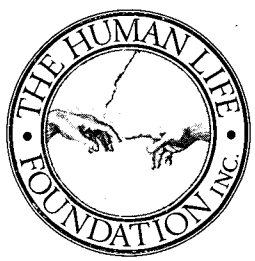
the HUMAN LIFE REVIEW



WINTER 1977

Featured in this issue:

Also in this issue:

Jacqueline Nolan-Haley • Thomas W. Hilgers, M.D. • George F. Will
Rep. Henry Hyde • James Jackson Kilpatrick • Wm. F. Buckley Jr.

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. . . about THE HUMAN LIFE REVIEW

With this issue we begin our third year of publication. We are happy to have made it this far (and, of course, grateful to our readers for having made it possible), and hope that, with your continued support, we may be able to continue indefinitely.

We certainly find no lack of suitable editorial material. Two years ago we thought ourselves hard put to find a) material within what we considered our purview that b) we wanted to publish (which is the only kind of thing editors *should* publish). Today, we are unable to publish even a tenth of what we'd like to see appear in our pages, not only because there is so much more available on the "life" issues we are concerned with, but also because our purview has broadened considerably, a fact that, we think, the current issue demonstrates. Certainly we have never before covered such a wide range of topics and views. We trust that your response will indicate whether or not we are moving in the right direction.

We are also happy to announce that all (eight) previous issues are now available, either individually or in bound volumes by year (i.e., one each for '75 and '76). You will find full information about how to order on the inside back cover of this issue. The bound volumes are not only handsome but quite permanent (in standard library-style hardcovers), and we hope the interested reader will want to acquire them—not to mention use them as gifts to a local school or library, or whatever.

Finally, you will find (among the many and diverse items in this issue) an excerpt from a new book, *In Necessity and Sorrow: Life and Death in an Abortion Hospital,* by Magda Denes. Many readers may want to get the book, which should be available from your local bookstore, or direct from the publisher (Basic Books, Inc., 10 East 53 Street, New York, N.Y. 10016; $10).

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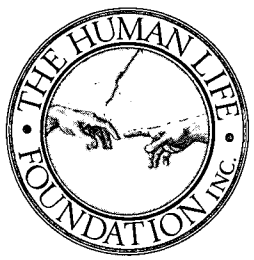

WINTER 1977

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INTRODUCTION

MRS. CLARE BOOTHE LUCE is an invigorating addition to any controversy, and we welcome her contribution to our own continuing debate on the abortion question, which is the main subject of this issue.

It might be said that the 1976 election campaign merely *raised* the abortion question: that is to say, it made abortion a major political issue for the first time, but afforded little means of settling it on a national level (although a number of local elections *did* hinge on the abortion vote). That the question *must* be settled now seems beyond doubt. Indeed, many (including Mrs. Luce) would argue that abortion has already become an issue comparable to the Slavery question that plagued Americans from the beginnings of our Republic until settled by a great civil war (the effects of which are with us still). The great question, of course, is *how* to solve it, and you will find a variety of ideas and suggestions in the articles presented here.

Some argue that the question should never have been raised at all—certainly not in the political arena. This is the position of Mr. James Jackson Kilpatrick, who expounded it, with his accustomed verve, in a nationally-syndicated column in the midst of the election campaign. Mrs. Luce makes that column her launching pad, and we hope you will want to read it (you will find it conveniently reprinted as item #1 in Appendix A) before finding out what Mrs. Luce has to say about it in our lead article. In fact she has some very provocative things to say (e.g., "Many Americans today are sadly short on hope . . . the prevalent doomsday attitude . . . probably explains why many of our . . . intellectuals have copped out on the abortion question.") and, as always, says them beautifully. Don't miss a word of it. (You will also find another answer to Mr. Kilpatrick, by Mr. Wm. F. Buckley Jr., reprinted as the second item in Appendix A; among other things, this Luce-Kilpatrick-Buckley trilogy seems to us a model of spirited disagreement among people who are, in "real life," good friends.)

Mr. M.J. Sobran follows with his own reflections on many of the same questions. Our regular readers need no introduction to his formidable ability not only to put forward his own arguments but also to dismantle those of his chosen opponents (who in this instance seem to be a great many people on *both* sides of the abortion question!). We hope you will pay particular attention to his description of what he calls "the pro-abor-

tionists' skill in characterizing the abortion *situation* . . . to suggest that only morally sensitive women get abortions"—because it seems to provide a kind of *preface* for our next article, "Watching an Abortion," which is an excerpt (without alteration of any kind) from a very controversial new book by Magda Denes.

Dr. Denes, a New York psychologist who had an abortion herself, has written elsewhere (see the New York *Sunday News*, November 28, 1976): "Of course abortions should be legal. . . . In a free country, the right to abort ought not to be in question (*sic*). . . . What ought to be in question, most urgently, is the recent propaganda which presents abortion as an easy business, like pulling a tooth." The selection reprinted here will, we think, settle the latter point so overwhelmingly that many readers may wonder if in fact Dr. Denes *means* it when she defends abortion as a "right." We wonder too (e.g., she writes, in the same *Sunday News* article, that "Abortion is murder of a most necessary sort."—but then ambiguity is no stranger to the abortion controversy). Her book would seem on the face of it to be so devastating an indictment of abortion as to justify its being called, as one anti-abortion critic has labelled it, a potential "Uncle Tom's Cabin" of abortion, i.e., the book that could serve as catalyst for public revulsion. Time will tell. Meanwhile, we apologize to those readers who find it over-strong; on the other hand, we hope those who can take it will read the entire book for themselves (the publisher's name and address are listed on our inside-front cover).

In the following article, Prof. John T. Noonan (a frequent contributor and editorial advisor to this Review) brings the argument back to less emotional ground. But Prof. Noonan too feels strongly about "the abortion problem as it actually exists in America," and his graphic description of the current *de facto* legal situation may well surprise even the most knowledgeable reader. In his opinion, the abortion dilemma is not only deplorable, but also impervious, on the record, to "normal" solution *via* our ordinary legal or political processes. Thus he calls for a much-discussed (but never effected) remedy: a Constitutional Convention for the purpose of passing an amendment that will make our Constitution "unmistakable in its protection of the unborn."

He is followed by Prof. George Carey who (not surprisingly for regular readers of this journal) disagrees. Mr. Carey begins by agreeing with Mrs. Luce that "The abortion controversy mirrors a far wider battle that is taking place in the Western world," goes on to outline exactly how the pro-abortion *faction* has managed to evade all the careful safeguards the Founding Fathers set up precisely to *frustrate* such factions, and concludes that the solution has been available all along: the Congress already has the power (under the 14th Amendment) to undo what the Court has done in *Roe* and *Doe*. (Please—we are not lawyers—it is not so simple as we make it sound; hear Prof. Carey out for yourself.)

Next comes yet another look at the effects of the Court's *Roe* and *Doe*

decisions (now four years old), by two young professionals: Mrs. Nolan-Haley is an attorney who was involved in the Edelin case; Dr. Hilgers is a widely-known authority on the medical aspects of abortion. Both are obviously worried about the Court's failure (either in the original abortion cases or in subsequent ones) to *define abortion.* This has resulted, they charge, in a situation in which no one is certain of "the sphere in which human life is legally protectable . . ." To show that the Court's "equation of abortion with pregnancy termination and viability with meaningful life is demonstrably erroneous," the authors have prepared what would seem to be a definitive survey of relevant medical opinion on the subject (which you will find in Appendix B).

So much, for this issue, on the abortion debate itself. However, it is by no means absent from what follows. Dr. Juliana Pilon writes again (she contributed an earlier article on related subjects in the Summer '76 issue) on the vexing problems of Fetal Research, which would be much less-discussed had legalized abortion-on-demand not provided a multitude of potential subjects available for biomedical investigations. Here again, it is impossible to summarize the many moral and ethical points Dr. Pilon makes, but what she is concerned with is the obvious *utilitarian* approach to disposing of what is, after all, human life. Some of it is sobering stuff ("Not everyone would agree that dying as a human guinea pig is ennobling . . .") and all of it bears careful consideration, for current problems in this area (if Dr. Pilon is correct) are merely the beginning of what may come soon.

Our concluding article is perhaps the most unusual of all. Herr von Kuehnelt-Leddihn (who is sometimes referred to by those who know him well as "an authority"—on whatever subject!) writes in what might be called the "European manner," i.e., he expects that the reader is already aware of a great deal. Here, he reflects on the general subject of population, discussing it from so many aspects that it is impossible to summarize it easily. But we have no doubt that most readers will find it fascinating, not least because most of the views expressed differ (often radically) from the "accepted" views in this country and elsewhere.

Particularly interesting, we think, is Herr Kuehnelt's discussion of "The Indian Dilemma"—for India is much in the news nowadays *in re* population control, sterilization, and so on—and his description of "The Provider-State" in relation to the strength and health of the family, which has heretofore been thought of as the basic unit of any race or nation (". . . modern man works not only for himself and his children . . . but also for a past generation still alive but improvident thanks to an 'old age security' eaten away by inflation . . .").

And there is still more. We have mentioned two of the items (by Messers. Buckley and Kilpatrick) in Appendix A. You will find three other items as well (the whole Appendix making up what might be called "The Abortion Papers"—striking commentary produced by and/or during

the late election campaign, all related more or less directly to the subject-matter of this issue). The third item is a letter-to-the-editor by Rep. Henry J. Hyde (R., Ill.), of *Hyde* Amendment fame; it was, so far as we (or the Congressman) know, *not* published by The Washington *Star,* but Hyde's commentary on Mr. Kilpatrick's column is trenchant, and deserves careful consideration (and we thank Mr. Hyde for permission to print it here).

Item #4 is another such: an "Op-Ed" page commentary sent by Mrs. Luce to her (hometown) Honolulu *Advertiser,* which has not been reprinted elsewhere. We think it deserves the largest possible audience, certainly among those who (like the readers of the Review) are concerned with the "life" issues she discusses so movingly. Item #5 is one of Mr. George F. Will's *Newsweek* columns which is considered by many to be perhaps the most penetrating analysis of the abortion issue to appear in the mass-circulation media during the election campaign (it was printed in mid-September, when *Time* magazine was calling abortion the *dominate* campaign issue). Many readers will, no doubt, dispute some of Mr. Will's contentions. But we think he makes a powerful case, and hope that you will give it a careful reading.

There you have it, certainly our most varied (and we hope, our best) issue to date. In future issues we hope to have more on population matters, the family, and—a subject of growing concern—genetics (and the "engineering" thereof). Certainly there is no lack of material available on the matters that we have tried to make our special concerns, and we mean to continue our efforts to provide the best we can find.

J. P. MCFADDEN
Editor

The "Kilpatrick Position"

Clare Boothe Luce

IN THE 18TH AND 19TH centuries Slavery presented itself to Americans as a multi-dimensional issue. It raised religious, moral, economic, political, legal, and Constitutional questions. But the core question was scientific: Was the negroid race, although clearly belonging to the genus "mankind," nevertheless a sub-human species? Was the black man biologically inferior to the white man, or was he biologically his equal, and consequently entitled to those rights guaranteed by the Constitution to "all men"?

By 1850, it was the consensus among scientists that by all the criteria of biological science, a black man was as "fully human" as a white man. But in 1858, in the famous Dred Scott ruling, the Supreme Court totally ignored the findings of contemporary science, and reflecting the widespread century-old prejudice against blacks, the Taney Court ruled that it was legal for white men to treat black men as property, or as animals of a lower order, and to continue to deny them the constitutional rights accorded white men. Predictably, the Dred Scott controversy spilled over into presidential politics. Lincoln, the anti-slavery candidate, was elected by a plurality, the South seceded, and the Civil War became inevitable.

The constitutional question was finally settled by the passage in 1868 of the 14th Amendment which nullified the Supreme Court's Dred Scott decision. But the deep-rooted emotional bias of many Americans against accepting the biological equality of blacks has continued ever since to poison the moral and political life of the nation, under the rubric of "discrimination." (The recent Butz episode is only the latest example of the persistence of prejudice at the emotional level, even in those who, at the intellectual level, quite sincerely think they are free of it.)

The abortion question, like the slavery question, also presents itself as a religious, moral, economic, legal, and Constitutional question. And curiously enough, it is also essentially a scientific, or biological question.

Is the child *in utero* a human being, a person? Or is a fetus non-

Clare Boothe Luce is well known as an author, playwright, diplomat, politician, etc. This is her first contribution to this review.

human, or sub-human matter, and if so, at what "point in time" does the fetus *become* a human being?

In the 1973 (*Roe* and *Doe*) abortion decisions, the Burger Court, like the Taney Court, studiously avoided weighing the answers of contemporary science. The Court determined (7-2) that an unborn child is an "it-thing" that does not become "fully human" until, in effect, "it" is born; that as non-human or sub-human life, "it" is solely the property of its mother, who may destroy "it" with impunity, whenever and for whatever reasons she chooses. In short, the Court ruled that the unborn child has no constitutional right to life, or like all other innocent beings, to the protection of the state.

Although legally settled by the Supreme Law of the Land, the abortion question has now spilled over into politics, creating a movement for the passage of a Right to Life amendment that would nullify the Supreme Court's unlimited abortion decision.

Perhaps the most dismaying aspect of the controversy is that so many intelligent people go intellectually to pieces when confronted with the core question: Is an unborn child a human being? And whether unable, or unwilling to recognize it as the *heart of the matter,* they settle for whatever rationale pops into their heads for sweeping the whole question of abortion under the political rug.

James J. Kilpatrick, one of America's most respected columnists (and one of my favorite pundits), offers a melancholy example of the curious tendency of many intellectuals to cop out on a question which is not only of profound, even agonizing concern to millions of their fellow citizens, but of extraordinary moral and political significance for the future of America. He writes in a recent syndicated column: ". . . for every person who is absolutely against a right of abortion, or absolutely for a right of abortion, there must be a hundred persons whose *inchoate views lie uneasily in between. I count myself in this large number."* (Emphasis added)

Now Jack Kilpatrick has a well-deserved reputation for intellectual integrity. I am inclined to believe that if he felt his views were *inchoate* on any other public issue (political, economic, social, or scientific) he would wait until he had got his own ducks in a rational row before undertaking to clarify it for his readers. Instead (for painful reasons I shall venture to suggest later), Mr. Kilpatrick chooses to emulate the blind leading the blind.

"It may well be true, as a matter of theology," he writes, "that a 'person' or a 'human being' exists from the instant of conception; but the validity of this concept is a matter for theologians and not for presidential candidates."

Imagine Kilpatrick, while breakfasting with his wife, suddenly remarking, "It may well be true, dear, as a matter of theology, that this egg I am eating became an 'unborn chicken' the instant it was conceived by its mother-hen, but the validity of that concept is a question for priests and ministers. I mean, I may be eating an unborn chick, or I may be eating just a Julia Child's recipe for an omelette. But as my own views on the subject are inchoate, this clearly makes the question of what an egg really *is* a matter for theologians to determine."

His wife might well reply, "Sorry darling, but if that's some 'in' joke, I don't get it. Everyone knows an egg is an unborn chicken, even if you can't taste the feathers. That's a biological fact, not a theological concept. Dear . . . think you may have a touch of fever?"

It is hard to believe that Jack Kilpatrick (or any educated person) is totally unaware of the overwhelming scientific proof which now exists that human life, like all animal life, is a biological continuum. From the moment of conception to the moment of death, the biologists say, there is *no* point at which a living human organism is *not* a "human being," be it in the uterine or infantile process of development, or in the process of disintegration called "dying." Geneticists have now discovered that in the very instant the ovum is fertilized by the sperm, the new human life receives its entire genetic inheritance from the parents: the color of eyes, hair, skin, the shape of nose, ears, mouth, jaw—all the physical characteristics the child will be born with; as well as the intellectual and creative capacities (the "brains" or "talent") that may (with opportunity) lead in adult life to fame and fortune, or obscurity. Moreover, science asserts that no two inherited genetic structures are exactly alike. No two humans, even identical twins, have identical fingerprints. It is science, not theology, that has now determined that the unborn child, however tiny, helpless or "unviable," is not only a human-in-being, but an utterly unique human-in-being—in short, a person.

The inchoate feeling of a pregnant woman—who, for whatever reasons, does not want to bring her child to term—that the "thing" growing in her belly is not "really human," does not change her unborn child into a non-human blob of jelly or a "blueprint" for a person.

Nor do Mr. Kilpatrick's "inchoate views" on abortion change a question of science into a "matter for theologians" to determine.

No one with any intellectual pretensions can ignore the fact that the abortion question (like the slavery question) turns on an *either-or* biological question that cannot be evaded by any honest mind:

Either the child *in utero* is, from conception, a human life in the process of developing fully into childhood, just as the born infant is a human life in the process of developing fully into adulthood; *or* the unborn child is a non-human form of life which becomes a human being only by virtue of being born. And this is to say that a miracle takes place at the split-second of birth much like the miracle performed by Cinderella's fairy godmother who, in the twinkling of an eye, changed a pumpkin into a coach and six mice into liveried footmen.

The weight of science is overwhelmingly on the side of the first proposition, and against the Supreme Court's view that the unborn child is simply disposable tissue (like a wart or tumor) until he or she can live outside the womb. Consequently, if the scientific view is the correct one, the question of abortion *inescapably* becomes a theological question, because it involves not only the taking of human life, but the question of the circumstances in which one person may morally take the life of another.

The Jewish and Christian religions teach that God is the Author of the Commandment *Thou shalt not kill.* But also, as in many other religions, they make notable exceptions. Theologians of all Western faiths are agreed that a person may kill innocently in defense of his or her own life, or the lives of innocent persons, or as in war, in defense of the life of one's nation and fellow citizens. Otherwise, the willful act of killing—the taking of a life for personal and selfish reasons, has been regarded as the crime of *murder* for thousands of years by all theologians—and up to now by all the governments of the Western nations. But also, the theologians have always recognized extenuating circumstances, and their theological positions have been reflected in the criminal laws of America. "Killing" can be first or second degree murder, or various less culpable degrees of homicide—manslaughter, killing while temporarily insane, etc.

If, as the scientists say, human life is a continuum from womb to tomb, theologians are required in faith and in conscience to protest against the Supreme Court's virtually *unlimited right of abortion* decision. It is a matter of record that many Protestant and Jewish theologians, as well as Catholics, have protested it. The Rev. Harold Brown, a well-known Evangelical theologian, wrote (in this Review): "The opinion that opposition to abortion stems chiefly from Roman Catholic sources remains widely held, although it is contrary to fact. The overwhelming consensus of the spiritual leaders of Protestantism, from the Reformation to the present, is clearly anti-abortion. There is very little doubt among biblically oriented Protes-

tants that abortion is an attack on the image of God in the developing child and is a great evil."*

And, speaking recently in my hometown, Honolulu, Rabbi Julius J. Nodel told his congregation of Temple Emmanuel, ". . . The disposability of unborn children nowadays is simply another aspect of getting rid of things for which we have no use . . . there is a straight line from disposable things to disposable ideas, to disposable relationships, to disposable lives." Life, the Rabbi said, "is a gift of God . . . an unborn child is not a 'thing' which can be cut off like a fingernail . . . *Judaism vigorously opposes the total disposability of the unborn . . . we do say 'yes' to the inherent sanctity of life, which once created, may be ended only under the most stringent controls, both moral and legal.*" (Emphasis added)

But *revenons nous a nos moutons. . . .* How are we to explain the sheep-like preference shown by so many intellectuals—even by those of known intellectual integrity like Kilpatrick—in refusing to come to grips with the scientific findings about fetal life?

Certainly one reason is that many intellectuals are profoundly concerned about the economic and political threat of overpopulation to America and to the whole world. If the present world birthrate is maintained, by the year 2000 there will be seven billion people on a planet which already seems to be running short of crucial raw materials and food. Many see the increasing quantity of human life as an intolerable threat to the quality of life. So, for humanitarian reasons, they are "uneasily" inclined to feel that although abortion may be the taking of human life, it is nevertheless a relatively simple, unbloody, and—today—popular way of slowing down the birthrate, and maintaining the present high living standard of individual American lives.

In a more optimistic century, the poet Wordsworth wrote:

"A child more than all other gifts
that earth can offer to declining man
Brings hope with it, and forward-looking
thoughts."

Many Americans today are sadly short on hope for both the economic and political future of their posterity. "Eat, drink, be merry—and abort our unborn children, for tomorrow our posterity will die," is the prevalent doomsday attitude which probably explains why many of our Western intellectuals have copped out on the abortion question.

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*Harold O. J. Brown, "Protestants and the Abortion Issue: a Socio-Religious Prognostication," *The Human Life Review*, Vol. II, No. 4 (Fall 1976) 131.

But there is also something else unmistakably influencing many of those who are quick to sidetrack the abortion question without troubling to think about it: There exists among many intellectuals a strong, emotional anti-Catholic bias which leads them almost automatically to disagree with any moral, legal, or political position which seems to be of more concern to Catholics than to non-Catholics.

Historian Arthur Schlesinger bluntly states that "prejudice" against Catholics is "the deepest bias in the history of the American people." And many other students of American history agree with him. Adam Walinsky wrote that liberals have more or less consistently "treated defeats of Catholic interests as triumphs over the devil." Professor Peter Viereck avers that "Catholic-baiting is the 'anti-Semitism' of American liberals."

Mr. Kilpatrick, I regret to say, seems to be one of the heirs of this historic American bias. His anti-Catholic prejudice, certainly unconscious, clearly provides him with his particular rationale for intellectually copping out on the abortion question. The nature of fetal life is a "matter for theologians," he insists, only to proclaim that theological matters have no place in American politics. "The abortion issue is being hotly pursued by a relatively small group of unusually zealous persons, most of them fervent Catholics." But when Catholics claim there are "valid arguments" against abortion they are talking "arrogant nonsense," for "Neither the Catholics, nor the members of any other denomination, have a right to impose their theology upon a free people through amendment of the supreme law of the land . . . people can advocate any constitutional folly they have a mind to" but to "write the 'Catholic position against abortion' into the Constitution would be profoundly wrong" since the Constitution "flatly forbids any law respecting an establishment of religion." And when *Catholics* demand that the presidential candidates take a stand against unlimited abortion, Kilpatrick finds that "reason flees the temple."

* * *

One morning not long ago, when Dr. Mortimer Adler, the philosopher, was visiting me in Honolulu, I came on him in the garden, sitting on a bench and staring somewhat blankly at his feet. Thinking he might be bored I said, "Mortimer, is there something you'd like to do this morning?" "I am doing something," he replied, "I'm working." Seeing my puzzlement he explained, "I'm thinking. And that's the hardest work in the world, because you see, when you really want to think a question through, you've got to begin by laying

all your own prejudices on the table. And that's the toughest thing for anyone to do, even for a philosopher."

Let us suppose that Mr. Kilpatrick, resolved to think the abortion question through, managed to lay his own prejudices on the table. He might then write a column confessing (again) his ignorance of the findings of science on uterine life, and saying it would not be useful to his readers to make a final judgment on the abortion issue until he had *thought through this core question.* Having done so much, he might then tell his readers that, under the Constitution, no Supreme Court ruling is considered infallible. First, historically the Court has been prone to reflect the political mood (and emotional prejudices) of the public, and as the mood changed or new facts emerged, the Court has often reversed itself. Secondly, as in the case of the Dred Scott decision, the Court's decision has been reversed by amendment to the Constitution when it ceased to reflect a public consensus.

He might also point out that those who say it is "profoundly wrong" for members of any religious denomination to "impose their theology" on the Constitution have little knowledge of how often this was done by Americans in the days when they were a religious people. He could cite America's first "sacred" political document, the Declaration of Independence, as the supreme example. The declaration of "these truths we hold" is the statement of a *purely theological position*—namely, that God, the Creator of Man, created all men equal in their humanity and endowed them equally with "certain rights," for which *precise theological reasons* these rights must be recognized as "unalienable." The Founding Fathers, God-fearing men, also imposed this theological position, with no Kilpatrickian compunction whatever, on their second "sacred" document, the Constitution.

Another purely theological concept of ancient vintage imposed on the Law of the Land, by a predominately Protestant American people, was the Judeo-Christian concept of monogamous marriage, which they made the only legal form of marriage in the United States.

(In passing, this theological concept was definitely imposed by law by a predominately Protestant Congress on the Mormons in 1862, and upheld by a Supreme Court decision in 1890.)

Mr. Kilpatrick might also remind his readers that the movement to abolish slavery was begun, and for a long time "hotly pursued by a relatively small group" of religious people who were determined to impose their theological position that "all God's chillun" were equal

in His sight on the Constitution. And happily they succeeded in doing so, in the end. Millions of American lives would have been spared if they had "imposed" it when many religious leaders had wanted it imposed—which was some decades earlier.

In an even more philosophical mood, Kilpatrick might point out that not only the legal roots of our political and social system but of our economic system as well lie in the teachings of Judeo-Christian theology. The 8th and 10th Commandments (against stealing and coveting) sanction the ownership and acquisition of private property. These particular Commandments, as any Marxian will tell you, are the origin of the "Capitalistic System." They are not the least of the reasons why Communists consider the Jewish and Christian religions the enemy of communism, since the first commandment—according to Marx—is: Thou shalt abolish all private property.

Another commandment upheld by Judeo-Christian theologians over the centuries is "Thou shalt love thy neighbor as thyself." This theological position is politically reflected today in many of our welfare laws, and in our laws seeking to eliminate discrimination against the minorities.

But returning to the abortion question, an unprejudiced Mr. Kilpatrick might point out that all Protestant theologians, until the last few decades, considered abortion, except for sound medical reasons, a crime against both God and Nature, and that most of the state anti-abortion laws, now struck down by the Supreme Court decision, were first put on the books by Protestants.

And, filled with righteous indignation, Kilpatrick might suggest that "reason" indeed "flees the temple" when Catholics are accused of trying to establish their church as the official church of America simply because they continue to support a theological position which many Protestants have abandoned. Finally, Mr. Kilpatrick might recognize the fact that as the majority of Catholics themselves do not practice abortion, clearly their purpose in seeking the passage of a Right to Life amendment is to save the lives of the unborn children of people of *all* faiths and of *no* faith.

The Abortion Ethos

M. J. Sobran

AMONG THE lessons of the 1976 presidential campaign is that the anti-abortion movement is not only alive but potent. Until then, media coverage had convinced many who were concerned about the issue that they were almost alone, and that most of those on their side were sectarians, eccentrics, and cranks.

This was one more bit of evidence that watching the television phantasmagoria of news events is an unreliable way to get the feel of American life. Abruptly, the abortion issue was *there:* at last the message had accommodated itself to the medium, had "made a scene," and it was clear that many, perhaps most, Americans do care about the matter. In fact they care strongly.

They have good reason to care. Millions of them have been touched by abortion, getting, arranging and participating in the operation that is variously described as "murder" and "termination of pregnancy." Obviously an incipient life is ended by abortion, and if that is serious it follows that millions bear a burden of guilt. But if it is not serious, then abortion advocates can reasonably accuse their opponents of wanting to impose needless hardship on women by forcing them to bear children they do not want, children whose lives might have been, without moral qualms or social dislocation, snuffed out early.

There has been melodramatic rhetoric, it must be acknowledged, on both sides of the issue. Anti-abortionists have been guilty of representing the unborn child as a child, (and of killing him or her as murder). Pro-abortionists, understandably, find this hard to forgive. Their technique has been to blur categories, and to represent as simple-minded any characterization of abortion as simply evil.

The conflict is drama indeed, and pro-abortionists have found their own way to make it melodrama—what one might call anti-melodramatic melodrama. As they portray it, the abortion issue is "complex" and "sensitive," full of ambiguity. There can be, in such a matter, no Good Guys or Bad Guys. The only Bad Guys, to their

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M. J. Sobran Jr. is a contributing editor to this review, and is now generally considered as one of the finest young social and cultural critics in America.

minds, are those who say there *are* Bad Guys. Thus columnist James J. Kilpatrick derides anti-abortionists as "fervent Catholics," and the derision is perhaps aimed less at Catholicism than at fervor. To oppose abortion vehemently is to sin against urbanity.

I have remarked before in these pages that the rhetoric of pro-abortionists is aimed at educated people to whom urbanity ranks high among virtues, and to whom fanaticism is abhorrent. Their success, I contend, is largely due to their ability to portray themselves as alert to moral nuance, and their foes as obsessive and obtuse. It is a technique of snobbery, of making a position discreditable by association. No pro-abortionist ever feels compelled to demonstrate his tolerance of his adversaries to the extent of saying that some of his best friends oppose abortion. Even if it is true, he does not wish to reveal that he keeps such company.

Each side has its cliches; those of the pro-abortion side, however, are polysyllabic, and therefore do not embarrass respectable people the way those of the other side do. To speak of "termination of pregnancy" or "a woman's right to control her own body" is to utter formulas that somehow convince educated people that you are thoughtful. To say "abortion is murder" is to invite the same kind of haughty derision as attaches to talk of "the Communist conspiracy." And it should be noted that the distinctions are primarily esthetic: whether abortion *is* murder, or whether there *is* a Communist conspiracy, hardly matters. The phrases themselves are *infra dignitatem,* almost taboo, by the same kind of purely historical prejudice that applies to certain phrases associated with the Nixon-Watergate era, like "perfectly clear" and "at that point in time."

But equally important, and more neglected, has been the pro-abortionists' skill in characterizing the abortion *situation.* Typically, we are given to understand, a pregnant woman comes to a doctor (if he is available) or a cynical butcher (if no doctor is available) to "terminate her pregnancy." Her decision is described as "anguished" or "agonized," the presumption being that she is doing something highminded, to spare her child misery, rather than something selfish and squalid, to spare herself responsibility and shame. Now the decision may well be conscientious; but is it typically so? It is likely enough to be "anguished," even as Macbeth's decision to stab Duncan is anguished, since she is deciding to have her child (to adapt Macduff's phrase) ripped from her womb. The point of the pro-abortionist propaganda, of course, is to suggest that only morally sensitive women get abortions. And to plant the axiom that to be troubled by one's conscience is as laudable as to obey it. Sure-

ly, we are led to feel, the woman has suffered enough without the added burden of societal interference. Which is where the Bad Guys of this carefully nuanced drama come in: the enemies of nuance and individual conscience, the Catholic hordes who, egged on by their bishops, threaten to burst into the obstetrician's chambers and rupture the delicate relation of doctor and patient.

What never gets answered is the question why, if abortion is not wrong, it is even necessary to be conscientious about it. Let alone the question why it should be the decision to kill the child, rather than the decision to let it live, that is represented as the triumph of conscience; although, it is true, the plight of the pregnant woman is shown in such lugubrious terms that one feels that to give birth is almost a form of child abuse. Furthermore, if the "right" to abort is unqualified, it is needless to adduce misery as a justification: for it must be equally the right of a healthy, wealthy, happily married woman who decides whimsically that she doesn't want to carry this one to term, thank you.

All these evasions, loaded arguments, irrelevantly bathetic tableaux, and euphemisms are signs that America has still refused to grant abortion full cultural assimilation. Anti-abortionists have predicted such assimilation in terms I regard as alarmist. They have said that abortion leads to infanticide, genocide, geronticide, and other evils. There is a grain of truth in that, but to say it in flatly prophetic and unqualified terms is to be guilty of the kind of stridency that serves only the pro-abortionist propagandist. After all, people can live long and happily with inconsistency. The Nazis restricted abortion, but hardly out of reverence for life. Those who denied the humanity of the Negro did not, so far as I can see, deny the humanity of a single white.

The fact is that we are not going to have legalized infanticide in the foreseeable future, for the very simple reason that nobody wants it. Abortion is here, and it will be hard to extirpate; but other kinds of killing are not yet clear and present dangers, and to say that they are imminent is to give the impression of having lost touch with reality. In fact it *is* to have lost touch with a very important reality: the moral sense of America, from which any effective anti-abortion movement will have to draw its strength. An alarmism that overlooks the presence and the power of that national conscience simply helps to defeat itself. "Our doubts are traitors," as the poet says,

> "And make us lose the good we oft might win,
> By fearing to attempt."

Just as I find encouragement in the dishonesty of certain pro-abor-

tion propagandists, so do I find it in the lack of response to the honesty and logic of certain pro-abortion philosophers. I will give two examples.

The first, whom I have mentioned before, is Michael Tooley. He favors not only abortion but also, on what appear quite consistent grounds, infanticide. His argument, put briefly, is as follows: The decisive criterion for whether it is seriously wrong to kill any being, human or otherwise, is whether it is conscious of itself as a self, rational, aware of its potentialities and therefore concerned about its future. Animals, fetuses, and babies don't measure up. By the way, Mr. Tooley does not shrink from using the word "kill"—in contradistinction to most of his fellow abortion advocates, who prefer the Orwellian locution "terminate." Once you accept abortion, Mr. Tooley's case appears at least plausible. All I want to point out here is that his ideas on the subject have attracted nobody, but nobody, in practical politics. Those who want abortion do not necessarily want consistency along with it, and this fact is more than a mere debater's point.

The second philosopher is Peter Singer, author of *Animal Liberation.* Mr. Singer's great thesis is that humans who regard their species as intrinsically superior to other species are guilty of "speciesism," and that we all ought to become vegetarians. In a recent issue of *The New York Review of Books,* Mr. Singer addressed the question of the morality of research on live aborted fetuses, and here is the sort of reasoning he offered:

"Is there any morally relevant difference between doing (an) experiment on a dying dog and doing it on a dying fetus? . . . It is the dog that is the more intelligent, sensitive, and autonomous being. How could any comparison not unthinkingly prejudiced in favor of our own species attribute greater dignity or integrity to the dying fetus than to the dying dog? . . . To say that merely being a member of our species entitled a being to special protection . . . is to discriminate on the basis of species alone, a form of discrimination no more defensible than discrimination on the basis of race alone."

One is temped to sigh: Only in the *New York Review!* And yet, like Mr. Tooley, Mr. Singer makes a case that is plausible on its own grounds, and much more rational and coherent than the usual pro-abortion arguments. One would expect a good deal more of their kind of reasoning if people really believed that it was all right to kill unborn children. But infanticide and animal liberation are not going to acquire either traction or momentum in our culture, for the same reason, I contend, that abortion has not really acquired them.

Let us leave our philosophers here with the observation that those who seriously try to address the question of the fetus's rights while advocating abortion seem to head for conclusions that most pro-abortionists want nothing to do with. A serious justification of abortion-in-general requires abandonment of the common moral idiom of our culture, which assumes that it is specially wrong to kill human beings, even in their infancy.

Perhaps the real test of what people actually feel, aside from what they only profess to feel, is whether they are willing, so to speak, to put their money where their mouth is. The number of people willing to advocate abortion may be great; but how many, aside from the doctrinaire who are out to make a point, will admit to having gotten one? And how many are willing to discuss contemplating getting one? This I take to be a point of some significance, since young couples now speak openly about family planning in other respects: they are not usually abashed about practicing contraception, even if they are Catholic. But they are abashed about getting abortions, even if they are not Catholic. A special odium, moral and social, attaches to the act of destroying a life already begun.

This is the fundamental fact the pro-abortionist forces are up against, and their clichés will ultimately, one trusts, founder on it. The urbane voice of *Newsweek* columnist George Will, for one, has risen against abortion, with satirical thrusts at the semantic legerdemain of its advocates. Mr. Will is the very clarion voice of common sense, and nobody can acuse him of being agitated by his bishop: in fact, he wrote a pro-abortion column a few months ago, before he had reflected much on the subject, so he speaks with the deliberate authority of the convert.

On the other hand, certain Catholic writers like Andrew Greeley have turned pro-abortionism into a presumption of anti-Catholicism: an unfortunate co-option of an issue of universal concern, that, since it confirms the feeling of some people that there is no reason for a non-Catholic to oppose abortion. During the 1976 campaign, Father Greeley accused Jimmy Carter of insensitivity to Catholic feelings because of his ambiguous abortion stand. But presumably one should take a stand on abortion with respect not to the Catholic voter, but to the unborn child.

Religious distractions apart, abortion is one of those potent issues that seems to have a bit of what the late Willmoore Kendall called "civil war potential," because of the depth of the division they symbolize. Everyone senses that our stand on abortion will decide what kind of nation we are to be. The two sides do indeed get "fighting

mad" at each other. The whole matter has deep, almost unexplored subterranean connections to other questions affecting our national destiny, and even the larger destiny of Western civilization.

It seems obvious that abortion is the natural consequence of a hedonistic society, one that recognizes pleasure as a legitimate end in itself, without respect to moral and metaphysical considerations. What used to be denounced as "free love" is now widely taken for granted, almost as an inalienable right; so that it seems an arrogant presumption for a child to get himself conceived during a sexual act, as if he were violating his parents' privacy. Indeed it seems incongruous to refer to fornicators as "parents," or for that matter as "fornicators," and one suspects that our culture's general diffidence about asking them to take responsibility for their act, and *behave* like parents, accounts for the prevailing permissiveness about abortion. Ours is a society in which people do not dare assert standards of conduct in general, apart from a few political and economic categories about which we are compensatingly fetishistic; and least of all are they asserted in sexual matters. It is probably true that most people are hypocrites-in-reverse about sex: they live by higher principles than they dare to preach. They would not dream of letting the public watch them in bed, but they have no vocabulary of condemnation for those who do.

Terms like "sin" and "wicked" are now used only in irony by most educated people, and our indices of well-being are almost exclusively material rather than moral. Those who look with favor on the achievements of Chinese Communism, for instance, praise the apparent cleanliness and comfort of its subjects today, as against the disease and famine that prevailed at its advent: they can evaluate it only in Epicurean terms which any idolator of Mao Tse-tung would regard as contemptible, when compared with the martial sense of mission and duty that animate every public utterance permitted in that nation. And it is typically the American liberal, who approves of Red China for what both the Communist and the conservative would consider all the wrong reasons, who approves of abortion at home. It is the Western liberal who is governed by a uniquely abject sense of man's dignity and destiny. The revolt against abortion is in part a reaction against a salient of articulate and aggressive liberalism, by people who feel it urgent to assert that pleasure and convenience are not the highest values in life, and that still higher ones have claims on all of us, no matter how unfortunate.

The spirit that authorizes abortion is thus a spirit of moral capitulation. Anti-abortionists may well be reluctant to get their cause

tangled up with political issues they see as distinct or subordinate in importance. But if so, they are liable to a charge of both political and metaphysical *naivete*. One of the cultural beachheads of liberalism is the whole area of sex. It has been difficult, in an age of secularism (misnamed "pluralism") to talk back to the claims of sexual freedom, since they come solemnly attired in the borrowed robes of personal liberty. But absolute liberty of conduct transmutes into utter relativism of standards, and experience soon discovers that a society cannot cheapen sex without also cheapening life. It is often said that "immorality," in puritanical America, has always meant sexual immorality. Today, however, it is widely denied that there is such a thing as sexual immorality, and it is almost widely denied that the general term "immorality" includes the act of killing a child in his mother's womb, so long as she is a party to it.

But no immorality can be confidently identified unless its opposite, a compelling ideal of dignity and integrity, stands forth as the measure of everything beneath it. No such ideal exists in our public life. Nor can a potent one be expected to emerge from amid the sleazy preoccupations of contemporary art, high or popular. Liberal control of strategic institutions—communications, universities, courts—seems to guarantee the ascendancy of that libertine anti-culture that is the matrix of the abortion ethos. A resistance movement must necessarily come from the grass roots, the Catholic Church being the only nationally prominent institution to assist it. That is partly why Catholicism is under such heavy attack.

Still, the kind of ideal of which I speak does exist at the grass roots level, in the personal and religious lives of ordinary people. They carry the tradition of the West, as Kendall liked to put it, "in their hips." That tradition, with its deep respect for virginal innocence and manly restraint, is both powerful and galvanizing. Its opposite, a doctrinaire ethos agglutinated by slogans and impelled by chaotic appetites, is politically strong, but spiritually so moribund that even its own advocates are ashamed to admit that they live down to its vile code of license. (The public prurience of the age is largely a way of comparing notes, of making sure that one is not sinking too far beneath the practice of one's peers.) In a fair fight between both views at their best, there can be little doubt which would win. Since the fight is not conducted on even terms, anti-abortionists and other carriers of the Western tradition will have to discover each other, and make common cause. It will take wisdom, and fortitude of a heroic order.

A final and encouraging word. It is true that changing the law—

or rather, since the Supreme Court has taken the matter out of the realm of ordinary political process, *restoring* the law—will be difficult. But even if that object is never attained, anti-abortionists may accomplish much on another plane. Their ultimate purpose, after all, is to prevent the killing of the unborn. And the greatest strength they have is the system of morals and manners they implicitly share with their fellow citizens. If the battle is waged at that level, if it is felt to be morally dubious to abort, if people can be made to feel the distinction between what the Court permits us to do and what civilized people choose to do, then the moral tone of American life, out of which any legal reformation must grow, will be preserved. And this means that anti-abortionists must avoid stridency, demonstrating instead a deep and decent solidarity with the rest of non-liberal America, instead of seeming to assail without distinction. If, as William Buckley puts it, bad taste leads to murder, good taste can save lives.

Watching an Abortion

Magda Denes

[The author is invited by "Dr Szenes" (all names except the author's are fictitious) to watch a saline abortion; she describes here what she saw, and her reactions to it and to other things she sees in the hospital.—Ed.]

"I HAVE TO get back to work, do you want to watch?"

"Very much, thank you."

"Stand here, then," he says, opening the swinging door and pointing me to a strategic corner where I can see but will not be in his way. To the girl he says, "Come in, young lady, I am Dr. Szenes. This is Dr. Denes, she'll be with us for the duration. Okay?" The girl nods, yes. He guides her to the treatment table and hands her over to the nurse who has been silently waiting. The nurse helps the girl onto the table and makes her lie down. She lifts the girl's white hospital gown to her waist and covers her thighs and genitals with a sterile disposable towelette, leaving her round protruding belly exposed. With a small gauze pad she washes the area with alcohol. Meanwhile, Dr. Szenes scrubs his hands at a tiny sink in the corner opposite to mine. "What is your name, young lady?" he asks. "Flo. Florence Sullivan." "Sullivan. Irish, eh? And how old are you?" "Well, my father was Irish. Sixteen and a half." "That's pretty young, to be going through this. When was your last period?" "June or July." "Which?" "June, I guess." "That makes you twenty-two weeks pregnant. Right?" "That's what I was told." The conversation goes on, partly to gather information, partly I suppose to reassure the girl, who looks terrified.

When he is through scrubbing, Szenes stands in front of the nurse, who holds open first a left, then a right sterile rubber glove so that the doctor can slip his hands into them. "Now this whole thing should not hurt you," he says, again addressing the girl. "It will be uncomfortable, but it should not hurt." The nurse hands Dr. Szenes a sy-

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Magda Denes is a clinical psychologist who had an abortion several years ago, after which she decided to revisit the hospital to observe other abortions, as well as interview members of the medical staff, patients, family members, etc. Her new book *In Necessity and Sorrow: Life and Death in an Abortion Hospital* is based on that research. This excerpt is taken directly from the book (beginning on page 53 and continuing through page 61) without alteration or omission, and is reprinted with permission by the publisher, *Basic Books, Inc.*

ringe. He expels a little liquid into the air, then injects Flo, near her belly button, just under the skin, holding the syringe parallel to the girl's abdomen. About two seconds later without removing the needle he jerks the syringe upward to made the needle plunge straight down into the abdominal cavity. At this point the needle is invisible and the syringe is completely vertical in the doctor's hands. The injected liquid is 5 cc's of Novocain. Flo winces and her eyes well up, but she remains silent. Szenes smiles at her. "That was the worst part, the rest is apple pie."

The nurse sprays the area with iodine solution, tinting Flo's skin the color of brown mustard. She takes the syringe from the doctor and hands him a needle. It looks enormous. He holds it up to show me. "It is an eighteen-gauge, three-and-a-half-inch long spinal needle. We use this to tap the fetal sac. It works very well." Turning back to the patient he places the needle on the exact spot of the injection and pushes it in to the hilt in one firm fluid motion resembling the choreographed movement of a dancer. Now that the horsing around is over, Szene's first-rate professional competence is unmistakable. There is no reaction from Florence. The needle ends in a pink hub about half an inch long. Holding on to it, Szenes removes the stylet to permit the free flow of amniotic fluid. As he lifts the stylet, I see a little squirt of yellowish liquid shoot up through the pink hub. Szenes says: "That's good. We're doing very well." The nurse hands him a short, thin rubber tube, one end of which he attaches to the needle hub. To the other end of the tube he connects a large syringe. Holding it steady, he slowly pulls the plunger outward, filling the syringe with a thin liquid the color and consistency of urine. He is suctioning out the amniotic fluid. When the syringe is filled he disconnects it from the rubber tube and squirts the liquid into the corner sink. The process is repeated three times—amounting altogether to one hundred and fifty cc's of amniotic fluid removed from Flo's belly.

"How do you feel, young lady?" "Fine." Flo's voice is barely audible. Her hands are clutched on her chest, and she is very pale. "Excellent, because we are almost finished. I am going to hook you up now to the saline to replace the fluid we took out. While that's going on, you'll have to tell me whether you feel anything unusual. Like if your face gets flushed or if you suddenly feel numb or very thirsty. Things like that, okay?" Flo nods. "Talking doesn't interfere with this process, you know." The intent is to console, the result is disaster. Flo breaks into racking, body-shaking sobs. Her belly heaves up and down causing the rubber tube to flop about. "Stop

it," says Szenes, his voice rising. "Stop it at once, you will dislodge the needle." The nurse, who until now has not uttered a sound, puts her hand on Flo's forehead and says, "Come on, dear, it is almost over." Flo grabs a corner of her folded-up white gown, stuffs it into her mouth and bits down on it. She looks like a broken-hearted three-year-old. For the first time since I have entered the room the context of the scene reasserts itself in my mind. Riveted, I have been watching on the level of pure performance something I have not seen before. Szenes, the nurse, even Flo, have been actors in a dramatic medical procedure, for me to observe and learn first hand. But the sobbing? The hand on the forehead? The rising inflection laden with concern of potential danger? This is no instructional demonstration, and the withdrawn liquid is no urine. It is fluid essential to the life of the child whose heart is beating in the belly of this other child. This other child who lies here, terrified, heartbroken, tormented, sucking on her shirt.

Next to the treatment table there is an intravenous stand about ten feet tall with an inverted bottle hanging from each side of its crossbar. One of the bottles has a long rubber tube attached to it. Szenes removes the short tubing from the hub of the needle in Flo's belly and connects it to the long tube leading from the bottle. The bottle contains hypertonic saline solution. He checks that the flow is steady by lowering and raising the bottle a couple of times, before replacing it on the crossbar of the stand. "I want about two thousand," he says to the nurse. It is evidently her duty now to keep an eye on the amount and the evenness of the flow.

Szenes sits down at a small desk in my corner to make notes in the charts. "Look here," he says to me, pointing to a number that exceeds nine thousand. "What is it?" "The patient's number." "You mean you have done this many?" "Well, not I, the five of us. Four, really, because Dr. Marcus joined us only a couple of hundred ago. I'd say about two thousand apiece, give or take a few."

The words of a pamphlet I had picked up weeks ago come back: "As a result of the concentrated solution of saline in the uterus the fetus will not survive more than a few hours after the injection." There is no way then to assert, except by pretense, that what is being salinated in its mother's womb is not alive or not human. There is no way to say that this is not a type of murder. And yet, there is no way to say that it would not be just as surely murder, more cold and vengeful, to force little Flo to give birth to her bastard.

This is no floor for self-assurance. No floor to feel good about anything.

"Okay," says Dr. Szenes, getting up and checking the bottle. "I think we can remove this now." He disconnects the bottle, retracts the needle, and the nurse puts an adhesive strip on the tiny puncture site. "Do you feel all right?" Flo nods. "You can go back to your room now. Lie down for a half-hour. Then drink two glasses of water. After that, you can walk around. Watch TV. Make phone calls, whatever you want to do. When dinner comes you must eat it all whether you like it or not. All of it. After dinner you are to stay in bed. The house doctor will come to your room and put an intravenous needle in your arm. Once that's done you may not move at all, nor eat or drink anything. The IV contains glucose to nourish you and a medicine called Pitocin to stimulate labor. If the cramps get bad you can ask the nurse for some Demerol, a pain killer. You must ask for it if you want it, because the nurses can't tell when your pains get really bad. Don't believe anyone who says it retards labor. It does nothing of the sort. With any luck, you should be all done twenty-four hours after the IV is inserted. Any questions?" Flo has climbed off the table and is adjusting her gown in the back, where it is open, in preparation for leaving. She say, "No." "Fine. Good day, young lady." Flo leaves, and Szenes sticks his head out the door: "Next please."

I look at my watch. Fifteen minutes have passed since I entered the room. I am drenched in sweat. I have a bellyache. I gather my stuff together. "Oh, you are leaving?" "Yes. I think so. Thank you very much. And I'd like to come back later if I may." "Any time, a pleasure." I walk out as I hear him begin to explain the procedure to the new girl in the room, who is black, whose name is Joan, and whose age is thirteen.

I do not get to see Flo deliver. In fact, I do not see anyone deliver for a very long time.

Once the IV is inserted the patients are confined to bed, and they deliver there, anywhere from twenty-four to thirty-six hours later. The precise moment is unpredictable. The process is exactly like giving birth to a child: cramps, water-break, fetus, placenta, end. Although I frequently hear screams from this room and that, I am somehow never in the right room at the right time. "Did your water break?" "Yes." "Then you'll deliver very soon." "Within the hour, I was told." "Oh my God, it's ten to four, I have to be in my office at four o'clock. Goodbye. Good luck." I never invent my excuses, they just come up. Repeatedly.

I decide to put an end to my stalling and spend an uninterrupted afternoon on the floor. Nothing happens, not even screaming.

Toward evening I turn in desperation to one of the nurses. "Isn't anybody going to give birth today?" Before she can open her mouth, her face tells me that I have spat in the soup. "Doctor, that is not what happens here." "I am sorry, I mean deliver a baby, I mean fetus. To hell with it, nurse, I am going home. Good night."

The next afternoon I return determined, regardless of where I am at the time of delivery, to look inside the buckets.

Two doors down from the nurses' station there is a little room with several large garbage cans, each neatly marked for different types of garbage, and a medium-sized table on top of which stand paper buckets—the type in which one buys fried chicken from take-home stores. The buckets are covered with their paper lids. Attached to each lid there is a white cardboard label bearing—printed in ink—the mother's name, the doctor's name, the time of delivery, the sex of the item, the time of gestation. Inside each bucket, I have been told, there is a fetus and its placenta stored in formaldehyde. At the end of the day the buckets are transferred to the laboratory where the contents are examined for abnormalities. That done, they are collected in a large plastic bag, and a special messenger takes them to a sister hospital in possession of an incinerator. There they are burned.

I ask the nurse on duty for some rubber gloves. "What size?" she asks. I am unaware that they come in sizes. Somehow I always thought that they were one-size-fits-all stretch. I hold up my left hand to show her its size. She misunderstands the gesture and says astonished: "You want size five gloves?" "No, I mean six," I answer, faking it. "I have only six and a halves." "That's fine, thank you." I have learned that with nurses I must disguise my ignorance of medical matters, otherwise they become suspicious of my right to do whatever I am doing and they put obstacles in my way.

I go into the little room, place my stuff on the floor next to the garbage cans, and pull on the gloves. Their fit is remarkable. My hands feel completely protected without any noticeable loss of agility. I enjoy very much having them on. I touch several objects at random —my pencil, the curving outside of a bucket, the edge of the table, the handle of my briefcase, my nose—and I am delighted with the experience of false contact. My hands can gather accurate information without being in the slightest way exposed. I can touch anything, I think, and feel what it is, and yet it can not touch me. A paradise of one-sidedness. I have a vague sense that there is some kind of parable hidden in the experience, but I cannot arrive at it in words.

Besides, I am also a little ashamed that I can stand in this garbage-can-filled graveyard, playing with gloves.

Planting myself in front of the table, balanced, legs slightly apart, I remove with one hand the lid of a bucket. The sharp fumes of formaldehyde instantly hurt the insides of my nose and throat. The smell also brings with it the long-forgotten memory of fetal pigs. The association strikes me as unseemly; nevertheless I remember, with unwanted total recall, the misery of my sophomore year in college, when in Bio. I., every Wednesday from three to five, for six months, we dissected the fetal pig. On the first day of class the instructor brought in a huge container filled with formaldehyde and floating pigs. He fished out one pig for each student, tagged with the student's last name, giving the impression that the pig was a lost, finally returned relative, in regrettable shape. My English at the time was very poor so that it took me weeks to catch on why the pigs were so small. I thought "fetal" was a brand name like "Jersey" for cows. When I did catch on, I cut classes for a month. That entire semester I would at odd and inconvenient moments think that I could smell the burning odor of mildly decomposed flesh stored in acid.

I look inside the bucket in front of me. There is a small naked person in there floating in a bloody liquid—plainly the tragic victim of a drowning accident. But then perhaps this was no accident, because the body is purple with bruises and the face has the agonized tautness of one forced to die too soon. Death overtakes me in a rush of madness. Oh yes, I have seen this before. The face of a Russian soldier lying on a frozen snow-covered hill, stiff with death and cold —on one hand an erect, bloody stump, where someone has cut off his ring finger to get at his wedding band. Oh yes, I have seen this face before, on humans and on a castrated horse, left lying in its blood across some unrooted streetcar tracks by someone demented with hunger who thought he had found food. Oh yes, I am no stranger here—I have seen brains spilled on sidewalks and hearts crushed forever with one blow. Who says you can't go home again? A death factory is the same anywhere, and the agony of early death is the same anywhere.

I take the lid off all the buckets. All of them. I reach up to the shelf above this bucket graveyard tabletop and take down a pair of forceps. With them I pull aside in each bucket the placenta, which looks like a cancerous mushroom shrouding the fetus. With the forceps I lift the fetuses, one by one. I lift them by an arm or a leg, leaving, as I return them again, an additional bruise on their purple, wrinkled, acid-soaked flesh. I have evidently gone mad. I carry on the

examination, whose sole purpose by now is to increase the unbearable anguish in my heart. Finally, I lift a very large fetus whose position is such that, rather than its face, I first see its swollen testicles and abnormally large stiff penis. I look at the label. Mother's name: Catherine Atkins; doctor's name: Saul Marcus; sex of item: male; time of gestation: twenty-four weeks. I remember Catherine. She is seventeen, a very pretty blond girl. Not very bright. This is Master Atkins — to be burned tomorrow — who died like a hero to save his mother's life. Might he have become someday the only one to truly love her? The only one to mourn her death?

"Nurse, nurse," I shout, taking off my fancy gloves. "Cover them up."

Abortion in the American Context

John T. Noonan Jr.

I MEAN TO set out here the abortion problem as it actually exists in America and I shall argue for the response which should be made to it within the context of the American tradition of pluralism and constitutional democracy.

First, then, the situation as it exists. Since January 22, 1973, the date of *Roe* and *Doe,* abortion on demand has been the law of the land.[1] That is, since that date it has been constitutionally impermissible to regulate by law the practice of abortion in any significant respect. In making decisions the Supreme Court normally balances one competing interest against another and strikes a compromise according some recognition to each. But the balance the Court has struck here has tilted so far in recognition of the abortion-seeker that nothing is left to be accorded the fetus.

Until the child in the womb is viable, the Supreme Court has determined that it is to be treated as a thing, as a zero, as entitled to less protection against destruction than a bird or a blade of grass in a national park. An alligator in Avocado Creek, Florida, is entitled to more protection than a five-month-old human fetus anywhere in America.[2] So wholehearted, so intense have the Justices been in eradicating protection for the unborn that they have not only invented a right to abortion unknown in over a thousand years of Anglo-American jurisprudence; they made that right absolute, subject to none of the restraints by which even such truly basic rights as the right to free speech are channeled.[3] Once a woman has decided to abort her young baby in the womb, no legal power in the United States may stand in her way.

After viability has been reached, after that imaginary point has been attained where the child might exist independently of the mother, the child remains legally vulnerable to the destructive urges of his or her parent. True, the Supreme Court, while not even then recognizing the viable child as a person, said that the State might regulate abortion in that child's interest. But the Court added an

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important proviso—the State must still permit an abortion for the health of the mother;[4] and by the Court's own definition, the term "health" includes the psychological and emotional well-being of the mother.[5] Whoever heard of an abortion being performed which was not at least aimed at the psychological and emotional well-being of the mother? Anyone familiar with the operation of California law before 1973 knows how routinely psychiatrists certified every abortion case presented to them as one where the mother's health required the abortion. The Court's apparent exception of the last two or three months of pregnancy from the rule of abortion on demand is mocked by the standards of the medical profession. If abortion may always be performed legally where the mother's health requires it, we have in fact abortion on demand for every month of the child's existence in the womb.

The advocates of abortion have gone further. They want the right to kill the child who is mature enough and strong enough to escape the homicidal movements of the physician. They want the right to kill the child who is born alive after an attempt to kill has been unsuccessful, after the abortion itself has aborted. Why else have they made a martyr out of Dr. Edelin, who was convicted of manslaughter for negligence in the care of an aborted child born alive? Twenty separate organizations favoring or fostering abortion appeared as "friends of the court" to urge the Supreme Judicial Court of Massachusetts to reverse his conviction. Here is what one of the briefs, filed on behalf of certain medical school deans and professors, asserts on p. 12: Abortion is a procedure for "the destruction of fetal life" and this procedure "cannot be halted, once begun." Here is what the brief on behalf of Planned Parenthood of America, p. 5, proclaims: Dr. Edelin's conviction "will have an unwarranted chilling effect upon all physicians" performing abortions. Here is the statement made by the Civil Liberties Union of Massachusetts at pp. 11-12: "The right of a woman is more than the right to physically terminate her pregnancy. It is the right not to be a mother, not to give birth to offspring, not to be forced to raise an unwanted child." To vindicate these rights, these friends of the court have been willing to defend the acts of a physician found not to have cared whether the boy-child he removed from the womb was alive or dead, or lived or died.[6]

Why has the national media paraded this standard type of Anglo-American manslaughter as an abortion case if the advocates of abortion do not see it as falling within abortion logically, emotionally, practically? If you can try to kill the child within the womb, why can you not finish the job if you bungle the first attempt? If you have

set your heart on destroying your offspring, why should you be embarrassed by the offspring's survival? If a certain percentage of attempted abortions result in livebirths—they do—should not the abortionist have the security of knowing that he always has a second chance to complete his work?

Such is practice. Legally, the issue is unresolved. For over a thousand years Anglo-American jurisprudence has extended to the child outside the womb all the protections it has given the adult. Yet for the past six months the Supreme Judicial Court of Massachusetts has failed to decide the *Edelin* case—an ordinary case of manslaughter by gross neglect if traditional standards are applied, but an abortion case if the advocates of abortion are correct. While this respected court has hesitated or divided, the Supreme Court of the United States in *Planned Parenthood v. Danforth* has held it unconstitutional to require the physician to give the same care to the child in the womb who is slated for abortion as to a child intended to be brought forth alive.[7] The law, it is implied, may not constitutionally respect the mother's interest in having an abortion by providing that a physician must take care that the child, delivered by abortion, live. Justice Blackmun's reference to other criminal statutes protecting the "liveborn infant" does not remove from his opinion its terrible preference: better, the Court holds, that the abortion be fatal than that the physician be held to a service to life.

Our legal situation then is abortion on demand as the law of the land and killing after birth as a legally disputed practice. Meanwhile the advocates of outright infanticide grow. Academic philosophers—Michael Tooley, for example,—say with reason that there is no difference between abortion and infanticide; and they draw the logical if wicked conclusion that infanticide is to be accepted.[8] Only recently I was invited to contribute to a symposium on "Permissible and Disputed Means of Infanticide." When our philosophers have become so corrupt as to consider some ways of infanticide disputable and others permissible, it is not surprising that our judges shrink from defending newborn human life by the traditional sanctions of the law.

The massive lifetaking assault, now constitutionally protected, constitutes only a portion of the situation in which we live. As American citizens we are compelled by court mandate to support, to finance this slaughter. We cannot have municipal hospitals providing surgical services for the poor without having these hospitals used for the practice of abortion.[9] We cannot have state programs of medical services without funding abortions.[10] We cannot have a federal program of aid for medical costs without part of that aid going to pay

the costs of abortion.[11] Already hundreds of thousands of abortions have been made possible by the employment of federal funds; the Department of Health, Education and Welfare has reported on them in the manner of the Defense Department giving the body count in Vietnam.[12] Congress in the most recent appropriations measure has banned the use of federal money in the Social Security program to pay for abortion. How long does anyone knowledgeable of the recent judicial decisions suppose that this expression of the popular will will stand? Only as long as it takes for some branch of Planned Parenthood of America or the American Civil Liberties Union to present the case to a federal district judge. If abortion is a constitutional liberty, if abortion on demand is the law of the land, Congress cannot chill the liberty or frustrate the demand by a discriminatory prohibition. The Congressional enactment is a paper move.

The advocates of abortion have not scrupled to coerce the consciences of the great majority of Americans who do not want to finance abortion. They have militantly threatened to wrest to their own purposes the hospitals and medical facilities built by the sacrifices of those who find their doctrine most abhorrent. All around the country—in Colorado, in Kentucky, in Wisconsin—they have attacked with lawsuits privately-operated hospitals and sought to force them by employment of the public force to perform abortions.[13] They have not yet succeeded. But the Fourth Circuit Court of Appeals, embracing Pennsylvania and the other Mid-Atlantic states, has ruled that a hospital which has once received federal funds from the Hill-Burton Act is a public facility, compelled thereby to comply with the requirements laid on public institutions.[14] There is scarcely a religiously-sponsored hospital in the country which is not this kind of beneficiary of federal help. We may expect, then, in the Mid-Atlantic states, and in the country as a whole if the Supreme Court so rules, that the institutions founded and staffed by dedicated Christian women will be turned into places where the unborn are processed to their deaths.

Killing inside the womb, killing outside the womb, killing by personal desire, killing as a public function, killing by conviction, killing against conscience—such has been and is now the program of the pro-abortionists. We do not deal now with the nice hypotheticals which once preoccupied the thoughts of moral theologians. We do not deal now with the rare exception, the hard case, so often used to make bad law and bad arguments. We deal with killing on a large scale. We live in a country where over one and one-quarter million children are killed by their parents' desire annually. We live under

governments whose public policy, forced upon them by the judges, is to pay for such killings. The country is not Orwell's *1984* or Huxley's *Brave New World.* It is the United States today.

Nor is this the end of what has been accomplished by the mandate of the Court which decrees what the law of the land shall be. It has become impossible to maintain this assault on life and still respect the structure of the family. Accordingly the Supreme Court (in the *Danforth* case, decided on July 1, 1976) struck two sharp blows against the family. First, it held that a husband had no right to protect his own unborn son or daughter from being destroyed at his wife's demand.[15] Second, the Court held that a girl—even a child of twelve or thirteen—had a right to an abortion which cannot be denied her by her parents.[16]

Consider the sweep of these rulings and their implications for the family. Under established law, a man has a right to conceive a child which the State arbitrarily cannot deny him;[17] he has a right to marry which the State cannot deny;[18] he has a right to adopt his own child conceived out of wedlock;[19] he has a right to notice and a hearing if his child is to be taken from him by his wife.[20] But he has no right to notice, to a hearing, or to anything at all if the child which both have conceived, which both are bound to support, which he may love, is to be destroyed at the mother's wish. With that gift for reading history inside out which has characterized his reasoning, Justice Blackmun held that the State had no power to delegate to a father—as if a father's interest in his unborn child arose from delegation by the State.[21] What idolatry of Leviathan is revealed here! What idiocy in interpreting the demands of nature! Fathers do not love their sons and daughters by delegation of the State. Fathers and mothers do not care for their children by delegation of the State. We do not breathe by delegation of the State.

Are parents not co-progenitors? Are man and wife not a unit in conceiving and in raising a child? Is a woman an atomic entity bearing by herself and destroying by herself? Yet under our law, under our Constitution as determined by this Supreme Court, a woman *alone* is the arbiter of life and death for the unborn child she and her mate have conceived.

As for relations between the generations, the Court has hinted that if a state statute let a judge decide where a minor daughter and her parents disagreed over an abortion, the Court might—might possibly—treat the statute as constitutional.[22] But if the statute merely required that the parents consent before abortion on a minor child was legal, then the statute is against the law of the land. Under our

system a minor child, boy or girl, cannot go to adult movies without parental permission. He or she cannot leave home against their parents' will; cannot do work they disapprove of; is legally incapable of making a contract, and cannot marry without their permission. At common law a surgeon may not remove tonsils or a mole on the skin or perform a skin graft on the body of an infant—that is, on any immature child—without parental consent.[23] But abortion is treated differently. A girl of tender years, without parental permission, without even telling her father or mother, has an unqualified right to an abortion. The physician may cut her open, remove her child, destroy her child, affect her body, her emotions and her mind for years to come, and do it because she wanted it. The natural interest of her father and mother in their grandchild is treated as nothing. The natural interest of her parents in her physical and emotional health is treated as nothing. The natural interest of her parents in her conduct and formation of her conscience is treated as nothing. Small wonder that the teenage girls seeking abortions in Boston this summer were photographed wearing bags over their heads. By choice they hid their faces. By law they were the anonymous, faceless creatures which the concealing bags proclaimed them to be.

Second, I turn to what we can and should do now in the America in which we live. Let us look at the shibboleths by which we are confronted, and by which we are urged to refrain from action. We are told that in a "pluralistic-society" we should tolerate conduct we personally would not practice. We are told that to press for alteration of the Constitution is divisive. We are informed that we should not be a people dedicated to one issue. Have these slogans any validity except as they are used as excuses by the timorous and faint-hearted?

If abortion is killing—I do not say murder for that is a term traditionally reserved for the taking of more mature human life—but if it is the killing of human beings, how can we tolerate it in the name of "pluralism"? No one doubts that the child conceived by two human parents is not a rock, a plant, a cow or an ox. That child is human because that child's parents are human. That child is alive. When someone takes that human child's life, we cannot be content to say, passively, "That is your privilege." No one accepts cruelty to a child as the privilege of the parent. How can this atavistic return to the parents' power of life and death over children be accepted? The unborn child is our brother or sister. We cannot, without closing our eyes to reality, treat that child as a thing or let him or her be so treated.

Do we divide the country when we ask for justice to the unborn? For almost two centuries the country gave that protection. In 1967, in some state legislatures, the protection began to weaken. Then, on January 22, 1973, it was taken away altogether by a decision which the most astute and most devoted students of constitutional law have found incomprehensible. It is *Roe* and *Doe* and their *sequelae* that have divided the country. It is they which have put into contention the most divisive of moral questions, "Who is a human being?" Because seven men in Washington have chosen in the exercise of raw judicial power to deny what our civilization has held, must we quietly accept their fiat? Who was guilty of dividing the country in 1858—those who tried to stop the expansion of the slave power or the seven men in Washington who decided *Dred Scott v. Sanford*?

When we respond to the abortion problem as decisive, as fundamental, we are responding no less to a great human issue than the abolitionists. We are scarcely more committed to a single issue than those millions of Americans who made involvement in the Vietnam war their criterion of political choice. The abortion issue cuts across the usual ideologies of Left and Right. It is troublesome to the party politicians who are used to compromises, worked out in dollars. The issue cannot be compromised. It cannot be solved by dollars. It will not go away. It is a test of character and a litmus test of hypocrisy for candidates for public office.

Even the pejorative description of abortion as a single issue is misleading. The abortion issue has multiplied. It is the issue of the function of the physician: Is he a healer only or should he also kill? It is the issue of the role of the government: Should the government's task be to protect life or to take an active part in reducing the population through programs of abortion? It is the issue of the status of the family: Are married persons a unit specially recognized by the law or are they two individuals with no more rights and privileges than the single person? Do parents have particular responsibilities for the mental, physical, and moral welfare of their children, or are minor children free to make their own decisions about procreating offspring? These questions go to the roots of our society. To take a stand in answer to them is to participate in the shaping of our country. Shall we stand aside and let those with narrower goals and less humane aims be the shapers?

In this contest which has now gone on for a decade, Catholics have had a special part to play. In part it has been thrust upon them by the advocates of abortion, anxious to make it appear that the common Anglo-American heritage of respect for life was the peculiar

tenet of a single religious body. But this tenet which Orthodox Judaism shares with the great Protestant churches, with Mormonism, and with Catholicism, has been defended with particular conviction by Catholics aware of their Church's historic concern for the sanctity of marriage, the goods of family life, and the holiness of procreation. How shameful is the conduct of those Catholics who resent the leadership of their bishops and out of fear of being considered cloddish peasants—I quote the *National Catholic Reporter*—take the opposite position. Like the immigrants of a century ago, they want to be taken for good Americans; but, unlike the immigrants, they have not the excuse of being strangers and, unlike the immigrants, they chose their path at the expense of the most basic principles of their religion. How pharisaical is the speech of those Catholics who reprove the excesses of the "pro-life" movement while keeping themselves aloof from all involvement in the struggle. Amateurs in politics will often make mistakes that more experienced hands know how to avoid. Persons dedicated to principles will often seem severe to those who are unaroused. How many mistakes the abolitionists made before they extirpated slavery! How many persons they offended by their seeming churlishness. But better to have been with them than standing on the sidelines fastidiously deploring their manners while swallowing the enormity of the expanding slave power.

How frightened is the conduct of Catholics who will not enter the fray because the outcome is not assured! They want to know that their allies will win, or they will do nothing. Was victory assured in the great battles of the sixties for civil rights? Why do these persons sit idle when the stakes are higher for human dignity and the risk of defeat through apathy greater?

How deluded are those Catholics who say, "Let the government be neutral. That is all we can ask." In the American context, the government cannot be neutral. In the American context of belief, what is legal is taken as what is right. In the American context of constitutional law, what is a constitutional liberty must be secured by the state. As long as a woman has a right to abortion services, the government, if it provides medical services at all, must provide abortions. In America the government must be either for abortion or against it.

What, then, must we do? If we are to believe the most recent appointee to the Supreme Court, Justice John Paul Stevens, *Roe v. Wade* is "now part of our law."[24] But we do not have to accept it as part of our law. The Court is free to change its mind. While we wait for that necessarily slow process to occur by means of retirements

and new appointments, we are free to amend the Constitution; and here we have two routes. We may act through Congress by a two-thirds vote of the Senate and the House proposing an Amendment to the States, which three-fourths of the States then pass. Or we may take the more democratic route afforded us by Article V of our Constitution: through action by two-thirds of the State legislatures we may require Congress to call a Convention for the very purpose of proposing Amendments. As I contemplate the procrastination, the political complexion, and the history of the past three years in Congress, I reluctantly conclude that it is this second route we may have to take. I am reluctant because of the fears a constitutional convention engenders among many lawyers; but I am not reluctant because of fear of failure. The strength of the forces favoring life has been in the grassroots. They can most effectively work upon the state legislatures to call a Convention and upon the Convention once it is called.

The method of Convention, however, is not free from problems. It has never been tried.[25] The State legislatures must act within a reasonable time of each other's action in their call upon Congress.[26] The President would probably have to join in the call upon Congress.[27] The lawyers and the liberals—who distrust the people—will be in opposition. It is a last resort, to be tried only if the appropriate congressional committees remain deaf to entreaty.

Everything short of an Amendment has been tried and has failed. The States have tried to define the unborn child as a person and been told by federal judges that such definition is not only unconstitutional but actually *frivolous*.[28] The States have tried to require care from the physician attending the unborn chosen for abortion. They have tried to respect the rights of husband and of father and mother.[29] Nothing has suited the Supreme Court, whose members have sat as men wiser than all the legislators. The Court tells us what the Constitution means. We can only escape the Court by making the Constitution unmistakable in its protection of the unborn.

NOTES

1. *Roe v. Wade* 410 U.S. 113; *Doe v. Bolton* 410 U.S. 179.
2. See 15 *U.S. Code* sec. 3; *U.S. v. Stokes* 464 F.2d 148 (5th Cir. 1972).
3. *E. g., Kovacs v. Cooper* 336 U.S. 77 (1949).
4. *Roe v. Wade* at 164.
5. *Doe v. Bolton* at 192.
6. See *1974-1975 Reporter on Human Reproduction and the Law* (hereafter RHRL) I-C-117 (Super. Ct. Mass. 1975).
7. *Planned Parenthood of Central Missouri v. Danforth* 44 (1976) LW 5197 at 5206.

8. M. Tooley "Abortion and Infanticide", *Philosophy and Public Affairs* 2 (1972) 37.
9. *Nyberg v. City of Virginia* 361 F.Supp. 932 (D. Minn. 1973).
10. *Doe v. Wolgenwith, 1974-1975 RHRL* I-C-49 (W.D. Penn. 1974).
11. *Coe v. Hooker, 1975-76 RHRL* I-C-17 (D. N.H. 1976); *Roe v. Norton* 408 F.Supp. 660 (D. Conn. 1975).
12. Department of Health, Education, and Welfare, "The Effects of General Provision 413 of the Labor-HEW Appropriations Act," *Memorandum to Senate-House Conferees,* September 24, 1974.
13. *Doe v. Bellin Memorial Hospital* 479 F.2d. 756 (7th Cir. 1973); *Ward v. St. Anthony Hospital* 476 F.2d 671 (10th Cir. 1973); *Jackson v. Norton Children's Hospital, Inc.* 487 F.2d 502 (6th Cir. 1973).
14. *Doe v. Charleston Area Medical Center, 1976-1977 RHRL* I-C-26 (4th Cir. 1975).
15. *Planned Parenthood v. Danforth* at 5202.
16. *Ibid.,* at 5203.
17. *Skinner v. Oklahoma* 316 U.S. 535 (1942).
18. *Loving v. Virginia* 388 U.S. 1 (1967).
19. *Stanley v. Illinois* 405 U.S. 645 (1972).
20. *Armstrong v. Manzo* 380 U.S. 545 (1965).
21. *Planned Parenthood v. Danforth* at 5202.
22. *Ibid.* at 5204; *Bellotti v. Baird* 44 LW 5221 at 5225 (1976).
23. *Bonner v. Moran* 126 F.2d 121 (D.C. App. 1941); for the nonmedical examples, see *Planned Parenthood v. Danforth* at 5212 (dissenting opinion of Stevens, J.).
24. *Ibid.,* at 5212.
25. See A.E. Bonfield, "Proposing Constitutional Amendments By Convention: Some Problems," *Notre Dame Lawyer* 39 (1964) 659.
26. *Ibid.,* at 665-670.
27. *Ibid.,* at 674.
28. *Doe v. Israel* 358 F.Supp. 1193 (D. R.I. 1973).
29. *Planned Parenthood v. Danforth* 44 *LW* 5197.

Abortion and the American Political Crisis

George W. Carey

THE ABORTION controversy mirrors a far wider battle that is taking place in the Western world. The issue clearly involves religious, philosophical, ethical, legal, economic, and *inter alia,* political considerations of the most fundamental nature, involving the very roots of the Judeo-Christian tradition.[1] But here, I mean to note only those aspects of it that clearly pose serious challenges to our own republican institutions and procedures.

For the Founding Fathers the central problem of the strengthened national government which they established *via* the Constitution was this: How could the effects of factions be controlled? For them the word "faction" had a far deeper meaning than we normally attach to it today. It did not refer simply to interest groups in the society, or even to those who had organized to seek change in our political and social structures. Rather, the term referred to those who sought to operate outside the accepted moral and ethical principles which provided the cohesion necessary for the society to operate at all; it connoted a selfish group which sought immediate gratification of its interests at the expense of the long range interests of the society. These characteristics of faction are embodied in Madison's well known definition:

> By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.[2]

Factions, of course, could plague any form of government. But it was well recognized, as Madison put it, that factions are the source of the "diseases most incident to republican government,"[3] the very form of government which the Constitution embodied. Because the "latent causes of faction are sown in the nature of man"[4] and men possess the liberty to pursue their end, no matter how selfish or ignoble, factions are bound to be found in abundance in republican

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forms. Moreover, according to Madison's line of reasoning, it would be both impractical and unwise to take those steps necessary to *eliminate* factions. This would involve the elimination of liberty, an element essential to factions. Yet, to do this would be tantamount to the "annihilation of air . . . because it imparts to fire its destructive agency."[5] Thus, eradicating liberty is too high a price to pay to avoid the ills of faction. To reduce all men to the same interest, another method of eliminating factions, would be impossible because "different opinions will be formed" so long "as the reason of man continues fallible and he is at liberty to exercise it."[6] What is more, to reduce men to the same interests, runs counter to the "first object of government" which is to protect the "diversity in the faculties of men."[7]

Here, let us briefly discuss the solution to the problem of factions which Madison, the purported "father" of our Constitution, was foremost in articulating both in the Philadelphia Convention and in *The Federalist*.[8] The very extensiveness of the new republic, a given factor, played a critical role in his thinking. Extensiveness meant that there would be numerous and diverse interests, a condition not to be found in small territorial democracies, the people would not make decisions directly; rather elected representatives of the people would have to assemble to conduct the affairs of state. These two factors which are the concomitants of extensiveness would serve to *control the effects of faction.* How and in what ways? Because, first, in electing representatives the attention of the people was likely to focus on individuals "whose wisdom may best discern the true interests of the country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations."[9] Thus, factious proposals would stand little chance of success in our national councils of decision making.

Second, the multiplicity and variety of interests would serve to make the task of any faction securing majority support extremely difficult. Factious proposals would seldom "force" themseves into the national political arena. For one thing, among the variety of interests it would be difficult to find a "common motive" for united action, and even if a common motive did exist extensiveness would make it "difficult for all who feel it to discover their own strength."[10] For another, "where there is a consciousness of unjust or dishonorable purpose, communication is always checked by distrust in proportion to the number whose concurrence is necessary."[11] Beyond this, we may note, any concerted campaign by a factious majority would take time. This would allow the people time to deliberate, so that, unlike pure or direct democracies, there would be far less likelihood that a

majority would succumb to unreflective passion and the appeals of a demagogue.

These in brief were the factors which Madison felt would operate to control the effects of a majority faction. In his words, in our extended republic "and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good . . ."[12] But if Madison believed that majority factions would seldom rule, he was certain that minority factions would never be able to impose their will on the entire nation. All that he writes concerning the dangers of minority factions is the following:

> If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution.[13]

A knowledge of only the essentials of this underlying theory is enough to make the victory of the pro-abortionists by means of a Supreme Court fiat appear incredible. What is evident is that none of the hurdles associated with the extensive republic was even confronted, much less jumped, in their successful "campaign." At no point did the people have the opportunity even to deliberate over an issue of such profound moral and philosophical meaning. The pro-abortionists had not tasted victory for their position in any such manner in even one of the fifty-one jurisdictions comprising the nation. Nor did the elected representatives of the people at any level have any input into that policy which is now national in scope. The evidence is irrefutable: If the American system had operated in a manner even approximating what Madison and the founders had anticipated, the pro-abortionists would never have achieved a victory of such dimensions.

Clearly the victory for abortion on demand manifests the breakdown of the traditional American political order. It did not cause the breakdown; it is, however, the most vivid and incontrovertible evidence of that collapse. A faction, and a minority faction at that, was able to impose its will upon the entire nation as *constitutionally* binding.[14]

At the political level the explanation for this breakdown is easy to come by. We can best begin by observing that in the last fifty years or so the Supreme Court has increasingly assumed the function

of a supreme legislative body. Through its interpretation of the "equal protection" and "due process" clauses of the 14th amendment, it has increasingly exercised control over matters and concerns which were formerly regarded as within the domain of the states.[15] For instance, through the process generally known as "selective incorporation" it has used these clauses of the 14th amendment to nationalize the major provisions of the Bill of Rights so that they are now fully applicable to the states. This alone has fundamentally altered our original constitutional ground rules because the Bill of Rights was not intended to apply to the states.[16] On the contrary, it was looked upon as a curb on the powers of the national government *vis à vis* the states.[17] Moreover, and what is more important, the Court's interpretation and use of the 14th amendment, whether in the process of selective incorporation or scrutinizing state laws to see if they conform with the "equal protection" and "due process" clauses, has served to render it an institution of immense powers, far beyond anything dreamt of by the Founding Fathers.

Certain vital issues which in the past evoked controversy concerning the 14th amendment and its purpose are now, sad to say, regarded as "water under the bridge." For example, it is highly doubtful to say the least, that the drafters of the 14th amendment intended that it be used (as it *has* been used) to reduce the states to little more than subordinate principalities under the thumb of the Supreme Court. Rather, common sense, the language of the amendment, and its historical context would strongly suggest that its purpose was to guarantee the newly freed slaves the same due process and equal protection accorded the white citizens of the various states, particularly those which had formerly comprised the Confederacy.[18] Nevertheless, as important as this issue may seem in terms of the drift of the American system, it is, as we have said, passé. The course of events and ideological factors seem to preclude serious discussion of this issue today.

Where we do continue to find controversy is in regard to the interpretation the Courts have given to the principal clauses of the 14th amendment, as well as the Bill of Rights. And, more frequently than not, such controversies involve legal mumbo-jumbo which makes it difficult to see the forest for the trees. The basic issues involved center around the fundamental principles of our system of government and are best understood in this light. It is not difficult to see that reasonable men will come to a parting of the ways at some point over the meaning of equal protection and due process. Nor is it difficult to see that if one adopts a liberal or expansive interpretation

of these concepts, the way is opened for greater judicial control over the states. Of course, and largely for the same reasons, the Court's interpretation of the Bill of Rights also affects the latitude of state discretion.

Against this background, what is abundantly clear is that modern courts—most especially the Warren Court—have seen fit to read their ideological preferences into the meaning, and hence the requirements, of equal protection, due process, and the Bill of Rights. Long standing rules of constitutional interpretation were scrapped to advance the goals normally associated with secular liberalism.[19] For the most part, in these endeavors, the Court was content to nullify state practices which they deemed inconsistent with their constitutional interpretations. However, with the Desegregation Cases, the Court took upon itself the authority to enunciate positive public policy. In the Warren era it began, in effect, to tell the states: "The laws you have on the books are not only unconstitutional but this is what you must do in order to conform with the Constitution." Now the Courts, at every level, are in the business of playing a positive, not negative, role; of commanding specific changes which are presumably the outgrowth of mandates embedded in our constitutional language.[20] Few today, even defenders of the Court, will deny it is legislating. And one has only to look at Boston's Judge Garrity to see clearly the culmination of this process, which comes, in my judgement, to nothing less than judicial tyranny.

In all of this, of course, the Court has far exceeded the role marked out for it by the founders. Evidence that the founders intended judicial review is, at best, very scanty. We do find in Alexander Hamilton's Federalist No. 78 a reasoned argument for judicial review—but of a kind and type totally unlike that which we have described. The Court, Hamilton enjoins, is to follow "strict rules and precedents."[21] Their power of judicial review extends only to laws whose provisions violate the "manifest tenor" of the Constitution.[22] And, according to Hamilton, it should exercise its veto power over legislation only when there is an "irreconcilable variance"[23] between the provisions of the law and the "manifest tenor" of the Constitution. Finally, Hamilton maintains, the Court should always exercise its "JUDGMENT" not "WILL"[24] The exercise of "WILL" he deemed the particular prerogative of the legislative branch.

To appreciate fully the morality which Hamilton urged upon the Court, as if he knew that even severely limited powers of judicial review would be a matter of intense controversy, we should bear in mind his perception of the relationship of the Court to our other

institutions. In this context he writes that the Court is "beyond comparison the weakest of the three departments of power;"[25] "the general liberty of the people can never be endangered"[26] by the Court; it possesses neither "FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments;"[27] and, in this vein, the Court "can take no active resolution whatever."[28] In sum, Hamilton takes pains to assure us, we have nothing to fear from the Court, even one vested with the power of judicial review.

Today, of course, Hamilton's conception of the judiciary and its power, as sensible as it is in the context of a limited republican government, is also passé. What we have in its place is a theory of judicial supremacy, a theory which remarkably enough is supported by most of our elected leaders who accept the notion that the Court is the final arbiter as to the meaning of the Constitution. We need not concern ourselves with detailing how it has come to pass that this doctrine has gained ascendancy. What is important are its ramifications. In the first place, we see that as the Court successfully expands the scope of its domain the latitude for deliberative self-government diminishes. Put otherwise, matters which were formerly considered to be within the realm of the political processes as outlined above, now fall exclusively under judicial control, including both factious and non-factious matters. Second, this new morality concerning the role of the Court both strains our credulity and serves to thwart our normal political processes.

In sum, the doctrine of judicial supremacy combined with the newly-found legislative powers of the Court rest upon the notion that the Court can divine from our Constitution answers to a myriad of perennially perplexing problems — and very small ones as well. The Court seems to be somehow free from the doubts and anxieties which plague mere mortal men, when it pretends to answer such questions as: When does life begin? At what stage in the development of the fetus can we say there is "life"? Or, at the intermediate level, what are the proper structures and processes of our representative institutions? What does representation mean? What ought to be considered in determining the "representative" character of our elected decision-making bodies? How should states finance their schools? What is an equitable tax structure for this purpose? What represents religious intrusion into our educational institutions which are publicly financed? And so on. For the small matters: How many basketballs and of what brand should state authorities buy for given schools to

meet the standards of equal protection as "proclaimed" in the 14th amendment?[29]

Natural Rights Theory and the Constitutional Decline

Yet this transformation of our basic constitutional division of powers could not have come about unless it was supported and abetted by a theory, a rationale, or an ideology. Such is demonstrably the case. We are currently witnessing the full effects of a secular, scientific "humanism" which finds its roots in the natural rights philosophy.

While we cannot explore all the aspects of the relationship between the natural rights school of thought and our contemporary *malaise*, certain features do merit our attention. We should note at the outset that the preposterous fiction underlying the natural rights dogma, specifically that of autonomous individuals in a state of nature, reflects a mind-set which regards the state as an artificial but omnipotent construct. Far-reaching consequences flow from this conception. First, let us consider the image of the autonomous individual who is viewed apart from the complex organic whole of society. His duties and responsibilities to others in the order of things are almost non-existent. Beyond this, the individual becomes a moral universe unto himself; the rationalism imputed to him is the source of rights. Thus, the individual is not subordinate to any higher or transcendental order not of his own making or derived from his own private stock of reason.[30]

Second, that a state can be born out of the consent of such atomistic individuals also provides us insight into the nature of the resultant political order. The state now becomes the chief repositor of reason, itself cut off from any transcendent order or higher moral law. It must, initially at least, build itself on the lowest common denominator of the interests and values of those individuals which comprise it. As such it possesses no higher purpose; its actions, laws, and such, have as their foundation no more moral force than that which the consenting act of individuals can bestow upon it. It follows that the state, like the individuals comprising it, is at sea without an anchor. In this context, to quote the late John Courtney Murray: the state is "simply an apparatus of compulsion without the moral function of realizing an order of justice; for in this view there is no order of justice antecedent to positive law or contractual agreement."[31] And this situation leads us straightway into the morass of moral and ethical relativism.

Third, we should note that such a state eventually becomes all-

pervasive. In terms of the natural rights theory it is the supreme authority precisely because it can lay a claim, superior to that of any subsidiary associations within the state, to embodying the collective will of all individuals. Consequently, and somewhat paradoxically, while there is a relativism with regard to individual values (the opinions of each autonomous individual are equal), there is an absolutism with respect to the state's function; namely, the full power to enforce the rights which it decrees.

These we suggest are the main roots of the secular, scientific humanism which has served to undermine our constitutional order. But to make the picture complete we must deal with certain theoretical developments.

The secularism of the natural rights school bears the characteristics of a religion which has dictated the direction of its modern development.[32] Because there is no transcendent moral order, the chief functions of the state become those of providing for material gratification. Science figures predominantly in this process for two reasons. First, science is the area which is presumably value free; where, unlike the moral realm, findings, holdings, and the like are free from subjectivism. Thus science provides an objective yardstick in an otherwise relativistic world. Second, insofar as material gratification is the principal end of the state, scientific techniques can be of use. For instance, crude utilitarianism is a feature of natural rights philosophy and what could be more natural than the refinement of a "felicific calculus" such as that set forth by Bentham. And this is precisely what has happened. The most recent and exhaustive effort in this direction is Rawls' *A Theory of Justice*,[33] a tedious and rather feeble philosophical defense of the secular, welfare state. Understandably his concern is with "primary goods" and their distribution. Not surprising, the primary goods are material goods and we are led to believe that not only can human wants and needs be determined on a more or less universal basis, but also that various levels of need can be established to insure optimal collective or aggregate gratification.

This development assumes great significance because those who "properly" use felicific calculus to meet the evident wants and needs of the people best fulfill the functions of the state. With this we come up against an interesting but logical inversion of the older natural rights philosophy: The best state is not one run by the people without any regard for a transcendent or higher moral law; rather it is one run for the people by those best able to calculate optimal material gratification.

Ramifications of Decline: Present and Future

We know that the vast majority of the American people have never consciously accepted this secular, scientific humanism in the terms we have set it forth. Very few, indeed, have probably ever given much thought to the intellectual and theoretical grounds which seem to dictate the direction of our governmental policies and the changes in our constitutional order. Indeed, probably few are aware of any such direction or shift. But who would deny that the concerted movement in manifestly predictable directions is not guided by a theory or philosophy, no matter how dimly perceived by the general public?[34] The symbols, clichés, slogans, and assumptions of our public discourse make it abundantly obvious to me that we are traveling down the path to oblivion marked out for us by the natural-rights theorists.

This account of their theory, sketchy as it is, helps to provide a deeper understanding of what has happened within the American system, as well as the directions it is likely to take. Consider, for instance, only the following:

> (a) The elitism spawned by the developments we have traced is a proximate cause for the "realignment" of the intended division-making authority in our system and of our constitutional rules relative to such decision-making. In this context, the Supreme Court is just as capable (probably more so) of making correct calculations as the legislature. After all, legislative deliberation might result in a variety of non-materialistic considerations being brought to bear. Moreover, in the last forty years, the Court's pretense to neutrality finds a warm nesting place among the dogmas of secularism.
>
> (b) The excessive concern for individual rights, apart from the social context in which they are asserted, is also traceable to the natural-rights philosophy. The appeal to the state is understandable enough, for in terms of theory, it is the only agency which is capable of dispensing rights. The result is an omnipotent state busily conferring rights upon individuals without regard to the impact of this on intermediate institutions or associations (the family, churches, schools, voluntary associations, and the like) which are essential for the cohesion of the state. Such intermediate groups have no place in the natural-rights philosophy whose very thrust is, rather, toward homogeneity of the citizens under the all-embracing state.
>
> The process of rights-conferral feeds back upon itself. As it tends to break down the intermediary associations, as the individual comes to find nothing between him and the state, the demands for new, more elaborate, and unheard-of rights grows and grows. Little wonder, then, that modern secularist thinking places such emphasis on our Bill of Rights. Yet, our Bill of Rights is essentially negative: it prescribes those things which government should *not* do. Only through such contortions as those we have witnessed in recent decades can the Bill of Rights meet the positive de-

mands of the secularists. But it is doubtful that until the Ninth Amendment[35] is uncorked—something which I believe is imminent—the Bill of Rights will be able to provide the source of all the rights emanating from the secularists. In any event, we can safely predict an expanded role for the Courts in the years ahead.

(c) We can anticipate in the future far more turmoil than we have as yet witnessed within our society. And this no matter whether our constitutional order is restored to its proper moorings of deliberative self-government, or continues on its present path. A restoration would involve severe "withdrawal" symptoms for a large part of our population which has grown accustomed to the dispensations of the state, principally the Courts. On the other hand, a continuation of the present trend will involve a dragging of feet or disobedience by those who don't like to be ordered about by *fiats* which are *not the product of the deliberate sense of the community.*[36]

Problems and Perplexities: Consensual and Political

I have so far focused on certain political and theoretical aspects of our present crises which are highlighted by the abortion controversy, and which indicate quite clearly a breakdown in the American consensus, not merely a breakdown in the consensual process of the political order. A considerable portion of our population, that is, to say, knowingly or unknowingly accepts and acts upon a theory which postulates the overriding end of the state to be maximum material gratification, individual or collective. Another sizable proportion of the population adheres, again knowingly or unknowingly, to an older, but more vigorous and complex tradition which acknowledges a higher moral law. This older tradition, around which there was almost universal consensus at one time in our history, holds that the matter of "rights" is a very serious and tricky business once one gets around to acknowledging the complexity of society which is a very fragile organism. It holds that fulfilling the stated purpose of our Preamble — for instance, those of justice, securing the *blessings* of liberty to ourselves and our posterity, and domestic tranquility— is demanding; that there are no *a priori* answers to be derived from any baseless theory of natural rights for resolving the inevitable conflicts between the values and goods a society cherishes.

At base, then, there is no single solution to the cleavages in our public consensus. All one can do is to expose repeatedly and with clarity the secularists' basic theory and presumptions in the hope that such a shallow and barren philosophy, once exposed, will fade away.

Other matters, admittedly less important but of immediate concern, are involved in the abortion controversy. One such issue comes down to how to rectify the Court's decisions; more specifically, whether recourse should be had to the amendment process. Some

anti-abortionists hold that such an amendment, taken along with the busing, reapportionment, and prayer amendments, would "clutter up" the Constitution with matters not truly of constitutional status and that, moreover, once it becomes common practice to amend the Constitution every time the Court renders an unpopular decision, the stability of the constitutional order would be undermined. Another, and in our view more compelling, argument against the amendment procedure is that such a course of action would signify by clear implication that (a) the Court possessed the power to rule authoritatively on the matter, and (b) the Court's decision represents a correct reading of the Constitution. Else, why amend?

The argument to the effect that the Constitution would somehow be trivialized by the abortion amendment comes with ill-graces from the pro-abortionists. Having won their case through the constitutional *legerdemain* outlined above, they now seek to close off the only possible remedy given the fact the Court has nailed its decision to the Constitution. In the first instance, it was the abortionists and their kin on the Court who closed off all avenues for rectification save that of amendment. If they were, indeed, sincere about not trivializing the Constitution, they would forthwith confess their guilt.

But the theoretical considerations noted above relative to the clear presumptions involved in seeking an amendment are very weighty. To take the amendment route is to accept the liberal secularists' view of the Constitution, its order and processes.[37] We would, in sum, be playing ball in their park and under their rules. And the consequences of this can only be disastrous because their order is, in reality, no order at all: it holds to no principle, save that of imposing its will through processes which pose the least resistance. And that is why we have witnessed in the last forty years the abandonment of federalism in any meaningful sense of that word, a totally outrageous reformulation of the scope of judicial powers, and continued reversals of field with respect to the constitutional powers and prerogatives of the executive. Moreover, we know very well that when it suits their purposes they will once again change the rules.[38]

The case for a "human life amendment" is, of course, based upon the best of motives and it may seem crass and inhuman to allow these constitutional considerations to preclude a course of action which would put an end once and for all to the ethically-monstrous policy of abortion-on-demand. However, there is another possible remedy which both utilizes our existing constitutional processes and joins the abortion issue with constitutional restoration. Specifically, Section 5 of the 14th Amendment[39] expressly empowers the Congress

through legislation to enforce the provisions of that amendment. Thus, Congress can through a simple statute incorporate the provisions of a human life amendment. This would be step one. Having done this, one of two possibilities would present themselves. First, the Court might accept the congressional act, thereby abandoning its position. This possibility should not be under-estimated given an expression of congressional feeling and the fact that modern courts have shown a truly ingenious capacity to reverse fields.

The second alternative, of course, is that the Court would declare the congressional act unconstitutional. At this point the congressional recourse must be the impeachment process with the end in mind of clearing the Court of those Justices who refuse to budge from their abortion-on-demand position. Here the issues would be joined: Is Congress going to allow the Court to persist in a policy which permits the wanton murder of millions, a policy which contravenes Congress' constitutional prescription?

We hasten to add that we do not lightly recommend such a course of action which would force a constitutional "showdown" of the first order. Such showdowns are to be avoided at almost any cost.[40] But the costs involved in allowing a continuation of the abortion-on-demand policy, by any known ethical standards deserving of the name, scarcely leave any alternative. Moreover, the repeated and successful assaults by the judiciary on our constitutional order, its abortion decisions being only among the most recent, must at some point be emphatically turned back. And while we are under no delusions about the possibilities of achieving success through the means suggested here, the chances of procuring a constitutional amendment are scarcely any better. What is more, to the extent that congressional action along the lines set forth here is even contemplated — be it only a group of, say 30-50 representatives—the message is bound to be heard by a wider audience; the very terms of the ensuing debate will not only bring into focus the salient issues (moral and constitutional) but also put the pro-abortionists on the defensive, and force them to do what is nigh-unto impossible for them, namely, to set forth coherently their own moral and constitutional theories.[41]

Finally, in this connection, we must emphasize that the matter of abortion, contrary to what certain anti-abortionists might contend, is a national, not a *state* or *federal* matter.[42] The very nature of the issue involved must preclude even one state permitting abortion on demand, a probable result of any policy which would overturn the Court's decisions only to the extent of returning us to the *status quo ante*. In this respect, the pro-abortionists have unwittingly performed

a service for the anti-abortionists: having thrust the issue into the national arena, they have highlighted the need for a remedy which is national in scope. Anything less than this would be a Phyrric victory.

This is not to suggest that we should scrap federalism, or refuse to recognize the legitimate role of the judiciary in our system of government. Great care must be taken in curbing the Court and in formulating a coherent and prudential theory of state-national relations.[43] These matters clearly call for thought of the highest order. In saying this, we end where we began: The abortion controversy brings into focus the full range of our civilizational, as well as constitutional, crises. That our political order would sanctify abortion on demand as a constitutional right reflects the depth of these crises. And from this we know that the task of restoring our moral and constitutional order will not be easy.

NOTES

1. In the forceful and eloquent words of Malcolm Muggeridge: ". . . we can survive energy crises, inflation, wars, revolution and insurrections, as they have been survived in the past; but if we transgress against the very basis of our mortal existence, become our own gods in our own universe, then we shall surely and deservedly perish from the earth." "What the Abortion Argument is About," *Human Life Review* (Summer, 1975), p. 6.
2. *The Federalist*, Edward Meade Earle, ed. (New York: Modern Library, n.d.), p. 54. All subsequent citations to *The Federalist* are to this edition.
3. *Ibid.*, p. 62.
4. *Ibid.*, p. 55.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. For a more comprehensive elaboration of Madison's solution see: George W. Carey, "Majority Tyranny and the Extended Republic Theory of James Madison," *Modern Age* (Winter, 1976).
9. *The Federalist*, p. 59.
10. *Ibid.*, p. 61.
11. *Ibid.*
12. *Ibid.*, p. 341.
13. *Ibid.*, p. 57.
14. Most certainly at the time of the Court's decision the pro-abortionists were a minority. As Dean O'Meara puts it: "Not until the recent past did a small but clamorous group begin to agitate for abortion on demand. In *Roe v. Wade* the Court yielded to the pressure of this strident minority." "Abortion: The Court Decides a Non-Case," *Human Life Review* (Fall, 1975), p. 19. Moreover, the polls which purportedly show majority support for abortion have never been worded such as to indicate the full dimensions of the Court's decisions and the practices which they condone.
15. The relevant section of the 14th Amendment is the first which 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 and 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."

16. Justice Marshall's statement in *Barron v. Baltimore* (1833), 7 Peters (U.S.) 243 is considered definitive on this matter.
17. This is apparent, for instance, from the controversy surrounding the Alien and Sedition Acts (1798) which prompted the Virginia and Kentucky Resolutions authored by Madison and Jefferson, respectively. The issue at stake was not, as commonly supposed, freedom of speech and press. Rather it was whether the state or national government possessed the power to punish seditious libel. The opponents of the Acts argued that the 1st amendment precluded any *national* legislation in these areas. See Leonard W. Levy, *Freedom of Speech and Press in Early American History: Legacy of Suppression* (New York: Harper and Row, 1963).
18. In this regard, it is frequently noted that the very same Congress which passed the 14th amendment also provided racially separated schools in the District of Columbia. Unquestionably, there is little resemblance between what the framers of the 14th amendment intended and the various judicial interpretations of it over at least the last forty years. On this see Charles S. Hyneman, *The Supreme Court on Trial* (New York: Atherton Press, 1963), Chapter Fifteen. See also, Charles Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights? The Original Understanding." 2 *Stanford Law Review*, 5 (1949-50).
19. For a detailed and critical analysis of some of the more prominent Warren Court decisions see, L. Brent Bozell, *The Warren Revolution* (New Rochelle: Arlington House, 1966), particularly section two, "The Warren Court in the Dock."
20. To our knowledge this point was first made in Hyneman, *op. cit.* Also in *Cooper v. Aaron* (1958) 358 U.S. 1, we find an assertion of judicial power unprecedented in our history, namely, that the Court's interpretation of the Constitution is superior to and binding upon all other branches of government. Such an assertion can only have validity if we view the Constitution as a judicial supremacy document which manifestly it is not.
21. *The Federalist*, p. 510.
22. *Ibid.*, p. 505.
23. *Ibid.*, p. 506.
24. *Ibid.*, p. 508.
25. *Ibid.*, p. 504.
26. *Ibid.*
27. *Ibid.*
28. *Ibid.*
29. For a relatively complete and up to date survey on the activities of the judiciary along these lines see, "The Power of our Judges---Are They Going Too Far?" *U.S. News and World Report* (January 19, 1976).
30. There is, no doubt, reification involved in the modern uses of natural rights theory. These theories were originally useful in helping to describe in a simplified manner the legal structures and the status of the individual. However, what was originally a purely fictional account constructed for purposes of simplified explanation has, in the last century, increasingly assumed the status of reality. See Sir Henry Maine's *Popular Government* (New York: Holt and Co., 1886).
31. *We Hold These Truths* (New York: Sheed and Ward, 1960), p. 321.
32. On this point see John Courtney Murray's "Law or Prepossessions?" in Robert G. McCloskey, ed., *Essays in Constitutional Law* (New York: Random House, 1957).
33. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
34. On this general matter see, M. J. Sobran, "The Abortion Sect," *Human Life Review* (Fall, 1975).
35. The ninth amendment states: "The enumeration in the Constitution, of certain rights,

shall not be construed to deny or disparage others retained by the people." Once "uncorked" there is no limit to what we can expect, given the number and nature of "rights" asserted in our society at the present time.

36. A good deal of the Southern resistance to Court order integration was, in fact, based on the firm conviction that the Courts were acting *ultra vires* in their pronouncements. We know of many Southerners who during the 1950's staunchly maintained that they would obey a law passed by Congress but not the edicts of the Courts. We may assume that this feeling was widely shared, if we judge by Southern compliance with the civil rights legislation of the 1960's.
37. In what follows we diverge markedly from the views expressed by Professor John T. Noonan in "A New Constitutional Amendment," *Human Life Review* (Winter, 1975). We certainly do not mean to imply that Professor Noonan is a secular liberal.
38. The views of Arthur S. Miller and Ronald F. Howell best illustrate what we are referring to here. "The role . . . of the Supreme Court in an age of positive government must be that of an active participant in government, assisting in furthering the democratic ideal." And, they continue, "judicial decisions should be gauged by their results and not by either their coincidence with a set of allegedly consistent doctrinal principles or by an impossible reference to neutrality of principle." And, in the realization of the goals associated with secular humanism, they write, "the judiciary has as important a role to play as any other organ of government. Perhaps even more important than the legislature or the executive." "The Myth of Neutrality in Constitutional Adjudication," 27 *University of Chicago Law Review,* 666 (1960).
39. Section 5 reads: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." I am well aware of the fact that the operative word in this section is "enforce," and that enforcement applies to *state* action (Section 1). I am also aware of the complexities surrounding the concept of "state action."

    However, the knowledgeable segment of the liberal community, as is well known in the halls of Congress, would prefer to expand the national "police powers" via Section 5, rather than use, as they have had to do in most cases involving Civil Rights legislation, the commerce clause.

    This, more or less, legalistic battle is a "hang over" from the post-Civil War period. The Southern contingent in Congress, understandably enough, is strongly opposed to the use of Section 5 in the manner I have outlined.

    I rest my case for such a use on three grounds. First, the Court itself has recognized my position with regard to Congressional powers under Section 5. See: *Katzenbach v Morgan* (384 U.S. 641). Second, the Southern contingent *is* short-sighted in not seeing that Congress should assume the role of determining such matters as what constitutes "state action" and what the provisions of the Fourteenth Amendment do require. In the long run, they are defeating their own cause by allowing the Court, not Congress, to determine these matters. (See text above re Fourteenth Amendment.) And third, the issue of abortion is of such paramount importance that whatever misgivings the Southern congressional contingent may have toward this use of the Fourteenth Amendment should surely yield, not to the reality of American politics which certainly runs against them, but to a higher morality—a morality which they well recognize is necessary for the preservation of this nation.

    Put otherwise, whilst the fiction remains that the Constitution somehow marks out the boundaries between the national and state government, and that, moreover, the Court is the tribunal to make such determinations, we will in terms of Publius' theory always be susceptible to factious rule.
40. Our position on this is set forth in Willmoore Kendall and George W. Carey, *The Basic Symbols of the American Political Tradition* (Baton Rouge: Louisiana State University Press, 1970), Chapter 8.
41. Aside from this there is the added advantage that legislation would allow for greater

flexibility than a constitutional amendment in making needed adjustments as circumstances might require.

While it can be said that legislation does not provide the same security as an amendment, the answer must be that if the Congress backs a policy of abortion on demand or anything similar to it, there simply is no hope for the republic. If this happens, nothing will save us from our moral degeneration.

42. For a contrary view see, Professor David Louisell, "A Life-Support Amendment," *Human Life Review* (Fall, 1975).
43. In our thinking about these matters, we must not assume a dogmatic stance towards federalism, as if the Founding Fathers had provided us with neat answers to the relative domain of state-national authority. Quite the contrary. They offer no clear-cut answers, but rather depend upon the prudence and good sense of future generations to make reasonable decisions on this matter. See *Federalists* 37, 39, and 46. See also, George W. Carey, "Federalism: A Defense of Political Processes" in *Federalism: Infinite Variety in Theory and Practice,* Valerie Earle, ed. (Itasca, Illinois: F. E. Peacock Publishers, 1968).

Likewise, we should be most reluctant ever to accept the judicial philosophy of Oliver Wendell Holmes, Jr. On this see, Walter Berns, "Oliver Wendell Holmes, Jr." in *American Political Thought,* Morton J. Frisch and Richard G. Stevens, eds. (New York: Charles Scribner's Sons. 1970).

Roe v. Wade: Some Definitional Considerations

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SINCE THE SUPREME Court's decision in *Roe v. Wade*[1] abortion and viability have become, *inter alia*, crucial terminology with respect to human life. They are words which demand precise definition in order to establish the sphere in which human life is legally protectable and in which physicians' conduct may not be subject to criminal prosecution. The Court's failure to define abortion and its abortive attempt at defining viability have engendered regrettable consequences for protectable human life. Ineluctably we have passed from abortion to feticide to infanticide of defective infants.

Nowhere is the definitional problem more blatant than in the post-*Roe* contention that the primary purpose of abortion is to destroy fetal life.[2] What follows is the correlative principle that there exists by virtue of *Roe*, a constitutional right to a dead fetus.[3] This contention is all the more disquieting when we consider that even at *full term,* pregnant women may elect abortion. When abortions are performed after viability the fetus may survive.[4] Moreover, the procedures for aborting a viable fetus typically present the same risks to the mother whether the fetus is saved or destroyed.[5] It is imperative, therefore, to consider whether the right of personal privacy, which includes the right to abortion, includes or implies a right to destroy the fetus *in utero.*

We must focus upon the definition of abortion. Since the turn of the century it has undergone a metamorphosis which reflects, if not accommodates, an evolving concept of viability. Seventy-five years ago the definition of abortion was based upon a time limitation of twenty-eight weeks with a fetal weight of approximately one thousand grams. At the same time, viability was thought to occur at twenty-eight weeks with a fetal weight of approximately one thousand grams. As the concept of viability became increasingly ap-

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plicable to younger and smaller fetuses (specifically, those born between twenty and twenty-eight weeks with a weight ranging from five hundred to one thousand grams) the definition of abortion changed accordingly. (See Appendix B)

At the time of the *Roe* decision in January, 1973, perhaps the most authoritative source for the definition of obstetric-related terms was a text prepared by the American College of Obstetrics and Gynecology Committee on Terminology (ACOG), entitled *Obstetric-Gynecologic Terminology*. Abortion was defined therein as follows:

> "Abortion is the expulsion or extraction of all (complete) or any part (incomplete) of the placenta or membranes, without an identifiable fetus or with a live-born fetus or stillborn infant weighing less than 500 gm. In the absence of known weight, an estimated gestation of less than 20 completed weeks (139 days) calculated from the first day of the last normal menstrual period, may be used. Abortion is a term referring to the birth process before the 20th week of gestation."[6]

Although ACOG's definition reflected a consensus within the professional obstetric community (see Appendix B), *Roe* chose to ignore it in favor of no definition at all. Instead, the Court consistently referred to abortion as the termination of pregnancy. This juxtaposition was not consonant with the realities of medical practice in 1973. Medically, these terms were distinguishable. ACOG's definition of pregnancy termination, which was also available at the time of the *Roe* decision was:

> ". . . the expulsion or extraction of the dead fetus or other products of conception from the mother or the birth of a live-born infant or stillborn infant."[7]

Abortion was medically defined in appellant Jane Roe's brief and in the *Amicus Curiae* brief submitted in behalf of appellant Mary Doe by the American College of Obstetricians and Gynecologists, American Medical Women's Association, American Psychiatric Association, New York Academy of Medicine, Medical School Deans and Professors, and certain individual physicians, four of whose texts appear in our Appendix (J.R. Willson, G. W. Douglas, L.M. Hellman, J.A. Pritchard). Both briefs contained the following definition:

> "Abortion is the termination of pregnancy at any time before the fetus has attained a stage of viability. Interpretations of the word viability have varied between fetal weights of 400 g (about 20 weeks of gestation) and 1,000 g (about 28 weeks of gestation). . ."[8]

Considering the results in *Roe* and *Doe v. Bolton,* it strains credulity that these briefs could have escaped the Court's attention.

An elementary comparison of abortion and pregnancy termination reveals that both terms refer to an expulsive or extractive process and that both terms are specifically neutral in regard to the life status of the fetus or infant. By definition, either live-birth or stillbirth can result from each process. Abortion is distinguishable from pregnancy termination by a time limitation and/or the weight of the fetus. Thus, all abortions are pregnancy terminations but the converse does not follow.

Under current abortion technology, pre-viable fetuses generally do not survive abortion. Even if some do, by virtue of *Roe,* states are powerless to prescribe procedures related to their survival, unless such procedures are reasonably related to maternal health. It is this aspect of *Roe* which lends credence to the post-*Roe* annunciation of a constitutional right to a dead fetus. However, after viability has occurred, the state's interest in human life is sufficiently compelling to regulate abortion in general and proscribe abortion on demand.[9] Difficulty arises in determining how far privacy extends after viability. *Roe* eludes the problem by simply stating that the "right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy . . . the right of personal privacy includes the abortion decision . . ."[10]

Justice Blackmun never explained why privacy encompassed the decision to abort. He simply enumerated various conditions which would inure to the detriment of pregnant women if they were denied the opportunity to make this decision.[11] These conditions go beyond the physical aspects of pregnancy to the psychological burdens of child-rearing. Accordingly, it has been argued that the rationale for allowing women to terminate unwanted pregnancies contemplates that children will not survive to burden them with unwanted parenthood.[12] The elasticity of the Court's holding would seem to support this argument were it not for its acknowledgement of a state interest in viable fetuses, an interest sufficiently compelling to both regulate and proscribe abortion. This interest is rendered nugatory if the primary purpose of abortion is to destroy fetal life.

State legislatures have responded to *Roe* with varying definitions of abortion. Consequently, viable human beings are denied legal protection not because of any asserted privacy interests, but simply because of statutory definitions. Two states define abortion as the termination of a pre-viable pregnancy; nine states define it as the termination of pregnancy; thirteen states define it in terms of feticide.[15] The latter definition surpasses contemporary medical concepts

but it more closely approximates the social reality of current abortion implementation.

Since *Roe* permits, but does not mandate, feticide, we next consider whether states may circumscribe the abortion procedure so as to preclude feticide. Resolution of this issue depends upon whether the fetus has legally protectable life under current law, and if so, when does it occur?

If the Court defined categories of exclusion with respect to legally protectable life, it can be argued with some degree of persuasion that the line of demarcation was viability. At this point *Roe* recognized a dimension to abortion which made it amenable to state regulation.[16] At this point the American College of Obstetricians and Gynecologists recognize "a continuing obligation on the part of the physician toward the survival of a possible viable fetus where this obligation can be discharged without additional hazard to the health of the mother."[17]

But the Court imposes no such obligation upon physicians whose legal duty of care arises only after live-birth. To prevent the occurrence of live-birth and possible criminal liability, it has been recommended as "prophylactically sound" that physicians administer a toxic substance to the fetus.[18] Within the framework of *Roe* this action would be permissible. Absent a statute, no criminal liability attaches to *in utero* actions which cause *in utero* death. A fetus, however viable he or she may be, is currently a legal non-entity, entitled only to whatever statutory protection a state chooses to provide. But states are under no obligation to provide any protection.

Since *Roe,* eleven states have chosen to regulate post-viability abortion by statute.[19] These statutes typically provide that physicians use skill, care and diligence while refraining from techniques designed to kill the viable fetus. Six statutes were challenged in lower federal courts.[20] Analysis of the litigation reveals little dispute that states may protect viable fetuses. The fertile source of controversy is when viability occurs and whether as a matter of constitutional law a specific time limit exists before which no protection may be afforded. *Roe's* language precluded uniform resolution.

The Court divided pregnancy into a neatly carved triptych consisting of the first trimester, the stage subsequent to the end of the first trimester and the stage subsequent to viability. Had it stopped there, human life would be legally protectable whenever it was capable of *ex utero* existence. But the Court went further, placing the lower end of the viability scale at twenty-four weeks. This time

limit was neither supported by the footnote it relied upon nor consonant with medical reality in 1973, both of which placed the lower end of the viability scale at twenty weeks and neither of which indicate a twenty-four week period. It created the illusion that *Roe* was a trimester-based decision with viability occurring in the third trimester and legally protectable life commencing at twenty-four weeks gestation.

Confusion prevailed in federal district courts until the Court attempted a clarification in *Planned Parenthood v. Danforth*:[22]

> ". . . it is not the proper function of the legislatures or the courts to place viability, which is essentially a medical concept, at a specific point in the gestation period . . . the determination of whether a particular fetus is viable, is, and must be, a matter for the judgment of the responsible attending physician."[23]

This clarification causes further ambiguities when coupled with internal inconsistencies in *Roe*. What happens when a "responsible attending physician" determines that a second trimester, twenty-three week fetus is viable? Is that fetus then entitled to the benefit of a regulatory statute which imposes a duty of care upon physicians and proscribes techniques designed to kill? Yes and no: if viability has occurred ". . . the state in promoting its interest in the potentiality of human life may, if it chooses, regulate . . . abortion . . ."[24] But, during the second trimester a state may only regulate abortion ". . . to the extent that the regulation reasonably relates to the preservation and protection of maternal health."[25]

The most troublesome definitional problem in *Roe* is the Court's equation of viability with meaningful life. More troublesome is its retention of this concept in *Danforth* coupled with the awesome directive to "responsible attending physicians."[26] It is one thing for physicians to determine whether a fetus is capable of *ex utero* existence. It is quite another thing for them to determine the meaningfulness *vel non* of someone's life without a *vade mecum*.

The concept of meaningful life has all the inherent weaknesses of the word obscenity. It is simply not susceptible of uniform definition. Because of this imprecision it is an inadequate criteria for legally protectable unborn life. Moreover, it has become a harbinger of infanticide of defective infants.

This practice, variously labeled "pediatric euthanasia" or "obstetrical euthanasia," occurs when ordinary medical care is deliberately withheld from newborn infants who in some way represent a deviation from contemporary community standards of normalcy.[27] However labeled, it is illegal under present law.[22] Yet, it is significant to

note that only since *Roe* has the scope and desirability of this practice been openly acknowledged.[29] What is more significant is the frequency with which the concept of meaningful life has become a criteria for legally protectable born life.

Ten months after *Roe* it was reported that forty-three infants were allowed to die at Yale New Haven Hospital because "prognosis for meaningful life was poor or hopeless."[30] Meaningful life was defined as the capacity "to love or be loved . . . to be independent, and to understand, anticipate and plan for the future." The decision to allow death was made by parents and physicians who balanced the infants' lives against such factors as cost, the threatening of the marriage bond, and sibling behavioral disturbances.

In 1975 Dr. Milton Heifetz, Chief of the Department of Neurological Surgery in a Los Angeles hospital, reported that he allowed a paralyzed but otherwise "normal" infant to die because even though there was a normal brain and normal intelligence he did not believe that newborns with such deformities should be treated.[32] In deciding whether or not to treat newborn infants Dr. Heifetz asks "will life be meaningful to any degree?"[33] He then balances the present and future condition of the child against its effects upon parents and siblings. His justification for the death decision is based upon a belief that the newborn is merely an organism with a potential for human qualities and life at birth is no more significant than at the second, fourth or sixth month or pregnancy.[34] The Yale New Haven and Los Angeles hospital examples are by no means exhaustive.[35]

The Supreme Court's equation of abortion with pregnancy termination and viability with meaningful life is demonstrably erroneous. Our concern surpasses the niceties of semantics to the resulting invidious discrimination against what legally protectable human life remains in the wake of *Roe*. To annunciate a rule of law without accurately defining its attendant terminology is inexcusable for any court or legislature. It is, *a fortiori,* inexcusable for the United States Supreme Court. The rule of *Roe,* existing as it does in a definitional vacuum, has resulted in the assertion and exercise of rights not contemplated by the Court: feticide and infanticide of defective infants. This phenomenon leaves little cause for complacency to those who find themselves between infancy and senility. But it is not surprising. As Chief Justice Warren Burger wrote (in an obscenity case some six months after *Roe*):

> "The seductive plausibility of single steps in a chain of evolutionary development of a legal rule is often not perceived until a third, fourth, or fifth "logical" extension occurs. Each step, when taken, appeared a reasonable

step in relation to that which preceded it, although the aggregate or end result is one that would never have been seriously considered in the first instance."[36]

NOTES

1. 410 U.S. 113 (1973).
2. *See e.g.,* Brief of Certain Medical School Deans, Professors and Individual Physicians as amicus curiae at 12 and Brief of the Civil Liberties Union of Massachusetts as amicus curiae at 8, 9 *Commonwealth v. Edelin,* No. 373, Mass. S.J.C. (1976).
3. *Idem.*
4. R. Hall, *A Doctor's Guide To Having An Abortion* (1971) at 43. *See also* "Fetal Experimentation: Moral, Legal and Medical Implications," 26 *Stanford L. Rev.* 1191, 1193 (1974); "Haunting Shadows from the Rubble of Roe's Right of Privacy," 9 *Suffolk U.L. Rev.* 145, 154 n.51 (1974); Medical Responsibility for Fetal Survival Under Roe and Doe, 10 *Harv. C.R.C.L.L.R.,* 444,445 (1975).
5. Tribe, "Foreword: Toward a Model of Roles in the Due Process of Life and Law," 87 *Harv. L. Rev.* 1, 4 n.24 (1973).
6. E.C. Hughes, Ed., *Obstetric-Gynecologic Terminology,* F.A. Davis Co., Philadelphia, 1972, pp. 414, 452.
7. *Idem* at 456.
8. Brief for Appellant at 18, *Roe v. Wade,* 410 U.S. 913 (1973); Brief for Appellant by the American College of Obstetricians and Gynecologists et al as Amicus Curiae at 7, *Doe v. Bolton,* 410 U.S. 179 (1973).
9. 410 U.S. at 164-165.
10. 410 U.S. at 153, 154.
11. 410 U.S. at 153.
12. *See e.g., supra* note 2.
13. Alaska, Hawaii.
14. Colorado, Delaware, Kansas, Kentucky, Maryland, Minnesota, New Mexico, Virginia, Washington.
15. Idaho, Indiana, Massachusetts, Missouri, Nevada, N. Dakota, Ohio, Rhode Island, S. Carolina, S. Dakota, Tennessee, Utah, Wyoming.
16. 410 U.S. at 164, 165.
17. Ob. Gyn. News, December 15, 1975 pp. 1, 18.
18. Wecht, "A Comparison of Two Abortion-Related Inquiries," 3 *Journal of Legal Medicine,* 36, 44 (1975).
19. Idaho, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, Missouri, Nebraska, North Dakota, Pennsylvania, Utah.
20. Illinois, Kentucky, Minnesota, Missouri, Pennsylvania, Utah.
21. 410 U.S. at 160 nn. 59, 60; J.P. Greenhill and E.A. Friedman, *Biological Principles and Modern Practice of Obstetrics,* W.B. Saunders Co., Philadelphia, London, Toronto at 185 (1974); 9 *Suffolk University L. Rev.* 145, 151 n. 39.
22. 96 S. Ct. 2831 (1976).
23. *Idem* at 2839.
24. 410 U.S. at 164, 165
25. *Idem* at 163.
26. 96 S. Ct. 2831, 2838-39.
27. *See* Robertson, "Involuntary Euthanasia of Defective Newborns: A Legal Analysis," 27 *Stan. L. Rev.* 213 (1975); Nolan-Haley, "Defective Children, Their Parents and The Death Decision," 4 *Journal of Legal Medicine* 9 (1976).
28. *Ibid.*
29. *See* e.g., Shaw, "Dilemmas of Informed Consent in Children," 289 *N.E.J. Med.* at 886 (1973); Gimbel, "Infanticide: Who Makes the Decision," *Wis. Med. J.,* Vol. 73,

No. 5 at 10 (1974); *Boston Globe,* Feb. 25, 1974, at 1, col. 1; *Time,* March 25, 1974 at 84; *N.Y. Times,* April 22, 1974, at 35, col. 2; *N.Y. Times,* June 12, 1974, at 18, col. 4; *Harvard Magazine,* January 1976 at 32; *Houston Chronicle,* March 17, 1974.

30. Duff & Campbell, "Moral and Ethical Dilemmas in the Special Care Nursery," 289 *N.E.J. Med.* 890 (1973).
31. Hastings Center Report, Vol. 5, No. 2, April 1975, at 5.
32. Heifetz, M.D., *The Right to Die,* G.L. Putnam's Sons, New York, 1975 at 56.
33. *Ibid.* at 51.
34. *Ibid.* at 51, 52.
35. *See* note 28 *supra.*
36. *United States v. 12 200-Ft. Reels of Super 8 MM. Film,* 413 U.S. 123, 127 (1973) (Burger, J.).

Cost-Benefit Ethics and Fetal Research

Juliana G. Pilon

An analysis of papers presented to the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.[1]

IN THESE DAYS of ever-expanding government regulation it has become virtually impossible to keep up with the administrative rulings, court decisions, and legislative decrees, let alone be familiar with the many debates surrounding them. The National Institute of Health regulations on human research are a case in point: the recently published text of the papers dealing with the ethical issues in fetal research presented to the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (a body established by Congress in 1975 to formulate guidelines regulating fetal research) is almost two inches thick. Yet in spite of its size, the tome is worth reading, for documents such as these have a way of reflecting the *Zeitgeist*. And a close examination provides reasons for serious concern: the prevalent attitude — as variously spelled out by the scholars involved[2] — is that *wanted fetuses "as a class" should not be denied the fruits of research performed at the expense of other — unwanted — fetuses.* Since the ominous implications of such a position were left virtually untouched in the few papers sympathetic to a more principled point of view, the result is a most disturbing document based on a "cost-benefit ethics" that openly defies traditional morality.

The first paper, written by Maurice J. Mahoney, M.D. (Associate Professor of Human Genetics and Pediatrics at Yale University School of Medicine), praises the many accomplishments in fetal research, with the added warning that

> . . . to eliminate the participation of human fetuses from experimentation because they are unable to consent, denies fetuses as a class the right to benefit from medical progress and directly contradicts the presumption that the human fetus is a legitimate participant in the human community. (1-31. See note #2 for an explanation of this and the following page references—*Ed.*)

It seems best to ignore Dr. Mahoney's subsequent statement that in the human community "all individuals participate in human experi-

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mentation without their consent at all times," (1-31) which would make it impossible for a fetus *not* to be experimented upon—insofar as his mother participates in experimentation in any case—and therefore render the earlier statement quite meaningless. Dr. Mahoney claims it is a privilege not only to benefit from such research but also to be actively involved in it as a participant.

Mark Lappé, Ph.D. (Associate for Biological Sciences, Institute for Society, Ethics, and the Life Sciences, Hastings Center) echoes this belief, but first he defines the utilitarian equation at stake: "The 'costs' of doing [fetal] experimentation are to be counterbalanced by the goods to be weighed; for when the fetus involved in research is an abortus (whether before, during, or after abortion), the ultimate fate of the research subject is *death.* Therefore, the beneficiaries in this case are not "fetuses as a class" *tout court* but fetuses minus the already-doomed research subjects. The latter, however, are presumably still better off for having served science: participation in an experiment, Dr. Lappé believes, can "ennoble that death" to which they would succumb, in any case, as abortuses. (4-7) The privilege of being sacrificed, then, is part of the "good" in the cost-benefit equation.

Not everyone would agree that dying as a human guinea pig is ennobling, and Joseph Fletcher, S. T. C. (Visiting Professor of Medical Ethics at the University of Virginia) does not insist on that point. He simply asserts that legislation on fetal research is just a matter of "the greatest good for the greatest number." To be specific:

> This ethical question — to whom do we owe our prior obligation, to the few or the many, the one or the several? — affects live research. Absolutizing or tabooing fetal life, even when a fetus is not wanted, is an obvious form of radical individualism (selfishness and narcissism), because it would deny the research uses of a live fetus which could provide lifesaving substances for living persons or yield lifesaving information. (3-12)

We shall refrain from asking how often an unwanted fetus is *killed* as a result of "selfishness and narcissism" and merely reiterate the utilitarian dictum as Rev. Fletcher sees it: the good of the greatest number wins out in an ethical dilemma. We "owe our prior obligation" to the many at the expense of the few. The same position is implicit in Richard Wasserstrom's (Ph.D., Professor of Law and Philosophy at University of California, Los Angeles) proposal that governmental ethical boards be established to determine the importance of information obtained from a particular research project "concerning the prevention of harm or the treatment of illness in

other human beings" (9-9, emphasis added) prior to approval. No mincing of words: the good of human beings *other* than the experimental subjects is the end of research on abortuses.

If this sounds a bit harsh, there is more to the story. Not only does Rev. Fletcher's heart bleed for the good of the many, in this case he even rejects the very humanness of the few. Thus "a fetus is 'precious' or 'has value' when its potentiality is wanted" — and, make no mistake, specifically "this means when it is wanted by the progenitors, not by somebody else" — such as, we suppose, relatives or other members of society, including potential adoptive parents. (3-3) The converse follows easily: if it is not wanted, the fetus has no [ethical] value, and no rights. Viability then becomes irrelevant for, as Rev. Fletcher notes, it is purely a function of "technology." Thus even when the age and viability of a fetus is no longer an issue, even when a fetus can be "rescued" by appropriate medical intervention, fetal research must go on. "The question is not whether a fetus has vital signs but whether it should be brought to live birth. If not, surely research and experimentation are in order." (3-5) Sissela Bok, Ph.D. (Lecturer in Medical Ethics at Radcliffe Institute and in the Harvard-MIT Program on Health and Technology) echoes this conclusion: "the word 'humanity' . . . has different meanings in terms of the reasons to protect life, in early *unwanted* pregnancies as distinguished from other contexts" (2-7, emphasis added) — that is, two relevantly similar fetuses (identical in age, weight, and health) differ in "humanity" depending on whether they happen to be wanted by their respective mothers, which is not only morally outrageous, but also ontological rubbish.

No less disturbing is the inability or unwillingness, on the part of those scholars presenting reports to the Commission who do not really approve of the utilitarian bias, to oppose that point of view. Richard McCormick, S. J. (Professor of Christian Ethics, Kennedy Institute, Georgetown University) is fully aware of the present climate: "Our culture is one where technology, even medical, is highly esteemed; moral judgments tend to collapse into pragmatic cost-benefit calculations." (5-10) Unfortunately, however, while Father McCormick deplores this attitude, he certainly does not oppose it on any rigorously principled basis. Instead, he emerges in favor of fetal research with rather weak provisos. For instance, he believes that in such research "there must be no discernible risk for the fetus or mother, or, if the fetus is dying, there is no added pain or discomfort." (5-10) But pain and discomfort are not the main or even the relevant considerations here; rather, the problem centers around the

very use of unwanted fetuses for the benefit of other, wanted fetuses. Is such practice legitimate? Father McCormick does not deny it.

Neither does Paul Ramsey, Ph.D. (Professor of Religion, Princeton University), although his position is difficult to discern from this paper. While he "tend[s] to believe that any use of the fetal subject, children, the unconscious, the dying, or the condemned would be an abuse," at the same time he allows "that there may be degrees of 'no discernible risk' that closely approximate [his] position" on fetal research. (6-11) Leaving aside, again, the question of what "discernible risk" could mean to an abortus (or any subject soon to die), it is clear that Professor Ramsey does not argue that abortus research is in principle not justified. He claims that "we need measurable limits [of fetal viability] beyond which it clearly is not," implicitly allowing that the pre-viable infant is a legitimate potential subject of fetal experimentation. In spite of his otherwise commendably strong opposition to unlimited research on aborted fetuses,[3] there is no head-on confrontation with the utilitarian position here.

Indeed, none of the scholars presenting reports to the Commission actually oppose fetal research — not even Rabbi Seymour Siegel, D. H. L. (Professor of Theology and Ethics and Rabbinic Thought at the Jewish Theological Seminary in New York), his "bias toward life" notwithstanding. To be sure, Rabbi Siegel's position is not utilitarian in any obvious fashion. Nevertheless, his argument contains assumptions and concepts that subtly but irrevocably undermine the principled, ethical position. In his paper, Rabbi Siegel points out that people sometimes lose the right to life (and, presumably, the right not to be experimented upon): aggressors in a war he takes to be the paradigm example. "In the same way," he continues, "the fetus' right to our concern for its life is mitigated when the fetus threatens someone else's life or health." (7-3) The two key concepts in trouble here are "threaten" and "health." Surely there is a difference between the "threat" from a rational, voluntary agent and from a fetus whose ability to make rational decisions is obviously nonexistent? The fetus is not responsible for its own conception — someone else is, usually at least one parent. It cannot, strictly speaking, "threaten" anyone, in the way a warrior threatens an enemy, for a fetus is not an agent. It therefore seems absurd to ask that a fetus pay with its life for an alleged "threat" of which it is logically incapable. The persons responsible for its conception are the causally efficacious agents, the individuals whose actions led to the fetus's very existence. (Thus, insofar as the mother is responsible for the conception, in consistent ethical language it can be said that *she* threatened herself.) More-

over, the concept of "health," which Rabbi Siegel left undefined, could also use elucidation. For whether a genuine threat to someone's "health" exists as a consequence of a child's birth is often very questionable. A woman may elect to have a "therapeutic" abortion for the flimsiest of reasons. If *she* says it is necessary for her health are we to take her word for it? The moral picture becomes blurred. I suggest that Rabbi Siegel's approach manages to distort if not nullify the very meaning of aggression which presupposes a precise concept of "threat" by rational, purposeful agents. If anyone claims that for the sake of his "health" another individual — in particular, one incapable of choice or action — must be sacrificed, what have we gained? Rabbi Siegel's view is ultimately no less dangerous to morality than the cost-benefit approach. In short, while it may appear as if Rabbi Siegel's "bias for life" is anti-utilitarian, and he certainly believes that research on fetuses or even on abortuses should not harm the research subject, nevertheless by arguing in favor of some abortions in the way he does, the theoretical ammunition is available for anyone willing to depart from a principled position.

Thus the argument of the utilitarian majority prevails, with all too little dissent. LeRoy Walters, Ph.D. (Director of the Center for Bioethics, Kennedy Institute, Georgetown University) recognizes that "in a pluralistic society [policy making] seeks to accommodate a variety of belief-systems and interests" (8-10) and he believes that indeed it should.[4] Prohibiting fetal research would not be permissible under the circumstances—he believes that compromise must be sought. But with compromise an ethical Pandora's box is opened.

In general, a cost-benefit approach to morality is antithetical to the concept of inalienable individual rights, to the sanctity of life, and to a freedom of choice respectful of the other's humanity (including that of the fetus). The proposition that the morally-relevant difference between a legitimate and an illegitimate research subject is whether its parents want it to live is most disturbing — indeed, ominous. What principle is left to protect the unwanted old or terminally-ill person, the social reject? Are not all rights in jeopardy? Can this be "ethics"? Rev. Fletcher is, again, straightforward:

> Medicine must be delivered from the kinds of ethics which follow principles when following them means we have to condemn and nullify the acquisition of useful know-how in medicine's effort to save and improve human life. (3-12)

In other words, *some* human life at the expense of *other* human life. Rev. Fletcher continues: "If 'principles' block medicine's heal-

ing task, so much the worse for such principles." (3-12) This is indeed shocking. If these are the words of an "ethicist," what can we expect from the technocrats? Such a statement is not without grave implications for the future of morality in this society. For once we have abandoned principle, what is left to defend any human rights?

By way of epilogue, for a better perspective on the implications of utilitarianism on this topic, let us take a closer look at the recent directions of fetal research legislation. The Supreme Court's 1973 *Roe vs. Wade* decision had left to the states the question of a fetus's fate once it is born viable. A few states then proceeded to legislate to protect the viable fetus. For example, Missouri's House Bill #1211 of June 1974 held that a doctor performing an abortion must exercise due care, making sure no viable infant — whether its mother intends to abort him or not — was killed in such a procedure. (The Edelin decision was also consistent with Bill #1211, for it decided that a viable fetus must not be killed even when the mother doesn't want him; such a child becomes, in most cases, a ward of the state.) But the Court's *Danforth* decision[5] (July 1, 1976), repudiated section 1 of part 6 from Bill #1211, specifically, the "due care" proviso. Thus, as of now, doctors need not exercise the same care when delivering infants destined for abortion—even if they are perfectly viable—as they must for "wanted" babies. Clearly this spells homicide. In addition, what is especially interesting for the purposes of this discussion, Bill #1211 also contained the following statement:

> No person shall use any fetus or premature infant aborted alive for any type of scientific, research, laboratory or other kind of experimentation either prior to or subsequent to any abortion procedure except as necessary to protect or preserve the life and health of such premature infant aborted alive.[6]

While the Supreme Court has not specifically repudiated this statement *as yet,* upon reflection it should be obvious that it relates closely to the first section of the same part 6: after all, if a doctor need not exercise the same care for aborted as for ordinary viable infants, what is the point of stopping him from experimenting on a doomed child? Pandora's box is now wide open, its monsters running wild.

In the final analysis, are these developments really so surprising? Allowing non-therapeutic experimentation on non-consenting subjects — be they helpless infants (*in* or *ex utero*), mentally disabled adults, or the terminally ill — is in line with the utilitarian outlook discussed above. It means breaking one of the most basic rules of a

principled ethics: thou shalt not use some (unwanted) human beings for the benefit of others.

I recommend, instead, a return to the Nuremberg Code of Ethics in Medical Research, which says:

> The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent: should be so situated as to be able to exercise free power of choice without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision.[7]

It may be well to bear in mind, moreover, the circumstances that led to the establishment of that Code.

NOTES

1. This article is a logical sequel to Professor Harold O. J. Brown's article published in *The Human Life Review,* Fall 1975, pp. 118-128. Professor Brown observes that the regulations on fetal research, as published in the *Federal Register* Vol. XL, No. 154 (Friday, August 8, 1975), pp. 33526-33552, are based on a utilitarian, cost-benefit ethics. He concludes:

   > As indicated, the HEW paper on the protection of human subjects really operates within a framework of utilitarian assumptions. The end justifies the means. If useful techniques and information for some, presumably a larger number, of individuals can be obtained by utilizing—even to the point of using up—others, particularly if such others are unwanted, what need is there to agonize on the moral and ethical justifiability of such utilization? As we have noted, this argument is not presented *expressis verbis,* no doubt because in those terms it would be found too cruel to accept, and in part because even those who in fact act as though they believed it are not conscious that it is the basis of their motivation. (p. 127)

   By looking closely at the newly published papers presented to the National Commission that aided in formulating the regulations on fetal research, we now find Professor Brown's last supposition—namely, that the utilitarian argument he cites was operating only at the unconscious level—all too charitable.

2. A complete list of contributors may be found in the table of contents of the *Appendix: Research on the Fetus,* The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, U. S. Department of Health, Education, and Welfare, DHEW Publication No. (OS) 76-128. The papers discussed here are only those numbered 1 through 9, since they alone take a position on the topic under analysis. (Professor Stephen Toulmin's paper #10 is a review of papers 1-9, while 11-16 are essentially factual reports, and documents 17-21 are examples of other sets of regulations on fetal research.) Pagination is separate for each article—thus page 5 of paper 6 is marked 6-5, etc.

   Note that the papers published in this *Appendix* were not written by the members of the National Commission themselves; a summary of the Commission's deliberations, together with the excellent dissenting statement of Professor David Louisell, may be found in the *Federal Register,* Vol. XL, No. 154 (Friday, August 8, 1975), pp. 33548-33550. The major part of it also appeared in *The Human Life Review,* Fall 1975.

3. For a full statement of Professor Ramsey's thoughts on fetal research see his book *The Ethics of Fetal Research,* Yale University Press (New Haven and London: 1975), portions of which were published in *Human Life Review,* Winter 1976.
4. For reasons why "pluralism" has no place in dealing with ethical issues in fetal research, see Brown, *op. cit.,* pp. 124-127.
5. For information on the *Danforth* decision, I am indebted to the Legal Affairs Department at the Michael Reese Medical Center, especially Mrs. Joan Matlaw, and to Mr. Dennis Horan of the University of Chicago Law School.
6. 96 Supreme Court 2831 (1976).
7. *Appendix: Research on the Fetus,* p. 17-1.

Some Reflections on Population Problems

Erik v. Kuehnelt-Leddihn

LET US start our ruminations with the statement that neither religion, nor pure passion or sheer animality demand a record procreation just for procreation's sake. We do, however, have the rather evil example of Latin-American *machismo,* an inordinate pride in virility which fosters courage (a moral virtue), but also a conceit as to sexual prowess and, what is more fatal, a morbid vanity concerning the procreating capacity. The result is a chaos which gravely affects the family, the social structure and the natural virtues of large sectors of the Latin-American population. Consequently we see in the lower social layers countless women having children by one man after the other, and while the mother has to work in order to feed her brood, the grandmother in this pure matriarchy desperately tries to keep order in the house or hut. Even if there is a school nearby, the children, as a rule, will grow up without discipline, without the three R's and without the *gana de trabajar,* the disposition for hard and systematic work. Here lies one of the real roots of the mass poverty in large parts of the racially-mixed areas of Latin America which no amount of so-called "social justice" or government control of multinational companies "exploiting the poor" can heal.[1] (A deputy of the Dominican Republic's diet once boasted about his own father who had 103 sons and daughters, the vast majority of them, needless to say, out of wedlock. No wonder that the legitimate births in that country amount to less than one-fifth of the total: the rate of population increase is an annual three percent.)

Surely, this is not a healthy state of affairs, but neither is the opposite. Parenthood has to be responsible,[2] but this truth cuts both ways. What we have seen so far on a global scale is that Europeans and North Americans, Australians and white South Africans have been preaching "birth control" (i.e. contraception, if not abortion) to themselves and to the other nations, but the latter have ignored

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this message, with the net result that the "White Races," as well as the Japanese, represent an ever-decreasing percentage of the world's population. Yet, even among the partly or highly industrialized "progressive" nations there are some glaring differences, with variations region by region and class by class. Taking a bird's-eye view of the situation in those countries, one finds that, due to the sometimes catastrophic decline in births, important changes are taking place. Local decreases with subsequent migrations are slowly changing not only the demographic, but also the ethnic, racial and religious map of Europe.[3] There is, above all, the phenomenon of the *Gastarbeiter,* the "guest worker," in the still-free part of Europe, coming generally from the south and the south-east to the north. There is even a North-African immigration from Algeria, Morocco and Tunisia, plus a minute one from Egypt as well as a certain influx from Asia: from Iran (mostly students), Pakistan, India (especially nurses) and even from Japan. When checking in at the "Börsenhotel" in Düsseldorf a few years ago, I found that every single employee, with the exception of the room-clerk, came from the Land of the Rising Sun.

The most significant groups of temporary immigrants on the Continent, who rarely settle down permanently, are, if we ignore the Algerians in France, the Italians (mostly from the south), the Yugoslavs (Croats, Serbs, Slovenes, Bulgars from Macedonia), the Turks, the Greeks, the Spaniards and the Portuguese. Looking back at the last 15 years, we must state that the Spaniards who once formed the second-largest group have, for some time, fallen below the Portuguese and the south-east Europeans,[4] that the massive immigration of the Turks is relatively recent. And here, we feel that it is necessary to remind the reader that the need for "hands" after the end of World War II was grossly underestimated. Who in his right mind would have thought that thickly settled West Germany, which had to take in 12 million refugees, would ever require additional laborers? Yet, at the height of its prosperity the Federal Republic had 2 million *Gastarbeiter,* and today still has a million and a half. In Austria the trade unions prevented an influx for a long time, but in spite of recession there are this year (1976) 6,000 more than in 1975. The Netherlands, generally considered to be immensely overpopulated (1,000 people per square mile), started immediately after the last war to send its denizens in large masses abroad—mostly to Australia and Canada. Twelve years later the first guestworkers arrived. Something similar happened in Japan which (pressured by the United States) had made drastic efforts to achieve a zero-growth

in population[5] and then had to admit (highly unpopular) Korean workers.

Obviously, the influx of the guestworkers has created many problems. They are *not* overly popular with their local worker-colleagues who everywhere tend towards xenophobia. And the new arrivals have had to face many private problems in their efforts to strike roots. They came speaking languages almost nobody could understand, they *looked* different, their children flooded the schools, the women the maternity wards, the men the pubs. The housing situation rapidly deteriorated. Yet, it should be mentioned that a great many of these newcomers are, as workers, superior to the resident population: they arrived unspoiled by the provider-state; they liked to work overtime; they were often quick at picking up skills and technical knowledge; they did not exploit medical insurance and, contrary to a general conviction, their crime rate (except for *crimes passionels* among themselves) was lower than that of the north-west Europeans. I know cases of German manufacturers dismissing Germans to hire Spaniards—always, as the law stipulates, for equal pay. For really hard and dirty work needing physical strength the Turks were and are unsurpassed. (It also ought to be mentioned that these hapless "guests" were often gouged by greedy landlords.)

The situation now is this: even as far north as Scandinavia there exists a variety of jobs no longer voluntarily done by "natives." This is especially evident in the case of Switzerland where early last year the guestworkers formed more than one-fifth of the laboring population. The result was a rising fear that Switzerland might completely change its character. A movement headed by Herr James Schwarzenbach, intent on "Keeping Switzerland Swiss," insists on a radical cut in the number of foreign workers (there are also many foreign residents living there in retirement,[6] foreign students, foreign employees of international organizations in Geneva and elsewhere). Yet even Schwarzenbach's masterplan, twice rejected by a narrow margin in plebiscites (so frequently staged in Switzerland) always exempted the employees of hospitals, nursing homes, etc. They certainly no longer could be found in the "local market."

These "invasions" have brought all sorts of changes in the lives of northwestern Europeans. Even conversations with waiters have been made complicated. (Immigrants fluent in languages become headwaiters and receptionists!) The denominational charter of entire regions has been changed, but, as a matter of fact, this is also due partly to different birthrates *within* given nations, regardless of immigration. The majority of the Swiss resident population today is

Catholic and nearly the same is true of western Germany. In the Netherlands the Catholics have a relative majority (40%) and the second-strongest religious community in France are no longer the combined Calvinists and Lutherans but the Moslems with more than a million faithful. Needless to say, the craze for using the local vernacular in Catholic liturgy encounters considerable difficulties in Europe, not merely on account of local bi-linguality and tourism but also due to the Spanish, Portuguese, Italian, Croat and Slovene guestworkers. (Poles, Czechs, Slovaks and Hungarians are not permitted to emigrate.) Significantly, the German Federal Railroads provide, on certain trains, prayer carpets for workers from Turkey, Bosnia and North Africa.

All this makes valid population forecasts very difficult. There is also an interesting theory according to which, from an economic point of view, countries can, on a certain level, be "overpopulated," then, within the framework of a more developed economy, become underpopulated, and with additional industrialization again become overpopulated, *and so forth*. Looking, for instance, at the 1898 issue of the leading German encyclopedia, *Brockhaus,* we find that, in spite of a high birthrate, the Tyrolean population hardly increased in the 19th century because, as Central Europe's poorhouse, the Tyrol could not gainfully employ and feed its population.[7] Today it has together with the equally Alpine Vorarlberg (another Federal State of Austria) a very high standard of living and is strongly industrialized. Only 16 percent of the population are fully employed in agriculture which also has far higher yields than 80 years ago. The conveniences of life in a Tyrolean village today are probably as high as those of similar human agglomerations in most parts of the United States. (Tourism! Hydro-electric power!) Thus the Tyrol has ceased to be a country of emigrants which it still was before World War I. Switzerland is a similar case. In centuries past, the young Swiss males, not knowing how to earn a livelihood in their own country, went abroad to serve as body-guards and mercenaries—for which profession they were greatly esteemed since they always stuck faithfully to their contracts. (During the French Revolution the Swiss Guards died to a man defending Louis XVI, one of the two Bourbon godfathers of the nascent United States[8] and, following that noble tradition, they still serve the Pope.) But if you skim the name-lists of modern mercenaries[9] in all parts of the world, you will no longer find the Swiss among them—they are too prosperous. Instead of being another Alpine slum, Switzerland today is not only the relatively richest country in Europe, it

also is in need of immigrants, which shows that future developments, future growth and future needs are all matters of mere speculation.

Communist Europe's Problems

The demographic crisis of Europe's west at present is matched by an analogous crisis east of the Iron Curtain. Before World War II the birthrates and the population growth of eastern Europe (apart from Latvia and Estonia) were towering over those of the west. The Soviet Union, Rumania and Bulgaria were the leaders. Present trends, however, are causing a great deal of alarm. In Bulgaria abortions are now, legally, very much restricted; the abortion laws in Hungary have been tightened; only in Rumania has the birthrate not decreased very appreciably. The Soviet birthrate—as far as one can trust official Soviet statistics[10]—is still not catastrophically lower, but the picture changes if we scrutinize the details. The USSR, no less than the Old Russian Empire, is a multinational conglomeration where the "ruling nation," the *Herrenvolk*, are the Great Russians who, in the past, formed a solid majority. In addition there were other Slavic nations (Ukrainians, White Ruthenians) and then Balts, Finno-Ugrians, Turk-Tartars, Georgians, Germans, Armenians, Jews and many other minor tribes, primarily in Eastern Siberia. Although it is officially denied that "Russification" was ever attempted by the new masters in the Kremlin, such a policy has been pursued through artificial migrations, amalgamations and so on.[11] This process, however, now runs into difficulties: with a very low birthrate, the Great Russians can no longer hold their own: they are now a minority and on the defensive *vis à vis* the effervescence of local nationalistic feelings directed against them. (To the discerning traveler in Russia, the lack of children in the streets is truly astonishing!)

Nikita Khrushchev, the butcher of Budapest, the man who promised to "bury the West" but was always depicted by the mass-media as a "great liberal," had indeed planned that by 1980 no less than 90 percent of all Soviet children after the age of six should be educated in state boarding schools, to protect them from evil parental influences![12] At the present moment this radical plan has been shelved almost completely, in all likelihood because the bosses in the Kremlin realized that it would deal a fatal blow to the Soviet birthrate which, last but not least, must keep *some* kind of pace with the Chinese one! It is easily imaginable that, if the children were to be taken from the parents at such tender age, the willing-

ness to produce more of them would, in the long run, decline steadily. The constant, though rather slow, decrease of the agrarian population also affects population growth.[13] Yet the more basic reason for the ever-declining Great Russian birthrate are the appalling living conditions in the countryside no less than in the cities: the lack of living space[14] and the immense hardships the rank and file of Soviet women have to undergo. Their miserable life is repeatedly dealt with in the Soviet press and was mentioned no less than three times by Solzhenitsyn in his famous "Letter to the Soviet Leaders."[15]

Whereas it is evident to the impartial analyst that the territories of the Soviet Union *theoretically* could have a marvelous industrial and agrarian development[16] and thus a fair rate of births wanted by responsible parents, this is less obvious in the case of certain Asian countries. The Turks are willing to work hard, but the country lacks shrewd, adventurous and aggressive entrepreneurs such as we encounter in neighboring Greece, which racially has a mixed character not too dissimilar from that of Turkey but—and this is of crucial importance—a very different culture and civilization. He who crosses the demarcation line between the Greek and Turkish sector in Nicosia, the capital of Cyprus, will be struck immediately by the great difference in living standards: he enters another world.[17]

The Indian Dilemma

And what about over-crowded India, which makes enormous (and, morally, by no means always legitimate) efforts to stop its population growth? Can India's soil, can India's industry really provide materially for a gigantic population growing by leaps and bounds? What would happen, looking merely at the food sector, if the Indian farmer were to adopt Western methods and would work hard and systematically? Dr. J. S. Kanwar, of the Indian Agrarian Research Institute, has told us that if modern intensive cultivation of the soil would take place in two large Federal States, the whole country could be fed, and if the whole nation would adopt Western methods, at least one-third of the production could be exported.[18] Here again, it is neither race nor climate, but culture and civilization, largely based on a specific religious faith, which is of decisive importance. Interestingly enough, the Indians emigrating—to South Africa, for instance—adopt a different way of life; they not only work hard, but also show great business acumen and become very prosperous. Such changes also take place within India. One has only to visit the average Christian church on a Sunday, see the rather "bourgeois" congregations and the pagan beggars outside, and then re-

member that these Christians are mostly the sons, daughters and grandchildren of Untouchables who are far more easily converted than the members of the higher castes, but they have gone to Christian schools and have been taught the natural virtues.[19] They know about the importance of our earthly life. They do not just wait patiently in resignation for another reincarnation, but for eternity. Pakistan? Bangladesh? Islamic *Kismet* is not very conducive to earthly ambitions either (whereas Judaism and Calvinism tend to believe that God rewards the Just right here on earth—hence the drive to "prove" God's favor in a very visible way).

China is India's rival in this day and age, and whereas Red China in the 1950's tried to drastically lower the birthrate, it has since changed its demographic policies. The Chinese are not only intelligent but also extremely hard workers, and I have encountered Western analysts who are "happy" that China has gone Communist, for otherwise it would totally outproduce the West. One only needs to look at Taiwan, two-thirds the size of Switzerland (but with a population of 16 million, some three times larger). It has the second-highest living standard in Asia—after Japan. The success of Taiwan, which for nearly a generation has not received *economic* aid from the United States, is matched only by that of Hong Kong and Singapore, the latter a truly tropical place, which shows that climate hardly affects the *gana de trabajar;*[20] some of the most relaxed Latin Americans live in areas of eternal spring (the Andean *altiplano,* for instance) and a great deal of Black African "laziness"[21] has nothing at all to do with heat and humidity. In Uganda, a high altitude and mild climate notwithstanding, the male farmer works an average of 2-3 hours a day, his wife as much as five.[22] (Yet with them the enthusiasm for procreation is very strong. A typical African woman, knowing or feeling that her husband [or lover] does not want to have children from her, is convinced that she is no longer loved.[23] Personal sexual gratification in these relationships is of secondary importance.)

One can imagine that China looks with longing eyes in the direction of India. The Chinese might be convinced that they have the qualities to build or, rather, rebuild India perhaps by exterminating a bit of its "decadent" population and settling on its plains and plateaus. If they can colonize Manchuria as well as Singapore, two areas with radically different climates, why not India? (And, of course, why not Siberia?) Genocide? The National Socialists tried to exterminate the Jews, the "Young Turks" the Armenians, the "progressive" Iraqis the Kurds. Genocide is now the fashion of

Europe, North America and Japan in an undeclared warfare vis-à-vis an unborn generation. We have to face the grim fact that demographic battles have taken place in the past and still are being fought with hunger blockades,[24] mass assassinations, gas chambers, contraception, sterilization centers[25] and abortion clinics. This momentous and sometimes terrifying aspect of history cannot be overlooked.

The Provider-State

At first glance the welfare state or, to be more precise, the provider-state,[26] could be a source of a higher birthrate mitigating the financial hardships due to frequent births and the material problems of raising children. Yet, at the same time, the provider-state fosters a certain mentality of irresponsibility and weakens the fabric of the family. Actually, as we all realize, the monies handed out by the provider-state are never free gifts, they have to be raised somehow and even the famous saying that it is the essence of the modern state to take out money from one pocket and put it into another, should not serve as a consolation because the overwhelming share of taxes comes always and everywhere from the lower and medium layers and *not* from the rich. Yet the old *patria,* the "fatherland," is slowly but surely, even in the Free World, evolving into the "Father-State."[27] It handles and controls these monies, appears as a benefactor, but actually declares its subjects as irresponsible, immature children incapable of taking care of themselves financially and therefore in need of a guardian. This, however, weakens the role of the parents and especially of the father.[28] The demarcation lines between state and society increasingly disappear,[29] as do those between the family and society, the family and the state, all of which fosters a totalitarian and collectivist spirit, diminishing even the very profound human urge for progeny. "The king was the father of the nation, only because every father was a king in his family," said Abel Bonnard speaking of the old order.[30] And fathers no less than kings were prone to extend their respective kingdoms in which they had a personal pride.

There is another side to the problem of the provider-state, which has practically given the death-knell to the large family embracing three generations, as witness the tendency to "dispose" of the "senior citizens," relegating them to the cemeteries of the living. The result is that modern man works not only for himself and his children—*on ne travaille que pour les enfants,* as Bernanos has said—but also for a past generation still alive but improvident thanks to an "old

age security" eaten away by inflation a long time ago. For the middle generation the heavy taxation to balance these deficits makes the procreation of a larger number of children a real burden for the parents. In the past, the couple which had a larger number of children, apart from saving in the old realistic way made possible by a classic economy, could always rely in a case of real emergency on the support of *several* descendants. This was the *natural* old age insurance. But a modern man providing for a wife, alimony for a first mate, the education of two children, plus paying taxes for his own progenitors, is in a rather tight situation. Rare, indeed, is the provider-state which is not over its ears in debt—which it does not mind as long as it remains an all-powerful deity.[31] This problem is highlighted in a publication of the ILO (International Labour Organization) in Geneva, issued recently (Sept. 1976), in which alarming facts are mentioned. The authors fear that the younger generation might collapse under the weight of its obligations to their seniors. Leading the critical list is the so-called German Democratic Republic with nearly 23% of its subjects above the age of 60, but the Soviet Union too is high up. It is expected that at the turn of the century these dangerous percentages will be doubled and tripled—and not only in the Red Paradise!

Of course, all this is of interest only for a thinking and feeling sector of mankind on a higher, i.e. truly human level. In a brutish condition people multiply thoughtlessly and in this respect the phrase "only illiterates have litters" makes some sense. Yet whereas the by no means illiterate farming class *as a whole*[32] is more prolific than the urban population, it is not true that birthrates automatically decrease with mounting social status. Even a superficial look at the *Almanac de Gotha* shows that Europe's leading families often had and frequently still have a large progeny.[33] This is not at all surprising because he who has personal pride is sure of himself, and finds a certain joy in propagating himself—together with another beloved human being. *La famille—seul remède contre la mort*—"the family, the only remedy against death." These words by Charles Maurras give us a clue to this attitude, which by no means expresses only a biological urge; here also lies an "educational expectation," i.e., a (not always fulfilled) hope to hand down ideas, convictions, insights, knowledge and even, if possible, certain traits of character: in other words, to have heirs in a higher than purely material sense. This mentality, needless to say, goes hand in hand with a reverence[34] for one's own parents and ancestors. Of Hitler it was said that he was like a mule: without pride of ancestry and without hope for

progeny. He was a *tribunus plebis*[35] and certainly not a sovereign; he was Big Brother and not a father in any sense of the term. And it is obvious that the man who sees reason for pride in the past, wants to project it into the future. This pertains not only to families of ancient lineage but to every family which preserves a genuine family sense. If that noble feeling gets lost, then the desire for and the joy in children will subside, peoples will stagnate, finally decay and die out. *Suicide is the natural death of the nations!*

The decline of the birthrate is in exceptional cases also the result of extreme misery, but more often that of excessive general well-being coupled with a practical materialism. The big cities, as a rule, have a death rate far exceeding the birthrate (and this not solely on account of the hospitals where people come from the countryside with fatal ailments). In megalopolis there is always limited space, high rents, a collective way of life hostile to the family spirit, a more brutal drive for higher living standards, an artificial separation from nature and a lack of natural instincts and drives. Take the case of Vienna which in 1914 had a population of 2.2 million. Ever since there has been a feverish building activity, but the inhabitants now count just over 1.6 million. This does not imply, as one might expect, a flight from the center into the suburbs: the city boundaries are most generously drawn. People want bigger and better apartments, but have far fewer children and infinitely more pets, cars and bank accounts. The *dolce vita* is adverse to children.[36]

Naturally, in the old order, in a period when the techniques of contraception were hardly developed, physical health was an important factor in fertility. (One has to look rather critically at the theory that hunger increases fertility.) A typical case is the demographic development of the Netherlands which, at the beginning of the last century, had a Catholic population comprising more than a third of the inhabitants. This was a depressed populace, deprived of many basic rights, socially backward, and in a position not dissimilar to that of the Catholics in present-day Northern Ireland. Yet the restrictive laws soon fell, the Catholics advanced socially and materially, and then their fertility overtook that of the Calvinists by the turn of the century.[37] Of course, in the meantime contraception spread rapidly among the non-Catholics and today the Catholic percentage, which was down to 29%, now exceeds 40%. This makes Catholics by far the biggest denomination in the Netherlands. (Some 22% are without religious affiliation—as against 2% in Switzerland.) But it was evident that without artificial contraception the (better-off) Calvinists would have matched the growth-rate of the

Catholic sector. Something similar happened in Switzerland (but there the massive immigration of south Europeans helped establish the absolute Catholic majority).

However, it would be a mistake to ascribe all these shifts simply to the not-always-obeyed Catholic teachings or to attribute the relative numerical decline of the "Whites" (not fully identical with Christendom) solely to denominational reasons. The world's record in births is still held by Latin America, and there, again, by the racially-mixed regions. The answer is more complex: the people professing to be on the side of "light" and "progress," and opposed to "medieval darkness" and "reactionary otherworldliness" are, paradoxically enough, not on the side of life. They do not see in our life a period of probation and trials leading to life everlasting, but a time for fun and enjoyment which should be made as agreeable as possible or, if this for some reason is not feasible, to be prevented or discarded. All *Leftisms,* in one way or another, are against nature, against existence and creation and seek some sort of utopian paradise right here on earth,[38] collectively or even individually. This might be done in relatively harmless ways, as part of a still innocuous hedonism, or, on a large scale, as wholesale extermination, by abortionism (a real "ism" because it contains so often a fanatical frenzy for this evil cause), by planned mass murder, killing off uncomfortable neighbors or unpopular, hardworking, intelligent minorities.[39] This disregard for the sanctity of life (which, however, to the Christian is not an *ultimate* value) might thus lead in all sorts of directions: to generational genocide or to racial-ethnic genocide. When the abortion problem came up in Austria and abortion on demand was "legalized"[40] by the ruling Socialist Party,[41] the most violent protest did not come from the Catholic hierarchy but from the Lutheran bishop of Austria, Dr. Oskar Sakrausky, who declared that this decision put us all on the Road to Auschwitz. (There was a howl of indignation from the Socialists.) Yet here one should remember that in neighboring Germany, Catholics and Evangelicals[42] opposed abortion in a *jointly* signed statement.[43] When told that many "Protestant" church groups in the United States take a stand in favor of abortion, German Lutherans are aghast. The idea that an anti-abortion stand betrays a purely Catholic bias would never be accepted in the land which served as the cradle of the Reformation, last but not least because one realizes there better than elsewhere what mass murder means.

The crisis of the family has many roots, even cultural ones. Let us remember that patriarchal, not matriarchal "cultural circles"[44]

are strongly family conscious. To say "yes" to procreation is an assent to life in which man's divine likeness finds a concrete expression: procreation is creation of being in the image of God, a creation not only here on earth but *in aeternum*. The desire for the child is deeply engraved in the healthy human mind, not only of women, but also of men. Bertrand Russell, surely not a representative of orthodox Christian thought, admitted in his autobiography that already as a young man seeing children at play filled him with an immense, even painful nostalgia and craving.[45] This man, in some ways a most fuzzy thinker, often had the right natural feelings. As Pascal said: "The heart had its reasons of which reason knows nothing."

NOTES

1. This is an aspect of the plight of Latin America which never finds its way into ecclesiastical documents. No Encyclical ever mentions it.
2. "Responsible parenthood" is also being taught by the Catholic Church which takes no stand favoring indiscriminate procreation.
3. Denominational maps of Europe exist. The lack of denominational variety and the compact character of religious settlement make these possible. The United States is denominationally mixed to such an extent that such maps could not easily be made.
4. The main reason is the return of so many Spaniards to their homeland.
5. Unfortunately abortion is an old tradition in Japan (it frightened St. Francis Xavier!); another one was the zero-growth regulation under the Tokugawa-Shōguns. If farmers had too many children, they were suffocated after birth. This was called *mabiki*, "thinning out."
6. On account of a low tax ceiling; according to cantons it is between 24 and 30 percent. Yet the military expenses figure is between 28 and 34 percent of the budget: only those in *Israel* are higher!
7. The Tyroleans emigrated mostly to South America (Brazil and Peru).
8. The other one (totally forgotten) was Charles III of Spain. Marie-Antoinette was a fervent admirer of the young republic.
9. Conscription came only with the new totalitarianism of the French Revolution. The word "soldier" means mercenary, "payee."
10. Some of the organizers of the 1950 census were tried and executed. There are no criminal statistics, and economists in the West mostly ignore the Soviet claims in their domain.
11. Thus the Kazakh S.S.R. has by now, due to immigration, only a minority of Kazakhs. In 1956 the Karelian S.S.R. was demoted to the status of a mere "autonomous" (but no longer federated) republic as the Karelians have become a minority—again due to immigration.
12. An even more dreaded influence—dreaded by the authorities—comes from the *babushka*, the grandmother who tells the children what life was like before 1917!
13. Very little is known by foreigners about the countryside. Correspondents, normally, have no access to it. André Amalrik's account of a village in Siberia paints a most depressing picture.
14. Most terrifying is the life in communal apartments *(obshtshezhitye)* where families usually have only one room.
15. *Vide* his *Pis'mo vozhdyam Sovyetskogo Soyuza* (Paris: YMCA-Press 1974), p. 35, 39, 47. *Vide* also the articles in *Literaturnaya Gazeta*, 1967, No. 5, 7, 8, 26 by E. Shim, L. Kuznyetsova and G. Kuzbasov.

16. Never was the industrial and agrarian development of Russia greater than in the 1890-1914 period. There is ample literature on that subject. Socialism is a movement of intellectuals, hostile to workers and farmers alike.
17. If dressed the same way the Turks do not greatly differ from Greeks. The latter have some blood from the ancient Hellenes, the former far less from the Osman Turks.
18. *Vide* Dr. J. S. Kanwar in *Kontinente,* III.4 (August 1968), p. 23. Not without cause did Gandhi speak about "our classic laziness." *Vide* T. K. Unithan, *Gandhi and Free India* (Groningen: Walters 1956), p. 36.
19. Here, however, was the glaring omission of the Catholic Church in Latin America: not to have taught sufficiently the natural virtues. To compensate for this neglect a large sector of the Church now engages in Leftist demagogy.
20. Count Hermann Keyserling's *Südamerikanische Meditationen* emphasizes the pivotal character of *gana* (desire, inclination) in Latin America.
21. Of course, *scientifically* the question cannot be answered whether we are normal and the backward Third-Worlders are lazy, or whether they are normal and we are work-neurotics.
22. *Vide* also René Dumont, *L'Afrique noire est mal partie* (Paris: Seuil 1962).
23. *Vide* Michel Croce-Spinelli, *Les enfants de Poto-Poto* (Paris: Grasset 1967), p. 278.
24. The hunger-blockade by the Allies during World War I was used during the armistice as means to force the Germans to sign the Versailles Treaty, an Allied crime later exploited by Hitler but mainly opposed by Herbert Hoover.
25. In India not only are premiums paid for men undergoing sterilization but also to those who successfully act as persuaders.
26. Wilhelm Roepke always rejected the term "welfare state" and recommended "provider-state" *(Versorgungsstaat)* because *every* state is responsible for the *Wohlfahrt* (common weal, welfare) of its citizens.
27. Its main characteristic is not only the taking and giving of huge sums, but also the fact that it tends to employ an ever increasing bureaucracy leading to a widespread craving to become a state employee, a craving culminating in a general enthusiasm for socialism. People suddenly want to be mice rather than men.
28. On this subject see also Karl Bednarik, *Die Krise des Mannes* (Vienna: Molden 1968) and George F. Gilder, *Sexual Suicide* (New York: Quadrangle—The New York Times Book Co., 1973).
29. Which, needless to say, is the tendency of statism in general as well as of socialism in particular. As soon as marriage was deprived of its sacramental character, the state immediately tried to annex it.
30. Cf. Abel Bonnard, *Le drame du présent,* Vol. I. "Les modérés" (Paris: Grasset 1936), p. 35.
31. Alexis de Tocqueville foresaw most clearly in his *Democracy in America* the evolution of democracy into the provider-state which finally would assume the traits of a gentle totalitarian tyranny and transform people into "a flock of timid and industrious animals of which the government is the shepherd." (Vol. II, Book IV, Ch. 5) in *Classics of Conservatism* (New Rochelle: Arlington House 1965), p. 388.
32. There are agrarian regions in Europe where the limitations of birth are most frequent, e.g. France and Hungary. The reason is the reluctance to see landed property divided among many descendants.
33. It is estimated that the Empress Maria Theresa (18th century) has, at present, about 6,000 living descendants.
34. *Pietas* in its original meaning is not piety, but a sense of filial reverence for the ancestors and the values they stood for.
35. Werner Bergengrün thought of Hitler when he wrote:

    Am Himmel, wenn Gewölk and Dunst zerrannen,
    Steht gross das alte Licht.
    Erblosen Todes sterben die Tyrannen.

Tribunen zeugen nicht.

(Rough translation:

When clouds and mists disappear from the sky
Returns the old Light. How great!
Without leaving heirs all tyrants die:
Tribunes never procreate.

Published in his *Der ewige Kaiser* Graz: 1937.

36. The historic fame of Vienna comes partly from its defense of Christendom: twice, 1529 and 1683 the Turkish advance was halted in two dramatic sieges. If Vienna had not held out (and the Polish relief army, in 1683, had not arrived in time) the Muezzin would call today the faithful all over Western Europe to prayer. Yet at present the Turkish guest-workers peacefully invade the former stronghold of the Habsburgs.
37. See also my article "The Politico-Geographic and Demographic Aspects of Religion in Europe," in *The Quarterly Bulletin of the Polish Institute of Arts and Sciences in America,* January 1946.
38. The New Left with its sudden rejection of technology and worship of nature unknowingly adopts the notion of early 19th century conservative romanticism. Th.W. Adorno, however, *vide* his *Minima Moralia*—said it would be right to borrow ideas from "reactionaries." Marx *(vide* the *Communist Manifesto)* lambasted the "idiocy of rural life" and despised farmers (and workers too!). See also my *Leftism (From De Sade and Marx to Hitler and Marcuse)* (New Rochelle: Arlington House 1974).
39. If the Jews had been stupid, unambitious and lazy, anti-Semitism would be unknown. It is a miracle that in India the very gifted but tiny Parsee minority, characterized by great natural virtues (yet rich!), is not equally under fire.
40. The nascent child can only be murdered in the first three months. In other words: a majority in parliament decides the moment a human being comes into existence . . . democracy triumphant! Luckily only in two areas of Austria is medical abortion obtainable, as the immense majority of Austrian doctors refuses to "cooperate" with the government.
41. The initiative came from the "Socialist Women's League" which is a powerful vote-controlling force. The leadership of the Party was none too happy about the preemptory demand, virtually an ultimatum.
42. We do not like the word "Protestant" coined by Catholics as a term of ridicule. Luther or Calvin would have thrown out anybody calling them "Protestants."
43. The Constitutional Court in Karlsruhe rejected the original law; the modified law permits abortion only on the basis of a medical indication (danger for the life of the mother and for a situation "unbearable to the mother"). There is, so far, no provision for the establishment of a commission determining the legality of such an abortion. By now it is evident that the hospitals in Southern Germany (which has many Evangelical areas) refuse to handle such cases and *every* abortion *has to be* carried out in a hospital. A similar situation exists in Austria.
44. The Cultural Circles Theory (i.e. the anthropological Vienna School) insists that only patriarchal civilizations put a strong emphasis on the family and (female) marital fidelity. The mother always *knows*: "This is my child." To the father this is an "act of faith."
45. Cf. *The Autobiography of Bertrand Russell 1872–1914* (Little, Brown & Co.: Boston 1967), p. 319.

APPENDIX A

[*During the 1976 election campaign, abortion became for the first time a much-discussed issue in the public press (as distinguished from the legal, medical and religious journals, etc., in which abortion has been the subject of heated debate for years). We reprint here several examples which are, in our judgment, especially interesting and also related to the articles in this issue. Below is the complete original syndicated column by Mr. James Jackson Kilpatrick, issued on September 18, which provided the subject-matter for Mrs. Luce's article; it is reprinted here with permission (© 1976 by* The Washington Star Syndicate, Inc.*), under the author's title.*]

Abortion: A Poor Presidential Issue

by James Jackson Kilpatrick

WASHINGTON: The issue of abortion—as an issue in a presidential campaign—is getting completely out of hand. It is high time to sidetrack this emotional and essentially irrelevant controversy, and to get back to issues that are presidential in fact.

The abortion issue is being hotly pursued by a relatively small group of unusually zealous persons, most of them fervent Catholics. Their sincerity cannot be challenged; that is the mark of zealous advocates in any field, that they believe deeply in their cause. The "right-to-lifers" who are charging Jimmy Carter with "murder" are convinced of the moral rectitude of their position, and their right to passionate expression has to be respected.

But that position does not have to be agreed with. Evidently not all Catholics agree with the hierarchical view: My mail brings opposing arguments from an organization, Catholics for a Free Choice, whose members emphatically disagree. Obviously the zealots of women's liberation do not agree. And for every person who is absolutely against a right of abortion, or absolutely for a right of abortion, there must be a hundred persons whose inchoate views lie uneasily in between.

I count myself in this large number. Mr. Carter and President Ford are in the same big boat. As Justice Byron White remarked in his dissent to *Roe v. Wade,* this is an issue "over which reasonable men may easily and heatedly disagree." There are rational arguments in behalf of the woman who is pregnant with an unwanted child; and there are rational arguments in behalf of the unborn infant capable of survival beyond the womb. It is arrogant nonsense to contend that one side has all the valid arguments and the other side has none.

One difficulty is that the issue involves questions of both theology and law. I cannot speak to the first point, but I can speak with certain conviction to the second: Neither the Catholics, nor the members of any other denomination, have a right to impose their theology upon a free people through amendment of the supreme law of the land. The Constitution flatly forbids any religious test as a qualification for public office; it flatly forbids

any law respecting an establishment of religion. To write the "Catholic position against abortion" into the Constitution would be profoundly wrong.

This is not to say that the anti-abortionists have no right to advocate amendment. Of course they do. In a free country, people can advocate any constitutional folly they have a mind to. Their proposed amendment says that with respect to the right to life, the word "person" as used in the Constitution "applies to all human beings, including their unborn offspring at every stage of their biological development, irrespective of age, health, function, or condition of dependency."

A second section of the proposed amendment would say that "no unborn person shall be deprived of life by any person," provided that exceptions may be made "to prevent the death of the mother" or in emergency situations "when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother."

It may well be true, as a matter of theology, that a "person" or a "human being" exists from the instant of conception, but the validity of this concept is a matter for theologians and not for presidential candidates. In refusing to support any such constitutional amendment, Messrs. Ford and Carter stand on sound ground. They stand on constitutional tradition; and they remind us of the time when teetotalers in another area of human conduct, through the Eighteenth Amendment, unhappily imposed their moral rectitude upon the supreme law of the land.

Only on peripheral questions, involving the expenditure of public funds, is abortion in any sense a presidential issue. The candidates reasonably may be asked if they approve, or disapprove, of permitting a poor woman on welfare to obtain an abortion through Medicaid. (Mr. Carter says he disapproves.) The same question rationally may be asked of a National Health Insurance plan.

But these are issues of limited scope. We ought to be hearing from Carter on defense, Carter on detente, Carter on price control, Carter on public unionism, Carter on the use of the power to pardon, and so on. When the bedeviled Georgian is pushed into discussing Carter on murder, reason flees the temple. We ought to let presidential candidates return to presidential things.

[*A few days later (September 23) the same syndicate issued another column, by Mr. Wm. F. Buckley Jr., replying to Mr. Kilpatrick; again, we reprint here, with permission, the original column (© 1976 by* The Washington Star Syndicate, Inc.*) under Mr. Buckley's title.*]

Abortion as a Campaign Issue

by Wm. F. Buckley, Jr.

In the space of a week, from two august sources we were all advised to stop asking the Presidential candidates how they feel about abortion. Mr. James Jackson Kilpatrick was one, and there is no one around whose advice, as a general rule, I'd sooner take even blindfolded. The other is the editorial board of the *New York Times,* a huge magnetic field useful primarily for orienting your compass to the wrong direction. The convergence of the two requires one to examine the proposition.

It is this. Abortion (they tell us) is fundamentally a religious issue—most conspicuously, a Catholic issue. It is a violation of the traditional separation of church and state to impose upon members of other religious sects the views of any one religious sect. Moreover, there are simply too many issues around—population, energy, crime, foreign policy, unemployment, taxation, inflation—to warrant the superordination of abortion over all others. Under the circumstances, in addition to its being a violation of the protocols of church-state, it is something approaching fanaticism to go about asking candidates how they feel about abortion, and then deciding, on the basis of their answer to that one question alone, how you are going to vote. To do this is to be maimed by what the French call a *fausse idée claire.*

Now this analysis appears to be plausible, but it breaks down under scrutiny.

Let us concede that abortion as a single issue can be taken to ludicrous lengths. During the thirties and forties, there was a doctor-professor in New Haven who would join *any* organization that favored socialized medicine. He asked only that one question, no other: and by that mechanism, he managed to end up belonging to something like 45 Communist fronts—for the simple reason that among the demands of the Communists is the socialization of everything, including medicine. By the same token, the anti-abortionist who asks only what a candidate's position is on abortion, could conceivably end by supporting on election day a pacifist, or a Nazi, or God help us, a prohibitionist.

But allowing for the intelligent avoidance of silly reductionism, what question is more important than whether the fetus is human? A great moral insight is a great moral insight irrespective of its provenance. It is true that the anti-abortion movement is perceived as a substantially Catholic movement, but it is by no means nourished by exclusively Catholic theology. Jews and Protestants in significant numbers are opposed to abortion for religious reasons.

It isn't a religion that tells them that thou shalt not kill a fetus, but a religion that tells them that thou shalt not kill a human being. It is scientific, not religious, evidence that leads them to believe, as so many doctors and scientists are coming to believe, that a fetus is in every crucial respect except one a human being, entitled, therefore, to be treated as one would a day-old baby.

A little over a hundred years ago, the abolitionists began to move in on the political parties. For them, too, there were great problems confronting our adolescent society. But the greatest of these was the need to answer the question whether a man born black is nevertheless a man.

It is difficult to persuade ourselves, one century later, that these men were parochial, or morally misguided. John Brown gave abolition a bad name, as some Americans by unconstructive behavior have given anti-abortion a bad name. But the issue is a genuine issue, and it takes only a little thought to recognize that it is preeminently the greatest of all issues. Because if it is true—if 100 years from now Americans will look back in horror at our abortion clinics, even as we look back now in horror at the slave markets in Charleston, South Carolina—that the fetus is human, then to destroy him as insouciantly as we would, say, squirt a blast of insecticide at a mosquito, or order another drink, is appalling.

Those who believe that the fetus is human, like those who believed the Negro was human, cannot do less than seek to share their insight with others, and to demand that their politicians accept corporate responsibility for the protection of human life.

[*On September 30, the Washington* Star *itself received a letter-to-the-editor in reply to Mr. Kilpatrick's column from Republican Congressman Henry J. Hyde (of Illinois' 6th District). Mr. Hyde is well-known as the author of the* **Hyde Amendment** *(banning federal monies for elective abortions under Medicaid). The* Star *did not print the letter; we print it here with Mr. Hyde's permission.*]

Letters to the Editor
The Washington Star
Washington, D.C. 20061

Dear Sir:

As a charter member of the James J. Kilpatrick fan club, it was painful to read his recent attack on banning the use of federal funds to pay for abortions.

Mr. Kilpatrick's treatment of a complex issue was more superficial than one expects from him.

Catholics, Protestants, and Jews at Congressional hearings have testified on behalf of restoring constitutional protection to the preborn child. Mr. Kilpatrick states that he cannot speak to questions of theology. But he then goes on to state that Catholics and other religious groups have no right to impose their "theology on a free people" through a constitutional amendment. I remind Mr. Kilpatrick that we are not talking about making the sign of the cross, saying "Praise the Lord," or wearing a yarmulke. We are talking about the lives of unborn children. Even Mr. Kilpatrick betrays some awareness of the unborn's humanity because he speaks of a "woman who is pregnant with an unwanted child." Being unwanted does not make a person subhuman. It simply means that person is unloved by someone.

Contrary to Mr. Kilpatrick's assertion, Presidents have long been involved in recommending and supporting constitutional amendments, even though no formal role is assigned by the Constitution. Washington, in his inaugural address recommended that the first Congress should give attention to passing what later became the first ten amendments to the Constitution. Jefferson supported amending the Constitution in order to purchase the Louisiana Territory. In 1865-66, President Andrew Johnson urged that former Confederate states "ratify" the 13th Amendment as part of his reconstruction program. In 1912, Teddy Roosevelt, as presidential candidate for the Progressive Party advocated a constitutional amendment granting women suffrage. Republican presidential candidate Charles Evans Hughes adopted the same position in the 1916 presidential campaign. President Wilson even went before Congress in September of 1918 and urged passage of the suffrage amendment.

What we must face, however unpleasant to some, is a fundamental question of ethics, better answered by biology than theology: is the fetus human? If our civilization holds human life as something unique and to be cherished, the humanity of the fetus becomes crucial in determining

whether or not considerations of economics or convenience shall prevail over the life of the unborn.

When the potential mother no longer assumes her role of protector but becomes rather the adversary of the life of her unborn, the Congress has a clear duty to intervene and protect this existing human life.

If the fetus is sub-human, simply a bunch of random cells, then abortion is as ethically neutral as an appendectomy. But to accept this, you have to tear a lot of pages out of the medical books.

Sincerely,
Henry J. Hyde
Member of Congress

[*Mrs. Luce also contributed to the abortion debate in her local newspaper, the Honolulu* Advertiser; *the following article appeared in the "Other Voices" column on September 13, and is reprinted here with permission.*]

Ask Not for Whom the Bell Tolls

by Clare Boothe Luce

Many arguments for abortion have been advanced in letters to the editor of The *Advertiser*. Some have been intellectually more plausible than others. But a pro-abortion argument made on this page last week was so, well, crazy, that I cannot forbear commenting on it.

The writer (whose name I charitably refrain from mentioning), argued the following case for abortion: Every child is entitled, at birth, not only to motherlove, but to adequate food, clothing and shelter; and, therefore, an unborn child who may be deprived of these birthrights by an unloving or impoverished mother should be aborted. In short (he argued), A should be killed because if A lives, B may deny A the things to which A is entitled.

THE WRITER who propounded this travesty of justice was, of course, groping toward an idea that has long been familiar to Europeans, but is still new to most Americans, namely, that human beings lose their right to life when (a) their relatives or society feel they would be "better off dead"; and (b) when their relatives or society would be economically better off without them.

This utilitarian idea first made its appearance in 1920 in the democratic Republic of Germany, with the publication of a book called, "The Release of the Destruction of Life Devoid of Value." The authors were Dr. Alfred Hoche, a distinguished psychiatrist, and Karl Binding, a highly respected jurist. In "Life Devoid of Value," the learned judge and the brilliant doctor persuasively developed the concept of "worthless human beings," such as the hopelessly crippled, deformed, and insane. They stressed the misery and futility of such unfortunate lives, and the cruel economic burden they represented to their relatives and society. German "intellectuals" quickly bought the idea as being both humane and socially practical, possibly because at that time, the "good German folk" were staggering under the blows of the post-World War I inflation-depression.

The medical program began with the abortion of women, and sterilization of both sexes with "hereditary" diseases, among which German doctors listed imbecility, insanity, deafness, dumbness, blindness, epilepsy, and alcoholism. But the program was soon enlarged to permit "mercy killings" as a "final solution" to the problem of humans "devoid of value."

IN THE BEGINNING, only seriously deformed or mentally retarded children were "put out of their misery." Later, children born with any imperfections, such as hare-lips, club feet, crooked spines, and children who showed withdrawn or hysterical behavior were dispatched to their careless Creator.

Most of these children were from poor families, or were war orphans.

By the time Hitler came on the scene, the concept of taking lives "devoid of value" had made enormous progress. Hospital records show that by 1935, 375,000 innocent Germans had been sterilized, and more than 250,000 had been "mercifully killed"---among them many World War I amputees and basket cases.

The German medical and legal professions had become so accustomed to expansions of the euthanasia program that when the Fuerher discovered that Jews were also "devoid of value," and parasites on the German economy, there was very little public protest.

Easy, you see, does it. Moreover, these things are done so quietly, so scientifically, so mercifully, in the hospitals that few but the doctors and the victims ever know much about them.

Launched in the 1920s as a humane undertaking, the "life devoid of value" program ended in the 1940s with the slaughter of 6 million Jews.

And easy may do it, too, in America.

FOR THE FIRST TIME in American history, the Supreme Court has now used its judicial power to decree that a human being who is innocent of any crime may be killed with impunity.

In its 1973 *Roe-Doe* decisions, the Supreme Court denied the right of the unborn child to life on the grounds that a child who cannot live outside the womb is not (in the language of the court) "fully human"; or "capable of meaningful life." And it turned the right to kill any unborn child, unwanted by the mother, over to the medical profession. Since the Supreme Court decision, American doctors have sucked, scraped and cut 3 million unwanted babies from the wombs of their mothers.

All jurists now agree that the court's abortion decisions have laid the foundation for the legalization of euthanasia, or the killing of people medically judged to be "incapable of meaningful life," such as mongoloid idiots, imbeciles, and terminally ill, senile melancholics, stroke victims living like "vegetables," and—well, what sort of people, besides unwanted babies, do you think, dear reader, would be "better off dead?"

Be patient: Euthanasia is coming. And as political tensions increase, and the economic demands of the people in a declining economy grow fiercer, and taxes for supporting the "unwanted" grow higher, the list of the legally wasteable will grow longer. And who knows? One day you may find yourself on it.

[*Perhaps the most widely-read and discussed abortion article during the campaign was the* Newsweek *column by Mr. George Will, which appeared in the September 20 issue of that magazine. It is reprinted here in full (© 1976 by* Newsweek, Inc., *all rights reserved. Reprinted by permission.)*]

Discretionary Killing

by George F. Will

It is neither surprising nor regrettable that the abortion epidemic alarms many thoughtful people. Last year there were a million legal abortions in the U.S. and 50 million worldwide. The killing of fetuses on this scale is a revolution against the judgment of generations. And this revolution in favor of discretionary killing has not run its course.

That life begins at conception is not disputable. The dispute concerns when, if ever, abortion is a *victimless* act. A nine-week-old fetus has a brain, organs, palm creases, fingerprints. But when, if ever, does a fetus acquire another human attribute, the right to life?

The Supreme Court has decreed that *at no point* are fetuses "persons in the whole sense." The constitutional status of fetuses is different in the third trimester of pregnancy. States constitutionally can, but need not, prohibit the killing of fetuses after "viability" (24 to 28 weeks), which the Court says is when a fetus can lead a "meaningful" life outside the womb. (The Court has not revealed its criterion of "meaningfulness.") But states cannot ban the killing of a viable fetus when that is necessary to protect a woman's health from harm, which can be construed broadly to include "distress." The essence of the Court's position is that the "right to privacy" means a mother (interestingly, that is how the Court refers to a woman carrying a fetus) may deny a fetus life in order that she may lead the life she prefers.

Most abortions kill fetuses that were accidentally conceived. Abortion also is used by couples who want a child, but not the one gestating. Chromosome studies of fetal cells taken from amniotic fluid enable prenatal diagnosis of genetic defects and diseases that produce physical and mental handicaps. Some couples, especially those who already have handicapped children, use such diagnosis to screen pregnancies.

ABORTION AS ALTERNATIVE

New diagnostic techniques should give pause to persons who would use a constitutional amendment to codify their blanket opposition to abortion. About fourteen weeks after conception expectant parents can know with virtual certainty that their child, if born, will die by age 4 of Tay-Sachs disease, having become deaf, blind and paralyzed. Other comparably dreadful afflictions can be detected near the end of the first trimester or early in the second. When such suffering is the alternative to abortion, abortion is not obviously the greater evil.

Unfortunately, morals often follow technologies, and new diagnostic and manipulative skills will stimulate some diseased dreams. Geneticist

Bentley Glass, in a presidential address to the American Association for the Advancement of Science, looked forward to the day when government may require what science makes possible: "No parents will in that future time have a right to burden society with a malformed or a mentally incompetent child."

WHO MUST DIE?

At a 1972 conference some eminent scientists argued that infants with Down's syndrome are a social burden and should be killed, when possible, by "negative euthanasia," the denial of aid needed for survival. It was the morally deformed condemning the genetically defective. Who will they condemn next? Old people, although easier to abandon, can be more inconvenient than unwanted children. Scientific advances against degenerative disease will enable old people to (as will be said) "exist" longer. The argument for the discretionary killing of these burdensome folks will be that "mere" existence, not "meaningful" life, would be ended by euthanasia.

The day is coming when an infertile woman will be able to have a laboratory-grown embryo implanted in her uterus. Then there will be the "surplus embryo problem." Dr. Donald Gould, a British science writer, wonders: "What happens to the embryos which are discarded at the end of the day—washed down the sink?" Dr. Leon R. Kass, a University of Chicago biologist, wonders: "Who decides what are the grounds for discard? What if there is another recipient available who wishes to have the otherwise unwanted embryo? Whose embryos are they? The woman's? The couple's? The geneticist's? The obstetrician's? The Ford Foundation's?. . . Shall we say that discarding laboratory-grown embryos is a matter solely between a doctor and his plumber?"

But for now the issue is abortion, and it is being trivialized by cant about "a woman's right to control her body." Dr. Kass notes that "the fetus simply is not a mere part of a woman's body. One need only consider whether a woman can ethically take thalidomide while pregnant to see that this is so." Dr Kass is especially impatient with the argument that a fetus with a heartbeat and brain activity "is indistinguishable from a tumor in the uterus, a wart on the nose, or a hamburger in the stomach." But that argument is necessary to justify discretionary killing of fetuses on the current scale, and some of the experiments that some scientists want to perform on live fetuses.

Abortion advocates have speech quirks that may betray qualms. Homeowners kill crabgrass. Abortionists kill fetuses. Homeowners do not speak of "terminating" crabgrass. But Planned Parenthood of New York City, which evidently regards abortion as just another form of birth control, has published an abortion guide that uses the word "kill" only twice, once to say what some women did to themselves before legalized abortion, and once to describe what some contraceptives do to sperm. But when referring to the killing of fetuses, the book, like abortion advocates generally, uses only euphemisms, like "termination of potential life."

Abortion advocates become interestingly indignant when opponents display photographs of the well-formed feet and hands of a nine-week-old fetus. People avoid correct words and object to accurate photographs because they are uneasy about saying and seeing what abortion is. It is *not* the "termination" of a hamburger in the stomach.

THE DEGRADATION OF MAN

And the casual manipulation of life is not harmless. As Dr. Kass says: "We have paid some high prices for the technological conquest of nature, but none so high as the intellectual and spiritual costs of seeing nature as mere material for our manipulation, exploitation and transformation. With the powers for biological engineering now gathering, there will be splendid new opportunities for a similar degradation of our view of man. Indeed, we are already witnessing the erosion of our idea of man as something splendid or divine, as a creature with freedom and dignity. And clearly, if we come to see ourselves as meat, then meat we shall become."

Politics has paved the way for this degradation. Meat we already have become, at Ypres and Verdun, Dresden and Hiroshima, Auschwitz and the Gulag. Is it a coincidence that this century, which is distinguished for science and war and totalitarianism, also is the dawn of the abortion age?

APPENDIX B

[*In this issue, Mrs. Nolan-Haley and Dr. Hilgers (see* Roe v. Wade: Some Definitional Considerations) *point out that, at the time the U.S. Supreme Court handed down its* Roe *decision (January 22, 1973), there was a wide consensus "within the professional obstetric community" as to the definition of abortion; however, they charge, the Court "chose to ignore" this consensus "in favor of no definition at all." What follows are excerpts from standard medical texts indicating the evolution of the definition of abortion both before and after the* Roe *decision.*]

TEXT AND AUTHOR	EDITION	YEAR	ABORTION DEFINITION
Operative Gynecology R. W. TeLinde	Second	1953	"Abortion is the detachment or expulsion of the pre-viable ovum. Although it is impossible to define accurately the term pre-viable, the lower limit of viability is usually taken as the 26th to 38th week of fetal life." p. 555
" "	Third	1962	Similar statement p. 568
" (R. Mattingly)	Fourth	1970	"Abortion is the expulsion of the product of conception in the first 20 weeks of gestation or if the fetus is under 500 gm. (actually a 500 gm. fetus is usually closer to 22 weeks gestational age). Such a definition is reflected in the collection of data by United States vital statistics and WHO classification of perinatal mortality. Termination of pregnancy between the 20th to 28th week (500 to 1000 gm.) is classified as immature delivery and is essentially an obstetric problem." p. 426
Stedman's Medical Dictionary	Seventeenth	1949	"abortion: The giving birth to an embryo or nonviable fetus." p. 4

N. B. Taylor, ed.			(Viable was defined as "Capable of living, noting a fetus sufficiently developed to live outside of the womb, i.e., a fetus of 7 months or older." p. 1302)
" "	Nineteenth	1957	" " pp. 6, 1539
" "	Twentieth	1961	"abortion: The giving birth to an embryo or fetus prior to the state of viability at about 20 weeks gestation (fetus weighs less than 400 gm.)" p. 5
" "	Twenty-second	1972	" " p. 3
Obstetrics and Gynecology J. R. Willson, et al	Second	1958	"By abortion we mean the termination of pregnancy before the 28th week, at which time, presumably, the infant first becomes able to carry on an independent existence." p. 149
" "	Third	1966	"Abortion is the termination of pregnancy before the 20th week. Termination of pregnancy between the 20th and 28th week, when the infant, which weighs from 500 to 999 gm., theoretically can carry on an independent existence, is called immature labor." p. 192
" "	Fourth	1975	"Abortion is the expulsion of the products of conception before 20 completed weeks." p. 378
The Management of Obstetric Difficulties P. Titus	First	1937	"Abortion is the technical term applied to the interruption of pregnancy up to the period of viability of the fetus (about the 28th week), irrespective of

				whether this occurrence is spontaneous and accidental, or the result of a deliberate operation." p. 241
" "		Fifth	1955	" " " p. 210
"	(J. R. Willson)	Sixth	1961	"Abortion is the term indicating the spontaneous or artificial termination of pregnancy before the 20th week." p. 192
*The Principles** *and Practice of Obstetrics* J. B. DeLee		First	1913	"The author agrees with those writers who apply the word abortion to all interruptions of pregnancy before the child is viable, that is before the 26th to 28th week, and the expression premature labor to those terminations of gestation after the child is viable, but before term." p. 416
" "		Second	1915	" " " p. 426
" "		Sixth	1936	" " " p. 456
" "		Seventh	1938	" " " p. 474
"	(J. P. Greenhill)	Eighth	1943	" " " p. 420
" " "		Ninth	1947	" " " p. 420
"	(J. P. Greenhill)	Tenth	1951	"I do not agree that the term abortion, as the word is now commonly used, should be applied to expulsion of fetuses up to the 28th week because it is not logical to call a baby an abortus when it remains alive even though it weighs only 800 or 900 gm. (1.83 lbs. or 1.88 lbs.). Many babies of these weights survive . . . The attitude

* This textbook has been second only to Williams' in its use among physicians and students of medicine.

			may be taken that there is a small chance of an infant weighing less than 1000 gm. (2.2 lbs.) surviving and therefore, generally speaking, all fetuses in this group should be classified as abortuses. Until recently, this view was widely held and it has been customary to classify an infant as premature when his weight varied between 1000 and 2500 gm. (2.2 and 5.5 lbs.) at birth and to consider fetuses of less than 1000 gm. as abortuses. Although the problem of defining prematurity might seem to be of academic interest only, its ramifications are surprisingly wide since it enters into the definition of abruptio placenta, therapeutic abortion, fetal mortality, and other important terms . . . Following is the classification agreed upon by Eastman and myself, although Eastman considers 400 gm. (13.5 oz.) the upper limit of abortuses. I prefer to place the upper limit of abortuses at 500 gm. (17 oz.) although there are two reports in the literature of babies who weighed less than 600 gm. (20 oz.) and who survived." p. 390
" "	Eleventh	1955	" " p. 432
" "	Twelfth	1960	" " pp. 437-438
Title of DeLee's text was changed to		1974	"Abortion is the interruption of pregnancy before

Biological Principles and Modern Practice of Obstetrics			the fetus is viable. In most areas today viability is defined in terms of fetal weight as 500 gm. or in terms of gestational age as 20 weeks. It refers to the potential capability of the fetus to survive outside the uterus. The lay term miscarriage generally refers to any premature termination of pregnancy with death of the fetus." p. 185
"	(J. P. Greenhill & E. A. Friedman)		"Premature labor is the interruption of pregnancy after the fetus is viable, but before term. The expression premature labor is usually applied to the interruption of pregnancy between the 20-37th weeks or more commonly in association with the delivery of an infant weighing 500-2500 gm." p. 185
			"Abortion (including induced abortion) should be used to apply only to the process of expulsion of a nonviable fetus and not to the fetus itself, which should be called an abortus. By convention, abortion refers to pregnancies terminating up to 20 weeks gestational age or delivering a fetus weighing less than 500 gm." p. 365
*Williams' Obstetrics**	First	1903	"Among medical men, on the other hand, (miscarriage) is but little used and it is customary to speak of

* This is perhaps the most well-known and frequently used textbook on obstetrics.

				all cases ending before the 28th week as abortions." p. 521
" "	Second	1910	" " " "	pp. 611-612
" "	Third	1912	" " " "	pp. 627-628
" "	Fourth	1920	" " " "	pp. 661-662
" "	Fifth	1923	" " " "	pp. 701-702
" "	Sixth	1930	" " " "	pp. 759-760
" (H. J. Stander)	Seventh	1936	" " " "	pp. 862-863
" (N. J. Eastman)	Tenth	1950	Abortion was defined "as the termination of pregnancy at any time when the fetus weighs less than 400 gm." p. 476	
" "	Eleventh	1956	" " " "	p. 515
" (L. M. Hellman)	Twelfth	1961	"In this textbook an abortion is defined as the termination of pregnancy at any time when the fetus weighs less than 500 gm." p. 525	
" "	Thirteenth	1966	" " " "	p. 502
" (Hellman & Pritchard)	Fourteenth	1971	"An abortion is here defined as the termination of pregnancy at any time when the fetus weighs less than 500 gm." p. 493	

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Cavanagh, D. and Comas, M. R., *Textbook of Obstetrics and Gynecology,* 2nd edition, N.Y., 1971, p. 335.	"Abortion is defined as the termination of pregnancy prior to the 20th week of gestation."
Douglas, W. G. and Stromme, W. B., *Operative Obstetrics,* 2nd edition, N.Y., 1965, p. 143.	"For practical purposes and clinical convenience, we classify as abortions all terminations of pregnancy in which the fetus weighs less than 500 gm."
Green, T. H., *Gynecology: Essentials of Clinical Practice,* 1971.	"The term abortion is ordinarily applied when a pregnancy fails to survive twenty weeks."

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McLennan, C. E., and Sandberg, E. C., *Synopsis of Obstetrics,* St. Louis, 8th edition, 1970, p. 216.	"Abortion indicates the termination of pregnancy before the fetus is viable (less than 500 gm.) and usually before the 20th week of gestation."
Reid, D. E., and Benirschke, K., *Principles and Management of Human Reproduction,* Philadelphia, London and Toronto, 1972, p. 254.	"For the purposes of this discussion an abortion is considered the termination of pregnancy before 20 weeks of gestation, counting from the first day of the last menstrual period."
Stedman's Medical Dictionary, N. B. Taylor, ed., 22nd edition, Baltimore, 1972, p. 3.	"Abortion: The giving birth to an embryo or fetus prior to the state of viability at about 20 weeks gestation (fetus weighs less than 400 gm.)."
TeLinde, R. W., and Mattingly, R., *Operative Gynecology,* 4th edition, 1970, p. 426.	"Abortion is the expulsion of the product of conception in the first 20 weeks of gestation or if the fetus is under 500 gm. (actually a 500 gm. fetus is usually closer to 22 weeks gestational age)."
Titus, P., *The Management of Obstetric Difficulties,* St. Louis, 1961, p. 192.	"Abortion is the term indicating the spontaneous or artificial termination of pregnancy before the 20th week."
Ullery, J. G. and Hollenbeck, Z. J. R., Editors, *Textbook of Obstetrics,* St. Louis, 1960, p. 126.	Abortion ". . . is the loss of a previable fetus. Viability of a fetus is defined by statutes of the various governmental agencies for the purposes of registration of birth. Fetuses of less than a certain size (usually 25 cm. or 400 gm.) or resulting from a pregnancy of less than a given gestational period (usually 20 weeks) are considered abortions and need not be registered as either a live birth or a stillbirth."
Willson, J. R., Beecham, C. T., and Carrington, E. R., *Obstetrics and Gynecology,* St. Louis, 1966, p. 192.	"Abortion is the termination of pregnancy before the 20th week."

A Statement on Abortion by One Hundred Professors of Obstetrics, 112 *Amer. J. Obstetrics Gynecology* 992-998, April 1, 1972.	"It should be emphasized that abortion is medically defined as the termination of pregnancy before the end of the 20th week."
The Women and Their Pregnancies. The collaborative perinatal study of the National Institute of Neurological Diseases and Stroke. U.S.D.H.E.W.N.I.H., W. B. Saunders Co., Philadelphia, London and Toronto, 1972, p. 529.	Abortion—"A pregnancy terminating at less than 20 weeks gestation."

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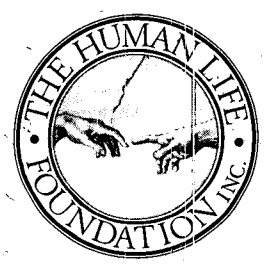
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