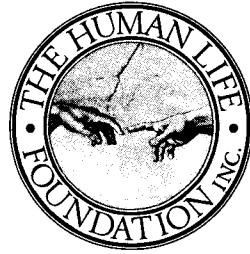


the HUMAN LIFE REVIEW



SPRING 1979

Featured in this issue:

James Hitchcock on The Moral Revolution

John T. Noonan Jr. on The Abortion Power

Prof. William Hasker

& Thomas D. Sullivan on The Definition of a
Person (a Debate)

Ellen Wilson on Controlled Reactions

M.J. Sobran on Imposing One's Views

Chilton Williamson Jr. on Heathen Rage

Francis Canavan on History Repeating

Wm. F. Buckley Jr. on Social Service for Youth

Also in this issue: Dr. Rafael Solari • George F. Will

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. . . about THE HUMAN LIFE REVIEW

Professor Paul Ramsey, whose article on *In Vitro* Fertilization appeared in the last (Winter '79) issue, writes asking us to correct an error in his text (which was in fact his public testimony to the Ethics Advisory Board of the Department of Health, Education and Welfare). On (our) page 20, Professor Ramsey stated that "Already there is a lawsuit soon to be brought to court on behalf of Georgetown University against the requirement in Health Maintenance Organizations that abortion and sterilization be provided as medical services." This is not the case, he informs us, and could not be, since the law in fact contains no such requirement. Professor Ramsey has asked that the official record of his testimony be changed to read (in place of the above): "Pressures are already building up for publicly funded HMO's to provide medically unnecessary abortions and sterilizations, which present law does not require. These pressures come from the consumers of these services; the providers also have economic and medical interests in showing that HMO's practices fulfill community demands."

We note that several of our authors will have new books out soon. Professor John T. Noonan's *A Private Choice: Abortion in America in the Seventies* is being published by the Macmillan Co.'s Free Press (and should be available in bookstores by the time this notice appears); Professor James Hitchcock's *Catholicism and Modernity: Confrontation or Capitulation?* will be published by The Seabury Press in early summer, and Mr. Chilton Williamson's *Saltbound* (a book about Block Island) is due to be published by Methuen, Inc., early next year.

This, our 18th issue, brings us to the midway point in our fifth year of publication. We remind readers that all previous issues are still available (as well as library-style bound volumes of the first four years, 1975 through 1978), and full information about how to obtain them can be found inside the back cover.

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INTRODUCTION

“DESPITE WHAT IS often asserted, the debate over abortion is not a conflict between two opposed moralities, not even between an absolutist valuing of human life and a relativist one. In a quite literal sense those who support abortion have no moral position.” Thus Professor James Hitchcock argumentatively opens what we think may well be our most unusual issue so far. In the main, it concerns the abortion debate — which is of course *not* unusual — but the breadth and variety of the contributions show that there is still a great deal yet to be said on the issues involved. So we have not only a half-dozen fresh pieces, plus an actual debate, but also an article first published 13 years ago which is remarkably *appropos* right now. Naturally, we hope you enjoy it all from cover to cover.

Professor Hitchcock, who is well known to our regular readers, sets the stage for much of what follows, putting the abortion issue in a wider moral context. Indeed, he sees it as symbolic of what is “finally a struggle over whether morality as such will endure” — and, as usual, he minces no words (“... when the same law which withdraws its protection from the unborn ... subsequently extends it to snail darters, and when these legal decrees are hailed by enlightened opinion as signs of moral progress, it is clear that what is operative is not moral sense but mere fashion.”).

Professor John T. Noonan Jr. (another frequent contributor) follows with a moving appeal (indeed, it is based on a speech he gave in Boston) for action against what he calls “the Abortion Power.” He too makes a powerful case, and along the way he provides some very interesting information about the American anti-abortion movement, as well as some fascinating historical comparisons (e.g., to the “Slave Power” of an earlier and equally-divisive struggle). He also points out some important but little-known facts; for instance, that the decisive steps leading to legalized abortion-on-demand were really taken early in the Nixon administration (and thus well before the Supreme Court’s 1973 *Abortion Cases*).

All this provides, we think, excellent background for our “live” debate, which in fact began with an article by Professor William Hasker (in *The Reformed Journal*) back in 1974, recounting his retreat from a generally anti-abortion position to his current (albeit limited) pro-abortion stance. Despite their obvious differences, Mr. Hasker is a friend of Professor Thomas Sullivan (whose first contribution to this journal appeared in our Summer ’77 issue): Sullivan asked Hasker if he would be willing to debate the point further; Hasker agreed, and we agreed to publish the results. So what you have is Mr. Hasker’s revised original, Sullivan’s response, and a rebuttal from each (i.e., the standard debating format). If Sullivan has the

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last word, don't blame us: the two gentlemen set their own ground rules.

The reader should at this point be hungry for *more*. Miss Ellen Wilson provides another view, in her usual finely-honed style. It certainly makes interesting reading in the light of the previous debate, for she addresses herself precisely to what it requires to hold a pro-abortion position, and concludes that those who do "must bear the burden of self-justification. They must explain why at times they award life on the basis of merit or value, and at other times, withhold it. If they insist that mankind's *right* to control human life expands as his capacities for doing so increase, they are left with the responsibility for the lives they preserve — and destroy."

Next Mr. M. J. Sobran (who now has contributed his inimitable essays to all but two of our 18 issues to date) provides what is certainly an untypical piece — if only because it is so much briefer than any previous one. The reason is, he wrote it as a kind of letter to the *New York Times*, in response to a *Times* "Editorial Notebook" item (March 6, 1979) by Soma Golden. Ms. Golden argued that there is a "religious case" for abortion — that "some women do, in fact, have a religious reason *for* seeking an abortion." But *inter alia* she repeated the familiar "Catholic issue" themes (e.g., "To the Roman Catholic Church . . . all abortion is murder") and that is the kind of thing Sobran answered. For some reason, the *Times* did not see fit to print his reply. We are delighted to do so.

What follows also began as a kind of letter-to-the-editor — us, in this case. Mr. Chilton Williamson, a professional writer (and old friend), has been reading this journal faithfully (he assures us) from the beginning. Somewhat to his surprise, he became progressively more interested in what we've been saying, which was by no means the case at the beginning. He decided to explain why; as he frequently writes reviews (of books, and "arts and manners" in general), he decided to, in effect, review *our* review. Naturally we are interested in the result, and hope you will be too. (Would that we had a similar effect on you all!)

After all this (mainly, as we say, about abortion, but encompassing much else besides), the reader may find Professor Francis Canavan's article very interesting indeed. It first appeared (in *America*, the Jesuit weekly) in May 1966 — almost exactly 13 years ago. Professor Hitchcock mentioned it in a speech some months back, so we asked Father Canavan if he still had a copy: he did, and after reading it we decided that the obvious thing to do was reprint it, untouched. (Father Canavan said OK, and kindly added a short postscript.) It speaks for itself.

As a refreshing windup, we have another vintage piece, on a subject that greatly interests us (and on which we hope to have much more in future issues), namely the plight of the aged in American society. Mr. William F. Buckley Jr. wrote this one some six years ago; he mentioned it recently in his newspaper column, and we went back and re-read it. Once again, the only thing to do was run it again. If anything, it is even more timely now. What caused Buckley to mention it was the current congressional interest in some kind of "social service for youth," possibly as part of a revived "draft" (i.e., some would serve in the military, others perform several years of public

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service). At the very least you will find it interesting.

We've added some other interesting (and varied) things. The first (Appendix A) is by Dr. Rafael Solari, a California doctor who makes the not-unusual comparison of abortion to the Nazi Holocaust — but he makes it impressively and, as we've said before, we think far too little such commentary comes from the medical profession; we are always interested in presenting it when available. Then we have Mr. Buckley again, with a column he wrote just after the Court's 1973 abortion decisions; we were reminded of *it* by recent column by Mr. George Will. Reading the two together (Appendix B) we think you'll see why.

Finally, we have an interesting document (Appendix C) by Professor Noonan on the subject of a Constitutional Convention; at present, most talk of such a convention centers on the "balanced budget" effort — but for several years there has been a parallel movement for a convention on abortion, and we expect that many readers will agree that Noonan's testimony illuminates a subject which is all too often clouded by misunderstandings (not to mention some strange fears, etc.).

Seldom have we run so many different pieces in one issue. Yet, as we put them together, they all seemed to fit neatly, and ended up making a lengthy but, we're convinced, very readable whole. It certainly isn't the kind of thing you're likely to find elsewhere.

J. P. MCFADDEN
Editor

Abortion and the Moral Revolution

James Hitchcock

THE ACT OF abortion is sometimes characterized as a tragic necessity, in the classical sense of a situation in which two undeniable goods conflict with one another, one or both fated to give way in the face of the requirements of the other.

Yet in practice those who advocate the morality of abortion rarely treat it as though it were tragic in any sense at all. A utilitarian calculus in which the needs of the mother are weighed against the needs of the unborn child and the former given precedence is, however unacceptable, at least comprehensible. But such a calculus, if truly employed, could not help but induce in its users a profound sense of ambivalence. Recognizing the legitimate claims of the child, the mother could never feel altogether justified in her choice, however necessary she might believe it to be. For a truly moral person, no matter how much persuaded that abortion is sometimes permissible, the act could never leave behind a wholly peaceful conscience.

In fact, however, the present cultural attitude towards abortion in no way includes this ambivalence. Although the word “tragic” is bandied about by those who seek merely a convenient verbal formula for disposing of scruples, the possibility that the child has rights is never seriously considered and is routinely and implicitly denied. The regular employment of the utilitarian calculus would actually mark a moral improvement, since it would bring the question at least to the point of admitting that the child’s rights must be consciously weighed.

The ploys by which these rights have been denied are too well known to require discussion — the use of terms like “product of pregnancy” and “evacuation of the womb” to obscure what is really happening, the assertion that the fetus is merely a parasite on the mother, and the absolutist claim (made by ostensible moral relativists) that the mother’s rights alone matter.

In any moral social atmosphere those who support the permissibility of abortion would treat anti-abortionists with at least a certain deference, admitting that hard moral choices are involved and that those who insist on asking pointed questions are right to do so. They would recognize that the general moral sense of society is

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protected from atrophy by those who demand that acts like abortion not slip into the realm of unexamined routine. In the end they would be prepared to say at least that anti-abortionists are right in the abstract, even if their ethic is too demanding and must be compromised in practice.

It would then follow that those who support abortion would feel a strong obligation to minimize its use. Having identified certain cases where they believe abortion is the lesser of two evils, they would be at great pains to insure that it was resorted to only in such cases, and they would exercise rigorous vigilance to prevent its becoming a routine practice. (If there is truly a parallel between abortion and capital punishment, the equivalent would be for the defenders of the latter to be determined that no innocent people should be executed.)

Instead a quite different situation prevails. Although legal abortion was advocated on the basis of the familiar "hard cases" — in this instance rape, incest, and danger to the mother's life — virtually all knowledgeable people now admit that such cases are rare. Abortion has indeed become routine and, as many even of its defenders now admit, is simply used as the ultimate method of contraception.

Women who seek abortions need not demonstrate any motive greater than an aversion to inconvenience. In no way does this situation seem to embarrass pro-abortionists; most seem to welcome it as a sign of progress.

Despite what is often asserted, the debate over abortion is not a conflict between two opposed moralities, not even between an absolutist valuing of human life and a relativist one. In a quite literal sense those who support abortion have no moral position. Their position is based precisely on the denial of morality, at least in this instance. Their greatest crime is, in one sense, not their willingness to countenance and even encourage abortion but their determination not to permit the morality of the question even to be discussed. In the interest of securing the practice against attack, they are prepared to suppress all considerations of morality whatever.

Anti-abortionists see parallels between themselves and the anti-slavery abolitionists before the Civil War, and the parallel is nowhere more pronounced than at this point. Although some defenders of slavery may have regarded it as a tragic necessity, and although some slave-owners (like Thomas Jefferson) had bad consciences over the practice, the burden of pro-slavery opinion came to be a flat denial that any moral question was even involved. With slavery as with abortion, those who insisted on raising the moral questions were themselves attacked as immoral. In both cases an act which, morally

speaking, could be characterized as at best dubious was elevated to the status of a virtue.

In the case of slave-owners, vested property interests, plus the legitimacy which any long-standing social practice automatically enjoys, largely explains the determination to defend the indefensible. Here the parallel with abortion diverges. Except for those who actually perform abortions, no one has an economic stake in the practice and, far from enjoying the sanction of custom, legalized abortion is a shockingly new and radical idea. What then accounts for the ferocity with which its defenders insist that evil is good?

Mere convenience seems inadequate to explain the passion involved, even though convenience may be the single most common motive for women's seeking abortions. Many morally dubious things are done for the sake of convenience, but such actions are usually justified, if at all, without much apparent conviction, indeed almost furtively. Why do many people passionately support a woman's "right" to kill her unborn offspring even when they themselves will probably never be in a position to seek an abortion?

Much of the passion, the ferocity which shades into hate, can perhaps be taken as a hopeful sign. Surely in many cases it indicates that there is indeed a conscience at work, a conscience which does not permit the easy acceptance of a horrendous deed, and which gives the individual a semblance of peace only to the degree that the moral tables are turned. The defender of human life must be cast as the aggressor, the taker of innocent life, the victim. When the ferocious passions of the pro-abortionists have subsided, when they no longer trouble to vilify their opponents, the cause for worry will be much greater, because it will signify the final disappearance of even the residue of moral sense on the question.

The practical questions surrounding abortion, especially of course the huge number of human lives lost, are enormous. However, it is crucial to the anti-abortion cause to recognize also how the practical questions are increasingly overshadowed by the symbolic. Defenders of abortion are not interested in the question whether fetuses are human and whether, therefore, it is moral to kill them. They dismiss such questions as unanswerable, which means that they do not wish to examine them in any serious way. But the very word "abortion" carries resonances of a kind which accompany few other terms in the language. Stating one's position on this single issue has the effect of calling into play a whole range of moral and social attitudes, and people are now often for or against abortion apart from any consideration of its concrete effects.

A preliminary distinction can be made between right-wing and left-

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wing pro-abortion sentiment. The former, which is found among many people of conservative beliefs, rests on the perception that legal (and governmentally funded) abortions help solve certain social problems — there will be fewer “unwanted” children, hence less social pathology and less need for expensive welfare programs. People who accept this largely utilitarian principle are usually not militant on the subject of abortion, however, and are not actively part of the group which presses constantly to push back the established limits of protection for human life (euthanasia and infanticide being obviously related issues).

Left-wing pro-abortionists are by definition part of the moral avant-garde of society, and it is their beliefs which are most influential and effective in establishing public policy. Their opinions, in fact, dominate the media, academic life, and the majority of public and private social agencies. Utilitarian considerations certainly enter their thoughts, and utilitarian arguments are especially used to attract popular support. But for most such people the symbolic issues are finally more important than the practical. (Thus liberals remain unmoved by the charge that governmentally funded abortion programs serve to restrict the black population. They are not primarily interested in the practical results of such programs.)

The symbolic issues exist in a series of concentric circles which support and complement one another. The outermost of these circles is that of class conflict — the perception that anti-abortionists are uneducated, crude, and irrational, while their opponents are enlightened, and civilized.¹ Although this stereotype is deliberately concocted for propaganda purposes (it is a stereotype which the media are only too glad to propagate), those who employ it probably also believe it.

It is a generally unrecognized fact about contemporary social life that virtually all change, no matter what populist banner it marches behind, achieves success or failure largely on the basis of what response it evokes from the educated and articulate segments of the middle class. (The black civil rights movement is a classic example.) In fact, very few movements in contemporary life do have populist roots. Most often, movements which appear populist are really the creation of an educated elite.

Abortion is a major instance of this phenomenon. Public support for abortion was initially solicited in the form of sympathy for the “victim” of restrictive laws — allegedly young, poor women either butchered in back alleys or forced to bear unwanted children, while rich mothers flew to safe clinics in foreign countries. Yet the number of women who actually could and did go to foreign countries for

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abortion was always very small, and the drive for legalized abortion aimed to provide a convenient service for well-off middle-class women. The middle-class couple who have decided that they want no more children, and who, should their daughter become pregnant outside wedlock, would not want her life to be "ruined," are the backbone of pro-abortion opinion in America. All the "needs" of the poor are asserted largely as a rationale for middle-class benefits.

In recent years, holding the correct political and social opinions, and associating oneself with the right kind of causes, has become an important badge of middle-class fashion in America, a phenomenon with which attitudes on abortion are intimately involved. Growing out of the civil-rights and anti-war movements, a conflict has been postulated between an allegedly narrow, bigoted, violent, and irrational white lower and lower-middle class and an educated, enlightened, and progressive upper-middle class. Although in fact social and political attitudes cannot be predicted with nearly such neatness, this image is an important part of the self-esteem of many educated people who take their superior economic status for granted but especially pride themselves on their advanced social views. In particular such people have fallen into the habit of assuming that every belief sanctioned by tradition is likely to be false and that the well-being of the human race is carried forward by constant intellectual and moral innovation.

Such people see themselves as the "cutting edge" of social change in America, and to be associated with avant-garde (and slightly daring) movements is for many of them a psychological necessity. Apart from the specifics of the issue, they see anti-abortion sentiment as representing all those backward attitudes which society must seek to erase. (Liberals who complain about the alleged right-wing dominance of the anti-abortion movement miss the most obvious point — if liberals themselves were to espouse the cause with vigor, conservatives would automatically be deprived of an issue.) Because the anti-abortion movement is as close to a genuinely populist cause as can be found in America, it is hated with special ferocity.

The English historian E. R. Norman has remarked that there is talk about "pluralism" only during the period of transition from one orthodoxy to another. Once the new orthodoxy has become established, its defenders no longer show any interest in the values of tolerance and multiple viewpoints which they previously extolled.

Defenders of traditional orthodoxies have frequently used overt censorship to inhibit the spread of heterodox ideas. Defenders of the new orthodoxies recognize that this is often counter-productive. Much more effective is the kind of censorship they practice, which

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consists in creating a climate of opinion in which people have the bare legal right to express dissenting views but in which such views are made to seem so eccentric as to be literally incredible. On almost all questions pertaining to sexual behavior, for example — contraception, abortion, extra-marital sex, unmarried cohabitation, homosexuality — defenders of traditional values have, within less than a decade's time, been put on the defensive, their beliefs stigmatized in the media and the educational system as symptomatic merely of narrow and insecure personalities.

Although the rhetoric of change emphasizes merely the right of each "alternative life style" to be tolerated, the struggle is never merely for toleration. Of necessity the media, the schools, and public and private social agencies must take positions with regard to all controversial belief and behavior, and it is the aim of the apostles of the avant-garde to insure that these institutions adopt their own beliefs as normative, relegating traditional values to the closet.

Although the rhetoric of relativism is freely used — the assertion that no absolutes exist and that all beliefs are therefore equally valid — in practice a new absolutism is espoused. Those who believe in sexual "liberation," for example, commonly do not recognize sexual abstinence as a valid way of life. At most they concede it a legal right to exist, and they generate massive social pressures against it.

The new orthodoxy fits closely with the reality of class conflict, already discussed, in that this orthodoxy is essentially located in what has often been called the "new class" — those persons who regard themselves as enlightened and emancipated in their opinions and who are maximally receptive of new ideas. In essence these people believe that moral belief, although necessary to society, is also dangerous because of the passions it arouses. Publicly they espouse the idea of relativism and equal toleration of all opinions, in order to dampen possible outbreaks of moral passions of which they disapprove. In practice, however, they concede to themselves the sole right to have moral passions, the sole right to mount moral crusades. Moral passion is treated as a dangerous substance which must in effect be licensed.

Since the late 1960's there has been talk of a "conscience constituency" in American politics, meaning an element among the voters who shun traditional party loyalties and traditional considerations of economic self-interest in favor of political behavior based on the perceived moral importance of particular issues. These are issues — war, racism, poverty, ecology, the "Third World" — which ordinary politics either takes little interest in or seeks to avoid, precisely because they are emotional and divisive.

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The intense hatred which many "new politics" people have for the anti-abortion movement stems from their feeling that the kind of people who are opposed to abortion (especially if they are demonstrably religious) have no right engaging in moral crusades. Such crusading is permissible only if directed towards subjects which have been certified as genuine issues of conscience. Conceiving themselves as the authentic keepers of the public conscience, such people are rendered angry and frightened at the prospect of others — the wrong kind of people — claiming the authority of conscience for their own concerns.

Those "single-issue" voters who have allowed their political loyalties to be guided solely by considerations involving, say, war or the Equal Rights Amendment are commonly admired, within the "conscience constituency," for their purity, even if their single-mindedness is sometimes thought a bit short-sighted. Those who cast their ballots solely on the question of abortion, however, are accused of being dangerous fanatics and threats to the democratic system, the remedy for such a threat being a renewed sense of party loyalty, in which anti-abortion voters would not hold politicians accountable for betraying them.

During the anti-war movement those who engaged in acts of civil disobedience were treated as heroes by most of the "enlightened" element in America, and those who went beyond disobedience to acts of destruction were usually "understood" even if not precisely condoned. In the late 1970's it has been anti-abortionists, and especially young anti-abortionists, who have shown a comparable willingness to risk themselves and their futures. Yet their witness has been largely ignored, or else dismissed as mere fanaticism, and acts of destruction directed against abortion clinics, even when there has been no evidence as to who perpetrated them, have been treated as almost sacrilegious, proof of the fundamental immorality of the anti-abortionists.

The moral avant-garde requires, in politics, a constant series of symbolic victories, which both serve to proclaim the triumph of the enlightened class of people over the backward and the continued and progressive triumph of advanced opinions over traditional beliefs. The terms of permissible public discourse, and the permissible style of those who engage in public discourse, are defined to that end, and supporters of the new manage thereby to keep the momentum always with themselves, their opponents constantly on the defensive.²

With regard to abortion, as on other questions, what is being tested in part is the media's ability to mold public opinion, and much of the media's hostility to the anti-abortion movement stems from that

movement's stubborn refusal to allow the media to instruct it in correct opinions.

Two other concentric circles are perhaps really dimensions of the previous one. They are constituted by two particular orthodoxies which have, within a decade, managed to establish themselves as beyond question. Their fortuitous coming together accounts almost entirely for the sudden triumph of the pro-abortion position in the public realm.

The first of these is the population question, the assertion that the world is threatened by the prospect of too many people and that all means of population control, including abortion, should be unstintingly used. The ramifications of this contention are too vast to be adequately discussed here. However, two relevant points can be noted. One is that, consciously or otherwise, the mentality of Zero Population Growth and the related philosophy of eugenics express the traditional elitist idea that the world would be a better place if there were fewer people, and if those few were also more carefully selected. In short, it envisions a world in which only those who fit into the enlightened consensus have a right to exist. Secondly — a point which is rather obvious, though seldom noted — there could be no more effective road to totalitarian control in the democratic West than by invoking draconian measures to insure the survival of the race. Furthermore, through such measures (especially as they affect the sacred area of sexual behavior), the enlightened elite can compel the backward masses to behave correctly. Many ardent civil-libertarians show an odd ambivalence towards proposals forcibly to regulate human breeding. (So also, few alarmists on the subject of population seem to be alarmed at the prospect of life created in the laboratory. The symbolism of yet another astonishing "break-through" far outweighs the practical demands of their cause. Many of them would probably prefer a society in which all life were created in the laboratory and little was left to human activity.)

The second unimpeachable orthodoxy is feminism, which neatly complements population-control in its tendency to denigrate motherhood as at best a specialized talent suitable for a relative few, and at worst a form of tyranny. Again the complete ramifications of this orthodoxy are too large for discussion. However, feminists who are opposed to abortion (as some sincerely are) are rather in the same position as Catholics who support it — the official doctrine of feminism does not treat abortion as peripheral, negotiable, or even debatable. The unrestricted right to an abortion is rather taken as basic to any authentic feminism.

There is compelling logic in this, in the sense that the shattering of

the hitherto sacred bond between mother and child is necessary for creating the kind of “freedom” that orthodox feminism seeks. Arguably, all aspects of women’s traditional social role stem ultimately from either the fact of or the potentiality for motherhood, and it is crucial to the orthodox feminist position that women be able to deny any finally binding obligations which they have towards children. Orthodox feminism is an especially militant manifestation of a larger, and increasingly prevalent, social philosophy which holds that the “needs” of the individual are self-validating and that no person or institution may restrict those needs. Abortion is perceived by many feminists as the acid test of real commitment to the cause — if even that deeply-rooted scruple can be overcome, then the individual is indeed a true believer. With feminism as with other fashionable political causes, no considerations of mere morality can be allowed to dilute the degree of commitment to the movement.

The innermost circle, the very core of the militant pro-abortion position, is the simple act of moral iconoclasm itself, and it is the fanaticism which this act breeds which fuels the passions motivating the other circles.

The “conscience constituency” engages in moral innovation in two opposite ways. On the one hand it seeks to define as immoral actions which most people do not think of as such — driving automobiles, building dams, smoking tobacco, eating steak — while on the other it declares permissible and even virtuous certain actions which are commonly deemed immoral — using drugs for enjoyment, homosexual relations, abortion, viewing pornography. The assumption beneath both sets of positions is that the moral perceptions of ordinary people are not only distorted but topsy-turvy, and that it is the duty of the avant-garde precisely to effect a “transvaluation of values.” Crucial to this revolution is the necessity of keeping the pressure high. One or two radical moral ideas are likely to suffer the fate of social isolation and be rejected. A moral revolution occurring on all fronts simultaneously will, however, so weaken the public sense of self-confidence, so distort the overall moral perspective, as to make virtually any idea seem plausible, so long as it is advanced with sufficient eloquence.

The pragmatic arguments for abortion, including the “hard cases” alluded to above, were never intended to be final. Rather they were necessary tactical preludes to the central symbolic act of iconoclasm, the assault on two of the most deeply rooted of all human moral institutions — the imperative to protect defenseless life and the sacred bond between mother and child.

Anti-abortionists wonder how two such profound moral instincts, both supported by powerful and ancient religious, legal, and social taboos, could possibly be discarded so cavalierly, how the act of abortion could be so swiftly transformed from a heinous crime into a work of charity. The answer is that it is precisely because of the sacredness of the prohibition that such a transformation had to occur. The avant-garde mentality is not content simply to transgress moral prohibitions when they are inconvenient, which has been done in all ages of history. Rather the avant-garde recognizes only one wholly-binding moral imperative, namely, in the words of the sociologist Philip Rieff, "the systematic hunting down of all settled convictions." Precisely because the act of aborting is widely perceived as immoral, it must be defiantly asserted. It is the crucial test case to demonstrate that traditional moral values, especially those which have roots in religion, shall not prevail.

The sometimes grotesque contortions through which the moral implications of abortion are denied are indication enough that a large residue of guilt still plagues those who insist that this is a surgical procedure merely equivalent to extracting inflamed tonsils. There have been some notable public conversions by people who began with a belief in the rightness of abortion but whose consciences would finally no longer permit this rationalization.

However, there is only limited comfort to be had from the existence of this moral residue, because it is precisely of the nature of the avant-garde mind to treat guilt as an atavism, an admittedly powerful force which must be systematically rooted out. Only when people suffer no guilt for their acts will they feel truly free. Abortion is the most important test case to determine whether, given massive propaganda doses, people can be made to overcome their deepest inhibitions. It is an experiment with immense relevance for the future.

The ultimate aim of this moral iconoclasm is the establishment of a morality which is wholly a human creation, not only in the sense of having no divine referent but also in the sense of being precisely a creation, that is, an emanation from the self, an exercise of the sovereign human will.³

The final result of this exercise — a result already achieved by many of the avant-garde — is that morality as such ceases to exist. This fact is generally overlooked because of the intense moralizing in which many of these same avant-garde indulge. But when the same law which withdraws its protection from unborn children subsequently extends it to snail darters, and when these legal decrees are hailed by enlightened opinion as signs of moral progress, it is clear that what is operative is not moral sense but mere fashion. There is no

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longer any right or wrong except that which has become enshrined in the ebbing and flowing of approved causes.

The struggle over the legal and moral status of abortion in America extends far beyond the lives of the millions of unborn, important though those lives are. It is finally a struggle over whether morality as such will endure, and will be allowed to make its claims on the way human beings live.

NOTES

1. See Peter Skerry, "The Class Conflict over Abortion," *The Public Interest*, Summer 1978; reprinted in *The Human Life Review*, Vol. IV, No. 4, Fall 1978, pp. 34-41.
2. See Hitchcock, "The Dynamics of Popular Intellectual Change," *The American Scholar*, XLV, 4 (Winter 1976), pp. 522-35, and "Power to the Eloquent," *The Yale Review*, LXVI, 3 (Spring, 1977), pp. 374-87.
3. See Hitchcock, "The Roots of American Violence," *The Human Life Review*, Vol. III, No. 3, Summer, 1977, pp. 17-29.

The Abortion Power

John T. Noonan, Jr.

I AIM TO indicate the strength of the force supporting abortion in America and the nature of the countervailing force. I shall begin with some lines from Robert Lowell's "For the Union Dead." They refer to St. Gaudens' monument to Robert Gould Shaw and his black regiment and to William James' speech in Boston at the dedication of the monument, which stands before the Statehouse. Lowell was evidently writing at the time the garage was being built under Boston Common:

Parking spaces luxuriate like civic
sandpiles in the heart of Boston.
A girdle of orange, Puritan-pumpkin colored girders
braces the tingling Statehouse,
shaking over the excavations, as it faces Colonel Shaw
and his bell-cheeked Negro infantry
on St. Gaudens' shaking Civil War relief,
propped by a plank splint against the garage's earthquake.
Two months after marching through Boston,
half the regiment was dead;
at the dedication,
William Jones could almost hear the bronze Negroes breathe.
Their monument sticks like a fishbone
in the city's throat.
Its Colonel is as lean
as a compass-needle.
He has an angry wrenlike vigilance,
a greyhound's gentle tautness;
he seems to wince at pleasure
and suffocate for privacy.
He is out of bounds now. He rejoices in man's lovely,
peculiar power to choose life and die--¹

I shall return to the St. Gaudens' monument and Shaw and man's lovely, peculiar power to choose life. Now I should like to evoke another scene which took place on the evening of February 28, 1976. On that date a banquet address was given by the Honorable Sarah Weddington, then a member of the House of Representatives of the State of Texas. The occasion was a meeting of the Western Regional

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Conference on Abortion, a meeting whose sponsors included the United States Civil Rights Commission, the G.D. Searle Company, Rocky Mountain Planned Parenthood, and the National Abortion Rights Action League.² Speaking in a glow of triumph, Ms. Weddington recalled the occasion on which she had successfully argued *Roe v. Wade* in the federal district court before successfully arguing it in the Supreme Court. It was the first contested case she had ever argued. "I was petrified," she recalls. But she continues, "when my nervousness was obviously showing," something happened. One of the three federal judges hearing the case was Sarah Hughes. As Sarah Weddington remembers it, at the high point of her anxiety, the other Sarah "winked at me as if to say, 'It's going to be all right'." And, Sarah Weddington adds, "Sure enough, it was."³ In case after case where the proponents of abortion might have been petrified — turned to stone — silent before the weight of the Constitution — there has been the equivalent of that wink from one Sarah to the other Sarah. And, sure enough, it has been all right with them.

From the district courts spread through the land to the Supreme Court itself, the federal judiciary has been the truest friend of the abortion cause. The judges have been ingenious, untiring, zealous to stamp out any sign of opposition to the doctrine that abortion is a great human liberty, one of the basic human rights to be protected and promoted like freedom of speech or freedom of religion. When the State of Rhode Island attempted to protect the unborn within its own borders by defining them by statute as human persons, it was a single federal judge — Pettine — sitting in Providence who declared the statute not only unconstitutional but "frivolous" and who blocked all efforts by the State to introduce the actual data of anatomy, biology, and psychology. Such evidence, he ruled was inadmissible once the Supreme Court had decided who was human.⁴

When the States refused to fund elective abortions, the pro-choice party rushed to the federal courts; and with one exception, every lower federal court which considered their contentions ruled that the States were acting unconstitutionally.⁵ Under our Constitution the States were not bound to pay for presses for those financially unable to exercise their constitutionally-guaranteed freedom of the press; but the States were bound to pay for abortions for those financially unable to exercise their Supreme Court-guaranteed freedom of abortion. Reading *Roe v. Wade* with the devout attention of acolytes, the federal judges discovered in it not only a new charter of freedom but a new charter for funding, which permitted them, the federal judges, to tell the legislatures of each State what they must spend in servicing abortions. One federal judge — Ross of Omaha — even

imposed a species of personal fine on John Poelker, the mayor of St. Louis, for daring to contest the claims of the abortion-seekers. Even to argue the pro-life cause in a federal court seemed to Judge Ross a species of *lese majestie*. He ordered Mayor Poelker to pay the abortion-seekers' counsel fees because Mayor Poelker's very act of opposition had been in the eyes of this federal judge "obdurate and obstinate," "callous," and "wanton."⁶

All of these lower federal judges requiring elective abortions to be funded were one step ahead of their masters on the Supreme Court, although not ahead of Justices Blackmun, Brennan and Marshall. In 1977 the majority of the Court held that the Constitution did not require the States to finance elective abortion.⁷ The majority even reversed Judge Ross' fine of Mayor Poelker.⁸ But the lower court decisions stand as testimony to the pro-abortion ideology dominant on the federal bench.

In Massachusetts, the will of two federal judges — Frank Freedman and Bailey Aldrich — has frustrated the efforts of the legislature to preserve the family in an abortion-prone society. Four years ago the Massachusetts legislature enacted a law requiring a young girl — a girl under the age of eighteen — to have the consent of her parents before she could obtain an abortion. That would seem reasonable enough legislation. After all, no child under 18 can be operated upon to eradicate a grave disease or to correct a slight skin condition without a parent's consent. Why should a decision full of emotional tension, not without physical risk, capable of leaving searing psychological scars be the sole prerogative of a person of tender years simply because that decision is to kill an unborn child? Moreover, have not the grandparents of this unborn child their own interest in his or her welfare? For four years this reasonable legislation has been suspended in its operation by the decree of Judges Freedman and Aldrich, supplemented at one point by a decree of Justice Brennan.⁹ For four years they have ruled that it would mean "irreparable injury" to an abortion clinic and its customers to let the Commonwealth of Massachusetts enforce its law. For five years they have seen no irreparable injury inflicted on the Commonwealth in preventing its ordinary health care rules from being carried out and irreparable injury to those families whose daughters — family-less by federal fiat — choose to destroy their offspring in the dark anonymity of an abortion clinic.

The most recent and the most startling evidence of the judges' attitude is from South Carolina. There in 1977 Judge Clement Haynsworth ruled that the State could not prosecute a physician for murder when the death of the child victim allegedly occurred as a

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consequence of an abortion; and Judge Haynsworth added that for purposes of the Fourteenth Amendment the Supreme Court "has determined" that the being in the womb is "not alive."¹⁰ The child in the womb "not alive"? The child who swallows fluid, urinates, reacts to the infliction of pain, whose heart is beating and whose brain is working; who kicks his mother's sides — not alive! Even Justice Blackmun had not dared to say as much so explicitly. But Judge Haynsworth is in the tradition of Judge Pettine — there is no evidence of life which can contradict the fiat of the Supreme Court. The last word, the federal judges think, belongs to them. In service to their ideology, they can tell us which of us are alive. But for those of us who still prefer the evidence of our senses to the fiat of a federal court, we would rather believe that the New York Yankees are not alive than deny the vital reality we have encountered within the womb.

The federal judges, winking from the bench, "It's going to be all right," are for abortion. So is the federal Executive Branch. It is no accident that the United States Civil Rights Commission was a sponsor of Sarah Weddington's banquet. It is no accident that Sarah Weddington was appointed President Carter's Special Assistant for Women. The great federal bureaucracy is in the control of those who believe that abortion is both a woman's right and a solution to the population problem.

This is not a special vice of a Democratic Administration. The first decisive steps were taken under Richard Nixon, who made Blackmun a Justice of the Supreme Court; gave Louis Hellman the key appointment of Deputy Assistant Secretary of HEW for Population Affairs; and put the devoted abortion leader John D. Rockefeller III at the head of the Presidential Commission on Population and the American Future. It is no accident that this Rockefeller-headed commission called in 1972 for the abolition of all American abortion laws and that a year later Justice Blackmun and his colleagues granted that wish. Since Richard Nixon, abortion has been part of the American future. Since Nixon, there has been a wink to the abortion party from the Executive Branch as broad and as knowing as the reassuring wink from one Sarah to the other Sarah.

The instrument and seat of the pro-abortion cause has been the Department of Health, Education and Welfare. It is this Department which has boasted of the number of abortions it has financed, saving the taxpayer money, much as a battle communique might boast of the number of enemies killed.¹¹ Only these were not enemies killed. They were our neighbors' children. It is this Department which has defined pregnancy in such a way that pregnancy actually includes abortion — a kind of federal Newspeak that out-Orwells Orwell.¹² It is this

Department which has set up the federal regulations for funding experiments on the unborn, so that they may be subjected to experiments performed on no other class of human beings.¹³ It is this Department which has attempted to continue the federal funding of abortion by expansive definitions of the circumstances in which the exceptions permitted by Congress may be found. It is this great sprawling, many-tentacled apparatus which still pumps the money that is heart's blood for the abortion-delivery services of America.

Two of the three branches of government recognized by the Constitution are for abortion. Also for abortion is the fourth branch of government which, unrecognized by the Constitution as governmental, has come into existence in modern times — the media. There is not a major metropolitan newspaper against abortion. There is not a television network against abortion. There is not a mass circulation magazine against abortion. The anti-slavery party in the 1850's had at least Horace Greeley's *Herald Tribune* to speak for it and reach the public. The opponents of abortion have no vehicle countering the immense forces placed at the disposal of the pro-choice side by the *New York Times*, the *Washington Post*, *Time*, *Newsweek*, and the three television networks. The pro-life movement fights against a news blackout of what is good on its side. It fights against the media propagating everything that can help the other side. It fights against a journalism which is either indifferent or hostile.

To recount the distortions, the omissions, the exaggerations committed by the press serving the abortion cause would be tedious. I mention three as typical, and I speak of the first as an eyewitness. On September 30 of this year Henry Hyde spoke to the Pro-Life Council of California. The Fairmont Hotel where he spoke was picketed by 30 persons huddled across the wide street from the hotel in front of the Pacific Union Club. From the busy porte cochere of the Fairmont it was hard to know who they were or what they were doing or even that they were there. The next day the *San Francisco Chronicle* put the number of pickets at 300; their presence was the story; the content of Congressman Hyde's speech was unmentioned. We are by now familiar with this kind of reporting — the multiplying of the pro-abortion group by a factor of ten; the pro-abortion protest as the significant item even though the protestors are anonymous; the blanking out of the pro-life message. The details of distortion are so familiar as to be almost trite.

A second example. Just before the Fraser-Short election in Minnesota, the *Wall Street Journal* of August 15, 1978 ran an analysis of the race in which abortion was identified as *the* key issue. After the election and Short's extraordinary victory, abortion was

not treated as *the* key variable in news accounts. Suddenly other issues such as gun control and hotel owners' rights became prominent in the journalists' retrospective reconstruction of why Short won.¹⁴ The media were unwilling to concede that a very able, very active, very popular Democrat had been beaten in his own party because he had been clearly identified by the voters as a congressional spokesman for the abortion cause. The media could not quite bury the decisive issue, but dilute it and hide it, they could and did.

A third instance. When fire destroyed several abortion clinics in Ohio, pro-choice leaders blamed the fires on the Catholic Church. The main headline of the front page of the Cleveland *Plain Dealer* of February 22, 1978 was as follows: "Catholics spur violence, pro-abortionist says." If an office of the Ku Klux Klan had been firebombed, would the press have reported as an immediately plausible fact the charge of a Klan leader that the NAACP had been responsible? Would any newspaper of the general circulation and prestige of the *Plain Dealer* have featured the charge as its front page headline? Would any part of the media have inferred that peaceful opposition to an organization was the same as encouraging arson? Without compunction and without restraint, the *Plain Dealer* repeated the smear, and the Associated Press carried it throughout the country.¹⁵

I have spoken only of the organs exercising governmental power which are on the side of abortion. I do not need to mention the population control advocates; the noisy spokeswomen of NOW; the cadres of the American Civil Liberties Union; the commercial hucksters of abortion and abortifacients and the profiteers in abortion services. We all know who they are for. I need only allude to the unhealthy alliance of technocracy and commerce by which makers of prostaglandins furnish them to research hospitals, so that babies being aborted may be delivered alive and intact for experimentation before their premature demise. We know these friends of abortion who range from libertarians to technocrats, and whose common denominator is their willingness to subordinate, to use and to destroy one portion of the human species. These avowed friends of abortion have become powerful and dangerous only as the press has spread their propaganda, the executive has financed their programs, and the judiciary has compelled compliance with their demands. For a decade they have captured and held three of the four branches of national government. The Abortion Power — so we may designate it — stands triumphant, castled, surrounded by high walls of authority and privilege, proud and assertive in its success. For a decade the Abortion Power has almost dominated our land.

Who prevents the complete capture? Who is working to regain the government? Who is on the side of life? In the first place, the women of the United States. The pro-abortionists are quite wrong in arguing that abortion is a women's issue in the sense that only women can speak on the subject. The perception of humanity does not depend on being a woman. The judgment that killing unborn humans is wrong does not depend on being a woman. But abortion is an act which, at least as constitutional law is presently understood, cannot occur without a woman's consent. In this sense, it is a woman's issue. Abortion is an act which affects a central image of womankind — woman as a caring, faithful, loving mother. In this sense it is a women's issue. The object of an abortion is a being whom only women come to know in the most intimate of ways, by bearing within them this other's body. In this sense it is a women's issue.

From the time attitudes to abortion have been carefully measured by survey research, it has been clear that the chief constituency for the abortion liberty in this country has been a single group — white, upper class, and male. The majority of American women have always been its enemies. The best analysis of the surveys — now available in Judith Blake's study in the *Population and Development Review* of 1977 — shows that over half of American women believe that human life begins at conception and only eleven percent believe that it begins at birth.¹⁶ In short, almost 90% of American women reject the views imposed upon the country by Justice Blackmun and Judge Pettine and Judge Haynsworth.

Over 72% of American women are against laws permitting abortion after three months.¹⁷ The Supreme Court-created liberty wipes out all substantial restrictions for nine months. It is a liberty contrary to the desires of almost three-quarters of the women.

A substantial majority of women are against abortion at any time on demand.¹⁸ The Supreme Court-created liberty permits abortion for nine months on what is, in effect, demand — for health understood as emotional and psychological well-being. If the Supreme Court opinion were put to the vote of women, or if the Supreme Court itself were composed of women representative of American women, the liberty read into the Constitution by seven males would be voted out. In fact, what is happening now as state after state votes for a constitutional convention, is that the women of America are enjoying their only opportunity to vote on the liberty, and they are voting it out.

We need not stop at the relatively superficial level of opinion reached by survey research. At a deeper level women in America have always seen abortion as an act forced on women by irresponsible men

and subversive of their own true humanity. Such was the position of the leading nineteenth century spokesperson for women, Elizabeth Cady Stanton.¹⁹ Such is the position now of such speakers for women as Grace Olivarez.²⁰ Such is the testimony of one of America's novelists most sensitive to our moral culture, Joan Didion. In *Play It As It Lays*, she describes Maria Wyeth's recurrent dream after she has had an abortion:

"This way to the gas, ladies and gentlemen," a loudspeaker kept repeating in her dreams now, and she would be checking off names as the children filed past her, the little children in the green antechamber, she would be collecting their lockets and baby rings in a fine mesh basket. Her instructions were to whisper a few comforting words to those children who cried or held back, because this was a humane operation.²¹

"This way to the gas" — a dream evoking the greatest mass murders of our century is necessary to delineate the social dimensions of the reality in America. "A humane operation" — the rhetoric of the media clashes with the reality responsible for the dream. Joan Didion's grasp of the reality reflects, I suggest, the practical perceptions of American women.

What was it that spurred the Slave Power in Congress in the 1830's to impose the gag rule and cut off the right to petition Congress? It was the petitions on slavery presented by that doughty old congressman from Plymouth, John Quincy Adams. And where did those petitions come from? From the women of Weymouth, Massachusetts, and Marshfield and Dorchester and Dover and Braintree.²² On the great issue of nineteenth century America, those women of Massachusetts led the way, provoking the Slave Power to a strategic error. Today it is the turn of women from such towns to show us the way to overcome the Abortion Power.

Secondly, the people, women and men, are on the side of life. Who do I mean by "the people"? Not merely the majority of women whose opinions I have already referred to. Not merely the majority of men, who stand with them if not in such numbers. But the people understood as those who are not a self-conscious elite, who are not at the centers of power. Time and again, friend and foe have described the opposition to abortion as "a grass roots movement" — the most effective grass roots movement in America since the drive to end the war in Vietnam.²³ It is a grass roots movement. It has brought together thousands who were not in politics before. At every level of leadership it is the work of those who have come into the political process because they feel they must. The anti-abortion forces are not identical with either of the major parties. The Republicans, it is true, adopted a platform endorsing a constitutional amendment. But their

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candidates have often not stood with it. The Democratic Party has done nothing to help us. Neither party can be fully trusted.

But we should despair of neither. A third party would be a disaster. One or both of the major parties may be converted and made trustworthy. It is my prediction that the party which does commit itself — the party which earnestly, whole-heartedly and in all its works and candidates commits itself to the cause of life — is the party which will enjoy the phenomenal popularity that the people conferred on the party of liberty in 1860.

I recall the Boston mayoral election of 1959. John Collins was running for mayor. Every major office holder, so it seemed, had endorsed his opponent. He came on television and said, "I am alone, except for you." The simplicity, the directness, and the power of this approach were evident. The politicians were with his opponent. He appealed to the people and won. We are in his position today.

Thirdly, the Legislative Branch of government is half with us, by Legislative Branch meaning not only the Congress but law-making bodies of a majority of States and cities. The United States Senate is not wholly ours. But it is sufficiently dependent on the cooperation of the House that the powerful bipartisan pro-life coalition there can make its weight felt. The proof of the power is results. We have cut off federal funding for abortion except in circumstances designated by the legislation to be exceptional. We have cut off government-funded legal aid to the abortion cause. We have cut off abortions in the military services. We have even ended abortions provided the Peace Corps! We have the opportunity under the doctrine sanctioned by the Supreme Court to make childbirth "more attractive" than abortion.²⁴ There is nothing, for example, to stop us from the taxation of abortion-related income, nothing to prevent the enactment of a kind of Norris-La Guardia Act taking from the hands of judges like Bailey Aldrich the power to stay the operation of laws in the area of abortion.

There is still much to be done. The subcommittees on constitutional amendments in both Senate and House are in the control of our opponents. But something may be pried from them. The best recipe for political success is success. We have tasted victory in the Congress and should taste it again and again.

The legislatures of the States have been even more responsive to the women and the grass roots. Like congressmen, the elected representatives know what the people want. They are not insulated from them by years spent in the capital, and they are not protected by long terms of office. They must understand the people if they are going to survive.

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From California to Massachusetts the great majority of legislatures have cut off abortion funding. They have enacted laws attempting to protect the family interest in the abortion decision. They have repeatedly pitted their policies against the will of the federal judiciary.

In cities and towns as diverse as Akron, Ohio and Framingham, Massachusetts, the same kind of grass roots lawmaking has gone on. The closer the body has been to popular control and the less friendly it has been to the voracious demands of the abortion advocates, the more ingenious and supple it has been in finding ways to make childbirth more attractive.

Finally we have developed our own leaders, men and women adept in the governmental process, whether they are members of Congress like Senator Helms and Representative Hyde; or masters of journalism and public opinion like Jim McFadden; or leaders of organizations like Carolyn Gerster, Ellen McCormack, Marjory Mecklenburg, and Katherine Healy — one marks the predominance of women in these positions of grass roots leadership.

Without leaders, the women and the people could not make their voices count in the Legislative Branch. With leaders, the Legislative Branch, now half ours, will become ours wholly. The two parties will follow, then the Executive Branch, and finally, the Judiciary. The media may be the last holdout, where the lost cause of the Abortion Power will be nostalgically nursed.

These leaders we have and the leaders we must develop will need what William James called “a lonely kind of courage.” He was speaking in Boston on May 31, 1897 on the unveiling of St. Gaudens’ bronze monument to Shaw and his black regiment. Shaw had accepted command of black men — men whom State after State, James recalled, had “by law” denied “to be human persons.”²⁵ At the age of 25, Shaw had given up command in a socially acceptable regiment to be the leader of this scorned segment of humanity. He had led them into battle and died with them in an engagement which military records show to have been a Union defeat. But, as James noted, the battle was not a defeat for the great cause; these black soldiers, recognized as human beings, did not die in vain. And Shaw’s greater act of courage was not in leading them into battle, but in accepting their leadership — “of five hundred of us who could storm a battery side by side with others perhaps not one would be found ready to risk his worldly fortunes all alone in resisting an enthroned abuse. The deadliest enemies of nations,” James continues, “are not their foreign foes; they always dwell within their border.”²⁶

How many in this country hesitate to embrace a cause which has

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not won social acceptance? When St. Gaudens' monument, and the memory of Shaw himself, stick "like a fishbone in the city's throat," it is when Shaw's example of rare and lonely courage goes unheeded. Against enthroned abuse we need his kind of leadership. To protect "the lovely, peculiar power to choose life" we need more men and more women like him.

James concluded his tribute to Shaw with the admonition "that evils must be checked in time before they grow so great."²⁷ This is also the message of a man from the western part of Massachusetts — for the west of the State must be heard too — a man born and brought up in Great Barrington, Massachusetts, the black historian William Burghardt Du Bois. He is speaking of what he has learned from studying the failure of the federal government before 1860 to suppress the slave trade:

... although this chapter of history can give us no definite answer suited to the ever-varying aspects of political life, yet it would seem to warn any nation from allowing, through carelessness and moral cowardice, any social evil to grow. No persons would have seen the Civil War with more surprise and horror than the Revolutionists of 1776; yet from the small and apparently dying institution of their day arose the walled and castled Slave-power. From this we may conclude that it behooves nations as well as men to do things at the very moment when they ought to be done.²⁸

We know what ought to be done to the Abortion Power. Now is when we should begin to do it.

NOTES

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3. Sarah Weddington, "Banquet Address," February 28, 1976, *Ibid.*, 279.
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6. *Doe v. Poelker* 515 F.2d 541 (8th Cir. 1975).
7. *Maher v. Roe* 432 U.S. 464 (1977).
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9. *Bellotti v. Baird* 428 F.Supp. 854 (D. Mass. 1977).
10. *Floyd v. Anders* 440 F.Supp. 535, 539 (D. So.Car. 1977).
11. Department of Health, Education and Welfare, "Effects of General Provision 413 of the Labor-HEW Appropriations Act," September 24, 1974 *Congressional Record* (November 20, 1974), 120, 36695.
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13. *Code of Federal Regulations*, (1976), sec. 46.201-211.
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18. *Ibid.*, 49-51.
19. Elizabeth Cady Stanton, "Child Murder," cited in Robert Mohr, *Abortion in America* (New York: Oxford, 1978), 111.
20. See Grace Olivarez, "Separate Statement," in Commission on Population Growth and the American Future, *Population and the American Future* (Washington: Government Printing Office, 1972), 160-161.
21. J. Didion, *Play It As It Lays* (New York: Bantam, 1971), 125.
22. Samuel Flagg Bemis, *John Quincy Adams and the Union* (New York: Knopf, 1956), 336-348.
23. E.g., *New York Times*, June 26, 1977, sec. 4, p. 1.
24. *Beal v. Doe* 432 U.S. 438 (1977).
25. William James, "Robert Gould Shaw," in James, *Memories and Studies* (New York: Longmans, Green and Co., 1911), 40.
26. *Ibid.*, 57-58.
27. *Ibid.*, 58.
28. William Burghardt Du Bois, *The Suppression of the African Slave Trade to the United States, 1638-1870* (New York: Dover, 1970), 199.

A Debate: I

Abortion and the Definition of a Person

William Hasker

IS THE FETUS a human being, or is it not? This is *the* question concerning abortion. Not the only question, of course — but the answers to all the others will be strongly affected by the answer to this one.

For Christians, this question has a very specific meaning. In Christian belief, each human person is, through God's power, capable of an endless life — a life to be spent either in the enjoyment of God's presence or in exclusion from it. In other words, each human being has — or is — a soul. So the question about the fetus is simply, does it possess a human soul or does it not?

In discussing this question I shall not produce any new medical, legal, or theological facts, though I shall recall some facts already well known to most persons interested in the question. I shall be primarily concerned to develop the implications and consequences of one way of interpreting these facts. If, as I believe, these consequences show that interpretation to be untenable, then the way will be open to propose another interpretation.

If one asks the question, "At what time does the fetus begin to have a soul?" it seems one is irresistibly pushed back to the very first moment of conception, to the union of sperm and ovum. Given the continuity of development of the fetus, the designation of any later moment seems arbitrary — an *ad hoc* move motivated only by the desire to escape certain difficulties. The moment of birth? But birth is *not* a "moment," but a process — so which stage of the process shall be selected? And is it not clear that the physical changes at birth, while significant, are minor in comparison to the total changes that occur both earlier and later? Quickening? But we know that the first perceptible movement of the fetus is by no means the beginning of its life — and who is to say how many imperceptible movements have preceded it? It is equally arbitrary to designate the moment of implantation in the uterus as the time of "ensoulment." Conservatives who take this line in order to avoid having to oppose very early abortions are vulnerable to the same charge they level against liberals and moderates — namely, that the time of ensoulment was not first

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determined in order to provide the basis for a policy on abortion, but is rather itself the consequence of an already adopted policy. The most palpable fact about the development of the fetus is the *continuity* of the development; there is no discontinuity at any stage which is dramatic enough to bear easily the weight of the distinction between that which is not yet a person and that which is already a person.

These considerations seem to constitute a clear case for regarding every conceptus as a human being, and for some time I accepted this conclusion. What I wish to do now is to develop certain consequences of this view, consequences which eventually led me to abandon it. The consequences may be roughly classified as moral, legal, and theological.

First, let us consider what might, on this view, be acceptable grounds for abortion. Most likely there is only one: the abortion of the fetus might be justified if this is the only way to prevent the otherwise certain death of the mother. My wording is deliberately strong. To see why such strong wording is necessary, we may consider briefly some of the more plausible alternative grounds for abortion. Danger to the mother's life? Danger to her (physical or mental) health? Pregnancy the result of rape or incest? Severe abnormality of the fetus? In each case, we have only to ask whether we could morally condone the deliberate killing of a *living person* on such grounds — and if not, then neither can we condone the killing of an unborn person. (Judith Thomson — in "A Defense of Abortion," *Philosophy and Public Affairs*, 1971 — argues otherwise. If she is right, some of the consequences which I develop below would have to be modified somewhat. But I won't discuss her arguments here: conservatives who object to my view on abortion will hardly want to defend themselves by accepting Thomson's!)

What about the legal consequences of abortion? On the interpretation just suggested, abortion is the deliberate, premeditated killing of an innocent human being — in other words, first degree murder. Thus the appropriate penalty for abortion would be exactly the same as that for murder — and note that guilt and penalty must apply not only to the abortionist himself (whether "back-street" or a licensed medical practitioner), but also to the woman who willingly lends her body to the procedure. Anti-abortionists do not seem to favor this, and I find myself wondering why. Is it because they want to avoid losing support for their position? Or is it because they can, after all, perceive a morally-relevant difference between aborting a one-month fetus and killing a year-old child?

But even if all the abortionists could be put out of business, the problems for this view would not be done with unless certain methods of contraception could also be eliminated. The "monthly pill" (using prostaglandins) now under development works by inducing what is essentially a "normal" monthly period whether or not fertilization and implantation have taken place, thus killing the fetus if there is one. This, to be sure, is not quite like ordinary abortion in that one is not deliberately killing a specific, known individual; it is more like firing a gun into a darkened room so as to kill anyone who may happen to be there. But what of the intrauterine loop? While there is not definite medical knowledge concerning the way IUD's work, the probability is that they do not prevent fertilization itself but rather prevent the implantation of the fertilized ovum. But if the fertilized ovum is a human being, then to prevent its implantation is most certainly to kill it — and the medical and social agencies which provide IUD's for this purpose are guilty of homicide. Indeed, by distributing such devices the United States government has committed mass murder on a scale to make the Nazi atrocities pale by comparison!

But even if all such means of contraception were eliminated, other difficulties remain. It is a well-established medical fact that somewhere between one-half and four-fifths of all embryos are aborted spontaneously in the very early stages of pregnancy, usually without the woman herself knowing that she is pregnant. Physicians view this fact without concern, supposing that these early abortions result either from fetal malformation or from some temporary disinclination of the woman's body to assume the biological tasks of pregnancy. On the assumption we are examining, *this attitude is not acceptable*. On the contrary: the high ratio of early spontaneous abortions (whether this is one-half or much higher doesn't really matter at this point) must be viewed as a *massive problem of public health*. It is also a moral problem, in that by our wilful neglect we permit the premature deaths of vast numbers of persons — a number far in excess of those killed by any other cause — and we permit this without lifting a medical finger to save them. To be sure, in many cases we lack the knowledge to offer assistance. But why do we lack it? Why aren't research funds being poured into a massive effort on this point? And why aren't anti-abortionists demanding such an effort? Of course, if we were able to prevent spontaneous abortions the result might very well be a tremendous increase in the incidence of birth defects (Len Fleck develops this in his paper, "Abortion, Deformed Fetuses, and the Omega Pill," forthcoming in *Philosophical Studies*). But those conservatives who regard every

fertilized ovum as in the full sense a human person couldn't possibly allow this to count as a reason for allowing them to die. (I'm not assuming that there is no moral difference between killing and "letting die." But the concern for the lives of these "persons" professed by the anti-abortionist is totally incompatible with allowing them to die when we might well be able to prevent this.)

I know from experience that it is difficult to get an argument such as this one taken seriously. One is accused of being flippant or frivolous, or of seeking to avoid clear duties by inventing hard cases. It's quite true that the policies I suggest for an anti-abortionist are policies which I can't imagine myself accepting or advocating. But that doesn't alter the fact that the policies are implied by the logic of his position! The conservative on abortion need not trouble himself as to whether *I* accept these consequences — emphatically, I do not — but I want him to ask himself seriously whether *he* is prepared to accept them, and if not, why not.

There is, finally, a certain theological difficulty which follows upon the point made above. The reasoning here is simple and straightforward. Each human being, we say, has an eternal destiny, and each fertilized ovum, we are told, is a human being. What, then, is the eternal destiny of the very large proportion of human beings who perish within the first few weeks of pregnancy? Surely they cannot be damned; so there is no escaping the conclusion that heaven is full of these creatures — that by far the greater part of the citizenry of the eternal kingdom is made up of "men" and "women" who never drew a breath on the earth. And here again I ask the reader: Does he, or she, in fact believe this? Does the expression, "the dignity of human life," not choke in one's throat when employed in such a context? Once again, the question is not what *someone might* believe or what *might possibly* be true but whether you, my reader, do *in fact* believe these things — and if not, why not?

If the reader has followed me this far, I trust he or she will understand that I find these consequences of the view that the fertilized ovum is a human being totally unacceptable and utterly incredible. Yet I would urge that each of these consequences is one to which the adherent of that view is strictly and unavoidably committed by the logic of his position. I will gladly admit that very few, if any, of those who regard the conceptus as a human person actually affirm and accept these consequences of their view. That they do not speaks well for their humanity and for their common sense, but does it not also cast a little doubt on the firmness of their belief? It is a tenet common to Christianity and to contemporary philosophy that believing something includes (some would say, *is*) a disposition to

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act as if the belief were true, and that what a person believes can be learned as well or better from what he does than from what he says. When the anti-abortionist agrees that abortion may be justified if the fetus is badly deformed, or if the pregnancy is the result of incest, or if the mother's life is seriously endangered, he may be demonstrating compassion and concern for the persons involved. But is he not also showing us that — in this one case, at least — he does *not* really regard the conceptus as an actual human being, but at most as a being which is potentially human?

If the view that every conceptus is a human being is untenable, what is the alternative? Can we determine some definite time subsequent to conception when human status is achieved? I think not. One could of course stipulate such a time, but would the stipulation have any basis other than the desire to avoid difficulties? I think we must simply confess that, assuming there is a definite time at which the fetus becomes a human person, we just do not know what that time is.

But can we find rest in our confession of ignorance? Isn't the decision one which has to be made? As the argument above has amply shown, many practical consequences hinge on whether or not in a specific case the fetus is regarded as a human being. Surely our admission of ignorance does not give us the right to walk away from these cases.

Indeed not. But what I wish to suggest is that the decision needs to be seen in a somewhat different light from that in which we have been viewing it up to this point. I suggest that the question of the human status of the fetus is not a matter for theoretical inquiry but an issue requiring a practical decision. The question is not, When *is* the fetus a human person? — for this is a question we are utterly unable to answer. The question is rather, at what point shall we human beings begin to *regard* and to *treat* the fetus as a human person?

On the one hand, it is clearly out of the question to place the time at which the human person is recognized later than the time of birth. To treat the newborn as a nonperson is surely morally repugnant to the vast majority in our society, and it could open the door to treating the retarded, the chronically ill, the senile, and the generally nonproductive members of society as nonpersons. For similar reasons, it is at least questionable to deny human status to the fetus in the very late stages of pregnancy. For should we do this, we must still face the fact that such a fetus would be perfectly capable of surviving with normal care, were natural or Caesarean childbirth to occur immediately. To kill a fetus at this stage, I submit, is psychologically and therefore also morally difficult to distinguish from killing an infant.

On the other hand, it seems undesirable to treat the fetus in the very early stages of pregnancy as already a human person, for reasons that I have tried to make clear. As a reasonable compromise between the extremes, I suggest the following: *The fetus is to be regarded and treated as a human person when it reaches the stage of development at which it is capable of independent existence as a human organism, supported by the care which is normally given to newborn children.* Such “normal care” would include oxygen tents and the like, but not the “artificial womb” should one be developed.

It may be objected that this proposal is both vague and arbitrary — vague, because the time of “viability” for the fetus can’t be known with certainty, and arbitrary, because whatever changes take place at the time of viability are no more significant than other changes that take place earlier and later. These objections are misplaced! Earlier, to be sure, I myself raised similar objections against attempts to place the time of “ensoulment” at some definite point subsequent to conception. But vagueness and arbitrariness, while weighty as objections to an alleged theoretical determination, have little force against a policy proposal such as I am now making. As for vagueness, I should say that as a practical matter abortion, when it is necessary, should come as early in pregnancy as possible. (This aim, by the way, tends to be frustrated by placing obstacles and elaborate procedures in the way of a woman seeking an abortion.) There is a sense in which my proposal not only is but must be arbitrary. There are in life many situations in which a “cut-off point” must be established but in which there is no one point which is obviously correct. (How many points do you need for a “B” on the Biology test?) Any answer to such a question must be to some extent arbitrary, and to point out that a particular answer is arbitrary is no objection to it. (It is an objection to point out that a particular answer ignores relevant data or has been unfairly applied. But that is another matter.)

The above principle, then, is put forward as a proposal for a practical policy, and is not based on any claim to “know” when the fetus becomes a person. Accordingly, I would welcome counter-proposals, provided that they are supported by relevant reasons and are not based on erroneous claims to know what I have said cannot be known. I cannot anticipate, at this point, what relevant reasons might be adduced for a policy different from the one I have proposed, so there is little point in discussing that question further.

But, it may be objected, surely *God* knows when the fetus becomes a person, even if we do not. Certainly. If there is a truth about this to be known, God knows it. But it is equally certain that in this case, as in so many others, God has not told us what he knows. On the other

hand, is it even clear that there must *be* a truth to be known? Is it not possible that for God, also, the personhood of the fetus is a matter for decision? That when it perishes, if its development has reached such a point that there is something worth preserving for immortal life, then God preserves it, and if not, not? In Austin Farrer's words: "We do not know where to draw the line; that is to say, we do not know where God draws it. But we may be sure that he loves and saves whatever is there to be saved or loved; if his love or power does not act, it is because there is nothing for it to act upon" (*Love Almighty and Ills Unlimited*, p. 190).

Suppose that the policy set forth above is accepted. What further practical consequences follow? It follows, of course, that in certain circumstances abortion may be contemplated as a morally acceptable course of action. It does not follow that one must be an enthusiastic advocate of abortion. The fetus, after all, is a being which could, in time, become a human person, capable of seeing in the light of the sun and of knowing God in the light of his Son. The fetus is not that person as yet, but also it is not nothing; it has a value and a dignity of its own, just as each of God's creatures — a bird, a flower, a blade of grass — has its own value and dignity. It is not yet, we surmise, the image of God, but it is the carefully primed and prepared canvas on which that image might be painted.

For such reasons as these, among others, it seems repugnant to reply upon abortion as a primary method of birth control, however necessary it may be in some cases as a method of last resort. Nor need one suppose that abortion will provide a permanent, satisfactory remedy for the ills it is supposed to alleviate, any more than antibiotics have provided a final solution to the problem of venereal disease. When problems whose causes are in part moral and spiritual are treated symptomatically through mechanical and physiological means, the evil tends to reappear in another form, sometimes even stronger because of the alleviation of the immediate symptoms. Still, in the present imperfect state of the world penicillin has its work to do, and so, sometimes, does abortion. For the most part we can only imitate God and help human beings one at a time. The proposal here presented can enable us to treat the problems of abortion on an individual basis, with true concern for the mother, the father, and their living children, as well as for the child who will live if no abortion is performed. And it will allow us to make decisions of compassion which meet the ineluctable needs of already-living persons without carrying in our hearts the guilt of murder. This gain may be small in comparison with the awesome total of human need and suffering. It is still, I submit, a gain worth making.

A Debate: II

In Defense of Total Regard

Thomas D. Sullivan

“**T**OTAL REGARD,” as I shall refer to it, is the proposition that life developing within a mother’s body is to be regarded as human throughout every stage of development. There are a number of reasons for treating nascent life with this kind of respect from conception on, including the fact that with the fertilization of the ovum, a new individual comes into existence, bearing in each of its cells a set of chromosomes typically human. Impressed with the orderly and continuous development of the individual through various stages of prenatal life, Professor Hasker once supported Total Regard. Lately, however, he finds himself troubled by certain moral, legal, and theological consequences of this view, and he wonders aloud if a less restrictive position might not be more sensible.

It would be a mistake, I think, to try to address his arguments by reviewing the data on human development furnished by the biological sciences. He is aware of the data and judges it inconclusive with respect to early stages. But he doesn’t think that the possibility of raising a doubt about the very beginnings settles the matter of how we are to *regard* emerging life when faced with the question of abortion. In a state of doubt we still may very well be obliged to treat the *conceptus* as a human being. Indeed, Hasker tells us, this is just what he for some time thought. Now he thinks he should take a different view of the matter. Before addressing his proposal and arguments, however, I would like to make an observation about Hasker’s general procedure and his treatment of the biological evidence.

Professor Hasker, it seems to me, sometimes forgets what his project is about. He says (p.33 and elsewhere) that he is not trying to show that the fetus is not a human being at times when he is willing to permit abortion, but rather that it should not be *regarded* as human for the purposes of the decision. But his last argument from consequences — the theological argument — does seem intended to show that the fetus probably is not human in the very earliest stages. The importance of his vacillation will be discussed later, but it is important to note here that this last argument is the only one he offers to cast doubt on the actual status of the fetus, and that whatever force it has (none, I think) bears only on the first few days, *before the*

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woman ordinarily knows she is pregnant and before the existential question of abortion can arise for her. A bare abstract possibility that a fetus with a beating heart and signalling brain may not be human can scarcely warrant our *choosing* to regard it as non-human. With the evidence all going in one direction at the moment of decision, it is plain enough how the fetus should be regarded. Only the prospect of having to face human difficulties can beguile us into giving weight to an ethereal doubt.

With this in mind, let us now turn to his proposed substitute for Total Regard. Killing fetuses in the late stages of development seems to Hasker, and probably the majority of people, indistinguishable from killing infants. And so believing Total Regard misplaced, Hasker proposes that the fetus be treated as a human person only when it reaches the stage of development at which it is capable of independent existence as a human organism, supported by the care normally given to newborn children (p.33).

But what is meant by "normal care"? Normal when and where? Huntington, Indiana in the spring of 1979? Surely Hasker cannot mean that, though his "clarification" seems to suggest as much: "Such 'normal care' would include oxygen tents and the like, but not the 'artificial womb' should one be developed." But if a less provincial concept of normal care is adopted, one that is adjusted to the resources of a particular community at a particular time, then the proposal is unfair. For when Pierre-Constant Budin at the 1896 Berlin Exposition placed six premature infants, whose chances of survival were considered slender, into an ingenious device which provided for one-way flow of warm air, and humidity and temperature monitoring of the environment, scientists and ordinary folk alike flocked to see the wonder — infants thriving in an incubator.¹ Today, of course, incubators are common. Hasker's proposal, then, means that Budin's infants were not entitled to the respect accorded human beings, while their counterparts born in his town or mine today are. But it is patently unfair to treat equally mature infants differently with respect to fundamental rights, just because they are born at different times or in different places.

Another result of letting "normal care" vary with the advance of technology is that one cannot exclude, as Hasker wants to, "the artificial womb." Hasker's motive is transparent here; he wants to keep his proposal distinguishable from Total Regard. This is impossible, though, unless the provincial concept of "normal care" is indeed what Hasker has in mind.

Setting these problems aside, Hasker's proposal is still unacceptable, for it carries with it the lethal consequence that

prematurely-born but well-formed infants requiring more than normal care would have to be declared non-human. There they would be in the intensive care unit of the hospital, with brain and heart and human face. And there we would be, touching hands nobody calls “potential hands” and looking into eyes nobody calls “potential eyes,” and babbling about “potential persons.” Now we can talk this way if we want, but it is pretty hard to talk ourselves into believing that it’s even *likely* such infants are not human. The overwhelming probability of their being human is enough to set aside any consideration based upon the bare possibility that they are not. We are not entitled to dispose of such infants or to abort their unborn counterparts just because we can say it is *possible* that they are not human. Yet given Hasker’s proposal, we are entitled to do just that. The assumption seems to be that if it is only *likely* that we are assaulting a human being, we may regard ourselves as doing something else.

We ought not to abandon Total Regard, therefore, until we are certain it is liable to objections more serious than those that afflict Hasker’s deadly compromise. The first Hasker brings forward is that Total Regard entails the proposition that the abortion of the fetus could only be justified to prevent the death of the mother (p.29). Hasker seems to think that this is obviously unacceptable, in many circumstances. But is it? He seems to forget that this is just what the argument is all about. The permissibility of abortion on any number of grounds is hardly a proposition one can take as a starting point. Imagine someone arguing this way with abolitionist Wendell Phillips: “The full humanity of the black is a matter of debate; if, however, we regard blacks as human, it plainly follows that the institution of slavery is immoral. The consequence is unacceptable. So blacks cannot be regarded as human.” The argument blatantly begs the question.

When Hasker considers the legal consequences of Total Regard, it is much to his credit that he avoids the most frequently heard arguments on this subject. We get none of the usual stuff about “imposing morality” in a pluralistic society, the example of prohibition, etc. Hasker is far too well versed in the vagaries of ethical thinking to support the idea that before any criminal law can be passed everybody must agree about the morality of the acts proscribed — on that view, no criminal law whatever could be passed. He knows too that (in learned journals) philosophers and others now voice support not only for abortion but infanticide. He won’t accept infanticide, and he doesn’t expect us to either.

Indeed, Hasker takes advantage of the fact that if we are firmly

convinced that certain forms of behavior strike at the foundations of society, we are obliged to do what we can to enact laws against them. The trouble, he argues, is that Total Regard carries with it legal consequences nobody could live with: 1) the mother as well as the abortionist would have to be prosecuted for premeditated murder; 2) various birth control devices would have to be outlawed; and 3) we would be obliged to pass legislation to create a crash program to prevent the natural abortion of defective fetuses.

Proponents of Total Regard seldom want to prosecute the mother for anything, let alone murder. "Is it," Hasker asks, "only because they want to avoid losing support for their position?" Instead of gratuitously questioning the motives of proponents of Total Regard —after all, he once stood with them — it would be wiser to wonder about the assumption he seems here to be making, i.e., that the law must treat alike all who disobey the same laws, irrespective of the condition and circumstances of both agent and victim. There is no reason why the law cannot take into account the fact that women have been thoroughly propagandized by the practitioners and others about what is really going on — "It's just a blob of tissue" — and that in any case mitigating factors are almost always present. Mothers do not kill their babies generally unless they are extremely distressed by the pregnancy. The abortionist is under no similar strain; he profits from the mother's hardship.

More plausibly, Hasker argues that consistency obliges proponents of Total Regard to favor outlawing certain devices that people use for contraceptive purposes, but which are in fact abortifacients. But again, why should this consequence disconcert us? If the (dangerous anyway) IUD were ruled out, those who wish to avoid pregnancy would scarcely be left without the numerous alternatives modern technology has conjured up. I blush to bring it up, but one might even make use of recently developed and highly reliable "Natural Family Planning" methods to determine periods of fertility and then — well, abstain. With so many methods available, surely one cannot insist that we have a right to sexual gratification so absolute that no restriction can be placed on *which* we choose, even though some methods can mean killing life conceived through our own acts. Let us recall that when IUD's etc. were first introduced, promoters emphatically denied that they were abortifacients. Now abortion is O.K., and the knowledge of their true effect is no longer considered relevant. "When pleasure is pleading the case," Aristotle once wrote, "the jury is not impartial."

The last supposed legal consequence Total Regard must face, according to Hasker, is that its proponents must insist that the

government launch a massive effort to find means to prevent spontaneous abortions due to fetal malfunction or disinclination on the part of the woman's body to assume the tasks of pregnancy. Hasker says he knows from experience that it is difficult to get an argument like this to be taken seriously. I think I know why. It's not that I think he is being flippant or frivolous, but rather that the rejoinder is perfectly obvious. We have a clear duty to refrain from taking innocent human life; we have no corresponding duty to prolong its existence no matter what the circumstances. There are times when we may licitly let someone die. Indeed, as Paul Ramsey has observed, a question can be raised about the morality of relentless and unqualified effort to save fetal life. "The first question to be asked is whether the respect which can be claimed for nascent life may include also the claim to be allowed to die, and not to be kept alive by the application of all the extraordinary means by which medical science can now do this."²

In a baffling parenthetical remark, Hasker says, "I am not assuming there is no moral difference between killing and letting die" (p.31). But if there is a difference, it can be applied to the case at hand. I'm sure Hasker doesn't think that an opponent of infanticide is obliged to favor government programs to study how the life of a death-bound, severely malformed neonate can be stretched out for weeks or months. If the opponent of infanticide can "let die," why can't the advocate of Total Regard?

Even if it is true (and Hasker gives us no reason to think it is) that we are somehow obliged to do what we can to prolong the lives of grossly defective embryos that nature would spontaneously abort, it certainly cannot be our first duty. Justice requires that help be given in a certain order. It will be time enough to turn to Hasker's far-fetched project when we have provided adequately for those millions who have a prior claim on our efforts.

A consideration of interest to the more theologically-minded is "the destiny of the very large proportion of human beings who perish within the first few weeks of pregnancy." They can't be damned, surely. So, proponents of Total Regard seem obliged to hold that "by far the greater part of the citizenry of the eternal kingdom is made up of 'men' and 'women' who never drew a breath on earth." Do we really believe this?

It is an intriguing question, which reminds one of others like it. What does God do with the millions of unbaptized babies who live for a time after birth, but never perform a morally significant act? Surely salvation isn't won by drawing breath on earth rather than receiving oxygen through the umbilical cord. Hasker, I gather, isn't opposed to

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God's permitting some persons into the kingdom whose brief span of life boasts no earthly achievements. But such prodigious generosity on God's part is mind-boggling. Yet if I with all my sins believe He may accept me into the kingdom, why should I balk at the idea that before his face stand countless millions of spotless souls who never harmed another human being?

But let us suppose that it *is* improbable. What follows from that? As far as I can see, nothing germane to the question at hand. The issue is not the speculative theological status of nascent life, but the practical question of how such life is to be regarded, given our ignorance. Even if it were unlikely that the embryo is human, it doesn't follow that for purposes of moral action, we may assume it is not. Consider a parallel. A woman goes to the doctor complaining of lower abdominal pains. She's in her mid-forties, and it is therefore unlikely that she is pregnant. The doctor, however, doesn't try to find out for certain; he just assumes that she is not and proceeds to X-ray her several times. When the child is born — unhappily I have an actual malpractice case in mind — every joint in his body is frozen. He lingers awhile, and then dies. The jury will not be impressed with the excuse it was unlikely that she was pregnant. In general, if there is a substantial possibility of injuring or killing someone, that is enough to oblige us to avoid doing so. Opponents of Total Regard must do more than show it is possible that the fetus is not human in early stages, and I don't think Hasker has done even that much. They must show that the likelihood is next to nil. Theological speculation about whom God will let into heaven quite obviously is incapable of establishing any such conclusion.

About such matters Scripture says nothing. It speaks to us only of what we need to know for our own salvation. And there we are told to take care not to do evil, even to the least of our brethren.

NOTES

1. Kathleen J. Motil and Michael G. Blackburn, "Temperature Regulation in the Neonate," *Clinical Pediatrics* 12, 634-35 (1973).
2. Paul Ramsey, *Ethics at the Edges of Life* (New York and London: Yale University Press, 1978), p. 189.

A Debate: III

Professor Hasker Replies

I WANT TO THANK Professor Sullivan for his thoughtful and challenging response to my paper. It seems that there are some misunderstandings and confusions between us, as well as some real and deep differences. I will first try to clarify my viewpoint where it may have been misunderstood, and then I will consider Professor Sullivan's objections to it.

The attitude or experience of doubt does not play as large a role in my thinking on abortion as Professor Sullivan supposes. It's not that I have doubts about whether a newly conceived embryo is a human person; I am quite firmly convinced that it is not. My opposition to casual abortion does not spring from a lingering worry that perhaps after all we are violating the rights of an unborn person; it springs rather from my conviction that this is a *potential* person (pardon the "babbling"!) and that it should not be deprived of the opportunity to develop into a human being without weighty and substantial reasons. But I do see a difference between aborting a deformed fetus and strangling a newborn child, even if Professor Sullivan does not. And I do not really have much doubt about this.

I do have doubts, or rather unfathomable ignorance, concerning that later moment, or period, or process in which the new biological organism achieves its full status as a human person in the image of God. Professor Sullivan, I take it, thinks that he knows they are persons from the very beginning. Here we differ profoundly. It's only to be expected, then, that he will disapprove of my "compromise policy" on abortion. I'm sure that the "viability criterion" can and should be stated better than I have stated it.* But I think it would be fruitless to pursue the matter here, since it's obvious in advance that no criterion of this general type could possibly meet with Professor Sullivan's approval. There is not much point in struggling to solve a problem for the benefit of someone who doesn't want to have it solved!

What surprises me most in Sullivan's critique is this: he really seems to think that our deep difference concerning the personhood of the fetus ought to make no difference at all to our practical policies — that, believing as I do that the fetus is not a person and unconvinced as I am by his arguments to the contrary, I nevertheless ought —

* Does Sullivan really think, in spite of my explicit statement to the contrary, that I would condone treating live-born infants as non-persons?

morally ought — to accede to his policy of “Total Regard.” I will return later to this remarkable claim.

I appreciate Professor Sullivan’s willingness to take seriously the consequences which I derive from “Total Regard.” He has made an unusually serious and consistent effort — if not, in my view, an entirely successful one — to bring his views and policies on those other matters into line with his fundamental conviction. First let me say that I am not surprised at Sullivan’s acceptance of the consequence that only the otherwise certain death of the mother can justify abortion, and I did not mean to beg the question by assuming at the outset that other grounds are acceptable. My remarks on p.29 are aimed not so much at Professor Sullivan and persons like him as at that rather large group of people who claim to be opposed to abortion yet tend to waffle on the hard cases. Sullivan does regard abortion as murder and he wants to punish practitioners, but not the women who seek and receive abortions. His rationale for this is not entirely convincing: generally the woman is under duress in a way the physician is not, but the physician may be altruistically motivated and deeply convinced of the rightness of what he is doing and of his medical and moral obligation to do it. Parents who deliberately kill their children *are* prosecuted for murder, though they seldom suffer the maximum penalty — and I still think there is something significant in the reluctance of conservatives to consider this in the case of abortion.

Sullivan does regard the loop as an instrument of mass murder, though for some reason he doesn’t seem as upset about this as he is about the — surely much smaller — number of “deaths” by abortion. (Of course I never meant to suggest that the loop is the only acceptable method of contraception.) He commendably tries to deal with the issue of spontaneous abortion as a “public health problem” — but I think his “perfectly obvious” reply has serious defects. I do see a moral difference between killing and letting die, but I do not think that difference is sufficient to justify a casual indifference to the death of huge numbers of human beings. (Fleck’s paper, cited above, should be read on this topic.) Sullivan quite unjustifiably assimilates all of these cases to that of the “death-bound, severely malformed neonate.” No doubt many spontaneously aborted fetuses are malformed, but for all we know many others might be capable of normal lives, given medical intervention to allow them to be brought to term. (It might turn out, of course, that this intervention was required at a very early point when we couldn’t yet determine which fetuses were deformed and which were normal. So we would have to save even the most severely deformed fetuses in order to fulfill our

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responsibilities to the normal ones.) Sullivan is indifferent to all this, and I seriously question whether it is an existential reality to him that a majority — perhaps a very large majority — of all human persons perish without ever having drawn a breath on the earth. Yet on his premises, it should be.

One last point on this: Sullivan observes that “Even if it is true . . . that we are somehow obliged to do what we can to prolong the lives of grossly defective [!!] embryos that nature would spontaneously abort, it certainly cannot be our first duty. Justice requires that help be given in a certain order.” Quite so. Others would say — I would say it myself — that while in general we have an obligation to support fetal life and to help it come to birth, this cannot always be our first duty — that sometimes our concern for the already-living persons whose lives would be endangered or gravely marred by the continuation of a pregnancy must take precedence over our care for the potential person in the womb.

What is the upshot of all this? Sullivan is convinced that the fetus is a person, even in the early stages of pregnancy, and I am convinced that it is not. I don’t find this surprising: I nowhere claimed, with any of my arguments, to “prove” that the fetus is not a person. When I say that I find the consequences of the view that it is a person “utterly incredible,” I am simply reporting what seems to me to be the case — that I just am not able to believe those things. I find that many persons, when they reflect on these consequences, tend to agree with me, while others, like Professor Sullivan, do not. I do not, frankly, see any very hopeful avenues for getting ourselves beyond this impasse; perhaps it must just be accepted. And it would seem reasonable to expect our practical policies on abortion to differ as a function of our different convictions about the personhood of the fetus.

But here Professor Sullivan disagrees. He thinks that, believing as I do about the personhood of the fetus, I am nevertheless morally bound to adhere to the policy of “Total Regard.” For unless the likelihood that the fetus is a person can be shown to be “next to nil,” we are required to proceed on the assumption that it is a person; to act otherwise is to run the morally unacceptable risk of committing murder.

What shall we make of this? Part of what Sullivan is appealing to is true enough: some risks are morally unacceptable, even if the probabilities are strongly in our favor. (To deliberately drive an automobile so as to incur a one per cent risk of a serious accident is recklessly immoral.) This is particularly likely to be the case if the evil that is risked is great and the gain from running the risk trivial, or if alternative, less risky methods are available, or if there is some

feasible way of finding out in advance how great the risk is (e.g., by testing for pregnancy *before* the X-rays). But little of this applies in the case of abortion. There is *no* "objective" way of finding out — before *or* after — whether the fetus has a soul or not; in many cases the evils risked by the continuation of a pregnancy are far from trivial, and no feasible alternative solutions are available. How then shall we estimate the risk of murder? At times Sullivan seems to write as though he had some way of knowing what the probabilities are independent of my agreement or anyone else's — some way of knowing that the non-personhood of the fetus is a "bare abstract possibility," an "ethereal doubt." But as he very well knows, it is difficult even to make sense of the notions of "likelihood," "probability," and the like in such contexts, unless we are basing them on the degree of belief or disposition to believe of informed persons who have seriously considered the issues. And the fact is, as stated earlier, that I (like many others) find myself entirely unable to view these matters as Professor Sullivan views them. For me, the "bare abstract possibility," the "ethereal doubt" is that he may after all be right. It follows from this that he and I will necessarily estimate the moral risks of abortion very differently.

There is, to be sure, a response typically made by conservatives at this point; Professor Sullivan, to his credit, does not make it. The response is that my professed disbelief in the personhood of the fetus is disingenuous — that I cannot believe this only because I *will not* believe it, because I am unwilling to shoulder the responsibilities that would arise if I did believe it. So far as I know, this is not true: I came to my present view, not as the result of any sort of personal duress, but simply by reflecting seriously on some of the consequences of "Total Regard." The larger point at stake here concerns the respect we must have for the integrity of those who differ with us even about important matters. For my part, I am deeply impressed with the integrity and scholarship of persons like Professor Sullivan and (for example) John T. Noonan. And I would hope that the proponents of "Total Regard" can in the same way respect those who differ from them — that they can acknowledge the honesty and deep commitment of a moralist like Daniel Callahan, or a Christian gynecologist like R. F. R. Gardner (see his *Abortion: The Personal Dilemma*). Only in this way is it possible for us to continue in dialogue and to affirm our common humanity, as we continue to seek more light on the rights and wrongs of abortion.

A Debate: IV

Total Regard: Conclusion

IN HIS CLOSING remarks Professor Hasker suggests that we may disagree so profoundly that there is no hopeful avenue for circumventing the impasse we have reached. I'm slightly more sanguine. Of course deep differences divide us, but there may be enough common agreement to resolve the question.

Before moving toward this resolution, however, let us see where we stand. Unable to determine when human life begins, Professor Hasker first argued against Total Regard solely on the grounds of its burdensome consequences. In his reply to the objections, however, he seems to have shifted perspectives. He reveals to us his confident judgment that human life is absent in early stages of pregnancy, and he makes that confident judgment the linchpin of his case. There is little point, therefore, in taxing the reader's endurance with detailed commentary on all of his attempts to clarify and to shore up his original arguments from consequences. Hasker concedes outright that one of these arguments leaves my position of Total Regard untouched,¹ comes close to conceding it in other cases,² attempts to prop up another argument with a highly implausible assumption,³ and abandons another of his original arguments without comment.⁴

Professor Hasker does, however, bring back one point that seems to merit further consideration. He allows, as I have argued, that mothers generally do not kill their babies unless they are extremely distressed by the pregnancy; but he still thinks that consistency obliges the anti-abortionist to seek legislation that would punish the mother and the abortionist with equal force, both for premeditated murder.

But it certainly doesn't follow that if anti-abortionists do not seek the harshest penalties they are somehow being inconsistent. After all, Hasker himself is, I gather, an anti-abortionist — albeit a limited one — since he finds late abortion indistinguishable from infanticide. But *he* isn't marching up and down with a picket calling for the mother and doctor's blood. He can think of reasons to justify leniency, reasons I expect not much different from ours. Proponents of Total Regard are thus inconsistent only if he is.

As for separating the case of the mother from that of the abortionist, good reasons abound, including the difference in awareness of the facts. Abortionists hide the facts from the women

and young girls they "serve." Planned Parenthood, for example, has gone all the way to the Supreme Court at least twice to fight state provisions for informed consent that would insure a woman's awareness of her decision and its significance. In one case they argued that "this requirement of written consent chills the right to choose to abort, and improperly interferes with the woman-physician relationship by interposing a state-ordained litany into the doctor's professional judgment regarding the information he or she finds it appropriate to tell a patient."⁵ In other words, if she knows what is going on she might not do it, and the abortionist can keep talking about "a blob of tissue" to those with qualms.

The laws that were on the books before the Supreme Court decided that every state in the Union, every legislature and every court was misinformed about their constitutionality were in the main quite sensible. They generally were far harder on profiteering abortionists than on desperate women; they also took into account factors that distinguish abortion from premeditated murder. Proponents of Total Regard simply want to reinstate the same kind of sensible legislation, together, I might add, with legislation aimed at helping women through distressful pregnancies. The claim that abortion opponents cannot consistently prefer such legislation to draconian substitutes is patently absurd. Hasker, after all, wouldn't claim that mothers who abort late should be charged with murder, although he regards what they are aborting as human.

Where does all this leave us? I believe biological evidence provides good grounds for Total Regard. As Professor Alan Donagan at the University of Chicago has said: "The question of when the life of a human being begins is a biological one, since human beings are rational *animals*; and biology answers it simply and unequivocally: a human life begins at conception, when the new being conceives the genetic code."⁶ But even if one doubts that the biological evidence *is* decisive, at a minimum it should be conceded that there is a substantial likelihood that the offspring is human even from the moment of conception. Since we cannot risk killing people just to evade taking responsibility for our voluntary acts, we are obliged to Total Regard, i.e., to act as if a person were present from the beginning.

Professor Hasker seems willing to go part of the way with me. If it is likely or if there is a substantial probability that unborn life is human from the moment of conception, then we are not justified in assaulting it just because carrying and delivering the baby might be burdensome. But Hasker is quite confident that the newly-conceived is not human, and so he thinks it is unreasonable of me or

anyone else to ask him to take into account the likelihood that in aborting a fetus the practitioner may be killing a person. Just why Professor Hasker is confident that the newly-conceived cannot be a person, when he used to think that it might well be, he doesn't say. Nor does he tell us where his confident judgment about the status of the unborn lets off and his "abysmal ignorance" begins. Is he still sure after a few weeks have passed and the question of abortion arises existentially for the woman who does not know until then that she is pregnant? Do brain, and heart, and face, and throbbing of independent life mean nothing? Can all of the stages after the first few days be covered by the mantle of "abysmal ignorance?"

Despite our profound differences at the moment, however, there is hope. And Hasker points the way. "As he (Sullivan) very well knows, it is difficult even to make sense of the notion of 'likelihood,' 'probability,' and the like in such contexts, unless we are basing them on the degree of belief or disposition to believe of informed persons who have seriously considered the issues." Fair enough. Let's listen to them. Not just to Noonan, to Donagan, to people like us, who sit in quiet offices trying to sort out and answer the moral issues. Let us listen to those who wield the knife. Let us listen to Dr. Bernard Nathanson: "I am deeply troubled by my own increasing certainty that I had in fact presided over 60,000 deaths. There is no longer serious doubt in my mind that human life exists within the womb from the very onset of pregnancy."⁷ Let us listen to those driven to tell of fantasies in the midst of every aborting, "in which they see the fetus resisting its own abortion, hanging on to the walls of the uterus with its tiny fingers, fighting to stay inside."⁸ Let us listen to those who speak in conference papers written for other "termination specialists," of "dreams of vomiting fetuses along with a sense of horror," and of "a need to protect others from viewing fetal parts . . ." Let us listen to them tell of the power of undeniable realities to penetrate defense mechanisms: "We have reached a point . . . in this particular technology where there is no possibility of denial of an act of destruction by the operator. It is before one's eyes. The sensations of dismemberment flow through the forceps like an electric current. . ."⁹ Let us listen to pro-choice writers who interview these doctors: "The word 'murder' surfaces again and again, and it sticks on the tongue like a searing coal of fire that one knows will do further damage whether it is swallowed or spit out."¹⁰ "I do think abortion is murder — of a very special and necessary sort. And no physician ever involved with the procedure ever kids himself about that."¹¹

Yes, for God's sake, let us listen.

THOMAS D. SULLIVAN

NOTES

1. Hasker had argued that if the fetus is regarded as human, no abortion except, perhaps, that to save the life of the mother, would be permissible. The consequence is unacceptable. I answered, to say the consequence is unacceptable is to beg the question. Hasker responds: "I did not mean to beg the question My remarks are aimed not so much at Professor Sullivan and persons like him as at that rather large group of people who claim to be opposed to abortion yet tend to waffle on the hard cases."
2. Hasker had argued that if the IUD and the pill are abortifacients, they would have to be removed from the market. I answered that the consequence is not unacceptable; for those who want to use contraceptives, science has provided all kinds of devices. Hasker answers: "I never meant to suggest that the loop is the only acceptable method of contraception." Fine, then there is no problem.
3. Hasker had argued that proponents of Total Regard are inconsistent if they fail to seek means (federally funded, of course!) to save all the fetuses that might be spontaneously aborted. If there were a way to save and assist those that are not death-bound, and if there were a way to do so without doing an injustice to anyone else, I would be for it. But it is far from clear that these conditions can be satisfied. Hasker asserts "we would have to save even the most severely deformed fetuses in order to fulfill our responsibilities to the normal." Why? To impose extraordinary burdens on the deformed because by so doing we might possibly save some persons is unjust.
4. No more mention is made of how God has to deal with the souls of the aborted. Maybe this is due to limitation of space; maybe Professor Hasker has decided to leave it to God.
5. *Planned Parenthood Association v. Fitzpatrick*, 401 F. Supp. 554 (1975) at 587. The case was appealed to the Supreme Court which upheld the constitutionality of the informed consent portion of Pennsylvania abortion statute. 428 U.S. 901, 49 L Ed 2d 1205, 96 S Ct 3202 (1976). The other case is *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976).
6. Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), p. 183.
7. Dr. Bernard Nathanson, *New England Journal of Medicine* (29 November), 1974, p. 68.
8. Norma Rosen, "Between Guilt and Gratification: Abortion Doctors Reveal Their Feelings," *New York Times*, April 17, 1977, p. 70.
9. Warren Hern, M.D. and Billie Corrigan, R.N., "What About Us? — Staff Reactions to the D and E Procedure." The paper was presented at the 1978 meeting of the Association of Planned Parenthood Physicians, San Diego, 26 October 1978, pp. 6 and 9. (My attention was drawn to this piece by Dexter Duggan.)
10. Magda Denes, "Performing Abortions," *Commentary* 62 (October, 1976), p. 35.
11. Magda Denes, "The Question of Abortion," *Commentary* 62 (December, 1976), p. 6.

Controlled Reactions

Ellen M. Wilson

MANY ANTI-ABORTIONISTS fail to proselytize successfully because they overlook half their task. If pro-abortionists were only brought to the point of *admitting* the humanity of that growing life within, so they think, then all would be well. The calendar would turn back to 1972, and the abortion clinics would close as potential patrons recoiled from the horror of the crime they had almost committed. And so the photographs of weeks-old embryos and months-old fetuses are magnified and reproduced and displayed; the vital statistics (movement, heartbeat, brain waves, sensitivity to pain) are zealously publicized, and the result is, yes, some people are converted, convinced by the evidence of their eyes, but others remain strangely unmoved. Like spectators at a magic show, partly curious, half carried away in spite of themselves, they remain in the end somehow skeptical, untouched by the contagion of conviction. They feel that some sleight of hand has been practiced upon them.

And there is a conscious, theorizing minority within this group of incorrigible pro-abortionists capable of verbalizing the grounds of their disbelief in the unborn's humanity. They maintain that this thing which *looks* so much like one of us, which apes our movements before it is even conscious of its own, this thing is only a human look-alike, exercising the same fascination upon us as monkeys and chimps at the zoo. Physical likenesses, so they say, only emphasize the enormous gulf between ourselves and this intermediate level of being. No, what you must do — and you will not be able to do it — is persuade us that this living, sensate creature is a human *person* — not a collection of human attributes, but one like ourselves, feeling emotion, receiving and analyzing environmental stimuli, *relating* to the world and to other people.

But there remains still another group of pro-abortionists who impose even stricter standards for admission to the human race. Dr. James Watson, for instance (co-discoverer of deoxyribonucleic acid, or DNA, and discouraging evidence of the default of 20th century liberal-arts education) would grant the newborn three days to prove its serious commitment to living before it was furnished with a birth certificate.

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Now, does a three-day survival test prove which former fetuses are human and which not, or does it separate potential burdens from more self-sufficient specimens? Clearly, the latter. And so those who propose this or that post-natal test of membership, or apply such tests prematurely (through amniocentesis, for example) are not troubling themselves with philosophical or biological questions about the distinguishing characteristics of *homo sapiens*, but are judging the baby's *value*. There is more than one way of measuring value, and more than one class of possible beneficiaries — judges less preoccupied with self-interest or society's convenience may, for instance, assess the infant's value to *itself*. Under this criterion, persons with major physical or mental handicaps may be judged incapable of returning *themselves* sufficient mental and/or physical satisfaction to warrant a prolonged existence. Or under social criteria, such handicapped may insufficiently reimburse the community for supporting their existence.

And so, for some categories of pro-abortionists, at least, several psychological Rubicons must be crossed before the hard-working anti-abortionist can claim a convert. The fetus must be human, it must be a person (and here the definitions expand and contract in an infinite variety of ways, according to your opponent), and it must be valuable, be at least potentially useful. But in a market economy which routinely raises and lowers the value of commodities in relation to one another, there is no immediately obvious formula for freezing the value of the human person, or "fixing" it objectively. The law of supply and demand, the identification of a commodity as luxury or necessity, alter the degree to which someone desires it, and the nature of the sacrifices he is willing to make. And so perceptions of value will be highly-individual; the collector of match-boxes may be induced to pay a seemingly-ridiculous sum for an unusual specimen, while an item greatly-valued by most people may be "worthless" to someone with eccentric tastes. Theoretically, at any rate, the market value of an item is determined by averaging all the individual estimates of its worth. Thus it is fruitless to insist upon one's own evaluation, since each consumer's judgment — allowing for inequalities of wealth — carries equal weight. Everyone is an arbiter of value — for though one cannot, in the normal course of events, purchase something below market price, one can *value* it above or below the number marked on the price tag.

And this is what hamstring the anti-abortionist who argues the inherent value of human life, even in the womb. "Inherent value" is a concept to which we bring no practical experience, no experiential understanding. For the escalation of human value to "infinite"

dimensions is a smokescreen which only obscures the question, “of infinite value to *whom*?” And what if one person’s object of “infinite value” collides with another? What human values may not, after all, be judged “infinite” by some people? To feminist champions of abortion rights, a woman’s “right to her own body” appears infinitely valuable. And though the life of the baby may be of infinite value to itself, it ranks very low with the aborter. In modern market economies, the value of one commodity is relative to that of the rest, and (discounting collectivist states, which impose values from above) all are determined by numerous arithmetical exercises.

Some anti-abortionists, then, abandon “value” and ground their defense of seemingly “useless” bits of humanity in an ecumenically conceived idea of the *sanctity* of human life. There are two arguments for doing so. First, sanctity better approximates our feelings towards human beings. It explains our ability to hold inviolate the lives of people we do not respect, or love, or even know. (This concept of sanctity, then, is a non-rational, though not necessarily irrational perception of *numina*, of sacredness without clear source or explanation.) Second, “sanctity” is a surer safeguard for helpless or “worthless” human beings — for the unborn, the handicapped, the very old. And because it is independent of theological formula or, indeed, any belief in a deity at all, it easily conforms to the demands of a pluralistic society. Only let yourself *feel* what one human being naturally feels toward another, they counsel, and you will agree that what you feel is reverence. Do not insist upon syllogisms to explain the thing; rest in the sure conviction that what you and others sense about humankind is as “reasonable,” as secure a mental resting-place, as a Euclidean proof or an algebraic equation.

There is something in this. “Value” is clearly deficient as a safeguard for human rights (totalitarian states provide clear examples of the ease with which “higher goods” can brush aside human rights). Perhaps value was never meant to be understood as an economic metaphor. But if the term truly refers to an inalienable quality inhering in its object, if the source of this quality is transcendental and not the product of man’s capricious judgment, then the word is exceedingly ill-chosen for its task.

But there are problems with the alternative also. In the effort to draw as wide a net as possible, by appealing to feelings unbuttressed by reason, they offer their opponents an unanswerable argument. For unless they can establish a convincing explanation for this welling-up of reverence toward a fellow-mortal, they will be left with no defense when others claim to be untouched by it, or deny their obligation to act in obedience to it. Feelings, after all, are not always trustworthy.

guides to action — envy, anger, desire, disgust, are more often obstructions to clear thinking and right action, while socially “useful” emotions, such as love, pity, gratitude, and the like, cannot always be summoned when required. And so there is no immediately obvious reason why one should trust this feeling of reverence toward human beings in all cases, and certainly no way to force it upon others. And if our feelings are to guide us to a proper understanding of what is due our fellow man, how should we respond when that apprehension of human sanctity is submerged by other emotions? Or lacking altogether? What does duty dictate to someone who feels only disgust at the sight of a shrunken body in a hospital bed, or a mongoloid baby? We are back at square one, if we must argue someone into feelings of reverence toward human beings.

But this is the problem endemic to searches for a lowest common denominator of opinion. Based upon the notion that differing beliefs can be reconciled by straining out all idiosyncracies and particularities, leaving only a kernel of common truth to us all, the effort is doomed to failure. For something must *fuel* this common belief, must make it convincing — or else the point of the homogenization of opinion will be lost and, to vary the metaphor, no unbelievers will be lured into the sheepfold. But of course *explanations* of beliefs are just the points at which differences develop. Those who begin convinced of mankind’s sanctity may themselves waver, unless they hold fast to their private (sectarian?) sources of belief. And those unconvinced may find little or nothing to sway them.

Of course, we are driven to defend the sanctity of human life because other people — not a majority, but no longer a lunatic fringe — act as if they perceived no numinous presence within the human tabernacle. But “sanctity” is no more compelling a concept than “value” — no more persuasive than appeals to the vagaries of taste — if our alleged feelings of reverence lack a communicable reason, or at least a source. Bystanders in the public forum are unlikely to honor the presumptive claims of those seeking to invest the unborn with the protective mantle of sanctity. In fact, this kind of sanctity summons us back once more to a marketplace world of changeable and individually-determined prices and values.

Something lies behind this “valuing” mentality, this ingrained habit of defining objects and persons by estimating their usefulness to us or interpreting our feelings towards them. And perhaps it will be easier to identify this “something” if we narrow our focus temporarily from abortion to voluntary and involuntary euthanasia — to growing skepticism about the “usefulness” of prolonging useless lives. For

“death with dignity” means death before — or at the moment that — the dying person loses value in his own or others’ eyes. The impulse to deny the sanctity of certain kinds of human life (because they elicit negative rather than positive feelings) opens the way for decisions to terminate lives no longer valuable to the community. The alternative is acknowledging transcendent claims upon us. But this is admission of subject status. And though man cannot determine his coming hither, he *can* control his going hence in a negative way, by cutting short his life.

The issue then is control. Long, lingering deaths forcefully betray one’s helplessness, one’s lack of control even over basic biological functions. And a drug-induced loss of consciousness is likewise a reminder — to others, and to the sufferer himself, in his lucid moments — that he is no longer in command. Cutting short one’s life, on the other hand — pulling the plug — is a kind of proof of one’s control at the end (just as determining whether a fetus will be granted life outside the womb is a woman’s assertion of control, through her right to judge the infant’s “usefulness” to her). Thus suicide is the ultimate act of self-assertion — it is the insistence not only upon one’s *ability*, but upon one’s *right* to annihilate self. It is the denial that, in practical terms, anyone else exists to whom one would owe duties, or even accept favors. This “anyone” includes not only other people, but God. To someone seemingly incapable of piloting himself through life, of providing for himself or satisfying even an appreciable portion of his own emotional needs or those of people close to him, suicide may appear the only alternative to permanent *taking*, permanent dependency.

And so a despairing state of mind is the natural product of this cult of independence and control. The belief that dependency is a shameful exposure of personal limitations and abhorrent on that account is the flip side of the illusion that individuals *can* fully satisfy their wants, without assistance (nations are susceptible to the same fallacy, though the requirements of national security and the state’s responsibilities to its citizens may render national delusions more excusable). But as C. S. Lewis suggested to an ailing, indigent friend, “Isn’t the spiritual value of having to accept money just this, that it makes palpable the total dependence in which we always live anyway?” And along with the illusion of independence, the fallacy of deservedness is unmasked at the very end of one’s life, as it lay revealed at the beginning. Though many people may be said to “earn” a good old age (as one earns a pension, putting something aside with each paycheck), no one old and infirm and helpless can be judged “worthy” in a utilitarian sense of the favors he must receive in order to

preserve life. Sir Thomas Browne revealed a true post-Renaissance mind, sensitive of its human dignity, when he admitted, "I am not so much afraid of death, as ashamed thereof; tis the very disgrace and ignominy of our natures, that in a moment can so disfigure us that our nearest friends, Wife, and Children stand afraid and start at us." To this shame of death we have added shame of *approaching* death. Lying on a sickbed, or being wheeled into a nursing home, we do not merely experience *prospective* disgust for the body in the grave; we suffer a *present* humiliation for our helpless condition.

Death — self-inflicted or administered by a fellow mortal — may seem the only "unshameful" alternative. And though there are enormous moral and practical differences between voluntary and involuntary euthanasia, there are at least these similarities: the insistence that human beings may judge human value, and the determination to exert control over the span of life. Proponents of voluntary euthanasia assert their right to determine life's length and suffering's duration (like the suicide); proponents of involuntary euthanasia insist upon the right of mankind (which actually means certain men) to determine the duration of individual lives, untethered by moral strictures as to the inviolability of human life. Often, only a hair-thin line separates the "self-control" mentality from that which seeks control of others — the abortion issue is a prime example, since women who claim they are only defending the right to control their own bodies blind themselves to the other bodies affected. Evidently, those other bodies (like those of euthanasia victims) have no *value*. For value is a human artifice, man's subjective estimation of objective reality, and he can easily lose sight of the object when otherwise engaged.

Are we driven back to the concept of the sanctity of human life? That is an acceptable alternative only if we reject the heresy that human life is sacred *because* man regards it as such. The principle of human sanctity, wrongly-interpreted, could suggest that reverence is due man because his fellow-man is willing to perceive something sacred in him. This would merely be a variation upon the principle of human *value*, which claims that respect is man's due because he proves himself worthy of it. Either way we once again find ourselves reaching individual judgments — and judgments individually rendered can be individually withheld, or withdrawn. Directly or indirectly, we are fostering man's illusion of control.

Instead we must recognize that we only perceive the sanctity of human life because it is there, it exists, it is objectively true. And if at any time we can acknowledge the sanctity of a life palpably valueless, unworthy — if we can confess that the reverence inspired by a

newborn has nothing to do with what it will become in 10 years or accomplish in 20, but with what it *is*, now — then we must logically conclude that our reverence is extended to man *qua* man. If we can even theoretically recognize an obligation to a human being whose condition repels, or personality disgusts us, then we must confess general obligations to human life, no matter how unfulfilled or undeveloped.

And if man need not — cannot — “earn” such reverential treatment, then what is the point of designing criteria to distinguish between “human beings” and “human persons”? Faithfulness to a human physiognomy, the achievement of a certain level of “consciousness,” the capacity to relate to others which the Desert Fathers might have had difficulty demonstrating — none of these, once established, *entitle* us to those human rights we claim for ourselves and others, and so it is difficult to see why we should require them of a three-month-old fetus before we spread the protective mantle of human sanctity over it. Those who attempt to distinguish between human beings and human persons, in an effort to exclude the former from human rights, are once more attempting to insinuate the notion that human life should be protected to the extent that it has *value* and is worthy of protection. This does not explain the complicated way in which most of us react to infants or the terminally ill or mongoloid children — and it certainly does not teach us how we *should* act.

For the recognition that human life is inherently important, quite apart from man’s judgment of value or perception of sanctity, imposes upon us objective duties. We cannot simply accept whatever opinion appears to be voted in, or suffer the fate of the fetus to be decided in a sort of philosophical marketplace. The understanding that human sanctity is innate and not invested by human beings obligates us to oppose those who would deny some lives such sanctity.

How then do we “explain” the sanctity of human life? How understand it, if it is not man-made, man-determined, man-merited? That is where an artificially-fashioned consensus is likely to reveal its limitations. A Catholic society may offer one revelation, a Jewish society another, Moslem or Buddhist a third. If one could imagine such a thing as a humanistic society, one could perhaps conceive of a shared humanistic understanding of the sacrosanct character of human life. At least, there are many atheists and agnostics who oppose wars, care for the ill and handicapped, yes, and even oppose abortion. Either they have a “rational” justification for directing their activities to “worthy” and “unworthy” alike, or they trust their simple

apprehension of human sanctity.

But a pluralistic society such as ours must function without corporate explanations for many of the beliefs which form our consensus. The need to resort to private or sectarian rationales does not, however, disqualify the consensus itself. Most people, in most places, at most times, have held human life in a peculiar — a unique — regard, have acknowledged special responsibilities to nurture the young and care for the helpless, no matter how useless or ugly or uninteresting. They have recognized the duty, whether or not they responded generously to it.

Those who sever their connection with traditions of thought and behavior spreading back beyond historical records must bear the burden of self-justification. They must explain why at times they award life on the basis of merit or value, and at other times, withhold it. If they insist that mankind's *right* to control human life expands as his capacities for doing so increase, they are left with the responsibility for the lives they preserve — and destroy.

On Imposing One's Views

M. J. Sobran

I AM SOMETIMES ASKED, when in conversation it transpires that I oppose abortion, whether I am a Catholic.

That this is deemed a pertinent question is a mark of confusion — and of the success of the pro-abortion campaign, which has managed to get an ethical and political problem turned into a credal problem. The result has been to further embitter an already thorny issue.

By now that campaign has popularized the proposition that “when human life begins is essentially a religious question.” Accept this, and it follows that those who have no religion can’t pretend to know the question’s answer, and hence can have no grounds for opposing abortion. A further (and more important) consequence is that a nation which eschews the establishment of religion has an actual obligation not to prohibit abortion. And from this it follows that those who seek to legislate such a prohibition are unassimilable to the form of the polity. Or, not to put too fine a point on it, they are constitutional pests who want to “impose their views” on everybody else.

But that proposition, in the first place, is a cliché. Every human life, like every canine and bovine life, begins at conception. Modern embryology has learned far more than Aristotle or Aquinas could have guessed about this. We know that the individual gets his entire biological make-up, from gender to baldness, when he is conceived; it is merely a silly semantic evasion to talk as if his species weren’t part of the bargain. The whole fascination of Louise Brown is that her life, a manifestly human life, began in a test tube, where it would be stretching words to say she was part of her mother’s body. Had she been implanted in a cow’s uterus she would not have developed into a calf. As soon as her life began it was a human life. That it could not have continued outside a human mother hardly refutes this point. Nor is it obvious what one’s views on the supernatural have to do with facts so transparent.

More sophisticated advocates of abortion say that the question is at what point the fetus is “fully” human. This at least acknowledges that we know far more than our ancestors about the continuity of life. Each of us was once a mere embryo, a mere fetus, a mere infant. Embryology is hardly likely to locate a better defining point than conception. The problem is to find moral reasons for distinguishing

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one phase of life from another for purposes of protection. Can a human life be too trivial to protect?

One philosopher, Michael Tooley, admits that life begins at conception and that it is nonsense to say what humans conceive is not human life. But he proposes as the best criterion of protection-worthiness (or what some call “full” humanity) the capacity for self-consciousness, for awareness of the self as distinct from other persons, that emerges a few months after birth. On this basis Tooley justifies not only abortion but infanticide. His solution may be horrifying, but it is consistent. Above all it does not pretend that only religion can answer what is essentially an ethical question.

Because the Catholic Church has taken an official position on abortion, many find it convenient to reduce the issue to religion. Some of them make thinly-veiled appeals to religious prejudice (or anti-religious prejudice). Others who don’t stoop to this have nonetheless sought to identify the anti-abortion movement with the Catholic Church.

This reveals confusion about religion. Not even the Catholic Church has made opposition to abortion an article of faith or “dogma.” Its position appeals to what it calls “natural law,” or moral reasoning that is independent of divine revelation. This should be obvious enough. Catholics are notoriously among those who try to excite horror against abortion by showing pictures of mutilated fetuses. Whatever one thinks of this, it is not an appeal to faith in things unseen or submission to authority. Like pictures of My Lai, it is an ingenuous appeal to our (natural?) loyalty to humanity. It may be simplistic. It is not in the least sectarian. On the contrary.

Why is this so hard for many Americans to understand? Perhaps because most of our non-Catholic religious traditions do depend on revelation for their moral codes, with the result that even popular secularism, rejecting revelation but retaining the Protestant exaltation of individual conscience, finds it hard to grasp a critical moral objectivism. This whole American moral tradition is itself dogmatic — unconditional, not susceptible to moral reasoning — and the assertion that abortion is strictly a religious issue is a dogmatic assertion. I know of no grounds for believing it; I have never heard any presented. Even among non-believers it can only be an article of faith.

This mentality, which presumes that only a faith like its own can animate opposition to abortion, has made it awkward for anyone whose view resembles or coincides with Catholicism’s. No matter what he says, no matter what reasons he gives, if his view is the “Catholic” one he faces impregnable skepticism: he is thought to be

making rationalizations for repeating what the Catholic hierarchy says. He must strain to show that he has found his own reasons and state them in terms that don't "sound Catholic." It helps, if his listeners aren't utterly bigoted, if he can say he isn't a Catholic. He must overcome a kind of psychological guilt-by-free-association with Catholicism.

But non-Catholics who oppose abortion have become almost invisible in the media, which emphasize the large Catholic portion of the anti-abortion movement, and treat the extremists of that movement as typical of it. The media didn't treat bombers and rioters as the heart and soul of the antiwar and civil rights movements, but this is different. Even nuns and figurines of the Virgin have a way of magnetizing the television cameras, as evidence of the putatively sectarian nature of what is really a humanitarian cause. The issue has predictably become whether "any group" has the right to "impose its views" on the "majority."

These are code-words for an all-too-familiar American bogey, the Catholic power-grab. Liberal opinion-leaders used to denounce this kind of appeal in 1960, but apparently they did so only because they perceived John Kennedy as one of their own. To the extent they are not directly guilty of it, they are guilty of tolerating it — as they emphatically do not tolerate appeals to fears of marauding Negroes or scheming Jews. They did not see the Reverend King as a menace to the separation of church and state; they do not raise troubling questions about whether support for Israel reflects special religious interests. Why, then, have they been so cruelly indulgent of the insinuation that the anti-abortion movement is essentially an expression of the constitutional insolence of the Catholic Church?

The irony is that the anti-abortion cause was doing very well in referenda as late as 1972. And what it has sought to do since has been not to "impose its views," but to restore, through persuasion and democratic process, laws passed through the same means (and by non-Catholic legislatures, if that helps); laws suddenly struck down in 1973 by seven men out of two hundred million. When the Supreme Court is voting progressively, liberals seldom complain — or notice — that a tiny minority is imposing its views. In fact judicial fiat and bureaucratic directive have become the preferred liberal modes of doing business with the American people.

We are now hearing the argument that the right to abort is somehow implicit in the First Amendment, as a free exercise of religion. Perhaps the same case could be made for human sacrifice in general, but that is neither here nor there. The humanitarian case against abortion deserves to be considered on its merits, which, such

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as they are, would stand unaffected if the Pope made abortion a sacrament. And Catholics deserve to be listened to, on this as on other subjects, with as much fairness and candor as if they were non-Catholics.

The bottom line of all government is compulsion. Unless a whole nation could be unanimous, this must always mean the imposition of some people's views on others who do not accept them. Yet the project of American politics has always been to keep compulsion at a minimum, and to keep before us the ideal of government by persuasion. This requires an ethos of fair and civil discussion. The sad fact is that American liberals, normally eloquent champions of free speech, have in this case, by countenancing and encouraging the defaming of anti-abortion forces and the misrepresenting of their goals, done much to corrupt that ethos.

Why Do the Heathen Rage?

Chilton Williamson Jr.

THE OTHER DAY somebody gave me a xerox of an article entitled "Abortion: Rules For Debate," written by Richard A. McCormick, S.J., Rose F. Kennedy Professor of Christian Ethics at Georgetown University's Kennedy Institute, and published last summer in *America* magazine. It turned out to be both an introduction to logic and an etiquette for embattled rhetoricians, and came down hard on the resort to the *argumentum ad hominem*, with its implied assumption that your opponent's position is wholly devoid of intellectual merit. I supposed that the intended beneficiary of the thing was the Roman Catholic Church, and was surprised — not altogether pleasantly, though I am not a Roman Catholic — to discover that Father McCormick was advocating a respectful attitude on the part of abortion disputants toward the positions of other parties to the debate. Where abortion is concerned, he complained, "the level of conversation is deplorably low"; what is wanted is more civility and a greater reasonableness in the breach. My first reaction to this ostensibly modest proposal was, What a decent fellow. I too believe in table manners, preferably not the Arab kind. Then I thought of Justice Byron White.

Justice White, it will be recalled, wrote a dissenting opinion in *Doe v. Bolton*, one of the Supreme Court's notorious *Abortion Cases*, which in 1973 stripped an unborn child in the United States of his rights to the point where he now enjoys fewer protections under the law than a seal cub has in Canada, being strictly invisible as he is to such brilliantly self-illuminating ecology activists as Brigitte Bardot and Cleveland Amory. Now nobody who dissented from *Doe* can be all bad, which makes it the more awful that Justice White incorporated in his opinion a statement which, however strongly it may appeal to the modern sense of enlightenment and intellectual fair play (so that it appears in context to be no more than a bit of empirical observation wrapped in a polite social gesture), reaches over the heads of the disgraceful majority to coddle and solicit the primary Heresy coiled like a spring in the modern mind and recognizable as such by all sane and honest men, even those who translate it instantly into the secular terms of plain Error. The

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question of whether or not abortion for convenience is wrong, Justice White said, is an issue “over which reasonable men may easily and heatedly disagree.”¹

Such a remark, as I say, is part politics, part *politesse* — and of course utter nonsense. To the extent that it has any intellectual respectability at all, it begs the idea that reasoning minds, proceeding from different points of departure, will frequently arrive at different termini, and that an intellectual climate which regards any act of reasoning, however flawed, as reasonable is reasonable of itself. Chesterton illustrated brilliantly (in his parable about the insane man to whom sanity could not be proved), how unreasonable such “reasonableness” is, but I don’t want to bring in Chesterton yet because I have only recently begun to read him and his confrères, and my response to the manner and matter of his work have for me an instantly recognizable quality to them, showing that he sets my neural impulses snapping down a long-familiar path like a boy skipping from boulder to boulder along a creek bed. This fact is probably of little interest to anybody, but it became of great interest to *me*, shortly after I began reading *The Human Life Review*. And reading it, began quoting from it — and, quoting from it, found myself suddenly under fire from friends who had long known me to be an agnostic, and who berated me for having allowed the Papists to brainwash me in a few short months. Several people, who knew me well enough to be acquainted with my family history, did not scruple to throw it up at me.

As a small boy in northern Michigan in the 1870’s, my grandfather Williamson once dropped a large rock on a small toad sitting feebly in the middle of a dirt path and went home right away to tell his mother that she didn’t have to pray to God anymore, as he had just killed the Devil. As a young man in the same vicinity he once knocked backwards down the front steps an earnest preacher who had come to pray him up to Grace. All his life he remained what might be called anti-religious, and harbored a special animus against the Catholic Church, which he indicted for a long list of usurpations and extortions, most of them practiced upon the ignorant sons of St. Patrick and other weak and credulous peoples. At his death, he left instructions for his cremation, but the flames were for him an ignominious defeat as he had indignantly demanded for years, in the bosom of the family, to be buried in a pinewood box — by that time illegal practice, at least in the suburbanized Garden State. This bias against a presumptive belief in a Supreme Deity and a faith in His minions on earth my grandfather passed on more or less intact to his children, and with enough vinegar in it to infect some of his grandchildren as well. Certainly it cut right through the faint protests

of my mother, who was baptized a Catholic at her father's insistence but raised up a Scots Presbyterian from the age of seven. I myself was sent to a fancy Episcopal day-school in New York City, but with the intention that I learn to read and write the King's English, not that I be cozened by the daily chapel services which in any case I learned to scorn from the first, when the chaplain took a Peanuts strip for his text. Anyhow, my religious education was so weak as to be virtually nonexistent; to this day it consists chiefly of a disordered collection of weak clues provided me by odd pieces of statuary and scraps of canvas, Pascal's *Pensees*, and the libretti to some operas by Verdi.

My tormentors thought it was Q.E.D. and waited for me to forsake the Venusberg; but they are still waiting. I think the Catholic Church a beautiful institution, though I have trouble accepting some of its highest and most sweeping claims, such as an absolute faith in the existence of God. I have always respected the Church, though I had never been given to discussing it with people; by the same token, I had always had a keen sense of the sanctity of human life. (Here, perhaps, I mean something different from what church people mean by sanctity, but perhaps not: certainly a belief in God is unnecessary to a belief in the dignity of man, which derives from a feeling of awe at man's place in the world — a place that is quite as awesome, and no less mysterious, when it is explained by Darwin rather than by Genesis. It has often occurred to me, in fact, that the idea of a pod of rational beings adrift upon the tides of a meaningless cosmos heightens, not lowers, one's sense of the grandeur and tragedy of life, though perhaps this is simply the infelicitous result of reading too much Dreiser at a tender age.)

But, once again, I had never talked about this very much, if only because it was something I was raised to take for granted. My grandfather died, though a very old man, when I was too young to have heard of abortion or known a girl who had visited an *abortoir*, and so I do not remember him pronouncing upon the subject; but I can no more imagine him thinking abortion moral than abolitionism immoral. Within the family tradition, agnosticism meant precisely what the term implies, no more and no less: certainly it did not entail disbelief in an irrefragable respect for human life, or the difference between right and wrong, true and false, honesty and dishonesty, sense and nonsense. *Freedom*, Laura Ingalls Wilder thought suddenly as a girl hearing the Declaration of Independence being read at a Fourth of July celebration in Dakota Territory, *means you've got to be good*. Agnosticism, to me and to all the agnostics I knew, meant *you've got to be better*. If there is no God and no Meaning, then you must become proficient at the game of *As If*. I

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think it wasn't until the middle Sixties that agnosticism ceased to mean that; and when it did, both legalized abortion and *The Human Life Review* became inevitable. It seems the most obvious thing to me that the *Review* exists to argue what shouldn't need arguing, but it has provoked me into thinking about axioms I have always held but of which I never was aware until they became heresies in a society that seems — at least in its most sophisticated and glamorous neighborhoods — to have passed beyond even what passes still for “secular humanism.”

When people treat the anti-abortion movement as generically a Catholic obsession and a “conservative” concern, all they are really calling attention to is the fact that Catholics and conservatives are inclined, by virtue of their beliefs, to appreciate better than many other observers the moral significance of legalized abortion. It is only because the pro-abortion movement is loath to recognize this that an attack upon it almost invariably shapes up as an ostensible apologia for Catholicism and conservatism.

II.

Dr. C. Everett Koop once wrote in these pages that “Without theological insights that help to form the basis of one's understanding of matters relating to the life and death of patients, I would find it impossible to make judgments in these matters.”² No doubt it is natural and inevitable that a Christian should feel that way, and yet in doing so he is perhaps led to underestimate gravely the natural power of his bias toward life. I say “natural,” because I am now prepared to acknowledge frankly such popular exponents of the Christian faith as Chesterton and C. S. Lewis, and for that matter the religious temperament itself. In other words, I am ready to take up the idea of “natural law.” Because one of the most striking things about the “natural law” is that, while it is the foundation sill of every religion ever conceived of by man and the recognized opponent of the positivist belief in legal rights deriving from the Lockean notion of the consent of the governed, the use of the adjective “natural” is never apologized for by its most polite adherents and never challenged by its most ferocious opponents, even though it is echoed across the enemy lines in such phrases as “natural selection.”

When Saul Bellow wrote in *Humboldt's Gift* that the modern world is intent upon denying what everybody knows by intuition — i.e., that the universe is ruled by Consciousness — he is, I am prepared to concede, talking inclusively only for people of a certain sensibility. But when it comes to natural law, which theologians will tell you was written by God upon the human heart, one can say absolutely that

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regardless of its origins its prompting has always and everywhere been felt, by people of every faith and by people of no faith at all. Has there ever been a society known to man, C. S. Lewis asks in *Mere Christianity*, in which murder was accepted with a shrug, and adultery encouraged, and stealing, lying, and cheating applauded? There have indeed been societies that condoned abortion and infanticide, but has there been a society before ours which chose officially to regard the former practice as the excision of a tumor and the latter in terms of a policy mandated by a macroeconomic cost-benefit analysis?

An editorialist at *The New York Times* wrote an essay recently which he entitled "By Jove," which he obviously had a good time writing, and which perfectly expresses the desuetude into which the religious temperament, or instinct, has fallen. Speaking of the space probe toward Neptune, he said:

We are not . . . surprised to learn from Voyager I that there is a ring around Jupiter. After all, the God Jupiter, or Jove, was the son of Saturn, and why should not the child resemble the parent? Unfortunately, relations between the two were never good. It was Saturn's practice to devour his children when he could catch them, and it required a revolt by Jupiter and his brothers and sisters to overthrow dad and his entire breed of Titans. That was when Jupiter took charge of the heavens, leaving the oceans to Neptune and the realms of the dead to Pluto. Jupiter was a notorious philanderer and we like to think that he and his wife Juno are still having their spats and that he still heaves thunderbolts in rage and exasperation.

So, admiring though we are of the accomplishments of Voyager I, we are keeping our fingers crossed that nothing it discovers will diminish the power of the gods to entrance us mortals. These outsized figures were not invented by any individual; they emerged from a human longing to comprehend the mysteries of nature — and of man himself. Science is useful; myth is the stuff of life.³

Thus the modern intellect deals with religion, turning it back into paganism and using its idols as gay puppets with which to entertain and "humanize" humanity. This makes it very hard for the religious temperament to find a proper ground on which to engage the secular. You can score a heavy point in a duel on the stage of the Globe Theater, but not on the apron of a puppet box.

Nevertheless, the most chaste materialist, and the staunchest secular humanist, can be wrestled down and made to kiss the boards. Common sense and honest thinking reveal inexorably the terms of our existence to us, and the magnitude of the gift we have received; religion *merely* tells us whence it came. And obviously the morality of the natural law is used, abused, and appealed to by the unreligious every day of the week. When George Bernard Shaw "exposed"

Christianity as socialism and water, he thought he had pulled a neat trick on religion but it is more and more apparent that the butt of the joke was socialism. Wherever socialists have made headway in the world in circumstances in which it was necessary for them to persuade people of the reasonableness and attractiveness of their program in order to get it adopted, they have been compelled to couch their arguments in the familiar terms with which the ordinary god-haunted man, however miasmic his thinking, is comfortable. For the most part, this has caused the proselytizers of socialism little discomfort because so much of the weight they carry around on their backs is not Marxism but Judeo-Christianism; yet it does occasionally make for confusion in the ranks. The World Health Organization, for instance, supports abortion on the grounds that health is "a state of complete physical, mental, and social well-being, not simply the absence of illness and disease" (the point being that unwed or previously occupied mothers, and unwanted children, can never realize this condition); but, embarrassingly, the General Assembly of the United Nations unanimously adopted, some years back, a Declaration of the Rights of the Child which states that "special safeguards and care, including appropriate legal protection, before as well as after, birth," are non-negotiable prerequisites to a tolerable and humane world. Here, at home in America, the same legal code that offers the fetus no protection whatever against dismemberment by suction, saline poisoning, and the knife, generously affirms its right of access to the laws of inheritance, and gives it a posthumous claim on the purse of a drunken motorist who kills its mother in an auto accident; the Social Security laws recognize it as a human being, even if according to a certain type of advanced thinking this is an argument — given the parlous state of the Social Security fund — against allowing it to be born to attain the onerous age of sixty-five.

Writing in *The Human Life Review*, Francis Canavan, S.J., has observed that, "We tend increasingly to limit [the notion of harm] to direct, tangible, and physical injury," which is why abortion (whose proponents invest only the mother with humanity) is not considered by them an affront to the dignity of life.⁴ But Canavan's thesis ignores the fact that the number of categories of oppression increases by the day, as one kind of activist after another locates another evil by process of applying metaphor as if it were a philosopher's stone to every aspect of the social condition. As Tom Wolfe, commenting upon the fertility of the liberal imagination in America, says: Europe has genocide, we have cultural genocide; they have fascism, we have social fascism. The trouble with the liberal's defense of his own habits is that his perceptual apparatus is double-bladed. Victims are readily

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turned into oppressors, and oppressors into victims. Also, humble people into arrogant ones. Surprisingly I have never heard anyone ask a defender of abortion why, if it is "intolerably arrogant" and "presumptuous" for a materially well-off person to condemn a fetus to a life of poverty in, say, Calcutta, it is not equally presumptuous of a healthy living person to choose death for the unborn.

III

When you examine the thing in context, the *ad hominem* line beloved of pro-abortionists and other people who regard life ultimately as either a convenience or an inconvenience is unpleasantly comprehensible. This mode of attack is most often resorted to when its object is a political conservative or, better yet, a Catholic, the first of whom finds himself stereotyped a vindictive, selfish, callous creature, and the second a benighted and intellectually backward dolt. Unhappily, Catholics especially are given to public resentment of this treatment, whining about their abuse at the hands of the secularists as if there were something impolite and wrong-headed in the application of sociological criteria to *anybody's* argument. What the anti-abortion people have got to do is to quit protesting the scorn that is lavished upon them, and pay closer attention to the significance of the treatment itself. For their enemy has selected, as a combatant is likely instinctively to select, precisely the weapon to which he is himself most vulnerable.

I was present on the floor of the National Democratic Convention in New York in 1976 when Mr. James Killilea of Massachusetts was permitted — owing to Jimmy Carter's astutely-cultivated friendship with the "pro-lifers" — to nominate Mrs. Ellen McCormack, presidential candidate of the anti-abortion activists; he was afterward succeeded on the rostrum by Erma Clauden Craven, a delegate from Minneapolis, a veteran social worker, *and a black woman*. I thought at the time, and think still, that having Mrs. Craven address the overwhelmingly abortion-minded convention of Democrats and liberals was a master-stroke, shrewd and superb and breathtaking, inexplicably without precedent and strangely neglected as a strategy since. As I wrote at the time: "It would be too much to say that the floor and the galleries unanimously clammed, but it is a fact that under the sledgehammer blows of Mrs. Craven's almost sobbingly abrasive voice, they subsided . . . abashedly? For Mrs. Craven was telling them, explicitly: 'Anti-abortion is a liberal cause'; and, implicitly, 'I, a black woman whose life has been spent among the poor, tell you this. You liberal pro-abortionists — *you know better.*'"

Here, I contend, is the secret behind the twisted — indeed,

murderous — anger that turns the faces of so many of the feminist demonstrators as opaque as though they were veiled in stockingmasks. The staggering simplicity of the abortion question has not, I suspect, evaded them in their heart of hearts, where angry human wilfulness does battle with something nobler: deep inside, they know that the struggle is between people guilty of what John A. Hardon called (in this *Review*) “the homicidal intent to kill innocent life,” and those who oppose them.⁵ This is an entirely justified bit of reductionism which, however, is not going to be countenanced by people accustomed to thinking of *themselves* as the valiant defenders of threatened human values, and who will fight to the point of inarticulateness the suspicion that they are living a lie.

Is there any doubt, after all, when human life commences? The new trick of the obscurantists is to prate of “consciousness,” as if life cannot exist apart from it — but this is quite irrelevant. As Canavan says, “When life begins is in itself a pre-theological and pre-moral problem which can only have a pre-theological and pre-moral answer, whether it be scientific or merely a common-sense answer.”⁶ Science, of course, has long since disposed of the “question”: at the moment of conception, the fertilized egg possesses the requisite 46 chromosomes — the complete genetic composition of a wholly unique human being has been conjured into existence. How to rebut so plain a scientific fact other than with an irrelevancy or an inanity? Ashley Montagu claims that the unborn “do not really become functionally human until humanized in the human socializing process”; other critics insist that humanity begins when the child is no longer dependent upon the mother. If Montagu and his ilk are to be taken seriously, there exists grave doubt whether an emotionally crippled, mom-crazed *pathétique* like Arnold Portnoy would be creditably human at the age of forty. When such information as that the fetus sucks his thumb and drinks deeply of his amniotic fluid when it is sweetened for him is — or should be — common knowledge among people who discourse publicly on the subject of abortion, it is impossible not to conclude that the unexpressed attitude of environmentalists and population control experts who advocate socialized abortion is: “We are going to have to get rid of some people, and fetuses are the easiest ones to begin with.” Save for such emotionally superior types as the editors of the *California Medical Journal*, this kind of thing is hard for even a secular humanist to hear himself think. Like Duncan’s blood, the stains of conscience will not rub out: when it is confronted by a felt guilt denied, the human mind responds with an expressionist splatter of furious irrationalities.

IV

If (and it seems undeniable) the present era in Western history is a time of intellectual decay, this is chiefly because the liberal mind has corrupted intellectual habits by replacing truth with human gratification on the right side of every equation. If logic does not prove a faithful accomplice, it is rerouted, and routed again, until it reaches the predetermined goal. Argumentation forced along these lines has naturally produced statements of grotesque, and indeed surreal, proportions. Here, for instance, is Professor Judith Thomson's rationale for "a woman's right to control her own body": "I am arguing *only* [my italics] that having a right to life does not guarantee having either a right to be given use of, or a right to be allowed continued use of, another person's body — even if one needs it for life itself.'"⁷ Does Professor Thomson, one wonders, live in the same world as ordinary people? There is a sense in which, in her capacity as a fancy Professor, she is as much a deserter of the human condition as a man who puts a gun to his head and pulls the trigger. On the intellectual level, such a betrayal is an act of pride delighting in the arabesques the human mind can trace upon its own surface; on the moral level, it is an act of sheer wilful egotism.

"The life of the law," wrote Justice Oliver Wendell Holmes, "has not been logic; it has been experience." That the experience he refers to has — since the Brandeis Brief put sociology into legal argument — been mainly the experience of social workers and reformers is attested to by the intellectual sloppiness of the *Roe* decision, which even pro-abortionist observers have deplored. Does it really require the trained and formidable brains of a Jesuit like Canavan to set the Court straight in its considerations of the nature of private actions: "The action performed in private does not thereby become a positive right whose exercise the law must facilitate?"⁸ Archibald Cox, who is Senator Edward Kennedy's favorite jurist, read the *Abortion Cases*, scratched his head, and went to his typewriter: "Has the Court swung around the circle back to the method which led to equating Due Process with the economics of *laissez-faire*? Is there any *general* principle which authorizes the Court to . . . read liberty of abortion into the Fourteenth Amendment but not liberty of contract?"⁹ Mssrs. Horan and Gorby have protested that Justice Blackmun, who worried aloud in his decision about "population growth, pollution, poverty, and racial overtones [which] tend to complicate and not to simplify the problem [of abortion]" should, if he intended to rule on these "profound problems" and was seeking to justify the sacrifice of unborn humans to the interests of population control, have said so, and allowed the matter "to be debated on its merits rather than

presenting the problem of *Roe* in terms of construing several potentially conflicting clauses of the Federal Constitution which guarantee individual rights.”¹⁰ What we find here, of course, is the malign development known as “government by judiciary” — a matter that strikes deeper, I suspect, even than many of the people who deplore it know. Ultimately, it is but another aspect of contemporary intellectual deliquescence — a product of the notion that, as Professor George W. Carey would put it, the Courts should divine the Constitution rather than argue with it. “This transformation of our basic constitutional division of powers could not have come about,” Carey has concluded unhappily, “unless it was supported and abetted by a theory, a rational, or an ideology.... We are currently witnessing the full effects of a secular, scientific ‘humanism’ which finds its roots in the natural rights philosophy.”¹¹ For a couple of generations now our jurists have been attempting to use this theory to turn themselves into scientists, only to end up as swamis instead.

V

Conservatives in this country are forever assuring each other that Americans are fundamentally conservative people, but more and more I wonder whether this is going to do them much good. Certainly the majority of the citizenry believes, however incoherently, in the existence of a Deity of some description, and therefore has at least a foggy notion of the basic imperatives of a moral universe. Yet this temperamental conservatism does not necessarily translate into policy and opinion which must be logically, and often very painstakingly, derived from it.

On the intellectual plane, conservatism implies a belief in intellectual principle: a conviction that thinking logically and systematically and from a fixed point of departure (as opposed to skipping *ad libido* among one-liners, from one philosophical pellet to the next: *ad hoc* thinking abandoned to a system) carries one to the best possible understanding of the world. (This, after all, is what intellectualism is about: its opposite is anti-intellectualism.) On the moral plane, it implies that these principles are based upon self-evident conclusions which are absolute — or must be treated as though they were absolute. Finally, in politics, it implies a desire for the conduction of public affairs by the honest and careful application of standards derived from these moral and intellectual principles.

Clearly conservatism taken thusly is not a philosophy for ordinary men in the democratic mass. Not only does faithfulness to it require the constant mental exercise needed to spot and reject the seductive anti-mental slogans of demagogues (“a woman’s right to control her

own body”; “the right of a person to a job irrespective of sexual orientation”; “the necessity for meaningful redistribution of wealth” — as if somebody distributed it in the first place!), it requires the fortitude to resist the material blandishments of convenient statist and welfarist policies (free day care centers, price supports, Medicaid, and funding of abortion-on-demand). And it is precisely this kind of fortitude that modern democrats lack. Without necessarily meaning to be, or understanding that it is, the modern temper in its public aspect is chiefly relativist, pragmatic, and viscerally accommodationist. Even the most decent and law-abiding Americans very often have no principles, in the philosophical sense of the word; philosophically speaking, they muddle through on instinct and upbringing. We are supposed to be in the middle of a religious awakening, and have put an evangelist in the White House; but under scrutiny the religion on tap in the heartland reveals itself to be little more than a devotion to a pop figure called Jesus Christ combined with a received — and perfectly sincere — commitment to the Ten Commandments.

This is something that Solzhenitsyn is just beginning to understand, but cannot yet appreciate, as his Harvard commencement address last spring showed: America is simply incapable of *thinking* — even if it can still *feel* — in the fixed terms even of para-religious discourse, and is thus prone, in its public affect, to the limpmindedness of secular humanism. The democratic mystique demands that any idea beyond the comprehension of a grade-school graduate be considered effete, and makes it an intolerable usurpation that a citizen should be ruled by a web of principle whose philosophical justification he is unable to fathom. One of the results of this is the progressive degradation of the intellect, now, as I say, spectacularly on display in American jurisprudence, which is abandoning reasonable conclusions for a salivate strand of *ad hoc* decisions, each arrived at not by proceeding in an orderly way from one legal principle to the next but by rushing to breathe the *Zeitgeist* into the presumably drowning and waterlogged Constitution. Plaintively, pathetically, David Louisell has protested in these pages: “Certainly the fact that our distinctions [*in re* the beginnings of human life] are fine does not of itself condemn them. Biology, psychology, and morality, like life itself, are filled with close questions, narrow definitions, and fine distinctions.”¹² Well, sorry for you, fella. If a vocal section of the public cannot understand how, let us say, it is constitutionally impermissible for the government to abide reverse discrimination on the grounds of race, then the government must declare itself tolerant of the practice and

fudge the law. This doctrine is politely recognized as organic constitutionalism, but in fact it is merely a betrayal of what Sidney Hook calls "the moral obligation to be intelligent," not to mention honest.

VI

Life is, finally, elevated or degraded less by how we treat it than by how we think about it: it is more wicked to justify an abortion than it is to buy one, which is why the argument that we had better make abortion legal in order to make it safe is so nauseously perverted, intellectually as well as morally. (As a 15th-century Jewish sage put it, "It is surely far better that individuals should commit the worst offenses and expose themselves to the gravest penalties than to promote the slightest compromise with the moral law.") Similarly, human intelligence is affirmed or denied according to how responsibly we use our powers of reason. This being so, it is obvious how profoundly legalized abortion and its theoretical defense have battered our respect for both life and intelligence. That the opinion polls continue to report that an overwhelming majority of Americans consider abortion an evil is testament to a profound yet common sense within the human heart. But if *Roe v. Wade* is not shortly overridden, whether by a new decision or by a constitutional amendment, public familiarity is likely to blanket the stirrings of private anxiety.

NOTES

1. *Doe v. Bolton*, 410 U.S. 179 (dissenting opinion).
2. C. Everett Koop, M.D., "The Right to Die (II)," *The Human Life Review*, Spring 1976, Vol. II, No. 2, p. 55.
3. "By Jove," *The New York Times* editorial page, March 10, 1979.
4. Francis Canavan, S.J., "Genetics, Politics, and the Image of Man," *The Human Life Review*, Spring 1978, Vol. IV, No. 2, p. 54.
5. John Hardon, "Euthanasia and Abortion: A Catholic View," *The Human Life Review*, Fall 1975, Vol. I, No. 4, p. 96.
6. Francis Canavan, S.J., "Simpleminded Separationism," *The Human Life Review*, Fall 1977, Vol. III, No. 4, p. 43.
7. Baruch Brody, "The Morality of Abortion," *The Human Life Review*, Fall 1975, Vol. I, No. 4, p. 43.
8. Francis Canavan, S.J., "Law and Society's Conscience," *The Human Life Review*, Winter 1976, Vol. II, No. 1, p. 4.
9. Archibald Cox, "The Supreme Court and Abortion," *The Human Life Review*, Fall 1976, Vol. II, No. 4, p. 17.
10. Denis J. Horan, Esq. and John D. Gorby, "Abortion and Human Rights," *The Human Life Review*, Summer 1976, Vol. II, No. 3, p. 29.
11. George W. Carey, "Abortion and the American Political Crisis," *The Human Life Review*, Winter 1977, Vol. III, No. 1, p. 45.
12. David W. Louisell, "Euthanasia and Biathanasia: On Dying and Killing," *The Human Life Review*, Summer 1976, Vol. II, No. 3, p. 77.

13 Years Ago

History Repeats Itself

Francis Canavan

LAST FALL, in the Oct. 19 number of *Look*, I read a plea for liberalized abortion laws entitled "The Growing Tragedy of Illegal Abortion." I have been thinking about it ever since. It is not that it was the first article of this kind that I had read. Last year alone, similar ones had appeared in *Pageant*, the *Saturday Evening Post*, *Parents Magazine*, the *Atlantic Monthly*, *Redbook*, the *New York Times Magazine* and a number of lesser publications. But as I read the *Look* article, the thought crossed my mind: "This is where I came in."

This was where we had been 15 or 20 years earlier, during the controversy over contraception and contraception laws. This was exactly the type of article that had been published, frequently enough in the same magazines, to show the absolute necessity of endorsing contraception and of changing the laws that limited its spread. The same sort of article can be, and almost certainly will be, used in the future to advocate still further changes in the moral and legal structure of Western civilization.

The *Look* article is a good example of the genre. It begins with a series of "cases" — horror stories of bungled criminal abortions to which women had to resort because safe, antiseptic abortions were not legally available to them. Eminent doctors, including the ubiquitous Dr. Alan F. Guttmacher of Planned Parenthood-World Population, are quoted in protest against this intolerable situation. Then the proposals for reform of the abortion laws are explained.

The principal one is contained in the Model Penal Code drawn up by the American Law Institute in 1959. (A bill based on it has been before this year's session of the New York State Legislature and similar ones have been introduced in a number of other States.) The Model Penal Code would permit abortion if doctors thought there was substantial risk that continuance of the pregnancy would gravely impair the mother's physical or mental health, or that the child would be born with grave physical or mental defect, or if the pregnancy resulted from rape or incest.

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FRANCIS CANAVAN

The only objections to liberalization of abortion laws that *Look* mentions have come from Catholics. (It quotes an editorial in *America* on this point.) To illustrate the nature of the conflict over abortion-law reform, it recounts how a bill for this purpose was shunted to a dead end in committee in the California Legislature last spring "as the result of fierce Catholic opposition." Catholic pastors denounced the bill from their pulpits, and Catholic clergymen gave testimony against it in legislative hearings, *Look* reports.

On the other hand, nearly 1,300 Protestant and Jewish clergymen in 334 California cities and towns were among the bill's supporters. Says *Look*: "The ecumenical movement suffered as the debate grew hot." It quotes the Rev. Lester Kinsolving, vicar of the Episcopal Church of the Holy Spirit in Salinas, as declaring angrily: "Some Catholics are insisting that their particular beliefs be forced upon all Californians. This is no more valid than if the Legislature were asked to outlaw pork because of Jewish beliefs or imposing the Christian Scientist's view on medicine or the Jehovah's Witnesses' objections to blood transfusion on everyone."

The *Look* article concludes with further quotations from supporters of the bill, and these words from Dr. Kenneth R. Niswander, of Buffalo, N.Y.: "The strongest effort must, of course, be directed toward prevention[*of unacceptable pregnancies*]. No matter how effective the contraceptive, however, unwanted pregnancies will occur, and when all else fails, abortion may be the only answer. Should the medical profession force desperate women to risk their lives by evading the law? A more liberal and realistic abortion law seems the better answer."

It is not my intention here to answer *Look's* article. This Review has published numerous editorials and articles that serve that purpose. The *Look* article interests me for other reasons.

First, it is a good example of a journalistic technique that can be used against any moral or legal principle. A writer describes a situation that is causing people to suffer: women with too many children, priests who want to marry, parents whose children are born badly deformed, children whose aged parents are dying in pain and ought to be put out of their misery, etc. He then points out the barbarity and mindlessness of laws that prevent people from taking the most realistic and effective means to relieve the suffering. The writer notes with regret that opposition to reform of these laws comes from reactionary elements in the Catholic Church and that this is putting a strain on community relations or, as we say today, on the ecumenical movement. The conclusion is clear: if the Church will join

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the 20th century and ally itself with progressive forces, we can all move forward to a more humane society.

The *Look* article is also important as being symptomatic of a major shift in the value structure of our society. If it were an isolated article, it would not have this significance. But the spate of articles, editorials, television broadcasts and legislative bills in favor of abortion in the past year or two has been so great as to give reason for believing that abortion will soon become as acceptable to most people as contraception already is.

The British writer Glanville Williams said, a few months ago, in a letter to the *Observer* (London): "Let us face the fact that the law of abortion aims to protect the fetus; and most people now take the view that this protection should be substantially modified." He referred to Great Britain, but a Gallup poll reported in this country earlier this year indicates that American public opinion is no different from what Mr. Williams says it is in Britain.

Of the people questioned, 77 per cent believed that abortion should be legal where the mother's health is in danger, 54 per cent where the child may be born deformed. The percentage of Catholics holding these views is lower than that of Protestants, but it is still high; 46 per cent of the Catholics questioned in the poll would approve of legalizing abortion where the child might be born deformed.

(A fairly prominent Catholic layman was recently quoted to me as saying that, if 51 per cent of the People of God approved of abortion, that would show that the Holy Spirit approved of it. In other words, in former times God spoke to our fathers in many ways and by many means, through the prophets; now at last, in these times, He has spoken to us through the Gallup poll. Such wonders has the "Catholic Revolution" wrought; and others, no doubt, are yet to come.)

These opinions represent something much deeper than a change of mind about the morality of a particular action such as abortion. As I said above, they represent a major shift in the value structure of our society. Modern society is secular, and its public philosophy is becoming steadily more secularized. The only values that it recognizes are those that can be realized in this world. As a consequence, the greatest evil that it knows is earthly human suffering. For the modern secularized mind, suffering is never a cross to be borne; it is a problem to be solved, and no allegedly absolute moral principle may be permitted to stand in the way of a solution. As Reinhold Niebuhr says in his latest book, *Man's Nature and His Communities* (Scribner): "An empirical culture is bound to be increasingly nominalistic and therefore is not inclined to accept

moral or political norms alleged to be either universal or inflexible.”

Furthermore, the values that modern man wishes to foster and protect are principally interior ones that reside in human consciousness: happiness, freedom, authenticity, etc. Physical or material values, such as the integrity of the sexual act or the sanctity of physical human life, are sometimes an obstacle to realizing these “personal” values. They therefore may be suppressed to the extent that they stand in the way.

Out of this system of values has grown the notion that man has a right to total control over his reproductive system, whether the control is exercised by interfering in the reproductive function through contraception, or by suppressing the function altogether through sterilization, or by eliminating the function’s natural result through abortion.

The same scheme of values has led to widespread acceptance of the proposition, assiduously propagated by Planned Parenthood, that the “unwanted child” is a positive evil. Not only is he an evil to his parents and to society, but he is an evil to himself: it were better that the unwanted child should not be born, even presumably from the point of view of the child himself. Marghanita Laski stated this thought succinctly in an article entitled “The Case for Abortion” in the March 18 *New Statesman*: “In my view the ideal is that no baby should be born except into a loving family that wants it.”

It follows that the baby’s conception should be prevented, if possible; but if he is conceived by accident, he should be destroyed. As Dr. Niswander said in the passage quoted above: “No matter how effective the contraceptive, unwanted pregnancies will occur, and when all else fails, abortion may be the only answer.”

I do not see how a society committed to this value system can stop short of legalizing infanticide. Some children who are badly deformed, or are for other reasons thoroughly unwanted, will always succeed in getting born. What is to be done about them? At the present time, even many advocates of legalized abortion would recoil from the idea of exterminating them. But within 20 years, at the outside, the legalization of killing infants at birth will be a subject of public discussion, as abortion is now.

Predictions like this are usually greeted with a skeptical smile, and rightly. It is not very convincing to say that, if we take step *a*, we logically should and therefore, in fact, shall go on inexorably to step *z*. Prof. Leo Strauss has called this kind of argument the *reductio ad Hitlerum*. It rests on the fallacy that the line that starts with putting fluorine in the water necessarily runs all the way to Auschwitz and Maidanek. The adequate answer to this is Justice Oliver Wendell

Holmes' remark that the life of the law is not logic but experience. People can and generally do stop far short of what may be the logical implications of their actions.

My proposition, however, is considerably more modest. I note, as a matter of observable fact, that society today has already taken step *a* (contraception) and is now taking step *b* (abortion). I assert as a reasonably safe prediction that it will take step *c* (infanticide), but not simply because such a step follows logically. Rather, it is because all the forces pushing us to this step are already in existence and there seems to be no force that can effectively resist them.

Our secularism, our liberalism, our skepticism, our distrust of absolute principles, our abhorrence of suffering, our post-Christian structure of values — all these already exist. So do the arguments and slogans that can be used to justify the mercy killing of infants. The people, the organizations, the mass circulation magazines and television networks that will propagate these arguments and slogans are already on the scene. Most important of all, the motives for infanticide are already operative in the minds and hearts of many people. In Belgium, a few years ago, when the Van de Put family was tried for killing their child because it had been born deformed by the drug thalidomide, they were acquitted (though they admitted the deed), and the populace of Liege cheered.

Euthanasia is scarcely mentioned in the mass media today, it is true. It would be a serious tactical mistake for the proponents of euthanasia even to allude to its possibility until the battle for abortion has been won. But when that takes place, the wheels will turn and the campaign to legalize killing of newly born infants — in certain circumstances and under strict social control, of course — will begin.

What forces will resist it? The innate decency of the American people? Hardly. There are no more decent and humane persons than those who are now heading the drive for liberalized abortion laws. The churches? It would be consoling to think that they could stem the tide. But it is doubtful whether they will even have the will to do so, if one may judge by the attitude they are now taking toward abortion.

According to the *Look* article, as we saw above, supporters of the California abortion law reform bill included nearly 1,300 Protestant and Jewish clergymen. If there has been any significant Protestant or Jewish opposition to legalizing easier abortion in this country or in Great Britain, it has escaped my notice. But perhaps the most ominous sign of the times is the changing attitude of the Church of England toward abortion.

It was the Church of England that led the way to general Protestant endorsement of contraception as a Christian practice. The Lambeth

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Conferences of 1920, 1930 and 1958 were the milestones along the road from flat condemnation of contraception to the removal of all doctrinal barriers to it. One can observe the same process now beginning in regard to abortion.

The 1958 Lambeth Conference stated a common Protestant position on abortion. Christians, it said, reject abortion "in the strongest terms" and permit it only "at the dictate of strict and undeniable medical necessity." Two sentences later it added: "The sacredness of life is, in Christian eyes, an absolute which should not be violated." In his excellent booklet, *Abortion and Public Policy* (NCWC Family Life Bureau), Russell B. Shaw comments: "If the sacredness of life is really an 'absolute,' it is difficult to see how it can properly be violated, even in the name of 'strict and undeniable medical necessity.'" None the less, it can be said that in 1958 the Lambeth Conference tried to make as small an exception for abortion as it had made for contraception in 1920.

Less than a decade later, on Dec. 31, 1965, a committee of the Church of England, set up by the Church Assembly Board for Social Responsibility, published a report recommending a broadening of the legal grounds for abortion (*Abortion: An Ethical Discussion*. Church Information Office, Church House, Westminster S.W.1, England). Instead of affirming any absolute and inviolable value in the life of the unborn child, it made the embryo's life simply one value to be balanced against others. Again, the reader has the feeling: "This is where I came in," because a history of moral decline is repeating itself.

The report recommends legal permission of abortion when a mother's life or well-being and, indirectly, that of her family are endangered by a pregnancy; and this situation, it says, could arise when the child was conceived as the result of rape or incest, or when there is a calculable risk that the child will be born defective or deformed. It will be noticed that these recommendations are very similar to those of the American Law Institute's Model Penal Code.

The report then enters a series of cautions against widespread resort to induced abortion for no better purpose than to remove an inconvenience. This, it says, would weaken reverence for life and trivialize the sexual act.

It is sometimes supposed, the report says, that humane and liberal considerations point to the removal of all restrictions on abortion. But the fetus as well as the mother has a claim to humane consideration. As a potential human life, it has a "significance which must not be overlooked, minimized or denied." The *general*

inviolability of the fetus and its right to live and develop must therefore be maintained.

But this right may be offset by other conflicting rights, which it is the function of the criminal law to regulate. The problem of abortion is weighing the claims of the mother against the claims of the fetus, and neither can be thought of in isolation from the family group. The report notes that the early Christian Church had taken a firm stand against abortion. But it explains that this was because of the significance that Christians attached to life at a time when society tended to depreciate it. Since then, it says, the Christian attitude toward abortion has shown "curious variations."

This last point is important, because it parallels an argument now being put forward by certain Catholics in the debate over contraception. One of the ways to get rid of a traditional moral principle is to trace its history and show that the Church has not been consistent in her teaching. Some Catholics are trying to do this in regard to the Church's teaching on contraception; now Anglicans are doing it in regard to abortion. This Anglican advance in the argument makes one wonder about the validity of Prof. John Noonan's idea that the Church prohibited contraception in order to protect the absolute value of human life against abortion and infanticide, and that we no longer need this bulwark. If anything is clear today, it is that the lowering of the barrier against contraception has been followed in a short time by demands for a more tolerant attitude toward abortion.

In fact, however, the Church has maintained with remarkable consistency that both contraception and abortion are morally wrong and sinful. The "curious variations" referred to in the Anglican report concern the question of when abortion becomes homicide; and this depends on the point at which God infuses a spiritual soul into the embryo. But, as the report itself acknowledges on its p. 17, it was always considered sinful to abort even an embryo into which medieval biology supposed that God had not yet infused a soul. As the movement to approve abortion gathers strength among Christians, however, we may expect to hear endless repetition of the claim that the past variations of Christian thought on abortion justify practicing it now.

The Anglican report's significance, however, does not lie in its resort to dubious historical arguments, but in its substitution of a new moral standard for an old one. In place of the traditional principle that innocent human life is sacred and inviolable, it puts a moral balancing act, by which the fetus's right to live is weighed against the interests of the mother and her family. But once we accept the

balancing act as the way in which we determine the morality of taking life, a further question arises: On this premise, how can we maintain that the infant who has just been born has an inviolable right to life that may not be weighed in the balance against anyone's interests?

On Feb. 21, the Church Assembly, or "parliament," of the Church of England voted a "welcome" (a technical term indicating something less than full endorsement) to this report because "it stresses the principle of the sanctity of life for mother and fetus and urges the Church to preserve and demonstrate a balance between compassion for the mother and proper responsibility for the life of the unborn child." Speaking in support of the report, Bishop Ronald R. Williams of Leicester, chairman of the Board for Social Responsibility, said: "We erred over the burning of heretics. We erred over the burning of witches, and no doubt many of the arguments heard in this debate were heard at those times. But we still had to learn to eat our words. I think Rome is showing signs at the present time that it may have to eat its words over contraception." The Church of England, therefore, should not hesitate to eat its former words against abortion.

In an article I wrote in this Review last year ("Reflections on the Revolution in Sex," 3/6/65), I remarked that some Catholics were urging Rome to "go to Lambeth" and accept contraception as a means of solving problems in family life. It was worth remembering, I then said, that the road to Lambeth may not end there. The Anglican report in favor of abortion suggests that I was not wrong. The Church of England has not made the report its official position, it is true. Since the next Lambeth Conference will meet in 1968, only two years from now, it is probable that there will not yet be a majority of bishops of the Anglican Communion who are willing to adopt the report's position on abortion. But there are already good reasons for fearing that the road to Lambeth may not end with acceptance of contraception.

And what of Rome? Vatican Council II, in its Constitution on the Church in the Modern World, repeated the traditional Catholic condemnation of abortion and infanticide in strong terms. But then, Pius XI's encyclical *Casti Connubii* repeated the traditional Catholic condemnation of contraception in very strong terms. Those who seek a way around, over or through *Casti Connubii* will hardly feel that a conciliar pronouncement closes the question of abortion and infanticide, especially since, as they frequently remind us, Vatican II intended to be a pastoral Council and to refrain from definitions.

Surely, those who for the past two or three years have filled the Catholic press with denunciations of "biologism" and "physicism" will find it somewhat difficult to maintain that abortion and

infanticide are always wrong. Some of them, in fact, do not maintain that; a few trial balloons justifying abortion have already been launched in print by Catholic writers. On the other hand, it is only fair to say that most of those who want the Church to abandon her condemnation of contraception would still draw the line against abortion and, still more, against infanticide.

These good people do not seem to understand, however, that history has left them behind. They are living in a society that quite plainly is coming to accept abortion as a necessary and morally permissible means of birth control when contraception fails. More and more, society looks upon the life of the unborn child as a piece of "mere biology" that can and should be sacrificed to higher considerations. The *New York Times* was typically modern when, on March 18, it protested editorially against sending the bill to liberalize the New York abortion law back to committee for further study. "Is more 'study' really necessary to determine the moral rightness of ending a pregnancy originating in incest or rape?" it asked. "Or when there is substantial risk that the infant would be born with grave physical or mental defect? More 'study' in this matter is as unnecessary as it is heartless."

A society in which one of the best and most highly respected newspapers can publish an editorial like that is not likely to listen to the contention that abortion, or even infanticide, is wrong because it is an attack on the human person. It is all the less likely to heed this argument when it comes from people who themselves have preached a dualistic depreciation of the physical as being without decisive moral significance.

It is not a flight of fantasy to imagine an article in *Look*, *Life* or the *Saturday Evening Post* sometime in 1984 (if not sooner) on the problem of the deformed infant. Here is a child, the article will say, who has been born with a brain so badly damaged that he will never really think, or make an act of choice, or know his parents or love anyone in a fully human way. In what sense is he a person? Do not talk to us in terms of an outworn metaphysics and tell us that he is a person because he has a soul.

The article will continue: Existentially, this child is and will always be incapable of anything that we can recognize as a personal act. He is not a person by any test that we can regard as valid. Instead, he is one of nature's mistakes, a mass of badly organized matter that should have attained personality but did not. His mother looks on him with horror and society refuses to acknowledge him as one of its members. Would it not therefore be more humane and more merciful to correct the mistake now and painlessly snuff out this merely physical and

biological life, rather than wait for nature to take its inevitable course?

Again, I do not propose to answer this hypothetical article. I only point out, first, that it is an article that we must expect to be written during the lifetime of most of us who are now alive. And, secondly, that it can hardly be answered by Christians who have accepted the premise that the physical aspects of human life are completely subject to human control and may be treated as we treat brute nature.

I would not say that modern Western society is relapsing into paganism, for the ancient pagans had a religious sense, and it is precisely this sense that modern men are losing. But one can say that the Christian moral code, so painstakingly built into our culture over centuries, is breaking down in the consciences of multitudes. What is taking its place is a post-Christian secular morality. It is similar to the morality that prevailed in the pre-Christian centuries when society tolerated contraception, abortion and infanticide, to say nothing of other practices that it is unnecessary to mention here. Future historians may record that the shift from one morality to the other became unmistakably obvious when the campaign for contraception was followed by an equally successful drive to broaden the grounds for abortion.

(When I wrote the above article in 1966, I did not foresee how strong and widespread the reaction against legalized abortion would be in the 1970's. Thanks to the anti-abortion movement, the pro-abortionists have not yet won the kind of victory that would make it possible to move on to a full-scale campaign to legalize infanticide and euthanasia. I also underestimated the anti-abortion sentiments of conservative Protestants and Orthodox Jews.

For the rest, I think the article stands up well, if I may say so who shouldn't. The drive to establish a secular and utilitarian ethic as the public morality of the United States continues unabated, aided as always by the major communications media. In the light of recent developments in genetic engineering, the implications of this drive for our national attitude toward human life are, if anything, more ominous today than I thought they were thirteen years ago. One may take some slight comfort, however, from observing that in an age of rapid change, the New York Times hasn't changed a bit and still shines like a candle in a naughty world. — FC, March, 1979.)

Social Service for Youth

Wm. F. Buckley, Jr.

MR. JAMES MICHENER says it bluntly, that in his opinion the problem of caring for the aged looms as the principal social problem of the balance of this century: greater than ecological asphyxiation, greater than over-population, greater than the energy crisis. The figure is, I suppose, scientific impressionism, but it has been said that one-half of those who are now sixty-five years or older would be dead if medical science had been arrested even a generation ago. It is absolutely predictable that medical progress will continue, and with it the successes of gerontology.

Already it is a subject one shrinks from dwelling upon — the years and years between the time when men and women are, if the word can be used in this context, ripe to die, and the day that increasing millions will die. Euthanasia, pending word to the contrary from the Supreme Court, is unthinkable. The cost of caring for the aged, most of whom need supervisory medical attention on a continuing basis, is suggested by this recent datum, namely, that the daily cost of a semiprivate hospital room in New York City is now over one hundred dollars. Good private homes for the aged are beyond the reach of any except the very very few. There are charitable and religious homes that will take in elderly people in return for their Social Security checks. But these — I think, for example, of the Mary Manning Walsh home in New York City — are necessarily exclusive, with facilities cruelly unequal to the task at hand.

The physical facilities and professional services needed for the aged are extremely expensive, and there is no way to avoid the capital cost of them. Certainly there is no reason to discourage the private sector from addressing itself as vigorously as possible to the building of suitable homes. Professional medical aid will have to be furnished by doctors and highly trained nurses, the cost of whose services is high, and will probably get higher.

The only variable is in the cost of unskilled labor. And the only human heaven is youth, whose functional companionship could greatly affect the quality of the last years.

Wm. F. Buckley, Jr. is too well known (as a journalist, author, TV personality and so on) to need an introduction. This article first appeared in his book, *Four Reforms* (G.P. Putman's Sons, New York), and is reprinted here with permission. (© 1973 by Wm. F. Buckley, Jr.)

The Mary Manning Walsh home in New York employs full time 40 doctors and 43 registered nurses. The cadre of its professional staff is 50. It employs, as cooks, waiters, janitors, nurses' assistants, elevator operators, laboratory workers, a total of 311. There are 347 beds in the home, so that the ratio of unskilled employees per patient is very nearly one for one. Or, taking the figures for the nation, in 1969 there were 850,000 Americans in nursing homes that employed 444,000 people, or one employee for 1.9 patients. (In 1963, there were 491,000 resident patients of nursing homes, so that in six years the figures almost doubled.)

The Republic faces a crisis of a very particular and a very poignant kind. We are aware of the reasons why less and less the aged die at home. The principal reason is the lengthening life span. Another is the need for certain kinds of care that cannot readily be provided at home. Another is the diminishing domestic utility of the great-grandmother or great-grandfather. Still another is the very high cost of urban living quarters where, now, 73 percent of the American people live. All of these combine to create the institution of the nursing home.

Simultaneous with the increase in the aged is the increase in the college population. That population in 1930 was 1.1 million. In 1970, 8.4 million.

It is my proposal that the burden of the nonprofessional work done in behalf of the aged should be done by young men and women graduated from high school, during one year before matriculating at college. The idea of public service of some kind or another by the citizenry has frequently been proposed. There has been an instinctive coolness towards the idea primarily because of the conscriptive feel of it: the suggestion that government require anyone to do anything of a philanthropic character tends to put one off, and for reasons not by any means all bad. The opportunity is great for initiative from the private sector.

I envision a statement by the trustees of the ten top-rated private colleges and universities in the United States in which it is given as common policy that beginning in the fall semester of 1976 (to pick a year far enough away to permit planning, soon enough to generate excitement), no one accepted into the freshman class will be matriculated until after he has passed one year in public service. I say public service because if the plan were very widely adopted, there would be more young help available than could be absorbed in the nursing homes alone. There are many other ways in which the young could be used. As guards in the grade schools, just to give a single

example (there are 1,700 auxiliaries in the New York schools alone), but for convenience I dwell on the care of the aged.

As regards the financing, it would be required only that the government exclude this category of volunteers from the provisions of the minimum wage. Otherwise the economic advantage would substantially dissipate. The nursing homes would of course provide board and pocket money (mostly, the volunteers could continue to live at home). In the unusual case where the eighteen-year-old is helping to support his own family, the college could either suspend the requirement or concert with foundations to find ways to permit the young volunteers to eke out the year.

The colleges would take the position that they desire, in matriculating freshman, an earnest of public concern, and extra-academic experience of a useful kind. The intervention of hundreds of thousands of eighteen-year-olds into the lives of the aged would serve more than merely the obvious purposes of cleaning the rooms and pushing the wheelchairs and washing the dishes. It would mean, for the aged, continuing contact with young, spirited people in their most effusive years. For the young it would mean several things. It would postpone by a year their matriculation at college. College administrators are all but unanimous in their conviction that an older student, one year, rather than freshly graduated, from high school gets more out of college. The experience would, moreover, interrupt the inertial commitment to more-and-more education, and some of the less strongly motivated, the rhythm having been broken, would probably elect not to go to college. The experience — particularly because of the voluntary aspect of it — would remind young people at an impressionable age of the nature of genuine, humanitarian service, which is the disinterested personal act of kindness, administered by one individual directly to another individual. And the experience would touch the young, temperamentally impatient with any thought of the other end of the life cycle, with the reality of old age; with the human side of the detritus whose ecological counterparts have almost exclusively occupied fashionable attention in recent years. Their capacity to give pleasure to others, without the stimulant of sex, or the pressure of the peer group, or the sense of family obligation, or the lure of economic reward, could not help but reinforce the best instincts of American youth, and these instincts are unstimulated at our peril. What it might provide for society as a whole, this union of young and old, is, just possibly, the reestablishment of a lost circuit: of spirit, and affection, and understanding.

APPENDIX A

[Dr. Rafael A. Solari recently completed his term as president of the San Francisco Medical Society. The following article originally appeared as the President's Message in the December, 1978 issue of San Francisco Medicine; it is reprinted here with permission.]

Another Holocaust?

by Rafael A. Solari

During the last decade there have been many alterations of mores along with attitudes in our society. One of the most radical departures from our prior ethic, both in our society at large and in our medical profession in particular, has been the revolutionary change in attitude towards abortion. The centuries-old Oath of Hippocrates clearly stated: "I will not give to a woman a pessary to produce abortion," and in 1871 the American Medical Association described abortionists as "men who cling to a noble profession only to dishonor it; false brethren; educated assassins; these modern Herods . . ." Today the AMA describes doctors performing abortion as "conscientious practitioners performing therapeutic abortions for reasons other than those posing a threat to the life of the mother." It has taken American doctors only six years, since the 1973 Supreme Court abortion decision, to arrive at a point in time where over one million unborn infants are killed every year in the United States.

Medical science tells us that the unborn is human life. After all, did not a California Medical Association editorial in the September 1970 issue of *California Medicine* admit that "the scientific fact which everyone really knows, (is) that human life begins at conception and is continuous whether intra or extrauterine until death."

Bernard Nathanson, former director of the Center for Reproductive and Sexual Health in New York, indicated the following: "We must courageously face the fact — finally — that human life of a special order is being taken (in abortion) and since the vast majority of pregnancies are carried successfully to term, abortion must be seen as the interruption of a process that would otherwise have produced a citizen of the world. Denial of this reality is the crassest kind of moral evasiveness."

The abortionist of today who insists on the right to abortion purely for a matter of convenience "in a pluralistic society" is similiar to the pre-Civil War Southern slave owner who insisted on his right to own slaves for his economic benefit "in a pluralistic society." Can America today tolerate a "little bit" of abortion anymore than the America of yesteryear could tolerate a "little bit" of slavery? With America's recent concern regarding the civil rights of citizens all over the globe, how can we justify denying the right to life itself to new human beings? Just as there was no moral justification for slavery in Civil War days, there is no moral justification for abortion today.

The analogy between today's attitude towards abortion and the attitude

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of pre-Nazi Germany's society and in particular the medical profession's attitude towards this issue is inescapable and has some alarming parallels. The evolution of thinking in Germany which began with a 1933 statement of the German Penal Code and Hamburg Eugenics Court which "permitted abortion" led to Hitler's Euthanasia Order of 1939 giving authority to physicians to give a "mercy death" to "incurables," and ultimately ended with the genocide of Jews. This mentality for mass murder originated in advocates who prepared the way by eliminating the defenseless members of society. Since the 1973 Supreme Court decision, it has taken American abortionists only six years to kill the same number of people as were killed during the twelve years of Germany's Third Reich.

The highest form of civilization is that which protects its weakest citizen, and when society turns its back on the defenseless, does it not jeopardize its own existence? Christopher Dawson, the famed cultural historian and philosopher of history, contended that when a society or culture loses its ethical roots and turns its back on its historic traditions "it becomes a dying culture however prosperous it may appear externally." Because we have turned our back on our classic and Judeo-Christian ethic, is this happening to us?

APPENDIX B

[The two syndicated newspaper columns reprinted below appeared almost exactly six years apart. The first, by William F. Buckley, Jr., was issued on Feb. 1, 1973, just 10 days after the U.S. Supreme Court's legalization of abortion on Jan. 22 (reprinted with permission, © 1973 The Washington Star Syndicate, Inc.). The second, by George Will, appeared in the Washington Post on Jan. 18, 1979, just a few days before the sixth anniversary of the Abortion Cases (reprinted with permission, © 1979 The Washington Post Co.)]

The Court on Abortion

by William F. Buckley, Jr.

Says Justice Blackmun, speaking for the majority of the Supreme Court: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." But in fact the Court didn't proceed to speculate on the answer, it proceeded to act on an answer it very simply promulgated. Up until three months, said the Court, the human fetus is nothing more than a biological lump of the mother, as expendable as a cyst. From three months to six months, it is something more than just that, but just exactly what, the Court spared us the intellectual embarrassment of stipulating. Then during the last three months, or more exactly the last ten weeks, the fetus is conceded by the Court as being "viable." That means that even separated from the mother the fetus could develop into a complete human being. Does that mean that beginning at this point the Court confers constitutional protections on the fetus? No. At that point, says the Court, "the state . . . may go so far as to proscribe abortion."

Really, it was an outrageous decision. Concerning it, a few observations:

1) Because the theological, philosophical, and medical worlds are divided on just when the fetus can be considered to be "human," why does that mean that the Supreme Court must therefore make the decision? The theological, philosophical, and medical worlds are divided on the question when a human being reaches the age of maturity: and, accordingly, a decision is reached (at age 18) not by the theologians, philosophers, doctors — or by the members of the Supreme Court — but by the politicians, who give their views on the subject, informed by the people.

2) The notion that we have here a church-state issue in the denominational sense is preposterous. It is everywhere suggested that it is a Catholics-against-the world issue. Yet the most recent national referendums on the matter, in Michigan and North Dakota — both of them states in which Catholics are a minority — ruled against liberalizing the abortion laws. It is quite true that Catholics are particularly mobilized against abortion — why shouldn't they be? Jews are particularly mobilized against genocide — is that wrong? But the notion that opposition to

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abortion is a Catholic peculiarity not only misses the point, but fails altogether to justify the judiciary's stepping into an argument totally removed from its authority and its competence.

3) Insofar as the Court attempted to base its line of reasoning on the argument that it is wrong to deny a woman an abortion since statistics show that giving birth to a child is more dangerous than aborting it, the Court was implausible — as one of the dissenters, Justice White, scathingly pointed out. “At the heart of the controversy,” he said, “are those recurring pregnancies that pose no danger whatsoever to the life or health of the mother but are nevertheless unwanted for any one or more of a variety of reasons — convenience, family planning, economics, dislike of children, the embarrassment of illegitimacy, etc.”

In a sentence which will survive in the annals of syntactical inelegance and analytical chaos, the Court said: “Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical wealth may be taxed by child care.” So that is the reason to allow abortion! I should think it at the very least a good excuse to justify infanticide. And the very best of reasons for justifying the elimination of all adolescents as a class. God knows they force upon most mothers a “distressful” life, as the judge put it. The psychological harm of wayward children is not only “imminent,” but concrete, as is the “tax” on the “mental and physical wealth” of their parents.

4) If it should happen tomorrow that medical science developed a means of protecting the embryo at age six weeks, does the Supreme Court understand its decision as having been invalidated?

The whole of it is dismal, reaching right down to the neglected cuticles of the Court's language. It is, verily, the *Dred Scott* decision of the 20th century. One shudders at what a Supreme Court, taking on the responsibility to decide such questions as these, will feel free to rule upon in the years to come. Woe unto those Americans who, because of their great age, threaten distressfulness upon their children.

Abortion: 'Settling' The Issue

by George F. Will

Justice Harry Blackmun may be remembered in connection with abortion the way Chief Justice Roger Taney is remembered in connection with slavery.

In the *Dred Scott* decision, Taney tried to use judicial power to "settle" the slavery issue by removing it from legislative arenas. Instead, he hastened civil war. Blackmun seems to want to "settle" the abortion issue similarly, but his injudicious opinions may provoke an anti-abortion amendment to the Constitution.

Blackmun wrote the 1973 abortion decision, which was a scythe mowing down state restrictions on abortion. Now Blackmun has written the opinion in a 6-to-3 ruling striking down a 1974 Pennsylvania law requiring doctors to use whatever abortion method is most likely to spare the life of any fetus that "may be viable." Blackmun finds that phrase unenforceably "vague."

Blackmun also faults Pennsylvania law because "it is uncertain whether the statute permits the physician to consider his duty to the patient to be paramount to his duty to the fetus." This suggests, obliquely, the real incompatibility of Pennsylvania's law and the 1973 ruling, an incompatibility that has nothing to do with the concept of "viability."

The court's labored analysis of "viability" obscures, in 1979 as in 1973, what the court is doing. It is concocting an expansive right to abortion, a right not significantly limited by considerations of fetal viability.

Justice Byron White, dissenting, says the latest ruling "withdraws from the states a substantial measure of the power to protect fetal life that was reserved to them" in the 1973 decision. But in fact the latest ruling only makes clear that the 1973 ruling virtually stripped the states of such power.

The logic of the 1973 ruling is this: A woman who wants an abortion has a virtually unlimitable constitutional right to purchase a procedure that will result in a dead fetus.

The 1973 decision held that at no point in pregnancy are fetuses "persons" in the whole sense. The court said that states may not forbid an abortion that a doctor determines is "necessary to preserve the life or health of the mother."

The court established, in effect, a right to abortion on demand when it said that doctors may make that determination "in the light of all attendant circumstances — psychological and emotional as well as physical — that might be relevant to the well-being of the patient." Doctors can be found who will construe "health" broadly enough to include, for example, the absence of "distress."

Pennsylvania's law was odd. To require abortionists to use the method safest for fetuses is to require abortionists to risk failing at their vocation, which is killing fetuses. But given today's moral and legal climate, it is unclear what must be done when fetuses do survive abortion procedures.

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There are bound to be many such cases in a nation with a million abortions a year.

True, some states require that babies born after abortion procedures must be given life-sustaining treatment appropriate for premature births. And many hospitals have neo-natal intensive-care units that can prolong, if not always preserve, the lives of infants that survive abortion procedures. But an abortionist might be sued for malpractice if he failed to kill his patient's fetus.

For centuries many societies considered abortion permissible before "quickening" (when a woman feels fetal movement) because they did not think the fetus was alive until then. Strict abortion laws developed as the science of embryology developed in the 19th century.

Today there is no doubt that pregnancy is a continuous process: What begins at conception will, if it escapes natural misfortune or deliberate attack, become a child. And what abortion kills is an organic system distinct from the woman's system. Abortionists do not deny that a fetus is alive and biologically human (meaning that it belongs to that category of life). They argue that an unwanted fetus has no value.

In *The Ambivalence of Abortion*, Linda Bird Franke reports that many women who have had abortions say: "I felt like I'd killed something." Of course. The feeling is reasonable. In every abortion, something living is killed. That is an indisputable biological fact, not a moral judgment. The moral argument today concerns whether Blackmun and his colleagues shall be allowed to define as nothing the status of that "something."

APPENDIX C

[The following is the text of testimony given to the Committee on Ways and Means of the California Assembly on Feb 15, 1979, by Professor John T. Noonan, Jr., Professor of Law at the University of California, Berkeley.]

The Convention Method of Constitutional Amendment: Its Meaning, Usefulness, and Wisdom

by John T. Noonan, Jr.

One of the great American innovations at the founding of our Republic was a Constitution which could be amended. At the time "it was heresy to suggest the possibility of change in governments divinely established and ensured."¹ To provide in the written instrument itself for change was to take the position in advance that experience would show defects, that change would sometimes be desirable and good, and that the people of the next generation or the twelfth generation later could be as wise and trustworthy as the founding fathers themselves.

The Meaning of the Method

Two methods of amendment were provided. One was dependent on the initiative of Congress, the other on the initiative of the States. The methods were intended to be parallel ways of changing the Constitution. In Madison's words in *The Federalist* the Article on Amendments "equally enables the general and the State governments to originate the amendment of errors."² It was recognized that those in power in the national government might have a disinclination to give up any of their prerogatives, so that it was particularly necessary to leave open the initiative of the States; and so Hamilton pointed out in his Final Plea for Ratification in *The Federalist*, the second method of Amendment had been provided in order that Congress would be under a "peremptory" duty to call a Convention when two-thirds of the States made application for one.³

You have been told that the second method of amendment provided by Article V of the Constitution is unworkable; that it is "shrouded in legal mystery of the most fundamental sort," that it is full of "fundamental uncertainties," that it will lead to confrontations between branches of government of "nightmarish dimensions," and that its invocation will lead to trauma for the country.⁴ Reading these prophecies of doom, I have been reminded of what an inveterate Tory might have pronounced in 1789 as our new Constitution was launched. Every word — legal mystery, fundamental uncertainties, confrontations between branches of government — could have been used and would in some sense have been true; but what distrust of popular government it would have been to act on such gloomy guesses! What distrust it shows today both in the wisdom of the founding fathers

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who gave us Article V and in ourselves to predict that we cannot safely use the second great mode of amendment offered by our Constitution.

The principal objection offered to the convention method is that a Convention may be a runaway body enacting Amendments on all kinds of matters not within its call. In the most flamboyant expositions of this danger it is even suggested that the Convention could repeal the Bill of Rights. Is there anything at all to such fears? The language of the Constitution is clear. Congress is to call a Convention on the application of the legislatures of the States. Congress is not free to call a Convention at its pleasure. It can only act upon the States' application; and if it can only act upon their application it cannot go beyond what they have applied for. If they apply for a Convention on a balanced budget Congress must call a Convention on a balanced budget. It cannot at its pleasure enlarge the topics. Nor can the Convention go beyond what Congress has specified in the call. The Convention's powers are derived from Article V and they cannot exceed what Article V specifies. The Convention meets at the call of Congress on the subject which the States have set out and Congress has called the Convention for.⁵

This understanding of the Article is confirmed by both Madison and Hamilton. Madison says explicitly that the national and State governments have equal powers of amendment.⁶ It is obvious that the powers are very unequal if the national government can propose individual amendments but the States can only propose amendment of the whole Constitution. If Congress can propose one amendment at a time, so can the States. Hamilton is, if anything, even more explicit. He says in so many words that every amendment "would be a single proposition and might be forwarded singly. There would then be no necessity for management or compromise, in relation to any other point — no giving or taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment that amendment must infallibly take place."⁷ There is absolutely nothing in this authoritative exposition that suggests that the States can only call a general Convention where the whole Constitution will be on the table to be bargained over. What is contemplated and assured by Article V is entirely different: two-thirds of the States agree on an amendment and "that amendment must infallibly take place."

There are no mysteries here, no fundamental incertitudes unless one is not willing to trust Congress and the Convention it calls to act lawfully and constitutionally. Of course one can always imagine bad men usurping the functions of a Convention as bad men could act as usurpers in Congress or the Executive Branch or the Judiciary. But the Constitution is not addressed to men of bad will. It is addressed to the great law-abiding American people. It assumes that responsible people will act in accordance with what the Constitution provides. If they do so, there can be no runaway Convention.

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It has been argued to you by Professor Charles Black of Yale that States can *only* call general Conventions, that any lesser and more specific call is void. Professor Black is wiser than the legislatures of all the States which have acted under Article V in this century. All of them, according to his theory, have done vain acts. I cannot believe that only Professor Black knows what the Constitution means. I cannot believe that Congress or the Supreme Court would adopt his ingenious and unique exposition, which defies Hamilton and Madison's contemporaneous expositions of the meaning.

It has been argued to you by Professor Gerald Gunther of Stanford that not bad men but reasonable men could expand the subject of the proposed Amendment to include matters remote from the intention of the proposers. I do not doubt the ability of lawyers — and lawyers are preeminently reasonable men! — to connect one subject with another: they are trained in the art of showing seamless webs, just as they are trained in taking such webs apart. But Professor Gunther's sagacious argument goes too far. If, with a show of reason, almost any topic can be linked with any other topic, a limited Convention is never possible. In a subtle form Professor Gunther's argument restates Professor Black's position: only general Conventions may be asked for by the States. But this conclusion, *contra* Hamilton and Madison, is to leave the States helpless to mandate action by Congress on the specific grievances.

The proper answer to Professor Gunther, therefore, must be that while reason can connect all things, when a Convention is called on a specific subject, all those subjects which are tangential and remote from the main issue must be eschewed by the Convention delegates. It is not beyond human wit to draw lines or beyond human sense to observe them. If the delegates wander, Congress need not transmit their wanderings. If irrelevancies are appended by a Convention, the States need not ratify them. If the States vote on matters not within the scope of the call, the Supreme Court can strike the surplusage. There is a triple check, a triple lock, of Congress, States, and Court. These bodies are surely competent to confine a Convention to the matter on which it was asked to act. The Convention is as safe and stable an instrument of governmental power as any other of the great institutions set up by the Constitution on a fundament of trust in the people.

The Usefulness of the Convention Method

The usefulness of the States' application for a Convention may be doubted because in fact a Convention has never been called. Is application for a Convention merely a way for a State legislature to blow off steam, harmlessly, without effect? In the almost two hundred years of our constitutional history there have been over 300 such applications by the States; every State has made at least one.⁸ No doubt some of the applications were fulminations in the air without result. But at least three of the topics addressed by application were made the subjects of amendments

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by Congress —the limitation of presidential tenure to two terms; the repeal of Prohibition; and the direct election of senators. It is fair to say that in each case the expression of the will of the States for a Convention was a factor contributing to congressional action; and that in the case of the direct election of senators the application for a Convention was a critical factor.⁹

For a decade Congress had refused to amend the Constitution to take from the State legislatures the power to elect senators. The reform threatened a power bloc in the Senate. The House had proposed the amendment several times. But the Senate each time killed it by referral to a committee. In 1906, twelve states met and planned concerted action to apply for a Convention.¹⁰ The number of States calling for a Convention rapidly mounted toward the requisite two-thirds. In 1911 the proponents of reform laid the States' petitions before the Senate. It was at this juncture that Senator Heyburn of Idaho, whom Professor Laurence Tribe invokes as a constitutional authority, opined that a Convention could "repeal every section" of the Constitution. Heyburn was one of the diehard reactionaries, trying to scare off the needed change. But by 1911 thirty States had applied for a Convention on direct election. In 1912 the retrograde Senate surrendered and Congress proposed the Seventeenth Amendment.

The lessons are clear: A reform that strikes at the power of Congress may only be adopted if effective pressure is generated by the States. The way of generating effective pressure is the way provided by the Founding Fathers — application by the legislatures of the States for a convention.

The Wisdom of the Convention Method

You have heard testimony that it would "trivialize" the Constitution to propose an amendment requiring a balanced budget.¹¹ I am surprised at what your witness viewed as trivial. No one, I should suppose, regards the Sixteenth Amendment as setting up a trivial tax. It is very hard to understand how an Amendment dealing with the limits of governmental expenditures is more trivial than an Amendment granting one form of taxing power. It is evident to most people that the limits of governmental finance are fundamental to the economic stability of the nation and are as properly a subject of constitutional concern as any specific form of taxation.

You have also been advised that a Convention would cause national trauma. In that warning I hear the voices of those supremely content with the country as it is, who, if they do not believe the Constitution is divinely established, at least have for the present system sentiments of satisfaction which they do not want disturbed by any democratic action of the people. To them the best answer, perhaps, lies in the words of Abraham Lincoln speaking at a time of grave national peril and giving his First Inaugural Address:

I fully recognize the rightful authority of the people over the whole subject [amendment of the Constitution], to be exercised in either of the modes prescribed in the instrument itself, and I should, under existing

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circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the convention mode seems preferable, in that it allows amendments to originate with the people themselves; instead of only permitting them to take or reject propositions originated by others, not especially chosen for the purpose, and which might not be precisely such as they would wish to accept or refuse . . .¹²

A method sanctioned by Lincoln, by Hamilton, by Madison, by Washington and Franklin, and by all the makers of the Constitution, and invoked from time to time by every state, is indeed a workable, useful, and wise way of keeping our Constitution a living instrument of the people.

NOTES

1. Roger Merriam, *The Written Constitution and the Unwritten Attitude* (1931) 6.
2. *The Federalist*, number 43 (Madison).
3. *Ibid*, number 85 (Hamilton).
4. Laurence Tribe, *Statement before the Ways and Means Committee of the Assembly*, February 1, 1979 at 12 and 14.
5. See the conclusions of the Special Constitutional Convention Study Committee of the American Bar Association, *Amendment of the Constitution* (1974) p. 17. Among the members of this committee reaching this unanimous conclusion were Judge Sarah Hughes of the Federal District Court and Dean Albert Sacks of Harvard Law School. The same conclusion is reached by Professor Paul G. Kauper of the University of Michigan Law School, "The Alternative Amendment Process: Some Observations," 64 *Michigan Law Review* 903 at 912 (1968) and by Note, *Harvard Law Review* 85 (1974) 1612 at 1629.
6. *The Federalist* no. 43 (Madison).
7. *Ibid*, no.85 (Hamilton).
8. ABA Special Constitutional Convention Study Committee, *Op. cit.* at 69.
9. See Edward S. Corwin and Mary Louise Ramsey, "The Constitutional Law of Constitutional Amendment," 26 *Notre Dame Lawyer* (1951) 185 at 196.
10. ABA Committee, 72.
11. Tribe, *Statement* at 3.
12. Abraham Lincoln, First Inaugural Address, March 4, 1861, Lincoln, *Collected Works* ed. Roy P. Basler (New Brunswick: Rutgers University Press 1953) 4, 269-270.

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