# the HUMAN LIFE REVIEW


SPRING 2001

*Featured in this issue:*

George McKenna on . . . . . Why They Help Them Lie
William Murchison on . . . Alan Wolfe's Search for Virtue
Richard J. Goldkamp on . . . . . Stoking the Fire for St. Mel
Brian Caulfield on . . . . . The World He Will Inherit

**Abortion in a Pill: RU-486**

Andrew Sullivan • David van Gend • Paul Greenberg • Kathryn Lopez

Mary Meehan on . . . . . ACLU *v.* Unborn Children
Mark Pickup on . . . . . The Murder of Tracy Latimer
Patrick J. Mullaney on . . . . . .The Case for Personhood

*Also in this issue:*

Mother Teresa • Jérôme Lejeune • Michael Novak • Neil Munro
George F. Will • Wesley J. Smith • J. Bottum • Richard Miniter

*Published by:*

The Human Life Foundation, Inc.

New York, New York

Vol. XXVII, No. 2 $5.00 a copy

ABOUT THIS ISSUE . . .

. . . we're delighted to welcome three new contributors this Spring.

Mark Pickup, ("The Murder of Tracy Latimer," p. 74) is a disability-rights activist in Canada. Wheelchair-bound by progressive multiple sclerosis, Mr. Pickup is nevertheless a peripatetic advocate who maintains a busy speaking schedule both in Canada and here in the United States. You can learn more about his tireless crusade against euthanasia by visiting his website: *HumanLifeMatters.com.*

Brian Caulfield, who writes for the archdiocesan newspaper, *Catholic New York*, became a father last September 23—seven weeks ahead of schedule. You'll read about the premature delivery in his article ("The World He Will Inherit," p. 31); today, we can provide a happy update: little Stephen James is thriving to such an extent that heart surgery which seemed imminent only a month ago has been put off for now.

Patrick Mullaney is a lawyer who lives and works in New Jersey. The story he tells in *New Jersey* v. *Alexander Loce et. als: A Father's Trial and the Case for Personhood* (p. 85) was a long time in the making—a promise he made to the late Cardinal John O'Connor shortly before O'Connor's death finally got it told. And what a story it is.

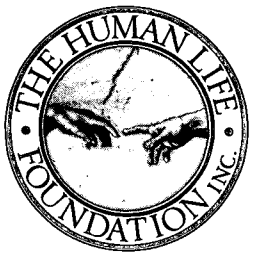
Three comings and one going: we'd like to take a moment to salute our senior editor William Murchison who, you will read, is taking a sabbatical from here to finish his book about the Episcopal Church. Bill's articles have graced our pages for nine years. We'll miss his signature musings on all things metaphysical, and wish him (speedy) success with his project.

We'd also like to congratulate another regular contributer, Wesley J. Smith, whose new book, *Culture of Death: The Assault on Medical Ethics in America* has just been named one of the ten outstanding books of the year by The Independent Publishers Group.

As always, we'd like to thank some other publications for permission to reprint articles we thought you'd not want to miss: *National Review Online* ("The Abortion Flaw," Michael Novak, p. 110); *Philanthropy* ("Everything for Sale?" Neil Munro, p. 112); *The Weekly Standard* ("The Politics of Stem Cells," Wesley Smith, p. 117 and "Against Human Cloning," J. Bottum, p. 121); and *The Wall Street Journal* ("The Dutch Way of Death," Richard Miniter, p. 124).

Finally, our thanks to Nick Downes, whose cartoons continue to justify the high esteem in which he was held by our late founder and editor, J.P. McFadden.

ANNE CONLON
MANAGING EDITOR






Published by THE HUMAN LIFE FOUNDATION, INC. Editorial Office, 215 Lexington Avenue, 4th Floor, New York, N.Y. 10016. The editors will consider all manuscripts submitted, but assume no responsibility for unsolicited material. Editorial and subscription inquiries, and requests for reprint permission should be sent directly to our editorial office. Subscription price: $20 per year; Canada and foreign $25 (U.S. currency). ISSN 0097-9783.



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# INTRODUCTION

"When I was a child I was told that only bad people lie." So begins Professor George McKenna in our lead article; he goes on to describe how he was taught by his professors in the 50's that "people who lied a lot were social lowlifes: Mafia wiseguys, clubhouse politicians . . . ." He flashes forward to the 90's, and the "cognitive dissonance" he experiences while watching Congressional hearings on partial-birth abortion: the attractively dressed woman, with her tasteful jewelry and modulated voice is . . . telling outrageous lies. Why? Because, as McKenna proves with numerous examples, some well and some not so well-known, "from its inception the 'pro-choice' movement has used lies to advance its cause." It has *had* to, because "the truth about what they are doing and defending is very unpleasant." McKenna then examines why today's "liberals" are so comfortable with the lies. I won't give away any more, except to say that I'm certain McKenna's engaging prose and startling observations will delight you.

McKenna's "Why They Help Them Lie" is a fitting start to this issue; the falsehoods promoted by abortion supporters, which go unchallenged by the media, are featured prominently in most of the articles we've gathered. Following McKenna's is a characteristically stunning contribution by our senior editor William Murchison. It's not exactly about lies, but certainly about what passes for truth and virtue in the media and the popular culture, and also what effect "liberalism" has had on Americans. His subject is a new book by sociologist Alan Wolfe, *Moral Freedom—The Search for Virtue in a World of Choice* (Murchison examined Wolfe's book *One Nation, After All* in our Summer, '98 issue). Wolfe and his "pack" have interviewed what he claims is a representative cross-section of Americans, and found that the "moral majority" in America are those who make up their *own* minds about right and wrong, without worrying overmuch about what God might think. "Choice" *as* a virtue "covers everything, dissolves hard-to-swallow moral conflicts"—and also, says Murchison, enables the abortion industry to thrive in a country in which most citizens are still "uncomfortable" with it. "Death we see among us; we shrink back but also shrug; move over in democratic fashion to make room." Nonetheless, Murchison believes that a) Wolfe's interviewees do *not,* please God, represent, an accurate cross-section of citizens, and b) in any case the only answer to the results of Wolfe's "survey" is nothing less than a moral turnaround.

Shifting to recent politics, we next present journalist Dick Goldkamp's piece about the sudden death of Missouri governor Mel Carnahan last October 16th,

and the surreal campaign in which he won re-election posthumously, defeating Republican (and now Attorney General) John Ashcroft. According to Goldkamp, Carnahan was by accounts a decent man, but he was also an extreme abortion-rights supporter, who went out of his way to support infanticide—vetoing the Infants' Protection Act passed by a majority of Missouri's legislators. The media "Sainted" Carnahan after his death, conveniently ignoring his controversial support for abortion, and creating a sympathy-based, issue-less campaign climate, thus making it even more impossible for Ashcroft, a pro-life Republican, to challenge the seat which would go to Carnahan's grieving widow—who has asserted full support for her husband's political views.

From the political to the personal: Catholic news journalist Brian Caulfield has written a profound and moving reflection on his son's premature birth, a difficult and terrifying experience ("My wife and child rode the tide between life and death"), and about the world little Stephen James, now eight months, will inherit. Being a first-time father has caused Caulfield to look with renewed wonder at the mystery of existence, and with heightened anxiety at the controversial issues preoccupying us today: cloning, stem-cell research and RU-486.

RU-486 is also the subject of a mini-special section which follows. We begin with an article from *The New Republic* by Andrew Sullivan, in which Sullivan writes of conflicting feelings about the new drug cocktail—he's "horrified by any abortion"—but thinks pro-lifers ought to see that the legalization of RU-486 is "on balance, a step forward." We reprinted Sullivan's piece here because our friend David van Gend of Australia emphatically disagrees: he sent us an eloquent rebuttal, and he brings us back soundly to the essential point about RU-486, which is that it is still abortion, and "ultimately size does not matter, and emotion does not adjudicate, in our obligation to our offspring." Mr. van Gend is followed by columnist Paul Greenberg, who writes about the *politics* of RU-486; regulations proposed to require certain basic safeguards in administering this dangerous drug to women meet objections in the name of "a woman's right to choose": "Abortion has become the right not just to kill the child but to endanger the mother." Finally, we have reprinted Kathryn Lopez's story from the *National Catholic Register* about the secrets and lies surrounding RU-486, as well the skewed reasoning behind some women's choice of the drug combination over a surgical procedure ("I thought the least I could do was suffer a little").

Those familiar with this *Review* know that Mary Meehan's articles are unparalleled: she has done fascinating research into the history of abortion and its connection with slavery and eugenics. This time Meehan has taken on another formidable subject, the American Civil Liberties Union, in her latest opus: *ACLU v. Unborn Children*. When the ACLU was formed, it "saw itself as a little guy, fighting for the civil liberties of other little guys"—the voiceless in

society. Yet the organization's history shows a "long and relentless campaign against the right to life of unborn children." Meehan shows how the "ACLU's abortion policy was shaped by dedicated lobbying on the part of a few ACLU members"—even though some members warned that the organization was coming down "on the wrong side." As Meehan carefully documents, the ACLU has continued supporting whichever side is *against* the little guys and girls slated for abortion—whether by siding with abortion clinics against protestors ("What Ever Happened to the First Amendment?"), or by supporting partial-birth abortion.

Mark Pickup is a tireless advocate for the disabled, even though he himself suffers from progressive multiple sclerosis. It was not without strong emotion that he watched as a large story unfolded in his native Canada—the trials of Robert Latimer, a farmer who admitted to murdering his twelve-year-old daughter Tracy because she had cerebral palsy. Pickup tells the story of the Latimer saga; the case went all the way to Canada's Supreme Court, and along the way popular support grew daily for . . . the *murderer*, and "mercy killing" in general. As Pickup writes, "It's a scary time to be disabled" in Canada.

Our final article tells an important and impressive story. Back in 1990, a unique court case evolved from the story of Alex Loce, a father who tried to save the life of his unborn child. When legal efforts failed, he attempted to block access to the clinic where his fiancee had scheduled an abortion. Loce was arrested for trespassing, and his child was, sadly, aborted, but Loce and his lawyer, Patrick Mullaney, who has written this compelling article for us, did not let it end there. Instead, Loce "opened up a novel legal opportunity: the chance to defend against the trespass charge by arguing that his unborn child had a right to life protected by the Due Process clause of the 14th Amendment." The trial, *New Jersey* v. *Alexander Loce et. als*, came before the Morris County municipal court in April of 1991.

Mullaney takes us step by step through the legal reasoning set forth by the Loce case. He also tells the amazing story of those who became champions of Loce's cause, no less than a (now heavenly) cloud of witnesses: Dr. Jérôme Lejeune, world-famous geneticist who discovered what causes Downs Syndrome, Cardinal John O'Connor, and even Mother Teresa. Although Loce was found guilty, and an appeal to the Supreme Court was denied, we emphatically agree with Mullaney that it is invaluable to "pass on the collective fruits" of the laborers for *Loce*, because "One day the United States Supreme Court will reconsider whether our law can continue to trample upon the right to life."

* * * * *

We begin our Appendices section by reprinting, in appendices *A* and *B*, two documents pertaining to the *Loce* case. First, the complete text of Mother Teresa's *amicus curiae* brief, filed on February 14, 1994, in which she urged the Su-

preme Court to take up Loce's petition (it was denied February 28th). Next, we have the beautiful testimony of Dr. Jérôme Lejeune, who was a witness for the defense; he was questioned by Mullaney about the genetic process of conception, and, though he was "speaking" science, his words are pure poetry. The *Review* has reprinted this testimony before, and we probably will again: there is nothing equal to Lejeune's words describing the process of conception, or his description of an eight-week old fetus as a "Tom Thumb," the size of a man's thumb, who is a "tiny being with fingers, with toes, with a face and with palm prints you could read with a microscope," and whose little heart beats in a symphony with his mother's.

*Appendix C* is a reflection by Michael Novak on the occasion of this year's March for Life in Washington, DC. Novak begins by speaking of Ronald Reagan's thoughts about abortion: "Reagan's radio address on this subject should be read in full; it is a marvelous record of how one man faced his own puzzlement and made up his mind." Novak goes from Reagan's pro-life convictions to his own hope that today, with the horrific legacy of 40 million dead since *Roe*, we nonetheless might be entering a "thaw," that "arguments have swung decisively toward the protection" of the unborn child, and "more and more people are beginning to awaken."

We hope he is right. In the meantime, sadly, legal atrocities against human life abound, and some seem to slip in under the radar of many Americans' consciousness. Take, for example, the sale and the use of fetal tissue, and the creation and destruction of embryos used for stem cell research, the subjects of *Appendix D*. As Neil Munro writes, "Research that uses fetal organs, limbs, eyes and brains is commonplace," in fact, the federal government "distributes 15-20 first trimester organs per week, at no charge, to NIH-funded researchers." Do most Americans realize this? And there is a hidden story behind the debates about federal money being used for stem cell research—private foundations have been putting millions of dollars into medical "research," with little or no objection when the money goes to buy fetal parts or to create embryos to be killed for their stem cells. In other words, what's lost in the debate over federal funding is that the grisly research is well-funded *already*, and there will continue to be a no-holds-barred approach to using body parts unless the foundations involved begin to "consider the impact of their funding on society, not just medicine and science."

In a related article (*Appendix E*), *The Politics of Stem Cells,* Wesley Smith takes us through a valuable explanation of what stem cells are, why they are coveted by researchers, and the exciting breakthroughs discovered recently using *non-embryonic* stem cells: adult stem cells and stem cells found in umbilical cord blood. But you probably haven't heard about these: as Smith writes, "The opportunities for developing successful therapies from stem cells that do not require the destruction of human embryos should be very big news. But where are the headlines?" Smith tells us the political and *im*moral reasons why

embryo stem-cell research, though not proving as promising as first hoped, is still relentlessly and publicly pushed over the alternatives.

And now, on to cloning: in *Appendix F*, *The Weekly Standard's* J. Bottum stresses for us the importance of the Brownback-Weldon bill to prohibit human cloning, and urges the reader to consider cloning a unique issue, which must be separated from the debates over abortion and stem cell research. Bottum writes that all pro-cloning arguments "quickly dissolve into a fog of vague, unfocused *feelings* about science, sex and the human condition," and he lists the compelling reasons why cloning should be banned. He warns that any politically-maneuvered "compromise" on cloning will actually be a victory for the pro-cloning forces—the only way to stop cloning is to ban it absolutely. (Also in the category of under-reported news: experiments with cloning, like those with the transplanting of fetal tissue in the brains of Parkinsons' sufferers, have had some disastrous results.)

Our last two appendices deal with other areas in our burgeoning coverage of life issues. First, in *Appendix G*, Richard Miniter of the *Wall Street Journal Europe* writes about the recent legalization of euthanasia in Holland, though, as we know, the Dutch have not only tolerated but encouraged voluntary and involuntary euthanasia for some time. It is ironic, as Miniter points out, that the Dutch doctors, who have ushered in this slaughter, "in contrast to the physicians of every other Nazi-occupied country," never "recommended or participated in a single euthanasia during World War II . . . .", whereas today "Every legal and professional barrier to euthanasia has been demolished, often by doctors themselves." *Appendix H* is a column by George Will responding to a recent study that's gotten a lot of attention: the Donohue-Levitt paper which claims that "Legalized abortion contributed significantly to recent crime reductions." Will has some choice objections to the researchers' findings, and he asks this: "Does the policy of abortion-on-demand, which reduces children to 'choices' and pregnancy to casually disposable inconveniences, contribute to the mentality that does make many children" . . . unwanted? Then "the abortion culture itself" would be an "incubator of crime."

There ends an issue which covers a broad range of weighty subjects. We've tried to provide welcome breathers with the interspersed collection of Nick Downes' cartoons, for which we are, as always, terrribly grateful. (A friend wrote my late father a few years ago: "Cartoons in a serious quarterly?—what a marvellous idea!")

MARIA MCFADDEN
EDITOR

# Why They Help Them Lie

*George McKenna*

When I was a child I was told that only bad people lie.

The message was reinforced when I went to college in the 1950s, but with a particular cultural inflection. I was taught by "vital centrist" professors—professors a little bit to the left of center—that people who lied a lot were social lowlifes: Mafia wiseguys, clubhouse politicians, red-baiters, those types of people. Their opponents, the good guys, were not liars. They could be mistaken. Their opinions could be wrong. But they were honest.

So there were liars and there were people who sought to tell the truth, and the liars were sleazy characters. And they looked it. The '50s brought America to dizzying new heights in the graphic revolution. Television, Madison Avenue, Hollywood, glossy magazines, all fetched up a great stock of images and visual cues. People who were dishonest were supposed to look and sound thuggish, and so of course they did. Joe McCarthy, the red-baiter, had an ugly jaw and an ugly nasal whine, wore his double-breasted suitcoats open, and even slugged one of his critics. (McCarthy himself was in the image business, playing "the tough Marine," but by the '50s that was quite out of date.) When the Mafia guys appeared at televised congressional hearings we looked for sharkskin suits and pinkie rings, and sometimes we actually saw them. But it didn't matter, the pictures were already in our heads. Richard Nixon, who was only an entry or two below McCarthy on my professors' Most Notorious list, had a problem with facial hair, and Herblock, the Washington *Post*'s cartoonist, was one of those graphic specialists who helped us see that Nixon's five o'clock shadow was a metaphor for dishonesty.

On the other side of the moral divide, the children of light also looked and talked the way we wanted them to. Attorney Joseph Welch, who fatally shamed McCarthy at the televised Army-McCarthy hearings in 1954 ("Have you no sense of decency, sir, at long last?") dressed in proper Boston tweeds; Adlai Stevenson, twice a Democratic presidential candidate and a frequent victim of McCarthy's jibes, looked like a kindly, slightly absent-minded professor. (When Stevenson tried to get nominated for the third time in 1960, his supporters displayed the photo of him with a hole in his shoe, which is what you'd expect a slightly absent-minded professor to have.) Some of the good guys, like

**George McKenna** is a professor of political science at City College of the City University of New York. He writes on political and ethical issues; some of his previous articles have appeared in this journal. His recent books include *The Drama of Democracy* (1998) and the 11th edition of *Taking Sides: Clashing Views on Controversial Political Issues* (1999), which he edits with Stanley Feingold.

Stevenson and Welch, were witty and convivial; others, like CBS's Edward R. Murrow, were solemn, but they all had about them a certain way of acting and talking, a carriage. Television, Marshall McLuhan later wrote, is a "cool" medium, and these were people perfectly suited to the television age because *they* were cool. Not aloof, but quiet, thoughtful, almost hesitant about letting us know their views. Theirs was the style of the seminar room, not the noisy convention hall. It worked very well in the cool medium of television.

Fast-forward now to the '90s, and here I am again in front of my TV, watching the congressional hearings on partial-birth abortion. A woman from Planned Parenthood is testifying, and she looks very attractive: tasteful hair-styling, a modest bit of jewelry, a dark, tailored dress. And she is speaking quietly, softly, in a measured way, the way Edward R. Murrow and Joseph Welch and Adlai Stevenson used to speak. But she is saying things that are not true and that she has reason to know are not true. She is telling lies.

Now here is a case of cognitive dissonance: the information I get from my observation of her manner and style is sharply at odds with what she is saying. My observation of her exterior tells me that she is an honest woman, but because I know that what she is saying is not true and that she must know that it is not true, my brain tells me that she is a liar. Still, I can't believe it, because she is so earnest and sincere. So I can't even bring myself to shout at the TV, "You're a liar!" And imagine the reception if by magic I were suddenly transported into the hearing room and one of the congressmen asked me for my opinion and I said, "We're not talking about opinions, we're talking about facts, and this woman has just lied." That's the kind of rudeness you'd expect from Joe McCarthy. Maybe one of the congressmen would even say, "Have you no sense of decency, sir?"

Yet I would be telling the truth. In fact, I'd be understating the truth. The truth is that it was not just that woman, on that day, who was lying, but that from its inception the "pro-choice" movement has used lies to advance its cause. I could fill the rest of this article with examples, but a few may be enough.

• In making its case for abortion legalization prior to the 1973 *Roe* v. *Wade* ruling, NARAL consistently lied about the number of deaths resulting from illegal abortions. In his memoir of the period, *Aborting America*, Dr. Bernard Nathanson, the former chairman of the National Association for the Repeal of Abortion Laws (NARAL—now called the National Abortion and Reproductive Rights Action League), who has since turned around and become a pro-life spokesman, recalled that he and the other NARAL leaders always cited the figure of "5,000 to 10,000 deaths a year." The actual total for 1972 listed by the federal government was 39 deaths. "I confess that I knew the figures were totally false," Nathanson wrote, "and I suppose that the others did too if

they stopped to think about it. But in the 'morality' of our revolution, it was a *useful* figure, widely accepted, so why go out of our way to correct it with honest statistics?"

◦ *Roe* itself was brought to the Court by lies. Norma McCorvey, the "Jane Roe" of the case, falsely claimed that she had been a victim of rape. According to her later account, she hastily made this up after the lawyers began "frowning" when she told them she was a lesbian. She had come to the two attorneys, Sarah Weddington and Linda Coffee, because she thought they could find her an abortionist. They could have, since, unknown to McCorvey, Weddington herself had recently obtained an abortion in Mexico. Instead, they lied to her, telling her that her only recourse was to become a plaintiff in their lawsuit. (Afterwards, McCorvey went home and looked up the word "plaintiff" in the dictionary.) They assured her that after the Supreme Court's decision, there would still be time to get an abortion. They knew of course that there wasn't—lawyers know how long it takes to get a case even before the Supreme Court—but they lied to her to get her cooperation. (McCorvey had the baby and put it up for adoption.) And they passed on her lie about the gang-rape.

◦ Another lie was used to bring *Doe* v. *Bolton*, the companion case to *Roe*, before the Supreme Court. (In *Doe*, the Court ruled that states could not ban even a third-trimester abortion if the mother-to-be could prove that she needed the abortion for reasons of "health," which was was defined to include physical, emotional, and "societal" considerations.) In a sworn affidavit submitted last year, the woman designated as "Mary Doe" stated that she did not want an abortion and in fact strenuously resisted pressure from a number of people, including her attorney, to get one. In 1970 she had gone to attorney Margie Pitt Hames, seeking not an abortion but a divorce and legal custody of her three already-born children. What Hames did was to turn the woman's marital plight into a case for a late-term abortion. When Hames and the others tried to pressure her into the abortion, she fled to Oklahoma and remained there until assured that the pressure would stop. When she returned, Hames asked her to appear in a courtroom with other expectant mothers but to say nothing. Three years later "I saw my lawyer, Margie, on television. The story reported on television was that the United States Supreme Court had made abortion legal. I did not fully comprehend what my role was in the Court's decision in *Doe* v. *Bolton*."

◦ The Becky Bell Story: Here is a lie that continues to be repeated by pro-abortion groups, especially when hearings are held on parental-notification bills. In 1990, Becky Bell, a 17-year-old Indiana girl, supposedly died from an illegal abortion that she'd gotten rather than to have to notify her parents of

her intention to get an abortion, as required by Indiana's parental-notification law. Conflicting versions of the Becky Bell story have been carried by CNN, *Time*, *Newsweek*, the Washington *Post*, and other major media. But there has never been any credible evidence that Becky Bell died from an abortion. What she apparently died from was toxic pneumonia, of the kind that killed Muppeteer Jim Henson. She was pregnant at the time, and during her last hours she apparently suffered a miscarriage (the doctor treating her said at one point that he would not be able to save the baby), but the coroner's report showed no evidence of an abortion.

• Serial lying was used to deny the grisly reality of partial-birth abortion. When the National Right To Life Organization first reported it in 1994, the Planned Parenthood Federation denied that it existed. But when Right to Life produced a paper describing the procedure by the doctor who invented it, the story suddenly changed: yes, it was used, said Planned Parenthood, but "only in rare cases, fewer than 500 per year," and "only in cases when the woman's life is in danger or in cases of extreme fetal abnormality." That story continued until 1996, when Ruth Padawar, a reporter for the *Record*, a New Jersey newspaper, made a few phone calls and discovered that in a single New Jersey clinic at least 1,500 partial-birth abortions were performed every year, the vast majority of them to healthy babies of healthy mothers. This was vehemently denied by Kate Michelman of NARAL, who claimed that Padawar "completely got it wrong," and called the 1,500 figure "a lie." Then, when more stories appeared about the frequency of partial-birth abortions, in the Washington *Post* and elsewhere, the National Organization for Women said that they were "planted by abortion opponents." Even after Ron Fitzsimmons, head of the National Coalition of Abortion Providers, admitted that he had previously lied in saying that the procedure was rare, they still stuck to the lie. ("If he thinks he lied, that's his problem," Michelman said.) But eventually most of them backed off.

A connected lie was that the baby doesn't die from the violent procedure itself but from the anesthesia administered to the mother before the operation. This was immediately and indignantly denied by the American Society of Anesthesiologists, which called it "entirely inaccurate." Yet Planned Parenthood continued to repeat the lie, causing needless concern among pregnant women that epidurals during labor would kill their babies.

These are not just lies blurted out on the spur of the moment. They are premeditated lies, lies worked out and rehearsed well in advance, then ceremoniously introduced to the public. This is not ordinary lying, it is organized lying, carried on now for more than a generation by the abortion industry and its supporters. Why do they lie? I suppose because they have to. The truth

about what they are doing and defending is very unpleasant. Some years ago I wrote an article on abortion in the *Atlantic Monthly*, one that sought to spell out a moderate position on the issue; it argued that pro-lifers should rely more on persuasion than on legislation and should try to limit abortion rather than seek a total ban on it. To my surprise it caused a terrible ruckus. More than five hundred letters were sent to the editor, most of them opposed, many demanding a cancellation of their subscription. One of the things that really got to a lot of *Atlantic* readers was that I called abortion "a killing process." Correspondents denounced this as inflammatory, then went on to insist that fetuses are not really humans, are not persons, and are so small that you can hardly see them—as if those assertions somehow proved that there was no killing involved. The fact, of course, is that even if all these assertions were correct, abortion would still be a killing process. *Something* is being killed. That was very hard for many people to take. In the piece I had quoted a counsellor at an abortion clinic who said she hated the term "abortion clinic," because her clinic was not really involved in killing but in "healing and care." She wrote a letter in response to my article insisting again that the term "abortion clinic" is "reductive and inadequate" (though she finally did allow that abortion involves "stilling a heartbeat," which surely isn't healing and caring).

The abortion insiders, the people who do it and people who promote it, have to be especially careful when they talk about partial-birth abortion. Stabbing an about-to-be-born baby in the back of the head, suctioning out its brains and crushing its skull, that is strong stuff. Dr. Warren Hern, the Colorado abortionist who specializes in it and has written a handbook on it, has a section in the book entitled "Dealing With the News Media." He advises physicians and administrators to "provide as much factual information as possible," but to make sure that the information is "appropriate for public consumption." In discussing it, Hern advises, the practitioners should focus on issues such as "freedom of choice," not on "the specific details of the abortion procedures." Diverting attention from "specific details," including the detail that a baby gets mutilated and killed, is the heart of the strategy. If reference is made to the baby at all, the baby is to be characterized as "deformed." (I heard Betty Friedan, founding mother of the National Organization for Women, actually use the term "monster.") This is another lie, as Ruth Padawer of the *Record* discovered when doctors who did the procedure told her that the vast majority were performed on healthy fetuses. Then there was the lie that the mother needed a partial-birth abortion to save her life or her "health" (the latter term being almost infinitely expandable). At an especially theatrical press conference in 1996, President Clinton brought with him five women who had had

partial-birth abortions, and he claimed that if they hadn't, their bodies would have been "eviscerated," "ripped to shreds," and they "could never have another baby." Not a word of this was true. As even the usually "pro-choice" American Medical Association stated, the procedure "is never medically necessary." A baby's excessive head size (hydrocephaly) can be corrected by draining fluid from its brain, or else the woman could give birth by caesarian. It is partial-birth abortion, a group of obstetricians later testified, that poses health risks to the mother, including "immediate and massive bleeding and the threat of shock or even death." It can also lead to an "incompetent cervix," the leading cause of premature deliveries.

So that is why the abortion people tell lies. The truth about our nation's abortion clinics—about who owns them, who runs them, and what happens there—is so dangerous that if it were ever given the kind of sustained coverage that the press gives to scandals, it would shake the foundations of the industry and threaten the careers of its lobbyists. So the abortion insiders have to lie.

What is puzzling is why so many people on the outside have gone along with the lies. I mean people in the news media, in the arts community, in politics, law, and the university. It took two years before a reporter even picked up a phone to check on Planned Parenthood's claim that partial birth abortion is used "only in rare cases," and "only in cases when the woman's life is in danger or in cases of extreme fetal abnormality." The New York *Times* printed these claims as facts, with no attribution and no quotation marks, and other media did the same. Nor did any reporter ever challenge President Clinton's claim that the women who had had partial-birth abortions would otherwise have had their uteruses "ripped to shreds." Lies like that are put into the media echo-chamber and are transformed into established "facts." Why do newspeople do that? Why are they so gullible? These are people who pride themselves on their skepticism, on not accepting the claims of public officials at face value. They like to catch them fibbing, and if one of the fibs turns out to be part of a larger network of deception—well, isn't that the way Pulitzers are earned? And what of the arts community and academic community—aren't these people dedicated to scholarly and artistic truth? There are great scholarly and artistic projects going in America, yet there is this blind spot on abortion. Consider this example. In 1999, Ken Burns, famous for his prize-winning film series on the Civil War, produced a documentary on the lives of Elizabeth Cady Stanton and Susan B. Anthony, leaders of the nineteenth-century struggle for women's rights. Now here is the odd thing: nowhere in Burns' rich narrative was it once mentioned that Stanton and Anthony were

outspoken opponents of abortion. Surely this is noteworthy: the founders of American feminism were fiercely opposed to "abortion rights," the centerpiece of mainstream feminism. Elizabeth Cady Stanton classed abortion with the killing of newborns as "infanticide" and Susan B. Anthony called it "child-murder." When columnist Nat Hentoff, who contributed to Burns's later documentary on the history of jazz, asked him why he omitted this part of their social and moral philosophy, Burns replied that he didn't want his documentary to be "burdened by present and past differing views on choice."

Note Burns' language: "choice." As Hentoff later remarked, it indicates "where he's coming from on the subject of abortion." But beyond that, what Burns did, what he tried to brush away with an evasive reply to Hentoff's question, was to censor his own documentary. He removed an inconvenient fact from his history of feminism. Was this any different from what the editors of the Soviet Encyclopedia did when they purged from the history of the U.S.S.R. all references to a man named Leon Trotsky?

Why would Burns do a thing like that? From his use of words we can gather, as did Hentoff, that he takes the "pro-choice" position on abortion. That might explain a certain slant, or a certain way of interpreting facts, but it doesn't explain why he would participate in a cover-up. Burns doesn't make his living from abortion, so he has no economic reason to do it. What risks would he have taken by letting viewers know that the founders of American feminism were pro-life? One would think that his reputation as a producer of honest documentaries would be more important to him than his standing with the "pro-choice" crowd. As with Burns, so with others in the arts community and the university and the media. Why would any of them be tempted to suppress information or uncritically repeat the claims of the abortion industry? They may be "pro-choice," but they don't have to be complicit in lying. So why are they?

I can't answer this definitively, because I can't read other people's minds. But what I can do, to some extent, is to read *my* mind and heart. I labor in the same vineyard as many of these people, and I share some of their thoughts and emotions, so I will offer my own witness.

Would it be fair to say that most people in the arts and the media and university are liberals? I think that is about right; the polling data that we have tend at least to show that there are far more liberals in those fields than among the public at large. But what is a "liberal"?

Philosophically the term has become almost impossible to define, but that was not always so. Originally and etymologically the term once had the general meaning of "liberty from oppressive government," but by the time of the New Deal in the 1930s the term had undergone a major revision. British and

continental liberals had started the process in the middle of the nineteenth century, and in the last century thinkers like Herbert Croly, John Dewey, and many in Franklin Roosevelt's "brain trust" adapted it to the American experience. In the end they came up with this formulation: Yes, liberalism means liberation from oppression. But oppression comes in many forms. It can come from government, but it can also come from giant corporations, which exploit workers and limit competition. It can come from poverty, which narrows people's opportunities and mental horizons; from crime, which forces people to live in fear; from totalitarian enemies abroad and subversive forces at home, which would plunge the nation into tyranny. In all of these instances, government can emerge not as an enemy but an ally of liberty. A vigorous government is especially necessary to protect the weakest and most vulnerable members of our society from harm.

While sharing the devotion that the older,"classical" strain of liberalism had for individual freedom, New Deal liberalism was more communitarian, admitting a positive role for the state and "intermediate" social institutions, such as churches and charitable institutions. It was a coherent, well-considered revision of an older form of liberalism, though of course not above challenge. There are still plenty of classical liberals who contest the revised version, some of them with formidable arguments. Nevertheless, there was grist and substance in New Deal liberalism; it possessed a solid doctrinal core.

Then something happened. Very gradually, liberalism began to develop a dual identity. It became not just a philosophy but a fashion. It started happening in the '50s, when I was in college, and I suppose it was connected with the graphic revolution referred to earlier. It was about then that we started expecting liberals to look and sound like liberals. In 1960 Republican Senator Barry Goldwater wrote a book called *Conscience of a Conservative,* and I remember watching a cabaret spoof called "Conscience of a Liberal." The stage manager came out at the beginning and said, "Can't you see I'm a liberal? Haven't you noticed my drip-dry suit?" The audience laughed knowingly because they knew that the drip-dry suit (you could wash it and put it on a hanger to dry) was fashionable just then in liberal circles.

By the '60s, then, liberals had become recognizable by the way they looked—and the way they talked. Liberals had become an ethnic group. Like other ethnic groups, they dressed and carried themselves in certain ways, they shared collective memories of good times and bad times (from the triumph of F.D.R.'s First Hundred Days to the tragedy of the McCarthy investigations). And they had a common langauge. Shortly after I married, my wife and I lived in a neighborhood of immigrant and first-generation Italians. One day,

while I was speaking to the butcher, the man smiled mysteriously and said, "you talk education." He meant, I think, that I spoke English like an educated person, a person somehow involved in higher education. I spoke the way they do in the academic community, in the arts community, the publishing community, the news community. We all "talk education."

Speech is an important ethnic marker. The ancient Greeks divided the world between themselves and the "barbarians." The barbarians were the strangers, the outsiders, because they had no experience of the freedom Greeks enjoyed in their beloved *polis*. But the reason Greeks used the term barbarian was that the Greeks couldn't make out their language; these outsiders all seemed to be saying "bar, bar." So the language became a kind of shortcut definition: barbarians are people who say, "bar, bar." A rationally defensible distinction (barbarians do not possess the Greek concept of political freedom) and an ethnic prejudice (barbarians talk funny) got mixed up together. Closer to our own time and place, in seventeenth-century New England the Puritans hated and persecuted the Quakers not because Quaker theology was particularly "heretical," but because, as the sociologist Kai Erikson observed in a famous study, the Quakers *looked* and *spoke* so differently: They refused to tip their hats to the leaders of the colony or remove them in court, and they insisted on addressing colony officials in the familiar "thee" and "thou."

But there is something even more interesting in Erikson's study. Applying a thesis he derived from Emile Durkheim, he argued that in a certain sense the Puritans needed the Quakers and other deviants, because they served to mark out the borders of the permissible; this helped to define and reinforce the identity of the orthodox. The doctrinal differences between the Puritans and Quakers were not that great, so the Puritans seized upon and exaggerated certain differences in speech and manner. "It was exactly because the New England Puritans shared so many features in common with the Quakers that they had to publicize the few crucial differences as noisily as they could." Something of that sort, I believe, started happening within liberalism during the late1960s.

During that period American liberalism as a *public philosophy* started to dissolve. The new developments, especially civil rights and the Vietnam war, were pounding and pummeling the internal structure of liberalism. Liberal intellectuals were having a hard time containing them. Vietnam was spawning all kinds of protests, including ones that were violent, intolerant, illiberal; and civil rights was curdling into black nationalism. Politically the '60s was a very creative decade but its public philosophy was less than rigorous. Logical coherence seemed less important than noble statements and demonstrations of "authenticity." Liberalism thus suffered a watering-down of the doctrine that had been so carefully developed during the early decades of the century. But

that posed a deep threat to the social identity of liberalism. Liberalism's very existence was jeopardized by the formlessness of its doctrine. The solution to this crisis, I believe, ran along the same lines that Kai Erikson found among the New England Puritans: liberals began to use their enemies as boundary-markers. Their enemies, identified as "the radical right," helped to shore up the orthodoxy of the group and serve as a warning to those who might stray: "I don't know whether you realize it or not, but you're starting to sound like the radical right."

It was during this period, roughly 1965–75, that "abortion rights" were added to the liberal agenda. Abortion was not added as the culmination of a long public dialogue, as was the case with New Deal liberalism in the 1930s. It was simply glommed on. Arguments against doing so were not very welcome; and, if the arguer persisted, warnings were posted.

ME: If liberalism means that government should protect the weakest and most vulnerable members of our society, surely that includes the unborn child?

FELLOW-LIBERAL: A woman has a right to her own body.

ME: A woman has a right to her own body, but this is not a part of her body, like a gall-bladder or appendix. It is a separate human being.

FELLOW-LIBERAL: So then it's a tenant within her own body, but she doesn't want the tenant there. By her lights it is a parasite, so she has the right to evict it.

ME: Since when do we New Dealers think that a landlord has an absolute right to evict undesired tenants—especially if the result is their death?

FELLOW-LIBERAL: So you don't believe in the right of a woman to make decisions about what goes on in her own body, her own property?

ME: A person's property rights have to be balanced against the human rights of other people, especially their right to live.

FELLOW-LIBERAL: Do you realize that you're starting to sound like Jesse Helms? (End of dialogue.)

This is not to say that there can't be liberal arguments for abortion. A liberal argument could focus on the "hard cases," the cases that raise painful human concerns and dilemmas. Maybe abortion is justified in such cases—or maybe not. There could have been arguments, and replies, and replies to the replies, which is the way dialogues are conducted. But that wasn't the way abortion got attached to the liberal agenda. It was just, "abortion is a woman's right and if you disagree you're a right-winger."

The surprising thing is that many liberals did disagree, at least at first. In 1971 Massachusetts Senator Edward Kennedy was writing constituents that "the legalization of abortion is not in accordance with the values which our civilization places on human life." Wanted or unwanted, Kennedy wrote, "hu-

man life, even at its earliest stages, has certain rights which must be recognized—the right to be born, the right to love, the right to grow old." Even in 1976, three years after *Roe* v. *Wade*, Kennedy was insisting that abortion "is not a legitimate or acceptable response to any problem of society," adding that "unwanted as well as wanted children must be unfailingly protected." As late as 1977 the Rev. Jesse Jackson was demanding that funding for abortion be cut and the money be spent on "human needs" instead of a "federal policy of killing." And, closer to present memories, Al Gore and Bill Clinton were firmly pro-life in the early 1980s. None of these politicians has ever offered an explanation for why he changed his views, beyond saying that his views "evolved." This is rare for converts. Usually they are only too anxious to tell us what led up to their change of heart. Dr. Nathanson, for example, has written and spoken at length about the ultrasound pictures of life in the womb that turned him around. But the reverse-converts say nothing about any experience, thought, or revelation that turned them around. So what made them convert? I suppose that if we gave truth serum to the Democratic politicians I just quoted, their answer would be that they worried about challenges in primary elections (which bring out liberal ideologues) and a drying-up of campaign funds (which come from wealthy ideological liberals). But that still would not answer the question of why *they,* the ideologically liberal voters and Democratic contributors, are so angrily determined to link liberalism with "abortion rights." The real answer, I think, is that, whatever the philosophical merits of the pro-life position, whatever its doctrinal compatibility with liberalism, pro-life has become identified with the "outsiders"—the strangers, the barbarians, the people who talk funny.

When my *Atlantic Monthly* article appeared and all the angry letters started pouring in, I thought, oh boy, I'm going to be in for it when I get back to school (the article appeared at the end of the summer break). But to my surprise, my academic colleagues seemed more embarrassed than angry. It was as if I had done something slightly shameful, something it was better not to talk about. But there was one exception: a newer, younger colleague did confront me, and we had quite a tart exchange. At one point in the conversation he let me know that after reading it, his wife, with whom I had once chatted at a faculty party, exclaimed, "My God! And I thought he was a nice guy!" Don't you see? She thought I was one of them. I had passed because I had "talked education," as my old neighborhood butcher might have said. But I was not really one of them. I was a member of the "radical right." The poor woman had suffered her own spell of cognitive dissonance.

The reason that so many liberals are ready to believe and disseminate the lies of the abortion industry is not that abortion has any inherent connection to

liberalism but because liberals and abortion advocates belong to the same ethnic group. One day, after hearing on the radio some pretty long excerpts from a speech by a NARAL official, I listened for an opposing view. Hearing none, I called the station manager and asked why he didn't put on a differing opinion, one from the pro-life side. His reply was that "we don't have these people on our Rolodex." There are these people out there, the people not on the Rolodex, and they mark the boundary between the normal and the deviant. And the boundary is patrolled, and liberals are warned if they get too close to it. Critics call this "political correctness," a mock-Leninist allusion, but that is not really accurate. It implies a deviation from some kind of highly structured doctrine. But what passes for liberalism today is not a doctrine anymore but an ethnic identity. Today there are not just liberal ways of talking and dressing, there is liberal cuisine and there are liberal jokes, liberal courtship rituals, liberal wedding ceremonies, liberal neighborhoods. But no one really knows what liberalism is, unless we define it circularly as "what liberals believe." And even that keeps changing. Forty years ago "color-blindness" was good, and now it is bad. Racial gerrymandering and other kinds of balkanization were once regarded with suspicion; today they are signs of healthy diversity. So the doctrines come and go, but liberal ethnic traits remain. The dress has become a little more raffish since I was in college, and it is cool now to sprinkle some Yiddishisms and black argot into the conversation, as long as it isn't overdone. Some liberals don't much like to call themselves liberal anymore, preferring the term "progressive." But these are matters of small consequence. Across generations or across the room, liberals never have any trouble recognizing each other. Or recognizing their useful enemy, "the radical right," except now it's "the religious right."

So we go back now to the televised hearings on partial-birth abortion and the woman from Planned Parenthood who is quietly telling us that partial-birth abortions are extremely rare, that they are performed only because the baby is horribly deformed or because mother's life is in danger, and anyway the baby is dead beforehand because of the anesthesia. And the congressmen are listening respectfully and the press is taking it all down and it will be in tomorrow's newspaper. Sure, there will be room in the paper, room on the evening news, for the opposition—for the others. Of course. That's only fair. They have their opinions too. But we all know, because our eyes and ears tell us, that the woman with the tasteful dress and the modest bit of jewelry and the quiet voice is the one we trust, because she is one of *us*. She could be mistaken. We all make mistakes. But that she could be deliberately lying, playing us all for suckers—*us*, her fellow liberals . . . why, that's, that's . . . just not the way we act. That's barbarous!

# Alan Wolfe's Search for Virtue

*William Murchison*

Yes, Alan Wolfe again. It would be fair and fitting to ask why a Boston College trend-spotter much favored by the New York *Times,* and other noted establishment publications, would be worthy of extended treatment in this proudly non-establishment journal.

I noticed this particular trend-spotter, in case you have forgotten (or, indeed, never knew) a couple of years ago, when he published *One Nation, After All,* a study of middle America's views on various subjects. Here he comes again.

A new Wolfe book is before us—*Moral Freedom: The Search for Virtue in a World of Choice* (Norton). The New York *Times Magazine* featured it prior to publication. Heavy-hitters like Midge Decter, in *Commentary,* have taken their cuts at it.

That alone doesn't validate *Moral Freedom* for examination in this journal. What might? The nature of Wolfe's quest, which is to learn what modern Americans believe about morality and moral conduct. Abortion is a matter confined in the present book to a couple of paragraphs. We learn much here, nevertheless, in an inferential way. What we learn is why the present regime is so widely tolerated and so likely, at least in the short run, to maintain its gruesome sway; why—another way of putting it—Americans themselves, rather than the U.S. Supreme Court, keep alive the abortion regime.

Well, yes. *Roe v. Wade* was a piece of judicial business; a decision by the highest court in the land. The theory would be, what one court, however high, can approve, another, somewhere down the road, can disallow. A kink in this argument is Americans' apparent uneasiness about tampering with a right passionately, stridently, loudly asserted by numerous fellow Americans.

Why this uneasiness? Can't we see plainly enough that abortion is the taking of human life? It would seem from public opinion polls we can and do; it would seem also that many are not disturbed profoundly at this realization. Disturbed a little, perhaps; just not enough to put out a restraining hand in view of that great alternative principle, "the right to choose." Death we see among us; we shrink back but also shrug; move over in democratic fashion to make room.

Death as lifestyle: Who once would have thought it? No one, clearly. That

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was when "lifestyles" (before they were called that) had to square with some grander sense of what life was about. There was an undoubted human right to choose and enjoy the good. Things reckoned bad, dangerous, harmful—would you believe sinful?—were another matter entirely. They had yet to become approved cultural alternatives guaranteed under a regime of "moral freedom."

Enter Alan Wolfe to tell us about that "freedom" in the spirit others have described it to him. I have no intention of presenting Wolfe, director of Boston College's brand-new Boisi Center for Religion and Public Life, as the Great Explainer. At times our friend overexplains. He's a good conversationalist, all the same. Conversation is at the base of his technique: the eliciting of thoughtful responses from representative American types. As in setting up *One Nation, After All,* Wolfe identified supposedly representative communities where thoughtful talk about moral freedom might take place. Members of the Wolfe pack, in taped conversations, drew out their subjects on a variety of topics.

Interviewers sat down with gays and lesbians in San Francisco and salt-of-the-earth small town types in Tipton, Iowa. The pack called on upscale Silicon Valley residents in Atherton, California; Mexican-Americans around San Antonio's Lackland Air Force Base; blacks in a Hartford, Connecticut suburb; and residents of post-industrial Fall River, Massachusetts (best-known as the town where Lizzie Borden perfected her axe-wielding skills). Students at the University of North Carolina-Greensboro put their two cents in. A "well-off suburb" of Dayton, Ohio, was the eighth venue. (Dayton's psephological pedigree dates to 1970, when Richard Scammon and Ben Wattenberg demonstrated that the ordinary American was a machinist's wife, "unyoung" and "unblack.")

Moral conduct was front and center for Wolfe's new project. "Americans from all walks of life [talked] about the conditions for leading good and virtuous lives, not only for themselves, but for others." And, in the process, said what? I quote Wolfe: "There is a moral majority in America. It just happens to be one that wants to make up its own mind."

Do what? Not submit to authority? Not wait for instructions?

That impression had dawned on many of us—dating back to the reckless '60s, the era of "do your own thing." Wolfe suggests that our intuitions were not misplaced.

So what were the implications?

"Our respondents are not saying, with Dostoevski's Grand Inquisitor, that in the absence of God, anything goes. They are instead expressing a desire to have a conversation with God, or with any other source of moral authority, in

which they will not just listen but also be free to express their own views. The concept of moral freedom corresponds to a deeply held populist suspicion of authority and a corresponding belief that people know their own best interest . . .

"[I]f Americans have learned to obtain a second opinion concerning their medical condition, they are also likely to seek additional opinions concerning their moral condition."

"Moderate in economics and politics, our respondents are moderate in morality. The great bulk of them no longer adhere to traditional ideas about virtue and vice, but neither do they live as moral libertines . . . They know that one cannot always be honest, but instead of concluding that one can never tell the truth, they try to create informal rules that govern when truth is required and when it is not."

This is a large mouthful to swallow. Keep chewing.

Religion, as the source of moral truth, isn't exactly over the hill. It just has to make room for other sources. It can't speak in "yesterday's language;" what it must do is seek "ways of believing appropriate to conditions of moral freedom." "[R]eligious institutions will not break under the weight of moral freedom but bend, as many of them have bent already, to accommodate themselves to the freedom of moral choice to which Americans have increasingly grown accustomed." Too often today, "traditional conceptions of morality offer little guidance;" "religious and philosophical traditions developed for another time and place" miss the target."

"Once people are free to choose their cars and their candidates, they will not for long be satisfied with letting others determine for them the best way to live." Better, "given moral freedom's inevitability, to think of it as a challenge to be met rather than as a condition to be cured."

I am persuaded. But not in the way, or to the extent, that Alan Wolfe might wish. We do face a new moral situation. Is there much question of that?

The way Wolfe frames the moral debate—personal choice against tradition and authority—squares with any common-sense reading of the present cultural climate. The Wolfe way of reading is informative. But authoritative? We don't have authority any more, do we? None we have to conform to unless it suits our needs and circumstances?

The severe impairment of moral authority keeps the new abortion regime in business—the "choice" chambers that advertise themselves as health centers where "you are among friends" and satisfied customers testify, "Nothing hurt! It was almost easy;" the money-raising and spending machines that fund political opposition to the slightest modification of the status quo; the

planted feet and folded arms that confront candidates or judicial nominees deemed unappreciative of a woman's "right to choose."

The federal courts by themselves do not enforce this state of affairs. The culture enforces it. Polls show the culture murky and muddled on life questions (less muddled, to be sure, about euthanasia than about abortion). Such are the consequences of moral freedom, Wolfe-style.

Let us see how we are to get at this question.

By posing, I think, two questions: How right is Wolfe's moral diagnosis? And what do we do about it? If anything?

So to business:

1) Wolfe—like a Walker Percy character—is "onto something." Thus it seems to me at least. This is not to present him as the Columbus of modern morality. With broad, sweeping strokes, he sketches. Certain denizens of Fall River, Mass., and Greensboro, N. C., think thus and so; others across the country weigh in. Could we have everyone's attention, please? Thank you. The Meaning of It All is . . .

The collapse of moral authority in our time—and Wolfe does mean "ours;" just the last few decades, a time most of us can remember—is a very, very, very large reality to depict. The Wolfe pack have gone out and shot some arresting photos which we should look at with some care; on the other hand, the human photo album is thousands of pages thick. The last few pages hardly seem determinative.

At the interview stage, members of the pack talk to people about the virtues of loyalty, self-discipline, honesty, and forgiveness. From their answers Wolfe extrapolates in a very large way indeed. Not the least noteworthy point is how Wolfe frames the virtue question. What has happened to the classical virtues—prudence, justice, fortitude, and temperance—not to mention the theological ones: faith, hope, and charity (a/k/a love)? "Forgiveness"? When did forgiveness, a favorite buzzword in modern therapy, become one of the principal virtues? (Deducing it from "charity" and "prudence," would work, of course, but Wolfe doesn't seem to have this in mind.)

Instead he gets down on the floor, as it were, to play with people he himself acknowledges no longer understand the vocabulary of virtue. Moral philosophy, it would seem, has gone out of style—a logical consequence of the authority crisis. In Wolfian terms, a San Antonio homemaker and a linen rental service employee in Fall River trump Augustine and Kant. Maybe not *sub specie aeternitatis*; rather, in the marketplace, which is forever spewing forth new reckonings and ideals. Only reactionary philosophers and theologians seem willing to try and trump the marketplace itself. Who listens to their

like? Better, in the Wolfian perspective, to talk with *real* people.

So far it doesn't sound very good for Wolfe and his method. But it gets better, inasmuch as what ordinary, everyday people think and say, out there in the marketplace, *is* important and *does* matter. We may or may not have experienced the birth of "moral freedom;" it is plain all the same that many of us act as though that birth were a fact—to be celebrated or, at the least, duly acknowledged.

That is where we get to the matter of abortion. To support the taking of unborn life, you have to believe in that which Wolfe affirms—the right of moral freedom. You can't be looking over your shoulder wondering what God thinks, because, unless moral reflection has been stupendously wrong—practically since there was such a thing as moral reflection—God takes a very dim view of His creatures' subjection to dilation and curettage or the various alternatives offered at today's "women clinics."

Shouldn't this bother one? Well, of course—if one takes with any seriousness the duty of reverence and obedience to God. That duty is precisely what the age of moral freedom can't acknowledge as binding. That would imply authoritarian control and fixedness of purpose. We are freer and more free-flowing than that today. At least we think we are. Wolfe's declaration, excerpted above, that "people experience in their own lives many situations for which traditional conceptions of morality offer little guidance"—such a declaration buttons tightly over the abortion question. This is how we have come to think about abortion.

Parents (often rendered in sociological studies as "fundamentalist parents") would throw the prospective mother into the streets; boyfriend says he isn't ready for fatherhood; family can't afford "one more mouth to feed"; the time isn't right; there's college to think about; it was all just a crazy moment of passion. And, hey, wait a minute. Why the need to explain at all? "Choice"—the word, the concept—covers everything, dissolves hard-to-swallow moral conflicts.

Where God comes into all this, God alone knows. Certainly not as an authority figure. Nor do public standards matter. Again Wolfe: "No longer do we believe, as the Victorians did, in public standards whose violation constitutes an opportunity for shaming, if not legal punishment." Two important ideals inform discussion today: "respect for others and equality . . . Today's Americans . . . believe that, morally speaking, people are equal until proven otherwise." Well, there you are, neighbor. As at McDonalds, have it your way. Abort or don't abort; six of one, half dozen of the other. Up to you.

One might get into a good old-fashioned wrangle with Wolfe as to the degree that dangerous, degrading nonsense like this is believed, but experience

suggests that "moral freedom" is a concept more honored in the observance than in the breach.

Thus our next point.

2) What, indeed, do we do? For the sake of argument, let us assume Wolfe to be half right about us. That is an awful thought. One hundred percent right would be intolerable.

If I may speak personally? I am about to take a sabbatical from these contributions in order to work on a book about the ongoing (woe and alas!) reconstruction of religion, a reconstruction that has been taking place hotly and heavily for at least the past half century. I take this opportunity to restate what seems to me true inside and outside organized religion. It is this: Nothing less than a moral turnaround will prove of any use.

Yes, yes, isn't that obvious? Not so obvious perhaps. Schemes of reconstruction generally take on a politico-legal aspect: We'll elect the right people, who will pass the right laws, making all (or most) things again right. Well, it might work, up to a point—a point perhaps not all that far removed from the one at which we stand presently. We might reflect sadly on the slackjawed astonishment sure to greet the assertion that a principle, a belief, an ideal, an allegiance might be considered *right.* Yes, right because of inner coherence; right because of symmetry with the purposes for which humanity was created; right—here is the all-purpose stopper—because congruent with the mind and will of God.

From what understanding do we suppose the old pre-*Roe* abortion laws to have derived? From the Supreme Court's easy respect for federalism? From the as-yet-unraised consciousness of millions who had not yet come to view motherhood as wholly optional—a sometimes disagreeable barrier to achievement and self-fulfillment? In part, perhaps. There were larger reasons, notwithstanding. The larger society in which U.S. Supreme Court justices were just one of many cogs believed that to take unborn life was to run the way of moral and spiritual injury. We, the people, could not and would not officially countenance such a policy. And that was that. Oh, the consequences of breaking the law might be gentler than the National Organization for Women would today find it profitable to acknowledge. It is notoriously hard to hate a daughter. Still, the law spoke a deep national conviction: Life was good.

It seems vain to hope for laws of the old sort—or just a revised sort—absent a rebirth of the old conviction. The U. S. Supreme Court—a body indirectly responsible to the people, through attentiveness to the direction in which political winds blow—will not restore the old directives, sanctions, and penalties. There is too much "moral freedom" in the land for that to happen.

A rethinking of "moral freedom" has to precede the rebirth of moral

obligation. Ultimately this means the rebirth of Judeo-Christian conviction regarding morality.

I would draw attention to one of the Book of Common Prayer's marvelous collects: "O God, who art the author of peace and lover of concord, in knowledge of whom standeth our eternal life, whose service is perfect freedom . . ."

Service: freedom. What a weird linkage—weird, that is, by modern standards. This is not the kind of freedom to which Wolfe points us. That kind of freedom is latitude—permission to do this, do that, do whatever, after (no doubt) some mediation, some reflection, blah, blah. . . .

Service: freedom. Note the likeness of "service," superficially speaking, to "servitude." The whole aura invoked by the collect is one of obligation, of constraint and restraint — because, as the Psalmist puts it, "it is He that hath made us and not we ourselves." As we serve the God who has made us, we loosen the shackles imposed on us by our human condition. What you have to believe first, of course, is 1) that God made us, and 2) that service liberates.

On these twin propositions the modern world stares with contempt or incomprehension. At that point our difficulties commence. A God who has turned into the Great Permissive Daddy of Us All can't be expected to show partiality as to the choices we actually make. Or if He does care, surely that's His problem, not ours. Around here we don't begin with duty; we begin with choice and then, a la Wolfe, work down. Not "*What* should we choose?" Rather, it is "*How* do we choose?"—thoughtfully?— respectfully?— with "a generally positive view of human potential," as Alan Wolfe puts it?

How fitting that the pro-abortion movement should fob itself off as the pro-choice movement. That is exactly what it's all about: the disregard of obligation, the exercise of internal disposition. Ours is the internal culture; the pre-*Roe* v. *Wade* culture was external, in the sense that norms and standards of judgment came to us, or our forbears, from outside. We have perforce to rebuild that culture. That is the point with which Alan Wolfe leaves us. (Not that he meant to do so. Wolfe clearly approves of the new status quo—friendly, tolerant, moderate, all those good things; the "can't we just get along" consensus.)

Elections come, elections go. Supreme Court justices retire, new ones take their place. The abortion industry churns on. It churns because the culture accepts, enthusiastically or with meekness, its premises. The moment for counter-revolution clearly is at hand.

What do we want? Well, let me suggest one thing. We want to see, one of these days soon, a successor to Alan Wolfe fare forth to Fall River, Mass., and Tipton, Iowa, and San Francisco, and find, maybe to his decided consternation, everyday Americans speaking of what they *ought* to do, rather

than what they might do if they followed raw instinct. What? A community of saints? San Francisco, I said, not Mt. Athos; not the terrain immediately adjacent to St. Simeon Stylites' pillar.

The journey need not take us so far away. An Alan Wolfe of 50 years ago, traversing the country, would have found enormous change under way. (It was underway as early as the famous *Middletown* study by Robert and Helen Lynd, in 1929.) He would likewise have found a far firmer commitment than now to the ideals of duty and responsibility: some greater sense of freedom through service. The silliest thing in the world, I would suggest, is the suggestion that where we've been, we can't get back to.

The moral reconstruction of Western culture is, I think, the essential task for folk of pro-life convictions. The overthrow of the *Roe* regime is crucial, needless to say. We want it gone. When will it go? When the "moral freedom" cult, which nurtured and maintains it, has gone.

And what is the strategy? I have no strategy. A hunch is what I have: The turnaround will begin inside the churches and (as we now call them) faith communities, which are the proper keepers after all of the service/freedom connection. As the churches come to speak authoritatively on these questions—and as that authority gains recognition and acknowledgment—so the larger process of reconstruction must take hold.

Here is the point Wolfe conspicuously misses: What any of us may think about anything matters infinitely less than what God thinks about it. Indeed, in the great scheme of things, what we "think" matters not at all. One way or another, He will have His way with us.

"Moral freedom" is neo-paganism in a sense: not yet the worship of statues or images; more the adoration and display of unanchored, disoriented desires which hang out, more or less, in space. Celebrate it, anoint it, throw parties, write books to honor it—it cannot last. And it won't.

# Stoking the Fire for St. Mel

*Richard J. Goldkamp*

Almost lost in the tug of war over the presidency last fall was a surrealistic election campaign that ended on Nov. 7, when Missouri Gov. Mel Carnahan won a U.S. Senate seat by defeating incumbent Republican John Ashcroft—three weeks after the 66-year-old Democrat had died in a plane crash a few miles south of St. Louis. Heightening the importance of this race is the Mexican standoff that has now developed over control of the Senate as a result of this and other GOP losses.

For the first few days after the Oct. 16 plane crash (in which Carnahan's son and a staff aide also died), the media were preoccupied with the details of the accident itself and with Carnahan's personal life and career. Phrases like "straight-up guy," a "man of character," and "straight-shooter" abounded in post-mortems on radio talk shows, especially on the Newsmakers broadcasts hosted by prize-winning newcaster Charles Jaco on St. Louis's powerhouse KMOX Radio.

Supporters, acknowledging that Carnahan was not known for his charisma, tried to portray him as a plain-spoken leader in the mold of Harry Truman. An early Associated Press account dubbed him a "fallen warrior" for his party, and described him as a man who knew how to get things done. Even some of his rivals saw him as a decent man on a personal level, despite their political differences with him in his two terms as governor.

The second phase of the post-mortem started very quickly. Lt. Gov. Roger Wilson, who became interim governor after the crash, barely had time to collect his thoughts before the media started to dwell earnestly on what came next.

It all hinged on a bizarre hypothetical. Legally, the crash occurred too late to remove Carnahan's name from the ballot. So the news focus shifted to a guessing game: What would happen if a dead governor somehow managed to oust a live senator from office?

As if leading a chorus, the liberal St. Louis *Post-Dispatch*—the only daily paper left in town—boldly headlined its lead story on Oct. 24: "Speculation centers on Jean Carnahan." The new governor soon got the message and made it official: He would ask Carnahan's widow to take the Senate seat if her husband won it. A few days later, Mrs. Carnahan signaled that she was open to Wilson's offer.

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The push for the sympathy vote was on. A catchy new issueless campaign slogan emerged when the Carnahans' daughter urged her late father's followers, "Don't let the fire go out." A week before the election, a sentimental *Post-Dispatch* cartoon by John Sherffius portrayed Jean Carnahan guarding the hearth, adding a log to the fireplace. Call-in radio shows reverberated with talk about Mel Carnahan's alleged trinity of concerns: family, children, education. With minor exceptions, Jean Carnahan stayed out of the limelight, letting Democratic surrogates carry the ball for Mel's "political vision."

Sen. Aschcroft, who temporarily suspended his campaign out of respect for the Carnahan family, also had a reputation as a decent man, with a scandal-free record as a first-term senator and former governor. But he knew he was fighting an uphill battle. He had put his career on hold at the very moment public sympathy was shifting to the grieving widow.

When election day arrived, Carnahan won by a margin of less than 50,000 votes out of 2.3 million cast. Two days later, an even more maudlin Sherffius cartoon showed up in the *Post-Dispatch*, this one showing the former governor sporting an "I'm still with Missouri" campaign button and smiling benignly beneath a halo.

The Pope, presumably, had nothing to say about this *Post*-haste advancement of "St. Mel's" cause for canonization. Missouri voters, however, had had a chance to re-examine the full Carnahan record. The fact that many apparently did not was due in part to neglect by the disingenuous media. Mel Carnahan was not quite the political saint he was made out to be.

The Carnahan-Ashcroft race had in fact been marked by its share of bitterly negative moments, with sharp-edged charges and countercharges coming from both sides. Early in the campaign, the Carnahan camp hinted subtly at racial motivation in Ashcroft's opposition to the nomination of a black Missouri Supreme Court justice, Ronnie White, for a federal judgeship. But then a story surfaced that Governor Carnahan had participated in a series of blackface minstrel shows in the early 1960s while he was a judge in Rolla. For the *Post-Dispatch*, this was a grievous political and cultural blunder. After the plane crash, though, the *Post* simply brushed the problem under the rug.

The two candidates differed in varying degrees on some issues—like reforming Medicare and Social Security or improving public education—and overlapped on others. Both supported the death penalty. In fact, Ashcroft's opposition to Justice White stemmed from White's allegedly "soft" stand on capital punishment. And according to constitutional law professor Kris

Kobach of the University of Missouri at Kansas City, Ashcroft voted to *confirm* 26 of 28 black judges nominated to the federal bench in his six years in Washington. The gap between the senator and the judge was plainly more political than racial.

But lurking behind everything else was a political and spiritual gulf separating Ashcroft and Carnahan on a key issue: abortion. Ashcroft opposed it; Carnahan supported it.

From the very beginning, this campaign was viewed by abortion backers as an opportunity to dislodge a senator with formidable support among pro-life voters. Ashcroft's pro-choice foes knew that agitation over the race issue—despite its flimsy basis in fact—would weaken Ashcroft's clout on the abortion issue.

Forgive me, therefore, for raising sharp doubts about media impartiality in the run-up to this election. Many of the analysts who joined in the paean of *personal* praise for the "fallen warrior" proved remarkably unwilling to discuss, or even bring up, one of the darker political chapters of the Carnahan era.

Gov. Mel Carnahan had doggedly resisted, in his second term, an effort to ban partial-birth abortion in Missouri. He vetoed the Infant's Protection Act of 1999, which had been passed by a hefty majority of Missouri legislators, including some members of the governor's own party. The General Assembly, controlled by the Democrats, overrode Carnahan's veto by a wide margin. It was one of his most embarrassing defeats in office.

It was also notable by its absence from media analyses during the final stage of the campaign. If there had been allegations of racial profiling of motorists by the Missouri Highway Patrol under Gov. Carnahan, it's a safe bet the subject would have gotten ample attention. But the profiling of preborn children for one-way trips to the state's chambers ranked near the bottom of the media's human-rights totem pole.

That Oct. 16 plane crash left me with conflicting emotions. I found myself concurring with the general appraisal of Mel Carnahan as a decent human being and an honorable family man, as well as a skillful political player and party loyalist. But that only made the albatross he had hung around his own neck all the more mystifying: Why would an otherwise decent man willingly endorse a barbaric act like partial-birth abortion—a medical procedure tantamount to infanticide?

Carnahan's record on this subject trivialized much of the oozing political chatter about his concern for children. Anyone familiar with partial-birth abortion, as our governor surely was, knows very well that a doctor is not simply "terminating a pregnancy" when he performs this procedure. He is

killing a nascent child, moments before an induced birth, by crushing its skull and suctioning out its brains.

Whether the media liked it or not, that veto was a defining moment in Mel Carnahan's career. Unlike some of his fellow Missouri Democrats, Carnahan was a willing proponent of the national party's fanatical adherence to the abortion-rights ideology.

Most Missourians, including Sen. Ashcroft, expressed genuine compassion for Jean Carnahan and her family in the aftermath of the plane crash. But now that Mrs. Carnahan has been sworn in as a freshman member of the Senate, she will have to play the game by the same rules that govern all senators. Her new constituents are entitled to hold her feet to the fire that she and her supporters sought to keep alive.

In an Associated Press interview around election time, Mrs. Carnahan reiterated her full support for her husband's political views. Among other things, she claimed to *oppose* partial-birth abortion—but said she also opposed any ban that did not make an exception for the health of the mother. That is the identical strategy her husband used on Missouri legislators. The governor had engaged in political con artistry of the worst kind: pretending to make a centrist play for bipartisan support while insisting the abortion ban must include the one exception that would render it meaningless.

This is a part of the Carnahan "fire" that deserves to be snuffed out.


*"AND THE SERVICE HERE IS EXCELLENT."*

# The World He Will Inherit

*Brian Caulfield*

My son was born last fall in the way of Caesar, seven weeks before he was due. It truly was a blessed event, which is to say it was in no way easy. I held my wife's hand in the operating room, whispering the Rosary in her ear and watching for the faint nod of her head each time I said the name "Jesus," knowing then that she was still all right.

My wife and child rode the tide between life and death, as a dozen professionals with the world's most sophisticated instruments coaxed them toward the shore.

"She's losing too much blood."

"The cord is wrapped twice around his neck."

I was at the head of the operating table, shielded from the action by a drape, left to imagine the worst. I heard a baby cry, louder each time and less breathless. A smile was on the pale lips of my wife and her tired eyes were beaming, and I realized, rather dumbly, that it was my child crying. This was our son. A nurse from the other side of the drape, which had seemed a world away, called out, "Does the father want to see the baby?"

"Yes!" I cried before I knew I had spoken. He was crinkly, pink, and no longer crying as she held his tiny body in that trained and tender way nurses have. I saw then that medicine still operates much as it always has amid the wonderful machinery: It's still about blood and humors and the human touch. It's about a mystery which the fine line of an EKG can only point to.

Science seeks to enter more deeply into this mystery. Dread diseases have been virtually eliminated, organs are transplanted or mechanically made, and the very building blocks of life in the human genome are being decoded.

Yet new dangers are also confronting us. There's the chemical abortion pill, RU-486, which Planned Parenthood here in New York is marketing to teenagers in subway ads as the "early option pill." There's the "emergency contraception" regimen, which actually causes an early abortion by making the uterine wall hostile to the implantation of a newly fertilized ovum. Fighting these lethal methods politically, legally, and in the court of public opinion takes immense effort and funding. Yet abortion is just the tip of the iceberg.

Stem-cell research on aborted babies will go on in private labs, whether there is federal funding or not, and genetic engineering could well bring us to

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a Brave New World of designer humans. And what of the thousands of frozen embryos in suspended animation in labs throughout the world? Numbers of pro-life women have come forward to offer their bodies as hosts to these little ones, an Operation Rescue of another sort.

Others regretfully hold that the frozen lives must be allowed to expire "naturally," as they do after 10 or so years. These pro-lifers say the only way to make good of a bad situation is to allow the embryos to expire in the frozen state, letting God and nature take their course.

These are the roads technology has thrust us along, leaving no easy way back to firm moral footing. I worry not so much for myself as for my son, who has given me a stake in the next generation. I look at him sleeping, his arms spread wide in cruciform as though to embrace what will come, and wonder what world he will inherit. Every father throughout history has wondered the same about his child, but what I ponder is not what the world will be like with the coming of the next mechanical marvel—the successor to the automobile, the airplane, the Internet. These are advances in the external world, the shaping and remaking of the stuff of creation. What my son faces is more personal and internal, a scientific manipulation of the building blocks not only of matter but of man—that enfleshed, spiritual mystery of a being.

I imagine that God will step in and say "enough" before the first human clone, refusing to infuse a soul into the Petri-dish being. He may call the final curtain down on us all for letting this go on, or He may confuse us as at Babel for seeking to speak His language. Yet some scientists say it is just a matter of time. Most of us don't even know what the word "clone" means. It conjures up images of identical twins (triplets? quadruplets?) "hard-wired" in their genes to walk, talk, and think alike, the stuff of science fiction.

But the facts make for a much grimmer scenario. The attempt to clone means the destruction of thousands of human lives conceived artificially for the purpose of experimentation. Every part of that sentence is bad news. First, the very attempt to clone means treating human life in general, and the human life under experimentation in particular, as a means and not as an end in itself. The whole notion of unrepeatable individuality and bodily integrity—of life, liberty, and the pursuit of happiness—upon which so much of our social, legal, and emotional life is based will be threatened. The biblical view of man as a special creation in the image of God will be deconstructed, and the idea that we are no more than our genes will take life. The soul will grow cold, as fewer and fewer believe that man even has one.

Technically speaking, embryonic lives will be brought into being in dishes only to have the genetic information of their nuclei removed and replaced

with the genetic information from the cells of another human being, the "donor." The newly concocted embryo will then be implanted in the womb of a woman, a "host mother," to grow in the normal way for nine months and be born into the world as a genetic copy of the "donor."

They say it has been done with the sheep Dolly and other animals after hundreds of failed attempts. Man is a more sophisticated organism, scientists say, so thousands more embryos may have to be made and discarded before the experiment "takes" and a thriving, dividing life is implanted in a "host."

What are the reasons for engaging in such genetic monkey business? Humanitarian, of course, we are told by scientists and ethicists. Better health, longer lives. But whose health and lives are we talking about? One can imagine a genetic match for Mom—call her Mom minor—providing skin, organs, maybe even brain cells as Mom starts forgetting where she put her glasses. Better yet, who knows if she'll even need glasses after "nonessential" elements of Mom minor's eyes have been transplanted? And how about when Mom minor reaches her majority? Could the two not have a long and loving relationship, donating genes and cells and making another replica to add to their genetic family? The possibilities are endless. Or will they end us?

A glimpse into the modern moral mind was given in a February cover story on cloning in the New York *Times Magazine*. Featured was a space-suit-clad man from France named Rael, who among other projects has raised $7 million for a center to welcome aliens in style. He and his odd followers, called Raelians, have labs working overtime to produce the first human clone. They claim to have the genetic material of a dead child and the financial backing of the child's grieving parents, who want to bring him back to life, so to speak. The *Times* writer takes a rather dim view of the Raelians (though some, she reports, are legitimate scientists with prestigious day jobs). But the subtle moral censure in the story centers not so much on cloning itself or the destruction of many tiny lives in the process. The problem with the Raelians' project, the article says, is that it raises false hopes for grieving parents. After all, a genetically identical child is not really the same child. Cloning is a genetic replication, not a resurrection or reincarnation. You can never reproduce the circumstances, influences, and experiences that make up the reality of each person. The people involved seem to know this yet not know it, the author observes. By the end of the article, the Raelians come off as somewhat idealistic zealots who are cruel and deluded in a clinical sort of way.

Though the author may not intend it—she cites favorably some scientists who oppose cloning—her lack of a cohesive moral view beyond "informed choice" sends an invitation to cloners and their apologists: If you're going to

do this, you'd better find deeper reasons than restoring a dead child to his parents.

The fact that the usually cool heads at the *Times* are having trouble mixing cloning in their ethical palette is evident from the magazine's cover illustration. In the style of a sensational science-fiction comic book, it shows two identical babies and screaming headlines : "Lab of the Human Clones!" "Rich U.F.O. Sect Behind Scheme." The sci-fi treatment is needed because the serious, considered arguments from respected experts that the *Times* trots out to support abortion and all its technological offspring are not yet on the same page. Even the Dolly clone-master says that human experiments would be irresponsible, given the number of embryos that would have to be destroyed. The *Times* seems in a way to be preparing the field, clearing out the wacky Rael scientists who give cloning a bad name so as to leave room for the "real" scientists who work not for the base reasons of meeting the emotional needs of distraught parents, but for the advancement of knowledge and the betterment of humanity. Expect the *Times*, when the time is ripe, to replace the nucleus of its own coverage, from comic-book colors to white-coated, serious-looking scientists.

What can be done will be done, some say must be done, in the name of "science." Yet the questions of man and his meaning—the mystery of existence—remain. The mystery is more evident to me than ever as I hold my son, Stephen James, now six months old. He has my mouth, cheeks, and chin and my fair skin. He has my wife's nose and her brown eyes. She puts him in the crib beside our bed after I have kissed him good-night, and she says that we sleep in the same position, with the same facial expression, and both of us have the habit of grinding our teeth and talking in our sleep.

He is a mix of our genes, yet is very much himself. He lives by the touches and smiles, words and hugs of his parents. Yet on the rare occasions we let him out of our sight for more than a minute, we return to find him sucking his thumb or staring at a shadow on the wall. He needs us for his very life of food, warmth, and hygiene, yet he exists apart from us, with interests, attitudes and a schedule of sleeping and eating which we can influence but not fully change. At his tender age, Stephen James is his own man, with some inner motive directing him. Holding him once I thought, in a flash of intuition about abortion: "What God has joined, let no man put asunder." I was thinking nothing new. Marriage and the good of children are intrinsically, spiritually, and physically linked. Let one be broken at will, the other will be vulnerable to destruction or manipulation.

I cradle my little boy's precious head, so fragile and so perfectly formed. How could anyone do it? To crush a skull such as this in abortion requires the coolly calculating mind of a serial killer. For a nation to allow it to go on at the

count of thousands per day requires a blindness of immense proportions. To promote it in politics and defend it in courts would take the soul of a people away.

As a new father, thrust into the world of life insurance, tax deductions, infant health coverage and the Universal Gifts to Minors Act, my thoughts occasionally stray to the weightier question already posed: What world will Stephen James inherit? I say "inherit" because I do not see the future as something we choose to give the next generation. By the time we are ready to leave the world to them, our children usually are very much in the thick of things. They are heirs, not recipients of favor, and this status begins from the time of conception, as even the civil law of inheritance at times allows. Their right to inherit is inherent.

We can lose sight of this in a culture that speaks of every child "wanted" and children of "choice." That parents can write their offspring out of their wills, and treat pets and charitable foundations as if they were blood relations, is indicative of broken connections in society. Today, it is another manifestation of the Culture of Death that a father can treat his son as though he didn't exist, as though their natural relationship made no inescapable demands. Somehow it is of a piece with "no-fault" divorce, male-abandoned households, and abortion. Natural, biological bonds no longer bind. Life is *not* in the blood. "Love" is not, as true love is, an act of the will drawn forth by the value of the other person and the nature of the relationship, but merely a preference, a pleasure, an arrangement of compatibility and convenience.

When I'm awakened by infant cries at 4:30 for the fourth straight morning, my emotions and foggy consciousness tell me that this is unfair and I have every right to roll over. Yet a love that is far from a warm, fuzzy feeling moves my body to the kitchen to heat the formula as my wife, who had the midnight shift, sleeps. It is no longer I who live, but my son living in me. He is my heir, therefore he is my love, even at 4:30 on a winter morning. I work for us; the future is ours. About the third time I held him, while he was still hooked up to beeping machines in the neonatal intensive care unit, I realized that there would never be a moment for the rest of my life when I would not be aware of his existence.

I had lived much of my life with the convenient notion that nothing of this world could hold me close. I could walk away from any situation and person—even ones that could benefit me—if they did not suit my form of morals. It was a quasi-spiritualism that passed for Catholicism, until I learned about the social teachings of the Church and the personalism of Pope John Paul II. Before we make a single conscious choice, we are in necessary and binding

relationships by virtue of biological and psychological facts, the body and the soul. A child conceived through fornication bears no sin for that act; yet he must find and define himself in the context of the illicit relationship. The same for a test-tube child, or a cloned one. Whatever our circumstances, we must grapple with the structures of objective reality.

A libertarian friend of mine was telling me of the ideal society, in which all legal and social relations would be freely chosen and no obligations would obtain except to refrain from doing physical harm. It sounded awful to me, and I asked if a mother would be obligated to care for her newborn. My friend, looking beyond his logic, admitted that maybe this one exception would need to be made. I suggested that his exception is really the rule. Does not how we are carried in the womb of one woman and born helpless into the world tell us something about the human condition? Are we ever so independent of others that the law should see us as solipsists? Whatever choices we make, there will always be human proportions—relationships, friendships, and the inner landscape of "I."

There is no escape from the personal: This is the point I get from the Pope. No way to transcend or computerize the conditions and the responsive obligations of the "I-Thou," the "Self and Other." We cannot choose when and how to be human. We cannot choose whether to be a part of the unfolding drama of man, to be our father's son or our brother's keeper. We already are. We are free to choose, and the greatest freedom is the truth. What can be done must not be done when it is false. The project of man is not so much to *do* more as to *be* more: more authentic, more faithful, more loving.

Immanuel Kant's categorical imperative, which has led the modern mind to inhuman conclusions, must give way to the interpersonal imperative. By placing the source of all knowledge and value within the mind, Kant opened a door to a lethal relativism. He said that we should act only in accordance with what we see as a universal moral law. But what if my particular reading of this law includes the killing of Jews or "my body, my choice?" You have your truth, I have mine.

Yet there is a Voice and a Way beyond the structures of the self. I hear this when the Pope says, "Be not afraid! Do not fear man!" We are in the image of God; we share a paternity, we are a family. We do not simply define others and ourselves in the confines of the mind but discover them in the wonders of the world. We should accept the "I-Thou," the relationship of Self to Other which we enter not by choice but by birth. We should surrender to it, without forsaking the necessary "I" which is my stake in the relationship. It is a way of losing your life to find it again; the very heart of the Gospel. It is what gets me up at 4:30 a.m. on a winter weekday.

# R U 4 Life

*Andrew Sullivan*

The odd, orchestrated dance that is the politics of abortion completed another quadrille last week with the approval of RU-486, a pharmaceutical cocktail that induces abortion.

The "pro-choice" lobby weighed in enthusiastically but warned of the imminent danger of electing an "anti-choice" president. The "pro-life" forces resorted to epithets like "baby-poison" and questioned the motives of the Food and Drug Administration. In the Manichaean debate over "life" and "choice" between Republican Representative Tom Coburn and abortion dogmatist Kate Michelman, the possibility of some sort of incremental progress appeared as remote as ever.

And yet it seems to me that RU-486 is indeed a sort of progress, if a kind fraught with moral danger. I say this as someone horrified by any abortion. It's something of a taboo to say this in polite society, but I can't think of any circumstances in which I could advise someone to abort a fetus. For me, abortion is the taking of a form of human life, as repugnant as killing a disabled person or euthanizing someone who has Alzheimer's. At the same time, I'm aware that good people in good conscience disagree and that the fact that this form of human life is contained within another human body makes the situation unique. I also recognize that, in a free society, the power of a government to regulate such a personal medical decision is rightly limited. As for the idea that such tolerance should not extend to "murder," I'm forced to say that abortion isn't "murder" as long as the "murderer" sincerely believes it isn't. Murder requires conscious intent. And the status of a fetus is murky enough to make the belief that abortion isn't murder a plausible one.

So my feelings on the issue—like those of so many others—are marked by a constant, acute unease. I would dearly love to live in a society with no abortions, but I'm not prepared to countenance the kind of government power that would make that possible anytime soon. I want to affirm the immorality of all abortions, but I don't want to treat my fellow citizens, half of whom confront the issue in a way I never will, as moral pariahs. Does that make me inconsistent, or does it simply make me realistic? I don't know. But whatever my position is, it is not well-described by either the term "pro-choice"

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**Andrew Sullivan** is a senior editor of *The New Republic*. This article first appeared on October 16, 2000 and is reprinted by permission of *The New Republic* 

or the term "pro-life." I think I am both.

Which is why RU-486 seems to me to be, on balance, a step forward. Its most immediate effect is to distill the meaning of the "choice" involved. Current medical abortions are essentially dual undertakings. They require a woman to consent to her body being invaded and her fetus killed; but they also require that another person perform the operation. The taking of a form of human life seems to me to have more serious moral consequences if it actively involves more than one person, just as the involvement of an accomplice in any wrongful act compounds its moral harm. So, in this sense, RU-486 helps mitigate the evil of abortion. Of course, RU-486, properly administered, involves a doctor at every stage and may, in a small percentage of cases, even necessitate an old-style surgical abortion—but, in most RU-486 cases, the actual act of killing the fetus is restricted to the mother by means of a couple of pills.

Hence, for the first time we really have choice worthy of the name. A woman cannot passively defer the decision to medical experts or have it done to her in an abortion clinic where she may be told that her abortion is not a moral problem. She must do it to herself and to her baby—and in the privacy of her own home. This may, in fact, make abortion harder for pregnant women to grapple with, not easier, as some pro-lifers claim. It's one thing—to take a related, if different, example—to support the death penalty. But if we each had to pull the switch ourselves, we might think again.

It also seems to me that the current pro-life, anti-RU-486 position misses an important moral intuition: that the longer a fetus has lived, the more troublesome an abortion is. This used to be the Catholic position, based on the Thomist notion that a human soul enters a fetus during the "quickening" at the end of the first trimester. It's also, in a subtle way, the philosophy behind the pro-life movement's recent campaign against "partial-birth abortions" carried out in the third trimester, when the violence inflicted on a babylike fetus rightly evokes recoil. Some pro-lifers may think of this emphasis merely as a propaganda ploy, a way to humanize the fetus and so play to our moral concerns about killing it at any time in its development. But, if so, the ploy hasn't worked; the anti-partial-birth campaign has won support from numerous prominent pro-choicers, but, as far as I know, awareness of the horrors of the procedure hasn't changed any of their minds about abortion per se.

And there's a good reason. "Partial-birth" is the pro-life movement's first slam-dunk political issue in decades because it appeals to our deep moral sense that crushing the skull of a third-trimester fetus is more worrisome than terminating a cluster of cells a few weeks after conception. Purists

find this distinction meaningless. Potential human life is potential human life, they argue, whether it's one month old or nine months old. But if this argument is logically powerful, it is also morally and practically obtuse. Unlike later-term abortions, which come close to having the psychological and physical effects of miscarriages, RU-486 abortions more closely mimic the natural, spontaneous abortions that often occur in early pregnancy.

If RU-486 increased the number of these early abortions and reduced the number of late-term abortions, it would not, I think, be a minor moral advance. That's a big "if," of course, but the European experience lends credence to the possibility. (In France, for example, where the abortion pill originated, the abortion rate is one-half that in the United States.) The difficult psychological impact of late-term abortions on women and families would also be lessened. Our society would be less coarsened by the knowledge that such procedures are being performed on fetuses that could live outside the womb. By making early abortion easier and more private, RU-486 would also subtly increase the social stigma of late abortions—paving the way perhaps for legislation making third-trimester abortions more difficult to get or even illegal altogether. In this way, the long-term effect of RU-486 might actually be to advance the pro-life cause rather than undermine it. If the pro-life leaders weren't such purists, they might see this.

Of course, if all RU-486 did was increase the net number of abortions, this moral equation would shift. But the European experience suggests that this pill doesn't do for abortion what that other pill did for sex. Since the introduction of RU-486 in Britain and France, total abortion rates have actually declined. And RU-486, as any woman who has taken it will testify, is no walk in the park. Like most weapons designed to kill, it's messy: painful cramps, persistent bleeding, physical and emotional trauma. Few women, I suspect, will take it casually, and those who do will soon realize that RU-486, like many other technological innovations, does not end moral choice. It merely sharpens it. For all of us.

# RU-486: Poisoning the Springs

*David van Gend*

There is a line to be defended in human relations, the inviolable line between one human existence and another.

The threat of RU-486 reminds us that this line is routinely violated, and at its most vulnerable point. Vulnerable because invisible; out of sight, out of mind, somewhere on the obscure dark side of the womb.

Routinely, the equivalent of a primary school classroom of children each day is violated in our country's abortion clinics. "Children," as Bob Ellis put it, "who would have loved you." Unknown thousands of embryos are poisoned at a week of age by "morning after" pills, their existence and demise unmarked. In both of these quiet culling fields, RU-486 has its contribution to make.

Ambivalent observers like Andrew Sullivan ("R U 4 Life," p. 37) have responded to RU-486 with a harm-reduction model. He is prepared to accept RU-486 increasing the number of early abortions (up to seven weeks) if it means there will be fewer "more troublesome" late-term abortions (up to seven months). Thereby he hopes to reduce "the difficult psychological impact of late-term abortion on women and families," and the broader brutalising impact on a society aware "that such procedures are being performed on foetuses that could live outside the womb."

"If the pro-life leaders weren't such purists," he objects, they would see that "the long-term effect of RU-486 might actually be to advance the pro-life cause."

Pro-life leaders, I imagine, would first set aside his naïve miscalculation—understanding instead that late-term abortions occur for late-term reasons, unrelated to whether or not RU-486 was available six months earlier.

Late-term abortion guidelines published by Queensland practitioner Dr. David Grundmann ("Abortion over 20 weeks," Monash Centre for Human Bioethics, August 1994), include such late-term justifications as "women who do not know they are pregnant" until six months, or "minor or doubtful abnormalities" in the advanced foetus, or "major changes in socioeconomic circumstances" late in pregnancy.

Such reasons arise in specifically late-term circumstances, for which specifically early-term solutions like RU-486 are necessarily irrelevant. A teen-

**Dr. David van Gend** is Queensland secretary for the World Federation of Doctors who Respect Human Life.

ager oblivious to being pregnant until six months was oblivious to being pregnant at six days or six weeks; what relevance there for early RU-486? Sullivan is mistaken in hoping that a reduction in late-term harm flows logically from a calculated increase in early-term harm; RU-486 remains part of the disease, not part of the cure.

Pro-life leaders might then turn to his accusation of being "purist," as opposed to pragmatist.

If "purist" means keeping pure the springs of opposition to adults killing their offspring, then they are guilty as charged. A pure sense of obligation sustains the outrage against abortion—the notion that the simple presence of another human being, however young, binds us to do no harm, to live and let live.

Sullivan's compromise with RU-486 muddies the springs, by appearing to diminish the obligation to our youngest offspring. The fact of a human existence does not vary from week to week; its ontological weight, he should have stressed, is not measurable in grams. The new name spoken at conception may take a lifetime to be fully expressed, but it is there in its fullness from the start. If such insights matter, they are incompatible with Sullivan's advice to trade off the youngest victims of RU-486 against the "more troublesome" later deaths.

This is not to dispute his point that we find emotionally "more troublesome" the cruel killing of a half-born premature baby than we do the unrecognizable loss of an early embryo. But it is to affirm that ultimately size does not matter, and emotion does not adjudicate, in our obligation to our offspring. It is to agree with Australia's Senate Select Committee on Human Embryo Experimentation in 1986, where they urged "that the concept of guardianship be adopted as the most appropriate model to indicate the respect due to the embryo." Even the embryo, our youngest charge, is to be kept within the circle of human care.

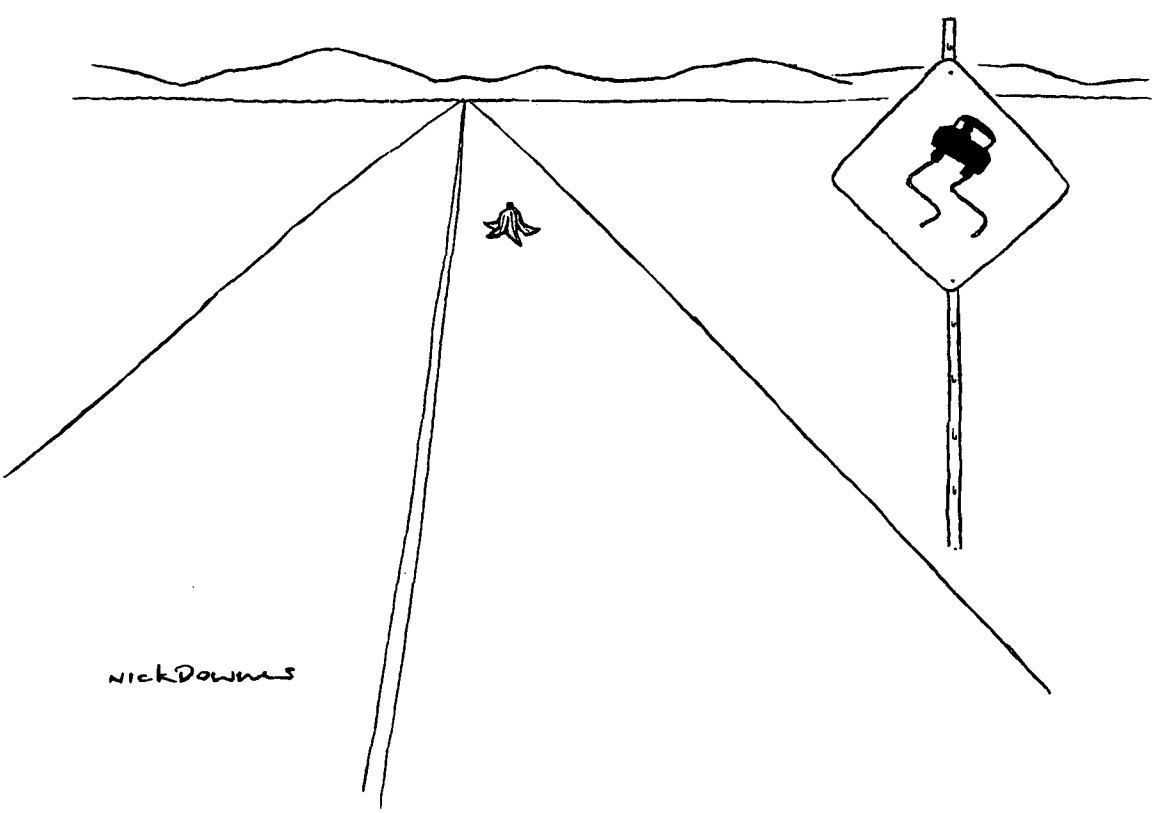
Sullivan writes from America, where the approval of RU-486 is the fulfillment of President Clinton's vow in 1993 to make it readily available, stamped with his moral authority. And as the latest presidential election confirms to overseas observers, abortion remains a defining battle in the Western culture wars.

This should not be surprising. Our culture, as a dry matter of history, counts its 2000th birthday from Bethlehem, scene of history's most famous "unplanned pregnancy," and source of the dominant image in our culture's art and spirituality until recent times, that of the mother and child.

Even to those who have forgotten our cultural roots, the relationship of mother and child is tinged with the sacred, or at least with intimate emotion. It

cannot be assaulted without deep disruption and opposition.

RU-486 is only the latest assault on this life between a mother and her baby, the latest skirmish in a profound cultural struggle. There can be no retreat, no harm-reduction concessions, because to defend the border between one human existence and another, between mother and child, is to defend sacred ground.



# Look Away, Look Away, The Rage for RU-486

*Paul Greenberg*

Abortion has ceased to be a medical procedure and become a political imperative. Even the most minimal requirements for an abortion pill may now be denounced as an infringement on the Constitution, meaning an infringement on *Roe* v. *Wade*, the Magna Carta of abortion.

Consider the arguments being made here in Arkansas against a bill in the Legislature that would establish standards for the use of RU-486, a drug whose sole purpose is to induce abortions.

Despite all the advertising for this "early option pill," its side effects can be serious—as clinical trials have demonstrated. RU-486 may be marketed as trouble-free (if you don't read the small print), but it ain't aspirin.

You would think anyone interested in protecting the health of women would support a bill like this. The standards it sets are minimal: The doctor administering the drug would have to be qualified to handle incomplete abortions, which RU-486 has been known to induce. He should be able to get his patient admitted to a hospital if necessary. He (or she) would need to be certified in the use of ultrasound techniques—to make sure the baby isn't too far along before this powerful drug is used. And the doctor would be required to complete a course in the use of RU-486.

The state's medical society had no objection to such a bill, which speaks well of the state's real doctors, but the abortion lobby was irate. Even though the bill passed the Arkansas House, there were 24 votes against it. Not even the simplest protections for women are acceptable to those for whom abortion has become not a medical issue but an unquestionable sacrament.

Murmur the magic words, "a woman's right to choose," and the rest of us are supposed to butt out, and express no concern for her safety. Abortion has become the right not just to kill the child but to endanger the mother.

Anyone who expresses doubts about the latest style of abortion, whether RU-486 or partial birth, will be told in no uncertain terms: *Ask no questions. Pass no regulations.* Shut up, the enlightened explain.

To quote Joyce Elliott, a state representative from Little Rock: "It's about

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time we recognize that abortions in this country are legal. For us to continue to throw up obstacles and interject ourselves between a woman and her doctor, I submit, is going too far."

The same legislators just approved detailed standards to govern the staffing of nursing homes in this state, but now they're told that a matter of life and death is none of their business. This is a matter between a woman and her doctor. The rest of us are supposed to pretend that no one else is involved in this decision, no matter what the sonogram shows.

Ask no questions. Pass no regulations.

That this same state representative, Joyce Elliott, is a fierce defender of animal rights in the Legislature only adds to the feast of grisly ironies that is the politics of abortion. For when it comes to protecting women from abortions, she opposes any regulations at all.

To quote Representative Elliott, "Doctors are honorable people. They don't need us to tell them what their medical ethics are."

So are they all, all honorable men, these abortionists—and so are all those who send the Lesser Breeds to them. For it is black and Hispanic women, the poor and troubled of all races, who are the prime candidates for abortions in this country. Eugenics never disappeared, it just took a new name: population control.

But didn't the Food and Drug Administration bless the use of RU-486? Yes, it approved the drug through its fast-track program, which is officially entitled *Accelerated Approval of New Drugs for Serious or Life Threatening Illness*. The doublespeak involved here is symptomatic of the whole culture of death: Life has become life-threatening.

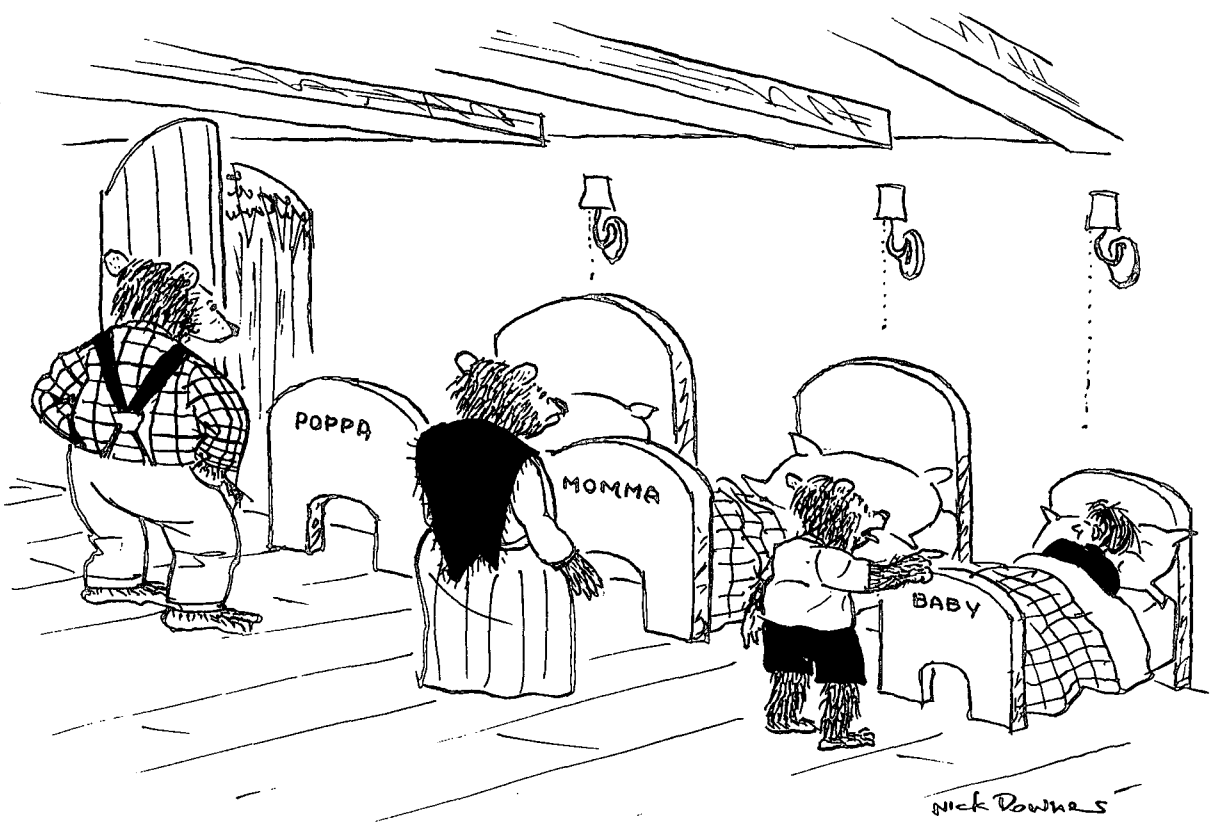
Before RU-486, only a couple of dozen drugs had been certified this way, including 17 for AIDS, eight for cancer, and one for leprosy. Pregnancy is scarcely a life-threatening condition in these times, but RU-486 was given the same priority treatment as drugs for cancer and AIDS.

If there were ever a case of political rather than medical approval of a drug, this is it. What's more, thanks to the special way the drug was approved, the manufacturers of the commercial version of RU-486 are specifically exempted from liability for any of its adverse effects.

And there can be adverse effects. In clinical trials, 8 percent of the women given the drug had incomplete abortions and 5 percent suffered "excessive bleeding." That's according to *The New England Journal of Medicine*. According to Jennifer Kabbany of *The Weekly Standard*, "In Iowa, Dr. Mark Louviere treated one clinical trial subject who had lost more than half her blood and was near death." Multiply these consequences by the tens of thousands as the drug becomes popular, and the danger should be obvious. No

wonder Searle, the manufacturer of a popular version of the drug, officially warns doctors prescribing the pill that it can cause "maternal and fetal death, severe vaginal bleeding, shock" and so on.

Whether you're for or against abortion, a bill to establish minimal standards for the use of RU-486 should be a routine piece of consumer protection. Instead, it inevitably produces a debate over a Woman's Right to Choose. No need to mention just what she might be choosing if RU-486 is administered without safeguards.




*"A DISHEVELED, DISORIENTED ROBERT DOWNEY JR., IS SLEEPING IN MY BED."*

# Has the "Kill Pill" Trumped the Pro-Life Cause?

*Kathryn Lopez*

*It may not be the miracle drug it was sold as—but it is rapidly becoming the preferred choice for women who want sexual intercourse but not a baby.*

Phones have been ringing off the hooks at abortion clinics across the nation ever since September, when the FDA approved Mifepristone, the critical ingredient in RU-486, for widespread use in the United States.

"I thought the least I could do was suffer a little," Rachel, a 28-year-old mother of two, told the Washington *Post*, about why she chose the "abortion pill." Call it redemptive suffering for the selfish and secular.

As I write, the first shipments of Mifeprex, an abortion "cocktail" based on the newly approved substance, are being packed on trucks headed to abortion clinics and doctors' offices nationwide. While many doctors are hesitant, preferring surgical abortion and some fearing protests, pro-abortion advocacy groups will do their best to make sure that RU-486 gets into the hands of every woman who wants it.

Ever since September, you might have thought something on a par with Abraham Lincoln's Emancipation Proclamation had been delivered rather than one more means to prevent new human life from forming. President Clinton and Vice President Al Gore cheered (not surprising, since they had pressured the FDA not to delay its decision on RU-486). The Feminist Majority Foundation called its approval "a total victory for U.S. women. At long last, science trumps anti-abortion politics and medical McCarthyism. . . . If this medication was primarily for men, the French developers would already have received a Nobel Prize in medicine."

Of course, left largely unmentioned are the hazards the pills pose to women (let alone the tiny humans they snuff out). Even Searle Pharmaceuticals, the manufacturer of the "step-two" pill that must be taken with Mifepristone to complete the abortion process, is cautioning doctors against prescribing their pill for abortions.

Misoprostol, an ulcer drug, must be taken to expel a dead baby after Mifepristone stops the placenta from growing. In the month before FDA

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approved RU-486 for abortion, Searle issued a letter warning that Misoprostol "is not approved for the induction of labor or abortion." The company cautions: "Serious adverse events reported following off-label use of Cytotec in pregnant women include maternal or fetal death; uterine hyperstimulation, rupture or perforation requiring uterine surgical repair, hysterectomy or salpingo-oophorectomy; amniotic fluid embolism; severe vaginal bleeding, retained placenta, shock, fetal bradycardia and pelvic pain."

And that's not the only secret the FDA and pro-choice advocates have tried to keep about RU-486. It took some serious sleuthing by journalists to confirm that the pill will be exported from a Chinese company that's been producing the abortion pill for women in that Communist country for nine years. This pill, of course, has long been an integral part of China's notorious population-control program. In order to protect the Hua Lian Pharmaceutical factory from protests, the Clinton administration has kept its identity and (nationality) quiet.

And although they may not be fighting its marketing, some pro-choice doctors know better. In the New York *Times*—no friend to pro-lifers—the operator of a Dallas abortion clinic admitted that he did not think that Mifepristone was the safest abortion option for women. He said, however, that "I'll be forced by market pressures to offer it."

Indeed. To make customers of Rachel and others like her, the words "independence" and "privacy" are bandied about. RU-486 is also presented as an opportunity for something natural—almost like a voluntary miscarriage. In another Washington *Post* story, this one published on the day of the FDA approval, we're told the story of Amy: For Amy, the abortion was a declaration of independence of sorts. "I felt like I was carrying it out myself," she said. "It probably was more comfortable [than a surgical abortion], but then someone else is doing that to me, and I didn't want that."

And yet, for all their enthusiasm over RU-486, there are signs that some women ready to embrace the drug are recognizing that there's more at stake in their pregnancy than their own self-interest. In "Pain, Penance and RU-486," the Washington *Post* article in which we met Rachel in October, we're told that when she heard the news that RU-486 had been approved by the FDA, she dropped her laundry basket and thought, "If I hadn't taken it, right now I'd have a newborn in the house. Which room would he or she sleep in?"

And in 1995, Naomi Wolf—feminist pro-choice advocate, image adviser to Al Gore—showed a similar glimmer of honest reflection over abortion. "Clinging to a rhetoric about abortion in which there is no life and no death,

we risk becoming ... callous, selfish and casually destructive men and women who share a cheapened view of human life." She called on her fellow feminists to "mourn" the "necessary evil" that is abortion.

The abortion industry, like Wolf's sentiments, falls far short of a full reckoning with their actions. For as long as abortion is legal, and women are deluded into thinking that for a little pain they will be healed of any guilt, while at the same time not being publicly allowed to acknowledge why they feel guilt—a natural emotional response for a woman who has killed her own child—there will still be the evil reality of abortion. Women will still die and suffer. And millions will never make it out alive.


*"BUT ENOUGH ABOUT MY PROBLEMS, YOU'RE THE ONE WHO CALLED 911."*

# ACLU *v.* Unborn Children

*Mary Meehan*

In its early days in the 1920s, the American Civil Liberties Union (ACLU) was a small but feisty group. It saw itself as a little guy, fighting for the civil liberties of other little guys—defending labor organizers, Communists, and other unpopular and unwanted people. During the Second World War, it fought for Japanese-Americans who were banished from the West Coast and sent to internment camps. It was early and strong in the battle against racial segregation, in both the North and the South.

Today it claims over 275,000 members, has an annual budget of $45 million, and boasts an endowment of $30 million. It has fifty-one affiliates and "staffed offices covering every state as well as the District of Columbia and Puerto Rico." It has over 100 staff attorneys, a foundation, and a lobbying office in Washington, D.C.[1] No longer a little guy itself, it still says that it favors the underdog. "The powerless and the despised have been the ACLU's most frequent clients," ACLU activist Samuel Walker has said, "for the simple reason that they have been the most frequent victims of intolerance and repression."[2]

When it comes to one group of victims, however, the ACLU fails to live up to this self-image. In its long and relentless campaign against the right to life of unborn children,[3] it has violated its own traditions and principles in a radical way.

Here the champion of the defenseless turns the power of government against the most defenseless human beings. The defender of equal rights supports a two-tiered view of humanity, with those on the lower tier having no rights at all. The defender of free speech helps ensure that millions of human beings will never have a chance to speak.

In other cases, the ACLU insists on the Fifth and Fourteenth Amendment guarantees against being deprived of "life, liberty, or property, without due process of law." It is no accident that life is mentioned first in this phrase, as it is first among the rights listed in our Declaration of Independence. The right to life underlies and sustains every other right we have. Yet the ACLU fights against it for the smallest and weakest of human beings.

How and why did these contradictions develop? The organization's own

**Mary Meehan**, a long-time *Review* contributor, worked with ACLU activists and others in the 1975-76 *Buckley* v. *Valeo* challenge to federal election law.

archives, located at Princeton University, tell much of the story.[4] Some files there are not yet open to researchers; but enough information is available to show that the ACLU's abortion policy was shaped by dedicated lobbying on the part of a few leading ACLU members, who carefully chose the terms of the debate. By using emotional appeals, selecting and often distorting statistics, and evading discussion of evidence about the humanity of the unborn, they enlisted their powerful group the side of abortion. Yet there has been internal dissent from ACLU abortion policy from the beginning. Appeals to the organization's basic principles—especially equal protection of the laws—might lead more ACLU activists to question that policy.

**Flawed from the Start**

Dorothy Kenyon—lawyer, feminist, and veteran ACLU board member—was trying to persuade the organization to fight abortion restrictions as early as the 1950s. She did not succeed; but attorney Harriet Pilpel took up the cause at a 1964 ACLU conference. Pilpel was an able lawyer and a strong personality; she was devoted to the cause of birth control and population control, including abortion. Her law firm represented the Planned Parenthood Federation of America, and she did most of the work on that account. At some point Pilpel also became interested in eugenics, probably under the influence of the president of Planned Parenthood, Dr. Alan Guttmacher, who was also vice president of the American Eugenics Society. Eugenics is the effort to breed a "better" human race, partly by suppressing the birthrate of the handicapped, the poor, and minorities.

At that 1964 ACLU conference, Pilpel showed some interest in the right to life—but only the life of the mother. She asked: "Does it not unconstitutionally deny a woman life, liberty and the pursuit of happiness, for example, if despite her wishes and the opinions of concurring doctors she is forced to bear a child she doesn't want and, objectively, shouldn't have?" In a footnote Pilpel suggested that a woman shouldn't bear a child who had been injured by the drug thalidomide while in the womb and would likely be born with missing limbs.[5]

If those who favored the destruction of thalidomide babies had to explain their position to Tony Melendez, they would have a hard time. Melendez, a thalidomide survivor who was born without arms, did not let that keep him from learning how to skateboard, play pool (wedging the cue stick between shoulder and chin), or "swim like a fish" (on his back). A composer and singer, Melendez plays the guitar with his toes. He has recorded several albums and performed for many audiences in the United States and abroad. Celia Yette is another thalidomide survivor who was born without arms. She uses her feet and toes to do everything from cooking to dialing a telephone to typing on her computer.

She has earned two university degrees. But it was a shock for her to go from the warmth of her family to the staring and even hostility of some strangers. Yette found that such behavior "hurt a whole lot."[6] (Fourteen years after Pilpel's report, an ACLU board member urged "that a way to turn around the tide against us would be to assert the right of women who suffer health defects or whose fetuses would be so defective as to be a hardship on the parents." But another board member, although reliably pro-abortion, "observed that it would be difficult to obtain the support of parents of retarded children in a lobbying effort which works against the creation of retarded children." She thought that the parents "would not be in a position psychologically to defend a pro-choice stand on this ground."[7])

In her 1964 paper, Pilpel also suggested that restricting birth control and abortion "breeds and perpetuates conditions of delinquency and crime" by encouraging "the multiplication of births among low income groups."[8] Ironically, at the very time she said this, the ACLU was deeply involved in the civil-rights movement, defending the rights of low-income African Americans.

The 1964 conference did not immediately accept Pilpel's recommendations, but it did call for a study of the constitutionality of abortion laws. In 1966 an ACLU staff member said the organization had "farmed this research out to our Southern California affiliate which has a Committee working on the problem, but so far has not come up with a final report. I don't think that we should wait any longer for them, in view of the growing interest and demand for action on this subject."[9]

### Pilpel on the Warpath

Pilpel, meanwhile, had testified before a New York legislative committee that was considering bills to loosen restrictions on abortion. Speaking on behalf of the New York Civil Liberties Union, an ACLU affiliate, she suggested that abortion be viewed simply as a health problem and left to doctors' discretion. Severely restricting abortion, she said, placed an enormous economic burden on the country. She estimated that each year's cohort of "unwanted children" could cost the public $17.5 billion to maintain. Having impressed the legislators with that figure—$17.5 billion was a *huge* sum of money in 1966—she then acknowledged that viewing "unwanted children solely in monetary terms is simplistic, as well as callous." What, then, was her higher ground? It seemed to be that an unwanted child "suffers from his parents' attitude toward him."

Pilpel complained that poor and minority women suffered a disproportionate number of deaths from illegal abortions. As in her 1964 report, she expressed special concern that women be able to obtain abortions if their

unborn children "would probably be defective." She acknowledged, but quickly discounted, the argument that the unborn have a right to life.[10]

**The Numbers Game**

As the ACLU's Due Process Committee developed an abortion policy for consideration by the group's national board, it used working papers collected by ACLU staff. The paper written by William Kopit and Harriet Pilpel contained two serious errors which misled the ACLU at a critical time and have been widely circulated since then, thus misleading many other people as well.[11]

Writing in 1965, Kopit and Pilpel suggested that there were between 1 million and 1.5 million illegal abortions in the United States each year, and over 8,000 maternal deaths from those abortions each year. While no one knows precisely how many illegal abortions there were before *Roe* v. *Wade*, there are various indications that Kopit and Pilpel's numbers are seriously inflated. In the first place, *legal* abortions have ranged between 1 million and 1.6 million per year since 1975.[12] Common sense suggests that there would have been far fewer abortions before removal of criminal sanctions, establishment of abortion clinics all over the country, heavy advertising, and public funding of abortion in many states. In 1981 three researchers estimated a range from "a low of 39,000 (1950) to a high of 210,000 (1961) and a mean of 98,000 per year."[13]

The number of maternal deaths actually reported by the U.S. government was far lower than the number given by Kopit and Pilpel. According to researcher Cynthia McKnight, government figures showed 1,313 maternal deaths from illegal abortions in 1940, trending down to 197 in 1965 (when Kopit and Pilpel were writing that there were over 8,000 such deaths each year). McKnight attributes the mortality decline to improvements in antibiotics, blood transfusions, and surgical techniques.

McKnight also cites two major abortion advocates, contemporaries of Kopit and Pilpel, who made far lower estimates than they did. One apparently accepted government figures; the other suggested about 500 deaths per year.[14] Dr. Bernard Nathanson, an abortion doctor and advocate for abortion who later turned against it, wrote of his colleagues in the National Association for Repeal of Abortion Laws (NARAL):

> . . . we generally emphasized the drama of the individual case, not the mass statistics, but when we spoke of the latter it was always "5,000 to 10,000 deaths a year." I confess that I knew the figures were totally false, and I suppose the others did too if they stopped to think of it. But in the "morality" of our revolution, it was a *useful* figure, widely accepted, so why go out of our way to correct it with honest statistics?[15]

The highly-inflated figures on illegal abortions and maternal deaths are still

in circulation and still influence the abortion debate. They lead many people to believe that legalizing abortion saved thousands of women's lives each year, without greatly increasing the number of fetal deaths. Many Americans support legal abortion largely because of the numbers. False numbers.

### Internal Dissent

Back in the 1960s most abortion opponents probably did not know that the ACLU was about to enter the abortion fight; but the organization did hear from a few of them. One, Michael Gask of New York, warned that civil libertarians "must oppose selectivity with regard to rights—some human life which is protected, and some which is not—or some more equally than others." He also suggested many ways to reduce pressures leading to abortion—including offering women prenatal and postnatal care and improving the status of unwed mothers and "illegitimate" children. An ACLU staff member thought that Gask's point about positive solutions "may have some merit," but doubted "that society is ready to take on the kinds of financial costs involved." Later he suggested that Gask "does not adequately deal with the impact of the unwanted child" and questioned whether changes needed "to provide wide-spread care for unwanted children are within the proper scope of civil liberties concern."[16]

But selectively denying rights to the "unwanted child" is precisely what Gask was warning against. And, given their stress on the evils of illegal abortion, ACLU staff and board members seemed markedly indifferent to positive alternatives. If they thought such solutions were outside "the proper scope of civil liberties concern," they did not have to undertake such work themselves; but they at least could have encouraged privated foundations and charities to do it.

An activist in the New York Civil Liberties Union, Benjamin DuVal, submitted a paper arguing that anti-abortion laws "do not violate any provision of the United States Constitution." DuVal apparently favored some exceptions to the anti-abortion laws of his day, but he made two crucial points often overlooked by his fellow civil-libertarians: 1) The fact that wealthy women could obtain abortions when poor women could not was the result not of discrimination in the laws themselves but, rather, of "the failure of the prosecuting authorities to enforce the law" when illegal abortions were done in hospitals; and 2) enforcement of anti-abortion laws did not "conjure up visions of police officers invading the bedroom."

DuVal's paper apparently carried some influence with the members of the Due Process Committee. According to a staff memo, they concluded that laws restricting abortion were "not unconstitutional on their face" and that society could properly "place such value on the life of the unborn child as to render

abortion possible only in a narrow range of circumstances." As a matter of *policy*, though, the committee wanted abortion to be legal up to twenty weeks of pregnancy provided that the husband—"if any, if he is available"—consented.[17]

When the ACLU board considered the issue in February 1967, board member Harriet Pilpel was ready to pounce. Taking the New York anti-abortion law as her example, she said it was unconstitutional for five different reasons: it was "unconstitutionally vague," denied equal protection of the laws to poor women, infringed upon rights to decide about childbearing and to have marital privacy, impaired the right of doctors to practice medicine, and deprived women of lives and liberty "without due process of law." Pilpel believed that equal protection of the laws and due process did not apply to the child in this case—or to the husband. She argued that abortions should even be allowed *after* twenty weeks in some cases, for example where the mother was "mentally ill or a mental defective."

Dorothy Kenyon, still on the board, thought that Pilpel's approach was not radical *enough*. A majority, though, were concerned that late abortions could harm women's health, and so the board reduced the proposed period in which an abortion could be obtained from five months (twenty weeks) to three months. It sent the question of abortion after three months back to the committee "for further clarification."[18]

Up to this point the board had been wrestling with legal questions but had not shown much interest in philosophy or ethics. There was a tendency to dismiss such concerns as religious, and particularly Catholic. But when Thomas Shaffer, a law professor at the University of Notre Dame and an activist in the Indiana Civil Liberties Union, wrote the ACLU to protest that the group was coming down "on the wrong side," he did not make the religious arguments the ACLU might have expected from a professor at a Catholic university. Indeed, he said that one "of the weaknesses of the defense [of life] is that it is associated with Roman Catholicism—which, because of its medieval attitude on birth control and divorce is least competent to carry it out." But Shaffer also declared:

> If any group defends secular ethics in our society, it is the ACLU. The first principle of secular ethics is that life is an absolute value. The Union's defense of pacifism is an ancient example of that; its statement on capital punishment is a more recent example.
>
> Abortion is a betrayal of secular ethics because it solves human problems by the destruction of life. . . .

Shaffer enclosed a letter he had just written to a newspaper, in which he said:

> It is not true that abortion is merely an extension of medical science to the pregnant, any more than the careful antiseptic administration of cyanide would merely extend

> medical science to the aged. The question in either case is whether doctors should be healers or executioners.[19]

By late 1967, Shaffer apparently had lost hope of reversing an increasingly radical ACLU trend; now he was simply trying to prevent open season on the unborn throughout pregnancy. He wrote:

> The reform movement is morally irresponsible because it will not face the possibility that this particular form of birth control is infanticide, that it shatters, therefore, the only certain unity mankind has—its unity against death. You and I both know that the standard debater's answer to this challenge is that "of course" no human life is involved. That sort of evasion makes the reform movement morally indistinguishable from Treblinka and Buchenwald. . . .[20]

Shaffer's strong words made some board members worry, at least about late-term abortion, but the stampede toward a hardline, pro-abortion position could not be checked. In March 1968, the ACLU reached the radical position that it still holds today. It did qualify its statement that "a woman has a right to have an abortion" by defining abortion as "a termination of pregnancy prior to the viability of the fetus." (A footnote suggested that this was "sometime after the twentieth week of pregnancy" and, practically speaking, "not until several weeks later.") Yet even this vague limit seemed to be negated by the next sentence, which asked that "state legislatures abolish all laws imposing criminal penalties for abortions." This meant that "any woman could ask a doctor to terminate a pregnancy at any time." Dr. Christopher Tietze—a population controller, eugenicist, and abortion advocate—apparently had convinced ACLU staff that late abortions were rarely done and would not be a serious problem if abortion were legalized.[21]

### "I Will Always Take the Money"

ACLU staff had been champing at the bit, anxious to fight for abortion in court. "I think we should get hot on abortion. . . ," staff member Eleanor Holmes Norton had written in December, 1967. "The Legal Department will, of course, be wanting to get involved in litigation wherever it can be found."[22] When the board passed the new policy in 1968, Norton and her colleagues were off to the races. They made an especially strong approach to Hugh Hefner's Playboy Foundation for money to finance abortion lawsuits—a strange alliance for people who were supposed to be fighting for women's rights. Norton (who is now the District of Columbia's non-voting delegate in Congress) even asked, "Are there some bunnies we can get who have particular influence with the management?" The Playboy Foundation, possibly at that time and certainly later, did support ACLU abortion activity; so did many other foundations, especially ones with strong interests in population control.[23]

Soon the ACLU was deeply involved in litigation to strike down abortion restrictions. It helped win a partial victory in the 1971 case of *United States* v. *Vuitch*, which undermined the District of Columbia's anti-abortion law. Texas lawyer Sarah Weddington was the lead attorney for abortion forces in *Roe* v. *Wade*, but ACLU lawyers handled *Roe*'s companion case, *Doe* v. *Bolton*, and ACLU staff have been deeply involved in abortion cases ever since. They fight tenaciously against every restriction on abortion and in favor of public funding for it. When they lost the court battle to continue federal funding for abortion in 1980, they intensified their efforts in state courts and succeeded in obtaining guarantees of public funding in California, Illinois, Massachusetts, New Jersey, and six other states. Their lobbyists in Washington, D.C., work fiercely against every congressional proposal to limit abortion,[24] and it seems that nearly every time abortion foes win even a small victory in a state legislature, ACLU lawyers are in court within days—or hours—to overturn that victory. As they explained in 1980: "Our litigation strategy has been to challenge every statute restricting reproductive freedom . . . In states where there are no lawyers willing to undertake these controversial cases, the entire litigation is conducted from the national office. . . ."[25]

Like Harriet Pilpel in her 1964 paper, they often present themselves as champions of the poor and of minorities in these battles. In *Doe* v. *Bolton*, they complained that the Georgia law restricting abortion meant that in a certain period "hospital abortions were performed for 408 white women but only for 53 Negro women in the state."[26] They viewed abortion as a *good* for Negro women and ignored the fact that it killed their children. They also, with their ideological view of a woman's making the abortion decision in a detached and sovereign way, overlooked women in desperate financial straits, women under heavy pressure from boyfriends or husbands, and teenagers who were afraid to tell their parents that they had become grandparents.

The eugenicists and population controllers must have been delighted to see the ACLU put the gloss of rights and freedom on abortion. It made their effort to suppress the birthrates of poor people and minorities so much easier.[27] Did ACLU leaders know or care about that kind of agenda? Aryeh Neier, executive director of the ACLU from 1970 to 1978, later referred to some African Americans' "feeling that there were whites who were eager to eliminate or limit the number of welfare mother babies out of an anti-black feeling and that's why they were supporting abortion." In a 1979 interview with one of his law students, Neier added that

> there's no question that I dealt with some supporters of abortion who are very much in favor of abortion for exactly that reason. . . . There was a foundation in Pittsburgh that was willing to provide support for litigation efforts on behalf of abortion

because of that feeling.

He said that was also "certainly the ideology" of a Missouri foundation that had supported ACLU litigation. Wasn't Neier reluctant to take that kind of money? "I don't regard it as dirty money," he said, "so long as people don't try to impose conditions on what you can do with the money." He added that if you tried "to go back and find out where people made their money and what all their other beliefs are . . . you'd go crazy. So as long as they don't try to impose restrictions, I will always take the money."[28] Why should they have imposed restrictions when the ACLU already was doing precisely what they wanted done?

Taking *chutzpah* to new heights, ACLU activists suggested that the ones who were really anti-poor were the *defenders* of the unborn poor. Arguing for public funding of abortion, ACLU lawyers said that the U.S. constitutional system "checks the power of a fervent single-issue minority to victimize the poor." In a fundraising letter, ACLU leader Norman Dorsen charged that "those who are trying to force compulsory parenthood on poor women have little regard for our Constitutional freedoms." Dorsen also realized that cranky taxpayers were among his potential supporters. "Financing abortions for the poor is far less expensive than the cost of childbirth and welfare support for unwanted children," he wrote. "So the government is actually paying out your tax dollars to force poor women to become mothers."[29]

### Worries About the Right-to-Lifers

In 1974 the ACLU established a Reproductive Freedom Project to defend and expand its court victories. By 1977, worried by the growing strength of the right-to-life movement, ACLU leaders decided to launch a national campaign of public education, lobbying, and yet more litigation. Staff member John Shattuck cautioned: "Since the abortion issue is so controversial outside the ACLU, our 'pro-choice' campaign should be conducted in the context of a larger effort to defend human rights." Later, when the ACLU board discussed and approved the campaign, "It was pointed out that the Right-to-Lifers are the only group educating on abortion at the grass roots level, and it was suggested that such reactionary groups are representative of some of the most anti-civil libertarian forces in the country."[30] What was the basis for the second statement? The record does not show any ACLU effort to meet right-to-life leaders or to discuss civil-liberties issues with them. ACLU leaders, moreover, knew that *some of their own activists* opposed abortion. Thomas Shaffer, quoted earlier, was one example. Jay Sykes, president of the Wisconsin ACLU in 1968-70, had lambasted liberals' support of abortion in a 1974 essay called "Farewell to Liberalism." And when the ACLU executive committee

discussed the proposed abortion campaign, "Some questions were raised such as the fact that many ACLU members and supporters felt uncomfortable about abortion, regarding it as killing . . ."[31]

**Worries About Late Abortions**

As noted earlier, official ACLU policy favors abortion "prior to the viability of the fetus." ACLU lawyers devised a way to make this limit meaningless: In the late 1970s, they argued that "the decision as to fetal viability must be left to the good faith medical judgment of an attending physician." Doctors, they said, "must be insulated from threats of criminal prosecutions based upon an allegation that the doctor's diagnosis was wrong."[32]

In 1985, however, the ACLU board noticed that its formal abortion policy seemed slightly *less* radical than *Roe* v. *Wade* on the issue of late-term abortions, so it established a special committee to review the old policy.[33] One member of the committee, attorney Rolland O'Hare, was deeply worried by late-term abortions and "expressed the view that an abortion of an eight and a half month fetus constituted murder . . ." But other members, including chairwoman (and law professor) Nadine Taub, felt that abortion must be allowed up until birth.[34] Attorney Jeremiah Gutman favored "a statement that a woman, even though the birth is imminent, has the right to instruct her physician that she does not want the fetus born alive." Dr. Warren Hern, an avid population controller and a specialist in second- and third-trimester abortions, spoke about what committee minutes called "a woman's right to a dead fetus." The minutes added: "He said that a woman who is 23 weeks pregnant and chooses to have an abortion does not want a seriously impaired fetus to survive." One member, though, "said the Committee should avoid the 'dead fetus' language."[35] Well, yes, that might have been a public-relations problem. It might also be a public-relations problem for Hern if it were generally known that his *curriculum vitae* as of 1994 noted his membership in the Society for the Study of Social Biology. That's the current name of the old American Eugenics Society. In 1997, when I asked Hern if he was still a member, he responded: "What are you up to? . . . It's none of your business."[36]

Eventually the committee recommended to the ACLU board a statement that every woman has a right to have an abortion at any time in pregnancy and to select any method of abortion. There was no viability restriction, not even in a footnote. Some board members supported the proposal but felt it needed more explanation. "One member argued that the relatively small number of late term abortions does not excuse infanticide and [that] fully viable fetuses should not be killed." In the end, the board sent the issue back to committee for more work. The overhaul effort apparently petered out, and the 1968 policy—with its

vague viability limit—is still in effect. But that limit means little or nothing. The ACLU fiercely resists efforts to ban even the gruesome D & X or "partial birth" abortion.[37]

### What Ever Happened to the First Amendment?

The First Amendment has been an ACLU byword from the organization's inception, and some ACLU affiliates have stoutly defended the free-speech rights of abortion foes. In the mid-1980s, when Montgomery County, Md., denied free bus advertising space to a pro-life group—space previously given to a peace group—the local ACLU went to court and obtained space for the pro-lifers. A Michigan abortion clinic won a restraining order to keep picketers and leafleters 500 feet away from its building, but the local ACLU went to court for the demonstrators and got the order thrown out. In Tacoma, Washington, when a clinic obtained an injunction forbidding picketers to refer to "killers" or "murderers," the ACLU filed a friend-of-the-court brief supporting the demonstrators. The ACLU has also supported protestors' right to picket homes of abortion doctors; two Pennsylvania activists remarked that "we have angered many friends in the pro-choice movement by this stand."[38]

Yet there is a built-in conflict of interest when the ACLU represents abortion clinics, as it so often does, especially when it wields the mighty tool of injunction—a tool the ACLU fought in its early years when injunctions were used to paralyze the labor movement. One writer has suggested that the situation could be worse: "In court appearances in California on behalf of clinics, A.C.L.U. attorneys have not sought the broadest possible injunctions against pro-life activists, despite the fact that these might benefit clinics and their clients."[39] Yet for pro-life activists to thank the ACLU lawyers for their restraint would have been a bit like a torture victim thanking his torturers for not turning the thumbscrews quite as tightly as they might have.

When Janet Benshoof headed the ACLU's Reproductive Freedom Project, she once drafted a letter to an Arizona abortion clinic whose staff, according to ACLU Foundation board minutes, wanted to know what local police might do "to prevent client harassment by anti-abortion demonstrators." But the Arizona ACLU affiliate objected to the Benshoof draft: "the affiliate believes that vigorous expression is protected and that a letter to the FPI [the clinic] would be turned over to the city attorney for possible prosecution of the protestors."[40]

In 1991 a reporter asked an ACLU lawyer in California about a charge that she had pointed out "Operation Rescue leaders to have them arrested." The lawyer acknowledged that she had provided information to police: "'If I hear them [police] say that they don't see someone [from Operation Rescue], I'll tell them, 'They're standing right there.'"[41]

Benshoof and roughly a dozen other attorneys of the Reproductive Freedom Project left the ACLU in 1992 and formed a new group called the Center for Reproductive Law and Policy. Benshoof thought they might be able to raise more money as an independent unit; she also said they wanted to expand into international work. Unfortunately, she and her colleagues have succeeded on both fronts. They are well funded by many of the same private foundations that still fund the ACLU, such as the Robert Sterling Clark Foundation, the Ford Foundation, the Wallace Alexander Gerbode Foundation, the Richard and Rhoda Goldman Fund, the George Gund Foundation, and the David & Lucile Packard Foundation.[42]

The ACLU made new appointments to fill the gap left by Benshoof and company, and kept on marching with its own Reproductive Freedom Project. Departure of the old staff did not, however, end the conflict between the ACLU's devotion to the First Amendment and its dedication to abortion.

**Bubble Zones, FACE, and RICO**

In a 1997 U.S. Supreme Court case, the national ACLU filed an *amicus curiae* (friend of the court) brief *supporting* an injunction that required protestors in Buffalo, N.Y., to stay at least fifteen feet away from abortion clinics' entrances and driveways. The injunction also provided a fifteen-foot "bubble zone" or "floating buffer zone" around each client who came to the clinic. Sidewalk counselors were allowed to approach women within the bubble zone, but they had to retreat if the woman indicated she did not want counseling. The ACLU brief said the injunction was "consistent with the First Amendment . . . and should be upheld."

Three ACLU affiliates (Florida, Indiana, and Ohio) disagreed so strenuously with the national ACLU position that they filed their own *amicus* brief. This brief was the kind of clear First Amendment statement that the national ACLU had made in so many other cases—and should have made in this one. An attorney with the Ohio affiliate commented: "There are people I consider to be civil libertarians who believe in an abortion exception to the First Amendment. I think that's outrageous. . . ." The Supreme Court upheld much of the injunction, but struck down the provision for bubble zones.[43]

Two years later, the national ACLU changed course. It filed an *amicus* brief *against* a Colorado law that imposed restrictions within 100 feet of the entrance to any health-care facility. Within that area, the law banned coming within eight feet of any person—unless that person consented—with the intention of leafleting, protesting, or counseling. But the national ACLU's re-conversion to the First Amendment came too late; last year, in *Hill* v. *Colorado*, the Supreme Court upheld the incredible Colorado law. "In its decisions knocking down

almost all laws against abortion," columnist Steve Chapman remarked, "the Supreme Court has left abortion opponents no way of protecting unborn life except simple persuasion. This decision is calculated to ensure that persuasion doesn't work."[44]

The abortion industry has other special protections, too, thanks partly to the ACLU. Years ago the organization supported use of the 1871 Ku Klux Klan Act against anti-abortion demonstrators who blocked access to abortion clinics. When that effort failed, the ACLU helped push through Congress the Freedom of Access to Clinic Entrances (FACE) law. While publicized as a response to violence against abortion clinics and their personnel, the FACE law also bars peaceful sit-ins. The penalties are draconian: a fine of up to $10,000 and/or imprisonment for up to six months for the first offense and up to $25,000 and/or eighteen months for a subsequent offense, plus the possibility of stiff civil penalties. Pro-life demonstrators said they had been singled out for extra punishment that did not apply to most other groups that practiced civil disobedience. When they went to court to challenge FACE, the ACLU was there to file *amicus* briefs against them. "Our analysis has been persuasive," the ACLU boasts. "In every case, FACE has withstood constitutional scrutiny."[45]

The ACLU has been ambivalent about use of a federal anti-racketeering statute against pro-life demonstrators. Congress passed the Racketeer-Influenced and Corrupt Organizations (RICO) law in 1970 as a tool in the battle against organized crime. But abortion clinics have used it with great effect against demonstrators and "rescuers," since it allows civil suits with the possibility of treble damages.

The ACLU lobbied against RICO before its passage, warning that it posed serious threats to civil liberties. In 1987, ACLU representative Antonio Califa testified for RICO reform, noting that the law had a chilling effect on the free-speech rights of anti-abortion demonstrators. "Simply by filing a claim," he declared, "the plaintiffs stigmatize the anti-abortion activists as 'racketeers,' often forcing a wide array of defendants, or an entire organization, to retain counsel no matter how frivolous the allegations." He said that "the mere threat of a RICO claim, with its treble damages, may be enough to preempt an organization from activities normally thought to be covered by the First Amendment's protective umbrella."[46]

Yet the ACLU's Reproductive Freedom Project had published a booklet suggesting that abortion clinics consider using RICO against demonstrators. "Isn't that rather strange advice for a civil-liberties group to be giving?" I once asked ACLU Executive Director Ira Glasser. He responded forthrightly: "It is, and we regret it. . . . We have not republished that, and if we do re-publish it,

we are going to delete or alter that advice." He said that it had "slipped through out of the zeal of people who were representing abortion clinics which were really under siege by a mixture of First Amendment-protected activity and violent activity . . ."[47]

But Glasser's remark, made in 1988, did not necessarily mean that the ACLU would represent protestors targeted by RICO. The following year, two Pennsylvania ACLU officials acknowledged that their Philadelphia branch had failed to aid pro-lifers in a critical RICO case—partly because the abortion clinic that was using RICO against the pro-lifers was already represented by the ACLU in another case. The officials suggested that this meant a "possible conflict of interest." (That, of course, is one reason why the ACLU should not be representing abortion clinics in the first place.) But the officials also stressed that the courts had applied RICO only against protesters who had illegally interfered with the clinic. Earlier, one of them said that Philadelphia ACLU leaders thought RICO was applied properly in the case.[48]

In 1990 a staffer on the Reproductive Freedom Project told columnist John Leo: "It's ACLU policy to oppose application of RICO, but there are those on staff who feel that as long as RICO exists, this kind of behavior [Operation Rescue tactics] does fit." Leo interpreted: "In other words, RICO is totally bad, but sort of useful."[49]

John Leo, law professor Alan Dershowitz, and columnist Nat Hentoff have all charged that the ACLU's abortion involvement compromises its role as guardian of the First Amendment.[50] The record shows that they are right.[51]

**Could the ACLU Be Turned Around?**

Organizations, especially ones as well established as the ACLU, are notoriously difficult to turn around on major policy questions. Yet it is possible to imagine appeals to reason and conscience that would reinforce dissenters within the ranks and encourage others to review their policy. Such appeals might also alert liberals in general—including liberal judges—to the profound inconsistencies in ACLU policy.

Dialogue with ACLU activists should cover scientific evidence that the embryo and fetus are human beings, as well as philosophical evidence that they are persons. It should also deal with the issue of power and the perennial temptation to use it against the weak. It could include discussion of religious motivation for opposition to abortion, which is not the church/state problem many civil libertarians believe it to be. The effort should be aided by the fact that there are several groups and one individual to whom many ACLU members might be willing to listen: Libertarians for Life; pro-life feminists; pro-life African Americans; and the journalist, Nat Hentoff.

**Status of the Embryo and Fetus**

It is important to challenge the ACLU to face squarely an issue it has long evaded: whether the being in existence after fertilization is a human being, a member of the species *Homo sapiens*. One ACLU publication conceded that "the fetus is alive" but suggested that whether it is a human being is "an inherently religious question."[52] Actually, it is not; science also has an answer to that question. Human embryologists say that each human being begins to exist as an individual at fertilization. The only exception is some multi-fetal pregnancies: with identical (monozygotic) twins, the first human being begins to exist at fertilization, and the second begins to exist soon after, when the embryo divides (triplets and higher multiples can be identical, fraternal, or a combination).[53] But whether through fertilization or division, each human being begins to exist as an individual in the embryotic state. This is not religious dogma; it is scientific fact. Failure to acknowledge it is a radical error that undermines the entire ACLU stance on abortion. It calls to mind a long-ago cartoon that showed the Tower of Pisa just after its completion, standing straight. The architect or engineer confided to a friend that he had cheated on the foundation a little bit, but added that no one would ever know the difference.

**Personhood**

Answering the scientific question of when each human being begins to exist does not settle the philosophical question of personhood. But those who assert that one can be a human being without also being a person have a very heavy burden of proof to meet. They are like the hunter who sees movement in the brush but does not know whether it is caused by a deer or another hunter. He must not "shoot first and ask questions later." He has an obligation to find out whether a person is there; if so, *or if he cannot find out*, he has no right to shoot.

The ACLU and other abortion supporters have failed to show that unborn humans lack personhood; indeed, many have not even tried to show this. They seem to believe it is all right to shoot first and ask no questions at all.

Perhaps they are influenced by the tiny size of the early embryo and the fact that—let's assume we are speaking of a female embryo—she "does not look like us." Yet she looks as she should look at that stage of her development. So did we all look at one time.

Our vision and experience are sharply limited in some ways. To our vision, it seems that the sun moves around the earth rather than vice-versa. We still speak of sunrise and sunset. Yet intellectually we know that it is the earth, not the sun, that rotates daily. We also know intellectually that the embryo is living, is a member of the human species, and has in her genes all the information needed to complete her development: she is, as one writer notes, "a *self-assembler*."[54]

Because a human being at the embryonic stage cannot yet express her potential to think and speak, to use reason and will, many ACLU activists believe that she is not yet a person—or at least not a "complete" person. Yet this goes against the concept of equality that the ACLU champions elsewhere. Philosopher Germain Grisez once imagined a case in which an embryo could speak in his own defense. The embryo, he said,

> might contend that the life of an adult is of less worth than his. After all, the adult has less time left to live . . . Most of what he could have been has been sacrificed in his becoming what he is, and much that he has been can never be recaptured.

The embryo could say that

> "my life is far better than yours, for my life is a process of development and ever increasing vitality, while yours is a process of deterioration and waning vitality as you decline toward death."

Grisez did not agree with this approach, but said that it "would be no more fallacious than ours, if we measure his worth by his degree of development."[55]

In arguing that personhood starts at fertilization, writer Doris Gordon says:

> No sperm or ovum can grow up and debate abortion; they are not "programmed" to do so. What sets the *person* aside from the *non-person* is the root capacity for reason and choice. If this capacity is not in a being's nature, the being cannot develop it. We had this capacity on Day One, because it came with our human nature.

To be persons, she says, "human beings need do nothing but be alive. We were all very much alive at conception." She finds that: "Given personhood, a human fetus has the same right as every innocent person not to be attacked and killed."[56]

**Power: "Who Can Hire the Fewest Lawyers?"**

The idea of gradual or delayed personhood entails at least one lower tier of humanity. It also suggests the possibility of losing one's personhood, so that people who are brain-damaged, demented, or in a coma might also occupy lower tiers. As writer John Walker notes, some advocates of gradual personhood suggest that once we have it, we are home free and need not worry "about being regarded as mere things. This way, the debate can appear to apply only to the preborn or very young. Those of us who are already members of the club need not concern ourselves about the implications of the debate." But he notes that some are willing to kick members out of the club— "to 'de-person' those of us who fall below their standards."[57] This is painfully clear in efforts to justify killing handicapped infants and adults.

Further, as Doris Gordon notes, those who advance the philosophical idea of delayed personhood *cannot agree among themselves when personhood*

*begins*.[58] Any point other than fertilization is purely arbitrary and subject to change according to ideological fashion or opinion polls—the kind of change that the ACLU strenuously resists when defending rights in general.

Who or what the law declares a person is currently very much an issue of power. A pro-life group made this point with a little quiz:

> Under current U.S. law, which is not a person?
> a) A Supreme Court judge
> b) A corporation
> c) An unborn child
> Hint: Who can hire the fewest lawyers?

Gordon comments: "If one is free to decide whether another is a person, then whoever is strongest will do the deciding, and we all had better be thinking about our own prospects."[59]

### Religious Issues

Abortion supporters often use religious discussions of when human life and personhood begin to say that choosing any position means imposing a religious belief on those who do not share it. They delight in quoting the *Talmud* on the forty-day embryo as "mere fluid" or St. Thomas Aquinas on delayed ensoulment.[60] Yet ancient and medieval religious commentators just followed the experts of their day, who—lacking microscopes and other scientific equipment—knew very little about embryonic and fetal development and nothing whatever about genes and chromosomes. Accepting their views on when each human being begins amounts to *imposing false science on everyone.* It is profoundly reactionary.

Abortion is not merely a religious issue. Many people are active against it *both* for secular or human-rights reasons *and* for religious reasons. One does not necessarily need religious insight to understand that a certain practice is unjust, but religious motivation often leads one to do something about it. The nineteenth-century campaign to abolish slavery in this country was based mainly in the Quaker community and the evangelical churches,[61] and abolitionists used both religious and human-rights arguments. The civil-rights movement of the 1950s and 1960s was based squarely in the black churches and was led by ministers.[62] Their religion gave them strength for the journey, courage for the long haul. Certainly the ACLU is not suggesting that civil-rights laws passed in that era are invalid because most civil-rights activists had religious motivation for their work.

### Libertarians for Life

The other side of the coin, though, is that pro-lifers who are religious must

be willing and able to make a secular case against abortion when they are speaking in the public square. They, as well as ACLU activists, would do well to study the publications of Libertarians for Life. I have already quoted Doris Gordon, the group's founder and leader (an atheist who once supported legal abortion), and John Walker, its research director. They and their colleagues use reasoning that is expressly philosophical and scientific rather than religious. They do some of the best and most lucid philosophical work of anyone on either side of the issue. One of the many issues they discuss—and one too often overlooked on both sides—is parental obligation.

Gordon once believed that there was an insoluble conflict between the unborn child's right to life and the woman's right to liberty and to control over her own body. But as Gordon thought about the principle of parental obligation, she realized that while there may be a conflict of needs, there is not one of rights. The child has a right to be in the womb:

> The cause-and-effect relationship between heterosexual intercourse and pregnancy is well-known. The child did not cause the situation. . . .
>
> The stork did not do it. The fact of parental agency refutes any assertion that the child is a trespasser, a parasite, or an aggressor of any sort.

The unborn child's life "is thrust upon her," Gordon notes, "as is her need for life support and her inability to fend for herself. . . . she is created vulnerable to harm."[63] When we place someone in harm's way, Gordon says, we have an obligation to be sure that harm does not befall that person:

> Conception followed by eviction from the womb could be compared to capturing someone, placing her on one's airplane, and then shoving her out in mid-flight without a parachute. . . .
>
> . . . . Even simple eviction from the womb initiates force and violates the child's rights (in most abortions, however, the child is first dismembered, or poisoned, then evicted).

Gordon concludes: "For the prenatal child, the mother's womb is home; this is where she *needs* to be—and this is where she has the *right* to be."[64]

**Listening to Pro-Life Feminists**

Pro-life feminists also believe that parents have obligations to children both before and after birth. That was the view of early American feminists such as Susan B. Anthony, Elizabeth Cady Stanton, and Alice Paul. They saw abortion not as a right of women but as an exploitation of them.[65] Following their lead, New Zealand feminist Daphne de Jong has protested "processing women through abortion mills to manufacture instant imitation men who will fit into a society made by and for wombless people." To accept the "necessity" of abortion, she has written, is to accept "that pregnant women and mothers are

unable to function as persons in this society." Society should be changed to accommodate mothers, rather than vice-versa.[66]

Feminists for Life of America is trying to change society by talking to young people through its College Outreach Program. It also organizes campus forums where students and administrators plan ways to help pregnant and parenting students. So great are the needs, especially for on-campus child care, that feminists on both sides of the abortion issue sometimes work together to implement the plans.[67]

While much of their focus is practical, pro-life feminists have not forgotten rights—either their own or those of children. As de Jong has warned: "Human rights are not exclusive. Any claim to a superior or exceptional right inevitably infringes on the rights of someone else. To ignore the rights of others in an effort to assert our own is to compound injustice, rather than reduce it."[68]

**Listening to African American Pro-Lifers**

The ACLU's commitment to the rights of African Americans dates back to the 1920s; it is a strong and consistent feature of the group's history. ACLU leaders should, therefore, be struck by the fact that the abortion rate of non-white women in this country is nearly three times that of white women. In absolute numbers, nearly 500,000 black children are aborted each year in the United States.[69] These numbers should alarm ACLU activists.

Dr. Yvonne Frank Sims, an African American physician, used the word "genocide" to describe what abortion does to her people. She added: "Now we even have the media telling us that the killing of those precious babies is somehow responsible for the reduction in inner city crime!" Dr. Frank's comments are of special interest because she has acknowledged that, as a young doctor, she "performed many, many pregnancy terminations for desperate women and young girls." Like some other ex-abortionists, though, she concluded that pregnancy aid centers—not abortions—are the answer for desperate cases. She now assists a center where a woman can "develop a plan for her baby that both she and the baby can live with."[70]

Pamela Carr, an African American who identified herself in an article she wrote for *Ebony* as "a young professional woman," described her experience of abortion when she was a high-school student and thought that a baby would interfere with her college plans. She felt great anguish and guilt after the abortion and "became deeply depressed." Noting that abortion is offered to young black women as a way to overcome problems and "strive for brighter tomorrows," she said that it "only darkened my future" and that it "took me many years to rise above the tide of confusion and guilt that flooded my life."

Referring to problems that afflict the African American community, Carr declared:

> Abortion eliminates children, not these complex social problems. We short-change ourselves when we buy the lie that we can improve the quality of our lives by terminating the lives of our children.
>
> . . . . We cannot gain our freedom and our rights by taking away the lives of other members of the Black community. If we do, we have cheated ourselves of a future and betrayed the leaders who came before us and struggled so hard for our lives.[71]

**Nat Hentoff Goes to the Garden Party**

Nat Hentoff, author, syndicated columnist, and former ACLU board member is an atheist who, although never an abortion activist, used to take abortion for granted. But his experience of defending handicapped newborns led him to take another look at the issue.

Starting in the early 1980s, Hentoff fiercely defended the "Baby Does" who, because of spina bifida or other handicaps, were denied medical treatment in the hope that they would die. Hentoff was shocked by the attitudes of his liberal friends and of organizations like the ACLU toward the Baby Doe cases. He wouldn't let up, and he wouldn't back down. He pounded away in the *Village Voice* and the Washington *Post* against those who supported denial of treatment. As another journalist later said, "Hentoff takes real risks, challenges icons and ideas that are treasured in the community he lives in. He puts on his skunk suit and heads off to the garden party, week after week, again and again."[72] It was—and is—an awesome performance.

Noticing links between his liberal friends' attitudes toward handicapped children and toward unborn children, he began to rethink the abortion issue, studying texts on prenatal care and speaking with doctors.[73] "As time went on," he wrote, "I began to understand that there is much more to abortion than abortion itself." The abortion mind-set, he said, "helps strengthen the consistent ethic of death in the nation . . ." He saw that the connections were not just psychological but also legal, since lawyers and judges cited *Roe* v. *Wade* to justify euthanasia. He was also disturbed by "pro-choicers who regard abortion as an essential purifier of the species." He added, "I've met a goodly number of them."[74]

Another point Hentoff mentioned does not have to do with ethics or law but, rather, the very human fear of being seen in the wrong company and disturbing one's friends. Hentoff noticed it in a friend of his, a civil libertarian who was worried about the Baby Doe cases. Explaining an initial failure to act, the friend said:

> "I've got to admit to you that it's because the only people who come out for these infants publicly are the right to life people, and I'm very careful about whom I get

into bed with. I think they're kooks, and I don't like them. I don't like their politics. They're for Reagan. So I didn't want to be in a position where I would be identified with them."

Hentoff added that his friend "woke up one morning and said: 'Damn it. This is either right or it's wrong. I don't care who's on my side as long as we agree on this particular issue.'"[75]

Let us hope that the ACLU will wake up one morning.

## NOTES

1. "About the ACLU: Ways You Can Support the ACLU," www.aclu.org on the Internet, 14 Feb. 2001; and "ACLU Chief Ira Glasser to Retire in 2001...," ibid., 10 Feb. 2001.
2. Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York, 1990), 5.
3. ACLU officials might object to my use of the term "unborn children"; yet some ACLU activists used this term in their early debates over abortion. But when staffers of the Association for the Study of Abortion coordinated friend-of-the-court briefs for *Roe* v. *Wade* and *Doe* v. *Bolton*, "they kept careful watch over the language used in the briefs; for example, they substituted 'fetus' for 'baby.' They also coined the phrase 'pro-choice' rather than the more value-laden 'pro-abortion.'" Lee Epstein and Joseph F. Kobylka, *The Supreme Court & Legal Change: Abortion & the Death Penalty* (Chapel Hill, N.C., 1992), 171.
4. I am most grateful to the staff of the Seeley G. Mudd Manuscript Library, Princeton University, Princeton, N.J., for their assistance with my research in the ACLU Archives and for permission to quote from archives documents.
5. Harriet F. Pilpel, "Civil Liberties and the War on Crime," Paper presented at ACLU Biennial Conference, Boulder, Colo., 21-24 June 1964, 7-8, 2 & 2n., ACLU Archives, box 409, folder 15, Seeley G. Mudd Manuscript Library, Princeton University, Princeton, N.J. This and other documents from the ACLU Archives are quoted with permission of the Princeton University Libraries. See David J. Garrow, *Liberty & Sexuality: The Right to Privacy and the Making of Roe v. Wade* (New York, 1994) on the role of Pilpel and Guttmacher in legalizing abortion. On Guttmacher's eugenics involvement, see *Eugenics Quarterly*, 1955-1966. Pilpel apparently spoke at a 1970 conference cosponsored by the American Eugenics Society and a division of the Population Council. See her "Family Planning and the Law," *Social Biology* 18, supp. (Sept. 1971), S127-S133.
6. Tony Melendez and Mel White, *A Gift of Hope* (Lake Dallas, Tex., 1996), 103, 82, 104, 170; and Bryna L. Bates, "Born Without Arms, Virginia Woman Turns Life's Challenges into Achievements," *Jet*, 12 July 1999, 14-18.
7. ACLU Board of Directors, 4-5 March 1978 minutes, 15-16, ACLU Archives, box 33, folder 2.
8. Pilpel, op. cit. (n. 5), 12.
9. Alan Reitman, memo to Eleanor Norton, 7 July 1966, ACLU Archives, box 87, folder 15.
10. "Testimony of Harriet F. Pilpel, Esq. for the New York Civil Liberties Union," before Committee on Health, New York State Assembly, 7 March 1966, 2-7, ACLU Archives, box 1143, folder 25.
11. "The office," memo to Due Process Committee, 9 Dec. 1966; and "The office," memo to Due Process Committee, 7 Dec. 1966, incorporating William Kopit and Harriet F. Pilpel, "Abortion and the New York Penal Laws" [1965], ACLU Archives, box 1145, folder 2. The Kopit-Pilpel paper made five statistical assertions—including the one about numbers of illegal abortions per year—for which the only citations given were outlines prepared by Pilpel herself but apparently not published. This was peculiar citation practice, to say the least.
12. U.S. Census Bureau, *Statistical Abstract of the United States, 1999* (Washington, 1999), 91, Table 123.
13. Barbara J. Syska and others, "An Objective Model for Estimating Criminal Abortions and Its Implications for Public Policy," in Thomas W. Hilgers and others, eds., *New Perspectives on*

*Human Abortion* (Frederick, Md., 1981), 164-181, 178.

14. Cynthia McKnight, *Life Without Roe: Making Predictions About Illegal Abortions* (Washington, 1992), 10-15. McKnight's study was published by the Horatio R. Storer Foundation, an affiliate of the National Right to Life Committee. The study is thoroughly documented.
15. Bernard N. Nathanson, *Aborting America* (Garden City, N.Y., 1979), 193. (NARAL is now called the National Abortion and Reproductive Rights Action League.) Nathanson added that: "Statistics on abortion deaths were fairly reliable, since bodies are difficult to hide, but not all these deaths were reported as such if the attending doctor wanted to protect a family by listing another cause of death."
16. Michael M. Gask to Alan Reitman, 25 Sept.1966, 2 & 5; and Joel Gora, memos to Mr. Reitman, 2 & 19 Oct. [1966], ACLU Archives, box 1145, folder 1.
17. "The Office," memo to Due Process Committee, 6 Jan. 1967, incorporating paper by Benjamin S. DuVal, Jr., 1, 6 & 9; and "The Office," memo to Board of Directors, 8 Feb. 1967, 3-4, ACLU Archives, box 88a, folder 4.
18. ACLU Board of Directors, 14 Feb. 1967 minutes, 3-7, ibid.
19. Thomas L. Shaffer to John de J. Pemberton, 21 March 1967, and to editor of the Indianapolis *Star*, 20 March 1967, reprinted in "IV. Some Arguments Against Abortion," ACLU Archives, box 1145, folder 2.
20. Thomas L. Shaffer to Alan Reitman, 6 Nov. 1967, 1-2, ibid.
21. ACLU, "Abortion," *1976 Policy Guide of the American Civil Liberties Union*, 230-231 [citing 25 Jan. 1968 board minutes & 25 March 1968 news release], Microfilming Corporation of America, "The American Civil Liberties Union: Update, 1974-1978," Reel 2; Will Lissner, "A.C.L.U. Asks End to Abortion Bans," New York *Times*, 25 March 1968, 35; Alan Reitman and Trudy Hayden, memo to Board of Directors [citing Dr. Tietze], 31 Oct. 1967, 7 ff., Microfilming Corporation of America, "American Civil Liberties Union Records and Publications, 1917-1975," Reel 25. Tietze was a member of England's Eugenics Society; see Eugenics Society, "List of Fellows and Members" as at August 1957 (London, 1957), [16].
22. Eleanor Norton, memo to Alan Reitman, 5 Dec.1967, ACLU Archives, box 1145, folder 1.
23. Eleanor Norton, memo to John Fordon, 3 July 1968, ACLU Archives, box 1145, folder 2; Playboy Foundation, "Grant Allocations for Fiscal Year 1980-81 at 6/30/81" (Chicago, 1981), 3, and 1983 annual report, 8; Foundation Center (n. 42 below).
24. Samuel Walker, op. cit. (n. 2); Epstein & Kobylka, op. cit. (n. 3); Garrow, op. cit. (n. 5); Nadine Strossen, "The American Civil Liberties Union and Women's Rights," *New York University Law Review* 66, no. 6 (Dec. 1991), 1940-1961. On ACLU lobbying at the national level, see www.aclu.org on the Internet. On ACLU success in guaranteeing public funding of abortion in ten states, see "The ACLU Reproductive Freedom Project," ibid.
25. "Reproductive Freedom Project Proposal, 1980," 4, ACLU Archives, box 382, folder 21.
26. Brief for Appellants at 49, *Doe* v. *Bolton*, 410 U.S. 179 (1973). Briefs in this and other cases cited here are available at the U.S. Supreme Court Library, Washington, D.C.
27. Mary Meehan, "The Road to Abortion (II): How Government Got Hooked," *Human Life Review* 25, no. 1 (Winter 1999), 68-82 (especially 69-70 & 78-79 on race).
28. Aryeh Neier, interview by Thomas J. Balch, 3 Nov. 1979, in Balch's "Convincing the Courts on Abortion," Appendix,12-13, Paper for Prof. Neier's "Litigation and Public Policy" course, [New York University School of Law], Fall, 1979.
29. Brief for Appellees at 185, Harris v. McRae, 448 U.S. 297 (1980); and Norman Dorsen, ACLU Campaign for Choice fund-raising letter to "Dear Friend," n.d. [received by the writer on 29 Sept. 1979].
30. Samuel Walker, op. cit. (n. 2), 303-304; John Shattuck, memo to Executive Committee and Board of Directors, 14 Sept. 1977, 2, ACLU Archives, box 32, folder 6; ACLU Board of Directors, 24-25 Sept.1977 minutes, 3, ACLU Archives, box 32, folder 1.
31. Jay G. Sykes, "Farewell to Liberalism," *Insight* (Sunday magazine of the Milwaukee *Journal*), 8 Sept. 1974, 30-32; and ACLU Executive Committee, 30 July 1977 minutes, 3, ACLU Archives, box 117, folder 1. For other examples of dissent within the ranks, see the ACLU publication *Civil Liberties*, April 1970, 6; Nov. 1974, 7; Winter 1986, 2; Spring 1986, 2; Summer/Fall 1986, 13. See, also, Nat Hentoff, "A Heretic in the ACLU," Washington *Post*, 16 Aug. 1985, A-23.
32. Brief for American Public Health Association, American Civil Liberties Union and others as Amici Curiae at 4 & 31, Colautti v. Franklin, 439 U.S. 379 (1979). See the Colautti opinion at 388-389 on this point.

33. Samuel Walker, op. cit. (n. 2), 348.
34. Abortion Policy Committee, 14 Feb. 1986, minutes, 3 & 2, ACLU Archives, box 155, folder 7. I am indebted to Prof. Taub for her gracious assistance in the checking of one point related to the committee.
35. Special Committee Reviewing ACLU Abortion Policy, 19 May 1986, minutes, 6 & 11, ACLU Archives, box 155, folder 6.
36. Warren M. Hern, *Curriculum Vitae*, 1 March 1994, 30, Exhibit A, Hill v. Thomas, Case No. 93-CV-1984, Div. No. 2, District Ct., Jefferson Co., Colo.; and writer's interview with Dr. Hern, 10 Jan. 1997.
37. Nadine Taub, letter to "Dear Abortion Policy Committee Member," 15 March 1988, with attached excerpt from ACLU board minutes of Jan. [1988], 3-17, ACLU Archives, box 166, folder 1; Emily Whitfield (ACLU Media Relations Director), memo to the writer, 24 Jan. 2001; www.aclu.org on the Internet.
38. Nat Hentoff, "Maryland's Odd Couple," Washington *Post*, 2 Feb. 1985, A-19, and "Abortion Protesters Have First Amendment Rights Too," ibid., 7 Feb. 1986, A-15; Samuel Walker, op. cit. (n. 2), 349; Stefan Presser & Barry Steinhardt, "The ACLU and RICO," Washington *Post*, 26 May 1989, A-22.
39. Samuel Walker, op. cit. (n. 2), 54-55 & 87; and Jeffrey T. Leeds, "The A.C.L.U.: Impeccable Judgments or Tainted Policies?" *New York Times Magazine*, 10 Sept. 1989, 76.
40. ACLU Foundation Board minutes, 19 May 1984, 1-2, ACLU Archives, box 39, folder 3.
41. R.N.S. [Religious News Service], "ACLU in Ethical Bind Over Rescue Cases," *World* 6, no. 12 (27 July 1991), 17.
42. David Margolick, "Abortion-Rights Team Leaves A.C.L.U.," New York *Times*, 21 May 1992, A-20; "Reproductive Law Unit Splits from ACLU," Washington *Post*, 21 May 1992, A-23; "Center for Reproductive Law and Policy" [1999 annual report]; Foundation Center, *Grants for Human/Civil Rights* ([New York], 1999), passim; Foundation Center, "FC Search 4.0 (2000): The Foundation Center's Database on CD-ROM," 5 Feb., 2001. Benshoof's center obtained nearly ninety percent of its income from foundations in 1999. The ACLU has significant foundation support, but also receives income from its large membership.
43. Brief for American Civil Liberties Union, New York Civil Liberties Union, and others as Amici Curiae at 17 and brief for ACLU Foundation of Florida and others as Amici Curiae, Schenck v. Pro-Choice Network, 519 U.S. 357 (1997); Frank J. Murray, "Divided ACLU Fights Pro-Lifers' Free-Speech Rights," Washington *Times*, 20 Oct. 1996, A-1 & A-5, and "'Bubble Zones' at Clinics Rejected," ibid., 20 Feb. 1997, A-1 & A-6.
44. Brief for ACLU as Amicus Curiae, Hill v. Colorado, 120 S. Ct. 2480 (2000); Steve Chapman, "Turning a Right into a Muzzle," Washington *Times*, 7 July 2000, A-15. The decision also has grim implications for other protest groups and for labor unions. A worried AFL-CIO had filed an amicus brief noting that the Colorado law "entirely precludes normal handbilling and leafletting." (Brief for AFL-CIO as Amicus Curiae at 3, Hill v. Colorado.)
45. Brief for ACLU and others as Amici Curiae, Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993); Kevin Merida, "Doctor's Slaying Spurs Abortion-Rights Lawmakers," Washington *Post*, 15 March 1993, A-11; Ruth Marcus, "President Signs Clinic Access Law; Foes File Lawsuit," ibid. 27 May 1994, A-10; Freedom of Access to Clinic Entrances, 18 U.S.C., Sec. 248 (1994); "The ACLU's Role in Stopping Clinic Violence," 2-3, www.aclu.org ("Reproductive Freedom") on the Internet, 1 Dec. 2000. FACE also applies against those who block access to religious services or damage/destroy religious property.
46. Lawrence Speiser to "Dear Congressman," 2 Oct. 1970, reprinted in *Congressional Record* (6 Oct. 1970), vol. 116, pt. 26, 35212-35214; testimony of Antonio J. Califa in U.S. Senate, Committee on the Judiciary, Hearings on *Proposed RICO Reform Legislation*, 100th Cong., 1st Sess., 29 Oct. & 10 Nov. 1987, 316-317.
47. ACLU Reproductive Freedom Project, *Preserving the Right to Choose: How to Cope with Violence and Disruption at Abortion Clinics* (New York, 1986), 34-35; Ira Glasser, interview by the writer, 4 May 1988.
48. Presser & Steinhardt, op. cit. (n. 38); Ann Rodgers-Melnick and Janet Williams, "Protesters Fear More Racketeering Lawsuits," Pittsburgh *Press*, 7 May 1989, B-1 & B-5.
49. John Leo, "One Watchdog Missing in Action, *U.S. News & World Report*, 5 Nov. 1990, 23." For the ACLU response, see Ira Glasser to ibid., 26 Nov. 1990, 6-7.
50. Dershowitz, incidentally, supports legal abortion. For some of his criticisms of the ACLU, see

Leo's column (n. 49); and Charles Oliver, "The First Shall Be Last?" *Reason* 22, no. 5 (Oct. 1990), 20-27. See, also, Nat Hentoff, "The ACLU Averts Its Eyes," Washington *Post*, 7 Aug. 1988, B-7, and "Two Cheers for the ACLU," ibid., 3 March 1990, A-25. Another interesting critique, by an ACLU life member, is Christopher Clausen, "Taking Liberties with the ACLU," *New Leader* 77, no. 8 (15-29 Aug. 1994), 12-13.

51. I asked the ACLU's Media Relations Director for comment on specific criticisms by Leo, Dershowitz and Hentoff. She responded by saying: "The columnists you cite have in the past made public statements about the ACLU that turned out to be demonstrably untrue. We do not feel obligated to respond to false assertions that we have denied before..." She did not respond to the specific queries, nor send copies of the past denials. Whitfield, op. cit. (n. 37). This seems an odd way to deal with three veteran writers, two of whom (Dershowitz and Hentoff) are former ACLU board members and experts on civil-liberties issues. Hentoff, by the way, has praised the ACLU in cases where it *has* gone to the defense of abortion foes (n. 38).
52. ACLU Reproductive Freedom Project, "Abortion: A Fundamental Right Under Attack" (New York, n.d.), 10-11. The writer(s) did not define "human being."
53. Keith L. Moore and T. V. N. Persaud, *Before We Are Born: Essentials of Embryology and Birth Defects* (Philadelphia, 5th ed., 1998), 36, 39, 147-149; Keith L. Moore and others, *Color Atlas of Clinical Embryology* (Philadelphia, 1994), 1-2, 101,104; T. W. Sadler, *Langman's Medical Embryology* (Baltimore, 7th ed., 1995), 3; Ronan O'Rahilly and Fabiola Müller, *Human Embryology & Teratology* (New York, 2nd ed., 1996), 7-8 & 81-82. See, also, U.S. Senate, Committee on the Judiciary, Subcommittee on Separation of Powers, Hearings on *The Human Life Bill*, 97th Cong., 1st Sess., April-June 1981, vol. 1, 7-23; Dianne Nutwell Irving, "Philosophical and Scientific Analysis of the Nature of the Early Human Embryo" (Ph.D. diss., Georgetown University, 1991); and Dianne N. Irving, "When Do Human Beings Begin? 'Scientific' Myths and Scientific Facts," in Doris Gordon and John Walker, eds., *Abortion and Rights*, an issue of the *International Journal of Sociology and Social Policy* 19, nos. 3/4 (1999), 22-47 (available at www.L4L.org on the Internet).
54. John Walker, "Power and Act," in ibid., 57.
55. Germain Grisez, *Abortion: The Myths, the Realities, and the Arguments* (New York, 1970), 305.
56. Doris Gordon, "Abortion and Rights: Applying Libertarian Principles Correctly," in Gordon & Walker, op. cit. (n. 53), 111 & 99.
57. John Walker, "Abortion and the Question of the Person," in Gordon & Walker, op. cit. (n. 53), 52.
58. Gordon, op. cit. (n. 56), 111-112.
59. SOUL, "Equal Rights: Or How Society Protects Almost Each and Every Person" (Minneapolis, n.d.), 12; and Gordon, op. cit. (n. 56), 112.
60. Many, however, distort the history of religious teaching on abortion. See Mary Meehan, "Theologians and Abortion: Not Their Finest Hour," *Human Life Review* 12, no. 4 (Fall 1986), 50-74.
61. For examples of religious motivation among abolitionists, see: Betty Fladeland, *James Gillespie Birney* (New York, 1955); Katharine du pre Lumpkin, *The Emancipation of Angelina Grimké* (Chapel Hill, N.C., 1974); Carleton Mabee and Susan Mabee Newhouse, *Sojourner Truth* (New York, 1993); Benjamin P. Thomas, *Theodore Weld* (New York, 1973, reprint); and Bertram Wyatt-Brown, *Lewis Tappan and the Evangelical War Against Slavery* (New York, 1971, reprint).
62. Taylor Branch, *Parting the Waters* (New York, 1988) and *Pillar of Fire* (New York, 1998), passim.
63. Gordon, op. cit. (n. 56), 119 & 122. The libertarian movement, which was inspired by Ayn Rand's Objectivist philosophy, is broader than the Libertarian Party. Both movement and party are divided on abortion. (For Libertarians for Life publications, see www.L4L.org on the Internet.)
64. Gordon, op. cit. (n. 56), 121, 120, 123.
65. Mary Krane Derr has done outstanding research in this area. See her "A Lost Source of Strength and Power: The Long Feminist Tradition of Non-Violent Response to Crisis Pregnancy," in Angela Kennedy, ed., *Swimming Against the Tide: Feminist Dissent on the Issue of Abortion* (Dublin, 1997), 12-27; and Mary Krane Derr and others, *Pro-life Feminism: Yesterday and Today* (New York, 1995).
66. Daphne de Jong, "The Feminist Sell-Out," *New Zealand Listener*, 14 Jan. 1978, reprinted in ibid., 171-174 (173).
67. See *The American Feminist*, the quarterly magazine of Feminists for Life of America, and

www.feministsforlife.org on the Internet.

68. De Jong, op. cit. (n. 66), 174.
69. U.S. Census Bureau, op. cit. (n. 12); Dr. Stanley K. Henshaw (of the Alan Guttmacher Institute), interview by the writer, 27 Feb. 2001. Dr. Henshaw estimated that there were 476,840 African American abortions in 1997.
70. Yvonne Frank Sims, untitled column in *The Life Light*, newsletter of the Life Education and Resource Network (L.E.A.R.N.), March 2000, 2.
71. Pamela Carr, "Which Way Black America? Anti-Abortion," *Ebony* 44, no. 12 (Oct. 1989), 134 ff.
72. The late Meg Greenfield, editorial page editor of the Washington *Post*, quoted in Nat Hentoff, *Speaking Freely: A Memoir* (New York, 1997), 291. See Hentoff's 1983-84 *Village Voice* articles on Baby Doe cases, reprinted in *Human Life Review* 10, no. 2 (Spring 1984), 73-104. He has since written many other articles on Baby Doe cases.
73. Hentoff, *Speaking Freely* (n. 72), 169-184; the writer's interview with Mr. Hentoff, 27 Feb. 2001.
74. Ibid., 174, 176-177 & 182-183, 180. In 1976 the ACLU said it recognized euthanasia—by act or omission—as "a legitimate extension of the right of control over one's own body." ACLU, *1977 Supplement to the American Civil Liberties Union Policy Guide* (Lexington, Mass., 1978), 82. The organization is involved in both litigation and lobbying in favor of assisted suicide; see www.aclu.org on the Internet.
75. Nat Hentoff, "Dialogue," interview by Jim Manney, *National Catholic Register*, 15 July 1984, 6.

# The Murder of Tracy Latimer

*Mark Pickup*

On October 24, 1993, Canadian farmer Robert Latimer decided it was time to kill his twelve-year old daughter. Tracy had cerebral palsy due to a lack of oxygen during her birth; she had undergone three successful surgeries to improve her quality of life. A fourth surgery was planned to ease pain from a dislocated hip. Despite the remarkable success of previous surgeries, her parents were horrified at the prospect of the fourth, and Robert Latimer decided to take matters into his own hands. His next actions would set off a seven-year ordeal involving two trials and numerous appeals, and spark public debate about mercy killing—ultimately challenging the conscience of a nation.

**Premeditation, cover-up, and lies**

Robert Latimer planned his daughter's murder for close to two weeks. He considered administering a drug overdose,[1] or shooting Tracy in the head, but he finally settled on gassing her to death. (End of the line, kid.[2]) On a bright sunny Sunday his wife, Laura, and their other children went to church, leaving Tracy at home with Robert. He murdered her with exhaust fumes from his truck.

He took Tracy's limp body, reeking of exhaust fumes, back to the farmhouse and put it in her bed (as though sleeping) for Laura or one of their other children to find when they got home. Everything worked according to plan: Laura discovered the corpse after coming home and preparing lunch. She cried that something was wrong with Tracy and called to her husband to phone for help. Robert called the Royal Canadian Mounted Police (RCMP), telling them Tracy had died in her sleep.[3] The body was still in the sleeping pose when the RCMP arrived, and Robert told them again that Tracy died in her sleep.[4] The police suspected a mercy killing and voiced their concerns to the coroner's office.[5]

Latimer destroyed evidence—cutting up and burning the hose he used to murder Tracy.[6] When he discovered that the police planned an autopsy of her body, he interjected and told them he wanted to it cremated,[7] which seemed to surprise his wife. Robert pulled Laura into their bedroom: a few minutes later, they emerged and asked together for cremation.[8] Robert continued to maintain that Tracy died in her sleep until the RCMP (with toxicology results showing

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lethal levels of carbon monoxide in her blood) finally coaxed a confession from him on November 4th—ten days after the murder. [9]

Only then did he own up to his actions:

> Laura went to church before eleven. So then I went outside, and the hose was in the old tin shed by the barn. . . . Then I went and got her, she was in the wheelchair, and took her to the shed [where the truck was parked]. . . . I had to cut the hose with the hack saw, hook it up to the exhaust ... and put it in the back window, let it run. . . After about 25 to twelve or so she made three or four coughing noises, she never started to cry, it was about seven or eight minutes when that happened, and that was about it. . . I let it run 'till noon, I was timing all this stuff. There was a tractor tire in the back, I was sitting there watching through the back window. . . . At twelve o'clock I shut it off, put her back in bed.[10]

**Laura Latimer stood by her man**

What did Laura know about Robert's intentions? He told police he shared his intentions for Tracy with Laura. During his 1993 confession, a police Sergeant asked: "For how long, Bob, had you thought about doing this?" Bob replied, "Well, pretty much decided after that doctor appointment."

"That was?"

"October 12, approximately."

"When did you discuss this with Laura?"

"We talked about it that night."

"The 12th?"

"Yeah."

Robert was asked what Laura thought about "*it*" [killing Tracy]. Robert answered, "She—no different than mine, she just said she wished she could call a Jack Kevorkian. She never participated in the planning. Just thoughts in general."[11] Did this mean that Laura knew his murderous plan? Later, when police asked Robert why he chose October 24th to kill Tracy, he replied: "Oh, that's the only occasion, I just knew that was one of the rare occasions."[12] Didn't this also occur to Laura, particularly in light of their discussion about "it" twelve days earlier? There is some conflicting testimony about Laura's knowledge.

In November of 1994 Robert Latimer went on trial for first-degree murder. Although Laura was originally listed as a witness for the prosecution, she switched sides to the defence. She was the last defence witness to testify: "Her birth was way, way sadder than her death. We lost Tracy when she was born," Laura stated.

A sympathetic jury would only convict Robert Latimer of second-degree murder. He was given the mandatory sentence of no less than ten years in prison. He appealed his sentence all the way up to the Supreme Court of

Canada, which ordered a retrial.

The second trial was a replay of the first. Laura told defence counsel that when the police told her Robert confessed to killing Tracy, she was initially shocked and angry.[13] However, Laura was *happy* to discover Tracy's lifeless body.[14] Was she expecting something? Laura said she was not aware Robert was going to murder when she left for church. Laura thought Tracy died of a seizure.[15] When the RCMP asked him if Laura knew he was going to kill Tracy when she left for church that fateful morning, Robert replied, "No."

Laura did not grieve Tracy's death: she said she grieved Tracy's birth.[16] Laura collaborated with the defence team to paint Tracy's life in the worst possible light of unremitting pain and anguish.

Police asked Robert if he told Laura what had happened when she arrived home from church. He said, "No." Didn't she wonder why her daughter's room and body stank of exhaust fumes?[17] Why was she so quick to conclude the cause of death was a seizure when Tracy was prone to the milder petit mals, not grand mal seizures?[18]

Laura said Robert was a "100 percent honest man."[19] Not true, as I have shown. It was Robert Latimer's legal-defence strategy to fixate on Tracy's disability, her pain—not her abilities, happiness, and joys in life. Laura participated in the tragedy of the strategy. She persisted in downplaying Tracy's humanity, only grudgingly admitting to the prosecution lawyer her daughter's *good* times.

**Tracy's life was miserable: That was Laura's story and she tried to stick to it.**

Was Tracy's life miserable? Was Tracy's life unworthy of life? Was her life one of continual suffering, as the defence lawyer Mark Brayford, Laura Latimer, and the media portrayed it? Did Tracy have *no* happiness, *no* joy? Did her life have *no* redeeming features?

Laura said in court that Tracy's last surgery left her utterly miserable:

"Tracy was in a lot of pain. Tracy was miserable. She used to be a happy little girl, and she'd turned into someone who just sat slumped, just waiting to be moved. She was—she was very unhappy.[20] . . . She would just sit slumped in her chair. Once in a while she would kind of sort of bat at a toy, but no, she was miserable, and it was getting—it was getting harder and harder to even have her comfortable . . ."[21]

The image of Tracy painted at the trial and reported by the media was untrue. Misery and pain were not the sum total of Tracy Latimer's life any more than misery and pain are the sum total of the lives of countless other people with severe disabilities. Tracy was a happy child.[22] She *did* have joy—the irrepressible joy of childhood—despite her disability.[23] She loved music,[24]

sleigh rides,[25] television,[26] games,[27] parties, the circus, and pets.[28] Tracy was dressed as a princess the Halloween before she was murdered.[29] On her last Easter, Laura wrote in Tracy's communication book: "Brian and Lindsay [Tracy's siblings] got up at 5:30 to hunt for eggs. We spent most of the day at Tracy's cousin Lynn's place. . . . Tracy spent a happy day, she ate a nice supper, and really enjoyed the desserts."[30]

At her little sister's sleep-over, Tracy became too excited to sleep.[31] She communicated and vocalized.[32] Tracy had preferences and made choices.[33] Tracy had a keen sense of mischief[34] and fun. Laura wrote, in Tracy's book: "After supper, we had a bonfire and Tracy sat outside until about nine o'clock. It was a beautiful night. Tracy seemed especially alert and happy . . . ."[35] Laura continued: "Tracy had a good weekend, sat out on the deck lots. Grandma and grandpa came yesterday, she's so happy to see grandma."[36]

Tracy adored her family, her face brightened at the very sight of them.[37] She went to a developmental centre each day for a regular school day.[38] There were discussions about integrating her into the regular school system.[39] She went to the development centre Monday to Friday and came home each day on the same school bus as her siblings and the other children,[40] and did so right up to the Friday before her murder.[41]

Tracy Latimer, like every human being, had something to bring to the world. At one point in court, Laura acknowledged the beauty Tracy brought to their lives. She reminisced, "Tracy enriched our lives, Tracy made us become better people, she—Tracy taught us how to love."[42]

Apparently Tracy's parents forgot what she taught them. They were tired, their patience had run out, there was a new baby in the house and it was time to move on with life.[43] Tracy's father put her out of *his* misery.[44]

Millions of disabled people have had misery in their lives. Many live alone, unloved, sometimes in pain. Sadly, that has been a reality for disabled people throughout history. But being miserable is not a reason to kill disabled people! If misery were a reason for death, none of us with disabilities would be safe. It would create open-season on the disabled. The answer is not to kill us in a flimsy excuse of stopping misery or bestow so-called *death with dignity*. The answer lies elsewhere: it lies in proper pain management,[45] and seeking *life with dignity,* and inclusion, especially for those who do not have it.

The murder of Tracy Latimer at the hands of her father, his callous timing of how long it took for Tracy to die, his reluctance to take responsibility for his horrible deed, and his attempts to destroy evidence should have prompted public condemnation and made him a pariah. *Au contraire*! Robert Latimer has become a kind of Canadian folk-hero. Throughout the past seven years he has enjoyed remarkable support from over seventy percent of Canadians.[46]

**Robert Latimer/Susan Smith**

A year after Robert Latimer murdered his daughter, American Susan Smith put her car into a South Carolina lake, drowning her two little boys, Alex and Michael. Why is Susan Smith universally reviled after killing her children while Robert Latimer has become a folk-hero after killing his child? The difference is this: Susan Smith killed two healthy children while Robert Latimer killed one disabled child. Tracy Latimer was not cute: Michael and Alex Smith were adorable. What should we make of this dramatic difference in public response? Are disabled children worth less than healthy children? Would Robert Latimer be a folk-hero if Tracy were a healthy child?

**Media blindness. Media deafness.**

The Canadian media could not see past Tracy's disability to the little girl who *was.* In her book, *A Voice Unheard: The Latimer Case and People with Disabilities*, Canadian author and disability advocate Ruth Enns made a revealing comment about the Canadian media's anti-disability bias in reporting the Latimer case:

> . . . [I] n the media coverage, she [Tracy] was less significant than the person who killed her. Of the eighty headlines only twenty-five mentioned or alluded to Tracy. Of those, only seven identified her simply by name or as a daughter, girl or child: . . . Only three of the eighty headlines referred to Tracy [sic] without some negative qualifier, as in the CP article in the Montreal Gazette, "Father had no choice but to kill girl."[47]

The media ignored extensive court testimony revealing Tracy's humanity, happiness, and joys. One must conclude that there was an intentional suppression of information that warped the notion of balanced reporting about Tracy's life. Inaccurate exaggerations of her pain persist to this day, even though it was clearly established that it was intermittent. It was obvious that she had more intelligence than—as was widely reported—a four-month-old baby.[48] It was as though the media revealed its own disabilities: blindness and deafness to the humanity of Tracy Latimer. Tracy did not get a voice; she became an "it."

Disabled people who opposed Robert Latimer were given sparse coverage while the media sought out those few people with disabilities who agreed with him.[49] The Canadian public was presented with a desperate view of Tracy Latimer and this contributed to the massive public support he enjoys to this day. This public support was actually part of his latest appeal to the Supreme Court of Canada, for a constitutional exemption from the mandatory sentence for second-degree murder.

This indictment of Canada stands for all to see. From the beginning of the

investigation, Robert Latimer enjoyed a climate of support and sympathy—from the initial police investigation to jury decisions. One appeal judge called Latimer "typical salt of the earth . . . a devoted family man . . . loving, caring, nurturing." He referred to Tracy as "tragically disfigured" and "born clinically dead and need[ed] to be resuscitated" and thereafter living in constant pain.

This judge also said "the appellant has no criminal record."[50] But he knew better. The appeal judge was Chief Justice E.D. Bayda, who was no stranger to Latimer, having presided over the 1974 *rape trial* of Robert W. Latimer. In May of that year, a Saskatchewan jury found the then 21-year-old Latimer guilty in the rape of a 15-year-old girl in the small Saskatchewan town of Wilkie on September 8t, 1973. Based upon a technicality, the sentence was overturned on appeal, effectively quashing the public record of Latimer's rape conviction.[51]

Things took a bizarre twist the when prosecution lawyer from the first murder trial, Randy Kirkham, was charged with jury irregularities and the case was, as stated above, ultimately appealed to the Supreme Court of Canada.[52] In February 1996, the high court ordered a retrial, which commenced on October 1997.[53]

**Robert Latimer's second trial**

Latimer's second trial was on the lesser charge of second-degree murder; the second jury was even more sympathetic to Robert, judging from some of their statements to the media.[54] Although the jury reluctantly convicted Latimer of second-degree murder, they recommended a sentence less than the minimum allowed by law and that he be eligible for parole after one year.[55] Latimer's legal counsel then applied for a constitutional exemption based upon Section 12 of Canada's Charter of Rights and Freedoms: "*Everyone has the right not to be subjected to cruel and unusual treatment or punishment.*"

The mother of another girl disabled with CP attended the trial. In horror she reported:

> The whole trial was grotesque . . . It was hard to believe the levity in the courtroom, the joking and congeniality between the judge, the lawyers, and the Latimers. The media people said they'd never seen such laughter in a murder trial. It was like everybody decided to forget that a child had been killed.[56]

**Judge Ted Noble's ignoble decision**

Apparently "the right not to be subjected to cruel treatment or punishment" applied to Robert Latimer but not to his daughter. Judge Ted Noble granted the unprecedented constitutional exemption from the mandatory life sentence with no chance of parole for at least ten years in favour of a two-year sentence.

Noble called Latimer a "devoted family man." Really? A devoted family man does not murder his child, timing how long it takes for her to die (one-thousand-one, one-thousand two ...), and then put the body in her bed for other family members to stumble upon. (Surprise!) Judge Noble spoke about Robert Latimer "the model citizen." Model citizens do not wilfully destroy evidence; they do not lie to police.

Noble said the Latimer case was isolated and was not a signal for others to follow. Did he really think others would not follow Latimer's lead? He only had to look at a number of mercy killings that took place after Latimer's first trial and conviction in 1994.[57] Ryan Wilkieson, a teenager with cerebral palsy, was murdered with carbon monoxide by his mother. Autistic Charles Blais was drowned by his mother in their Montreal home. A physician, Dr. Nancy Morrison, killed Halifax cancer patient Paul Mills. Canadian MS sufferer Austin Bastable was assisted in his suicide by Jack Kevorkian. Winnipeg senior Bert Doerksen helped his suicidal wife die by carbon monoxide poisoning. Nova Scotian Mary Jane Fogarty was convicted of assisting her diabetic friend Brenda Barnes to commit suicide. (Fogarty received a suspended sentence and was ordered to perform 300 hours of community service.) Ten-year-old Katie Lynn Baker of British Columbia, who had Rett Syndrome, was starved to death by her mother. None resulted in any jail time.

Judge Noble spoke of the Latimer case as "compassionate homicide." The media adopted the term and cheered his ruling as "courageous" and "breaking new legal ground."[58] Noble may as well have declared a new legal underclass in Canada: the handicapped and disabled. That was the implication, regardless of guarantees to the contrary in the Canadian *Charter of Rights and Freedoms* (Canada's version of a Constitution).

The prosecution appealed the sentence to the Saskatchewan Court of Appeals and the mandatory sentence was put in place. Robert Latimer then appealed to the Supreme Court of Canada for the constitutional exemption to be reinstated.

**Canada's climate of support for "mercy-killers"**

Regardless of media manipulating public support for Robert Latimer, Canada is still confronted with the ugly reality that a climate of support for mercy-killers has been established. The Latimer case played an important role in introducing to the public mindset the idea of "compassionate homicide" for the disabled.

Why were two juries–who heard the full testimonies—so sympathetic to him? The first refused to convict Robert of first-degree murder, opting for a second-degree murder conviction. Based upon clear evidence that could not be refuted, the second jury was compelled to convict him of second-degree

murder but recommended a sentence of one year instead of the mandatory life sentence with no chance of parole for at least ten years. Why were the police and courts so sympathetic to Robert Latimer? Robert Latimer has become a Canadian folk hero. Is the thought of living with a disability in one's family so abhorrent to Canadians? Latimer claimed he chose to "commit suicide" for his daughter. Suicide by proxy?

Between the first and second trial, Canada's governing Liberal Party adopted an official policy favouring assisted suicide. After the second Latimer trial Canada's Justice Minister, Anne McLellan, said she would consider changing Canada's criminal code to permit lenient sentences for second-degree murder in "exceptional circumstances."[59]

In April of 1998, McLellan wrote to me regarding my concerns about the Latimer case, assisted suicide and euthanasia. She said, in part:

"Questions ranging from the quality of medical care available to seriously ill and dying people to the moral questions involving a person's power to control his or her own life and *even the value of life itself must be considered when debating this subject* [emphasis added]."

I was left to wonder: The value of *which* lives are up for consideration and who will do the considering? Does the Canadian Justice Minister envision a different standard of "medical care" for "seriously ill and dying people" than the rest of the population? Better or worse?

**Supreme Court decisions by mob rule?**

As the Canadian Supreme Court began to deliberate the Latimer appeal for a constitutional exemption from the mandatory life sentence for second degree murder, the media contacted Robert Latimer at his farm for comment: "It's obvious isn't it?" Latimer said, "The majority of people seem to understand." He was relying on public support to sway the Supreme Court. In a written submission to the High Court, his legal team wrote, "the vast majority of Canadians are outraged" at the sentence imposed on an "anguished father."[60]

In January 2001, Canada's Supreme Court upheld Latimer's mandatory sentence for second-degree murder and sent him to prison to serve his life sentence without chance of parole for at least ten years. Immediately, tens of thousands of petitions began circulating across Canada gathering signatures asking Canada's federal government to reduce or commute his sentence. Numerous Canadians have volunteered to serve portions of his prison time for him.

And so, a last chapter may yet be played out in the Robert Latimer story and a new chapter of legal jurisprudence discriminating against Canada's disabled may begin. Pressure is building to have Parliament make a new

category for third-degree murder. It would be a lesser category for mercy killers of the handicapped, with more lenient sentences. If this occurs, Canada will effectively create a new legal underclass: The disabled, handicapped, and incurably ill.

It's a scary time to be disabled (as I am) in Canada; the winds of public opinion blow cold. Bob Latimer may be in jail but his case served to set a new public sympathy for mercy killers. In Montreal, two months after the high court sent Robert Latimer to jail to finally serve the proper sentence, a woman murdered her disabled daughter. The child's name was Chelsea Craig; she was fourteen years old and had a sunny disposition. Although her mother was charged with first-degree murder, rumblings of public support for her are being heard. Latimer lowered the bar—the mercy killings begin anew.

## NOTES

1. Transcript of Court proceedings: Between Her Majesty the Queen and Robert W. Latimer, Q.J.B. #37, CA#7413 & 7416, October 27, 28, 29, 30, November 3, 4, 5, 13 and December 1, 1997. Vol. II, lines 44-46, p. 240. Hereafter, reference to trial proceedings will be referred to as "Proceedings," vol. number, line and page (unless testimony is too lengthy; then the line numbers will be omitted).
2. Laura Latimer said they were of the view that upcoming surgery was not the "end of the road" (Proceedings, vol. III, lines 4-5, p 651).
3. Proceedings, vol. I, line 25, p. 66. Testimony of RCMP Corporal, Nick Donald Hartle. Also see, "Tearful Latimer told police Tracy died in her sleep: Accused nods off at his murder trial," *The Edmonton Journal*, 28 September 1998, A3.
4. Robert Latimer told the RCMP a second time that Tracy died in her sleep when they first arrived at the farm. (Proceedings, Hartle, vol. I, lines 13-15, p. 68). He misled police a third time (vol. 1, lines18-21, p. 79.)
5. Proceedings, vol. I, p. 84, lines 15-19. Testimony of RCMP Corporal Hartle.
6. Proceedings, vol. II, lines 7-13, page 233. Also vol. II, lines 16-31, p. 239. Testimony of RCMP Sgt. K.C. Lyons.
7. Proceedings, vol. I, line 3-5, p. 81. Testimony of RCMP Corporal Hartle.
8. Proceedings, RCMP Corporal Hartle. vol. 1, pp. 81-82.
9. Proceedings, vol. II, pp. 231-232. Testimony of K.C. Lyons. Also, Proceedings, vol. II, lines 5-23, p. 270. Testimony of RCMP Sgt. Robert Conlon. Also lines 1-15, page 82. Testimony of Constable Hartle.
10. Proceedings, vol. II, p. 238. Court testimony of RCMP Sgt. Lyons recalling confession of Robert Latimer on November 4th 1993.
11. Proceedings, vol. II, lines 10-26. p. 240. Testimony of RCMP Sgt. K.C. Lyons.
12. Proceedings, vol. II, lines 38-40, p. 249. Sgt. Lyons recalling Robert's confession.
13. Proceedings, vol. III, p. 513-515.
14. Proceedings, vol. II, lines 48-49, p. 242. Robert Latimer testimony to RCMP that Laura was happy to see Tracy dead. Laura also concurred with this during the trial, saying "I was so happy for Tracy." (Proceedings, vol. III, line 3, p. 514.)
15. Proceedings, vol. III, line 15 & 16, p. 513. Laura Latimer testimony to defence counsel, Mark Brayford. (Proceedings, vol. III, lines 12-26, p. 588.)
16. Proceedings, vol. III, lines 9-11, p. 516. Testimony of Laura Latimer to defence counsel Mark Brayford.
17. Proceedings, vol. III, lines 8-16, p. 590. Laura Latimer testified to an oily smell in hallway and Tracy's room, which disappears when the body is removed.
18. Proceedings, Vol. II, lines 12-20, p. 393. Testimony of Theresa Huyghebaert, Group home manager, North Battleford, Saskatchewan. Tracy had short petit mal seizures. Also note proceedings vol.

III, lines 20-22. Laura Latimer testifies that seizures were reduced and controlled with drugs.
19. Proceedings, vol. III, line 16, p. 514. Laura Latimer's testimony to Robert's defence counsel.
20. Proceedings, vol. III, lines 14-18, p. 491.
21. Proceedings, vol. III, line 11-15, p. 503.
22. Proceeding references to Tracy being a happy and cheerful child are too numerous to mention.
23. Professionals who worked with her contradicted the dismal portrayal of Tracy. It was also contradicted by Laura Latimer's own handwritten notes in a communication book that always accompanied Tracy for caregivers to read. Samples of Laura's own numerous notes alluding to a happy child include such comments as "Tracy was happy," "Tracy ate a very good ham supper, she was a very happy girl," "When I came home I gave Tracy a pudding. She was a happy girl," "Tracy seemed cheerful and more like her old self." "Tracy was very cheerful."
24. Testimony of Dr. Robert Kemp, family physician. (Proceedings, vol. II, lines 8 –10, p. 346.) Also testimony of Laura Latimer. (Proceedings, vol. III, lines 12-15, p. 539.)
25. Testimony of Irene Fraess, Day Program Supervisor at the Developmental Centre where Tracey Latimer attended. (Proceedings, vol. II, p. 433.)
26. Proceedings, vol. III, p. 543.
27. Tracy enjoyed a clapping game and would try to continue after it ended (vol. III, line 11). A May 26th, 1993 clinical assessment of Tracy by a clinical psychologist, Dr. Debbie Lake, and speech language pathologist, Valerie Lawson, said she loved the gym and movement, as well as cause/ effect toys manipulated with a switchboard illustrating her capacity to make choices. (Proceedings, vol. III, pp. 535-8.) Tracy even won a first prize badge for bowling. (Proceedings, vol. III, lines 4-6, p. 572.)
28. Tracy enjoyed the circus. Testimony of Theresa Huyghebaert. (Proceedings, vol. II, pp. 397-8.) The clinical assessment mentioned in the previous footnote also says: "She [Tracy] will try to pat, pick up the cat; ... Tracy smiles when she sees the cat." Proceedings, vol. III, lines 7-8 & lines 5-26, pp. 541-42.
29. Proceedings, vol. III, lines 24-25, p. 554.
30. Proceedings, vol. III, line 26, p.563; lines1-6, p. 564.
31. Ruth Enns, *A Voice Unheard: The Latimer Case and People with Disabilities* (Halifax, Nova Scotia: Fernwood Publishing, 1999), p.45.
32. Clinical report: "Mrs. Latimer indicated that Tracy does vocalize at home, mostly pleasure." Proceedings, vol. III, lines 16-17, p. 544. Under the heading "Comprehension and Communication" the report said Tracy was very sociable.
33. Tracy liked being with people (p.544, lines 23-24). Laura said that at mealtime Tracy would "screw up her face or pretend to be asleep" to indicate she was full. (Proceedings, vol. III, line 26, p. 544 & line 1, 545.) Tracy's eyes would widen with pleasure when someone used hand-cream on her hands (lines 6-7, p.545.) Laura Latimer wrote in Tracy's log: "Lindsay painted Tracy's nails, Tracy chose red, as usual." Note "as usual." Apparently Tracy was fond of the colour red.
34. Writing about the Tracy's sense of mischief, Laura wrote: "Tracy was the worst girl at the sleep-over, up at ten to seven, laughing and vocalizing. . . ." (Proceedings, vol. III, lines 11-12, p. 563.) Also assessment report: "Tracy grabbed Valerie's glasses and looked for a response." (Proceedings. vol. III, lines 10-11, p.543.) Laura Latimer wrote "Tracy will take off her dad's glasses and throw them, and then smile" (Proceedings, vol. III, lines 3-4, p. 542.) Laura also said, "She would sometimes—her hands would touch his glasses, and she would—her hands would close on them, and she would wave them around in the air, and he would say to her; you, just like you know she was naughty or something, and she'd laugh and laugh. She used to—and then sometimes she would drop them, and she used to get a lot of pleasure from that." (Proceedings, vol. III, lines 23-26, P. 500, & lines 1-4, P. 501.) Apparently seeing people grope without their glasses amused Tracy.
35. Proceeding, vol. III, lines 7-10, p. 569.
36. Proceedings, vol. III, lines 4-6, p. 571.
37. Tracy was "all smiles" when her cousins from Edmonton visited. (Proceedings, vol. III, lines 17-18, p. 559 & lines 3-4, p. 560.)
38. Tracy went to school five days a week. Her school day began at 8:40am and concluded at 3:20pm. (Proceedings, vol. II, lines 17-20, p. 437.)
39. Proceedings, vol. III, p. 576-578.
40. Proceedings, vol. III, lines 7-19, p. 527.
41. Proceedings, vol. II, lines 7-8, p. 440.

42. Proceedings, vol. III, p. 498.
43. Proceedings, vol. III, lines 19-26, p. 579-580.
44. Psychiatrist Dr. Robin Menzies assessed Robert Latimer. She deduced he had a phobia of medical procedures and devices, which began in childhood. The psychiatrist said the thought or memory of medical intervention for Tracy caused Robert great distress. His fear was irrational. When exposed to, or thinking of needles, injections, blood or tissue damage, Robert would tense up, shut his eyes, look away, start sweating, become shaky and light-headed. He would try to avoid such situations. This phobia was so ingrained in Latimer that he even considered immunizing children cruel. (Proceedings, vol. III. pp. 622-625.) As hard as it is to believe, the psychiatrist did not consider this pertinent to the murder case because he was able to function normally.
45 Testimony of Dr. Menzies (Proceedingss, vol. III, lines 24-26, p. 633.) At the time of Tracy Latimer's death she was on ordinary Tylenol.
46. Polls consistently reveal most Canadians think Robert Latimer's sentence was too harsh. See "Tolerance Shown for Mercy Killing," *The Toronto Globe and Mail*, 11 January 1999.
47. Enns, p. 55.
48. The four-month-old mental capacity of Tracy was speculation of family physician to the prosecution's question about his view of Tracy's cognitive capabilities. (Proceedings, vol. II, lines 13-14, p. 347.)
49. See Enns, Chapter 2. *The Media Trial.*
50. "Who is the real Robert Latimer? The judge who sentenced him for rape now calls him salt of the earth." *Alberta Report*, 04 September 1995, p. 29.
51. ibid
52. " 'Error' gives farmer shot at a new trial: Latimer jurors secretly interviewed." *The Edmonton Journal*, 26 October, 1995, A3. The prosecution lawyer, Randy Kirkham, was charged with attempting to obstruct justice for allegedly having police interview prospective jurors about their beliefs on issues such as religion, abortion and mercy killing. Kirkham was acquitted of the charges in June of 1998.
53. "Latimer's new trial reopens debate on mercy killing." *The Edmonton Journal*, 27 October 1997, A6.
54. Enns, p.43
55. Transcript of Ruling on Defence Motion and Sentencing by J. Noble: Between Her Majesty the Queen and Robert William Latimer. Q.B,J, No. 37 of 1994, Lines 20-22, P. 19.
56. *ProLife News Canada*, February 1998, P. 9. Observation of Charlotte Cooper of Stony Plain, Alberta. Ms Cooper attended the trial with her seventeen year old daughter who also has cerebral palsy (and had the same series of operations).
57. "Latimer's conviction sets new precedent, chief justice says." *The Edmonton Journal*, 8 November, 1997, A3. Skatchewan Chief Justice Ed Bayda commented that he researched four recent cases of mercy killing. He pointed out that in each of the cases, the court eventually accepted guilty pleas from the accused to manslaughter or administer a noxious substance. He wondered why Robert Latimer was receiving such extraordinarily harsh treatment. He said that Latimer's mandatory sentence for second-degree murder was tantamount to "an unjust and unusual punishment."
58. "Latimer's fate rests with Supreme Court." *The Toronto Star, 24 November, 1998.*
59. "Changes to Criminal Code considered: Justice Minister encourages debate on euthanasia." *The Edmonton Journal*, 07 November, 1997, A3.
60. "Latimer case renews debate on euthanasia: Top court will rule if he must spend 10 years in prison." *The Edmonton Journal*, 12 June, 2000, A3. Also see Latimer v the Queen and the People for Equal participation, Inc. Council of Canadians with disabilities and Saskatchewan Voice of the Handicapped, interveners. [1995] S.J. No. 402 Appeal File C.A. 6515, Saskatchewan Court of Appeal. Ground for Appeal Number 2: "That the learned trial Judge erred in law in not charging the jury that they could find that Robert William Latimer had the legal right to decide to commit suicide for his daughter, by virtue of her complete absence of physical and intellectual abilities."

*New Jersey* v. *Alexander Loce et. als*:

# A Father's Trial and the Case for Personhood

*Patrick J. Mullaney*

On September 7, 1990, Alex Loce embarked upon the short journey from his home in Queens, New York, to Morristown, New Jersey, a greatly burdened young man. His fiancée had told him that she was pregnant, and she had also told him that she had scheduled an abortion for the next day at a Morristown clinic. At the time, Alex did not know that he was also embarking on a long journey through the courts, in what would become an international effort to force the United States Supreme Court to seriously consider the core issue in America's abortion debate: whether the life of the unborn child is entitled to protection under the Due Process Clause of the Fourteenth Amendment.

One of Alex's biggest supporters as the case unfolded was John Cardinal O'Connor. Because of the importance that the *Loce* case may have in future abortion litigation, the Cardinal asked me not long before his death to tell the story of Alex Loce.

* * * * *

When Alex arrived in Morristown that Friday afternoon, he contacted me and two other attorneys, Richard Traynor and Michael Carroll, who were prepared to help him in his attempt to enjoin the procedure. Morris County Chancery Court Judge Kenneth McKenzie granted him an emergency hearing, but after listening to brief oral arguments beginning at 5:45 p.m., Judge McKenzie concluded that Alex's fiancée had a constitutional right to the abortion and therefore there could be no injunction. We immediately appealed to a three-judge Appellate Division panel convened via conference call from Springfield, some thirty miles away. When the Appellate Division summarily affirmed Judge McKenzie's ruling, Alex continued on the Friday night to the New Jersey Supreme Court. Under New Jersey's single-justice-relief rules, Justice Robert Clifford heard Alex's appeal sometime after midnight in his living room in Chester. There, having already battled through New Jersey's lower courts before his fiancée, her attorneys, his attorneys, and various representatives from the National Organization for Women, Alex

**Patrick J. Mullaney**, a New Jersey lawyer specializing in tax and commercial real estate law, represented Alex Loce (pro bono) in *New Jersey* v. *Alexander Loce et. als* from 1991 to 1994. He is grateful for the "unceasing" assistance of David B. Mullaney of the University of North Carolina.

argued once again for the life of his child. And once again, his petition was denied on the grounds that a woman's abortion right was firmly established. The legal system offered no further remedy for what the morning would bring.

Not one to give up easily, Alex spent the rest of that long night rounding up twelve strangers who were willing to help. Arriving early the next morning at the clinic, Alex and his twelve supporters chained themselves to its doors and equipment and collectively managed to halt his fiancée's abortion for about nine hours. Inevitably the police acted, arresting Alex and his new friends and charging them all with trespass. The clinic was reopened, and Alex's child was aborted.

Though bitterly disappointed, Alex had opened up a novel legal opportunity: the chance to defend against the trespass charge by arguing that his unborn child had a right to life protected by the Due Process Clause of the 14th Amendment. Without belaboring a fairly complex legal theory, the bottom line significance of the trespass prosecution was that it afforded a live case to raise the unborn child's Due Process claim before the Supreme Court, something which had never been seriously attempted in the eighteen years since *Roe* v. *Wade*. Put simply, if Alex could establish that his unborn child had due-process rights, then those rights had been violated by the Morristown police in removing Alex from the clinic and allowing the abortion to take place. Further, the violation itself was relevant to the issue of Alex's guilt or innocence by virtue of the United States Supreme Court's decision, in, of all places, *Griswold* v. *Connecticut*, the case which established the right to privacy and was later used in deciding *Roe* v. *Wade*. If such a right could be established, Alex was innocent. If not, he was guilty. Of course, if this right was established, all constitutional jurisprudence on abortion would be turned on its head. But that was the point.

In order to establish that prenatal life was entitled to constitutional protection, the fact of prenatal life and its legal standing had to be proven in court. This was no small task. The better the proofs and arguments, the greater likelihood of success. It was common knowledge that the best man for a job like this was Dr. Jérôme Lejeune, a world-renowned geneticist based at the University of Paris. In 1963 Dr. Lejeune had been the first to discover a chromosomal abnormality in man, the one leading to Down's Syndrome, and he became known around the world as the "father of human genetics." Even more impressive than his professional qualifications, however, were his insights into how and why the physical world behaves as it does—how God's purposes are carried out through the laws of nature. A member of the Pontifical Academy of Science, a philosopher (with a leaning towards Pascal),

and a poet in his younger days, Dr. Lejeune could reveal the complexities of human genetics with a beautiful simplicity and had devoted his later years to telling the world that the discoveries of science amount to nothing more than human descriptions of the genius of nature's author.

How does one obtain the assistance of such a man in something so seemingly inconsequential as a municipal trespass case? This was also no small task. Having no better ideas and willing to try anything, Dick Traynor and I contacted Cardinal O'Connor by fax, asking for his help. In retrospect our fax was ridiculous. In it we told him we were two lawyers whom he had never met or even heard of, but we thought we were on to something worthwhile, and would he please see what he could do to get Dr. Lejeune, the world famous scientist, to fly from Paris to Morristown to help us out in municipal court?

Several days later, in what is yet to me a most remarkable memory, the Cardinal faxed a personal plea to Dr. Lejeune at the University of Paris, first praising him for his work, next apologizing for imposing on his schedule, and finally pleading with him to lend his expertise to this "very important case," one which could possibly result in the unborn child's being granted the protection of the law throughout the United States. Actually, the most we were hoping for was maybe a phone number or an OK to use the Cardinal's name. That is not what we got. Unable to turn the Cardinal down, Dr. Lejeune agreed to assist. And assist he did.

Alex Loce's trial was held in Morristown Municipal Court on April 13, 1991. Dr. Lejeune testified to the fact that life begins at conception. Dr. Bernard Nathanson, a prominent physician and former abortionist, testified as to the continuing humanity of the living and developing child. Dr. Russell Hittinger, then teaching philosophy at Princeton, rounded out the testimony by advising the Court that no accepted school of philosophical thought could deny either the scientific fact of prenatal life or the humanity of the unborn child.

After listening to this testimony, in what was to the best of my knowledge the first time the issue of the humanity of the unborn child and its constitutional implications had ever been presented in an American court, Judge Michael Noonan held as "true fact" that life begins at conception. He went on to hold correctly that the unborn are a class of humanity excluded from our laws "by the authority of the United States Supreme Court in *Roe* v. *Wade*." On that basis Judge Noonan found Alex guilty of trespass and concluded with the statement that blared in the next day's headlines: that the abortion of Alex's child had been an act of "legal execution."

Although we lost, Judge Noonan's factual finding of the presence of life—

an interest protected under the Due Process Clause of the 14th Amendment—gave strength to the argument we intended to raise on appeal: that this life must be protected even in the case of an unborn child. This was the point where our real work began—that is, the development of the argument that once the fact of prenatal life is established, our Constitution has no option other than to recognize and protect it.

Now, for those who haven't tried it, developing a new constitutional right is not an easy thing to do. It was necessary from the outset of the appellate process to find and stick with a theme, something noble, something unarguable, something that would attract people to aid in the effort as it went forward.

We found that something in Dr. Lejeune's testimony before Judge Noonan. There he had been asked to explain the process of human reproduction, and he had replied:

> Now the reproduction process is a very impressive phenomenon in the sense that what is reproduced is never the matter, but it is information. For example, when you want to reproduce a statue, you can make a mold and there will be an exact contiguity between the atoms of the original statue and the atoms of the mold. During the molding process there will be again between the plaster and the mold contact atom by atom so that you reproduce the statue. But what is reproduced is not the original, because you can make it out of plaster, out of bronze, about anything. What is reproduced is the form that the genius of the sculptor had imprinted in the matter. The same thing is true for any reproduction whether it is by radio, by television, by photography: what is printed or reproduced is the information and not the matter. The matter is a support of the information. And that explains to us how life is at all possible, because it would be impossible to reproduce matter. Then there is nothing like living matter; what exists is animated matter. And what we learn in genetics is to know what does animate the matter, to force the matter to take the form of a human being.
>
> Now, exactly as if you go and buy a cartridge on which the *Eine Kleine Nachtmusik* from Mozart has been registered, if you put it in a normal recorder, the musicians would not be reproduced, the notes of the music will not be reproduced, they are not there; what would be reproduced is the movement of air which transmits to you the genius of Mozart. It's exactly the same way that life is played. On the tiny minicassettes which are our chromosomes are written various parts of the opus which is for the human symphony, and as soon as all the information necessary and sufficient to spell out the whole symphony is present, this symphony plays itself, and transmits again the genius of the author.

One might rightly ask, Where in this very impressive piece of off-the-cuff prose is the seed of a constitutional argument? It is in Dr. Lejeune's point: there is both order and purpose in the material universe. Matter is a support for the purposes of life's author and helps to bring about that author's intended order.

Not far removed from here is the question whether there is an underlying

purpose and order defining the proper exercise of the human will, in particular the law as the collective will. If so, was our law, in particular our Constitution, adopted in fidelity to that purpose, with an intent to further a particular order? Or is our Constitution without such an animating principle, being essentially an agent of unbridled individualism?

Up to that time, the vast array of abortion-related litigation had only dealt with various forms of state regulation of individual rights. Never had the issue of the purpose of the law been brought to the courtroom. Did the framers intend to recognize the protection of life as a moral obligation, making any decision excluding the protection of life simply incorrect?

All this brought us to review in depth the historical purposes of the Due Process Clause of the 14th Amendment, drafted and sent to the states for ratification by the 39th Congress, which convened between 1866 and 1868. That Congress, having experienced the brutality of laws which ignored basic human dignities (in particular the affirmative slavery laws of the Southern states prior to the Civil War), had as its primary objective the expansion of individual rights.

The discussion here necessarily turns somewhat technical. But keep in mind that we are inquiring into Congress's thoughts about both the shortcomings of the law prior to the Civil War, and an appropriate remedy to avoid a repetition of the conditions that led to that war. In drafting the new amendment, Congress examined two landmark Supreme Court decisions, *Dred Scott* v. *Sanford* (1857) and *Barron* v. *Baltimore* (1823).

*Dred Scott* has two important constitutional aspects. First, it found within the Bill of Rights an unenumerated right to slavery, something which has relegated that decision to eternal infamy. However, of greater significance to us is the methodology of disfranchisement that Justice Taney employed in deriving that right. After all, the 5th Amendment's Due Process Clause contained an *enumerated* right, liberty. To legitimize slavery, the Court had to somehow remove Mr. Scott's liberty from the protection it was afforded by that amendment. Justice Taney resolved the dilemma by holding that the Bill of Rights was intended by its framers to benefit "citizens" and "citizens" only. Significantly, "citizenship" was narrowly defined as a status enjoyed only by lineal descendants of persons who were "citizens" at the time of the adoption of the Constitution in 1789. As to Mr. Scott, the result was clear. His liberty had been denied because he was not a "citizen"; he did not possess a requisite legal status.

In coming to understand the structure of Section I of the 14th Amendment, it is important to note that the issue in *Dred Scott* was the constitutionality of

a federal law, namely the Missouri Compromise. That decision therefore served to establish the limits of constitutional protections (to "citizens") against acts of the federal government but the federal government only. *Barron* v. *Baltimore*, the 39th Congress's other landmark, had also dealt with the scope of federal protections, but had done so in regard to acts of *state governments*. More specifically it considered the applicability of the Bill of Rights against potentially violative acts of the states. Chief Justice Marshall concluded that *no* constitutional rights applied against state acts unless there was a "plain and intelligible" statement of an intent to apply them in the relevant text. Significantly, he approved the words "No State Shall" as being sufficiently "plain and intelligible."

It is against this backdrop that Section I of the 14th Amendment, adopted in 1868, must be understood. It reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are *citizens* of the United States and of the state wherein they reside. *No State shall* make or enforce any law which shall abridge the privileges or immunities of *citizens* of the United States; *nor shall any State* deprive any *person* of life, liberty or property without due process of law; nor deny to any *person* within its jurisdiction the equal protection of the laws. (Emphasis added.)

The purpose of each component of Section I must be considered carefully. The first sentence, by expanding the definition of "citizen" from *Dred Scott*'s lineal descendants of 1789 citizens to "all persons born or naturalized in the United States"—but otherwise letting the decision stand—granted all members of that now greatly enlarged class (but only those members) constitutional rights against the federal government.

The first clause of the second sentence dealt with *Barron* by incorporating the "privileges or immunities of citizens of the United States" against acts of the individual states. The "privileges or immunities" to be protected from state acts were a large class of historically recognized rights including, as the legislative history of this Amendment makes very clear, those found in the Bill of Rights. Congress was particular about using the language "No State Shall," which had been pre-approved in *Barron* as sufficiently "plain and intelligible" to be applicable.

Taken together, then, the first sentence and the Privileges or Immunities Clause nicely accomplished the authors' purpose of expanding the scope of constitutional protections by applying the Bill of Rights to all "citizens" against acts of both state and federal governments. However, we are left with an intriguing question. Why is the next component of Section I, the Due Process Clause, even there? Since the Fifth Amendment had a Due Process Clause which had for 79 years protected life, liberty and property rights, and

since these rights would be protected against state actions by incorporating them into the new law through the Privileges or Immunities Clause, why was a *second* Due Process Clause enacted to do the same thing?

Consider carefully the mechanics of Section I. Incorporation of the Fifth Amendment's Due Process Clause would, of course, extend its protection to apply to acts of state governments. Still, consistent with the limitation held over from *Dred Scott*, that protection would extend only to "citizens." As is made clear throughout the record of congressional debates on this amendment, this limitation was fine for *all* other incorporated rights. It wasn't fine, however, for those rights known as due-process rights. They, as the record makes clear, required a broader, more comprehensive protection, and it was only for the purpose of providing the broadest possible protection to life, liberty, and property rights that the 14th Amendment's Due Process Clause was enacted.

Congressman John Bingham of Ohio, the principal drafter of Section I, explained on the House floor why this was done:

> *Natural or inherent rights, which belong to all men regardless of all conventional regulations*, are by this Constitution *guaranteed* by the broad and comprehensive word "*person,*" as contradistinguished from the limited term *citizen*—as in the 5th Article of the Amendments . . . that "no person shall be deprived of life, liberty, or property but by due process of law . . ." *Cong. Globe, 35th Cong. 2nd Sess. 982* (Emphasis added.)

Bingham starts by categorizing due-process rights as "natural or inherent," a categorization which is constitutionally significant: It means that the law has no authority to take any act or impose any condition, referred by Bingham as "conventional regulations," that would place them outside its protection. Next, switching from prohibition to obligation, Bingham states that the law's correct relationship to due-process rights is not a conditional one—one dependent on a person's having a particular status, such as citizenship—but rather one of affirmative responsibility to *guarantee* them broadly and comprehensively.

Bingham goes on to explain how the Constitution actually discharges this obligation with the use of a single operative word, a word carefully chosen. That word was "person." In contrast to the limited concept of "citizen," "person" is broad, expansive, and reflective of the intrinsic value of the natural rights which it is employed to protect.

The authors of the 14th Amendment effectively codified into the Due Process Clause the natural character of due process rights, bringing within the coercive power of the positive law the aspirational "inalienable rights" language of the Declaration of Independence. We can now look back at Dr.

Lejeune's points of support, order, and purpose. Our law, in the form of the Due Process Clause, by treating as natural and unconditional the God-given rights of life, liberty, and property, protects them in obligation to and support of a purposeful moral order. It is in fidelity to this moral order that our law requires us not to kill, enslave, or deprive of his property any "person." Congressman Bingham makes clear that this fidelity was the reason for the adoption of what is arguably the most important clause in the American Constitution.

With that as background we can turn to *Roe* v. *Wade*, decided by the United States Supreme Court in 1973. *Roe* considers squarely the issue of whether the unborn child's life is guaranteed by the 14th Amendment's Due Process Clause, and squarely denies the claim. The analysis in *Roe* was eerily similar to that in *Dred Scott* in two important respects. As *Dred Scott* had done for slavery, *Roe* first found for abortion the existence of an unenumerated right within the Bill of Rights. Next, as *Dred Scott* had disfranchised slaves from an enumerated right, liberty, *Roe* had to disfranchise unborn children from the protection of another enumerated right, life. We have seen how the *Dred Scott* Court carried out its dirty work, using the word "citizen." The *Roe* Court did it, ironically enough, using the word "person." Ignoring the legislative purpose of the use of "person" in the Due Process Clause, the Court chose to conduct its analysis by examining whether the word "person" had any pre-natal application elsewhere in the Constitution. The Court reviewed the use of "person" in 14 unrelated constitutional contexts, ranging from the age requirements for President, Senator, and Representative to the Fugitive Slave Act. Noting that nowhere in the Constitution was "person" used pre-natally, and ignoring the substantive issue of whether the unborn child possesses the interest of life, the Court concluded that "person" was not to be used pre-natally in the due-process context either.

What *Roe* achieved was exactly what the authors of the 14th Amendment had sought to protect against. Rather than broadly and unconditionally guaranteeing life, "person" was now, like *Dred Scott*'s "citizen," a tool of classification, something which by consideration of a status—birth—rendered irrelevant life's natural value and classified out of legal existence an entire class of humanity. *Roe*'s "person" was, in Bingham's words, a "conventional regulation" dispossessing a natural right, exactly the opposite of its purpose.

What may have hampered its analysis was that, by its own account, the *Roe* Court was laboring under the disability of being unable to determine whether unborn life exists. As discussed in more detail below, the Court held that it was unable to determine when life begins and stated that in the absence of certainty it would not "speculate" as to life's commencement.

Thus the state of the law is that if one wishes to make the argument that the unborn child should come within the scope of the Due Process Clause, the burden must be met of proving to the Court that life exists pre-natally. It seemed to me as Alex's attorney that this task would be best approached by demonstrating first the factual existence of pre-natal life and then its recognition in some constitutional sense.

For starters, the fact of biological life prior to birth is now unquestioned. We do not need testimony at the level of Dr. Lejeune's to affirm that; every seventh-grade science book in America makes it clear. But I think the *Roe* Court was trying to say that something more then simply science may be required. The law may require a conclusion that the Constitution somewhere along the way has made a judgment that the unborn child is legally a rights-bearing entity.

In *Roe* v. *Wade*, plaintiff Jane Roe claimed that a Texas criminal statute making abortion illegal violated her due-process right to abortion. Texas defended itself on the grounds that it had a "compelling state interest" to legislate on behalf of unborn life, an interest which—if upheld—would override the constitutional rights of Ms. Roe. The Court considered Texas's claim—the first time unborn life had been presented in any constitutional context—by stating, quite sensibly, that for a state to have a regulatory interest on behalf of pre-natal life, that life must be known to exist. Actual constitutional rights cannot be restricted on behalf of unknown or imaginary countervailing interests. So, the Court, having found abortion to be a recognized constitutional right, denied Texas by holding in its now-famous language that the question of when life begins is a "difficult and sensitive" one, upon which it would not "speculate." No life, no state interest in life. Fair enough.

In 1992, Professor Jed Rubenfeld of the Yale Law School published an article in the *Stanford Law Journal* entitled "On the Legal Status of the Proposition That Life Begins at Conception." In his article he pointed out that numerous post-*Roe* cases, including *Akron* v. *Akron Center for Reproductive Services* (1983), *Thornburgh* v. *American College of Obstetricians and Gynecologists* (1986), and *Webster* v. *Missouri Reproductive Services* (1989), have upheld "compelling state interests" in unborn life and upheld them from conception. Significantly, five of the nine justices have held in exactly that regard. (*Planned Parenthood of S.E. Pa.* v. *Casey* [1992] can be added to the list by upholding state interests in unborn life designated as "substantial" or "profound" from conception.) The point, of course, is that, by the demands of *Roe*'s own logic, no state interest on behalf of unborn life could be upheld

if life had not commenced for constitutional purposes. Therefore, by finding such interests beginning at conception in the post-*Roe* cases, the Court has necessarily found that, for those constitutional purposes, life has commenced at conception.

We sit now at a very interesting point in the evolution of the law. The Supreme Court has held that states have a regulatory authority to protect unborn life of sufficient magnitude to significantly restrict the exercise of the abortion liberty. Because under *Roe*, there must *be life* in order for there to be an authority to regulate on its behalf, the conclusion is inescapable that the unborn child has been recognized at the constitutional level as in fact its own rights-bearing entity entitled to the protection of law, removing the ground upon which the *Roe* Court took its stand in 1973. When this evolved constitutional status is coupled with the constitutional purpose of the Due Process Clause as offering a broad and unconditional guarantee to the "person" possessing life, the conclusion becomes inescapable that a proper decision—should the issue be revisited today—would be that unborn life is entitled to constitutional protection.

Think about it. The state of the law currently is that a portion of humanity is entitled to have its life protected to various extents by affirmative acts of government, but is not entitled to protection on its own account. Having to track back through 130 years of jurisprudence—through all the judicial rationalizations that have brought us to where we are—to establish that the law in fact knows that life is valuable and should be protected is proof of what has been said about evil: Evil must rationalize, and that is its weakness. But it can, and that is its strength.

At the outset of this essay I stated that its purposes were to tell the story of Alex Loce and to discuss certain legal arguments. In large measure the two are intertwined. The first phase of the case itself—meaning through the trial in front of Judge Noonan—attracted the support of and participation of some very serious people—Cardinal O'Connor, Jérôme Lejeune, Bernard Nathanson, Russell Hittinger. All devoted their considerable talents and influences because of the opportunity to take a step toward bringing the unborn child within the ambit of the law's protection.

From April 1991 through February 1994 appeals were taken, first through New Jersey courts, and then to the Supreme Court of the United States in the form of a petition for *certiorari*. At each level interest in the case grew, because of the centrality of the issue of establishing the rights of the unborn child in the constitutional matrix.

Leading the charge was Cardinal O'Connor, often in the face of disparaging

opposition from the usual suspects—the ACLU, Catholics for a Free Choice, NOW, The Project for Reproductive Freedom. The Cardinal used all the resources at his disposal. First he wrote to every fellow prelate in the United States, explaining the nature of the appeal and asking for assistance.

The Cardinal also devoted two of his "From My Viewpoint" columns in *Catholic New York* to the appeal, the second including a personal request for readers to send me financial contributions, as the demands had been considerable. (Over $10,000 was received, with donations coming from all parts of the country.)

The effort grew enormously. Harold Cassidy—the attorney who had successfully battled against surrogate motherhood in the Baby M case—became involved, bringing his boundless energies to the case. Soon he had organized a group of women in Monmouth County, New Jersey, called "Friends of Loce," who scoured the globe for organizations willing to join the appeal as friends of the court. By the time the appeal reached the United States Supreme Court in late 1993, 160 friends of the court from seventy nations around the world had filed briefs arguing from every conceivable angle that preborn life was the legitimate object of the law's protection. The same people coordinated an enormous letter-writing campaign to the Justices of the Court, imploring them to grant a review of the case, an effort described by Justice Souter's secretary as the largest the Court had ever seen.

Cardinal O'Connor requested Mother Teresa to become a friend of the court. She agreed, in what I am told was the first time in her life she had directly petitioned a government. In a handwritten appeal to the Supreme Court of New Jersey, Mother Teresa said:

> Justices of New Jersey
> Supreme Court of New Jersey
>
> Regarding: *State of New Jersey* v. *Alex Loce*
>
> Dear Justices of New Jersey:
>
> To make it easier for us to love and protect one another, Jesus made us this promise . . . "Whatever you do to the least of my brethren, you did it to me. . . . When you receive a little child in my name . . . you receive me." Today, the least and most unprotected of our brethren, is the little unborn child. We have all been created by the same loving hand of God. It is your responsibility to protect the rights of all of God's children that come before you, regardless if they can speak for themselves or not. As you are making your decision to hear this case, I beg you to protect the rights of God's poorest of the poor, please do not turn your back and reject the rights of the little unborn child, I beg of you to do what Jesus would do in this situation.
>
> My gratitude to you is my prayer for you, for the work that you are doing and for the

people whom you serve.

Mother M. Teresa, M.C.
Calcutta

When New Jersey's highest court declined to hear the case, Mother Teresa continued as an amicus to the United States Supreme Court. There, represented by Robert George and William Porth, both remarkable attorneys and intellects, Mother Teresa reminded the Court in her brief how America had been founded upon the precept—old in moral discussions but radically new in politics—of equal rights for all. She reminded the Justices how in following this path America, though it had stumbled now and then, had always remained faithful, and she said that that fidelity had been the reason for America's greatness. She told them finally that *Roe* v. *Wade* stood in opposition to all that is good and noble about America, and she asked them to reverse *Roe* in the *Loce* case by entitling the unborn child to the protection of law.

I wish I could say the story had a happy ending. It didn't. In February 1994 the United States Supreme Court declined Alex Loce's petition. The unborn child would have to wait for another day in court.

It was my great honor to have participated in the effort which was the *Loce* case and, above all else, to pass on the collective fruits of our labors. There will be other cases where the same issue will be raised again, developed, refined, and reargued. One day the United States Supreme Court will reconsider whether our law can continue to trample upon the right to life.

To those who are destined to participate in the next round I say: Know that the work is hard and the subject is spiritually dangerous, but also know that there are many people who will go to extraordinary lengths to help. More important, know that our law is sound and good—only currently misguided. To those brave souls I offer the research documents of the *Loce* case, which are available more formally than set forth herein. We only have to convince five of nine people not to be afraid to interpret our law in the moral tenor in which it was composed, speaking of life as a right from God and of the moral obligation of the law to protect it. We need only ask these Justices to be progressive, progressive in an odd sort of way, progressive as C.S. Lewis would see it: "We all want progress, but if you are on the wrong road, progress means doing an about-turn and walking back to the right road; in that case, the man who turns back soonest is the most progressive."

# APPENDIX A

*[We reprint here the complete text of the* amicus curiae *brief filed by Mother Teresa of Calcutta with the U.S. Supreme Court on February 14, 1994. The original title page is reproduced below.]*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1993

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ALEXANDER LOCE,

*Petitioner,*

- against -

THE STATE OF NEW JERSEY,

*Respondent.*

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TINA KRAIL, ET ALS.,

*Petitioners,*

- against -

THE STATE OF NEW JERSEY,

*Respondent.*

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**BRIEF AMICUS CURIAE OF MOTHER TERESA OF CALCUTTA, IN SUPPORT OF PETITIONERS' PETITIONS FOR A WRIT OF CERTIORARI**

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APPENDIX A

## INTEREST OF AMICUS CURIAE

Mother Teresa resides at 541A Ach. Jagdish, Ch. Bose Rd., Calcutta, India 700 016. She is the founder and mother superior of the Order of the Missionaries of Charity. The order maintains its headquarters in Calcutta, India. The Missionaries of Charity have provided services to the needy in many parts of the world, including the United States of America, where the order's main office is located at 335 East 145th Street in the Bronx, New York. Much of the work of the Missionaries of Charity involves providing charitable services to children and to poor families. Through this work Mother Teresa and the Missionaries of Charity have a special interest in the welfare of all children, born and unborn, and the familial relationship between children and their mothers and fathers.

## SUMMARY OF ARGUMENT

The unborn child possesses an inalienable right to life which must be recognized and safeguarded by any just society.

## ARGUMENT

### 1. THE QUESTION WHETHER UNBORN HUMAN BEINGS POSSESS THE INALIENABLE RIGHT TO LIFE IS OF THE GREATEST IMPORTANCE AND MUST NOT BE AVOIDED BY THE COURT.

I hope you will count it no presumption that I seek your leave to address you on behalf of the unborn child. Like that child I can be called an outsider. I am not an American citizen. My parents were Albanian. I was born before the First World War in a part of what was not yet, and is no longer, Yuglosavia. In many senses I know what it is like to be without a country. I also know what it is like to feel an adopted citizen of other lands. When I was still a girl I travelled to India. I found my work among the poor and sick of that nation, and I have lived there ever since.

Since 1950 I have worked with my many sisters from around the world as one of the Missionaries of Charity. Our congregation now has over 400 foundations in more than 100 countries, including the United States of America. We have almost 5,000 sisters. We care for those who are often treated as outsiders in their own communities by their own neighbors—the starving, the crippled, the impoverished, and the diseased, from the old woman with a brain tumor in Calcutta to the young man with AIDS in New York City. A special focus of our care are mothers and their children. This includes mothers who feel pressured to sacrifice their unborn children by want, neglect, despair, and philosophies and governmental policies which promote the dehumanization of inconvenient human life. And it includes the children themselves, innocent and utterly defenseless, who are at the mercy of those who would deny their humanity. So, in a sense, my sisters and those we serve are

all outsiders together. At the same time, we are supremely conscious of the common bonds of humanity that unite us and transcend national boundaries.

In another sense no one in the world who prizes liberty and human rights can feel anything but a strong kinship with America. Yours is the one great nation in all of history which was founded on the precept of equal rights and respect for all humankind, for the poorest and weakest of us as well as the richest and strongest. As your Declaration of Independence put it in words which have never lost their power to stir the heart:

> We hold these truths to be self-evident: that all men are created equal; that they are endowed by their creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness . . . .

A nation founded on these principles holds a sacred trust: to stand as an example to the rest of the world, to climb ever higher in its practical realization of the ideals of human dignity, brotherhood, and mutual respect. It has been your constant efforts in fulfillment of that mission, far more than your size or your wealth or your military might, that have made America an inspiration to all mankind.

It must be recognized that your model was never one of realized perfection, but of ceaseless aspiration. From the outset, for example, America denied the African slave his freedom and human dignity. But in time you righted that wrong, albeit at an incalculable cost in human suffering and loss of life. Your impetus has almost always been toward a fuller, more all-embracing conception and assurance of the rights which your founding fathers recognized as inherent and God-given. Yours has ever been an inclusive, not an exclusive society. And your steps, though they may have paused or faltered now and then, have been pointed in the right direction and have trod the right path. The task has not always been an easy one, and each new generation has faced its own challenges and tempations. But, in a uniquely courageous and inspiring way, America has kept faith.

Yet there has been one infinitely tragic and destructive departure from those American ideals in recent memory. It was this Court's own decision in 1973 to exclude the unborn child from the human family. *Roe* v. *Wade*, 410 U.S. 113 (1973). You ruled that a mother, in consulation with her doctor, has broad discretion, guaranteed against infringement by the United States Constitution, to choose to destroy her unborn child. Your opinion stated that you did not need to "resolve the difficult question of when life begins." 410 U.S. at 159. That question is inescapable. If the right life is an inherent and inalienable right, it must surely obtain wherever human life exists. No one can deny that the unborn child is a distinct human being, that it is human, and that it is alive. It is unjust, therefore, to deprive the unborn child of its fundamental right to life on the basis of its age, size, or condition of dependency. It was a sad infidelity to America's highest ideals when this Court said it did not matter, or could not be determined, when the inalienable right to life began for a child in its mother's womb.

America needs no words from me to see how your decision in *Roe* v. *Wade* has

deformed a great nation. The so-called right to abortion has pitted mothers against their children and women against men. It has sown violence and discord at the heart of the most intimate human relationships. It has aggravated the derogation of the father's role in an increasingly fatherless society. It has portrayed the greatest of gifts—a child—as a competitor, an intrusion, and an inconvenience. It has nominally accorded mothers unfettered dominion over the independent lives of their physically dependent sons and daughters. And, in granting this unconscionable power, it has exposed many women to unjust and selfish demands from their husbands or other sexual partners.

Human rights are not a privelige conferred by government. They are every human being's entitlement by virtue of his humanity. The right to life does not depend, and must not be declared to be contingent, on the pleasure of *anyone* else, not even a parent or a sovereign. The Constitutional Court of the Federal Republic of Germany recently ruled:

> The unborn child is entitled to its right to life independently of acceptance by its mother; this is an elementary and inalienable right which emanates from the dignity of the human being.

[Judgement of May 28, 1993, The Constitutional Court of the Federal Republic of Germany, Judgement of the Second Senate, 20 EuGRZ 229-275 (consolidated case nos. 2 BzF2/90m 2 BzF 5/92).]

Americans may feel justly proud that Germany in 1993 was able to recognize the sanctity of human life. You must weep that your own government, at present, seems blind to this truth.

I have no new teaching for America. I seek only to recall you to faithfulness to what you once taught the world. Your nation was founded on the proposition—very old as a moral precept, but startling and innovative as a political insight—that human life is a gift of immeasurable worth, and that it deserves, always and everywhere, to be treated with the utmost dignity and respect.

## CONCLUSION

I urge the Court to take the opportunity presented by the petitions in these cases to consider the fundamental question of when human life begins and to declare without equivocation the inalienable rights which it possesses.

Respectfully submitted,
MOTHER TERESA OF CALCUTTA

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ROBERT P. GEORGE, ESQ.

# APPENDIX B

*[The following originally appeared in our Spring, 1994 issue, as a tribute to the recently-deceased Dr. Lejeune. We reprint it here for its relevance to this issues's article,* New Jersey *v.* Alexander Loce et. als*: A Father's Trial and the Case for Personhood.]*

## Doctor Jérôme Lejeune, R.I.P.

On Easter Sunday, April 3, Dr. Jérôme Lejeune, age 67, died in Paris. He was world-renowned for having discovered the cause of Down Syndrome; he won numerous awards, and was a member of many prominent medical and scientific academies. In March of this year, Pope John Paul II named him head of the new Pontifical Academy of Life.

Dr. Lejeune was perhaps best known as an eloquent advocate of the unborn, and a frequent witness at abortion hearings and legal trials, both in France and the U.S. (where he also testified at several congressional hearings).

A memorable example was the so-called Loce case, tried in a New Jersey court in 1991. Dr. Lejeune was questioned by Patrick J. Mullaney, an attorney for the defendant, Alexander Loce. We reprint here excerpts from his testimony.

Q: Doctor Lejeune, could you please, for the record, state your name?

A: Your Honor, my name is Jérôme Lejeune.

I am a professor of fundamental genetics in the Children's Hospital of Paris and the Faculty of Medicine of Paris.

And I began as a pediatrician and then I became a geneticist. Now I am a pediatrician and a geneticist.

And in my consultation, which is probably the biggest in the world for mentally retarded children having difficulty due to a chromosomal mistake, we examine every year 2000 children, and we have record of 30,000 of them. So our job is really to try to understand what makes the nature of every human being; why some of them are afflicted by constitutional difficulty, and to try later to treat that, if we can, so that we would be able to some day to bring them back to normal; and to give them what nature has refused to them.

Q. Dr. Lejeune, could you please tell the Court a little bit about your educational background?

A. As I said I was MD and PhD, and have been always in Paris as a student. And later when I finished my studying and I got my degree in medicine and genetics, I was representative of France in the United Nations' scientific committee on the danger of atomic radiation, because I was geneticist.

And in that function, international function, I came very often to the United States to go to the UN and I met one professor of California Institute of Technology.

And I was invited to give the first course of human genetics in Cal Tech

because in this highly-educated university they had not yet had any course of human genetics.

They had a lot of courses in fundamental genetics. I was the first professor of fundamental genetics in Cal Tech.

Q. As part of your serving on this committee, Doctor, did you have opportunity to go to the Kremlin in Moscow and meet with Mr. Brezhnev?

A. Yes. That is, as a geneticist, I was vice-president of the Genetic Congress in Moscow, and I was known by my fellow professors of genetics in Moscow, and because I am a member of the Pontifical Academy of Science and because I was a member of a special group to study the dangers of atomic war, I was sent by the Pope, John Paul II, to Moscow.

It was around three days after Mr. Jaruzelski had declared the war against people of Poland; in other words, declared a state of war against its own population.

And because we had prepared the reports about the dangers of—as a specialist, I was only speaking of the genetic dangers of the atomic war—then the Holy Father wanted me to be presenting a report to all the powers of the world who were having the atomic power.

And so some of us of the Pontifical Academy of Science went to America to see Mr. Reagan and some came to France or England, to China and India. And I was sent by the Holy Father to see Mr. Brezhnev.

And it was a very curious situation. But I am not going to talk too much about that.

Q: Dr. Lejeune, you have been credited with the first discovery of the first chromosomal abnormality in man. Could you please tell the court about your discovery of Down Syndrome?

A. Yes: Down Syndrome is a very peculiar disease in the sense that the babies who are born with it owe their difficulty to an excess of genetic material. . . . It was long ago, nearly thirty years ago, that I discovered that they had an extra chromosome and this chromosome is now known as number 21.
The classification of chromosomes was not yet established at that moment because it was the first disease to be discovered to be due to this chromosomal defect.

And those babies, in fact, suffer because they have too much of those tables of the law of life which we call chromosomes.... To make a very complex story short, I would say that inside the chromosomes, written in a very special ribbon which is DNA, are all the tricks of the trade to be a human being, if those chromosomes are human chromosomes.

If they are chimpanzee chromosomes, all the tricks to be a chimpanzee are written there.

Q: Dr. Lejeune, could you please describe the process of human reproduction?

A: It is a very long story, your Honor. Because life has been with us for millennia. But even if life continues from generation to generation, each of us has a very unique beginning, which is the moment that all the information necessary and sufficient to be that particular human being, which we will call later Peter or Margaret, depending on its own genetic make-up, when this whole necessary and sufficient information is gathered.

And we now know from experience both in animals and now in human beings, that this moment is exactly the moment at which the head of the sperm penetrates inside the ovum; then the information carried by the father encounters in the same recipient cell the information carried or transmitted by the mother; so that suddenly a new constitution is spelled out.

It is very curious that biology and the science of the law are speaking the same language.

The voting process even exists in biology, which is the choice of the sperm.

Because there are maybe hundreds of thousands or ten thousand sperms swimming around one egg, and one is selected. And that is a voting process.

And at the moment the human constitution is entirely spelled out, a new human being begins its career.

That's not rhetoric. That's not fancy, or hope of a moralist. It is just an experimental phenomenon.

Q: Dr. Lejeune, where is this information specifically contained?

A: This information is specifically contained in two different parts. One is DNA. DNA is a long thread molecule. And to give you an impression, your Honor, this flat ribbon is roughly comparable to the tape that you put in a tape recorder. But it is very minute.

Inside the head of a sperm there's a long thread of one meter, one yard, say. And this is so tightly coiled in 23 little pieces that we call chromosomes, that the whole thing is inside the head of the sperm and the volume of it is upon the point of a needle.

In the first place, in so small a volume, all the data which will spell out the way to build all the protein which will make the machine tool inside the cells is entirely spelled out.

The same is true in the ovum, in which 23 little pieces of chromosomes one meter long all together stay there until they receive the help of the 23 from the father. Now that's part of the information and it is a text book.

Most of the people will stop there and tell you that genetic information is carried by DNA.

That's perfectly true. But there's another type of information, the amount of which is even much more important and much bigger, which is inside the cell.

Inside the ovum there are prepared billions of highly specialized molecules who will recognize and be recognized by the signals given by the genetic make-up.

And to make the thing understandable, remember that when you use a tape recorder if you buy a mini cassette in which the music of an artist such as Mozart is recorded, then if you put it in your tape recorder, you will get a symphony.

But curiously on the tape there are no notes of music, and inside your tape recorder there are no musicians.

Nevertheless, by a special code written on the tape, some information is given to your tape recorder so that it will read it, and it will make the air move by the loudspeaker so that what is coming to you is not the orchestra, not the musicians, not evidence of music, but the genius of Mozart.

That's the way life, the symphony of life, is played. That is inside the egg, which receives the tape band from father and which has its own tape bands, and which make 23 plus 23, 46 volumes of the table of the law of life.

Now when you speak about genetic information, you have to remember you have the long ribbon of DNA which is the mini cassette of the symphony of life, but you have the cell itself which is the tape recorder; and which has an enormous amount of information.

Because the tape recorder, to read a tiny ribbon like this, must be a fantastic machine, extremely complex.

Then, to answer your question, it's very difficult to spell out the amount of information in the first cell.

Q: Once fertilization, once conception has occurred, could you tell the Court, is anything added after the point? Does Peter or Margaret come into being, so to speak, through additional information?

A: Well, that was a very interesting discovery of modern science. Because for a long time it has been believed that the mother, the feeling of the mother, could do something to the baby. . . . [but] we know now that everything is written inside the first cell. I have to come back to this concept of conception, because it is a very remarkable fact that in all the languages coming from Latin, we use the same word either to express an idea which comes into our mind, or to a new being coming into life.

We conceive an idea. We conceive a baby. A baby is conceived. Conception applies just as well for defining what will animate matter in a human nature or what will animate your mind within your idea.

And that is, so to speak, an extraordinary description of reality which is at the very beginning the information and the matter, so to speak: the spirit and the body are so intimately interwoven that we use the same word to say spirit animated by your ideas, or life of a new human being animated by genetic property—conception.

Now this moment a new human being is conceived is, really, as for the conception of a new constitution, when the whole thing has been spelled out.

Now we know, and I think there's no disagreement among biologists ev-

erywhere in this world, that after fecundation no new information goes in. Everything is there, just at the moment after the entry of the sperm, or it is not enough and it will fail.

Either the whole information for the human being is there and the human being can develop and organize, or it is not there and no human being will develop at all.

Now nature has invented an extraordinary device to tell us that nature does protect the privacy of the very first stage of the human being. The right of privacy is written in that way in biology.

The egg is a little sphere of one millimeter and a half in diameter. But it is not naked. It has some plastic bag around it that we call from Latin zona pellucida, because you can see through it. And this very curious plastic bag is, in fact, the perfect control of the privacy of the new being because as soon as the head of the sperm who got there first was able to burrow inside the zona pellucida, as soon as the head comes inside, suddenly in a micro-second, this lucida, this transparent membrane becomes suddenly changed physically, and it becomes entirely impermeable to any other sperm.

It's a mechanism of an extraordinary precision which prevents many sperm from going inside the one egg.

Q: Doctor Lejeune, is it your testimony that there's a physical difference between the chromosomal make-up, a physical difference, of the human being and every other species?

A: Well, there's no doubt. There's no other species which has the same chromosomal constitution as a human being.

But that is not true especially for us. It is true for every species. We can look at the chromosome of a chimp and say this one is a chimp. This is an orangutan. This is a gibbon and this is a gorilla.

Each species has its own shape of chromosome that we can recognize.

Q: Dr. Lejeune, could you tell us about the Jeffreys' bar code and the process of methylation?

A: You know when you buy something now in the supermarket, instead of writing the price and what it is, there are various lines of various widths, of various distances and with an optic reader.

You just go through the bars and it tells inside the computer what is the product and what you should pay for it.

Now the Jeffreys' system does exactly the same thing, that is, having extracted the DNA, and having looked at it with that technique, you see the bar code of the person.

And the demonstration by Jeffreys was correct; that is, each of us is absolutely unique—that is the sequence of bands is absolutely typical of the person you're looking at. . . . It is unique to an individual. It is, so to speak, its identity card, which cannot be falsified because you have this identity card

written in each of your cells.

In all of your cells it is always the same pattern that you would get if you were looking at it.

But this pattern is not only typical of each of us. If you look at the pattern of the DNA by the Jeffreys' picture of Dad and Mom of this person, we will see that this person has a sequence of the bar code which is unique to this person.

But we will see that half of the bands were present in Dad, and the other half was present in Mom.

So that we can recognize at one glance beyond any discrepancy in calculation that this person is the progeny of those two persons.

And we can demonstrate that no other person in the world has exactly the same bar code.

Q: At what point does that individuation take place?

A: Oh, that takes place at fecundation, at fertilization, at conception. Because it just tells us that the constitution of this person is unique to this person.

Q: Dr. Lejeune, is it your testimony that we have at conception both species specificity and a casting of the individual within the species?

A: Yes. And I would say that very soon we will build a machine very comparable to the supermarket with an electronic reader so that we will go through the bar code and have the whole thing studied by computer.

Just for the moment we look at it. But it could be done by computer, exactly like in the supermarket.

But the only thing that the biggest computer will never tell us will be the price of the human life.

Q: Dr. Lejeune, based upon the empirical data you presented, do you have a conclusion as to what exists at the moment of fertilization?

A: Well, at the moment of fertilization, what exists is a pure novelty. It has never occurred before.

It's a new constitution of a new personally-devised constitution for this person.

Q: If you had to give it a name what would you call it.

A: I would call it a human because I know that the whole information is human. I can read it. I can see the dimensions and make up of the chromosomes.

I can be sure it is human. Now I would say it is a being because I know by its own information that it will develop itself.

It just needs nurture and protection. That is all it needs. Then, being human, it is a human being.

I would not have any definition other than a human being. But if I could say a word about a second discovery, because what I felt in France, the curious decision of the Supreme Court in America.

I was surprised by one phrase which was that it was not possible to reach agreement on when human life begins.

But that was 18 years ago. And Jeffreys' system was not known, and what was not known is now the Sorimy and many others which I will not quote all of them by their name which is the methylation of DNA. . . . The human constitution happens at the moment the genetic information coming from the father goes in the cell which is ready to have it, which is the female cell.

And once the zona pellucida has closed entirely, the information is locked in. No one can enter late. And all of it has to be there.

To answer your question when does this special constitution begin, it's very simple—at the moment which is micro-seconds after the change of the zona pellucida which locks in this particular human constitution which is a new being.

Now what is a human being? That's very simple. A human being has to be human, has to be a being. Then a human being is only a member of our species.

An egg of a chimpanzee can't be a human being because it is a chimpanzee being. But every time that genetic information is human, every time that this message which is at the beginning of life which is alive and which is life, as soon as this message is really a human message, then this life is a human life.

And if it is a being, this being is a human being. . . . Now it is what is meant by the methylation processes, the message is well-written and everything is written to make a human being, to be a human being.

But at the moment of fecundation, part of the DNA coming from father is underlined in the male way, and the DNA coming from mother is underlined in the female way.

And, therefore, the fantastic discovery was never expected ten years ago. Nobody predicted it—that, in fact, the father underlines instructions to make immediately the membranes inside which the embryo will develop itself, so to speak, its space capsule; and to make the placenta which is the body by which it will take the nutrients from the vessels of mother.

That's underlined on the sperm, not on the egg. But on the egg what is underlined is all the tricks of the trade to make the spare pieces, which if they are put together will build an individual.

Now it is extraordinary because it was a moving observation for geneticists to see in this one millimeter and a half sphere of living being this separation of the tasks which we see in ordinary life.

And the man in biology builds the membranes which is the shelter and the placenta which is a gathering food system.

On the other hand it is up to the feminine genius to underline the way how to manufacture a baby.

And all that is written in the first cell. Now what was the greatest consequences of the discovery was that it is impossible and it is definitely ruled out

to make a genetic constitution from one parent only. . . . Now we come to an extraordinary observation that the only cell in all my life in which those two methylation systems from father and from mother were present together inside one cell was in the first cell which gave me life.

Because progressively at each division, this methylation is erased and replaced. And progressively cells learn by a cascade of reaction to specialize.

So that one will make nails, another will make the brain, another will make the liver and another will make the bones and another will make the muscle.

For example, I read only two months ago, that the male way of spelling is obligatory for muscles. And muscles are, we know, much stronger in males than in females.

But even in the female, the information which builds the muscles has to be underlined in the—coming from father—in the paternal way and remains that ways so that muscles can be made.

And we are just beginning to understand that, in fact, this way of underlying the message which is different in father and in mother is the secret that life is using, so that it can epitomize in one cell that which a mathematician would say is reduced to its simplest expression.

Q: Doctor Lejeune, as the being develops, does it retain its individuality and its membership in the human species?

A: Totally. We, each of us, has never been a chimpanzee. And we are not going to become one.

No baby goes through different species. It belongs to its own species from the very beginning. And that's true of every species. It's not a special feature of humanity.

But what is written in the human fertilized egg that is in a human zygote, in the human being of one cell, what is written is this humanity.

Q: Dr. Lejeune, at eight weeks how would you describe that being?

A: I would describe that being indeed as a human being. But to tell the Court what it looks like, I would say it's Tom Thumb.

Q: Tom Thumb?

A: Tom Thumb. Because the human being at eight weeks is the size of my thumb. That is, from the head to the rump, he measures one inch. And if you were looking at one of them, having never seen anything about human embryology, if I had an eight-week-old human being in my fist you would not see I had anything inside.

But if I opened my hand you would see a tiny being with fingers, with toes, with a face and with palm prints you could read with a microscope.

You would see the sex. And this story of Tom Thumb, of the tiny human being smaller than the thumb which has always enchanted the young babies and the great mothers, is not a fancy.

It is a truth. Each of us has been a Tom Thumb in the womb of the mother, in this curious shelter, in which only some red light, dim light comes in, in which there is very curious noise, one loud, and strong, and deep hammering which is the heart of the mother and which bangs around a decemberate of a counter bass. And the other is very rapid, like the maracas. And it will come from the heart of this tiny human being. And those two rhythms which we can now detect with hydrophones are typical of the most primitive music any human ear has ever heard, which is the symphony of two hearts; the mother one like the counter bass, 60 times per minute, and the baby one like maracas like 150 per minute: 140 if it is a boy, 160 if it is a girl. . . . This symphony by two hearts is what defines the true story of Tom Thumb.

Q: Dr. Lejeune, what is the effect of an abortion on an eight week human being?

A: It kills a member of our species.

# APPENDIX C

[*Michael Novak is a fellow at the American Enterprise Institute. The following commentary appeared on January 22, 2001, on* National Review Online *(www.nationalreview.com) where Mr. Novak is a contributing editor. It is reprinted with permission.*]

## The Abortion Thaw

*Michael Novak*

Not until he became governor and faced a bill on his desk did Ronald Reagan ever think much about abortion, he tells us in his new book, and then he boiled his queries down to one commonsense question. Tell me what would happen, he asked his lawyer friends, if a man died, leaving his estate half to his pregnant wife and half to the child in her womb. If the wife then procured an abortion, so that she could keep the estate for herself, would that be murder for financial gain? Nobody wanted to answer that.

The law protects the unborn child in two or three important areas, Reagan concluded, including inheritance laws and laws against the abuse of pregnant women that causes the death of the unborn child. That gave Reagan the foundation for his view that, in the general case, the unborn deserve the protection of their lives. They are human individuals and have long been so treated by the law. They have rights to be protected.

Reagan's radio address upon this subject should be read in full; it is a marvelous record of how one man faced his own puzzlement and made up his mind. It may be found in *Reagan, In His Own Hand*, just published by the Hoover Institution Press. It was reprinted recently in The New York *Times Magazine* (Dec. 31, 2000). It is one of the advance scripts for Reagan's radio show, drafted and corrected in his own hand.

This text appears just in time to prepare us for today's great March for Life, on the 28th anniversary of *Roe* v. *Wade*, to mourn the deaths of 40 million citizens ripped untimely from the womb, and to pray God to bless this nation with a more civilized and benign moral practice.

The 40 million dead represent almost exactly the number of young workers needed to fend off the immense crisis of unsustainable Social Security burdens. With every year that passes, not enough younger people are working to finance the retirement of the older. The young workers have been winnowed out. Their cohort is lacking 40 million.

The oldest of those now dead would be in their 27th year. Each year now, there would be another 1.4 million of them turning six and entering first grade, and an equal number graduating into the work force from high school or college. But they are absent.

Some 13 million of these missing ones were black children, just about one-third of all aborted ones. The winnowing in the black community has been the most severe. (If this were any other activity, less protected by the liberal elites, this fact alone would brand abortion a racist policy.)

The people of the United States have never voted for the abortion regime. When they have had a chance to vote, they have usually voted for some modest method of restricting it; but the courts have aborted legislative will.

No issue is so divisive in our public disputations. No issue so inflames liberal women. No issue is surrounded so by lies and euphemism, evasion, even refusal to keep statistics. It is virtually certain that many more women today are maimed or die from complications due to abortion procedures than in "the bad old days before *Roe* v. *Wade*," both because of lack of policing of abortion facilities, and because of the massive annual number of abortions (more than 3,000 every day), hugely swollen since 1973. But the government refuses *in this one instance* to keep statistics about death and injury from abortion procedures. The truth is abortion's enemy.

Many consciences in America believe abortion is benign. It is not difficult to respect their consciences. But lack of investigative reporting, truth telling, and public argument from all points of view is a grave weakness of our public life.

Some who rabidly promote abortion do not dare to tell the truth about it. They defame any who oppose them, as most recently against John Ashcroft. They turn to calling names with passion. The fundamental lie they propagate is this: The unborn is "part of the woman's body." Genetic science no longer allows them such a claim. Like the common law that Ronald Reagan reflected on, science too studies in the womb a genetically independent human individual. If its life is not prematurely taken from it, this individual can become no other than a developed human child. That is science, not moral judgment.

A college student wrote recently that the generation born since 1973 is the first in history to reflect that they might have been aborted. They lacked security even in their mother's womb.

There is no rock of trust on which they can depend.

But the profoundest thing that has changed since 1973 is that the arguments have swung decisively toward the protection of the human rights of the genetically independent child in the womb. Millions are now committed to defending what has happened since 1973, of course, and do not want to hear of argument. They have planned their lives around some falsehoods. Ice is creaking underneath their feet.

But still, in the wind and the cold, the great March for Life of January 22 goes on, year by dreary year. More and more people are beginning to awaken. There is a better way of life to live. Better laws are coming. Public consciences are thawing. After winter, spring is always on its way.

# APPENDIX D

[*Neil Munro covers the politics of technology for* National Journal. *The following is reprinted from the January-February 2001 issue of* Philanthropy, *by permission of the Philanthropy Roundtable. Copyright 2001, the Philanthropy Roundtable.*]

## Everything for Sale?

*Neil Munro*

Medical research is advancing by leaps and bounds, along the way uncovering wonderful new treatments for dread diseases, genetic disabilities, and ghastly accidents. With any luck, these new cures will work their way into the marketplace in coming decades, perhaps lifting from most Americans the threat of cancer, Alzheimer's, Parkinson's, and other maladies.

Foundations are playing a significant role by funding particular research, typically through non-profit groups such as the Parkinson's research charities. Much of this work deserves to be praised for the undeniable benefits it will bring to millions of afflicted patients, their families, and those as yet unborn, who will use the new sciences to prevent disease in the first place.

But in the rush to seize on new cures, scientists and their foundation backers are practicing some pretty unsavory research, which critics say should be minimized or stopped.

Of course, much medical research is painful to perform and manage, because of the moral dilemmas created by desperate patients and limited resources, by the approach of death, and by the anguish shared by all. But the controversial research examined here is that involving the use of fetal tissue and yet-to-be implanted human embryos (the latter generally referred to as embryonic stem-cell research).

Research that uses fetal organs, limbs, eyes and brains is commonplace. So commonplace, in fact, that the federal government distributes15-20 first-trimester organs per week, at no charge, to NIH-funded researchers. Several firms will send a selection of fresh organs via overnight mail, from fetuses up to eight months old, as requested by the researchers over the Internet.

These firms' price lists are varied; most ask for a flat fee for each organ, while at least one has charged according to the laws of supply and demand, seeking $999 for an undamaged brain and $50 for an eye. These firms also offer to meet researchers' special needs, including the use of a particular freezing techniques, the avoidance of poisons during the abortion, or the use of specialized techniques and tools such as extra-wide suction tubes. The researchers who use these organs come from every corner of the bioresearch community, from private firms to major hospitals, foundations, and universities.

The trade in fetal organs was made possible by a 1993 law, the NIH Revitalization Act, backed by foundation-supported charities such as the Juvenile Diabetes Foundation and the Parkinson's Action Network. The law requires that the mother's consent be gained before the fetus is used in research, and bars payments from researchers to the mother.

Although the law grandly declares that it is illegal to buy or sell fetal parts, it does allow "reasonable payments" for the cost of collecting, preparing and forwarding the organs. The law requires no government oversight of the sector, so there is little data on its scale, nor any reviews to ensure compliance. Many scientists say compliance with this law fulfills all ethical obligations regarding fetal organs.

**Looking the Other Way**

The nexus between this unpleasant research and the nation's foundations is broad but largely hidden. Broad, because fetal tissue is widely used by researchers, and hidden, because neither researchers nor foundations want to acknowledge the practice.

There is, however, a paper trail. Dean Alberty is a former employee of a medical supply company who dissected fetuses while working for a supplier company and later testified before a Congressional committee on what he termed as "abuses" within the business.

Alberty has made available organ order-forms revealing purchases in the 1980s and 1990s by a wide variety of universities and by foundation-supported research centers, including the Sansum Medical Research Institute in Santa Barbara, the Cancer Research Institute in Elmsford, New York, Philadelphia's Wistar Institute, and the Whittier Institute in La Jolla, California. From 1996 to 1998, for example, the Wistar Institute was awarded at least 19 grants from private foundations totaling $2.77 million.

Of course, only a very small portion of foundations' medical-research grants and awards are spent on fetal-tissue research. The vast majority goes to buying new research equipment, developing good nursing techniques, or extending health care to the community. Thus the Juvenile Diabetes Foundation spent less than 1 percent of its $70 million budget in 1999 on related research into stem cells taken from embryos (a spokeswoman for the foundation describes such work as "a priority area" and says the modest amounts expended reflect a lack of research projects to fund).

Still, some foundations willingly fund this controversial work, and many do not even bother to ask before issuing grants that could end up funding the use of fetal tissue or stem cells taken from embryos. Many simply have no idea where their research money ends up. The Esther A. & Joseph Klingenstein Fund has given roughly $1 million per year for medical research over the last 18 years, says president John Klingenstein. The grant requests are reviewed by an outside panel of scientists. But when asked if any of his grants paid for the use of fetal-tissue, Klingenstein threw up his hands. "I don't know and I doubt it, and if they did I wouldn't object."

Similarly, the Michigan based Kresge Foundation, does "not restrict the use of medical equipment supported by Kresge grants," according to a statement. The Pew Charitable Trusts does not restrict its funds either, deferring ethical reviews to

the NIH and to each center's Independent Review Boards, says Pew executive Sharon Gallagher. "We're really looking at the promise of the scientists" says Gallagher. Yet NIH rules, which form the basis for government grants and the universities' independent review boards, place no significant restrictions on the use of fetal tissue.

At the research centers themselves, grant experts say they knew of no foundations that restrict use of funds because of ethical concerns over fetal-tissue and embryonic stem cells. "That's not an issue," says Alison Wollitcer, who solicits grants for Sansum.

Only one foundation contracted in connection with this story says that it limits its research funding; the Doris Duke Charitable Foundation, established in 1996. Because the founder did not want to fund work that might hurt animals, its money will be spent on late-stage clinical research where animals are not directly involved, say Elain Gallin, who oversees the awarding of roughly $17 million per year in medical-research grants. "It is not that we are taking an ethical stand," Gallin is quick to say. "Many of our investigators have portions of their [clinical] research programs that start with an animal."

**When the End Doesn't Justify the Means**

On the other hand, New York's G. Harold and Leila Mathers Charitable Foundation has funded both fetal-tissue work and stem-cell work even when such activities were deemed unethical by the federal government and the NIH. "Our attitude was that these were areas that had to be investigated... [despite] political issues that had nothing to do with the research questions," says James Handelman, the fund's executive director, who has given $200 million to various research programs over the last ten years.

Some of this money, he says, paid for a project at Yale University in which fetal brain-tissue was transplanted into Parkinson's patients. The project, and a similar effort at the University of Denver, depended on private donations because of a ban, since lifted, on federal funding. These experiments did not cure the ailing patients, but did provide useful knowledge, he says.

The many defenders of fetal tissue research make the utilitarian claim that the moral harm of using doomed and dead fetuses is outweighed by the prospective benefits to patients. The broadcast claim is made by Handelman: "The pursuit of knowledge for its own sake is the most important course we must take. . . . I find it really repulsive that certain research directions should not be approached because of ethical concerns."

Yet even the utility of fetal tissue research is open to question. Dr. Curt Freed, at the University of Colorado in Denver, has been transplanting brain cells from fetuses into sick patients since 1988. His initial work was funded by private donors including Robert and Charles Stanton of Denver, who gave $350,000 (Charles had Parkinson's disease). Freed also received funding from three Los Angeles-based organizations including the Seaver Institute, the Program to End Parkinson's, and

the Mitchell Family Foundation, when the ban on federal funding was in effect, and later from the NIH and the National Parkinson Foundation.

As part of his project, Freed inserted fetal brain-cells into the brains of Parkinson's sufferers, in a double-blind test of roughly 40 patients, the results of which were announced recently. The experiment was declared a disappointment by other scientists. "The fetal tissue hasn't worked," says Dr. Abraham Lieberman, medical director of the foundation. Currently, "I don't know anyone would fund it" for further research, because there are more promising avenues open now, he says.

Which is just as well. Here are a few not-often discussed details of Freed's experiment. The brains were extracted from fetuses seven to eight weeks old, and the 1,000 samples of brain-tissue were so difficult to extract that it could be done once in ten abortions, according to Freed. Three to four fetuses were needed for every transplant. That suggests that Freed's experiments required at least 2,000 abortions, and perhaps many more. At the rate, the nation's roughly one million Parkinson's patients could only be cured by extracting the brains from tens of millions of fetuses.

**Crossing a Bright Line**

A related and equally controversial area of foundation-funded biomedical research involves stem cells. There are two basic type of stem cells; those taken harmlessly from adults, and those taken from an embryo, killing it in the process.

Researchers are increasingly excited about stem cells because they have shown the ability to convert themselves into many other types of cells. For example, the Christopher Reeve Paralysis Foundation has funded a project that recently converted a relatively few blood stem-cells into billions of healthy brain cells. Because these cells came from an adult, they raise no ethical questions, and the new cells can be transplanted back into the adult's brain without much fear of rejection, as sometimes happens when embryonic stem cells are implanted.

But the use of embryos' stem cells crosses a bright line in ethics; the deliberate creation and killing of human beings—albeit small, ugly, dependent, and insentient—for the benefit of others.

Once this line is crossed, it becomes much harder to limit future experimentation. For example, what law or moral tradition would stop a couple from conceiving a fetus purely for the purpose of extracting cells or organs for someone else, perhaps a sick daughter? What would stop a fertility clinic from creating batches of embryos so that prospective parents could select from among them for implantation after a low-cost genetic analysis of likely attributes? Or stop a company from mass-cloning fetuses to help test cosmetic medicines?

Once we reach that point, the distinction between life and death will have become an economic issue and a political football. And all political views can be changed as political power shifts, especially if Congress can be persuaded to shift boundaries by corporate lobbyists and eager scientists with one eye on stock options, perhaps to save hospital costs incurred by poor patients or to create new

opportunities for recreational and consumer therapies.

Clearly, foundations must consider the impact of their funding on society, not just medicine and science. Research with fetal organs and embryonic stem cells is creating a fundamental danger that is usually overlooked in the noble rush to cure patients or win research funding, and researchers and foundation officials alike need to lift their eyes above their immediate goals. They need to understand the cumulative impact of their many modest, rational, good-hearted decisions to press for cures as fast as they can, regardless of ethical issues. If foundation executives ignore these ethical dangers, their grandchildren, their children's grandchildren, and many millions of others may not be able to undo the damage to society.


*"HOW DO I KNOW IT WASN'T LIKE THIS BEFORE THE TORNADO?"*

# APPENDIX E

[*Wesley J. Smith is the author of* Culture of Death: The Assault on Medical Ethics in America *(Encounter Books). The following is reprinted with the permission of* The Weekly Standard *(March 26, 2001, Copyright, News America Incorporated).*]

## The Politics of Stem Cells

*Wesley J. Smith*

Stem cells are undifferentiated "master cells" in the body that can develop into differentiated tissues, such as bone, muscle, nerve, or skin. Stem cell research may lead to exponential improvements in the treatment of many terminal and debilitating conditions, from cancer to Parkinson's to Alzheimer's to diabetes to heart disease. Indeed, breakthroughs in stem cell research reported just in the last six months take one's breath away:

◦ Italian scientists have generated muscle tissue using rat stem cells, a discovery that may have significant implications for organ transplant therapy.

◦ University of South Florida researchers report that rats genetically engineered to have strokes were injected with rat stem cells that "integrated seamlessly into the surrounding brain tissue, maturing into the type of cell appropriate for that area of the brain." The potential for stem cell treatments to alleviate stroke symptoms such as slurred speech and dizziness—therapy that would not require surgery—has the potential to dramatically improve the treatment of many neurological diseases.

◦ The group of scientists who achieved worldwide fame for cloning Dolly the sheep have successfully created heart tissue using cow stem cells. The experiment demonstrated that stem cells could be transformed into differentiated bodily tissues, offering great impetus to further research.

◦ Scientists at Enzo Biochem, Inc., inserted anti-HIV genes into human stem cells. The stem cells survived, grew, and developed into a type of white blood cell that is affected adversely by HIV infection. In the laboratory, these treated cells blocked HIV growth. The next step is human trials, in which stem cell therapy will be attempted using bone marrow transplantation techniques currently effective in the treatment of some cancers.

What will surprise many people is that *none* of these remarkable achievements relied on the use of stem cells from embryos or the products of abortion. Indeed, all of these experiments involved adult stem cells or undifferentiated stem cells obtained from other non-embryo sources. The rat muscle tissue in the first example was generated using adult rat brain cells. The brain tissue generated in the Florida research was obtained using human stem cells found in umbilical cord blood—material usually discarded after birth and a potentially inexhaustible source of stem cells, since 4 million babies are born in the United States alone each year. Dolly's creators obtained cow heart tissue by reprogramming adult cow skin tissue back into its primordial stem cell state and thence to cardiac cells. The exciting HIV experiments were conducted using stem cells found in the patients' own bone

marrow, spleen, or blood.

The opportunities for developing successful therapies from stem cells that do not require the destruction of human embryos should be very big news. But where are the headlines? These and other successful experiments have been all but drowned out by breathless stories extolling the miraculous potential of embryonic stem cell research. How many readers are aware, for example, that French doctors recently transformed a heart patient's own thigh muscle into contracting muscle cells? When these cells were injected into the patient's damaged heart, they thrived and, in association with bypass surgery, substantially improved the patient's heartbeat. Such research is now on the fast track, offering great hope for cardiac patients everywhere.

With all of the hype surrounding embryo research, it is important to note that embryo stem cell research—and its first cousin, fetal tissue experiments—may not actually produce the therapeutic benefits its supporters have told us to anticipate. Such worries are not mere speculation. The March 8, 2001, *New England Journal of Medicine* reported tragic side effects from an experiment involving the insertion of fetal brain cells into the brains of Parkinson's disease patients.

The patients thus treated showed modest if any overall benefits by comparison with a control group who underwent "sham surgeries" without receiving fetal tissue. But over time, some 15 percent of the patients who had received the transplants experienced dramatic over-production of a chemical in the brain that controls movement. The results, in the words of one disheartened researcher, were "utterly devastating," with the unfortunate patients exhibiting permanent uncontrollable movements: writhing, twisting, head-jerking, arm flailing, and constant chewing. One man was so badly affected he no longer can eat, requiring the insertion of a feeding tube.

While some studies using stem cells culled from embryos to treat Parkinson's type symptoms in mice have been encouraging, grafts of fetal and embryonic tissue may provoke the body's immune response, leading to rejection of the tissue and potentially death, since once the cells are injected they cannot be extracted. Even more alarming, a May 1996 *Neurology* article disclosed a patient's death caused by an experiment in China in which fetal nerve cells and embryo cells were transplanted into a human Parkinson's patient. After briefly improving, the patient died unexpectedly. His autopsy showed that the tissue graft had failed to generate new nerve cells to treat his disease as had been hoped. Worse, the man's death was caused by the unexpected growth of bone, skin, and hair in his brain, material authors theorized resulted from the transformation of undifferentiated stem cells into non-neural, and therefore deadly, tissues.

Even some of the most enthusiastic boosters of embryo stem cell research see trouble ahead. For example, University of Pennsylvania bioethicist Glenn McGee admitted to *Technology Review*, a Massachusetts Institute of Technology publication, "The emerging truth in the lab is that pluripotent stem cells are hard to rein in. The potential that they would explode into a cancerous mass after a stem cell

transplant might turn out to be the Pandora's box of stem cell research." Thus, it could be that adult tissue-specific stem cells are actually safer than their counterparts culled from embryos since, being extracted from mature cells, they may not exhibit the propensity for uncontrolled differentiation.

These concerns arise just as the long-time ban on using federal funds for research that destroys human embryos is under renewed scrutiny. That longstanding ban was effectively reinterpreted out of existence in the waning months of the Clinton administration, and the National Institutes of Health are currently accepting grant proposals for research using embryos originally created for in vitro fertilization but now deemed "in excess of clinical need." The new administration is taking a long, hard look at the policy; during the campaign, George W. Bush declared his opposition to research that involved destroying human embryos.

All of this raises intriguing questions: Why is federal funding for embryo and fetal research pushed so hard and so publicly—while adult stem cell and other alternative therapies are damned with faint praise? Why do the media applaud fetal stem cell experiments and provide klieg-light coverage of stories promoting the use of embryos, while they mention uncontroversial research not requiring the destruction of human life as an afterthought, if that? Indeed, why do some scientists assert that alternative stem cell research offers but uncertain hope, while they promote embryo and fetal tissue research as the keys to the Promised Land?

I suggest three answers: celebrities, abortion, and eugenics.

In a society that has often denigrated its true heroes, the only people who now stand head above the clouds are figures from the world of entertainment. Increasingly, these celebrities are using their power to promote public policies. They know that their participation can define issues and shape the debate by attracting media coverage, generating fan support, and, most important, stimulating a Pavlovian response in politicians.

Three high-powered celebrities have weighed in recently in the stem cell controversy, each promoting full federal funding of embryo research: the popular Michael J. Fox, stricken at a tragically young age with Parkinson's disease; the television icon Mary Tyler Moore, a diabetes patient; and actor Christopher Reeve, paralyzed from the neck down in an equestrian accident. With such kiloton star power favoring federal funding of embryo research, promoters of research relying on adult stem cells and other alternative sources, along with those opposed to the destruction of embryos on ethical grounds, have been reduced to background noise or, worse, made to look heartless by denying these celebrities medical breakthroughs they need.

At a deeper level, just as in the nineteenth century many national issues led back to slavery, today numerous policy disputes lead ultimately to abortion. The controversy over destroying human embryos to obtain their stem cells has brought an outcry from the pro-life movement, which views human life as sacred from the moment of conception. This has led to reflexive support for embryo research by many pro-choicers, who have seized on the issue as a way to further their depiction

of pro-life forces as caring little about people once they are born. Thus the embryo stem cell debate offers abortion rights advocates a "two-fer": It furthers their primary political goal of isolating and marginalizing pro-lifers, and it enables them to seize the PR high ground by "compassionately" pressing for research that offers hope against debilitating diseases. To acknowledge the tremendous potential of adult stem cell research would interfere with this political pincer movement.

Finally, in my view, the ultimate purpose of promoting federal funding for embryo experiments over adult stem cell research—particularly among many in the bioethics movement—is to open the door to eugenic manipulations of the human genome. Once embryos can be exploited for their stem cells to promote human welfare, what is to stop scientists from manipulating embryos to control and direct human evolution—equally for the purpose of improving the human future?

Indeed, some of those who signed a recent open letter to President Bush urging an end to the ban on federal funding for human embryo research were scientists and bioethicists well known as favoring eugenics. For example, James D. Watson, a co-discoverer of the DNA helix, has written that newborns should not be considered "alive" for three days, to permit genetic screening. Newborns who fail to pass genetic muster should be discarded—much as the ancient Romans left unwanted babies outdoors to die of exposure. Another co-author of this letter, Michael West, head of the for-profit research company Advanced Cell Technology, proposes permitting human cloning as a way to obtain genetically matched stem cells for transplants, which might overcome the problem of tissue rejection in embryo stem cell therapy. Not coincidentally, many neo-eugenicists in bioethics and science communities view cloning as a prime vehicle for directing the eugenic manipulation of human evolution.

All of this will come to a head in the coming weeks and months. Some recent news stories indicate that Health and Human Services secretary Tommy Thompson may be troubled by a federal ban on embryo stem cell research and thus inclined to retain the Clinton administration's funding policy. But why go down that controversial path, when adult stem cells and alternative sources offer such tremendous hope for treating every malady that research using embryos and fetal tissue seeks to ameliorate? Instead of turning this important field of medical research into another battlefield in America's never-ending culture war (the first lawsuit has already been filed to prevent federal funding), why not focus our public resources with laser-like intensity on the incredible potential of adult and alternative sources of stem cells?

# APPENDIX F



## Against Human Cloning

*J. Bottum*

Last week, the Brownback-Weldon bill to prohibit human cloning was introduced on Capitol Hill. And the arguments against it are... well, as it turns out, there really aren't many arguments against a ban on manufacturing human beings like gingerbread men from a cookie cutter.

It's true, of course, that some propositions resembling arguments for cloning have been advanced in recent years. But under scrutiny, these ostensible arguments quickly dissolve into a fog of vague, unfocused *feelings* about science, sex, and the human condition.

Take, for example, the claim that to prohibit cloning would be to prevent a grief-stricken mother and father from replacing their dead daughter with a new genetically identical daughter who will somehow erase the loss of their first daughter. You don't have to delve very far into philosophical questions of identity and existence to realize that the notion is so confused and self-contradictory, it won't even bear the weight of its own expression. But the point of invoking those grieving parents is not to present an argument. The point is to express a feeling: Death ought not to sting, the grave should not have the victory, the ones we love must come back to life. And so cloning enthusiasts look to science—as to a god—to wipe away our tears, to assuage the eternal pity, and to console human grief.

Or take, for another example, the claim that a ban on human cloning would be a blow against Roe. v. Wade. Some antiabortion activists do make this argument. They say everything bad begins with disrespect for human life: The unfettered right to abortion grants us a Promethean power of life and death over our unborn offspring that naturally leads to practices like cloning. Thus, the argument goes, we can succeed in banning cloning only by winning—today—the battle over abortion. Many supporters of cloning actually make the same argument, although they run it in reverse to frighten off liberal Democrats: A ban on cloning, they warn, would mean the loss of "a woman's right to choose"; America can thus guarantee the full abortion license only by allowing cloning to proceed unhindered.

Our fellow pro-lifers may well be right that there is an underlying logic linking these issues. But the truth is—and this is the vital political point—we can ban cloning without touching *Roe* v. *Wade*. Indeed, the debate over cloning shouldn't be forced back into the well-worn grooves of the abortion debate. The issue of cloning offers the possibility of some interesting realignments in American politics. This is an issue, after all, on which radical environmentalists and religious evangelicals find themselves in agreement—which would be impossible if the right-to-choose equals right-to-clone argument were definitive. But, then, this was never meant to be a genuine argument. It is meant instead to express a feeling—a feeling

that radical individualism, sexual liberation, and modern science have all somehow combined to bring us to this point, and to reject any piece of it now, even the reproduction of human beings by cloning, is to return to the Dark Ages.

And take, for a final example, the claim that a law against cloning human beings will make us forfeit potential advances in medicine. Who could be opposed to experiments that might lead to a cure for cancer, a fully compatible liver for transplanting, a genetically engineered solution to diabetes? But examined more closely, the hoped-for medical advances turn out to be merely examples of things that researchers promise they will try to find, if only we leave them along to play with human cloning as much as they like.

The manipulation of stem cells obtained from cloned embryos is asserted to be necessary for the desired medical breakthroughs. And the use of these putative therapeutic miracles in pro-cloning arguments seems to have survived unscathed the recent evidence that it is possible to obtain the required stem cells not from embryos but from adults' blood, bone marrow, brain tissue, and even fat cells. It has survived unscathed, for that matter the disastrous initial results of stem-cell treatment (in which the cells, derived from embryos, went wild and began producing not merely brain tissue but other tissue as well when introduced into the brains of some of their new hosts).

But, then, the promise of unlimited medical advance was never really an argument for keeping cloning legal. It is a feeling, a sentiment, masquerading as an argument—and perhaps the most insidious of them all. A vague belief in the capacity of human beings to obtain any end through beneficent science has oddly joined a vague belief in the capacity of human beings to halt the march of science or decide what those ends should be. Once we add in the thousands of university laboratories anxious for the acclaim of scientific breakthroughs and the dozens of large pharmaceutical companies hungry for new technologies, the use of cloning simply feels like the future: unavoidable, inexorable, and predetermined. As well oppose the rising of tomorrow's sun, we are counseled, as try to halt the arrival of human cloning.

Yet halt it we can, and should—for reasons compellingly presented by such thinkers as Leon Kass and Gilbert Meilaender. Those reasons range from the extraordinarily high incidence of deformity among cloned animals, to the familial confusion that will be engendered by reproducing oneself as one's own child, to the likely psychological damage to the person created by cloning, and, most fundamentally, to the fact that moving from the begetting of our children to the manufacture of our descendants is a radical and perhaps irreparable dehumanization.

American politics being what it is, there will be an attempt to find a "compromise" on this issue, as there was when Congress last considered it in 1998. The favored form of compromise prohibits "reproductive" cloning while allowing "therapeutic" cloning to continue unabated. But a ban solely on reproductive uses only *looks* like a compromise. It's actually a victory for the pro-cloning forces—and everyone opposed to the onslaught of human cloning must reject it out of hand.

For what this "compromise" would mean is a license to practice all the cloning a scientist may desire, while vainly attempting to prevent the end toward which that practice clearly aims: the live birth of cloned human beings.

Part of the problem is the question of intention. Since all embryonic clones are made in the same way, we cannot know the reason for which an embryo was created until it is either destroyed in research or implanted in a womb. Of course, once it has been implanted, a law against reproductive cloning would clearly have been violated. But there is at that point no possible redress, short of forced abortions or a federal pregnancy police determining how each pregnancy in America came about.

Then, too, there is the problem of the status of the embryos created by cloning. For those who are pro-life, of course, the embryo and the fetus are already members of the human race, and it is wrong simply to destroy them. But even the federal directives for biological research, which do not admit the personhood of embryos, nonetheless demand that they be treated with "profound respect." And a law banning only reproductive cloning would produce, for the first time in federal statutes, a class of embryos it is a crime *not* to destroy, a class of embryos that must *not* be treated with profound respect.

Recent events in England are instructive. On April 19, health secretary Alan Milburn announced, to great fanfare in the British press, that Britain would shortly become the first country in the world to ban human cloning. But all he really meant was that Britain would prohibit reproduction by cloning, while continuing to promote the actual practice of cloning by encouraging laboratories to perfect their techniques. It was as polished an example of studied disingenuousness and blatant obfuscation, as one will ever see. Four days later, the head of Britain's embryology authority quietly announced that scientist who had gone abroad to do embryo research illegal in Britain could return to "continuing acclaim."

For America, the lesson is clear: The only way to stop human reproductive cloning is to ban all human cloning, and to ban it now. There is no middle ground here, not merely because the principles involved do not admit it, but because the actual practice grants no room for compromise. To allow human cloning for medical and biological research is necessary to allow—in the very near future—cloning for the reproduction of human beings.

# APPENDIX G

[*The following appeared on* OpinionJournal.com *on May 1, 2001. Mr. Miniter is an editorial writer for* The Wall Street Journal Europe. *Reprinted with permission of The Wall Street Journal* © *2001 Dow Jones & Company, Inc. All rights reserved.*]

## The Dutch Way of Death

*Richard Miniter*

Seven years ago, Dr. Niko Wolswinkel was asked to kill someone.

On a Monday morning that he will never forget, the Dutch physician's patient, a 77-year old woman dying from cancer, asked him to kill her.

As a purely legal matter, he knew he could do it. While euthanasia had not yet been officially decriminalized in the Netherlands—that happened earlier this month—in practice, it had. A string of high-profile court rulings in the 1980s made it nearly impossible for prosecutors to win euthanasia cases, and in the few instances in which doctors were convicted, their sentences were suspended. The Royal Dutch Medical Association had publicly approved of euthanasia, which was common even then. All that stood between euthanasia and his patient, Dr. Wolswinkel knew, was his own willingness to comply.

On that day, he searched his conscience. "It is very hard to speak of these things," Dr. Wolswinkel said, with a quiet sadness in his voice. "Thirty years ago, this was something that people didn't ask for."

He couldn't bring himself to kill his patient; doctors are supposed to be healers, not killers. And, as a Christian, he believed it was wrong to take into his hands the power of God. A few days later, his patient died naturally.

Most Dutchmen have come to a different conclusion; more than 80% favor "voluntary euthanasia," according to recent polls. The Dutch Parliament recently passed a measure completely decriminalizing euthanasia and doctor-assisted suicide. The Netherlands is now the first democratic nation on earth to permit, under law, doctors to kill their patients.

And they may be accustomed to doing so. Of the 130,000 Dutchmen who died in 1990, some 11,800 were killed or helped to die by their doctors, according to a 1991 report by the attorney general of the High Council of the Netherlands. (The 1991 report is the only complete report on euthanasia practices by the Dutch government.)

Some of these deaths are the classic cases cited by right-to-die advocates: A terminally ill patient, in agony, demanding to "die with dignity." But many are not. An estimated 5,981 people—an average of 16 per day—were killed by their doctors without their consent, according to the Dutch government report.

And these numbers do not measure several other groups that are put to death involuntarily: disabled infants, terminally ill children and mental patients. Some 8% of all infants who die in the Netherlands are killed by their doctors, according to a 1997 study published in the Lancet, a British medical journal. Consider the case of Dr. Henk Prins, who killed—with her parents' consent—a three-day old

girl with spina bifida and an open wound at the base of her spine. Dr. Prins never made any attempt to treat the wound, according to Wesley J. Smith, author of the book *Culture of Death*. The treatment was death. Euthanasia critics have talked about the "slippery slope" as a possibility; in the Netherlands, it is a fact.

Many old people now fear Dutch hospitals. More than 10% of senior citizens who responded to a recent survey, which did not mention euthanasia, volunteered that they feared being killed by their doctors without their consent. One senior-citizen group printed up wallet cards that tell doctors that the cardholder opposes euthanasia.

What makes the Dutch comfortable with euthanasia? One factor is that their doctors became comfortable with it. "The Dutch have got so far so fast because right from the beginning, they have had the medical profession on their side," Derek Humphry, founder of the Hemlock Society, told the Toronto *Globe and Mail* last September. "Until we get a significant part of the medical profession on our side, we won't get very far."

Some suggest that Dutch doctors are naturally more inclined toward euthanasia. That seems unlikely. In contrast to the physicians of every other Nazi-occupied country, Dutch doctors never recommended or participated in a single euthanasia during World War II, according to a 1949 *New England Journal of Medicine* article. Even Nazi orders not to treat the old or those with little chance of recovery were disobeyed. It only took a generation, essayist Malcolm Muggeridge noted, "to transform a war crime into an act of compassion."

How did Dutch doctors change their thinking so dramatically in the space of one lifetime?

The path to the death culture began when doctors learned to think like accountants. As the cost of socialized medicine in the Netherlands grew, doctors were lectured about the importance of keeping expenses down. In many hospitals, signs were posted indicating how much old-age treatments cost taxpayers. The result was a growing "social pressure" from doctors and others, says Arno Heltzel, a spokesman for the Catholic Union of the Elderly, the largest Dutch senior-citizen group, which favors voluntary euthanasia. "Old people have to excuse themselves for living. When they say that all of their friends are dead, people say, 'Maybe it is time for you to go too,' rather than, 'You need to find new friends.'"

With such pressure, even the "voluntary" euthanasia cases many not be truly consensual. Add to that the remarkable 33% drop in elderly suicides with an almost equal rise in euthanasia in the same age group over the past two decades. What Dr. Herbert Hendin, a euthanasia opponent, calls "the Dutch cure for suicide" may simply be evidence of untreated depression. But treatment is costly.

Professional restrictions against euthanasia were cast aside. The Hippocratic Oath, a 2,500-year old credo meant to curb ancient temptations, includes the pledge: "I will not give a fatal draught to anyone if I am asked, nor will I suggest any such thing." Few medical schools in any developed nation require the oath. Other professional codes have been rewritten to be neutral or supportive of euthanasia.

Medical school curricula and professional standards were changed, too. Nearly every major medical school offers a bioethics class in which euthanasia is considered, at least, an open question. Euthanasia is now an option, not a taboo. The Dutch Pediatric Society issued guidelines for killing infants in 1993; the Royal Dutch Society of Pharmacology sends a book to all new doctors that includes formulas for euthanasia-inducing poisons.

Then came the bogus ethicists. Many of these "medical ethics experts" are drawn from or influenced by the global pro-death subculture—the World Federation of Right-to-Die Societies lists 36 groups in 21 countries—that stretches from Australia's Dr. Phillip Nitschke ("Dr. Death") to Princeton University's Peter Singer. Many of them are doctors. "They can be very charming", said Rita L. Marker, executive director of the International Anti-Euthanasia Task force. They can also be very influential; they seemed to have shaped the thinking of the Dutch health minister, Els Borst. Ms. Borst, who is 69, recently called for a suicide pill for healthy but "bored" old people.

Over time, euthanasia came to be seen as normal. When I phoned Amsterdam's Academic Medical Center, a spokeswoman told me that she approved of involuntary euthanasia for disabled infants: "It is the same in all the hospitals in the world; we are just more open about it." Most hospitals try heroically to save disabled children, but the contrary view seems to be widely held among the Dutch.

Finally, the feckless politicians enter the frame. There is no major party unequivocally opposed to euthanasia in principle, not even the right-of-center Christian Democrats, who have shared power for most of the postwar period. "There is no broad opposition to euthanasia, even in the Christian circles," laments Kars Veling, a member of Parliament who will lead the Christian Union party next year.

After speaking to a packed party meeting in Spakenburg, Mr. Veling soberly talks about watching his father die. The old man was suffering terribly. "We prayed for the Lord to take him," he said. The doctor offered a lethal injection. It was hard to say no, he said, but his father had never asked for death and such an end would have been contrary to the values by which he lived.

Dutch doctors are free to make such fatal offers. Every legal and professional barrier to euthanasia has been demolished, often by doctors themselves. Euthanasia began with doctors, and only an awakening of their conscience can stop it now.

# APPENDIX H

*[George F. Will is an author, television commentator, and nationally-syndicated columnist. The following is reprinted with Mr. Will's permission (©2001 George F. Will.)]*

## Abortions Don't Mean Drop in Crime

*George F. Will*

John J. Donohue III and Steven D. Levitt are not in the least like Capt. Gonzalo de Aguilera. Before considering who Donohue and Levitt are, consider who the captain was. He was a polo-playing ex-cavalry officer selected by General Franco as a press liaison during the Spanish Civil War. He said the fundamental cause of the war was "the introduction of modern drainage. Prior to this, the riffraff had been killed by various useful diseases; now they survived and, of course, were above themselves." And: "Had we no sewers in Madrid, Barcelona and Bilbao, all these Red leaders would have died in their infancy instead of exciting the rabble and causing good Spanish blood to flow. When the war is over, we should destroy the sewers."

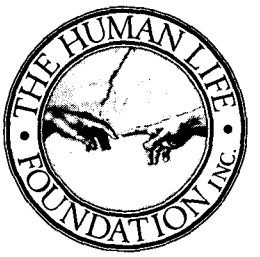
Donohue and Levitt, law professors at Stanford and the University of Chicago respectively, say: "Legalized abortion contributed significantly to recent crime reductions."

In their paper for Harvard's Quarterly Journal of Economics they do not recommend abortion as anti-crime policy. Rather, they explore, as social scientists do, whether causation explains a correlation. This one: "Crime began to fall roughly 18 years after abortion legalization."

Since 1991—18 years after *Roe* v. *Wade* legalized abortion—murder rates have fallen faster than at any time since the end of Prohibition in 1933. Homicide rates are down 40 percent, violent crime and property crime are down 30 percent. The five states (New York, California, Washington, Hawaii, Alaska) that legalized abortion earlier experienced earlier declines in crime. And states with especially high abortion rates in the 1970s and 1980s had especially dramatic crime reductions in the 1990s.

Donohue and Levitt consider the many variables besides abortion that could explain declining crime—more incarceration, more and better-used police, reduction of the crack-cocaine trade, more victim protections (security guards and alarms), a strong economy. But many cities that have not improved their police have had reductions in crime. Crime has fallen even where there never was a substantial crack trade. And research has not established a strong link between economic performance and violent crime. After controlling for such factors, Donohue and Levitt conclude: "Legalized abortion appears to account for as much as 50 percent of the recent drop in crime."

And why not? Even if you think, as pro-abortion people do, that killing 27 million unborn babies (or, as some pro-abortion people put it, causing 27 million clumps of "fetal material" to "undergo demise") in 18 years is a morally negligible matter, it is not a minor social development. Abortion obviously has reduced the size of the high-crime cohort—young males. Less obvious, but even more important, there is a "selective-abortion" effect and an "improved-environment" effect.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