since 1973, as far as I can see, the Catholic hierarchy is getting serious about the issue. Earlier, they merely included the abomination of abortion in a checklist of federal welfare programs that were contrued as "life issues." Mary McGrory's column criticizing Clinton for giving Catholics "the back of his hand" was widely noted. Not that concern about abortion should be a specifically *Catholic* issue. But where are the other denominations?

There weren't many blacks at the March for Life, and why not? A disproportionate

number of blacks are aborted. The non-white abortion rate (54 per 1,000 women aged 15-44) is almost three times the white rate (20 per 1,000 women). "You can't exactly say non-white is black but essentially it is," Susan Tew of the Alan Guttmacher Institute told me. The District of Columbia has by far the highest rate in the country (138 per 1,000 women), while the "whitest" states have the lowest abortion rates (Wyoming 4, Idaho and South Dakota 7, West Virginia 8, Utah 9). As a percentage of all abortions, the white percentage has decreased from 65 percent to 63 percent since the late 1980's. Tew said that updated information on abortion by race will be available this summer.

Anti-abortion pickets anecdotally report large numbers of black women going for abortions. Johnny Hunter, an anti-abortion black minister in Buffalo, noted that abortion supporters at one local clinic were so used to seeing black patients that when a young black protester showed up, she was assumed to be a client and immediately escorted into the clinic. Rep. Chris Smith of New Jersey, one of the leading opponents of abortion in Congress, mentioned another side to this—the increasing number of Planned Parenthood clinics in the inner cities, "located to capture Medicaid dollars." Abortions for indigent women are paid for by seventeen states, including New York, New Jersey, Illinois, Massachusetts, and California. Then there's welfare reform. The trend is to reduce cash payments at the state level but to preserve the abortion funding. "So if the woman on welfare continues the pregnancy she's poorer," Smith said. "There's an economic incentive to kill the baby. And our numbers have increased. Two preliminary reports have shown the number of abortions for the indigent have recently gone up in New Jersey."

Bear in mind that Planned Parenthood founder Margaret Sanger wanted "more children from the fit, less from the unfit," the latter defined as "all non-Aryan people." The "dysgenic races" deserved to be "treated like criminals," she said. It's in this murky eugenic zone that we can locate the Rockefeller Republican distaste for the right-to-life movement. The southern California abortionist Edward Allred said a few years ago: "When a sullen black woman becomes a burden to us all, it's time to stop. In parts of South Los Angeles, having babies for welfare is the only industry the people have." Liberal (sort of) columnist Nicholas von Hoffman once wrote a pro-abortion piece which a Philadelphia newspaper headlined: "America's Future Criminal Class: The Unaborted." And I have heard right-wingers say, off the record of course, that they *particularly* support government-funded abortion.

Time and effort has also been spent by International Planned Parenthood to loosen up the anti-abortion laws in such countries as Nigeria, Tanzania, Kenya, Ethiopia, Cameroon, Ivory Coast, Guinea, Burkina Faso. Question for the Black Caucus: What do those countries have in common? Are we beginning to get the picture yet?

"As far as the Black Caucus is concerned, they're all pro-abortion," Chris

Smith told me. "There isn't a single exception among the women and men who make up the Caucus. J.C. Watts is anti-abortion, but he is not a Caucus member. I mentioned it once to Kweisi Mfume, now head of the NAACP. In my view this is a not-so-veiled attempt at genocide, I said; a different version of the ethnic cleansing in Bosnia. He just listened, didn't really respond. I've also talked to Floyd Flake of New York about it, because he was pro-life when he came here. He was even the speaker at the National Right to Life's convention in Florida. Then he changed 180 degrees. I remember one vote on the D.C. appropriations bill. As we walked in I said, 'C'mon Floyd, this is abortion on demand. . .' It's mind boggling. You have to be into denial big-time not to see the game-plan."

Until about 1980, the black leadership seemed to understand that the man had a plan. Jesse Jackson gave many anti-abortion speeches in the 1970's. After he and Dick Gregory spoke at the National Youth Pro-Life Coalition in New York, in 1974, the pro-abortion activist and clinic owner Bill Baird accused them of "exploiting black women's bodies to act as breeding machines to produce more black babies to give more political power to male black leadership." Well, Baird won that debate. It turned out to be no contest. Jesse Jackson teamed up with the abortionists and the Rockefeller Republicans.

Coalition politics is what happened. In return for receiving their goodies from the white liberals—minority set-asides, quotas, legal privileges and entitlements, racially gerrymandered districts—the black leadership knew what they had to give in return: Full support for the feminist position on abortion. The Black Caucus has been happy to oblige. They vote for abortion because the alternative will jeopardize their power and perquisites. Eldridge Cleaver said recently that we now have "the worst leadership in the black community since slavery," and one can see what he means. Their votes have been bought.

What about Louis Farrakhan? Say what you will, he is not "bought." (No doubt that was why he had to travel to Libya—fundraising.) He is "vehemently opposed" to abortion, according to the recent *New Yorker* article by Henry Louis Gates. What about the high black abortion rate? I tried telephoning to hear what he thinks but didn't get very far. Spokesmen for the Nation of Islam are hard to reach. At the time of the Million Man March last October whole pages of articles came out in the New York *Times* and Washington *Post* without any quotes from the organizers. I haven't found a library yet that stocks back issues of *Final Call*, the Nation of Islam newspaper. I hunted through speeches and quotes from Farrakhan, though, and found only those two words: "vehemently opposed." Anyway, my suggestion for Farrakhan is this: Why not forget about those Jewish doctors cooking up the AIDS virus to infect blacks and pay attention to an area where suspicions about hostile intent toward the black race may not be entirely paranoid?

It's worth reflecting that if there were such a thing as publicly expressible

right-wing opinion in this country, which on the whole there is not, there probably would be open support for abortion on racial grounds. At that point, the Black Caucus would pay attention to what is going on. From the white-liberal perspective, of course, the speech taboo on the right performs the useful function of keeping blacks in the dark, ensuring that the pro-abortion coalition is not sundered by black defection. In any event, if the present trend continues, someone in the black leadership may well wake up and then the whole pro-abortion coalition could be jeopardized. Meanwhile, if anyone knows how to reach Farrakhan . . .

It is said that new chemical abortions will undermine pro-life political efforts. The drugs have already been approved by the FDA for other purposes and Planned Parenthood expects to offer the chemical cocktails to expectant moms soon. Chris Smith said that the unwelcome accompaniment to this "medically and ethically indefensible" strategy will be increased risk to the health of the mother in other respects. "We already know that abortion leads to a mammoth increase in risk for breast cancer, and they play that down," he said. He mentioned "twenty-five studies that have shown a direct link."

But that is another story. On the day I went up to Capitol Hill to see the congressman, there was a moving account in the *Washington Times* of a 19-year-old girl, Gianna Jessen, who survived a saline abortion at seven-and-a-half months. One of hundreds of abortion survivors, she testified before Congress. "Wearing a long, light blue dress to hide the twisted legs the procedure left her, she described how she required four surgeries and years of therapy before she could walk. 'I am happy to be alive,' she said. 'I almost died. Everyday I thank God for life.'" Only two of the thirteen Republicans on the subcommittee bothered to show up (Henry Hyde and Charles Canady). The Colorado feminist Pat Schroeder boycotted the hearing. It was only meant to "undermine the public's consistent and overwhelming support for *Roe v. Wade*," she said.

Chris Smith held a press conference a few years ago with Gianna Jessen. "The place was packed with press, but I didn't see one single story," he recalled. One reporter came up to Smith later and said he *could* not or would not believe her story. Abortion could be a very conspicuous thing, but journalists will not show Gianna Jessen, or those horror pictures of aborted babies. They would stir our deadened consciences and turn the country against our ongoing holocaust: Over 30 million babies killed since 1973, about ten million of them African-American.

APPENDIX C

[The following syndicated column appeared in the Washington Times *on April 16, 1996, and is reprinted here with permission (© 1996, Thomas Sowell and Creators Syndicate).*

Slippery words that conceal

Thomas Sowell

Whether you are "pro-choice" or "pro-life," things should be called what they are. President Clinton's veto of the bill to ban so-called "partial-birth abortions"—what the liberals call "late-term abortions"—is something that can and should be talked about during the election campaign. Unfortunately, it is far more likely to be talked around, in vague generalities that leave the public no clearer as to just what was and was not supposed to be banned.

In a so-called "partial-birth abortion," the baby is deliberately turned around and only the lower half of his body is allowed to come outside the mother. Then the doctor reaches inside and removes the baby's brains, killing it.

This peculiar procedure is not done for medical reasons but for legal technicalities. Because the baby's head is still inside the mother when this happens, this can legally be called an abortion, rather than the murder of a new-born baby.

This is what the congressional legislation banned and what the president's veto will allow to continue. Whether you are "pro-choice" or "pro-life," this is what you should be either defending or attacking—not covering up with verbal fog.

Unfortunately, nothing has been so rare in discussions of the abortion issue as plain English and the plain truth.

The argument has long been made that a woman has a right to do what she wishes with her own body. But, in "partial-birth abortions," the issue is not her body but the body of a baby who has to be killed deliberately because he is now so big and so strong that merely removing him from his mother's body will leave him alive and able to survive.

The reason Bill Clinton gave for vetoing the bill that would have banned this particular kind of abortion is that it did not allow an exception for situations in which the mother's health or safety was at risk.

Plausible as this may sound, such an exception would be a loophole big enough to let the same things continue to be done on the same scale, with just a passing remark that the mother's "mental health" required that it be done. If in fact the mother's physical health required that the baby be removed from her body, it could be removed by either a Caesarean operation or by delivery through the birth canal.

It is not the removal of the baby from the mother's body that is the real issue, but killing the baby. It is all too clear in the so-called "partial-birth abortion" or "late-term" abortion that the whole point is to make sure the baby does not survive. It is not to relieve the mother of whatever strain might be involved in

continuing the pregnancy.

In this particular situation, we need not get bogged down in either religious or legal questions about when life begins, as in other kinds of abortion issues. When you have to kill deliberately, it can only be because there is life that is capable of independent existence.

Slippery words and fraudulent claims have been all too common in discussions of abortion issues over the past three decades since the Supreme Court's decision in "Roe v. Wade." The woman called "Roe" to protect her real name later admitted that she had lied about having been raped.

That is why creating a blanket exception for "rape and incest" would render any abortion restriction meaningless. Rape and incest are not things that happen at high noon in the public square. There are ususally no witnesses when it happens—and also no way to prove it didn't happen.

Various attempts to provide exceptions for women who reported being raped to the police do not satisfy the "pro-choice" movement, because that would not be the blank check they want. Talk about "rape and incest" is not meant to help women who have been victims of such things, but to allow unsubstantiated claims to destroy any restrictions on any kinds of abortions.

What kinds of abortion laws should we have?

That is the issue that should be argued but is not likely to be faced, so long as vague phrases and emotional rhetoric are allowed to obscure the painful realities and tragic dilemmas facing those who have to make such a decision.

The biggest lie of all was the claim by Justice Harry Blackmun and his supporters that the Constitution of the United States required a one-size-fits-all answer from the Supreme Court. It can hardly be surprising that a lie of this magnitude has led to many other frauds and deceptions. With lies, as with potato chips, you can seldom stop with just one.

'You've been crying again, haven't you?'

THE SPECTATOR 27 January 1996

APPENDIX D

[The following article first appeared in the Wall Street Journal *(May 9, 1996) and is reprinted here with permission (copyright 1996 Dow Jones & Company, Inc. All rights reserved.). Mr. Forsythe is President of Americans United for Life in Chicago.]*

The Missing Abortion Amendment

Clarke D. Forsythe

With the appointment last week of House Judiciary Committee Chairman Henry Hyde (R., Ill.) as chairman of the Platform Committee at the Republican National Convention, and announcements by Govs. Pete Wilson, Christine Whitman, George Pataki and Bill Weld that they will seek to repeal the Republican Party plank on abortion, it might be good to read the past platform language just once, before the media hullabaloo leading to the convention drowns out the facts.

The plank that the media keep referring to—the plank containing "a constitutional amendment that would ban abortion"—is nowhere to be found. Every Republican Party platform since 1976, with only minor modifications over the years, has contained a plank declaring the unborn child to be a person. (See below.)

Nonsense

Never quoting the text, the media have been content to refer to the plank as calling for a constitutional amendment that would "ban" abortion. This is legal nonsense.

The plank supports a "human life amendment," without specifying any particular language. This is critical, because a number of very different amendments on abortion were considered by Congress in the late 1970s and early 1980s. These included the Hatch Amendment (also called the Hatch Federalism Amendment or Hatch Human Life Amendment), the Federal Rights Amendment, the Federalism Amendment, and the Eagleton Amendment. All of these have been referred to, from time to time, as "human life amendments," but their effects would be very different. Some would merely return the abortion issue to the states, while others would extend constitutional rights to the unborn. Yet, all were referred to as "human life amendments."

Give the language of the entire Republican plank, however, the reference to "a human life amendment" can reasonably be taken to support a constitutional amendment that establishes the unborn child to be a "person" protected by the 14th Amendment.

What would be the effect of such an amendment? Because the 14th Amendment forbids the states to deprive persons of life, liberty, or property without due process of law, an amendment that granted unborn children the protections of the 14th Amendment would forbid "state action" that deprives the unborn of life, liberty or property without due process of law. It would forbid states and state

officials from discriminating against the unborn by, for example, promoting liberalized abortion laws.

The limitations of such an amendment can be seen in the Supreme Court's 1989 decision in *Deshaney v. Winnebago County*. Winnebago County, Wisc., was sued when county officials failed to protect an infant from his abusive father. The Supreme Court held that "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." Chief Justice William Rehnquist elaborated that the extent to which the state must protect persons from other persons was a matter the Framers "were content to leave . . . to the democratic political process."

The claim that a personhood amendment would "ban abortion" therefore ignores fundamental principles of constitutional law. A constitutional amendment is not a criminal code; it does not act to proscribe criminal conduct. An amendment that gave unborn children the protections of the 14th Amendment would not touch individual conduct, only state action. States don't usually commit abortions; individual abortionists do.

Likewise, a constitutional amendment is not self-enforcing. An amendment would need enabling legislation at the federal or state level to effectively touch individual conduct. Its effective enforcement would depend on the adoption of state or local criminal legislation. A human life amendment might empower legislators to act against individual conduct, but would not require them to do so.

By comparison, the passage of the 14th Amendment prohibited state discrimination against black Americans, but it did nothing to touch individual criminal action, like lynching. Consequently, the NAACP spent the early decades of this century fighting for a federal anti-lynching law.

These same principles show why the claim of some that such an amendment would require "criminalizing women's participation in abortion" is a canard. Because the amendment would only affect state action, leaving private action to state legislation, the contingent factors that go into effective law enforcement would be left to the states. Thus, a "human life amendment" would allow the states to adopt the very same enforcement policy that the states uniformly adopted for the 100 years leading up to the Supreme Court's 1973 decision legalizing abortion on demand—targeting abortionists and treating the woman as the second victim of abortion, along with the unborn child. But, of course, this history is conveniently ignored.

At a time when political commentators say they want politicians to articulate vision and set future goals, it's ironic to hear the attack from "pragmatists" that the Republican plank is "not immediately achievable." Admittedly, it's a goal. It signifies a vision derived from the doctrine of unalienable rights proclaimed in the Declaration of Independence: that every human being—including every unborn child—be protected as a person against discriminatory state action that would threaten the right to life.

Profoundly Democratic

Republicans who are uneasy with the plank ought to consider its profoundly democratic nature. Our current national policy of abortion on demand was imposed by judicial fiat and has engulfed the country in a 20-year culture war with no end in sight. The plank, by stark contrast, is profoundly democratic. Constitutional amendments must be passed by three-fourths of the states. By supporting an amendment, the plank says that the GOP will go to the American people to create a national consensus that will support an amendment that protects the unborn child as a person. No consensus, no amendment.

When some Republicans say the public won't support an amendment today, the plank says that the party will go to the people and try to persuade them otherwise. It's hard to imagine how Republican officials, or voters in Middle America, would be scared by such a democratic proposal.

* * * * *

From the Republican Party's 1992 platform on abortion:

We believe the unborn child has a fundamental individual right to life which can not be infringed. We therefore reaffirm our support for a human life amendment to the Constitution, and we endorse legislation to make clear that the Fourteenth Amendment's protections apply to unborn children. We oppose using public revenues for abortion and will not fund organizations which advocate it. We commend those who provide alternatives to abortion by meeting the needs of mothers and offering adoption services. We reaffirm our support for appointment of judges who respect traditional family values and the sanctity of innocent human life.

From the Democratic Party's 1992 platform on abortion:

CHOICE. *Democrats stand behind the right of every woman to choose, consistent with* Roe *v.* Wade, *regardless of ability to pay, and support a national law to protect that right. It is a fundamental constitutional liberty that individual Americans—not government—can best take responsibility for making the most difficult and intensely personal decisions regarding reproduction. The goal of our nation must be to make abortion less necessary, not more difficult or more dangerous. We pledge to support contraceptive research, family planning, comprehensive family life education, and policies that support healthy childbearing and enable parents to care most effectively for their children.*

APPENDIX E

[The following syndicated column appeared in the Washington Times *(May 15, 1996) and is reprinted here with permission of the author. Mr. Leo is a contributing editor of* U.S. News & World Report.*]*

In the big tent of surprises

John Leo

Odd as it may seem today, tent size was the biggest preconvention issue for the Republican Party in 1860. Unfortunately, the party was divided by the vexing issue of slavery, which most party leaders fervently wished would simply go away.

The "small-tent" people, as they came to be called, thought slavery was a great evil and wanted the party to say so plainly in a convention plank. But making a moral issue out of something as private and personal as slave-owning was widely regarded as controversial, and pointlessly so. Enlightened opinion was offended.

This was particularly true among the many rights-oriented Republicans who had no slaves themselves but wished to defend the human rights of those who happened to own a few here and there. As they tirelessly explained, they were not "pro-slaveholding." Not at all. They were merely "slaveholder-rights advocates," defending the right to choose.

Shaking their heads in disbelief, the "big-tent" people argued that a moralistic, intolerant plank would drive away the slaveholder vote and bore the socks off the many mainstream Republicans who believed that issues such as slavery had nothing at all to do with life's central tasks of making a buck, getting taxes reduced and holding conventions in large tents.

Still others admired the fervor of the abolitionists but insisted that a national political convention was hardly the place to discuss ideas, let alone principles. "Why insert a plank into the platform that divides the party?" asked one exasperated senator from Maine. Instead, he favored a unity platform dedicated to peace, justice and the American way, but he swiftly added that he was willing to bargain those phrases down if anyone felt they were too insensitive or noninclusive.

The same big-tent advice came from major newspapers in New York, Los Angeles and Washington, all of which liked to counsel Republicans in the spring and summer of election years before endorsing Democrats in the fall.

As it turned out, however, this expansive big-tent advice applied to only one political party. The Democrats had long since shrunk tent size by kicking out all known anti-slavery delegates and then screening to make sure that none would ever show up again. The key enforcement was provided by a women's group called "Enemies List," which made certain that no anti-slavery Democrat got a nickel from its list of wealthy contributors, even if he or she had won world

renown or achieved sainthood on the side.

In fact, nobody had even uttered the word "slavery" at a Democratic Convention since 1832. The entire discussion was conducted in a clever code built around the secret word "choice." Opponents of slavery were "anti-choice." Those who criticized anti-choicers were "anti-anti-choice," while those inclined to rebut such criticism were "anti-anti-anti-choice," and so on.

The public and the government were not to stick their noses into private matters, unless, of course, there were people who wished to own slaves but couldn't afford them, in which case (the Democratic platform insisted) it was the public and the government's job to stick their noses in and provide subsidies. The only other approved government role was to fund slaveholder missionaries as they fanned out to places like Cairo and Beijing seeking converts.

Just before the Republican Convention, the issue heated up when an unusually bizarre plantation practice came to light. Some slaveowners were killing babies as they were being born, seizing the feet and driving an ice pick up through the birth canal and into the infant's head. The Democratic nominee said this was all right with him, since he understood that it was well within the privacy and property rights of owners, though probably not too good for the babies involved.

Yet this operation, apparently adapted from a terror tactic used for generations in the Balkans, was so horrific that the media had to react swiftly. They thought up and installed a soothing new term: certain late-term procedures, or CLTP. All reporters thought that this term was easier to take than the obvious alternative: the baby-and-ice pick procedure, or BIPP.

Despite this timely linguistic intervention, many Americans remained greatly troubled, perhaps for once beyond the reach of euphemism. As one prominent Democrat admitted, off the record, "This is just the sort of thing that gives slavery a bad name."

Against this ominous backdrop, the Republicans gathered for their convention, eager to increase tent size by coming down firmly on both sides of the slavery issue. Luckily, their front-runner (not Abe Lincoln, who at the time was well behind) was a man of deep convictions about slavery, half of them pro, half con. Perhaps anticipating what the party expected of him at the convention, he had been coming down on both sides again and again, quite sincerely, for many months. He had never met a slavery opinion he didn't respect and agree with.

In the end, of course, they threw him out and picked Lincoln. A good thing, too. Otherwise we would probably still have slavery, and the Democrats would be holding their 36th straight convention calling it a fundamental human right.

APPENDIX F

[The following syndicated column appeared in the New York Post *on March 13, 1996, and is reprinted here with permission (© 1996, Universal Press Syndicate).]*

The Right to Kill

Maggie Gallagher

The right to kill, once confined to the state and exercised only upon convicted murderers, just expanded ominously.

For in a breathtakingly broad decision, the federal Ninth Circuit Court of Appeals struck down a Washington state law making assisted suicide a felony, ruling not only that patients in nine Western states have "a right to die," but that physicians have a right to kill—which is what "physician-assisted suicide," stripped of euphemistic trappings, really means.

Doctors, once dedicated to healing, are now to have a dual mission: To heal or to kill, as the patient (or more frequently, his family and/or his insurance company) dictates.

As the population ages and the essentially religious faith that human life is sacred weakens, the debate over eldercide is bound to intensify.

I understand why those suffering might want to die, or their overburdened relatives wish to kill. What I can't understand is our rush to implicate doctors in the grisly act.

Consider the case of Gerald Klooster, an Alzheimer's victim whose son fought for (and won) custody of him, after his wife contacted Dr. Jack Kevorkian. It appears to be another instance of a weary spouse seeking escape from the burden of compassion (which means "to suffer with")—not unlike the case of George DeLurey in New York, who encouraged his wife to hoard her antidepressants for use in committing suicide, and (his diary shows) agonized over her indecisiveness about ending it all.

Notice something peculiar? There are hundreds of ways to kill oneself or another, from swallowing household poisons to hanging out in the garage with the car running. Why cross state lines to employ a doctor (like Mrs. Klooster), or insist on using medication (as DeLurey did) as the instrument of death?

Like most euphemisms, this strange insistence on bringing in medical paraphernalia to hasten death is a telltale sign of bad faith. Obviously, some tattered remnant of Judeo-Christian ethics still forces us to hide from ourselves the nature of our actions, to dress it up in medical garb, lest we suffer a momentary lapse of the post-modern faith that in hurting the sick, we are really helping them.

The Ninth Circuit obviously recognized that the medical angle is just a psychological dodge, not a logical distinction, that killing is not the same as caring for a patient, that carbon monoxide, a la Kevorkian, is not really a medical treatment at all. (Do we really think friends and relatives who assist in suicide are

guilty of practicing medicine without a license?)

In a striking footnote, the majority of justices suggested the Constitution protects not only doctors but anyone, from pharmacists to family members, "whose services are essential to help the terminally ill patient obtain and take" what is euphemistically termed "medication" to end life.

Responding to the ruling, the American Medical Association reaffirmed its view that assisting suicide is "fundamentally incompatible with the physician's role as healer and caregiver." After all, it is keeping patients alive, not helping them die, that requires extensive medical training.

Making it the responsibility of doctors to kill patients is a form of barbarism not seen since the Dark Ages, when barbers both cut hair and performed surgery, because both acts happened to require the use of knife.

If we are going to condone eldercide, at the very least, we should make sure that offing patients does not become part of the doctor's job description. Let morticians do it, since they are accustomed to handling dead bodies. Or create a new class of technicians, "mortuaries" trained to estimate the precise dosage that will put Grandma, like Fido, out of her misery.

If we are no longer willing to protect the sanctity of all human beings, let us at least keep, as one small saving grace, the honor and dignity of the medical profession intact.

'— and your prayers should be sent to "god//:ihs.org".'

THE SPECTATOR 27 January 1996

APPENDIX G

[The following syndicated column appeared in The Arizona Republic *on April 3, 1996 (Copyright, 1996, Los Angeles Times. Reprinted by permission). Mr. Greenberg is editorial page editor of the Little Rock Arkansas* Democrat-Gazette.*]*

Perfect babies via abortion

Paul Greenberg

Here's something to remember the next time the name of Joycelyn Elders, former surgeon general and lightning rod, is affixed to another honor roll, hall of fame or list of endorsements for a candidate or condom: Why not add some memorable quotation from her body of wit and wisdom, some gem of philosophy to go with her official portrait? Much like the brief quotes that used to appear under the pictures of graduating seniors in any respectable high school annual.

But which quotation? The good doctor has said so many things one can't forget (as much as you might like to) that it would be hard to choose just the right one. Yet one of her observations does stand out in memory—like a bright, shining beacon that illuminates the dark road ahead.

The statement was made a couple of years ago—even before partial-birth abortions were being touted at the country's medical schools, even before appellate courts were opening the doors to euthanasia, and perhaps even before Dr. Kevorkian was being hailed as a savior who only wanted to ease our suffering—even if the side effects might include death. The statement came during her testimony before the Senate Labor and Human Resources Committee, as Dr. Elders was saying, once again, that "abortion has had an important, and positive, public-health effect."

How's that? Well, the good doctor explained, "the number of Down syndrome infants in Washington state in 1976 was 64 percent lower than it would have been without legal abortion."

Isn't it wonderful to have brought down the rate of Down syndrome births by so dramatic a margin? Gosh, how could the state of Washington have achieved so striking a scientific advance?

Think about it.

Of course. The doctors simply aborted a large number of babies/fetuses found to have Down, thus keeping down the cost of health care and raising the general Quality of Life. And the only thing this marked gain in public health cost was life itself.

Dr. Elders' comment foreshadowed the latest development in our ever-expanding culture of death: the revival of eugenics, the science of human breeding. Call it the Perfect Baby Syndrome. Because with the new advances in prenatal testing, it becomes more and more possible to eliminate any feature of your baby that disturbs—simply by eliminating the baby.

The slippery slope only starts with Down syndrome. There are so many other problems, handicaps, conditions, and deviations from the statistical mean that can now be eliminated early—long before any personal attachments may get in the way. Spina bifida, for example. Or hydrocephalus.

Of course there will always be those who stand in the way of progress. A columnist for the *London Spectator*, for example, had written about how much his daughter, a Down baby, had come to mean to him. In turn his column evoked this letter to the *Spectator*'s editor:

"I have severe spina bifida and am a full-time wheelchair user. I also run the Handicap Division of the Society for the Protection of Unborn Children—a group of disabled people. It is difficult for me to express my appreciation of your positive, loving attitude toward your daughter, since it means so much to me. I feel that your acceptance embraces all disabled people, and it represents such a radically different view to the one more commonly expressed. Every day I read in the press about 'exciting breakthroughs,' which mean yet another way to kill people like me before birth. . . ."

In a society in which no reason need be given for an abortion, why cavil about a way of lowering the rate of children born with Down? Why not think of it, to quote Dr. Elders, as an "important, and positive, public-health effect"? Just imagine the Important and Positive Public-Health Effects to come. ("Tired of having brown-eyed boys in the family? Want to try for a blue-eyed girl instead?") Even now amniocentesis isn't used just to satisfy the prospective parents' idle curiosity.

As the genetic map is decoded, all kinds of wondrous/horrific possibilities present themselves—like Mephistopheles with a deal you can't refuse. What a brave new, and uniform, world it could be. A world without Down and spina bifida and dyslexia and color-blindedness and allergies and left-handedness and . . .

The possibilities are as endless as death itself. Roe v. Wade stands like an open gate to this beckoning future of the Perfect Baby. Entrance is free to anybody who doesn't think too long or too hard. Or who just tends to follow Fashion, or Science or Authority without asking too many questions.

Richard John Neuhaus is editor-in-chief of First Things magazine, a thoroughly subversive influence in pagan America. He reports regularly on the unfolding Culture of Death, and it seems to be advancing from both ends of life's spectrum toward the middle. Roe v. Wade only cracked the door. Now an appellate decision out of the 9th Circuit Court has cited Roe as the basis of a constitutional right to suicide/hastened death—with or without the patient's explicit permission.

Perhaps the most arresting phrase of this pro-death ruling may have been an almost offhand observation in the majority opinion: "The slippery slope fears of Roe's opponents have, of course, not materialized." Of course not. Only a million and a half perfectly legal abortions are performed in this country every year, the organ-harvesting industry grows in tandem with abortion, and euthanasia is now getting a new

lease on death. Moral: There is no denial of the slippery slope quite so impressive as one that comes from a court already a good way down it.

'Now dear, it's just that when you described her as a living doll, we assumed she was life-sized.'

THE SPECTATOR 18 November 1995

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