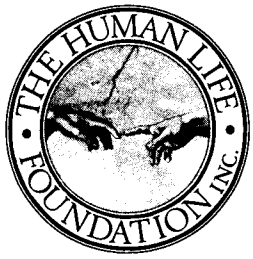
the HUMAN LIFE REVIEW



WINTER 1986

Featured in this issue:

Jack Kemp on ..... The Value of Human Life

Joseph Sobran on ..... Abortion, the Court and Federalism

Francis Canavan on ..... A New 14th Amendment

Henry Hyde on ..... Spiritual Leadership

James Hitchcock on .....The Catholic Church and Abortion

Allan Carlson on ..... The Family in America

Thomas Molnar on ..... The 'Quality of Life' in Hungary

Also in this issue:

Bishop Edward M. Egan • Raoul Berger • Judith Neuman

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. . . FROM THE PUBLISHER

Herewith our 45th issue, beginning our twelfth year of publication.

A year ago I wrote that we "were not quite a publishing empire" but were greatly encouraged by the publication of President Reagan's *Abortion and the Conscience of the Nation* (by Thomas Nelson Publishers), which sold many thousands of copies—a clear sign that abortion is a crucial issue for many Americans.

Of course the President's contribution originally appeared in this review, and the book also includes articles by Surgeon General C. Everett Koop and the great Malcolm Muggeridge, which also first appeared here. We still have copies available (see the inside back cover for details).

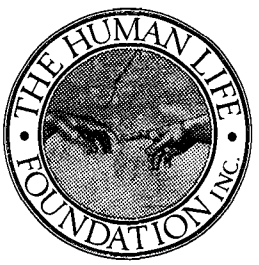
We are happy to regret to announce that John T. Noonan, Jr., a member of our editorial board since our first issue (for which he wrote a major article), has resigned. He is now Judge Noonan, having been confirmed by the U.S. Senate for the federal Ninth Circuit Court of Appeals. And another contributor (he wrote our first lead article), former Senator James L. Buckley, is now serving on the U.S. Court of Appeals for the District of Columbia. We congratulate them both.

We note that Congressman Henry Hyde's article in this issue is reprinted from his new book *For Every Idle Silence*, just published by Servant Books (Box 8617, Ann Arbor, Michigan 48107; price $6.95). Mr. Allan Carlson's article is reprinted from a very promising new quarterly, *The Journal of Family and Culture* (721 Second St., N.E., Washington, D.C. 20002; subscription $10 per year). Finally, Thomas Molnar will soon publish another book, *Politics and the Sacred* (Eerdmans, Grand Rapids—watch for it).

Also please note that *The Human Life Review* is available in microform from both University Microfilm International (300 N. Zeeb Road, Ann Arbor, Michigan 48106) and Bell & Howell (Micro-Photo Division, Old Mansfield Road, Wooster, Ohio 44691).

EDWARD A. CAPANO
Publisher

THE HUMAN LIFE REVIEW



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INTRODUCTION

In France, argument is, like fine wine, an art. Recently, connoisseurs have been savouring the controversy caused by an article (published by the magazine *Le Figaro*) titled, "Will We Still Be French in 30 Years?"

In fact, the question concerns all of Europe, and was summarized neatly by the *Wall Street Journal*: "If the current low fertility rates hold, upheaval could result in out-of-control social security costs—as too few youngsters in the population are forced to support too many of the elderly—undermanned armies, and clashes between native and immigrant workers."

Historically, Europe has exported its problems to America, however belatedly; our advantage remains *time*—surely we need not follow the Old World's decline? Well, to answer *no* we must first answer *yes* to continued growth, most especially population growth, argues Representative Jack Kemp in our lead article. The question, Mr. Kemp writes, "often reduces to this: Are people basically users, or *creators*, of resources?"

The New York Congressman is well-known for his pro-population views. What is perhaps less well known is that his views are by no means based solely on the obvious economic factors, but more deeply on the value of human life itself. He shares with Abraham Lincoln the conviction that it is our Declaration of Independence, with its proclamation of a God-given right to life, that is "the father of all moral principle" for Americans. Thus our readers will not be surprised that Mr. Kemp has taken a leading position in the fight against abortion—or that we welcome him to our pages.

Mr. Kemp ranks life with liberty, that second "unalienable right" which it is the high duty of government to preserve. Here again, abortion has become a central issue. For in taking away the right to life of the unborn, the U.S. Supreme Court has, in the opinion of many, once again trampled on the constitutional liberties of us all. We say "once again": so does Mr. Joseph Sobran, in our next article.

One of the great pleasures of publishing this journal is having Mr. Sobran on *our* side (we shudder to think how we'd carry on if he ever turned his prose on *us*). Here, Sobran uses another of his rhetorical neutron bombs to

vaporize the notions of certain Justices while leaving the Court's *intended* structure intact. He reminds us that, after all, the Founding Fathers clearly intended that "the first job of the judiciary in interpreting the Constitution is to 'ascertain its meaning'" by "finding out what was meant. The judge is not to 'interpret' the law the way a Method actor 'interprets' the role of Hamlet, injecting his own inspired subjectivity into the thing."

Who would argue that the document's Framers *meant* to include a "right" to abortion in the Constitution? Indeed, a unique strength of the anti-abortion position is that serious constitutional scholars—including even those who personally support legalized abortion—agree that such a "right" was wholly unimaginable to the Framers; that it was "found" through an act of "raw judicial power," as Justice Byron White said when the Court's fateful legislative *fiat* was promulgated in 1973. So Mr. Sobran enjoys an unaccustomed advantage: his usual unanswerable arguments are directed this time at opponents the best of whom are intellectually ashamed to oppose them.

Well then, if the Court behaves so badly, can't anybody *do* anything about it? Some say no: the Court's "first-among-equals" usurpation of both legislative and executive power is necessary, they argue, to preserve its sacrosanct "judicial review" function. Well again, "judicial review" isn't in the Constitution either, is it? No, it too was "found" by the Court (way back in 1803); but it was used only gingerly, remaining largely a "We could but of course we wouldn't" power until, relatively recently, the Court began interpreting the Fourteenth Amendment as a "We can and we will" megaweapon.

So the answer is quite simple, argues our friend Professor Francis Canavan: let's *rewrite* the Fourteenth in such a way that judicial review can be kept within reasonable limits. Why not?

Loud and angry Why-nots will gush from the Court's many partisans, who will be outraged by so "radical" a proposal. But consider: last fall the nation's highest court agreed to accept a case which involves a decision as to whether private homosexual acts are protected by the "right of privacy" first discovered only some 30 years ago to have always been in the Constitution (it was of course used just 20 years later to "ground" the abortion "right" in the Constitution—one bogus reading thus providing character reference for a fresh one). We asked Father Canavan what he thought about this new development: his amusing answer was that, because "the Court still follows the election returns, thank God," the Justices have heard about AIDS, and therefore are not likely to turn homosexuality into a constitutional "right" just now—but they *ought* to "if they mean to be consistent with what they have said about the right of privacy in previous cases"! What Canavan explains

here is *how* such readings of the Fourteenth Amendment corrupted the idea of judicial review, and thus why *rewriting* it is the only solution.

To be sure, many will find Canavan's suggestion a radical one. On the other hand, it could hardly be more timely. Last summer, Attorney General Edwin Meese called upon the Court to go back to considering the intentions of the Framers—hardly a new argument, but certainly a novel one to come from the nation's top legal official, given recent history. What stirred up the current national debate was the strong public response to Mr. Meese from several sitting members of the Court. Justice William Brennan went so far as to claim that it was simple "arrogance" to "pretend" that we can nowadays "gauge accurately the intent of the Framers." Now Meese's specific point was that this Court's insistence on "neutrality" between religion and *irreligion* "would have struck the founding generation as bizarre"—quite true, surely?—which would seem to explain Brennan's extreme language, i.e., he *needs* it to defend his position. But of course the *point* applies equally well to abortion: one can only *pretend* to find it in the Constitution; it is squarely based on what Justice John Paul Stevens has euphemistically described as "subsequent events in the development of our law."

The question is, will the Court's legislative invention of a "right" to abortion stand or fall? Mr. Henry Hyde has without question done as much as anyone in America to bring it down. He argues here that there is a "serious possibility that a reconstituted Supreme Court will reverse its disastrous *Roe* v. *Wade* decision in the near future" because anti-abortionists have succeeded in making their moral issue an uncompromisable *political* issue—the greatest "single issue" since Slavery. Hyde considers it a great irony that this success would now be challenged by, of all people, the U.S. Catholic Bishops, who last year formally adopted the "seamless garment" doctrine (woven by Chicago's Cardinal Joseph Bernardin) that "linking" abortion to other issues—war, capital punishment, "social justice," the list is exceedingly long—will somehow *strengthen* the anti-abortion effort.

We've already noted that we'd hate to have Joe Sobran against us; ditto Henry Hyde. His (forgive the alliteration) gargantuan gusto in debate on any issue that engages his passionate attention is legendary in Washington and elsewhere. As with Caruso or Babe Ruth, you can't really appreciate Hyde without actually seeing him perform—the printed words are a pale reflection—yet we doubt that you, dear reader, will be disappointed by what you read here. Even Justice Brennan would admit to no difficulty in understanding Mr. Hyde's clear meaning and intent.

It would be difficult to say the same of Cardinal Bernardin. Grant him (as

we do) ineffable good intentions to accomplish his stated purpose of strengthening the anti-abortion position, the practical *political* effect of his doctrine must surely be to fatally weaken that paradoxical "coalition of Americans of diverse beliefs, backgrounds, races, and political loyalties" (as Hyde accurately describes it) united *only* by their opposition to the killing of "preborn" humans (another Hyde flourish).

And the point *is* politics, as James Hitchcock makes clear in our next article. While we're praising our own, let us praise Mr. Hitchcock's talent for implacable argument: he piles the evidence so high that, off at the end, the reasonable thing to do is concede that he's got it right—unless of course you are prepared to refute him fact by fact—a formidable task. Few will dispute his conclusion: that for "some years to come there is likely to be muted, polite, but nonetheless real tension between two wings of the American hierarchy over the relative importance of abortion as a public issue"—a stunning example of another Hitchcock talent, i.e., the mild reminder that he *has* made his case (in *this* case, that the "seamless garment" has already bitterly divided not only the anti-abortion movement but also American Catholics!).

Mr. Allan Carlson's article might well have followed directly after Mr. Kemp's—his subject is again the American family, and his point of reference is that same Malthusian pessimism Kemp dissects. However, Carlson is quite pessimistic himself. As he makes clear, deliberate *policies* have produced the great decline in the fortunes (in every sense) of families—notions spawned by weird "Swedish theorists" and aped by our own ideologues that have been incorporated into government programs which have undermined the future of the nation—to the extent that only "extraordinary effort and clarity of purpose can salvage the situation at this late date." Again, it's difficult to refute him: there isn't an awful lot of clarity about extraordinary efforts, etc. Maybe we should have put Jack Kemp *after* Carlson, as an antidote?

The final article provides another antidote. Our old friend Thomas Molnar recently visited his native Hungary, and found reasons for cautious optimism about family life in that communist-plagued nation. We think you will find his first-hand account interesting reading. But following Mr. Carlson, it serves another purpose, as a reminder that the family is not only the basic unit of any society, but also enormously *resilient.* So there's hope yet, even against the *worst* the State can do?

* * * * *

As usual we have added several appendices, which seem to us nicely related to our articles. *Appendix A* is a homily (you know, a sermon) delivered by the Most Reverend Edward M. Egan, recently-appointed auxiliary bishop of New

York, at a "Red Mass" in Washington last fall. No, a Red Mass is not for Liberation Theologians, but rather a traditional Roman Catholic blessing on the legal profession. In this case, the most prominent member of the bishop's audience was the Supreme Court's Chief Justice Warren Burger.

We take this opportunity to add an historical footnote that has fascinated us. In supporting the *Roe* decision, Mr. Burger "dissented" briefly to state emphatically that what the Court was *not* doing was establishing abortion on demand. But of course that is exactly what *Roe* did establish—any American woman can procure an abortion, anytime before birth, provided only that she can procure a doctor to perform it; shameful to add, there is no shortage of doctors for such hire. Our point is, *since* then (but for one procedural exception) Mr. Burger has voted against *Roe*. Tacit judicial review, in truth? We'd pray so. Anyway, Bishop Egan's point (the Prophet Ezra is his model) is that the Good Lawyer is a Teacher, who never "pretends not to know where the law is. . . . You need only have the strength of soul to read it . . . "

Appendix B is another column by Joseph Sobran, demonstrating a) that he never misses a chance to pound away on a particular point and b) that he never fails to find fresh words to address the same subject.

Appendix C is by an acknowledged *doyen* of legal scholars, Raoul Berger, late of Harvard Law School, and author of the controversial *Government by Judiciary: The Transformation of the Fourteenth Amendment*; that title itself tells you that Mr. Berger has had plenty to say about Father Canavan's point. Here, we reprint an Op-Ed column he wrote for the Washington *Post* last fall. Again, his title ("Justice Brennan is Wrong") tells you his position.

Is there anything new to say about abortion? As we begin our twelfth year of publishing, readers of this journal are entitled to wonder if, in the million or two words we've published on the subject, we haven't exhausted it. Then you come upon (as we did) what you will find in *Appendix D*, and realize that there's always something new to say about it, if only because "new" people keep on discovering what it *means*, as Judith Neuman has, finally. In our last issue, Mr. Sobran analyzed "The Abortionist As Hero" phenomenon of our time, the worst of times for the unborn child. Mrs. Neuman reminds us that the abortionist's victims, mothers real and potential, know deep inside that he has another, more familiar name, by which he will again be called, in those better times this journal strives to bring back.

J. P. McFADDEN
Editor

The Value of Human Life

Jack Kemp

THERE IS NO BETTER WAY for Americans to think about the value of human life than by reminding ourselves of something our premier Founding Father wrote: "The God who gave us life gave us liberty at the same time." Thomas Jefferson believed that life and liberty are equally gifts of God, both are precious, and one of government's highest purposes is to preserve both.

Yet Jefferson's proposition is by no means universally accepted in today's world, in which many fear that *people* pose a threat to the physical environment needed to sustain life. The question often reduces to this: Are people basically users, or *creators*, of resources?

How we answer that question says much about the value we place on human life. It can also determine the kind of society we will have, and the nature of the government under which we will live.

Pessimists argue that social and governmental systems should bend all their efforts to redistributing the resources we already have, so we can slow the rate of social decline and share austerity equally. Optimists believe people must have a maximum of freedom and incentives to create new resources to improve the lives of future generations.

Clearly Jefferson and the founding generation were optimists about the value of human life. Indeed, for most of our nation's history there was little debate on the matter. No debate was necessary: there was a virtual consensus. The Declaration of Independence declared "that all men . . . are endowed by their Creator with certain unalienable Rights," that first among these is the right to life and that "to secure these rights, Governments are instituted among Men."

What has happened to our traditional consensus on these basic ideas? Why is the value of life under attack at both of life's extremes—infancy and old age?

Item: consider a recent episode in the public-television series "Nova." The broadcast described how the lives of thousands of children in the

Jack Kemp is a United States Congressman from New York who has been a leader of congressional opposition to abortion.

developing world were being saved using oral rehydration therapies to overcome chronic diarrhea, which happens to be the main cause of infant and child death in many nations. Until recently most people would agree without question that this was a medical *advance*, an encouraging sign of progress against childhood diseases in line, say, with the development of the Salk polio vaccine or penicillin. Some participants in the program, however, suggested that the very success of oral rehydration therapies had created new problems in the developing nations because efforts to control population growth were being undercut by the survival of too many children.

Item: consider a report published by a private, non-profit group called the Population Reference Bureau (PRB) last year detailing improvements in the struggle against fatal illnesses such as cancer and heart disease. U.S. life expectancy, which stood at 74.5 years in 1983, could rise to the age of 80 by the year 2000. An increasing lifespan is something most people have always desired, but the PRB report focused on the "unhealthy" impact of long lives on the federal budget and "the dubious goal of keeping people alive well beyond their years of vigor." Longer lifespans "could be disastrous" in "their impact on society and on the current system of public programs for the elderly." Apparently, keeping budgets "healthy" is more important than making people healthy. Now we know why one U.S. governor speaks of the "duty" of the elderly "to die" like so many falling leaves. Life is a bad thing because it costs too much.

Given the fact that America's old consensus on the value of life has disappeared, the increasing debate on this question is necessary and useful. As these examples show—and they could easily be multiplied—the greatest value of the human-life debate is that it is forcing opponents of life into the open, revealing the full meaning and result of their position on everything from health advances to abortion to euthanasia to immigration to medical experimentation. With Jefferson and the signers of the Declaration of Independence, I believe that open public debate on fundamental issues of human rights is the proper and best way for pro-life forces to restore and even strengthen our consensus on the value of life.

If there is a common thread running through the arguments denigrat-

ing the value of life, that thread is a deep pessimism. This pessimism, which turns even the most dramatic life-improving achievement into failure, is part and parcel of a philosophy that claims we live in an "era of limits," and we must look to the government to divide up our dwindling resources, or else chaos will be the result. Its intellectual godfather, so to speak, was Thomas Malthus, an eighteenth-century economist who claimed that the world's population growth would outstrip the world's ability to produce food, and thus worldwide starvation was inevitable. Expressed more generally, Malthusianism believes that resources are limited, and human beings, like all other animals, are net consumers, rather than producers, of the earth's natural materials.

Here are a few examples of Malthusianism in action, which in retrospect may seem comic but at the time must have appeared tragic. This headline appeared in the New York *Times* on December 16, 1908: LAWS URGED to SAVE TREES, FORESTS WILL BE WIPED OUT in TEN YEARS. In 1926 the Federal Oil Conservation Board predicted that the U.S. had only a seven-year supply of oil remaining. The U.S. Geological Survey announced in 1891 that there was little or no chance of finding oil in Texas! In 1899 the Director of the U.S. Patent Office, of all people, declared that "everything that can be invented has been invented." As for Malthus' own prophecy, the world's population has grown to five or six times what it was in the eighteenth century, and our output of food—maldistribution aside—is greater than ever.

Yet the doom-laden forecasts and the neo-Malthusian predictions persist undaunted by facts. In 1979 House Speaker Tip O'Neill told the graduating class of Providence College that "we must learn to live with limits" and accept "scarcity and shortages as facts of life." In 1981 the popular economist Robert Lekachman warned that "the era of growth is over, and the era of limits is upon us." He called for implementation of a public policy agenda to include total government management and allocation of credit, investment, and natural resources, and permanent controls on wages and prices.

The litany of fears voiced by the pessimists include: instability of the global ecology; disappearance of food supplies and natural resources; permanent impoverishment of millions of people; erosion of farmland and increasing energy crises. Worst of all, say the Malthusians, people

all over the world keep having children despite all of the efforts made to persuade and sometimes compel them not to. The only good thing they can say about today is that it is surely better than tomorrow is likely to be.

The pessimists have long been warning that dire consequences will follow if we fail to control the growth of population both at home and abroad. They claim that growing populations are a "timebomb" waiting to explode. Former Secretary of Defense Robert McNamara, a leader of the population-control movement, recently said: "To put it simply, the single greatest obstacle to the economic and social development of the majority of the people in the underdeveloped world is rampant population growth. . . . the threat of unmanageable population pressures is very much like the threat of nuclear war."

What, then, are the pessimists' solutions? We must readjust our sights, lower our goals, reduce our standards, and learn to live with less. Their answer to inflation is unemployment; their solution to poverty is to transfer wealth and control population growth—often through the use of abortion as a "method of family planning."

By contrast with the pessimists' view of the world, I believe that most people recognize that the only limits within which mankind must live are those imposed by our own minds and ideas and freedom. President Reagan, the most optimistic leader America has had in decades, expressed this vision in saying, "there are no limits to growth and human progress when men and women are free to follow their dreams."

Responding to the predictions of catastrophe advanced by the Malthusians, one need only cite the facts. The book *The Resourceful Earth* (edited by Julian Simon and the late Herman Kahn) published studies demonstrating that world life expectancy is not falling, it is rising. Birthrates in the developing world are not going up, they are declining. The world's supply of food is increasing even as farmers are paid by governments to idle their most productive land. Minerals are getting more plentiful, and oil and gas prices are falling. And while the real challenges we face are formidable, we can meet them just as we have from the beginning of civilization, through the use of the ultimate resource, the human mind.

Adherents of the rigid limits-to-growth view, however, are un-

daunted by facts. They continue to pursue public policy goals which include the control of population growth and the closing of our borders.

Early efforts to control population growth abroad centered on making modern contraceptives available to those families who wished to use them. The right of every family to plan the births of their children is a goal shared by most. But population planners were frustated when families in the developing world kept having children, and soon their methods became more extreme, even despotic. The coerced sterilization of six million people in India in 1976 and the enforcement of a policy of one child per family through the use of forced abortion and sterilization by the People's Republic of China (PRC) are two examples of the extreme measures undertaken to implement population control policies; others include a widespread use of abortion as a "method of family planning"—as if there were no difference between the prevention of conception and the termination of human life. Here at home, this approach is rationalized by those who support continued federal subsidies for abortion as a method of birth control on the ground that "the cost of an abortion is half that of childbirth."

The PRC's former family-planning minister Qian Xinzhong said that "a couple cannot have a baby just because it wants to," since China's economy cannot support its growing population. Yet neither Taiwan, which has a population density five times that of the PRC and a GNP eight times greater, nor Singapore, with a population density and GNP ten times the PRC's, find it necessary to practice forced abortion, infanticide, or mandatory sterilization. Population control certainly will not solve the poverty and economic problems brought on by the imposition of socialist ideology on the Chinese people.

In truth, a nation's level of population growth is not related in any simplistic way to its economic successes or failures. As the Reagan Administration's Mexico City statement explained, "The relationship between population growth and economic development is not necessarily a negative one. More people do not necessarily mean less growth. Indeed, in the economic history of many nations, population growth has been an essential element in economic progress."

President Reagan went on to describe his policy on population by

saying: "U.S. support for family-planning programs is based on respect for human life, enhancement of human dignity, and the strengthening of the family. Attempts to use abortion, involuntary sterilization, or other coercive measures in family planning must be shunned, whether exercised against families within a society or against nations within the family of man."

Congress has made significant strides in implementation and enforcement of the Administration's policy. In 1984, the House of Representatives adopted an amendment to the bill authorizing our foreign-aid programs which expressed Congressional support for the President's decision to withhold federal funds from international organizations that include the use of abortion as a method of family planning. The International Planned Parenthood Federation (IPPF), which received $11.5 million from the U.S. in 1984, refused U.S. funding in 1985 rather than abandon its dogmatic commitment to abortion as a method of controlling population in the developing nations. Its sister affiliate, the Western Hemisphere IPPF, agreed to refrain from promoting abortion for family planning, and it continues to provide contraceptive services and information throughout the hemisphere with the benefit of U.S. funding.

Congress has adopted the Kemp-Helms amendment, which prohibits U.S. international population-planning funds from being used by organizations that participate in programs of coercive abortion or involuntary sterilization. In 1984 the UN's Family Planning Agency received one-third of its budget from the U.S., and it in turn provided a substantial portion of funding for the efforts of the PRC to control its population by limiting families to one child. As has been documented by many reliable sources, including Michael Wiesskopf of the Washington *Post*, the PRC enforces its unpopular policy through the use of coercive abortion, even through the third trimester, and through mandatory sterilization, and tragically it often results in infanticide, particularly of females.

In the United States, Senator Hatch and I recently proposed legislation that would end federal subsidies for domestic organizations that treat abortion as a method of planning families. Congress first enacted the domestic family-planning program in 1970 to provide poor women with access to contraceptive services, as well as to fund research into new contraceptive methods. Congress intended to establish a wall of

separation between family planning and abortion; nevertheless, the Planned Parenthood Federation of America, a major recipient of federal funding under this program, performed 86,947 abortions in 1984 alone. Planned Parenthood claims that the adoption of the Hatch-Kemp amendment will increase taxpayer costs because abortion costs less than childbirth, and the children we save from abortion will sooner or later end up on welfare. It is remarkable that this specious argument replicates almost exactly the nineteenth-century sociological apology for the antebellum South's "peculiar institution" of chattel slavery, which claimed that it "cared for" black people at less cost than in the capitalistic North.

In the arena of public policy, some treat immigration restriction as a population-control issue. Enforcement of immigration procedures has nearly broken down in recent years, and it is obvious that our immigration laws need reform. But this need for reform has been used to call for a virtual closing off of U.S borders. Governor Richard Lamm of Colorado, a leading exponent of population and immigration control, has said: "We have witnessed an increase in the number of people who are structurally unemployed. Clearly, we are not doing a good job with our own poor. We cannot persist in the illusion that the U.S. can and should be the home of last resort for all the world's dispossessed." But to claim that immigrants take jobs from Americans is to say that the economy is a zero-sum proposition, a game of musical chairs according to which there are only so many jobs to go around and an immigrant can find work only by displacing someone else who is currently employed.

Of course this is not the first effort to restrict immigration to America. After the turn of the century, when it appeared that most U.S. land had been claimed, pressure began to build to restrict immigration. According to Samuel Eliot Morison's standard *Oxford History of the American People*, "a group of intellectuals . . . feared that the overwhelming number of immigrants from southern and eastern Europe, with different folkways and traditions from those of northern Europe, were a menace to American society." A more significant element of that pressure came from people who were more concerned with redistributing static amounts of wealth than in creating new wealth. As the

historian Henry Steele Commager wrote in his book, *The Growth of the American Republic*, "Agitation for exclusion came from . . . social reformers . . . who had come to the conclusion that there could be no solution of the problems of slums, public health and the exploitation of the poor as long as illiterate immigrants poured into the great cities." These so-called reformers thought, like all Malthusians, that people are a drain on our resources.

But people are not a drain on our resources. People *are* a resource. Indeed, free people and free markets form the greatest resource we have for combatting poverty and increasing abundance for everyone. Overly-restrictive immigration policies have led to some obvious absurdities. For example, the Immigration Act of 1917 specifically barred all Indochinese immigration on the ground of illiteracy. Yet ever since the 1970s when America had the good fortune to become the home of the boat people who fled Vietnam after the war, Indochinese Americans have become one of our richest veins of learning, mental energy, scholarship, talent, and enterprise. Their proficiency in math and engineering is already legendary, and their contributions in the field of microcomputer technology are indispensible, not just to economic growth but to our nation's military security system. In our cities, many small corner-store businesses are Vietnamese owned. The restrictive immigration laws of 1917 are almost a paradigm of mistaken policy. The mistake lay in believing that there are narrow limits to growth and we need to worry more about the problem of distribution than the opportunities for creativity and expansion.

Why did our open-door approach to immigration, which had been the American policy throughout the boom years of the nineteenth century, take such a turn after World War I? The conventional view is that we could "afford" an open door as long as there was room to expand, but with the closing of the frontier at the turn of the century we had to limit further population expansion from foreign countries.

The thesis that the frontier was closing came from a brilliant historian, Frederick Jackson Turner, but in my judgment it is inadequate as a basis of public policy. The only frontier America must worry about is not at the border of the country but at the edge of the mind. The real frontier today is not in Alaska or even in space; it is at the margin of enterprise, new service and product development, innovative technol-

ogy and entrepreneurship. And we need more enterprising activity and job creation. These come from creative minds, and they can be found among every nation in the world. The key difference between the United States and the homelands of most immigrants is that we have been democratic and capitalist from our first beginnings while the "old countries" were being impoverished by managed statist economies and elitist political leadership.

It is obvious that immigration cannot be *totally* unrestricted. Just to live in the United States, most immigrants and their children need education in English and other skills, and the facilities available are limited in the short term. However, the single most important action we can take to curb immigration, both legal and illegal, is to export vigorously the American model of individual initiative and economic growth around the globe. The more the rest of the world resembles the United States, the less the need to emigrate.

Author Paul Theroux has written, "If you say to someone in the north of Thailand or in Sri Lanka that you're an American, the reaction is: 'I'd like to go there.' Usually that's because life is so much harder and hope so much thinner for people in Third World countries. In the 1960s they didn't speak that way; they thought something positive might happen in their land." Beginning in the 1970s the world economy as a whole began to suffer contraction, and in the 1980s the contrast with the booming economy in the U.S. has become enormous. People are literally willing to die to come here. The American idea is still revolutionary. We should help the rest of the world turn the American model of political, economic, and religious freedom into a reality around the globe. That obligation is one profound implication of the Declaration of Independence's doctrine that "*all* men are created equal."

The limits-to-growth approach and its public policy applications in the areas of population and immigration control are still powerful. This should not surprise us. Certain elites have a vested interest in such policies for the simple reason that they are, or expect to be, in control of the operation of those policies. It is in the nature of bureaucracies that they live at the expense of the problems they were supposed to eliminate. Obviously if it were recognized that the "overpopulation problem" is only a symptom, that the real problem is establishing policies to

encourage worldwide economic expansion rather than population limitation, the need for agencies to deal with "overpopulation" would be eliminated. Naturally, bureaucracies and elites with a vested interest in controlling populations do not want to allow that to happen.

Nevertheless there is reason to believe that the tide has indeed turned. There is an increasing realization that the use of abortion to plan families is not only a logical contradiction in terms, but that it threatens to open a path to a new kind of despotism over the body and the mind, as we see in nations such as India and the PRC. Where the American idea of equality joins people of all ages together, population control sets young against elderly. Where our principles appeal to *all* human beings, immigration control divides "us" against "them." Where economic growth gives all men and women hope for the future, the neo-Malthusian pessimism of those who denigrate life offers fear of the future, of the present, of our fellow man.

Abraham Lincoln called the Declaration of Independence, with its proclamation of a God-given natural right to life, "the father of all moral principle" in the American people. I believe that as long as the American people continue to have faith in the revolutionary ideas of the Declaration, they will reject the false and despotic idea that a few may deprive the rest of us of the right to life or liberty for economic or materialistic considerations.

Principle and Power: Abortion, the Court, and Federalism

Joseph Sobran

THE YEAR 1985 brought a major new debate about the meaning of the Constitution, a debate that is far from finished. For the first time in memory, those favoring liberal interpretation of the Constitution were finding themselves on the defensive—and largely as a result of their most daring coup, the triumph of legal abortion in *Roe* v. *Wade.*

The best defense being a good offense, liberals took the attack. They charged the Reagan Administration with applying an "ideological litmus test" to prospective appointees to the federal judiciary: namely, opposition to abortion.

Not so, one Administration official replied. True, we ask their views on *Roe* v. *Wade* as a piece of constitutional interpretation, but it is, after all, a major ruling. We never ask them whether they oppose legal abortion as such or how they would vote on the issue. Furthermore (he went on), the Carter Administration imposed its own litmus tests—racial and sexual as well as ideological—without objections from liberal quarters: for example, candidates were asked directly how they stood on the Equal Rights Amendment.

The debate got into high gear in the fall when Justice William Brennan, in a speech at Georgetown University, delivered what everyone recognized as an attack on the Administration's position that constitutional interpretation should give high place to "the intentions of the framers." Brennan argued that the intention of the framers of the Constitution is often obscure and, in any case, need not be decisive for our generation, since the Constitution is in some ways "anachronistic," and its saving virtue is its "adaptability." The task of the judiciary, he said, is to apply "constitutional principles" to contemporary problems, and to secure "the rights of minorities" in accordance with "the ceaseless pursuit of the constitutional ideal of human dignity."

In the weeks that followed, many other jurists (including Justice

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John Paul Stevens), lawyers, professors, and journalists aligned themselves with Brennan against the Administration. None of them seemed to notice a fundamental difficulty in their common position.

The difficulty is easy to pose: How do you find "principles" in a document if the "intentions" of its authors are obscure? Alexander Hamilton, writing as Publius in the 78th number of *The Federalist*, said that the first job of the judiciary in interpreting the Constitution is to "ascertain its meaning." This may sound hopelessly pedestrian to men who see themselves as engaged in a higher and more ambitious mission of giving life to great "principles," but there it is. For Publius, interpretation means, first of all, finding out what was meant. The judge is not to "interpret" the law the way a Method actor "interprets" the role of Hamlet, injecting his own inspired subjectivity into the thing.

As it happens, Shakespeare criticism provides some useful object lessons for constitutional interpreters. One of the most bizarre attempts to explain Hamlet was that of the Freudian Ernest Jones, who theorized that the prince was afflicted with an Oedipus complex. Laurence Olivier even made this notion the basis of his film of *Hamlet*. It must have seemed like a good idea at the time, but now it seems laughably quaint. Because he refused to take Shakespeare's conscious intention seriously, Jones imputed to the play a meaning that is obviously a projection (to use a good Freudian term) of the fashions of his own time, the 1930s.

In the same way, the liberal Court, in trying to separate "constitutional principles" from their real origins, has generated a long series of supposed "interpretations" that can be seen in retrospect as so many items in the contemporary liberal agenda. Abortion on demand is surely one of these.

Brennan has actually given us a valuable clue to the Court's *modus operandi*. In practice it disregards the concrete meaning of phrases like "the freedom of speech" in the minds and mouths of those who wrote and ratified the Constitution, and expands them into an infinitely general "freedom of expression" that extends its protection even to pornographers and topless dancers. In time the concept of "freedom of expression" replaces the actual words (and meanings) of the Constitution. That is what Brennan seems to mean by a "constitutional principle."

But as Grover Rees III points out, there is no single principle

embedded in phrases like "the freedom of speech." Any number of principles can be extracted from such a phrase. "Freedom of expression" is only one. But we might equally well choose "freedom of opinion," "freedom to criticize the state," "freedom to say what one thinks," or any of several others. The phrase itself could be made to accommodate any of these, but it commits us to none of them. We have to "ascertain its meaning."

To complicate matters more, the Court has never held that "freedom of expression" must be total and absolute. It has acknowledged that obscenity as such can't claim constitutional protection. True, at every step it has found this or that piece of pornography to be protected by the First Amendment, but the generalizing has never gone all the way. In one way we may be glad, but this leaves jurists, lawyers, and prosecutors to puzzle over the precise reach of the ostensibly boundless "constitutional principle."

The Court has acted similarly with the phrase "equal protection of the laws" in the Fourteenth Amendment. In the 1960s it suddenly decided that this phrase required representation on the one-man/one-vote principle in all state legislatures. Otherwise, it said, some voters were being denied equal protection. Critics raised the reasonable question why the equal protection principle didn't invalidate the U.S. Senate, in which a voter from California clearly doesn't enjoy equal protection with a voter from Utah or Idaho. There is no answer, except to appeal to the intentions of the framers of the Fourteenth Amendment, who obviously had no thought of abolishing the U.S. Senate, but just as obviously didn't intend to reapportion the legislatures of all the states. The Court again enunciated an apparently universal principle, then abruptly stopped short of applying it with full rigor.

Of course nobody really expects the Supreme Court to take on the U.S. Senate in a real showdown. And that is just the point. The Court's "principles" are limited only by sheer power. The dark suspicion arises that those principles themselves are expressions and instruments of power—"raw judicial power," in Justice Byron White's phrase.

Even in the heyday of its liberal activism, the Court was careful not to challenge Congress. Nearly all of what liberals like to call the Court's "historic" decisions—on segregation, school prayer, reapportionment,

police procedures, obscenity, contraception, abortion, and the rest—were made in rulings against state laws and local ordinances.

This is an extremely important fact, since it means that the Court today is playing a radically different role from the one the framers of the Constitution envisioned—and, in fact, a radically different role from the one most Americans have been taught to believe it plays.

In the 78th *Federalist*, Hamilton makes the case for judicial review in terms John Marshall would later adopt in *Marbury* v. *Madison*. He sees the Supreme Court as a check on Congress, and therefore as a limitation on the growth of federal power. He contends that since the Court can take "no active resolution whatever," it is "beyond comparison the weakest" of the three branches of government. Therefore "it can never attack with success either of the other two [branches of government]," and "the general liberty of the people can never be endangered from that quarter."

These are comforting words, until we recall two facts. First, Hamilton wrote before the adoption of the Bill of Rights, which he opposed. So he could not have envisioned judicial review in the form we are used to: namely, the Court striking down laws in the name of the Bill of Rights. Second, he wrote before the "incorporation" theory of the Fourteenth Amendment took hold in the federal judiciary, permitting the courts to strike down even state laws in the name of the Bill of Rights. These two facts make all the difference.

The currently-normal mode of judicial review is for the federal courts to strike down a state law on grounds that it violates some provision of the Bill of Rights or the Fourteenth Amendment. Justice Brennan describes this process in terms of protecting the rights of "minorities." But it is not very helpful to put it that way. In every democratic decision, the minority is simply the losing side. There is nothing sacrosanct about a minority as such, despite the moral resonance of the word "minority" in liberal rhetoric. It would be a peculiar inversion of democracy to hold that the losing side was always right. If Brennan meant only that sometimes the losing side can make a good case, that the winning side went beyond the bounds of the Constitution, very well: that is only to say that the judiciary must sometimes decide separate questions between the winners and the losers, not that it should make a presumption in favor of the losers.

There is also something faintly peculiar about Brennan's phrase "the ceaseless pursuit of the constitutional ideal of human dignity." We all believe in human dignity, but it is not especially a (let alone "the") "constitutional ideal." The Constitution doesn't mention it and in fact doesn't speak in the idealistic mode. Nor does it speak of "ceaseless pursuits." Like a good legal document, it seems to be more interested in nailing things down, in specifying and defining: *habeas corpus*, bills of attainder, full faith and credit, post roads, that sort of thing. People who turn to it in the hope of finding moral uplift are bound to be disappointed. What they will find instead is a pretty hardheaded and carefully laid out distribution of power.

Now the striking note of liberal jurisprudential rhetoric is its extreme looseness. It assumes that our "constitutional protections" can be "expanded" by progressively broadening the meaning of a few phrases in the Bill of Rights and the Fourteenth Amendment: the freedom of speech, cruel and unusual punishments, equal protection, etc. Once these are inflated to truly idealistic dimensions, they can be used as devices for striking down laws—mostly state and local laws, for Congress never seems to transgress against the Constitution in any serious way. At least the Court seldom finds a federal law in violation of the Bill of Rights. It is state and local law that is the habitual target of judicial review.

The Court's attacks on state and local law rest on the foundation of the "incorporation" theory of the Fourteenth Amendment, which first peeped forth in 1925, more than half a century after the amendment itself was ratified. That theory is still controversial, and it is hard to maintain that it was intended by the framers of the Fourteenth Amendment. Legislative history, in fact, has proven an increasing embarrassment to liberal jurisprudence, which may be why liberals prefer disembodied principles to historically-rooted ones.

But even the Supreme Court has never adopted a full-blown version of incorporationism, which would hold that the states are inhibited by the Bill of Rights just as much as the Federal Government is. However, this fact matters less than the fact that the theory is a precarious foundation for all the weight the Court has laid on it. If the incorporation theory is mistaken, so are all the "historic" decisions that have issued from it.

Consider *Roe* v. *Wade*. Its validity depends on the validity of a whole series of prior rulings stretching back to 1925. These include several in which the incorporation theory was asserted and extended, and especially *Griswold* v. *Connecticut* (1965), in which the Court discovered, via "penumbras" and "emanations," a constitutional "right of privacy" such that state laws banning the sale of contraceptives were impermissible. On the backs of these earlier rulings the Court stacked a further right to abortion.

The difficulty is plain. Unless the earlier rulings were sound, *Roe* is bound to be unsound. It is obvious that in a series of inferences in which each conclusion becomes the major premise of the next deduction, the probability of the later inferences being correct diminishes steadily. Each step has to be valid. And there has usually been a minority on the Court vigorously challenging every step.

Now judicial reasoning is not a mechanical process. But suppose it were. And suppose that the chances of the Court's being correct in a given case could be quantified. If the Court could be right in hard cases two-thirds of the time, it would still only have a 44 per cent chance of being right twice in a row, and a less than 30 per cent chance of being right three straight times.

Even this little hypothesis is enough to suggest why the Court's recent concatenations of rulings seem to have taken it so far from the Constitution as Hamilton and his contemporaries understood it. Somewhere along the line, the Court has probably erred. But since there is no corrective mechanism, and since the entire federal judiciary treats the High Court's rulings as virtually infallible precedents, its errors are bound to become foundations of further error.

Liberals will object to this line of reasoning, because they don't regard "error" as a relevant category. They acknowledge that the Court's reasoning is anything but mechanical, and indeed praise it for creative improvisation. But even this is to admit that there is something arbitrary about the content of Supreme Court rulings, however one may approve of their general direction. And it follows that the Court's rulings are still bound to be ever more tenuously related to the original constitutional plan. Most liberals are willing to accept this state of affairs.

The Court is not attempting anything like a strictly logical extension of the original plan. It sees its role as active, not passive; it is anything but a humble executor of someone else's will. And it is not disturbed that it winds up taking positions light years away from the plan of government laid down by the framers and taken for granted by generations of Americans. The Court acts self-consciously as a vanguard of democracy, and its admirers hail it as such.

So it is natural that the Court's great victories, its "historic" rulings, should be attained at the expense of the original federal system. What others see as a hypertrophic application of the Fourteenth Amendment, the Court and its partisans see as a legitimate development. They have no great regard for the old federal system: they see it as an impediment to "necessary social change," to that "ceaseless pursuit of the constitutional ideal of human dignity," and they consider such values as states' rights to be mere pretexts for inequities like racial segregation.

Here we may pause to note that liberals, including those on the Court, have not always followed this logic consistently. At times they give primacy to procedure as the bulwark of liberty, no matter what unpleasant short-term results it may produce. If the cause of civil liberties results in allowing subversives, pornographers, and violent criminals to be free to repeat their malefactions, liberals write this off as the price of freedom for everyone. But they don't apply this line of thinking to states' rights.

Now for the framers of the Constitution and for succeeding generations, our constitutional protections were thought to inhere not so much in a few clauses of the Bill of Rights as in the entire federal system. After all, the Bill of Rights was a sort of afterthought. The real system of liberty was laid out in the body of the Constitution—and reaffirmed in the Ninth and Tenth Amendments, which tried to meet such qualms about the Bill of Rights as Hamilton had voiced. The power of the Federal Government was to be limited both internally, by the checks and balances distributed among the three branches, and externally, by the rights and powers reserved to the states and to the people.

Disdaining "parchment barriers," the framers showed their practical political genius by designing a system in which a central government was both enabled to act and restrained from acting tyrannically. Each

branch was restrained by the presence of other *branches* (and another *house* of one branch) and by the presence, beyond Washington, of other *levels* of government.

Within this system, judicial review was to play its part in checking the central government's "encroachments" and "usurpations" (to use the language of the framers). But today the actual practice of judicial review, directed as it is primarily against states and localities, has the opposite effect: it undermines the lower levels of government, and helps centralize power in Washington.

What makes matters worse is that there is no remedy in sight. In theory the legislative and judicial branches have reciprocal powers over one another. But this obviously doesn't apply between different *levels* of government. State governments are constitutionally helpless against the federal judiciary. They have no weapons of self-defense. There is no corrective mechanism for an encroachment or usurpation by the Court itself. Using the incorporation doctrine, the Supreme Court has defeated the principle of checks and balances.

The Court and its liberal champions see the Court as the great vindicator of constitutional principles. In their view, the Court intervenes in the processes of state and local government to guarantee those principles to individuals and "minorities" that might otherwise be denied them. But again, the choice of "principles" is highly arbitrary. The prerogatives of states and of the people, the reserved powers of the Tenth Amendment, are constitutional principles too. They were built into the very structure of the federal system. The integrity of that structure was assumed to be our essential constitutional protection.

We should therefore ask ourselves whether the Court's newly assumed power over state legislatures doesn't represent an overall defeat, rather than a victory, for liberty. The Constitution was framed to provide self-government, not just a set of discrete rights for individuals and minorities. It sought to secure the "blessings of liberty" by creating a complex form of government in which each part would be answerable to the others and ultimately to the people themselves. None would have limitless and unaccountable power—of the kind the Court now has *vis-a-vis* the states.

If there is one indisputable "constitutional principle," one would think it is that there should be no unrestrained political power. And yet

an unelected body of nine men, appointed for life, has exactly that. It is no wonder that their arrogance has swollen to the point that they feel free to declare the abortion laws of all 50 states, the most liberal as well as the most restrictive, unconstitutional. An entire political movement has been generated by the sheer difficulty of correcting a single blunder by the Court.

The anti-abortion movement is in essence a democratic response to an authoritarian act. The Court virtually said that *none* of the 50 state legislatures had properly understood the Constitution in relation to the abortion question. *All* their answers were wrong. *Every* abortion law had to be overturned.

This implies a remarkable conception of the Constitution. One might think that the American people, who had ratified and sustained that Constitution, and who, so to speak, lived it out in their civic lives, might be credited with some practical insight into its meaning. This is especially true if one understands the constitutional system structurally: not as a fragile collection of "rights" that are forever being trampled unless courts, armed with superior insight, intervene, but as a set of arrangements for living civilly that we have long since settled comfortably into. The reformist and activist rhetoric of Justice Brennan seems to tell us that no matter how familiar our way of life may seem, no matter how good its fit, we must be prepared to change it any moment at a command from on high. In that "ceaseless pursuit," we must be constantly ready to receive our marching orders, to pull up stakes, and to relocate.

In the twentieth century it has been a common experience, because so many modern ideologies have conceived the state as an agency for mobilizing whole populations in ceaseless pursuits, sometimes called long marches. "To some people," Michael Oakeshott writes, in a famous passage, "'government' appears as a vast reservoir of power which inspires them to dream of what use might be made of it. They have favorite projects, of various dimensions, which they sincerely believe are for the good of mankind, and to capture this source of power, if necessary to increase it, and to use it for imposing their favorite projects upon their fellows is what they understand as the adventure of governing men. They are, thus, disposed to recognize government as

an instrument of passion; the art of politics is to inflame and direct desire."

Several recent Supreme Court justices have been known as passionate advocates of certain social policies, Justice Thurgood Marshall being the outstanding current example, and they have not been the least bit embarrassed to use the judiciary as an instrument in promoting their favorite projects. Why should they be embarrassed? The policies they advocate may be criticized, especially by people who prefer rival policies, but we now pretty much take it for granted that even judges will behave like politicians. We have nearly forgotten that there have been times when even politicians were expected to behave like judges.

As C. S. Lewis reminds us, "In all previous ages that I can think of the principal aim of rulers, except at rare and short intervals, was to keep their subjects quiet, to forestall or extinguish widespread excitement, and persuade people to attend quietly to their several occupations." He notes that we have even changed our terminology: we have ceased calling our rulers "rulers" and now call them "leaders," a change with deep implications: "For of a ruler one asks justice, incorruption, diligence, perhaps clemency; of a leader, dash, initiative, and (I suppose) what people call 'magnetism' or 'personality.'" The ancient image of a king, like Solomon, deciding impartially between his subjects has been replaced by the image of the charismatic politician. It has gone so far that even the judge is no longer expected to be Solomonic.

"The new theory," Lewis says, "makes political power something inventive, creative. Its seat is transferred from the reason which humbly and patiently discerns what is right to the will which decrees what shall be right." Oddly enough, the deeply conservative view of Lewis and Oakeshott has been reaffirmed by such libertarian thinkers as F. A. Hayek and Bruno Leoni. All of them regard as corruption the sort of special-interest politics we now take for granted. All of them deny that it is the right of any party, even in a democracy, to impose its will or interest on the entire community. They all hearken back to the older tradition that sees law as something to be discovered as latent in a larger moral order, not as the expression of mere personal desire. This tradition holds, as Lewis puts it, "that good would still be good even if stripped of all power."

At least some residue of this tradition moved the framers of the Con-

stitution, who abhorred the politics of what they called "passion" and "faction," and thought that "the cool and deliberate sense of the community" would be the surest safeguard of peace and justice. They designed the federal system with the purpose of forcing proposed legislation to undergo an elaborate filtering process: through two different houses of representatives, speaking for widely dispersed interests, then through an executive, and finally, if necessary, through a judiciary that would consider the legislative act in light of the Constitution, the ultimate expression of that "cool and deliberate sense." This is Hamilton's argument for judicial review: that "the Constitution ought to be preferred to the statute, [as] the intention of the people to the intention of their agents."

So it becomes the justices to maintain the demeanor of men who are charged with representing, not the latest causes of a political avant-garde (which may turn out to be no more than ill-advised passions), but the settled and reflective wisdom of the entire community. "The man of this disposition," says Oakeshott, "understands it to be the business of a government not to inflame passion and give it new objects to feed upon, but to inject into the activities of already too passionate men an element of moderation; to restrain, to deflate, to pacify, and to reconcile; not to stoke the fires of desire, but to damp them down. And all this, not because passion is vice and moderation virtue, but because moderation is indispensible if passionate men are to escape being locked in an encounter of mutual frustration."

It is especially unfortunate that justices should be so eagerly involved in contests of passion and power, which are so sharply opposed to reason and authority. Power and authority are widely confused nowadays, but they are not at all the same thing. They are more nearly opposites than synonyms. Authority is something abiding, like a measuring rod, a written law, a Scripture, against which current claims can be judged. Authority is ultimately a restraint on power. One of the most terrifying things that can happen to a society is to have a Stalin whose power is so total that he can destroy authority, "raze out the written records of the past," rewrite history when it pleases him, and, by sheer force and terror, impersonate authority himself.

To a lesser extent power triumphs over authority when, say, a body

of churchmen in thrall to feminist ideology ignore or write off passages from the Bible that rebuke the pet fashion; or when, say, Supreme Court justices "interpret" the Constitution ahistorically to suit their own ideology. Such revisionism is not different in principle from the constant revisings of the Soviet Encyclopedia, recent editions of which have made scant mention of Josef Stalin, now himself a victim of Stalinism.

The purpose of the Constitution, like any device of authority, is to give the permanent some kind of check against what has been called "the tyranny of the urgent." Things are topsy-turvy when even judges think it is their duty to represent the urgent against the permanent. It would be one thing if all 50 states had suddenly, in a mass frenzy, passed laws restricting or forbidding abortion. Then the Court might reasonably consider whether the laws were an expression of mere popular passion, at odds with "the cool and deliberate sense of the community." But in fact the situation is the other way around: it was the judges who were in a faddish frenzy, legal abortion having become the cause *du jour* among liberals, and in *Roe* v. *Wade* they pitted themselves against that cool and deliberate sense, which had stood the test of time.

Abortion was an area in which the states were free to legislate. There was nothing in either the intentions of the framers or the practice of generations to contradict this. It was settled. Until the "sexual revolution" of the Sixties, nobody had ever contested it. Overnight the Court undertook to unsettle it.

This was such a startling role reversal that even now it has hardly been grasped, even by the Court's angriest critics. The Court is required to speak in the tones of authority, as if it represented the permanent will of the people against a transitory majority, in accordance with the vision of *The Federalist.* But in fact it spoke for a current minority, against both current and permanent majorities. It spoke for power, "raw judicial power," against every kind of authority. It projected onto the Constitution its own immediate and unmediated passion.

Those who are willing to hijack the judiciary in order to establish the liberal agenda, or any other "favorite project," will naturally be disposed to divorce "constitutional principles" from the intentions of the framers, from the federal structure, and from any settled American way

of life. The last thing that will occur to them is that limitations on the federal judiciary itself might be regarded as "constitutional protections." But at the moment these seem to be the protections that need expanding.

The federal judiciary has launched a series of unilateral and unanswered first strikes against the constitutional system—if, that is, we still think of the states and their rights as essential to that system. The judiciary has destroyed safeguards under the illusion that it is erecting them, has practiced autocracy under the illusion that it is perfecting democracy, and worst of all has abolished sacred rights under the illusion that it is "expanding" rights.

More than fifteen million lives have been extinguished by abortion since *Roe* v. *Wade*, and yet the Court never seriously entertains the possibility that it has erred, or that it could seriously err. Justice Harry Blackmun, author of the majority opinion in *Roe*, boasts inanely that "the abortion decisions are among the most liberal that the Court has made in many a year." He is certainly right about that. They may even be the most liberal the Court has *ever* made, or ever *will* make. Let us hope so.

A New Fourteenth Amendment

Francis Canavan

IN 1780 JOHN DUNNING MADE a famous motion in the House of Commons: "The influence of the Crown has increased, is increasing, and ought to be diminished." We may say the same today of the part played by the courts in our system of government: the power of the courts has increased, is increasing, and ought to be diminished.

Even those who disagree with this proposition will admit that the present power of the courts is based principally on the Fourteenth Amendment. Leonard W. Levy, for example, seems to have little desire to reduce the power of the courts, but he has no doubt about its source:

> Excepting the commerce clause, which is the basis for so much congressional legislation, modern constitutional law is very much made up of Fourteenth Amendment cases. No part of the Constitution has given rise to more cases than its due process clause alone, and its various clauses taken together account for about half of the work of the Supreme Court. The states in our federal system can scarcely act without raising a Fourteenth Amendment question. The vast majority of all cases which concern our precious constitutional freedoms—from freedom of speech to separation of church and state, from racial equality to the many elements of criminal justice—turn on the Fourteenth Amendment.[1]

"The states in our federal system can scarcely act without raising a Fourteenth Amendment question." Those who hail this development are no doubt aware that it represents a massive transfer of power from legislatures to courts. They may be less aware, however, that this transfer of power, because it turns the courts into policymaking bodies, undermines the theoretical foundation of the courts' power of judicial review and makes the legitimacy of their present role in American government questionable. To explain why the Fourteenth Amendment has this effect, however, it is first necessary to turn our attention to the meaning of judicial review.

Judicial review is the power of courts to review acts of legislative bodies and executive organs in order to determine their compatibility

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with the constitution, either of a State or of the United States, and to declare them null and void if they are contrary to the constitution. In the words of Edward S. Corwin,

> . . . judicial review rests upon the following propositions and can rest upon no others: 1) That the constitution binds the organs of government; 2) That it is law in the sense of being known to and enforceable by the courts; 3) That the function of interpreting the standing law appertains to the courts alone, so that their interpretations of the constitution as part and parcel of such standing law are, in all cases coming within judicial cognizance, alone authoritative, while those of the other departments are mere expressions of opinion.[2]

The first of these propositions is essential to the doctrine of judicial review, since it asserts the supremacy of the constitution over the organs of government. But it would be possible to accept this proposition without acknowledging, as the Jeffersonians did not, the exclusive power of courts to make the final and authoritative interpretation of the constitution. It is the third proposition that asserts this power as belonging to the courts alone. But the power totally depends on the second proposition, namely, that the constitution is a law of which the courts can and must take cognizance in performing their ordinary and proper function of deciding cases in law and equity.

The doctrine of judicial review holds that in deciding cases that come before them, the courts are bound to prefer the higher law, the constitution enacted by the sovereign people, to any law made by the representatives of the people, when the two are in conflict. But this duty and power of the courts could not exist without the premise that a constitution is a law in the strict and proper sense. If a constitution were not a law of the kind that courts can know and enforce, it would be a statement of a political obligation, enforceable by the people at the next election, but it would not be a legal norm enforceable by the courts.

Now, the Constitution of the United States describes itself as a law in the strict sense of the term. The supremacy clause of Article VI proclaims: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." This clause, it is true, asserts the supremacy

of national laws and treaties, as well as of the Constitution, and it asserts their supremacy over State constitutions and laws. What is of immediate importance, however, is that the Constitution describes itself as law which is to be recognized and enforced by judges.

While the Constitution does not mention the power of federal courts to declare national laws null and void if they are in conflict with the Constitution, Max Farrand seems to be correct when he says that the framers of the Constitution took that power for granted:

> The question did not come up in connection with the discussion of the jurisdiction of the federal courts. At different times in the sessions of the convention, however, it was proposed to associate the federal judges with the executive in a council of revision or in the exercise of the veto power. At those times it was asserted over and over again, and by such men as Wilson, Madison, Gouverneur Morris, King, Gerry, Mason, and Luther Martin, that the federal judiciary would declare null and void laws that were inconsistent with the constitution. In other words, it was generally assumed by the leading men in the convention that this power existed.[3]

But because the power was assumed to exist, no fully developed argument for it was presented, and the Constitution makes no formal and explicit grant to the courts of a power to nullify laws because of their conflict with the Constitution. (Even the supremacy clause imposes an obligation on judges instead of expressly conferring a power on them.) Judicial review got into the Constitution by the back door, so to speak.

The so-called Virginia Plan, which was the Constitutional Convention's original working document, proposed that the national legislature should have power "to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union."[4] Hence maintaining the constitutional boundaries between the nation and the States was to be a legislative rather than a judicial function. The Virginia Plan also proposed keeping the national legislature within its bounds by associating certain members of the national judiciary with the executive in a Council of Revision which could veto acts of the national legislature, and this veto could be overridden only by extraordinary majorities in both branches of the national legislature.[5] It was only as the Convention came to reject both of these proposals that it fell back on the assumption that the judges would keep both the State and national legislatures within their constitutional limits by determin-

ing the constitutionality of laws when that issue arose in the ordinary course of lawsuits.

Statements on judicial review in the Convention, therefore, were scattered and brief. Some of them, however, made by members of the Convention who doubted whether judicial review would give sufficient protection against legislative violations of the Constitution, reveal how limited they thought the scope of judicial review was.

James Wilson, for example, opined: "It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect."[6] George Mason added that the judges "could declare an unconstitutional law void. But with regard to every law however unjust, oppressive or pernicious, which did not come plainly under this description, they would be under the necessity as Judges to give it a free course."[7] Gouverneur Morris "could not agree that the Judiciary . . . should be bound to say that a direct violation of the Constitution was law." James Madison said, "A law violating a constitution established by the people themselves, would be considered by the Judges as null & void."[9] Nonetheless, to the end of the Convention Madison believed that only a congressional power to veto State laws would be sufficient to protect the Union. This had been rejected by the Convention, however. "The jurisdiction of the Supreme Court," he said, "must be the source of redress. So far only had provision been made by the plan agst. injurious acts of the States."[10]

Implicit in all of these statements was the understanding of the review power of judges as being limited to declaring laws unconstitutional when they clearly violated a Constitution which itself was clear in its terms. The full import of this proposition emerges in Alexander Hamilton's argument for judicial review in *The Federalist*, no. 78.

According to Hamilton, "the judiciary is beyond comparison the weakest of the three departments of power" and "from the nature of its functions, will always be the least dangerous to the political rights of the Constitution." The reason is that the judiciary neither makes nor enforces the laws "and can take no active resolution whatever. It may

truly be said to have neither FORCE nor WILL, but merely judgment."[11]

The judiciary exercises nothing but judgment because of "the nature of its functions." Hamilton explains:

> The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.[12]

It will be noted that Hamilton contemplates an "irreconcilable variance" between the Constitution and a statute as the reason for declaring the statute unconstitutional. The duty of the courts, he had said on an earlier page, "must be to declare all acts contrary to the manifest tenor of the Constitution void,"[13] which statement assumes that the Constitution has a manifest tenor. Hence the courts can be said to exercise judgment rather than will: "They ought to regulate their decisions by the fundamental laws, rather than by those that are not fundamental."[14]

Later in the same essay Hamilton remarks:

> A voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them.[15]

It is true that in this passage Hamilton has in mind the whole body of law which provides the courts with their ordinary business rather than the limited area of constitutional law. Nonetheless, it is consonant with his explanation of judicial review that even in deciding cases in constitutional law the courts are not to enjoy an arbitrary discretion but are to follow rules and precedents that point out their duty in particular cases. The rules will be those embodied in the Constitution itself and will necessarily be broader in their terms than those of statute law. Nevertheless the courts "ought to regulate their decisions" by those rules of fundamental law. Courts, however, cannot do this unless the rules of fundamental law are definite enough to serve as regulating principles and so to prevent arbitrary discretion.

Hamilton's argument that the courts may decide on the constitution-

ality of laws because they must do so in order to perform their judicial function was repeated in the *locus classicus* of judicial review, Chief Justice John Marshall's opinion of the U.S. Supreme Court in *Marbury* v. *Madison*.[16] The facts, the issues, and the decision in that case are well known and it is not necessary to restate them here. We need only recall that Marshall decided the case by finding—whether rightly or wrongly—that section 13 of the Judiciary Act of 1789 conferred on the Supreme Court an exercise of original jurisdiction that the Constitution denied to it. This finding, according to Marshall, raised the question whether the Court should take jurisdiction of the case in order to obey the Act of Congress or refuse to take it in order to obey the Constitution.

To the question thus posed, said Marshall, the answer was clear:

> The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act, contrary to the constitution, is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature, illimitable.[17]

Both the constitution and the legislative act are laws, and in that respect they are identical. The difference between them is only that the constitution is the superior law, which must override the law made by the legislature when the two are in conflict. It is this fact, Marshall argues, that creates the power, because it prescribes the duty, of courts to determine the constitutionality of legislative acts. The courts are not empowered by the Constitution of the United States to function as councils of revision or superlegislatures. But they are obliged by their judicial function to resolve questions of constitutionality when it is necessary to do so in order to decide particular cases. In Marshall's own words,

> it is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.[18]

Chief Justice Marshall was notoriously not a strict constructionist and rejected the view that the courts should read the Constitution as if they were interpreting a village ordinance. As he said in *McCulloch* v.

Maryland, "We must never forget that it is a *constitution* we are expounding,"[19] and a constitution is "intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs."[20] The means that the national government might constitutionally use in carrying into execution the powers granted to it in the Constitution (which alone were at issue in that case) must therefore be interpreted generously, not stingily, in accordance with this rule of construction: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."[21]

Marshall's broad construction of the powers of the federal government was controlled, however, as it had to be, by his earlier argument in *Marbury* v. *Madison* for the power of courts to construe the Constitution at all. Courts interpret the Constitution in order to resolve alleged conflicts between the paramount law and inferior laws, both of which the courts are bound to follow unless the conflict between them is so irreconcilable that it is impossible to follow them both. In that case, but in that case alone, a court is obliged to follow the rule of the Constitution rather than the act of a lesser authority. The argument for judicial review may well justify a broad and intelligent construction of the Constitution but it cannot, without destroying its own premises, justify a construction so broad that it makes the Constitution mean whatever the judges say it means.

It is now well over half a century since Charles Evans Hughes, between his two tenures on the U.S. Supreme Court, made his oft-quoted remark that "we are under a Constitution, but the Constitution is what the judges say it is."[22] The future Chief Justice said that in 1926;[23] the "nationalization of civil rights" had begun only the year before in *Gitlow* v. *New York*;[24] and as that process has unfolded itself since then, we have learned ever more fully what the judges can make the Constitution mean and with how little restraint they can do so. As John Hart Ely wrote in 1980, despite mounting warnings about the danger that judicial activism was posing to the doctrine of judicial review, "the Court's power continued to grow, and probably has never been greater than it has been over the past two decades."[25]

It was probably inherent in the very notion of judicial review that

complaints about the excessive power it gives to judges should be heard and, in fact, they were heard in 1787 in the Constitutional Convention itself.[26] But whatever we may think of the validity of criticisms of judicial review before the Civil War, the thesis of this article is that the adoption of the Fourteenth Amendment made the criticisms almost inevitable and fully justified.

The Fourteenth Amendment gives the Court and the courts a "supreme law of the land" to interpret and apply that is not a law in the sense of the term, law, that is assumed by the doctrine of judicial review. The most important clauses of the Amendment—either in themselves or as they have been interpreted by the Supreme Court—are so amorphous that when taken as the basis of constitutional adjudication they become blanket grants of power to the courts rather than paramount laws by which the courts are bound and by which they in turn bind legislatures. These clauses therefore undermine the doctrine of judicial review by destroying its premises.

The Fourteenth Amendment has five sections, of which only sections 1 and 5 are of practical importance today. Section 2 tried to induce the Southern States to give blacks the right to vote by reducing their representation in Congress if they refused to do so; it was soon superseded by the Fifteenth Amendment which simply forbade denying the right to vote on account of race, color, or previous condition of servitude. Section 3 limited the right of certain former rebels to hold public office. Section 4 voided the Confederate war debts. Sections 1 and 5, therefore, are the only ones that need be discussed here. They read as follows:

> SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

In the first case it decided under the Fourteenth Amendment, in 1873,[27] the Supreme Court emasculated the privileges or immunities clause of section 1. The future of freewheeling judicial review therefore

lay, first, with the due process clause and, later, with the equal protection of the laws clause. Whatever the original meaning of those clauses was, the Court has made of them a general commission to protect "liberty" (to which property and life itself are now subordinated) and "equality." The Court supplies the meaning of those terms as cases come before it.[28]

The original meaning of the privileges or immunities, due process, and equal protection clauses as understood and intended by the framers of the Fourteenth Amendment is the subject of unending debate.[29] It is not necessary here to enter into that debate except to say that when the 39th Congress framed and proposed the Fourteenth Amendment in 1866, it did not foresee or intend section 1 as the unspecified grant of power *to the courts* that the Supreme Court has made of it. If section 1 is a blank check, then Congress made the check out to itself, not to the courts. Raoul Berger has argued persuasively that the three clauses of section 1 which impose restrictions on the States

> were three facets of one and the same concern: to insure that there would be no discrimination against the freedmen in respect of "fundamental rights," which had *clearly understood and narrow compass.* Roughly speaking, the substantive rights were identified by the privileges or immunities clause; the equal protection clause was to bar legislative discrimination with respect to those rights; and the judicial machinery to secure them was to be supplied by nondiscriminatory due process of the several States.[30]

Whether one finds Berger's argument convincing or not, this much is clear beyond doubt: the evil which sections 1 and 5 of the Fourteenth Amendment were intended to remedy was discriminatory legislation against black people of the kind enacted by the Southern States after the emancipation of the slaves, and the remedy envisioned for this evil was legislation enacted by Congress to override State laws. The Fourteenth Amendment embodied a return, in a limited area of civil rights, to the national negative on State laws that the Constitutional Convention of 1787 had rejected.

The evolution of what became sections 1 and 5 makes this plain. Rep. John A. Bingham of Ohio, the principal author of section 1, was a member of the Joint Congressional Committee on Reconstruction. On February 26, 1866, he reported to the House of Representatives from that committee a proposed constitutional amendment which he himself

had in fact written.[31] It provided: "The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty and property."[32] As its opening words make clear, this amendment contemplated nothing but a grant of power to Congress, and Bingham's speech introducing it stated this emphatically.[33]

Bingham's proposed amendment, however, did not fare well in the House and was never debated in the Senate. On February 28 the House voted to postpone consideration of it,[34] and it was in fact never considered again. The reason for its rejection, however, was not that it granted power to Congress but that it was seen as granting an affirmative power to enact an unspecified range of national civil rights laws. This point was best made by Robert S. Hale, a Republican congressman from New York. Where, he asked, would Bingham "draw the line as to the powers which Congress may exercise as the 'necessary and proper' legislation to attain these very general results?"[35]

Another Republican congressman from New York, Giles W. Hotchkiss, voiced a different objection. It was not enough, he said, to give Congress power to enact legislation which a later Congress could revoke. If Bingham's intention was

> to provide against a discrimination to the injury or exclusion of any class of citizens in any State from the privileges which other classes enjoy, the right should be incorporated into the Constitution. It should be a constitutional right that cannot be wrested from any class of citizens, or from the citizens of any State by mere legislation. . . . Then if the gentleman [Bingham] wishes to go further, and provide by laws of Congress for the enforcement of these rights, I will go with him.[36]

Hotchkiss's remarks foreshadowed what in fact was done in the final version of the Fourteenth Amendment. In April, 1866, the Joint Committee decided to combine several proposed constitutional amendments into one, which, with modifications, became the Fourteenth Amendment as we know it. Bingham wrote section 1 as it now stands[37] (minus the citizenship clause, which was added at a later date in the Senate and was placed at the beginning of the section). The congressional power of enforcement was then relegated to section 5. Section 1 thus became a statement of constitutional restrictions on the States instead of a grant of lawmaking power to Congress.[38]

This separation of restrictions on the States from the power to enforce them by congressional legislation has turned out to be of revolutionary significance in our constitutional system because it has given rise to unbounded and all-pervasive judicial review of State legislation. Nevertheless, in separating sections 1 and 5, the 39th Congress was not looking to the courts for the enforcement of section 1. Its attention remained fixed on the power granted in section 5 to enforce the restrictions of section 1 by national legislation. No one in the 39th Congress foresaw or intended section 1 to hand over to the courts the supervision of State legislation which that section was intended to achieve.

Indeed, the Supreme Court itself, in the first case in which it interpreted section 1, refused to take on such a role. It gave the privileges or immunities clause what was possibly an unduly narrow interpretation because to do otherwise, it said, "would constitute this court a perpetual censor upon all legislation of the States." [39]

The framers of the Fourteenth Amendment were not unaware of judicial review as a means of enforcing constitutional rights, but they had very little faith in it.[40] John Bingham, in defending his original proposed amendment in February, had said: "A grant of power, according to all construction, is a very different thing from a bill of rights." The mere presence in the Constitution of restraints on government did not give Congress power to enforce those restraints. Yet congressional power was absolutely necessary, he explained, for this reason:

> Restore those States [which had seceded from the Union] with a majority of rebels to political power, and they will cast their ballots to exclude from the protection of the laws every man who bore arms in defense of the Government. The loyal minority of white citizens and the disfranchised colored citizens will be utterly powerless. There is no efficient remedy for it without an amendment to your Constitution [granting Congress power to legislate]. *A civil action* [in the courts] *is no remedy for a great public wrong and crime.*[41]

In his advocacy of section 1 of the Fourteenth Amendment, Bingham took the same line: the crying need was for congressional, not judicial, power. "The necessity for the first section of this amendment to the Constitution," he explained, is "a want . . . in the constitution of our country, which the proposed amendment will supply." That want "is the power in the people, the whole people of the United States, by express authority of the Constitution to do that by congressional

enactment which hitherto they have not had the power to do . . . " Later in the same speech he added: "That great want of the citizen and stranger, protection by national law from unconstitutional State enactments, is supplied by the first section of this amendment. That is the extent it hath, no more."[42]

So also said both proponents and opponents of the Amendment. Congressman Thomas D. Eliot of Massachusetts declared: "I support the first section because . . . if, under the Constitution as it now stands, Congress has not the power to prohibit State legislation discriminating against classes of citizens or depriving any person of life, liberty, or property without due process of law, or denying to any persons within the State the equal protection of the laws, then, in my judgment, such power should be distinctly conferred."[43] Congressman William E. Finck of Ohio, an opponent of the Amendment, after quoting section 1, sourly commented: "Well, all I have to say about this section is, that if it is necessary to adopt it, in order to confer upon Congress power over the matters contained in it, then the civil rights bill [of 1866], which the President vetoed [and which was enacted over his veto], was passed without authority, and is clearly unconstitutional."[44]

The redoubtable Thaddeus Stevens of Pennsylvania, in opening the debate in the House of Representatives on the Amendment, said that the clauses of section 1

> are all asserted, in some form or other, in our DECLARATION or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies that defect, and allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate *equally* on them all.[45]

The reader will have noticed the tendency on the part of the speakers quoted above to conflate sections 1 and 5, and to speak of section 1 as if it were a grant of power to Congress. A more refined and accurate view of the relationship between the two sections was presented by Senator Jacob M. Howard of Michigan when he opened the debate on the Amendment in the Senate. Having discussed the scope of the privileges or immunities clause of section 1, he continued:

> Now, sir, here is a mass of privileges, immunities, and rights, some of them secured by the second section of the fourth article of the Constitution, . . . some by the first eight amendments of the Constitution; and it is a fact well worthy of attention that

> the course of decision of our courts and the present settled doctrine is, that all these immunities, privileges, rights thus guarantied [*sic*] by the Constitution or recognized by it, are secured to the citizen solely as a citizen of the United States and as a party in their courts. They do not operate in the slightest degree as a restraint or prohibition upon State legislation. . . .
>
> Now, sir, there is no power given in the Constitution to enforce and to carry out any of these guarantees. They are not powers granted by the Constitution to Congress, . . . but they stand simply as a bill of rights in the Constitution, without power on the part of Congress to give them full effect; . . . The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees. How will it be done under the present amendment? As I have remarked, they are not powers granted to Congress, and therefore, if they are to be effectuated and enforced, . . . that additional power should be given to Congress to that end. This is done by the fifth section of this amendment, . . .
>
> . . . I look upon the first section, taken in connection with the fifth, as very important.[46]

Senator Howard knew that the clauses of section 1 were restrictions upon the States and not in themselves grants of power to Congress. He was aware that the citizen could secure his constitutional rights as a party in the U.S. courts. Yet he considered these clauses as being important only because they stated the objects for which Congress could legislate under section 5.

The purpose of presenting the above statements in Congress on section 1 is not to imply that the Supreme Court has usurped the power to review State laws for constitutionality under that section. Although the intention of the framers clearly was to confer legislative power on Congress, the fact remains that they put section 1 into the amendment as a separate and independent part of it. The Court may, therefore, and indeed must entertain lawsuits which properly raise the question of the constitutionality of State laws under section 1.

The Court's fault (and it is a serious and, in my opinion, irreparable one while the amendment stands) has been to interpret the due process and equal protection clauses as guaranteeing substantive rights of such generality that only the Court itself knows their content and limits. Those who contend that the Court is not at fault because those clauses inherently lend themselves to the interpretation the Court has put on them, should also admit, then, that it was a serious mistake for the framers of the Fourteenth Amendment to put such clauses in it because they thereby, though unwittingly, denatured judicial review.

To give but one example of how judicial review has been shifted off its foundations, let us consider *Griswold* v. *Connecticut.*[47] In that case the Court found that Connecticut laws prohibiting the use of contraceptives or counselling their use deprived appellants of the privacy guaranteed to the marital relationship by the due process clause of the Fourteenth Amendment. It did not matter that there is no explicit statement of a "right to privacy" anywhere in the Constitution. "The association of people," the Court admitted, "is not mentioned in the Constitution nor in the Bill of Rights."[48] But the Court had long since decided that the first eight amendments of the Constitution—not all of them, as Senator Howard had seemed to say, but most of them—had been "incorporated" in the due process clause of the Fourteenth Amendment. Now the Court concluded that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."[49] Previous cases interpreting those penumbras revealed a constitutional "right of privacy" and "bear witness that the right of privacy which presses for recognition here is a legitimate one. The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees."[50] On this basis the Court agreed with appellant's claim that the Connecticut laws "violated the Fourteenth Amendment."[51]

Now, a Court which arrives at this conclusion is certainly exercising power, and it may be arguable that it exercises its power wisely and justly. But it is equally certain that the Court is not exercising the power of judicial review. The latter power arises out of the Court's duty to resolve a conflict between what Chief Justice Marshall called the "superior paramount law" of the Constitution and "ordinary legislative acts." But a constitutional command to define and protect a "right of privacy" which is neither mentioned nor defined in the Constitution, is a command to *make* laws, not to apply them. One cannot arrive at the power that the Court assigned to itself in *Griswold* v. *Connecticut* and its sequels[52] from the premises of the doctrine of judicial review. Not only in that line of cases but in several others arising under section 1, the Court exercises what is effectively a policy-making, therefore a legislative, power.

Nor is there any hope that the Court will learn the virtue of "judicial restraint" and desist from exploration of the nuances of liberty and

equality implicit in the clauses of section 1. Once the Court admits a concept like "freedom of contract," "the right of privacy," "racial balance," or "one man, one vote" into the meaning of those clauses, it opens the gates to a flood of lawsuits that it finds very hard to stem.[53] Substantive due process and substantive equal protection are now too deeply embedded in our constitutional law, too many interests have been built on them, too many organizations depend on them for the practice of a "judicial politics" that makes litigation the preferred way of getting desired policy results, and too many politicians find them a convenient reason for handing the "hot potatoes" of controversial issues to the courts, for the Court to be able to reverse course even if it wanted to do so.

The only remedy for judicial activism is to rewrite section 1 of the Fourteenth Amendment and make it what its framers originally contemplated: a mere grant of power to Congress to legislate in the area of civil rights. We should do this, not simply because such was the intention of the Civil War generation, but in order to save the institution of judicial review by returning it to its original premises. If judicial review is to survive popular disillusionment and cynicism, it must be and be seen to be an exercise of judgment, not will, in resolving conflicts between known and intelligible laws.

It will be necessary, therefore, to write a new constitutional amendment to replace the Fourteenth Amendment's first section. That would be a work for expert draftsmen, and I am not one. But merely as a suggestion of the form that the New Amendment might take, I venture to propose the following.

> SECTION 1. Section 1 of the fourteenth article of amendment to the Constitution of the United States is hereby repealed.
>
> SECTION 2. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
>
> SECTION 3. The Congress shall have power, by appropriate legislation, to ensure that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.

A section 4 will also be needed in order to make it indubitably clear, in appropriate legal language, that the due process clause of the Fifth

Amendment, which controls Congress, is to be taken in a purely procedural, not a substantive, sense.

The New Amendment would in no way tamper with the jurisdiction of the federal courts; that would remain what it is. Nor would the New Amendment impair the courts' power of judicial review; they would remain as able as before to declare null and void any act of government that conflicted with a provision of the Constitution. But the privileges or immunities, due process, and equal protection clauses would no longer be in the Constitution as provisions against which the courts could directly test State actions for constitutionality. These clauses would reappear in section 3 of the New Amendment, but only as definitions of the objects of congressional legislation, nothing more. The courts could review Acts of Congress for constitutionality under section 3 of the New Amendment, but only in order to decide whether Congress had gone beyond the powers granted to it in that section. State laws and actions henceforth would be regulated by Acts of Congress, not by decisions of courts interpreting what Professor (later Justice) Felix Frankfurter called the "convenient vagueness"[54] of due process of law—or of equal protection.

On the other hand, the New Amendment would not increase the powers of Congress, because it would give Congress no power that it does not already have under sections 1 and 5 of the Fourteenth Amendment. Section 3 of the New Amendment merely combines those two sections into one and and makes the grant of legislative power to Congress the controlling clause. Congress has had this power since the Fourteenth Amendment was ratified in 1868, and it cannot be said that Congress has exercised it with the fussy and interfering zeal that the federal courts have shown and are increasingly showing.[55] We need not fear, therefore, that the New Amendment would lead to a congressional tyranny, though Congress's inability any longer to pass the buck to the Supreme Court might cause Congress to bestir itself more than it has in the field of civil rights legislation.

The whole effect of the New Amendment, as a matter of constitutional law, would be to deprive the federal courts, led by the Supreme Court, of the blanket grant of judicial power that section 1 of the Fourteenth Amendment has become. The courts would no doubt regret the loss of power, and so would many citizens for whom constitutional

litigation has become an addiction. But the courts would serve the republic better if they were relieved of their present role as superlegislatures for the fifty States and countless thousands of localities, and were confined to policing the exercise of power by a separate branch of the national government. The framers of the Constitution counted on the natural jealousy among the separate branches of government to make them restrain one another, but they did not foresee the problem of getting the Supreme Court to restrain itself in its interpretation of the amorphous language of the Fourteenth Amendment.

The Court has been put into an impossible situation by the inclusion in the Constitution of clauses that are not in the proper sense of the term laws. Liberty and equality are political ideals which ought to guide legislatures; they cannot be rules of constitutional law. Ordered liberty is a concept which might well inspire the framers of a constitution, but it cannot itself be a clause in the constitution. Equal justice under law is the motto of the Supreme Court, but it should remain where it is, over the Court's front door, and not be argued before the Court as a norm which a court of law can enforce. The premise of judicial review is and must be that courts administer law, not ideals.

NOTES

1. "Foreword," in Graham, Howard Jay, *Everyman's Constitution* (Madison: State Historical Society of Wisconsin, 1968), p. vii.
2. *The Doctrine of Judicial Review* (Gloucester, Mass.: Peter Smith, reprinted 1963), pp. 26-27.
3. *The Framing of the Constitution of the United States* (New Haven: Yale U. Press, 1913), pp. 156-157. For passages in James Madison's notes on the debates in the Convention of 1787 that bear Farrand out, see Tansill, Charles C., ed., *Documents Illustrative of the Formation of the Union of the American States* (Washington, D.C.: Government Printing Office, 1927), pp. 93, 147, 390-392, 422-423, 426-428, 439, 549, 625, 717.
4. *Documents Illustrative*, p. 117.
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9. *Ibid.*, p. 439.
10. *Ibid.*, p. 717.
11. Hamilton, Jay, and Madison, *The Federalist* (New York: The Modern Library, Random House, n.d.), p. 504.
12. *Ibid.*, p. 506.
13. *Ibid.*, p. 505.
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16. 1 Cranch 137 (1803).
17. *Ibid.*, p. 176.
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23. Kelly, Alfred H., and Harbison, Winifred A., *The American Constitution: Its Origins and Development* (New York: W. W. Norton & Co., rev. ed., 1955), p. 4.
24. 268 U.S. 652 (1925).
25. *Democracy and Distrust* (Cambridge, Mass.: Harvard University Press, 1980), p. 48.
26. Tansill, ed., *Documents Illustrative*, pp. 548, 549.
27. *The Slaughterhouse Cases*, 16 Wallace 36.
28. The mere summary of the Court's interpretation of these two clauses occupies more than 200 pages in the 1973 edition of the U.S. government publication, *The Constitution of the United States of America: Analysis and Interpretation* (Washington, D.C.: Government Printing Office). The reader may consult it for an idea of the range of subjects to which the Court can extend due process and equal protection.
29. Those who wish documentation may consult Raoul Berger, *Government by Judiciary* (Cambridge, Mass.: Harvard University Press, 1977). Professor Berger, while arguing vigorously for one view of the original meaning of section 1 of the Amendment, has the merit of offering a more than adequate survey of the literature on this point.
30. *Ibid.*, p. 18 (emphasis added). Cf. pp. 36, 43-44, 146, 167, 171-172, 180, 193 ff., 208-214.
31. James, Joseph B., *The Framing of the Fourteenth Amendment* (Urbana: University of Illinois Press, 1956), p. 82.
32. *The Congressional Globe*, 39th Congress, 1st session, p. 1034. Subsequent references will be to the same session.
33. *Ibid.*, p. 1034.
34. *Ibid.*, p. 1095.
35. *Ibid.*, p. 1065.
36. *Ibid.*, p. 1095.
37. Flack, Horace Edgar, *The Adoption of the Fourteenth Amendment* (Gloucester, Mass.: Peter Smith, 1965), pp. 65-68.
38. Note that once four constitutional amendments were combined into one, it became a virtual impossibility to introduce them with the words, "The Congress shall have power to . . ." That may have been a reason for putting these words at the end of the Amendment, in section 5.
39. *The Slaughterhouse Cases*, 16 Wallace 36, 78 (1873).
40. Howard Jay Graham comments on "the relation of these Republican leaders to judicial review in the fifties and sixties [of the nineteenth century]. Bingham, Conkling, Stevens and the others were among the severest critics of the Supreme Court and judicial review. One can scarcely avoid the conclusion that it would have constituted a curious—an almost unparalleled case of political schizophrenia—for men of such bent to have consciously and simultaneously *increased* both the powers and the discretion of the very Court which they, like most old antislavery men, still viewed with a profound and ever growing mistrust, and which they repeatedly had attacked both in Congress and out." *Everyman's Constitution*, pp. 447-448; cf. p. 323.
41. *Congressional Globe*, pp. 1093-1094 (emphasis added).
42. *Ibid.*, pp. 2542-2543.
43. *Ibid.*, p. 2511.
44. *Ibid.*, p. 2461; cf. Rep. Eldridge, p. 2506.
45. *Ibid.*, p. 2459; cf. Reps. Broomall, p. 2498, and Raymond, pp. 2502, 2513.
46. *Ibid.*, pp. 2765-2766. Cf. his remarks on the responsibility of Congress under this amendment on p. 2768.
47. 381 U.S. 479 (1965).
48. *Ibid.*, p. 482.
49. *Ibid.*, p. 484.
50. *Ibid.*, p. 485.
51. *Ibid.*, p. 480.
52. See in particular *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972) and *Roe* v. *Wade*, 410 U.S. 113 (1973), from which latter decision an unending line of cases still flows.
53. It is true that in the constitutional crisis of the New Deal the Court abandoned "freedom of contract." *West Coast Hotel* v. *Parrish*, 300 US. 379 (1937). But that only meant that the Court turned its energies to new fields for the exercise of judicial power, using new substantive concepts.
54. Quoted by Berger, *Government by Judiciary*, p. 193.

55. Among my favorite examples of the silly lengths to which the Court has gone in finding deprivations of liberty and denials of equality under the Fourteenth Amendment are *Tinker* v. *School District*, 393 U.S. 503 (1969) which found unconstitutional an order by public school authorities forbidding children to wear black armbands in opposition to the Vietnam War; *Craig* v. *Boren*, 429 U.S. 190 (1976), which struck down as denying equal protection an Oklahoma law prohibiting the sale of 3.2% beer to males under 21 years of age but to females only under age 18; and *Schad* v. *Mount Ephraim*, 452 U.S. 61 (1981), which found that a municipal ban on a coin-operated peep show violated the First and Fourteenth Amendments.

Spiritual Leadership and the Abortion Crisis

Henry J. Hyde

ABORTION IS THE PARAMOUNT moral issue of the age—the "single issue" that commands the concern and time and energy of everyone who cherishes human life. The prolife movement is the archetypal "single issue movement." It is a coalition of Americans of diverse beliefs, backgrounds, races, and political loyalties who have come together in the selfless effort to end the holocaust of the unborn in our country.

The prolife movement has grown in numbers and in influence in recent years. The prolife position is being received with new respect in our society, and we can even entertain the serious possibility that a reconstituted Supreme Court will reverse its disastrous *Roe* v. *Wade* decision in the near future.

It is ironic, therefore, that the "single issue" focus of the prolife movement would be challenged at a time when the movement's success is largely attributable to its clear goals. It is doubly ironic that the challenge would be mounted on "ethical" grounds, and that its source would be the Catholic bishops of the United States—a group of cherished friends and supporters of the prolife movement for many years. I am referring to the concept of the "seamless garment" of prolife positions. Here I will explain why the "seamless garment" notion disheartens me and threatens the prolife movement. Then I will outline what I think it will take to achieve final success.

The seamless garment was popularized by Cardinal Joseph Bernardin of Chicago in 1983. As chairman of the U.S. Catholic bishops' Committee for Pro-Life Activities, Cardinal Bernardin has shown himself to be determined to expand the concept of "prolife" beyond mere opposition to abortion, to include opposition to war, opposition to capital punishment, and a generalized support for the liberal agenda. He has fashioned the now famous metaphor by insisting that these "life issues" form a "seamless garment," and that the truly prolife position is

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one which maintains a "consistent ethic" on these issues. The overwhelming majority of American bishops have expressed support for this view.

On examination, however, the seamless garment has proven to be somewhat elusive. Archbishop Bernard Law of Boston made an important distinction when, on August 7, 1984, he told the Knights of Columbus that "however weighty the urgency of life related issues such as the right to life of the unborn and the spiraling nuclear arms race, one thing must be clearly noted: nuclear holocaust is a frightening possibility but the holocaust of abortion is a present cruel reality and fact."

On February 10, 1985, Cardinal Bernardin supported Archbishop Law's view by writing in the *Chicago Catholic*, "abortion is not a 'potential threat' as is nuclear warfare, but a holocaust now realized and probably underestimated. For that reason, I fully agree that abortion demands priority attention."

In October, 1984, however, Cardinal Bernardin was less than explicit about this priority when he spoke at Georgetown University and spelled out his intent (and thus that of the American bishops) on the consistent ethic one must adopt to be rightly credentialed as prolife.

He referred to his famous speech nearly a year earlier at Fordham University where he first announced the "seamless garment" thesis and stated that "I am more convinced than ever that the ethic of the seamless garment is the best analytical setting in which to develop a posture in defense of human life."

One cannot deny a certain plausibility to the Cardinal's ideas. Implicitly, however, he advances the classic charge leveled against the antiabortion movement since its earliest days—that of "single issue" politics.

This epithet was unheard of in the halcyon days of the civil rights movement and antiwar protesters, nor would one dare apply it to environmentalists or Equal Rights Amendment supporters today. If the most brilliant political candidate since Franklin Roosevelt were to come along and be "correct" on every controversial issue but one—say he believed in some degree of press censorship—does anyone doubt that single issue would doom him in the eyes of the same media that endlessly deplores "single issue politics"?

Some issues are so difficult, so controversial, and so furiously resisted

that one such issue can command all the physical and moral energy a person may possess. I suggest in a nation where one and a half million abortions a year are performed, the fact that some people assign a higher priority to what they conceive as the *real* "clear and present danger," the extermination of innocent preborn children, does not render them less "prolife" than the bishops themselves.

All can agree that peace is a desirable goal. We are, nonetheless, far from agreement on the best means to reach this goal. The pacifist has one way, the hawk another, and the moderate will search for a middle ground. All are respectable views and may be most sincerely held. But disagreement over the means does not invalidate their moral legitimacy.

I have never met anyone who was *for* war or poverty. I have met a lot of thinking people who agree on the bishops' goals, but disagree on the means to attain these goals. These disagreements are rational, intelligent judgments founded in as much good will and sincerity as those of the bishops.

With due respect, I resent being charged with inconsistency concerning the "life issues" because I believe in the private sector more than the public sector as the great strength of our country and our society. The liberal welfare agenda hasn't seemed to solve the riddle of poverty, and those of us who wish to try other approaches are no less concerned about alleviating poverty than those who always opt for a federal solution.

If anything is ironical about the seamless garment, it is that *exclusion* will be the likely result of its use. We should be seeking to *include* certain prominent senators and congressmen within the active antiabortion ranks. However, by reducing opposition to abortion to the level of opposition to capital punishment (is there no essential difference between innocent life and "guilty life"?), antiwar activism (domestic, of course; we can't all picket the Kremlin) and more and bigger federal programs to solve poverty (the only valid charity is collective rather than individual) we dilute our moral capital and introduce new political controversies.

The seamless garment, literally applied, provides too many political leaders with camouflage to cover up their failure to aggressively oppose legalized abortion. If Geraldine Ferraro and Mario Cuomo won't buy the seamless garment, who will?

If a psychic ray existed that could probe through the jargon and rhetoric that surrounds the abortion debate, I suspect you would find the single most distancing feature between the establishment elite and the essentially socially conservative prolife forces to be cultural distaste.

It is a rare discussion on this topic that doesn't produce a spate of patronizing disparagement towards "those people," best symbolized by the public figure at once the most successful defender of the preborn and the most hated by the establishment, Senator Jesse Helms of North Carolina. When some people get tired of vilifying Senator Helms they turn their cannon on Jerry Falwell. But make no mistake, the same cultural divide also separates this elite from President Reagan as well, and no amount of intellectual or evidentiary argument can overcome the pervasive and enduring cultural animosity that underlies this struggle.

When Senators Kennedy, Moynihan, and Leahy support the federal defunding of abortion and cosponsor a constitutional amendment to reverse *Roe* v. *Wade*, I will gladly concede efficacy to the strategy of the seamless garment. I shall not, however, hold my breath.

The indictment of inconsistency so often leveled at many prolifers achieved its most pungent expression from liberal Congressman Barney Frank of Massachusetts, who was admiringly quoted by columnist Mary McGrory in the Washington *Post* on January 27, 1985:

> They know they are faulted because they focus so obsessively on the child in the womb and have so little to say for the child in need. They have heard Barney Frank's famous barb about the administration's concern for children—"Begins with conception, ends with birth."

This "famous barb" is a sure laugh-getter but its capsule disparagement of antiabortion activists is just plain wrong. In the January, 1985 edition of the *Atlantic* magazine Nat Hentoff, who by acclamation belongs in the Civil Libertarian Hall of Fame, wrote a strong article on "The Awful Privacy of Baby Doe," wherein he severely criticized the "management option" of death often chosen for infants born with Down's Syndrome, cerebral palsy, and spina bifida. A most interesting part of this article deals with the congressional debate on legislation seeking to provide these already born members of the human family with at least ordinary medical care, the same as a nonhandicapped citizen is entitled to receive.

Hentoff says, "Liberals led the debate against those provisions on the House floor, and conservatives, by and large, supported the measure." He cites me as an "unabashed Tory" and quotes my remarks in debate:

> The fact is, that . . . many children . . . are permitted to die because minimal routine medical care is withheld from them. And the parents who have the emotional trauma of being confronted with this horrendous decision, and seeing ahead a bleak prospect, may well not be, in that time and at that place, the best people to decide. . . . I suggest that a question of life or death for a born person ought to belong to nobody, whether they are parents or not. The Constitution ought to protect that child. . . . Because they are handicapped, they are not to be treated differently than if they were women or Hispanics or American Indian or Black. [Their handicap] is a mental condition or a physical condition; but by God, they are human, and nobody has the right to kill them by passive starvation or anything else.

Hentoff continues:

> On the key vote concerning this section of the bill Congresswoman Geraldine Ferraro joined other renowned liberals in the House in voting against protections for handicapped babies, though most, to be sure, said they were supporting the right of parents to make life-or-death decisions about their infants and opposing government interference in that process. Among the others in opposition were such normally fierce defenders of the powerless as Peter Rodino, Henry Waxman, Don Edwards, Barney Frank, John Conyers, Thomas Downey, Charles Rangel, Robert Kastenmeier, Gerry Studds, George Crockett, and Barbara Mikulski.

The brilliant columnist Joseph Sobran, in a devastating critique entitled "Abortion and the American Bishops," raises further troubling questions about the seamless garment metaphor:

> Why didn't the Cardinal, or the bishops in general, raise traditional *Catholic* "life issues," to call them that, such as those concerned with the very transmission of life? Much might be said about sexual morality—about contraception, divorce, pornography, fornication, homosexuality. The virtue of chastity would bear mention, not only for its intrinsic value but in light of the ubiquitously visible consequences of unchastity. One suspects, however, that these themes would jeopardize the sort of "credibility" the hierarchy pines for. Certainly the bishops have said little, in their highly-publicized recent statements on nuclear war and economics, to disturb secular liberalism. It takes very little political sophistication to know that the "seamless garment" and "single-issue" arguments are directed exclusively against the more conservative and orthodox members of the Catholic Church. The most striking aspect of these arguments is that they are never—never—applied even-handedly. Cardinal Bernardin doesn't address his demand for a "consistent ethic" to liberals. If he meant it seriously, however, he couldn't fail to do so. He would certainly warn them that they could not (credibly) oppose war and poverty *unless they also opposed abortion.* He has said not a single word to this effect; and until he does so, his whole metaphor of the seamless garment will deserve to be

> regarded (as it already is) as a rhetorical stratagem for the liberal cause. It serves precisely to "dilute" the anti-abortion position. It has no other effect whatever.

Father Francis Canavan, S.J., of Fordham tells us:

> The more often those who exercise authority in the name of Jesus Christ act like politicians in a pluralistic liberal democracy, the more they engender, not open revolt, but something that in the long run is even worse. That is a chronic, low-grade infection of disillusionment, cynicism, apathy, and loss of interest in the Church and her works.
>
> This is not the kind of phenomenon that makes tomorrow's headlines, and it may take some years to register in the statistics of sociological surveys. But its effect on the Church is nonetheless real; it means that the Church loses the confidence of her people.

Very few senators and members of Congress can meet the requirements of the seamless garment in its strictest formulation. In fact, the leftist *National Catholic Reporter* in 1984 named only three senators and seven House members who are entitled to be called "prolife" under this definition. What are the consequences of this? Since most politicians fall short, a voter who believes the consistent ethic garment is really seamless can be justified in supporting a candidate who supports abortion funding, on the ground that this lapse alone is not disqualifying.

The bishops must know that moving the Democratic party towards an antiabortion stance will take a miracle and since they much value the liberal agenda, they have insisted that voters consider a candidate's views on arms control, the economy, welfare, and Central America, as well as abortion. Is it any wonder that abortion, as a crucial issue, gets lost in the shuffle?

I have a suggestion for the highest and best use for the seamless garment. When blood is flowing (and in America an abortion occurs every twenty seconds), you urgently need to apply a tourniquet.

I would suggest our bishops take their seamless garment and use it *now* to stop the shedding of the innocent blood of those defenseless preborn who, like each of us, is made in the image and likeness of God.

If they do this, the bishops would be exercising effective prolife leadership.

Effective, courageous, clear-headed leadership is something the prolife movement needs. Our strength is in our grass-roots organization—the hundreds and thousands of local groups encompassing countless

dedicated men and women who do the hard work of education, lobbying, and fundraising. The heroes and heroines of the movement are the sidewalk counselors who take the verbal abuse of the establishment as they witness to the sanctity of human life on the streets outside abortion clinics.

The movement as a whole, however, has been weakened by disunity. It is a movement that has attracted many strong personalities and such individuals disagree on many matters of tactics and strategy. We need the strong personalities, but we also need leaders with the talent to forge a common vision and the courage to speak out for the unborn at times when courageous speech can be costly.

In Congress, the institution I know best, we have a desperate need for men and women who will speak out for life. We particularly need women to take this issue and run with it. I take my hat off to the three women in Congress, two of them Democrats, who are fearless in their defense of the unborn. They are Mary Rose Oakar of Ohio, a liberal Democrat; Marilyn Lloyd of Tennessee, a conservative Democrat; and Barbara Vucanovich of Nevada, a Republican. There are many other members of Congress who should be as bold as these three.

Grass-roots activity is the way to make public officials bold. Some of us are ideological on this issue; we are driven to oppose abortion for reasons of conscience. However, the intensity of most congressmen's feelings on this issue reflects the intensity of the feelings of people back home in his district. Organize locally. Keep the pressure on. We need the right people who care enough to put energy into the local prolife organization. We need, in a word, leadership.

Effective local organization will help those in public office understand that they will not suffer politically by speaking out for life. President Reagan has not suffered for his outspoken prolife views. Neither will our governors, state legislators, senators, and congressmen suffer for defending life. If our public officials will not see this as an important issue, we need to elect men and women to public office who do.

We should put as much energy into providing alternatives to abortion as we do into politics and education. Abortions happen because women think an abortion will solve the problem their pregnancy has caused them. They are wrong, tragically wrong, to think that abortion solves any problem, but the problems are real nevertheless. We need to

reach out to these women in love with all the help we can muster.

Local prolife organizations should also take an interest in the way biology is taught in the schools. There are many signs that science is being taught more fairly. We are making progress in putting aside the myth that unborn babies are less than full members of the human family. With an accurate presentation of the facts of fetal development to students, the biological question about the humanity of the unborn should be settled rather quickly.

That will leave us with the values question: what value do we ascribe to human life? The battle over this question is the titanic struggle of our time. It transcends the abortion issue. The values question lies at the heart of the growing acceptance of infanticide in the past decade. The value of human life is being weighed and measured by policy makers as we live longer and the American population grows older. We have already heard Governor Richard Lamm of Colorado talk about older people's duty to die. Unless we as a society understand that human life is priceless, measures to eliminate old people might become respectable just as abortion is respectable.

Here we need prolife leadership from our spiritual leaders. Our bishops and pastors and denominational bodies should be insisting that a human society not governed by the Ten Commandments is a society governed by the laws of animal husbandry.

We are going to win the struggle over values. More and more Americans are coming forward, willing to be considered cultural lags by the Gucci Bolsheviks who dominate the society pages. It is becoming culturally fashionable to protect the defenseless unborn. And rightly so, for the prolife side is the winning side. Biology is on our side. Science is on our side. Tradition and history are on our side. So we can go forth with confidence because we have all these allies and because we do work that is dear to God's heart.

A concluding word about the religion and politics debate generally. I enjoy the tumult and turmoil of politics and I would be the last person to deplore partisanship in public life. But I think that spiritual leaders who plead for a "consistent ethic of life" that strongly resembles a liberal social agenda and conservatives like me who find such ideas offensive should go as far as we can to lay politics aside.

We conservatives need to learn to be sensitive to the dispossessed of

this world and to understand that self-help remedies often are not enough. There is a legitimate role for government in providing assistance to people who desperately need it. We need to recognize that we are not buying the entire liberal agenda when we acknowledge that government in today's society needs to do more than deliver the mail and defend the country. Conservatives are learning this. But we have not completely learned this lesson yet.

For their part, our spiritual leaders need to develop more respect for people who disagree with them on the means to attain the ends we all share—peace, the alleviation of poverty, and greater freedom in the world. They also should give first priority to seeking spiritual solutions to the horrendous problems we face. We are not going to find the way to peace and freedom in the fever swamps of politics, but rather in a renewed spiritual awareness and commitment. That is why efforts to exclude religion from public life are cutting us off from the spiritual solutions to our public problems.

About six months after the 1984 presidential election I ran into the Reverend Jesse Jackson in O'Hare Airport and sat with him on a flight from Chicago to Washington, D.C. We talked. Mr. Jackson told me he had been visiting public schools in the Washington area. In most places, he found himself talking about drugs.

At one school, not an inner city school, Mr. Jackson asked the kids who were on drugs to come down in front. About 100 students came forward. It was a highly emotional scene. The kids were crying, both those up front and those in the audience. The school authorities were nonplussed.

"We've tried everything," Mr. Jackson said he told the students. "Drug education, threats, lectures, police—everything except one thing—God. Maybe that's the only place we have left to turn. Let's pray to God that you will all be delivered from drugs." Everyone held hands while Mr. Jackson led the students and teachers in prayer, even though he knew that what he was doing was probably illegal in the United States of America.

I was very moved by this story. I think Jesse Jackson is a gifted preacher and spiritual leader and I hope he puts this great gift to use in the great causes. The great causes are not who becomes the mayor of Chicago or the chairman of the Democratic National Committee or

even president of the United States. The great causes are finding ways for generations of young people to get free of drug addiction. The great cause of our time is finding a way out of the spiritual malaise that grips society.

Our society is on its knees—not in prayer, but as a result of the social bludgeoning of teenage pregnancies, divorce, the plague of drugs, the explosive criminality that makes our cities dangerous to walk in. I believe that our society desperately needs spiritual renewal led by men and women of deep faith who can lead us to a recognition of the fatherhood of God. That is a cause worth working and praying for.

The Catholic Church and Abortion

James Hitchcock

Since the time of the 1984 elections, perhaps the most significant continuing conflict in American Catholicism has centered on an advertisement, published in the New York *Times* during that autumn, entitled "A Catholic Statement on Pluralism and Abortion," in which (among other signers) two priests, a religious brother, and 27 nuns proclaimed that a "pro-choice" position on abortion is legitimate for Catholics and denounced the Church's "coercive" stand on the issue.

The advertisement was sponsored by Catholics for a Free Choice, an organization mainly funded by substantial grants from various pro-abortion organizations. It was officially denounced by the National Conference of Catholic Bishops, which noted that it was directly contrary to Catholic teaching.

The Vatican subsequently announced that the clergy and religious signing the statement would either have to retract their positions or face official dismissal from their communities. The three male signers soon issued "clarifications" which amounted to retractions, while the 27 female signers either openly refused to do so or kept silence. By the end of 1985 four of the nuns were reported to have reached acceptable settlements with the Vatican, the terms of which were not made public, while the others remained obdurate.

Despite the official condemnation of their actions by the Vatican, those who subscribed to the CFFC statement gathered considerable support and sympathy in liberal Catholic circles, including approval, or at least "understanding," from numerous fellow priests and religious. Privately they even claimed the support of certain bishops. A commonly articulated position has been the claim that, although the signers were perhaps unwise, imprudent, or even simply wrong with respect to their public stand, the Vatican was even more wrong to have attempted discipline. The "right" of religious women to take a "pro-choice" stand has been ringingly affirmed.

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Some of the signers complained later that they did not fully realize what they were signing, and probably most of those who affixed their names to the document did not anticipate the reaction they provoked, since a shrewd observer of American Catholicism over the past decade might well have concluded that the time was finally ripe for abortion to become the latest in an endless procession of seemingly-fixed Catholic doctrines which have now been attacked with impunity. It was for this reason, as much as any, that liberal Catholics who claimed to oppose abortion in principle cried "foul" at the Vatican intervention.

It is commonly believed that the chief reason the Vatican has not as yet moved against the signers who have failed to "clarify" their stance is that the religious orders in question are strongly supporting their own members and that certain bishops do so also.

At the same time cooler liberal heads realized almost immediately that the advertisement was at best a serious tactical error. When, a year after the fact, CFFC announced that it was going to publish a second such statement, the leftist *National Catholic Reporter*, usually open to the "pro-choice" viewpoint even though itself officially "pro-life," published a strong editorial urging Catholics, for both tactical and principled reasons, not to sign. This advice in turn brought forth a gush of angry letters, most of them from women religious, once more affirming the legitimacy of the "pro-choice" position.

Almost a year after the first *Times* statement (the second has not yet appeared), the Leadership Conference of Women Religious, composed of the official heads of all female religious communities in the United States, invited one of the unrepentant signers, Sister Margaret Farley of Yale Divinity School, to address its annual meeting, an invitation which prompted Archbishop John R. Quinn of San Francisco and Archbishop Pio Laghi, the papal pro-nuncio to the United States, to cancel their own scheduled appearances. The invitation demonstrated clearly the fact that, in dominant Catholic religious circles today, the "pro-choice" position is considered legitimate and even respectable, if not necessarily correct.

As the reaction even of many liberals to the *Times* statement showed, no Catholic can at present expect to take an openly pro-abortion position and not suffer at least some loss of credibility. Although "pro-choice" Catholics claim that certain bishops are privately in sympathy

with their position, all but the most fanatical also realize that a frontal attack on that doctrine would at present be counter-productive.

A more practical strategy is that of simply "defusing" the issue by almost casually creating situations where pro-abortion spokesmen, even if they do not speak on that subject, are given respectability by being invited to speak under official Catholic auspices.

Thus the National Conference of Catholic Charities, whose spokesmen deplored the "exaggerated" importance given the abortion issue in both the 1976 and 1980 elections, in 1985 invited pro-abortion Governor Mario Cuomo of New York to address its convention, only to have Cuomo cancel his appearance following protests from the bishops of Pennsylvania, led by Bishop James Timlin (who replaced now-Cardinal John J. O'Connor as Bishop of Scranton—it is by no means certain that bishops in other parts of the country would necessarily have reacted similarly). Also in late 1985, the National Catholic Youth Conference invited as one of its speakers a Buffalo (N.Y.) woman counsellor who openly admitted referring pregnant women to abortion clinics. At almost exactly the same time Catholic University of America, officially controlled by the bishops, was giving its "distinguished alumnus" award to Senator Tom Harkin of Iowa, a leading pro-abortion member of the upper house.

The 1984 elections brought the issue of abortion to a level both of intensity and visibility which it had not had almost since the time of the 1973 Supreme Court decision declaring the practice to be a woman's constitutional right. Far from fading away, as proponents of this "right" had predicted, the question seems rather to have gained in importance and to have become a permanent feature of the political landscape.

In part this is due to the unabashedly anti-abortion stand taken by President Reagan and, at his behest, by the Republican Party, and to the unwavering pro-abortion position of the Democrats. In part, however, it is also due to the way in which abortion was re-injected into the political stream in 1984 as a "religious" issue, attributable mainly to attempts by prominent Democratic politicians to finesse the Catholic Church's anti-abortion stance.

The key figures were Governor Cuomo and New York Congresswoman Geraldine Ferraro, the party's candidate for vice-president. Although both ritualistically took the "I am personally opposed to

abortion but . . ." stance developed into an art by Senator Edward Kennedy, in fact both did a good deal more in 1984 than simply try to avoid the question. In effect Cuomo and Ferraro put themselves forward as moral and religious teachers, more "enlightened" than the Pope and the bishops, and invited Catholics to accept their guidance about one of the most fundamental moral questions of the age.

Were Cuomo merely a political opportunist, he would be a less ominous figure. There is no reason to doubt him when he claims to take his faith seriously and read theology. What his reading has brought him, however, appears to be an eccentric version of Catholicism which owes more to the enigmatic Jesuit theologian Pierre Teilhard de Chardin than it does to official church doctrine, and which is motivated by a strongly negative reaction to the church of his youth.

Thus several years ago Cuomo stood up in an Episcopal cathedral and told his listeners that he had "outgrown" the "negative" faith he had been taught. Apparently counting abortion among the positive things, he later told a feminist audience that "nobody has done more for 'pro-choice' than I have." Cuomo seems to take himself seriously as a religious and moral thinker, and offers himself to his fellow Catholics as an agent of their own "emancipation."

Ferraro appears to be less self-conscious about her religion and during the campaign tried to project the image of an ordinary Queens Italian Catholic unconcerned with theological hair-splitting. But both before and after her nomination for vice-president she showed herself a hard-core pro-abortion activist. On one occasion, which was widely publicized during the campaign, she sponsored a Washington conference organized by Catholics for a Free Choice, the purpose of which was to persuade Catholic politicians that it is safe to vote in favor of abortion.

Immediately after being nominated she told the media that she was indeed personally opposed to abortion but followed that with the disclaimer that, in difficult circumstances, she might not be "so self-righteous," a revealing phrase in its implication that her alleged anti-abortion stance represented mere unthinking prejudice. She also said that, if her daughter were to get pregnant and desire an abortion, she would give her the money to have one and cooperate in obtaining it.

At best, therefore, Cuomo and Ferraro were only nominally opposed

to abortion even morally, while exerting every ounce of energy to preserve and encourage it as a legal "right."

Democratic leaders may not have known of the intensity of Ferraro's pro-abortion commitment before they chose her, and they certainly did not bargain for the endless religious controversy which followed, but the party had, as long ago as 1976, committed itself irreversibly to a pro-abortion position and no anti-abortion politician presently has even the slightest chance of being named to the national ticket. It was obvious long before 1984, therefore, that supporters of the Democratic program would have to do something to convince Catholics that abortion was not a significant issue.

Cuomo is generally thought to harbor presidential ambitions for 1988, and it is plausible to speculate that he used Ferraro in 1984 as a stalking horse—he could gauge the intensity of Catholic feeling about abortion by the reactions to her candidacy and thereby adjust his own position four years hence.

Conceivably Cuomo's and Ferraro's bid to be accepted as the real moral leaders of American Catholicism would have succeeded had there not been a significant shift in the American hierarchy early in 1984. For much of the campaign Ferraro was kept busy responding to sharp criticisms of her position made by Archbishops John J. O'Connor of New York and Bernard F. Law of Boston, both of whom had been promoted only in the year of the election.

Some of the Cuomo-Ferraro supporters cried foul in 1984 on the grounds that earlier Catholic politicians had not been subjected to the same degree of criticism on the issue. Predictably, Archbishop O'Connor's comments about Ferraro were said to be motivated by anti-female prejudice, and it was even suggested that the Archbishop was anti-Italian! But Ferraro was the first openly-pro-abortion Catholic to appear on a national ticket, which made some kind of a response from the hierarchy virtually mandatory, and it also seems clear that the Vatican wants bolder leadership from the American bishops and that the promotions of Archbishops Law and O'Connor are part of the process of reshaping that leadership. (Both were made Cardinals in 1985.)

Some Catholics feel themselves in a dilemma concerning abortion—they sincerely oppose it yet, as political liberals, they are inclined to support candidates most of whom are pro-abortion. The most promis-

ing solution of that dilemma would seem to be a determined effort to use Catholic influence in liberal circles, of which there is now a good deal, to force liberals to acknowledge abortion as a major social evil. However, most liberals, including the leadership of the Democratic Party, have made it clear that a woman's "right" to an abortion is a "non-negotiable" issue.

Some Catholics, as a result, have abandoned life-time affiliation with the Democratic Party and, with varying degrees of uneasiness, begun supporting Republicans. However, many others have simply swallowed whatever misgiving they have about abortion and have resolved to put the best possible face on the Democrats' unshakable pro-abortion stance.

Ever since the Supreme Court legalized abortion in 1973, there have been Catholics publicly decrying the fact that some of their co-religionists are too "single-minded" and "fanatical" on the issue. In effect they would like the Church to limit itself to formally reaffirming, from time to time, its moral disapproval of the act, but to refrain from any effective action on the issue, lest it jeopardize the liberal political program.

Anti-abortionists have realized from the beginning that whatever successes they might have are dependent on their remaining a "single issue" group, since otherwise they would be swallowed up by larger movements uncommitted to the cause. Conversely, it has been the obvious strategy of those Catholics rendered uncomfortable by the issue simply to bury it amidst a number of other issues.

Whatever may have been his intention, episcopal support for that strategy has come from Cardinal Joseph L. Bernardin of Chicago, in his now famous "seamless garment" theory, which holds that abortion must be seen as part of a closely-knit web of "life issues" and must never be dealt with in isolation. Nuclear weaponry is said to be the most important of these issues, although capital punishment is periodically mentioned, along with a seemingly quite elastic list of other issues.

Taken strictly, Cardinal Bernardin's exhortations seem to mean that Catholic voters should support only candidates who hold "correct" positions on a long list of issues, of which abortion is only one. However, empirical studies have shown that only a handful of politicians meet this requirement. Consequently, in practice Catholic voters are

usually faced with a choice between candidates who are "sound" on abortion but not so on other issues, or the reverse. Although he has not said so, Cardinal Bernardin's formula in effect justifies voting for pro-abortion candidates, on the grounds that their position on other issues outweighs their deficiency on abortion.

Thus in 1984 much effort was spent trying to persuade Catholics that abortion, being only "one issue," is less important than a whole range of issues on which the Democrats were allegedly closer to Catholic doctrine than were the Republicans. By a bizarre formula Catholics were in effect asked to oppose some of their own strongest supporters in public life, beginning with President Reagan, while supporting some of their most implacable opponents. (Part of the uniqueness of the anti-abortion movement is the fact that so many of its proclaimed "friends" insist that it should willingly submerge its own agenda.)

Practically from the moment of Geraldine Ferraro's nomination, Archbishop O'Connor, and to a somewhat lesser extent Archbishop Law, began reminding voters that the Catholic Church indeed still regards abortion as the paramount moral evil, and kept insisting that Catholics could not in good conscience support the practice. These episcopal stands brought forth predictable cries of outrage, which before long reached hysterical levels.

Curiously, much of the criticism directed at Archbishop O'Connor simply accused him of partisanship, implying that he was not genuinely concerned about abortion but had merely seized on the issue to discredit the Democrats. It was a revealing reaction in view of all the praise which liberals had heaped on the American bishops the previous several years for their "courageous" and "prophetic" stand on war/peace issues and their anticipated position on the American economy. Somehow, in the process, abortion had ceased to be thought of as a "Catholic issue," so that many of those who had been in the habit of praising the bishops were outraged that Archbishops O'Connor and Law had dared to raise it.

Some of those critics were also openly anti-Catholic, warning bluntly that the Church would bring down the wrath of non-Catholics upon itself if it insisted on claiming its rights. Since the days of John F. Kennedy, however, much of traditional anti-Catholicism has internalized itself in the Catholic community, so that in 1984 Catholics were

among those publicly raising the specter of the Vatican's seeking to influence American politics in inappropriate ways.

Those bishops who took a strong public stand on abortion provoked outrage because they were perceived as having violated a series of "gentlemen's agreements" which liberals apparently thought had been negotiated in the previous few years—that the abortion issue would be muffled under a blanket of others, that the American bishops would continue to accommodate themselves to the liberal ethos, that insofar as the bishops demonstrated a political bias it would be in a liberal direction and against the Reagan Administration (their war/peace letter of early 1984 was almost universally interpreted in this way), and that Catholics in general would not push issues which brought them into conflict with the liberal establishment. Conceivably, Cuomo and Ferraro sincerely felt betrayed because they assumed that such agreements had been tacitly sealed.

Some bishops' blunt statements about abortion, especially Archbishop O'Connor's comment that he did not see how a Catholic could in good conscience vote for a pro-abortion politician, thus called forth comment from other prelates. Next to Cardinal Bernardin himself, whose "seamless garment" speeches were the chief articulation of the Catholic version of the liberal consensus, the key prelate was Bishop James W. Malone of Youngstown, Ohio, president of the U.S. bishops' conference. Malone's statements, which were seen as expressing the mind of the hierarchy collectively, were subject to much interpretation. On the one hand he vigorously defended the right of bishops to take stands in the face of many claims that anti-abortion bishops had violated protocol, but on the other hand he also reaffirmed that the Church in America is not wedded to a "single issue," the hallowed code term applied to abortion but rarely to any other public issue.

Cardinal Bernardin's first two "seamless garment" speeches had been made at Jesuit universities—Fordham and St. Louis. During the campaign he made a third at yet another Jesuit institution—Georgetown University in Washington, a speech which was interpreted by the Washington *Post* as a plea for de-emphasis of the abortion issue and thus as an implicit rebuke to Archbishops O'Connor and Law. Subsequently Russell Shaw of the U.S. Catholic Conference wrote to the *Post* insisting that the Cardinal's speech had been misinterpreted. However,

the ambiguities surrounding the various "clarifications" had the effect of clouding episcopal intentions in a fog of uncertainty, and fed open speculation about deep splits in the hierarchy.

Also during the campaign, several bishops, including Auxiliary Bishop Peter A. Rossaza of Hartford and Bishop Kenneth S. Povish of Lansing, Michigan, publicly disagreed with Archbishops Law and O'Connor as to the centrality of the abortion issue. Others still, like Bishop Daniel Ryan of Springfield, Illinois, solemnly warned their people not to vote on the basis of a "single issue." (Such advice was, of course, obvious political "interference" on the part of the bishop, although not branded as such by reporters most of whom were probably happy that it occurred.)

At Christmas 1984 the far-left *Village Voice* newspaper in New York City published a vicious attack on Archbishop O'Connor, mainly centering on his anti-abortion position. Amazingly, some of his fellow bishops were quoted as directly repudiating his stance. These included Archbishop John R. Roach of St. Paul-Minneapolis, Cardinal Bernardin, Bishop Walter Sullivan of Richmond, Bishop Maurice Dingman of Des Moines, Bishop Ernest Unterkoefler of Charleston, Archbishop Thomas C. Kelly of Louisville, and Bishop Leroy Matthiesen of Amarillo.

Given the *Voice*'s record of open anti-Catholicism, and given the fact, as the reporter himself noted, that bishops rarely criticize one another in public, it was amazing that bishops would talk to the paper at all. That they did, however, revealed their apparent depth of resentment over the fact that Archbishop O'Connor had dared to resurrect an issue which supposedly had been safely buried.

As the *Village Voice* further reported, Bishop Thomas J. Grady of Orlando, Florida, had made a motion at the annual bishops' meeting decrying "divisiveness" in the Church, a move the reporter interpreted as aimed precisely at Archbishop O'Connor. (When liberal Catholics disapprove of what their adversaries are doing they denounce them as divisive. Their own divisiveness is called "prophetic," characterizations which most of the time the secular media also are happy to employ.)

The charge of partisanship directed at anti-abortion bishops was patently hypocritical, given the eagerness with which the liberal media regularly shower attention on liberal clerics. During the campaign, for

example, one of Archbishop O'Connor's own auxiliaries, Bishop Emerson Moore, told the press that he had supported Jesse Jackson for the Democratic nomination and indicated that he was leaning towards Walter Mondale even though he was unsatisfied with the purity of some of Mondale's positions. Later Bishop Moore accompanied Jackson on a visit to Pope John Paul II. Although similarly blatant partisanship on the part of numerous clergy of all denominations has been rampant for years, the charge of mixing politics and religion has been reserved only for those clergy who support an agenda which contravenes that of the liberal establishment.

The liberal press now routinely publishes adulatory articles about clerics (often Catholic priests) who publicly denounce the Reagan Administration for its alleged insensitivity to the poor, and for "warmongering." Never is it even suggested that this involves partisanship and, if conservative Catholics raise objections, they are merely told that they lack moral sensitivity.

More is involved here than mere hypocrisy, or the cynical manipulation of religious leaders on behalf of particular political programs. The tacit liberal position is consistent. It permits religious leaders to lend their prestige to the established liberal agenda, to those issues which can be seen as secular in origin and firmly controlled by secular movements—while it forbids those same leaders to raise public issues perceived as distinctively religious or as controlled by religious groups. It thus amounts to a kind of disenfranchisement of religious believers, although it is a disenfranchisement in which many clergy have been happy to cooperate.

The anger directed at Archbishop O'Connor (and to a lesser extent at Archbishop Law) thus stemmed not only from his alleged "partisanship" but also from the fact that he threatened to make the Catholic Church once more a potent force, after some of its own bishops had acquiesced in its silencing. (Their "outspoken" stands on war/peace issues and the economy are welcomed precisely because they reinforce the secular liberal agenda.)

In 1985 the bishops in effect officially adopted Cardinal Bernardin's "seamless garment" approach, although the Cardinal later said that he had not intended that the metaphor itself should so dominate public discussion.

The bishops' new "pro-life pastoral strategy" pledges increased efforts against abortion. However, it also situates abortion amidst a whole range of "life issues" and insists that it is not possible to address one without the others. Although the exact practical effects of this are not yet clear, at a minimum it seems to deny to anti-abortionists the right to be the "single issue" advocates they have always been.

The "seamless garment" theory also plays into the hands of the anti-abortion movement's critics, who have long charged that those who oppose abortion are "inconsistent" and even hypocritical, because they do not with equal vehemence oppose, for example, capital punishment. Now it appears that the Catholic bishops themselves are admitting as much and are in effect saying that no one except left-wing liberals can take a principled stand against abortion.

The seamless garment, if taken seriously, will prove infinitely expandable, since the liberal agenda is itself infinitely expandable and expanding. There will be no end of issues about which anti-abortion activists can be accused of being insensitive and, as the garment is stretched, abortion will necessarily occupy a proportionately smaller part of the whole.

In explaining his approach, Cardinal Bernardin always insists that it marks no dimunition of commitment to the anti-abortion cause, nor does it involve dilution of the issue amidst a sea of others. However, in practice neither he nor other supporters of his position have done much to explain precisely what it does mean, nor how apparent conflicts of interest and commitment can be resolved. In practice, therefore, the new "pastoral strategy" stands in such a way as to be usable by those who simply want to ignore abortion as a public issue.

Among liberal Catholics there are concentric circles of attitudes towards abortion. Some genuinely view it as a major moral evil but reluctantly think it is outweighed by other issues. Some view it as only a secondary evil and regret that it has been "over-emphasized." Others are deeply ambivalent about it—they do see it as an evil but are prepared to justify it in many specific instances. Finally there are those who, whether or not they admit it publicly, are simply pro-abortion—they accept the assertion that it is a woman's "right." (The last attitude is reinforced by the resentment against religious authority which is now deeply ingrained in the hearts of many liberal Catholics—the very fact

that the Church condemns abortion is enough to give it moral standing in their eyes.)

Arguably the choice of the term "pro-life" by the anti-abortion movement was a tactical mistake, because it invites endless arguments about who is "really" pro-life and what *constitutes* being pro-life. However, in politics labelling is often three-fourths of a battle, and it has been a major aim of the pro-abortion movement to deny to the anti-abortionists the name they choose for themselves.

Much of the discomfort caused by Cardinal Bernardin's "seamless garment" idea thus derives from the fact that he seems to implicitly accept the pro-abortionists' claim that the anti-abortionists are not "really" pro-life and that the latter must pass certain tests before they are entitled to the name. This in turn invited the kind of scrambling for the use of the name which occurred during the 1984 campaign.

When the abortion battle first began, it was mainly avowed pro-abortionists who accused anti-abortionists of caring only for the unborn and of being myopic. But now, seemingly justified by Cardinal Bernardin's own words, it has become routine for these charges to be made even in Catholic circles, often by priests or religious, not infrequently in the diocesan press.

"Single issue" anti-abortionists are treated as unreasonably narrow people who refuse to open their arms to sincere offers of support from other quarters. Why not, after all, link abortion and capital punishment, if this would increase the anti-abortion movement's credibility and gain new allies?

But years in an uphill struggle have made anti-abortion leaders keenly sensitive to political realities. They know that, no matter how far backwards they may bend to show how liberal they are, they will not convert most liberals, for whom the "right" to abortion is simply an article of faith. They also know that, given the polarities of American politics at present, the invitation to "broaden" their concerns means letting the abortion issue be over-ridden by other matters which, if nothing else, always outnumber the "single issue" of abortion.

No bishop has publicly endorsed a "pro-choice" position, and Cuomo's and Ferraro's speeches were designed to provide Catholics with a sophisticated rationale for eliminating abortion from their list of key moral issues. It was thus significant that Cuomo gave his speech at the

University of Notre Dame, at the invitation of the school's theology department. Afterwards Notre Dame's president, Father Theodore Hesburgh, an icon of American liberal Catholicism for three decades, suggested that a "compromise" might be worked out on the subject. The Jesuit editor of *America* magazine hailed Cuomo's speech as an "American Catholic classic," and the former provincial of the Canadian Jesuits, Father E. F. Sheridan, cited it as retroactive justification for the impeccable pro-abortion voting record of the former Jesuit Congressman Robert Drinan.

In reality Cuomo's address laid bare the fundamental illogic of the liberal Catholic position. The gist of his argument was that, in the absence of a national consensus on the subject, Catholics should not impose their own morality on others. Yet Cuomo had been among those extravagantly congratulating the bishops for issuing their war/peace letter, which scarcely reflected a consensus, and, as numerous of Cuomo's critics pointed out, no social evil would ever be eradicated if reformers simply waited for a consensus to develop.

Abortion seems to provide a classic example of Cardinal Newman's distinction between "notional" and "real" assent. Most Catholics (and many non-Catholics) profess to think that abortion is indeed an evil, yet not only are they willing to tolerate it, they even urge that the government pay for it. They could scarcely hold such a position if they really believed it to be what it is—the deliberate snuffing out of preborn human life, often by brutal and painful means.

For some time there has been a tug of war between anti-abortion Catholics and those falling under the general rubric of "peace and justice" advocates, mainly over priorities. Many of the latter are sincerely opposed to abortion but regret that it has been perceived as the preeminent Catholic issue. The bishops' pastorals on war and peace and the economy have thus been hailed for demonstrating that it is *not.* There has also been a practical tug of war involving voting—"peace and justice" activists almost always want their fellow Catholics to support liberal candidates who are, much more often than not, pro-abortion.

Thus, although no bishop is openly pro-choice, some of those most closely identified with the anti-nuclear movement have done their bit to defuse the abortion issue. The late Bishop Carroll Dozier of Memphis, who was once publicly rebuked by the Vatican for his liturgical irregu-

larities, was hailed, while still active, for his outspokenness on a variety of public issues. Yet he was among those denigrating Archbishop O'Connor to the *Village Voice*, condescendingly suggesting that the Archbishop was inept because "he's new at the job."

Archbishop Raymond G. Hunthausen of Seattle, also rebuked by the Vatican, has been in some ways the most radical of the "peace bishops," refusing to pay his income tax because part of the money goes for weapons. When in 1984 Washington state voters were presented with a proposal to ban state funding of abortions, he endorsed it, only to be met with a barrage of criticism from some of the very people who had been used to praising him for his "courage." But whereas criticism of his anti-nuclear activities seems to have mainly hardened him in his resolve, Archbishop Hunthausen came close to backing down on the abortion referendum. His theological advisor, Father Peter Chirico, while defending the propriety of the Archbishop's endorsing the proposal, also explained to the media how Catholics could in good conscience vote against it or otherwise conclude that legalized abortion might be admissable for certain reasons.

The most prominent "peace bishop" is Auxiliary Bishop Thomas J. Gumbleton of Detroit. On war/peace issues Bishop Gumbleton takes a "prophetic" and uncompromising line. However, like Archbishop Hunthausen, his moral absolutism softens considerably where abortion is concerned. Thus early in 1984 he defended a Detroit nun who had accepted a job in the Michigan state government which involved adminstering abortion funding, even after she had been forced by the Vatican to leave her community. (It is impossible to imagine Bishop Gumbleton or other Catholic anti-war activists defending a religious who might take a job in the Pentagon which involved procuring napalm, for example.)

During the campaign Bishop Gumbleton, ordinarily inclined to hold politicians to very strict standards where matters of weaponry are concerned, defended Cuomo and Ferraro on the grounds that "If you don't have a general consensus on an issue, you can hurt the common good more by trying to put one position into law than by trying to develop a consensus," a formulation which seemed to leave no room at all for "prophecy." Bishop Gumbleton has supported the radical wing of the anti-war movement (the Berrigan brothers, for example) even though

its adherents can scarcely claim that there exists a consensus in support of their views.

Priests and religious are disproportionately represented in "peace and justice" circles, and the irony of the frequent charge that the bishops are manipulating the faithful on the abortion issue is the fact that the anti-abortion movement has always been overwhelmingly lay. During the 1984 campaign numerous priests and religious publicly endorsed the Democratic ticket and urged their fellow Catholics not to be swayed by a "single issue" agenda, and such endorsements never raised questions in the media about the mixture of religion and politics. (Thus in a national advertisement by "Catholics for Mondale and Ferraro" the only signers from the state of Alabama were 21 Benedictine nuns.)

In the summer of 1984 Kathryn Lauriha, a staff member of the United States Catholic Conference, and Renee Brereton, a staff member of the bishops' Campaign for Human Development, participated in a meeting in Washington called by a coalition of liberal organizations to discuss ways of mobilizing voter participation in the November elections. All the groups represented were left of center, and a number were openly pro-abortion, including the National Abortion Rights Alliance, the National Organization for Women, and the American Civil Liberties Union.

During the campaign pro-abortion Congressman Robert Edgar of Pennsylvania exploited the fact that he had a working relationship with another USCC staff member, Thomas Quigley. The USCC's general secretary, Msgr. Daniel Hoye, said later that Quigley was unaware that Edgar was pro-abortion, a fact which, if true, illustrates the USCC's often casual attitude towards the issue. (Edgar's perfect pro-abortion voting record in Congress is public record.)

Although anti-abortion Catholics are often accused of distorting Cardinal Bernardin's "seamless garment" argument, and unfairly contrasting his stand with that of Cardinals Law and O'Connor, many liberals do exactly the same thing. While Cardinal O'Connor has been subjected to an endless series of often vicious attacks in the media, Cardinal Bernardin's public image has been simultaneously held up as the model of a balanced prelate who does not "intrude" religion into politics.

A significant indication of the priorities which exist among some

bishops has been the career of Jim Castelli, a journalist who once worked for the bishops' official news agency, National Catholic News Service, and more recently for *Our Sunday Visitor*, the Catholic newspaper with the largest circulation in the United States. As long ago as 1976, Castelli used his access to the diocesan press to undercut the anti-abortion movement, and he was hired by *OSV* even though his record was well known.

Following the issuance of the war/peace pastoral, Castelli wrote a book which was praised by Cardinal Bernardin and by Archbishop Roach and for which he was given access to episcopal files. The book includes a snide—indeed vicious—personal attack on then-Bishop O'Connor, whose moderating role in the drafting of the pastoral is probably what brought him to the attention of the Vatican.

Castelli was a participant in the Catholics for a Free Choice Washington meeting at which Catholic politicians were told that it was safe to be pro-abortion. Part of his message on that occasion was the prediction that the bishops were prepared to soften their anti-abortion stand because they were uncomfortable being allied with the "far right." During the 1984 campaign Castelli published an article in the secular press in which he castigated Archbishops Law and O'Connor for "politicking" and denied that Ferraro, who had presided over the CFFC meeting at which he spoke, was pro-abortion. He ended by calling on the "elected leadership" of the bishops (presumably Bishop Malone) to "pick up the pieces."

The ex-priest Daniel Maguire, a professor at Marquette University, has been the most stridently pro-abortion Catholic theologian in the United States, regularly denouncing anti-abortionists in hysterical terms. After the election Maguire told the media that he knows bishops who do not agree with the Church's teaching on abortion but cannot say so publicly.

The "peace and justice" Catholics often fail even to list abortion as one social evil among many, and some treat it with remarkable casualness and even levity. Thus Msgr. Charles O. Rice of Pittsburgh, a veteran "labor priest," praised Cuomo and Ferraro during the campaign, in part on the grounds that "a Catholic, who is a politician, cannot honestly say that he or she will turn the clock back." He termed the abortion issue "the religion card" in the election and judged that Arch-

bishop O'Connor had played his card "ineptly," while Cuomo and Ferraro had played theirs "deftly."

Many Catholics accused of voting for Ronald Reagan on only a "single issue" might have legitimately responded that they agreed with him on a number of issues, although that fact was not relevant to the abortion controversy. The liberals who control much of the machinery of American Catholicism long ago decided, however, that the President's program is—abortion aside—directly contrary to Catholic social doctrine, with many arguing that it is manifestly evil. Such a conclusion is scarcely even defended any more, but is treated as self-evidently true. "Catholic" social doctrine has simply been identified with the agenda of the left wing of the Democratic Party.

It was for this reason that the innumerable clerics and religious who openly opposed Reagan or supported Mondale and Ferraro did not think of themselves as being partisan, nor were they accused of such by those usually eager to criticize the Church. There is a broad assumption fostered in part by numerous USCC actions over the years, that the Democratic Party merits unquestioning Catholic support. Thus any serious questions asked of the party, notably on the abortion issue, are interpreted as motivated merely by partisanship.

Since almost all secular liberals regard abortion as a woman's undeniable "right," most Catholic liberals are at best acutely uncomfortable deviating from the liberal agenda on this point. They have long accustomed themselves to thinking in secular/liberal terms, and it requires a wrenching act of the will to break out of that pattern. Indicative of the mentality has been the *National Catholic Reporter*, which remains officially opposed to abortion but spends much of its energy in attacks on the anti-abortion movement, and which has been consistently receptive to "pro-choice" arguments. In the midst of the campaign it published an article by Daniel Maguire describing his visit to an abortion clinic, his tone of reverence comparable to that other Catholics might use to describe a visit to Lourdes. Among other things, he recounted holding the "product of conceptus" in his hand following an abortion. It is inconceivable that the *Reporter*, or any other liberal Catholic journal, would publish a similar article about, for example, an execution or an anti-guerilla military operation. For many liberal Catholics abortion is deemed an evil only in a very abstract sense, which is why they resent

the way in which it keeps "intruding" itself into the political process.

The ultimate reason why abortion is not an integral part of most liberal Catholic "peace and justice" agendas is the fact that feminism *is*. The grooves of secular/liberal thinking are so deeply worn in some Catholic minds that they are led almost automatically to whatever position secular liberals have previously discovered. Thus, once women as a group were defined as among the most exploited classes in society, that notion was bound to become a staple of liberal Catholic thought, and it *has* become so, particularly among certain nuns, whose resentment of male authority often reaches the level of pathology. It would not be an exaggeration to say that certain groups of women religious have no rationale for their very existence except their rancorous feminism.

There *are* feminists who oppose abortion. However, their position is anomalous, rather like that of the Catholics who favor it—official feminism regards abortion as one of a woman's most basic "rights," because it regards freedom from motherhood as essential to all other feminist goals. Hence anti-abortion feminists have gained almost no hearing from other feminists, and some have been excommunicated from the movement.

Most feminist nuns profess to believe abortion is morally wrong. However, just as liberal Catholics in general refuse to press the Democratic Party to change its stand on abortion, so very few Catholic feminists press that movement to change. Thus, of necessity, a Catholic who aspires to be an orthodox feminist must not only accept the legitimacy of abortion, she must also exert pressure against the Church's official stand.

Over the years a number of nuns have spoken individually in favor of legalized abortion, and organized groups of nuns (including the official Leadership Conference of Women Religious) have gone on record as opposing all legislation to curtail the practice. A common rationale is that, while abortion may be morally wrong, no one but the mother has a right to make such a decision.

The National Coalition of American Nuns, an unofficial group which claims to have 2,000 members, has adopted a position whereby the official definition of "pro-life" now includes being "pro-choice" on abortion, the hallowed terminology having thus been finally and neatly

reversed. Although it has no official status, NCAN has enjoyed the support of a number of leading religious.

Amidst considerable controversy, the St. Louis archdiocesan newspaper, the *Review*, published an advertisement during the campaign by a group calling itself "Pro-Lifers for Mondale and Ferraro," in which the "pro-life" epithet was again applied to a pro-abortion political program. (One of the signers of the "pro-life" St. Louis statement was also a signer of the pro-abortion manifesto in the *Times*.)

Jim Castelli, who in 1976 was the only American journalist to report that Jimmy Carter might be willing to support an anti-abortion amendment to the Constitution (everyone else correctly reported that he would not), demonstrated comparable political perspicacity in 1984 when he told his readers in *Our Sunday Visitor* that Catholics might be preparing to support the Mondale-Ferraro ticket, using as part of his evidence the claim that most Catholics disagree with the Church's stand on abortion.

The same issue of *OSV* which published his prognostication also published a poll of readers which showed them about to vote for Ronald Reagan by a large majority, and such indeed proved to be the case in the general election, to the surprise of no one except perhaps Castelli.

Although the promotion of Archbishops O'Connor and Law in 1984 seemed to signal that the Vatican was appointing bishops in the United States who will take an uncompromising stand on abortion, a more recent appointment, that of Archbishop Roger M. Mahony to Los Angeles, calls that into doubt.

In an interview with a leftist journalist in the Los Angeles *Times* not long after his installation, Archbishop Mahony seemed precisely to de-emphasize the abortion issue amidst a sea of others, going out of his way to portray anti-abortion activists as inconsistent and denouncing "extremists" in the movement. On the other hand, he had kind words for Planned Parenthood.

In a manner which by now has become almost reflexive among certain American clergy, the Archbishop also gratuitously denounced Jerry Falwell of the Moral Majority, whom he accused of distorting the Gospel, and President Reagan, whose administration he accused of being inconsistent in its alleged "pro-life" commitments. Since both the

Reagan Administration and the Moral Majority have been powerful allies of the Catholic Church in the anti-abortion fight, such slurs seem at best unwise. It is also worth noting that American bishops almost never say anything critical about liberal Protestant leaders, even those who are adamantly pro-abortion.

Going even further, retired Bishop William E. McManus of Fort Wayne-South Bend (Ind.) has criticized the Reagan Administration not for its supposed failures in other areas but precisely for its anti-abortion activity. Writing in *America*, Bishop McManus propagates the common liberal argument that it is wrong to evaluate potential judges on the basis of their views about abortion, since this involves letting "personal opinions" interfere with the judicial process.

Responding to often intense pressure from the "peace and justice" segment of American Catholicism, leading Catholic prelates now signal as clearly as they can that it is morally appropriate to support pro-abortion politicians who hold a "Catholic" position on everything else rather than support the most ardent anti-abortionists who have not embraced the left-liberal social agenda. For some years to come there is likely to be muted, polite, but nonetheless real tension between two wings of the American hierarchy over the relative importance of abortion as a public issue.

The Family in America

Allan C. Carlson

THE YEAR OF ORWELL produced new expressions of hope for the family in America. The optimists pointed to the stabilization of the American divorce rate, which followed the rapid increase of the 1960-81 period. They noted that having babies—at least one or two babies—seemed to be back in fashion among the trend-setting upper middle class. The fertility rate for women age 30 or over, for example, stood at the highest level ever recorded in this century, a change produced solely by the "Yuppie" cohort. The blatant anti-family rhetoric spouted fifteen years before by radical feminists, New Left activists, and the more progressive social scientists also seemed a distant memory. Both major political parties filled their 1984 platforms with pledges to help families. After two decades of studiously ignoring the issue, minority leaders claimed to raise "repairing the black family" to their highest priority.

But the reality facing the family in America, 1985, is wholly different. Cultural developments of the last twenty years are conspiring with economic and policy changes to dismantle the foundations of traditional family life among large sectors of the population. Indeed, the American social order stands today at a crisis point, an unstable cultural and economic condition portending abrupt and radical change. Some evidence suggests that we may have even passed that point. The situation demands a thorough rethinking of what constitutes the "family issues," and the emergence of a more forceful, ideologically conscious, and vocal political movement on their behalf.

Children as Enemies

The components of crisis can be sorted into three categories. The first is the Malthusian ascendancy. When the intellectual histories of late 20th Century America are written, among the most dramatic transfor-

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mations recorded will be the rapid turn by Americans to the dismal economics and politics of neo-Malthusianism.

Prior to 1960, it was assumed that economic growth and population growth went hand in hand. More people meant more markets. New babies translated into new businesses, new jobs, new opportunities. Particularly during the decade and a half after World War II, large families were in vogue. The expanding, child-centered suburbs seemed tailor-made for the "baby boom." The fertility level of the college-educated middle class almost doubled, as did the number of Americans under the age of five. It was a time of astonishing national confidence, renewed youth, true social democratization, and economic expansion.

Then the tide turned. Malthusian propaganda tracts such as the Hugh Moore Fund's famed 1954 pamphlet, *The Population Bomb*, began drawing attention to the high population-growth rates found in Asia, Africa, and Latin America. Five years later, the U.S. Departments of State and Defense concluded that such trends threatened world stability. The early 60's brought warnings that America's own population growth was also threatening "the quality of life" on this planet. Large families, the propagandists declared, were socially irresponsible. In 1965, the U.S. Department of Interior actually labeled "overpopulation" the "greatest threat to quality living in this country." Population expansion was not the key to prosperity, the Interior document continued; rather, it was "more likely to lead to poverty, degradation, and despair." In its 1972 report, Richard Nixon's Commission on Population Growth and the American Future recommended "that the nation welcome and plan for a stabilized population." In pursuit of this aim, Planned Parenthood was transformed by massive governmental funding into a quasi-state agency. Access to contraceptives and sexual counseling became a guaranteed right, even for minors. The free availability of abortion also secured the imprimatur of liberal opinion, as did changes in the tax law (including the purposeful erosion of the value of the personal exemption) which transferred the relative income tax burden onto families with three or more children.

Cultural assumptions also changed. "Child free" marriages became the mark of responsibility. By way of contrast, giving birth to a third or fourth child became a dubious, frowned-upon action. Our own child-

ren, majority opinion came to agree, now posed a grave threat to our collective future.

Despite the presence of anti-Malthusian voices in the Reagan administration, little has really changed. Malthusian prejudices still dominate the media, the textbook publishing industry, the major universities, and the mainline churches, and cast a gray pallor over the nation.

Demise of the Family Wage

The second component of crisis results from the breakdown of our nation's "family wage" system. Once considered the centerpiece of a just society, the concept is all but forgotten today. Its history bears examination.

In the late 19th and 20th centuries, progressive reformers worked to move women and children out of—not into—the factories and mines. As both the symbol and means of social justice, payment of a "family wage" was demanded: a single income sufficient to allow a worker to support a wife and children in modest comfort. Such reform, progressive voices argued, would allow for the proper maternal care of children and protect male workers from having to compete in the sale of their labor with their own and other men's wives and children. Real wage scales would never rise, it was argued, so long as entire families were thrown into the competitive scramble. One principle wage per household need be the rule.

The family wage concept eventually became enshrined in custom: the best and highest paying jobs were reserved, by convention, for men as heads of households. The lower wages paid to women were justified by the argument that most working women either supported only themselves or were merely supplementing the primary wage of their spouse.

Yet the system had a weakness. While recognized by legal statute, this method of delivering a family wage was, in general, informal. As such, it required that the large majority of the population voluntarily abide by it. If significant numbers of families secured two-incomes, or if the assumptions undergirding the system—that most women would marry, that women with children would have husbands, that there were "male" and "female" jobs—were widely questioned, economic and social pressures would quickly dismantle the family wage.

The social disruption of World War II brought the first shocks. Mas-

sive numbers of women moved into "male" jobs as part of the war effort. While most returned willingly to home and children with the advent of peace, it seems in retrospect that expectations and assumptions altered in more permanent ways. Indeed, by the late 1940's, women began moving back into the workplace. Although a period characterized by extraordinary displays of domesticity, the 1950's saw this quiet revolution accelerate as the proportion of married women in the labor force steadily mounted. Individual decisions coalesced into a fundamental challenge to the family wage.

The same period witnessed a dramatic increase in illegitimacy, and an expanding number of "non-formed," female-headed families. The trend was first observed in urban black communities. By the early 1960's, one out of every four births was outside the marriage bond. Shortly thereafter, certain white populations evidenced the same turn toward what some called "single-parent" families. Such a trend was encouraged by an extension of Aid to Families with Dependent Children (AFDC) to "families" formed by illegitimacy. In short, a second assumption undergirding the family wage was weakened.

As a spin-off of the civil rights campaign of the late 50's and early 60's, the demand for pay equity between the sexes became another challenge to the prevailing order. The tension between old and new socio-economic systems was revealed in the 1963 report of President John Kennedy's Commission on the Status of Women, when it affirmed the "unique and immutable" role of women in the family unit and, at the same time, urged the removal of "every obstacle" to women's "full participation" in society. The subsequent Equal Pay Act of 1963—which assured "equal pay for equal work"—struck at the heart of the family wage concept, which had presumed that "heads of households" deserved more since they fed, housed, and clothed a greater number out of the one paycheck. Yet the measure passed with little opposition, and with even less awareness of its inevitable social and economic consequences.

Policy change gained momentum. The inclusion of "sex" among the categories of discrimination prohibited by Title VII of the Civil Rights Act of 1964 occurred, as feminist historians ruefully note, largely as a joke. Proposed by "Dixiecrat" Howard Smith in hopes of scuttling the whole measure, this major move by the federal government into the

regulation of gender roles occurred without hearings in either house of Congress, and after less than half a day of uninformed debate. By 1971, though, the measure had become the lever for the wholesale elimination of gender-determined job and wage categories and the effective scuttling of the informal family wage.

Cultural barriers also fell, as the modern feminist campaign became during the 1970's a dominant intellectual force in America. The feminist demand that *no woman* be financially dependent on a man undermined the once-universal American legal principle which had placed on the husband primary responsibility for support of his wife and family, with only secondary responsibility falling on the wife. At some point in the decade, the number of two-income families reached a critical mass that transformed most housing markets, leaving the American dream of home ownership beyond the reach of most remaining new one-income families. During the early 1980's, the last relic of the family wage system—the lingering pay differential between "men's" jobs such as truck driving and "women's" jobs such as secretarial services—came under challenge, as demand for "equal pay for work of *comparable* worth" grew. Perennial Communist Party-USA Vice Presidential candidate Angela Davis, speaking recently in Seattle, accurately gauged the issue's significance: "Comparable worth is the most radical effort women can be involved in today." In 1984, another critical mass may have been reached, as the employment level of American women with children under age six apparently passed the 50 percent mark.

In short, we are quickly moving toward a new cultural norm: what the Swedes have called "the working family." Remarkably similar in structure to the patterns of life affecting the poorest groups of the early industrial era, the atomized "working family" represents a socio-economic order where *everyone* (including a growing number of teenagers) works outside the home, where the full-time mother is a museum piece, and where children are increasingly a collective, not a family, responsibility. In this "proletarized" milieu, the home slowly shrinks from being the central focus of life into a mere way-station where workers take some of their meals and sleep together.

In the modern industrial era, this *is* the alternative to a system resting on the "family wage." And from a certain perspective, there is method and purpose to it. As an article in the March 1975 issue of *Political*

Affairs ("The theoretical journal of the Communist Party-USA") explains: "Our goal is to bring as much of the population into the organized work force as possible, so that the discipline and training inherent in working class struggles will be a training ground for socialism for ever greater numbers." Marx and Lenin would not entirely understand why it happened this way in America; yet they would recognize and cheer the results.

Forgotten Children

The third, and closely related, component of crisis derives from the lingering problem of children: who will care for them?

For most of our century, maternal care was the expectation, the norm. Popular wisdom, confirmed by social research, presumed that the full time care of pre-schoolers by their mothers was usually necessary to healthy emotional and social development. Government subsidy of day care was confined largely to programs for disadvantaged groups.

An unintended policy revolution occurred in 1976 when Congress transformed the existing limited tax deduction for child care costs (considered a "business expense") into a tax credit. The change was justified as "tax simplification." But since credits of this style do represent an indirect government grant and since intact, two-income families could also claim it, the child care credit actually introduced a new policy of subsidizing child care by others than parents. At the same time, it denied equivalent support for maternal or paternal care.

Richard Nixon's 1971 veto of the Child and Family Services Act was justified on the grounds that the direct subsidy of day care centers would tilt the nation away from family-centered child-rearing. Yet the steady expansion of the child-care credit has had the same effect. The maximum credit was recently raised to $720 for one child and $1,440 for two if adjusted gross income is $10,000 or less. For households making over $28,000, the credit is worth up to $960 for two or more children. Both the Democratic and Republican platforms of 1984 promise expanded support for day care, through direct or indirect subvention. The past year also witnessed a spate of new studies, reports, and conferences urging a vast expansion of federal support for the non-parental care of pre-school children.

The anomaly in all this, of course, comes from the fact that most

honest research still shows that even mediocre full-time maternal care of children is better than the best day care, except among the most disadvantaged groups. The injustice in this state of affairs derives from the selective nature of federal subsidization. Two-income families with children cared for by others not only enjoy the benefits of extra income; they receive up to a $1,440 bonus from the government for so ordering their lives, together with other potential benefits such as meals provided under the U.S. Department of Agriculture's Child Care Food Program. Those parents who sacrifice a second income to perform the socially desirable role of caring for their own children receive nothing. Indeed, in effect, the state actually taxes them at a higher net rate to recover income lost through the child care credit. The same is true for those working couples who go to the pains of scheduling their labor for different periods of the day in order to give their children direct care; again, the federal government grants them nothing.

In short, however unintended, government policy in its effect discourages parental care of children in America. Fortunately, many will continue to nurture their own offspring; yet the federal government continues to demand more and more relative sacrifice for the exercise of this apparent "privilege."

Perhaps not coincidentally, such a *de facto* end of parental rearing of children was the goal of the American and Swedish theorists who founded the modern day care movement in the 1920's and 1930's. They aimed at reshaping young people in line with the social democratic goals of gender-neutrality, moral freedom, and economic and social cooperation. Parental attitudes—usually labeled "bourgeois prejudices"—could only get in the way of building the post-middle-class social order.

Raising the Ideological Stakes

Taken together, the Malthusian ascendency, the collapse of the family wage, and the bias against parental care of children are undermining the traditional American family system. To paraphrase the Marxists, the correlation of cultural and economic forces has turned against a family premised on differentiated sex roles, the centrality of children, and the preference for maternal care.

Only extraordinary effort and clarity of purpose can salvage the

situation at this late date. Yet the political forces necessary for this task remain, by and large, unmobilized. Since its emergence in the late 1970's, the nascent pro-family movement has tended to focus on more peripheral issues such as school prayer and tuition tax credits. If individuals and organizations are serious about salvaging the family in America, a broader agenda and a new maturity are imperative. Put more bluntly, the movement must raise the ideological stakes of the confrontation, and face issues that will stir passions and opposition as bitter as that stimulated by the abortion debate. These include:

(1) *Decoupling the "gender revolution" from "civil rights"*: It is an anthropological axiom that the definition of gender-roles is central to the structure of any family system. Moreover, a change in the relative economic roles of men and women must produce at least equivalent, if not greater, social and cultural changes. Until the mid-1960's, gender-roles in America were defined and governed by cultural convention, rather than by law. Alteration of prevailing gender-roles occurred as a function of democratic cultural evolution, rather than politics. However, with the advent of the Equal Pay Act of 1963 and, more importantly, Title VII of the Civil Rights Act of 1964, the definition of gender-roles was made a matter of law, to be determined by regulators in the Equal Employment Opportunity Commission and related agencies. Such regulators, experience has shown, are governed by an ideology committed to creation of a social order stripped of gender differentiation. They are not now, and in our lifetime will probably never be, amenable to the protection of the family.

The need is to annul the twisted marriage of the civil rights movement to the ideology of feminism, to label as historically inaccurate and morally repugnant the equation of "sexism" with racism. Specifically, the legal fate of gender-roles should no longer be subject to the unisex prescriptions created by regulators who derive their power from the vague language and almost non-existent legislative history [concerning gender-roles] of the Civil Rights Act of 1964.

This annulment is particularly crucial to the future of black Americans, among whom family disintegration has reached catastrophic proportions. The reformulation of strategies aimed at providing education and jobs for male black breadwinners will occur only after the civil rights movement severs its unholy bond to a feminism that considers

the collapse of the patriarchal family to be a major goal, rather than an evil.

(2) *Reform of the welfare system.* As basic principles, federal welfare policy should not penalize an intact family, nor reward the creation of a broken family. From this perspective, existing AFDC and related support programs should be radically changed. Minimum reform efforts should include: denying rent subsidies to single teenage mothers with known parents, in order to remove the existing incentive that encourages girls in housing projects to have their own out-of-wedlock babies; ending the state option of withholding AFDC payments to families where the father is present; and channeling all federal and state assistance to teenager-headed, "never formed," and broken families through a local church or similar institution, so that the recipients can receive personal attention and moral guidance.

(3) *Reconstruction of the "family wage."* Left to cultural shifts alone, the one-income norm and the informal family wage might be reconstructed at some point in the future. Yet regulatory controls, legal changes, and attendant economic pressures have made such natural, democratic evolution extraordinarily difficult. Captive to an institutionalized feminist ideology, we have lost our freedom to change.

Moreover, the assumptions needed to animate an informal, gender-based family wage no longer hold. There now exist numerous female-headed families which do need a living wage. In a nation where one of every five children has no responsible father, it is impossible in the short run to restore a support system keyed to fathers.

The option left is to use public policy to reconstruct a partial, gender-neutral family wage that at least reduces the financial penalty that accrues to parents with children. A minimum move would be to increase the personal exemption for dependents to offset the same proportion to income which it did when the exemption was introduced in 1948. This means raising it from the current level of $1,000 per dependent to $5,600 per dependent spouse and child.

In lieu of this change, the federal government might implement universal child allowances paid on a monthly basis. Such funds should count as taxable income, insuring that greater resources flow to those most in need. For welfare families, the allowances would replace a proportional amount of the federal contribution to state AFDC pro-

grams. As a serendipity, this would facilitate re-entry of AFDC parents to the workforce by reducing the work disincentive that now exists.

(4) *Fairness in the Subsidization of Child Care.* A strong case could be made that federal tax and income redistribution policies should be designed to *encourage* the full-time parental care of pre-school children. At the very least, though, federal policy should not *penalize* such efforts.

The most cost-efficient way of restoring fairness in federal child care policy would be to scrap the child care tax credit altogether, perhaps as part of a true tax simplification program, and end all other day-care subsidies, except those means-tested programs aimed at targeted disadvantaged populations.

Yet the lesson of the welfare state is that a benefit, once granted, is almost impossible to take away. If that proves here to be the case, fairness can then be restored only by extending the maximum child care tax credit to parents who care for their own pre-school children, be they single-income families or those two-income families which arrange job schedules to provide full time parental care for their offspring.

(5) *Rebuilding a Family Housing Policy.* One of the few success stories in the history of American social policy was the post-World War II housing boom. Between 1945 and 1970, federal policy measures helped transform the United States from a nation of renters into a nation of homeowners. This surburbanization of America undoubtedly encouraged the family-centeredness which blossomed, however incompletely, during the 1950's.

Over the last decade and a half, though, housing has been driven beyond the reach of the average new family. Soaring housing and mortgage costs reflect, to some degree, market adjustment to the two-income family norm. Reconstruction of a partial family wage would help offset this situation.

There are more direct housing policy measures that would also aid young couples in this basic step toward family formation. The tax code should be amended to allow creation of IRA-like housing accounts, where young couples could save, tax free, toward the purchase of their first home. Moreover, the Federal Housing Administration should be authorized to offer special mortgages to first time home-purchasers, where the interest rate in the early years would be set well below

market rates, a benefit to be made up in later years or on the sale of the house. In such cases, eligibility language should be narrowly drawn so as to target most special mortgages toward young families.

(6) *Recover a Federal Policy of Growth.* Malthusianism is a bankrupt, scientifically discredited ideology, and its institutional stranglehold on federal policy measures must be broken. Specific actions toward this goal would include moving the federal government out of the population control business by defunding Planned Parenthood and related organizations. A growth-oriented administration should also create a new Commission on Population Growth and the American Future that would repudiate the conclusions of its predecessor and affirm the value of children and the benefits derived from a child-oriented, growing population.

If fulfilled, this agenda would restore the minimum foundations necessary to the survival of the family in America. Without these policy changes, the decades ahead are bleak. The wealthy, it is true, will continue to have free choices in family formation and child care. For the large majority of Americans, though, the increasingly sterile "working family" will be the sole option.

Our children, our national heritage, and our future are at stake. In action, we have nothing to lose, and a family-centered land to regain.

The "Quality of Life" in Hungary

Thomas Molnar

In recent years Americans have heard many conflicting reports about liberalization, then renewed campaigns of repression, in Communist East Europe. Some describe conditions there as intolerable, others describe them as approaching Western standards, at least in Hungary. Perhaps a first-hand report by someone who has recently traveled in Hungary and, most importantly, speaks the language, will prove helpful in dispelling some of the confusion. I will try to keep away from political judgments and, instead, look into what sociologists call "the fabric of society"—the ways people conduct themselves, and what their values and moral attitudes are.

Such insights are, I believe, best obtained from within families, by participating in their conversations, reading their magazines and books, and going to the stores, restaurants, beaches, villages and towns, churches and cultural events they share. In other words, the best "investigative journalism" is not the chase after the sensational and the scandalous, but a sympathetic presence in the actual course of events.

According to the statistics, Hungarians are a dying race, with a very low birth rate and a very high suicide rate. I confess that I give little credence to statistics, and prefer to extrapolate from what I see and experience. But here are the facts as I learned them: after the great bloodletting of World War II, Hungarian mothers showed a welcome tendency to replenish the cradles of the nation, which had some eight million citizens before the war. Natality went up until about 1955, when the differential between births and deaths was a favorable 11.4 per cent *plus*. Then came the famous 1956 "Revolt in Hungary," with the attendant executions, deportations, emigrations, and general depression of the populace. The demographic upswing stopped. And, in that same year, the first abortion law was promulgated, making it compulsory for physicians to perform an abortion if the mother so desired. It is

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charged that in 1958 secret instructions were issued to exempt the Slavic minorities (there are many Slovaks in northern Hungary), a move aimed at lowering the percentage of Hungarians in the total citizenry, Slavisation being in the interest of the Soviet Union.

The consequence of the 1956 abortion law was the loss, every year, of about 120,000 children. The total population figure now stands at some 10 million and a half; without legalized abortion, it would probably be more than 14 million. Thus in three decades, a loss of almost 4 million may be attributable to abortions alone. In 1984, there was a population *decrease* of two per cent. No wonder that the regime now in effect opposes abortions, if only by silence—no current statistics are available.

The striking thing to me was the large number of children of all age groups I saw, in their parents' company, at playgrounds and beaches. But it also seemed obvious that many young people surrender at an early age to alcohol and drugs; no doubt both the Soviet oppression and Western fashion combined to encourage these addictions, but they are no more prevalent than in the U.S. and Western Europe. At any rate Hungary, unlike for example Spain after Franco, has not become a paradise for pushers and consumers of drugs, nor for a completely hedonistic way of life. For instance, in the related matter of pornography, the regime forbids it, while the kiosks display it in a very mild form; it does not penetrate, as an obsession, public life and speech. It is unknown on television. This may be in part due to the fact that under a statist economy, publicity and advertisement are played down. The needs of the population are so great after decades of scarcity that hardly anything needs to be advertised. There are no lines of shoppers anywhere, the stores and street vendors have plenty of clients, publicity is at a minimum, including publicity for the seamy side of life.

Most families, however, have no more than one or two children. Only deeply religious, Catholic couples (not more than three to five per cent of the nation) have five or more. Living space is hard to come by, although the government keeps adding new, low-cost apartment buildings, and not a few families build small "secondary residences" in the mountains and around spacious Lake Balaton. Thus there are contradictions too: many families make great financial sacrifices to buy an apartment for newlyweds, while the number is growing of those who

can afford luxurious villas—not always honestly acquired, but by "appropriating" enough building and electrical material at their workplace to construct a kind of "blackmarket" home. For the director of an enterprise it is almost without risk to order surplus material from another State enterprise, commandeer trucks and workers, whatever. Soon he is the owner of an attractive villa. Those in the know receive extra bonuses, paid of course by the State, for "overtime"—and keep their mouths shut.

Such corruption has become endemic, exactly as it used to be in the Balkans marked by centuries of Turkish occupation and the baksheesh system—but not in Hungary. Why now? The government explains it by scarcity. The participants and culprits suggest that demand, real and artificial, is ahead of supply, and that the presently-enjoyed good life may be interrupted at any time by an ukase from Moscow. Thus a Western-style hedonism subverts society, people want *now* all they can have because tomorrow is uncertain: annual vacation abroad, all the consumer goods plus the luxuries ("we cannot have candied fruit" a spoiled young woman complained to me), apartments with valuable objects, hundreds of thousands of forints in the bank. Since "socialism" has proved a fiasco, a savage form of private capitalism has developed, with no restraints. The regime has made room for a small but growing private sector (restaurants, cafés, small shops, hairdresser, tailor, shoe repair, taxi company, and even engineering firms, auto-mechanic shops, plumbers, indeed small factories) where enterprising people with some initial capital create fantastic situtations for a Communist regime. One illustration: three electricians have set up a workshop in Vienna(!), attend to their business there over long weekends, then return Monday to their regular jobs in a state-run enterprise. It is understood that they cross the border carrying in their truck some items of "socialist property" to their private workplace. They also appropriate some of the time they ought to devote to the "building of socialism." Their colleagues know about their profitable escapades, but because many are involved in similar endeavors, nobody mentions it.

Such matters are often the topic of conversation around the family table. The most-discussed practice is that of physicians who receive "envelopes" from every patient, with as much "gratitude money" as the latter can afford. This is a universal thing, the like of which I once

encountered in Morocco where the sick had to buy pillows and sheets from hospital nurses. In Hungary it is now about the same, and droll stories circulate about doctors whose "envelope" after treatment contained—nothing.

No wonder that public morality is loose and cynicism rampant. The Party has so blatantly (and for so long) lied to the citizens, while suppressing the traditional sources of morality—the churches and respected institutions—that nothing is sacred anymore except, perhaps surprisingly, the nation itself whose image people respect as the sole obstacle to sovietization and absorption in "socialist internationalism." Consequently, in indirect ways, many artists, intellectuals, historians and scholars devote their talents to the exploration of the nation's past, its language, its old monuments and memories, so as to counteract official policy which underplays the idea of the nation.

Thus a large part of the current literature and study helps to perform a nation-preserving function (spilling over into many areas) that normally would be performed by the government, the Academy of Sciences, the universities and the press. Which means that, contrary to what is taking place in Western countries, the intellectual class (aside from servile opportunists) does not subvert tradition and values: it protects them from both Party propaganda and modernist erosion.

Those who are thus helped are vast segments of the population who, for various reasons, have kept intact the old values of the bourgeoisie. These values have undergone even some purification, after exposure to many and contrary winds of doctrine. They have proved to be tenacious, able to resist the brutalities of Communist rule, able even to reconvert some of the Communists to the national cause. As a consequence, the visitor after many decades does not find himself an alien: the old framework of life still surrounds him, although very often in an impoverished form, the shadow of the earlier substance. The sidewalk cafés and restaurants, the leisure parks, the beautiful buildings and statues, the once-elegant public theater, the strollers on the Corso along the Danube, and the habitués of beer gardens are still there. But all is shopworn, shabby, patched-over. Waiters are impatient and rude, the public squares badly neglected, the summer theater often offensively vulgar, the beer gardens—under State management—without their old lustre and gaity. Appearances are desperately insisted upon, but they

turn real only at the spots where tourists and well-spending foreigners congregate. The Danube is still majestic and wide, and its two shores, Buda and Pest, offer skyline views comparable to those of Rio de Janiero, San Francisco, Capetown, even Paris. Yet, almost everywhere else outside the city's center, one sees the drab stamp of the "proletarian revolution." But if the nation could look forward to a stable and promising future, it would regain its decency, self-confidence, and moral uplift.

These qualities exist in a latent form, primarily in the many children safely embedded in families, large and small. Families and children are perhaps today more symbolic of the nation's will to live than are the new freedoms granted, or tolerated, by the regime. I visited families in populous housing projects, old elegant neighborhoods, villages, garden cities, and weekend homes. They were, in all cases, a joy to the eyes and heart. The hardships endured have taught each member to remain tenaciously loyal, ready for patience and sacrifice. New homes, or just a few new pieces of furniture, can cause a joy that we, in the superprosperous West, have unlearned with the accumulation of cars in the garage and TV sets in every room. In contrast to public lies and pompous language, private life has acquired a deeper content, produced a greater maturity on the part of the young, and a greater gratitude on the part of the parents who look around themselves and can state proudly: We have survived, and are not too badly off! The family has rediscovered itself as the "building cell of society," not just a slogan in Hungary where things must be reconstructed and protected at almost every level, after two horrible decades, from 1948 to about 1970. The family pride spills over into enthusiasm for town and country-side, archeological finds (further excavations of Roman ruins), for rehabilitated public squares and entire sections of old cities. Even the Hilton hotel, built in a style that beautifully blends with the old skyline of Buda, heralds the new hope for the lasting nobility of landscape.

I had many conversations with teenagers. The first thing to notice (after the increasing "class war" between generations in our societies) is the warmth that the parents' much-suffered generation has managed to pass on to its young. Let me repeat that the outside world's harshness and falsehoods have made family love more needed, more solid. The old forms have been largely preserved: talk around the dinner table,

children's confidence in parents, the shared joys and anxieties. Talking with these young people is often a delight; one is not at all aware of the tensions experienced in the West where the possession of money and of a junior-consumer status gives the young if not arrogance, at least a provocative air of independence *vis-a-vis* parents and adults. In Hungary, the family turns inward, ready for mutual protection. This does not mean the absence of ambitions; however, the tight financial circumstances and the constant tension between individual choice and Party policy call for a more mature planning within the limits of the possible. Thus there are fewer disappointments, more input of energy, and, for the single-minded and purposeful, a tremendous strengthening of character. With all that, the curiosity of the young is very much alive (I thought, sadly, of my disaffected, indifferent students). They fully appreciate every little advance toward knowledge of themselves and of the world: foreign travel, the praise by professors, books read, presents from parents whom the child knows must hold down two, even three jobs to make ends meet.

I do not think I am painting too idyllic a picture, in this attempt merely to familiarize the reader with a society existing simultaneously on several different levels among which its members must constantly make choices. Under the circumstances, playing the frivolous, the indifferent, the uninvolved witness (and there are many of these too—drifters, Rock fans, punks) is a futile, self-defeating game. The overarching concern, invisibly present in all my conversations and social transactions, was whether the actual state of affairs, quite bearable for most, would last. Every personal project, course of studies, or choice of a career has a shadow accompanying it: Will I be given time to complete it, will Party policy not strike it down, will the temporary prove lasting?

This feeling is not shared by everyone in equal measure. I spoke with old peasants and middle-aged workshop foremen, with sons of pre-war rich landowners, and children of poor peasant families who rose to the position of university rector and other high offices. A wide-enough cross-section of the new society, the wider as two or three at least were members of the Party.

Some of these people were contented men and women, having risen from poverty and struggling families to old-age rest, adequate living

conditions, or social prominence. These men are not at heart Marxists, they are opportunists in a positive sense, who enjoy the comparison between their earlier and present circumstances. They, Party members included, spoke of the Russians with an unconcealed condescension if not worse, and of the "Marxist system" as all too often incompetent, even absurd. Yet, and this is crucial when we scrutinize the future of East/West relations, these men are committed to the status quo; they would resist any radical change away from "socialism," whatever the term means. They owe to the new circumstances their own comfortable insertion into society; in a concrete sense they are the *new class.* Many of them take full advantage of their status, but—and here is the stumbling block for the Communist regime—they are patriots for whom the country is not to be bargained away in Moscow.

Others are plainly marked by nostalgia for the past; they are bitter if not vindictive. Many good things were taken away from them after the war, not for the enhancement of the common good (this they would accept) but for the purpose of the bloody enemy and his henchmen. They will never forgive either the Communist regime nor the foreign occupiers and their humiliating exactions. However, like the members of the "new class," these thwarted inheritors of a better way of life have remained attached to the country. They would not—and did not—leave it, even in 1956 when it was easy and tempting.

The question is almost childishly simple: When will the old and new classes fuse and combine forces—not against the regime (who knows at what stage of its evolution the regime will be when the fusion takes place?), but for a reconciled society. To friends in Hungary I said (and here now repeat it) that in most respects Balzac had faithfully described *their* society in a series of novels about post-1789 France. The rise of the new and greedy classes with their rude and brutal manners, the nostalgia for the "sweet life" enjoyed before the Revolution by noble and high bourgeois, the slow and grudging fusion of the two—through marriage, business partnership, talent, rise to high office—into one middle class that governed the country for another hundred and fifty years, until the Second World War. The difference is, of course, that in France there were reasonable and *national* governments; in Hungary today Moscow's interests prevail, and the local regime bends under the servitude.

Meanwhile, Hungary has become what may be called a "convalescent" society, still shuddering from memories of the dark decades, still opening up cautiously. The majority complains *and* at the same time finds comfort in some undeniable accomplishment. An old lady, wife of a high railway official under the old regime, brutally pensioned-off in mid-career and left poor with five children, was perhaps the best representative of the majority feeling. The old couple have kept their home, on the outskirts of Budapest; a spacious house with a flower-and-vegetable garden. No question that the regime regarded them as typical reactionaries and extended no help. The old lady was until recently a teacher, devoted enough to be protected by her (Communist) superiors. Even in her retirement, she goes back and gives advice. Unlike her husband, who is still bitter, she is happy: her five children have made good in spite of their "faulty" class-origin: doctor, art restorer, athlete, housewife. And seven or eight grandchildren. On the way to visiting them, the old lady kept pointing from the car to new housing projects, sports-grounds, roads, and bridges as proofs of national recovery. She was enthusiastic, not distinguishing between successive regimes, provided they have added to the nation's substance.

Within the families visited, one senses bourgeois normalcy—the only thing to call it. This or that would still be needed, they say, and since in two cases they are intellectuals, the need is mostly contact with the West. Not so much the urge to travel (the government grants some foreign currency for that purpose every three years, arguing that for the rest it must buy expensive foreign machinery and equipment), as the mere knowledge that West Europe is *there*, at the threshold, and that Hungarians can still count themselves a part of it. The United States is too far away; it is a legend (both positive and negative), not a reality. The Soviet Union, inasmuch as anybody cares to mention it, is regarded as a nightmare, period. Austria, Italy, Switzerland, France—the places the old bourgeoisie used to visit—have remained the preferences of the new class also.

And Russia? Its official existence looms enormous in Party publications and speeches, and in newspapers. When Gorbachev engages in oratory or the "fraternal Party" meets in Moscow, the Hungarian newspapers simply print no reports from elsewhere in the world, for all their pages are taken up by the great event.

Moscow is also the super-presence economically: it supplies some essential things like gas, but takes whatever it wants, at preferential prices. There are many translations of Soviet books in bookstores and of Soviet plays in theaters. Hardly anybody reads or attends. Russia does not exist for Hungarians except as a huge nuisance—and, alas, as keeper of the keys of the future. In my opinion, the aloofness is possible only because, unlike the other satellites' language, Hungarian is not Slavic, is not even part of the Indo-European language family.

The nuisance, however, remains. An illustration: a resort hotel, "somewhere in Hungary." It is still breakfast time. A group of Soviet tourists arrives. Its leader (and Party controller of his flock's orthodoxy) enters the dining hall just as a slight breeze turns over one small decorative flag on the central table. As luck would have it, this was the Soviet flag, which had been standing between the flags of West Germany and America. The tourist guide calls the manager, and raises his voice: "Who liberated you? The Germans? the Americans? It was the glorious Soviet Army!"

The manager mumbles a few embarrassed words. After all, what can he do if the wind blows from the West?

APPENDIX A

[The following is the text of the homily by Bishop Edward M. Egan delivered October 6, 1985, in the Cathedral of St. Matthew in Washington, D.C., on the occasion of the "Red Mass," a traditional service for lawyers. Among those present was Chief Justice Warren Burger of the United States Supreme Court. Bishop Egan is currently an auxiliary bishop of the New York Archdiocese.]

"What is written in the Law?"

The Most Reverend Edward M. Egan

Your Excellency, Reverend Clergy, dear Sisters and Brothers, Honorable Judges, esteemed members of the John Carroll Society, and friends all.

It is no secret that lawyers have not fared well in the New Testament. The gentleman about whom we just read in the Gospel according to Luke (10:25) is a case in point. He is plainly said to have approached the Lord with ill-intent, hoping for an answer to his question which he might have twisted or perhaps even ridiculed. The Lord, however, seized upon a perennial lawyer's ploy, countering with a question of His own; and when He received the obvious response, He simply approved it and changed the subject.

No, lawyers have not fared well in the New Testament. Likewise, in the calendar of the Saints they do not figure prominently. There is Saint Thomas More, of course, but apart from him, well, it is no small consolation to those of us whose life has been the law that not all who are saved are certified as such here below.

Whatever of this, the legal profession does a good deal better in the Old Testament. If Moses, for example, was not a legislator properly so-called, he was clearly *the* Legislator's first clerk with Aaron as his advocate; and Gideon, Samson, Samuel, and Deborah, you may recall, all rejoiced in the title, "Judge."

Of none of these giants, however, do I wish to speak this morning. I would rather call to your prayerful attention an ordinary, every-day, Old Testament barrister who is one of my heroes and who, I dare to hope, might be one of yours as well.

His name is Ezra, son of Seraiah; and he lived half a millenium before Christ in Persia, where he practiced law among the Jewish exiles whom Nebuchadnezzar had taken into captivity a century or so earlier.

Ezra seems to have been a rather prosperous and contented fellow, at least until King Artaxerxes decided to enforce a decree of his grandfather, Cyrus, whereby some of his Jewish captives might return to Judah whence they

came, there to rebuild Jerusalem and especially the temple of the Lord. For though the civil-law arrangements which the King and his father and grandfather before him had stipulated for the return were quite acceptable (they concerned rules of contract, tax exemptions, criminal tribunals, and the like), Ezra feared that the Chosen People might misunderstand them or, more importantly, not put them into proper perspective. Accordingly, after the successful completion of a most satisfying piece of litigation in Babylon regarding labor contracts for the laying of the foundation of the temple in Jerusalem, Ezra set off for the Holy Land to take matters into hand.

What he found there was—as in most human situations—both good and bad. The reconstruction of the city walls and the temple foundation were well under way; but the people, having become quite docile as regards the ordinances of the Persian King, were allowing these ordinances to drag them into pagan and scandalous attitudes towards the law of God.

Now what does an experienced and resourceful lawyer do in such a situation? There may be a number of options. Still, I must confess that I am very much taken by Ezra's choice. For, as we learned from the First Reading of our Mass this morning (Nehemiah 8:1-11), he assembled the multitudes in the square before the half-built temple, delivered a harangue against their misdeeds, and then had constructed in the square a wooden tower on the top of which he stood day by day reading the Law of God as the people went about their work. Indeed, because not all of the returned exiles understood the language of their forefathers, Ezra established a network of simultaneous translators strategically located here and there about the city to repeat his words loudly, clearly, incessantly.

Some may suggest that Ezra on his tower was no longer merely a lawyer. He was rather a priest or a prophet or at very least a self-appointed preacher. I would insist that he was a lawyer who understood the meaning of the law, a lawyer who deserves to be emulated by all who come after him and truly revere the profession.

My reasoning is as follows.

Civil laws, whether they be the statutes of a Persian King or even the legislation of the Congress of the United States of America, are never perfect, inasmuch as they are human in their origins. Hence, they need constant reexamination in order to make sure they are fair and in order to move them ever closer to that ideal of justice which is never fully achieved in this vale of tears but towards which all human law must continually strive.

Nor do human laws have within themselves a criterion for judging their fairness and justice. For this we must look outside positive human legislation,

outside the particular determinations of even the best-intentioned and cleverest of lawmakers.

In the estimate of some, the criterion is public acceptance. In the estimate of others, it is utility. In the estimate of Ezra, it is the law of God. And Ezra is right.

The public by and large accepted Adolph Hitler's proclamations concerning the extermination of the Jews and others whom he termed "undesirable." Joseph Stalin's edicts about the massacres in Georgia and the Ukraine were, at least in terms of economics and political stability, quite useful. The only serious measure of the iniquity of either of these pieces of positive lawmaking was that they could not be squared with the will of the Almighty. What was needed in Hitler's Germany in the thirties and in Stalin's Russia in the forties or—if you prefer—what is needed in Kabul and Capetown today, is a lawyer on a tower proclaiming God's law at the top of his voice and forcing the populace to acknowledge the iniquity of the legislation of their rulers.

I can almost hear the classic objection rising from the pews. Who is to say what is God's law? Is not God's law regularly wrapped in denominational packaging? If I admit your definition of it, will I not be offending the rights and insights of others who would wish to build a tower of their own and, Ezra-like, tell us what the Almighty thinks of our statutes?

Quite a dilemma. But only if you believe that God's law is made known exclusively through positive revelation, on Mount Sinai, for instance, or on the Mount of the Beatitudes.

I, of course, acknowledge that it is indeed made known in both these places. I would protest, however, that it is also made known in my heart or better: in my mind and my mind's capacity to analyze what I see around me. In short, I believe that at least in those fundamental aspects of it which are necessary to judge the fairness and justice of the most significant of man's laws, I can know the will, that is, the law, of God.

Oh yes, I concede that the enterprise can at times be difficult, faltering, or even touched with error. All the same, I insist with Aristotle and Aquinas, not to mention the author of the Book of Wisdom and Paul of Tarsus, that the Divinity has carved into our hearts the essentials of His will for us and that we cannot long be ignorant of them unless we choose to be.

On September 17, 1787, thirty-nine good men affixed their signatures to one of the most distinguished pieces of legislation in the history of Western civilization, the Constitution of the United States of America. In Article I, Section 2, however, a grievous injustice was approved. Black men and women *in* bondage were for purposes of representation in Congress to be considered

but three-fifths of a person. On July 24, 1868, this outrage was corrected in the Fourteenth Amendment to the self-same Constitution. Eighty-one years it took—plus a war—to wrench this man-made legislation into something that could be squared with God-made reality. No person is ever a fraction of a person. All persons are sons and daughters of the Almighty, fashioned in His image and likeness and endowed with inalienable rights. Persons do not admit of divisions or reductions by other persons no matter how lofty the titles as legislators or even judges these other persons may enjoy. And we all know this, if not from the Bible or the tenets of a particular religious group, at least in the pit of our stomach, because the Eternal Lawmaker wanted us to know it and made sure that it be available to be known if only we allow ourselves to think.

In September of 1787, in front of the Pennsylvania Statehouse, there should have been a wooden tower built, on the top of which stood an Ezra proclaiming the law of God for all to hear. Undoubtedly, if he happened to be a Congregationalist or an Anabaptist or even a Roman Catholic, the sophisticated columnists of the sophisticated journals of the day would have declared his efforts denominational and therefore unworthy of consideration. "He belongs to the Free-Church Movement," one might have written. "He is trying to force his particular religious views on us. Take down the tower. Stop that silly, narrow-minded enemy of pluralism from disturbing the quiet of this pleasant Monday morning in Philadelphia."

But Ezra, I suspect, would have stayed on his tower, repeating his message even though some might have termed what he had to say sectarian. Solid practicing lawyers—or at least the best of them—are, you see, that way. They stand on their tower and protest when man's law is in conflict with God's, and they are quite unperturbed when the merely sophisticated attempt to silence them with nonsense.

Nor will the Ezras of this world ever be free to climb down from their towers. It is part of the human condition that men and women in ruling their fellow men and women regularly fall short of the divine ideal, the divine norm, the law of God which we can know if we can think and if we dare to do so.

We have in this land of ours today a law that authorizes "terminating the life" (a euphemism for "killing") of a being living within its mother's womb, a being which has never been proved to be other than a person, fashioned in the image and likeness of God and endowed with an inalienable right at least to life. And even now we suspect there lies in wait for us yet another man-made ordinance which will authorize the killing—we do not yet know the

euphemism—of persons who have grown old, unacceptable, useless, "undesirable." Perhaps the formula will be a law which sanctions the "canceling of the life of a mere fraction of a person."

Under the Providence of God, however, there are and always will be Ezras on their towers challenging all of this simply by reciting the law of God. Undoubtedly, they will be accused of illiberal attitudes, dedication to "single-issues," or perhaps even of an unsecular or unecumenical bent. The best of them, nonetheless, will hardly take note of the criticism. For part of being a good lawyer is not wasting time on irrelevancies.

Accordingly, when someone approaches to "trip them up" and ask why they are disturbing the peace of the community, they will reply with the simple words of a Teacher to a lawyer: "What is written in the Law? How do you read?" And if their interrogator pretends not to know where the law is, they will cite article and section with a gesture of the hand, first to the head and then to the heart. "It is written here," they will affirm. "You need only have the strength of soul to read it or to listen to me as I read it here atop my tower."

God love you.

APPENDIX B

[The following syndicated column was issued last November 12 and is reprinted here with permission. Mr. Sobran is a well-known commentator on social and political issues. (©1985, Universal Press Syndicate.)]

Forgotten Checks and Balances

Joseph Sobran

When I was a literature student in college, it was always stressed that the first thing you had to know about a text was what the words meant in their own time. Nobody cared what sublime emotions or fantasies the poet's words stirred in your own breast. The job of a scholar was to discover meaning, not invent it or impose it.

I also took a minor in history, where I learned something similar. As Herbert Butterfield wrote in *The Whig Interpretation of History*, the historian's job is to understand the past as it understood itself, rather than to divide the characters into good guys and bad guys depending on how well they suit contemporary taste.

But with the Constitution of the United States, it's apparently just the opposite. Liberal judges and scholars keep telling us to disregard what the Constitution meant to those who wrote and ratified it. Instead we are to interpret it "creatively"—or rather, to indulge the Supreme Court when it does so.

Liberal scholars want to apply to the Constitution a method of understanding they would flunk any undergraduate for applying to Chaucer or Milton.

If you buy a pocket edition of John Donne's poetry, you will find it full of footnotes that instruct you in what some of the words meant in Donne's time. The editor will definitely not tell you that it's up to you to apply Donne's words as you see fit to contemporary situations, and never mind what those words meant to the poet and his audience. Any scholar who said anything so fatuous would give his professional reputation a severe wound.

Given that James Madison used the English language less idiosyncratically than Donne, it should be at least as feasible to discover his original intention as Donne's. Yet the liberal community is counseling us to despair of understanding what the Constitution originally meant.

The worst abuses of constitutional interpretation have revolved not around the original document or the Bill of Rights as such, but the application of the Bill of Rights to the states on the theory that the 14th Amendment, ratified (by dubious means) after the Civil War, somehow "incorporates" the Bill of Rights into state laws. The Supreme Court has never pushed this idea as far as

it might, but it has done enough, in piecemeal fashion, to create confusion in the constitutional order.

Professor Raoul Berger of Harvard has made a pair of unanswerably simple points about the 14th Amendment. One is that it explicitly authorizes Congress, not the courts, to enforce its provisions against the states. The other is that its meaning is patently narrow rather than sweeping. For if it had given the federal government power to carry the idea of "the equal protection of the laws" as far as the modern Supreme Court has carried it, there would have been no need to pass the 15th Amendment, giving blacks the vote, at the same time.

The most obvious principles of the Constitution are limited government, the separation of powers, and checks and balances. All three have been casualties of the liberal era.

The liberal appetite is for big, centralized government. This is why liberalism rejects the clear intention of the framers of the Constitution, namely, that each branch of government should have some restraining power over the others.

It can't be pointed out too often (though I seem to be the only one doing it) that the liberal judiciary's most "historic" (i.e., leftist) decisions have been made at the expense of state and local government. Seldom does the Supreme Court strike down major federal legislation. In the areas of abortion, reapportionment, police procedures, race, and pornography, it was the prerogatives of state and local government that were the victims.

These levels of government, unlike Congress, have no means of self-defense against the usurpations of the Supreme Court. They can't impeach, cut funding, or limit the court's appellate jurisdiction. The court may act against them with virtually no restraint.

In a word, the court has increasingly chosen to act in a way that defeats the very idea of checks and balances. If it errs, there is no practicable way of correcting it. If it overreaches, its victims have no ready avenue of redress.

What it all means is that the federal judiciary has struck blow after blow against representative self-government below the federal level.

This is not some controversial minor point of interpretation. It amounts to a severe distortion of the basic form of our government, in which each branch is supposed to be answerable to the others.

APPENDIX C

[*The following Op-Ed article appeared in the Washington* Post *October 28, 1985, and is reprinted here with permission (©1985 by the Washington* Post*). Mr. Berger is a well-known legal historian, and the author of* Government by Judiciary.]

Justice Brennan Is Wrong

Raoul Berger

For the first time a justice of the Supreme Court, Justice William Brennan, has openly laid claim to judicial power to revise the Constitution. He conjures up a duty, scornfully dismissed by Justice Black, of "keeping it in tune with the times." Those who differ with him "feign self-effacing deference to specific judgments of those who forged our original social compact." It is "arrogance clothed as humility," he said "to pretend that . . . we can gauge accurately the intent of the Framers." And he suggests that this "facile historicism" has a "political underpinning," expressing "antipathy" to minority rights.

Respect for the "original intention" of the Founders is not the bastard doctrine disparaged by Justice Brennan. Instead, as Prof. Thomas Grey, himself an activist, observed, it "is deeply rooted in our history and in our shared principles of political legitimacy. It has equally deep roots in our constitutional law." Professor Jacobus ten-Broek noted that the Supreme Court "has insisted, with almost uninterrupted regularity, that the end and object of constitutional construction is the discovery of the intention of those persons who formulated the instrument." Recently the court stated, "Clearly the men who wrote the First Amendment religion clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment."

"What makes a thing true," Sidney Hook wrote, "is not who says it but the evidence for it." Let me therefore briefly adduce some evidence that refutes Brennan's assertion that we cannot gauge accurately the intent of the Framers on application to specific contemporary questions. One example must suffice: the reapportionment decisions that were rested on the 14th Amendment, notwithstanding that, in the words of Justice Harlan, the exclusion of suffrage from the amendment is "irrefutable and still unanswered," as academicians increasingly agree. To mention only two items of evidence: section 2 of the amendment prescribes that a state's representation in the House of Representatives should be reduced in proportion to the exclusion of male inhabitants from voting. Discriminate if you will, was the message, but it will cost you. That limited sanction bars an inference that discrimination was prohibited altogether. Shortly thereafter the 15th Amendment, its framers explained, was

adopted to fill the gap left by the 14th. Brennan's joinder in the reapportionment decisions plainly proceeded in the teeth of the framers' unmistakable intention to exclude suffrage from federal control.

To escape such facts, he takes another tack, asserting that to "restrict claims of right to the values of 1789 *specifically articulated* in the Constitution" is to "turn a blind eye to social progress and eschew adaptation of overarching principle to changes of social circumstances." What is the "overarching principle" that empowers him to reverse the Framers' unmistakable determination to leave suffrage to the states? Of course there must be power to change the Constitution in light of changing circumstances. But that power was vested exclusively in the people by the machinery of amendment. Chief Justice Marshall wrote that the courts have "no power to change the instrument."

Brennan invokes the power of interpreting: "Judicial power resides in the power to give meaning to the Constitution." At the adoption of the Constitution "interpret" was defined and still is as to explain, decipher, and—as a law dictionary has it—"to ascertain the meaning of those who used the word," emphatically not to depart from the meaning of those who used it. From Francis Bacon on, the office of a judge was "to interpret the law, not to make it"; and so the court often has held. Whatever "interpret" may mean, one thing it clearly did not mean—"making law," precisely what Brennan defends.

For him the "ultimate question must be, what do the words mean in our time?" But Justice Holmes considered that "the purpose of written instruments is to express some intention . . . of those who write them, and it is desirable to make that purpose effectual." Brennan is welcome to use words that *he* employs as he will, but he may not saddle his meaning on the Founders. If "the sense in which the Constitution was accepted and ratified by the Nation," said Madison, "be not the guide in expounding it, there can be no security . . . for a faithful exercise of its power." In his Farewell Address, Washington cautioned, "let there be no change by usurpation" (in place of amendment), for "it is the customary weapon by which free governments are destroyed."

Brennan assails what he terms "unchecked enshrinement of majority will." In "The Federalist," Hamilton said: "To give a minority a negative upon the majority . . . is, in its tendency, to subject the sense of the greater number to that of the lesser." Undeniably a purpose of the Constitution was to "declare certain values . . . beyond the reach of temporary political majorities." But Brennan would go beyond the minority rights "specifically articulated in the Constitution"; he does not feel bound by the "precise, at times anachronistic, contours" of the Constitution. Sailing under that flag, the modern court has

fashioned additional, so-called human rights that even activists admit have no roots in the text or history of the Constitution. They are judicial constructs out of thin air. Anti-activists, therefore, do not express "antipathy to claims of the minority to rights against the majority," as Brennan charges, but only against the newly created rights the court has fashioned without constitutional authorization. Arrogation of power, even for benign purposes, violates the Constitution. A judge, Cardozo observed, "is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or goodness."

Finally, it is to be borne in mind that on many important issues Brennan is a dissenter, stubbornly continuing to insist, for example, that death penalties must be abolished. I would commend to him the words of his esteemed colleague, Justice Harlan:

"When the court disregards the express intent and understanding of the Framers, it has invaded the realm of the political process to which the amending power was committed, and it has violated the constitutional structure which it is its highest duty to protect."

Such views are not to be ridiculed as "arrogance cloaked in humility."

APPENDIX D

[*The following column appeared in the San Jose, California* Mercury *November 2, 1985, and is reprinted here with permission (©1985 by the San Jose* Mercury*). Judith Neuman is the newspaper's Religion and Ethics Editor.*]

Forget women's rights, simple truth is that abortion is murder

Judith Neuman

I hate abortion.

It has taken me 13 years of equivocating to be able to say that in public, but there it is. Finally.

I think abortion is murder. I think fetuses are people in progress, and I think they have a right to be born.

If you don't agree, well, tough.

I've heard all your arguments about women's rights and women's bodies, and I'm just not buying them anymore.

We're talking about killing babies here, and if you can't see that, then I'm sorry for you.

I can't make it any plainer.

But if you'll indulge me for a moment, I'd like to explain how difficult it has been for me to say that out loud, and why I finally decided I should.

I have been a closet anti-abortionist for years, going back to the beginning of the massive public debate on the subject. My first memories of all that are from Michigan, where I lived for 12 years, and where all three of my children were born.

In 1972, shortly before the United States Supreme Court handed down its *Roe* v. *Wade* decision that said a woman had the right to an abortion on demand, Michigan held a state referendum on the subject.

As you can imagine, it was the prime topic on everyone's lips for months.

It seemed that everyone I knew—and almost everyone whose opinions I respected—was in favor of legalizing abortion.

They talked endlessly about women's rights to control their bodies and their destinies. They talked about back-alley abortionists and how many women died each year because of botched illegal abortions.

Knitting needles, they hissed. Coat hangers.

And child abuse and unwanted children.

I felt intimidated.

I felt as if my own mind, which kept whispering that these were babies, not globs of cells to flush down the drain, was just overly emotional and sentimental.

I knew I was prone to that because, at the time, I had in my arms my own miracle baby that I had yearned for and prayed for during seven long years of barren marriage.

I found out I was pregnant with the baby that turned out to be my daughter, Beth, right after being assigned to a social worker at a Detroit adoption agency. The doctors had said we'd never have a baby of our own. It had taken two years for my and my husband's name to work to the top of the agency's waiting list. From that point, it would have taken us at least another year to be given a child. We wanted a baby. We'd been willing to wait.

Instead, here was Beth, our own beautiful, perfect child whom we loved with all our hearts.

I would gaze at her face and think, "How could anyone want to kill a baby?"

Then I would go and listen to my friends while they made all their intellectual arguments about women's rights.

I was a career woman. I'd had my own battles with women's rights, including being turned down for one job because the newspaper where I wanted to work had a spouse clause, and my husband already worked there. I'd been told flat out by General Motors' public relations department that they'd never hired a woman and weren't about to start with me.

I understood women's rights.

I tried to understand abortion, too. I went to several debates and public discussions about it.

One of them was at my church. People stood up and talked on both sides of the issue, and the minister moderated. When it was over, he thanked everyone for coming.

He didn't take sides.

On the way out the door, I asked him, "Well, what do *you* think?"

And he said that my church had decided that abortion was an issue that should be left up to individual consciences.

I admitted, then, that I didn't like it.

And he smiled indulgently, and said, "Well, you're a new mother . . ." Which, of course, only reinforced my own opinion: that my feelings against abortion were probably due to some lingering overload of female hormones, or sentimentalization of cuddly little babies in perambulators.

When the referendum came, I voted against legalizing abortion. But I didn't

tell any of my friends. I let them assume I was with them.

Later, I went on to be an editorial writer at a large Detroit newspaper, one that had come out in favor of abortion.

Again, I found myself surrounded by achingly intelligent people who thought abortion was just hunky-dory. Or at least, the decent alternative.

We wrote about it a lot. I hedged my bets. Only once did I ever actually have to write an editorial in favor of abortion. It was the paper's position, and I stated it.

I also wrote a column that tried to deal with my feelings on the matter. Basically it said, "I feel confused."

That wasn't completely honest. I didn't feel all that confused. I just couldn't admit to 600,000 readers and, more importantly, to my friends and co-workers that I had aligned myself—at least in my own mind—with people they laughed off. I didn't want to take on the coloration they gave to people opposed to abortion: narrow-minded, rabid, silly, old-fashioned. Non-intellectual.

Last year, the editorial board of this newspaper invited me to sit in on a published debate on abortion, as the members struggled through whether they were for it or against it.

Everyone but I, to one degree or another, was for it.

I waffled around, but came closer to saying that it all seemed to come down to dead babies than I had before.

Last spring, I saw the movie "Silent Scream," which created a flutter when it purported to show a fetus expressing pain during the abortion process.

Critics, correctly in my view, claimed that the whole image was too fuzzy to see what was going on. Some claimed it was just emotional hype. I didn't think it hype at all. The emotion, which was there, didn't come from the narration by Dr. Bernard M. Nathanson, who used to run the country's largest abortion clinic, but from the idea of being a spectator at an abortion itself.

The film, for me, solidified things. Not because of the imagery, but because it brought me new information. Until I saw that film, I didn't really understand that the standard abortion technique of dilation and evacuation (D and E) meant cutting up the fetus into little pieces and sucking the pieces out of the womb.

They cut off the arms, they cut off the legs, they cut off the head.

That's butchery.

Not of a bunch of cells, but of a human being.

A recent article I read—that had nothing to do with abortion—indicated that people who stood by and watched the Jews hauled away during the Holocaust felt powerless to do anything, or intimidated by the state. They just

plain went along with what was going on because it was easier than anything else.

When this country finally wakes up and realizes that abortion is America's Holocaust, I don't want to have been one of those who just went along with the crowd.

Maybe—echoes of German voices—I can't do much. But I can publicly state my opposition.

It's a start.

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