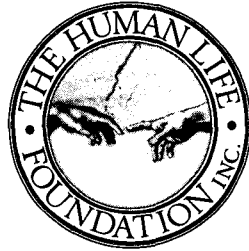


the HUMAN LIFE REVIEW



SPRING 1999

Featured in this issue:

- William Murchison on Crimes of the Heart
Richard Stith on Nominal Babies
George McKenna on The Miami Moderates
Ellen Wilson Fielding on Our Shrinking President
Kathryn Jean Lopez on Virtual Healing
Diane G. Fisher on See No Evil
Lynette Burrows on Suffer, the Children
Francis Canavan, S.J. on The Empiricist Mind
Wesley J. Smith on Assisted Suicide:
The Tip of the Iceberg

Also in this issue:

Ramesh Ponnuru • Hadley Arkes • Teresa R. Wagner • Rabbi Jacob
Neusner • Lorena Rodrigues Bottum • Peggy Noonan • George F. Will
John Leo • and the editors of *National Review*

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ABOUT THIS ISSUE . . .

. . . first, our thanks to those of you who responded so warmly to the Winter 1999 *Review* which commemorated our late editor, J.P. McFadden. Frequent contributor Wesley Smith told our new editor he was astounded to learn that Jim had been exposing Peter Singer's utilitarian "ethics" as far back as 1983. Mr. Smith, whose article "Assisted Suicide: The Tip of the Iceberg" begins on page 80, is currently at work on a book about bioethics, *The Culture of Death*, and says he's "seriously" considering quoting from Jim's article ("Toward the New Future," reprinted in the Winter '99 *HLF*) in his opening chapter.

The demise last March of that avatar of the culture of death, Justice Harry Blackmun, prompted Senior Editor William Murchison's "Crimes of the Heart" (page 7), a steely look at the "jurisprudence of sentiment" unleashed by the author of *Roe v. Wade*. Murchison has chronicled the collateral damage wrought by *Roe* and other social upheavals in his syndicated Dallas *Morning News* column; a collection, *There's More to Life than Politics*, came out last fall (Spence Publishing Company, Dallas).

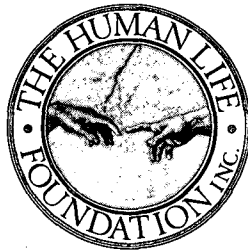
National Review magazine wasn't wild about Harry either. Our thanks to the editors for graciously allowing us to reprint their withering editorial, "Harry Blackmun, R.I.P." (page 91) and also Ramesh Ponnuru's "Sexual Hangu" (page 93). For more information about the magazine, call or write *National Review* at 215 Lexington Avenue, New York, NY 10016; telephone: (212) 679-7330.

Peggy Noonan, another reliable guide in turbulent times, recently observed that "What walked into Columbine High School . . . was the culture of death." Our thanks to the *Wall Street Journal* for permission to reprint not only Ms. Noonan's essay in this issue (page 106) but "Ordinary Abortions" (page 104) by Lorena Rodrigues Bottum as well.

Amherst College professor Hadley Arkes, whose insightful commentary has enriched our pages for years, does it again (page 97), courtesy of the kind folk at *Crisis* magazine. If you're interested in subscribing to *Crisis*, call 800-852-9962. (For an acute treatment of the relationship between citizen-corruption and abortion politics that Arkes touches on here, you may want to read his essay, "Prudent Warnings and Imprudent Reactions," included in *The End of Democracy II: A Crisis of Legitimacy* [Spence]. The book also features an introductory essay by sometime *HLR* contributor J. Budziszewski.)

Finally, we're grateful (as always) to Nick Downes for sending us a fresh supply of his inimitable cartoons, reminding us that a "culture of life" cannot thrive without laughter—and lots of it.

ANNE CONLON
MANAGING EDITOR



the HUMAN LIFE REVIEW

Spring 1999

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National Review

Ramesh Ponnuru
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Lorena Rodrigues Bottum
Peggy Noonan
George F. Will
John Leo

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INTRODUCTION

JUSTICE HARRY A. BLACKMUN'S DEATH last March gave the liberal press a fresh opportunity, in eulogizing him, to speak admiringly of his most famous (infamous) majority opinion—*Roe v. Wade*. The *New York Times*' Bob Herbert called him a man of "courage and integrity." Kate Michelman, president of NARRAL, said "His primary motivation was to see that the law was fair and that it provided dignity for the individual." Of course, for us, the occasion of Blackmun's death was an awful reminder of the massive injustice of the *Roe* decision, and the loss of millions of tiny American individuals since the day it (along with its companion piece, *Doe v. Bolton*) was handed down.

In this issue's lead article, Senior Editor William Murchison lays bare Blackmun's motivation in the *Roe* decision, and argues that what Blackmun did was not, as was his appointed duty, to interpret and remain faithful to the Constitution. Instead, he committed a "crime of the heart": a deliberate twisting of the role of the judiciary for his own ideological purposes. In order to emancipate women, and free us Americans from outdated views of sexuality, he and his colleagues found not only that a "right of personal privacy exists in the Constitution" but that it "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

In Murchison's extraordinary prose (how many times, while reading him, do we slap our foreheads and say, "what a wonderful way to *put* that!"), he writes that as Blackmun got older "The morality—on his own terms" of *Roe* became an obsession: "*Roe* became his pride and joy: a robust, bouncing full-term baby, against whom nothing was to be said." It was also a decision of which he said, prophetically, "I'll carry this one to my grave." That he did, not only because of the newly-legalized killing, but also, Murchison writes, Blackmun subverted "the stability of law itself" by promoting a "judiciary of sentiment" that tries to "square law itself with the restless aspirations of the modern age."

Roe v. Wade, a decision based not on science or fidelity to the Constitution, but on a particular social agenda, has lived on to be used to justify additional pro-abortion Court judgments, as Valparaiso Professor of Law Richard Stith explains in our next article, "Nominal Babies." Stith writes that *Roe* took a "nominalist" approach: "the unborn child has no real nature," that what it is is solely a matter of names, but at the moment of birth it becomes a real living entity. Blackmun's magic birth wall has since been "deconstructed" but it hasn't changed the law. In *Planned Parenthood v. Casey* (1992), the Supreme Court refused to re-examine Blackmun's claim that the Court "need not resolve the difficult question of when life begins" but instead reaffirmed *Roe*, using as justification *stare decisis*, binding precedent.

At the same time the justices, by letting stand a Pennsylvania law which called for some abortion restrictions, did allow that the state could have “profound respect for the life of the unborn,” thus being more realistic about prenatal life. As Professor Stith warns us, this realism, while a definite good, “cuts in two directions”—it could be used to protect prenatal life, or as in partial-birth abortion, to allow the killing of life admittedly human but not deemed valuable by society: the infirm, comatose, and unwanted born babies.

It is clear from the first two articles that abortion decisions in fact have been effected by those with radical views. Next, our esteemed contributor Professor George McKenna, in “The Miami Moderates” (named for a meeting last February in Miami of seventy “moderate” Republican leaders), asks the question: Why do politicians who support a more radical pro-abortion agenda than the majority of Americans call themselves “moderate”? He begins with Governor Christine Todd Whitman of New Jersey, “the doyenne of moderates” who chastised her Republican party at the meeting for appearing “mean-spirited and vindictive” regarding the President’s impeachment hearings. “Moderate” Whitman emulated Clinton by vetoing a ban on partial-birth abortions, a procedure that, polls show, appalls most Americans, and she is consistent in her radical pro-abortion positions (even insisting that abortions be paid for by her constituents’ taxes). McKenna takes us on a delightful trip through the land of the Republican “moderates”: from their reactions to Clinton’s impeachment hearings, to, more broadly, their role in the many skirmishes of the Great American Culture War. He even brings in for fun the delicious scandal of Jerry Falwell and Tinky Winky, the purple, “gay” Teletubbie, which is actually fitting: the “moderates” themselves seem to be confused about their true colors.

Senior Editor Ellen Wilson Fielding, in our next piece, changes the pace a bit, starting her stunning article on current American culture with a step back into her own memories of the 60s and 70s. Tracing her awareness of the “stripping away of the sacred” that has perhaps reached its most desolate point, she writes of our damaged faith in government, institutions, others, ourselves, and—most crucially—God. As she writes: “There is a thickness, a depth to life, that life—sapped of the sacred—loses, leaving us, in Milan Kundera’s phrase, with a sense of the ‘unbearable lightness of being.’” Ellen’s is an article of unsettling reflections: a profound rendering of the essence of what is “wrong with us.”

Fielding concludes her piece with a reference to a *Wall Street Journal* column by Lorena Rodrigues Bottum (which we have reprinted as *Appendix F*) about the *ordinary* evil abortion has become, spoken about casually among women as an “unpleasant necessity,” and closes with the scripture passage from Isaiah: “Can a mother forget her suckling child, that she should have no compassion on the son of her womb”? Our next author, *National Review* editorial associate Kathryn Jean Lopez, lets us in on the thoughts of some mothers who have *not* forgotten their aborted children. Miss Lopez discovered several web sites on the Internet, our most modern

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arena for “sharing,” for women who have had abortions, and who are not “free and clear” of their decision.

In the instances Miss Lopez relates, women who are agonizing about their abortion decisions and their feelings afterwards have come together for support. “The freedom of choice has twisted into something that is hurting women,” one woman wrote, and, while many of the women in the chat rooms might still call themselves “pro-choice,” their poignant, disturbing messages offer proof that Blackmun’s beloved *Roe* has enslaved many women in the pain of “Post Abortion Stress Syndrome,” the name of one of the sites. As Miss Lopez writes, though ten years ago Surgeon General C. Everett Koop did not find enough evidence to support the existence of post-abortion syndrome, the “acknowledgement of the reality of post-abortion emotional pain is becoming more mainstream.”

Women who have abortions are victims of the abortion culture; it has long been a concern of this journal that our born children may also be suffering from our new found “freedoms.” New contributor Diane Fisher, a psychologist and mother of three, thinks there certainly are repercussions, as she tackles for us the controversial question of day-care. Is day-care, as a recently much-publicized report seemed to say (see Fisher’s article for the truth on that!) actually *good* for our children; is it all the same for our youngest ones to be away from Mommy (or Daddy) and in institutional care? Or are we in denial, because the truth (that our babies need *us*) doesn’t fit in with our lifestyles or economic pressures? Fisher sees denial over day-care as an extension of our deeper denial over the humanity of the unborn, and even sees some disturbing precedents in ordinary German citizens’ denial over the atrocities being committed right next door during the Holocaust, the latter reflection prompted by her own recent visit to Dachau.

In another article about the fate of our born children and our families, British contributor Lynette Burrows (in “Suffer, the Children”) writes about the “fashionable crusade” of the “children’s rights” movement in Europe, which purports to be for children’s welfare, but which is actually involved in taking away *parents’* rights and putting the fate of children in the state’s (unloving) hands. Burrows exposes the ideological partners involved in the movement; she also reports some absolutely shocking facts and statistics about social engineering and the forcible breaking up of families in Sweden, that great mecca and model for progressive thinkers.

We turn our minds next to a gratifying dissection of a philosophy so much at the bottom of the disturbing trends and practices we’ve been discussing. Father Francis Canavan, Professor Emeritus at Fordham University, examines “The Empiricist Mind” by taking Dr. Peter Singer (see “Infanticide Chic II: Professor Singer Goes to Princeton,” *HLR*, Fall 1998) as an example of the empiricist *par . . . malfaisance*? Canavan echoes Stith’s earlier discussion of “nominalism” and “realism.” To put it briefly, an empiricist only believes in what he sees: a fetus at its earliest stages is not human because it doesn’t *look* human, a tadpole is not a frog, etc. Things do not have an essential nature; as Canavan writes: “a Nominalist never knows the

essence of rose or what 'roseness' consists in, but only groups certain flowers under the name of 'rose' because they look sufficiently alike." Empiricists, by definition, do not believe in the transcendent—God, Order, a meaning to life, these are all intangibles. Their Creation story has to do with a "chance combination of gases." And so empiricists like Singer can recommend practices like infanticide that go against the core beliefs of the God-fearing. Canavan writes that his purpose is not to "shock and arouse a sense of horror" (certainly our readers are beyond that); he asks instead why people accept such "shallow empiricism that is presented to us as Science"—this pseudo-Science has produced deadly results.

And this brings us exactly to what Wesley Smith writes about in our final article, "Assisted Suicide: The Tip of the Iceberg." Mr. Smith, now a nationally-known expert on assisted suicide and euthanasia, writes that our traditional medical ethics are crumbling. What he dubs The Ethic, which is the traditional sanctity of life ethic (that all patients have "inherent moral worth") is rapidly being replaced by relativism: a person's worth is dependent on subjective attributes like "self-awareness" or "a sense of time." Smith points to the late Joseph Fletcher, one of the founders of modern bioethics, as an immense influence on current thought. Fletcher was a "truly radical utilitarian," who did not believe in universal human rights, and yet his radical ideas are increasingly put into practice, especially concerning end-of-life decisions. A shocking example: it is no longer beyond the pale for ethicists to consider the harvesting (for transplant) of organs from the bodies of assisted suicides.

Smith wraps up his piece with, again, Peter Singer, a man who now represents the mainstreaming of the Godless trends in our ethics—imagine, he is slated to begin teaching young people at Princeton in the fall! This final article provides a nice summary of the overarching theme that runs through all the articles in this issue: the Great Culture War, and the extent to which many are unaware of the deadly serious nature of each battle. As Smith concludes: "Two paths lie before us: a culture of death that devalues and even countenances" the killing of many of us, or "A culture of life that embraces the utter human equality of us all."

* * * * *

Justice Blackmun is also the subject of our first *Appendix*, a marvelous non-eulogy from the editors of *National Review*. Following is another *National Review* piece: written by Articles Editor Ramesh Ponnuru, it is the finest analysis we have read of the debate over the Clinton scandal, and whether or not it's "about sex." As Ponnuru writes, it's *all* about sex, as is the public division over abortion. The whole "privacy" issue was used, *à la* Blackmun, to allow for the activities baptized by the sexual revolution, which people, by and large, are not about to give up.

Thus the failure of America to really censure President Clinton for his behavior. In *Appendix C*, Professor Hadley Arkes gives evidence of a "public growing ever dimmer in its moral reflexes," led by such hypocrites as Senators Joseph Lieberman and Daniel Patrick Moynihan, who profess "moral concern," but fail to take strong

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moral positions—opting instead to “stand with their friends” (even when prenatal life hangs in the balance). Teresa Wagner does remind us, in *Appendix D*, that at least Senator Moynihan has taken a stand against partial-birth abortion, the ghastly procedure he has called “near-infanticide.” However, although the majority of the American public feels profoundly uncomfortable with this procedure, partial-birth abortion bans in the states are challenged every step of the way by the medical and legal professions, and by the courts—all proving, says Wagner, that the extremism of the abortion lobby has far-reaching influence.

We next have two columns on real-life abortions. The first is by Rabbi Jacob Neusner, whose grand-nephew, to his and the grandparents’ horror, was aborted in Israel. He asks the question: “how is mass abortion in the State of Israel . . . not compared to mass murder of Jewish children in German Europe?” The second (mentioned in Ellen Wilson Fielding’s article) is a column by Lorena Bottum, who recounts a conversation among “ordinary, middle-class stay-at-home mothers”—in a playground, of all places—about their abortions. The very “normalcy” of the scene was proof for Mrs. Bottum that the “safe, legal and rare” mantra of the politicians is ludicrous: legal abortion, for many, has become a mildly upsetting commonplace.

A sense of the surreal accompanied the news of the horrific events of April 20th, in Littleton Co., where 15 deaths seemed to be part of a gruesome game. In *Appendix G*, we reprint Peggy Noonan’s masterful column from the *Wall Street Journal*, in which she tries to put her finger on what it is that disturbs our children. Her answer is our children’s almost total immersion in the culture of death, so lamented by Pope John Paul II, a culture that, among other things, takes the killing of our youngest children so casually.

We’re relieved to leave you with two columns of a more optimistic nature. Columnist George Will writes in *Appendix H* his suggestions for pro-life “realism” in the Republican party. Forget the Human Life Amendment, he says bluntly: “An America in which three quarters of the states would ratify” such an amendment wouldn’t need it. On the other hand, there is a positive truth to disseminate: most Americans are troubled by casual abortion, and would support restrictions. The Democratic party, by pandering to abortion-rights zealots, has accepted an extreme view not reflective of the country at large, and it should be made to suffer for it (if only Republicans would be brave enough to point it out). In our final *Appendix (I)*, columnist John Leo reports on a study conducted by an organization headed by Faye Wattleton, former president of Planned Parenthood. Wattleton was “crushed” to find that women’s support for abortion is going *down*, as is approval of premarital sex, and 75 percent of the women polled said religion had an important place in their lives.

So perhaps we have reached such lows that there is no place to go but up?

We hope so.

—MARIA McFADDEN
EDITOR

Crimes of the Heart

William Murchison

It came out strongly and repeatedly in coverage of the late Harry A. Blackmun's life and career that the author of the majority opinion in *Roe v. Wade* had been subjected to scurrilous criticism for the decision, and that, no, of course, he hadn't enjoyed such an experience, yet, at the worst times, his convictions had remained unshaken.

Roe v. Wade, Mr. Justice Blackmun affirmed again and again in his latter years, off the bench and on it, was *right*. Couldn't we see that? Perhaps not. Well . . . history would vindicate the court's magisterial insight—that the right to privacy compasses the right to abort unborn human life, a right so fundamental no legislative body should ever again undo it. Was that plain enough?

Yes, the sentiment was. The reasoning behind the sentiment? That was something else. As a matter of fact, the twain—sentiment and reasoning—seemed hardly to meet at all. There appeared a radical disconnection between the two.

That disconnection, and its power to alter the social, political, and moral landscape, remains Harry Blackmun's judicial legacy.

When Blackmun retired from the Supreme Court, in 1994, he was the most liberal of jurists, the most interventionist in temperament, the least willing to sit by while legislatures did things of which he disapproved personally. He had come to exemplify what Jeffrey Rosen, appraising his career in the *New Republic*, called "the jurisprudence of sentiment." *Roe v. Wade*, both as to spirit and implications, remains the *ne plus ultra* of that jurisprudence, wherein learned judges follow their noses and their hearts toward the result they seek.

Less sentimental judges, though endowed with noses and hearts of their own, seek rather to follow the trail left by previous courts: originating in the constitutional text and for the most part carefully marked on judicial maps. The heart may tug one way and the law point another. The law prevails.

This is because Law itself rests on a fundamental premise—that a statute enjoys validity only when the governed, speaking through their elected representatives, give their consent. To give law (*jus dicere*) is no part of a judge's mission. The judge is to scrutinize the laws others have given; on raising his

William Murchison, our senior editor, is a nationally-syndicated columnist at the *Dallas Morning News* and a popular speaker on a wide range of current religious and cultural issues. His latest book is *There's More to Life Than Politics*, out last fall from Spence Publishing Company (Dallas).

eyes, he is to say what a particular law means in practice or, more rarely, whether it squares at all with the supreme law; that is, the Constitution. A judge is entitled to think a particular law bad or unfortunate, but if the enactment of such a law lies within the legislative branch's prerogative—well, there is little more to be said, judicially speaking.

Blackmun and the court majority, in *Roe v. Wade*, stood this historic assumption on its head. Not in blatant fashion, you understand; not without a demonstration of legal scholarship, which Blackmun put together after many days in the library of the Mayo Clinic, whose counsel he once had been. *Roe v. Wade* used the paraphernalia of the law—footnotes, citations, and so on—to subvert the stability of law itself. All this for sentiment.

When Harry Blackmun joined the court in 1970, he was considered an ideological twin of Chief Justice Warren Burger, his fellow townsman (Minneapolis) and longtime buddy. President Nixon had appointed both men as part of his design to turn the court away from loose construction of the Constitution, as practiced by the Warren Court, and especially by justices like William J. Brennan and William O. Douglas.

The shy and modest Blackmun, despite his friendship with Burger, was a curious choice for such an assignment. Though a declared Republican, appointed to the appeals bench by President Eisenhower, Blackmun was one of those woolly establishment Republicans who agree as often with the Democrats as with their party's conservatives. For instance, he quietly supported liberal Democratic Sen. Hubert Humphrey and apparently found nothing strange about so doing. On the other hand, Nixon's two previous choices for the vacant court seat, Clement Haynsworth and G. Harrold Carswell, had bombed in the Senate. Nixon was growing desperate.

Desperation, as almost anyone knows, breeds recklessness. Blackmun was confirmable; that was all, seemingly, that counted. *Roe v. Wade*, handed down in Blackmun's third year on the court, demonstrated quickly enough the perils of blind faith in presidential appointees.

Let us recall the state of abortion law at that time. Abortion, to begin with, was purely a state question; state legislatures resolved the matter according to their own lights. Prior to *Roe v. Wade*, restrictive abortion laws were still on the statute books of 44 states. Texas, where the case originated, and 36 other states as well, permitted abortion only to save the mother's life. Where had the states derived their mission to the unborn? From the presumption that unborn life merited protection. What stood against such a presumption? Harry Blackmun and his six colleagues soon told us what stood against it: the right to privacy.

"The Court has recognized," *Roe v. Wade* said, "that a right of personal

privacy or a guarantee of certain areas or zones of privacy, does exist under the Constitution . . . This right of privacy, whether it be founded in the 14th Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." The seven justices might not be sure where the constitutional right of privacy made its home, or exactly what size it was. They were sure of this: such a right existed.

There is no compelling reason to rehash *Roe v. Wade* at this great remove in time. Its defects as law, leave aside social policy, remain as identified clearly on Jan. 22, 1973, and ever since. No one has put it more cogently than Mr. Justice White, in dissent: The decision amounted to "an exercise of raw judicial power." The court sought a particular end. To achieve that end, it spoke to Americans in the manner of Yul Brynner, playing Ramses II in *The Ten Commandments*: "So let it be written; so let it be done."

More interesting for purposes suggested by the death of Justice Blackmun is what Blackmun's *Roe* opinion says about modern judicial method. It says there is not much method; intention outranks technique.

What made Blackmun so adamant about asserting, then defending against all odds, the right of an American to do in her unborn baby? The obituaries addressed that question only obliquely. They suggested for a fact that somewhere along the line Blackmun had changed. He had gone to Washington a somewhat sheltered species of middle-class manhood. Then, for one experiential reason or another, his eyes opened. He saw and recognized what he took for human distress; so seeing, so recognizing, he wanted to help.

Blackmun's pilgrimage from Nixon Republican to Earl Warren-ite, said University of Virginia Law Professor A.E. "Dick" Howard, was "a journey less of the mind than the heart." The heart had reasons that the Blackmun reason knew not one blessed thing about. It had, moreover, a loud voice. It spoke insistently. To its promptings Blackmun replied with ever-increasing fervor.

Blackmun was a Harvard Law School graduate, conversant with the apparatus of legal argument. He had served, moreover, on a federal appellate court. The heart, he cannot have failed to understand, did not govern. Still, if a man knew what he was doing, and what result he wanted, the law was no necessary barrier to an affair of the heart. If anything, the law could become an instrument of others' conversion. It could establish the heart's standard as the national norm.

This, Blackmun achieved in some measure through *Roe*. Not perfectly. Seven Supreme Court justices are not a force large or powerful enough to

overthrow several thousand years of moral and religious understanding. The critical mail Blackmun received after *Roe* showed him as much. He was called “murderer,” “butcher of Dachau,” “Pontius Pilate.” Wrote one feverish correspondent: “I am praying for your slow, torturous death.” Such gentle epistles never ceased. No Supreme Court decision, not even *Brown v. Board of Education*, generated the mail that *Roe* did. Toward Blackmun personally there were more pointed threats. Fourteen years ago, someone fired a gun into his Arlington, Virginia, apartment. The gunman was never identified; his motives, to many, seemed plain enough.

It is reasonable to assume that this sort of thing scared Blackmun less than it fortified his view of *Roe*’s rightness. How could *Roe* not be right if so many on the other side spoke so much evil? This lent his own side a touch of the heroic—“. . . For so persecuted they the prophets which were before you.”

Blackmun’s experience—to speak parenthetically—should caution the more vitriolic adherents of any cause that conversions never are worked through anger, violence, and hatred; they are worked through love and concern.

But, of course, it remains fair to say that *Roe* was not just any garden-variety outrage. This one involved human life: worse yet, innocent (allowing for Original Sin) human life. Such a consideration seems to have escaped Blackmun entirely, notwithstanding his scholarly investigation of the matter. In *Roe*, as written, the right to privacy trumped the right to life.

Blackmun’s convictions in the matter underwent steady evolution. *Roe v. Wade* is no shrieking feminist opinion, but its author became convinced that it gave women no more than the respect and consideration due them. At the judge’s funeral, his daughter Nancy spoke of how “the single mothers he knew personally in his formative years created an awareness of the burdens women bear alone.” This awareness, she said, was “reflected in the kind of thinking about women’s needs and rights found later” in Supreme Court decisions.

On his retirement, Blackmun declared *Roe v. Wade* “a step that had to be taken as we go down the road toward the full emancipation of women.” Such a viewpoint contradicts his own insistence that *Roe* was not about morality but instead about constitutional law. If it had been about constitutional law, Blackmun and his colleagues might have acknowledged the federal judiciary’s helplessness regarding a matter historically reserved to the states’ jurisdiction. The heart, not the lawbook, ruled in this instance. We *were* going to have a moral outcome—moral by the standards of seven unelected federal jurists. Who said so? The seven federal jurists.

The morality—on his own terms—of *Roe v. Wade* became something of an obsession with Blackmun. Perhaps this was due in part to the vehemence of the opposition the decision excited: not least to the letters he got. Whatever the case, *Roe* became his pride and joy: a robust, bouncing, full-term baby, against whom nothing was to be said.

When, in 1992, it appeared that the Reagan appointees to the high court were about to engineer a reversal of *Roe*, the proud father despaired. Then, in *Planned Parenthood v. Casey*, the court, by a single vote, stepped back, as Blackmun reckoned it, from the abyss, sustaining instead of voiding *Roe*'s "essential holding." Joy and release flooded Blackmun's being. "Just when many expected the darkness to fall, the flame has grown bright," he wrote. Yet he was checked in his transports: "I fear for the darkness as four justices anxiously await the single vote necessary to extinguish the light. I am 83 years old. I cannot remain on this court forever." Abortion was his cause. Thither that pulsating heart had led him. No result other than the affirmation of a right to abortion was acceptable.

When came the time at last for Blackmun to step down, in 1994, the short-term, if not the long-term, future seemed secure. Bill Clinton, who believed abortions should be "safe, legal, and rare," had been chosen president. Clinton would not betray the cause, would he? Not that cause. Blackmun's successor on the Court, Stephen Breyer, albeit no jurist of the heart, lacks any disposition to interfere with "the emancipation of women." (Interestingly, Clinton's first appointee to the Supreme Court, Ruth Bader Ginsburg, found no favor with Blackmun. Says Jeffrey Rosen: "Blackmun never forgave Ginsburg for criticizing the scope of *Roe* in the 1980s; he peevishly refused to interview her law clerks for his own clerkships and, according to several intimates, was less than elated by her nomination [in 1993].")

Another thing is notable about the jurisprudence of sentiment in addition to its startling effects on the right to be born. That thing is the frequency with which Blackmun allowed it to spill over the dam, into a variety of areas not directly connected with abortion. Blackmun's heart tugged him, prodded him, cut off his retreat.

On the "women's rights" question, Blackmun found it shocking, in 1991, that manufacturers with "fetal protection policies" could be allowed not to hire pregnant women. Speaking for a 6-3 majority, Blackmun once more trumped the unborn child. Employers might take into account "only the woman's ability to do her job," not the effects of that job on her unborn child. Decisions concerning "the welfare of future children" were hers and hers alone.

Capital punishment litigation effected yet another conversion experience.

Not long before his retirement, Blackmun wrote in a 22-page dissent from a death penalty appeal that “From this day forward, I no longer shall tinker with the machinery of death.” Why not? Because “the death penalty experiment has failed.” That capital punishment could be administered fairly was the merest “delusion”; the whole procedure was “inherently subjective, rife with all of life’s understandings, experiences, prejudices and passions.” A decision to execute defied “the rationality and consistency required by the Constitution.” Blackmun read the dissent in a tone of near-anguish. No brother or sister justice joined in this *cri de coeur*.

One thing was especially curious about Blackmun’s newfound enthusiasm for lives the state proposed to take. It was the way he apparently differentiated between lives of this sort and the sort thrown away in an abortion clinic. The former sort excited in Blackmun’s heart a rush of fellow feeling, the latter no discernible feeling at all—at least none discernible in his writings about abortion. For Blackmun, the father of three daughters, a man married to the same woman for 62 years, life inside the womb seemed to have little if any meaning. Seemed, I say, because the inner workings of the heart are necessarily invisible. Did Blackmun, in the the still watches of the night, wonder—and if so how much did he wonder—about the quality of unborn life? All one can say is that his public utterances betray no hint of any wrestling. Publicly his conscience seemed clear. Abortion was A Good Thing.

After *Roe*, Blackmun became protective of homosexuals’ asserted rights. He could not bear it that Georgia should receive continued license (*Bowers v. Hardwick*, 1986) to prosecute sodomy. That “individuals,” he wrote, “define themselves in a significant way through their intimate sexual relationships with others suggests, in a nation as diverse as ours, that there may be many ‘right’ ways of conducting those relationships. . . .” What such an observation had to do with constitutional law remained an open question.

A former teacher of constitutional law, Bill Clinton, was ready enough, given his intellectual congruence with Blackmun, to consecrate the judge’s insights. “Every decision and every dissent [of Blackmun’s],” Clinton commented when his new soulmate died, “was firmly grounded in the Constitution he revered and his uncanny feel for the human element that lies just beneath the surface of all serious legal argument.”

That may be as prepossessing a case as can be made for what a former pastor, at his funeral, called Blackmun’s “creative fidelity.” Accent on “creative.” With Blackmun the perpetual quest was not to find out what his predecessors, and their civilization and his, had believed about a particular point of law. The quest was to square law itself with the restless aspirations of the

modern age. What enough people want, Blackmun seemed to reason, the Supreme Court is obliged to give them! At least provided those people can show themselves to be members of a caste or sex long suppressed, smothered, now anxiously awaiting liberation. Whether, say, a society of Anglo-Saxon males, however numerous, could have laid its concerns before him, one can't say objectively. Objectivity in any case is an odd word to use in talking of Harry Blackmun. Nothing could have been less objective—rooted, that is, in external circumstance—than Blackmun's jurisprudence. Mr. Justice Blackmun was *par excellence* the subjectivist, straining observations and, above all, feelings through his judicial filter. The heart trumped the mind, the senses the eyes. What matter if many, in bygone times, had believed something different than Blackmun now believed? What matter if many still did—and regarded their viewpoint as right and logical? These were not vested with the power to enforce their convictions. That power lay in the hands of people like—Harry Blackmun. Given such power, he was bound to use it. In the service of his own convictions. His own: the ones that counted. His own: those that others would obey if he and enough others said so.

The jurisprudence of sentiment, it should be obvious, is less sweetly sentimental than it seems; no gentle mid-morning sunshine bathing it, no melodious twittering of birds. Backing it up is the mailed fist. The jurisprudence of sentiment cannot recognize or adhere to overarching standards: certainly not to the Constitution, a document of another age, composed and promulgated by men who never suspected the womenfolk might hanker for emancipation. Adhering, in the old-fashioned manner, to a higher standard of worth, a touchstone of value, would negate human “development.”

Jurists promoted to our nation's highest court, as was Harry Blackmun, much to his surprise, profess devotion to the constitutional text. However, such devotion applies in a special way—not to dry words and precedents but to spirit and feeling; the sense, always stirring within the best of us, that things, however good they may be, can always be made better. These jurists—Harry Blackmun was their exemplar—practice “creative fidelity.”

What is new in all this? Not all that much for the last couple of centuries. Harry Blackmun was a late-blooming child of the Enlightenment, which exalted feeling over fact, the internal over the external. What was truth? that was—to be seen. Meanwhile, there was one priceless touchstone—the heart. Subjectivity beat down objectivity horse, foot, and dragoons.

Roe v. Wade—from which the name of Harry Blackmun will always be indisseverable (“I'll carry this one to my grave,” he said, with prophetic

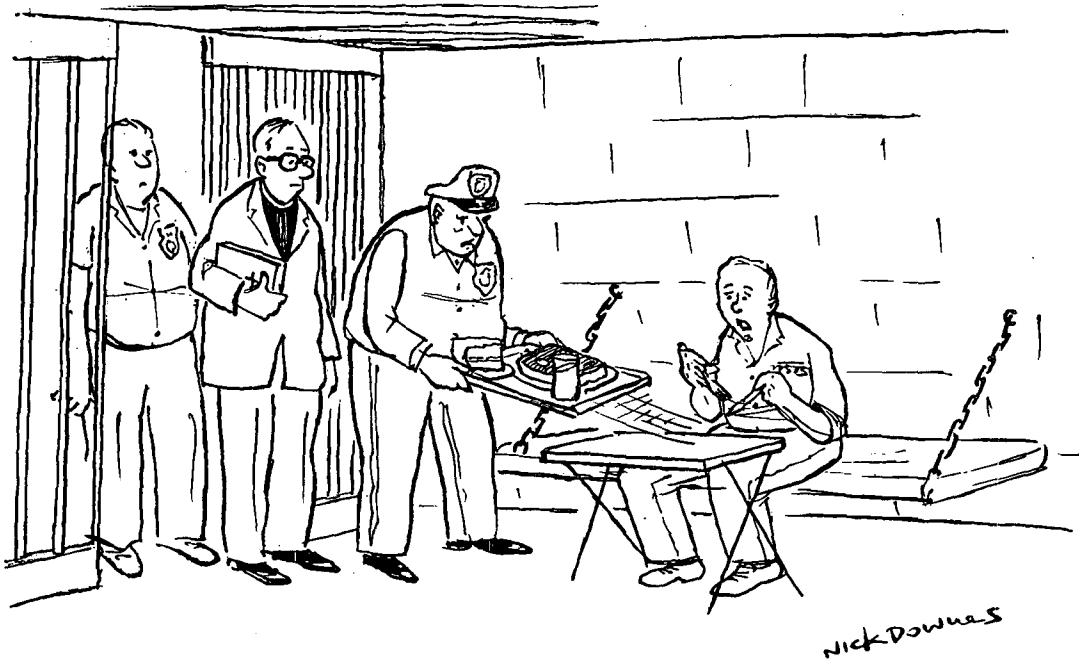
WILLIAM MURCHISON

force)—has resulted in loss of life unprecedented in peacetime. Since the decision was handed down, 26 years ago, 38 million abortions have taken place in the United States. An unknown number of these would have occurred in the absence of such a decision; many more, probably, would not have.

The exact number ascribable to the Supreme Court's *Roe* jurisprudence is not the present issue. The issue is the style of that jurisprudence—sleek, patronizing, ultimately despotic and overbearing: *our* hearts describing what *yours* might understand, were yours more sensitive and acutely tuned.

The great crimes of modern times, from the French Revolution through the Holocaust and beyond, have been crimes of the heart—that same heart characterized in scripture as “deceitful above all things.” No abiding truths are assumed to exist in this modern world of ours. Truth simply . . . evolves, sometimes with the help of a good two-handed shove from behind.

In such a world, the kind *Roe v. Wade* ordains and reinforces, “free choice” flourishes; qualities of a self-effacing sort, such as duty and responsibility and reverence and sacrifice, get lost in the shuffle. Pride rules—that same pride which notoriously goes before a fall. Harry A. Blackmun, one likes to think, cannot have meant all this to be so. Meaning a thing to be so is different, of course, from helping materially to make it so.



“SORRY, DUGAN—YOU GOT A STAY OF EXECUTION.”

Nominal Babies

Richard Stith

In its famous 1973 decision *Roe v. Wade*, the United States Supreme Court mandated elective abortion up to viability, and abortion for broadly defined “health” reasons (i.e. virtually elective abortion) thereafter. That opinion contains a deep contradiction that can be understood as a conflict between what I will call “nominalism” and “realism.” The Court asserts in effect that the unborn child has no real nature, that what it is is solely a matter of conventions concerning names (*nomina* in Latin). Yet the moment of birth is assumed to mark an essential difference, a real (not merely conventional) transition to a living entity, human in nature.

In the past twenty-five years, this “birth wall” has been largely dismantled or, to use appropriately the more fashionable expression, “deconstructed.” That is, the purely nominal character of the birth difference has become increasingly accepted by those on both sides of the abortion debate. My purpose here is to elucidate this shift and to show the possibilities and perils of our emerging legal world.

Roe’s nominalism can be seen most simply in Justice Harry Blackmun’s well-known assertion that the Justices “need not resolve the difficult question of when life begins” in order to justify the Court’s requirement that legislators treat the fetus at most as “the potentiality of human life” right up to the moment of birth. There is no need, he says, to answer this question because the diversity of answers given by others shows the question to be unanswerable, at least at present. But surely the law may take controvertible stands, and it may seek to minimize the possible harm of error even where it has no access to truth. Blackmun’s insistence that what we call the fetus does not matter seems to imply a much more radical agnosticism; the assumption that the names we give to pre-born human beings are wholly conventional, that one can in principle never say that abortion *really* takes a human life.

Blackmun’s justificatory history of permissive abortion practices bears out this appearance of deep-seated nominalism. Let me explain. In order to decide whether or not practices of past ages can be justified today, we ought to look not only at the practices themselves (e.g., practices permitting abortion),

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but also at the beliefs about values and facts upon which those practices were based. If those underlying values now seem to us quite mistaken, the practices arising from those beliefs hold no authority for us today. Similarly, we cannot honestly invoke the authority of past scientific conclusions if we now see that the data upon which the conclusions were based were incomplete or mistaken. If we seek to know what is real, we cannot rest content with labels. We have to inquire into reasons.

Yet throughout Justice Blackmun's lengthy surveys of past practices allowing abortion, he never once asks whether or not the beliefs upon which those practices were based are in fact ones that he considers admirable or accurate. (By contrast, by the way, he occasionally does try to refute past reasons for *restricting* abortion—such as to protect the mother's life.)

For example, Blackmun refers often to “quickening” as a popular dividing line, without once mentioning that modern medical knowledge shows this “event,” as he calls it, to be an illusion. The overall impression Blackmun gives is that whether and when abortion is allowed is an open choice, with most cultures voting for abortion.

At the same time, Blackmun suggests (without exactly stating) that birth makes a real difference. Such a claim is implicit in his refusal to find that constitutional personhood or actual human life begins “before live birth.” In any event, Justice John Paul Stevens, writing thirteen years later in support of *Roe v. Wade*, makes clear the necessity of what I have here called “the birth wall.” Concurring in *Thornburgh v. American College of Obstetricians and Gynecologists* (1986), he insists that “there is a fundamental and well-recognized difference between a fetus and a human being; indeed, if there is not such a difference, the permissibility of terminating the life of a fetus could scarcely be left to the will of the state legislatures.” In the next sentence, Stevens makes clear that, in his view, even “the nine-month gestated, fully sentient fetus on the eve of birth” is not yet a human being.

Stevens gives no explanation for his claim that a fundamental change at birth is required in order to justify legal abortion. But one basis for his view is surely the principle of human equality that underlies both our ethics and our law. There must be a real and deep difference between human and non-human entities in order to give force and limit to the normative demand for equal protection for all humans. If any and all entities could be defined at will into or out of humanity, human equality would have no practical significance. Insofar as human equality does make practical demands on us, it follows that we are politically committed to ontological realism. Stevens has to claim that a fetus and an infant are different kinds of beings in order to avoid

recognizing an equal right to life before and after birth. Only if expulsion from the womb gives the fetus a human nature for the first time is late-term abortion easily justified.

We are thus bequeathed a curious antinomy by *Roe*. We are to presume that the unborn child or fetus has no inner nature of its own. What it is called is a matter of convention or preference, for it is not “really” anything at all. At the same time, we must assume that birth is a bright line, a moment when (in reality not merely in convention), by leaving the uterus, the fetus becomes undeniably one of us. In other words, we are to be skeptical nominalists prior to birth, but credulous realists about birth itself.

It should be obvious, even to Stevens, that the notion of a clear, fundamental difference at birth is not, shall we say, viable. The many postmodern nominalists among us (especially among academics) can hardly be expected to accept the mere assertion that a bright line between human and nonhuman exists at birth. If definition in principle is social construction, Stevens’ definition of humanity will inevitably be deconstructed by those who have the political will to do so—i.e., those interested in protecting the unborn or in justifying infanticide (of which more below).

But even realists must in the end reject the birthwall thesis, because it claims that what something is depends upon where it is. It makes the fundamental nature of the perinatal entity depend solely upon location. But location cannot determine a being’s inner nature, though location may well affect how that being functions for others and thus affect what they name it. That is, the jurisprudence of Blackmun and Stevens abjures the search for the nature of the fetus prior to birth, where a realist would search it out, while relying on a form of naïve realism about birth itself, where the fetus/infant difference cannot be more than nominal. Blackmun and Stevens would have us believe the child born prematurely at seven months to be a human being, while its more developed cousin in the womb overdue at nine and a half months is still a creature without a fundamentally human nature. Without an appeal to some supernatural change such as the insertion of a soul at first breath, an appeal which neither judge makes nor constitutionally could make, such a belief is quite simply absurd, beyond the limits of even the most extreme credulity.

The absurdity of the birth wall has not caused it to fall entirely. The Supreme Court in fact reaffirmed *Roe v. Wade* in 1992 in *Planned Parenthood v. Casey*, but it did so without claiming that birth really makes a difference, explicitly avoiding any claim that *Roe* was rightly decided in the first place. Instead, *Casey* based the right to abort in large measure on *stare decisis*, binding precedent, which is in *Casey* a doctrine of court vanity and positivism.

Past decisions cannot be overturned just because they were based on fallacious reasoning. Fidelity to the Constitution is not by itself a sufficient reason to right old wrongs. Only on the basis of new information not available to the earlier Court can erroneous holdings be overruled. Except in such circumstances, to correct past mistakes would undermine the Supreme Court's prestige, *Casey* argued, particularly so on matters of great controversy. The abortion *fiat* stands, but only as such. Not willing to deny (or even explicitly to consider) that millions of actual human lives are being lost under *Roe*, *Casey* says simply that the court has spoken, *causa finita est*.

Referring to "the interest of the State in the protection of 'potential life,'" also characterized as "a legitimate interest in promoting the life or potential life of the unborn," the outcome-determinative opinion of Justices Sandra Day O'Connor, Anthony Kennedy, and David Souter declared in sum:

We do not need to say whether each of us, had we been members of the Court when the valuation of the state interest came before it as an original matter, would have concluded, as the *Roe* Court did, that its weight is insufficient to justify a ban on abortions prior to viability even when it is subject to certain exceptions. The matter is not before us in the first instance, and coming as it does after nearly twenty years of litigation in *Roe*'s wake we are satisfied that the immediate question is not the soundness of *Roe*'s resolution of the issue, but the precedential force that must be accorded to its holding.

There is good news and bad news in *Casey*'s doubts about *Roe*. The good news is that, since the Court no longer assumes that a magical change comes about at birth, the unchanging identity of the child before and after birth can be affirmed in law—provided always that the ultimate right to abortion be preserved. Postnatal realism can begin to replace prenatal nominalism. If the child has real dignity outside the womb, it must have dignity inside—since location cannot make an essential difference. Again in the words of O'Connor, Kennedy, and Souter: "Regulations which do no more than create a structural mechanism by which the State . . . may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose." For example, laws requiring a woman contemplating abortion to be fully informed about the procedure, including what it does to the fetus, were declared constitutional by *Casey* (overruling a contrary 1983 holding that had read *Roe* to forbid state attempts to dissuade women from having abortions).

Even in the earliest stages of pregnancy, a state may enact rules and regulations designed to encourage women to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term: "Measures aimed at ensuring that a

woman's choice contemplates the consequences for the fetus do not necessarily interfere with the right recognized in *Roe*."

Though it sometimes still uses the opaque and demeaning phrase "potential life" (along with "life" and "child") for the living human fetus, the *Casey* decision clearly permits state anti-abortion laws to be motivated by the "legitimate goal of protecting the life of the unborn," so long as their purpose remains "to persuade the woman to choose childbirth" rather than forcibly to stop her from choosing abortion. Indeed, already in the 1989 *Webster* case, the birth distinction had weakened to the point where the Court upheld Missouri legislation requiring that the unborn child, from the moment of conception, be treated as a legal person except insofar as the decisions of the U.S. Supreme Court might otherwise require.

In addition to informed consent, *Casey* approves a twenty-four-hour period of reflection between the time the pregnant woman is given the required information and the actual abortion. But *Casey*'s persuade-but-do-not-actually-block principle need not stop there. After that case was decided, for example, Pennsylvania initiated a system of state subsidies for (nonreligious, of course) pro-life crisis pregnancy centers, the sort that had previously subsisted almost solely on private contributions and volunteers. And if women already in a crisis pregnancy can be given accurate factual information intended to encourage them to choose life, why not public high school students, even as part of a required curriculum? Such information may well be more effectively integrated into decision-making if it is provided prior to a pregnancy-induced sense of desperation. Just such an educational initiative appears to be beginning in Florida.

Where the Court-declared constitutional right to abortion is not even peripherally at issue, the Supreme Court has been still more indulgent regarding state action designed to protect unborn human beings. Just recently, for example, it refused to review the South Carolina Supreme Court's decision upholding a statute punishing drug use by pregnant women as a form of "child endangerment." And at no point post-*Roe* has the U.S. Supreme Court ever struck down any of the laws, now found in the majority of states, that punish the killing of a fetus whenever the killing is done without the mother's permission. In Minnesota today, an assailant who intentionally destroys a just-conceived human embryo—by battering its mother, for example—can be sentenced to life in prison for "murder of an unborn child," even if the woman was on her way to an abortion clinic at the time.

The "good news," then, is that *Roe*'s never-absolute birth wall was partially dismantled by the *Casey* decision, permitting greater recognition and

protection for the child prior to birth. *Roe*'s post-natal realism has begun, to a degree, to displace its prenatal nominalism.

The "bad news" is of a piece with the good: The weakness of the birth wall, the absurdity of thinking that a child's location (or its mother's choice) can change its inner nature, can easily permit *Roe*'s pre-birth nominalism to expand to displace realism after birth as well. For someone committed to *Roe*, the realization that there is no real difference between abortion and infanticide can mean only that infanticide must, at least in principle, be permitted.

This logic can be seen at work in the current widespread support among pro-choice advocates for the right to kill a fetus during induced delivery. If the child partially outside the womb could be protected against having its brain sucked out, how could exactly the same child still wholly inside be dismembered with impunity? In order to avoid this question, the right to partial-birth abortion must be affirmed with vigor.

But even clearer, I think, has been the apparently universal support for infanticide in pro-abortion scholarship. I am thinking here of the works of people like Joseph Fletcher, Michael Tooley, Ronald M. Green, Jonathan Glover, Peter Singer, and perhaps Steven Pinker, but to my knowledge they represent not just a majority, but a very solid consensus. A survey by Don Marquis in the *Journal of Philosophy* showed that all pro-choice theories developed by 1989 deny that there is anything wrong *prima facie* with killing infants. I know of no pro-abortion scholar who has written that there is something *intrinsically* wrong with early postnatal infanticide. The reason is obvious: if the newborn has intrinsic (real, in our terms) dignity, then the same child located in the womb just prior to birth must have equal dignity, even the just-conceived embryo must have a like dignity, for the only humanly significant attributes possessed by the newborn are possessed as well by the embryo: membership in our species and (what comes to the same thing) design for human community, with its virtues of reason and love.

To say that actual manifestation of (rather than mere design for) these virtues is required for human dignity would be to exclude the infant along with the embryo. To focus upon the actualized traits possessed by the infant but not the embryo (e.g., size or ability to survive with less external life support) would be to include many nonhuman entities and, moreover, would be to point to traits that are ultimately just not very important to our idea of human dignity. For this very reason, the German Constitutional Court ruled unanimously in 1975, with an entirely different panel reaffirming also unanimously in 1993, that the constitutional right to life must extend throughout

pregnancy. Since we know that newborn infants have human dignity, despite the fact that their uniquely human virtues subsist only as potentialities, we cannot deny that same dignity to the unborn, who possess those same potentialities. In the words of the German court:

The process of development . . . is a continuing process which exhibits no sharp demarcation and does not allow a precise division of the various steps of development of the human life. The process does not end with birth; the phenomena of consciousness which are specific to the human personality, for example, appear for the first time a rather long time after birth. Therefore, the protection . . . of the Basic Law cannot be limited either to the “completed” human being after birth or to the child about to be born which is independently capable of living. . . . [No] distinction can be made here between various stages of the life developing itself before birth, or between unborn and born life.

Many pro-abortion academics do claim to discern a bright line at a later, post-infantile stage of human life. For example, H. Tristram Englehardt, Jr. has averred that true personhood inheres only in the normal adult human. Such thinkers are still realists; they just think that what really matters begins quite a bit later than birth. And, in their favor, it must be admitted that almost any developmental point they might choose—e.g., self-consciousness, the age of reason, even puberty—will be more real and thus more arguable than *Roe*'s choice of birth. But can such points remain bright lines in the postmodern era? If the existence of the self is a cognitive illusion, as some argue, how can self-consciousness really matter? If reason is only manipulation, an epiphenomenon of the will to power, why should it matter more than, say, muscles? It is vain to suppose that new attempts to construct real walls against killing can be successful in our age of deconstruction.

Rather than search vainly for a new bright line after birth, more perspicacious pro-abortion jurists have opted to rid themselves of the principle to which we pointed early in this essay, a principle that makes it necessary to have bright lines in the first place: human equality. If human beings can be treated in radically unequal ways, if they need not even in principle be accorded equal protection under the law, then those who favor abortion need not be disturbed by the continuity of human life. If unequal treatment of human beings is acceptable, the need to assert a fundamental difference between fetus and infant disappears. Why bother wracking one's brain to find a difference if they need not be shown equal respect, even granting their common humanity?

Among academics, Ronald Dworkin has perhaps done the most to advance human inequality in the law. “The less profitable effort invested in each human being, the less regrettable the killing of that being” paraphrases

a non-egalitarian notion that Dworkin applies throughout the human life span, after as well as before birth.

But some of our federal appellate judges (not yet with explicit U.S. Supreme Court approval) have cut even more directly to the quick. Seeking to justify lesser state protection for the lives of those terminally disabled, in 1996 Judge Roger Miner wrote for the Second Circuit, "Surely the state's interest lessens as the potential for life diminishes." For the Ninth Circuit in the same year, Judge Stephen Reinhardt wrote: "[The strength of] the state's interest in preserving life . . . is dependent on relevant circumstances, including the medical condition . . . of the person whose life is at stake." Judge Robert Beezer, writing in dissent, countered that the court is thus reexamining "the historic presumption that all human lives are equally and intrinsically valuable," and that this reexamination may be "a mere rationalization for housecleaning, cost-cutting, and burden-shifting—a way to get rid of those whose lives we deem worthless."

Perhaps because of Judge Beezer's forceful challenge, Judge Reinhardt sought to bolster his position with the Supreme Court's jurisprudence denying equal protection to the unborn:

In right-to-die cases, the outcome of the balancing test may differ at different points along the life cycle as a person's physical or medical condition deteriorates, just as in abortion cases the permissibility of restrictive state legislation may vary with the progression of the pregnancy. . . . [B]oth types of cases raise issues of life and death.

Judge Beezer did not attempt to deny the majority's analogy to abortion law, just to narrow it:

[In] the abortion context, the Supreme Court tells us that the state's interests in fetal life are weaker before viability than they are once the fetus becomes viable. . . . A state's interest in preserving human life is stronger when applied to viable beings than it is when applied to non-viable beings. Like a first-trimester fetus, a person kept alive by life-sustaining treatment is essentially nonviable. A terminally ill patient seeking to commit physician-assisted suicide, by contrast, is essentially viable. The patient may be inexorably approaching the line of non-viability. But the patient is still on the viable side of that line, and consequently enjoys the full protection of the state's interest in preserving life.

Of course, since even fully viable fetuses enjoy nowhere near the "full protection" of the Constitution under *Roe* and *Casey*, Judge Beezer's analogy is cold comfort even for the disabled person capable of surviving without life supports. If such a person counts only as much as a viable fetus, he will get far less than equal protection from our law.

In denying the constitutional duty of equal protection, are these appellate

judges doing anything more than following the lead of *Casey*? In holding that *Roe* must stand even if it was wrongly decided, *Casey* proclaimed that the State's duty of equal protection falls before *stare decisis* and the prestige needs of the Court. Reinhardt and Beezer read that case well.

The honesty newly permitted by the *Casey* decision thus cuts in two directions. The fact that the same child exists within and without the womb can lead us to two opposite conclusions. We can begin to treat the pre-born with respect equal to that which we now show to already-born human beings. Or we can come to treat some of those already born with the same disrespect we now show toward the pre-born. We can become more realistic about the entire human life span, or we can begin to doubt the human nature of others thought inconvenient and less capable. Or we may finesse the whole problem of nominalism vs. realism by denying the State's duty of equal protection, leaving the weak to their own devices regardless of whether they are human in nature or only in name.



"PEASE HELP—A JUROR'S BEEN CRUSHED UNDER
THE PREPONDERANCE OF EVIDENCE!"

The Miami Moderates

George McKenna

Risking jeers from those who call them “country club Republicans,” a group of seventy Republican “moderate” leaders met at the Doral Golf Resort and Spa in Miami last February. Perhaps some day a plaque will go up to commemorate the event, because the moderates were there to throw down the gauntlet before the “religious right.” The *New York Times*, which gave the meeting front-page coverage, had a picture of New Jersey Governor Christine Todd Whitman, the doyenne of Republican moderates, sitting upright on a high chair before a podium, looking very cross. That was the mood of the gathering. The attendees were “exasperated,” the *Times* said, by the cultural conservatives in their party. “We have to get away from the perception that all we care about is whether or not Teletubbies are gay,” said Mrs. Whitman.

The immediate occasion for their exasperation was not Teletubbies but the impeachment of the President by the Republican-controlled House and the subsequent trial in the Senate. “These are tough times for Republicans,” Mrs. Whitman went on. “The fact is that many Americans now have an impression of the Republican Party that’s mean-spirited, vindictive and was not attending to the public’s business.” Her views were echoed by another prominent moderate Republican, Governor John G. Rowland of Connecticut, who said, according to the report, that the impeachment process “had exacerbated an already entrenched image of Republicans as negative and intolerant.” Similar views were voiced by one speaker after another. One Republican activist, a securities trader from Mrs. Whitman’s state, said that the Republicans needed more attractive “sound bites,” then provided an incisive sound bite of his own: “Does the Republican-controlled Congress operate under a mandate that requires it to elect leaders who are homogeneous, intolerant, good old Southern boys who are prone to say dumb things?”

Let’s think this over.

II

Start with definitions. What is a “moderate” Republican? The term doesn’t seem to have much connection with issues like welfare, taxes, gun control, labor unions, minimum wage laws, and civil rights, which liberals and

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conservatives usually fight about. If that were so, Republican congressmen like Chris Smith (NJ) and Peter King (NY) would be moderates; their positions on these issues are about in the middle, or even a little to the left, of most Republican politicians. Smith votes for gun control and minimum wage increases, spending for maternal and child health, and in 1995 was one of four New Jersey Republican Representatives to vote against cuts in the rate of spending for Medicare. King is friendly to organized labor and was one of five Republicans who voted against Clinton's impeachment. But they don't make the "moderate" grade (though the *New York Times* allows that King "often votes with moderates"). Why not? Because they're pro-life.

That is why Governor Whitman *is* moderate. She has not only vetoed a partial-birth abortion ban passed by her legislature, and has refused to let state attorneys defend the ban (which passed over her veto) in court, but also opposes any laws requiring parental consent for minors getting abortions, opposes 24-hour waiting periods, heads a group pressing the national Republicans to scrap their pro-life platform plank, and insists that abortions should be funded with taxpayers' money. Mrs. Whitman is extremely moderate.

To the simple-minded, of course, the word "moderate" means something like "between two extremes," which is one of the definitions the dictionary gives to it. A man of moderate height is somewhere between 5'8 and 5'10. If he's 6'6, he's extremely tall and if he's 5'1, he's extremely short. He may be a nice guy, but if he's that tall or that short, he's an extremist, height-wise.

So also with abortion. If you want a Constitutional amendment banning it in all cases, you've taken an extreme position. Recent polls show that only 25% of Americans share that view. But if you support abortion on demand, you're at the other extreme: only 28 percent share that view. Some 53% of Americans—including, according to a recent poll, 53% of American *women*—believe that, except in cases of rape, incest, fetal abnormalities, or the life of the mother (which together constitute about 5% of abortions) *all* abortions should be banned. *Most Americans would ban most abortions.* And the percentages favoring less-than-total restrictions on abortion go much higher: 73 percent would ban partial-birth abortions, 75 percent oppose government funding of abortion, and 80 percent favor parental notification laws and 24-hour waiting periods. All these positions go directly contrary to those of the Republican party's most famous "moderates": Governor Whitman, Representatives Nancy Johnson and Christopher Shays, Senators Olympia Snowe, Susan Collins, Jim Jeffords, and John Chafee. By any objective measurement, these folks are not at all moderate. Like very tall or very short people, they may be nice people, but they are abortion extremists.

So why are they called moderate? I puzzled over that until I realized that the answer was literally staring in my face. It's because they *are* nice. Watch Susan Collins and Olympia Snowe on C-Span: are there cooler, better-mannered people in all of Congress? Moderate means "between two extremes" but the dictionary allows other definitions, derived from meteorology: "mild," "calm," "gentle." And perhaps "genteel," a close relation to "gentle." Here is John Chafee, profiled in the *New York Times* as one of a "small political breed," of "patrician" Republican: a graduate of Yale and Harvard Law School and "a member of the 'five families' considered to be Rhode Island's aristocracy." The piece quoted one of the local businessmen attending an awards luncheon for Chafee thrown by a New England manufacturer: "He fits right in with me. Lots of times you like your Senator but don't love him. I think Chafee is loved." The views of abortion Republicans are way out of whack with the views of most Americans. But their *manners* are moderate. "Soft-spoken," "modest in both his manner and appearance": that is how the *New York Times*, in its obituary, characterized the Republican Supreme Court Justice Harry Blackmun, author of *Roe v. Wade*. He, too, Senator Chafee's friend could have said, "fits right in with me."

What about their opponents, the ones who seemed to be causing all the heartburn at the Miami gathering? The opposite of moderate is "immoderate." What is immoderate about them? Not, apparently, their positions on abortion, since almost all the positions they hold are supported by the vast majority of Americans.* So if they aren't extreme about that, what are they extreme about?

The answer is apparent in the language used by the moderates. Listen again to the New Jersey securities trader. In his view, which no one at the meeting contradicted, the real problem with their opponents in the party—the immoderate, extremist faction—is that they are "homogeneous, intolerant, good old Southern boys who are prone to say dumb things." They're dumb Southerners! They never went to any really good schools. Clinton is Southern, but he finished off at Yale Law; these guys are unreconstructed Southerners, which means "negative and intolerant," "mean-spirited," and "vindictive." Those words keep tumbling out whenever Republican moderates gather. What is remarkable is that they seem to be untethered to any

*Not for years has there been any serious push for a constitutional amendment outlawing abortion; it is in the national Republican platform and will probably stay there as a friendly gesture to the faithful and a raised finger to the opposition, much like the Democrats' continued call for a twice-defeated Equal Rights Amendment. To the demand of Governor Whitman's caucus that this symbolic plan be removed, the response could be: "We'll take out the call for a constitutional amendment if you will agree to vigorously support us—and the wishes of 70-80% of the American people—in getting our other pro-life proposals into law. Is it a deal?" No need to worry that the proposal would be accepted. When it comes to abortion, Republican moderates don't like give-and-take; they like take.

concrete positions taken by their opponents. In a recent TV appearance with reporters Sam Donaldson and Cokie Roberts, George Stephanopoulos, the former Clinton aide turned television commentator and no Republican of any kind, nevertheless sympathized with GOP moderates. They have a tough job, Stephanopoulos said, because their party looks to be taken over by anti-abortionists who are out of step with America. Cokie Roberts reminded him that on such issues as partial-birth abortion and parental notification the pro-lifers are very much in step with the nation, especially those who vote. Well, yes, Stephanopoulos conceded, "but, Cokie, it's their *tone*, their *tone*, Cokie." That very term, apparently, was circulating around the Miami gathering. The *Times* report again: "Many of the approximately 70 people at this weekend's gathering said they thought that the party's Washington leadership had shown itself to be remarkably tone-deaf," because "moderate voices had been drowned out by the incessant blare from the right."

So now we have our terms defined. Republican moderates are people who take extreme positions on abortion but are soft-spoken, modest in manner and appearance, mild, gentle and genteel. Republican extremists are people whose abortion views are in line with those of the American majority but who have the wrong tone: they sound mean-spirited, vindictive, intolerant, and not very well educated; too many of them have cornpone accents.

II

As I noted at the beginning, the immediate issue at the Miami meeting was not abortion but the impeachment of President Clinton. This was what brought out the complaints of intolerance, mean-spiritiness and vindictiveness. Almost everyone at the meeting, according to the *Times*, thought that it was the Republicans' "dogged pursuit of a popular President" that had caused their party's setbacks in the 1998 elections. Does that mean that they thought President Clinton was innocent of all charges, or that he was guilty of something but not of impeachable offenses, or that, even if he was guilty of impeachable offenses, he should not have been impeached?

The first question can be disposed of easily. Here are *Democrats* talking about Bill Clinton last September: Senator Barbara Boxer (D-Calif.) called his behavior "wrong" and "indefensible"; Senator Joseph Lieberman (D-Conn.) said it was "disgraceful" and "immoral." Senator Fritz Hollings (D-S.C.) said, "we're fed up. The behavior, the dishonesty of the president is unacceptable." Senator Daniel P. Moynihan (D-N.Y.): "The seven months of deception, and perhaps even perjury, by the president are impeachable offenses"; Senator Carl Levin (D-Mich.): "The President's behavior was clearly reckless and immoral"; then-congressman (now Senator) Charles Schumer

(D-N.Y.): "To me it is clear that the president lied when he testified before the grand jury." Democratic party leaders were contemptuous of Clinton's attempts to wriggle out of perjury by redefining "sex." House Minority Leader Richard Gephardt said that Americans would not be impressed by "the fine distinction of a legal argument," and Senate Minority Leader Tom Daschle was even more emphatic: "I certainly agree with those who have grown impatient with hair-splitting over legal technicalities," adding that the president had failed to meet "a basic understanding of the standard of truthfulness." Indeed, as late as last February, Democratic Senator Dianne Feinstein's draft censure resolution said that Clinton had "deliberately misled and deceived the American people, and people in all branches of the United States government," that his behavior was "shameful, reckless and indefensible," "demean[s] the office of the president . . . and creates disrespect for the laws of the land."

President Clinton did some very bad things.

Were they impeachable? That had to be determined. How do you do that? Presumably by holding hearings. So the exasperated Republican moderates at the historic Miami meeting could not have been exasperated just because hearings were held. Nearly every member of the House of Representatives, Democrat and Republican, wanted hearings. The Republicans wanted them open-ended, as the Watergate hearings were 24 years earlier; the Democrats wanted hearings with time limits and other departures from the Watergate model. The Republican version won; every single Republican moderate in the House voted for it. None of the participants at the Miami meeting apparently voiced any objection to that.

If the decision to hold hearings was okay, what wasn't okay? Was it the eventual House impeachment vote, the vote accusing President Clinton of perjury, obstruction of justice, and abuse of power?

So far as I know, none of the Miami moderates attempted to argue Clinton's innocence of any of the charges against him. In fact, the previous September, Mrs. Whitman herself had said that Clinton's behavior was "disgraceful" and called for his resignation. But President Clinton refused to resign. What then? Should the House have refused to impeach him because he refused to leave on his own? If the man won't quit, you must acquit? That doesn't make sense. So what was going on at that meeting in Miami last February?

"I'll tell you what was going on," some wag might say, "George Gallup was going on." All last fall the polls kept showing large majorities opposing impeachment, and giving ever-higher job approval ratings to the president,

and ever-lower ratings to his impeachers. Can anyone blame the moderates for getting exasperated?

But reflect a moment. Moderate Republicans should be the last people on earth to want legislative outcomes dictated by opinion polls. This is not fifth-century Athens, a “pure democracy,” as James Madison disparagingly called it. It is a republic, which, as Madison said, is supposed “to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens.” We elect representatives to meet together, deliberate, and give us their best shot. If we don’t like the outcome over the long run we replace them. But if we turn elected representatives into poll-puppets we might as well fire the lot of them and use polls to make policy. Would anyone want that? Not, I assume, the Republicans assembled at the Doral Golf Resort and Spa last February. Whatever anyone calls them, nobody is going to call them populists. Their views and votes are often at variance with the majority of the nation on issues ranging from prayers in public schools to abortion. Most of them, in fact, take pride in their maverick-ness, wearing it as a badge of personal stature.

All right, forget about majoritarian philosophy. Let’s just talk political survival. By insisting on voting for impeachment, the argument goes, House Republicans may have done their party a real disservice in election year 2000. Indeed, some of the Republicans assembled at the Miami meeting might themselves be put in jeopardy by the vote. Don’t these considerations count for something?

Consider the ethical implications of that argument. What the argument comes down to is: “We don’t care about Clinton’s guilt or innocence. We don’t care what evidence you saw or what arguments you heard or what conclusions you reached about Clinton’s impeachability. You should have left him alone because we’re afraid of election losses in 2000.” Something is wrong when people who pride themselves on their rock-solid integrity think like that. Imagine what we would say if they scolded a jury in that way after it had delivered its verdict.

Well, but sometimes even patricians have to rise above principle; Republicans can’t do much ethical stuff if they can’t get elected. But even from the standpoint of smart politics, it may not have been a mistake for Republicans to vote for the impeachment of Bill Clinton. As election year 2000 gets closer, new issues keep surfacing, and more ticking bombs—catastrophic blunders in foreign policy, possible criminal neglect of our national security, new, credible allegations of non-consensual sex—keep showing up on White House grounds. In election year 2000, the burden of explanation may not be on

those who voted for Clinton's impeachment but on those most vehement in his defense.

III

Since nothing we have examined so far reasonably accounts for the anger and exasperation at the February meeting of Republican moderates, what does explain it?

Start with a puzzling correlation. Within the Republican party, almost all of the criticism of the impeachment is coming from the moderates, and, with perhaps a few exceptions, the moderates are abortion Republicans. The correlation was especially striking in the Senate: all five Republican Senators voting not guilty on both articles of impeachment were outspoken advocates of "reproductive rights," and four out of the five actually supported Clinton's veto of the partial-birth abortion ban—a truly radical position on abortion. So there must be some kind of connection between abortion and impeachment. But what connection? Nobody says, "I'm pro-choice, therefore Clinton is innocent." Yet that is what it seems to come down to. Why?

Sometimes silly things provide clues to deeper things. So let's talk Teletubbies. Governor Whitman again: "We have to get away from the perception that all we care about is whether or not Teletubbies are gay." What is the governor of a major industrial state doing talking about Teletubbies?

Teletubbies, for those not in the know, are cute characters in a children's public television show. They are portrayed by actors in oversized, brightly colored costumes, with television screens on their stomachs. One of the Teletubbies, a boy, carries what appears to be a purse. The show is broadcast here and in England, and last year an article in a London newspaper reported that Tinky Winky, the boy Tubbie, was celebrated in homosexual circles as a campy role model, ideal for making small children feel comfortable about homosexual "lifestyles." In the United States the story soon got picked up by *Time* magazine and, later, by *People* and the *Washington Post*. Then the senior editor of a newspaper published by the Rev. Jerry Falwell, the former head of the Moral Majority, summarized the earlier stories and urged parents to be careful about the TV programs their children watch. After the piece appeared, Falwell was waylaid by a reporter who asked why he was attacking Teletubbies. Apparently clueless, Falwell said, "What are you talking about?" After the reporter explained and Falwell read the article, he opined that if indoctrination was the intent, it was not good for children. That did it: the news media were soon carrying stories that Falwell had "outed" one of the Teletubbies, implying that he was now launching a campaign against the program.

Falwell had been sucker-punched, but the non-event soon acquired a life

of its own, setting off talk show debates on the legitimacy of diverse lifestyles and whether anyone had a right to be “judgmental.” That was Mrs. Whitman’s point at the Miami meeting. One of the things that has been driving Clinton’s high job performance ratings, she said, is people’s “fear of some of the rhetoric that they have heard from some of the more extreme spokespersons of the Republican Party that implied, ‘yeah, but it’s only my morals that are right and if you don’t think exactly the way I think you can’t be a good Republican.’”

So now we begin to understand what the Miami moderates were saying last February. They were saying that the same *types* of people who are intolerant of abortion and gay Teletubbies are the ones hellbent to impeach the president. Judgmental types. “Mean-spirited,” “intolerant,” “vindictive” types. The adjectives now get pressed into double, even triple, service. Intolerance of abortion equals intolerance of homosexuals equals intolerance of President Clinton’s personal failings. Is this just word-play? Or is there something that links together these seemingly different intolerances?

Over the past year or more the President’s defenders have been hammering on this theme: yes, there is a linkage. The linkage is sex. Abortion is about sex, homosexuality is about sex, and the investigation of the president was “all about sex.” Independent Counsel Kenneth Starr, according to James Carville, was “an out-of-control sex-crazed person [who] has spent \$40 million of taxpayers’ money investigating people’s sex lives.” The same line was repeated by almost all the Democrats on the House Judiciary committee: this whole matter arose out of a matter of “consensual sex.” The assertion, of course, was untrue. The Lewinsky scandal arose out of a false affidavit submitted by her on the president’s behalf in a suit charging him with something distinctly non-consensual: sexual harassment. But the “it’s all about consensual sex” line had the effect of throwing the Republicans on the defensive (an effect intensified, perhaps, by revelations that some Republicans had a few sexual indiscretions of their own). Every attempt by the Republicans to bring the discussion back on track, to questions of perjury, obstruction of justice, and abuse of office, seemed only to encourage their opponents to crank up the volume. The investigation was “sexual McCarthyism,” “puritan witchhunting,” “cultural warfare” by “the religious right.”

What made the smear campaign so effective was that it tapped into Americans’ deeply-held view that people’s personal lives are their own business. Clinton, always well-briefed on public opinion, played to this by confessing only to “personal” transgressions—for which, as a poor Christian, he begged forgiveness and brought in clergy. The public forgave, the Senate acquitted, and America moved on.

But the bitterness and anger still linger, and they were hanging in the air at that meeting last February. The moderates' broad-brush depiction of fellow Republicans as vindictive zealots points to something deeper than disagreement about impeachment. What was going on?

Perhaps the president's defenders may have been right in a certain sense. Beyond the immediate issue of impeachment, which of course has to be argued on its merits, maybe there is a dimension of the controversy which is "all about sex." The president's defenders seem to be spoiling for that kind of fight. Wryly but at least half-seriously, Frank Rich of the *New York Times* argued that impeachment is a kind of proxy war, a smaller battle within a greater confrontation over freedom versus repression. Forget about impeachment, he wrote, let's move on to the big war. On Geraldo Rivera's talk show last December, Harvard Professor Alan Dershowitz said the same thing, only hysterically: "This is truly the first battle in a great culture war. And if the president is impeached, it will be a great victory for the forces of evil—evil—genuine evil." In a much-acclaimed article published last October in the *New York Times Magazine*, homosexual writer Andrew Sullivan flung out a very wide net and pulled in the following: the impeachment hearings, Kenneth Starr's investigation, Robert Bork's book *Slouching Toward Gomorrah*, William Kristol's magazine *The Weekly Standard*, and *First Things*, Richard John Neuhaus's monthly journal. What they all have in common is "scolding, moralizing conservatism." Unlike Reagan's conservatism, which was "far less strident," even "sunny" (characterizations surprising to anyone who remembers how Reagan was depicted in the *Times* during the '80s), the new conservatism is sour and bleak. And its issues are all about sexual morality: "infidelity and honesty, abortion, family cohesion and homosexual legitimacy."

First Things seems at first to be an odd fish for Sullivan's net. I subscribe to it, and I do not remember reading a single article in 1998 on impeachment, Kenneth Starr, or homosexuality. In Sullivan's mind they are all linked, but maybe not in Neuhaus's. Yet Sullivan is right in one respect: all of the people on his list *do* care about morality, family, fidelity, and honesty. And one other thing. I do not know Judge Starr's views on abortion, but I would not be surprised if they were similar to those of the others.

The "key social issue" for the intellectual leaders of the new conservatism, says Sullivan, is not adultery or even homosexuality. It is abortion. "In fact, abortion is at the center of current Republican orthodoxy as much because of conservative intellectuals as evangelical activists." He quotes William Kristol's remark that "abortion today is at the bloody crossroads of

American politics. It is where judicial liberation (from the Constitution), sexual liberation (from traditional mores) and women's liberation (from natural distinctions) come together."

Sullivan's article was intended as an expose, an intellectual, high-class confirmation of Hillary Clinton's claim of a "vast right-wing conspiracy." The magazine's readers reacted accordingly. Some of them sounded like they were ready to call in the FBI. Referring to the conservative intellectuals, one reader wrote: "Their dream for America is a totalitarian one, and presents as dire a threat to our freedom as any foreign enemy." Another letter ended simply, "Heaven help us!"

Sullivan's article has its own McCarthyish odor, but whatever its intent (or its effect on faint-hearted *Times* readers), its focus on abortion was appropriate. For the abortion culture and Bill Clinton *are* linked to sex, or rather to a certain kind of sex: self-indulgent, narcissistic sex, sex without consequences or responsibility, utterly remote from marriage and family—sex as recreation and personal gratification. Sullivan was deeply wounded by a word in the Starr report that most readers must have missed. Starr had written that the president was entitled to a "private *family* life" [emphasis Sullivan's]. From this Sullivan inferred that Starr believes "a private, non-family life is fair game for prosecution and exposure." A few paragraphs later, Sullivan wrote that conservative intellectuals "see no distinction between an argument for same-sex marriage, for example, and a presidential defense of adultery, because in their eyes, there is no context in which a homosexual relationship can be moral."

Yet Sullivan himself had earlier lent support to the very prejudices he attributes to his opponents. In his book *Virtually Normal* (1995) he suggested parallels between same-sex marriage and adultery, and opened the question of whether homosexual behavior is quite "normal."

The book, intended to make the case for same-sex marriage, started off defending it as a rather conservative idea. All we want, he says, is the same stable union of spouse and spouse that heterosexuals enjoy. "*And that is all*" [emphasis Sullivan's]. He rejects the alternative, adopted in many states, of "domestic partnership," because it "chips away at the prestige of traditional relationships and undermines the priority we give them." He seems to want homosexual couples to be able to live as traditionally as heterosexual couples. But at the end of the book it turns out that homosexual unions are, well, different. "The truth is," he says, "homosexuals are not entirely normal. . . ." With homosexual couples there is "greater understanding of the need for extramarital outlets between two men than between a man and a woman;

and again, the lack of children gives gay couples greater freedom.” But the fact that gay partners tend to fool around on the outside is a good thing, a healthy thing—so healthy that Sullivan is inclined to recommend the practice for every marriage. Its “honesty, its flexibility, and its equality could undoubtedly help strengthen and inform many heterosexual unions.” We begin to see why, despite Clinton’s signing of the Defense of Marriage Act and his retreat from the pledge to bring gays into the military, there remains such a deep emotional affinity between Bill Clinton and homosexual advocates like Sullivan.

So maybe there are tie-ins between abortion, casual sex, and the defense of Bill Clinton. Nina Burleigh, a journalist who covered the White House for *Time* magazine, touched all three bases in her famous declaration that she would gladly service the president *à la* Lewinsky, “just to thank him for keeping abortion legal.” So also, Monica Lewinsky, prattling on about her generation being “comfortable with our sexuality,” conducting an affair with another man during her time with Clinton, and reflexively turning to abortion when she got pregnant.

But if there is a *kulturkampf* to which the abortion question is central, is it accurate to characterize it as a conflict between moral permissiveness (“nonjudgmentalism”) and moral absolutism? I don’t think so. If either of the two Clintons in the White House is the avatar of the ’60s, it is not the libertine president but the very controlled, and controlling, First Lady. Hillary Clinton has been the sponsor of every conceivable domestic program for taking care of us: of our health, our children, of our children’s health, of their education, of their environment, of their social development. She is not alone. The culture we inherited from the ’60s may be permissive about sex but not about most areas of American social life. A whole generation has taken over the command posts of American culture and now issues commands of every sort. One of the letters to the editor of the *Times* magazine summed it up: “[F]or the last 40 years I have been unable to turn around without being hectored by pious scolds from the sanctimonious left: don’t smoke, don’t litter, don’t own guns, use condoms, save whales, conserve wetlands, protect moms, help moms protect abortion, conserve energy, wear ribbons (pink, yellow, red—I lose track).”

It goes beyond scolding. During a classroom discussion at the University of Michigan, a student said that he considered homosexuality a disease treatable by psychotherapy. He was forced to attend a formal disciplinary hearing for violating the school code against speech that “victimizes” people based on their “sexual orientation.” At City College of New York, where I

teach, we have something like Nuremberg laws, except they are called “affirmative action.” Each year, every department must submit to the Affirmative Action Office a racial breakdown of its teaching staff. The chairs of job search committees must submit similar lists of the members of the committee as well as of the applicants. If someone from a “non-protected” (basically, white male) category is hired, the chair must explain why. There have been so many “politically correct” requirements in academia over the past twenty years that an organization, the National Association of Scholars, has been formed to combat them; but it is a voice in the wilderness.

Academic culture has worked its way into our law-making apparatus, giving rise to a proliferation of regulations and coercions. That is why abortion advocates are never content with the “choice” of abortion. They demand public funding of abortion—Mrs. Clinton’s famous health insurance bill would have nationalized abortion funding, forcing everyone to buy a “standard package” that included it—and for cutting off any funds for crisis pregnancy centers which provide alternatives to abortion. They press for laws that punish non-violent demonstrations at abortion clinics, and they use RICO laws, intended for gangsters, to bankrupt pro-life advocacy groups. They bring court suits to remove creches from public property and to stop high-school kids from praying at football games. They are ever-vigilant.

If there is a “culture war” in America, then, it is not between moral absolutism and moral relativism but between two competing moral visions of how people ought to live in a community. When Gloria Steinem says she would like to see St. Patrick’s Cathedral turned into a day care center, we know that there is more going on than live and let live. Take away sexual license and one finds very little “permissiveness” in the radical culture passed down from the ’60s. The intellectuals and activists who came of age under its influence have always tended toward absolutism. And they have never been content to philosophize; the aim is to translate their morals into policy. Clinton, always a quick learner, figured out right away what they wanted and, as far as he was able, gave it to them. (His wife never had to figure it out; she wanted the same things.) In return, they stuck with the Clintons when the going got rough last winter.

IV

The question remaining is why any Republicans should want to help them out. Why were the Republican moderates in Miami talking so much like Clinton’s defenders? Why were they calling their fellow party members rustics, bigots, sexists, homophobes? Why does the rhetoric of the Republican moderates seem to track that of the Democrats?

Part of the explanation is sociological: they hang out together. They, or their spouses, see and talk to each other at the same social events, health clubs, fashion shows; parties, black-tie dinners. They, or their kids, went to the same schools, had the same friends growing up, and talk with the same accents. Consider the following thought-experiment. Suppose you are giving a dinner party and want your guests to feel comfortable with one another. You invite four moderate Republicans, say, Susan Collins, Christine Todd Whitman, Jim Jeffords, and John Chafee, and you seat them on one side of the table. Now you want four other guests for the other side. How about Connecticut Senator Chris Dodd and West Virginia Senator Jay Rockefeller? Now, for more depth in the conversations, some professors: maybe Laurence Tribe of Harvard Law School and Ronald Dworkin of New York University Law School. Would everyone get along? Of course. They'd be lingering over their coffee till well past midnight. The people across the table from the Republican moderates were, of course, either Democratic politicians or intellectuals aligned with them. But now suppose, a few weeks later, you decide to give an all-Republican dinner. You keep the same Republicans from the first dinner, and you invite four others: Gary Bauer, president of the Family Research Council; South Carolina Representative Lindsey Graham; Tom DeLay, Assistant Majority Leader of the House of Representatives; and Phyllis Schlafly, president of the Eagle Forum. How much cross-table talk would there be? Some, perhaps. But on the whole, the evening would probably be tedious, if not tense, and would end early. Why? Not just because the two sides disagree but because, as George Stephanopoulos might say, "It's their *tone*, their *tone*, Cokie." There would be grating cultural dissonances. To be sure, a few non-moderate Republicans have the right tone to "pass" in moderate society. Steve Forbes and William Kristol come to mind. But Forbes is a fairly recent apostate from moderation, and Kristol is sometimes denounced as a class traitor. In general, moderates feel more comfortable schmoozing with Democrats than with their Republican colleagues, even when they discuss issues which normally divide the parties. In fact, over the years, under the gentle rub of social interaction, the differences have narrowed considerably.

The sociological explanation falls short in one respect. It doesn't explain why moderate Republicans tend to move toward the Democrats. Why doesn't the current ever flow the other way? We need to supplement the sociology with some philosophical reflections.

In deference to press usage I have been using the term "moderate" Republicans, but perhaps a better term would be *liberal* Republicans. The intent here is not to disparage but to define the term in the context of American

political thought. Liberalism has a long history in this country, stretching back to the “classical liberalism” of the eighteenth century. What we can call modern liberalism has its roots in the progressive era of the early twentieth century. Coming to fruition in the 1930s, it was probably best articulated by the philosopher John Dewey. In the 1935 book, *Liberalism and Social Action*, Dewey looked back on early liberalism, whose hallmark was a deep distrust of what Thomas Jefferson called “energetic government.” The permanently valid part of that kind of liberalism, Dewey said, was its emphasis on “free intelligence in inquiry, discussion and expression.” But classical liberalism also contained “adventitious” elements that need to be jettisoned. Fixated as it was on *laissez-faire*, it failed to take account of historical change. Today, Dewey said, in order to realize the very ends championed by classical liberalism, namely freedom of inquiry and intellectual growth, government needs to play a greater role in our lives. Dewey carefully avoided spelling out what the role should be. Indeed, that was his whole point: everything depends on where we are at any particular stage in history. At one time, freedom required minimal government involvement; today it requires more, and tomorrow it may need still more. The role of liberalism is a pragmatic one: to keep an eye out for new social demands and needs, then adjust “old habits and old ways of thinking” to accommodate the new. In short, “its task is the mediation of social transitions.”

If we think of moderate Republicanism in this light, it becomes easier to see why it drifts toward the Democratic agenda. Moderates are convinced that the Democrats are in tune with the cultural-moral *zeitgeist*, and it is *their* job, the job of Republican moderates, to bring their party into a similar adjustment. Indeed, even on economic issues, despite their ritual assurance that they are “fiscal conservatives,” they boast of their “pragmatism” and “flexibility.” Speaking of his fellow moderates, Senator John Chaffee says, “they’re not ideologues. For someone to say, ‘Oh, that’s socialized medicine’—they think that’s nonsense. They say, ‘Let’s see if it’s a good program.’” On fiscal matters, then, as well as on abortion and the other moral issues, the moderates drift toward Democratic positions. Right now, Republican moderates in Congress are resisting their own leadership’s call for a ten percent tax cut while demanding more spending on education, the environment, and other social programs. They *have* to act that way, because they believe that they have an important role to play. Their role is to mediate social transitions, serving as a linkage between Democrats and the less-progressive elements of their own party.

What they don’t understand is that the Democratic Party is itself drifting into unknown waters. If you told a group of Democratic activists in, say,

1960 that by the end of the century, their party would be moving toward gay marriage, euthanasia, and nationally-subsidized abortion, you'd be considered a lunatic. It would take us far afield to review the developments that brought the Democrats to this pass. Suffice it that the Democrats have undergone a sea change since 1960. The people now driving the party do not come from its traditional base of working-class Catholics and white Southerners but from business and professional elites and the academic community. In some respects (with the exception of blacks) its constituencies are not much different from those of liberal Republicans, which is one reason they get along so well. There are still pro-lifers and other social conservatives in the party, but they are kept under control, and, when necessary, muzzled. No big tent for the Democrats.

What attracts Republican moderates is the public *face* of the Democratic Party. "Why can't we all just get along?" The tearful question of Rodney King, the drunken motorist whose beating by Los Angeles police culminated in a race riot, has become a staple of Democratic rhetoric. In a recent *60 Minutes II* interview, President Clinton explained the Kosovo crisis as just another illustration, along with Northern Ireland and Rwanda, of why people have to learn to get along. Tolerance, dialogue, diversity: these are the watchwords of the Democrats, and liberal Republicans are quick to shout, "me too!" It fits their ethos of individual choice.

But behind the face of diversity, the people who supply the ideas for the Democratic Party have a different mindset. In matters of social morality ("social justice") they have firm views of right and wrong, limited patience with people who disagree, and a concept of the state expansive and powerful enough to make *their* views prevail. This is not to suggest that there is some inner group of conspirators within the party trying to hide their real intentions. Not at all; the outer face and the inner core are logically related. For example, if we really want people to "get along," don't we need hate-crime laws, and maybe even laws against hate speech? If public acceptance of homosexual behavior is a major goal, won't we need special programs and textbooks in schools, and of course more laws? If freedom to choose abortion is a basic human right, don't we need a national program of taxpayer-funded abortions? And new clinics for underserved areas, and more trained abortion doctors, and more requirements for medical schools? Even the decision now described as the most "deeply personal," the decision to end one's life, has coercive implications once it becomes a "right." As is apparent now in the Netherlands, physician-assisted suicide tends by its own logic to grow into state-sanctioned euthanasia, in which "defective" children and

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old people are put to death. And why should these decisions be left to individual doctors? The Dutch have already begun establishing a state board to decide whose lives are worthy of life. America may never arrive at that point, but the most progressive Democratic cadres have set out in its direction. We have begun to see the first signs of party-line votes in Congress on assisted-suicide, just as we have seen them on abortion over the past quarter-century. The Democratic Party, the party of compassion and concern, is sailing into darkness.

Liberal Republicans, like those who met last February in Miami, follow in its wake, not because they have charted the same course as Democratic ideologues, but because they have no charts. What mesmerizes them is the appearance of diversity and tolerance in the Democratic Party. They ask: Why can't our party be more like that? So they follow, at a respectable distance—a moderate distance—and they fret over the reactionary elements in their party who would hold them back. But where are they heading? The question is not relevant. They have no fixed compass-points, only a determination to keep adjusting their party to the tide of progress. When to stop? There is no stopping because, as Dewey said of liberalism, "there is always an adjustment to be made."



“Honey, I shrunk the President”⁹⁹

Ellen Wilson Fielding

I was twelve years old in 1968, the great bleeding year of that decade. My mother and father subscribed to *Life* and *Look* magazines, and my mind still turns to freeze-frame shots when I want to conjure up pictures of the great public upheavals—riots, assassinations, demonstrations, war atrocities, SDS bombings—of those years. Full-color, dramatically rivetting examples of award-winning photography, they burned into my brain images more powerful than the photos of rock groups and aspirants to the White House and artists with *outré* painting techniques that filled out each issue.

Though I cannot overlook the nightly film footage entirely. My small child’s eyes, for example, took in the brief shots of the Buddhist monks who had doused themselves with gasoline and then ignited themselves as living torches in protest against—President Diem’s?—regime in the early 60s. A year or two later I recall references on the evening news to President Johnson’s “credibility gap,” which I assumed must have something to do with money—“credibility” being confused in my mind with “credit.”

What more dignified, solemn and serious times the 60s started out being, to be sure, when one network could choose theme music from Beethoven for its evening news program. I remember hearing it issue from our black and white TV while I whirled around the livingroom floor in that child’s game of trying to make myself dizzy. Then I would stop, suddenly, and stagger to keep my balance as the room seemed to spin around me—not a bad metaphor for the years to come.

The awe-inspiring quality of public life collapsed under the weight of the first wave of adolescent Baby Boomers. The grown-up quality of Ed Sullivan could no longer contain the uncontrolled energy of hormonally charged children like the Rolling Stones, the Dave Clark Five, the curiously attired Paul Revere and the Raiders, and by far the most talented of the lot, the Beatles.

This is not an article about the 60s and early 70s and their influence upon us. It is a brief effort to trace how the sacredness of public symbols may be undermined and debased by public actions and reactions.

I was no rebel, no revolutionary. I steered clear of drugs, never made it to Woodstock, didn’t even protest the Vietnam War. I was a little too young for

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most of the early hoopla, and a little too cynical for the Age of Aquarius. The second wave of Baby Boomers, those who entered college as regular classes resumed in the mid-70s, were not in the market for the explosive uprooting of existing institutions, major social engineering, or optimistic utopias featuring open marriage, communal living, the end of pesticides or the commandeering of commercial jets to fly to Cuba.

Yet Vietnam and the local violence and then, almost anticlimactically, Watergate, left scars on our understanding of the great American experiment of democratic-ordered liberty. The America of relentless progress unfolded by the history books (even the cataclysmic Civil War seeming retrospectively inevitable in its emancipatory effects) appeared suddenly much more precarious and contingent. Many even among the non-radical majority were markedly more tentative and doubtful about what seemed somewhat fulsome displays of patriotism and uncritical flag-waving by an older generation that was generous and had sacrificed much, and saw in America its own admirable reflection.

Even most young supporters of a Vietnam free of communism shared a certain angle of vision with opponents of the war, though we wanted no part of their posters indicting “Amerika” and their chants of “Hey, hey, LBJ, how many kids did you kill today?” This was particularly the case after Watergate and the events building up to Nixon’s resignation—yes, and the fall of Saigon and the panicked passengers crowding onto the last American helicopters leaving the overrun capital, and the boat people—those who made it—ending up in refugee camps in Thailand, from which they would work whatever American contacts they could come up with.

These civic doubts were especially roused after the still unhealed wound of the 1973 legalization of abortion. That started as an exercise in “raw judicial power,” but as the years went by it became clear that, no matter how optimistically the polls were interpreted, the continuation of legalized abortion was not solely the result of judicial fiat. A sizable minority stood against reversal of *Roe*, and perhaps the largest group of all chose not to get too agitated about the subject.

I was eighteen in 1974, when Nixon was caught out in his lies to the American public by the discovery of the tapes. The League of Women Voters came to our school that spring to register voters. That was the year of the great Watergate-spawned revulsion against the Republican Party, and I could not stomach being a member of it. New York State, whose politics more closely resemble European coalition politics than those of any other state, offered Liberal and Conservative parties on the ballot also (the Right to Life Party would soon follow). I signed on with the (comparatively) pure

Conservatives. It took the better part of a decade before I could reconcile myself to the Republican Party.

These are things I think about—going back twenty-five and thirty years in time—fingering my memories and meditating on their significance, when I listen in on the debates over the effect of Clinton's misbehavior and public temporizing. Many opponents of Clinton have argued that young people (and adults) will draw bad lessons from Clinton's impeachment trial—the lesson that sex is a minor matter that should have few repercussions outside the private realm, that perjury may go unpunished, that lying (if the excuse is that you are trying to escape embarrassment) is O.K. They worry about the effects of the Clinton affair on public and private morality. I myself foresee few effects in that sense, because, like some of the Clinton defenders, I think that most children's consciences are formed closer to home, by parents and teachers and youth group leaders and people specifically held up for emulation by these authority figures.

But this is not particularly optimistic news, since the poll numbers throughout the impeachment hearings and trial showed that about two-thirds of these parents, teachers and other local role models believed Clinton should not be removed from office for his public wrongdoing—committing perjury and attempting to obstruct justice. This is the significant after-effect of the Clinton scandal—not that it has coarsened moral sensibilities or rubbed smooth the obstinate bumps and protuberances of the human conscience, but that it has exposed our pre-existing willingness to ignore and overlook and explain away evil when we find it convenient.

If this is true, William Bennett has overemphasized Clinton's role in the moral dumbing down of America. Americans have spent a full generation acquiring the knack of accommodating children cohabiting with their lovers (even on visits to Mom and Dad!); daughters choosing the *Roe*-sanctioned violent solution to an unexpected pregnancy; sons being absorbed into a homosexual lifestyle; the coarsening of public—and collaterally private—discourse; and the insistence that we treat all of these as normal and “adult” (in the non-pornographic sense) behavior. In short, the same tolerance we were taught for homosexuals necking on a park bench and the unmarried couple cohabiting in the apartment next to us and our friend Bob marrying the woman he had an adulterous affair with after his wife found out and divorced him—the same tolerance laid the groundwork for Clinton's acquittal, applauded by a majority of magnanimously tolerant Americans.

But something else permitted Clinton to hang on also, something not fully detected by commentators who could still talk of the “majesty” and “mystique”

of the Presidency. The truth is that much of the majesty and mystique of the presidency evaporated long ago, along with much of the publicly inculcated reverence for other icons of democracy, whether flags or institutions like the armed forces or historical figures like Lincoln, Jefferson and Washington. The older generation—the Depression and World War II generation—still feels this reverence viscerally, and Baby Boomers and perhaps Generation Xers feel a vestigial reverence for this or that historical figure (Rosa Parks, say, or Martin Luther King. It is interesting how many of these still-sacred figures are black, because they were untouched by the corrosive demythologizing of the icons of the status quo in the 60s.).

But by and large, we are like pagans in the waning centuries of the Roman Empire—the gods have left the sacred groves, the vestal virgins tend a fire whose smoke rises up to nothingness. “Nothing is sacred.” We say this facetiously, sometimes in praise of our daring refusal to be put off from challenging the reputations of the powerful, sometimes as mere observation, sometimes in passing dismay because our particular sacred cow has been gored, but it is true of nonreligious objects of veneration, too. Courts and legislatures, mayors and governors, cabinets and presidents have all shared in this shrinking or devaluing process (“Honey, I shrunk the president”). The Clinton scandals perhaps hastened the process by calling attention to it (“Look, the Emperor has no clothes!”), but it was already going on, like the demystification of the British Royal Family.

Which is a good point, because it directs us to the cause of all this stripping away of the sacred. It has been a good many centuries since many people thought seriously about the divine right of kings—the doctrine that kings ruled with divine authority, in the place of God—somehow, a bit like the pope in the spiritual realm only without any promise of infallibility. The afterglow that haloed royal families endured for several centuries, even though the democratic legislative bodies were preeminent. In our own day it has so dimmed that even such a popular royal figure as the late Princess Diana could achieve only the same level of celebrity status as other pretty, rich, somewhat exhibitionistic figures like actors and rock stars. (Remember that as late as the early 1700s Samuel Johnson, then a small child, was taken to receive the king’s healing touch for a scrofulous skin complaint.)

But what succeeded the divine right of kings? Did we go straight to the ironical attitude towards all honors and persons of privilege common today?

No. First we replaced it with the divine right of the people, most legitimately protected and enthroned in democracies. Washington, D.C.—and many state capitals scattered across the U.S.—built shrines to representative

democracy and to democratic heroes in the neoclassical style reminiscent of the great Greek and Roman temples and monuments.

It is not that political parties and candidates were not vilified by the press and subjected to private scorn. Some of the language used in an older era of newspapers about congressmen and presidents is astoundingly blunt and disrespectful. But the public attitude toward the *institutions* of government and to the founding documents of our democracy was straightforwardly reverent.

On the Fourth of July, the centerpiece of celebrations in small towns all across America was once a public recitation, in town square or on the village green, of the Declaration of Independence. Students memorized chunks of the Declaration and the Constitution, as well as the Gettysburg Address, parts of Lincoln's Second Inaugural, and other national sacred scriptures. (This coincided with the widespread memorization of large chunks of the Bible, and the comparison is hard to miss.)

And why not? Democracy was the secular equivalent of religion, the God-ordained way of establishing divinely-intended rights and liberties. Protestants in particular drew a connection between private interpretation of scripture and the right to vote, and that was one reason why they doubted the democratic qualifications of those heretical, lock-step Catholic immigrants of the mid-to-late 1800s.

America's hallowed documents are still hermetically sealed behind bulletproof glass in the National Archive Building. But to recall these sacred secular texts is to be confronted with how much less sacredly they are treated today. Yes, tourists foreign and domestic still troop past them, and they also spell out the quotations from Jefferson and Lincoln carved into the walls of the Lincoln Memorial and the Jefferson Monument. (People of the Book, we have focused on the written word.) But they are seldom memorized in school, hung up on modern walls, declaimed on public holidays.

Take the example of the Constitution. Where once all students began by memorizing and analyzing the Preamble, which discusses the purposes and significance of our government, most young people nowadays find their classes focusing on the Bill of Rights. Certainly our rights are not only worth litigating for, but worth dying for. They are also, we might say, the most self-centered part of the Constitution—especially when they are detached from the Declaration of Independence, which explains the basis for our rights (“the laws of nature and of nature's God”). Studying the Declaration, the Constitution, the Federalist Papers, and some of the important speeches and papers of our Founding Fathers can prepare us for self-government, and educate us about the benefits and limitations of that “worst of all possible forms of government, except every other,” as Churchill put it.

Studying the Bill of Rights in relative isolation is more likely to prepare us for filing class action suits.

“None of today’s children wish to be President someday,” lamented one TV political commentator. Yet I can’t remember a time when most children, or even most high achievers, *did*. The President may be (as Washington D.C. people put it) “the most powerful person on the planet” (though I have doubts about this), but there are a great many other forms of extravagant fame, influence, success or self-fulfillment. Political people will gravitate to politics. Running for office is a difficult and unpleasant and in some ways demeaning process (see Dickens’ description of a political rally in *The Pickwick Papers* to realize that it has never been a *dignified* process), but I do not think that the mass of people in office nowadays are more venal than their predecessors—or their constituents. More vain than their constituents—yes; more talkative—yes; more attracted by power—probably. But more venal—no.

Yet to take apart the political mechanism this way and search for missing or damaged parts shows that the whole is more than the sum of its parts, and depends upon more than mere arranging. American politics today reminds me a little of those third-world countries that used to emerge from colonialism by borrowing heavily from proven Western Constitutions, turning the machine of state on, and then expecting to transmogrify into the American Congress or British Parliament just because they had followed the principles of one man, one vote and *Robert’s Rules of Order*.

No, the reverence given to the democratic idea derives from its origins, its explicit intention of defending rights divinely ordained, and not in its diagrams delineating the separation of powers. When the former is gone, the latter is lifeless, uninteresting. When we are doubtful about the place of God, natural law and natural right in all of this, then we encourage people to pursue their own private interests in a much less self-conscious, much more unlimited, way. The restraining influence of *pietas*, and a wholesome fear of the Lord is then lacking.

That is also what happens to the oath once its attachment to God is loosened. A promise made before God, “as God is my witness,” is a much different thing from the more half-hearted affirmations we routinely make to one another—“Honey, I’ll try to get home for dinner tonight,” “Sweetie, I’ll see if I can make your ballet recital.” We see the difference ourselves. So did Americans of earlier generations, which is why, once in a great while, for important state occasions (inaugurations) or judicial ones (courtroom oaths) or civil ones (weddings), something extra was required to solemnify the act

and—so to speak—nail it down. One special witness was called for, in addition to the court clerk or the maid of honor, to witness to a solemn binding promise, and that witness was God.

Our Founders, in their desperate gamble for independence, bound themselves to their great enterprise, “mutually pledging our lives, our fortunes, and our sacred honor.” But why sacred? Who is the other addressee of the Declaration, the intended audience besides the King and parliament in London and the anxious colonists here in the New World? None other than God, to whom the Founders appeal in basing their claim to their rights on “the laws of nature and of nature’s God.”

The ACLU notwithstanding, God is still there in the courtroom Bible, and the Supreme Court Justice administering the presidential oath of office, and the opening prayers in Congress. But how far have the sense of the sacred and the momentous disappeared from our experience of America? And this is not because of Clinton; it is merely a fact thrown into sharper relief because of the impeachment spectacle we have just lived through.

Let’s look at that arena of American life which we would expect to find permeated with awe and a sense of the sacred: the typical American church service. How many of these, whether Protestant or Catholic or Jewish, are still straightforward expressions of adoration of an almighty God? How often do sermons help us appreciate the sublimity, the *awesomeness* (in the original sense of the word) of God? Instead, how many seem to reduce God to someone with the genial intentions of a favorite golfing buddy?

The sense of sacred places, sacred words, sacred oaths, “sacred honor”—the *pietas* that propelled Aeneas across his known world to Rome, the “duty, honor, country” that fed old soldiers, these are evanescent as surely and insensibly as a morning mist. After a time we look around and see nothing but sunshine, normality, the everyday, the routine.

When some Americans listen to patriotic songs now, they find them inspiring, yes, but also a bit overwrought, a bit unrealistic. “Who more than self, their country loved/And freedom more than life”—wonderful stuff, but that kind of thing could land you in a Civil War charge or a World War II trench if you aren’t careful.

There is a thickness, a depth to life, that life—sapped of the sacred—loses, leaving us, in Milan Kundera’s phrase, with a sense of the “unbearable lightness of being.” Those who retain a sense of the sacredness of life, ritual, man’s assigned dominion over nature and man’s political dominion over man, understand that any legitimate government partakes of this thickness, this sense that more may be here than meets the eye—and that “more”

may have something to do with God and His providential plans, His awe-inspiring presence, His life-generating power.

So the sacredness of human life is in danger, when our other sacred places—altar, judgment seat and the rest—no longer give off that sense of the sacred. Sacred causes, sacred honor, sacred trust—These are archaic phrases, more suited to Sir Walter Scott than to people gazing over the bridge to the 21st century.

Where does that leave us? It deposits us in the same seemingly dead end that all the wars, horrors and cataclysms of this century have dumped us into. It would seem that these proofs of human capacity to go astray would throw us back, in sheer desperation, onto Transcendent Goodness. For a number of people, especially those on the front lines of human evil, under fascism or communism or cruel dictatorships, it has done so. But for many, many others, especially those in the Western democracies, who have been fortunate enough to be mere bystanders rubbernecking their way past those wrecked by the century's ultimate horrors, the effects have been far more disappointing.

Two non-religious reactions to human evil—whether imposed by tyranny or voted in democratically or mindlessly entered into like a lynch mob—stand out. One is a kind of despair that recognizes no authority, no transcendent Judge to appeal to, reasoning that any just Judge would have intervened dramatically long ago. These are people for whom the problem of evil has stymied all gropings toward conceptions of a good God and an ultimate justice to which one may appeal. The other, peculiarly Western and even more peculiarly American, is the optimistic voice of the man tinkering for long hours with a balky car engine or an obstinately misbehaving computer: "I can fix this, let me try another idea, give me a minute." It perceives historical catastrophes and catalogues of human horrors as mistakes arising from incorrect reasoning about means and ends. Fine tuning the mechanics of government here and there—or the economy or the educational system—will curb and control the destructive impulses that have caused us so much trouble.

Between the despairers and those presumptuously confident of their own capabilities to correct and rejuvenate the culture, the ranks of those willing to bend the knee or rise in the presence of anyone and anything over and above themselves are greatly depleted. Even many religious people today place as much trust in medical science, free enterprise and human ingenuity as they do in their Creator—hence the confusion of millennial apocalyptic expectations with secular forecasts of Y2K disaster.

It is not that we should place no trust in the results of human reason and ingenuity: the believer has an especially firm basis for trust in reason, since he does not posit an accidental or nonsensical universe. But the faith

many people place today in democracy, or the free market, or science and technology, is more exaggerated because more exclusive. The unarticulated bottom line is, "If this doesn't work, what will?" We grab hold of Supreme Court decisions, and election returns, and poll results (and unfortunately accord them roughly similar degrees of authority) because we have no legitimised, agreed-upon standard of appeal by which to judge them.

And yet, daily we work with and live next-door to and bump into all sorts of pleasant, decent-seeming people, engaged in carving out little territories of personal happiness, sacrificing for children, perhaps stretching themselves to care for elderly parents. How bad can things really be? Has Paul Weyrich's Moral Majority really proved itself a mirage, or diminished into a politically impotent minority?

So many people and publications have been arguing this back and forth during the past year, and in weariness and frustration it becomes tempting to throw up our hands and say, "Who knows whether we're better or worse or the same?"

And yet. And yet each day brings another story, another piece of evidence, another splintered piece of wood washed ashore from the wreck of what we used to be.

On March 12th, the *Wall Street Journal* ran an op-ed piece by Lorena Rodrigues Bottum (see *Appendix F*), a young mother living in Washington, D.C. She writes about a playground conversation among young middle-class mothers: stay-at-home, volunteer-at-school moms, whose husbands are Washington professionals making good incomes. One of them casually mentions that her preparations for a major overseas move were suddenly complicated when she thought (mistakenly as it turned out) that she might be pregnant: "I thought to myself, 'Oh, no, not another abortion!'"

Another woman then chipped in with her own abortion-for-convenience story: "'Oh, I know,' said the other. 'It's so expensive, and you feel sick for days afterwards.'" Each case is presented not as a great trauma or trial of conscience but as simply an unpleasant necessity to continue life-as-they-know-it. I begin to better understand those "understanding" parents of middle-class teens who have dumped their new-borns. At least, I see that they are not anomalies. God must have had in mind a society much like ours when he inspired Isaiah with these words that convey a divine consolation in the very act of acknowledging the disquieting undependability of human beings:

"Can a mother forget her sucking child,
that she should have no compassion on the son of her womb?
Even if she should forget,
yet I will not forget you." (Isaiah 49:15)

Virtual Healing

Kathryn Jean Lopez

“The outside world has no idea, they see us as ‘selfish’ women, who just happily waltzed off to an abortion clinic, and they just have no idea of what we really went through, and what we continue to go through.” So writes 35-year-old Jill in a post on her Post Abortion Stress Syndrome (PASS) Support and Research Page; she is responding to a woman, who—like most who “gather” at her web site—feels, in the wake of an abortion, as though she is alone.

Far from a god-send, the post-*Roe v. Wade* world has not been kind to women. “The freedom of choice has twisted into something that is hurting women, instead of helping them,” one girl recovering from an abortion told me recently in an Internet chat room. In 1994, the unabashedly pro-choice *Glamour* magazine surveyed some 3,000 women who had undergone abortions. Overwhelmingly, respondents said that if prior to the procedure they’d had any idea of how deeply they would come to regret it, they would have never gone through with it. For many of these women who are often left alone to suffer the pain of abortion, cyberspace has become a safe haven to share, remember, and grieve—in the days, weeks, months, and in some cases, twenty or more years after they exercise their “reproductive rights.”

Jill’s is the most active of these web sites. A divorced mother of 3, she has had five abortions in the past 18 years, the first of them at age sixteen. “With the first three, whenever I would start to get upset, or think about them too much, I would just shove the pain down, or use alcohol, or overeating, or casual relationships and more casual sex to push away any thoughts that the abortions bothered me,” she recalls in more than one post on her PASS Women’s Support Board, one of six bulletin boards on her site. “I insisted to myself again and again, that I was glad I had that choice, and that my life would have been miserable if I had kept the pregnancies going.”

But after her fifth abortion in February of 1998, she realized that the loving, supportive man she was dating would have made a great father. She looked at her three living children and regretted that the ones she had aborted weren’t with them. She knew she was stuck in some kind of cycle. Thinking “I can’t be the only one who’s feeling like this. I can’t be the only woman out there who’s had an abortion, and felt so upset afterwards,” she decided to put her amateur knowledge of web-site construction to use and create a site designed to “see if other women felt like I did. I was sure they were out

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there, just like me, afraid to speak, or having no one to talk to. And it helps now to know I'm not alone."

Affectionately known as "Jilly," her Post Abortion Stress Syndrome Support and Research Page (www.geocities.com/Athens/Parthenon/1362), is guided by a philosophy often repeated in her online postings: "no matter WHAT the reason, if you are having a hard time with an abortion, you need hugs!" No false advertiser, she warns on her main page that she is not a professional and advises that her site not be the only source for an individual's outreach. Ideally, she tells me, women should "have a one-on-one counselor, in addition to the online stuff." (And she means it. When one regular visitor to her site, in private e-mails, recently sounded suicidal, Jill intervened, coaxing her counselor's phone number out of her.)

In her role as part-time counselor, or "goddess" to some lonely women, as one regular teases during a chat session, Jilly leaves no posting without a response. Jilly advises one sister-in-mourning: "I know it FEELS like if you get pregnant again, it will take away all that pain from the abortion. But the truth is, it won't. You will love, and enjoy, and be kept busy all the time by the new baby, but the PASS will still be there, and will be sneaking up on you and knocking your feet out from under you more than you realize."

Virtual hugs and healing may be her current project, but Jilly has more elaborate plans for the future. "America has NO RESPECT right now for women, unborn infants, and motherhood." A book, day-care centers, and a lobbying group are all on a rough drawing board. Less than a year into her site, she's already started to build a non-profit group, the PASS Foundation, to assist some of the many women who have fallen victim to abortion in a society that demeans the value of motherhood. Eventually, in addition to educational outreach programs, Jilly envisions her foundation running homes for pregnant women who have nowhere else to turn.

Jilly knows firsthand, and through the experiences of her Internet friends, that "choice" is mostly an illusion, especially for low-income, single women. In one posting Jilly implores pro-life lawmakers to visit her site and boards to "find out the real reasons women are having abortions." As a matter of public policy, she suggests low-cost or free day care, more part-time work in "good fields" for moms, better housing assistance for mothers of small children. "Having a child does change your life, but it shouldn't have to financially devastate you, or force you to lose your job, drop out of college, things like that."

Nor is there enough respect for women to warn them in advance that abortion isn't really the "no big deal" everyone makes it out to be. Jilly knows from her own Internet research (and experience), that honesty about post-abortion

pain is too often foreign to those who call themselves pro-choice. An e-mail she sent to NARRAL requesting information about post-abortion stress syndrome came back with a less than useful reply: "We are not familiar with the term Post Abortion Syndrome in any context other than what we have seen in the literature of anti-choice organizations." From the California Abortion Rights Action League, she received a similar answer: "I am unaware of the syndrome you mentioned and so do not know of any web sites."

For a group of women, the minority of whom are pro-life, Jilly's girls express a natural animosity toward the pro-choice party line, as comments on a recent series of print ads from the National Abortion Access Project demonstrate. "Will abortion services be there when you need them?" asks a woman in one advertisement. An attractive young woman discloses: "When I got pregnant, my best friend said I should 'pay the price' and have the baby. But I knew that abortion was the responsible choice for me."

Posting a wire story about the ads on her site, Jilly is outraged: "[It's] the pro-choice attitude that the ad shows, saying that the woman's friend says she should 'Pay the price' and have the baby!! AS IF!! That just burns me up, that they are looking at women, and motherhood, and pregnancy and having a baby as a PRICE!!!!!!"

Knowing better, an abortion provider is the last place any of these women would expect empathy. As their post tells, ill-treatment at abortion clinics is a common experience. One woman tells the story of going to a clinic for a pregnancy test. After taking her urine sample, a clinic worker approached her and said: "We got your test here, and you are pregnant." The worst of the shock was that the next sentence was, "When do you want to schedule the abortion?" I was horrified, and I left in tears. Devastated, she continued the story, with a sincere, somewhat obligatory, defense of the clinic:

Now, that statement was spoken to me by a woman who had fought an extremely difficult and dangerous battle to get the clinic I was sitting in open and functioning. It was a feminist endeavor of the most practical sort. But I believe that the struggle had created the paranoia that said if we let the Right know that one woman might choose to NOT have an abortion then all our work will fall apart.

Pro-lifers shouldn't expect Jilly's girls to join them outside abortion clinics anytime soon. Even given the unsympathetic alternative, pro-lifers don't score many points with this crowd. Those people "who scream to us on the way into the clinic" don't seem particularly welcoming. One woman asked me, "Do you really think any of us were happy about being there?" Twenty-seven-year-old Jen won't go near pro-life counselors, having given one a try early on; she was left only more hurt when, she says, the woman "threw a Bible at me," focusing on her sin, seemingly ignoring her pain.

“Really, I am pro-life in my heart, and pro-choice in my head” Jilly tells me. “I would love to see abortion used only for medical complications, or for the few cases of women who truly want no part of pregnancy, childbirth, children or adoption. But right now, I have no faith in the government to produce the necessary safety nets that women would need.” Jen, who otherwise seems suspicious of anyone or anything pro-life, tells me, as if I asked a no-brainer, “obviously it is a life. . . . if we had done nothing, we would have children.” Although the PASS site strives to be, necessarily, apolitical (“the part about my site that is different,” Jilly says, “is that women can come, and regret their abortions, but don’t necessarily have to examine the issue of abortion and whether it should be legal or not”), the women can’t help what’s in their hearts. During an online chat session, a couple of the regulars tell me they would never have had the abortions if they felt they *really* had a choice. In fact, many of these women would most like to be home taking care of their children—*all* of them. Writes one, “I always wanted to be a stay-home mom, but could not afford it . . . and it still upsets me.”

Although church-sponsored post-abortion counseling isn’t particularly popular among Jilly’s crowd, there’s no aversion to spirituality. Heaven is a common topic on her bulletin boards and the majority of post-ers commonly refer to their aborted children as angels. Jilly writes: “I like to think that when I die, I’ll get to see my baby again.” Comparing her vision of the afterlife to Kate Winslet’s character in the movie *Titanic*, she imagines: “I think that if I can be strong, and brave, if I make the most out of what I do have here, that I’ll have the chance for my Heaven, like Rose had hers. And my Heaven will be to have my baby, hold her in my arms, and watch her grow. I hope that the life and times that I was cheated out of with her here on earth, I’ll get up there.”

An initial step in the grieving process—a prominent element of Jilly’s and a usual component of most post-abortion sites—is mothers memorializing the lives they’ve lost. An anonymous Christmas-time posting on Jilly’s support board is typical:

My Dearest Evan,

If only I could have that second chance to make everything ok. To make everything different. To fix my mistakes. To hold you in my arms and look into your sweet face. I long just to kiss your sweet face. I long just to kiss you and tell you how much I love you. I love you more than life itself. I would give my life just so you could have yours back and live the happy life that you deserve. But I was not strong enough for you and I failed at the most important job in the world—being your mother and protecting you from harm. I wanted you more than anything but allowed others to pressure me into making the worst decision of my life. I was scared and thought I

KATHRYN JEAN LOPEZ

couldn't support you by myself. I was afraid to tell anyone else or ask for other people's help because your Dad and I were not married and I thought others would look down and criticize me. I now realize that none of that seems so important—not as important as having you in my life. I am in such pain and think of you every single day. I kept thinking that as time went by, I would feel less and less hurt, but that is not happening. I kept searching for an answer or reason as to why I did what I did to you, but there is no answer and there is no reason. I just tried to run away from my problems at the time and in turn, that cost you your life.

I am so sorry and I am trying my hardest to change. I am a different person now Evan. A stronger and better person but definitely not the same person. When they took you from me on March 20th, they took away a part of my heart and soul that can never be replaced. You will always carry a piece of my heart and of my soul with you. Please don't ever let go. Hold on to it tight and know that you will always be Mommy's first and only Angel. I am so very sorry and am trying so hard to learn how to forgive myself. I hope that someday, both you and God will forgive me as well. I know that you are safe and at peace in heaven in God's arms. Until we meet someday . . . Goodbye and never forget that I love you with all of my heart, my sweet angel baby, Evan . . .

All my love,
Mommy

Other women, like Kay, are more representative of those who tend to call post-abortion healing groups like Project Rachel, usually at least ten years after their abortions, once they've worked up the courage to address their pain—or admit their mistakes.

Ten years ago today, I had an abortion. 1988. I was in high school, seems like so long ago but then again, like it was yesterday. I am sad when I think of what I did ten years ago, yet I do not regret the choice. Do you know what I mean? I just came here today on Thanksgiving Day to pay some tribute to the little spirit that is not here, a sacrifice I made when I was only 16.

A friend of mine told me about this place. I like it. Gosh, I wish it had been here a few years after my abortion when I was going through all of those feelings. I feel more settled with my choice and my life now. I hope you all do too someday, if not now. I spent many years in regret but my life has turned out good in the end.

Peace, Kay

Jilly's pages, although among the most populated, are not alone in cyberspace. Some of the more professional sites, which are less active, are maintained by pro-life groups. Common are those run by pro-life women who have gone through the healing process themselves, seeking to help others work through their grief. Included on one such site (<http://gargaro.com/regrets.html>), in a section called "Abortion—and the Regrets," is a particularly gruesome story, sent in, unsolicited, by e-mail. From "Michelle" upon learning, at age 16, that she was pregnant:

I stood on my bed, and removed my curtain rods. I broke off the end and laid on my

bed, and with no hesitance at all, I killed my baby, and almost myself. . . . [after 11 days hospitalization] I went on with life as usual. . . . seemed very proud of myself, it was cheap and quick and got the job done. . . . in less than one year I was pregnant again. By this time I knew what to do . . . It was \$350 and I would be put to sleep, and this wonderful “God-sent” Doctor would make me unpregnant! The abortion was legal and much safer than my first. I went home, had some cramping, nausea, and some bleeding and within 3 days I was again telling my friends about the wonderful “gift” of abortion.

[After four abortions in less than three years she began drinking and began using illegal drugs, becoming addicted to crack.] Drugs took away the reality and the pain of what I had done. I became very involved in spreading the pro-choice message to whomever I could and, really felt there were no regrets. . . . [It was in drug therapy that the truth came out.] Abortion is an option to a life of Hell only! ! ! There are other ways, I only wish that little girl with her heart so heavy and scared that night 11 years ago, could have had a peek into her future, just a small peek and what a different choice she would have made.

Other sites, however, are more denial-fests than occasions for healing. At “A Heartbreaking Choice” page (www.erichad.com/ahc/ahc3.htm), there is more justification rhetoric than memorializing, grieving, and forgiving. At times, it seems less a “healing” aid than a tribute to “courageous” women who chose termination and a testament to “the grey area” of abortion. “Cody’s Mom” offers a typical posting:

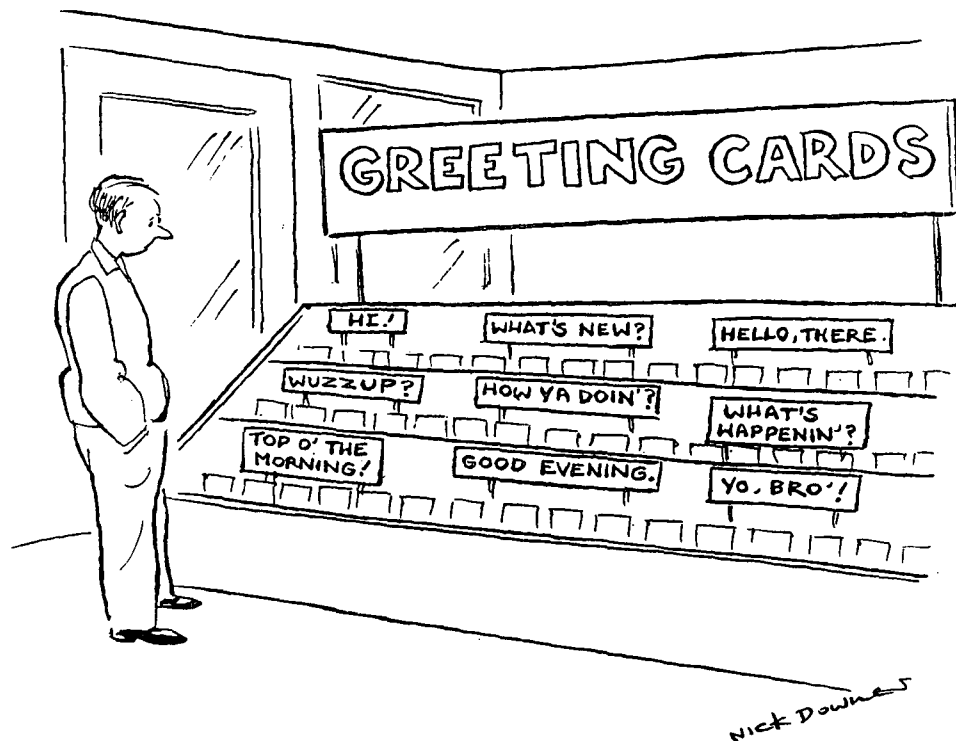
I had to choose to end my child’s life. I have never regretted my decision, but I never had anyone that I could share my feelings with who knew exactly what those feelings were. . . . I think the most misunderstood thing surrounding termination is that we chose to terminate the pregnancy because we loved our children so much that we couldn’t stand to have them live a life of pain and suffering. I am so often told that I took the “easy way out.” I couldn’t disagree more. The easy way would have been to have Cody.

Over a decade after Surgeon General C. Everett Koop told President Reagan that there was insufficient research to determine whether post-abortion stress syndrome could be considered a national health problem, acknowledgement of the reality of post-abortion emotional pain is gradually becoming more mainstream. “Something’s shifted in terms of consciousness,” observes Project Rachel’s founder, Vicki Thorn. They get three to four hundred calls a month, she says, and, increasingly, they are calls from a relatively new group: “We are getting a real influx of women who’ve just had abortions.”

Still, not everyone—certainly not the abortion industry—“gets it.” In such a climate, “cyberspace can serve a viable function” for women with this “major issue of pain in their lives,” observes David Reardon, author of *Aborted Women: Silent No More* and director of the Elliot Institute, a non-profit educational group focusing on abortion’s aftermath. An overwhelmingly

shame-based group of women, they often feel as if there is nowhere to turn. They avoid pro-lifers for fear of condemnation, and think that many pro-choicers just don't want to understand, leaving them feeling like "oddballs." While, Reardon says, the Internet will never "substitute totally for human contact" it can provide some women a rare, "safe environment," where "grief can be authenticated" and women can share and begin "to decompress." "Still, there's reason for caution in a non-concrete medium, where you just don't know who you are contacting," cautions Project Rachel's Vicki Thorn.

Whether sites like Jilly's will serve as a seismic catalyst toward making post-abortion healing a mainstream concern, or are merely a symptom of a trend already in progress, her "regulars" will testify to the blessing that the safety of her virtual support group has been in their lives. With over 14,000 hits to her main page and over 12,000 to her support board since June 1998, Jilly's site seems to serve her short-term goal, a community subject to pop up in search results when a grieving woman most needs it—"one of the many more of us out there, who are just silent, because there are very few places where you can say, 'Hey, I had an abortion, I don't think it was the wrong thing at the time, but I am MISERABLE.'"



See No Evil

Diane G. Fisher

Anne, an office-worker in her thirties, gives her three-year-old daughter one last hug before she hops in her car. It is early, and other sleepy children are being ushered in to the day-care center by rushed parents, traffic is picking up as the sun rises. Anne likes her job but she has been questioning whether it's all "worth it." She has a nagging feeling that she and her daughter are missing out on something. But everyone she knows works, her husband expects her to work, her boss is unenthused about halftime and her daughter's teachers insist the child is doing "great." Anne likes her job, but her real passion in life is that daughter she just dropped off. She just can't seem to get it right. On the radio that morning, the announcer is talking about a new study, the same one she glanced at in the morning paper. The headlines say that her working won't hurt her daughter . . . that she really shouldn't *worry*. The study says the children who were away from Mom all day did just fine. She thinks, "maybe my worries are just me."

This study of working parents was published in the March issue of *Developmental Psychology*. The press based much of their story on the press release sent by the American Psychological Association (hardly an apolitical group) announcing "New longitudinal study finds that having a working mother does no significant harm to children" (Public Affairs office, 2/18/99). The story was picked up by ecstatic media all over the country ("Maternal Employment Does No Harm, Study Says," "Mother's Employment Works for Children"). Before the blaring headlines hit, neither the author, or the press, or the APA saw fit to make clear to mothers such as Anne that the study had little to do with them and their children. Critics pointed out later that the mothers in this study were way below average in terms of income and intelligence, and were disproportionately single, "minority" and young. In addition, these were self-reporting, poll-style answers. Both the author and the press were silent about the serious limitations of interpreting such measures, even though the conclusions proposed to the public were sweeping: that there was "no difference" between children whose mothers worked and those whose mothers stayed at home. Issues such as compassion, ethics, moral development, and love of life—none of these made the "no difference" radar screen.

Diane Fisher, a mother of three, is a clinical psychologist and political talk-show commentator on local radio in Cincinnati. She's also a member of the advisory boards of the Independent Women's Forum and Mother's at Home, serving as a policy consultant for women's and children's issues.

We are all tired of polls, of spinning data for political aims, and of the endless working-mother battle. Why do we care, anyway, whether women choose to work or not? Isn't it their business? It would be if it were only a family's decision. But the day-care issue has become part of the culture war—making full-time child-care the norm has become a massive political and industry effort—one involving subsidies, caregiver scholarships and aggressive “public-education” campaigns. Policymakers refuse to draw a line between recommendations for welfare and low-functioning families and the rest of the country's parents. Therefore, a middle-class fully-functioning young mother is inundated with messages to leave her child. This “for the children” day-care campaign has serious repercussions. It is no surprise that feminists, big-government and big corporations stand to benefit; but mainstream children suffer.

Who is responsible for these public statements? Imagine a tobacco company releasing a new “medical study” and nicotine-addled journalists responding with uncritical, relieved headlines: “Second-hand smoking dangers a myth!” We'd be cynical and disgusted. We'd expect serious review and potential questioning of the researchers. We'd fear for the policy repercussions of such irresponsible press (i.e. no more no-smoking zones). But we can see no such reservations when it comes to irresponsible statements about day-care.

I come to this issue as a mother and fellow psychologist who has worked with parents and children for many years; I have written and spoken extensively on the day-care issue—from “teach-ins” to Congressional hearings. And I have to admit, I've grown pessimistic about the endless circling debate on day-care. Pro-day-care policy makers insist on portraying the future of child-care as bright—one only limited by dollars for quality and availability. Child-care advocates paint pictures of women “freed up” to work and children pried from stultifying environments to be properly stimulated by waiting day-care “experts.” There is no room in this policy debate for reservations, careful discussions of child development, or deep assessments of parents' needs. Rather, we are treated to spectacles like the gushing White-House summit on day-care. Doubting conservatives are hammered with threats of unfunded welfare and single mothers, or accused of shoving women back into the 50's.

Why the black-or-white type of debate about this? Why can't we do what's best for the child? My belief after several forays onto the day-care battlefield is that a serious understanding of the child-care impasse may first require an understanding of the national epidemic of *denial*.

We have heard pundits describe a new morality: “the ends justify the means.” This requires denial as a lubricant, an anesthesia for the soul. This is

the positive side of denial—it always seems to be cost-free, it reduces pain. If something is uncomfortable, or might hamper one's ability to get from point A to point B, just refuse to acknowledge it exists. A dear friend reflected that the worst consequence of ignoring her husband's affairs was "losing a little piece of yourself." The signs of our diminished state are everywhere—consider the moral confusion that marked the recent impeachment trial. In practicing the new "end justifies the means" paradigm, we have lost many "pieces of ourselves." In deciding that women's rights or fulfillment must always supersede family or marital needs, in deciding freedom and tolerance rightfully eliminated community norms, we have lost something. Denial takes practice, gaining in scope and momentum as one goes along. It starts with looking the other way, "just this once" and ends with a true inability to see inconvenient reality. It is a moral erosion that prevents independent critical thought. We are far down the road.

Day-care is not the only example of our "national epidemic" of denial. Consider our collective years of either outright advocacy for, or confusion about, abortion. The end goal of abortion was to preserve a woman's options, choices, freedom from biological destiny or a traumatic unplanned pregnancy. All of these are real issues, felt deeply and often with anger or desperation by women. But advocates believed that women's freedom had to be protected at all costs, the gender playing-field had to be evened up. Again, the end was portrayed to justify the means. But what *truth* had to be disregarded? —the irrefutable fact of a child's existence.

We started by parsing the word "child," by Clintonesque splitting hairs in discussing "fetuses" and pieces of "tissue." Remember? Somehow, this level of denial was eventually too embarrassing for even the most ardent feminists. We had to admit, rhetorically, that we were in fact choosing a woman's life over an unborn's life. But usually, we'd prefer to say we were "protecting women's right to health-care." Hallmarks of denial: euphemisms and double-speak. This was palatable as long as we continued to practice blindness towards the dumpsters, the pictures, the partial-birth abortions, even women's own experiences of carrying fetuses in their own wombs. We had to forget.

When we have eased ourselves into accepting such tragic but expedient choices, how much will we worry, say, about a six-week-old in an eight-hour day-care center? We are even numb to the words. Try to picture that scene if you can. Or a three-year-old sent to a center in pajamas with a cereal bar at 6 a.m., picked up at 6 p.m.? What, exactly, is wrong with this? We seem unable to grasp it. I interviewed a supervisor of a national day-care

chain about the advisability of full-time day-care for infants (a young woman with a master's degree in early childhood education, but childless). She smilingly told me she would not hesitate to put her own children in day-care, adding a mantra-like sentence, "They all benefit from the socialization." All of them? I pressed, even the newborns? She was unmoved: "They *all* benefit. It's never too early for socialization." Spooky. Ever been in an infant day-care room? What "socialization" could newborns need? Quiet. Rocking. Nursing. Familiar smells and voices and songs. Seeing the world from a beloved hip, or over a trusted shoulder.

Let's be clear: "socialization" psychologically involves broadening one's tolerance of others outside of one's primary attachment object (usually Mom). Not *instead of* one's primary attachment object. And this branching out *is* appropriate in brief doses, beginning at around eighteen months. Find *one* developmental psychologist who believes *infants* need this. In fact, replacing this intense primary attachment with a number of pleasant acquaintances (i.e. caregivers and fellow babies) in an attempt at "socialization" could be a psychological disaster. But then, we'd be focusing on the infant's needs, not the mother's, nor those of the workplace, or day-care industry.

Certainly, there are many sensitive parents struggling to balance it all. Mothers sitting at their desks acutely aware of the day passing without holding their little one. Fathers who pass up promotions. Parents who make anguished choices trying to "make it work." But there are others. A recent "working-mother" article in the Boston *Globe* quoted one full-time mother who drops off her two-and-one-half-year old at Bright Horizons: "I've had no regrets at all!" Another says, "This is the best thing for him without a doubt!" Note the phrasing? It is like the day-care supervisor, the completeness of their statements, the 120% assuredness that tells us something is being shoved aside. It is also symbolized in the euphemistic names used for the centers themselves: "Bright Horizons," "Enchanted Castles" (for an *all-night* center). And these centers do have bright colors, laughing children, fish and hamsters, and smiling caregivers. But they also have naps on mats, lines of cribs, bright fluorescent lights, shift changes and children literally climbing over one another like puppies for one affectionate glance from the caregiver. An endless, structured, line-up-sit-down day from sun-up to sun-down, with little surcease, quiet or tenderness.

Seeing the problem requires open eyes. Sensitivity is high maintenance. When we have given up enough "pieces of ourselves," few can retain the gift of truly seeing our children. In order to achieve the blindness required to peel them out of our arms at sunrise, many of us give up full sight when we

pick up our children at dusk. Denial does not allow light-switch convenience. It does not allow the comfort of darkness one hour, and illumination the next. Tragically, some parents pay by losing touch with the life-forming emotional connection they can offer their children. One mother in *Working Mother* magazine compared herself to the day-care center: "There are rabbits to play with . . . lots of friends and toys and people who love him all day long. On the days when he and I are home together, when he's sick or on snow days, often a trip to the laundry room is the best I can offer for entertainment." What a diminished sense of one's self and the relationship this implies. What an alienation from the potential intimacy parents and children can have. Day-care providers often tell me of parents who hire add-on nannies because they can't handle their children on weekends, or parents who toss off children on Monday mornings with a "Thank God the weekend's over!" attitude. We all know parents who are stressed and miserable trying to work full-time and raise children. So stressed they have no energy to cook, no energy to even set basic family rules such as bedtime. So children eat take-out and fall asleep on the desks at their pre-schools. But we refuse to confront the damage that is being done. We refuse to help even though we are awash in "child advocates." Denial is so much easier.

We humans can brush aside most anything. Mary Cantwell, a professional, divorced working mother, wrote a piece (*Vogue*, Feb. '98) claiming that she never regretted working: she "loved her work" and her children "loved their nannies." Years later, she learned that after she left for the office her daughter "would hide in the closet among my clothes, to sniff the perfume that still clung to them." (Picture this, if you can.) On hearing this, Cantwell had "one heart-sickening moment" of grief, but then moved on. Ah. Sailing away on the cultural good ship "Denial." What about parents who suspect their child is being abused but wait until they can document it on videotape, or the new phenomenon of video monitors at day-care centers. What are we trying to *not* think about? Many of us wonder about troubled children whose problems are revealed only after tragedy. As columnist Kathleen Parker mused ". . . America's children have done everything short of shooting their parents to get their attention. They've stolen, raped, killed, gotten pregnant, died from overdoses. Only China has more red flags." More commonly, we use a kind of magical thinking to pretend that our children exist in a kind of bubble while we are gone: that the real character-building occurs in those few hours between pick-up and the next drop-off time.

Why would loving parents opt for denial in the child-care decision? Consider: author Dana Mack, in her book "Assault on Parenthood," explains

“You can’t put people under insurmountable pressures to disengage themselves from their children and then blame them when they do it.” Media headlines, the psychological profession and child-care industry—even the White House—urge mothers to “join the mainstream” by denying their own wish to bond with their child. Thus the mother-to-be who makes the decision to rely on day-care must, from her first few moments in the maternity ward, psychologically brace herself for separation. A mother in *Working Mother* magazine says, “I always knew this center was where I wanted my child to be . . . when I found out I was pregnant, I called my husband, my mother and the director of the center, in that order.” No waiting to see how she evolves as a mother, what her gut experience is, her intuitive sense of what her infant needs after he is born . . . a baby she has not yet even seen. No, those doors are shut. In this situation, how will her eyes be opened? How will she be willing to see her child’s need for her, or whether the center is really where her child can thrive? Human nature does not work that way. Once a parent has gotten to the point of deciding to return to full-time work, a discussion of whether day-care is “good” is beside the point: the facts are no longer available for consideration. We scan the horizon for affirmation that *everyone* has made the same choice: that’s human nature. We look for the latest poll that tells us “all mothers” have now chosen child-care. We cheer representatives like Hillary Clinton and Donna Shalala, who tell us of a future where all women will work outside the home, where “The Village” will raise the child.

Widespread cultural denial is nothing new. In this time of moral confusion, it is curious that we have such increasing fascination with the Holocaust. The Holocaust Museum in Washington, D.C. has become one of the most visited museums in the country. Thousands of people visit and shake their heads. They read “Never again.” They show their children “just what can happen.” But what are we actually learning? Simply that there are bad people? That racism is evil? Looked at another way, the subtext of the Holocaust story is a cautionary tale of denial, about a country that could drink fine wine, visit art galleries, listen to Wagner with a tear in the eye . . . and yet not see the railroad cars, and the Gestapo, the raids, and the smokestacks. What are we to learn? That good citizens were persuaded to look the other way for “the good of the country.” That the end seemed to justify the means.

I was confronted with my own naïve assumptions during a recent trip to Dachau, the concentration camp outside of Munich. Why did I assume these camps were in isolated areas? The barbed-wire walls and guard towers, the

railroad cars pulling in at night, the dogs, the rifles—why did I think these would have to be *hidden*? They would *have* to be hidden because a decent people would not tolerate them (I thought). But then I saw the camp at Dachau, nestled cheek to jowl within the perimeter of an old village. Old rowhouses just outside the walls, buildings that were most certainly there before the camp was there. One could throw a stone from many village streets over the wall and into the courtyards of that camp. We learned the village was constantly coated with a particularly hard-to-remove ash, from the 24-hour-a-day ovens. It is conceivable that people were not *able to discern* the evil under their noses because of the power of the cultural zeitgeist. People just like us. The camp was hidden. Not physically, but by cultural brainwashing. Just like day-care centers, and abortion clinics.

Could we be similar? People capable of tragic cultural deceptions? Yes. Do humans always awake from denial before great harm is done? Often not. And yet people do change. Our society is awash in denial. But we still have our hearts, our consciences and we know the innocence of our young children. We can, individually, begin to ask “What is best for my child?” and learn to listen to our true experience. It takes courage. In considering full-time child-care, I am always eager to encourage parents to sit, just sit, on the floor of a day-care center; or be like a fly on the wall, for maybe . . . two, three hours. Ideally, one should do this before one has children, when objective assessment is still possible. If one’s stomach for bereft children is particularly strong, come late in the day, or very early in the morning. Be sure to choose a “model” program, a “high-quality” fully accredited center. Then sit and watch the babies, the toddlers, the three-year-olds.

There is one more requirement however, much harder than finding the center or scheduling the visit. One’s eyes must be open to *see*. To see infant rooms, where diaper changes are done according to a schedule on the wall (would most mothers need to rely on a *schedule*?). Rows of babies who are read alphabet books because that is what the posted curriculum requires. A tired toddler, in an expensive Tommy Hilfiger outfit, crying alone on the floor, and drooling on the industrial carpet until a caregiver has time to retrieve him. Pre-schoolers who will burrow into any available adult lap seeking affection. Children who are indifferent and sullen when parents finally arrive at the end of the day. Kindergartners attending before-school, school, extended-care and after-school, shuttling through a ten hour day just like commuters.

What can we do? We need to be realistic about this. Shoving an unhappy mother back into the home is not the solution. Denial in this direction may

be just as destructive. Some of us love our work and our professional identity. Some of us, by our history or current marriage, must earn an income in order to feel secure—financially or emotionally. Some of us don't, or can't, trust our marriage. Some of us are angry at our vulnerability as a mother, terrified by the burden a child brings upon us. Some of us are unable to love, sealed off from nurturing and attachment. These are real issues and real truths.

What solution are we offered by our "modern" culture? If the ends must justify the means, the solution is to push past the child. We should have "no problem" doing it. We might even feel angry at the incessant needs of our child—who do these kids think they are? Thank God for denial, here's your day-care center—like it or lump it! We can lean on feminist rhetoric: women "must" be free to do what is best for them, it's as simple as that. It is frightening how easily the child's needs are silenced. And the more they misbehave, the more they cling or perform poorly, the more distant we get. Other parents resort to passive detachment: "I simply can't deal with them." Sensitivity and patience can be so easily undermined. The responsibility to build the adults of the future falls increasingly on caregivers and teachers—some solution.

We can deal with the truth: for most of us—no matter how much we love our work—our children will always be our prime concern. For those parents at the low end of the income scale, this may be even more true. And this group may be most vulnerable to deception by cultural "authorities."

This is where society can change its message and begin to give real help to parents to elevate and encourage them. Psychologists and pediatricians can discard their own "politically correct" denial and begin to speak *for the child*. Editors can question irresponsible "spin." Day-care articles can feature *objective* observations of daily life for children, rather than day-care industry press-feeds. Politicians can walk away from cheap polarization or the wish merely to appease women. We can help parents to access and amplify a *connection* with their children: we can culturally affirm families and marriage. We can help women by encouraging the importance and uniqueness of fathering. We need truly *humanitarian* leadership: this is not a zero-sum game. Workplaces, schools and neighborhoods can be changed to support families.

The day-care delusion is a weak substitute for real creativity. But we won't really see this until we cast off denial and open our eyes.

Suffer, the Children

Lynette Burrows

When you think about it, the fashionable crusade of “children’s rights” is bound to be anti-family. It is a movement which declares itself to be more interested in the welfare of children than are ordinary parents. It seeks rights and laws for children that neither they, nor their parents, want: it promises to give children legal sanctions against their parents and, in so doing, pits the interests of children against their parents. The inescapable implication is that children are not in safe hands with their own parents so that a whole movement has had to be formed in order to protect them. It is an innocent-sounding piece of subliminal, anti-family propaganda advertising the fact that parents are, at best, inadequate and, at worst, hostile to the needs of their children.

Analysing the “loaded” message of the title “children’s rights,” one can see it attempts to pack the punch of an appeal to both parental feeling and the nobility of action implied by the word “rights.” But it is utterly bogus! A “right” is classically defined as “the freedom to act without interference, according to one’s conscience.” It means nothing unless the individual has the capacity to act upon his “right” and children, by nature of their immaturity and inexperience, do not have that capacity. So children’s-rights activists seek to have the state act for them, in place of the people who created them and who love them more than anyone else. Those people, the adult parents, have a freedom to act according to their conscience, and within the law, with their children; and it is that freedom that the children’s-rights activists seek to remove.

One can clearly map their intentions by what they have achieved so far and by their signals of what they want to do in the future. I’m not an expert on the American scene, but in Great Britain, and in several European countries, among their achievements has been securing the right of the state to allow under-age children to be given contraceptives and abortions without their parents’ knowledge or consent. This remarkable right was not achieved via Parliament, which still upholds an “age of consent” at sixteen years: still less was it achieved by pressure from either parents or children. It was achieved by the active collaboration of the industry that sells contraceptives, the people who are employed in promoting their use, and the “children’s

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rights” lobby who claimed that—since children had now decided to be sexually active—there was nothing parents could do about it.

A child’s right to “divorce” unsatisfactory parents has also been secured by children’s-rights lawyers; working on the usual pay-rates but with the bill settled by the taxpayer. So far, parents have not been given the right to divorce unsatisfactory children—but that is consistent with the philosophy of children’s rights. It is parents who are failing in their duty to give children the freedom they need. Children, the client group, are not to be criticised or restricted in any way.

Children have also been given the right to take themselves out of the care of their parents and put themselves, instead, into the misnamed “care” of the local authority. Just what this can mean was illustrated by a mother, Mrs. Iverson, whose 14-year-old daughter went to live with a 33-year-old drug-dealer from Jamaica. She appealed to the local authorities to get her daughter back and they responded by having a social worker take the child to a contraceptive clinic. The anguished mother could do nothing whilst her daughter was first introduced to a life of prostitution and then, a month later, *murdered*. No one in authority was criticised or prosecuted for their lack of action since all—even the police—were prevented from denying the child her “right” to free association, by the Children Act, 1989.

According to the children’s-rights agenda, the right to behave badly is second only to the right to premature sexual activity. Consider the successful campaign of one of the earliest children’s-rights groups to get corporal punishment, of even the mildest kind, outlawed in schools. An unwary Parliament passed this law by one vote, against a background of generally unproblematic discipline in schools. Certainly primary schools were little havens of tranquility and learning for children in even the roughest areas. All this has gone now, together with thousands of good teachers who have fled a profession where in many areas harassment of those ostensibly “in charge” is the norm rather than the exception.

Children have, in other words, been given an amazing collection of liberties to behave badly, with absolutely no enforceable obligations to behave themselves or even to observe the law. On the contrary, their misdeeds are providing masses of highly-paid work for the now enormous lobby of professionals who are parasitic on the new options available to children and the problems they bring. Any attempt to improve the behaviour of young people runs into opposition from these professionals since *they* are defending a financial interest that is dependent upon more of the same.

But the rights sought by activists for children are also surprisingly limited and arbitrary. If these really were rights that any child could legitimately be

supposed to need or to want, they would surely start with the right of a child to be born. But all children's-rights activists support abortion in principle and in practice, as if it could be considered in the unborn child's best interest.

Then again, any child should surely have a right to enjoy a relationship with both its mother and father, rather than being created by artificial insemination for the benefit of a lesbian couple. In all the arguments about this still highly-contentious practice, and its rather more relevant, related topic, the ability of homosexuals to foster and adopt children, the children's-rights people have been "out to lunch."

Another major area in which children's rights are involved is surely the right of children not to be bullied at school. Parents protest about it all the time, but little has been done to address their concerns because parents do not belong to well-funded organisations with direct access to the media. 70% of parents were found last year to want corporal punishment restored in school; and so too did 68% of schoolchildren. The reason for this is, no doubt, that many children are in fact receiving punishment that is decidedly "corporal" in school—but from bullying thugs rather than from lawful authority. The rights activists don't address this subject because they are so busy monitoring schools for signs of homophobia, sexism or racism that they seem to have overlooked the much larger number of children who are simply terrified of the big boys.

Other areas deserving attention from those who could support parents in wanting the best for their children, would be having a flexible school-leaving age and having the right to do work outside of school hours. Even more important, amongst the list of glaring omissions in the children's-rights agenda, is the care and protection of children who have been taken into council care.*

The Social Services Inspectorate presented a report last year that pointed out just how badly children "in care" are doing. Though only 0.5% of children are in local authority care, 22% of young men in prison and 39% of prisoners under 21 have been in care. One third of people sleeping rough in London have been in care, and one quarter of children in care aged 14 or over don't go to school regularly. For some reason, referred to in the report but not explained, many of those who abscond from children's homes somehow disappear from local authority records thereafter.

* When asked about the British term "council care," the author explains: "Council care is the hostel accommodation provided by the local government. They are usually large old houses that accommodate about 20 children of different ages. They have no discipline in them nowadays because nothing is enforceable; so few respectable people work in them . . . Every report of them is damning and usually includes a long list of abuses which, if committed by parents, would put them behind bars for a very long time. In fact, many former care-home workers have been imprisoned, many have been attacked by erstwhile 'residents' and several have been murdered."

When this report came out, there was much public discussion about this parlous state of affairs and many people commented on the lack of independent monitoring to safeguard vulnerable children. None that I saw even thought to question the complete lack of involvement or interest in this scandal by the many, high-profile, publicly-funded children's rights organisations. There are many areas of pressing need in relation to disadvantaged children, where parents with the best will in the world simply have no power to get things done. Well-funded organisations with premises, facilities, telephones, full-time staff and, above all, access to the media, could do so much of real value if they wanted to; but our current crop do not. So, one has to ask, what do they really want?

The answer to this must be that it is something ideological as well as something financial. The financial objective is fairly straightforward. It has provided a good many jobs and the children's-rights activists have certainly found themselves a career. My book, *The Fight for the Family*, started life as a commissioned chapter in a book about social affairs. I was given a researcher (American) and told to find out about the principal children's-rights groups: who formed them, who supported them and who paid for them.

Once we began, we found a scene so entirely different from what we had expected that we became seriously interested, and what had started out as a fairly hum-drum piece of research turned into a fascinating lesson in the *modus operandi* of pressure groups. It also ballooned into a small book.

For a start we discovered that all the principal groups concerned with this characteristically liberal/left version of children's-rights were founded or co-founded by one man and his domestic "partner": mostly as limited companies. Their friends and colleagues over the years were spread amongst child-care charities and government committees and one, or both, turned up on the boards of all eight of the principal organisations promoting their version of "children's rights." Their ideological orientation explained why the narrow agenda they pursued in every case was so similar. It also explained why the basic assumption was always that children needed to be "liberated" from their parents' care and control. Not having chosen to get married themselves, despite having children, it is fair to say that they have some rooted objection to marriage as an institution or that they believe it's just not important.

These groups have played an important part in promoting all the rights referred to above relating to premature sexual activity and bad behaviour. One of the organisations was exclusively devoted to securing the abolition of corporal punishment in schools, and, that having been achieved, its funds were transferred to another organisation, End Physical Punishment of

Children (EPOCH), which is the principal driving force behind attempts to get parental smacking of children criminalised.

The part of my book which really enraged rights activists, however, was not the discussion of their ideological bent, which they did not seem to dispute. It was the fact that attention was drawn to the similarity of their aims to those of the paedophile organisations of the 1970s, which were prosecuted and suppressed in 1980.

As a matter of fact, the similarities are striking and, whilst I was not claiming that children's-rights activists were all paedophiles, it is nevertheless evident that their campaigns have been useful to those who want greater sexual access to children. "Unwitting" was the word I used to describe the direct help given to paedophiles by the *de facto* abolition of the age of consent for girls in the matter of providing them with contraceptives at school. Now it is proposed to apply the same age of consent law to boys for homosexual activity; we will no doubt see its *de facto* abolition soon.

However, it was after the book was sold out that the response to the publishers began to make another aspect of "children's rights" clear. It was always obvious that the welfare of children was very low on most of the activists' agenda. Otherwise they would have been doing honest research to discover whether the freedoms advocated by them for children were actually beneficial. They would also have been much more interested in whether breaking up families was the best response to anything but clear law-breaking on the part of parents, not to mention whether local authority care was better for children than a normal—even strict—home.

Now, like a voice from beyond the grave, we suddenly hear that Sweden has, at long last, developed a protest movement against the things that were being done to them in the name of children's rights. Here and in Europe, Sweden has always been held up as a paragon of "progressive" innovation. It is referred to in reverential tones by liberals everywhere and children's-rights activists place particular emphasis on the beneficial effects of their 1979 law which forbade parents to smack their children. According to their literature, no parents have ever been imprisoned or otherwise penalised for having laid a hand on their children and there is no cause for concern anywhere.

Well, it isn't true! An organisation of academics, lawyers, doctors and other professionals has formed "The Nordic Committee for Human Rights," which is principally concerned with human rights abuses in Sweden, the most powerful and influential of the Nordic nations. They have a web site (NKMR.org) where you can read all about it in English. They point out

several crucial, historical factors: notably that the Nazis copied a good deal of their social policy from the Swedes; particularly that part of it which saw children as belonging to "the parental state" rather than to their parents. The family too was viewed with dislike since it encouraged thoughts and actions that were not prescribed by the state.

Unmarried mothers had their babies automatically taken away from them and an organisation called "Save the Children" was begun during the 1930s in Sweden, which was, contrary to expectation, profoundly anti-family. What children had to be "saved" from were the imperfections of their natural parents and the oppressive and un-enlightened atmosphere of a normal family. That has a familiar ring to it, doesn't it?

The Swedes were also very enamoured of eugenics and the idea of a perfect racial type. Unbeknown to the rest of the world, the Swedish government pursued a policy of forced sterilisation of children coming from ostensibly poor stock *until 1976*. What a surprise for liberals everywhere when the fact came out, only last year, that more than 60,000 children had, in that way, been cleansed of their ability to procreate.

Few people had any idea that the Swedish government had the power to maintain such secrecy when it also had a relatively free press. One can hazard a guess that the truth only emerged finally because a couple of sad individuals, who had been deprived of their birthright by being sterilised when they were children in care, sued the government for compensation for what had been done to them. Victims have now been promised the princely sum of £7,000 apiece (about \$11,340).

The Nordic Committee, under its energetic and fearless chairman Ruby Harrold-Claesson, has at last broken open many of the other half-truths that the Swedish authorities are still putting about. She is a lawyer—incidentally, the only black one in Sweden—and has dredged up a lot of the figures relating to the seizure of children by the authorities. These are difficult to obtain because they are not recorded in the normal, criminal courts. Hence the ability of the children's-rights people to claim that there have been no prosecutions under the 1979 law. Children are taken away under the auspices of an administrative court which (in the public interest, of course) keeps the figures safely out of reach of most people.

To give you an idea of the scale of the tyranny over the family, it is necessary to describe the context. Sweden has a population of eight million; it is also extremely homogenous as to race, and no people in Europe are more clearly identifiable by their appearance alone. It has virtually no poverty, no large cities, and wall-to-wall welfare. The capital city has a population of less than two million and the second city has one hundred and fifty thousand

people. There should be, in fact, very few cases where children need to be taken from their parents. Yet in 1981 the authorities seized 22,000 children, which represents a rate of seizure 86 times greater than that of West Germany. An equivalent figure for America would, by that reckoning, be more than 687,000—in one year!

No doubt the authorities had such a field day because of the number of children who had been smacked by their parents before the 1979 Act came in. The figure fell somewhat after but, in 1995, it was 14,700 children removed from their homes. That is a rate 57 times that of Germany and, in American terms, would be nearly 500,000 children, a mind-boggling number for the rest of the world to contemplate and clear explanation of why so few people in Sweden either get married or have children.

Yet why is this so little known? From time to time there is brief publicity about Sweden's abuses, before liberals return to their uncritical admiration of it. Unfortunately for the oppressed everywhere, the liberal/left always treasures its heroes—even when they are murderous tyrants—so it will take some time, and a lot of repetition, for the truth to rise to the surface.

Another stalwart of the Nordic Committee, Siv Westerberg, has taken eight cases to the Court of Human Rights at Strasbourg, and has won seven times. The *Readers Digest* featured one of her cases in 1993. This involved three children who were abducted by the authorities whilst they were at school. They were sent to separate families 600 miles away and it took the parents five months even to find out where they were. No specific reason was ever given for why they had been taken; just that it was in their “best interest.” It took seven years before the parents were able to get their case to the European Court, which found in their favour. The parents were awarded £33,000 (about \$53,460) in compensation and the Swedish authorities were told to return the children to their parents. The eldest, who was then 17, was allowed home but the other two were not. This is the system that we are being asked to admire and follow!

By a striking coincidence, on the very day the organisation that published my book held a conference to discuss its findings, the BBC asked to do an interview with me about the smacking debate. Since I was tied up with the conference, they decided to interview me in a side room during the lunch break, and accordingly sent an interviewer and crew. I took the opportunity to introduce them to Ruby Harrold-Claesson, who was one of the principal speakers at the conference: she gave them a brief run-down of what she was saying about Sweden.

The team looked uncomfortable and, when I suggested that they include

an interview with her to beef up the debate, they said they had already been to Sweden and would be including an account of things there, as part of the programme.

When we watched the programme a few days later, sure enough, there they were in Sweden interviewing a handful of schoolchildren who confirmed that their parents were not allowed to smack them. They then asked a senior official about whether many children had been taken from their families as a result of the anti-smacking law. Laughing uproariously, she waved her hand around her: "Can you see many children being taken?" she said. And that was supposed to be a sufficient answer.

After this, the missing brick fell into place! The question was always "Why are the children's-rights people so concerned to make the parental right to smack their children illegal?" Most of their organisations have been more or less devoted to the subject despite the fact that 90% of good and caring parents say that it is necessary at times. Now the answer is clear.

It is a device which places most parents in the power of social workers. These are, by training and tradition, Marxist, feminist, and anti-religious. They don't much care for the family; they lend their weight on every possible occasion to arguments and devices that show it in a bad light. Here in England, they are still opposed to the inclusion, in official statistics, of figures which show the precise nature of the relationship of abusers to the children they abuse. At present, they are simply called "fathers," even though they are seldom genetic fathers and, even more seldom, genetic fathers actually married to the mother of their children. The traditional family is still the safest place for any child to be—but you would not know it from official literature on the subject.

Thus, anybody who wanted to further a Marxist, feminist agenda could not do better than to have most families in thrall to social workers. The right to browbeat parents because they smack their children when they think it necessary, as the Bible tells them they must, would be all an officious bureaucracy needed to infantilise the majority of adults. This issue is not about the elevation of children's rights at all. It is about the crushing of adult ones.

It is a particularly crafty bandwagon to set on the road because it has drawn support from so many unpleasant but powerful allies. Contraceptive-selling commerce has welcomed and supported them; paedophiles love them; and as for those government employees engaged in the job of directing, but not curbing, the rising tide of young people in trouble—they simply could not do without them.

Baby-snatching, as it has always been called, is almost bound to be due for a makeover in the years to come. There has been an increase in infertility

The Empiricist Mind

Francis Canavan

Readers of this *Review* are already familiar, and perhaps fed up, with the opinions of Peter Singer, who, in July, will join Princeton University as a professor of bioethics. But I will quote a few of them as found in earlier issues of the *HLR*, using them as an introduction to the topic I want to discuss, namely, the empiricist cast of mind that makes Professor Singer and so many others capable of thinking the way they do.

In an article he wrote while he was still a professor at Monash University in Australia (reprinted as an appendix in the Fall 1983 *HLR*) Singer stated: "We can no longer base our ethics on the idea that human beings are a special form of creation, made in the image of God, singled out from all other animals, and alone possessing an immortal soul." Such a belief is "religious mumbo-jumbo," he assures us in that condescending tone that passes for argument in certain academic circles.

He grants that "we may continue to see normal members of our species as possessing greater capacities of rationality, self-consciousness, communication, and so on, than members of any other species." But that does not mean that "we must regard as sacrosanct the life of each and every member of our species," no matter how limited that member may be in intelligence or even capacity for conscious life. For, "if we compare a severely defective human infant with a nonhuman animal, a dog or a pig, for example, we will often find the nonhuman to have superior capacities."

Underlying this proposition is the assumption that there is no such thing as a human nature, the possession of which makes a being human, whatever its stage of development. One could also maintain (and I have read authors who do maintain) that a tadpole is not a frog, and a caterpillar is not a butterfly, because they don't look like a frog or a butterfly, nor can they do what frogs and butterflies do. A living being is only what we see it to be at a particular time. There is no nature or principle of development in it that exists through all the stages of its growth, and moves it toward the mature realization of the nature. Its only reality is the one that we can observe here and now. What past ages called a nature is no more than a biochemical structure that makes certain operations possible and does not exist until those

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operations are observable. Singer does speak of the “severely defective human infant” as a member of our species, but does not recognize it as entitled to the respect and protection that we accord to “normal members of our species.” That seems to say that the mere fact of having been begotten and born of human parents does not endow the infant with essentially human qualities until such qualities appear in the eye of a beholder. It is the fact of the perceived qualities, not a nature, that makes one truly human.

We may therefore kill the baby. In a symposium on Peter Singer’s thought in the Fall 1998 *HLR*, he is quoted as saying:

If the fetus does not have the same claim to life as a person, it appears that the newborn baby does not either, and the life of a newborn baby is of less value than the life of a pig, a dog, or a chimpanzee. . . . In thinking about this matter we should put aside feelings on the small, helpless and—sometimes—cute appearance of human infants. . . . If we can put aside these emotionally moving but strictly irrelevant aspects of the killing of a baby we can see that the grounds for not killing persons do not apply to newborn infants.

At a deeper level, Singer explains, as quoted in the same symposium, that ultimately any life has only the value that we choose to give it:

When we reject belief in a god we must give up the idea that life on this planet has some preordained meaning. Life as a whole has no meaning. It began, as the best available theories tell us, in a chance combination of gases; it then evolved through random mutations and natural selection. All this just happened; it did not happen for any overall purpose. Now that it has resulted in the existence of beings who prefer some states of affairs to others, however, it may be possible for particular lives to be meaningful. In this sense some atheists can find some meaning in life.

Other atheists, of course, may have other preferences, in which case it is hard to see how the lives even of normal persons can be safe from atheists with power, if they prefer to get along without certain normal persons.

But let that go, and turn our attention to “the best available theories.” Blind evolution through random mutations and natural selection follows a rising curve, in which higher effects outrun lower causes. Inanimate matter becomes living matter, living matter becomes matter that is capable of sensation, and sentient matter becomes intelligent matter that achieves self-consciousness, the ability to communicate, and so on. According to Singer, as quoted earlier, these are higher qualities to which we may (or should?) give more respect.

Now he says that all of this “just happens,” which is to say that it happens without adequate causes. The random changes in matter that operate in the evolutionary process form without further explanation a universe, and produce life, sensation, thought, and at least the illusion of free will. The difference

between higher and lower effects thus disappears. This explanation is what is called reductionism, the reduction of the more to the less and of the higher to the lower. Matter is what is real, and the actions made possible by its varying and accidental degrees of complexity are all that there is to even the “superior” expressions of the human mind. There is nothing in the human mind that is not explainable by different degrees of complexity in the structure of matter.

A good example of this was given by Sir Francis Crick, the discoverer of DNA, in his book, *The Astonishing Hypothesis: The Scientific Search for the Soul*. “You,” he tells his readers, “your joys and your sorrows, your memories and your ambitions, your sense of personal identity and free will, are no more than the behavior of a vast assembly of nerve cells and their assorted molecules.” The reductionist phrase is “no more than,” and we may ask, with all due deference to Sir Francis’s brilliance as a scientist, how does he know this?

The answer is, he doesn’t know it. He simply assumes it because that is as far as his science will take him. For him, what science does not and cannot know, is not real. To seek explanation beyond science would take him, not only into the realm of theology, which is superstition, but of philosophy, which is an exercise of the imagination and a kind of poetry. Or, as Peter Singer tells us, it would be yielding to the “emotionally moving but strictly irrelevant aspects of killing a baby,” which we must not allow to interfere with our rational judgment.

This attitude raises a question that occurred to others besides myself. David Goodstein, in a review of a scientific book in the *New York Times Book Review*, puts the question well:

Our brains, like every other part of us, were evolved to help us get a meal and a mate and to make us better able to ward off predators. It stands to reason that being a bit more intelligent might give us an edge in the struggle, but how in the world did we wind up with the massive organ that can compose a symphony, solve a differential equation or write a book review?

A good question to which, alas, Mr. Goodstein does not offer an answer.

Stephen Budiansky, however, provides one in his *If a Lion Could Talk: Animal Minds and the Evolution of Consciousness*. “Language,” he says, “is the rocket that has escaped the gravitational pull of biological adaptation . . . into a realm where ethical thought becomes possible.” He might better have said, where specifically human thought of any kind becomes possible. But language depends on the prior ability to form general concepts for things, actions, and attributes. Once we get beyond “me Tarzan, you Jane,” we speak

with general nouns such as man, dog, cabbage, diamond; with verbs such as go, think, shout, fall; and with such adjectives as blue, red, yellow and their various combinations, all of which apply to more than single objects. We also speak of such virtues as temperance, courage, prudence, and justice.

It is the ability to frame such abstract ideas that makes language possible and elevates man above the beasts. The lower animals cannot form the concepts that words express. The sheep recognizes the wolf and flees, as the wolf recognizes the sheep and pursues it. But they cannot *talk* about it because they cannot conceptualize it. The reason, however, is not that they lack physical organs of speech, but that they lack the abstracting intellect of the human being, which can grasp a common concept in the data of sense. Our senses always perceive what is particular and concrete; one may meet a variety of people while walking down a street, but never Humanity with a capital H. To recognize Humanity requires a mind whose capacity works upon and transcends the senses.

What that ability is was the subject of a great debate between Realists and Nominalists in the medieval universities. Briefly (and oversimply) the Realists held that the human mind sees real natures and real patterns of order in the beings perceived by the senses, while the Nominalists held that the mind recognizes only individual and particular things, and groups them under class names on the basis of similarities in the way they appear to the senses, without knowing what their real substance and nature is.

The last line in Umberto Eco's nominalist novel, *The Name of the Rose*, is "*Stat rosa pristina nomine; nomina nuda tenemus*—The archetypal rose consists in its name; we have nothing but names." Since the data of the senses are always singular and concrete, and essences are universal within a species or class, a Nominalist never knows the essence of a rose or what "roseness" consists in, but only groups certain flowers under the name of "rose" because they look sufficiently alike. This reasoning, applied to human beings, leads eventually to the kind of conclusions that Peter Singer and others draw.

With the triumphant rise of modern mathematical physics in the seventeenth century, nominalism flowed into empiricism. The term is taken from the Greek word *empeiria*, experience, but everything depends on what we mean by experience. Nominalism beheld a world of individual substances, united only in an order imposed by the Sovereign Will of God. Empiricism presupposes that human knowledge begins, not with substances or wholes existing in the real world, but with the isolated, disconnected data of the senses. The connections among these data, with which we constitute larger

perceived objects, are factitious. That is to say, they are mental constructs that we impose on the data so that our minds can deal with them.

Even efficient causality, by which one thing causes another to be, is really, according to the eighteenth-century philosopher David Hume, a habit of mind that results from our regularly observing antecedents and consequences. We come to see that one thing predictably follows on another, and call them cause and effect, but we do not really perceive causality because it is not one of the data of the senses.

In such a world there is no teleology, a term taken from the Greek *telos*, meaning an end, but not in the sense that a period marks the end of a sentence or a DEAD END sign indicates the end of a road. Rather, a *telos* is the end toward which a process tends, as an acorn grows into an oak tree and the built-in end of the eye is to see. In a teleological world there are intrinsic purposes in things, the most obvious example being the human body, whose many organs perform definite functions, all of which contribute to the continued life and health of the whole body, with the result that the organs cannot be understood except in relation to the whole body.

The empiricist world, in contrast, is the world of mechanistic, atomic physics, in which atoms impinging on one another form masses and interact in relations that can be precisely measured and stated as physical laws: the universe is understood as a vast machine. This is taken, not only as an accurate description of reality, but as the only one, to which any exercise of the mind that claims to be knowledge must conform.

In his book, *The End of Physics: The Myth of a Unified Theory*, David Lindley explains that Sir Isaac Newton turned the teleological thought of Aristotelian philosophy “into what we recognize as true science, based on quantitative and precise relations between masses, forces and motions.” Since these quantities had to be measured by numbers, the laws of physics had to be mathematical. The result has been that “we give the name of science to those areas of intellectual inquiry that yield to mathematical analysis” and say that “mathematics is the language of science because we reserve the name ‘science’ for anything that mathematics can handle.” (Lindley himself rejects this “temptingly simple” explanation because “modern particle physics” has moved “from the billiard-ball atoms of classical physics to the intangible mathematical entities of today.”)

Yet the old billiard-ball theory persists in the minds of empiricists who still believe that everything can ultimately be reduced to atoms in motion. This view understands human knowledge as building up the objects it observes and the connections among them from atomic, raw sense data, and

makes the world as we perceive it a mental construct. In the world that we ourselves create in this fashion, there is no natural teleology, choice replaces nature as the standard of human action and, to borrow a phrase from Robert Sokolowski, freedom establishes truth instead of being governed by it. The only world we can know and deal with, is one that we make out of meaningless and purposeless matter.

The ethics of the empiricist world is necessarily a utilitarianism which, carried far enough, instrumentalizes the material world and makes it more and more manipulable by us as our technology develops. It does the same to human beings and leads to such projects as cloning human embryos to be used to furnish spare parts for other human beings. And why not, if, as Peter Singer tells us, a newborn baby is less valuable than a pig?

But my purpose in this article has not been to shock and arouse a sense of horror (the contemporary world has come too far for that), but to raise the question why we should accept the theory of knowledge that lies behind such projects. The day is passing in which humanity can afford to capitulate to a shallow empiricism that is presented to us as Science by people who take for granted an inherited epistemology that they do not bother to criticize.



Assisted Suicide:

The Tip of the Iceberg

Wesley J. Smith

Traditional medical ethics in the United States are crumbling before our very eyes. Where once physicians swore to “do no harm,” today many doctors believe it is acceptable to kill a patient who asks to die. Doctors used to be taught that all patients have equal inherent moral worth (a value system known variously as the “equality of life” or “sanctity of life” ethic but which I call simply, “The Ethic”)¹ and were thus entitled by simple virtue of their humanity to optimum medical care based on their individual health needs. Today, a growing utilitarian spirit threatens some elderly, disabled, and dying patients with virtual abandonment by doctors based on “quality of life” considerations. Doctors of yore believed that their patients deserved their sole allegiance: they would never permit *business executives* to make their medical decisions. Today, many physicians divide their loyalties between patients and managed health care business entities in which profits come from inducing physicians to reduce levels of care. Hippocrates must be turning over in his grave.

We did not enter this dark new world of medicine by chance but have been steered in this direction intentionally by an influential group of moral philosophers, academics, doctors, lawyers, and members of the medical intelligentsia—known generically as bioethicists—who, in the years following World War II, dominated public and professional discourse about medical ethics and the creation of health-care public policy.

Bioethics started out with the best of purposes: to ensure that the medical horrors associated with the Holocaust were never repeated. Later, bioethics helped fashion the means by which excruciating decisions about access to health care were made ethically, such as selecting which patients should have access to kidney dialysis when demand for that life-saving treatment far exceeded its availability.

But as the years passed the influence of bioethics grew, and it became both less benign and more ambitious. What began as a process of decision-making evolved over time into an orthodoxy—perhaps even an ideology—predominately utilitarian in outlook, radical in its notions of almost unfettered personal autonomy while, paradoxically, devaluing the individual moral

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worth of people—from infants to the elderly, the disabled and the otherwise “marginalized.” Moreover, predominate bioethics-thinking explicitly rejects The Ethic, the Hippocratic tradition, and other fundamental mores of Western Civilization.

What went wrong with modern bioethics can be traced to one of its founding fathers, the late moral philosopher Joseph Fletcher. He is probably best known for his exposition of “situational ethics,” a philosophical construct that denies the existence of absolutes such as right and wrong, good and bad, moral and immoral; it promotes behavioral “choices” based on intended or likely outcomes—better known as relativism. Fletcher was wildly radical and aimed to completely remake American culture. Perhaps recognizing that a society’s overall moral outlook is influenced profoundly by its medical ethics, he wrote and lectured extensively throughout the 1970s and 1980s on bioethics. He became so influential that the predominate outlook of contemporary bioethics can be traced directly to his advocacy. Indeed, many of today’s most prominent bioethicists are accurately described as “acorns off of the Fletcher oak tree.”

Fletcher was a truly radical utilitarian. His goal was to maximize human happiness and minimize human suffering. That sounds good in the abstract, but—as Ross Perot often says—“the devil is in the details.” Fletcher-style utilitarianism is paradoxically both anarchic and totalitarian. Thus, he willingly supported the wildest ideas in the name of human freedom, such as the manufacture of chimeras (part human, part animal) through genetic engineering.² But individuals, in and of themselves, actually mattered little to Fletcher. Those lives which he perceived to interfere with the pursuit of the greater happiness were expendable, even subject to being killed.

Joseph Fletcher did not believe in universal human rights. What mattered to him was having a “personal life” earned by possessing certain relevant “indicators,” such as “self awareness,” “a sense of time,” “the capability to relate to others,” “and control of existence,” among others. According to Fletcher, people who possess these qualities are “subjects,” and those who do not are “objects.” Being a subject is good. It means you have equal rights. Not so human objects, who not only possess no rights but who can be exploited for the greater good of human subjects.³

Fletcher was one of the primary instigators of what has come to be known as the “culture war.” Richard John Neuhaus once described this ongoing struggle as “a conflict between those who believe that human beings possess ‘unalienable rights’ that we are bound to respect and those who, in various ways, argue that rights in law and life are ‘fictions’ that we can more or less

make up as we go along.”⁴ This culture war is being waged on many fronts: politics, family life, education, art, entertainment, sports, but most especially in medicine—where the struggle is literally a matter of life and death. Indeed, some people have already died as a consequence of the slow devolution of medical ethics along the lines envisioned by Fletcher.

That is not to say that bioethics’ influence has been entirely negative. Patients were once passive about their own medical care: today, thanks in large measure to bioethics, the doctrine of informed consent permits patients to accept or reject medical treatment. That means people are far less likely to be involuntarily “hooked up to machines,” a medical abuse that led to the creation of the so-called “right to die” movement. Unfortunately, patient autonomy has been taken to an unhealthy extreme, as—for example—justification for legalizing assisted suicide.

As worrisome as assisted suicide advocacy is, it is just the tip of the iceberg. Medical policies equally violative of The Ethic—only a few years ago mere gleams in many bioethicists’ eyes—are being implemented in the clinical setting, directly threatening human lives. Meanwhile, new and even more radical proposals are published nearly every month in the nation’s most influential medical and bioethics journals, pushing us ever-closer to a society created in Fletcher’s image in which some of us are subjects and others of us are objects. This essay will offer a broad overview of these hottest issues in the bioethics debate.

Assisted Suicide

Assisted suicide presents the most immediate threat to contemporary medical morality and is quickly becoming one of the flash points of American politics. The debate entered a new phase recently, when Jack Kevorkian was convicted of second degree murder and sent to prison for ten to twenty-five years for lethally injecting 52-year-old Thomas Youk, an event witnessed by tens of millions of people on CBS’ *60 Minutes* (Nov. 22, 1998). Kevorkian’s conviction was a great victory. But assisted suicide advocates quickly distanced themselves from him and said that now, with the Kevorkian distraction out of the way, they could focus their argument. Look for an increase in “real life cases” of the “compassion” of assisted suicide to replace reporting on Kevorkian in the immediate future.

This is what has happened in Oregon as that state completed its first year as the only place in the world in which assisted suicide is formally and officially legal. Because Oregon regulators shrouded the practice in mystery through rigid state-imposed secrecy, the little hard news reported in the media

came directly from assisted-suicide advocacy groups. For example, Barbara Coombs Lee, the executive director of one such group, Compassion in Dying (CID), held a press conference to announce the country's first reported legal assisted suicide, that of a woman with breast cancer. CID attempted to put the best face on this killing. Even so, it was easy to detect the ugly truth that assisted suicide isn't so much about "choice" as about abandonment and ideology.

When the woman's own doctor refused to lethally prescribe, she asked a second doctor, who diagnosed her with depression and also refused to participate in her killing. She then went to CID, whose medical director blithely assured her that she wasn't depressed but "frustrated." He referred her to a death doctor willing to prescribe lethally. She died only 2 ½ weeks after meeting the doctor who helped end her life. The woman clearly was not in unbearable pain or unremitting suffering. She claimed in an audio tape, played posthumously by Lee, that she wanted assisted suicide to alleviate her "stress."⁵ This was not how legalization was sold to the voters of Oregon.

Then, in March, 1999, the *New England Journal of Medicine*⁶ published a study, based upon interviews with legally-prescribing doctors, that purported to show that all is well with assisted suicide as a legal act. Much was made of the report that 15 people had killed themselves under the law with the help of a physician, and that none of the dead had done so because of financial worries or fear of pain. But a closer look at the study revealed many glaring problems that the media failed to address:

- *None* of the assisted suicides was based on actual and unrelievable pain and suffering, the purported purpose for legalizing assisted suicide. Rather, doctors legally prescribed for patients concerned "about loss of autonomy or control of body functions."⁷ That represents a broadening of the purposes for which assisted suicide can be used. Indeed, if worries about needing help with bathing, toilet, and other activities of daily living constitute grounds for doctors to lethally prescribe, there are far more disabled and elderly people for whom assisted suicide should be permitted. This is the slippery slope in action.

- Many of the patients who died had very short relationships—some as short as *15 days*—with the doctors who helped kill them. This wasn't supposed to happen, either. Assisted-suicide advocates promised that it would be performed only by doctors with strong, long-term relationships with the patients.

- Many, if not all, of the doctors who lethally prescribed were affiliated with CID or other assisted-suicide advocacy groups. The doctors interviewed

for the study were asked if they were affiliated, but—in a telling omission—the results were not published. It is thus likely that many of the assisted suicides were motivated primarily by ideology.

- Investigators exhibited a shocking lack of curiosity. Physicians who had “treated” the dead patients were not interviewed for the study even though they were the most likely to provide the best information on their patients’ health and state of mind. Nor were physicians interviewed who were asked, but refused, to commit assisted suicide: nor were the families of the dead patients.

- No autopsies were performed to determine whether the dead patients were actually terminally ill when they were helped to kill themselves.

All in all, rather than alleviating fears, the study demonstrates that legalized assisted suicide will not be restricted to the rare case of medical urgency but that it will be practiced far more liberally, often by doctors the patients barely know. Thus, rather than being a carefully controlled and regulated practice, legal assisted suicide bears a striking resemblance to the rogue practice of Jack Kevorkian.⁸

This message will have to be forcefully and repeatedly made by opponets in the coming years, as proponents pepper the nation with legalization schemes. For example, in the wake of the Oregon study, legislation was introduced in California to legalize assisted suicide based on the Oregon statute where it was voted quickly if narrowly out of the Judiciary Committee by an 8-7 vote. As of this writing, its ultimate fate is uncertain but looks to be close. Legalization attempts are also underway in New Hampshire, Maine, Arizona, Louisiana, and Nebraska. A lawsuit has been filed in Alaska seeking to declare that state’s law against assisted suicide a violation of the state’s constitution. On the positive side, legislation has passed both houses in the Maryland legislature that would outlaw the practice. If the governor signs the bill, Maryland will become the sixth state to pass anti-assisted suicide legislation since Oregon legalized assisted suicide in 1994.

Dehydrating Cognitively Disabled People

It has been fewer than ten years since the United States Supreme Court accepted the contention that delivery of food and fluids by feeding tube is a form of “medical treatment” that can be withdrawn legally and ethically from people diagnosed to be in a permanent unconscious condition.⁹ Initially, bioethicists assured that dehydration would be restricted to people who were unconscious.

But the clinical reality is quite different: conscious cognitively-disabled people are intentionally dehydrated in nursing homes and hospitals all over

the country, almost as a matter of medical routine. So long as the family approves, no questions are asked.

Now, there is a court case in California that seeks to allow intentional dehydration of people who are conscious—even when some family members object. The case involves Robert Wendland, who was severely injured in an auto accident. Wendland was comatose for 16 months. Then, in 1995, he awakened and improved, to the point where he could perform simple functions on request, such as removing and replacing colored pegs from a board and maneuvering an electric wheelchair down a hospital corridor. Despite Robert's achievement, his wife, Rose, asked doctors to remove his feeding tube: the ethics committee of the Lodi Memorial Hospital gave unanimous consent. But an anonymous nurse, appalled that Robert's life would be erased because of a "quality of life" judgment, blew the whistle to one of Robert's sisters. Soon, his mother Florence and a sister, Rebekah Vinson, sued to prevent the dehydration.

The litigation was bitter and prolonged. Robert's interests were supposed to be represented by San Joaquin County Deputy Public Defender, Doran Berg. But in a nasty twist, she quickly sided with the death decision and argued more vehemently and emotionally than *Rose* did for Robert's dehydration—this was perhaps the first time in the history of jurisprudence that a public defender has urged a judge to sentence a client to death. But Judge Bob McNatt reluctantly declined. Stating that he was making "the absolutely wrong decision, for all the right reasons," he ruled wisely that such a momentous change in law and ethics should be decided in the legislature or a court of appeals, not by a trial judge.

McNatt's decision may have only been a reprieve—not a "pardon"—for Robert. Berg and Rose quickly appealed.¹⁰ Judge McNatt agreed that up to \$50,000 of San Joaquin County funds would be made available for Berg to retain a private attorney to pursue Robert's death in the appeals courts. Now, the power of the state and the money of taxpayers is being used to pursue the death of one of its citizens, whose only "crime" is to be brain damaged. If the Court of Appeals allows Robert to be dehydrated, a strong message will be sent that the lives of conscious, cognitively disabled people can be ended ethically, placing thousands of defenseless people all over the country at lethal risk.

Futile Care Theory

The media usually characterizes cases like *Cruzan* and *Wendland* as promoting patient autonomy and private medical decision-making. But that is

only partially true. Increasingly, “choice” in medical cases involving the profoundly disabled and the actively dying is viewed by many bioethicists and doctors as a one-way street. If families insist that treatment such as tube feeding or ventilator-assisted breathing continue, these policy makers advocate that it be refused because “autonomy has its limits.”

This concept, little known among the general public but all the rage in bioethics, is called Futile Care Theory.¹¹ The idea behind it goes something like this: When a patient reaches a certain predefined stage of age, illness, or disability, any further treatment other than comfort care is “futile” and shall be withheld, regardless of the desires of the patient or family. This is a bit duplicitous. In futile-care cases, it is the patients, not the the treatment, these theorists see as futile. Treatment is stopped not because it has no physiological effect, but because it does.

Futile-care decisions are already being implemented in many of the nation’s hospitals. Little-noticed by the mainstream media—but well documented in the medical literature—doctors and hospitals in Michigan, Massachusetts, Texas, Tennessee and California have already refused to provide desired medical treatment to profoundly disabled and dying patients. Futile-care theory is not simply about quickening their end: its purpose is to create a principle—that doctors can make bedside health-care decisions based not on what is good for the patient but on what is better for “society.” This is nothing less than preparing the way for overt health care rationing.

Creating a “Duty to Die”

Taken together, assisted suicide and futile care sound suspiciously like the creation of a “duty to die.” Indeed, some bioethicists are quite candid about the existence of such a moral duty. Perhaps the most famous advocate of this position is the former governor of Colorado, Richard Lamm, who is now a bioethicist at the University of Denver. He is best known for proclaiming that elderly people have a “duty to die and get out of the way” (a statement Lamm claims was taken out of context). He contends that there is a moral duty for society to withhold medical treatment from people diagnosed with permanent unconsciousness (as just one example), because the resources needed for their care are urgently needed by society elsewhere.¹²

The most candid advocate for a “duty to die” comes from a bioethicist, John Hardwig, chairman of the Department of Philosophy at the University of East Tennessee. Hardwig’s thesis is that dying, elderly, and disabled people should be ready to die when their lives are too much of a burden on family, community, or country. The “fundamental insight underlying the duty to

die,” he wrote, comes when “continuing to live will impose significant burdens—emotional burdens, extensive care giving, destruction of life plans, and yes, financial hardship—on . . . family and loved ones.”¹³ Indeed, Hardwig writes, “to have reached the age of, say, seventy-five or eighty years without being ready to die is itself a moral failing, the sign of a life out of touch with life’s basic realities.”¹⁴

It is important to note that this is not the raving of a fringe character. Hardwig’s essay was a cover story in the *Hastings Center Report*, one of the most influential bioethics journals in the world. His essays and others are being discussed actively within bioethics circles. This is how public policy in health care often begins—with philosophical debate. But as with dehydrating cognitively-disabled people, once “consensus” is reached among bioethicists, the policy is soon moved toward active implementation.

Organ Transplants

When Jack Kevorkian ripped the kidneys out of assisted-suicide victim Joseph Tushkowski, and offered them to the public (“first come, first served”) one would have expected members of the organ-transplant community to be outraged. Chillingly, most were not. Oh, some were quoted as stating that the kidneys were unusable: an opinion based on practical problems such as proper preservation, tissue typing, and other pragmatic, rather than moral, considerations.¹⁵ But few, if any, came forward to say that it is morally wrong to help kill someone and then harvest his organs.

Could it be that obtaining organs from an “assisted suicide” is no longer considered by many bioethicists as beyond the pale? Alas: *yes*. Kevorkian was once shunned for advocating organ harvesting from people being executed or committing assisted suicide. Indeed, his beliefs materially contributed to his failed medical career. Today, some of the most mainstream bioethicists and physicians involved in organ procurement and transplantation actively contemplate using organs from assisted-suicide victims as one way to increase the supply of organs for transplantation. “If active euthanasia . . . and assisted suicide are legally sanctioned,” write Robert M. Arnold and Stuart J. Youngner, well-respected members of the professional organ-transplant community, “patients could couple organ donation with their planned deaths; we would not have to depend only upon persons attached to life support [as organ sources]. This practice would yield not only more donors, but more types of organs as well, since the heart could now be removed from dying, not just dead patients.”¹⁶

Some bioethicists also want to expand the definition of death in order to

permit expanded organ procurement. These advocates claim that human life, in and of itself, is not morally meaningful. What matters is human *rationality*. Thus, they urge that patients who have been diagnosed as permanently unconscious be considered “dead,” so that their organs can be procured for transplantation. Some of the world’s most notable bioethicists favor redefining death in this way. One is Robert M. Veatch, the influential director of the Kennedy Institute of Ethics at Georgetown University, who has written that when the “organic and mental functions” of a human being are “irretrievably disjoined, then human life no longer exists.”¹⁷ Similarly, a 1997 article in the British medical journal, *The Lancet*, argued that permanent unconsciousness for 12 months should be deemed “dead,” after which it should be acceptable to end the body’s functioning through “lethal injection, and then remove the organs needed for transplantation, subject to the usual criteria for consent.”¹⁸

Narrowing the Definition of Protectable Life

Most people know that it is wrong to kill babies. They understand that pigs are animals, not persons. They view the intentional killing of mentally incompetent people as murder.

Not Peter Singer. The Australian utilitarian philosopher, a founder of the animal rights movement, claims that infants have no moral right to live and views infanticide as an ethical act. (Singer believes parents should have 28 days within which to decide whether to keep or kill their newborn children.) He not only promotes legalizing voluntary euthanasia but advocates the involuntary killing of medically defenseless people, if it will enhance the happiness of family and society.¹⁹

If Singer was the subject of a movie, it would be called, “The Son of Fletcher.” To him, membership in the human species is irrelevant to the right to life. Rather, what matters is whether a “being” is a “person,” a status to be earned based on “relevant characteristics,” such as the ability to be self-aware over time. To Singer, this means that some *animals* are persons: specifically pigs, elephants, dolphin, dogs, and many others, “perhaps including all mammals.” Other forms of life—newborn infants, people with advanced Alzheimer’s disease or other severe cognitive disabilities, along with fish and birds—are not persons. To Singer, a newborn infant is the moral equivalent of a mackerel; and an advanced Alzheimer’s patient is comparable to a turkey.

Singer’s ideas should make him an outcast. To illustrate how tenuous is our grasp of The Ethic, over the last 20 years Singer’s vigorous advocacy of

these Nazi-like policies have made him a darling among the bioethics set and with academic philosophers, many of whom share his views, or at least respect his intellectualism. Indeed, Singer is invited to present papers at seminars, symposia, and philosophy association conventions throughout the world. His 1979 book, *Practical Ethics*, which unabashedly advocates infanticide, euthanasia, and decries “discrimination” based on species (a bizarre notion Singer labels “speciesism”), has become a standard text in many college philosophy departments. Singer is now so mainstream that he even wrote the essay on ethics for the *Encyclopedia Britannica*.

Most disturbingly, beginning July 1999, Singer will become a permanent member of the Princeton University faculty, where he will be the Ira W. DeCamp Professor of Bioethics: a prestigious, tenured academic chair, at the university’s Center for Human Values. For many years to come, Singer will repeatedly clone himself in the young minds he molds in university. Making matters worse, most of his students-to-be are destined to rise to the top of American life. They are the physicians, health-care executives, political office holders, bureaucratic policy-makers, foundation decision-makers, and the university and college professors of tomorrow. Which means that Singer’s ideas are likely to eventually affect the everyday reality of American life.

Conclusion

It is ironic that as the United States prevailed in its half-century struggle against an international despotism that held The Ethic in open contempt, our own academics and medical intelligentsia have pushed us ever closer to an ethical cliff that will eventually threaten the lives and welfare of each and every one of us. Tragically, most Americans do not realize the depth to which our culture has fallen nor the importance of what is at stake in these and other emerging biomedical and ethical issues. But—ready or not—we are approaching the crucial crossroads. Two paths lie before us: a culture of death that devalues and even countenances the killing, death by neglect, and exploitation of infants, disabled, elderly, and dying people, or a culture of life that embraces the utter human equality of us all. Each path leads to a dramatically different future. The choice is ours. As will be the society we create for the twenty-first century.

Notes

1. Whether based on religious values or secular pragmatism, The Ethic is the moral backbone of Western Civilization. Without it, our millennial struggle to secure equal rights for all and our

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- belief in protecting the defenseless and downtrodden would soon cease to exist.
2. Joseph Fletcher, *Humanhood: Essays in Biomedical Ethics* (1979, Prometheus Books, Buffalo, NY), p. 85.
 3. *Id.*, p. 16
 4. Richard John Neuhaus, *America Against Itself: Moral Vision and the Public Order* (1992, University of Notre Dame Press, Notre Dame, IN).
 5. Hendin, Foley, and White, "Physician Assisted Suicide: Reflections on Oregon's First Case," *Issues in Law & Medicine*, Volume 14, No. 3, 1998.
 6. Chin, Kedberg, Higginson, and Fleming, "Legalized Physician-Assisted Suicide in Oregon—The First Year's Experience," *New England Journal of Medicine*, Volume 340, No. 7, February 18, 1999.
 7. *Id.*
 8. See also, Smith, "Dependency or Death? Oregonians Make a Chilling Choice," *Wall Street Journal*, February 25, 1999.
 9. *Cruzan v. Director, Missouri Department of Health*, 110 Supreme Court, 2841.
 10. *In re Conservatorship of Wendland*, California Court of Appeals, Third Appellate District, Case No. C 029439.
 11. Wesley J. Smith, "Our Discardable People," *Human Life Review*, Summer 1998.
 12. Richard Lamm, interview with Wesley J. Smith, November 19, 1998.
 13. John Hardwig, "Is There a Duty to Die?," *Hastings Center Report*, March/April 1997, p. 38.
 14. *Id.*, p. 39.
 15. David Goodman, "Kevorkian Gives Organs From Suicide," from the Associated Press appearing in the *Washington Post*, June 7, 1998.
 16. Robert M. Arnold and Stuart J. Youngner, "The Dead Donor Rule: Should We Stretch It, Bend It, or Abandon It?," *Kennedy Institute of Ethics Journal*, June 1993, p. 271.
 17. Robert M. Veatch, "Brain Death and Slippery Slopes," *The Journal of Clinical Ethics*, Volume 3, No. 3, Fall 1992, p. 185.
 18. R. Hoffenberg, et al., for the International Forum for Transplant Ethics, "Should Organs From Patients in Permanent Vegetative State Be Used For Transplantation," *The Lancet*, Volume 350, November 1, 1997, p. 1321.
 19. Peter Singer, *Rethinking Life and Death: The Collapse of Our Traditional Ethics* (1995, St. Martin's Press, New York, NY).



"I'M SORRY, BUT I'M AFRAID UNDOING A CURSE ISN'T COVERED BY YOUR PARTICULAR HEALTH PLAN."

APPENDIX A

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Harry Blackmun, R.I.P.

National Review

Supreme Court Justice Harry Blackmun, the author of *Roe v. Wade*, died on March 4, 1999.

He began as a single-cell human zygote containing 46 chromosomes. He was, from conception, genetically unique and distinct from his parents. Although initially very tiny, and conceived in a condition of dependency, the Harry Blackmun who lived for more than 90 years was, from the very beginning, a separate human organism—a human being—who under the proper circumstances would direct his own continuous development from embryo to fetus to neonate to child to 23-year-old law student to 25-year-old lawyer to 50-year-old appeals-court judge to Supreme Court justice, all the way to his death. Even in the zygotic and embryonic stages of his existence, Blackmun was no mere “undifferentiated mass of cells.” Still less was he an “appendage” or “part of his mother’s body.” On the contrary, he was a new and whole member of the species *Homo sapiens* whose unity, distinctness, and identity would remain intact through the successive stages of his development. For someone to have cut short his life at any of these stages would have been to kill a human being—and not in any merely abstract sense: It would have been to kill the particular, unitary, determinate being who was Harry Blackmun.

But, one may ask, was the prenatal Harry Blackmun a person? There is no plausible definition of personhood according to which a person is something other than a whole living member of the species *Homo sapiens*. To suppose that he came to being as a nonperson and then at some point (at, say, viability, birth, or some months after birth when he began to have self-awareness) *became* a person is to imagine that persons merely inhabit their bodies. That they are “ghosts in machines.” But persons, whatever else they may be, *are* living human bodies; to destroy a living human body at any stage of its existence is to kill the person who, whatever else he or she may be, is that body.

In his zeal to create a national right to abortion, Harry Blackmun feigned a profound uncertainty about prenatal life. In *Roe*, he cited a lack of consensus among “those trained in medicine, philosophy, and theology” as to “when life begins.” He doubted whether it was possible “at this point in the development of man’s knowledge to resolve [that] difficult question.” None of this uncertainty, however, seemed to give him a moment’s doubt about his own authority to sweep away the nation’s abortion laws in defiance of the considered judgments of the people and their elected representatives. Nor did it stop him from declaring in *Roe* that the offspring of human beings prior to birth are mere “potential life.” From that fundamental error followed all the pro-abortion dogmas that Blackmun secured his place in history by writing into our constitutional law.

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The tragedy of Harry Blackmun, who had been appointed to the Supreme Court by Richard Nixon as a strict constructionist and a law-and-order judge, was that he sinned gravely against the very Constitution in whose name he purported to act. If the Constitution implies anything at all pertinent to abortion (and many distinguished jurists, including Antonin Scalia and Robert Bork, insist that it does not), the equal-protection clause of the Fourteenth Amendment would seem to require states to extend legal protection to the unborn. Blackmun, however, relying on grossly inaccurate legal history and, even then, drawing from it the most dubious inferences, concluded that the due-process clause of that same amendment forbids states from providing any meaningful protection against deliberate feticide.

For his efforts in behalf of abortion, Blackmun was lionized by the moral-cultural Left. As one would have expected, he was soon finding all sorts of other previously undreamt-of implications in the Constitution—for instance, that it prohibits the death penalty that it explicitly mentions. In place of the Constitution, he substituted his own conscience. Unfortunately, it wasn't up to the task.



“WHAT’S THE CATCH OF THE DAY?”

APPENDIX B

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Sexual Hangup

Ramesh Ponnuru

Clinton's defenders are right about *l'affaire Lewinsky*. It is about sex. Not in the sense they generally intend, of course. Clinton has been in trouble because of felonies, not fellatio; and the legal and moral issues raised by his conduct are not reducible to sexual immorality. But the debate about the Clinton scandal has been a debate, albeit a veiled and confused one, about the sexual revolution and its legacy. This is largely because the Left made it so. Most of the commentary on impeachment-as-culture-war has come from liberals who have attributed conservatives' antipathy to Clinton to their alleged sexual hang-ups. This argument is a classic case of projection: It's far truer that liberals rushed to his defense because they couldn't stand the possibility that consequential moral judgments might be made about anything involving consensual sex.

The scandal did not present a clean referendum on the sexual revolution, for several reasons. A concern for the stability of the office has also influenced people's perceptions of the scandal. And Clinton has benefited from a pre-revolutionary sense of rectitude and decency—the revulsion felt by many Americans at the public discussion of sexual details. Nevertheless, there is a clear correlation between people's views of sexual mores and their views of the scandal.

This is true at both the popular and elite levels. Film director Marshall Herskovitz told the *New York Times*, "The scandal is really a referendum on sexual morality in the country. Those people whose sexual morality accepts the possibility of complexity and ambivalence in a marital relationship have not judged Clinton as badly as those who see marriage as a monolithic simple entity." Leaving aside the loaded language, he is basically right. That's why Hollywood lined up on Clinton's side, after all. And as Clinton's defenders have constantly observed, the most intense anti-Clinton sentiments can be found in the precincts of the "religious Right," which these defenders revile for its notoriously judgmental attitude toward sex.

The scandal would surely have unfolded very differently if the ranks of sexual conservatives were larger. Imagine, if it is possible, that the public of, say, 1961 had learned that its president had a sexual romp with a young intern—sans perjury, obstruction of justice, etc. Does anyone doubt that bipartisan pressure would have had him packing his bags within the week? The difference between then and now reflects changes in the media and in our view of politics and government, to be sure; but even more it reflects changed sexual mores. And the difference between the parties in this scandal reflects a difference in the evaluation of those changes.

This division over morality was veiled by invocations of "privacy," as if the real conflict were between those who respected it and those who did not. But the privacy issue was always a fig leaf. The liberals who raised it were not about to give

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Americans back their privacy in any other respect. They would not go to the ramparts for freedom of association in private clubs, or defend taxpayers' financial privacy from the IRS. The danger that child-welfare agencies might intrude on private matters of family discipline does not stir them. It is the allegedly privacy-trampling religious Right that is most exercised about schools' probing of the emotional and family life of children.

In the Lewinsky scandal, privacy simply meant sex. Nothing else would be protected by the shield of privacy. (The Supreme Court's "privacy right," though seemingly boundless, functions similarly. In *Planned Parenthood v. Casey* in 1992, the Court acknowledged a "right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life" through abortion. Attempts to define the mystery of the cosmos through racial discrimination would probably not earn the Court's protection.)

To say that the debate about Clinton was a referendum on the sexual revolution does not mean that his supporters generally *avored* sexual libertinism—the polls pretty emphatically suggest they don't. Attitudes toward the sexual revolution do not fall neatly into "for" and "against" columns. There are of course libertines and puritans, and idealogues of libertinism and puritanism among our elites. But there are also millions who, on reflection, would concur that the sexual revolution has inflicted vast damage on American society if they did not feel restrained by their own participation in and enjoyment of it.

Others are resigned. Stricter standards of sexual morality might be desirable in some abstract sense, but impossible in our culture. To be "against" the sexual revolution, from this perspective, would be like being against the invention of the automobile. Here reasonableness can slide into rationalization for the abdication of parental responsibility: It's impossible to keep our children from being promiscuous, so why try? Pass out the condoms and pay for the abortions. This exaggerated view—actually, recent surveys of teenagers suggest that ever-rising promiscuity is not an inevitable feature of modernity—is often buttressed by the mythology of the sexual revolution. The supposed fact that "everybody does it" has been frequently invoked in Clinton's defense.

If the liberals are right in claiming that the scandal is about sex, they are wrong to regard this as a departure from normal American politics. For much of our politics was already about sex and will continue to be; and this is largely their doing. Sex is an undercurrent to our debates about education policy, about parental rights, about welfare. It is not too much to say that contemporary liberalism is built programmatically on the sexual revolution. A wide array of government programs is necessary to further it or deal with its detritus, from sex education to child-care services for single mothers. And support for abortion and gay rights, as aspects of sexual freedom, is the emotional core of modern liberalism; it occupies the place that suspicion of corporate power did for an earlier generation of liberals. A liberal friend of Peggy Noonan put it best when Noonan asked her why liberals supported condom distribution in the schools: "Because f***ing is an entitlement."

This is why the cause of gay rights has moved to the center stage of American politics even though the percentage of the population that defines itself as gay is so low. And it is why abortion's political importance is so much larger than would be suggested by the small number of people for whom it is a top concern, or even by the intensity of those people. Abortion, sociologically, is about sex. Opponents of abortion tend also to oppose extramarital sex. Sexual liberals, meanwhile, act as if they regarded abortion as the ultimate guarantor of their revolution. It erases the victims of what they insist are victimless acts. It is also a fallback for those who practice what these liberals preach. This is one reason that young men are among the strongest supporters of abortion rights.

It is not surprising, then, that the struggle over abortion has been the key place where divisions over the sexual revolution have played out. As William Kristol noted some time ago, "abortion is today the bloody crossroads of American politics," the place where all the Left's sundry projects of liberation come together: "judicial liberation (from the Constitution), sexual liberation (from traditional mores), and women's liberation (from natural distinctions)." In the subterranean geology of our politics, abortion is the deepest fault line. That is not always apparent at the surface, and most voters don't like being reminded of it. Earthquakes don't poll well.

Among pundits, too, where someone stands on partial-birth abortion has been a rough-and-ready index of where he stands on impeachment. (It's been noted that many of Clinton's journalistic critics are Irish Catholics; but the tendency of Irish-Catholic pundits who defend partial-birth abortion also to defend Clinton suggests which is the deeper pattern.) Abortion acts as a marker within the Republican party, too: A politician who favors keeping it legal is almost certain to stand to the left of the party's center of gravity on size-of-government issues. This is true of almost all the allegedly "fiscally conservative, socially moderate" politicians the media laud, such as New Jersey governor Christine Todd Whitman and former Massachusetts governor William Weld.

This pattern doesn't mean that everyone who falls on one side of the divide over sexual mores automatically joins one political coalition (although the number of exceptions is dwindling). Still less does it mean that there are no chaste liberals or promiscuous conservatives, whatever their abstract moral views. But the body politic is now riven by the politics of the body.

This is not an entirely new phenomenon. American politics has historically been organized around cultural and religious rather than economic lines; the mid 20th century was an exception, perhaps because of wartime pressures toward conformity and the subsequent homogenization and massification of economy and society. But when cultural divisions that grow up around such intimate matters as sex come to dominate our politics, the character of politics cannot fail to change. Politics becomes visceral. One side's politics seems like a reproach to the other. Liberals hate and fear the Right because it wants to outlaw abortion, not because it wants

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to cut taxes. As Andrew Sullivan remarked a few years ago, the Cold War was a political etiquette as well as foreign policy.

The scandal has deepened the division. It has reinforced conservatives' suspicion that there is no logical stopping point to the principle of sexual liberation—that liberals have no principled grounds to reject promiscuity. Many liberals have said of Clinton's behavior that "it cannot be condoned," a formulation that suggested that perhaps it could not be condemned, either—not really, not on grounds other than recklessness or Mrs. Clinton's putative distress. A few commentators took the next step. It was "An Innocent Romance," wrote Seth Stevenson in *Slate*: "Just what do you all think was wrong with this affair? They were simply two consenting adults voluntarily engaging in sex and enjoying it. People do strange things in the pursuit of happiness."

Once sex is dissociated from its deepest purposes, indeed, it becomes difficult even to define. We see this final Foucauldian move in the president's lawyers' contention that the term "sexual relations" has no definite referent.

But if conservatives can take comfort in this demonstration that social changes unfold according to an internal logic—that "ideas have consequences," to adapt one of their favored slogans—they must also acknowledge that this logic seems to leave them in a frankly reactionary position. Rejecting the sexual revolution in toto is probably even less popular than pushing it to its limits. Many conservatives have therefore retreated to a furtively reactionary position: they refuse, for instance, to spell out their case against homosexual conduct because it would also condemn the practices of most heterosexuals.

Liberals are not fooled. From their perspective, the culture war pits the forces of enlightenment, emancipation, and pleasure against those of ignorance, prudery, and repression. Discussing the scandal on CNN, Betty Friedan expressed what may be the next liberal line: "You know, sex isn't morality. Morality doesn't have to do with what two people do in bed when they mutually consent to do it."

And Friedan is on to something: Sex isn't the whole of morality, and moralists' seeming obsession with it often seems disproportionate. Religious conservative leaders do not often declaim in public against the sin of pride, which Christian orthodoxy has generally held to be worse than sexual sin. But the moralists, for all their follies, know something their critics don't: that sexual passion is one of the most powerful and disruptive forces we ever encounter, one capable of inducing irrationality and self-delusion on an epic scale; and that it takes great effort, by individuals and societies, to channel anarchic lusts into civilized patterns of living.

APPENDIX C

[Hadley Arkes is a professor of American Institutions at Amherst College and a contributing editor of *Crisis* magazine, for which he writes the "Life Watch" column. The following appeared in the April 1999 issue, and is reprinted with the permission of *Crisis* magazine.]

A Time for Recriminations

Hadley Arkes

With the long lead times of *Crisis*, readers will understand when I report that this column was filed just after the impeachment of the president had failed in the Senate. By this point, it will be old news to the reader, though it is still too early to know whether Andrew Johnson will be damaged in the rest of his presidency.

As for Bill Clinton, he will be gone in two years—though we must suspect that if the public were asked in a survey whether Mr. Clinton should serve yet another term, about a third would probably say yes: That is, with the level of ignorance reflected in the polls, we can probably expect that about a third of the respondents are blissfully unaware that Clinton is barred, by the Constitution, from a third term. But unless Clinton returns as an advisor to his wife, risen from the Senate to the presidency, we can expect him to be mercifully gone. Yet, he has helped to instruct and confirm the public in a new set of moral understandings, which promise to be quite corrosive of our public life. For what was revealed in this crisis is that a large portion of the public and our political class have absorbed the kind of ethic that may mark these years as the Machiavellian Moment in our politics.

My late professor, Leo Strauss, remarked in a telling passage that we are no longer shocked by the teaching of Machiavelli because the intellectual classes in America have long ago absorbed Machiavelli's premises as their own. And so, after listening to the careful presentation by the House managers making a compelling case on perjury and the obstruction of justice, the White House correspondent for *USA Today* was asked for her assessment. She responded that there were not enough votes to convict the president. In the same manner did Senator Robert Byrd of West Virginia "respond" after he weighed the evidence: By his own reckoning, the president had lied under oath and obstructed justice; Byrd was persuaded that these acts counted as "high crimes and misdemeanors"; and yet he moved to dismiss the charges because, as he said, there were not enough votes to convict. In both instances, a question of moral substance was transmuted into a question of power: Who had the votes?

Imagine for a moment that the jurists involved in *Brown v. Board of Education* were asked what they thought of this matter of mandating, through the law, a separation of the races. And what if one of those jurists had responded by saying, "We may not have the votes to overturn that policy"? The assessment might have been quite accurate, but it would have been the mark of a mind that was terminally trivial.

And speaking of things terminally trivial, the recent crisis should have cleared

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up any lingering doubts about Senators Joseph Lieberman and Daniel Patrick Moynihan. Lieberman is always wringing his hands, making a show of something that resembles a “moral” concern. He is often on the verge of casting a vote to protect nascent life, but something, some high reason of state, always holds him back and finds him voting, at last, comfortably within the fold of his party. As for Moynihan, his antics on the impeachment finally stamp his character unmistakably. H.L. Mencken referred to William Jennings Bryan as the “National Tear Duct,” and Moynihan must now be styled as the National Windbag: a vast repertoire of affectations and posturings, utterly without moral substance. For the sake of purchasing two more years of Clinton, Moynihan had to agree to end his career affecting the mind of a hayseed. Did he really think that Monica Lewinsky had filed anything but a false affidavit? Did he think that Vernon Jordan had bestirred himself to call the heads of corporations, arranging interviews at the highest levels for a 24-year-old with no evident credentials—and that none of this had anything to do with the need to lure this young woman and keep her from testifying in the Paula Jones case? Was Pat Moynihan really so dim as to believe all of this, or even any of this?

But then, what corruption or surprise could Moynihan have revealed that he had not already revealed quite fully, much earlier, on the matter of abortion? He was a professed Catholic, representing a state containing New York City, a city in which the right to abortion is regarded now as the “first freedom,” more important than the freedoms of speech or religion. To preserve his standing in the politics of that city, he was willing to say in public that he did not know when human life began, or that people indeed had a right to take life as it suited their convenience. As for the teaching of his Church, he was willing to advance the project of discrediting Catholicism by teaching in public that one could reject the most serious moral teachings of the Church and remain a good Catholic. That vulgarity was never beneath him. And that should have been enough to pronounce the enduring estimate of the man, even before the crisis over impeachment. He does not merit more words, and so let it simply be said that he is not to be taken seriously; he does not deserve to be treated hereafter as anything more than the buffoon he had made of himself.

From the beginning to the end, the Liebermans and Byrds made it clear that the “rule of law” was just so much twaddle; they would stand with their friends. There was no attempt to explain how they would reconcile their judgment in this case with the standards that had been brought forth 25 years earlier to judge Richard Nixon. Neither would there be any gesture toward explaining whether the “pass” they were offering now on perjury and the obstruction of justice would be settled only on this president, or whether they were installing a new rule, to be applied to all presidents in the future. In other words, there was not even the faintest attempt to establish the rudiments of a principled decision. Aristotle had remarked caustically on those people for whom life was but a series of disconnected emotional episodes. For those people, the study of philosophy would be without point, for they had no interest in establishing a principled ground for their motivations or

their judgments. But that was what the Democrats were willing to make of themselves, and in that “ethic” they were now schooling the public.

With these lessons taught from the top of the state, there should have been no wonder that the same moral obtuseness became incorporated in the surveys of the public. The people canvassed in the polls were treated as the bearers merely of “opinions,” not as citizens who might be asked how they reconciled their judgments with the precedents of the past, or whether they were installing a new rule to cover cases in the future. Apparently, they were not even asked, as a condition for their responses, whether they had bothered to read the relevant documents. In this manner, the media and the political class revealed that they no longer remembered the rationale for representative government itself. People may vote their raw opinions in the isolation of voting booths, but we expect our representatives to do something strikingly different. We expect them to deliberate. We expect them, that is, to confront arguments, offer reasons, read the documents, reconcile interests, and consider the constitutional principles that bear on the problem at hand. Since they make politics their vocation, we ask them to deliberate in a far more strenuous way than other folk, who are busy making their livings at other things. And yet, reporters would be brazen enough to ask Henry Hyde just why he and his colleagues were willing to persist even in the face of the polls. It never seemed to occur to them that the question should have run the other way: Why weren’t pollsters posing the public the kinds of questions that Hyde and his colleagues had to face as they sought to reach a principled judgment? Instead of asking citizens to rise to the level of citizenship, the media asked legislators to take their guide from people who were counted as “representative” Americans precisely because they were untutored in the things that Henry Hyde knew.

For the past year, we have been startled by the evidence of a public growing ever dimmer in its moral reflexes. And yet, even many savvy commentators have shied away from drawing the dark conclusions that spring from the evidence. But why the powerful need to deny what is plainly before us? After all, do we deny that ordinary persons, individuals, can become corrupted? Why is it suddenly so unthinkable that a public, sensitive to the lessons taught by our leading figures, may itself come to absorb that corruption? Lincoln had grasped this sobering point long ago as part of his own realism about politics. As Harry Jaffa recalled, Lincoln understood that “once the government was established upon a popular basis, the great danger was the corruption of the people” themselves. For they would soon bring forth talented and ambitious men, all too ready to echo their clichés and cater to their diminished wants. But whether the problem springs from the people or from the top of the state, the remedy points in the same direction: The only corrective can come from political men and women who are willing to frame these moral questions in public, and begin to teach, in public, some different lessons.

APPENDIX D

[Teresa R. Wagner, Esq., is an analyst at the Family Research Council. The following article, adapted from a FRC pamphlet titled "The Truth in Black and White," appeared in the Cincinnati Enquirer on January 29, 1999. It is reprinted here with permission.]

Abortion and Moral Corruption

Teresa R. Wagner

Twenty-six years of legal abortion on demand has clarified at least three things. First, the American abortion lobby has reached the extreme of apparently defending any abortion, no matter how advanced the pregnancy and no matter how developed the child. Second, the legal and medical professions are far more committed to abortion than the American public.

Third, the judiciary will oblige abortion advocates no matter what they demand, regardless of the will of the people.

The backdrop for these assertions is the case law on state partial-birth abortion bans. Every month, it seems, we hear that another court has struck down a state's partial-birth abortion statute on the pretext that it is unconstitutional.

Partial-birth abortion is a relatively new abortion method whereby the abortion practitioner delivers the child feet first up to the head, stabs the base of the child's skull to create an opening to suction out the child's brains, and then crushes the head to complete the delivery.

Twenty-eight states have passed laws to ban this barbaric abortion method, many in record time and three over governors' vetoes. The House of Representatives has voted overwhelmingly in favor of a federal ban, and even abortion-sympathetic politicians have recoiled upon learning about it. Democratic Senator Daniel Patrick Moynihan called it "near-infanticide."

The widespread consensus against this repugnant practice has not deterred the abortion lobby from defending it, however. This alone shows how out of step they are with the moral sensibilities of most Americans. Professional abortion litigators (those who challenge the "constitutionality" of abortion laws as a full-time job) have taken approximately 19 of these very popular laws to court, claiming that they violate a woman's "right to choose." How the elimination of one renegade abortion method could do this is a good legal question, but no real obstacle for courts seemingly committed to abortion above all else.

Two bogus claims are made in the challenges to these bans. First, abortion lawyers claim that the wording of the bans is "vague" and cannot be understood by those who perform abortions, with the result that they might stop doing most or all abortions. If only all businesses could be so free of regulation by conveniently claiming they do not understand the laws that apply to them. It's also curious that abortion supporters initially claimed that the targeted procedure was too rare to warrant legislation. Somebody understood the law's meaning then. Finally, the very same lawyers advanced the very same claim against an Ohio law that used completely different language.

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The second argument is that these laws would deprive mothers of a safe abortion method and would therefore threaten their health. This too is spurious. Even seasoned abortionists have come forward to denounce partial-birth abortion as a threat to a mother's safety.

Nonetheless, almost every court to review these laws has sided with abortion advocates, telling American citizens that we cannot pass laws to protect the life of the human infant, even when the infant is in the very process of birth. Only three decisions out of 19 have upheld state bans.

These decisions constitute a moral crisis within the legal and medical professions. It is one thing to know that abortion is killing; it is quite another to discuss that killing in graphic detail, apparently without compunction. The doctors and judges participating in these cases coolly describe dismembering arms, disarticulating legs, crushing heads and tearing up torsos. One waits in vain for recognition of the crime being committed against these young human beings. If our doctors and lawyers can testify and listen to such brutalities with not a hint of regret, then the moral corruption of these professions is frightening indeed.

These cases should remind all citizens that black robes and white coats do not confer moral authority. (Indeed, it was a doctor and a lawyer in Weimar Germany who laid the foundation for this century's other Holocaust: Alfred Hoche, a psychiatrist, and Karl Binding, a jurist, authored the 1920 pamphlet "Permission for the Destruction of Life Unworthy of Life," arguing for euthanasia and eliminating unwanteds.)

Rather, the citizenry must assert the sound moral judgment it has displayed regarding this issue and reject the barbarity that the legal and medical elites would foist upon us.

Our task is to see through the legal citations and the medical euphemisms to recognize abortion for what it is: the violent and unjust destruction of human beings.

APPENDIX E

[Rabbi Jacob Neusner is a prolific author and professor of religion at the University of South Florida in Tampa and at Bard College, New York. This article first appeared in Christianity Today (Oct. 26, 1998), and is reprinted here with Rabbi Neusner's permission.]

Israel's Holocaust

A Jewish rabbi asks: Why shouldn't abortion in Israel be compared to the mass murder of Jewish children in Hitler's Europe

Jacob Neusner

My heart is broken. Just now, my wife's brother called from Jerusalem. He reported that his son's estranged wife the day before had aborted the baby they conceived two months earlier, on the very eve of the couple's final separation leading to divorce.

No law stood in the way of this act, no argument from morality. The Torah did not intervene. Lacking all legal rights—the child was not murdered, it was deemed a mere protoplasm to which my nephew had contributed—"it" had merely been "removed." The father was not consulted. Had he been, he would have confirmed that he wanted and would take paternal responsibility to raise the child. The grandparents had no say. They would gladly have welcomed the baby and, if asked, would have undertaken to nurture him or her.

Ah! phone calls from Jerusalem! That was not the first time the phone rang with news of family death in Jerusalem. More than 25 years ago, my brother-in-law called to tell us that my father-in-law had died in Jerusalem. As a tourist, he went swimming in the pool at the King David Hotel and, exhausted after a day of touring, drowned. The only difference was no one pulled him under and held him down. My brother-in-law's voice now, as then, was rich in sadness and pathos.

And why not? this perfectly healthy and normal infant in its mother's womb enjoyed every possibility of life, until the collusion of the mother and her physician took away any chance to live. It was an act of deliberation, with full knowledge of the consequence. I wish I could explain to myself why it is not comparable to an act of murder: deliberate, fully intentional annihilation of the life of another.

We Jews are experienced in suffering murder, and we preserve the memory of the victims and their murderers. That is why we build museums. That is why I ask, how is mass abortion in the State of Israel such as is practiced by the secular (but not the religious) portion of the Israeli population not comparable to mass murder of Jewish children in German Europe? The well-documented cases of Nazis murdering infants and children—more than a million of them—involved not only the born but the unborn, including forced abortions, the killing of pregnant women and their unborn children, and the like. Is not abortion on demand an act of wanton and deliberate destruction of life? I think it is. Does not the state's provision for abortion on demand, a choice made preferable by the state's omission of aggressive provision for mothers to carry their children to term, compare to the state's

sponsorship of mass murder? I think it does. As the numbers mount up, when do considerations of volume enter in and validate calling the annihilation of millions of lives “a Holocaust”? I think they do. Here is a Holocaust today. Every Jewish child born in the State of Israel is a survivor of the Holocaust sustained by Israeli law.

The State of Israel rightly invokes the Holocaust as a primary cause in the creation of the state itself: a refuge and a hope for the victims of the Holocaust. But its liberal abortion laws, the prevalence of abortion as a medium of contraception, the routine character of decisions to abort as a perfectly ordinary medical procedure—these political facts of public policy constitute the counterpart to the race laws and state-organized offices and institutions of mass murder that shame Germany through all eternity.

The difference is, Germany has acknowledged its shame. But for the annual annihilation of tens of thousands of Jewish children, the State of Israel acknowledges nothing. And, here at home, American Jewry’s consensus is one-sidedly pro-choice. In desperation I try to tell myself abortion is not a Jewish issue. But the Torah intervenes, teaching that human life comes from God. And, when it hits within a family, it becomes very much a Jewish issue, too, no less than it is a Christian and a Muslim issue.

The abortionists call themselves “pro-choice.” Indeed so, and the Torah teaches, “Choose Life.”

APPENDIX F

[Lorena Rodrigues Bottum lives in Washington, D.C. with her daughter and husband. The following first appeared in the Wall Street Journal on March 12, 1999 and is reprinted with permission (The Wall Street Journal © 1999, Dow Jones & Co., Inc. All rights reserved.)]

Ordinary Abortions

Lorena Rodrigues Bottum

During the Barbara Walters interview, Monica Lewinsky casually mentioned that she'd had an abortion while dating a Pentagon official. Like the rest of her conduct, it was nothing she was ashamed of. Unfortunately in this regard, at least, she's no aberration—as I learned recently at a park in my well-to-do Washington, D.C., neighborhood.

While my daughter played with some local children, I sat with their mothers: a friendly, 28-year-old woman from Ohio and a slightly older woman whose husband had just been notified that he was being posted to Africa in June. We boasted of our children. We exchanged information about baby-sitters, complained about the local supermarket, and spoke about our doctors—at least, until the older woman explained: “The same week that Bob got his warning that we have to go overseas, I missed my period. And I thought to myself, ‘Oh, no, not another abortion!’”

“Oh, I know,” said the other, “It's so expensive, and you feel sick for days afterwards.”

“And right in the middle of moving. But it turned out to be a false alarm.”

Proponents of abortion rights typically insist that abortion is a traumatic decision for women and not undertaken lightly. But the fact is that my neighbors in the park are not moral monsters. Neither are they moral philosophers, of course. They're ordinary, middle-class, stay-at-home mothers, best described not so much in positive terms as in double negatives: not unfriendly, not unkind, not unintelligent, not uneasy. Somehow, modern America has allowed them to develop the ability to casually discuss their multiple casual abortions with a stranger. What's going on here?

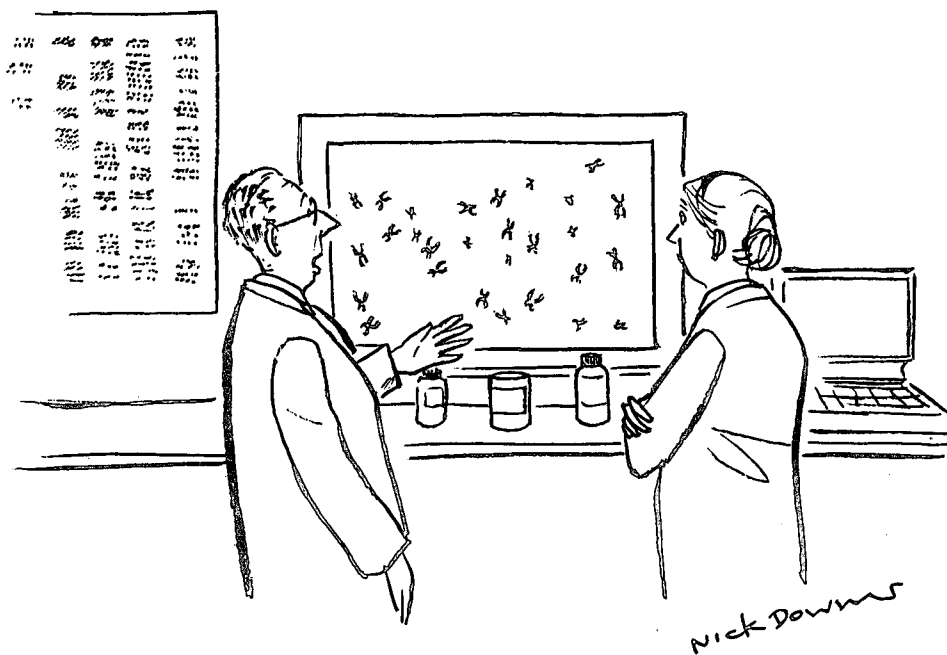
I remember once reading a 1940s mystery novel in which a woman gives, to the private-eye hero, the name of a college professor who can describe a stolen piece of art. “You're not going to lead him into trouble, are you?” she asks plaintively as she jots down the name. “He's good people.”

That phrase—“He's good people”—stayed with me for years, until, with a sudden click, I finally got it: In the moral universe of hard-boiled American crime novels, there are bad guys who accept evil, and good guys who take some small stand on principle, however ambiguous and arbitrary. On the edges of the story, however, stand the vast majority of good, ordinary people who are innocent mostly because they've never been tested. The criminals are bad because they want to lead those people into temptation, while the detective is good because he wants to save them from a moral trial he knows they will almost certainly fail.

The mother by the sandbox who saw no moral difficulty in having an abortion to

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avoid an unpleasant time packing: She's good people. And that's exactly the problem with the current abortion situation. It's the problem ignored by President Clinton when he made his famous declaration—recently echoed by Gov. George W. Bush—that abortion should be “safe, legal, and rare.” So long as abortion is legal, it will be neither an agonizing decision nor a rare one. Those good, ordinary, middle-class mothers from the park in Georgetown: Like Monica Lewinsky, they'll always fail that test.



“THE GENE WE THINK CAUSES ANTI-SOCIAL BEHAVIOR
WAS ALREADY QUITE ISOLATED.”

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[Peggy Noonan is an author, commentator, and renowned speechwriter for Presidents Ronald Reagan and George Bush. Her latest book, Simply Speaking, was published last year by ReganBooks. The following appeared in the Wall Street Journal (April 22, 1999) and is reprinted with permission (The Wall Street Journal © 1999, Dow Jones & Co. Inc.).]

The Culture of Death

Peggy Noonan

"I know it's an amendment. I know it's in the Constitution. But you know what? Enough is enough."—Rosie O'Donnell

Enough is. The audience at Ms. O'Donnell's show applauded yesterday, and I would have too if I'd been there, not for her call to ban all guns but because Rosie O'Donnell was as genuinely moved by the Colorado shootings as the rest of us, and was at least trying to come up with an answer. The political sentiment expressed was radical but was also the expression of a fact: People have had it. Something is different about this story. We've been through it before but the reaction this time suggests some critical mass has been reached.

You could see it even in the unnerving sameness, the jarring predictability of what we saw on television as this very specific tragedy unfolded. We all know the Kabuki now, we know it by heart. First the aerial shots of kids fleeing the shooting, then the shot of the girl sobbing in the arms of her friends; after that the Associated Press photo of the boy with his baseball hat turned backwards, gesturing over a body; then the memorial at the local church with kids sobbing and a stricken pastor speaking; then the yearbook pictures of the perpetrators—"He was kind of quiet, kind of a weird guy"—then the neighbor's testimony about video games and Marilyn Manson; then the debate: "It's the gun culture." "It's the community."

We all know how to do this now. We have been here before, and too often. The children, in the midst of the horror, all know how to speak to the cameras and give the reporters what they need.

Groping for Answers

We all know our part. We all know what's next. The difference this time, so far, is that the finger-pointing seems wan, halfhearted. People seem to be groping for that elusive thing, a satisfying answer—or partial answer—or a piece of the puzzle.

Here's mine. The kids who did this are responsible. They did it. They killed. But they came from a place and a time, and were yielded forth by a culture.

What walked into Columbine High School Tuesday was the culture of death. This time it wore black trench coats. Last time it was children's hunting gear. Next time it will be some other costume, but it will still be the culture of death. That is the Pope's phrase; it is how he describes the world we live in.

The boys who did the killing, the famous Trench Coat Mafia, inhaled too deep the ocean in which they swam.

Think of it this way. Your child is an intelligent little fish. He swims in deep water. Waves of sound and sight, of thought and fact, come invisibly through that water, like radar; they go through him again and again, from this direction and that. The sound from the television is a wave, and the sound from the radio; the headlines on the newsstand, on the magazines, on the ad on the bus as it whizzes by—all are waves. The fish—your child—is bombarded and barely knows it. But the waves contain words like this, which I'll limit to only one source, the news:

... was found strangled and is believed to have been sexually molested . . . had her breast implants removed . . . took the stand to say the killer was smiling the day the show aired . . . said the procedure is, in fact, legal infanticide . . . is thought to be connected to earlier sexual activity among teens . . . court battle over who owns the frozen sperm . . . contains songs that call for dominating and even imprisoning women . . . died of lethal injection . . . had threatened to kill her children . . . said that he turned and said, "You better put some ice on that" . . . had asked Kevorkian for help in killing himself . . . protested the game, which they said has gone beyond violence to sadism . . . showed no remorse . . . which is about a wager over whether he could sleep with another student . . . which is about her attempts to balance three lovers and a watchful financé . . .

This is the ocean in which our children swim. This is the sound of our culture. It comes from all parts of our culture and reaches all parts of our culture, and all the people in it, which is everybody.

It is corny to lay it out like this because we all know this. What I'm writing is not news. It is part of the reason that Hollywood people, when discussing these matters, no longer say, "If you don't like it, change the channel." They now realize something they didn't realize 10 years ago: There is no channel to change to. You could sooner remove an ocean than find such a channel.

Who counters the culture of death? The good parents and good families of our children. They are kind enough, sensitive enough to give them religious belief, the knowledge of a God, a sense that life has coherence and purpose. They are generous enough, and loyal enough to the future, to show through their actions that doing your best to show love is good, doing your work is good, contributing is good. "This is what we do," they do not say but show. "This is how to live."

But there aren't enough to go around. Most of the children who get into terrible trouble and wind up with guns in their hands don't have anyone to counter the culture. There are a number of reasons, but lately I think a great one is this: So many parents themselves are bound down by the culture, by the sickness of it, which they bear as a weight on their shoulders.

And there's more. We forget, those of us who are middle-aged, that we grew up in a time of saner, less sick-making images and sounds.

For instance, the culture of crime only began to explode in the 1960s. We have lived in it for 30 years, and most of us turned out OK. So we think our children will

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be OK too. But they never had a normal culture against which to balance the newer, sicker one. They have no reference points to the old, boring normality. We assume they know what we know: "This is not right." But why would they know that? The water in which they swim is the only water they've known.

The television executive Roger Ailes, who runs Fox News Channel, is a modern man, a smart man who lives in the world. A few years ago I was on his TV show to sell a book. He asked me why I am concerned about violence in the media. After all, he said, television and movies are full of comedy and the country isn't breaking out in laughter. I laughed and said that was true. But here's the difference: Violence is an inspiration to the unstable. People who are frailer, less stable, are more subject to the dark images they see. Teenagers, who are by nature in greater thrall to sweeps of emotion and sadness, are most vulnerable. If Holden Caulfield with all his angst had lived in modern America—well, that would be a book.

A man called into Christian radio this morning and said a true thing. He said, and I am paraphrasing: those kids were sick and sad, and if a teacher had talked to one of them and said, "Listen, there's a way out, there really is love out there that will never stop loving you, there's a real God and I want to be able to talk to you about him"—if that teacher had intervened that way, he would have been hauled into court.

Things in Common

Yes, he would have. It occurs to me at the moment that a gun and a Bible have a few things in common. Both are small, black, have an immediate heft and are dangerous—the first to life, the second to the culture of death.

One more thing: I think every intelligent person I know has been having thoughts like this for years, and they don't want to, and they're right not to want to, because it just may be true that this is one problem our resourceful and brilliant country cannot solve. The dark genie is out of the bottle, and swims in the seas.

I'll tell you who could make some progress though, maybe. Hillary Clinton. All the big media people, the owners and anchors, the studio heads and producers, the creators and disseminators, they all admire her. They support her. She could talk to them. She could ignite a "national conversation." She could get tough. She could take names. It might cost her—they give her money. But she's an important member of the community. And you know, it takes a village.

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[George Will, a well-known author and television commentator, is a nationally-syndicated newspaper columnist. The following first appeared in the Washington Post (March 18, 1999) and is reprinted with permission (© 1999, The Washington Post Writers' Group).]

For Right-to-Life Realists

George F. Will

Republican presidential candidates must rescue their party from the sterility into which its abortion debate has fallen. Herewith a suggested statement for any candidate seeking a position palatable to right-to-life realists:

“For those of us determined to regenerate society’s reverence for young life, the proposed Human Life Amendment has become a distraction. It encourages the barren politics of catharsis—striking emotionally satisfying poses unrelated to practical policy. Let me be blunt: An America in which three-quarters of the states would ratify an amendment banning abortion would not need such an amendment. Abortion would already be rare because it would be broadly understood as invariably tinged with tragedy.

“Concerning whether I would use a ‘litmus test’ to select Supreme court nominees ‘opposed to abortion,’ I say that question is miscast. It entices conservatives into endorsing the sort of result-oriented jurisprudence liberals advocate. The proper question concerns general jurisprudence. I would nominate judges whose respect for the Framers’ intentions—the Constitution’s language and logic—would dispose them to conclude, as many thoughtful supporters of abortion rights do, that *Roe v. Wade* is indefensible as constitutional law.

“The Democratic Party, which distrusts the American people, insists that abortion policy be set by judges. I believe the people can be trusted to legislate abortion policy. Overturning *Roe* would invigorate democratic debates at the state level concerning parental notification, public funding and partial-birth abortion.

“Temperate people on both sides of the abortion divide can support a requirement for parental notification, less as abortion policy than as sound family policy. Supporters and opponents of abortion can join in opposing public funding as an offense against civility: It is uncivil to compel one’s fellow citizens to fund a practice they abhor.

“Partial-birth abortion, too, reveals the real abortion extremism. In this procedure, all but part of the late-term baby’s head is delivered from the birth canal, then the skull is collapsed. During Senate debate on banning this procedure, two Democrats, Wisconsin’s Feingold and New Jersey’s Lautenberg, were asked: If the baby’s head slipped out—if the baby were entirely delivered—then did it have a right to live? Neither ‘pro-choice’ senator would say that the baby even then had a right to live.

“Who are the extremists now? The American majority, troubled by the casualness of abortion today? Or abortion-rights zealots who regard abortion as no more morally significant than an appendectomy? Formally, the Clinton-Gore position is

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that abortion should be 'safe and legal, but rare.' Actually, the Clinton-Gore position is dogmatic intolerance of anything that suggests abortion is even slightly problematic, morally.

"Pro-life people, of whom I am one, should not despair because a constitutional amendment will be impossible until it is unnecessary. We can take considerable comfort from the support science increasingly gives to the right-to-life movement's general moral stance.

"For example, I know that young adults who call themselves 'pro-choice' must be uneasy about the incongruity of that belief and their behavior: They frame sonogram pictures of their unborn baby responding to stimuli, and they read in 'The Well Baby Book' that, 'Increasing knowledge is increasing the awe and respect we have for the unborn baby and is causing us to regard the unborn baby as a real person long before birth.' And as a patient before birth. Medicine is performing diagnostic and therapeutic wonders, including surgery, on unborn babies.

"Pro-choice and right-to-life Republicans can share the common-sense conviction that the Supreme Court got things exactly wrong when it said it cannot tell when life begins but can tell when 'meaningful' life begins. As president I will patiently work to deepen the growing unease of the thoughtful American majority about the Democratic Party's position, which is this: Nothing in law or policy or public rhetoric can be tolerated that suggests that an unborn baby has a status more complex than an appendix.

"To encourage the growing anxiety of the American majority about the Democratic Party's culture of abortion, Republicans will be the party of adoption, removing all laws and other impediments, sparing no expense, to achieving a goal more noble even than a landing on the moon—adoptive parents for every unwanted unborn baby.

"My position, stressing moral persuasion as much as political advocacy, will displease Democrats eager to caricature Republicans, journalists hoping for Republican fratricide and simplifiers of the sort who would edit a stop sign. But it defines a party congenial to all but those who are utterly untroubled by the coarsening casualness with which young life is treated in today's abortion culture."

APPENDIX I

[*John Leo is a nationally-syndicated columnist. The following appeared in U.S. News & World Report ("On Society" March 1, 1999) and is reprinted with Mr. Leo's permission.*]

The Joy of Sexual Values

John Leo

Faye Wattleton, former head of Planned Parenthood, was crushed to learn that women's attitudes on abortion are not what she supposed they were. A poll conducted by Wattleton's new group, the Center for Gender Equality, found that 53 percent of American women think abortion should be allowed only after rape or incest, to save a woman's life, or not at all. Only 28 percent said abortion should be generally available, and 70 percent want more restrictions.

Another sign of slippage in support for abortion shows up in UCLA's annual national survey of the attitudes of college freshmen. Support for legal abortion dropped for the sixth straight year. In 1990 it was 64.9 percent. Now it is a bare majority, 50.9 percent. The National Opinion Research Center in Chicago found declining opposition to legal abortion from 1988 to 1996. But opposition climbed again in 1998 and is now in the 55 percent range.

Declining support for abortion owes something to the gruesome details that emerged in the debate over "partial-birth" abortion. Improvements in ultrasound imaging also tend to undermine abortion, cutting through the abstractions of "choice" and "reproductive rights" and showing pregnant women how much a fetus resembles a newborn. When ultrasound video shows the fetus in 3-D, support for abortion could drop further.

But this support may be eroding because sexual attitudes in general have been moving in a conservative direction throughout the 1990s. Wattleton's poll shows that 44 percent of women think divorce should be harder to get, and 52 percent oppose distribution of condoms in schools. Surveys by Yankelovich Partners Inc. report that three decades after the sexual revolution, only 37 percent of Americans think premarital sex is acceptable (32 percent women, 43 percent men), and only 20 percent approve of sexual intercourse among teenagers. In the UCLA survey, a record low of 39.6 percent of students (down from 51.9 percent in 1987) agreed that "if two people really like each other, it's all right for them to have sex even if they've known each other for a very short time."

Getting religion

Two factors driving the conservative trend are religion and the costs of the sexual revolution (AIDS and other sexually transmitted diseases, the effects of divorce, dissatisfaction with promiscuous sex). The Wattleton survey found that 75 percent of the women polled said religion is very important in their lives, up from 69 percent two years ago. A study of young urban males by the Urban Institute found that the growing trend toward less permissive sexual attitudes in the 1990s is associated with religious beliefs. The number of religious teens didn't rise, but the teens who were religious developed more conservative values. It's not just teen pregnancies

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that are down. So are teen sexual activity and approval of it. Support for premarital sex remains high, but it dropped from 80 percent in 1988 to 71 percent in 1995. Over the same period, the percentage of males age 17 to 19 who have had sex fell 7 points to 68 percent.

In a hypothetical case of pregnancy involving an unmarried couple, the percentage of males who endorsed having the baby and supporting it rose steadily from 19 percent in 1979 to 59 percent in 1995. The report says these changes, found among whites and minorities alike, are "broadly consistent" with the sexual values reflected in the Promise Keepers and the Million Man March. The lessons of the study, said its authors, are that values matter and AIDS education makes a difference.

The high divorce rate and liberated lifestyles of the boomer generation may now be producing more cautious, conservative attitudes among the young. "Generation X-ers basically believe the baby boomers went too far with their lifestyle, taking it to the brink," says Ann Clurman of Yankelovich Partners. "Children of divorce are 50 percent of gen X-ers. They think they are victims of divorce and want to pull back from the precipice. Down the road we will definitely see less divorce." Her colleague and fellow analyst at Yankelovich, J. Walker Smith, adds this: "X-ers don't want to return to Ozzie and Harriet, but they want to recapture the traditional satisfactions. The family unit is on the decline, but the desire for family satisfaction is on the rise." Smith says boomers too, as they age, are developing more traditional attitudes: Gen X-ers are 10 to 25 points more likely in surveys to prefer a return to traditional standards than boomers were when they were young. And boomers today are just as likely as gen-Xers to differ with the attitudes reported by the boomer generation in the 1970s.

Smith says researchers are picking up a rising reaction against the trend of dropping dating in favor of "hooking up"—typically teens or college students going out in groups, maybe drinking a lot, then pairing off for sex. Amy Holmes, of the Independent Women's Forum, is pushing a "Take Back the Date" movement to stamp out the aimless sex of "hooking up." Maybe the tanker is turning around.

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