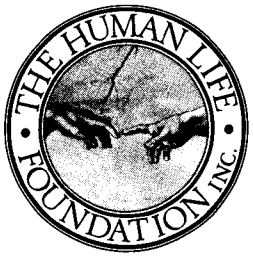
the HUMAN LIFE REVIEW



SUMMER 1994

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ABOUT THIS ISSUE . . .

. . . This Summer issue's mix of articles is quite eclectic—subjects ranging from "Doctor Death" Kevorkian and his day in court to the "making" of *Roe v. Wade*, from the grotesquely "modern" thinking of the Marquis de Sade to China's brutal de-population policies. All, however, are connected by the common thread of abortion: as Messrs. William Murchison and Robert Destro point out, the legalization of abortion has paved the way for the current demand for euthanasia and "assisted suicide," and abortion, which was once part of the perverse thinking of de Sade, has become a norm for feminists and population "specialists."

We note that Contributing Editor William Murchison's forthcoming book, *Reclaiming Morality in America*, will be available in October from Thomas Nelson Publishers.

We are pleased to bring you John Wauck's article on Governor Robert Casey of Pennsylvania, and thank the Governor's office for sending us the powerful commencement address given by Governor Casey at the Franciscan University of Steubenville.

Penelope Leach's recent book, *Children First*, which is discussed in Mary Kenny's article, is published by Michael Joseph (of the Penguin Group), 27 Wrights Lane, London W 8 5TZ.

Re our Spring issue, Mr. Hugh Kenner, the well-known critic, writes us that Dr. Margaret White's reference (in her "Brave New World—Or Is It?") to "the silent dog in the Sherlock Holmes story *The Hound of the Baskervilles*" was in error; the correct Holmes story was called *Silver Blaze*. And Miss Miranda Mannia (a recent subscriber) points out that whereas we said (see the Introduction) that Aldous Huxley "never even *mentioned* abortion" in his *Brave New World*, in fact he *did* do so briefly (on pps. 120-121). Our editor says the mistake was his: he simply assumed it wasn't there, because Faith Abbott ("What Would Surprise Aldous Huxley?") hadn't mentioned it. He adds his *mea culpa* for the "silent dog" error which, he says, he should have caught, having read the complete Sherlock Holmes himself, albeit not lately.

As usual, the *Spectator*'s cartoons have given us a break from our dead-serious material—may you and yours have a safe and happy summer!

MARIA MCFADDEN
MANAGING EDITOR

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Vol. XX, No. 3

INTRODUCTION

ONCE UPON A TIME, there were those who pooh-poohed the notion that *Roe v. Wade* provided the proverbial Slippery Slope down which we would slide from legalized abortion to "lawful" euthanasia. Today, few if any gainsay the point, least of all the federal judge in Washington state who has ruled that the "choice" of assisted suicide differs not at all from choosing abortion. Nor is it surprising that the descent took us just 21 years: consequences come swiftly in post-Christian America.

The question remains: What is the "moral" principle that unites these court rulings? Mr. William Murchison is in no doubt about what it is; he puts it bluntly in our lead article:

> The principle is, the weak give way; the strong prevail. The strong have force and power at their disposal; the weak depend utterly on their good will. Mother is stronger than unborn child. The ill are by definition weak. The world we look on is the world of Thomas Hobbes—a world of blood and unsheathed swords.

But stripping away the sacredness of human life has left us, Murchison says, enmeshed in "ambiguities"—surely life itself cannot be turned into a mere "option, on the order of catsup vs. mustard"? Thus, following *Roe*'s logic, the courts are annointing choice *itself* sacred—choose what you will, it's your "freedom of choice" that matters. The trouble is, not all Americans choose to accept that logic—millions still bitterly oppose legalized abortion and "mercy killing"—leaving our legislatures and courts with the problem of how to handle "them." Not only the many court rulings but also the recent act of Congress—signed by President Clinton *instanter*—prescribing Draconian penalties specifically (indeed, *only*) for anti-abortion protestors illuminates the preferred final solution to the dilemma. Murchison judges that we are entering "the Age of Kevorkian"—Doctor Death personifies the accelerating "trend" of politically-correct opinion—which *should* mean that, for the beleagured "pro-life" movement, its greatest days lie just ahead.

To us, it seems marvelously fitting that, as "the nation turns its eyes" toward death without fuss or muss, *another* man should personify the tenacity for life celebrated in heroic balladry through the ages. In the following story, our

sometime colleague John Wauck recounts the saga of Governor Robert P. Casey, previously renowned for his legendary political struggles in Pennsylvania, but now for his near-miraculous survival against all the odds. Like some counter-reformation saint, "Battlin' Bob" Casey proselytizes by *example*: his simple credo is "Press on"—you don't *have* to quit, fighting is its own reward. It's an amazing story, and we'll leave you to marvel at it without further gloss.

Alas, after such inspiration we return to the "real" world, which celebrates such heroes as Harry Blackmun, the saint of "choice"—the just-retired Justice himself considers *Roe* his greatest achievement, and he does not lack hagiographers. For instance Mr. David Garrow, who has written a massive tome, *Liberty & Sexuality*, about "the making of *Roe v. Wade*" and the "Right to Privacy" it enshrined. We noticed his book because of the lavish full-page media ads for it (in, e.g., the New York *Times Book Review*). Cleverly, we admitted our own legal-affairs incompetence to our old friend Mr. Robert Destro, and asked him to judge the book for us. He has, and *then* some: what you get here is a powerful essay on the kind of supra-legal "activism" that made *Roe* and its devilish progeny possible. And it was all done, as Destro explains with acid-tipped gusto, on behalf of "the Thoughtful Part of the Nation" that the current Supreme Court majority presumes to set above not only the Constitution but also "the people" who cannot be trusted to deal "rationally" with life-and-death issues—their *morals* get in the way.

As it happens, you next get another piece, by Mr. Lynn Wardle, which emphasizes both the central role of our High Court *and* the crucial difference "just one man" can make; we think you will find it a most interesting slice of history which carries an obvious lesson for the present—specifically, if Justice Anthony Kennedy had not been converted to the Court's "thoughtful" majority, *Roe* might well have been overturned rather than *confirmed* by the decision in *Planned Parenthood v. Casey* (yes, the selfsame Casey John Wauck has introduced you to)—we doubt that Justice Kennedy will enjoy Wardle's analogy, but we think you will.

After which, you are in for another kind of analogy that you may find rather disturbing: Mr. John Attarian, a newcomer to our pages, has undertaken the distasteful task of actually reading deeply into the works of the infamous Marquis de Sade and, to make his point, "treats" you to some of the stomach-turning results. But his point is well worth making: the eponym for perversion turns out to have been the philosopher of "choice" as well—and in terminology that survives in the "thought" of many contemporary Feminists. It's another piece of history that remains all *too* relevant—but as we say, you will need a strong stomach, it's un-pretty, raw stuff.

However, nothing is so bad that it's not good for something—the odious pervert should at least make you all the more pleased to have another piece from the delightful Mary Kenny. She also writes about feminist thought, but

from an optimistic viewpoint: it seems that some prominent Feminists—e.g., Britain's own "Dr. Spock," Penelope Leach—are having salutary *second* thoughts about the role of "family values" and the "central importance" of children in the lives of *most* women. Miss Kenny herself is, well, shocked: "All this sounds perilously close to a 'reactionary' or 'back-to-the-kitchen-sink' prescription"—but it's exactly what Dr. Leach is saying nowadays, which *is* cause for optimism. As always, Kenny gives you a "good read" and, here, a welcome restorative after the malevolent Marquis.

Mr. Desmond Rushe next provides another good read, which you may find quite unusual, if only because most of us rarely get to read anything like it. For instance, imagine an American writing about our nation as Rushe does about Ireland:

> Unlike every other member of the European Union [Ireland] never acquired colonial possessions. It did, however, build up an empire which was peculiarly its own—an empire which now has roots fourteen centuries old and which experienced its greatest burgeoning in the present century: an empire erected not by soldiers, adventurers or conquistadores motivated by greed or personal advancement, but by missionaries governed only by the desire to give and serve. If it could be said, with truth, that the sun never set on the British Empire, it could be said with equal truth that the sun never rose without casting its first warming rays on the Irish spiritual empire. But in a European union—and a world—submerged in secularism and neo-paganism, it would be considered not only unfashionable but unthinkable for politicians to talk about spiritual empires.

We certainly can't imagine that kind of thing appearing on any Op-Ed page we know of—"unfashionable" is hardly the word—but then you must remember that many Irish remain backward in these matters: they continue to think the "unthinkable" and actually *say* what they think, as if that were normal, rather than an egregious violation of politically-correct canon law.

Of course his point is that Ireland is now under enormous pressure to "catch up" with the rest of Europe by secularizing itself, e.g., it is the only member of the Community in which "divorce is not legally permitted"—its Constitution actually refers to the "sanctity" of marriage and guarantees its "indissolubility"—a shocking deviation that the present government will put to a referendum vote soon, with "enthusiastic backing" from the Irish media (surely the New York *Times* will second the notion?). As we say, it's all very interesting and unusual stuff for American readers; we trust you will find it refreshing as well.

And just in time: our final article is a powerful indictment of the continuing "family planning" terror in still-Communist China, plus a chapter-and-verse *exposé* of world-wide support for the horrors being perpetrated, not least from the Clinton Administration. And Mr. John Aird knows what he's talking about: he was a population specialist at the U.S. Census Bureau for almost 30 years, and maintains close contact with his many Asian sources. But as he shows, one need go no further than United Nations headquarters to discover just how

badly "human rights" fare in China and other countries where "the poor and the uneducated have no effective recourse" against local and international "authority"—it's all part of the UN "de-population" campaign—the New Imperialism that lusts to "stabilize" world population *via* "birth control" (and *abortion*, needless to add) by the year 2015. Again, what Mr. Aird has to say is *not* what you are likely to find in other American publications, which is reason enough for our being happy to provide it here—that's what we're here *for*?

* * * * *

As usual, we have a lot more. The first half dozen of our ten appendices in this issue are all by newspaper columnists or editors and, we think, they demonstrate that "our issues"—abortion and its progeny—continue to receive serious and spirited commentary in the print media.

It is of course no surprise that William F. Buckley Jr. (*Appendix A*) would write about the same Washington state "assisted suicide" court ruling that William Murchison confronts in our lead article: Buckley has been writing anti-abortion columns since before *Roe* (his *National Review* is also the only "mainstream" political journal to oppose abortion editorially). Much of what he says here complements Murchison, but he emphasizes a point most commentators "overlooked"—Judge Barbara Rothstein over-ruled the citizens of Washington, who voted *against* what the Judge has now allowed in a referendum just three years back—so much for "majority rule"!

In *Appendix B*, John Leo ranges through the whole abortion-euthanasia scene, agreeing with Murchison that the "right to die" controversy is now in the "early stages" position that abortion occupied before *Roe*, and asks an obvious question: "Isn't it time to pause and rethink this?" before we add another "right"—this time, an "obligation on the part of others to kill or help kill" which is what assisted suicide portends. (Leo also gets off a fine line: "Judge Rothstein dismissed the slippery slope argument, even as she hurtled down the slope herself.").

The focus next shifts to the "author" of it all, just-retired Justice Harry Blackmun. In *Appendix C*, David Boldt, editorial-page editor of the Philadelphia *Inquirer*, says he'd intended to just let Justice Blackmun "ride off into the sunset" without comment, but then he read "one too many smarmy panegyrics" from media brethren, and decided he'd give his own considered opinion of Blackmun, and the single "work" for which he will be remembered—*Roe*, which Boldt calls "one of the great disasters in the history of American jurisprudence" (*Amen*). As it happens, Paul Greenberg is also an editorial-page editor—of the Arkansas *Democrat Gazette*, President Clinton's "home town" paper—in *Appendix D*, he too considers *Roe* in historical context, which of course calls to mind *Dred Scott*, to which he thinks *Roe* will be forever linked, just as Justice Blackmun will be linked to Chief Justice Roger Taney.

We admitted no surprise in having Bill Buckley once again in our pages; we *are* surprised to include Mike Royko (*Appendix E*), who is *not* noted for his attention to abortion *et al.* Indeed, that fact is what he writes about—he'd be "foolhardy," he says, to "infuriate countless women"—he'd rather "lead a peaceful life." But what he *does* say tells you a lot about our "impartial" media. Our final newspaperman is the redoubtable Ray Kerrison who, sad to say, is *not* syndicated: only readers of the New York *Post* can read him regularly—a pity, because *nobody* "tells it like it is" better than Kerrison (by the way, he's an old-hand horse-racing reporter too—he called this year's Preakness with crystal-ball precision!). In *Appendix F*, you get his view of how America's "mission" has changed in the 50 years since D-Day.

In *Appendix G*, Professor Phyllis Zagano of Boston University has some strong things to say about RU-486, the hotly-debated "abortion pill"—what surprised us was, she got to say them in *USA Today*, the national "McPaper" that is aggressively *pro*-abortion—we take it as evidence blatant bias *does* bother editors whose survival depends on non-Establishment readers (you know, ordinary *people*). Likewise, we found it interesting to read the column by Valerie Schultz (*Appendix H*) in *Commonweal*, the venerable "lay Catholic" journal which contorts itself into intellectual knots over the conflict between ideological liberalism and a "pro-life" stand—Miss Schultz' own agonizing illustrates what we mean.

In sharp contrast, Miss Dolores Grier has no hesitation in describing her position on abortion, even to the President himself, as you will see in *Appendix I*, in which we reproduce her recent letter to Mr. Clinton just as we received it, for your edification. And we are pleased to conclude this issue with another no-hesitation piece: in *Appendix J* you will find the text of an address by the Honorable Robert P. Casey to the graduating class of a Catholic university; having read John Wauck's encomium, you will *not* be surprised by what the Governor says, or how he says it—"Press on" to it, and enjoy.

But we must close on a sad note: Kitty Muggeridge, widow of Malcolm, and mother of our friend and Contributing Editor John, died on June 11, aged 90. Anyone who knew Malcolm (we were so fortunate, he served as our Editor-at-Large for many years) had to know that his beloved Kitty was one of the most remarkable women imaginable, with a wit to rival her husband's—she once quipped that David Frost had "risen without trace"—and a grace that was peerless. Our consolation is that we can now pray for them together, as they surely are, again.

J. P. McFADDEN
EDITOR

In the Age of Kevorkian:

The War on the Weak

William Murchison

"Americans," writes Ellen Goodman, "are at the same point in the debate over suicide, assisted suicide, and the right to die and euthanasia, that we were in the debate over abortion in the early 1970s. We're at the beginning."

And isn't that the most disgusting thought you've had in a long while! Nonetheless, the Boston *Globe*'s feminist-in-residence keeps her olfactory equipment in working order. She has sniffed the contemporary air and found it hauntingly familiar. There is, among other things, the sickly odor of moral, hence legal, ambiguity.

Sentimentality overwhelms logic; irreconcilable contradictions go unreconciled—and unremarked. Some of the atmospheric disturbances proceed unmistakably from a federal courtroom. As the invaluable Larry (Yogi) Berra is supposed to have remarked, it's *déja vu* all over again.

Judge Barbara Rothstein of the U.S. District Court in Seattle is partly responsible for evoking the sights, sounds, and smells of the *Roe v. Wade* era. Last May 3, Judge Rothstein pronounced Washington State's law against assisted suicide a violation of federal 14th Amendment rights. The law was passed 140 years ago, when there were only 12 amendments. Of course, that was before *Roe*, which in Judge Rothstein's eyes has forever altered the constitutional topography: so much so that only two years ago the high court refused specifically (*Planned Parenthood v. Casey*) to overturn *Roe* and return to the states the right to regulate (or not regulate) abortion.

Like the *Casey* decision, Judge Rothstein wrote, "the decision of a terminally ill person to end his or her life 'involv[es] the most intimate and personal choices a person may make in a lifetime' and constitutes 'a choice central to personal dignity and autonomy.'

"This court concludes that the suffering of a terminally ill person cannot be deemed any less intimate or personal, or any less deserving

William Murchison is a syndicated columnist based at the Dallas *Morning News*; his new book *Reclaiming Morality in America* (Thomas Nelson Publishers) will be published shortly.

of protection from unwarranted governmental interference, than that of a pregnant woman . . ."

Supposedly this is a judicial opinion: it reads more like an Op-Ed essay. Don't ask what's "intimate or personal." The federal court will let you know. Not that the good old 'Seventies odor of self-expression and personal autonomy reached Ellen Goodman's nostrils straight from the West Coast. Michigan, the same month Judge Rothstein ruled, let loose some of the same acrid perfume.

The day before the Washington decision, a Michigan jury acquitted Dr. Jack Kevorkian, the noted "suicide doctor," of violating a 1993 state law whose declared objective was putting him out of the "assisted-suicide" business. Kevorkian had helped one Thomas Hyde to fulfill his wish to be delivered from the agonies of amyotrophic lateral sclerosis (*a.k.a.* Lou Gehrig's Disease). The jury evidently was more impressed with Hyde's videotaped plea for deliverance than with the high-minded concerns of those who voted for the law.

A few days later the Michigan Court of Appeals found that no "right to commit suicide" was embedded in either the state or the U.S. Constitutions. But, never mind, the 1993 law wasn't constitutional, owing to a technicality in its drafting. But never mind that either—Dr. Kevorkian not only could be but had to be prosecuted under the state's homicide law for helping two women kill themselves in 1991—before the "Stop Kevorkian" law was enacted. Kevorkian's lawyer, not wholly without cause, called the ruling "amazingly goofy."

Goofier was still to come. A month later, Michigan's Supreme Court temporarily restored the Kevorkian law to the books. Appeals commence in October. The New York *Times* thus summarized the legal situation in Michigan: "Prosecutors are protesting the Appeals Court's overturning of the assisted-suicide law. Dr. Kevorkian's lawyer is appealing the reinstatement of the murder charges against his client, and the [American Civil Liberties Union] is contending that the Appeals Court had no business ruling that there is no constitutional right to commit suicide." At such times a judge is entitled to ask himself ruefully why he didn't enter a less high-pressured profession, like used car sales.

How are we to make sense of all this? Perhaps by *not* making sense of it. There is little sense to be found. The nation is wrestling visibly with its conscience. The discussion is informed by no overarching principle having to do with life—its value, its worth, its meaning. *Roe v. Wade* has in large measure foreclosed that possibility. Clarity

in this all-important matter is gone; we deal instead with a network of moral ambiguities.

I propose turning aside for a moment to re-examine the moral damage *Roe* has wrought. The sight may prove instructive as we feel ever more keenly the effects of moral depletion. The muddle about life—when to protect it, whether to protect it—commenced with *Roe.* We sometimes forget how much ambiguity infests the decision, how little principle informs it.

Roe v. Wade, the most disastrous decision in American judicial history, dislodged an old principle—the sacredness of unborn life—without putting in place a new one, the un-sacredness of the whole enterprise. Doubtless we should be thankful for this. Bad enough was the sudden withdrawal of legal protections from unborn life. Worse would have been the declaration that the unborn, under all circumstances, were non-persons. As it was, from a great and priceless gift worthy of protection by the state, life had become an option, on the order of catsup vs. mustard. Henceforth the mother was to judge for herself the value or necessity of bringing a baby to term. Whatever judgment she reached didn't matter; what mattered was the freedom to judge.

This ambiguity, in the eyes of the law, has produced no end of confusion. Was unborn life worthy of no protection whatever? The court made no such claim. If they wanted to, the court said, states could prohibit abortion in the third trimester. From the standpoint of those concerned to reverence and preserve life, this, as I say, was good—but from the philosophical standpoint, it resolved nothing. Did the court's latitude mean in states that restricted abortion in the third trimester human life was sacred and that, in states that didn't, life wasn't sacred? This did not figure. A life was a life, surely?

The ambiguities have persisted and intensified. Two are of special interest currently.

The "direct action" tactics of Operation Rescue and other organizations of combative spirit have brought "pro-life" demonstrators into direct conflict with the police, and likewise with public opinion. The rescuers have staged sit-ins at abortion clinics and, under these as well as more conventional circumstances, have besought prospective patients not to go through with their planned abortions. Campaigns, often quite nasty, have been launched against doctors who perform abortions. The direct-action groups picket the doctors' offices and their clubs

and churches, if any. Recently, and notoriously, one doctor who performed abortions was murdered; in a separate incident, another was wounded. All this activity recently gained Congress' attention. A federal statute severely limiting what picketers can do and say at an abortion clinic passed both houses and promptly gained President Clinton's signature. The new law assesses prison sentences of up to three years and fines of up to $250,000 for activities that impinge on a mother's right to abort her "fetus." About the same time, a Houston jury awarded Planned Parenthood $1 million in punitive damages against Operation Rescue for its activities during the 1992 Republican National Convention.

The moral ambiguity angle plays out this way: free-speech concerns such as the civil rights movement asserted 30 years ago take a back seat to the asserted right to "choose." What is qualitatively different about an abortion-clinic blockade and a lunch counter sit-in of the sort that multiplied throughout the South, *circa* 1961? Nothing whatever is different. The activities are identical. It is the government response that differs. The civil-rights demonstrators were righteous and idealistic folk, the clinic blockaders are yahoos. The real difference, it appears, is in the rights asserted: the right to defend life is inferior to the right to eat at an integrated restaurant. On what principle does one assert this? Certainly not on any consistent moral principle. Of course there are other principles, such as that "liberal" social causes always take precedence over "conservative" ones. Naturally you never hear it expressed that way, but that doesn't hinder its operation. In any case, absent the application of moral (as opposed to political) principle, ambiguity and conflict reign.

Additional ambiguities emerge. What about the "products of conception," as unborn babies are sometimes called? Presumably, in the post-*Roe* era, they have no rights? You would suppose not. But, if that is so, then what about this from the New York *Times*? "In the latest ruling on the question of when a fetus should have the legal status of a person, the California Supreme Court decided . . . that an assault on a pregnant woman that kills her fetus can be prosecuted as murder, even if the fetus is not viable."

Wait, that can't be. The mother can do away with her "fetus" if she chooses. But if this man shoots her . . . ? "More than half the states," the *Times* reminds or informs us, "have either legislation or court rulings saying that where an assault on a pregnant woman results in the death of the fetus, the fetus can be considered a person

for the purpose of bringing homicide charges." But only against the assailant—not against an abortionist! Here is moral ambiguity to the *nth* degree.

It is echoed in a recent column by the *Times*' resident feminist, Anna Quindlen: she notes a new study showing that AZT taken during pregnancy "may deter maternal transmission of the AIDS virus . . ." Ms. Quindlen, acordingly, favors "mandatory counseling for pregnant women so that they decide to be tested and to seek treatment for themselves and their children."

"Children?" What goes on? The "fetus," for purpose of disposal, is a mass of plasm? But for AIDS testing he's a "child"? That would seem about it. You ask: Where is the principle here? How do we reconcile the stunning distinction Anna Quindlen seeks to draw between "conception products" who merit legal protection and those who don't? There is an answer all right, but for the moment it needs to be held back.

It is time we returned to Ellen Goodman, remarking in an interested fashion on the comparison between the abortion debate 25 years ago and the euthanasia debate today. Ms. Goodman, as Walker Percy liked to say, is on to something.

What she is onto is the onset of another exercise in moral ambiguity. We have been working our way there for a generation, but the going is rougher. Here is the beginning premise: the value of life is relative. The "pro-choice" lobby has put forth essentially the same premise. Very well. But one notices at once how much easier it is to make such a claim with regard to life that can't be seen. Heard, yes; felt, yes; sensed with every fiber of the woman's being, yes. But not seen. Invisibility can in such cases breed contempt. But consider a person fully born: in most cases a person mature in years and seasoned in experience; a hand that can be grasped physically, lips that can speak. A parent perhaps.

The moral ambiguity of the abortion debate is harder to bring off when the topic is a human being in full view, rather than one described merely as a substantial bulge in the mother's belly. As with abortion, you have to preserve the principle of democratic sovereignty, except, with regard to mercy killing, active or passive, you transfer the right of exercise from the custodian (the mother) to the individual himself. In doing so, you still have failed to give a satisfactory account of the principles at the back of life. Are we

God's, or our own? Is life Good on its own terms, or just a big unruly mess? Such questions go unposed, unanswered. At all events, you keep choice in the equation.

This goes a long way toward satisfying the media and the social activists.

So choice falls to the individual, and the most heart-rending stories are vented. Dr. Jack Kevorkian's patient, Thomas Hyde, for whose departure the Michigan jury failed to blame the doctor, made a videotape describing his physical agonies and his wish to quit them as soon as the doctor could arrange it. Such testimonies are awful to see, most of all to the sufferer's loved ones.

In our rapidly-aging society, one hears again and again the plea of the aged to be allowed to "go home," rather than be kept alive "on tubes." The sentiment has moral validity. As the Rev. John Donne said in a letter: "My body is my prison, and I would be so obedient to the law as not to break prison. I would not hasten my death by starving or macerating this body. But if this prison be burnt down by continual fevers, or blown down with continual vapors, would any man be so in love with that ground upon which that prison stood as to desire rather to stay there than to go home?" Not likely.

Still, as Dr. Kevorkian's victims/patients multiply, we see judges and lawmakers searching for a principle—and often contradicting each other. It is no wonder they have to scrounge so diligently. *Roe v. Wade* is little help, constitutionally speaking, unless the Supreme Court is ready to expand the "privacy" principle the justices discovered while rummaging around in the constitutional penumbras. This tells modern judges little enough, because the action now is outside the womb, not inside. Feminists are fond of saying, "I can do as I like with my body," but that's a long way from specifying the point at which one's body supposedly becomes worthless enough to warrant its removal. How ravished with illness must one be to receive the right of suicide? How ravished to receive from a court the presumption of competence to decide to end it all? What if one is just tired and despondent? Can he go on and hire Dr. Jack, or someone like him, to speed his departure? And what if the sick or despondent person has loved ones dependent on him? Does that mean he is obligated, against his will, to go on living? (Possibly not: *Roe* isn't long on the concept of responsibility toward others.)

The potential complications are immense, as well as tangled.

Judges will take years to sort through them, even as they continue to sort through the implications of the *Roe* decision. Under *Roe*, our view of life is purely functional. But what is function and what is dysfunction? And who qualifies to point out the difference?

Still, there *is* a principle of last resort. It is not the kind you will find written down in law books, where it would look obscene. The principle is as old as *Roe*; it is the dark shadow of those fine, spacious words on liberty, subscribed to by the justices of the Supreme Court. The principle is eminently transferable from the sphere of abortion to that of euthanasia. Morally light, it floats like a fragment of ash.

The principle is, the weak give way; the strong prevail. The strong have force and power at their disposal; the weak depend utterly on their good will. Mother is stronger than unborn child. The ill are by definition weak. The world we look on is the world of Thomas Hobbes—a world of blood and unsheathed swords.

Will the principle of strong over weak necessarily prevail as the courts move to adjudicate the question of euthanasia? This is by no means certain. The courts' continued confusion over abortion—when is a fetus not a fetus?—mirrors the still-greater confusion into which they are sure to sink concerning euthanasia.

But the principle is there. It animates *Roe*. Lawyers will assert it, and some courts at least will find it eminently reasonable. This is because responsibility for life, a tenuous business, must be assigned to someone—if not to the states, in a protective role, then to the mother to do with as she likes. This is in recognition not so much of the mother's privacy as of her strength as the party in charge.

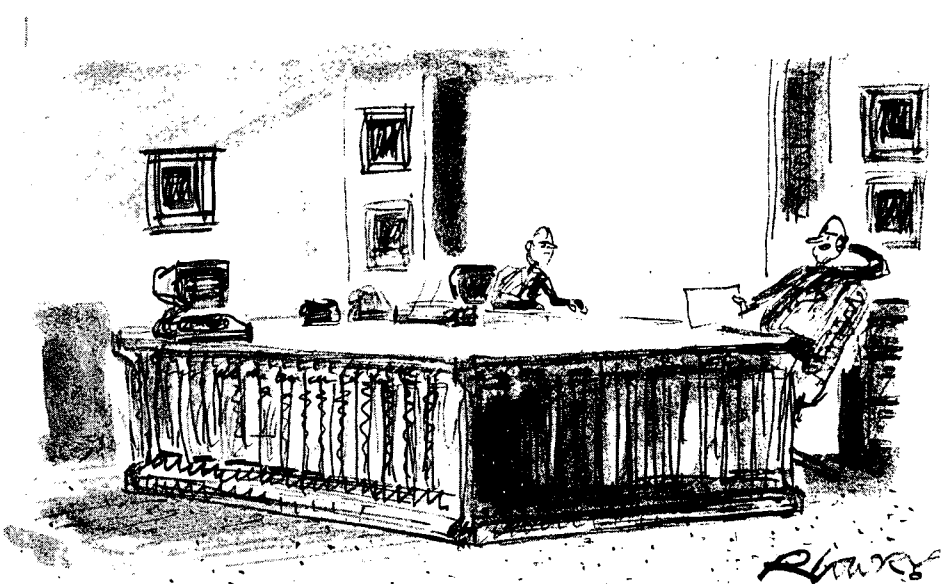
Similarly, the ailing individual is in charge—but marginally, tenuously. As his health declines, so must his autonomy. An expectant mother, young and vital, can hold her own in an argument over means and ends; not so a patient ravaged by years, sickness, or both. Strength prevails in an encounter with such a patient.

As a proposition, the "right to die" sounds voluntary enough, but stretch it a bit farther and watch it become the right to kill. The factor that most clearly inhibits the right to kill is the historic concept of life's sacredness and worth—most particularly, life viewed as the gift of God.

There is more awareness of the danger in this matter than one might suppose. Assisted suicide, *à la* Jack Kevorkian, is a concept that the born, many of them, regard warily. The New York State

Task Force on Life and the Law, appointed by the same Gov. Mario Cuomo who has so often advertised his acceptance of *Roe*, unanimously finds that "legalizing assisted suicide and euthanasia would pose profound risks to many individuals who are ill and vulnerable." William F. Buckley Jr. inquires unanswerably: "What right does the state have to tell the doctor that he can't help the man who did the decathlon yesterday to commit suicide today?" The Washington *Post* worries that the dying, "vulnerable in every way," might feel obligated to expedite their own departure.

Whereas the asserted right to an abortion swept nearly all before it during the feminist 'Seventies, the right to kill one's self may take hold less quickly and deeply in the 'Nineties. If it takes hold at all. The war on the weak, so to call it, stirs human impulses that courts are poorly equipped to discipline. The war on the weak presupposes, for success, an absence of human pity, a loss of fellow-feeling, as in the concentration camps of Nazi Germany. One can lose it. One can also regain it—a consequence of explanation and expostulation of the sort in which the right-to-life movement has been engaged for two decades, with appreciable effect. The movement's greatest challenge, and greatest days, may lie ahead as the Age of Kevorkian commences.



'Can't the public see that we're trying to give them freedom of choice? They can like it or lump it!'

THE SPECTATOR 27 November 1993

Governor Casey *v.* the Odds

John Wauck

It is four o'clock in the morning, Monday, June 14, 1993. At the University of Pittsburgh Medical Center, the governor of Pennsylvania lies in a hospital bed surrounded by his family: Ellen, his wife of 40 years, and their eight children, all of whom have rushed from various points on the East Coast, in the middle of the night, to be with their father—perhaps for the last time.

Governor Robert Patrick Casey has had the longest weekend of his life. At a Friday press conference, he'd announced good news: he was about to undergo preliminary tests for a liver transplant to halt a progressive and fatal disease that had afflicted him since 1991. The disease, familial amyloidosis, causes the liver to produce an abnormal protein called amyloid which encrusts internal organs such as the heart and intestines. Since 1991, Casey's weight had dropped from 210 to 155 pounds.

Medical textbooks say there is no cure, and Casey had assumed he was living under a death sentence. A more severe strain of the rare disease had killed the mayors of Pittsburgh and Erie in 1988 and 1991. Comparing himself with them, Casey would sometimes say, "I got the one with the long fuse."

Then, early in 1993, Pennsylvania's state treasurer sent Casey a signed copy of *The Puzzle People: Memoirs of a Transplant Surgeon* by the internationally-renowned transplant pioneer Dr. Thomas Starzl, who heads the Transplantation Institute at the University of Pittsburgh Medical Center.

After reading the book, Casey called Dr. Starzl to thank him. In the course of their conversation, he asked Dr. Starzl if he knew anything about amyloidosis. Minutes later, Dr. Starzl called back to say he could cure Casey with a liver transplant. As Casey later recounted, his initial response was stunned elation: "Holy smokes!" he thought, "This is the best thing that's happened to me since my marriage."

In the Friday press conference, only one ominous note had been struck: "Obviously," said Casey, "one of the key questions, in light

John Wauck, our erstwhile contributing editor, is currently a speech writer for the Governor of Pennsylvania.

of my cardiac history, is what risk to the heart this surgery would present." In 1987, shortly after he took office, Casey had suffered a mild heart attack and underwent quadruple bypass surgery.

If Casey had been in high spirits Friday, he had good reason: the success rate for liver transplants is quite high—75-80%. In fact, he was already thinking of the future: "I tell you," he said, "if I get through this thing OK, I don't rule anything out. I'm going to be the guy out in front in that fire-engine red Corvette." Casey strode into the hospital looking unbeatable.

By Saturday afternoon, however, the mood had changed completely. Preliminary tests showed that Casey's heart was in extraordinarily bad shape. The doctors in Pittsburgh marveled that he was still alive—much less working full-time. Not only could the heart not withstand the trauma of a liver transplant, but it was itself on the verge of failing. For Bob Casey, there was little time left.

The only solution offered by Dr. Starzl had been radical and daunting: Casey could receive a new liver *and* a new heart. Such double-organ transplants are rare; the success rate is low. The University of Pittsburgh, which has performed more than any other hospital, had done only four. Three of the patients died within months. One, a girl named Stormie Jones, survived 6 years.

Dr. Starzl had been concerned about how Casey would take the grim news that he now needed two organs, but Casey's reaction was stoic: "Well, let's go then." A little later, he requested a big piece of cheesecake—something forbidden because of his heart condition. "I figure I might as well punish the old devil before we get rid of it," Casey explained.

Miraculously, a donor had become available almost immediately. In fact, he was nearby, in Monessen, a dying steel town just southwest of Pittsburgh. Michael Lucas, a 34-year-old black man, had been beaten by a gang on the front steps of his house a week earlier. On Sunday, he had died. He was the governor's size and had the same blood type.

Now, less than 72 hours after the Friday press conference, the governor of the nation's fifth largest state, having signed over his gubernatorial powers to his lieutenant governor, lies in bed, steeling himself for the replacement of his heart and liver, drawing strength from his large family. Dr. Starzl stops in for one last visit, and tells the governor "This will be the biggest fight of your life. But you'll win it."

At 6:45 a.m., Casey will be anesthetized. At 7:25, the surgery will begin. Before the surgery is finished at 8:45 p.m., night will fall. The governor will spend the entire day on the operating table. His ribs will be broken, his muscles will be cut, arteries will be severed, his body will be artificially chilled. When he wakes up—if he wakes up—he will have the heart and liver of another man.

There is nothing to do now but wait and pray.

As the sun rises on a beautiful early-summer day, the people of Pennsylvania will be shocked to learn that their governor is already in surgery. The noon Mass at the Cathedral in Harrisburg, the state capital, will be crowded. In Casey's hometown of Scranton, there will be special Masses. Radio stations will urge people to keep a light on in a window as a sign of support.

Before the operation, Casey will suggest to one of the nurses that she hang some shamrocks in his room.

Outside Pennsylvania, most Americans know Robert P. Casey as the pro-life Democrat the party big-shots wouldn't allow to speak at their 1992 convention. Or as the "Casey" in the Supreme Court's 1992 decision *Planned Parenthood of Pennsylvania v. Casey*, which upheld the Pennsylvania Abortion Control Act, but failed to overrule the "central holding" of *Roe v. Wade.*

What the convention delegates were prohibited from hearing was a simple but profound message: "Abortion is foreign to the American experience." Casey had said it many times before: "Just as we fought so hard and so well for the rights of the workers of America. For the dignity and human rights of minorities. For women and children and families. For the poor. The disabled. The dispossessed. Just as we fought for all of them, the time has come to fight to protect the most vulnerable, the most defenseless, the most powerless members of the human family."

In his home state, where he has lived a very public life in public service, Casey is a legend who has given new meaning to the old saw, "You can't keep a good man down." To understand Casey, it helps to understand Pennsylvania. In Casey's own words, it's the kind of place where "old-fashioned values" are still allowed—"values that say, simply, that it's still OK to be a Boy Scout or a Girl Scout. It's still OK to say the pledge of allegiance at school. To like *Reader's Digest.* Where it's still OK to take your family to church, just like your mom and dad took you. . . . In other words, Pennsylvania is

heartland America." Perhaps it is enough to say that it is the birthplace of Jimmy Stewart.

When Casey entered the hospital, he was in his sixty-first year, gaunt but unbowed by the earlier heart surgery and amyloidosis. Standing ramrod straight, he is an imposing figure at six feet two, with white hair and the striking black eyebrows that help pay the bills of every political cartoonist in Pennsylvania. Though he has never served in the military, there is something almost martial in his bearing. He is a fighter. A reporter once described him as "the sort of man you'd want to be piloting a 747."

He is certainly not the typical glad-handing, back-slapping pol. As he puts it, "I'm no jolly-popper." In an era when politicians overflow with *bonhomie*, he exudes dignity, integrity, rectitude, and reserve. He is a man at home in a suit and tie. The Washington *Post* has described him as "shy and guarded, a righteous loner never embraced by party regulars."

Casey is, of course, a Democrat. The *Almanac of American Politics* describes him as a "lineal descendent of those practical New Dealers who believed in a government compassionate to the helpless and supportive of traditional values." He's never believed in government indifference or inaction when times are hard and people are struggling. He doesn't believe that a political leader's job is simply to cut taxes and step aside; he believes he's supposed to lead the strong and serve the weak.

In Pennsylvania, Casey is known as a champion of the little guy. His natural constituents are the workers, the miners, the steelers, and homemakers trying to make ends meet in the parts of the state that have seen industries and jobs evaporate: the anthracite coal regions, the Monongahela Valley, towns like McKeesport and Monessen. It was somehow fitting that Michael Lucas, the black man whose heart and liver were given to Casey, was from Monessen and had been in one of Casey's job-training programs. In fact, the day after Casey was elected in 1986, he celebrated by going to visit Monessen, because it was struggling towns like Monessen that he had vowed to help.

Casey's story is an extraordinary saga. Since 1962, he has run in five of seven Pennsylvania gubernatorial races—every one where an incumbent wasn't on the ticket. In his seven state-wide elections—he also ran twice for auditor general—he has never lost to a Republican.

More remarkable than his record is his spotless reputation and the respect he commands from political allies and opponents alike. He is a rather unusual creature—a fighter without enemies. On the day of his transplant, even the politically-hostile Philadelphia *Inquirer* noted his brave approach to the dangerous surgery, saying Casey's "confident determined spirit . . . is certainly in keeping with the way this stubborn and highly principled man has conducted his life and his political career. Say what you will about Bob Casey, he's no quitter."

When it comes to doing the right thing, Casey is a notorious stickler. Some think of him as "square"—almost to a fault. He's the kind of guy who rips up checks from manipulative contributors and walks out on big donors who want to push him around, who installs separate phone lines in his office so his personal calls won't be billed to the taxpayers of his state. Referring to the Greek philosopher who used to wander the streets of Athens with a lamp in search of a single honest man, one of Casey's assistants (who has worked in both state and federal government) recalls that when he met Casey, his first reaction was: "Diogenes, call your office."

Local Scranton lore has it that, as a young boy, when the other boys would stand on the street corner and throw snowballs at cars and girls, Bob Casey would take his younger brother John by the arm and stand apart on another corner until the boys had ceased their mischief. The story may be apocryphal; what's noteworthy is that it's believable.

While running Casey's two successful gubernatorial campaigns, James Carville—the squinting, drawling, Cajun *guru* behind Bill Clinton's presidential race—would sometimes marvel to the Casey children: "You know, your daddy's not like other men." Later, shortly before Casey's surgery, while Carville was working for President Clinton, he said on TV that Bob Casey was "the most decent, most honest, most true-blue American" that he'd ever had the privilege to work for. Perhaps Republican Henry Hyde said it best when he referred to Casey as "a flamingo in the barnyard of American politics."

No doubt much of Casey's strong character comes from his father. Alphonsus Casey started working in the coal mines near Scranton at age 10. Orphaned at 15, he became the family breadwinner for his five younger brothers and sisters. In his thirties, he moved with his wife Marie to New York to attend Fordham Law School. There,

in 1932, on January 9, at a hospital in Queens, Robert Patrick Casey was born (as Casey likes to note, the doctor who delivered him was Jimmy Cagney's brother).

The family returned to Scranton, and Casey attended the local Jesuit high school, where he was valedictorian, captain of the basketball team, and star of the baseball team.

Somehow, along the way, Casey acquired the nickname "Spike," which is what his family and close friends still call him. The name's roguish connotations seem somewhat at odds with Casey's straight-laced personality but, in other ways, the nickname rings true, conjuring the image of something simple, not flashy, straight, clean, tough—and dangerous to run into.

Turning down a try-out with the Philadelphia Phillies, he headed, with a full basketball scholarship under his arm, to Holy Cross College. He rarely played, but in those days at Holy Cross, riding the bench was no disgrace, since the guys on the court included players like Bob Cousy and Tommy Heinsohn.

As soon as he graduated, he married Ellen Harding, whom he had met at a YMCA dance when they were 14. For the last 34 years, since shortly after Casey got his law degree, Ellen and Bob Casey have lived in the same modest house in Scranton. Although Casey's favorite TV show is "The Honeymooners," he doesn't seem to have learned much from Ralph Cramden; his daughter Margie notes that, living in that house, with four daughters and one shower, her father never raised his voice.

Ellen Casey says of her husband, "His greatest accomplishment is his family." And the eight Casey children have paid their parents the ultimate compliment of following in their footsteps: the four sons are pursuing careers as lawyers; the four daughters are raising families of their own. All the children have played active roles in their father's campaigns. Indeed, the Casey family—large, tight-knit, fiercely-loyal, Irish Catholic—has been called a G-rated version of the Kennedys, without the money, the scandals, and the violent tragedies.

The year the Clintons sent out a Christmas card in which their only child, Chelsea, was conspicuously absent, the Caseys sent out a Christmas card bursting at the seams with family—two parents, eight children and their spouses, sixteen grandchildren. Since that picture was taken, two more grandchildren have arrived.

Someone once told Casey how Hubert H. Humphrey believed the

adage that, with every new child, God sends good luck. When his first child was born, Humphrey was elected mayor. With the second, he was reelected; with the third, he was elected to the Senate; with the fourth, he was reelected. "Heck," Humphrey would say, "if Muriel and I were younger, we'd love our way into the White House."

Casey's wry response was, "Well, if that's true, then how come I'm not President?"

The tone is understandable. No one has paid more political dues and taken more lumps than Bob Casey. At the age of 30, in 1962, he was elected a State Senator. In 1968, he was elected state auditor general and reelected in 1972.

As auditor general, Casey crusaded against pork-barrel spending and waste, transforming the sleepy office into a high-powered investigatory unit. He hired the office's first CPAs and a skilled team of auditors, actuaries and investigators. The Casey name became so synonymous with efficiency and integrity that, in 1974, William Scranton, the former Republican governor, offered Casey the Republican nomination for governor. A loyal Democrat, he declined.

Ironically, Casey's good name would end up betraying him.

Twice, political unknowns who happened to be named Robert Casey won state-wide elections. The first time, in 1976, the real Bob Casey wasn't running. But the second time, in 1978, the real Bob Casey was running for governor for the third time. Casey had first run for governor in 1966, at the age of 34, losing in the Democratic primary to millionaire businessman Milton Shapp. In 1970, he ran again, and lost again to Shapp.

In 1978, the interloping Robert P. Casey was a high school biology teacher whose total executive experience consisted of having once run an ice cream parlor. Running a $4,000 campaign for the lieutenant governor nomination, the biology teacher split the "Casey" vote and won the lieutenant governor's primary, doing especially well in Casey's home county. Meanwhile Casey, heavily favored before the election, lost to his principal rival, Pittsburgh mayor Pete Flaherty.

After that appalling debacle, some people began to refer to Casey as "The Three-time Loss from Holy Cross."

The epithet did not sit well with Casey. One of his favorite movies is *On the Waterfront*, starring Marlon Brando as Terry Mulloy, the boxer who works on the Jersey docks but won't cooperate with the corrupt union boss (in the film's most famous scene Mulloy,

robbed of a boxing title he deserved, tells his brother, "I coulda been somebody, Charlie. I coulda been a contendah."). At the end of the movie, in a brutal scene that is almost painful to watch, Mulloy is beaten mercilessly on the dock, but he will not stay down.

When Bob Casey told his wife Ellen that he was planning to run for governor a fourth time in 1986, she asked, with the painful past in mind, "Are you ready to lose?" He responded, "Are you ready to win?"

He named his campaign committee "The Real Bob Casey Committee." His opponent was lieutenant governor William Scranton, the son and political heir of the former governor who had asked Casey to run as a Republican in 1976.

The character issue figured prominently in the campaign. In the sixties, Scranton had been a hippie and experimented with drugs, and one of Casey's mailings posed the question: "What message would it send to our young people if someone with Bill Scranton's values and character got to be governor?" Ironically, Casey's campaign managers at the time were none other than James Carville and Paul Begala, the same pair who, six years later, would sell the nation Bill Clinton, whose own reputation makes Bill Scranton look like a choir boy.

In a close race, Casey beat Scranton and finally became governor of Pennsylvania.

Abortion figured in all of Casey's gubernatorial campaigns; his open and unyielding position was well-known, and it hurt him especially in the Democratic primaries, where the most liberal element in the party votes heavily. But it wasn't until 1990 that abortion took center stage in the general election. After the Supreme Court's 1989 *Webster* decision, conventional wisdom maintained that there would be a backlash against "pro-life" politicians. The "pro-choice" march in Washington in April, 1990, was hailed as a sign of overwhelming pro-abortion momentum.

Casey's Republican challenger, Auditor General Barbara Hafer, campaigned aggressively on the abortion issue. An early poll showed that, when informed of the candidates' abortion positions, voters chose Hafer over Casey. Hafer's TV ads depicted a rape in progress and cut from the screaming victim to a grainy picture of Governor Casey, noting that he opposes abortion even in the case of rape or incest. At one point in the campaign, Hafer called Casey a "red-neck Irishman from Scranton."

The battle lines could not have been more clearly drawn. In November, in the largest gubernatorial landslide in the history of the state, Casey crushed Hafer by 36 percentage points, winning 66 of 67 counties.

But his phenomenal success did not make him a household name in Democratic circles. The national media paid little attention. Exasperated campaign-manager Carville complained to the New York *Times*: "If Bob Casey were a pro-choice Episcopalian, he'd be on the cover of *Time* magazine." A reporter for the Washington *Post* recently noted that, because of all the attention given his anti-abortion stand, Casey has not received the credit he deserves from the national media: "His strong record on human services, the environment and health care has gone largely unapplauded, overshadowed by his anti-abortion crusade."

In fact, Casey has done more for poor children than any governor in the history of his state. The renowned Harvard pediatrician Dr. T. Berry Brazelton has hailed his health programs for women and children as a "model for the rest of the nation." The state's economic development program and recycling program are the nation's largest. He has set up the nation's first statewide adoption network to overcome the difficulty in placing children with permanent families. Pennsylvania ranks first in the nation in collecting child support payments from dead-beat dads.

After Casey was gagged at the Democratic convention, he took his show on the road. New York's ultra-liberal *Village Voice*, chagrined by the party's intolerance, invited him to come to speak at the Cooper Institute, where Abraham Lincoln had given his famous "house-divided" speech, but demonstrators refused to let him speak. Two weeks later, Casey was back in New York, at the Al Smith Dinner, where he spoke about abortion and the continuing anti-Catholic bigotry in America. In March of 1993, he delivered a speech in the Missouri courtroom where the *Dred Scott* case originated, comparing slavery to abortion and *Dred Scott* to *Roe v. Wade.*

In a speech in May at Washington's National Press Club, Casey directly challenged the Clinton administration's pro-abortion policies, particularly the plan to include abortion in the proposed national health-care plan:

> With millions of my fellow Americans, I have watched with a sense of shock and outrage as our national government has aggressively and relentlessly moved to expand the abortion license which will increase dramatically the

number of abortions in our country. The effort began on inauguration day and it is in full stride.

Opposition down the road will come too late. A stand must be taken now. A line must be drawn now—a line must be drawn in the sand today. I'm talking about political action, the only relevant kind of action in a democracy. . . . The administration leaves us no alternative. We cannot stand silent in the face of this relentless, radical drive to weave the abortion license into the fabric of American life.

I intend to make this issue—to the extent that I can—remain front and center in the national debate, in the congressional elections in '94 and in the election in '96.

We'll be working in the election in 1996—in some way. When I say 'we,' I mean there will be a person. In my judgment, there will be a person who will come forward from the center of the party who will articulate that message. . . . And somebody will carry the standard. Somebody will carry the standard.

He spoke on May 12, 1993, almost exactly one month before he would undergo his heart and liver transplant. In explaining how the American people have refused to accept abortion, Casey said: "It is as if a defective organ had been transplanted into the body of America. The body continues to reject it and the abortion industry has yet to find an anti-rejection drug that works."

It is clear, in retrospect, that Casey had been reading Dr. Starzl's autobiography. But just as clearly, he was a man who refused to be counted out. Time and again, he had come back and won. In short, he was a man prepared for the fight of his life. Recommending a double-transplant to Casey, Dr. Starzl had felt obliged to admit, "You know, I'm an optimist." Without missing a beat, Casey responded, "Well, so am I. I had to run for this job 4 times." When Dr. Starzl asked him how soon he wanted to have the double-transplant surgery, Casey said, "How 'bout yesterday?"

* * * * *

"The procedure was essentially flawless." The clipped, precise voice of heart surgeon John Armitage was the first thing most people heard as they waited anxiously for news about Casey.

The biggest surprise after Casey's surgery was discovering just how sick the governor had been. Though his amyloidosis was public knowledge, he had never seemed to be in imminent danger. He traveled extensively. He worked long hours and never complained.

Nevertheless, as Dr. Starzl told the New York *Times*, when Casey

entered the hospital, "His heart was not functioning at a rate compatible with human life. His legs were all blue, and he had no circulation to speak of in his hands. I was taken aback. But his brain was still working like a computer. . . . It was remarkable how he grabbed onto the last rung of life on his way down the chute and pulled himself back to the top."

The amyloid deposits had almost doubled the weight of his heart. It was pumping 1.6 liters of blood per minute—about half the normal rate. The brain and liver alone require 1.5 liters per minute to maintain functioning. In effect, Casey had been running on fumes—sheer will power. "I can't believe this guy," said liver surgeon John Fung, "That heart was the worst thing I'd ever seen. It was as hard as a rock." To which Dr. Armitage added: "It was unusual testimony to the governor's resiliency that he was able to get around."

In fact, he'd done much more than get around. Shortly before the transplants, he videotaped a state advertisement at a Pepperidge Farm plant in Lancaster County. Stepping from a van, he banged his calf on a piece of equipment, making a serious puncture wound, but he refused to interrupt the taping. "These guys are getting paid good money to do this," he explained. Three hours later, his sock and shoe soaked with blood that he couldn't afford to lose, he agreed to see a doctor. The wound required six stitches. The next day, the wound still bleeding a bit, rather than rest, he flew up to New York for a late-night interview on the "Charlie Rose" show.

The doctors have called his recovery "supernormal." The day after surgery he was trying to write notes to his family. The first one said simply, "I'm back." In the governor's hands was the first evidence of recovery: formerly thin and ashen, they were now full and pink. Within a week, Casey was out of intensive care, sitting up in a chair. Soon he was prowling the halls. A week after the surgery, he was celebrating Father's Day, surrounded by his wife and children. The governor was in good spirits, singing "Ain't Misbehavin' " with his respiratory therapist and quipping to his staff, "If I felt any better, I'd be dangerous."

A month later he was home at the Governor's Residence in Harrisburg. Over the summer and fall, he fought off a minor bout with rejection and two viruses that were carried in the donor organs. Cards of sympathy and support flooded the governor's office from all over the state and around the country. By Christmas, he was back in

office, where he's been working full time ever since. When Casey returned to office after his surgery, his old nemesis in the legislature, Robert Jubelirer, a pro-abortion Republican, said with tears in his eyes, "He's a living miracle."

The mother of the donor, Mrs. Frances Lucas, sent a Christmas card saying, "the only consolation we have from this whole terrible tragedy of our son's death is that he's living on in you."

Asked how long Casey will live, Dr. Fung now says, "I think he's got probably at least another ten years, and there's a pretty good chance it might be longer." He's confident because the anti-rejection drug Casey takes, FK506, is far more effective than previous immuno-suppressants and has fewer side effects. Moreover, Casey was leading a very active life up to the moment he walked into the hospital and, because of the unusual nature of amyloidosis, he did not have the usual debilitating systemic problems associated with liver and heart disease. Finally, receiving a liver and heart from the same donor actually reduces the risk of rejection because the two vital organs "recognize" each other.

The only other surviving heart-liver transplant recipient in the United States, a Chicago businessman named Richard Fenelon, had a much slower recovery than Casey—it was two months before he could sit up in bed—but now is back working full time and golfing under 100.

Clearly, surgery has not taken away Casey's taste for battle. In fact, the surgery has given him a greater sense of freedom. "It sounds strange," he told one reporter, "but I really don't feel the stress of the job. What could be worse than where I was before? So you have a decision that has a political impact—you just make it and say, 'The hell with it!' and don't look back. Because measured against life and death—what did Jackie Gleason use to say?—it's a mere bag of shells."

In response to a recent directive from the Department of Health and Human Services which would require Pennsylvania to pay for abortions in pregnancies due to rape and incest without even requiring a police report, Casey told President Clinton in a blunt letter: "This I cannot and will not do. . . . I urge you to withdraw and rescind the directive contained in the letter of Dec. 28. . . . I have no intention of following it."

Back in 1978, after his heart-breaking loss to Pete Flaherty and

the "phony" Robert P. Casey, Casey told a reporter, "I've got nine lives. I've been knocked down before, but I always get up. I'll be back."

Now, at the age of 62, feeling healthier than he has since before he became governor, Casey is in no mood to retire. "I've got a 34-year-old ticker," he says, "a new pump and new pipes." Mrs. Casey says: "Some men are content taking vacations and playing golf. But he's not like that. The day he went back to work, he got stronger."

Naturally, many people ask about the future. This is the final year of Casey's second term, and state term limits prohibit him from running again. He hasn't decided what he'll do next, but it is a fair bet that this contender won't be backing away from any fights. Last fall, speaking in Washington DC about the need to rid America of the scourge of abortion, he said: "Having been given a second chance at life when so many are given no chance at all, I am determined to do my part to end this tragic chapter in American history."

'Mrs Benton is still severely disturbed — she said how reasonable your charges were.'

SPECTATOR 16 April 1994

The Supreme Court, the "Facts of Life" and "the Thoughtful Part of the Nation"

Robert A. Destro

It would be tempting simply to label David Garrow's *Liberty & Sexuality: The Rights of Privacy and the Making of Roe v. Wade* as a long and unrelieved paean to (as the author puts it) "the remarkable women and men who made the right to privacy a meaningful part of America's constitutional heritage." Though an accurate description of Garrow's book, such an approach has at least two disadvantages. The first is that such a "review" would be, well, too short for this journal. The second is a bit more substantive: aside from a few juicy details drawn from what the book jacket breathlessly describes as the "comprehensive, once-secret files of former Justices William J. Brennan, William O. Douglas, and Thurgood Marshall," this book was simply not worth the time and effort it took to get through it.

For all the exhaustive research that went into its 712 pages of text and 269 pages of notes (which are, by far, the most useful parts of the book), he never once considers either an opposing point of view, or the larger implications of the political struggles he describes. In short, the book is excruciatingly long, extraordinarily shallow, and ends simply by running out of "history" and, hence, out of gas, in the middle of an accusation that all "pro-life" advocates "bear some of the blame" for the "terrorism" directed at, and the alleged murders of, abortionists.

Since the book itself is devoid of anything which passes for either historical context or legal analysis, reviewing it serves as a convenient opportunity to highlight what might be termed the "subtext" of his argument about "the making of *Roe v. Wade*." This requires both a description of the manner in which Garrow argues the case for an expansive "right to privacy" and a discussion of the necessary

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implications of his basic argument—that democracy fails when a faction is able to "block" legal changes it considers ill-advised or inconsistent with the public welfare.

The main point of the book is that judicial activism under the rubric of "the right to privacy" is a powerful antidote for the failure of the body politic to adopt policies currently favored by "progressives." He makes this point in every chapter by recounting, in excruciating detail, the background, labors, triumphs, and setbacks of the men and women who worked for nearly fifty years to make abortion a "fundamental right." To Garrow, these activists are (and were) noble, enlightened, and selfless folk, worthy of inclusion "for all time in America's constitutional pantheon."[1]

Not surprisingly, the legitimacy of Garrow's position is very much the centerpiece of debates over the role of courts in a democratic society. That is why the second part of this review involves a discussion of why we—and, more importantly, why Senators charged with the task of screening judicial nominees—should be skeptical of the view that the Constitution empowers judges with names like Stephen Breyer, Sandra Day O'Connor, Harry Blackmun, Anthony Kennedy, William Brennan and John Marshall Harlan to decide *for* us what "facts of life" the nation can understand at any given moment in its history, and to translate those "facts" into a vision of the common good which binds us all.

The Right to Privacy and the Making of *Roe*

Garrow's story begins at a Farmington, Connecticut, Country Club luncheon on June 8, 1939, where Sally Pease, president of the Connecticut Birth Control League (CBCL), had failed to take into account "the possible press coverage of her luncheon remarks" to the upper-crust Republican women of Greenwich and Fairfield County who comprised much of the organization's membership. She announced that, unbeknownst to taxpayers of Waterbury, a birth-control clinic had been opened by the CBCL in an out-patient building of Waterbury Hospital, "a public institution."

To the Republican women gathered at the country club—and to Connecticut's mainline, Republican press—this was not "news" at all, it was *progress*. "One of the advantages of birth-control work over other social reforms," wrote one a few months later, was that "*individuals* can really accomplish something! You could slave yourself to death for peace and not make a dent in the armed frontiers of

the world. . . ." Birth-control work was, for this woman, different: it gave "whole families a tremendously important boost toward a fundamentally sound home life." The altruism of the work—a "mission" of sorts—was so apparent to the establishment journalists who attended it that the speech warranted only a modest story on page 24 of the Hartford *Courant*, and a page 15 story headlined "U.S. Maternal Mortality Rate Reported Poor" in the Waterbury *Republican*.

Over at the Waterbury *Democrat*, however, the operation of a birth-control clinic in a public hospital was news indeed—*front-page* news. The *Democrat* was, you see, "the voice for Waterbury's Irish, Italian, French-Canadian, and Lithuanian immigrant populations." These families were "almost all Roman Catholic." They also happened to be the targets of the Birth Control League's eugenically-motivated evangelization campaigns.[2] To no one's great surprise, the Catholic Church and those who shared its concern that the ethic which motivated these new evangelists would eventually lead to the acceptance of abortion and the destruction of the family, took a dim view of these developments. They reacted strongly, urging from the pulpit that Catholics avoid the clinic, and demanding that the prosecutors do their duty. The fight was on. It was an early, and important, skirmish in the "culture war" which led to the legalization of abortion.[3]

The first 270 pages of *Liberty & Sexuality* (Chapters 1 to 4) are devoted to the political and judicial struggle waged by the Connecticut Birth Control League (later Planned Parenthood of Connecticut) against the 1879 Connecticut birth-control statute. Until this statute was held unconstitutional by the U.S. Supreme Court in *Griswold v. Connecticut* (1965),[4] Connecticut was unique among the states in that its law governing birth control prohibited not only the sale or distribution of birth-control information and devices, but also prohibited the *use* of birth control by married couples.

Though the statute was challenged unsuccessfully several times, *Griswold* reached the Supreme Court during the heyday of the Warren Court. Understandably, the Court found the restrictions on the behavior of married couples to be outrageous, but they needed a theory which would justify the decision to hold it unconstitutional. They were skittish about utilizing the theory that had been used so successfully to block Franklin Roosevelt's "New Deal" (until he threatened, in 1936, to "pack" the Court), so they put William O. Douglas and a bevy of law clerks to work on the project.

What we know today as "the right to privacy" was the result of that effort, and Garrow's report of the Court's internal deliberations on the topic make fascinating reading for those interested in the development of policy debates within that body. Unfortunately, they will learn very little about policy that they did not know (or figure out) already. What they will learn, however, is that discussions among the law clerks were lively, thorough, and ultimately critical to the development of a legal theory on which the future "right to abortion" would finally rest.

Three of the most interesting tidbits that can be gleaned from Garrow's report are the roles played by Charles Fried (later Solicitor General during part of the Reagan administration), and Judges Steven Breyer and Richard Arnold in the development of the theoretical models Harry Blackmun later used to create *Roe v. Wade*'s holding that abortion is a "fundamental right." Fried, then a law clerk for the late Justice John M. Harlan, actually wrote the passage upon which the Supreme Court relied in *Planned Parenthood v. Casey* as a justification for reaffirming the "central holding" in *Roe*.[5] Breyer, then a law clerk for the late Justice Arthur Goldberg and now President Clinton's nominee to replace Justice Harry Blackmun, was assigned the task of making the case that the little-used and poorly-understood Ninth Amendment[6] would make an excellent foundation upon which to build the case for an expansive reading of the concept of "liberty." Interestingly, Richard Arnold, then law clerk to Justice William Brennan—and front-runner for the appointment to fill the seat vacated by Harry Blackmun until President Clinton chose Breyer—took the most "conservative" positions of the three!

The chapters devoted to abortion (5 to 9) are basically an extended discussion of the ultimately-successful campaign by abortion-rights advocates to convince the courts that the rationale of *Griswold* also invalidated restrictive abortion laws. The litigation sagas of abortion-rights activists in Texas (*Roe v. Wade*), Georgia (*Doe v. Bolton*), and Washington, D.C. (*United States v. Vuitch*) are described in exhaustive detail. So too are the legislative struggles in both New York and California, and the behind-the-scenes judicial intrigue involved in abortion cases around the country.

This is not a book for the short-of-attention. Though the story Garrow tells is an interesting one, and the vignettes he recounts confirm that many of the abortion cases were "decided" before they were even argued,[7] the book is, at bottom, a rather meager contribution

to the literature on what is, by far, the most important socio-cultural and legal battle of the twentieth century.

The reason the book, and its passionate defense of the "right to privacy," is so shallow is that, when all is said and done, it is not really about birth control, abortion, and "privacy" at all. It is a book about *people.* Not just *any* people, mind you. This is a book about the *right kind of people*—"enlightened" people who find the political *status quo* inconsistent with their present views of social morality, and who consider it their moral and social duty to save the rest of us from our narrow and religiously-inspired vision of the common good.

It matters not to Garrow that most of this nation's abortion laws were passed after a campaign by (mostly Protestant) doctors, or that the 1879 Connecticut birth-control statute was passed with the approbation and support of a Protestant-dominated organization (the New England Society for the Suppression of Vice) which included among its members the presidents of Amherst, Brown, Dartmouth, and Yale.[8] Likewise, it does not matter that there is a profound difference in moral and political philosophy between those who today agitate in the legislatures and the courts against laws prohibiting sodomy, physician-assisted suicide, and euthanasia, and those who support them. In Garrow's view, the times have changed, and so have the morals of the *cognoscenti.* It follows, Garrow believes, that the law must change too.

Had Garrow given *any* attention to the social, cultural and legal implications of the "subtext" of his book—an examination of whose views "count" in the political and judical process, and whose do not, it might have been worth reading. In the words of a far more charitable review of the book than this one, he never "directly explores" the "cultural as well as the political effects" of *Roe v. Wade*, and he fails to consider the fact that "landmark decisions sometimes promise more than they deliver."[9]

But this is Garrow's intention. He can "leave out huge chunks of the anti-abortion story," "describe in detail" the "legislative success of the Catholic Church leadership and its disciplined parishioners," and completely ignore "how Protestant fundamentalists took up the opposition leadership later on" because he has no respect, either for them, or for their views. In Garrow's republic, judges must take the law into their own hands whenever it is out of step with the moral sensibilities of "the thoughtful part of the nation,"[10] for he

certainly sees himself and the protagonists of his "privacy book"[11] as part of that elite group.

Garrow's story is *their* story. Not incidentally, it is also a testament to his—and their—belief that "enlightened" people, acting in good faith for the betterment of themselves and the poor, need not be constrained by such details as representative democracy and judicial restraint. Their faith is in those like themselves: other members of the *cognoscenti*, including law professors and sympathetic judges who are all too willing to condone massive social engineering and experimentation in the name of "constitutional law."

In words that "pro-life" advocates would be well-advised to ponder carefully in the context of euthanasia and assisted suicide, Garrow recounts what became of a strategy of "nullification." A "new and very important turn" was taken in 1931, when

> one young supportive woman lawyer, Dorothy Kenyon . . . advanced the novel contention that rather than continuing to focus on winning legislative repeal of federal and state anticontraception laws, it would be preferable "to get away from the law by the simple expedient of forgetting about it." Terming this option "nullification," Kenyon argued that it would be better to bypass legislative bodies "and concentrate upon public opinion, in the hope that some day the sentiment of the community may be strong enough to impress our enforcement officers" into nonenforcement. Kenyon's article stimulated considerable discussion. Birth control historian Norman Himes agreed that the key would be "the failure of prosecutors to bring cases before the courts," and attorney Alexander Lindley concurred: "nullification promises the only speedy relief." Morris Ernst [counsel to Margaret Sanger] saw it somewhat differently: "Nullification will take place by the constant whittling away of the law by judicial decisions." Birth control statutes "will not be repealed until they have already been nullified," Ernst predicted, but the essence of change would be judicial incrementalism: "Courts which are too cowardly to declare laws in conflict with our basic Constitution wheedle out of dilemmas by casting new interpretations on old statutes, eventually destroying the word of the law givers."[12]

Morris Ernst was prescient. As "doing constitutional interpretation [has become] a lot like making common law,"[13] "incrementalism" and "nullification" have become the way to void laws with which advocates of greater individual autonomy disagree.

Judging by the results, the strategy has been wildly successful. It was followed by promoters of legal abortion both before and after *Roe v. Wade*. Gay rights activists are utilizing an incrementalist approach on their way to seeking full parity for homosexual and heterosexual sexual activity, "lifestyles" and "unions." And Doctor

Jack Kevorkian and the pro-euthanasia crowd are having similar "incrementalist" successes in Michigan, where prosecutors and courts are divided over what to do about the man who many call "Dr. Death," and in Washington state, where a U.S. district judge has now decided that the "right to assisted suicide" follows inexorably from the logic of *Griswold* and *Roe*.

The only casualty has been the "rule of law" itself, but Justice Blackmun, who rarely has been constrained by it, would be proud! He had anticipated, as early as 1971, that the logic of the abortion right "would inevitably entail recognition of a right to commit suicide"[14] and Heaven knows what else.[15]

Liberty, Privacy, and Autonomy: Just how far can the courts stretch the concept of "liberty"?

A. Defining the Issues

The limits of representative democracy: One does not write a tome of nearly 1,000 pages about the most intractable political conflict of this century without having a point to make. Garrow is no exception. Though the focus of the book is on the personalities and struggles of those whose work led to the adoption by the Courts of a broadly-drawn concept of personal autonomy, the real story lies in what his larger-than-life characters actually believe should be done about laws with which they disagree.

Let us consider for a moment the problems which face any faction within the body politic which disagrees with either the substance or direction of the law. The principle of "one person, one vote" in a republican democracy would seem to indicate that the way to change the offending policy is to form coalitions that can make a compelling case to the legislature. But, as we all know, the "hard cases" which are used to justify broad reforms would rarely lead to good policy if a legislature were to adopt a "responsive" policy without a lengthy process of deliberation, log-rolling, and good, old-fashioned horse-trading (witness the "Clinton Health Plan").

In fact, the "checks and balances" built into the American system of constitutional government were *designed* to assure that the public policy-making process would be as messy, cumbersome and fraught with compromise as humanly possible. To win in the legislature, those devoted to a legislative cause must find allies, join coalitions, and use whatever clout they have to best advantage.

Abortion opponents know this fact of political life only too well.

So does Mr. Garrow. But unlike James Madison, who envisioned a political system which protects the interests of diverse political factions by making it hard for legislative majorities to pass legislation which does not have a broad base of public support, Garrow sees legislative inaction on controversial issues relating to individual autonomy as an outrageous abuse of power and public trust. If we are to be true to our nation's commitment to "privacy" and "liberty," we must, in Garrow's view, accept the fact that representative government has its limits.

Taken at face value, such a statement seems innocent enough. Of *course* democracy has its limits. It is limited by the text and structure of the original Constitution, by the text and structure of the Bill of Rights and subsequent amendments, and by "the law of Nature and of Nature's God." But these are emphatically *not* the kind of "limits" that Garrow, or the Supreme Court's "rights" jurisprudence since the late Nineteenth Century, have in mind.

The Role of Judges

Students taking "Con Law 101" are generally expected to be at least noddingly familiar with the debate over the role of judges in a pluralistic, representative democracy. That debate, which began even before the Constitutional Convention of 1787, is part and parcel of two of the most important principles of American constitutional law: federalism and the separation of powers.

As early as 1798, U.S. Supreme Court Justices Salmon P. Chase and James Iredell squared off on the issue of whether or not "An act of the legislature . . . contrary to the great first principles of the social compact, can be considered a rightful exercise of legislative authority."[16] Chase took the position that legislative acts which violated those "first principles" could not even be called "law," even though there might not be anything in the Constitution which would prohibit the passage of such a statute. Iredell disagreed:

> If any act of Congress, or of the legislature of a state, violates those constitutional provisions [which "define with precision, the objects of the legislative power, and restrain its exercise within marked and settled boundaries"], it is unquestionably void. If, on the other hand, the legislature of the Union, or the legislatures of any member of the Union, shall pass a law, within the general scope of their constitutional power, the court cannot pronounce it to be void, merely because it is, in their judgment, contrary to the principles of natural justice. The ideals of natural justice are regulated by no fixed standard; the ablest and the purest men have differed upon the subject; and

> all that the court could properly say, in such an event, would be that the legislature (possessed of an equal right of opinion) had passed an act which, in the opinion of the judges, was inconsistent with the abstract principles of natural justice. . . .[17]

For Garrow, however, arcane concepts such as federalism and separation of powers cannot be permitted to stand in the way of enlightened views on issues of personal autonomy. In his view, any doubts about that point were resolved when Robert Bork's nomination to the Supreme Court ran aground because liberals were able to paint him as a radical conservative who was unalterably opposed to the "right to privacy." The lesson we are to take from that particular morality play, he says, is that "any future nominee who has ever questioned the constitutional integrity or the political propriety of *Griswold* will suffer Bork's fate."[18]

Because no one, not even the most jaded judicial conservative, will argue that there is no "right to privacy" under the Constitution (the question is, rather, the limits on individual "autonomy"), it will be necessary to leave aside the distinctly revisionist nature of Garrow's fervent wish that the autonomy right recognized in *Griswold* should be used as "the Senate's litmus test for federal judges."[19] Unless we are committed to deflecting attention from what actually goes on in the "sacred precincts" of the judicial conference room, the appropriate focus of Senate confirmation hearings is, or should be, the role of judges—and their law clerks—in our constitutional government. For this, however, the reader needs just a bit of background which is, not surprisingly, missing from Garrow's narrative.

How Judges (and their Law Clerks) Determine the Meaning of "Liberty" and "Autonomy"

B. The Fourteenth Amendment

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part, ". . . nor shall any State deprive any person of life, liberty or property without due process of law; . . ."[20] Over the years, this guarantee has been given both a "procedural" and a "substantive" interpretation. On the procedural side, the Supreme Court has made it clear that the States must act with great care when taking action which has a substantial impact on personal rights of life, liberty and property. In practice, this usually means getting advance notice of an intended action, and having an opportunity to make a case in support or opposition. On the "substantive" side,

the guarantee is far broader. The Court now interprets it to include all rights it believes to be "fundamental."[21]

How do we know whether a right is "fundamental" or not? The Court, to its credit, concedes, that "These expressions are admittedly not precise, but our decisions implementing this notion of 'fundamental' rights do not afford any more elaborate basis on which to base such a classification."[22] So, unless we are to approach the question in the same manner that the late Justice Potter Stewart approached the definition of "hard core pornography"—"I know it when I see it"[23]—we will need a working definition of a "fundamental right."

There are two potential starting points. The first, and most obvious, is the text and structure of the Constitution and its amendments. The alternative, currently in favor with a majority of the Court, is found in the dissenting opinion of the second Justice John Harlan in *Poe v. Ullman,*[24] one of several cases filed in an attempt to invalidate the Connecticut birth-control statute. In a passage written by his then-clerk, Charles Fried, Justice Harlan opined that

> the full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. . . .
>
> Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to the Constitutional concept has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard for what history teaches are the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint.[25]

This "definition" of what makes a right "fundamental" was adopted by a majority of the Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey.*[26] It means that:

1. the full scope of the liberty guaranteed by the Due Process Clause *cannot be found in or limited by* the precise terms of the specific guarantees elsewhere provided in the Constitution;
2. "supplying of content to the Constitutional concept" of personal "liberty" which appears in the Due Process Clause of the Fourteenth Amendment

is the role of the United States Supreme Court;

3. the Supreme Court supplies that content by striking a "rational" balance between its view of the appropriate level of "respect for the liberty of the individual . . . and the demands of organized society," guided by our nation's "living" tradition; and
4. that the restraints on this judicial "balancing" process are *political*, not constitutional.

Because "the full scope of the liberty guaranteed . . . cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution," we need to know where else to look for them. After all, they must come from *somewhere.* So, the Court tells us, they come from the Justices themselves! A given "right" (*i.e.*, a claim to immunity from prosecution or other penalty) is "fundamental" if a majority of the Justices think that "the balance struck by this country, having regard for what history teaches are the traditions from which it broke" requires issues as varied as abortion, euthanasia, sodomy laws, capital punishment, gun control, race relations, and religious freedom, to be removed from the hurly-burly of power politics. The joint opinion of Justices O'Connor, Kennedy and Souter in *Casey* is explicit; in matters

> involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. *At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.* Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.[27]

Since there are *lots* of matters which can be described as "intimate and personal choices" (*e.g.*, the decision to use drugs, or to sell one's body parts or fluids on the market), how are we to know when the Court will intervene? The Court makes it clear in *Casey* that its concern is the ability of its decisions to "survive"—a concern rooted in power politics, rather than constitutional law. Were the benchmark for legitimacy the balance struck by the Constitution rather than the Court's "beliefs about these matters," any decision which departed from it, "radically" or otherwise, would not simply be "unsound" or unpopular, it would be *unconstitutional.*

"*And Who Will Judge the Judges?*" Looking at the Court's Record as a Proxy for "the Thoughtful Part of the Nation"

a. The Supreme Court on Race Relations: A Case Study in Moral Ambiguity

Since Garrow, Blackmun, and the authors of the joint opinion in *Casey* have been so effusive about the contribution the Supreme Court has made to our understanding of the concept of "liberty" over the years, it might be useful to consider the Court's track record. Even though the Court is often viewed (and certainly views itself) as the champion of the poor, the downtrodden, and the oppressed, its record over the long term is not a good one.

Let us consider briefly the three examples of judicial activism *outside* the field of "reproductive rights" which illustrate the inherent danger that lurks at the heart of any theory of judicial review which permits judges to disregard the language, structure, and history of the Constitution:

- *Dred Scott v. Sanford,*[28] the "central holding" of which relied on natural law principles and contemporary understandings of morality and politics to find that "[Persons of Black African descent] had for more than a century before been regarded as beings of an inferior order; and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; . . ."[29]
- *Plessy v. Ferguson,*[30] the "central holding" of which justified the doctrine of "separate but equal," and thereby gutted the Fourteenth Amendment's Equal Protection Clause, on the basis of what Justice Sandra Day O'Connor has called (in *Casey*) the social "facts-of-life" in the mid-1890s; and
- *Brown v. Board of Education,*[31] the "central holding" of which relied on the "social facts" of life in the mid-1950s to craft a morally and legally ambiguous position that condemned the "separate but equal" doctrine in public education, but permitted local school boards to retain it while they desegregated "with all deliberate speed."

b. Race and the Supreme Court's Jurisprudence of "Social Fact"

Whether or not the decision to sit in a train car reserved for whites can validly be described as one of "the most intimate and personal choices a person may make in a lifetime," there can be no doubt whatever that Mr. Plessy's decision to do so would forever be remembered as a "choice central to the personal dignity and autonomy" of millions of black Americans. He was, after all, a citizen, whose right to equal protection of the laws had been specifically guaranteed by a Fourteenth Amendment which was intended by the Reconstruction Congress to embody the moral principle that "all men are *created* equal." He assumed, as most ordinary citizens do, that the Supreme Court would be guided, if not by the principle of the inherent equality of human beings, then at least by the Constitution and laws of the

United States. He was wrong.

The reason that Mr. Plessy's "choice" of a seat on a train is relevant to a discussion of the Court's jurisprudence of autonomous "choice" is that both Mr. Garrow, and the Supreme Court itself, have attempted to wrap *Roe v. Wade* in the protective mantle of *Brown v. Board of Education*. This is smart politics, for *Brown* is a cultural icon, and Garrow quite rightly views it as "enshrined . . . for all time in America's constitutional pantheon." [32]

Politics aside, however, the maneuver underscores not only the shallowness of the Court's reasoning in *Casey*, but also the shallowness of its devotion to the "principles" upon which the Court was said to have relied in *Brown* itself. Virtually unnoticed by commentators discussing *Casey*'s "reaffirmation" of the "central holding" of *Roe* was the joint opinion's discussion of the present Court's reading of the actual basis for the decisions in both *Brown* and *Plessy*. Though the Court intended the discussion to serve as an explanation of why it was legitimate for the Court to overrule (albeit implicitly) the central holding of *Plessy* while retaining the "central holding" of *Roe*, the discussion reveals far more about the legal philosophy of the five justices who signed this part of the *Casey* opinion[33] than it does about either the theory or application of the doctrine of *stare decisis* in constitutional cases.

The key passage explaining why it was legitimate for the Court to overrule the "separate but equal" doctrine, but to reaffirm *Roe*, is reproduced below. It explains that *Brown v. Board of Education* and other important constitutional holdings the Court had jettisoned in the past

> rested on facts, or an understanding of facts, changed from those which furnished the claimed justifications for the earlier constitutional resolutions. Each case was comprehensible as the Court's response to facts that the country could understand, or had come to understand already, but which the Court of an earlier day, as its own declarations disclosed, had not been able to perceive. *As the decisions were thus comprehensible they were also defensible,* not merely as the victories of one doctrinal school over another by dint of numbers (victories though they were), but as applications of constitutional principle to facts as they had not been seen by the Court before. *In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations, and the thoughtful part of the Nation could accept each decision to overrule a prior case as a response to the Court's constitutional duty.*[34] [*Emphasis added.*]

What we learn from this passage is that the Constitution was just

as irrelevant to the decision in *Brown* as it was to the decision in *Plessy, Dred Scott* and, later, *Roe*. What was important, says the Court, was that the "facts, or an understanding of facts, [had] changed from those which furnished the claimed justifications for" *Plessy*'s holding that the doctrine of "separate but equal" was not an affront to the human dignity of the person.

The key phrases in this passage are those which emphasize "perception" and "understanding." According to a majority of the Court which decided *Casey*, the *Brown* decision "was comprehensible as the Court's response to facts that the country could understand, or had come to understand already, but which the Court of an earlier day, as its own declarations disclosed, had not been able to perceive."

This, of course, is utter nonsense. The Court that decided *Plessy* was actually quite explicit about its views on racial mixing. In fact, the opinion in *Plessy* speaks of black Americans in exactly the same haughty tones Garrow uses to describe Catholics and anti-abortionists. "The assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority," wrote Justice Brown, arises "not by reason of anything found in [the Jim Crow law at issue in the case], but solely because the colored race chooses to put that construction upon it." More to the point, he continued, "We imagine that the white race, at least, would not acquiesce in this assumption."[35]

The perception which "counted," according to the *Plessy* opinion, was not that of blacks and other Americans who took the principle of racial equality seriously, it was "the general sentiment of the community upon whom [civil-rights laws] are designed to operate"[36]—white folks who considered blacks to be inferior to them.

The *controlling* principle was autonomy. Said the Court: "If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, *and a voluntary consent of individuals*."[37] [*Emphasis added.*]

We know, of course, that racial segregation was just as insulting and immoral in 1896 as it was in 1954. So what had changed? The answer is simple: that "general sentiment of the community upon whom [civil-rights laws] are designed to operate." The Court which decided *Brown*, it appears, was confident that at least "the thoughtful part of the Nation could accept [the] decision to overrule [the] prior case as a response to the Court's constitutional duty." Nevertheless, it hedged its bets. Equity, said the Court a year later, required only

that the schools be desegregated "with all deliberate speed."[38]

It has not gone unnoticed in this fortieth anniversary year after *Brown* that it took nearly twenty years for the Court to realize that the "all deliberate speed" standard was a moral and legal farce. The Court, acting as a self-appointed proxy for the "the thoughtful part of the Nation" rather than in its capacity as a court empowered by *all* the people to enforce their sovereign will, had tolerated Jim Crow laws and the damage they wrought for nearly a century. We are still cleaning up their mess.

But the Court in *Casey* does not stop here. It wants us to accept a proposition which guts the very Constitution it claims to be enforcing. The majority writes that

> as the decisions were thus comprehensible they were also defensible, not merely as the victories of one doctrinal school over another by dint of numbers (victories though they were), but as applications of constitutional principle to facts as they had not been seen by the Court before.

Now this is truly a novel proposition. Constitutional decisions do not become "defensible" merely because they are "comprehensible . . . as applications of constitutional principle to facts as they had not been seen by the Court before." They are "defensible" only to the extent that they are supported by the Constitution.

The *Casey* Court admits that *Plessy*[39] was wrongly decided "the day it was decided," but its reasoning is both morally and intellectually dishonest. The *Plessy* Court *was* aware of the "facts of life." It *explicitly* recognized that arbitrary decisions based on race harmed everyone affected by them when it opined that any attempt by Louisiana to exempt from civil damages conductors who guessed "wrong" about the race of a passenger would be unconstitutional. The only thing it could not foresee was the *amount* of harm that officially-sanctioned segregation would engender in our society.

That race discrimination was harmful to everyone simply did not matter to them. Like the Justices in *Roe* and *Dred Scott*, the Justices in *Casey* and *Plessy* were about a different task: protecting the sacred principle of individual autonomy from "zealots" who hold the religiously-inspired view that all human beings actually *are* "created equal," informed "scientific" understanding to the contrary notwithstanding.[40] They voided much of the legislative handiwork of the "religiously-inspired" Abolition movement, and most of the "religiously-inspired""New Deal"on precisely the same grounds.

The fallacy of Garrow's book, and of the *Casey* Court's defense

of *Roe*, is that they assume it is preferable to argue the case for individual autonomy before a sympathetic judge with life tenure rather than to legislators whose primary concern is surviving the next election. Efficiency, however, has its price: the "benefits" of judicial activism are purchased at very high cost; and it is payable over generations.

A regime in which legal obligations are contingent because "changed circumstances may impose new obligations" is not the constitutional order that all judges, state and federal, have sworn to uphold. If judges are unconstrained by the Constitution, they are free to "create" rights and immunities that the Constitution does not recognize. Unconstrained by the Constitution, they are also free to negate or suspend rights which it *does* recognize.

The legacy of the cases in which the Court has stepped in to "nullify" laws or constitutional provisions duly adopted by popularly-elected legislatures has been a sorry one. *Dred Scott* "nullified" the Missouri Compromise because the Court did not feel that the country was ready to accept the proposition that legal and moral duties are not contingent upon skin color or continent of origin. *Plessy* "nullified" the Equal Protection Clause of the Fourteenth Amendment because the Court did not feel that the country was prepared to accept the proposition that official segregation (*a.k.a.* apartheid) "stamps the colored race with a badge of inferiority." And *Roe* "nullified" the will of those political communities which had concluded that the lives of unborn human beings are deserving of at least *some* protection from the law.

Judicial activism thus cuts both ways. When *explicit* constitutional rights like "equal protection of the laws," the right to life, or the Ninth Amendment right of political *communities* (not the Court) to recognize rights beyond those enumerated in the Constitution are contingent upon the ability or political willingness of what Justice O'Connor has called "the thoughtful part of the Nation [to] accept" them, they exist only insofar as they are acceptable to "thoughtful," elite groupings such as the one which gathered so long ago at the Farmington Country Club. Moral and legal obligations, including those enshrined in the Constitution itself, count for nothing.

Some "pro-life" advocates know this, but they too have accepted the theory that the Constitution should reflect the moral views of "the majority"—they simply disagree with "pro-choice" advocates over which "majority" should be counted as the "real" one.

The fact is, there will be no change in the constitutional *status quo* until anti-abortionists abandon the commonly-held view that *Roe v. Wade* is "the problem." It isn't. *Roe* is merely the Court's "take" on the views of the "thoughtful part of the Nation" concerning abortion, and it will remain that way until abortion opponents convince the public, and through it the Court, that times—and attitudes toward the unborn and persons with severe disabilities or terminal conditions—have changed. It took Margaret Sanger and her followers over fifty years to change the *status quo*. It's going to take the anti-abortion movement at least that long.

Conclusion

Much of what Garrow has written is depressingly familiar to any reader who knows either the law, or the political and social dynamics of the struggle over abortion. Nonetheless, his book serves to underscore a point often forgotten (or never learned) by those who mistakenly believe that the battle over abortion will be over if only they can make an effective case for the humanity of the unborn child. Garrow's history proves, if anything, that a showing "of the well-known facts of fetal development" would be deemed to be just as beside the point by those who believe that autonomy is the first principle of constitutional law as it was to the Court which decided *Roe*. *Liberty and Sexuality* demonstrates beyond a shadow of a doubt that "pro-life" forces are involved in an old-fashioned, high-stakes game of hardball politics, and that they are opposed by well-financed professionals who understand the power of symbol, the limits of democracy, the need to dominate federal and state judiciaries, and the importance of what former President George Bush once called "the vision thing."

For Garrow, the "visionaries" are birth-control crusaders Margaret Sanger, Kit Hepburn (Katherine's mother), Sally Pease and Estelle Griswold of the Connecticut Birth Control League; lawyers, like Lawrence Lader, Fowler Harper, Harriet Pilpel, Sarah Weddington and Margie Pitts Hames; judges, like Harry Blackmun, Arthur Goldberg, and William Brennan; abortionists like Massachusetts' Bill Baird, New York's Alan Guttmacher, and Minnesota's Jane Hodgson; the Connecticut Republican Party, and Joseph Sunnen, the St. Louis-based contraceptive foam manufacturer who financed much of the struggle.

The villains are the usual suspects: the Roman Catholic Church and those in sympathy with what he clearly considers to be its intellectually-benighted and theologically-reactionary world view,[41]

such as the Knights of Columbus and the National Right to Life Committee. Back in the days when it sought to protect the interests of the working poor from upper-crust, Republican-style social engineers, the Democratic Party was also on Garrow's hit list.

These are, in Garrow's world at least, the forces of darkness and reaction, whose intellectual credentials and legal positions are belittled at every turn.[42] They are the antithesis of the heroes and heroines of Garrow's story—the enlightened folk whose views on personal autonomy consistently play to such mixed reviews in state legislatures and referenda—they are "the thoughtful part of the Nation." They are, to borrow a phrase from the (thankfully) now-retired Supreme Court Justice Harry Blackmun, the forces of "light."[43]

What lessons can abortion opponents take from this book? Perhaps the admonition that "winner's justice" carries with it the promise of a double standard. It will not matter to the forces of "light" that their heroines utilized the very same sort of moral argumentation or tactics as their hated adversaries; it is the justice of their position which determines the legitimacy of their actions. It will not matter that mainline Protestant clergy have condemned, in the most religious of terms, the Catholic position as the wholesale "imposition" of "one faith" on a diverse community. The views of the Catholic Church concerning abortion and birth control will continue to be dismissed out of hand as "religiously-based" and, therefore, illegitimate subjects for public discourse. The civil disobedience of ministers who opened abortion and birth-control programs, and the intentional disregard of the law by Connecticut Planned Parenthood's Estelle Griswold and abortionists Bill Baird and Jane Hodgson (all three of whom *wanted* to be arrested) will be viewed as "different" in kind, and therefore justifiable.

Why is this so? Virtually every page of Garrow's book tells us. Catholics and their "pro-life" fellow-travelers are hypocrites. They use contraceptives when it serves their purposes, they have abortions when the situation demands it, and they are murderers with the blood of abortionists on their hands. Unlike the enlightened, upper-crust Democratic and Republican ladies and gentlemen who have done so much to legalize abortion, sodomy, physician-assisted suicide, and euthanasia—indeed, to make them a part of our national patrimony—"pro-lifers" are "terrorists." Like Catholics, they are not the kind of people "the thoughtful part of the Nation" can trust to deal "rationally" with either liberty or sexuality. Their "morals" get in the way.

NOTES

1. David J. Garrow, *Liberty & Sexuality: The Rights of Privacy and the Making of Roe v. Wade* (New York: Macmillan, 1994), 981 pp., $28.00, p. 705 [hereafter, cited as *Liberty & Sexuality*].
2. Robert G. Marshall & Charles A. Donovan, *Blessed Are the Barren: The Social Policy of Planned Parenthood* (San Francisco: Ignatius Press, 1991), pp. 9-10, 275-281.
3. The phrase is borrowed from James Davison Hunter's book on the more recent manifestations of the rift between what he terms "the orthodox" and "the progressives, and the manner in which it plays out in the context of the abortion issue." James Davison Hunter, *Culture Wars: The Struggle To Define America* (New York: Basic Books, 1991).

   Garrow reports that Judy Smith, the woman who recruited Sarah Weddington to argue *Roe v. Wade*, was of the view that:

   > "We in Women's Liberation," she explained, "deny any inherent differences between men and women and regard everyone as human beings with the same potential. All of us are trapped by the society that created our roles," and those confines had to be torn down. "We are questioning the ideals of marriage and motherhood," and in the process "the very society that has created these roles and values must also be questioned." Several weeks later the group published a second piece in *The Rag*, entitled "Why Women's Liberation?," and explained that part of the answer was that "Women's problems are rooted deep in society, and women's liberation cannot be successful until much of what is wrong with society is corrected. The task is almost too great to be contemplated. Yet there is freedom in the striving," *Liberty & Sexuality*, p. 390.

   These views are consistent with one of the several schools of thought within contemporary feminism which take the view that abortion rights are critical to the liberation of women. The joint opinion of Justices O'Connor, Kennedy and Souter in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S.Ct. 2791, 2809 (1992), also takes this position:

   > for two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. See, e.g., R. Petchesky, *Abortion and Woman's Choice* 109, 133, n. 7 (rev. ed. 1990). The Constitution serves human values, and while the effect of reliance on *Roe* cannot be exactly measured, neither can the certain cost of overruling *Roe* for people who have ordered their thinking and living around that case be dismissed.

   The debates within the feminist camp over the relevance of biology to the "construction" of sex roles in society are fascinating topics in their own right, but they are very much beyond the scope of this review. These debates are, however, topics with which informed pro-life advocates should be familiar. A good primer on the subject is Amy Miller, J.D., "Against the Tide: Pro-Lifer as Feminist," *Respect Life*, 1993 (Washington: NCCB Secretariat for Pro-Life Activities).
4. 381 U.S. 479 (1965).
5. *Liberty & Sexuality*, p. 190.
6. The Ninth Amendment provides that: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Though intended as a limit on federal judicial power to decree that the Bill of Rights was to be taken as the "exclusive" list of civil and political rights, there is an extensive literature on the Ninth Amendment as a justification for *expanding* federal judicial authority to invalidate State legislation deemed inconsistent with "unenumerated rights."

   This is precisely what happened in *Roe v. Wade*, where the Court held that Texas could not take steps to increase the level of legal protection afforded to unborn children because such steps violated the unenumerated right of a woman to terminate a pregnancy. Interestingly, the Ninth Amendment was utilized by both sides in the case. Sarah Weddington argued the now-familiar position that protection of the unborn was inconsistent with the existing rights of the woman. Dorothy K. Beasley, counsel for the State of Georgia in *Doe v. Bolton*, argued that the Ninth Amendment protected the right of the fetus "to be left alone." *Liberty & Sexuality*, p. 571-72.

   The literature on the Ninth Amendment is extensive. See, *e.g.*, "Symposium on Interpreting the Ninth Amendment", 64 *Chi-Kent L.Rev.* 37-168 (1988); Sager, "You Can Raise the First, Hide Behind the Fourth, and Plead the Fifth, But What on Earth Can You Do With the Ninth Amendment?", *Id.* at 237; *The Rights Retained By The People: The History and Meaning of the Ninth Amendment* (R. Barnett ed., 1989); C. Black, *Decision According To Law* (1981). A notable exception is Professor Calvin Massey's recent article, "The Anti-federalist Ninth Amendment and its Implications For State Constitutional Law", 1990 *Wis. L. Rev.* 1229. Not only is Professor

Massey's thesis an interesting one, it contains an extremely useful collection of the literature. *See*, Massey, *supra*, 1990 *Wis. L. Rev.* 1229-39 & n. 2 (discussing the academic literature).

7. The pretrial attitude of United States District Judge Sarah Hughes of Dallas, famed for administering the presidential oath of office to Lyndon B. Johnson after the assassination of John F. Kennedy and one of the three judges to whom *Roe v. Wade* was argued, is described as follows:

   > Only one member of the three-judge panel, Sara Tilghman Hughes, had given much thought to *Roe v. Wade* in advance of the May 22 hearing. One of her two clerks, Randy Shreve, had been assigned to pull together relevant materials in addition to the spotty briefs that made up the case's formal record, and Shreve had gone to the extent of calling Roy in New York to ask for information. Lucas [who was, by then, actively involved in pro-abortion advocacy] sent off a package of what he termed "numerous articles and briefs to which you may or may not already have had access," but whether or not Shreve was cognizant of it, Sarah Hughes already knew full well what she thought of the substantive issue posed by *Roe v. Wade*. Asked later whether she had had a personal opinion on the question prior to hearing the case, Hughes answered frankly that "Oh, well, I was in favor of permitting abortion." *Liberty & Sexuality*, p. 440.

8. *Liberty & Sexuality*, p. 15.
9. Kathleen Sullivan, Book Review, "Liberty and Sexuality: The Right to Privacy and the Making of *Roe v. Wade*," *The New Republic*, vol. 210, no. 21 (May 23, 1994), p. 42.
10. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S.Ct. 2791, 2813 (1992). Garrow quotes, with obvious approval, the opinion of Judge Stephen Reinhardt of the United States Court of Appeals for the Ninth Circuit in *Watkins v. United States Army*, 837 F.2d 1428, 1457 (9th Cir. 1988) (Reinhardt, J. dissenting). "Reinhardt predicted that in time 'history will view [*Bowers v. Hardwick*] much as it views *Plessy* [*v. Ferguson*],' the Supreme Court's infamous 1896 endorsement of racial segregation, and said that he was 'confident that, in the long run, *Hardwick*, like *Plessy*, will be overruled by a wiser and more enlightened Court.'" *Liberty & Sexuality*, p. 686.
11. *Liberty & Sexuality*, p. 711.
12. *Liberty & Sexuality*, p. 26.
13. Kathleen Sullivan, *op. cit.*
14. *Liberty & Sexuality*, p. 478 [recounting the oral argument in *United States v. Vuitch*, 402 U.S. 62 (1971)].
15. See, *e.g., Donaldson v. Van de Kamp, Attorney General*, 4 Cal. Rptr. 2d 59 (Ct. App. 2d Dist., Div. 6, 1992) (rejecting the proposition that there is an autonomous right to commit suicide in order to have one's body cryogenically preserved in the hope that future advances in medical science might provide a means to cure a person with a presently incurable illness).
16. *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388, I L.Ed. 648 (1798) (opinion of Chase, J.).
17. *Id.*, 3 U.S. (3 Dall.) 398-399 (opinion of Iredell, J.).
18. *Liberty & Sexuality*, p. 671.
19. *Liberty & Sexuality*, pp. 668-72.
20. U.S. Const. amend. XIV, Section 1 (1868).
21. *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). (a right is fundamental if it is "implicit in the concept of ordered liberty"); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). (a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.").
22. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S.Ct. 2791 (1992).
23. Concurring in *Jacobellis v. Ohio*, 378 U.S. 184, 187, 197, 84 S.Ct. 1676, 1677, 1683, 12 L.Ed. 2d 793 (1964), wrote that criminal prosecution in the obscenity area is constitutionally limited to prosecution of "hard-core pornography." He went on to say:

   > "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it and the motion picture involved in this case is not that."

24. *Poe v. Ullman*, 367 U.S. 497 (1961).
25. *Poe v. Ullman*, 367 U.S. at 542 (Harlan, J. dissenting).
26. —U.S.—, 112 S.Ct. 2791, 2806 (1992).
27. *Id.* 2807.
28. 60 U.S. (19 How.) 393 (1857).
29. *Id.* 60 U.S. at 407, 410, 416. This holding was overturned by the Citizenship Clause of the Fourteenth Amendment. U.S. Const. Amend. XIV § 1 (1868).
30. 163 U.S. 537 (1896).
31. *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).
32. *Liberty & Sexuality*, p. 705.
33. O'Connor, Kennedy, Souter, Blackmun and Stevens.
34. *Casey*, 2813 (*emphasis added*).

35. *Plessy*, 163 U.S. at 551.
36. *Id.*
37. *Id.*
38. *Brown v. Board of Education* (II), 349 U.S. 294, 301 (1955) (remedial phase: "all deliberate speed").
39. 163 U.S. 537 (1896).
40. Bemoaning "the dwindling medical commitment" to abortion training and performing abortions among today's young physicians, Garrow notes that "the scientific consensus regarding abortion appeared sturdier than ever before." He quotes with approval the current "scientific" theory concerning what is, essentially, a value judgment: "The question of when the fetus acquires humanness," two even-handed experts explained, "comes down to this: When do nerve cells in the brain form synapses?" *Liberty & Sexuality*, p. 683 & n. 115.
41. Although virtually *all* the villains in Garrow's book are identified as "Roman Catholics," there is one notable exception: the Connecticut Supreme Court, which consistently rejected the proposition that judges should take matters into their own hands when a legislature seems unable to reach a consensus on hotly-contested political issues. In a passage which stands in stark contrast to Garrow's praise of the activists drawn from the ranks of the Yale law and medical faculty, which flatly contradicts his assertion that the Birth Control "league's best political chance lay in obtaining firm support from the Republican party" (*Liberty & Sexuality*, p. 89), he tells us that "the composition of the Connecticut Supreme Court offered few reasons for optimism." The reason: "Four of the five justices had attended Yale Law School, and the fifth, Harvard, and four were Congregationalists and the fifth a Baptist, but it was not an aggressive or creative court. The two youngest members were each fifty-seven years of age, all five justices were Republicans. . . ." *Id.*, pp. 75-76.
42. Typical of Garrow's sneering style is his description of Fordham University law professor Robert M. Byrne, who is described as "a prolific Roman Catholic critic of any form of abortion law liberalization" and "a forty-year-old bachelor who still lived with his mother [in 1970]." *Liberty & Sexuality*, p. 522. But not all Catholics belong, like Byrne, to the "power group of zealots" who oppose abortion. Those who support either abortion itself, or a totally passive role for both abortion opponents and the Church itself, are singled out for their "courage" in the face of severe criticism by their co-religionists. Rev. Robert F. Drinan, S.J., who had argued that repeal of abortion laws is preferable from a moral point of view than "reforms" which would place the State in the unenviable position of deciding which children are eligible to be born (a view which I share) is given special attention because of the role he played in undercutting the Catholic opposition. Garrow applauded him as "far more influential than many observers yet realized" in 1969, and quotes with approval Drinan's wholesale capitulation on the role of church leaders in the abortion issue. *Id.* p. 421.
43. The term is drawn from Justice Blackmun's concurring opinion in *Casey*:

> Three years ago, in *Webster v. Reproductive Health Serv.*, [citation omitted], four Members of this Court appeared poised to "cast into darkness the hopes and visions of every woman in this country" who had come to believe that the Constitution guaranteed her the right to reproductive choice. [citations omitted].
>
> All that remained between the promise of *Roe* and the darkness of the plurality was a single, flickering flame. Decisions since *Webster* gave little reason to hope that this flame would cast much light. [citations omitted]. But now, just when so many expected the darkness to fall, the flame has grown bright.

Casey, 112 S.Ct. 2791, 2844 (1992) (Blackmun, J. concurring).

Thomas Jefferson *v. Casey*

Lynn D. Wardle

The voice of a single individual . . . would have prevented this abominable crime from spreading itself over the new country. Thus we see the fate of millions unborn hanging on the tongue of one man, and heaven was silent in that awful moment.
—Thomas Jefferson

Congress was very busy in the years immediately after the War of Independence, and Thomas Jefferson was an active participant in its critical business. He was chairman of a committee to arrange for a temporary government of the western territories. In March, 1784, Jefferson's committee presented its report to Congress. It contained, among other things, a proviso that "neither slavery nor involuntary servitude" should be permitted in any part of the western territories after the year 1800.[1] A representative from North Carolina objected, and called for a vote.

The Articles of Confederation required a majority of the states to approve that kind of new law. As there were 13 states, 7 states' votes were needed for Jefferson's proposal to become law. On the fateful day, six states voted yea, three voted nay (including Virginia, Jefferson's own delegation, which voted 2-1 against the proposal), and one state delegation was evenly divided (North Carolina). One representative from another state (New Jersey) also voted yea, and if that vote had counted, Jefferson's proviso would have passed. But the rules required at least two representatives from any state to participate for the state's vote to count, and the other New Jersey representative was sick in his lodgings that day. Thus, by just one person's vote (either the missing second representative from New Jersey, or one more vote in the evenly-split North Carolina delegation, or one changed vote in his own Virginia delegation), Jefferson and Congress had failed to prohibit the growth of slavery.[2]

To many, that loss may have seemed a minor setback. But Jefferson mourned greatly. He realized what it meant, that a singular opportunity was lost—as his words quoted above show. Three years later, after

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Jefferson had gone to Europe, Congress finally passed a much-diluted version of Jefferson's proposal—it was limited to the northwest territory (excluding the middle and southern territories), and it was offset by a strong fugitive slave provision. It was so weak as to allow the perpetuation and expansion of the practice (slavery) that Jefferson desperately had hoped to isolate and eliminate.

What Might Have Been—And What Happened Instead

Had Jefferson's original proposal become law, slavery would have been excluded from the states of Tennessee, Alabama and Mississippi, which were then part of the "western territory" that would have been covered by Jefferson's proposal; and the later-acquired territories of Arkansas and Louisiana would also have been free states if Jefferson's proviso had applied to later-acquired territories as well. Five of the eleven states that joined the Confederacy would never have become slave states had Jefferson's proposal passed and remained in effect. But Jefferson's proposal failed by one vote, and so slavery spread into the new territories, where, after the invention of the cotton gin just a few years later, slavery became an irresistibly-lucrative institution. As slavery spread, the political power of the slave states grew so that for sixty years the slavery caucus distorted the politics of the nation.

For the want of a single vote, the opportunity to isolate slavery was lost. But the problem did not shrivel up and disappear. The evil practice grew and plagued the nation until a Civil War erupted, pitting brother against brother in armed conflict, leaving more than 525,000 Americans dead (about ten times as many as died in Vietnam), draining the finances of the struggling nation by a staggering $15 billion in war costs (in 1860 dollars).[3] Entire towns were destroyed, entire families exterminated, industries demolished, land ravaged, until nearly half the nation lay smoldering in ruins, millions of children were left fatherless, hundreds of thousands of women were widowed, and such racial bitterness engendered by hostilities that repression of black Americans persisted for another century until today, nearly 130 years after the end of the Civil War, we still reel under the burdens of failure in interracial relations.

Justice Cannot Sleep Forever

I suspect that Jefferson foresaw that something like the Civil War would result from the failure to stop the spread of slavery. He later

said (and these words are inscribed in the marble walls of the Jefferson Memorial in Washington, D.C.):

> Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep forever.[4]

Another great opponent of slavery, Abraham Lincoln, shared this view of the terrible national consequences of that great evil. In his Second Inaugural Address (delivered in March, 1865, 81 years after Jefferson's proposal to quarantine slavery failed by a single vote), President Lincoln spoke of the terrible scourge of the Civil War as a just judgment visited upon the nation that had for so long embraced and allowed the practice of slavery. He said (and these words are inscribed in the marble walls of the Lincoln Memorial):

> Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet if God wills that it continue, until all the wealth piled by the bond-man's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord, are true and righteous altogether."[5]

What a terrible price was paid by individuals, families, communities and the nation—in wasted human life, destroyed health, tremendous suffering, family disruption and disintegration, national conflict, regional hatred, and human enmity (not to mention the economic costs of tremendous destruction of property, revenues dissipated, and national progress diverted)—because the evil of slavery was perpetuated and accommodated so long by America. What a different course might have been followed, and how much suffering by so many might have been avoided if that crucial "single voice" had come forward, and Jefferson's 1784 proposal had been adopted.

The Modern Parallel to Slavery: *Roe v. Wade* and Abortion-on-Demand

I recently thought of the words of Jefferson, his tremendous disappointment at the failure of a crucial swing vote at a crucial time, and his prophetic gloom about the inevitable judgments, and of Lincoln's heart-sick recognition of the judgment hand of God in the terrible scourge of the Civil War. Their words echoed in my mind when I read the stunning decision of the Supreme Court in June, 1992 in *Planned Parenthood v. Casey.*[6]

To understand the magnitude of the lost opportunity in *Casey*, one must recall the 1973 Supreme Court decision in *Roe v. Wade*.[7] For hundreds of years before the Supreme Court decided *Roe v. Wade*, common law in America and England had prohibited abortion except in very narrow cases (traditionally except when necessary to save the life of the mother). During the nineteenth century the common law prohibition of abortion had been explicitly codified in most states. In 1973, all American states prohibited abortion. No American state, not even the most liberal, allowed absolute abortion-on-demand. Even in states where abortion was most easily available, there were substantial restrictions. But with a stroke of the pen, the Supreme Court, in *Roe v. Wade*, invalidated, wholly or in part, abortion laws in all of the states, and decreed that the Constitution required all states to allow abortion-on-demand. Even though the destruction of human life *in utero* had been a profound public matter of social morality for centuries, the Court in *Roe* declared that it was no longer a permissible subject of public concern or social regulation at all. Rather, the Court declared, abortion was now a "private" decision entirely.

The effect of *Roe* was revolutionary. The number of abortions in the United States has skyrocketed to over 1.5 million abortions annually (nearly all of which are done for reasons of personal or social convenience, not medical necessity), and the ratio of pregnancies ending in abortion has risen to 30 percent of all pregnancies.[8] Abortion has become a matter of routine birth control (as shown by the fact that nearly fifty percent of all women having abortions have previously had one or more abortions).[9] Yet since the Supreme Court mandated abortion-on-demand as the law for America, the number and percentage of children born out of wedlock has trebled (from 398,700 births [10% of all births] in 1970 to 1,165,400 births [28% of all births] in 1988),[10] the number of adoptions has dropped almost in half (from 175,000 in 1970 to 104,000 in 1986),[11] and the rate of child abuse has multiplied astronomically (from 141,000 cases of child neglect in 1972 to 1,767,673 reports and 838,232 substantiated cases of child victims of abuse and neglect in 1991).[12] It is as if the violence inflicted increasingly on unborn children has generated a new attitude that violence toward all children is now acceptable.

Women, far more than men, have suffered the tragic aftermath of the epidemic of abortion-on-demand. Since *Roe* legalized abortion-on-demand, the rate of sexual assaults on women has more than

doubled (from 46.7 per 1000 women in 1972 to 102.6 per 1000 women in 1990),[13] and the rate of deaths from breast cancer (which now appears to be related to abortion) has risen (from 29.9 in 1970 to 43.1 in 1989).[14] A new wave of promiscuity (which always hurts women and children) has swept over the nation as if the legalization of a "quick fix" to the "problem" that might result from wanton sexual liaisons has liberated hundreds of thousands of men and women to engage in illicit sexual relations. Abandoned to their "privacy," multitudes of women have been sexually exploited, then manipulated into abortion, then left alone (or in empty sexual relationships) to cope with potentially severe consequences (from physical injuries to psychological trauma) in the exquisitely isolated "privacy" provided by *Roe*. Women have been the victims of the deception of abortion "privacy" which places the entire responsibility for procreation and children upon women. The Supreme Court in *Roe* constitutionally legitimated the corrupt, male-immunizing notion that sexual and procreative responsibility is the sole and private matter of women.

Because of *Roe*, America has the most radically pro-abortion law of any modern nation in the world, for in no other modern nation has this crime against humanity been enshrined as a matter of fundamental constitutional right. No other country in the world that even pretends to be a real democracy has a rule of law that is so extreme, so neglectful of social interests, so callous to the small, silent victims, so utterly unrestrictive of so deadly a practice as is the American abortion doctrine articulated in *Roe v. Wade*. Only in places like China does one find so little restriction on abortion as exists in the United States.

An entire industry devoted to killing human beings has come into being in the United States, built on the doctrine declared in *Roe v. Wade* that elective abortion is a fundamental constitutional right, protected by even greater judicial protection than freedom of religion and other rights included in the Bill of Rights. The cost of *Roe* in terms of the loss of civilization, the corruption of morality, the brutalization of a generation of Americans who have participated in the "little murders" of abortion is incalculable.

It is not an exaggeration to suggest that *Roe v. Wade* is one of the two worst decisions in the history of the United States Supreme Court. *Roe* mandated legal acceptance throughout America of what for at least 700 years was regarded as a crime against humanity;

it politicized the judiciary and called into question the integrity and independence (from political consideration) of the work of the courts more than any decision in modern memory; it polarized the nation about abortion policy at the very moment when legislative reforms were sweeping the country and building a remarkably reasonable consensus (which *Roe* summarily repudiated). *Roe v. Wade* has been more divisive, has engendered more destructive controversy, produced more fractious political meddling, and resulted in more bloodshed than any Supreme Court decision since the 1857 *Dred Scott v. Sanford* decision that sparked the Civil War.[15]

But For a Single Vote—History Repeats Itself in *Casey*

Planned Parenthood v. Casey presented the Court with a golden opportunity to make a critical, mid-course correction. In the years between *Roe* and *Casey*, a growing number of justices had criticized the *Roe* decision, both for the extreme doctrine it mandated (forcing all states to legalize abortion-on-demand) and for its revival of the long-disreputed practice of substantive due process. The justices who expressed dissatisfaction with *Roe* had swelled from two to five consistent critics and one occasional scolder. Among the most articulate of the judicial critics of *Roe* were Justices Anthony M. Kennedy and Sandra Day O'Connor. Only three years before *Casey*, Kennedy had voted to reverse the core elements of *Roe* in the *Webster* case,[16] and only two years earlier he had written strong opinions to substantially curtail the application of the *Roe* doctrine to minors.[17] In 1983, Justice Sandra Day O'Connor had strongly criticized the Court for acting like "Platonic Guardians" in abortion cases and had declared that *Roe v. Wade* was "on a collision course with itself."[18]

Thus, when *Casey* was argued before the Supreme Court in the spring of 1992, it was widely believed by both pro-life and pro-abortion legal experts that the Court would overturn the core of *Roe v. Wade*. But that is not what happened. Instead, in *Casey* the Court narrowly but emphatically reaffirmed that abortion is a constitutionally-mandated matter of exclusive female privacy. The *Casey* majority also declared that abortion-on-demand is indispensable to the full participation of modern women in political and economic equality. Moreover, in *Casey* the Court radically extended the concept of feminist privacy in abortion by holding that the Constitution forbids a state to require that the husband be notified that his wife, who is carrying their child (the offspring of their jointly-made procreative

decision and the result of their mutual act), intends to abort (kill) their child.

The vote in *Casey* was 5-4. Four justices voted to remedy the evil extremism of *Roe v. Wade*, but for the want of a single vote, they lost the opportunity.

Regrettably, Justice Kennedy, the indispensable single voice needed to "prevent this abominable crime from spreading," was silent. But it might have been otherwise. In the Supreme Court conference after *Casey* was argued, it has been reported that Justice Kennedy "lined up with the 5-4 majority supporting Pennsylvania's statute regulating abortion. Chief Justice William Rehnquist assigned himself the opinion which would undercut *Roe v. Wade*'s elevation of abortion as an inviolable constitutional right."[19] So wrote Evans & Novak in their column for September 4, 1992. Thus, initially, Justice Kennedy raised his voice in defense of the principle that the Constitution does not forbid laws that protect the unborn child. But over the next few months, Justice Kennedy was reportedly the object of an incredible lobbying effort led by his law clerk. Evans and Novak wrote that Kennedy had long been the target of a campaign of flattery and guile led by Harvard Law Professor Laurence Tribe, who lauded Kennedy in a book he co-wrote with a former student, Michael Dorf, and later persuaded Kennedy to hire Dorf to serve as his law clerk. Dorf lobbied Kennedy until he persuaded him to change his vote in the *Casey* case.[20]

The lobbying effort evidently heightened Justice Kennedy's concerns about the political future of the Court (or, as his critics say, his own political future). Apparently just weeks before *Casey* was announced, Kennedy switched his vote, turning what was a majority opinion written by Chief Justice William Rehnquist into a dissenting opinion. Kennedy's stunning U-turn was parodied in the Supreme Court's end-of-term skit, where the law clerks played the theme song from the old TV series "Flipper" to tease him.

Justice Kennedy's opinion in *Casey* directly contradicted some very specific positions he had taken within the previous three years. Kennedy's reason for switching his positions, in the most sympathetic estimate, was purely political—his assessment of the political mood of the country, the way the political winds were blowing, and the desire to curry popularity either for the Court (in the view of his apologists) or himself (in the view of his harshest critics).[21] Even

assuming that Justice Kennedy believed that reaffirming *Roe* was for the good of the nation and that it was a difficult decision for him, his good intentions do not ameliorate the consequences of his *Casey* decision or justify his unjudicial behavior. He failed because he looked at the case in political terms and subordinated the timeless standards of the Constitution to the passing values of political whim. History shows time and again that justices almost invariably have stumbled when they have tried to leverage their judicial position into a political one.

Of course, Justice Kennedy was only one of five justices who voted in *Casey* to reaffirm *Roe*. The changed vote of any one of them would have changed the outcome. Justice O'Connor, also, abandoned her previously-expressed rejection of the key facets of *Roe*. Her vote was no less critical, nor any more justifiable, than Justice Kennedy's vote (though her switch of principles was certainly telegraphed as early as in *Webster*). Moreover, Justice O'Connor's vote reflected the tremendous gender pressure that had been put on her, as the sole woman on the Court, to represent with her vote the political wishes of millions of professional women who viewed abortion as a symbol and tool of liberation from unwanted or untimely domestic responsibilities. Justice Souter also might have been expected to be sympathetic to the arguments for reform of the most highly-criticized, institutional-impugning Supreme Court mistake of the twentieth century. But he, too, voted to reaffirm and extend *Roe*, offering a transparent manipulation of *stare decisis* to justify the perpetuation of a doctrine that has no foundation in the Constitution under which *stare decisis* derives its legitimacy. (Justices Blackmun and Stevens, of course, clung tenaciously to the abortion doctrine, utterly convinced that life worth living could not exist in America without a court-imposed rule of abortion-on-demand.)

Thus, judged solely by their past opinions and general judicial philosophies, at least three of the five justices who reaffirmed *Roe* in *Casey* very credibly and consistently could have voted to repudiate *Roe* (or even been expected to do so). But of the five, Justice Anthony Kennedy had to travel the furthest, and contradict most blatantly and least rationally the most recent statement of his own constitutional principles to reaffirm *Roe*. His was the critical "fifth" vote. The silence of his voice meant that the opportunity to prevent the spread of "this abominable crime" was lost. Another opportunity to remedy

the public wrong committed by the Court may not come in his lifetime.

The Magnitude of the Opportunity Lost

With *Casey* the Court had the opportunity to depoliticize the role and revive the integrity of the Court. It had the chance to renew national faith in the notion of self-government that is the core of the separation of powers. In *Casey* the Court had the prospect to moderate the most extreme example of judicial legislation, and to repudiate the most serious violation of basic human rights the Court has imposed (in the name of the Constitution) in this century. But the Court did none of that. In *Casey* the silence of one person shouted approval to a million acts of lethal violence. By one silent voice the States were forced to do nothing about the most prevalent—and the most deadly—form of child abuse practiced in America.

I grieve for the opportunity lost, because the country will suffer terribly for the delay. Each year over a million unborn children with beating hearts, active minds, and healthy, growing bodies will continue to be violently destroyed. Each year, over a million women will be sexually exploited, interpersonally manipulated, and cynically liberated to privately kill their own offspring. Each year innumerable women will suffer the bitter anguish of tragic mental, physical, and moral pathologies in the isolation of Court-mandated privacy. Each year that the farce of constitutionally-mandated abortion-on-demand continues, the credibility and integrity of the Court grow weaker, the invisible guides that have kept the Court on its tracks rot a little more, and the engine tilts more dangerously toward self-destruction as it careens along. The cost of correcting the holocaust of judicially-mandated abortion-on-demand will be much greater, much more terrible, than it could have been if the opportunity presented in *Casey* had not been squandered.

Thus, as I read the Supreme Court opinion in *Casey* and I think of the silent voice that could have made the critical difference in that case, I cannot help but remember the sobering words of Jefferson:

> The voice of a single individual . . . would have prevented this abominable crime from spreading itself over the new country. Thus we see the fate of millions unborn hanging on the tongue of one man, and heaven was silent *in that awful moment.*
>
> I tremble for my country when I reflect that God is just: that his justice cannot sleep forever.

NOTES

1. See John Chester Miller, *The Wolf by the Ears: Thomas Jefferson and Slavery*, (1977), p. 28; Merrill D. Peterson, *Thomas Jefferson and the New Nation*, (Oxford University Press: 1970), p. 283.
2. See sources in footnote 1. See also Donald L. Robinson, *Slavery in the Structure of American Politics, 1765-1820*, (Harcourt, Brace and Jovanovich: 1971), pp. 378-383: "If New Jersey had a full delegation on that day (Samuel Dick voted 'aye,' but the Articles required that a state have two delegates in Congress to have its vote counted), if William Grayson or James Madison had been in the Virginia delegation instead of Hardy or Mercer, or if Delaware had been present, the story might have been different," p. 380; Philip S. Foner, *History of Black Americans, From Africa to the Emergence of the Cotton Kingdom*, (Greenwood Press: 1975), pp. 374-375.
3. For statistics, see "Civil War," *World Book Encyclopedia*, (1981), vol. 4, p. 492.
4. Noble E. Cummings, Jr., *In Pursuit of Reason: The Life of Thomas Jefferson*, (LSU Press: 1987), pp. 62-63.
5. William Lee Miller, *Lincoln's Second Inaugural, A Study in Political Ethics*, (1980), p. 3.
6. 112 S.Ct. 2791 (1992).
7. 410 U.S. 113 (1973).
8. See Stanley K. Henshaw, "Characteristics of U.S. Women Having Abortions, 1982-1983," *Family Planning Perspectives*, (1988), vol. 158, p. 19; see Lynn D. Wardle, "Time Enough: *Webster v. Reproductive Health Services* and the Prudent Pace of Justice," 41 *Florida Law Review* 881, 985 (1989) (App. D).
9. The latest data on this point is for 1987; in that year 43.2% of all the 1.5 million abortions were the second or higher abortion of all the women having the abortion, reported the Alan Guttmacher Institute (the research affiliate of Planned Parenthood). See Henshaw, p. 20, and Wardle, *supra* note 8 at 985 (App. D).
10. *Statistical Abstract of the United States*, (1993), Table 98; also *Vital Statistics of the United States*, (1988), vol. 1, p. 57.
11. *Statistical Abstract of the United States*, (1992), Table 599.
12. *Statistical Abstract of the United States*, (1993), Tables 340, 341; Judith Areen, "Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse," 63 *Georgia Law Review* 887, 887 n. 2 (1975) (citing H.E.W. data).
13. *Statistical Abstract of the United States*, (1992), Table 287; *ibid.*, 1975, Table 248.
14. *Statistical Abstract of the United States*, (1992), Table 114.
15. 19 How. 393 (1857).
16. *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).
17. *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990), (opinion for the Court by Kennedy, J.); see also *Hodgson v. Minnesota*, 497 U.S. 417 (1990), (Kennedy, J., concurring in part and dissenting in part).
18. 462 U.S. 416, 453, 458 (O'Conner, J., dissenting).
19. Evans and Novak, "How Justice Kennedy Flipped," Chicago *Sun Times*, Sept. 4, 1992, p. B18.
20. For other articles describing Justice Kennedy's about-face and offering various insights or speculations into how it happened, see David G. Savage, "How Roe vs. Wade Survived," Los Angeles *Times* vis. Dallas *Morning News*, Dec. 17, 1992 (Lexis), (Kennedy's visit with Blackmun, collaboration with Souter and O'Connor); Tony Mauro, "Another Solution to the Kennedy Riddle," *Legal Times*, Sept. 14, 1992 (Lexis), (James Doyle's oral argument in earlier case); David G. Savage, "The Rescue of Roe vs. Wade," Los Angeles *Times*, Dec. 13, 1992 (Lexis), (Kennedy voted to uphold different temperament than Scalia, *California Lawyer* interview day of decision); Richard Lacayo, "Inside the Court," *Time*, July 13, 1992 (clerk-did-it theory, running for Chief theory, and afraid to be deciding vote, Dorf & Rubin); Terence Moran, "Profiles in Caprice: Justice Anthony Kennedy," *New Jersey Law Journal*, July 13, 1992 (Lexis), (different theories: clerk, evolution, seduced by establishment, try-to-be-fair); Richard C. Reuben, "Signs Hint Rehnquist Miscalculated," *Chicago Daily Law Bulletin*, Aug. 28, 1992 (Lexis), (evidence of last-minute switch, visit to Blackmun, Dorf contact to Rubin, Bray rescheduling); Richard C. Reuben, "Man in the Middle," *California Lawyer*, Oct. 1992 (Lexis), (evidence of last-minute shift, opinion evidence, evolution); Tony Mauro, *Texas Lawyer*, Nov. 2, 1992 (Lexis), (Kennedy's *California Lawyer* interview).
21. Evans and Novak write: "The reason Kennedy flipped and formed a 5 to 4 majority affirming *Roe* is attributed to his desire to approbation by journalists and legal establishments committed to judicial activism . . ."

Abortion and the Marquis de Sade

John Attarian

Mention the Marquis de Sade and most people have some idea about who he was: the pervert for whom sadism is named. Those who have waded through his printed sewage, or have read about him, know that he was a pornographic novelist and "philosopher" whose mouthpiece characters propounded a philosophy sanctioning every imaginable crime and cruelty. What is less widely known is that he was an abortion advocate. In fact, most of today's arguments for abortion were anticipated by Sade. Moreover, he confirms the profound misogyny involved in abortion, thus—however unintentionally—supporting the arguments of anti-abortionists.

In 1795, almost exactly two centuries ago, Sade wrote *Philosophy in the Bedroom*, a philosophical novel consisting of seven dialogues among four main characters: Dolmancé, a thirty-six-year-old male libertine; Madame de Saint-Ange and her brother the Chevalier de Mirvel, both libertines; and Eugénie de Mistival, a fifteen-year-old virgin whose sexual consciousness is raised under Dolmancé's supervision by methods which shall go undiscussed here. Between orgies and cruelties, the otherwise thoroughly-forgettable characters speechify, expounding Sade's libertine philosophy.

Dolmancé, Sade's principal mouthpiece here, heaps atheist scorn on God, Jesus, the Resurrection, Christianity, and Communion.[1] All morality is nonsense, and, being a matter of geography, relative:

> There is no deed . . . which is really criminal, none which may really be called virtuous. All is relative to our manners and the climate we inhabit; what is a crime here is often a virtue several hundred leagues hence, and the virtues of another hemisphere might well reverse themselves into crimes in our own.[2]

But, asks Eugénie, aren't some things, such as murder, so evil in themselves that they are universally deemed criminal? Not at all, her companions retort; some cultures esteem murder very highly.[3]

She asks: What about libertinage in young girls and adultery among

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women? Look to Nature, replies Madame de Saint-Ange. Animals are neither subject to their parents' will nor fettered in marriage. Like bitches and she-wolves, women were born for sex, hence can be as promiscuous as they like. Madame exhorts Eugénie to sex; *"your body is your own, yours alone*; in all the world there is but yourself who has the right to enjoy it as you see fit" [italics added].[4]

Alas, women get pregnant. Perverse sex, sodomy, and contraception evade pregnancy, hence are recommended.[5] Madame de Saint-Ange exhorts Eugénie to be "the implacable enemy of this wearisome child-getting" which, she complains, ruins women's figures, dulls their voluptuous sensations, ages them, and so on.[6] Should Eugénie be unfortunate enough to conceive, Madame generously offers:

> notify me within the first seven or eight weeks and I'll have it very neatly remedied. Dread not infanticide; the crime is imaginary: *we are always mistress of what we carry in our womb*, and we do no more harm in destroying this kind of matter than in evacuating another, by medicines, when we feel the need [italics added].[7]

Eugénie balks: What if the fetus is near term? Even if the baby were born, Madame assures her, "we should still have the right to destroy it"; mothers have an unshakable prerogative over their children, including the right to abort them.[8] Dolmancé chimes in:

> The right is natural . . . it is incontestable. The deific system's extravagance was the source of every one of those gross errors. The imbeciles who believed in God, persuaded that our existence is had of none but him and that immediately an embryo begins to mature, a little soul, an emanation of God, comes straightway to animate it: these fools, I say, assuredly had to regard as a capital crime this small creature's undoing, because, according to them, it no longer belonged to men. 'Twas God's work; 'twas God's own: dispatch it without crime? No. Since, however, the torch of philosophy has dissipated all those impostures, since, the celestial chimera has been tumbled in the dust, since, better instructed of physics' laws and secrets, we have evolved the principle of generation, and now that this material mechanism offers nothing more astonishing to the eye than the development of a germ of wheat, we have been called back to Nature and away from human error. As we have broadened the horizon of our rights, we have recognized that we are perfectly free to take back what we only gave up reluctantly, or by accident, and that it is impossible to demand of any individual whomsoever that he become a father or mother against his will; . . . and that we become, in a word, as certainly the masters of this morsel of flesh, however it be animated, as we are of the nails we pare from our fingers, or the excrements we eliminate through our bowels, because the one and the other are our own, and because we are absolute proprietors of what emanates from us.[9]

Similarly, early in *Juliette* (1797), Sade's massive novel of the

career of a female sadist, the depraved nun Madame Delbène, enticing Juliette into libertinism, argues:

> The embryo is to be considered the woman's exclusive property; as the sole owner of this fruit rather jestingly called precious, she can dispose of it as she likes. She can destroy it in the depths of her womb if it proves a nuisance to her . . . infanticide is her sacred right. Her spawn is hers, entirely hers . . . the mother may feed it or she may strangle it, depending upon her preference.[10]

Much later in *Juliette*, Sade put a nihilist speech in the mouth of, yes, Pope Pius VI, whom Juliette, by now a hardened sadist, visits and entices into sadistic sex. Pius endorses infanticide and the murder of pregnant women,[11] and cites the practice of abortion by Japanese women, whereupon a footnote continues:

> The penalty decreed against child-murdering mothers is an unexampled atrocity. Who then has a greater right to dispose of this fruit than she who carries it in her womb? If in all the world there is an article of property to which no outside claim can be fair, it is surely this one. To interfere with the usage a woman chooses to make of it is stupidity carried beyond any conceivable extreme.[12]

Sound familiar? This is today's liberal, secular-humanist, feminist stand, stripped of all fig leaves of decency. Sade makes brutally explicit what others prefer not to mention, pitilessly illuminating what follows when religious and moral restraints are repudiated. There is neither God nor soul, hence nothing sacred about the fetus; it is no more awe-inspiring than a sprouting seed, its elimination no worse than a bowel movement, and on and on. One can almost hear Dolmancé and Madame admonishing Eugénie, *à la* Joycelyn Elders, to "get over [your] love affair with the fetus."

And abortion to combat overpopulation? Sade anticipated this one too. Reading from a pamphlet titled *Yet Another Effort, Frenchmen, If You Would Become Republicans*, which expounds Sade's political philosophy and argues, among other things, that murder is no crime, the Chevalier asserts that nations will be poor if population exceeds its subsistence, but will prosper if population is controlled. Murdering adults for this purpose is unjust, but

> it is not unjust, I say, to prevent the arrival into the world of a being who will certainly be useless to it. The human species must be purged from the cradle; what you foresee as useless to society is what must be stricken out of it . . .[13]

Which, of course, also covers aborting defective ("useless") babies.

This is not to say that today's abortion advocates took their cue from Sade. Most, surely, have never read him. Rather, they share Sade's libertine world view: there is no God, hence no religious and moral scruples to hold me back, I'm here to enjoy myself, I reject the rules, I'll play by my own rules, I can do as I like, right is what I want, wrong is whatever thwarts or inconveniences me, hence an inconvenient or unwanted baby . . . The logic of libertinism, as Sade made brutally clear, is inexorable and merciless.

Sade's arguments for abortion make it seem a bold stroke of liberation. Abortion's modern advocates certainly see it that way. However, Sade also shows that this purported liberation of women rests on a profound misogyny.

If women have any characteristics giving them claims to special consideration as women, it is their beauty and their role as life-bearers. Both have, as a matter of historic record, been, until recently, evocative of tenderness and protectiveness among men—and, until recently, such responses were considered proper—indeed part of what it means to be civilized.

Here Sade is diabolically illuminating. Far from seeing women as in any way entitled to chivalry, he asserts their inferiority to men over and over in his novels. Nature made women weaker than men, hence they are inferiors, and serving men's pleasure is their only reason for being.[14] Hence "there is nothing in their sex which can constitute a solid title to our respect; and love, begot of this blind respect, is, like it, a superstition"; as long as men obey Nature, "they are bound to hold women in supremest contempt."[15]

Suiting the action to the word, Sade's libertines give both beauty and life-bearing short shrift in his nightmare world. Beauty is only an incitement to cruelty, as another of Sade's mouthpieces, the statesman Noirceuil, argues in *Juliette*:

> "But beauty," I hear some sentimental imbecile protest, "beauty melts, interests, it invites to sweetness, to forgiveness: how is one to resist the tears of the pretty girl who, clasping her hands together, implores mercy of her executioner?" Indeed! This is precisely what one is after, it is from this agitation, this terror the libertine in question extracts his most delicious enjoyment. . . . Beauty, virtue, innocence, . . . the object we covet will not be sheltered by any of these. To the contrary. . . . all those qualities tend only to inflame us the more, and we should look upon them all simply as vehicles to our passions. More, these qualities afford us the opportunity of violating another prohibition: I allude to the variety of pleasure derived from sacrilege or the profanation of objects that expect our worship. That beautiful girl is an object of reverence

> for fools; making her the target of my liveliest and rudest passions, I experience the double pleasure of sacrificing to that passion both a beautiful object and one before which the crowd bows down.[16]

Woman's other grounds for reverence and chivalry, her capacity for conceiving and bearing children, is equally revolting in Sade's eyes. "What," the Comte de Belmor asks in *Juliette*, "is there more frightful to see than an expectant mother? Gravid and stark naked, it is thus the entire sex ought to be shown to its admirers, since they have a liking for the grotesque and the horrible."[17] A horror of childbearing and pregnancy permeates Sade's novels. Madame de Saint-Ange tells Eugénie "I hold generation in such horror I should cease to be your friend the instant you were to become pregnant."[18] In *Juliette*, the Sodality of the Friends of Crime, a secret libertine society, instructs female members to avoid pregnancy, proclaiming that "a woman addicted to child-bearing will not be tolerated," and asks Juliette in her interview for admission to membership if she will have the courage to abort should she become pregnant.[19]

Like beauty, woman's life-bearing capacity is a target of diabolical cruelty. Women fare badly in Sade's fictions, receiving the overwhelming majority of his monstrosities—and pregnant women are singled out for martyrdoms of singular ferocity. When they aren't murdered outright, or given abortions outright, they are maltreated or tortured, almost always for the express purpose of inducing miscarriage or abortion; or, sometimes, their newborn infants are murdered.[20]

Scrutiny of Sade's "masterpiece," *The 120 Days of Sodom*, a tale of the activities of a society of libertines, vividly bears this out. Divided into four sections of some 150 "passions" (or sadistic scenarios) each, it manifests an escalating cruelty, and the worse it gets, the more frequently women are victimized as life-bearers. Only one of the straightforwardly sexual "simple passions" involves a pregnant woman.[21] Revolting rather than cruel, the "complex passions" entail mainly coprophagy and sacrilegious acts, such as desecration of Hosts and profanation of the Mass—expectant mothers are victims in only three.[22] But they are tortured in six of the violent, cruel "criminal passions"[23] and 15 of the 148 "murderous passions" are unreadably-ghastly murders of pregnant women.[24]

In Sade's fiction women are of value only as sterile sex toys of libertines, as hurtable beings to be flogged and tortured, as props for fantasies, and, in some cases, as living furniture.[25] None of this

has anything to do with what it means specifically to be a woman. As soon as women become pregnant and thus fulfill their biological mission and destiny—i.e., as soon as they *more fully realize their nature as women*—they become special targets of cruelty. This is made explicit in *Justine*, when one of the women held prisoner in an isolated monastery run by four sadistic monks tells the newly-arrived heroine:

> Pregnancy, reverenced in the world, is the very certitude of reprobation amongst these villains; here, the pregnant woman is given no dispensations; . . . on the contrary, a gravid condition is the certain way to procure oneself troubles, sufferings, humiliations, sorrows; how often do they not by dint of blows cause abortions . . .[26]

All this indicates that Sade well knew the special horror entailed by outrages against the life-bearing capacity of women, cruelty to women made especially vulnerable to harm by pregnancy, and murder of babies helpless in their wombs. If abortion were not a cosmic horror, why would this connoisseur of cruelty fasten on it?

Then, too, most of the abortions in Sade's novels are forced, induced by torture; voluntary abortion seldom goes beyond libertines exhorting women to abort if they get pregnant. Sade's use of abortion primarily as a form of cruelty indicates that, in his eyes, the "liberation" which abortion seemingly promises (in its advocacy by his mouthpieces) is only its minor aspect; its deeper significance was as an integral part of a hostility to woman *as woman*, a metaphysical misogyny expressed in attacks on her essential nature.

Sade's enthusiasm for abortion and cruelty to women as life-bearers also reflects his profound indifference to—even hatred for—life itself. In the context of rationalizing lesbianism and sodomy, as preventing a propagation Nature at best tolerates, Dolmancé concurs when Madame de Saint-Ange tells him his arguments will "prove that totally to extinguish the human race would be nothing but to render Nature a service"—he later asserts that Nature is indifferent to her creatures and that the disappearance of the human species would make no difference to her at all.[27]

This indifference to life rests in turn on philosophical materialism. This, indeed, is a foundation stone of Sade's world view. Over and over again his mouthpiece characters pound it home: the universe and everything in it are merely matter. People are only matter organized in a certain way; when they die, all that happens is that the matter gets reorganized and takes on another form. Life and death, therefore,

are meaningless, and murder is no crime.[28] And with everything reduced to matter, nothing in the universe is more meaningful than anything else. "What is man? and what difference is there between him and other plants, between him and all the other animals of the world?" *Yet Another Effort, Frenchmen, If You Would Become Republicans* asks, and answers: "None, obviously."[29] Indeed, nothing outside the libertine's own pleasure means anything at all.[30] Having just burned a family alive for fun, Juliette muses:

> So this is what murder is! A little organized matter disorganized; a few compositional changes, the combination of some molecules disturbed and broken, those molecules tossed back into the crucible of Nature who, re-employing the selfsame materials, will cast them into something else so that in but a day or so they shall reappear in the world again, only guised a little differently; this they call murder—truly now, in all seriousness, I ask myself, where is the wrong in murder? This woman here, that infant there—in the eyes of Nature does either count for more than, say, a housefly or a maggot?[31]

Once one accepts all this, then childbearing is, as Madame Delbène contends elsewhere in *Juliette*, without significance:

> It is erroneous that propagation is supposed to be one of Nature's laws, if we imagine such nonsense our pride alone is to blame. Nature permits propagation, but one must take care not to mistake her tolerance for an enjoinder. Nature stands in not the slightest need of propagation . . . Thus, we no more serve Nature in reproducing ourselves than we offend her in not doing so. . . . this wonderful propagation, inflated into a virtue by our preposterously overdrawn self-esteem, if viewed from the standpoint of Nature's functionings, becomes entirely superfluous, and a subject over which we ought to trouble ourselves as little as possible.[32]

If everything is mere matter, life no more meaningful than death, and propagation of no significance, then the unborn child is reduced to a bit of matter. Before birth, Madame Delbène tells Juliette, you were only "Several unqualified lumps of unorganized matter as yet without definite form, or at least lacking any form you can hope to remember."[33] (The stock pro-abortion phrases "just a fetus" or "a blob of cells" are unwitting echoes of Sade's materialism.) One's unborn child is no more important than one's convenience, and may be sacrificed to it without qualm—as Sade illustrates with an incident halfway through *Juliette*. By now steeped in libertinism, materialism and nihilism by her mentors, Juliette is liberated from all constraining social conventions and traditional morality—indeed, in her beliefs and her rejection of constraints and confining sex roles, she seems

like a modern radical feminist. Four months after intercourse with her father, her fear that she is pregnant is confirmed:

> . . . the fact had to be faced, a decision taken; I consulted a renowned midwife who, hampered by no scruples in this matter, deftly inserted a long and well-sharpened needle into my matrix, found the embryo, and pierced it. I evacuated it two hours later . . . this remedy . . . is the one I recommend to every woman who, like me, is courageous enough to grant greater importance to her figure and her health than to some molecules of organized f - - - [how like "a blob of tissue(s)"] which when come to maturity will frequently prove the bane of her existence who vivified them in her womb. The scion of his excellency my father once dropped into the privy, I came forth trimmer about the waist than ever before.[34]

One's horror is split between what Juliette did, and her cavalier attitude that made it possible. Sade reveals the core of the pro-abortion ideology: a nihilist indifference to life and death, born of seeing the world as mere meaningless matter. Abortion is no crime, indeed a right, because this supposedly human life is only matter, a cell blob with neither humanity nor soul.

Many abortion advocates see themselves as bold innovators building a brave new world. But they are only retracing the thoughts of a prostitute-flogging pervert who dipped his quill in an inkwell two centuries ago in the Bastille.

Linda Gordon, in *Woman's Body, Woman's Right*:

> Abortion is just a step away from infanticide. Its appeals are strong: it liberates a woman not only from child-raising, but also from months of uncomfortable, tiring, and sometimes painful pregnancy, and from the pain and danger of childbirth. One of the arguments that anti-abortionists have used . . . is that abortion violates some age-old and God-given "natural law." One look at history dissolves that illusion. Almost all preindustrial societies accepted abortion, the fetus being considered a part of the mother as the fruit is a part of the tree till it ripens and falls down.[35]

Barbara Ehrenreich:

> A fetus is certainly a potential person. But it is also, scientifically speaking, a collection of cells—a part of the woman's body. A woman may think of her fetus as a person or as just cells depending on whether the pregnancy is wanted or not. This does not reflect moral confusion, but choice in action.[36]

Katha Pollitt: "Maybe I'm a cold and heartless person, but I find it hard to think of it as a moral question, the right to life of this thing the size of a fingernail."[37]

Ti-Grace Atkinson:

> An embryo (definition of "embryo" = product of reproductive process in the womb in the first three months . . .) may begin to take shape . . . The

woman may decide to stop the process: the embryo is destroyed.

But perhaps the woman does not make this decision, and . . . the embryo may be transformed into a fetus. (Definition of 'fetus' = product of reproductive process in the womb from the end of the third month of pregnancy until birth.) . . . Both her reproductive function and the fetus . . . constitute her property. She may decide at any time during this period that she does not want to exercise this function any longer, at which time she is free not to do so.[38]

Professor Frederick Turner, to a hypothetical woman seeking an abortion:

Many classical cultures abandoned babies even after they were born: they drew the line between what's human and what's not in a different place. And they weren't bad people. You're in the early part of the second trimester, so that if we do the abortion, we'll be killing an organism inside you that is potentially human and is shaped like a human body but has a degree of organized sensitivity and awareness somewhere between that of sheep and that of your lower spine. . . .

See, at some point we have to connect with the rest of nature, and that always involves death. . . .

. . . . There's a stage when the human fetus has something like a gill; perhaps it has as much of a soul then as a fish does. Later there's a stage where it's pretty hard to distinguish a photo of it from one of a chicken embryo. Maybe it's about as important as a live chicken at that point . . .

. . . . Spontaneous miscarriages are wasteful natural sacrifices. If you abort . . . intentionally for a good reason, you're in accord with nature's own tradition of sacred sacrifical waste.[39]

A woman who had had an abortion:

I remember a conversation I had with a friend who'd just had an abortion. It's just an embryo, I told her, preferring to use the clinical definition. It's not a being, just a bunch of splitting cells. My friend said, "It's murder. How can you deny it's a life? It's murder, but it's justifiable homicide." Now if I took that as my own philosophy I couldn't follow through with it. I'd have to have the baby. I agree with her, of course, but I just won't admit it. We've gotten very distant now.[40]

Another woman who aborted:

I had no feelings about the baby. I didn't think of it as a baby. I had no emotional attachment to it. Hell, you can make one of those things every month . . . a fetus is unique only in the statistical sense.

I drove home alone that afternoon. I wasn't upset or trembling and had no regrets. It was no different from getting a filling at the dentist. Now I could go on and do other things.[41]

They claim to see only "liberation" in abortion. But Sade, with a lunatic's clarity, divined and revealed the horrible truth of what abortion really means.

NOTES

1. The Marquis de Sade, *Philosophy in the Bedroom*, in Sade, *Justine, Philosophy in the Bedroom, and other writings*, comp. and tr. Richard Seaver and Austryn Wainhouse (New York: Grove Weidenfeld, 1990), pp. 209-214.
2. *Ibid.*, p. 217. Sade expounds moral relativism elsewhere too. See the Marquis de Sade, *Juliette*, tr. Austryn Wainhouse (New York: Grove Press, Inc., 1968), pp. 9-10.
3. Sade, *Philosophy in the Bedroom*, p. 218.
4. *Ibid.*, p. 221.
5. *Ibid.*, pp. 228-233.
6. *Ibid.*, p. 248.
7. *Ibid.*, p. 249.
8. *Ibid.*
9. *Ibid.*, pp. 249-250.
10. Sade, *Juliette*, p. 68.
11. *Ibid.*, pp. 775-776.
12. *Ibid.*, pp. 782-783.
13. Sade, *Philosophy in the Bedroom*, pp. 336-337.
14. See *Juliette*, pp. 506; *Justine*, in *Justine, Philosophy in the Bedroom, and Other Writings*, pp. 487, 645-650; *Philosophy in the Bedroom*, pp. 318-320, 345.
15. Sade, *Juliette*, p. 506.
16. *Ibid.*, pp. 269-270.
17. *Ibid.*, p. 508.
18. Sade, *Philosophy in the Bedroom*, p. 248.
19. Sade, *Juliette*, pp. 435, 423, 431.
20. See the Marquis de Sade, *The 120 Days of Sodom*, in Sade, *The 120 Days of Sodom and Other Writings*, comp. and tr. Austryn Wainhouse and Richard Seaver (New York: Grove Weidenfeld, 1987), pp. 592, 593, 594, 607, 614, 619-620, 635, 638, 639, 652, 657-658, 660, 661, 662, 663, 664, 665. Mistreatment to induce abortion also occurs in *Juliette*, pp. 617-622, 1002-1010.
21. Sade, *The 120 Days of Sodom*, p. 543.
22. *Ibid.*, pp. 592, 593, 594.
23. *Ibid.*, pp. 607, 614, 619, 620.
24. *Ibid.*, pp. 635, 638, 639, 652, 656-657, 657-658, 660, 661, 662-663, 664.
25. See the feast of Minski the cannibal in *Juliette*, pp. 584-585.
26. Sade, *Justine*, p. 586.
27. Sade, *Philosophy in the Bedroom*, pp. 230-276.
28. *Philosophy in the Bedroom*, pp. 237-238, 329-331; *Juliette*, pp. 15-16, 43-45, 49-51, 765-782; *Justine*, pp. 518-519.
29. Sade, *Philosophy in the Bedroom*, pp. 329-330.
30. Sade, *Juliette*, pp. 9, 15-20, 52, 67, 99, etc.; *Justine*, p. 608; *Philosophy in the Bedroom*, pp. 185, 208, 217, etc. For that matter, all the libertine speeches and deeds in Sade's writing demonstrate this.
31. Sade, *Juliette*, p. 415.
32. *Ibid.*, p. 67.
33. *Ibid.*, p. 49.
34. *Ibid.*, p. 523.
35. Linda Gordon, *Woman's Body, Woman's Right: A Social History of Birth Control in America* (New York: Grossman Publishers, 1976), pp. 35-36.
36. Barbara Ehrenreich, "The Woman Behind the Fetus," New York *Times*, April 28, 1989, A39.
37. Quoted in Maria McFadden's "Katha Pollitt Strikes Out," *Human Life Review*, vol. XIX, no. 1, Winter 1993, p. 38.
38. Ti-Grace Atkinson, *Amazon Odyssey* (New York: Links Books, 1974), p. 2.
39. "She's Come for an Abortion. What Do You Say?" *Harper's*, November, 1992, pp. 53-54.
40. Linda Bird Francke, *The Ambivalence of Abortion* (New York: Random House, 1978), p. 63.
41. *Ibid.*, p. 105.

Feminism and "Family Values"

Mary Kenny

In Britain, the undisputed Dr. Spock of our time—that is, the baby and child-care *guru* who dominates the market—is a brisk, left-wing feminist called Penelope Leach. Her various manuals on baby and child care have sold over a million copies, which is phenomenal in a relatively small country like the United Kingdom. Dr. Leach is an admirer of the Swedish type of social and political organisation: Big Sister will regulate the family by forbidding smacking of any kind, and the taxpayer should pick up the tab for extended maternity and paternity leave.

On abortion, it goes without saying, she is "pro-choice"—an unwanted pregnancy is an unwanted child, leading to the general decline in social relationships—though it is never explained directly by such "pro-choice" advocates that the decline in social relationships, such as crime and family breakdown, seems to have taken place *alongside*, or perhaps even in consequence of, abortion choice. If society thinks human life is disposable, such attitudes will spill over into all aspects of moral relationships.

And yet Penelope Leach is an interesting voice and a significant writer: some of her utterances are a real indication of a trend that is developing within feminism, in Europe and the West in general, of concern for the family and a searching collective examination of the needs of children. Her book *Children First*, published this spring in London, was regarded as something of a benchmark in the whole sphere of family concerns because it called attention to the fact that for all our insistence, among educationalists and sociologists, that "the best interest of the child" should be the focal point of child-care policy, we are very far indeed from putting children first. Parents are spending less time with their children today than at any other period this century—with the possible exception of the upper-class Edwardians who handed the whole business of child care

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over to Nanny, lock, stock and barrel (though at least in such cases,* Nanny was often a continuous substitute mother and in service for life). Leach's accusation is that we have in the West constructed a society which rides roughshod over children's needs and family values. We have constructed a society in which women are repressed from developing their mothering role—indeed, giving a talk in New York in 1993, Penelope Leach was thoroughly scolded by an American journalist for even using the words "mothers" and "fathers," on the grounds that such words were offensively sexist and élitist.

Dr. Leach was repentant: she did not intend to challenge Political Correctness, or offend. "But I was stymied. Mother and father are biological terms; as such they clearly differentiate both genders and genes but equally clearly they imply no value judgment." It is not nature that is sexist, she claims, but human behaviour (some of us would beg to differ: the "values" of the lion and the lioness, the goose and the gander, the stallion and the filly are deeply sexist, in accordance with nature, not with human behaviour). Objectively speaking, the American journalist who tried to stop her from using such words as "mothers" and "fathers" was exact in describing them as sexist: descriptively, they are!

But Penelope Leach is trying, earnestly and in many instances valiantly, to square a feminist circle. She is seeking to affirm the primacy of motherhood, and to give back to women their sense of self-affirmation as mothers; she is trying to underline the value of the child, the child's unique and irrefragable identity, and the child's right, as a human being, to be taken seriously and to be respected. She is trying to say that society should value women as mothers, and give them time, space, and resources—just as society should, in the final analysis, put children first. In an elliptical way, it can be read as a "pro-life" message, since it certainly echoes so much of the substance of pro-life thinking—which she is trying to interweave with feminist claims to autonomy and a gender-free working agenda.

Leach is in an awkward situation: she identifies herself as a feminist, and that is perfectly sincere. And yet, what she is faced with, when she examines the evidence, is that so much of what feminism has fought for is actually inimical to the needs of mothers and children

*A new biography of the ardently-pro-life Earl of Longford, born in 1905, describes how his aristocratic mother did not really care for him as a baby: but there was a loving Nanny, and the extended family also produced a doting aunt. The system was able to come up with more substitutes for a reluctant mother.

or, indeed, parents and children. "Many mothers, especially in the United Kingdom and North America, see only one parenting choice: between staying at home and being broke in a boring backwater, or finding day care and joining the rich regatta of mainstream work before it leaves them 'out of it' for ever."

Thus, it is concluded that the primary demand from working women today is for "day care." "Official forecasts of demand usually assume that the children of any woman in the labor force will require formal full-time day care . . . The European Childcare Network, for example, speaking of the European Community to the year 1995, states that demand for day care 'will increase over time. Even without any additional measure to assist with child care, labor-force participation rates among women and their share of the labor force are expected to continue to rise.'" Penelope Leach damns such forecasters as "people in grey suits with computers for minds." The mentality is stupidly reductionist, leading to such headlines in American newspapers as "Homemaking is on the way out. More than half of all American mothers are back at work"—as if that solved the issue of family needs. In *The Guardian*, Britain's leading serious left-wing national newspaper, the dominance of men in John Major's administration was ascribed, in a report, to "Lack of child care facilities prevents women, as opposed to men, from pursuing their careers." It just ain't that simple, as those of us who have felt that conflict between "careers" and the parenting role, and most *specifically*, the mothering role, know from our own experience.

Leach is cool on day care as a panacea. Some day care is certainly supportive to parents of young children, and can be stimulating for toddlers on a part-time basis. "But even the best type of care is not generally regarded [by parents] as desirable or satisfactory." This is not to do with particular shortcomings or scandals in bad nurseries: it is to do with the fact that satisfying parenting—and particularly satisfying mothering—comes from being with the child, from loving, playing, responding, interacting. It is not quality time that counts, it is continuity. Babies, toddlers, children (and I would add, alarmingly, even teenagers) need to respond to a continuous relationship with a mother and a father—Penny Leach actually thinks kids need both, as well.

"Any personal indifference is damaging to infants, even that of a potentially loving mother who becomes so submerged in postnatal

depression that it is all she can do to keep her baby fed and warm and clean and more than she can do to offer herself to him, respond to him,"* she writes.

"A nursery worker has less reason still to celebrate this infant because she has others to care for who may overload her or whom she may prefer. How well an infant thrives despite any of those situations probably depends on how much time he also spends with someone who cares not just *for* but *about* him. Three hours a day in an understaffed nursery where he is special to nobody is far from ideal for a newborn, but nine hours a day is far more likely to damage his development." Most women hate it: the instinct of most mothers is to care for their babies.

All this sounds perilously close to a "reactionary" or "back-to-the-kitchen-sink" prescription which feminism is alerted against, but Leach's book did not draw such fire when it was published, partly because of her final remedies—that the State should fund mothers and, where desired, fathers, to stay at home with their children, which made her recommendations Utopianly palatable to the Left—and partly because what she is saying articulates the experience of so many young women today who find, when they become mothers, that the "gender-free" and "autonomous" world of the workplace and of civil society in general is indeed inimical to their feelings and needs as mothers. A top executive in *The Times* of London, Mary-Ann Sieghart, described the Leach book as a cry from the heart for the thirty-something, high-achieving women now finding that they hate the callow choices of leaving their babies, even with a good Nanny, to return to the board-room. Why can't mothers really be mothers?

There are no easy solutions, in general, to many of the difficulties of family organisation, or the conflicts that we will always meet on life's path, and that is, and probably always has been, a special matter of anguish for women as mothers. We know that motherhood has always involved sacrifices and even heartbreak, because it expands women's altruism and makes us vulnerable to being hurt on another's behalf—not a recipe that goes with cool-headed "autonomy." But

*In most of her texts, Penelope Leach refers to a baby as "she" and "her," in a deliberate bid to reverse traditions of calling the baby "he." In this passage, she makes the notional baby masculine, presumably to differentiate between the care-giver and the child.

for me, Penelope Leach has illustrated the way in which feminism has, in some respects, made things more difficult for women as mothers.

It was feminism, after all, which from the 1960s onwards denigrated the family as an institution, described motherhood as cabbagey, and targeted autonomy, parity and a gender-free agenda as personal liberation. It was feminism which tried to eliminate the differences between men and women—differences which, when it comes to reproduction, are essential to ensure respect towards mothers and indeed the special consideration they require in pregnancy, childbirth and the subsequent nurturing years. It was feminism which degraded the fruit of the womb: in her most recent book, *Moving Beyond Words*, Gloria Steinem compares the "products of conception" with blood and semen, as though the formed child in the womb were undifferentiated from body fluids. If you lower what women do, if you show contempt for women's creative processes, if you marginalise their special value as mothers, then it follows that a "gender-free" and "autonomous" working world, trained to regard "reproductive choice" as private and morally neutral, will certainly have scant regard for the needs of children, mothers *and* fathers.

The feminist agenda is caught in a dilemma and a contradiction: on the one hand, it presses on with demands for gender-free parity in the workplace and elsewhere. On the other, it is becoming increasingly aware of the difficulties encountered by families and the desire of most women to see a society which does make special arrangements for them as mothers. Even while she denigrates the fruit of the womb, Gloria Steinem also demands primacy of consideration for women as mothers, for recognising "pregnancy, birth, lactation and the reality of women's share in reproducing and nurturing the next generation"; she even goes so far as to deplore the feminisation of poverty through divorce (established in Lenore Weitzman's study, *The Divorce Revolution*).

Indeed, the importance of motherhood (deliberately-chosen motherhood, of course, nothing that just happened through love, chance, fate, or God) is now becoming a commonplace in a new wave of feminist publications. Betty Friedan, in her tiresomely over-written *The Fountain of Age*, alludes to a conversation with younger women, including members of her family, where she began to speak about abortion-on-demand—only to be surprised by the fact that the younger women, including her own daughter-in-law, were actually more interested in the possibility of having babies rather than getting

rid of them, more intrigued by *con*ception than by *contra*ception. They fretted more about the Penelope Leach dilemma—how can mothers mother in a world that is often hostile to motherhood—than in rehearsing the dreary menu of birth control. What Mrs. Friedan forgets is that while being a suburban housewife might well have bored her back in the 1950s, nevertheless American society made it easy and pleasant and supportive for women to marry and have their children. For young women today, all that is an immense struggle of trying to "fit in" motherhood with a gender-free world that does not look tenderly on it.

Penelope Leach's text is a harbinger of the future: there will be many more *cris-des-coeurs* about this issue. Marilyn French, the feminist novelist, told me when I met her in London in April that she thought the most important campaign for the future was now "children—and how we can construct a society which puts children first."

But this is what the pro-life movement has been saying all along! Mothers and children are important. Most women consider their family role as of central importance to their lives. There *is* a tension between "equality" and motherhood, because mothers need special treatment. In a roundabout, elliptical way, feminism is coming to acknowledge all this, although it will go on trying to square the circle by seeking to make women and men the same while sensing that, actually, they are different, and the goal of a "gender-free" culture substantially disadvantages the majority of women who are mothers.

'Security here. There's a blonde kid in the three bears' apartment eating their porridge.'

THE SPECTATOR 4 December 1993

Ireland's Forgotten Empire

Desmond Rushe

The United Nations Organisation has named 1994 the Year of the Family. This is nothing to get elated or excited about because, as far as the family is concerned, it is more than likely that the UN declaration won't be worth the paper it's written on. The odds are that the zero results achieved by nominated Years of the past—the Year of the Child, the Year of the Handicapped, the Year of the Poor among them—will be repeated.

Indeed as far as Ireland is concerned, the results could be sub-zero, because the Irish government will celebrate the Year of the Family by initiating machinery for the holding of a referendum which, it hopes, will legalise divorce—an odd way to contribute to the concept of the importance of family stability in society.

Ireland is the only member State of the European Community, now known as the European Union, and one of the few countries in the world, where divorce is not legally permitted. The Irish Constitution, which came into operation in 1938, refers to the sanctity of marriage, recognises the primacy of family as the base societal unit and guarantees the indissolubility of the marriage union. But there have been vast changes in moral values over the past few decades: divorce on demand has now become an established feature of the morality of convenience throughout the world, and proponents of the liberal agenda in Ireland have been active in seeking to make the Irish toe the fashionable global line.

The forebears of the current generation who sanctioned the Constitution by their votes are being portrayed as people of their time: backward, conservative and narrow-visioned—so removed from modern civilisation as to be made to appear as troglodytes, terrified of facing the bright light of progress which shines beyond the confines of their caves. The campaign of the liberal agendaists led to the holding of a divorce referendum in 1986, and the result was a massive endorsement of the '30s troglodytes, with 63.5% voting for a retention of the constitutional ban. Since then, the Divorce Action Group and a miscellany of other pressure groups have applied themselves

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to their campaign with increased vigour, and Ireland faces yet another referendum later this year (November now seems likely). The hope of the lobbyists is that the erosive effects of relentless publicity will do the trick—that the wearing-down process will have weaned away a sufficient number of the 63.5% to carry the day.

The lobbyists have a formidable advantage: they have the solid and enthusiastic backing of the national media, print and electronic. But, then, they had the same backing in 1986: newspapers and the national broadcasting service, radio and television, were unanimous in overtly and covertly promoting the official pro-divorce line. In a remarkable move, the leading national daily, the *Irish Independent*, once the pillar of conventional moral and family values, published an editorial on page one urging its readers to alter the constitutional provision; it was the first time such a thing happened in the paper's history. Readers, however, were not impressed by the breach of precedent: neither were television viewers, radio listeners nor readers of other pro-divorce newspapers impressed. Two-thirds of them showed that they had minds of their own and, in doing so, made a substantial dent in the credibility of pollsters. For the last of many polls taken in the run-up to the referendum showed 61% in favour of divorce.

Pro-divorce campaigners later argued that one reason why they suffered such a resounding defeat was because women were afraid that in a divorce situation, they would be victims of an unfair distribution of property—that they would be left without house, home or means of support. The Irish government is determined to remove any such anxiety before another referendum is held. Its Matrimonial Home Bill proposed to give each spouse equal rights of ownership to house and household effects, but it was declared unconstitutional by the Supreme Court on the grounds that it conferred on the State a disproportionate power of intervention into the rights of the family.

An alternative Family Law Bill was substituted, designed to allay fears of divorced women by providing a legal framework for settlements relating to property rights. The new-found concern of the government for the rights of women might, perhaps, be touching were it not confined to divorced women, and so blatantly the product of an anti-family, pro-divorce mentality. But whether the sop being thrown out in the Family Law Bill will succeed in seducing the Irish into abandoning their commitment to fundamental family values remains to be seen.

It is not only in relation to divorce that Ireland stands alone in the European Union. It is also unique in that it is the only member state which has never been a colonial power, and its uniqueness stretches into the area of abortion. But if liberal agendaists, divorce lobbyists and the media are determined to end its uniqueness as regards divorce, so are liberal agendaists, pro-abortionists and the media equally determined to subsume it into the abortion culture. The danger is that the political establishment will terminate its most notable claim to uniqueness, and end its expressed wish to hold human life sacred, without reference to the people and in defiance of a Constitution which lays down that only the people can decide matters of national policy.

At the time of writing, demands from pro-life groups for a third referendum which would endorse the huge anti-abortion majorities of two previous ones have gone unheeded. Ruling politicians are intent on introducing legislation in line with a Supreme Court ruling which legalised abortion in certain cases: should they persist in their perverse course, their action will represent a grotesque contempt of the people's rights, and a scandalous betrayal of Ireland's past.

Ireland's past teems with conflict and suffering, repression and persecution. But it also has elements which are splendid and noble. Unlike every other member of the European Union, it never acquired colonial possessions. It did, however, build up an empire which was peculiarly its own—an empire which now has roots fourteen centuries old and which experienced its greatest burgeoning in the present century: an empire erected not by soldiers, adventurers or conquistadores motivated by greed or personal advancement, but by missionaries governed only by the desire to give and serve. If it could be said, with truth, that the sun never set on the British Empire, it could be said with equal truth that the sun never rose without casting its first warming rays on the Irish spiritual empire. But in a European union—and a world—submerged in secularism and neo-paganism, it would be considered not only unfashionable but unthinkable for politicians to talk about spiritual empires.

Irish politicians in Dublin and on the European scene in Brussels, Strasbourg and Luxemburg shy away from references to Ireland's non-colonial empire, what aspects of the national persona it may represent or reflect, and what healing contribution it has made, or may still make, to a broken world. They are preoccupied instead

with making their country adopt the moral and behavioural practices of their European Union partners in particular and of the world in general, and with integrating it in what may laughingly be referred to as sophisticated modern civilisation. The publicity-seeking liberals who enjoy the highest media profiles in Ireland are, if anything, ashamed of the country's spiritual and cultural heritage; when the Irish are accused of being backward, priest-ridden and living in the Dark Age because they wish to prevent the murder of unborn children, liberal politicians tend to acquiesce and hang their heads. People of honour and probity would expose the ignorance and shallowness of the accusers.

The Irish have, in fact, been accused by European politicians of living in the Dark Ages because of their attitude toward abortion. Actually, the Irish did much to bring light to the Dark Age which engulfed Europe after the Roman empire in the West collapsed when wave after wave of Goths, Vandals, Huns and others loosely described as barbarians swept across the Rhine and the Danube. During the sixth century, monasteries for men and women were founded throughout Ireland, and flourished so much that they came to exercise immense influence at home and throughout Europe.

It is hard to believe that now isolated centres such as Glendalough, Clonmacnoise and Fore once accommodated student bodies numbering more than 5000; it was not for nothing that Ireland became known as the Island of Saints and Scholars. Meanwhile, works of exquisite art were being created (the Book of Kells, dating from the late eighth century, is reputed to be the most beautiful book ever made), and Irish missionaries were dispelling the Dark Age. St. Colmcille became the patron of Scotland and, leading a small army of monks, St. Columbanus established a string of famous monasteries on the continent. Place-names in Belgium, France, Germany, Austria, Switzerland and Italy today bear testimony to the veneration in which these early Irish missionaries were held.

To the disparate ethnic groupings among whom they came, they brought the Gospel message of love and hope, and they were ranked among the saints. It is not an exaggeration to say that the Dark Age permeating the same regions of Europe today is darker and more insidious than the one associated with Alaric the Goth and Attila the Hun. Nor is it in any way extravagant to suggest that a dispelling light such as that borne by the Irish so long ago is now

even more desperately needed. Ireland could play a profoundly influential and important role in sparking off the spiritual renewal for which Europe is thirsting. It assuredly will not do so by slavishly aping the amoral ordinances which govern European legislative thinking.

An explosion of missionary activity in this century expanded the Irish spiritual empire enormously. Typical of dozens of organisations which came into being were the Columban Fathers, who concentrated on the Far East; St. Patrick's Missionary Society, which made Africa its base of operation; the Maynooth Mission to China and the Medical Missionaries of Mary, who set about establishing hospitals and leprosaria in several African countries. Now, churches and cathedrals manned by indigenous priests and bishops, health services, primary health care facilities, schools and universities scattered all over the globe owe their existence to the young boys and girls who, in the years of greatest blossoming, responded in astonishing numbers to appeals for vocations. They, and their predecessors of the sixth-to-ninth centuries, are an integral and glowing part of Ireland's cultural and spiritual heritage, however much they may be forgotten or, indeed, despised by today's secularists. And forgotten and despised the contribution of the Catholic Church is in some major newspapers, particularly in relation to the Irish scene.

For reasons best known to itself, for instance, the widely circulating *Sunday Independent* has been relentless in its virulent attitude toward the Catholic Church. To it, religious news is almost exclusively concerned with confrontation, conflict and scandal. Acres of space are devoted to the negative and sensational (as in the painful and tragic case of Bishop Eamonn Casey), while the extraordinary volume of positive input is largely ignored. Trendily feminist and hedonistic, the *Sunday Independent* seeks to apply a veneer of broadsheet respectability to an ingrained tabloid mentality, and it is not the only major Irish newspaper which does so, even if it is the most hypocritical and shallow in its pretentions. In the league of journalistic ethics and standards and the balance one is entitled to expect from a responsible profession, it has an extremely low rating.

It is ironic that a rare defence of the Catholic Church in a recent edition of the paper came from a regular contributor, Shane Ross. He is in the stock-broking business, is a member of the Irish Senate and is a recent recruit to the Fine Gael party. He started off his piece by writing: "Perhaps it is time to lay off the Catholic Church.

As a Black Protestant, I can say it: it is time to re-assess our attitudes. On balance, the Roman Catholic Church in Ireland is a big plus. The Irish media give saturation but hostile coverage to the Church's conservative stance on divorce, contraception and celibacy. Our obsession with the politically correct agenda and our opposition to the Church's attitude has meant that its work among the grass roots has been forgotten." The self-described Black Protestant later wrote: "The media, mainly the Dublin media, have viturally demonised the Church," and concluded: "The Church sees itself as the defender of the fabric of Irish society. It also regards itself the champion of the excluded and the poor. It has earned its position. Let us remember that it has a far more just claim to this title than any political party." Clearly the *Sunday Independent* could do with more Black Protestants and fewer renegade Catholics.

Mr. Ross was, of course, perfectly right in placing the contribution and credibility of the Catholic Church above those of any political party: without the input of the Church through its priests, religious and voluntary organisations, the health, social service and educational systems in Ireland would collapse overnight. Unlike politicians, Mr. Ross wrote, the Church tends to practise what it preaches but, he added, it has become a fashionable butt for the cheap and trendy jibe.

Why? Maybe the Church's uncompromising stance on the moral values which the liberal agenda seeks to destroy has something to do with it. Certainly the venom which now characterises the media attitude is of fairly recent origin: it could, in fact, be termed an instance of late 1960s American history repeating itself in Ireland. For in the late 1960s, a key factor in the pro-abortion campaign in the U.S. was to villify the Catholic Church. Dr. Bernard Nathanson, the one-time leading abortionist turned active pro-life advocate has written that the campaign in the late 1960s thrived on the Big Lie, with results of fictional polls being fabricated and fed to a compliant media. He added: "We picked on the Catholic hierarchy as the villains: this theme was played endlessly." It is now being played in Ireland in remarkably slavish replication while the immensely influential part Ireland played in a former Dark Age, and which it could play again, counts for nothing to time-serving politicians, media hacks and a rag-bag of liberal agendaists.

While politicians are busily engaged in framing legislation aimed at weakening the resistance to divorce, particularly among women, news of a survey carried out in Britain has helped focus the public

mind on one of the most important side effects of divorce—a side effect which has been given scant attention, if any at all, by the pro-divorce lobby in Ireland. Much is being written and spoken on such matters as the equitable division of property, and legislators are extravagant in their assurances to wives that, in a divorce situation, they will not be left high and dry. A report based on a survey by the Department of Child Health at Exeter University, however, had prompted many people to ask: "But what about the children?" A pertinent, appropriate and exceedingly important question, seeing that children are the innocent victims of divorce and accepting that their interests are paramount.

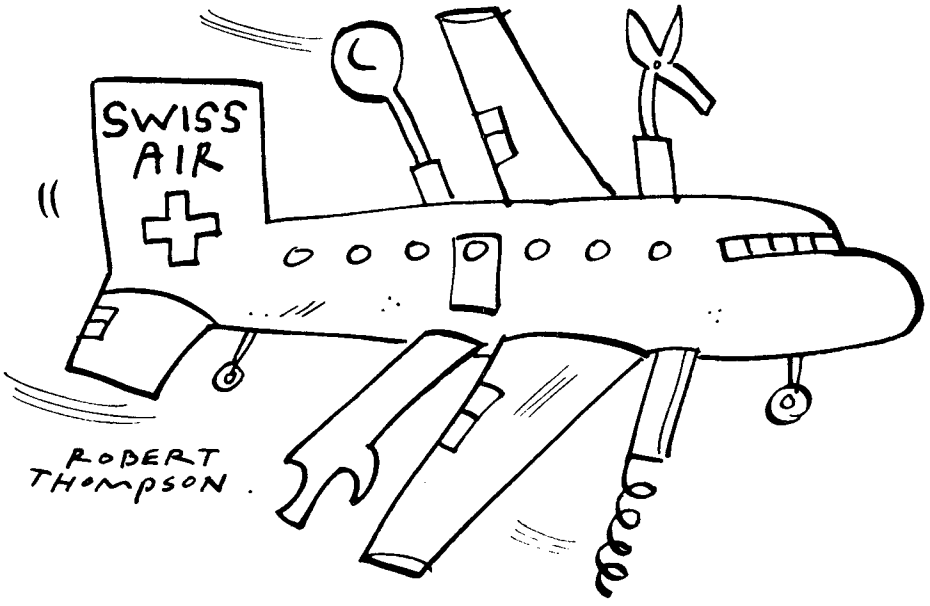
The Exeter Report is sombre, but in no way startling. Its findings reveal nothing new or sensational; by and large they merely confirm what our common sense tells us—which is that the children of divorced parents are disadvantaged to varying degrees of severity. Divorce, the report says, can be seriously damaging for young children, while remarriage and the step-family experience can be extremely distressing. Children generally tend to suffer from poor health, to need psychiatric treatment later in life, and to have difficulty with school work. Emotional vulnerability and insecurity are heightened and while it was found that a minority of the children surveyed suffered no ill effects, the average impact was adverse, and profoundly so in some cases.

The Exeter Report is a careful and balanced document which meets the stringent criteria that govern academic research. It does not indulge in speculation, insinuation or guesswork; it does not engage in conjecture, therefore, on the possible influence broken marriages had on the two English children who were found guilty last year of murdering a two-year-old infant, and whose trial was accorded lurid publicity around the world. Neither does it comment on the fact that, in the vast majority of cases involving juvenile violence and anti-social behaviour in Britain, the United States or anywhere else, the parents of the perpetrators appear to be divorced. Benjamin Franklin's dictum that there never was a good war or a bad peace is more than vaguely echoed in the Exeter Report: it concludes that parents should not assume that "a good divorce is better than a bad marriage"—as far as children are concerned, perhaps there's no such thing, in relative terms, as a good divorce or a bad marriage.

Marriage breakdown is a fact of life in Ireland as in every other part of the world, though the extent of its prevalence is a matter

of contention. The figure of 60,000 affected people cited by pro-divorce interests is said to be grossly inflated by the anti lobby, but whatever the incidence of breakdown, the absence of an easy dissolution procedure has had a stabilising influence. With no divorce, Irish couples must try harder to make their marriages work, and even if the number of broken marriages is as high as the pro-divorce interests claim, it still represents a very much lower percentage than the number of divorces in neighbouring Britain, or elsewhere in the European union.

From the point of view of family stability, Ireland is in an enviable position, and vulnerable children are at incomparably lower risk of being grievously hurt. But these factors, and the sober message of the Exeter Report, seemingly count for nothing among blinkered political legislators obsessed with bringing Ireland into the mainstream of modern culture and morality, however degenerate, depraved and, as proven by the Exeter Report, deeply harmful to society.



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Foreigners Fan the Flames

China's "Family Planning" Terror

John S. Aird

The surprising news came in April, 1993: Peng Peiyun, minister-in-charge of China's State Family Planning Commission, revealed that for the first time ever all of China's 30 provinces, regions, and central municipalities fulfilled their population plans in 1992. A survey had reportedly found that human fertility in China had suddenly dropped well below the replacement level. The Chinese authorities themselves seemed startled at what had happened: they had not expected to reach that target before the end of the century.

Foreign supporters of China's program were also stunned by the news. They were well aware that such an abrupt drop in fertility could not have been caused by a spontaneous change in Chinese attitudes toward childbearing. What had produced it? Peng Peiyun's explanation was that "Party and Government officials at all levels paid greater attention to family planning and adopted more effective measures."

What measures? All she would say was that they included "strengthened leadership" and the "mobilization" of the whole society. Glinting through these euphemistic abstractions, experienced China watchers detected the steely hand of government-managed coercion. The impression was reinforced by foreign journalists' reports of forced sterilizations and abortions.

The United Nations Population Fund (still known by its old acronym, UNFPA), then in its third 5-year program of assistance to China's "population activities," which included family planning, was alarmed by the news. UN principles supposedly prohibit the UNFPA from supporting coercive family-planning programs. UNFPA executive director, Nafis Sadik, let it be known that the UNFPA might have to withdraw from China.

The Clinton Administration, which was on the point of restoring the U.S. contribution of funds to the UNFPA—withheld since 1985 because the two previous administrations had concluded that the

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Chinese program *was* coercive—was also flummoxed by the news. With Congress aroused, the Administration could not afford to seem insensitive to the human-rights implications of the pending action. Secretary of State Warren Christopher publicly denounced coercive family planning in China and said it might be grounds for ending Beijing's most-favored-nation trade status.

Coercion has long history

More surprising than the sudden upsurge of coercion in China's family-planning program was the surprise of so many foreigners at finally discovering that the program was indeed coercive. The Chinese leaders had been using coercion to enforce unpopular policies ever since the land reform and collectivization drives of the early 1950s; documented evidence of China's coercive tactics had been accumulating for over 35 years. In the late 1950s, the Chinese media described measures applied to women in urban factories that were transparently coercive. In the 1970s, birth control was made a part of the "class struggle"—resisters were persecuted as "class enemies." Local family-planning cadres used coercive methods to match the spectacular achievements claimed by national "model" units they were directed to emulate. The details were usually kept well hidden, but enough instances were reported to suggest that coercion was widespread.

By 1978 coercion in all spheres of domestic administration, including family planning, had become so serious that the "masses" were reportedly becoming "alienated from the Party." A press campaign was waged to purge the worst excesses. For example, a Beijing newspaper told family-planning officials they could no longer deny food and water to non-compliant families. But before the year was over, the central authorities learned that the curb on coercion was causing some local leaders to ease up on family-planning work. The anti-coercion campaign was promptly called off. Some of the tactics just denounced as coercive were again encouraged from the top. Guangdong Province, for example, served notice that "any policy that is advantageous to planned parenthood may be carried out."

Early in 1979 the Chinese authorities instituted their famous one-child policy. In April a conference of Party and government leaders adopted the goal of not letting the national population exceed 1.2 billion before the year 2000; in June Party Chairman Hua Guofeng demanded all-out efforts to reduce the rate of population growth to one percent by the end of 1979, and *half* that by 1985. Chen

Muhua, the central official then in charge of family planning, said that if the one-child rule posed a conflict between the interests of the indivdual and those of the state, the individual's interests should be subordinated.

A few exceptions were permitted for hardship cases; for example, a second birth was permitted to couples whose first child died or was handicapped and to couples in which one spouse had a child in a previous marriage but the other had never had a child. All others were supposed to stop at one, regardless of the sex of their only child. A third child was "absolutely prohibited." The one-child limit was especially troubling to Chinese peasants, who constituted a majority of the population and for whom a son was the only guarantee of care in old age. Traditionally, daughters joined the families of their husbands when they married and were in no position to support their own parents. Peasants had no other form of social security; even as recently as 1989 only 29 percent of China's urban work force and 1.7 percent of its rural work force had adequate provisions for retirement.

The one-child policy was enforced with such rigor that another strong public reaction set in against it. A second anti-coercion campaign was waged from February, 1980, until the spring of 1981. Once again, enforcement of family planning began to lapse in some areas. Hopeful rumors began to circulate that the one-child limit was about to be abandoned and that every couple could now have two children. A wave of births was reported in many areas. By the latter half of 1981, however, the central authorities were complaining that population growth was "out of control" and that unless the trend was reversed it could "wipe out all the family-planning achievements of the 1970s."

Plans were made to conduct an extremely aggressive "family-planning propaganda month" in January, 1983. The Party Central Committee and the State Council, which together constitute the highest authority in the land, issued a joint circular in November, 1982, specifying that couples with two or more children must be sterilized, and women pregnant without official permission must have abortions. "Propaganda teams" and "technical work teams" were to be organized to implement these requirements, and their work was to be "carried out solidly and stress must be put on practical results." In December, 1982, Qian Xinzhong, head of the newly-established State Family Planning Commission, added that "women of childbearing age with one child must be fitted with intrauterine devices."

Accordingly, the "work teams" fanned out over the countryside rounding up those subject to surgical procedures under the policy and carrying out the operations on the spot. When the month was over, Deng Xiaoping, who had replaced Hua as supreme leader in China, directed that the drive be continued indefinitely. Premier Zhao Ziyang demanded that family-planning workers "prevent additional births by all means" and said that preventive measures must be implemented "resolutely and relentlessly." Indeed, they were. By the end of 1983, according to official figures, 17.8 million IUD insertions, 14.4 million abortions, and 20.8 million sterilizations had been performed; almost 80 percent of those sterilized were women. The total number of birth control "operations" in 1983, 52.9 million, represented a 67 percent increase over the figure for 1982, the previous peak year.

As before, there was a strong popular revulsion against the brutal measures. The central authorities again became concerned about "the alienation of the masses." In December, 1983, Qian Xinzhong was removed as head of the State Family Planning Commission, and his replacement, Wang Wei, announced a new policy of moderation. The numbers of families in "difficult" circumstances allowed to have a second child was to be increased from five percent to "about 10 percent"—but only in localities that had first succeeded in eliminating unauthorized births. However, population targets were to be met on schedule and the goal of keeping the population under 1.2 billion until the year 2000 was retained.

The mixed signals from Beijing caused confusion among local family-planning workers and revived the rumors that the one-child policy was about to be abandoned. In one province the popular perception was that "the storm in planned parenthood is over." In another it was reported that "the masses are delighted and the [officials] are worried." Again, the easing of demands went far beyond what the central authorities intended; the birth rate began to rise again in 1985. The central authorities in turn, worried, fumed, and attempted to tighten control by rewarding local leaders who fulfilled the targets and punishing those who did not. They warned that a population crisis was approaching, that the situation was "grim," that China was producing too many "dull-witted" children. More, population growth was hampering economic development, depleting natural resources, polluting the environment, crowding transportation,

causing unemployment, illiteracy, and housing shortages. It was also threatening the food supply, and lowering the educational and "cultural" level of the people. Their efforts paid off. By 1988 the birth rate was again falling.

The current escalation

In January, 1991, Peng Peiyun (who had replaced Wang Wei in 1986) sent a letter to family-planning workers throughout the country saying that "it was necessary to unwaveringly use the basic practices that have been effective for many years." In February, she said it was "imperative" that everyone adhere to the government's family-planning policies and that fertility must be reduced from 2.3 children per woman (the 1990 figure) to 2.1 by 1995, and 2.0 by the end of the century. She insisted that the policies "must be firmly implemented during the 1990s."

Apparently she was able to convince the top Party leaders that a new crackdown should be launched. In March, 1991, Party General Secretary Jiang Zemin and Premier Li Peng said that the policies would remain unchanged for the rest of the century and must be implemented with "no wavering whatsoever." Early in April at a "symposium" on family planning convened by the Party Central Committee and the State Council, Jiang demanded that governments and party committees at all levels, all "mass organizations," and all the people "put forth every effort to help bring China's population growth under control."

In May, the Party Central Committee and State Council issued a formal directive in which more muscle was showing:

> At present it is necessary to resolutely implement existing policies without any wavering, loosening, or changes in order to preserve the stability and continuity of the policies. Management of population planning should be stepped up by strictly obeying relevant state laws and regulations . . . It is necessary resolutely to correct laxity in family-planning work in certain regions and to strictly prohibit the indiscriminate granting of permission for more childbirths . . . It is necessary firmly to prevent early marriages, pregnancies, and multiple childbirths, as well as to strive to prevent [unauthorized] pregnancies and childbirths.

In June Peng Peiyun told a foreign reporter that Chinese couples had a "duty" to practice contraception as stipulated in the Chinese constitution. She defended the use of strong measures and the government's plan to sterilize the "mentally handicapped," a policy

that had aroused much foreign criticism.

The directive resulted immediately in an escalation of family-planning work. In 1991 the number of sterilizations in China increased by 18 percent over the previous year's. In April, 1992, Peng announced that the rate of population growth in 1991 had been 1.69 per thousand—*lower* than that target year's. She congratulated the family-planning workers on their achievement, but also warned them not to become unrealistically optimistic or relax their efforts. In September she revealed that the birth rate had declined still further during the first half of 1992—but then complained that some family-planning workers had become "intoxicated" with these results and were easing up. The *People's Daily* also criticized "some localities" that had allegedly begun to relax and demanded that all areas "adopt effective measures" and "make . . . unremitting efforts" to "take solid and effective actions."

Coercive measures downplayed

In March, 1993, Peng announced that in 1992 for the first time all provinces had fulfilled their state-assigned population plans, and that the rate of population growth had dropped by another 1.38 per thousand below the 1991 level. In April, Peng disclosed that fertility had fallen well below the replacement level. Later it was revealed that the 1992 fertility rate was only 1.73 children per woman. For the three central municipalities and seven of the provinces, it was under 1.5, and the rate of population growth was less than one percent! Later in the year Peng reported that the decline in fertility had continued into the first half of 1993. Coercion again had proven a smashing success.

Specific coercive measures used in China are seldom described in domestic sources, but many have been reported by foreign journalists. Such tactics as rounding up women and taking them forcibly to clinics for birth control surgeries, cutting off food and water to non-compliant families, confining women pregnant without official permission in "study classes" until they consent to abortion, imprisoning their husbands in cattle sheds and hog cages, imposing exorbitant fines, confiscating their livestock, household possessions, and farm implements, and expelling them from or knocking down their houses, have been reported since the early 1980s.

In the 1980s there were reports from several Chinese cities that doctors in maternity wards were threatened with loss of their jobs if they permitted infants born without official authorization to leave

the hospital alive. The infants were sometimes killed as they were crowning by an injection of alcohol or formaldehyde into the fontanel, or were suffocated after birth out of sight of the mothers, who were simply told their infants had died. These practices have not been reported recently, but there have been reports of abortifacient drugs being administered to "illegally" pregnant women without their consent or knowledge. There have also been reports of violators being beaten with electric batons. In 1993, Peng Peiyun said that "it was necessary to unwaveringly use the basic practices that had been effective for many years." She did not make clear what they were because she did not need to. Local family-planning officials would get the message.

Foreign reactions

Until 1993 the leadership of the UNFPA—like that of most institutions and agencies promoting worldwide family planning—steadfastly insisted that the Chinese program was voluntary, despite all the contrary evidence. They were apparently fascinated and encouraged by the reported success of the Chinese program and showed remarkably little curiosity about the methods by which the Chinese success had been obtained. I had spent my career studying demographic developments in China and had written extensively on the subject, but I was not consulted by organizations anxious to establish contact with the Chinese program. When I tried to inform some of them about the "promotional" tactics employed, I was usually ignored, and sometimes rebuffed. On several occasions when I confronted defenders of the Chinese program in person, I had the impression I was talking to deaf ears.

The insensitivity of family-planning advocates—and some of my fellow demographers—to human-rights violations in the Chinese family-planning program both surprised and profoundly troubled me. I had been an advocate and supporter of voluntary family planning all my life and had been critical of the Chinese Government's opposition to family planning in the early 1950s. I was pleased when at last it began to make birth control available to its citizens in the middle 1950s. I felt that some reduction in the rate of population growth in China was in the best interest of China's people.

However, when evidence began to appear that the Chinese authorities were resorting to compulsory birth control, I was brought up short. The use of compulsion prompted disturbing questions that were not as pressing when birth control was voluntary. How sure were we

that population growth constituted a world crisis? How sound was the relevant empirical evidence? If there were important benefits to be gained from lower fertility levels, how much reduction was needed? How could one justify using compulsory measures without first making sure that all other remedies—social, political, and economic—had been tried and proven ineffectual?

Could it be shown beyond reasonable doubt that China could not afford to wait until fertility declined in response to rising living standards and other changes that come with economic development? Was development really impossible unless fertility, already falling rapidly in the 1970s, was reduced still further? Was it possible that going from a two percent annual population growth rate down to one percent could spell the difference between catastrophe and prosperity? At what point did the cost in human rights begin to outweigh whatever advantages were to be gained from it? How could one make sure that no more force was used than was absolutely necessary?

If these questions bothered the foreign family-planning advocates seeking contact with the Chinese program, they gave very little sign of it. Instead, they rushed to embrace it and identify its goals with their own. In 1979, as China was initiating its harsh one-child policy, the UNFPA began its first five-year $50 million program in China. In 1983, as the Chinese program was building up to its first peak of coercion, a UN committee on which the then-head of the UNFPA, Rafael Salas, served as advisor, conferred the first two UN population awards on Indira Gandhi—whose government had fallen in 1976 in part because of its support for a coercive sterilization program—and Qian Xinzhong, the head of China's State Family Planning Commission, who directed the 1983 drive. One of the academic advisors to the UN committee, the Nobel-laureate economist Prof. Theodore W. Schultz, denounced the choices as a "travesty" and asked that his name be removed from any mention of the awards.

When I learned that the committee, with Salas' participation, had selected as awardees representatives of the only two governments in the world that had sponsored coercive family-planning programs, I also thought it a travesty. At a chance meeting with the UNFPA media liaison chief, Edmund Kerner, in March, 1983, I criticized the award. When he questioned whether the Chinese program was coercive, I offered to send him copies of corroborating sources from my files. Under the circumstances he could hardly turn down the

offer, and did not. Within a few weeks I sent him a stack of more than 275 items, mainly from the Chinese media, with a long cover letter pointing out their significance.

Then in May I received a copy of a new source from China in which the vice-governor of Guangdong Province revealed that the 1983 policy of mandatory IUD insertion, sterilization, and abortion had been adopted by the State Family Planning Commission with the prior approval of the Party Central Committee and the State Council. Since Salas had publicly commended the Chinese program, I sent him a copy of the report with a cover letter saying that with this documentation the coercion issue was no longer merely a matter of interpretation. Salas did not reply to me but instead wrote to the U.S. Permanent Representative to the UN complaining that my letter had come to him directly instead of through official channels. Since Salas had never bothered to go through channels when he wished to contact colleagues of mine at the Census Bureau, I considered his complaint an effort to use bureaucratic procedures to shoot down the messenger bringing him unwelcome news. I never tried to contact him again.

Late in 1983, the members of the International Planned Parenthood Federation, meeting in Nairobi, decided not to endorse a strong human-rights report prepared at its direction by one of its "working groups"—and then welcomed the Chinese Family Planning Association to full membership. In subsequent years the IPPF provided more than $8 million in assistance to the Chinese program through the CFPA, which it refers to as a "non-government, voluntary" organization, although, as all China-watchers know, the so-called "mass organizations" in China are neither independent nor truly voluntary. They are established and controlled by the Chinese government to give the appearance of spontaneous citizen support for its policies.

Meanwhile, Salas and other family-planning advocates went to great lengths to encourage the Chinese in their birth-control efforts. In 1981, Salas reportedly said that "China provides a superb example of integrating population programmes with the national goals of development." In 1982, Werner Fornos of the Washington-based Population Institute said that the Chinese program was "very well organized" and one that "the world should copy." In April, 1983, officials of the IPPF said China's program was successful because

"it is the people's own choice"—adding that China's population policies were consistent with the goals of the IPPF. In May, 1983, the UNFPA deputy in Beijing declared China's one-child policy "the only choice for a country with such a large population."

In April, 1984, Salas said the UNFPA had no evidence of "abuses" in the Chinese program, ignoring the documentation I had sent him a year earlier. The following February the UNFPA provided a "briefing note" to the U.S. Agency for International Development asserting that the Chinese Government advocates but does not require compliance with the one-child limit, that compliance "can only be on a voluntary basis," and that the Government had repeatedly told the people of China that "coercion is under no circumstances permitted." Each of these claims was either grossly misleading or palpably false. In April, on a visit to Beijing, Salas said he had come to "reaffirm our support of China in the field of population activities" and that "China should feel proud of the achievements made in her family-planning program." In the same month a Chinese reporter who interviewed Salas in New York quoted him as saying that "China has done an outstanding job in her population problem."

In 1988, a meeting of the International Council on Population Program Management held in Beijing gave its annual "population award" to China's State Family Planning Commission. In April, 1989, the UNFPA deputy in Beijing said U.S. charges of coercion were "groundless." In May, Nafis Sadik, who succeeded Salis as head of UNFPA in 1986, told a meeting in Washington that the Chinese program was "totally voluntary." She repeated this claim in an interview on the CBS-TV "Nightwatch" program in November, claiming that in China there was "no such thing as, you know, a license to have a birth, and so on." In view of the standard Chinese practice, widely documented in Chinese sources, of requiring women to obtain a pink permission slip called a "quota" from their local authorities before they can get pregnant, Sadik's statement is incredible.

In April, 1991, just as the current crackdown was beginning, Sadik told a Chinese reporter that "China has every reason to feel proud of and pleased with" the "remarkable achievements made in its family-planning policy and control of population growth over the past 10 years." She added that the UNFPA was going to "popularize China's experiences in population growth control and family planning" in other countries.

Government hypocrisy on coercion

The Chinese authorities were naturally pleased with the accolades from abroad. In 1983, Qian Xinzhong said his UN population award was "a symbol of UN support and encouragement for China's family-planning program," and a Chinese health journal said the award indicated that "the international community supports and approves of China's family-planning work." In 1989, a Chinese spokesman noted that "China's family-planning program has received the understanding and support of many countries, international organizations, and individuals," and Beijing's English-language newspaper, the *China Daily*, said that the international support for the program was "greatly appreciated." Peng Peiyun added that more than 20 foreign delegations had endorsed the program "during the past few years."

Obviously the Chinese authorities regarded the lavish foreign praise as unconditional approval and encouragement for their family-planning program, which in fact it was. Besides, foreign testimonials were useful in quieting domestic critics of the human-rights abuses by showing them that they could not hope for support from abroad. Foreign support also helped to neutralize denunciations of the program by foreign human-rights advocates.

The Chinese authorities have a standard cover story in response to foreign charges of coercion in family planning. For years they have maintained that their program is based on the principle of "state guidance . . . combined with the voluntary actions of the people." In March, 1992, as pressures for coercion were mounting all over the country, an article in a Chinese journal for foreign consumption repeated the standard claim that "the Chinese Government is always opposed to . . . coercion, and immediately takes action to check any coercive measures . . . as soon as they are discovered," something they never say in the domestic media! Yet, while the authorities have often publicized cases of couples or cadres punished for noncompliance with family-planning requirements, they have never publicized a case of a cadre punished for using coercive family-planning measures. The available provincial family-planning regulations, which spell out elaborate penalties for violators of family planning, contain no provisions forbidding or penalizing acts of coercion.

Chinese authorities do not deny that coercive actions take place; they pretend that such acts represent excess zeal on the part of local people who "don't understand" that the program is supposed to

be voluntary. This is wholly disingenuous, of course, since the impetus for coercive action is the pressure on local cadres generated by the central authorities, who could eliminate most of it immediately simply by easing up.

During the 1978 anti-coercion campaign, articles in the Chinese press pointed out that coercion results when higher levels order those below to meet unrealistic targets and insist that the tasks be fulfilled "at all costs." Local cadres who succeed are commended and promoted regardless of the methods they use. "In dealing with these problems," said the *People's Daily*, "the authorities at higher levels must shoulder responsibility." But in subsequent years the central authorities continued to demand results that could not be obtained except by coercive means, and blame local cadres when hostile public reactions reached a level that could not be ignored. The result has been a number of policy cycles in which coercion is followed by remission, which is then followed by a return to coercion.

The coercion peak of 1992 was followed in 1993 by warnings from the central authorities against the use of coercive measures by local levels. In March, 1993, Premier Li Peng noted that "some problems in work style" had "impaired relations between the masses and the Party" and in April Peng Peiyun urged the cadres to "stress publicity rather than disincentives." In September, she warned the cadres against using "simple and rough work styles, resorting to coercion and giving orders" and again told them to "promote close relations between the Party and the masses."

The political fallout from the recent upsurge in coercion had apparently become quite serious. In June, an article in a Hong Kong journal discussing the causes of peasant riots in May in Sichuan Province, China's leading province in birth control, attributed the unrest to "erroneous measures . . . formulated in the past by the central authorities" which caused local authorities to use "compulsory measures" to implement family planning. Among these measures was a notice sent to judicial departments at all levels saying that they could refuse to handle complaints of peasants against coercive actions by family-planning workers. With this notice, the article explained, the

> . . . grass-roots cadres had acquired the imperial sword and thought they could use whatever means they deemed necessary to promote family planning. Various kinds of family-planning "small teams," "work teams," and "shock brigades" emerged therefore, becoming active in the rural areas. In order to pick away at the "difficult households" they sent public security [police] officers and militiamen to grab grain, vacate houses, grab animals, and remove

> furniture, using extreme methods. Knowing that they will not have their legal responsibilities pursued, grass-roots cadres have nothing to worry about during this sort of work and extreme behavior is unavoidable.

This tactic also was nothing new. A similar notice was sent out in 1981 with the same consequences.

Because of the vehemence of popular reactions, the central authorities reportedly became "panicky and worried" and feared that a single spark could start a "prairie fire" that might destabilize the whole country, an interesting commentary on the state of political disaffection among the Chinese people at present, and the role of family planning among their dissatisfactions! However, when the authorities once again issued public warnings against using coercive methods, the peasants in some areas, feeling that the central authorities were taking their side against the local cadres, began to attack and beat up the cadres, who complained bitterly that "the central authorities have betrayed us."

The charge was not at all unreasonable. In the previous several years the central authorities had made their intentions quite clear, not only in open-ended injunctions to the cadres to "grasp the work firmly," "take forceful action," work in a "down-to-earth manner," and achieve "practical results," but also from the fact that they permitted articles calling for coercion to appear in the controlled media. In April, 1993, an article by two legal scholars in a Chinese legal journal deplored a lack of uniformity among the provincial family-planning regulations beause it meant that "some forcible measures that could have been legal have become illegal." According to the authors, "family-planning work needs to be backed by forcible measures provided for by the law." They added:

> In addition to ordinary economic and administrative measures, it is necessary to have legal rules providing for relevant forcible, restrictive measures to deal with the situation of being pregnant and preparing to give birth after having had two births, such as rules which explicitly provide for forcible termination of pregnancy, forcible induced abortion, or induced abortion. It is necessary to forcibly sterilize those couples who have failed to be sterilized or use contraceptive measures after having each had two births. Forcible and restrictive measures constitute an issue which critically affects whether family-planning work can be effectively carried out. If there are no relevant legal rules, then it would be difficult to eliminate the stubborn problems in family-planning work. Therefore, there should be no hesitancy on this issue . . .

In May, 1993, a population specialist had acknowledged in a Beijing

demographic journal that "so far the reduction in China's rural fertility has been the result of external constraints; that is, the mechanism involved has been a coercion-based reduction mechanism." The author worried that population control might become more difficult in the future when coercion lost some of its effectiveness.

Of course, the central authorities themselves never call openly for coercive measures. They need to maintain "plausible deniability" both for domestic and foreign purposes. But they know how to jump-start coercion when they want it!

The hypocrisy of foreign agencies

The recent coercion peak in China posed a real dilemma for President Clinton. During his election campaign he had given assurances to the U.S. family-planning community that he intended to resume funding for UNFPA and expand U.S. support for worldwide population control. Early in 1993 he took steps to make good on that promise. He reversed the so-called Mexico City policy restricting funds to organizations involved in abortion and requested a $100 million increase in U.S. population assistance funds for FY 1994. The White House press secretary defended these actions at a press conference on April 1, 1993, just three weeks before the coerciveness of the new Chinese drive was brought to public attention by an article in the New York *Times* by Nicholas Kristof. Since Clinton had also taken a strong stand on human rights during the campaign and had specifically criticized the Bush Administration for failure to condemn human-rights violations in China, it would have been awkward, to say the least, to restore U.S. funds for an agency actively supporting that program at a time when its coerciveness was escalating. Fearing congressional opposition, the Administration delayed action while looking for a way out.

The solution ultimately devised was to vehemently condemn coercion in the Chinese program but tender funds to the UNFPA with the proviso that no U.S. monies went directly to China. In May, as noted earlier, Secretary of State Christopher attacked coercion in the Chinese program and Brian Atwood, administrator of the U.S. Agency for International Development, told Congress that the administration was "appalled" by reports of coercive abortion in China. Atwood also said that the UNFPA's policy on such matters was "very strict" and that it "conforms completely with our own policy," though he did not explain how the conformity could be

that complete when the UNFPA was funding the Chinese program and the U.S. was not.

At a meeting of the United Nations Development Programme (UNDP) Governing Council in New York on June 1, 1993 the U.S. delegate, Warren Zimmerman, reiterated the Administration's opposition to coercive family-planning programs and asked:

> What does one do when a nation's program consistently ignores the rights of individuals to choose; that continuously, over a long period of time, shows disdain toward the principle of voluntarism; that is indifferent to calls, from all quarters, to rid their program of coercion?

There was only one national family-planning program in the world to which this description would apply. What did Zimmerman propose to do about it? "The answer," he said, "is clear. We must condemn such abuses" and "do what we can" to stop them. On the latter proposal he offered no concrete suggestions, but instead declared:

> It is a time for stock taking. After thirteen years of UNFPA-supported activities in China, UNFPA must decide whether their efforts have significantly improved voluntarism in China. Indeed, we must consider whether it has been possible for the UNFPA to have such an impact on the China program. Has UNFPA been an agent of progress? And if not, can it be? These questions need to be addressed.

They were, in fact, rather good questions, and not hard to answer. After thirteen years of UNFPA involvement in China, the Chinese family-planning program was as coercive as ever. The moderating influence of the UNFPA was negligible or non-existent.

This was hardly surprising. Not only had the UNFPA lauded the program and defended it as "purely voluntary," it had publicly placed itself in the position of being unable to recognize coercion, let alone take action to mitigate it. Like most family-planning organizations and most population control advocates, the UNFPA was at least nominally committed to the principle of reproductive freedom. The World Population Plan of Action adopted at the 1974 World Population Conference in Bucharest acknowledged "the basic human right of all couples and individuals to decide freely and responsibly the number and spacing of their children." The 1984 Mexico City conference reaffirmed that right and added that parents should be allowed to fulfill their responsibilities "freely and without coercion." Yet, since neither conference provided specific guidance on what constituted coercion, the Chinese Government has ever since baldly claimed

that its program is in full accord with the principles laid down at both conferences.

The UNFPA also left itself plenty of flexibility in evaluating the human rights compliance of client states. In 1985 Raphael Salas asserted that the UNFPA was guided by three principles: "respect for national sovereignty," the principle of reproductive freedom, and the principle that population policies should be integrated with national development plans. However, Salas gave "national sovereignty" precedence over the other two principles:

> Countries are and must remain free to decide on their own attitudes and responses to questions of population. The United Nations system is not equipped, either by law or by practice, to go behind this principle and judge the moral acceptability of programs . . . The relationship of individual freedom to the needs of society as a whole is a matter for each country to decide.

Instead of being a universal right, reproductive freedom meant whatever a national government decided it should mean. This placed responsibility for protecting human rights in the tender hands of the agencies most likely to violate them!

When Nafis Sadik succeeded Salas in 1986, she adopted essentially the same position. Although she insisted that "any limitations on the exercise of personal and voluntary choice" of family-planning methods "represents a violation of the right to have access to family planning," she added that "judgments about what constitutes free and informed choice must be made within the context of a particular culture and the context of the overall government programme for social and economic development." Thus, instead of there being universal principles which the world as a whole had a duty to uphold, "freedom" and "informed consent" were matters of local definition.

The International Planned Parenthood Federation followed the UNFPA's lead and went a step farther. In 1990 the *People's Daily* quoted two IPPF spokesmen as saying that China's family-planning policies were "China's internal affairs which are subject to no arbitrary interference" or "criticism by any foreign countries or international organizations." In effect, both the UNFPA and the IPPF disavowed any responsibility for reaching moral or ethical judgments as to whether a particular national family-planning program met acceptable human-rights standards.

The usefulness of this strategy in the short run was apparent. Both agencies could render assistance to the Chinese program while claiming

that they were not empowered to determine whether or not it was coercive (though both, paradoxically, assured the world that it was *not* coercive). But as the years passed, the mounting evidence of coercion in the Chinese program posed a problem for them. They were trapped between their nominal principles and their actual practices. To withdraw their support from China would have outraged the Chinese authorities and drawn attention to their own ineptitude in having gotten involved in the first place. If they acknowledged the coerciveness of the program but continued to support it, their position would be openly and inexplicably hypocritical. The option that threatened the least immediate damage was to "stonewall" the evidence and continue their support of the program.

This strategy was pursued until the April, 1993 revelations. A new ploy was then needed and in due course it was found. Both the UNFPA and the IPPF now claim that they are engaged in monitoring the "abuses" under the Chinese program and using their influence to moderate its coercive aspects. One may reasonably be skeptical as to how carefully coercion can be monitored by organizations that remained officially unaware of it until it virtually exploded under them!

The initial signs are not promising. In July, 1993, Sadik wrote to Brian Atwood that the UNFPA finds coercion "morally abhorrent" and would dissociate itself from any program that deviates from the "principles of voluntarism," but she then repeated the disingenuous Chinese Government cover stories about its opposition to coercion and assurances from the State Family Planning Commission that it was taking steps to review abuses in the program. Sadik said the SFPC had agreed to keep the UNFPA informed of any corrective actions taken in regard to specific cases of coercion and would hold "working level consultations" with the UNFPA when either party deemed it necessary. "From these agreements," Sadik told Atwood, "you can conclude that indeed the Chinese Government is willing to address seriously the problem of alleged or reported abuses, and with UNFPA assistance, to make improvements, where necessary." To reach that conclusion one would have to be ignorant of the record of the past 13 years in which the UNFPA believed what it wanted to believe in spite of the evidence, and the Chinese Government encouraged coercion whenever it felt the urge.

The IPPF has also maintained a conveniently high level of

credulousness in regard to coercion in the Chinese program and seems disposed to continue the practice. In June, 1993, reacting to the new evidence of coercion, the IPPF issued a press release reaffirming its support for human rights in family planning and also its affiliation with the Chinese Family Planning Association, which it still insists is a "non-government organization" consisting of "volunteers"and therefore separate from the Chinese Government.

This is a pretense that even the Chinese authorities take no great trouble to maintain. The current Chairman of the CFPA, Song Ping, served in that post while still a member of the Standing Committee of the PolitBuro and of the State Council and was subsequently appointed Minister of the State Science and Technology Commission. He has played a prominent role in endorsing the current crackdown on family planning, has attended official family-planning conferences, made many speeches in support of the drive, called on local CFPA affiliates to help "monitor" family planning among the migrant population, and publicly endorsed the Government's aggressive eugenics program that includes sterilization of handicapped Chinese.

The IPPF claims that the CFPA, at the request of the Chinese government, has recently begun to "identify and report on reproductive rights abuses," which, the IPPF claims, is a "unique and positive step which will contribute to the promotion of reproductive rights" in China. People who can believe that can believe anything! Items in the Chinese domestic media on family planning do not mention any such request, which they would if the authorities were serious about enlisting CFPA help to discourage coercion.

Meanwhile, the Clinton Administration is preparing to overlook further indications of coercion. A USAID official, John E. Mullen, argued in a March, 1993, memorandum that the UNFPA connection with abuses in the Chinese program was "indirect and remote" and repeated without reservation the Chinese claim that coercive actions were the fault of "overzealous cadres" who engaged in them "despite official government criticism of these abuses." In August Brian Atwood, in reply to a question from a U.S. senator, cited a legal opinion that before U.S. funding could be withdrawn from an agency supporting a coercive family-planning program "it would be reasonable to require evidence that the organization knowingly and intentionally provides direct support for, or helps to manage, people or agencies who are clearly engaged in coercive abortion or involuntary sterilization."

The use of such restrictive qualifiers as "knowingly," "intentionally," "direct," and "clearly" and the exclusion of the coercive use of IUDs and other contraceptives suggest that the Administration wants to make it as difficult as possible to prove that the UNFPA, the IPPF, or any other organization is assisting coercive family planning in China or anywhere else. Naturally no government agency or non-government organization will admit to knowingly and intentionally supporting coercion, whatever its involvement in a coercive program. They never have in the past. Moreover, the policy as stated seems to imply that *indirect* support for a coercive program is acceptable to the Clinton Administration. While loudly denouncing coercion and proclaiming its devotion to human rights, the Administration seems to have made preparations to overlook any but the most inescapable evidence of direct support—which hardly qualifies as a strong human-rights stand!

The power of ethical protest

Enthusiasm for the protection of human rights is by no means universally shared in the U.S. Many people involved in international trade seem to regard it as bad for business. Diplomatic types sometimes feel that it interferes with the exercise of *Realpolitik* and should be ruled out of bounds in international relations. China watchers who sell their services as consultants to businesses seeking dealings with China have a direct conflict of interest in any issue that threatens to disrupt relations between China and the U.S. Aside from those who believe, on whatever grounds, that we should not *try* to deter the Chinese from using draconian methods to deal with their population, there are those who say the effort would be pointless because the Chinese will only adopt a "bunker mentality" and proceed to do what they meant to do anyway.

However, though the Chinese authorities would like to give the impression that they are uninfluenced by foreign criticism, they have shown themselves to be extremely sensitive to attacks on their human-rights record. Their standard response is to fulminate that foreign critics are trying to "interfere in China's internal affairs" and are acting from "ulterior motives." They also argue that human rights are an internal matter for individual countries to resolve according to their own domestic conditions, and even that their family-planning program, because of its supposed contribution to economic development, is itself an expression of human rights! They have reacted sharply

to the condemnations of their record in the U.S. State Department's annual human-rights reports and issued an unusually fierce response to the latest report released in February 1994.

Their touchiness on the issue is not just a matter of pride or a symptom of their vulnerability on the issue: foreign criticisms have a definite impact on Chinese internal affairs and on its foreign relations. Several Chinese sources, the most recent in 1993, have noted that foreign criticisms of coercion in the Chinese family-planning program tend to discourage Chinese cadres from carrying out coercive measures and thus tend to moderate the program in spite of the central authorities.

Another indication of the impact of foreign criticism was given in December, 1993, when China's Public Health Ministry announced a "Draft Law on Eugenics and Health Protection" calling for the use of abortion and sterilization to "avoid new births of inferior quality and heighten the standards of the whole population." This proposal evoked an immediate flurry of denunciations in the rest of the world. A week later the Ministry reacted by saying that its eugenics policies were "totally different" from those practiced by Adolf Hitler and announced that the preferred English euphemism for the bill would now be the "Draft Natal and Health Care Law." That did little to still the criticism. By February, 1994, the Chinese Government had begun to revise the law to remove from it such expressions as "eugenics" and "inferior births." One wonders how much the Chinese family-planning program might have been moderated from the late 1970s onward if the UNFPA, the IPPF, and governments around the world had paid more attention to its human-rights implications from the start.

Crisis ideology and tolerance for coercion

Why is there so little real concern among family-planning advocates about coercion in family planning? Some probably are secretly in favor of it. One gets hints of this from time to time. A few years ago I heard a demographer tell a congressional committee that many other countries would soon have to implement a program like China's if they failed to get population growth down by voluntary means. Another has repeatedly called for coercive birth control even in the U.S.! One of his articles was the first by a foreign demographer to be reprinted in a Chinese newspaper. Others avoid explicit mention of coercion but praise the Chinese leaders for boldly confronting the "population problem" and insist that the rest of the world owes

the Chinese a debt of gratitude.

At the root of this tolerance of human-rights violations in family planning is the widely-shared notion that the world risks a population crisis unless population growth is checked. The imminence of such a disaster is not a scientifically demonstrable fact. The relevant empirical evidence is equivocal at best, suggesting that there is no simple, direct, strong relationship between population growth and human welfare—either positive or negative. If there *had* been, a significant correlation should have appeared by now in international statistics. Yet the crisis notion has prospered in the absence of firm evidence. Why?

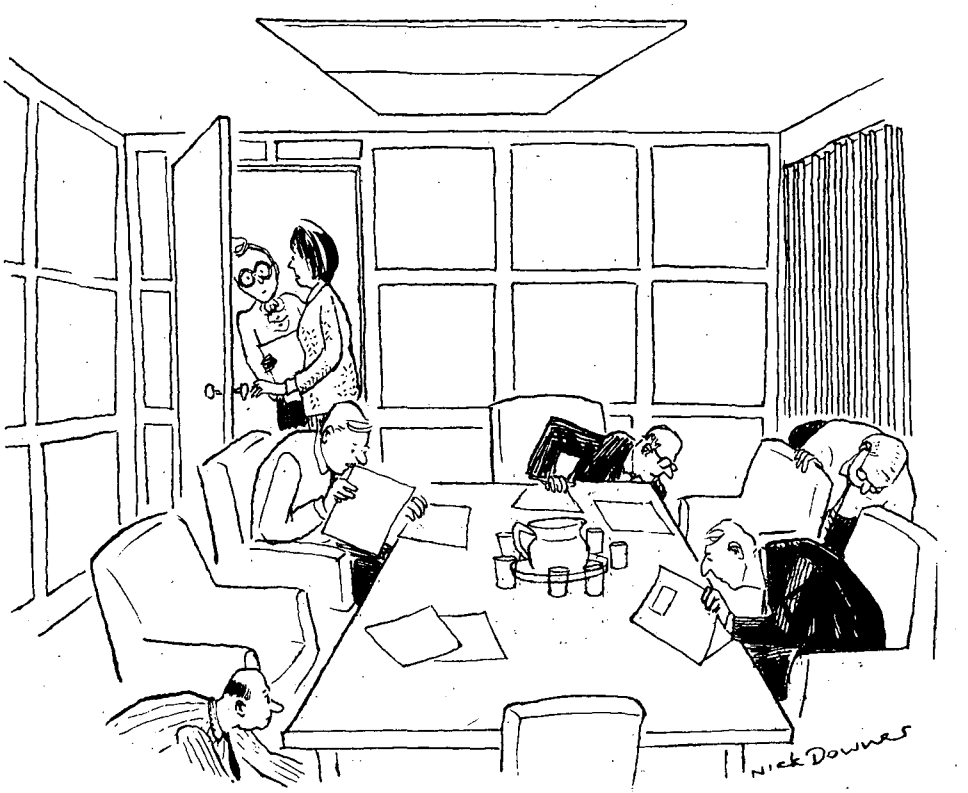
No doubt part of the reason is that the idea has a superficial plausibility that discourages second thoughts. If there were fewer people, there would be more arable land, grain, housing, jobs, water, money, and everything else per capita, right? Yes, if the change happened suddenly. But if it happened gradually, many per capita measures might not rise. The reason is that arable land, housing, and the rest are at least in part products of human endeavor, hence fewer people might produce less, leaving per capita levels little changed, or causing them to change unpredictably in either direction. The dynamics of human population are in fact very complex, hence the idea that reducing human numbers will solve all our problems is dubious at best and probably unsound.

Such cautions seem not to touch those who believe in the population crisis. Why not? For some it may be a matter of personal subsistence. For many family planners, demographers, and the publicists who make a career out of warning against crises—not to mention the foundations that support these activities—popular acceptance of the crisis idea brings money and notoriety to their enterprises and advances their careers. One can understand why they are slow to entertain doubts about it. For others who derive nothing from the crisis idea but an article of faith around which to organize their philosophies and a cause to which to dedicate themselves, the principle deterrent to reconsideration is probably the natural human reluctance to change one's mind, especially in a matter of faith, devotion, or zeal.

Experience seems to have little impact on such beliefs. In China, where the government has bought the crisis idea hook, line, and sinker, the media still carry stories that population growth threatens economic development and even "subsistence," though in 1993 the

authorities also worried publicly about "overheating" in an economy growing at over 13 percent per year, and in February, 1994, they reported that grain output in 1993 was 50 percent higher than in 1979 despite reduced crop acreage. Obviously the growing population had impeded neither, yet crisis rhetoric continues.

As long as the crisis notion prevails, effective enforcement of human-rights principles in family-planning programs is unlikely, not only in China but in other countries and regions where the poor and the uneducated have no effective recourse against the importunings of authority.



'They can't find their hidden agenda.'

THE SPECTATOR 24 February 1990

APPENDIX A

[The following syndicated column was released on May 5, 1994, and is reprinted here with permission (© 1994 by Universal Press Syndicate).]

Suicide, Anyone?

William F. Buckley Jr.

The right of privacy has had another offspring—some people would say illegitimate, inasmuch as the father is a phantom, in the view of constitutional experts a figment of the imagination of Justice Blackmun, who fathered the right of privacy in 1973, when he declared that the voters do not have the right to protect the unborn.

Comes now Judge Barbara Rothstein of the U.S. District Court in Seattle, and she strikes down a 140-year-old Washington state law prohibiting a doctor from assisting a patient to commit suicide. Judge Rothstein appeals directly to *Roe v. Wade*, the abortion decision of the Supreme Court. Her reasoning is that just as the court has established that abortion is the exercise of a right of privacy, so should the right to end one's life be protected as the exercise of a right of privacy.

"The suffering of a terminally ill person cannot be deemed any less intimate or personal, or any less deserving of protection from unwarranted governmental interference than that of a pregnant woman," the judge said.

But she did not end there. She said that it's OK for the law to discourage, and presumably prevent, suicide in certain cases. "Obviously, the state has a strong, legitimate interest in deterring suicide by young people and others with a significant natural life span ahead of them." But that isn't the case when you are talking about somebody suffering terminally.

Ah, but this is a can of worms, is it not?

Just to begin with, it isn't possible to prevent someone who is able-bodied from committing suicide. He/she can borrow the children's pistol, aim it at the head, and pull the trigger. Or jump out of the window. What one can't do, in the state of Washington or in 30 other states, is ask the doctor for a knockout pill. If Judge Rothstein is correct, henceforward, in Washington and indeed elsewhere—Judge Rothstein is a federal judge, not a state judge—doctors can give you a lethal prescription.

But then begin the equivocations. This would be forbidden if you are a "young person" with a "significant life span" ahead of you. And, of course, the decision by Judge Rothstein came only a day after the current trial of Dr. Jack Kevorkian. He was acquitted on a technicality. The jury found that, as the doctor's lawyer pleaded, he wasn't engaged in helping to kill the patient; he was merely engaged in diminishing the patient's pain.

What Dr. Kevorkian did concretely was furnish a mask for the patient, and run a tube from the mask to a tank of carbon monoxide. This is the equivalent of saying that the handyman who plants a bomb under your car, runs an electri-

cal line to your window sill but leaves it to you to depress the button when your wife enters the car, hasn't assisted you to commit murder; he is just making life easier for you.

But these are the problems one runs into when planting rights and attempting to reason to their applicability. For instance, if Judge Rothstein is correct in saying that taking your life is your most intimate right, then why should it not also be the right of the healthy young man with the "significant life span" ahead of him? What right does the state have to tell the doctor that he can't help the man who did the decathlon yesterday to commit suicide today? What right do the voters of the state of Washington have to ordain that tedium vitae isn't a sufficient excuse for ending your life? Why doesn't the dejected young Republican have a right to despair, and end it all, when Bill Clinton is elected president?

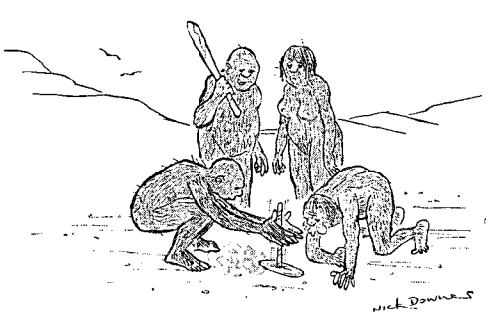
To display one's own cards in the matter, the author of these words believes most profoundly in the desirability of death, over against protracted, useless suffering. But there is a point at which one is supposed to yield to higher laws.

The tradition in America is that the people will vote collectively on such matters, and just three years ago the people of Washington state rejected an initiative that would have given to doctors the right Judge Rothstein has just now given them; even as the voters, over the span of generations, had voted to protect unborn life.

That principle—self-government, by the majority—can be taken as sacredly as Abraham Lincoln took it, refusing to call for the abolition of slavery for so long as it was constitutionally tolerated. And there are those others governed by laws even more august than the legislature's, which laws prohibit suicide, though they do not prohibit life protraction.

But the judge in Seattle has now discovered a fresh right, obviously susceptible to abuse, and has declared incompetent the franchise of the people, renewed as recently as three years ago.

It's fun to set about discovering fresh rights, but there are victims, as we have seen. Unborn babies are the most conspicuous. But now add problematic death-wishers, corrupt doctors—and the sovereignty of majority rule.



'The world used to be a simpler place. . . '

THE SPECTATOR 9 April 1994

APPENDIX B

[*The following is reprinted with permission of the author. It first appeared as an "On Society" column in the May 16, 1994, issue of* U.S. News & World Report *under the same title.*]

Assisted suicide's slippery slope

John Leo

Until last week, the "right to die" controversy was about where the abortion controversy was when the Sherri Finkbine case hit the media in 1962.

Finkbine, a mother of four, unwittingly took thalidomide and sought an abortion to avoid bearing a deformed child. Amid great publicity, an Arizona hospital waffled, and Finkbine eventually got an abortion in Sweden.

In her book, *Decoding Abortion Rhetoric*, Celeste Michelle Condit depicts Finkbine as a powerful myth and rhetorical device for those who wanted to legalize abortion. As Condit sees it, the Finkbine narrative told a new abortion story in the language and symbols of the old antiabortion consensus: She was married, middle-class, responsible, wanted more children and refused to break the law by seeking an illegal abortion.

"Persuasive narratives," Condit writes, "always present the most extreme cases with the most noble purposes." Finkbine was "only a first move," someone who generated a compelling story. She was Chapter 1.

Who are the compelling Chapter 1 figures in the euthanasia narrative? People like Thomas Hyde, of course, the man Jack Kevorkian has just been acquitted of killing through assisted suicide. The erratic Kevorkian made the strategic mistake of entering Chapter 2 by "assisting" several people who were not terminally ill, including a woman who had beaten her son at tennis the week before. But the big trial focused on the assisted suicide of a suffering, dying man with strong emotional appeal. Most of us are fearful of a long and painful death and the prospect of being kept alive for years.

The power of story. The Kevorkian acquittal was hardly a decisive turning point. Over the years, other mercy killers and suicide helpers have gotten off. But it's a strong indicator of the power of compelling narratives to sway jurors who should apply the law but don't. "Society is too overwhelmed by the emotional appeal of these cases to look at the big picture," said Yale Kamisar, a University of Michigan law professor. The big picture is that once the right to intervene actively and bring about death is established, there is almost no way to prevent the rest of the chapters of this book from being written.

What if Thomas Hyde had lacked the strength to pull the string that brought on Kevorkian's carbon monoxide? Well, what's the difference, let's pull it for him or give him some pills. Freelance killing of suicidal loved ones would come along quickly. Once doctors are licensed to kill, what jury will convict a spouse or other family member who dispatches a willing person?

Several proposed plans on assisted suicide include the safeguard of at least two physicians certifying that death is less than six months away. But these are like the old plan to limit abortion to cases of rape and incest. In a rights-oriented culture, such restrictions won't last long. Soon the medical benefit of death would be extended to those in heavy pain who are terminally ill, and equal-rights litigation would seek to extend it to comatose patients and, inevitably, AIDS and Alzheimer patients.

The rhetoric of the abortion-rights movement, with its emphasis on "choice," "self-determination" and "rights," has gradually suffused the right-to-die movement. Last week, a rather stunning federal court ruling in Washington State explicitly linked the two issues. Judge Barbara Rothstein said that a terminally ill adult has a "constitutionally guaranteed right" under the 14th Amendment to medical assistance in committing suicide.

Her decision cited the Supreme Court's 1992 reaffirmation of abortion rights in *Planned Parenthood v. Casey* and said the suffering, terminally ill person is no less deserving of protection than a pregnant woman who wishes to abort. This seems to vault our story into Chapter 6 or 7 of the death book. Suicide is no longer a crime anywhere in America, so people are always free to kill themselves, but no previous court had ever called physician-assisted suicide a right.

Having sent this boulder downhill, Judge Rothstein was careful to set a tiny twig in its path to restrain it: The state also has a right to seek the prevention of suicide by people who are not terminally ill. The problem is this: Though the judge was careful to insert the words "terminally ill" as often as possible, the logic of the decision seems to establish the right for everyone, young or old, terminal or not. Using the language of the *Casey* decision, the ruling says that "choices central to personal dignity and autonomy . . . [are] central to the liberty protected by the 14th Amendment." But if it's a basic right, how can it be denied to those who aren't terminally ill?

Judge Rothstein dismissed the slippery slope argument, even as she hurtled down the slope herself. Once again, we are trapping ourselves by an obsession with rights-talk. In principle, rights are always absolute, unconditional. As ethicist Leon Kass writes, "It is hard enough . . . to try to figure out what is morally right and humanly good, without having to contend with intransigent and absolute demands of a legal and moral right to die." Such a right would also translate into an obligation on the part of others to kill or help kill. Isn't it time to pause and rethink this?

APPENDIX C

[*The following column appeared in the April 10, 1994 Philadelphia* Inquirer *and is reprinted here with permission. David R. Boldt is the editor of the Editorial Page.*]

Farewell to Justice Blackmun: He blew it on the 'Roe' decision

David R. Boldt

Really, I wasn't going to say anything about it. I was just going to let Justice Harry Blackmun ride off into the sunset to play with his grandchildren.

But I guess I just read one too many smarmy panegyrics. Ellen Goodman's tribute to this "gentle, careful justice," which appeared on this page yesterday, may well have been what pushed me over the edge. I say this even though I concur with her that bashing of Blackmun as the author of *Roe v. Wade* has also been overdone.

Blackmun was no monster. He is instead a living, breathing example of what might be called "Hruskaism," after a famous remark once made by Sen. Roman Hruska in defense of another nominee President Nixon put forward for the Supreme Court (one of those, interestingly, whose defeat eventually opened the way for Blackmun's appointment).

In seeking to defend the earlier nominee against the argument that he possessed a less than brilliant judicial mind, Hruska said, "Even if he is mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they?"

There's little doubt that legal historians will conclude that the mediocre were ably represented by Blackmun, and nowhere, perhaps, was that mediocrity better exemplified than in *Roe v. Wade*.

The problem with the decision wasn't necessarily its result. Abortion was going to become widely available in the United States back in the 1970s, as it was in every developed Western democracy, one way or another. The problem with *Roe v. Wade* was the coarse insensitivity of the reasoning behind it, which opened the way to two decades of damaging cultural warfare.

Because it caused so much unnecessary trouble, it's worth reviewing its shortcomings, even though it is basically moot at this point. (The underpinnings of abortion rights were substantially reconstructed, on firmer ground, in the court's more recent decision on the Pennsylvania Abortion Control Act.)

One first has to understand how extraordinary the continued battling over abortion after *Roe v. Wade* really was. Throughout American history the Supreme Court has spoken on issues of the utmost sensitivity, and its decision has generally settled the matter. This manifestly did not happen in regard to abortion and *Roe*. Moreover, the continued brawling over the issue in the United States stands in stark contrast with the relatively brief and painless episodes in which European countries have dealt with the issue, achieving basically the same results over the same time period.

What was wrong with *Roe?* For starters, it went too far. Nothing required such a sweeping and unnuanced decree. To cite perhaps the most dramatic example, the United States today is unique among the supposedly civilized nations of the world in its permissiveness regarding third trimester abortions as a consequence of *Roe*.

Roe allows states to regulate these abortions, but many states do not. The reason is mainly the difficulty involved in drafting regulations that would pass muster with the criteria indicated in *Roe*, which allows a state to intervene only when the mother's well being is threatened. Even when states do regulate such abortions, the precautions are far less rigorous than those employed in European countries.

Now a third-trimester abortion is a truly repellent undertaking. It involves a fetus that would live if it were removed from the womb by Caesarean section. And because the skull has formed, the fetus can't be removed by slicing it up, or vacuuming it out, as is done with earlier abortions. To get the fetus out, a hole is made in its skull, and "the surgeon . . . introduces a suction catheter into this hole and evacuates the skull contents," as the procedure is described in one medical journal.

As abortion rights people like to point out, this isn't done often—perhaps only a few hundred, or a few thousand times a year, depending on who's doing the estimating. But it does happen often enough that there's something distinctly odd about Blackmun, after authoring *Roe*, becoming squeamish about the death penalty.

Roe is also remarkable for the lack of attention it gives to society's interest in the protection of developing human life. Blackmun offers some lip service to "the sensitive and emotional nature of the abortion controversy" in the opening of *Roe*. However, as Harvard law professor Mary Ann Glendon notes in *Abortion and Divorce in Western Law*, Blackmun subsequently kisses off moral concerns as "among the many factors which 'tend to complicate and not to simplify the problem.' "

Ultimately Blackmun's opinion is based more on medical than moral considerations. Glendon notes that Blackmun did most of his research for the decision in the library of the Mayo Clinic, a former client of his, while presumably consulting with physicians there. Glendon sees in *Roe* not so much a decision guaranteeing the rights of women, as a decision protecting the prerogatives of doctors.

The other thing that *Roe* did was remove the issue from the legislative realm. By contrast, the abortion procedures in European countries were all worked out by legislatures. While those nations permit abortion, they also require waiting periods and the presentation of information regarding alternatives. These are restrictions most Americans also favor, but which were basically ruled out until the court adjusted its stance in the Pennsylvania case.

(The West German high court did, to be sure, get involved in that country's abortion debate. It ruled that the law passed by the Bundestag was *too liberal* because it had failed to comply with a provision in that nation's constitution requiring respect for human life.)

To conclude, *Roe v. Wade* was one of the great disasters in the history of American jurisprudence, and when its author formally leaves the bench, this writer will be wishing him godspeed—and good riddance.

APPENDIX D

[*The following syndicated column appeared in the Washington* Times *on April 10, 1994, and is reprinted here with permission (© 1994, Los Angeles* Times *Syndicate).*]

Taney's retirement revisited

Paul Greenberg

Indulge me in a momentary historical fantasy. Suppose that Roger Brooke Taney had not gone down in American history as the principle author of what is now almost universally acknowledged as the worst decision in the history of American jurisprudence, *Dred Scott v. Sandford* in 1857.

Suppose the country had been shaped in the image of Chief Justice Taney's decision, which decreed that slaves could be carried anywhere in the Union, and that Negroes could not be citizens under the Constitution, for they were "regarded as being of an inferior order and altogether unfit to associate with the white race . . . and so far inferior that they had no rights which the white man was bound to respect." These were not persons, according to the high court, but property.

Stay with me, this may take some imagination. Now suppose that, instead of these words exciting contempt and derision, and moral horror, they were thought to represent a bulwark of American rights, a new birth of freedom.

In that case, there might still have been those Americans who did not approve of slavery, and perhaps even demonstrated against it, but suppose they were outnumbered by far? Not by fervent disciples of human slavery, but by the mass of citizens who felt uneasy when the subject came up, and who themselves would never own a slave, but who did not feel they should interfere with another's right to own one. Such a delicate question, they felt, should be left to individual conscience—not dictated by the state.

And finally, suppose that Roger B. Taney, full of years and honors, were to announce that he would retire at the end of the Supreme Court's current term. What would some forgettable mediocrity of a president have said on that occasion? Would he have identified himself with the decision in *Dred Scott*? And would the departing chief justice have been hailed as the Conscience of the Court? Would the grand old man have explained at one point that, while not in favor of slavery personally, he had acted to protect the rights of others?

Too rich a fantasy?

Not if one listens to what is being said on the retirement of Justice Harry Blackmun, author of *Roe v. Wade*, the *Dred Scott* decision of our time. *Roe* made it clear that the unborn child—fetus, if that term is more comfortable—has no rights that the state is bound to respect.

And like *Dred Scott, Roe* was handed down in the name of an individual right. Roger Taney's decision in *Dred Scott* was based on the Fifth Amendment's guarantee that no person shall be deprived of life, liberty or property without due process of law. Justice Blackmun based *Roe* on a vague right of privacy nowhere

spelled out in the Constitution but "broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

Of course *Roe* does not condemn millions to a lifetime of slavery, but rather to no life at all—or, if one prefers, termination. (Euphemism is the first sign that an advocate feels queasy about what he's really advocating.) At his press conference with Justice Blackmun this week, this president repeated his support for *Roe* in his own forgettable way: "I—you know, of course, that I agree with the decision and I think it's an important one in a very difficult and complex area of our nation's life."

It might be noted that James Buchanan, the forgettable president in 1857, was all for the decision in *Dred Scott*, too, exulting that it would make Kansas "as much a slave state as Georgia or South Carolina." At last the slavery question was resolved and the agitation over it would end—just as Harry Blackmun's opinion in *Roe* was supposed to end any dispute about abortion.

Speaking of his decision in *Roe*, Justice Blackmun once explained: "People misunderstand. I am not for abortion. I hope my family never has to face such a decision." Roger Taney's defenders in the more poisonous groves of academe explain that the chief justice wasn't ruling for slavery, but only interpreting the Constitution. People misunderstood.

By all reports, Mr. Justice Blackmun is a nice man, and a baseball fan to boot. Chief Justice Taney doubtless led an exemplary private life and had his hobbies, too. And both handed down other, better decisions besides the single one that history will indelibly link to their names. Perhaps that is the essence of this fantasy: In a society that has lost its moral bearings, strange and terrible decisions can be made, and can come to seem quite ordinary, even praiseworthy.

'I wouldn't bother your pretty little head about it . . .'

THE SPECTATOR 7 May 1994

APPENDIX E

[*The following syndicated column originally appeared in the Chicago* Tribune *on April 6, 1994, and is reprinted here with permission (© 1994, Tribune Media Services).*]

Wouldn't touch that with a 10-foot smoke

Mike Royko

The truth is, all columnists appreciate suggestions on subjects we might write about.

Some ideas are predictable: "My electric bill is too high—why don't you blast the greedy utilities."

Others are strange: "Write about the messages. I hear messages from outer space. They come through a filling in my tooth. Or sometimes the bedsprings."

Some might be of limited interest: "You ought to write about my boss. That creepy SOB pretends to be a good family man, but he's always putting his hands on my back or my shoulders and he leers and he has bad breath."

But some are just too dangerous, volatile and controversial for any sane, tranquility-loving columnist to mess around with.

Which is what I tried to explain to the female reader who cornered me the other day.

"I'm quitting smoking," she said. "I've tried before, but this time I'm going to do it. They have knocked out smoking where I work, and my husband is on my back about it at home, and now I read that I won't even be able to smoke at the ballpark."

That's good, I told her. As one who is going through the withdrawal anxieties, I urge everyone to shake the nicotine addiction. It makes me feel so pure and socially responsible.

"Yes," she said. "But I'm also against abortions except in the most extreme cases—rape and incest and cases like that."

I thought we were talking about smoking.

"Well, let me give you an idea for a column," she said. "It has to do with smoking."

Good. I'm ready and able to join the mob beating up on smokers.

"OK, here is my idea. If the government is going to put a big tax on cigarettes because they want to discourage smoking, then why don't they put a big tax on abortions?"

A tax on abortions? Any politician who proposed something like that would soon be out in the cold looking for honest work.

"Well, think about it," she said. "If secondhand smoke is so dangerous to some defenseless non-smokers at the other end of the restaurant, and if you can't have a cigarette at an outdoor baseball park with the wind blowing through, isn't abortion dangerous to defenseless unborn children?"

Ma'am, I told her, I am not keen on the idea of picking up my phone and fielding phone calls from hundreds or thousands of furious females.

"Don't be such a coward. I mean, if congressmen and the president are so worried about somebody getting a whiff of my cigarette smoke—and I smoke the low-tar brand—why aren't they that worried about the millions of babies who will never be born because of legal abortions?

"Why don't you call the leaders of the pro-abortion groups and ask them how they feel about smoking? I'll bet you that most of the pro-abortion people are for higher taxes or making smoking illegal just about anywhere.

"But they don't have any problems with women having abortions because it's an inconvenience to their social life or careers or their jogging or their love lives to have the child that they have conceived."

You are being illogical and are comparing apples and oranges.

"No I'm not. I'm comparing having a smoke in a corner of the company cafeteria with having a baby. I'd be willing to bet that if you asked the average liberal how they feel about smoking, they would favor government controls and taxes. But if you ask the same liberals about killing unborn children, they would say it is none of society's business what a woman does with her body. Come on, show some spunk. This would be one heck of a column."

If I were foolhardy, yes, it might be. But I have no desire to see my phone bouncing up and down with phone calls from angry, liberated female persons.

"Then you are a weenie," she said. "The people who are trying to ban smoking just about everywhere are the very same people who say that abortion is a valid form of birth control, which is what most abortions amount to. For every person who is harmed by my smoke, about 10,000 unborn children are killed. That's what you ought to be writing about."

Yes, if I wanted to infuriate countless women. But I prefer to lead a peaceful life.

"Then what about the secondhand fathers?" she said. "Everybody talks about secondhand smoke. But don't the secondhand fathers of the aborted children have any rights? Why isn't their approval required before an abortion is performed?"

I tried to explain that this is why I am a columnist and she isn't. I know better than to run in the streets and play in traffic.

"Then you are gutless. How can you let the government tell you what you can smoke, eat, drink, or what kind of medication you can take—which it does all the time—but you don't mind the government saying that it is OK to kill children before they are born. What's your problem? Are you afraid of controversy?"

Not at all. I thrive on controversy. But I am not going to put my head on the chopping block.

"Coward," was her final word.

"Prudent," was mine.

APPENDIX F

[*The following article first appeared in the New York* Post *on Monday, June 6, 1994, and is reprinted here with permission.*]

Pro-abortion prez is wrong man to hail heroes

Ray Kerrison

The thousands of little white grave markers on the green fields of Normandy are a monument to the sacrifice this nation made to free Europe of an evil tyranny.

The men who stormed the beaches through hellfire represented the best of America in an age when nobility of purpose, duty, patriotism, gallantry and generous heart were esteemed as national virtues.

Yet the deeds of the dead at Normandy and Anzio, Guadalcanal and Iwo Jima, were only the beginning. In the years following D-Day, the United States embarked on a mission unprecedented anywhere in history in scope or benevolence. It began rescuing the very enemies who had caused it such grief. It poured men, planes, goods and tens of billions of dollars into Germany and Japan to put them back on their feet.

This was the United States that made the world stand in awe. Strong, bold, creative, can-do America. Soon, millions of people from war-torn Europe and beyond would begin clamoring to come live in the New World, to see and experience for themselves this wondrous land, to raise their families, pursue opportunity and seek prosperity.

America was the beacon in a dark world. It offered two priceless gifts: life and hope.

Today, 50 years after the landing at Normandy, the U.S. remains an incomparably generous nation, optimistic and powerful. But other things have changed. The Clinton administration, for example, has embarked on a global campaign that is diabolical and deeply at odds with everything the nation has stood for.

Today, the U.S. is threatening to use its vast wealth as a club to force the Third World to embrace abortion as a means of population control.

This is a staggering reversal of national policy. Where once the U.S. used all its resources to export life and hope, today it is using them to export death and despair.

Welcome to the Clinton era, whose motto to developing nations is: if you don't wipe out your young, you will receive no aid. The U.S. is positioning itself to become a genocidal nation. What could be more grotesque on this 50th anniversary of the landing at Normandy?

The abortion culture is so deeply entrenched here that each year 1.6 million babies are destroyed in the womb. That this national tragedy should now become a major instrument of American foreign policy, a new form of cultural imperialism, is incomprehensible.

The arrogance of it is breath-taking. Neither you nor I would dare tell our

children or our neighbors how many children they should have. That is the most personal and private of all decisions. Yet here are Bill and Hillary Clinton, through the State Department, telling Africans and Asians and Latins that if they want any cash, they had better start destroying their young through abortion.

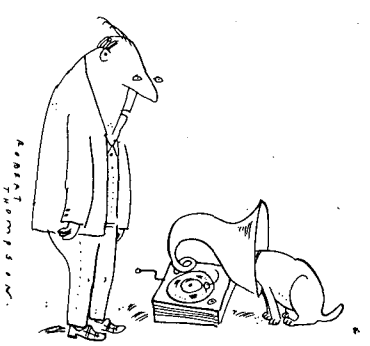
What is it with these people? Why is life defined through abortion? Why has the legal right to snuff out the life of a baby become the sacrament of the feminist movement? Why is the American government so determined to make poor foreign nations their partners in death?

In the beginning, when God created man and woman, He told them to be fruitful, multiply, fill the earth and subdue it. In the year 1994, Bill and Hillary have apparently decided that the Africans, Asians and Latins are too damn fruitful and multiplying too fast. They have decided the earth is full enough as it is, it has been subdued, time to call it a day. What would we do without the Clintons to guide us through the shoals of life?

We all understand there are serious differences of opinion on abortion. A majority of Americans approve it but overwhelmingly disapprove of abortion on demand. In any case, it is a matter of serious debate within the U.S. That it should be exported and imposed on other nations through financial threat is unforgivable. No, it is barbaric.

Would we tolerate for one moment a coalition of African, Asian and Latin nations telling *us* how many children we should have or pronouncing a judgment that America has enough people and it's time for them to cut back? We'd tell them to mind their own business.

Tonight, the president and the little white grave markers in Normandy will be all over the TV screens. It will remind us that those men died that Europe might live. That is a noble cause. Demanding that poor nations all over the world destroy their young is not. This is the shame of the Clintons on this sacred day.



'Admit it, you're deaf.'

THE SPECTATOR 9 April 1994

APPENDIX G

[*The following article first appeared in* USA Today *on May 19, 1994, and is reprinted here with permission.*]

RU-486: A lot of people, a lot to answer for

With this 'miracle,' anyone can become an abortionist.

Phyllis Zagano

I have heard all the arguments. I know you have as well. There is a pill now, a drug called RU-486, which is more than just a "morning-after pill."

At least with that you had the advantage of not knowing whether you were really pregnant.

No, this one is different. This one you use when you are sure you are pregnant, sure there is something inside you that is not quite you and not quite not you.

This one is for when you have decided, for whatever tragic or convenient reasons you have stacked up in your mind, that this pregnancy has to end.

It is supposed to be easy.

It is supposed to be safe.

You go to the doctor, say, three or four times.

First you go to talk about it.

Then you go to take the pill.

Then you go to take another pill, a prostaglandin drug.

Then you go back two weeks later to make sure that all the bleeding, all the discharge, all the contractions really signaled an "abortion."

It takes a lot of time.

It is very painful.

You need to be near a hospital, just in case.

This is done to help the poor? This is done to give women control of their bodies?

The drug companies have had plenty of practice, yes. Nearly a quarter-million women have had this kind of abortion in Europe and in China. They know it works, at least 98% of the time. The other 2% ended up with surgical abortions.

Then there were bleeders—one in 500 need transfusions—and the ones in shock—one in 100 have a significant drop in blood pressure.

The president of the United States has decided to let American women have this advantage.

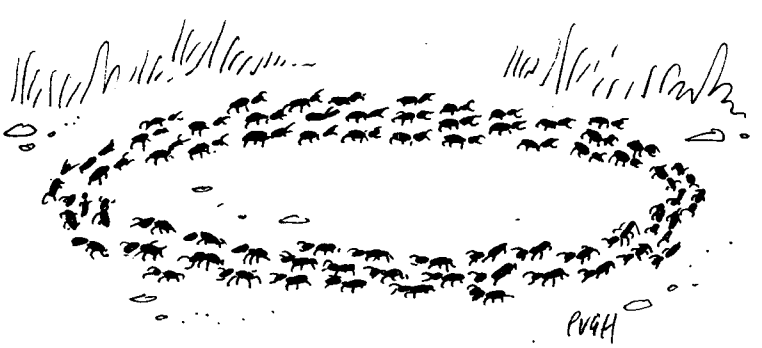
The German patent owner, Hoechst, and the French manufacturer, Roussel-Uclaf, have turned U.S. patent rights over to the Population Council in New York. Because, we're told, they were afraid of religious pressure. Because, we're told, the Catholic owners caved in to pressure from the pope.

We should recall a little history here. It was Hoechst as part of IG Farben that owned Zyklon-B, the Nazi death-camp drug. It was Hoechst subsidiary Degesh

that licensed it for others to use. It was Hoechst which helped the world extinguish 6 million lives.

The president of Hoechst has said that RU-486 would not have been developed if all its "side effects" were known. Now, with the help of Roussel-Uclaf, the Population Council and President Clinton, Hoechst is giving away its trade secrets so that anyone can become an abortionist.

Maybe God does not exist. But for those who wager along with Pascal that he does, it would seem that Hoechst and all its friends and colleagues will have Someone more powerful than the pope to contend with.



'I think we've got a leadership problem.'

THE SPECTATOR 28 May 1994

APPENDIX H

[*The following article first appeared in* Commonweal *on May 20, 1994, and is reprinted here with permission.*]

. . . and just down the hall

Valerie Schultz

To reach the Neonatal Intensive Care Unit, they tell me at Information, go to the fourth floor, to Maternity, but then turn right.

Of course I've heard of the NICU before, but like any intensive care unit, you only focus on it when your loved ones require extraordinary care. And then it amazes you when you realize that every day, every night of your normal life, *someone* will be there.

On Labor Day, my sister's twin boys decided that nine months of pregnancy were excessive. Without warning, they cut their gestation to less than seven months. Actually, Colin did that; Ian found himself along for the ride that culminated in a danger-fraught whoosh down the birth canal.

The NICU has glass windows, but the blinds are often drawn to spare onlookers the sight of certain procedures. It is a small, brightly lit room, packed with banks of technology, an efficient, serene staff in serviceable shoes, and distressed, angry, tiny humans. Next to the NICU is a waiting room with a nap-length couch, a TV, a water cooler, and an inspiring photo montage of babies who outgrew the need for this place. Unlike the well-baby nursery down the hall, this room is a place of serious, dark, anxious waiting. While the larger nursery in Maternity draws visits from casual well-wishers and even strangers, the NICU serves far more specific watchers. Here, everyone waiting is intimately involved with the patients.

Most of the waiting at NICU is for premature infants, like Colin and Ian. Born well before they were expected to parents who thought they still had plenty of time to pick middle names and take the hospital tour, they survive their first days here. Cheated of their third trimester, they are thrust off schedule and into the dangerous uncertainty of life. For the new parent, daily, customary life has screeched to a dizzying halt. Fathers with thwarted protective instincts and mothers overflowing with new milk must simply wait. What preemies need most from all the medical advances is time: time to grow strong and function unaided on the outside.

Lucky enough to catch a glimpse of Colin through the soundproof glass, between nurses and machines, I see a tiny, hairy creature with a head the size of an orange. His skin miraculously clings to bones without the help of any apparent fat or muscle, and somehow supports tubes and wires from feet, arms, stomach, heart, nose, mouth, lungs. He is naked. A blindfold protects his eyes from the jaundice lights, intensifying the image of newborn as hostage. Every bodily function that I take for granted is monitored. But small and unhappy as Colin is, everything is there: fingernails, eyelashes, nipples, scrotum, nostrils. It's not that anything is missing; it's just that, at twenty-six weeks or so, they are not quite

ready. Within hours of birth, Colin can expertly guide his thumb past all entanglements into his mouth and satisfy his primal urge to suck. This to me appears magical, until I realize that he has been sucking his thumb for months, deep within my sister.

This realization takes me by the mental lapels and shakes me. As I gaze through the silence at this child/man, I reflect that while the hospital is now employing every human and medical resource it can muster to save his young life, a mere six weeks earlier it might have legally aborted him. This scares and astounds me.

I am not a rabid anti-abortionist; there was a time in my life when, but for a little luck, I might have been the grateful recipient of one. I have considered myself reluctantly prochoice, prochoice with a weak stomach. I wouldn't have one, but who am I to force other women to bear children? Besides, I'd rather not think about it.

But I am sorely troubled by these faces from the womb in the NICU. Twenty years ago my sister's babies would not have survived their premature birth. Twenty years from now, how much earlier will preemies be medically enabled to survive? Will the twenty-week deadline for abortion become a day or two in the transformation of nonviable plasma into someone's offspring? And will that be enough time for future parents to turn on the suppressed urge to nurture their children?

I fear that we have been kidding ourselves with talk of trimesters and viability. Babies, after all, are babies. It's just that sometimes they are *in utero*. Sometimes they are early. Sometimes they die in spite of our best efforts.

My nephews are going to be fine, thanks to the NICU. They will get chubby and rosy, and grow to be boys of ten and men of twenty. But their tumultuous arrival has forced me to question myself and a society that, depending on some square on a calendar, would just as easily kill them as it would accord them their dignity and human rights.

These vertiginous thoughts refuse to remain on the fourth floor. They accompany me down into the gift shop. They hinder my careful choice of a greeting card. They are not daunted by my gulps of bracing outdoor air. They are emphatically mine.

The boys' crescent-moon slivers of fingernails haunt me long after I am back on the street. Today is the day that I am no longer prochoice.

APPENDIX I

[The following letter was sent to President Clinton by the organization of American Black Women Against Abortion (10 West 135 Street, New York, NY 10037); it is reprinted here with permission.]

June 13, 1994

Dear President Clinton:

We, members of the American Black Women Against Abortion, write to urge you to delete abortion—"the termination of a pregnancy resulting in the *death* of a developing human" (Webster's Medical Dictionary) from your Health Care Plan. Death by abortion should not be included in any Health Care Plan. Being pregnant is not a pathological condition but a temporary biological state, and abortion is unnecessary invasive surgery which confused women, faced with an unintended pregnancy, use as a permanent solution to a *temporary inconvenience.*

Moreover, we not only believe abortion to be morally wrong, we see it as genocide, Black genocide, and wonder if it is not a weapon being used by America to "prune" its Black population. More Black males have been lynched by abortion in their mother's womb than were ever lynched from a tree by the Ku Klux Klan since the 1973 U.S. Supreme Court decision legalizing abortion. The aggressive efforts being made to provide Black women with abortion is viewed by Black people as dehumanizing and a form of subjugation.

Yesteryear Black babies were snatched from their mother's arms and sold into slavery. Today, Black human beings are dismembered in their mother's wombs and their body parts sold for experimentation or trashed. This is racial genocide in its cruelest form.

Black women have never demanded nor demonstrated for abortion. We are God loving, God fearing people who respect all human life and adhere to God's commandment "Thou Shall Not Kill." The inclusion of

abortion in your Health Care Plan perpetuates moral ambiguity and creates confusion among some Black women who are coerced into terminating their unborn child, alive and growing in their womb, under the guise that it is the only solution to their economic and social crisis, *death* instead of *life*.

Mr. President, we realize that the abortion providers industry, which continues to target Black neighborhoods, is a billion dollar business with powerful influence, but we, who are citizens of America, registered voters and women of faith, urge you not to contribute to the "pruning" or extermination of Black people by including abortion in your Health Care Plan.

In the words of the late Reverend Martin Luther King, Jr.:

> Cowardice asks the question, "is it safe?"; expediency asks the question, "is it politic?"; but conscience asks the question "is it right?"; and there comes a time when one must take a position that is not safe or politic but because conscience tells one it is right.

Thank you for your attention to this letter.

Respectfully,

Miss Dolores Bernadette Grier
President

APPENDIX J

[The following is the printed text of the Commencement Address by Governor Robert P. Casey to the graduating class of the Franciscan University of Steubenville, Ohio; it was delivered on May 14, 1994, and is reprinted here with permission.]

"Press on!"

Governor Robert P. Casey

Many of the commencement speeches I've heard or read over the years have been, frankly, pretty depressing. These speeches are generally an occasion for warning: assessments of how the world is shaping up, of dangers to be guarded against, of ominous developments to be watched.

Last year, for instance, graduates in Austin, Texas, heard America's problems described as a "crisis of meaning." The call went out for a Politics of Meaning. Another audience in Washington recently heard a very powerful speech about, as the speaker put it, America's "turning away of the soul." In one case the speaker was Hillary Clinton. In the other case, former Education Secretary William J. Bennett.

Although the terms are similar, no doubt in the details they mean quite different things. But it tells us something interesting that they and others strike the same theme. It's probably fair to say that America is slowly arriving at a rough consensus. We are at last beginning to realize that there are problems beyond the power of politics or science or wealth to repair. More and more we sense an absence. A void. We seem to agree that something crucial is missing from what, by all material calculations, should be the picture of perfect national contentment.

Surveying this scene, it may be that we are passing through our own American version of "Darkness at Noon." Just when we have prevailed in the "long, twilight struggle," we find ourselves in domestic quarrels more and more bitter. In a country founded on ideas of opportunity, and community, and generosity, we find ourselves locked in often frenzied quarrels over who gets what; whose rights come first and whose last; and even who gets to live and who doesn't.

Just as the economic cycle comes around again to lift us up, promising greater wealth and security, we find more and more homes falling apart.

A society with more lawyers than any other and the oldest surviving constitution, we are the most lawless in the world; the freest of nations, yet also the most violent. You are safer today walking the streets of Belfast or Hebron than you are in parts of some of our cities.

And even more bizarre, as you walk our cities you can even find popular music and art celebrating that very brutality, revelling in it. Indeed, if one word sums up whatever it is that troubles the American soul, that would be it right there: violence. In speeches we describe the crisis in very lofty, philosophical language, but at the end of the day that seems to be what we have—a violent streak.

To this list of American traits I would add only one point: at the same time, we are a culture of staggering generosity, heroic self-sacrifice, and envied

brilliance. We could cite all kinds of evidence for this—the tens of billions Americans give to charities, our foreign aid, the work of our churches, our social services both public and private. But I say this as someone who in the last year has witnessed all three qualities up close, from that unique view of life afforded from a hospital room. From that seat of powerlessness, I saw that other America we celebrate in our more hopeful moments. The "compassionate" America my party used to talk about and believe in: a society of caring, healing, heroism, resolve, bold endeavor, brotherhood.

Just a few weeks ago the papers reported a new breakthrough in the treatment of fatal diseases through gene alteration. Think of the good this might bring, the suffering it might spare. Where else but in America is such a project even conceivable? And who, in the face of such possibilities, can even guess how things will look one day when you're attending the graduations of your own children?

Viewing the whole picture, though, there is just no getting around the violent streak. Our capacity for creativity seems at times to be overtaken by our capacity for destruction. Sometimes the violence is so aggressive that the hospitals and homes and campuses like this come to seem like small fortresses, places of refuge. In some respects our culture resembles a place foreseen by the Scottish author John Buchan. Writing fifty years ago, he described "the coming of a too garish age, when life would be lived in the glare of neon lamps and the spirit would have no solitude."

In such a world, he said:

> . . . everyone would have leisure. But everyone would be restless, for there would be no spiritual discipline in life. . . . It would be a feverish, bustling world, self-satisfied and yet malcontent, and under the mask of a riotous life there would be death at the heart. In the perpetual hurry of life there would be no quiet for the soul. [In such a world] life would be rationalized and padded with every material comfort, [but] there would be little satisfaction for the immortal part of man.

Along with Mrs. Clinton and Mr. Bennett, different observers come forward with different explanations for the situation. Some make the familiar point that learning and technology run inevitably at an unequal pace; that in the race of progress, wisdom and goodness will always lag behind power. Others believe it arises from uniquely American vices; they say it's the ruthless underside of our culture of contentment and self-gratification. Still others, like the First Lady, offer a vaguely spiritual diagnosis.

But whatever explanation we favor, I am absolutely sure of one thing. And I offer it as my contribution to the national debate. There is nothing at all vague about our problems. They are not of some mysterious origin. All people in all times have suffered from vague spiritual anxieties, and we should not expect to be any different. In the end, our national griefs are of our own making. They arise from decisions we have made, and have it in our power to reverse. They come from evils we have invited, and may yet banish. They are the fruit of acts

of violence we have permitted—and in some quarters even celebrated.

And I am just as sure of this. All of these trends, these disturbing, violent, garish trends, come together in the issue of abortion. Whatever fine gloss we put on it, here is the ultimate act of unreason, of aggression, of exploitation of the weak by the strong. Because abortion is the ultimate violence. The abortion movement isn't just another cause; it is the telltale passion of a deeply disturbed society.

The clearest evidence of this is the yearning among those who defend abortion to put the issue behind us, their gnawing anxiety to put it all out of their minds, to make us all forget it and move on. Other ages knew this tragedy, but they at least saw it as tragedy. Ours alone has dared to call it a good. We alone have dared to call the victim a "thing," the act a "service," the killer a "provider."

We have spent a generation constructing a world in which unborn babies are but expendable tissue, this make-believe world of death without tears—and then we wonder why our culture is so violent! We permit the casual destruction of the most meaningful thing on earth at a rate of 1.6 million a year—and then wonder why our own lives seem to hold so little meaning. Should we really be surprised that in such a society life comes to seem cheaper and cheaper? Is a happy, healthy abortion culture even imaginable? Other ages had abortion, but our age lives with something more on its conscience. We've made not only a right of abortion, but a lucrative industry. And what decent society can live peacefully with that?

* * * * *

But that is only part of my message. The other side of it is this. In the long term, our cultural unease with abortion, this refusal to drop the subject, is our most hopeful sign of health. Other countries, sadly, have more or less learned to live with it; they don't see it as anything to get worked up about. But not here. This thing—this horrible thing so contrary to our ideals, our inclusiveness, our kindness, our love for one another—has been grafted onto American society. But it is not a functioning organ—it's a disfigurement. It won't take. It won't heal. The body rejects it.

Think, for example, of the memorial you have here to the unborn child. When I saw it this morning, I thought two things.

First, I thought how beautiful it is that young people like you can share in such a memorial. We're always hearing of the "new generation" with its proud, matter-of-fact, unapologetic embrace of the abortion culture. But as that "herd of independent minds" on other campuses charges onward, grows more and more militant and gullible, here there is still enough calm to see the tragedy of it all; to refuse enlistment in such a cause. It must be very hard sometimes to hold to your conscience in such a culture. You face pressures that in my youth we never knew. I am honored to be in the presence of young people who have the courage and integrity to do that.

But then, looking down at the memorial, I thought something else. I couldn't help but imagine what would happen if a monument like that appeared on any other campus. Just imagine the rage, the bitterness, the resentment! What we see as a beautiful and humane symbol, an expression of our brotherhood with all humanity, others would greet as an outrageous, intolerable provocation. Such a symbol would not last a day without being encircled by an angry mob demanding its prompt removal.

I believe the reason for all that anger is very simple. In looking at such reminders, we look at ourselves, at our whole country and its purpose. We on the pro-life side are always faulted for our curious "obsession" with the subject, but really, it's the others who cannot quite let it go. Theirs is the obsession of people in denial, furiously repressing all doubts, hiding all the troubling details, hating any who would disturb their moral slumber.

The abortion issue has that effect on people: It forces you to decide who you are, how you live, what life itself is all about. When all the shouting matches and tortuous arguments are over, when all the heated marches and rallies are disbanded, here in the end is what they cannot face: a tiny grave. And in a way you can't blame them for their anger: Who in their position could look down at that, and in the quiet of his or her heart affirm, "Yes, this is what I believe in. I can live with this"?

That memorial here on campus—I suppose at times it must seem to you a lonely, forlorn symbol, a solitary gesture in a forgotten, hopeless cause. But today I want to offer a much more encouraging report. I don't believe for one moment that it is a forgotten cause. The abortion movement is doomed to fail; it is a crusade without a Cross. Quietly, slowly, painfully, America is facing up to these questions. Is this really what we want? Is *this* the endpoint of progress? Is this the sort of culture we want our own children to live in? Must we really destroy what we lack the courage to love?

And America's answer, the more we are pressed with the issue, is No.

If anyone doubts this, here's a question for you: Remember the Freedom of Choice Act? I seem to reall that this legislation was going to enshrine, once and for all, the holdings of *Roe v. Wade*. It was to be the culmination of the whole abortion movement.

But when last seen, it was being quietly tabled for later consideration. In other words, it failed. It didn't have the votes. Here we have a Presidency, a House, and a Senate controlled by the party formally committed to unrestricted abortion. We have in such groups as NARAL and Planned Parenthood perhaps the most ferocious, relentless lobby in Washington. And yet, in the end, they were afraid even to bring their bill to the floor. After all the big talk and bold promises, they couldn't pull it off. Neither, it turns out, could they repeal the Hyde Amendment.

And this year, a good number of states, including Pennsylvania, have refused to comply with the recent White House edict requiring states to disregard state

restrictions on public funding of abortions in the cases of rape and incest.

And on other fronts, the abortion movement continues to wane. Consider this fact reported a year ago in *USA Today*:

> Despite President Clinton's reversal of a ban on abortions at military hospitals overseas, . . . no U.S. military doctors will perform abortions. The Pentagon confirmed Wednesday that all 44 military doctors in Europe have decided against doing the procedure on moral and religious grounds.

And then there was the *Wall Street Journal* article reporting on a study of medical schools at Columbia and the University of California at Davis. The study found a sharp decline in the number of medical schools offering abortion training, as well as the number of students even willing to take such courses.

Listen to Dr. Trent MacKay, the author of the study: "There is certainly a stigma attached to it now. In many communities it is not an acceptable thing to do. . . ." Moreover, the story reports, "even those medical schools who offer training are running into another problem—the absence of mentors willing to set themselves up as role models." Dr. MacKay calls this "the graying of the abortion provider."

And finally, consider the remarkable sight we witnessed on television after Mother Teresa's recent appearance in Washington. She was there to speak at a prayer breakfast. To her right sat the President of the United States and his wife. To her left, the Vice President of the United States and his wife.

Said Mother Teresa, "Any country that accepts abortion is not teaching its people to love, but to use any violence to get what they want. This is why the greatest destroyer of love and peace is abortion.

"Many people," Mother Teresa continued, "are very, very concerned with the children of India, with the children of Africa, where quite a few die of hunger, and so on. Many people are also concerned with all the violence in this great country of the United States. These concerns are very good. But often these same people are not concerned with the millions who are being killed by the deliberate decisions of their mothers. And this is what is the greatest destroyer of peace today—abortion, which brings people to such blindness."

Well, if every age is remembered by a snapshot image, one picture that captures something essential about the times, here was a new one for the gallery. Saying these words, Mother Teresa was almost drowned out in applause. Everybody applauded, except four people. And as one who has spent a lot of energy pursuing political power myself, I had to wonder: What power is really worth the price of having to sit in the presence of someone like that, and hear her message in awkward silence? What have we come to when the leaders of the free world are not even free to applaud words of such obvious wisdom and power?

But despite that sad image, we continue to hope. Men are complex, and despite all the pressure may yet find the strength of truth within themselves. It was only a year ago, and not far from here, that, in Chillicothe, Ohio, President Clinton put it this way.

"Very few Americans," he said, "believe that all abortions, all the time, are all right. Almost all Americans believe abortions should be illegal when the children can live without the mother's assistance, when the children can live outside the mother's womb."

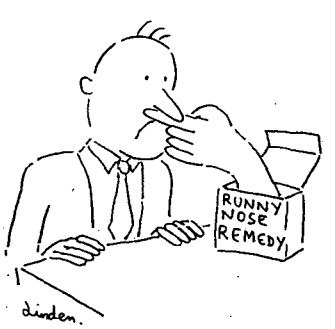
By referring to the unborn as children, the President was not making a theological claim, or even a controversial claim. He was just saying what we all know by instinct, common sense, and conscience. It was an unguarded moment. This is how a man sounds when he is letting his heart speak, without regard to political pressures or ideological etiquette.

In a less vivid way, similar pressure will always confront each one of us, and especially each of you as you leave today on your different journeys. However complex the situation, however great the pressures, always the challenge will be the same: to weigh the real value of things. The world will try again and again, in a thousand different forms, to sell you power, popularity, acceptance. But look very closely because usually the price is a high one. The price is to surrender the greatest power and freedom any man or woman could ever have—your conscience.

Let me send you off with this thought. In past ages, a person looking for the world's centers of power would have pointed to some government temple or tribune or emperor. Never, 1,500 years ago, would anyone have ever thought to look for power and influence in a dark cave in Assisi. I believe something similar can be said of our world. At times in life you will feel weak, vulnerable, outnumbered. So did St. Francis. And yet he was never discouraged. Despite all the odds, he pressed on. And today those great powers, built by force, have fallen by force. They have long since rotted away, while the work of St. Francis lives on in you.

This is the message I leave with you: Never forget that beneath all the slogans and fierce arguments is the fate of innocent children. They need your love; their mothers need your courage. Do not be discouraged in the face of scorn: Press on!

And finally, give your country not what it wants or will reward, but what it needs. Lend it in your own lives that goodness without which it cannot be great, and the grace without which it cannot be saved: Press on!



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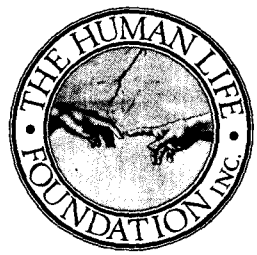
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