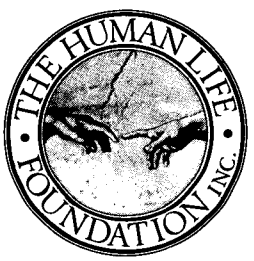
the HUMAN LIFE REVIEW



WINTER 2001

Featured in this issue:

William Murchison on . . . . . Where to Go from Here
James K. Fitzpatrick on . . . . . A Pro-Life Loss of Nerve?
Chris Weinkopf on . . . . . The Abortion Boat

Britain's Siamese Twins Case: What Would Solomon Do?

Lynette Burrows • M. Therese Lysaught • Gregg Easterbrook
Simon Lee • Libby Purves • Wesley J. Smith • Austen Ivereigh
Archbishop Cormac Murphy-O'Connor

Melinda Tankard Reist on . . . . . Giving Sorrow Words
Kathryn Jean Lopez on . . . . . Making It Rare
Peter Kreeft compares . . . . . Apples and Abortion
Wesley J. Smith on . . . . . Not-So-Catholic Bioethics

Also in this issue:

J. Bottum • James Le Fanu • Ira Carnahan • Lawrence H. Diller

Published by:

The Human Life Foundation, Inc.

New York, New York

VOL. XXVII, No. 1 $5.00 a copy

ABOUT THIS ISSUE . . .

. . . 27 years ago our late founding editor, J.P. McFadden, wrote that the "purpose" of his new *Human Life Review* would be "to inform those already interested in and concerned about the meaning of life, and death." While compiling a record of the abortion debate set off by *Roe* v. *Wade* was (and is) a primary goal, the *Review* has regularly cast its gaze on other matters of life and death—e.g. euthanasia, eugenics, fetal research and testing, and more recently, cloning.

A special section in this issue looks at yet another legally (not to mention morally) thorny debate: "The British Siamese Twins Case: What Would Solomon Do?" We are grateful to *The Tablet*, the international Catholic weekly magazine based in London, for giving us permission to reprint commentaries by Simon Lee, Libby Purves, and Austen Ivereigh. For subscription information, e-mail the editor, Mr. Hugh Kealy, at *thetablet@thetablet.co.uk* or write to him at *The Tablet*, 1 King Street Cloisters, Clifton Walk, London W6 0QZ. Thanks also go to the Internet's *beliefnet.com,* where Gregg Easterbrook's article detailing how C. Everett Koop dealt with a similar dilemma involving Siamese twins originally appeared. *Commonweal* magazine kindly allowed us to share M. Therese Lysaught's insights on the British case with readers—their toll-free number for subscriptions is 1-888-495-6755. And *The Weekly Standard* was gracious—as always—in letting us include Wesley J. Smith's "Twin Killing." To subscribe, call 1-800-283-2014 or visit their website at *www.weeklystandard.com.*

Mr. Smith, a frequent *Review* contributor, informs us that his new and widely praised *Culture of Death: the Assault on Medical Ethics in America* has just gone into a second printing (Encounter). Congratulations to him and to another *Review* contributor, Melinda Tankard Reist; the Australian writer has just published *Giving Sorrow Words: Women's Stories of Grief after Abortion* (Duffy &Snellgrove, Sydney) from which the article beginning on page 65 was adapted. The book, not yet available in the U.S., can be ordered from Gleebooks, 49 & 191 Glebe Pt Road, Glebe NSW 2037 Australia (website address: *www.gleebooks.com.au*).

Finally, a reminder that *our* website address is *www.humanlifereview.com*, and an apology for a personnel glitch (at our website provider) which delayed the posting of the last issue (Fall 2000) for several weeks. It's posted now, and by the time you receive *this* issue, it, too, should be available online to inform a global audience of "those already interested in and concerned about the meaning of life, and death."

ANNE CONLON
MANAGING EDITOR

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

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INTRODUCTION

As the *Human Life Review*'s second millennium of publication opens, an avowedly pro-life president occupies the White House. Sworn into office two days before the 28th anniversary of *Roe* v. *Wade*, he took note of the occasion to announce the cessation of foreign aid money for abortions. We are encouraged to hope that this president actually will look for other opportunities to make abortion "rare," as his predecessor promised and spectacularly failed to do. But even with a pro-life administration, is there any realistic chance of rendering abortion illegal in the near future?

William Murchison is preoccupied with much the same question in his sober and at times somber evaluation of what pro-lifers can hope for in the legal and political realms. Murchison contrasts the timidity of pro-life politicians in the last campaign with "the style of the pro-choice left. That style is confident, abrasive, strident; intolerant of disagreement, brooking no compromise." Why do pro-abortion politicians feel they can get away with, for example, the Gore/Bradley brawls over who's the most pro-choice of them all? "Democrats project themselves as the party of the status quo on abortion—the party that talks about how we don't need to talk about it any more. This strikes many voters, I would judge, as soothing." Read on to discover Murchison's George W.-esque plan for where we should go from here.

More provocative thought follows with author James K. Fitzpatrick's unsparing and ingenious exploration of why pro-lifers—even impassioned ones—don't sign onto the John Brown approach of intervening violently to save lives. Would we picket an apartment building while murder or child abuse was taking place within, and then go home, satisfied with our activism? Fitzpatrick moves from a series of such stark comparisons to explain why he thinks pro-lifers *logically* do—and should—refrain from violence.

Next, Los Angeles *Daily News* journalist Chris Weinkopf (who contributed to the Spring/Summer 2000 and Fall 2000 issues of this journal) writes about pro-abortion provocateur *par excellence* Rebecca Gomperts. The Dutch Gomperts, a veteran of Greenpeace and founder of the Women on Waves Foundation, hopes to liberate women in those benighted countries that still outlaw abortion (mostly Third World nations, along with Ireland, Poland, and Malta). Her idea is to acquire and outfit a ship that could anchor just far enough outside a port to be in international waters, and then motor out native women to receive early-term "pregnancy treatment" on the high seas. But mightn't these women be subject to legal, political, and social reprisals once ferried back home to places like, say, Pakistan? Women

on Waves' web site breezily responds that "in all countries where abortion has been legalized, . . . women have had to stand up for their rights. The ship will serve as a catalyst and give will [sic] women the opportunity to do so." As the not-yet-acquired ship's name suggests, social revolution on a global scale is Gomperts' overarching aim.

There follows a special section on another "foreign" story, but one which occupied major headlines in the U.S. as well. We refer to last fall's legal battle over the fate of Siamese twins born in an English hospital. The parents, you may recall, had traveled from a small Mediterranean island to England in search of a medical miracle when it became clear that the babies would be in mortal danger.

Unfortunately, the two little girls could not be surgically separated without at least one of them dying. But the doctors also believed that the twins could not survive *un*-separated for more than a few months. The weaker twin, Mary, would essentially be feeding off of Jodie until both became too weak to live. The parents decided they could not put one of their children to death, even to save the other, at which point a legal dilemma was born, with the hospital challenging the parents' right to deny Jodie the operation that could save her life. Law, religion (the parents are Catholic), medicine, competing cultural views, the rights of parents vs. those of society and the individual—this story had it all, drawing the heated attention of England and much of the rest of the world until the English Court of Appeal ruled in favor of Jodie and the doctors. The surgical separation was performed, Mary died, and Jodie at this writing is alive.

We have reprinted a selection of authors whose sympathies and considered judgments run the gamut of possible alignments, from supporting the parents to the doctors to the judges. Lynette Burrows, well-known to readers of this journal, summarizes the difficulties faced by all parties: "[The parents] . . . refused to give permission for one of their daughters to be sacrificed for the other. That was their duty; nevertheless, they had put themselves where that could not be the end of it." Burrows believes that, perhaps rarely for modern moral dilemmas, "virtue was displayed by both sides and was mutually acknowledged. . . . This discussion in no way devalued but enhanced the sanctity of life."

Wesley J. Smith, who regularly covers the spread of euthanasia for this journal, does not take nearly so sanguine a view. He compares this case to another recent case in which a British court denied a disabled baby the right to life-sustaining medical treatment because of the doctors' pessimistic prognosis for his quality of life. "Those who say the conjoined twins ruling will set no precedent simply do not understand how relentlessly the culture of death is advancing."

Bouncing back to optimism, Gregg Easterbrook, senior editor of *The New Republic,* discovers no moral dilemma, but merely an emotional ordeal, posed by the British-born Siamese Twins. He revisits a 1977 American case of similar surgery on Siamese twins performed by noted pediatric surgeon and pro-lifer Dr. C. Everett Koop (destined a few years later to become Reagan's surgeon general). Koop also sacrificed one twin to offer the stronger one a future—but with the consent of the

Orthodox Jewish parents and the approval of their rabbis. In Koop's view, "The morals of the situation were clear. We had to choose between two deaths, or one death and one life. We chose life."

Three more-conflicted views follow. Simon Lee, Rector of Liverpool University, is bothered by several underlying assumptions of those who pled Jodie's case: "[I]t is assumed that the parents genuinely think that they cannot bring themselves to choose death for one of their children . . . whereas in fact they will have a sense of relief, the paternalists believe, if the authorities trump those arguments. . . . At this point we are only a short distance from allowing professionals and the state to reinterpret the wishes, rights and interests of the public."

Across the water, here in America, M. Therese Lysaught, assistant professor of religious studies at the University of Dayton, also has qualms, especially about the difficulty of fitting this case into the standard Catholic principle of double effect. Under this principle, the surgery would be justified if Mary's death were truly an unintended consequence of saving Jodie. "Would Mary's death be the cause of the good outcome? If so, the surgery would be illicit." Meanwhile, English journalist and author Libby Purves is uneasy with other aspects of this case, including the judge's "involvement in the first place. Conscientious and compassionate though his words are, it somehow seems intensely inappropriate that a choice like this should be a legal one. . . . If the parents consider it their duty to protect both, what is the civil law that it should overrule that duty?" Supplying the heretofore missing voices of the parents, Austen Ivereigh, assistant editor of the London-based international Catholic weekly *The Tablet,* describes a TV interview of the mother and father that took place after the court decision. Finally, we present the Submission to the Court of Appeal by Archbishop Cormac Murphy-O'Connor of Westminster. In this carefully constructed explanation of the ethical dilemma posed by the twins' surgery, the archbishop concludes that "in the case of Jodie, if what is required to prolong her life involves doing grave wrong to Mary then one is obliged to refrain from that attempt to prolong life."

We move from Great Britain to Australia, where Melinda Tankard Reist has recently published *Giving Sorrow Words: Women's Stories of Grief After Abortion.* Pro-choicers typically ignore the humanity of the "product of conception" expelled in an abortion. But Reist notes another category of human beings ignored by abortion rights advocates: women who have aborted their babies and cannot get over it. "Emotional trauma after an abortion is treated with disdain; dismissed by abortion's advocates as an invention," Ms. Reist observes, and sets out to tell some of the stories of these secondary victims of abortion. Profiled here is Margaret's story, which makes harrowing reading—it is easy to see why pro-abortionists would *want* to avert their eyes from her pain, but hard to see how they are able to. "In my mind, I have a son I cannot touch and cannot feel and who follows me about like a ghost . . . I love him with all my heart yet I do not have the power to bring him back to life." Yet, perhaps her situation is better than that of women who feel

nothing after abortion; doctors remind us that pain can be medically a *good* sign—a sign of life.

Kathryn Jean Lopez, associate editor of *National Review* magazine, also focuses on women who undergo abortions, but from a different perspective. While Reist explored the psychic pain of abortion, Lopez describes physical pain, harm, and sometimes death inflicted on pregnant women by doctors and clinics guilty of malpractice and sheer callousness on a sometimes massive scale. "In the U.S.," writes Lopez, "the standard of care for women undergoing abortion is far lower than that for patients seeking any other kind of medical treatment." The result: women with perforated uteruses, hemorrhaging, infection, pieces of the fetus left inside—leading to emergency hospitalizations, lost fertility, and in some cases, death.

Peter Kreeft teaches philosophy at Boston College, but he is also the author of many deftly argued books on philosophy, ethics, and religion aimed at the common reader. The article here reprinted from *Crisis* magazine walks the reader through a luminously clear and cogent Socratic argument against abortion, starting from a relatively uncontroversial premise—that "we know what an apple is." From this seemingly innocent concession, Kreeft reaches the conclusion that—well, *you* see how he gets where he goes, and try to find a hole in the argument.

Our final article is another contribution by Wesley J. Smith to his long and careful documentation of the takeover of medical ethics by the pro-euthanasia and futile-care crowd. This time Smith focuses on the bioethical rot setting in at many Catholic institutions: "[A] growing challenge to the Church's traditional medical ethics" comes from "a fifth column of Catholic medical ethicists and even priests who want to remake Catholic medicine in the image of more secular bioethics." One of the thinkers leading this flight from the culture of life is Daniel Callahan, the co-founder of The Hastings Center. Ignoring millennia of teaching about the sanctity of the individual, he counsels us to set aside "thinking about the health of individuals and instead take a 'population perspective.'" Smith argues that an increasing number of Catholic health institutions are willing to do just that, with fatal results for patients and their families seeking life-saving treatment against their doctors' wishes.

* * * * *

Aldous Huxley's *Brave New World* is often cited when people discuss futuristic tinkering with human beings. But for our first appendix, it seems more appropriate to refer to *Animal Farm*—you know, the allegory of a communist state run by a pig named Napoleon. Author J. Bottum of *The Weekly Standard* sets out the implications of last October's revelation that researchers had engineered a man-pig hybrid (though it was destroyed when it reached the stage of a 32-cell embryo). The researchers claim they would not think of implanting such an embryo—or any other such hybrid—in a human uterus, but Bottum compellingly argues that a crucial corner has been turned: "What difference does it make whether the researchers'

intention is to create subhumans or superhumans? Either they want to make a race of slaves, or they want to make a race of masters. And either way, it means the end of humanity."

Dr. James Le Fanu, in *Appendix B*, also explores the revolutionary implications of biological advances. He considers the British Parliament's eventual legalization of cloning almost inevitable, because of the therapeutic (and financial) benefits promised. "The only conceivable counter-argument that might persuade them [Parliament] otherwise," he writes, "would be to show that the claims of therapeutic benefit are a scientific fairy story." Could such an approach work? Possibly, if those involved acknowledge the "almost direct historical parallel between the current debate over cloning and the controversy over human embryo experiments 15 years ago." Claims of colossal benefits from human embryo experimentation have not been fulfilled. Le Fanu argues that, as they did 15 years ago, scientists are blinding "the public with science" in their desire to resist restrictions on what they may research.

Our next appendix features Ira Carnahan's account of efforts by the activist group Bastard Nation to force the opening of adoptive records. Their demands go way beyond requesting access to vital medical background information (already provided in many states). Instead, Bastard Nation is inventing an absolute right to know one's blood and biology. Carnahan points out that the natural consequence of laws revealing names of biological parents will be a drop in the (already low) number of women willing to give their babies up for adoption. As regular readers of this journal should know, that means more abortions by pregnant girls and women unable or unwilling to assume care of their babies—replacing the Bastard Nation with the Aborted Nation.

Finally, pediatrician Lawrence H. Diller decries the Ritalin craze in an article originally published in the on-line magazine *Salon*. This time, the doctors and medical people are not the primary villains, but the school systems that find it easier to medicate behavior problems than to consider carefully their nature and extent. In searching for a quick fix, many school systems are attempting to force unwilling parents to give their children Ritalin, or face their child's transfer to a "special ed" class. Other schools have begun appealing to Child Protective Services to force recalcitrant parents to dose their children.

That rounds out our Winter issue. As always, we leaven our sometimes sobering reading with cartoons drawn from Nick Downes' outstanding work.

ELLEN WILSON FIELDING
SENIOR EDITOR

Where to Go from Here?

William Murchison

Another election, another political impasse over abortion. You would like the dreary details? Here they are. I quote, for starters, a reliable source—the Family Research Council's *Citizen* magazine:

> In the House, pro-lifers gained two seats—one in Virginia and the other in Michigan. But three pro-life seats went to pro-abortion Democrats—in California, Oklahoma, and Washington. On most pro-life legislation that will come before the House, [a leading pro-life strategist] expects a pro-life majority—but not a veto-proof one—on issues ranging from taxpayer funding for abortion to a ban on partial-birth abortion.

The Senate is left with "just 44 pro-life votes—a net loss of one . . . there are plenty of votes for a partial-birth abortion ban, but still not enough for 'sweeping' legislation." A larger datum is the absence of votes for conscientious judicial foes of *Roe* v. *Wade*, should the Bush administration nominate any of their number to the federal bench.

On the New York *Times* Op-Ed page, Gloria Feldt, president of the Planned Parenthood Federation of America, went in for a spot of triumphalism. Feldt none-too-delicately warned that if the victorious, and pro-life, George W. Bush "truly wants to unite the nation, he will take into account that the majority of Americans support reproductive rights." In other words, add up the votes for pro-choice Al Gore and pro-choice Ralph Nader, "and you have a decisive voter preference for reproductive freedom." Take that!

All the news, to be sure, wasn't bad. Maine voters beat back an attempt to legalize what is usually, and euphemistically, called "assisted suicide." Fairly impressive for a generally liberated state, its politics muddled by too long association with Massachusetts (of which Maine in fact was originally a part).

And of course there is the big qualitative change at the top: a president who believes, as he said during the campaign, that "life is a gift from our Creator." George W. Bush sits where formerly sat the man who supposedly wanted abortion made "rare"—yet never lifted one of those long, pencil-slim fingers to achieve that non-feminist goal.

Right away, the new pro-life president named a defeated pro-life senator, John Ashcroft, as attorney general. (Whether Ashcroft's former senatorial colleagues would let him take the job remained an open question as these

William Murchison, our senior editor, is a nationally syndicated columnist at the Dallas *Morning News* and popular speaker on a wide range of current religious and cultural issues. His latest book is *There's More to Life than Politics* (1998, Spence Publishing Company, Dallas).

words were written.) Another plus, at the outset, was the nomination of Wisconsin Gov. Tommy Thompson, a pro-lifer, as secretary of health and human services. Tommy Thompson, in the job previously held by Donna Shalala, bosom friend of U.S. Sen. Hillary Rodham Clinton! Paradise enow.

There is at least one more datum from 2000, and it is not paradisiacal at all. It is retrospective and, I have to say, on the gloomy side. It is . . . put aside the congressional seat counts, the prospects for legislation, the prospects for regulation. It is the mildness and non-dynamism of the pro-life movement in politics, compared with the—well, let's say the rage and indignation that pro-choice (i.e., pro-abortion) politicians always bring to the table.

Our political leaders don't talk like their political leaders. Let's see if we can figure out why. To do this, we have to review.

Pro-life politicians during the past campaign were intimidated almost into silence. Not total silence but the next thing, which was biting of lips whenever the unwelcome question arose: What would *you* do about abortion?; the quick, formulaic answer, delicately phrased so as to alienate the smallest possible number of voters; the outstretched hand to Those Who Believe Otherwise; the readiness—almost the eagerness—to see the other side's viewpoint, and thus to be a good guy, firm but tolerant, tolerant but firm.

This is not the style of the pro-choice left. That style is confident, abrasive, strident; intolerant of disagreement, brooking no compromise. It is the style of affected decency and rectitude: no argument known—no *honest* argument—for restraining a woman bent on abortion. Whereas look at those on the other side—hopeful, if given half a chance, of returning pregnant women to backalley butchery; relics of a different time and place, with scowls and pursed lips, and rather more religious conviction than would seem good for any of us in an age of infinite diversity.

See the other side's viewpoint? What viewpoint? Nothing to see, nothing to understand. Those who would restrict abortion rights are the sort who resist women's rights in general. Why listen to them?

And if such a stance might seem closed-minded to some, there were always the media around to assure viewers and readers that in fact the question of abortion *is* a closed question, the lid nailed down tightly by the *Roe* v. *Wade* majority. There would be no sense, would there, in listening to thoughtful presentations by opponents of Copernicus? Would any responsible parties so much as attend an objective debate on the Jim Crow laws? These prolifers should wake up. Jan. 22, 1973, was 28 long years ago! Get over it!

In such tones, with such modulation, the advocates of "reproductive freedom" commonly address those who continue to challenge the justice and morality of abortion.

I am convinced the main reason the politicians try to shut down the debate on abortion is that they believe the larger society to have shut it down: which leaves no advantage in the matter for politicians. For run-of-the-mill politicians, I should say, these being the great majority in that questionable profession.

It is not in the nature of democratic—small "d", please—politicians to lead boldly. Not if the terrain is rough and uphill. Not if the crowd isn't interested in following.

Blowing the trumpet or banging the drum doesn't win elections most of the time; playing first alto sax, or sometimes just third french horn, with a certain skill and clarity, is more often the winning ticket.

And thereby hangs a tale of frustration and futility—from the standpoint of Americans who look for the restoration of limits, these days almost any kind of limits, on the right to extinguish unborn life. We look to politicians, many of whom wish—though they are unlikely to say it distinctly—that we would look elsewhere, or anyway look a little less eagerly.

Down to specifics about 2000—who said what and about whom.

On abortion, the two political parties essentially ran in place—Democrats promising to protect the right to choose abortion, Republicans promising (as the Democrats characterized their promise) to undermine that sovereign right. Concerning which there was no room for surprise. Platforms, for all the stir they create before and during conventions, hardly ever are heard of later. You say in them the things your important constituencies want to hear.

More noteworthy than anything said in the party platforms was the tone of post-convention pronouncements on abortion. Democrats took the issue and danced gaily with it.

I got a clue early on. A club whose members are affluent Republican women invited me to speak about the campaign. Fine. Just one thing, though, cautioned the program chairman. Our members don't want to hear about abortion.

I'm just to pass over the topic?

Yes. It's really because the members are so divided on the question. It's such a personal question. They'd rather not hear about it.

Not hear about it. Ummm-hmmmm.

They didn't hear about it. Not from your obedient servant, who meditated for some time afterwards on the capacity, even among the intelligent, for drowning out unwelcome news. Such as the news that we have, in abortion, a calamitous problem, requiring a remedy.

Let us say I were a notorious liberal, and an influential Democratic women's

club had invited me to speak. Would the program chairman advise omission of the abortion question? What she would want me to do, *au contraire*, is to warn of the threat Republicans were mounting to the sacred right to choose.

A bit more than this happened during the campaign.

Take the judicial issue. Division on the U. S. Supreme Court, concerning abortion, is the breadth of a hair—5 to 4 for most purposes (excluding the overturning of *Roe*, for which there is less support). In June, about a month before the Republican convention, the Supreme Court struck down, 5 to 4, Nebraska's law prohibiting partial-birth abortions. Here was an occasion to rally the troops on both sides.

Bush criticized the justices for voting to uphold a "brutal practice"; he said nothing about how, if elected president, he would work to remodel the court and make sure this sort of thing didn't happen again.

Al Gore's reaction was the diametrical opposite. Not a word said he about how it's too bad we have to suck the brains out of partially born babies' skulls in order to maintain the delicate balance of constitutional liberties. Numerous words he uttered, and uttered repeatedly, about how if the Republicans got their hands on the court—Whooo-eee, and Katy bar the door. "The next president," said the vice president, "will nominate at least three and probably four, perhaps four, justices to the Supreme Court. One extra vote on the wrong side of those two issues would change the outcome and a woman's right to choose would be taken away."

Got that, ladies? To the phone banks! The fundamentalists are coming, the fundamentalists are coming!

Well, it must work, or else the ever-attuned New York *Times* would hardly have touted Hillary Clinton's senatorial candidacy as a means of guarding against "Supreme Court nominees who would compromise the constitutional right to abortion." (The *Times*, endorsing Mrs. Clinton, actually set aside her, shall we say, personal liabilities as minor matters compared with her ability to smite pro-lifers hip and thigh.)

Republicans, by contrast, never had much to say about the courts. Publicly. Non-publicly I heard a lot—the courts as the big reason for voting Republican. What Republicans aren't supposed to do, nonetheless, is challenge frontally the deadly and atrocious thing the Supreme Court did in *Roe*—and keeps re-affirming with the Democratic party's blessing and encouragement. Bush said he would appoint "strict constructionists" to the court. Democrats pointed out—rightly—that Bush was speaking in code. The kind of judges he would appoint would cast a fishy eye on *Roe*. That is, if they were true strict constructionists, reluctant to rewrite the Constitution in their own image.

In short, Republicans may oppose abortion, and hope to "do something"

about it, but they'd sure better not talk loudly about those sentiments and intentions, lest they get barbecued for so doing.

What is it about abortion? Whence its magical hold on the political mind? Consider that, because political success is based on ability to reflect the popular will, democratic politicians have a healthy, sometimes too-healthy, regard for *vox populi*.

The way democratic politicians read the public, the public doesn't want to do much about abortion—or even hear much about it. (Witness the Republican women I addressed.) So why do the Democrats talk about it? That is the provocative thing. Democrats project themselves as the party of the status quo on abortion—the party that talks about how we don't need to talk about it any more. This strikes many voters, I would judge, as soothing. We can put a raucous moral topic to the side, the Democrats tell us. It's a done deal. Forget it. Isn't there enough else these days to worry about?

I think this is the message many self-described centrist voters hear. This would fit with those poll results describing the public's ambiguity on abortion—fears of taking life, coupled with fears of compromising precious personal "rights," and sometimes, no doubt, fears of having conspired, through silence, in the taking of life. The Republican politician, fearing to offend this sensitive center, shies away from confronting the problem. *Quieta non movere*—Sir Robert Walpole's motto—he appropriates unto himself. If it ain't moving, don't kick it. Before the election, that is. Afterwards—with a sly wink to voters of similar persuasion—afterwards, let's see what we can do . . .

But "what we can do" in those circumstances usually isn't much: the public having gone unprepared during the election season for drastic, dramatic action on abortion. The public's mind is elsewhere: taxes, the economy, Social Security, health care, problems that invite political, not political-moral, attention, hence don't frighten you to death when you open the morning newspaper. Visions of flickering flames and dancing devils don't excite—rather they repel—those of whom Auden spoke in 1939:

Faces along the bar
Cling to their average day:
The lights must never go out,
The music must always play.

While it plays, those not embarrassed or discomfited by the prevalence of abortion raise merry hell in support of the cause. These folk believe as firmly in their own proposition as do their critics. They want no tampering. It is more than that: they refuse to forgive tampering—thus showing how unlike

Social Security or tax cutting is the issue of abortion. Abortion excites moral fervor not just on the pro-life right but on the pro-choice left.

If the world survives a few decades longer, the psychology of the abortion supporter is a matter likely to fill shelves of Ph.D. dissertations, because the matter is complex and arresting.

A columnist for the web site Voter.com, Margot Magowan, wrote just before the election:

> Reproductive rights don't exist in a vacuum. They have everything to do with women's economic and political power, women's access to education and healthcare, women's status in society, and women's abilities to take care of themselves and their children.

Such children as they don't abort, one might interject. But let's go on. This is interesting.

> Choice is a political barometer, indicative of how politicians feel not only about the basic rights of women, but the role of women in society, their beliefs on sex education, health care, poverty, the economy and the part government should play in an individual's life. A position on choice indicates whether or not your representative will fight to get your kids vaccinated and to make your contraception affordable.

To sum it up:

> Pro-choice means women have the choice to graduate from college, the choice to borrow money from a bank to start a business, the choice to get a good job with a fair wage, the choice not to live in poverty and to keep their kids out of poverty. Choice means real equality; that women get to be autonomous citizens—just like men do—with the power to determine their own destinies.

Now whether or not you agree with all that, gentle reader—I myself dissent across the board (but, then, what does a man know?)—this is the kind of reasoning that blows down political redwoods, inundates low-lying fields. This is real passion. I do not defend it; I remark it for the reason that politicians remark it with inspiration, fear, or both.

On the other side of the political street, there is passion, too: the passion of homemakers and clergymen and mothers and legal scholars and pro-life pregnancy counselors who sacrifice hundreds of hours, not to mention floods of honest tears, in defense of unborn life. For one reason or another, this is the brand of passion politicians either hear less or fear less than the other variety.

The other could be called, in political terms, a personal kind of passion. Why that? To defend the personhood of a specific child yet unborn—that isn't personal? Of course it is: profoundly, and beautifully, so. It is the passion of disinterested love. The oddity of our present moment in history is to see disinterested love of others ridden down by pushing, charging, galloping

love of self: the love of "real equality," of women's "power to determine their own destinies."

Which love is better? I think I know. I think you know, too, gentle reader. But the superiority of one or the other isn't the political question; the political question is, what do I have to do, as a political candidate, to get your vote? What do you want of me? What the pro-choice bloc wants (rights, prerogatives, equality) is intensely political.

Protection for unborn life is a political aim, to be sure. But the protection is for others not even present at the big voter rally or in the room when the confirmation hearing commences. Not present? They are not even born. You see the problem, politically speaking.

When it comes to arm-twisting, those who want something for themselves are normally more effective, not to say intimidating, than those who seek the good of others.

Thus you bolster the sloppy, mushy political center, where hands cover eyes and ears, with the unperfumed passion of the equal rights lobby, and, in political terms what you get is a great cloud of witnesses. No, something better: a puissant bloc of voters, ready to put you in office on the presumption that you will honor your undertaking to defend the sacred right first proclaimed by St. Harry Blackmun.

I suppose it could end there, this political matter, but it doesn't. Politics isn't the be-all and end-all, the determinative element in nearly everything human.

Interestingly, that late-blooming politician, George W. Bush, seems to have it about right. When the culture wakes up and sees what is going on, it will put a stop to egregious offenses like abortion. So Bush supposes on considerable evidence. It might have been invigorating to hear him out on the campaign trail bellowing, ". . . And I pledge, if elected, to bend every effort to the extinction of this evil called abortion . . ." Less invigorating would have been to watch the inauguration of Al Gore on Jan. 20, 2001.

I think we must understand that the abortion culture—the culture of death—is unlikely to be extinguished by votes and political action: the number of votes now available for deployment, the kinds of action that seem capable of adoption in the political realm. The main incentives are on the other side. Some lady who sees college and career opportunity as tied up intimately with her abortion rights—you kind of have to watch what you say about abortion in front of her. Unless, of course, you say, lady, by golly, you're right, and I'm with you every step of the way.

Without in the least giving up on political action (e.g., better a George

Allen representing Virginia in the Senate than a Chuck Robb), pro-life folk, I think, need to adjust their expectations regarding the political process. For one thing, too many crushed political expectations at the polls can breed cynicism, discouragement, and withdrawal into quietism and despair. Things aren't that bad. Just about half of America voted for the presidential candidate who said (however gently and non-provocatively) that he was against abortion. Some voters probably held their noses as they voted for him, but the same is likely true with many who voted for Gore. Far from every Democratic voter favors abortion, say the polls.

The second thing about expectation adjustment is that it could—should—lead directly to programs of cultural reform; programs bigger than ever attempted before, inside and outside churches; more sincere and more passionate. And—yes—humbler, perhaps, in the face of human frailty and sin. Man proposes, but God disposes, wrote Thomas à Kempis. He meant we concoct these big plans but lack the means to put them over. Faithful teaching and witness about the beauty and sacredness of human life, as created by God; human responsibility for the receipt and care of that gift; faithfulness and gratitude to the Creator—here would seem plenty both to affirm and to practice. And of course there is a corollary duty: keeping a watchful eye—maybe two eyes at a time—on those particular humans called to the vocation of making and interpreting laws.

This may be altogether too cheerful a note on which to conclude scrutiny of an election almost won by the pro-choice candidate. If so, I apologize. And, again, I don't apologize at all.

I have just the sense that better times lie ahead: if not in the short run, then the longer term. That would be, of course, by God's grace—altogether a more uplifting topic than the misfeasances of the many who don't mind His saying important things, just His insisting we listen seriously.

A Pro-life Loss of Nerve?

James K. Fitzpatrick

There are times when it is hard to accept that advocates of legal abortion mean what they say. One wonders, for example, if anyone actually believes that partial-birth abortion is distinguishable from infanticide in any meaningful way; or thinks it perceptive to make the point that many pro-lifers are not advocates of generous welfare payments and increased government spending for child care programs. You will remember the latter proposition, advanced frequently in recent election campaigns: that pro-lifers lack sincerity because they "pretend to be concerned about the life of the unborn child, but refuse to spend money to care for children already born." By this logic, we ought not toss a drowning man a life preserver unless we are also willing to take him into our homes and support him the rest of his life.

There is one pro-choice argument, however, that in my opinion hits the mark, an argument that I have never heard a pro-life activist answer satisfactorily. It goes something like this: "You pro-lifers are hypocritical. You say that aborting a fetus is the taking of innocent unborn life. Yet you insist that you have no intention of charging a woman who procures an abortion with being an accessory to a murder. You say your intention is to prosecute only the doctors who perform the abortion. But why? If the woman hired a local thug to kidnap and kill her child, you would prosecute her as an accessory. More to the point: you leap to disassociate yourselves from those who employ violence against abortion clinics. Why again? Such reticence does not make sense if you really think you are acting to save a child's life."

One cannot dismiss this with a shrug. Consider, for example, how we would react if we found ourselves in a hospital maternity ward as a man with a meat cleaver moves down the rows of cribs. He begins hacking away at the infants. He has killed two infants so far, and there are twenty more to go. You have a pistol with you. What would you do? What would you expect someone else to do in such a situation? What would even the most committed opponents of capital punishment recommend?

Let us be more precise to cover all the bases. Let us posit that it is too late to try to reason with the man, and that the risk is too great that he will kill more infants if you try to use nonlethal force—shooting to wound, for instance—

James K. Fitzpatrick's latest book is *God, Country, and the Supreme Court* (Regnery). This article originally appeared in *First Things* (December 2000) and is reprinted with permission.

or call the police. Let us assume that it is not debatable: the only realistic way to save the lives of the other infants in the room is to shoot to kill right away. Let us also assume that you have the training to use the pistol to kill the assailant. Hence there will be little danger to you or anyone else in the room if you fire your weapon. You can save the lives of the infants by pulling the trigger. If you hesitate, they die.

I submit that few would think highly of an individual who let the killings proceed because of a moral punctiliousness over the use of violence. Trying to block the murderer by sitting down in front of him and praying the rosary would be viewed as a shamefully half-hearted response, even though pro-life activists who use these tactics at abortion clinics are considered radicals by many. You may remember the outrage directed several months back at a young man in a Western state who walked away while a friend sexually assaulted and killed a young girl in a public restroom. The scene of the murderer following the young girl into the restroom was caught on tape, shocking the nation. The young man who walked away was treated as a pariah by Ed Bradley in the *60 Minutes* coverage of the story. The young man's college classmates were interviewed as part of the show. Without exception, they expressed contempt for his lack of courage and basic decency. Some wanted him expelled from college for his shameful behavior. They made clear that they would never associate with him if he remained in school.

Now, admittedly, the focus in this story was on the young man's refusal to even summon the police at the time of the assault. The anger directed at him was motivated by his indifference to the evil being committed by his friend, by his apathy and lack of concern for a fellow human being. Yet I think it fair to say that those who expressed contempt for his refusal to act would have applauded him if he had taken out a pistol and used it to save the life of the young girl—even if it meant shooting to kill. I submit that society would have treated him as a hero if he responded in this manner—once again, if we grant that he could not have saved her life in any other way. Society would also have lionized a young man who ran to his pickup truck to get his shotgun and then used it to kill Dylan Klebold and Eric Harris during their massacre of the students at Columbine High School.

The case could be made that those who bomb abortion clinics or shoot abortionists find themselves facing a moral calculus identical to that of this hypothetical young man with a gun at Columbine High School or the person facing the killer in the maternity ward. They are convinced that abortion is the killing of an innocent baby. Their religious leaders support them in this conclusion. They know that on the day they are carrying the bomb to the

abortion clinic, or checking the sights on their rifle and waiting for the abortionist to drive into the clinic parking lot, a number of unborn children will be killed unless they use the lethal force at their disposal.

Pro-life religious leaders and politicians balk at this point. They express horror at the thought of using violence. Perhaps the prospect of serving a long jail sentence plays some role in shaping their spirit of moderation, but this doesn't seem right. Pro-life leaders are not usually thought to lack courage. Most of them argue that they are reluctant to use force because they abhor violence. We know their responses: "We cannot condone killing even in this case. Violence does not solve anything; we must use legal remedies. Violence is counterproductive, winning sympathy for the abortionists and the pro-abortion forces. Our commitment is to work within the law." No doubt, those who say these things are sincere. But the logic falls short in key areas.

First, Christian teaching (and secular thought as well) does condone violence when used to defend innocent victims of aggression, especially children. And violence can actually solve a great deal. It stopped Hitler. It ended slavery in this country. The police use lethal force to stop would-be murderers, rapists, and kidnappers in their tracks, sparing their intended victims. Clint Eastwood has made a career portraying men of action who refuse to wait for legal and peaceful remedies to defeat recognizable villainy. We view those characters as heroes.

I would argue that the legal status of abortion does not change this equation appreciably. Few moral theologians would find fault with members of an anti-Nazi resistance movement who employed lethal force against concentration camp guards to free imprisoned inmates at Auschwitz or Dachau. It is more likely that they would produce educational movies extolling their heroism. And yet religious leaders—Catholic, Protestant, Jewish—almost unanimously condemn violence against abortionists. Why? One can reach no other conclusion than that they see something different about killing the unborn and killing a living, breathing child. I do not charge hypocrisy, or a failure of nerve. I agree with those who are convinced that the fetus is unborn human life, yet I have never contemplated killing an abortionist or a member of his staff to save the children they are about to abort. I do not charge pro-lifers who are reluctant to use physical force with cowardice. There is another dynamic at work.

There are only a few plausible explanations for why pro-lifers refrain from violence in pursuit of their cause. One might argue that the unborn do not feel pain the way infants do, and are therefore less in need of our intervention in

their defense. But this argument is weak. Watch a child born prematurely when it is time for its circumcision or first inoculations. It screams as loudly as a two-year-old. The fetus flails about when the saline solution is injected into the sac as part of the abortion procedure. That is why the nursing staff during the procedure must hold down the mother. The child's reactions often cause her midsection to convulse violently. Moreover, the infants sleeping in the nursery about to be slashed to death by our imaginary killer probably would feel no pain if struck violently. They would die instantly, unaware of what happened to them. We would not be more supportive of standing by while their lives were taken if we were assured that they had been anesthetized first. The level of pain involved in the killing simply does not determine our view of murder in any other situation.

Others will emphasize that killing an individual abortionist will not end abortions; that he will be replaced by other abortionists and that abortion on demand will go on; that legal reform is the only way to bring about meaningful change. But, once again, this logic is not the one we apply when dealing with other murderers. We would not react patiently to a German who excused his reluctance to use force in 1942 to free concentration camp inmates if he argued that he was convinced at the time that he could do more good by working within the system to end Nazi control than by risking his own arrest and imprisonment in an armed strike to free a few dozen inmates scheduled for the gas chambers on a single morning. The central issue would be whether the use of force would save those under assault that day, at that moment. Neither would it alter our approval of the use of physical force against the concentration camp guards if we were told that it was likely that the inmates who escaped would likely be captured the next day and executed anyway. We would applaud the guerrilla who used bombs and rifle fire to free them. Long-term calculations are deemed irrelevant to the duty to save the individual lives at risk—except when the evil at hand is legal abortion.

Why the difference? Why do those who continue to scold Germans who stood by and did nothing when German Jews were rounded up excuse themselves from physical confrontations with abortionists? Why do those of us who would live our lives in shame if we stood by while a young child was mutilated by a child abuser have dinner and watch television, read a book and sleep a good night's sleep, while knowing that there are dozens of unborn children scheduled to be killed in their mothers' wombs within a short drive from our homes the next day? I trust the reaction would be more militant if euthanasia were made legal and we were faced with scenes of elderly men and women screaming in resistance as they are strapped to the gurneys for their lethal injections.

I am convinced that the explanation for the reluctance of pro-lifers to use force against abortionists is rooted not in cowardice or in their understanding of what takes place during an abortion (pro-lifers are sure about that) but in their perception *of the abortionist and the woman who hires him* to take the life of her unborn child; that whether or not we have consciously articulated it for ourselves, we base our response to abortion on an understanding of the fundamental requirements of membership in a democratic society. We intuit that it is impermissible to employ lethal force against our fellow citizens unless and until they have become incorrigible criminals, contemptible individuals deserving of an application of force to halt their ongoing iniquities. We would expect an honorable man to use lethal force to stop Dylan Klebold and Eric Harris or Nazi concentration camp guards. We do not consider our neighbors who work in a local abortion clinic as comparably villainous. This is a crucial difference.

C.S. Lewis once wrote that "when the Round Table is broken every man must follow Galahad or Mordred; middle things are gone." His point was that the time may come when the societal bonds are so ruptured that forceful confrontation will become necessary with those who, until then, had been our fellow citizens. The corollary, of course, is that we cannot in good conscience call for an application of lethal force against our neighbors until that moment arrives. There must be a marked debasement of the social compact. The Round Table must already be broken. For all but the most radical prolifers, such a devolution has not yet occurred. Pro-life Americans are not willing to accept the sight of abortionists, their staff, and the women who employ them lying dead in our streets, because they remain our neighbors. They are neighbors who have fallen into evil ways on the issue of abortion, but neighbors nonetheless, fellow citizens who have permitted material concerns and self-centeredness to cloud their judgment on the question of abortion.

Historical parallels are hard to come by to press this point. After all, we are talking about large numbers of our neighbors reaching the conclusion that it should be legal to kill unborn children. The Civil War offers certain insights, however. It has been well documented that slavery was not the only issue in that conflict. But it was the central issue for Christian abolitionists in the North. By 1860 they were willing to take up arms against supporters of the Confederacy to end slavery. The question is: Why then? Why not before? Radical abolitionists such as John Brown and William Lloyd Garrison had called for military action against the South long before the war, but others were not as militant. They were willing to bide their time, seek a moral

conversion of the slaveholders, work for a political solution even if that solution were to take many years.

Yet when war was declared there were few protests from these moderate factions. What had changed? Why was there a new willingness to back the use of force? It was not a result of a sudden breakthrough in their awareness of the evils of slavery. The writings and speeches of antislavery Americans in the middle years of the nineteenth century make clear that they had always viewed slavery as unequivocally immoral.

No doubt the war itself was responsible for much of the change, leading many who had urged compromise to conclude that the Rubicon had been crossed and that their former views were now academic. For whatever reason, the more moderate abolitionists now changed their view of Southern slaveholders and those who defended slavery. For antislavery Northerners the pro-slavery point of view had ceased to be a shortcoming that they were willing to tolerate to maintain harmony within our republican system of government. The Round Table had been broken. Continuing defenses of slavery were no longer the wrongheaded views of otherwise honorable men. Instead, they were culpable evils unworthy of forbearance and conciliation. We cut deals and compromises with those we consider individuals of honor. We make no concessions to the forces of evil.

Supporters of legal abortion in modern America are not seen in such an unforgiving light by pro-life Americans. The defenders of abortion include within their ranks many of our cultural leaders, including members of the clergy, people whose opinion is respected in other areas, whose views are lauded on the talk shows and in academic circles—the proverbial "best and brightest." Moreover, many pro-lifers have family members who disagree with them on abortion. All this makes a difference. It causes even militant prolifers to intuit that there is something markedly different between Nazi concentration camp guards and, say, the pro-choice delegates to the Democratic National Convention or members of the local chapter of the League of Women Voters.

Does a willingness to entertain apologies for the pro-abortion sentiments of their fellow citizens imply a degree of doubt about the nature of abortion on the part of pro-life Americans? To a certain extent—yes. It indicates, at the least, that pro-life Americans understand what causes many of their fellow citizens to err on this question. Let us once again consider the abolitionist to illustrate the point.

One could argue that the willingness to compromise with slaveholders in the years before the Civil War implied some self-doubt among early abolitionists; that their spirit of tolerance indicated, perhaps, that early abolition-

ists questioned the fitness of Southern slaves for equal membership in American society. This explains why so much abolitionist energy was directed toward returning blacks to Africa after emancipation. It seems fair to conclude that there was considerable sympathy in the North for those Southerners who hesitated to free their slaves in fear of what emancipation would do to their society. The fear was seen as not entirely unjustified. In other words, Southern slaveholders were viewed as being in error on the question of slavery by early abolitionists, but not as irretrievably evil men and women because of that failure. They were to be given time to come around to the truth, time to work out the social adjustments needed to deal with emancipation.

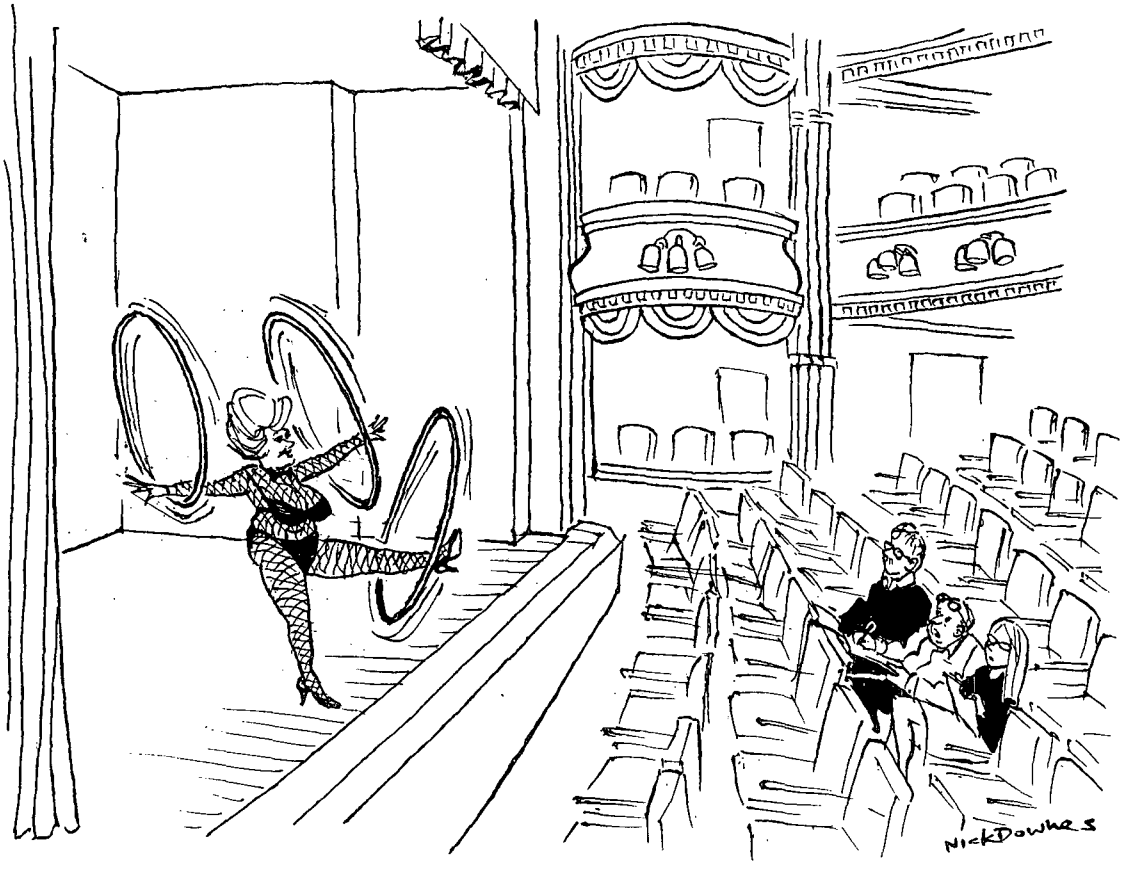
This, I submit, is also the view—more sensed than articulated at this point—of modern pro-life activists toward their pro-abortion fellow citizens. It is what explains why George W. Bush is able to react with such composure to his mother's pro-choice view. As he phrases it, "Good people disagree about abortion." While there is no reason to question Bush's repeated assurance that his goal is to insure that "every unborn child will be protected in law and welcomed in life," it is unlikely that Bush would have responded with such aplomb if it were discovered that his mother was a racist or anti-Semite. His reaction makes clear he does not think her error in this instance an egregious moral deficiency.

In other words, Bush is not so convinced of the persuasiveness of his pro-life position that he cannot imagine a high-minded individual coming to a different conclusion. I would argue that most pro-lifers are in the same boat. They do not see the mass of their pro-abortion fellow citizens as engaged in a calculated choice of evil. In fact, if pressed, I think most pro-life activists would concede that the fetus, especially in the early stages of its development, is not *self-evidently* (I repeat: not *self-evidently*) a human person; that there very well may be an element of religious belief that informs their conviction that human life begins at the moment of conception.

These distinctions are critical. We would not grant rapists, child molesters, or concentration camp guards any benefit of the doubt, regardless of how articulately they defended their behavior. We treat their transgressions as self-evident evils, their attempts at self-justification as crass dissimulation. That we treat differently Americans who promote and participate in abortions indicates our grasp of how easy it is for otherwise upstanding members of society to fall into error on this question—in spite of our own conviction that the act is an abomination.

Pro-lifers who condemn violence against abortionists and abortion clinics

are not hypocritical, nor are they inconsistent. Their intuition that shooting a nurse at an abortion clinic is not the same as shooting the man with the meat cleaver in a maternity ward is correct, even though saving innocent lives is the objective in both cases. What the man is doing is outside and against just law. What the nurse does is, alas, permitted by unjust law. It is reasonable to believe that that unjust law can be changed, with the result that innumerable innocent lives will be saved. It follows that it is morally imperative to work for such change, which can be achieved only through the politics of persuasion. Pro-lifers are keenly aware of how difficult that task is. They are wrestling with a moral dilemma unlike any since the Civil War. But the Round Table is not broken, and, please God, it will not be in the future.



"THANK YOU, BUT WE'RE CASTING 'THE CRUCIBLE.'"

The Abortion Boat

Chris Weinkopf

Under most circumstances, Rebecca Gomperts is the sort of pioneer the left would despise. A white European, she seeks to circumvent laws, trample non-Western cultures, and overturn indigenous customs throughout the Third World. While she's at it, Gomperts will actively try to curb the growth of various non-white populations and impose Western attitudes over local religions and values.

If Gomperts were exporting blue jeans or Big Macs, liberals would roundly condemn her for the crime of cultural genocide. But instead, she is exporting abortion, for which the left's enthusiasm exceeds its disdain for cultural imperialism.

Gomperts, who declined an interview for this piece, is a 34-year-old Dutch abortionist. She is also the founder of the Women on Waves Foundation—an effort to literally ship abortion to the one-quarter of the world's nations that enshrine the right to life in their laws. Gomperts' plan is to charter a 150-foot ship, christen it *Sea Change*, and convert the boat into a floating abortuary that would anchor itself just outside the territorial waters of countries that ban abortion. From that safe distance, Women on Waves would not only expand the abortion industry to untapped markets, but also spread the worldview that sustains it. The *Sea Change* would deliver euphemistic utilitarianism, amorality, women's exploitation, and lawlessness—all hallmarks of the culture of death.

Preparing for the maiden voyage

"We are not intending to commit any crime," Gomperts insists, because "in international waters, abortion is not a crime."[1] In fact, because the *Sea Change* would fly under the Dutch flag, Dutch law—abortion on demand after an initial consultation and a five-day waiting period—would prevail. The *Sea Change* would come into port and offer consultations, distribute contraceptives, and operate a dockside museum on sexual education. After picking up about 20 prospective customers, the ship would sail to international waters, where Gomperts would ply her trade. "An abortion performed by trained providers is a very simple and safe procedure which can take no longer than 5-10 minutes," Gomperts explains.[2] She estimates that the *Sea Change* could rid about 100 mothers of their unborn children each week.

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Depending on local demand, the ship would stay in port for up to six months at a time.

Gomperts came up with the idea for Women on Waves between her two stints as shipboard doctor for Greenpeace's second *Rainbow Warrior* ship. (The first was sunk by French commandos in 1985 for obstructing France's nuclear-testing program in the South Pacific.) The *Sea Change* puts a feminist spin on the *Rainbow Warrior*'s brand of activism-piracy. The ship would have an all-female crew, consisting of one or two doctors, a nurse, a captain, and deckhands. It would be equipped with all the usual tools of modern seafaring, like satellite communications and navigation equipment, plus some less conventional amenities: an ultrasonograph, a suction machine, hospital beds with stirrups.

The medical equipment is all part of the $50,000 abortion "treatment room" encased in a shipping container that attaches to the vessel. Designed by Dutch artist Josep van Lieshout, the room "is aimed at transforming a clinical environment into a friendly and comfortable place."[3] Or, put less euphemistically, it seeks to create a cozy atmosphere that conceals the efficient brutality that takes place inside. To that end, the interior is painted in a placid "duck eggshell white." The blueprints note that to "make this small place agreeable, sharp edges and straight edges are avoided." Outside the abortion chamber is the reception area, "a friendly warm space where the client can speak to the doctor and have a drink or a refreshment," just like Jiffy Lube.

The design of the facility, like the choice of the word "treatment room" itself, is consistent with abortion-rights proponents' tendency to claim that abortion is merely one of many "health services," morally no different from a lumpectomy. The strategy requires that its adherents choose their language carefully. There can be no suggestion that the decision to have an abortion is anything other than liberating, or that the lump being excised possesses any of the characteristics of a human being.

Women on Waves, for example, seldom uses the word "termination" to describe an abortion. Instead, it offers such statements as "pregnancies will be treated"—as though pregnancy were an easily curable but otherwise dangerous affliction. Its website makes references to the need to "save the life of the pregnant woman," while careful not to call pregnant women "mothers."

The site's "procedures" page discusses abortion clinically, in a matter-of-fact manner that portrays the operation as uneventful, even banal, instead of lethal and traumatic. "Attach suction canula to suction machine and vacuum inside uterus" is followed by "Give emotional support." After all, "women can experience some cramping." Acknowledging the real reason why women might need emotional support after an abortion would be to concede too much.

Abortions aboard the ship would be free of charge, but those who can afford to would be asked to pay $100 to help defray the costs for future clients. Women on Waves is not about making money. "We want to empower women. We are a nonprofit organization," Gomperts explains.[4] Women, however, are not the only intended recipients of the group's philanthropy. Gomperts has stressed that those in most need of her organization's services are "women without financial means and *adolescents*" [emphasis added].[5] Presumably, girls would be welcome aboard the *Sea Change*, with or without their parents' consent. If the sovereign rights of nations to enforce their own laws won't stop Gomperts, it's hard to see why parental rights would.

It's unclear when, if ever, the *Sea Change* will set sail. Its biggest obstacle is raising $190,000 in seed capital, but the crew and the $50,000 mobile abortion clinic are already in place.[6] "If the money came in tomorrow," Gomperts boasts, "we would be able to sail in a month."[7] The boat's first destination has not been set, but Gomperts avers that "wherever abortion is illegal, that is our target country."[8] Her preference is for developing nations in Africa and South America, but Malta, Poland, and Ireland have all been named as possible sites. Predominantly Catholic countries, naturally, top the list. Not surprisingly, Women on Waves has won the support of the anti-Catholic left, including Catholics for a Free Choice.[9]

Any difficulties the organization has had raising funds stem less from principled opposition than from skepticism about the feasibility of a floating abortuary. The *New York Times* describes Gomperts' reception with American abortion-rights advocates as "warm but cautious."[10] Although intrigued by the prospect, potential backers are worried that the ship would be detained, impounded, or sunk upon entering the waters of an unsympathetic nation.[11] Gomperts is less concerned. She is confident that international law is on her side, and that even though the *Sea Change* will seek media attention, it will also be able to evade detection when necessary. She notes that the boat will include various security systems, from surveillance cameras to high-tech devices she is unwilling to disclose.[12]

For now, though, fundraising remains the top priority. Women on Waves has received financial support from Mama Cash, a Dutch feminist group, and it solicits tax-deductible donations from its website. The Dutch Minister of Development has endorsed its agenda, and the Dutch parliament has even considered extending it a public subsidy.

Calling all martyrs

Women on Waves has many goals, but its "main idea," Gomperts says, "is to reduce mortalities caused by unsafe abortions."[13] She invokes statistics

from Planned Parenthood's Alan Guttmacher Institute to support the claim that worldwide, 70,000 women die in botched abortions each year. The *Sea Change*, she argues, "is a chance to provide safe services. Research shows that when abortion is legal, morbidity decreases dramatically."[14] To reduce the chance of complications, Women on Waves will offer only first-trimester abortions. It will also dispense RU-486 to women who haven been pregnant for less than seven weeks.

Still, there is good reason to be skeptical about the plan's safety. Gomperts' confidence assumes that safe medical conditions can be achieved on a relatively small vessel sailing on the high seas, with the closest full-service hospital at least twelve miles away. It assumes that women who suffer post-abortion complications (including RU-486-induced bleeding) will be able to seek treatment in countries where doing so requires confessing to a crime. And it assumes the professional credibility of an organization that essentially faces no legal or financial repercussions for its mistakes or malpractice—a here-today, gone-tomorrow abortion mill.

Far from preventing the illegal, unsafe abortions that Gomperts decries, Women on Waves plans to aid yet more of them by offering instruction to would-be abortionists in the pro-life countries it visits. The Women on Waves website promises that "by training local service providers (5 each week) in techniques of vacuum aspiration and post-abortion care, we will ensure that the services delivered by the ship will continue to be available after it has departed." In other words, back on land, hastily trained, unaccountable and unlicensed abortionists will be able to carry on the carnage in the *Sea Change*'s wake.

If they're so inclined, the indigenous abortionists will then be able to pass along their skill: "These local providers will be recruited by the local groups and will be trained in such a way that they will in turn be able to train other service providers to support local capacity building."[15] Beyond simply promoting an alternative to illegal abortion, Women on Waves aspires to lay the foundation for its host countries' very own black-market, back-alley abortion industry. So much for Gomperts' insistence that "neither we nor the cooperating local groups will ever conduct any illegal or criminal activity."[16]

While Gomperts' concern for the safety of women is surely real, it rates as a distant second priority to her overriding zeal for spreading the abortion revolution overseas. She seems to accept the idea that the cause of internationally legalized abortion is worth the cost of a few women. Despite Gomperts' assurances that the law is on her side, there is a strong possibility that her clients would face criminal sanctions in their home countries. In Malta, Social Policy Minister Lawrence Gonzi warned that his government

would take legal action against any of its citizens found collaborating with Women on Waves.

On the "Question and Answers" portion of the Women on Waves website, one query asks, "Will women who have had treatment on board face social or juridical problems when they return to land?" The response remarks that "history has taught us that in all countries where abortion has been legalized, test court cases have taken place and women have had to stand up for their rights. The ship will serve as a catalyst and give will [sic] women the opportunity to do so." That's no doubt the opportunity that Third World women crave—the chance to be a legal guinea pig.

And what comfort does Women on Waves have to offer its clients, should they be victimized by one of the "anti-choice" terrorists that abortion defenders are convinced dominate the pro-life movement? Outside of North America, its website claims, attacks are unlikely, but in any case, "the consequence of violent action against providers and clinics . . . has been huge support for the pro-choice cause." Martyrs make for great press.

The larger purpose of the Women on Waves agenda, as detailed in the foundation's mission statement, is to "re-energize pro-choice activism and counter anti-choice backlash." The group's plans for the *Sea Change* are much greater than simply performing a few hundred, or even a few thousand, abortions. It hopes the boat will "draw public attention to the consequences of illegal abortion and catalyze efforts to liberalize abortion laws."[17]

This is guerrilla activism, the feminist version of fighting logging policies by hijacking a tree. Gomperts hopes that by skirting nations' abortion laws, she will ultimately overturn them. "I want these countries to change their laws," she explains. "The only way to get the law changed is to push the issue."[18]

As America's experience since *Roe v. Wade* has shown, once abortion becomes readily available, society's behavior conforms to it—until "choice" looks to many like "necessity." When the *Sea Change* anchors off shore in one of its target countries, it will bring not only a quick and easy fix to the problem of unwanted pregnancies, but also a highly addictive and corrupting way of life. By turning its clients into agents of the abortion culture, and then facilitating that culture by establishing a domestic abortion industry, Women on Waves could do more to overturn anti-abortion laws than any amount of propaganda or politicking.

Gomperts is one of abortion's true believers—more than a student-activist type mesmerized by the libertarian-sounding promise of "choice." She considers her line of work "a very satisfying profession."[19] Abortion, for her, is

far more than a trade, or even a form of service—it is a galvanizing force for social good. "The possibility for women to decide over their own fertility has everything to do with women's empowerment and emancipation," she proclaims.[20] The Women on Waves website charges that "Availability of safe and above all affordable abortion will also have implications for the future financial situation of such women and/or their families and can therefore be considered part of the struggle against poverty."

Exporting the revolution

Gomperts' use of Marxist imagery—talk of "emancipation" and "the struggle"—is indicative of the revolutionary approach that governs the pro-choice philosophy. Her effort is less about changing the world than recreating it, replacing the tyranny of biology with a utopian vision of unrestrained sexual liberation, where abundant contraceptives and abortion on demand unhinge sex from its moral and medical dimensions.

Like the twentieth-century utopian revolutions before it, the abortion-rights campaign needs to be waged continuously in order to remain viable. Otherwise, the public might begin to question why the revolution failed to deliver on its promised liberation. At least that's what Gomperts perceives in her homeland, which long ago embraced the abortion culture. Women on Waves' website complains that, "as in the US, the increasing influence of an anti-choice backlash is noticeable even in the Netherlands. This is mostly due to an aggressive, well-funded and media savvy anti-choice movement that has forced the supporters of choice into a defensive position."

The defensive position is one the revolution cannot sustain for long. When scrutiny, biological evidence, and moral reasoning enter the debate, the abortion edifice crumbles quickly. The revolution thus must always be on the attack, knocking down one last barrier, fighting against an elusive but dangerous cadre of counter-revolutionaries. As the Women on Waves website puts it, "To counter this tendency, the pro-choice movement needs to once again take on its activist role and clearly set the public agenda."

The *Sea Change* is only the first step. Ideally, Gomperts would like to see the boat generate enough publicity and attention that it could influence the political culture of the countries it visits, as well as raise enough revenue to construct a full armada of floating abortuaries to continue exporting the revolution. "We want to develop our activities simultaneously at numerous locations and are thus looking for additional ships that would allow us to do so," the Women on Waves website informs its viewers. "Do you have a ship which fits the above description?"

In building a perfect world in the place of God's failed prototype, the

revolutionaries feel no compunction to obey the laws—natural or man-made—of the old model they seek to discard. That's why abortion-rights activists are so dismissive, even disdainful, of the question of when life begins. Who cares about losing a few million—or even tens or hundreds of millions—of human lives when the greater goal is perfecting *humanity* itself?

As for those who stand in the way of "reproductive rights," whether parents or governments, these are unjust authorities that must be toppled. Gomperts herself has no qualms about trying to undermine nations' abortion laws and their pro-life culture because she views the laws themselves as fundamentally unjust and the cultures as hopelessly backward. An account of the history of abortion laws on the Women on Waves website illustrates this attitude:

> Prior to the beginning of the 19th century, there were no abortion laws in existence. In 1869 Pope Pius IX declared that ensoulment occurs at conception. As a result the laws in the 19th century did not allow any termination of pregnancy. These laws form the basis of the restrictive legislation on abortion that still exist in many developing countries. Between 1950 and 1985 almost all developed countries liberalized their abortion laws for reasons of human rights and safety. Where abortion is still illegal this is often due to old colonial laws and not always an expression of the opinion of the local population.

The Catholic Church's teaching on abortion (which has origins as early as the first century) is dismissed as self-evidently false, like flat-earth cosmology. By this reasoning, superstition alone keeps abortion illegal in the few colonized corners of the world that remain undeveloped or illiberal—and unconcerned for human rights or safety.

If there's one reason why pro-lifers and pro-choicers have such a difficult time finding common ground, this is it. Pro-lifers take the question of ensoulment—or, put in secular terms, when a human being becomes a human being—seriously, while pro-choicers think it irrelevant. Ultimately, the debate is a clash between two fundamentally opposed worldviews—the spiritualist and materialist—and a question as to whether higher truths trump personal wants.

Neither Rebecca Gomperts, the organization she has founded, nor the revolution she hopes to export can do much to refute the spiritualist worldview, but that's not their aim. They hope only to displace it.

NOTES

1. Peter Ford, "Banned on land, but free at sea?," *Christian Science Monitor*, June 23, 2000.
2. Daniela Xuereb, "A floating abortion clinic," *Malta Independent*, June 25, 2000.
3. Women on Waves website, http://www.womenonwaves.org, "Activities" page.
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18. Thornton, June 11, 2000.
19. *Ibid.*
20. Women on Waves website, "Interview with Dr. Rebecca Gomperts" page.

"I'D ASK FOR A REFUND ON THAT DUCK-CALL, HARRY."

A Dilemma of Biblical Proportions

Lynette Burrows

For those who may not know the full story of the Siamese twins, Jodie and Mary, the facts are these. Their parents are Maltese and, when it was discovered that they were expecting Siamese twins, they decided to come to England to have the babies. Once here, it was quickly discovered that the babies presented grave difficulties and they were offered an abortion. This they refused, as was their right, and the woman was delivered by Caesarian section of two little girls who were so inextricably conjoined that doctors said they could not both survive. This fact, at least, was indisputable since the weaker twin, Mary, had neither heart nor lungs that were strong enough to support her alone and she was, furthermore, brain-damaged.

The stronger baby, Jodie, on the other hand, was thought to stand a reasonable chance on her own and the doctors decided it was in her interest to be separated from her sister. The parents refused their permission for the operation, however, and the case was taken first to the High Court and then to the Court of Appeal, in order to decide if the wishes of the parents should be paramount or whether the only child who could survive should be allowed her chance to live.

It was an agonising decision for the judges and, it must be said in all fairness, they did not come to their conclusion lightly. More than one admitted to having sleepless nights and to shedding tears as they considered the case from every angle; the rights of the parents, the rights of the children, the morality of the choices they were considering and the implications for future cases.

In the end it was decided that the operation to separate the children could go ahead even though the doctors had already said that the weaker twin could not possibly survive being separated from her stronger sister. The operation lasted fifteen hours and, at the end of it, Mary was dead and her sister had been, with incredible skill, "reassembled" as a whole baby. Poorly at first, she has made good progress so far and is reported to be showing an unusually tenacious grasp of life. The parents have asked for privacy and silence from the media in order to recover themselves after the ordeal, and this they have had.

So, what are we to make of it all? The new archbishop said that such an

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operation can never be sanctioned because of the principle of the sanctity of life; no doubt he was right to say so. The cacophony of comment, both religious and anti-religious, that accompanied the proceedings every step of the way, made clear the irreconcilable attitudes held by both sides and—at the centre of it all—the parents wept for the little daughter they lost and are, no doubt, praying for the survival of the one who was saved.

In morally confused times like these, it is easy to see this agonising predicament as standing four-square at a crossroad. In one direction lies trust and acceptance of whatever God sends, and the other leads—where?

It is no good trying to argue that this case makes it easier to destroy future children who might be born in such a way: the case is so rare that there is little chance of another such occurring again in the lifetime of any of the protagonists.

It has been passionately argued, though, that the decision will further diminish respect for human life. However, this ignores the fact that, in cases of multiple conceptions, the "unwanted" embryos have been routinely culled in the womb, without any of the discussion and passion that this case has provoked. Good heavens! The very essence of our abortion legislation is predicated upon the idea that what the mother wants is paramount, the right to life of the child she is carrying is as nothing. This happens thousands of times a year, without making the slightest impact upon the public conscience. There is no highroad to destruction in this scenario that has not been trod a million times already, without a backward glance.

One difference in this case is that the parents did not want one of their daughters to be sacrificed for the other. Their wishes did not prevail, although applying to a court to take away their right was a necessary procedure. This has happened on several occasions to allow the child of Jehovah's Witnesses to receive a blood transfusion; and once to allow a Down's Syndrome child to have an operation that the parents opposed, since it would prolong her life. In these cases, too, there was moral inconsistency; but those who argued for parental rights to be paramount were obliged to feel relief that there was a court which could set them aside.

Human affairs can be infinitely difficult and subtle, with a whole background of needs, motives and emotions that have to be considered in coming to a conclusion. That is why the medieval church evolved the twice-yearly dramas that became known as the "Mystery Plays," which enacted all that was known, or could be imaginatively ascribed to the principal players in the drama of Christ's life and death. By that means ordinary people, unused to theology or philosophical speculation, could be brought to understand what was involved in following the tenets of their Faith. These plays were

the foundation of our dramatic tradition; Shakespeare and all the great dramatists used "the play" to describe and explain character in action, and to refine and give coherence to our feelings.

Indeed, the much-criticised tendency of the media to "dramatise" stories in the news shows the same desire to point to a moral by means of a story. In an age that is characterised by the quantity rather than quality in its artistic life, we have to be grateful for anything that moves our hearts towards understanding.

So let us look again at the facts of this case, seen in another light. The parents of the twins decided to leave their country and to go somewhere that allows abortion but that also has excellent children's hospitals. They would certainly have known that they would be offered abortion; they must also have known that if there was any chance of saving the children, that chance would be greater here.

So, paradox number one is that a country that allows unborn children to be indiscriminately killed on the say-so of their mothers also produces men and women who are devoted to the welfare of babies. They are just not the *same* men and women. The parents must also have known, from the endless consultations that centred on their children, that the doctors and nurses wanted above all else to save their children if it were possible. Scans would have revealed how little chance Mary had of surviving on her own, and it is not credible that they would not have been told what might happen. They could have gone home then if they had simply been resigned to losing both of their children: they *didn't* go because there was still hope—and who can honestly blame them?

They did what they had to do, and refused to give permission for one of their daughters to be sacrificed for the other. That was their duty; nevertheless, they had put themselves where that could not be the end of it. The courts decided that—rather than lose both—one child should be sacrificed that the other should live. It was one of those terrible decisions that no one can ever make in a vacuum. No parents should ever have to decide which of their children must die to allow the other to live: yet it is a decision that sometimes parents have to make. Which child to give the last remaining morsel of food to; which child to let fall in order to retain the strength to hold the other—these are all heart-breaking decisions that no policy or morality can be founded upon. They just happen; and the mother will make her case with God, in the privacy of her own heart, later.

The doctors were in rather the same position. Far from being regarded as heroes of their profession before the operation, newspapers speculated that

they were in a no-win position. If both babies died they would be excoriated as little better than well-intentioned murderers. And if one survived but was handicapped and wretched, they would be doubly blamed for the death of one and the misery of the other. It took some courage in those circumstances for them to go ahead and take responsibility for what they were prepared to risk their reputations in trying to do. In truth, it would have been easier for all concerned just to let the children quietly fade away together.

So, in this drama, virtue was displayed by both sides and was mutually acknowledged. There was a real dilemma—of biblical-story proportions—as most people understood. The public held their breath when the babies were operated upon and no doubt many prayers were said for the family, by people who had never before given a thought to the subject of other peoples' children. Its effect was to bring serious, ethical discussion into public life and at a level that could be understood and appreciated by everyone. This discussion in no way devalued but enhanced the sanctity of life. Something which has been regarded for a long time as simply a woman's decision, and the business of nobody else, was suddenly discovered to be replete with significance.

Safe in the arms of Jesus, as no doubt little Mary is: her death did more than simply allow her sister to live.

Twin Killing

Wesley J. Smith

Alas, Poor Mary. She's the conjoined twin in England, united at the chest with her stronger sister Jodie, and she's been called a parasite, a tumor, a blood sucker: someone whose "primitive" brain makes her life unworthy of protecting. And all that by two British courts, which have wrenched away from her parents the right to decide whether or not to have her surgically separated from Jodie—though the operation will take Mary's life.

The courts have done what the twin girls' parents refused to do: make a real-life Sophie's Choice. They have chosen to kill one daughter to save the other. The couple, from the small Mediterranean island of Gozo, view their daughters as equally precious and entitled to life They rejected the dehumanization of Mary, asserting their right to refuse medical treatment and allow nature to take its course. But last week, rebuffed by the court of appeals, they gave up the fight and announced they would not take the case to the House of Lords.

Hard cases make bad law, or so the saying goes, and the facts of this tragic case are the worst possible. They are so unusual that most commentators have assured the public the ruling hasn't set a precedent. But we have no assurance that this is true. Indeed, we have considerable evidence, in the history of euthanasia laws, that the opposite is true: Decisions reached in tragic cases quickly open the gates to a flood of new cases—each moving us one step further from a reverence for life. The decision to require the death of Mary has been imposed on a reluctant family, and that ought to frighten the average citizen of England—and of America, too, for that matter: An international precedent is now in place to deny parents the right to resist the "culture of death."

The phrase describes a mindset that accepts intentional killing as an answer to difficulties stemming from illness, disability, age, and the social inequities caused by limited medical resources. It is a mindset that leads to what seem at first to be contradictory attitudes toward death and dying. Thus, some of the same commentators who now argue that the court was right to overrule the parents in order to save Jodie's life also looked with approval on another recent court decision from England that expressly permitted doctors to refuse to save the life of a profoundly disabled child—even though his

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Wesley J. Smith's latest book, *Culture of Death*, is just out from Encounter books. This article is reprinted with permission of *The Weekly Standard* (October 9, 2000; © News America Inc.).

parents wanted him to continue receiving care.

This second case involved a 19-month-old boy born prematurely with an irreversible lung condition and brain abnormality. Even though he responds to his parents, smiles in recognition, and shows signs of acquiring a vocabulary, the court ruled that his doctors' bleak prognosis permits them to overrule his parents' wishes and let the boy die the next time he has a medical emergency.

At first glance, these two British court decisions appear opposites. One imposes treatment, the other denies it. But looked at through the lens of the culture of death, they prove perfectly consistent. One imposes unwanted treatment on a family knowing that a helpless child will die. The other denies wanted treatment to a family knowing that a helpless child will die. In both cases, the child dies, and in both cases, the courts have held that the doctors' values rule.

The same apparent paradox is seen in this country. On the one hand, supporters of assisted suicide argue that the terminally ill and severely disabled have a right to doctors' help in committing suicide. On the other hand, supporters of "futile care theory," now all the rage in bioethics, are ready to disregard the wishes of the ill or disabled if the patients seek expensive treatment their doctors deem unjustified by their quality of life. To apologists for futile care theory, autonomy has its limits.

The real point of both policies, however, is the elimination of people judged to have a low quality of life. If "choice" gets the job done, fine. If not, death is imposed under another rationale (typically, "distributive justice": Timmy doesn't have health insurance, so we can't afford to give Granny Jones a respirator).

The case of Mary and Jodie presents a terrible dilemma. If the decision to separate the twins in order to save the stronger were being made against the backdrop of a culture still committed to the equal dignity of human beings, it would be far less worrisome. But we live in a time when the commitment to life is steadily losing ground to the culture of death. It is a time when a scholar like Peter Singer can assert that parents should have the right to kill their newborns to benefit the family—and be rewarded with a chair at Princeton University. It is a time when the *Lancet* can report (in 1996) that pediatric euthanasia based on quality-of-life judgments takes some 80 infant lives a year in the Netherlands—and not cause a ripple.

Those who say the conjoined twins ruling will set no precedent simply do not understand how relentlessly the culture of death is advancing. With this decision we may have crossed a cultural Rubicon: It can reasonably be argued that the judges have ordered doctors to perform involuntary euthanasia. At the very least, the case of Mary and Jodie makes it easier to justify medical killing the next time some "worthy" case comes along.

A Moral Precedent for the Siamese Twins Case

Gregg Easterbrook

The situation gripping British national attention seems unprecedented. Five-week-old Siamese twins Jodie and Mary share but one heart. Doctors believe both will die if not separated soon; Jodie, the stronger twin, would get the heart, and Mary would perish, deliberately killed by the surgery. A British court has ordered that the operation proceed. The parents, devout Catholics, oppose any surgery because they cannot bear the idea of Mary being killed.

According to British news reports, the Rev. Cormac Murphy-O'Connor, the archbishop of Westminster and England's highest-ranking Catholic, has advised the courts that it would be better to do nothing at all, letting both girls die, than to kill one in order to save the other. Yesterday, Lord Justice Ward, who is reviewing the legal appeal, declared that he is "on the horns of an irreconcilable dilemma" and can find no similar case to guide him.

In fact, an almost identical case occurred in the United States in 1977 and was just as morally wrenching but decisively resolved by the chief surgeon—C. Everett Koop, later to be surgeon general and renowned as an extremely dedicated pro-life proponent. In that case Koop, pro-life in every way, killed one twin to save the other.

Here was the background. First, it is important to know that long before Koop became politically prominent—initially as an opponent of abortion, later as an opponent of cigarette smoking and proponent of AIDS action—he was celebrated within the medical community as the founder of modern pediatric surgery.

Beginning his work at Children's Hospital of Philadelphia in the late 1940s, Koop made pediatric surgery much safer and more effective by pioneering surgical and anesthetic techniques meant for small bodies and metabolisms, and by championing pediatric surgery as a subspecialty. He developed many basic children's operations still used today, and as a research clinician, established the existence of and therapies for childhood cancer. Until Koop, the medical community believed that only adults could contract cancer, with the result that many children died of undiagnosed cancer. Koop also saved numerous infants born with extreme birth defects, ones other doctors had given up on and whom utilitarians might claim would be "better off" expiring.

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Not one of them, Koop later said with justified pride, ever returned to him as an adult and complained about being saved.

And Koop learned how to separate Siamese twins, once thought impossible. In 1957, Koop became an international sensation when he separated two female twins. One died nine years later of heart failure, but the second thrived, and Koop has said that his most prized possession in life is a picture of himself with the twin on her wedding day.

In 1974, Koop became a medical star again when he performed the Rodriguez separation. Clara and Alta Rodriguez were Siamese twins of a type called "ischiopagus tetrapus," sharing a liver, colon, and parts of the intestines, with their entire trunks merged. What they were barely looked human, and the case was considered hopeless. Directing a team of 23 surgeons, technicians, and nurses using equipment he specially designed for the Rodriguez girls, Koop separated the twins. Two years later, Alta died in a choking accident, but Clara grew into a healthy adult. "Even the other surgeons were in awe of Koop on that day," one of the doctors present told me for my 1991 book *Surgeon Koop*. "It was as if he had worked a miracle, in the true sense of doing something beyond physical law."

No miracle was possible for the Siamese twins brought to Koop's hospital in 1977, however. Like Jodie and Mary today, these twins (whose names were never released, in keeping with their parents' wishes) shared a single heart. If separated, one would die. If nothing were done, in a few months or at most a few years, both would die because a single heart cannot pump for two grown bodies—the same demise Jodie and Mary face if nothing is done.

In the 1977 case, the parents were Orthodox Jewish. Shortly after they arrived with their twins at Children's of Philadelphia, a small army of Orthodox rabbis and Talmudic scholars pitched camp in a wing of the hospital, trying to decide the correct course. The rabbis, and the parents, eventually came to the lesser-of-two-evils position: One death would be less horrible than two deaths. The rabbis interviewed all the members of the surgical team, looking for information and spiritual insights on subjects as arcane as exactly how the babies would be touched in the moment when one of the lives were lost.

Unlike the current British case, there was no lawsuit in the 1977 Philadelphia decision. The questions were, first, what did the parents want? The parents wanted surgery to save at least one. The next question was, what did the rabbis think? After extended debate, the rabbis felt that God would approve. The final question was, would Koop do the operation?

Koop, by 1977 was already the country's leading medical opponent of *Roe* v. *Wade*. An active evangelical Protestant, he very strongly endorsed the

view that life begins at conception and was pushing medical schools to include this definition in the oaths young physicians take. Koop bitterly denounced physicians who performed abortions and also those who maintained that severely handicapped infants, the elderly sick, and the profoundly retarded should be allowed to die: God and God alone should decide between life and death, Koop thought. When not performing pediatric surgery, Koop was touring the country giving speeches for the Right to Life movement and warning the public that he foresaw a coming utilitarian abyss in which doctors would casually terminate any child or elderly person who was unwanted or judged unfit.

Yet when given the dilemma of whether to operate on the 1977 twins, Koop has said, it took less than 10 minutes to decide to go ahead. To him the morals of the situation were obvious. God had already made the choice that only one could live by bringing twins with a single heart into the world; Koop's job was to ensure that the one who could live, did live. The only obstacle was resolving himself to the fact that he would be deliberately killing the twin who died. And he did resolve to do that feeling he could not ask any of the other doctors to perform that act unless he was willing to do it himself. Koop personally performed the assessment of which baby was stronger and would be saved; when the moment came, he personally clamped off Baby A's carotid artery as the table holding Baby B, granted the heart, was wheeled away.

"This was the hardest day of my professional life, but only because of what I had to do, not for moral reasons," Koop has said. "The morals of the situation were clear. We had to choose between two deaths, or one death and one life. We chose life."

That is the situation now facing the British courts, the Catholic Church and the anguished parents of Jodie and Mary. There is no solution to their dilemma that does not cause pain. But they should choose life for the one girl who can be saved.

Babies' Lives in the Judges' Scales

Simon Lee

The Siamese twins, "Jodie" and "Mary," present not just a hard case but an "un-easy" case. The moral dilemma is so acute that if you do not have some sense of unease, you have not understood the complexities involved. It was therefore comforting for the public, if disturbing for the judges themselves, to hear during the course of argument in the Court of Appeal that the judges were having sleepless nights.

Speaking to the BBC on his way into court last Friday, however, Lord Justice Ward's tone jarred ("half the country will think we're potty") and the judges' hesitancy during the hearing seemed to give way to a misplaced tone of certainty as they presented their judgments in court in summary form. Lords Justices Ward, Brooke and Robert Walker unanimously supported Mr. Justice Johnson's decision to order the separation of the twins, notwithstanding the parents' religious convictions to the contrary, with the inevitable result that the weaker twin would die during the operation.

The English legal system instantaneously published on the Internet the judges' full 130 pages of justification, thus allowing the whole world to examine their approach at www.courtservice.gov.uk. The judges considered that the fundamental family-law principles of deciding in favour of children's best interests or welfare prevailed. They did not believe that the criminal law of murder would apply to deliberate separation of Siamese twins even if doctors could foresee that one twin would inevitably die during the operation.

Lord Justice Brooke asked: "Would the proposed operation amount to the positive act of killing Mary? The answer is Yes. Would the doctors be held to have the intention of killing Mary, however little they desire that outcome? The answer is again Yes. The doctrine of double effect, which permits a doctor, acting in good faith, to administer pain-killing drugs to her dying patient, has no relevance in this case. This leaves open the single question, 'Would the killing be unlawful?' To that, all the judges have answered 'No.'"

The judges were grateful to Archbishop Cormac Murphy-O'Connor of Westminster for his submission, in particular accepting his five principles of ethical decision-making (given in abridged form in *The Tablet* last week), all of which pointed in the opposite direction to the one they took.

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The judges did not so much counter the archbishop's points as offer hypothetical cases designed to encourage the public to assume that we must sometimes plump for the kind of conclusion which they reached in this case. If a six-year-old child were running amok with a gun in a playground, killing other children, and you had the opportunity to shoot the child dead, would you do so to save other children? All these examples (which included a cast of crashing planes, parachutes and caravans surrounded by bandits) strike me as unhelpful analogies.

To begin with, they involve a snap decision, whereas the case of Jodie and Mary has already taken weeks and could last for months. In the playground, for instance, one is unlikely to have the benefit of an *amicus curiae* brief from the Archbishop of Westminster. Similarly, people faced with hypothetical or real dilemmas where there is a chance to save one life at the expense of another have little time to ponder the nuances of the doctrine of double effect, whether facing death on a mountain (would you cut the rope sending a fellow mountainer to his death in order to save yourself or another?) or on a sinking ship (would you sweep aside a person frozen by fear or the cold who blocks the path of dozens to safety from a capsized ferry, as happened in the Zeebrugge disaster?).

A second difficulty is that in hypothetical cases there is seldom only one way forward to save a life or lives. But in the case of Jodie and Mary we are told that there is no way in which both can survive for long. In the playground story, for example, shooting to kill the young boy is unlikely to be the only option for restraining him. My time in Northern Ireland taught me that shooting to kill, rather than to disarm, is rarely, if ever, required, even against trained terrorists, let alone Lord Justice Ward's imaginary six-year-old.

A third problem is that in a real case, such as that of Jodie and Mary, the facts are difficult to establish, the prognosis changes, one twin grows stronger and another weakens, the predicted life expectancy goes up and down, the timing of the operation recedes or becomes an emergency, as the issue wends its way through the legal system. In the hypothetical cases, by contrast, the facts are determined with the certainty of the Court of Appeal judges in delivering their assessments, instead of the more attractive unease of the same judges grappling with an uncertain world during the course of argument.

Supplemented now by debates on all these hypothetical cases, speculation on the fate of Jodie and Mary is tantamount to a national (or international) seminar on ethical choices. The humility of the public is moving. So-called ordinary citizens are disarmingly prone to say that their first thought was such and such, but now that they have learnt more, thought about it,

heard other people talk about it, prayed about it, they now think the exact opposite.

This is one of the benefits of the appellate process, that we participate in a continuing conversation, rather than make a once-and-for-all snap decision in a school playground or on a mountain. In a chilling passage at the first instance hearing, Mr. Justice Johnson had said of the weaker twin that her life "would not simply be worth nothing to her, it would be hurtful." This error of judgement by Mr. Justice Johnson was rejected by the Court of Appeal. Lord Justice Ward said: "I am satisfied that Mary's life, desperate as it is, still has its own ineliminable value and dignity. In my judgement, the learned judge was wrong to find it was worth nothing."

It would be unfortunate if a court consisting of all the highest-level legal talents did not have in turn the opportunity to scrutinise the conclusions of the Court of Appeal. Apart from the fact that it is difficult to see how the judges leapt from their often enriching uneasy reasoning to their stark conclusion, the best single argument for ordering the operation and the best single argument for respecting the wishes of the parents have not so far been fully articulated by the courts.

In arguing for the operation, the ethical argument is lost once one adopts the rhetoric of the rights or best interests of the more vulnerable twin. This way of thinking cannot allow for a decision which deliberately takes Mary's life. The more cogent line to run would be what American lawyers have called a "substituted judgment" test. Rather than talk of Mary's rights or interests, ask instead what she would decide if she were capable of analysing her predicament, but were otherwise the person she is now. Would she not choose heroic self-sacrifice: greater love hath no sister than this, that she lay down her life for her twin?

The best argument for following the parental wishes, on the other hand, is that the new Human Rights Act requires judges to have particular regard to the importance of freedom of thought, conscience and religion. This is especially significant as the Human Rights Act 1998 comes into force on 2 October, with its emphasis in §13 on the courts being under a duty to pay particular regard to freedom of religion. It would be a missed opportunity if this case, with its profound moral challenges, were not to be illuminated by judicial reflection on the importance of religion. Trumping parental wishes is not to be undertaken lightly, as explained in the archbishop's fifth principle, and it is difficult to see how, once the Act is fully in force, parental wishes could be trumped at all in these circumstances.

We have also seen some of the worst arguments feature or lurk beneath

the surface of attitudes struck in and out of court. For example, any arguments about parental interests need to be handled carefully. In this case, we were earlier treated to an equation of disability and sin akin to that which brought about Glenn Hoddle's demise as England manager. In the first judgement on 24 August, Mr. Justice Johnson reported that: "Due to the customs of the community in which they live, the mother feels that she must have done something wrong for her to have conceived in this way. She is concerned about how the twins would be received in their community where there is a belief that this disability must be punishment for some earlier sin."

We must beware of taking at face value accounts of what the parents think, or what the customs or facilities are in another country; and we should be extremely wary of hidden dismissals of what the parents say they think. Underlying some reactions to this case, a paternalism can be detected: it is assumed that the parents genuinely think that they cannot bring themselves to choose death for one of their children, and therefore genuinely argue vigorously for non-intervention, whereas in fact they will have a sense of relief, the paternalists believe, if the authorities trump those arguments. Then honour will be satisfied. The best case will have been put for the weaker twin and the parents may emerge from the case with one child to cherish.

At this point we are only a short distance away from allowing professionals and the state to reinterpret the wishes, rights and interests of the public.

This is a case which involves us all. When it began, the twins may have been seen as posing a unique dilemma. As the case proceeds, however, everyone can begin to see that our unease at any quick or simple conclusion arises from the profound way in which this dilemma speaks to us of the human condition and the Divine will.

This is best seen through the statement on "Human Rights and the Catholic Church" which the Catholic Bishops' Conference of England and Wales made in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. The bishops based their position on the "Catholic belief that two vital truths about human persons must always be held together," and they went on to elaborate them:

"Firstly, all persons are unique, irreplaceable, destined for transcendent life, and so are not just units of some larger mass or entity, who could properly be treated as interchangeable, or merely as the instruments of another's purpose. (For example, each person is embodied: all our thoughts and perceptions are inseparable from our senses, from their openness to the world and their active response to it. It follows that everyone's experience is unrepeatable.)

"Secondly and equally important, everyone is a person-in-relationship whose well-being cannot be attained alone, and whose life can never be

considered apart from the many relationships (more or less intimate or enduring) that make up its fabric.

"In practice, the individual person and the community will always have claims against each other: and their true fulfillment goes together. Neither an individualism that denies the claims of community, nor a corporate prosperity that excludes the well-being or dignity of individual persons, is ultimately tolerable."

These two truths show that the uneasy case of Jodie and Mary is not to be regarded as on the margins, at only one remove from implausible hypothetical situations and thus so unusual that fundamental principles can be disregarded. On the contrary, these principles show why the case of Jodie and Mary has touched the conscience of the world: the interdependence yet uniqueness of the two vulnerable children involved poses in stark form questions of the ultimate truths about human dignity and the human condition.

A Question to Break the Heart

Libby Purves

Even in a world of tragedy and injustice, there has been something peculiarly harrowing in the story of the Siamese twins born in Manchester. There is something almost mythic in the description of the strong twin being progressively drained by her dependent, attached sister, who cannot live without her yet who daily weakens her and drives her towards death. There is poignancy in their pregnant mother's flight to Britain from her rural Mediterranean island, in the hope of a medical miracle; and something profoundly uncomfortable about the fact that once here, and once aware that there is no hope of saving both twins, the parents had their wishes and instincts overruled by a judge.

For Mr. Justice Johnson, in a moving and humane statement, ruled that despite the Catholic parents' unwillingness, the girls must be separated: which will cause Mary to die. Permanent union will kill them both anyway within six months, the doctors say; the sooner the separation is done, the better the chances of the strong twin.

Unsurprisingly, the parents can't take this: their faith forbids such interference with God's terrible will for these babies, and a certain peasant practicality makes them point out that even if she survives, the twin known as Jodie will be severely disabled and cannot "financially or personally" be looked after in the circumstances of their home community. But the judge has ruled that the other twin, Mary, must be separated and die. He has taken into account not only the need of the strong twin to be free of the weak one in order to survive, but the fact that the weak sister may soon feel considerable pain as her sister begins to move more actively. This latter reason borders on an argument for euthanasia, and has frightened many onlookers considerably. But the judge says that he cannot shrink from weighing up the rights of the children, and exercising an independent and objective judgement even if this conflicts with the parents' wishes and beliefs.

As vexed as any of them, I have been wrestling with various private reactions; and being still inconclusive, I might as well share them. I feel unease that the parents had to throw their shortage of resources into the equation—though clearly, they did. And I feel—to my surprise—a strong sense of unease about the judge. Not about his competence, but about his involvement

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in the first place. Conscientious and compassionate though his words are, it somehow seems intensely inappropriate that a choice like this should be a legal one. There has been no crime or civil dispute.

There is not even a real parallel with those cases where devout parental wishes endanger children's health—as when a Jehovah's Witness refuses blood transfusions for an unconscious child. That is comparatively easy: life or death. Here, though, both the babies are alive and what is proposed is that one should die. If the parents consider it their duty to protect both, what is the civil law that it should overrule that duty? The parents, as simple-hearted Catholics, presumably believe that they see in this disastrous birth a manifestation of the will of God. They will stand in awe of the sacredness of all human life, however apparently pointless. They will believe that God intends to gather these two sad little souls to himself in his own good time, and that somehow it is all part of a great and good pattern.

Most moderns will shudder and shrink from this attitude, as horrible, medieval fatalist mumbo-jumbo. Yet it is a philosophical point of view that the parents have every right to hold. What right has the civil law to set their presumptions about God's will aside, in favour of a secularism which says explicitly that the stronger twin must live merely because she is the stronger, and that the "few months of Mary's life, if not separated from her twin, would not simply be worth nothing to her, they would be hurtful"? It is a hygienic, brisk, rational, practical, thoroughly modern approach. A lawyer's approach.

Why should it win? In the babies' home community, more likely the mother, father, priest and doctor would confer, pray perhaps, and then quietly decide. Down the decades this has happened countless times; midwives have turned from a tragic mother's bedside with a terribly deformed or barely living child, and made no further effort to prolong its life. Sometimes, no doubt, they have made terrible mistakes in doing so; but they have at least taken an immediate humane responsibility. Doctors have—in the very moment of delivery—made awesome decisions, including the crushing of a half-born child's skull to save its mother's life, or its twin's. Forty years ago these things were common: doctors were trusted to make tremendous choices, informed by their own code of ethics and by awareness of the patient's own faith.

But as medicine advances, and more avenues of impossible endeavor are opened, we have become inured to daily miracles and, paradoxically, developed a contempt for doctors. We sue them, we berate them for falling away from the very highest standards; we suspect that for two pins they would all turn into Harold Shipman and start making unwelcome decisions about the

unfitness for survival of cheerful old ladies. In the maze of tubes and wires that keep the nearly dead alive, the borders between life and death are blurred, and we have lost confidence in those who patrol them.

But who else could decide? Politicians? Priests? Prelates? Parents in a state of shock? In the end, I suppose, it had to be a judge. But it still feels horribly, perplexingly, wrong.

Is It Killing?

M. Therese Lysaught

"We cannot kill one of our daughters to allow the other to survive. We believe nature should take its course. If it's God's will that both of our children should survive, then so be it. It's not something we believe we have the right to interfere with."

So wrote the parents of the pseudonymous conjoined twins, Jodie and Mary, in their petition to the British Court of Appeal. Physicians in the case had sued to surgically separate the twins, born August 8. The parents—Roman Catholics—initially opposed the surgery. Separation would result immediately in Mary's death, since she relies on Jodie's heart and lungs for her blood and oxygen supply. But if not separated, the strain on Jodie's heart will ultimately kill them both.

The court's September 22 decision to permit the physicians to proceed with the surgery did little to clarify the moral terrain. The parents, it appears at this time, have decided not to appeal the ruling. This outcome only solidified the case's more troubling aspects.

To begin, consider how the various participants have been characterized in the court and the media. The heroes, clearly, are the judges. It is they who bear the terrible burden of moral decision, they who have been agonizing through sleepless nights about what ought to be done. The physicians emerge as clear-eyed, single-minded knights, simply seeking to do the right thing. The parents, on the other hand, are "devout Roman Catholics," "simple-minded peasants" from a "remote European community" (now revealed to be Gozo, an island near Malta). The subtext paints the parents as backward, their geographic isolation and rural communal life reinforcing their archaic religious scruples. The fact that the tragedy of the case affects the parents and not the judges or the physicians seems to have been lost.

The children are likewise juxtaposed. Jodie is consistently described as "bright and alert," Mary, on the other hand, is assailed by a range of metaphors. She is "passive," "deformed," "pathetic," a "congenital tumor," her existence "utterly futile." In the chilling words of the recent court decision, she is a "parasite" that "sucks the lifeblood of Jodie." Such language has but one purpose—to dehumanize. It is always easier to take the life of a creature that is less-than-human.

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What troubles me about this case? The "facts," as reported, change daily. Initially, Mary was simply described as "passive." With each subsequent report, her physical handicaps become more extensive. Initially, Jodie's odds of surviving the surgery and leading a "normal" life were cast as high as 80 to 90 percent. But this sort of surgery is extremely rare and extremely high risk; the prognoses seem unduly optimistic. And we hear later that if she does survive, even with multiple surgeries over a period of years, her ability to walk, control her bladder, or have children may be permanently impaired. Initially, the girls were given a maximum of three to six months to live. Physicians later consulted for a second opinion suggested that both girls might live conjoined for "many months, even a few years." Initially, the parents were reported to refuse surgery on "religious grounds," citing "God's will" as the basis for the impossibility of choosing between the girls. Later reports, however, suggest that the parents would rather not raise a handicapped child. A handicapped Jodie would be shunned in their community, they maintain, and adequate medical care is not available. Reports from the community itself, however, seem to refute both assertions.

Regarding cases like this, then, caution is in order. It is difficult not to be persuaded by metaphors that mask the absence of argument and that attempt to minimize ambiguity by diminishing or eliminating the moral status of those involved. From the parents' perspective, the story would likely sound very differently. Who gets to tell the story? When "facts" are fluid, adequate moral analysis is impossible.

What further troubles me about this case is that the classic framework of the Catholic moral tradition—the principle of double effect—does not provide clear-cut guidance. In this particular instance, commentators on both sides argue from stricter and looser interpretations of the principle. How might one work through it? We would begin with the object or moral species of the act in question. Is the action properly characterized as "killing" Mary or rather as saving Jodie's life? A charitable reading suggests the latter.

What is the act itself? Is the act itself good or morally neutral? The act seems properly described as a surgical intervention to separate conjoined twins. In the absence of tragic physiology, surgical separation would certainly be the medical recommendation. And Jodie's medical situation seems to call for it, making it a therapeutic intervention. Thus, it seems fair to characterize it as a good or neutral action.

But Mary would die. The Catholic tradition allows for situations where death is the unintended and unavoidable outcome of a medical procedure designed to save a life. But would such reasoning apply in this case? Without a doubt, Mary's death is not intended, desired, or willed (the dehumanizing

remarks above notwithstanding). Without a doubt, the saving of Jodie's life combined with Mary's grim prospects for life expectancy provide a sufficiently grave reason.

But though it seems unfair to describe the situation as "killing Mary in order to save Jodie," or doing an evil in order to achieve a good, one troubling question remains: Would Mary's death be the cause of the good outcome? If so, the surgery would be illicit. This proviso is important, especially if the new prognosis with regard to the girls' life expectancy together is correct. More time may change the situation. In the course of time, an alternate course of action, without the same moral onus, might appear.

However, at this time the closest analogy, although an imperfect one, might be the analogy of the ectopic pregnancy. Traditional moral analysis permits physicians to perform a surgical procedure designed to remedy a lethal pathology—a fallopian tube that would inevitably hemorrhage. Physicians would not be permitted, however, to simply open the tube, kill the fetus, and remove it. Does this analogy hold here? Does the surgical separation differ from a direct attack upon Mary that would simply end her life? Yes, but the uncertainty of the prognosis weakens the analogy.

In the end, we do not have enough similar cases to develop a "more probable" answer. The situation remains unique. Although the medical literature now boasts a handful of cases involving the separation of conjoined twins, they differ in relevant particulars (the nature of the join, the wishes of the parents and physicians, the medical prognoses for the two children, the outcomes, etc.). There is no substantial body of moral opinion from which to draw. In such cases, one could—after careful and prayerful deliberation—be justified in proceeding.

Another matter that troubles me about this case is the use of the term "God's will." The parents find God's will in the given, in the course that nature takes. Lord Justice Ward, one of the three judges considering the appeal, follows suit: "It was not God's will that [Mary] should live because [she] wasn't born with the capacity to live and death is inevitable." Troubling indeed is the picture of God these diverse statements render and what they imply about human life as made in the image of God.

The God conjured here is a sovereign God, omnipotent, perhaps capricious from our perspective, certainly inscrutable. God's will is not our will, nor God's ways our ways. He (sorry, but this is definitely not God as Mother) has his own good reasons for his actions, which are beyond our ability to see or understand. Such a God is remote, the sort of God who gathers souls to his heavenly bosom in his own good time. It is a God who acts "immediately,"

one who intervenes in the world in an unmediated fashion. God's will is known not only through nature in its flourishing and perfection (à la Thomas Aquinas) but in its inevitable imperfections as well.

Though Job and Calvin might recognize this God, the Catholic tradition ought not—or would at least ask for a fuller account. In the Catholic tradition, God is an incarnate God whose will is not entirely unknowable. Scripture, tradition, liturgy, and nature all attest that God is a creative God who wills life. God heals, creates community, attends the outcast, suffers, redeems humanity from death, and promises the eschatological renewal of all creation, giving hope. God wills healing, wholeness, life, relief from suffering, and special care—a preferential option, if you will—for the vulnerable and marginalized. God does not will death.

We are images of God, and we are called to follow, to work to realize in the world God's will for healing, wholeness, life, relief from suffering, refusing to abandon the outcast. We are not called to wait passively for God to intervene miraculously, nor are we simply to read God's will from "whatever happens."

Rereading God's will in this way would lend support to the argument for proceeding with the surgery. While Mary will inevitably die either way, Jodie's death does not seem as inevitable. As God wills healing, flourishing, and life for Jodie, we are called to do likewise. The parties to the case ought to do all that they can to heal Jodie and promote her life. Living as a conjoined twin is not a physiologically ideal state. Surgical separation seems the action most directly designed to promote healing and life.

But this is not to say that the parents are wrong. Mary may be less than whole; God's will for life, healing, and wholeness cannot be achieved for her, but God will not abandon her. The parties to the case must likewise embody God's presence to Mary and resist descriptions that dehumanize. Such descriptions fail to embody God's will to be present to those who suffer, not to abandon those who cannot be cured, to walk with the most vulnerable, even if it is in their dying.

Which leads us to the last troubling aspect of the case. Although I have built a case for justifying the surgery, such a case would only permit; it would not necessarily oblige. God, indeed, would not will that the parents kill one of their daughters so that the other might survive. God would not will that they abandon one for the good of the other. If this is how the parents understand their situation, then they have no choice but to oppose the surgery. In conscience, they could not do otherwise.

Perhaps I empathize too much with the parents. While my own moral and theological reflection leads me to agree that the surgery could be permitted,

and may even be the right thing to do, the utilitarian reasoning of the physicians and the courts, as well as the manipulative rhetoric employed, makes me want to champion the parents' case. I want to defend the vulnerable against the powerful. Or perhaps it is the presence of the two babies in my own womb, kicking, rolling, and growing toward their estimated arrival in December. If faced with a similar situation, would I be able to engage in the sort of analysis outlined above, or would my deepest religious instincts find it all to be sophistry? Would I be able to choose between my children? I do not know. But I do know that in a case as morally complex and ambiguous as this, a decision made in conscience by grieving parents ought to be respected by the courts.

A Pastor's Reflections

Archbishop Cormac Murphy-O'Connor

1. I am grateful to the Court for this opportunity to make a submission. My reason for doing so is to offer some reflections based on principles of morality which the Catholic Church holds in common with countless others who value the Judeo-Christian tradition. It is my hope that these reflections may be of some assistance to the Court of Appeal judges in deciding this tragic and heartrending case in which everyone involved is clearly trying to discern, and to do, what is for the best.

2. The arguments presented in this submission stem from the belief that God has given to humankind the gift of life, and as such it is to be revered and cherished. Christian beliefs about the special nature and value of human life lie at the root of the western humanist tradition which continues to influence the values held by many in our society and historically underpins our legal system.

3. There are five overarching moral considerations which govern this submission:
(a) Human life is sacred, that is inviolable, so that one should never aim to cause an innocent person's death by act or omission.[1]
(b) A person's bodily integrity should not be invaded when the consequences of doing so are of no benefit to that person; this is most particularly the case if the consequences are foreseeably lethal.
(c) Though the duty to preserve life is a serious duty, no such duty exists when the only available means of preserving life involves a grave injustice. In this case, if what is envisaged is the killing of, or a deliberate lethal assault on, one of the twins, "Mary," in order to save the other, "Jodie," there is a grave injustice involved. The good end would not justify the means. It would set a very dangerous precedent to enshrine in English case law that it was ever lawful to kill, or to commit a deliberate lethal assault on, an innocent person that good may come of it, even to preserve the life of another.
(d) There is no duty to adopt particular therapeutic measures to preserve life when these are likely to impose excessive burdens on the patient and the patients' carers. Would the operation that is involved in the separation involve such "extraordinary means"? If so, then quite apart from its effect on

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Archbishop Cormac Murphy-O'Connor, Archbishop of Westminster, filed this Submission to the Court of Appeal in the Case of *Central Manchester Healthcare Trust* v *Mr. And Mrs. A and Re a Child* (by her Guardian Ad Litem, the Official Solicitor) 14 September 2000.

Mary, there can be no moral obligation on doctors to carry out the operation to save Jodie, or on the parents to consent to it.
(e) Respect for the natural authority of parents requires that the courts override the rights of parents only when there is clear evidence that they are acting contrary to what is strictly owing to their children. In this case, the parents have simply adopted the only position they felt was consistent with their consciences and with their love for both children.

4. Against the background, this submission, on which I have received legal advice, now turns to the specific arguments adduced. It respectfully invites the Court to reverse the judgment of Johnson J. by outlining the main considerations which, it is submitted, ought to govern the resolution of this case.

5. The following seem to be the case: 1) Mary is a distinct individual, giving some evidence of a distinct life, even if conjoined to another and with seriously defective organs. 2) The life that Mary has is, because of abnormal development, dependent on Jodie's blood supply.

6. The first consideration—implicitly and rightly accepted by Johnson J.[2]—is that each of the conjoined twins is a live-born human being or, in the ancient terminology of the common law, a "reasonable creature in rerum natura."[3] Mary and Jodie have been wholly born alive and enjoy an existence physically independent of their mother. Their parents and the hospital staff rightly consider them to be two individuals.[4]

7. Mary exists as a legal person in spite of the fact that her continued existence may depend on her sister's heart and lungs. Physical independence from the mother is not to be confused with an existence independent from anyone or anything else. Many live-born children are dependent on mechanical ventilators for their hope of survival: they are nevertheless legal persons.

8. As Mary is a legal person, she enjoys the same right to bodily integrity, and the same legal protection from assault and homicide, as other legal persons.

9. Although Mary and Jodie are two seriously abnormal human beings, they remain fully entitled to the protection of the law relating to assault and homicide. The law protects Mary from lethal conduct just as it would protect, say, an anencephalic infant. In *Re J (A Minor)*, Lord Justice Taylor noted that the court's high respect for the sanctity of human life imposes a strong presumption in favour of taking all steps to preserve it, save in exceptional circumstances. He added: "It cannot be too strongly emphasized that the court never sanctions steps to terminate life. That would be unlawful. There is no question of approving, even in a case of the most horrendous disability, a

course aimed at terminating life or accelerating death."[5]

10. A child may not normally be subjected to medical treatment without the consent of her parents. As Lord Donaldson MR observed in *Re J (A Minor)*, although the doctors owe a child patient a duty to care for it in accordance with good medical practice recognized as appropriate by a responsible body of medical opinion: "This is, however, subject to the qualification that, if time permits, they must obtain the consent of the parents before undertaking serious invasive treatment."[6]

11. In *Re F (Mental Patient: Sterilization)*, Lord Brandon stated that treatment would be in the best interests of incompetent (adult) patients "if, but only if, it is carried out in order either to save their lives, or to ensure improvement or prevent deterioration in their physical or mental health."[7] The proposed operation would confer no benefit, therapeutic or otherwise, on Mary. It would serve only to accelerate Mary's death and, therefore, far from being in her interests, would be *against* her interests. It is the parents' right to withhold consent to such lethal conduct.

12. In *Re T*[8] the Court of Appeal held that it would not be in the best interests of a child to undergo a liver transplant operation, despite unanimous medical evidence that with the operation the boy would enjoy many years of normal life and that without the operation he would die. The Court held that the High Court judge had failed to assess the matter more broadly and had overlooked several factors including the relevance or the weight of the mother's concern as to the benefits to her child of the surgery and post-operative treatment, the dangers of failure both long term and short term, the possibility of the need for the further transplants, and the likely length of life and the effect on her child of all those concerns.[9] As Butler-Sloss LJ observed, the practical considerations of the mother's ability to cope with supporting the child in the face of her belief that the operation was not right for him, the requirement to return from their distant Commonwealth country for further treatment, possibly leaving the father behind and losing his support, were not put by the judge into the balance. She added that the prolongation of life was not the sole objective of the court and that to require it at the expense of other considerations may not be in the child's best interests.[10] If the Court respects the parents' refusal of consent because they do not think that a life-saving operation is in their child's best interests, then the Court should a *fortiori* respect parents' refusal of consent because they think a life-taking operation would not be in the best interests of one of their children, Mary, as being a grave injustice to her.

13. I understand that the primary reason for the parents' refusal of consent to the procedure for separating the twins is that it will cause Mary's death. But there is also the question whether, were Jodie to survive separation, subsequent surgical and other care for her would impose excessive burdens both on Jodie and on the parents. When prospective burdens likely to be caused by a therapeutic procedure are reasonably judged to be considerable and the benefits very uncertain, one is justified in declining that procedure.[11] So, though the Court should recognise the lethal consequence for Mary of separation surgery as a decisive reason for respecting parental refusal of consent to it, weight should also be given to the likely burdensome consequences of surgery for Jodie and her parents.

14. Johnson J. stated that "In considering the consequence for Mary of what is proposed, I must, and I do, focus only upon the interests of Mary herself."[12] His Lordship proceeded to reason that it was in Mary's interests for her life to be intentionally terminated and to find a basis upon which that termination could lawfully be justified. In other words, His Lordship declared the operation lawful precisely on the ground that it was "a course aimed at terminating life or accelerating death."[13]

15. His Lordship stated: "I conclude that the few months of Mary's life if not separated from her twin would not simply be worth nothing to her, they would be hurtful" and that "to prolong Mary's life for those few months would, in my judgment, be very seriously to her disadvantage."[14] He invoked the distinction drawn by the House of Lords in *Airedale NHS* v *Bland*[15]—to justify the withdrawal of tube-feeding from a patient in persistent vegetative state—between intentionally terminating life by an act and by an omission. Drawing an analogy between the withdrawal of tube-feeding and the proposed operation, Johnson J. ruled that the operation causing Mary's death would also be an omission: "I have concluded that the operation which is proposed will be lawful because it represents the withdrawal of Mary's blood supply."[16]

16. His Lordship construed the "interests" of Mary in such a way that the bringing about of her death is justified precisely as a desirable objective. The implications of such a line of reasoning are alarming, and in no way mitigated by the penultimate sentence of his judgment: "It is of course plain that the consequence for Mary is one that most certainly does not represent the primary objective of the operation."[17] For his reasoning sought to show not that the "consequence for Mary" would be, say, a tolerable side-effect[18] but rather an appropriate objective of the procedure envisaged. And that is why he thought it necessary to invoke *Bland*.

17. Johnson J.'s reasoning invites several criticisms:
1) It is seriously unreasonable to seek to justify the ending of someone's life on the grounds that that human being's life lacks value or worth,[19] so that he or she would be better off dead. Judgments of that kind should not be admitted as justifications of intentional killing since they are both arbitrary and admit of no principled way of containing their extension to a variety of other conditions, and so are incompatible with the justice which the law should uphold. The indispensable foundation of justice is the basic equality in worth of every human being.
2) The distinction drawn in *Bland* between deliberately ending someone's life by a positive intervention (held to be impermissible) and by a course of conduct classifiable as an omission (held to be permissible) should not be relied on. To aim at ending an innocent person's life is just as wrong when one does it by omission as when one does it by a positive act.[20]
3) In any event, the analogy between the proposed operation and ceasing tube-feeding is strained and unpersuasive. While it is reasonable to classify the latter as an omission, the former is clearly a major surgical intervention.

18. There are those—including no doubt many Catholics—who would argue that one might embark on such an operation without having Mary's death as part of one's aim, and that her death would then be a foreseen but unintended consequence of a morally justifiable operation aimed at saving Jodie. But what is not possible is that one could embark on such an operation without foreseeing that it would do Mary no good[21] but only lethal harm. And even if her death were merely foreseen, the invasion of her bodily integrity is nevertheless intended. The process of separation cannot be thought of with any plausibility as one of cutting into Jodie's body alone; Mary's body is necessarily cut into. And that violation of her bodily integrity is in the nature of the case lethal for her. It therefore cannot be justified.

19. It is submitted that Ward LJ was right to observe: "The moment the knife goes into the united body, it touches the body of unhappy little Mary. It is in that second an assault. You fiddle about, rearrange the plumbing. An hour later you put a clamp on the aorta. You cannot pretend that is not actively engaged in assaulting her integrity. For what justification? None of hers."[22]

20. It is also submitted that the further comment reportedly made by Ward LJ is right:
"If what you propose is the murder of Mary, I cannot see how you can trade off one against the other. My conclusions in the middle of the night were, if the court comes to the view that the operation is contrary to the interest of

Mary, there is no jurisdiction to say that the parental refusal was wrong—and the parental refusal bites."[23]

21. The considerations which, it is submitted, should govern a just resolution of the case are:

1) Mary should be acknowledged to be an individual human being with, as the parents have asserted, a right to life. It is clear that those who have dealt with Mary apart from her parents—the doctors and nursing staff—see Mary as an individual human being. The fact of her dependence should not be allowed to count against her right to life.

2) Mary's right to life should be respected because (a) she possesses the same basic worth and dignity which belongs to every human being, and (b) she has done nothing which could justify killing her. Any attempt (as in Johnson J's judgment) to justify intentionally ending her life on the ground that her life is without any value—indeed, has negative value—should be rejected as incompatible with the truth which should govern all our dealings with each other, viz. the basic equality in worth of every human being. So the argument advanced before the Court of Appeal by counsel for Jodie that Mary's life is "futile"[24] should be rejected. The right not to be unjustly killed is the core of the doctrine of the sanctity of life, which the criminal law has historically upheld, and which it is essential that the law should continue to uphold.[25]

3) The doctrine of the sanctity of life does not entail any absolute requirement that human life is to be preserved wherever and whenever this may seem physically possible.[26] There can, moreover, be no obligation to prolong a person's life when doing so involves something which should be regarded as morally wrong. Thus in the case of Jodie, if what is required to prolong her life involves doing grave wrong to Mary then one is obliged to refrain from that attempt to prolong life. Even if the attempt to save Jodie's life does not require that one has as part of one's aim (as recommended by Johnson J. and, at least implicitly, by counsel for Jodie) ending Mary's life, it will nonetheless amount to an unjust invasion of Mary's bodily integrity. So the attempt to save Jodie's life at the expense of Mary's should be regarded as morally impermissible.

4) The law should not stretch the concept of an "unjust aggressor" to include human beings incapable of entertaining aggressive intentions. Dependence which has resulted from developmental processes, however abnormal, is not aggression.

5) No part of the judgment should rely on the distinction drawn in *Bland* between, on the one hand, deliberately ending someone's life by a positive

intervention (held to be impermissible) and, on the other, by a course of conduct classifiable as an omission (held to be permissible). To aim at ending an innocent person's life is just as wrong by omission as by a positive act.[27]

6) Respect for the natural authority of parents requires that the courts override the rights of parents in the care of their children only when there is clear evidence that the parents are acting contrary to what is owing to their children. The refusal by the parents of Jodie and Mary to consent to surgery to separate them involves no injustice towards either of their children and is indeed wholly reasonable on the grounds they have advanced.[28] In particular, respect for the rights of both their children makes any other choice on their part morally impossible. The Court should respect their refusal and allow the parents to take up, if they wish, the offer of care in Italy, which seems to be the type of care that is consistent with the moral principles they rightly uphold.[29]

NOTES

1. Article 2 of the European Convention states that "Everyone's right to life shall be protected by law. No-one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."
2. His Lordship accepted that Mary was an individual, living being, albeit physically dependent on Jodie for survival: "She lives only because of her attachment of Jodie. The blood and the oxygen that maintain her life come from Jodie." *Central Manchester Healthcare Trust* v. *Mr. and Mrs. A and Re A Child (by her guardian ad litem, the Official Solicitor)*, judgment, p1. Hereafter "judgment." He continued that in determining Mary's future, "the interests of that individual child" were paramount. (judgment, p2).
3. 3 Co Inst 50. Sir James Stephen defined homicide as the killing of a human being, adding: "A child becomes a human being within the meaning of this definition when it has completely proceeded in a living state from the body of its mother, whether it has or has not breathed, and whether the navel string has or has not been divided, and the killing of such a child is homicide whether it is killed by injuries inflicted before, during or after birth." *A Digest of the Criminal Law* (9th edition, by Lewis Francis Sturge, 1950) pp 205-206. (Citations omitted) Smith and Hogan state: "Coke's 'reasonable creature in Rerum natura' is simply the 'person' who is the victim of an offence in the modern law of offences against the person—i.e., any human being." (Criminal Law, 8th edition, 1996, p338). The question, they add, is whether the child has "'an existence independent of its mother,' and that to have such an existence the child must have been wholly expelled from its mother and be alive." (ibid). They point out that the tests of independent existence which the courts have accepted have been an independent circulation and breathing. (See also *C* v *S* [1987] 1 All ER 1230 interpreting the phrase "capable of being born alive" in section 1 of the Infant Life Preservation Act 1929, a decision criticised by John Keown in "The Scope of the Offence of Child Destruction" [1988] 104 *LQR* 120 as inconsistent with the law of homicide's historic prohibition of prenatal assault causing postnatal death even of infants too premature to breathe. See 3 Co Inst 50.) Johnson J. stated that Mary has no "effective" (judgment, p1) or "significant" (judgment, p4) heart or lung function. Even if she has none, independent circulation and breathing are not, it is submitted, the only *indicia* of life. Not only can these functions be substituted in any living person by machines, but Mary's independent movement is no less proof that she is alive. It is reported that "Mary has made some progress in her first four weeks. She has opened an eye and started to suck." [*The Times* 6th September 2000, p6.] And Johnson J. noted that she has some, albeit very little, brain function

(judgment, p4), and that, when stroked her face contorts and when pinched there is some reflex (judgment, p5). How, then, can Mary not be alive? According to *The Times* report of 6th September 2000, just after birth "Mary . . . gasped for breath as doctors struggled to resuscitate her, but her lungs failed completely." The earliest medical notes on Mary taken on the evening of the day of her birth read: "Spontaneous breathing effort on arrival from theatre. Face mask, oxygen given. Intubated. Very stiff to ventilate. No chest movement or breath sounds." Relevantly, section 41 of the Births and Death Registration Act 1953 (as amended by the Still-Birth Definition Act 1992 section 1 (1)) defines "still-born child" as "a child which has issued forth from its mother after the twenty-fourth week of pregnancy and which did not at any time after being completely expelled from its mother breathe *or show any other signs of life* . . ." [emphasis added]

4. *The Times* 6th September 2000.
5. [1990] 2 Med LR 67 at 75
6. At 70.
7. [1990] 2 AC 1 at 55.
8. [1997] 1 All ER 906.
9. At 914 per Butler-Sloss L.J.
10. At 916.
11. In Roman Catholic moral theology one consideration which grounds the judgment that treatment is "extraordinary" (i.e. not obligatory) is the reasonable belief that the prospective benefits of treatment do not clearly warrant the burdensome consequences it is likely to impose. Among the burdensome consequences of treatment which traditional teaching takes into account are: physical pain, psychological stress, social dislocation, and financial expenditure.
12. Judgment, p2.
13. See text at n4, supra.
14. Judgment, p5.
15. [1993] AC 789.
16. Judgment, p8.
17. Judgment, p8.
18. He comments at p7: "Sometimes cases similar to this give rise to the doctrine of double effect, as for example where the court authorises a particular course of treatment with a view to the alleviation of pain, even though as a secondary effect death may ensue. Applied to the circumstances of this case one might argue that the death of Mary was not the primary objective of the separation and that therefore the operation would be lawful. That argument was not addressed to me and I think rightly so."
19. It is regrettable that counsel for Mary appears, wrongly, to have conceded: "I cannot suggest, on her behalf, that there is not a futility in her existence." *The Times* 7th September 2000, p6.
20. A number of the Law Lords in *Bland* remarked on the incoherence introduced into the law of homicide by the case they constructed for permitting the withdrawal of tube-feeding from Tony Bland when they agreed that withdrawal was intended to bring about his death. Thus: Lord Mustill at [1993] 2 WLR 316 at 388-9: "the distortions of a legal structure which is already both morally and intellectually misshapen"; [at 399): "the morally and intellectually dubious distinction between acts and omissions"; Lord Browne-Wilkinson at 387: "the conclusion I have reached will appear to some to be almost irrational . . . I find it difficult to find a moral answer . . ."; Lord Lowry at 379: "a distinction without a difference . . ."
21. Bearing in mind the point made in (1) that it is not true that Mary's life is of negative value.
22. *Daily Telegraph* 6th September 2000.
23. *The Times* 7th September 2000.
24. Quoted in the *Daily Mail* 6th September 2000.
25. House of Lords, Session 1993-94. *Report of the Select Committee on Medical Ethics* Volume 1—Report [HL Paper 21-1], para. 237: "[the] prohibition [of intentional killing] is the cornerstone of law and social relationships. It protects each one of us impartially, embodying the belief that all are equal. We do not wish that protection to be diminished . . ." A joint statement by Anglican and Roman Catholic bishops in the aftermath of the House of Lords judgment in *Bland* included the following passage: "Those who become vulnerable through illness or disease deserve special care and protection. Adherence to this principle provides a fundamental test as to what constitutes a civilised society . . . Because human life is a gift from God to be preserved and cherished, the deliberate taking of human life is prohibited except in self-defence

or the legitimate defence of others . . . a pattern of care should never be adopted with the intention, purpose or aim of terminating life or bringing about the death of a patient. . ."

26. This is not the doctrine of the sanctity of life but rather a position called "vitalism." For a lucid exposition of the precise implications of the doctrine of the sanctity of life, and how it differs from "vitalism" on the one hand and, on the other, the position of those who consider that there are human beings whose lives lack value and as such may be intentionally killed, see John Keown, "Restoring Moral and Intellectual Shape to the Law after *Bland*" (1997) 113 LQR 481.
27. See n20, supra.
28. The BBC website on the case somewhat crassly identifies it as one of "Religion v Medicine." In fact the parents' statement to the court [as reported in Johnson J's judgment] explains what they mean in saying that the doctors' proposal to separate the children, so causing the death of Mary, "is not God's will" by immediately going on to state: "Everyone has the right to life so why should we kill one of our daughters to enable the other one to survive"? In other words, it is the denial of Mary's basic right not to be intentionally killed, entailed, as they see it, by the doctors' proposal, which explains why they think that proposal contrary to God's will. Even if there is no intention to kill, but only assault lethal in its consequences for Mary, their refusal remains well founded in standard requirements of justice.
29. It has been reported that the Archbishop Emeritus of Ravenna, Cardinal Tonini, had offered free hospice care for the children together with free accommodation for their parents. Even if the Court were minded to think the operation might be lawful, it is at the very least the sort of "highly problematic case" referred to by Waite LJ in ReT where there is "genuine scope for a difference of view between parent and judge" and where the stronger the court's inclination should be to the view that "in the last analysis the best interests of every child include an expectation that difficult decisions affecting the length and quality of its life will be taken for it by the parent to whom its care has been entrusted by nature." [1997] 1 All ER 906 at 917-18.

Consciences on Camera

Austen Ivereigh

Until last week we had only been able to see the Maltese parents of the conjoined twins, Jodie and Mary, in our minds. Because they had been portrayed as "devout Catholics" opposed to the operation "for religious reasons," the media had depicted a conflict between science and religion. The surgeons, too, we had to imagine; what had led them to force the operation through the courts? It was a case of dogma blinding the parents to what was obviously the best course, in one view; a case of secularist doctors airily dismissive of a courageous pro-life stance, in the other.

But last week the parents broke our preconceptions along with their silence when the gagging orders were lifted to enable the broadcast of a documentary. Granada TV's *Tonight with Trevor McDonald* contained long interviews with the twins' parents, Michaelangelo and Rina Attard, as well as with two surgeons at St. Mary's Hospital in Manchester.

There were a number of revelations. The first was the deep mutual respect between the Attards and the surgeons, who had after all fought a legal battle lasting as long as the twins had lived. Another was the discovery that the surgeons were committed Christians. Neither Alan Dickson, an evangelical, nor Adrian Bianchi, like the Attards a Maltese Catholic, glossed over the operation's terrible import. Dickson described praying earnestly in his car on the day of the operation "that the outcome would be the best for everyone concerned." The moment Mary was cut away was the "most meaningful and intense" of their careers, they said. "The theatre was very quiet," Dickson told the programme. "People knew what was happening. And it was done with great respect."

As for Rina and Michaelangelo Attard, they were hardly the dogmatic peasants the media had led us to expect. A more gentle, prayerful, thoughtful yet "ordinary" couple could scarcely be imagined. They did not resort to church rules or dogmatic assertions, but spoke out of a prayerful conscience. They had refused to abort their twins because "if you do something like that," said Michael, "it's always inside you; you can keep feeling it all your life." There was no mention of church rules or Catholic teaching, no hint of being beholden to bishops, no gap between their conscience and their religion. They opposed their daughters' separation because of the assumptions

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that lay behind it. Of Mary, Michael said: "We couldn't accept that we have to sacrifice one for the other; that because one's so weak, we have to get rid of her."

This did not mean they were opposed to surgery; they had come from Malta to Manchester in order for their daughters to be separated, they said; they only refused to accept the surgery because the separation involved killing Mary. But did they not realise that "if you did nothing you'd have no children?" the presenter, Martin Bashir, asked. "We always thought it was God's will to keep them like that," explained Michael, "and that He would take them back like that when He was ready to take them back."

The calm courage of the parents was humbling, the doctors' dedication impressive. High horses had to be kept well stabled. But at times the programme's equanimity was excessive; watching it, anyone new to the case would be hard pressed to believe the dilemma had torn the medical and legal professions apart. Now and then the documentary's editorial line slipped free of its cleat and dangled in the wind: the doctors were self-evidently justified, it was assumed, but all could identify with the suffering of the parents. This approach kept the core issues well concealed. How, for example, did the doctors—backed by the courts—justify overriding the parents' wishes, when the moral outcome was so uncertain? Bashir did not enquire.

The surgeons faced "an impossible dilemma," Bashir told us. But this was obviously not true. They were trained to save life on pragmatic, Hippocratic principles. They had gone to court to defend those principles; there was no indication during the programme that they had ever questioned the good of separation that would involve the sacrifice of one twin. Yet how did they square those principles with their religious faith? "I still can't accept that one has to die to save the other," Michael told the presenter, Martin Bashir. "Because they are both our daughters." But the matter had been taken from him by the doctors and the courts, he said, "and it seems we can do nothing about it." How did the doctors justify taking the decision out of the Attards' hands? Bashir never asked.

But you could see the clash of worldviews nonetheless. Rina and Michael spoke of their daughters as equal people bound together, whom they loved in the same way in spite of the obvious contrast in their conditions. Even Mary, the weaker twin, could hold your hand and speak to you, they said. When one was asleep, I would talk to the other, said Rina, "The more I stay with them, the more I do things for them, the more my love grows for them," she added. Their guardian-angel retired-builder friend Tony Hubble, who cried when he first saw Jodie and Mary, summed it up: "As time goes by, you

don't notice that they are conjoined. They are just two babies."

For all their compassion, the doctors took a different view. Like the courts, they seemed to perceive only the dark side of the twins' conjoinedness, and Jodie's and Mary's interests as mutually antagonistic. Both twins would die without intervention, said one of the surgeons, Dickson, as if death were a bitter failure, an outcome not to be contemplated. "If they weren't separated," he adds later, "neither twin was going to enjoy bodily integrity in terms of having an ordinary bodily structure and the quality of life that accompanies that." Mary "was unlikely to have viability in her own right," noted Bianchi, the other surgeon who spoke on the programme. This "was a situation where the better twin, Jodie, had all the systems appropriate to survival," whereas Mary "was in effect a non-survivor," he went on. "She only survived because she was linked to her viable sister."

Bianchi later described reconstructing Jodie, how he brought the pelvic bones together, bringing the genitals and the back passage "into the right position" so that now, he said, "you had somebody who looked like a baby."

Remarkably, the parents' anger showed through their exhaustion only once, when they recalled Lord Justice Ward holding up the sketch of the twins and asking: "What is this creature in the eyes of the law?" "No one can judge without seeing," Rina told Bashir, her eyes flashing with fury. "I think you have to see first, and then, maybe, you can judge." What had Ward missed that they had seen?

A film showing in September in London concerned 30-year-old twins conjoined, like Jodie and Mary, at the abdomen. In *Twin Falls Idaho* one of the brothers is weakening; he threatens to take his stronger sibling down with him—which is why they avoid hospitals. "We checked in together," they tell a prostitute who befriends them, "and we're going to check out together." The day after I saw the film, I was in the Court of Appeal to hear Lord Justice Ward imagine Jodie saying to her sister, "Stop it! You're killing me!" and proceed to order Mary's death on grounds of self-defence. I knew which rang more true.

Still, Jodie's little life is a marvel. She is a fighter. Rina and Michael have not forgotten Mary, but within a matter of months they are likely to take a healthy, if disabled, daughter back with them to Gozo. People there have put up a plaque. "Jodie and Mary," it reads. "God Made Them, Man Separated Them, Both Will Be Joined Safely To The Lord In Heaven, Forever. Glory be to God."

Giving Sorrow Words

Melinda Tankard Reist

Give sorrow words. The grief that does not speak
Whispers the o'erfraught heart and bids it break
—Shakespeare, *Macbeth*, Act IV, scene 3

There are some griefs so loud
They could bring down the sky,
And there are griefs so still
No one knows how deep they lie,
Endured, never expended
—May Sarton

All sorrows can be borne if you put them into
a story or tell a story about them.
—Isak Dinesen

This is a book about women who don't exist.

The women who tell their stories here have all suffered abortion-related grief: a depth of grief they were not prepared for and which many carry still.

But they go unheard. Emotional trauma after an abortion is treated with disdain; dismissed by abortion's advocates as an invention. A number of Australian reports, such as "We Women Decide" and the "Information Paper on Termination of Pregnancy in Australia," as well as recent books on abortion, such as *The Abortion Myth*, and *The Politics of Reproduction*, give the topic scant, almost indifferent, consideration. An international conference of abortionists, held in Queensland in November 1999, devoted just one workshop to the subject. The workshop's title alone—"Reflections on a Long Cherished Belief: Psychological sequelae of abortion"—indicated a lack of a serious regard for the subject, suggesting it is merely an article of faith, a fondly held myth. The workshop tone was generally dismissive of the research on post-abortion aftermath, indeed, one participant said women were "overwhelmingly overjoyed" and even "euphoric" after an abortion.

Conventional wisdom has it that abortion is mostly trouble-free. Because

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of this, those who are troubled are made—indeed, often forced to be—invisible.

The grief of the women documented in this book is real. But their stories, and the stories of women like them, have been disqualified—even by those who say we must listen to women's voices and credit women's experiences.

Attitudes towards women overwhelmed by grief following abortion demonstrate a cruel indifference to women's pain. Their suffering is considered a figment of their imagination; their guilt and remorse a byproduct of social/religious conditioning. In short, they are an embarrassment.

There is another constraint on their expression of grief. The politics surrounding abortion has drowned out the voices of women harmed by it.

How free are women to share their anguish when advocates extol abortion as "an act of individual self-determination," and a "rite of passage into womanhood," a "positive moral good" for women and "a source of fulfilment, transcendence, and growth"? Women whose lives are shattered by the abortion experience and for whom abortion was not a "maturational milestone" and who did not feel it made them a "mistress of their own destiny," are cast aside as over-sensitive, psychologically unstable, victims of socially constructed guilt. Their experience is trivialised.

When an article I wrote about women's negative experiences of abortion appeared in *The Canberra Times* in 1997, a Family Planning figure hastily wrote in to dismiss post-abortion trauma. Similar reactions surfaced in a feminist e-mail discussion about my book which lasted several days. The project was treated with contempt by all but two participants. Someone suggested a quick on-line collection of "stories of women not hurt by abortion" be compiled. This reaction unnecessarily pits women's differing stories against each other and, once again, suggests there is only one authentic experiential reality when it comes to abortion.

A woman's abortion pain is discounted and minimised due to the prevailing view that a termination is really no big deal, "just a curette," an easy fix. Abortion is promoted by many who dominate the discourse on the subject as a procedure without repercussions. Because of this, attempts to discuss women's abortion suffering have been constrained.

Suffering post-aborted women feel a resentment towards a society which ignores or neglects their suffering. They are not allowed to acknowledge or mourn their loss openly. The disdain for women suffering after-abortion trauma sends the message: you're only upset because you've chosen to get upset. *Herald Sun* writer Evelyn Tsitas epitomises this attitude: "Abortion can be an emotional subject—particularly for people who choose to get upset about it. There is a movement taking hold called: 'I'll always regret what I did and want to burn in hell for it.'"

This sort of response to women's abortion-related suffering makes them feel they're being melodramatic, over-sensitive, attention-seeking. But many women are suffering emotionally from a procedure which was portrayed as emotionally benign. They are filled with feelings of self-loss, daily haunted by their abortion experience. "We live with that regret till the day we die and for some we were wishing we too were dead," wrote a woman who signed her name "Tortured."

These women might have been told "there is nothing there," or that their foetuses look like "scraps of paper" (the description given to one woman by a Queensland abortion counsellor). But to them, these were flesh and blood babies; for them, a baby died in an abortion. "I do not think I terminated a 'bunch of cells' but a real human being," wrote Melbourne woman Marguerite, whose story appears here.

Their arms feel empty, they don't like looking at babies, they cry often. They ask: What would my baby have looked like? Was it a boy or a girl? Would-have-been birthdays are quietly marked year after year.

As Margaret Nicol points out in her important work on maternal grief, it is a myth that a mother only bonds with her child after birth. A woman never forgets a pregnancy and the baby that might have been. When the baby is lost and there are no memories or visible reminders of the baby, "The feeling of emptiness and nothingness becomes pervasive and it is this uneasy and anxious void that makes women wonder if they're going crazy."

Women who have been callously treated after losing babies through miscarriage and stillbirth are slowly being given recognition. Women like Glenys Collis: "But at nearly five months it all went wrong. I lost the baby. Of course it wasn't really a baby I had lost, the doctor told me sternly. 'Don't cry, you silly girl. This is all part of being a woman.'"

In 1994, *The Age* published a deeply moving story about an 81-year-old woman, Mrs. Rose, who had searched for forty-seven years to find the place her stillborn child had been buried. Finally, she learned of a mass grave where her baby lay. She had walked around the grave, calling for her lost child. A photo of Mrs. Rose showed her pressing dirt from the mass grave to her cheek. The dirt was, she said, "the first reality I have got."

"It was not the done thing to talk about grief . . . I did not cry . . . I thought about it privately," she said.

The dirt represented the reality of her buried baby. But the woman who has aborted does not even have a handful of dirt. She has nothing to mark that there was a baby and now there is no baby. Like Mrs. Rose forty-seven years ago, it is not the done thing to talk about this grief; she bears alone the

mantle of silent maternal suffering.

The significance of perinatal loss as well as the loss of relinquishing mothers in adoption ("Wasn't it enough that women were conned out of their children: were lied to, harassed, intimidated and had taken from them their child in a way that scarred them permanently?"—Marie Meggit, relinquishing mother and advocate), the anguish of Indigenous mothers whose children were forcibly removed under assimilation policies, and the loss of babies "which might have been" by women who are infertile, has now been acknowledged. Grief for an aborted baby is forbidden grief: it remains taboo.

. . .

Unlike the Maori woman in Perth who took the remains of her aborted baby home and kept them in a jar in the fridge prior to burial, the women in this book did not take their baby remnants home to grieve. But they understand what Bob Ellis wrote about "the aborted child arriving in dreams at her bedside, tugging at her sleeve, calling Mummy, Mummy." Many women feel their sleeves being tugged. Many hear babies crying in the night, calling for them. They feel the shadow of a baby following them. They have a need to mark the event, something to acknowledge the reality of the life that was inside them, and to farewell it: a pair of booties or a teddy bear or doll bought after the abortion, a tattoo, the grave of another dead child visited as though that of their own child, pictures of an unborn child drawn, set aflame and "cremated."

This book is a way for a few of them, at least, to give sorrow words.

MARGUERITE

I open my arms and embrace the air

I realised the other day that my grieving for the dead has come to overshadow my love for the living.

What brought this realisation about? Failed relationships? Disinterest in family and friends? Living without hope for the future? Well it really doesn't matter. What is important is that I have finally admitted to myself that the Ghost of Grief is ruling my life and I have not said "no" to it yet. Not so far.

I wanted my baby. I unequivocally wanted my baby.

I was a twenty-three-year-old student living with a man who was prone to violence, resorted to violence, loathed violence, was violent. I had recently suffered a breakdown. My friends and my family were absent. He said that I did not need them. He took hold of my hand and said that he would be there for me always. But now, we must act responsibly. He said he was not ready for children. He said I was not ready for children. If I had the baby, he would have to leave. There would be other children one day. Truly.

A week later I was in the hospital for the abortion.

I remember the preceding week fairly well. I spent most of it in bed dreaming of my baby. Pretending to myself that if I lay there long enough, I'd give birth before the abortion took place. My body felt soft and roly. My nostrils were overwhelmed by the smell of lavender (I had been packing bags with lavender for extra money).

Protocol had me meet with a doctor. My partner was present. I could not speak. Were they going to ask me if I wanted the abortion? I waited. No questions asked. The day drew nearer and panic set in. I remember one night being so alarmed by pain in my womb that I was convinced I was miscarrying. I ran to the hospital and burst in, tears streaming down my face. "What does it matter?" a nurse scolded. "You're going to have an abortion anyway." I slunk away.

The day of the procedure, my partner fell asleep on the hospital bed while I sat and waited to be taken into theatre. He was tired and exhausted and upset. I was feeling ill-fated. They took me away. On the operating table they proceeded to administer the anaesthetic. I looked into the anaesthetist's face. I said "no." But they performed the operation anyway. No last minute absolution in this place.

The day after the termination I recorded in my diary a conversation which took place between two nurses prior to my going into theatre.

How many ABs today?
Eight.
All we need is one more to beat the other night.
I know. It must be the heat.
It must.

And I dreamed for many weeks later of human beings copulating indiscriminately in the sweltering heat of infra-red streets and alleys, just like animals. The cities were filled with clinics where impregnated women could abort, only to walk back on the streets to begin again the senseless game of conception and murder.

I remember also before the operation, recalling part of Judith Wright's poem "Women to Man."

The eyeless labourer in the night,
The selfless, shapeless seed I hold,
Builds for its resurrection day –
Silent and swift and deep from sight
Foresees the unimagined light.

This is no child with a child's face;
This has no name to name it by:
Yet you and I have known it well
This is our hunter and our chase,
The third who lay in our embrace.

Oh, I felt so betrayed.

I tried to see things this way—this nameless, faceless being which I could "put on hold" for a while and create again when the time was more "appropriate." But there was always a face and a name. From the very beginning I felt connected to my baby and believed that I could see him. I even named him but I do not care to repeat that name these days.

For many months after the termination I woke during the night to hear my baby screaming. Sometimes, confused, I would get up and look for him. Other times I thought, this is my penance, and lay awake and forced myself to listen until he settled down. Eventually, after many months, the screaming turned to crying, and then to whimpering and then to sniffling. One day it stopped altogether. But this was not the end.

To this day, I feel him around me. Sometimes he is more present than at other times. Sometimes I open my arms and embrace the air as if I am holding on to something tangible. Mostly I just talk to him with my hands—making gestures in the air to demonstrate a thought or a sentence or to share an interesting view. Or I might run my hands around the smoothness of his face. I know that there is nothing there, but these are impulses which I carry out without thinking.

While riding on trams I drift off into a fantasy. A magic genie has offered me a wish. One wish. And I am transported back in time where I am swollen and sleepy and so incredibly happy. In this world, my partner is not violent and does not threaten to leave. In this world, I pack my bags and return to my mother until such time as he feels ready to be a father. And that time comes soon.

I lost my child and my relationship broke down. I felt so betrayed I could

no longer sleep with him. I see him around (we are in the same profession). He once told me that he was devastated that I had listened to him then. He holds this wish that I had said 'no' to him and continued with the pregnancy. We both grieve. But we do so alone.

The guilt? There is certainly some of that. I wrote in my diary about a year and a half later:

> I sit like Theseus in my chair. Unmoving. I'm doomed to never sleep but to think think think—to regret the failure of my kingdom, the death of my son, the loss of my honour amongst the gods . . . for once, you know, I was a favourite . . .

This shame is all-consuming. Yet, I am not a religious person. I believe that women have the "right" to have an abortion. That does not stop me from feeling like a murderer for terminating my child. I did not terminate a "bunch of cells" but a real human being. And yet, I do not expect to be shamed by my community. This is not an issue for the moral majority. I have fought the stigma of the majority—on both sides—who talk of my abortion as if it is a "right" or a "wrong." These are simplistic terms which cannot convey what it means to me: a regret and a grief. Abortion is an issue which every woman approaches differently. I have spoken to women who have terminated and who have never looked back. This is not how it is with me. I have looked back and am constantly remembering and grieving. I grieve and see no end to the grief because what I did, rightly or wrongly, was irreversibly and irrevocably permanent. Do you see? I cannot, for all the riches in the world, get my child back.

I was in the Northern Territory recently, at a place called Simpsons Gap, with a man who was my fiancé but is no longer. I had this sudden urge to draw on the sand. I drew a child encased in a kind of aura. My then partner looked at the picture. "Who is the golden child?" I shrugged. But we both knew who it was. And he is a golden child. The least I can do, after having created and then destroyed him, is to embalm him in a warm and golden light. I thought then, for a moment, I could step aside after the pain, guilt and grief, forgive myself, and, perhaps create again.

The desire to conceive again is overwhelming. To somehow bring back what I have lost; to attempt to fill the void. I wrote in my diary:

> . . . There are babies being born all the time – there is no way to escape or deny—my womb opens up like an empty yawn. I want to conceive . . .

But I have not conceived again. I cannot. Will not. I am disabled by the very ability which brought all this about in the first place. I have not recovered my desire for lovemaking. I have not recovered my love of children. I

have not discovered the joy of that selfless giving which is parenthood. Is six years of grief penance enough? Perhaps not. Perhaps the grief is the only way I can keep my child alive in my heart. But with him beckoning daily, I have left no space for anyone or any thing else.

If you ask me what grief is, then it is all that I have described above. It is a mixture of loss and desire, guilt and shame. It is palpable. It permeates waking and sleeping hours. This is the kind of thing every woman considering termination must be aware of before the procedure, not after. In my mind, I have a son I cannot touch and cannot feed and who follows me about like a ghost. He grows with me. I sense him around me all the time. I love him with all my heart yet I do not have the power to bring him back to life.

There is a face and there is a name, but there will not be a resurrection day for the selfless, shapeless seed that I held.

Making It Rare

Kathryn Jean Lopez

Safe, legal, and rare?

Try *anything* but safe.

As the Clinton administration fades into the sunset, this—one of the 42nd president's many lies—may be going with it.

It's not just unborn babies whose lives are lost at the hands of abortion providers. But it is in the tragedy of botched abortions and health risks to women that abortion in America may finally be—gradually—becoming rare.

Ironically, abortion may die the same place it was conceived—in the courts.

Every year for the last nine years, the National Abortion and Reproductive Rights Action League has rung in the new year with *Who Decides: A State-by-State Review of Abortion and Reproductive Rights*. In January, with the inauguration of a Republican, pro-life administration in Washington, D.C. and a vicious fight over a pro-life attorney-general pick, the group and its allies began to wage nothing short of a full-scale rhetorical attack on pro-lifers.

But they've got it wrong. At least, partially wrong. It's not necessarily the threat of pro-lifers forcing through state or federal bans on partial-birth or other forms of abortion that should have advocates of abortion-on-demand most concerned. Nor should they be anxious about Republicans refusing to enforce existing, however unconstitutional, buffer-zone laws seeking to silence pro-lifers outside abortion mills. They need to worry about the abortion providers themselves who, through their own handiwork, have become the targets of increasing numbers of malpractice suits.

So-called reproductive-rights advocates do indeed have reason to be scared. Fewer doctors are willing to perform abortions. The reason, however, isn't necessarily what they claim it is. Threats on their lives are horrible when they happen and are wrong. Period. But, as recent numbers from the National Abortion Federation (of all places) show, incidents of violence or threats of violence have gone down over the past few years. The real reason why fewer doctors than ever—since abortion was legalized in 1973—are willing to perform abortions is because of the increased possibility of being sued if something goes wrong.

Men behaving badly

In February of 1998, a Kentucky court required Dr. Ronachai Banchongmanie

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to pay a woman $21,000 ($3,500 for medical expenses, $17,500 for pain and suffering) for botching her abortion. In January of 1991, Banchongmanie left fetal tissue inside Amy Powell Duncan. Two days later, the tissue became infected and sent her to a local emergency room for five days.

Many doctors set themselves up for lawsuits. The most recent numbers from the Centers for Disease Control indicate that there are at least 15,000 women each year who experience complications involving abortions.

But the CDC numbers don't even begin to tell the story. Since the federal agency began to collect statistics on abortion-related injury and death in 1978, groups like Mark Crutcher's Texas-based Life Dynamics have been pointing out the problems with their data collection.

Even the industry admits to it. As has been quoted elsewhere, Dr. Warren Hern admitted at a recent convening of the National Abortion Federation, "There's a lot of crummy medicine being practiced out there in providing abortion services, and I think that some of the stuff I see coming across my desk is very upsetting . . . We have to do this right or we shouldn't do it."

Even with the multiple grounds for potential lawsuits, however, women are slow to come forward with their stories. Also, finding lawyers willing to take up the cases is a challenge as well: those who are willing to take on these kinds of hot-potato cases against abortionists tend to be young and idealistic, willing to donate their time to the cause.

The onus is on pro-life groups like Life Dynamics, the Justice Foundation, Legal Action for Women, and numerous others that have recently formed, that have set up abortion-malpractice projects, to get the word out, so that families of women who've died, and women who have been injured while undergoing an abortion know they have legal recourse.

In recent years, patient deaths, incomplete abortions, and even post-abortion trauma cases have begun to prove themselves winners in the courtroom. And with legal victories, more professional, well-established law firms are willing to handle the cases. Legal wins are inspiration for women who've suffered, guidance for the well-intentioned pro-life attorney, and a source of fear for the likes of Dr. Moishe Hachamovitch and Dr. John Biskind.

Moishe Hachamovitch was owner of the closed AZ-Women's Center in Phoenix, along with other lightning rods for lawsuits in New York City and Texas. Prior to the death of Lou Anne Herron in his Arizona clinic in April 1998, he had been named in some 30 lawsuits. Herron, a 33-year-old mother of three, reportedly pleaded—to no avail—with clinic workers for help, complaining of numbness in her legs, as she bled. After finding her in the clinic, lying on blood-drenched sheets, apparently dead for a number of hours, paramedics discovered she had suffered a ruptured uterus during a partial-birth

abortion. The doctor who performed the abortion, John Biskind, and a clinic assistant, Carol Stuart, were both indicted on charges of manslaughter. Their convictions, and the case against Hachamovitch are still pending.

John Biskind is exactly what you'd think the abortion industry should be trying to avoid—a true butcher. In 1990 he tried to abort a 27-week-old fetus he misdiagnosed as 10 weeks. In 1998, he tried to abort a 17-year-old's pregnancy, which he estimated as at 13 weeks. Turned out it was full term. The baby survived the botched abortion attempt—with a fractured skull.

Such tales of butchery put the pro-choice movement in an uncomfortable position—opposition to malpractice suits, in general or in specific cases, makes them look insensitive to suffering women.

In response to accusations that he is "using lawsuits to do what the U.S. Supreme Court won't," Theodore Amshoff Jr. told the Louisville, Kentucky *Courier-Journal*, "I don't care if it's an appendectomy or a hysterectomy, if you leave tissue behind that gets infected, and the patient has to be hospitalized, she has a right to recover damages. Her right to sue should not be viewed with a political bent."

ABC

Such clear-cut instances of butchery are not the only horrors abortionists need to be wary of, though. Other things might catch up with them in the courtroom—like breast cancer.

Red River Women's Clinic in Fargo, North Dakota rues the day that Amy Jo Mattson picked up a pamphlet from their clinic. It read: "Anti-abortion activists claim that having an abortion increases the risk of breast cancer and endangers future child-bearing. *None* of these claims are supported by medical research or established medical organizations." And so Mattson, represented by John Kindley, an attorney who has written extensively on the abortion-breast cancer link, is suing the clinic to cease distributing the pamphlet and in its place start disclosing the potential breast-cancer risks associated with abortion.

Kindley argues that an abortion-breast cancer link should not necessarily be a "pro-life" issue. In a *Wisconsin Law Review* article he wrote, "Such litigation and public education should remain separate and distinct from the moral and political debate over abortion. What is at stake is nothing more—and nothing less—than the right to know the truth."

He makes a comparison to smoking. "Although smokers know that smoking is dangerous and still continue to smoke, I think a lot more people would be smoking if it wasn't for the campaign to educate the public about the dangers of smoking. Likewise, I think that informing women about the

abortion-breast cancer link will lead many women to decide not to undergo the procedure, particularly those who are already ambivalent about undergoing the abortion for other reasons."

The source

Ironically, much ammunition for malpractice suits comes from the pen of the late Supreme Court Justice Harry Blackmun, father of *Roe* v. *Wade*. In his lead opinion, he wrote:

> The State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient. . . . The interest obviously extends at least to the performing physician and his staff, to the availability of after-care, and to adequate provision for any complication or emergency that might arise.

Also in *Roe*: "Abortion is inherently and primarily a medical decision" and therefore providers must have a sound basis for "his medical judgment [that] the patient's pregnancy should be terminated."

To simply provide an abortion because it is a woman's birth control of choice, therefore, is negligent.

"I wish you had never been born."

Sadly, more of the successful court cases involving abortion are those of so-called "wrongful birth." Just last year, a New Jersey mother was awarded $1.8 million on the grounds that her son, suffering from Down's Syndrome, should not be alive to burden her. Had her obstetrician performed the requisite prenatal tests and communicated the possibility of Down's Syndrome in her son, she would have aborted him.

"Wrongful birth," however, may have a short life; the trend was struck a blow this fall in the case of seven-year-old Alicia Hester, who was born with spina bifida, a disease that has paralyzed her from the chest down and impaired her mental ability. But her crippling condition is the least of her problems.

The Ohio supreme court ruled that as far as Ohio is concerned, there is no such thing as "wrongful life" or "wrongful birth." Those are the grounds on which Alicia's parents, Patricia and Laurence Hester, sued their two doctors for emotional distress and compensation for Alicia's medical expenses. The Hester argument: They deserve money because Alicia "suffered damage based on the fact of her being born rather than aborted."

In a 4-3 decision, the court ruled that "judges and jurors are no more able to judge the value of life in a 'normal' condition (however that might be defined) as in a nonbeing."

As if the Hesters' legal action wasn't horrific enough, in the same court on the same day, the same judges ruled that another set of parents, Theresa and James Simmener, were not entitled to damages for the birth of their son, who was born with a fatal heart condition. Theresa Simmener became pregnant after undergoing a certain sterilization procedure known as tubal banding. The Simmener's boy died 15 months after he was born.

Should either or both sets of parents appeal, the U.S. Supreme Court, protector of the sacred right to "privacy" above all else, will likely be much friendlier to this most recent attempt at commodifying human life.

Enter the pill

The arrival of RU-486 onto the American scene brings with it the potential for death of babies and women—and lawsuits. The misinformation campaign has been in full swing since the pill's approval by the Food and Drug Administration in October. The FDA kept the news of who would be providing the "kill pills" secret as long as they could, aiding the marketing campaign for the start-up U.S. distributor, Danco.

For eight years, the FDA has desperately tried to entice a pharmaceutical company here in the U.S. to bite. No takers. Finally, a Chinese company that for nine years has been producing the abortion pill for Chinese women took the bait. This pill, mind you, has long been an integral part of China's notorious population-control program. In order to protect the Hua Lian Pharmaceutical factory from protests, the Clinton administration kept its identity (and nationality) quiet. Funny, considering the Chinese government *doesn't allow protests*. Just ask the peaceful members of the spiritual movement Falun Gong, more and more of whom are dying at the hands of Chinese authorities.

Clearly, the manufacturing site of this latest innovation of the reproductive rights movement was meant to be a state secret, but this shouldn't come as a surprise. It's far from the only thing that's been kept hidden from American women.

During the same week the press was all abuzz as word leaked out that the latest issue of the *Journal of the American Medical Association*—not exactly a propaganda arm of the pro-life movement—reports that use of the common birth control pill may increase a woman's chances of developing breast cancer, especially in families with a history of the disease. To which pill-users ought to have responded: Thanks for telling us *now*.

Such studies have been highlighted by pro-lifers in recent years and then quickly dismissed as anti-choice propaganda. How the latest news about the pill will be handled is still a work in progress, but one would think the news

would warrant at least a mention in the "New and Noteworthy" section of Planned Parenthood's state-of-the-art website. Nope. Not a word.

Which brings us back to the question of the latest pill, RU-486. Pro-lifers consistently mention, rote-like, the proven health concerns about the abortion pill—that is, once you've put aside for the moment the one fatality the pill promises.

But the "anti-choicers" are just about the only ones talking about it these days. As some have noted, not only are the side effects downplayed, but the Danco website doesn't even mention the word "abortion." RU-486 is the "early option pill." As American Life League president Judie Brown has noted: "Danco omits the fact that the mother may be witnessing the passage of arms, legs, hands, feet and pieces of the spinal column. To the average teen browsing Danco's website, RU-486 looks like a pill that simply ends an unplanned pregnancy—not one that takes a human life."

One wonders why they don't want to use the A-word. After all, it's not as if the reproductive-rights crowd has ever been forthright about the health dangers a woman faces when undergoing a surgical abortion. In 1989, for instance, the U.S. taxpayer-funded Abortion Surveillance Unit of the Centers for Disease Control reported only 12 deaths at the hands of abortionists. Investigative reporters and pro-life researchers have long since debunked such lies. But you won't find any such admissions or confessions when you visit Planned Parenthood's bright and cheerful webzine for teens.

What women know

In the U.S., the standard of care for women undergoing abortion is far lower than that for patients seeking any other kind of medical treatment. This, despite the pro-abortion spin.

If you are pro-abortion, abortion trumps all.

Nowhere was this more clearly made plain than in the case of Bruce Steir, who perforated the uterus of 27-year-old Sharon Hamptlon in December 1996. As it turned out, in a career in which he claimed to have performed some 40,000 abortions, he had an ugly record, full of suspensions. At the time of Hamptlon's abortion, he was on probation with the state medical board and should have had a mandatory monitor in the room; he did not.

Steir would fly back and forth to different California counties to ensure that areas met the abortion demand. Prosecutors claimed that Steir, in a rush to get a flight back to his San Francisco home, sent Hamptlon home—despite the fact that she was vomiting blood, had chills and a high pulse rate. She died in her mother's car before she made it home, with her 3-year-old son by her side.

The American Civil Liberties Union in California subsequently released an over 8,000-word report entitled "Preventing Unfair Prosecution of Abortion Providers," decrying the ruling against Steir and all malpractice cases against abortionists as simply anti-abortion activists' tyranny over women and their choices.

Steir ultimately pleaded guilty to involuntary manslaughter and was charged with second-degree murder.

The spin

Pro-choice advocates would like to blame pro-lifers for the low standards and unsafe practices. Take for instance a recent controversy in Lancaster, Penn., where the local Planned Parenthood clinic has resorted to using an anonymous out-of-town gynecologist to perform abortions—making oversight impossible.

In Louisville, Kentucky, a clinic director told the local paper, "It's just another deterrent from trying to keep physicians from doing abortions."

In fact, pro-abortion advocates are adamantly against informed choice. Planned Parenthood's website whines: "Undaunted by the absence of compelling evidence associating induced abortion with a woman's risk of developing breast cancer, anti-choice extremists insist on making the connection anyway."

Are we there yet?

Good lawyers, carelessness by the abortion industry and favorable rulings are obviously making doctors nervous. According to the Alan Guttmacher Institute, the number of facilities offering abortions has declined by one-third since 1982, the year during which the largest number was performed in the United States.

Still, abortion remains the most unregulated of all medical procedures in the U.S. In many states, abortion clinics do not have to meet basic ambulatory outpatient standards. As has been pointed out in Louisiana, where a years-long struggle continues to enforce an abortion-clinic-oversight law, "The salon where you get a manicure and facial is inspected regularly by the state. So is your dentist's office. So is the funeral home where your body will be embalmed." Not so with abortion clinics.

As the struggle in Louisiana for oversight over clinics and cases like Bruce Steir's in California—hard fought by the American Civil Liberties Union—show, is that pro-choicers and their allies will do anything to ensure a woman's right to unregulated, unlimited abortion. Who cares about her health? in other words. For activists who normally harp on "life of the mother" exceptions,

it's a curiously hypocritical position.

Reverend Richard John Neuhaus, editor of the journal *First Things*, has written, "Multiplying lawsuits doesn't do much to elevate the level of public discourse, but it has a certain vulgar charm, and may be effective." Likewise, John Kindley agrees that malpractice suits "based on failure to inform about the abortion-breast cancer link" may in fact be the "most promising means of increasing public awareness."

And so, despite a pro-life majority in the White House and the House of Representatives, the courts may hold a more viable strategy for success for American women and their unborn children. Exposing the pro-choice movement's reckless disregard for women's health (besides their complete disregard for the lives of their children) may prove to be an important marker in the war against legal abortion in the United States.

"WHAT'S IN THE HOUSE SPECIAL?"

The Apple Argument Against Abortion

Peter Kreeft

I doubt there are many readers of this magazine who are pro-choice. Why, then, do I write an argument against abortion for its readers. Why preach to the choir?

Preaching to the choir is a legitimate enterprise. Scripture calls it "edification," or "building up." It is what priests, ministers, rabbis, and mullahs try to do once every week. We all need to clean and improve our apologetic weapons periodically; and this argument is the most effective one I know for actual use in dialogue with intelligent pro-choicers.

I will be as upfront as possible. I will try to prove the simple, commonsensical reasonableness of the pro-life case by a sort of Socratic logic. My conclusion is that *Roe* v. *Wade* must be overturned, and my fundamental reason for this is not only because of what abortion is but because *we all know* what abortion is.

This is obviously a controversial conclusion, and initially unacceptable to all pro-choicers. So, my starting point must be noncontroversial. It is this: We know what an apple is. I will try to persuade you that if we know what an apple is, *Roe* v. *Wade* must be overthrown, and that if you want to defend *Roe*, you will probably want to deny that we know what an apple is.

1. We Know What an Apple Is

Our first principle should be as undeniable as possible, for arguments usually go back to their first principles. If we find our first premise to be a stone wall that cannot be knocked down when we back up against it, our argument will be strong.

Tradition states and common sense dictates our premise that we know what an apple is. Almost no one doubted this, until quite recently. Even now, only philosophers, scholars, "experts," media mavens, professors, journalists, and mind-molders dare to claim that we do not know what an apple is.

2. We Really Know What an Apple Really Is

From the premise that "we know what an apple is," I move to a second principle that is only an explication of the meaning of the first: that we *really* know what an apple *really* is. If this is denied, our first principle is refuted. It becomes, "We know, but not really, what an apple is, but not really." Step 2

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says only, "Let us not 'nuance' Step 1 out of existence!"

3. We Really Know What Some Things Really Are

From Step 2, I deduce the third principle, also an immediate logical corollary, that we really know what some things (other things than apples) really are. This follows if we only add the minor premise that an apple is another thing.

This third principle, of course, is the repudiation of skepticism. The secret has been out since Socrates that skepticism is logically self-contradictory. To say, "I do not know" is to say "I know I do not know." Socrates's wisdom was not skepticism. He was *not* the only man in the world who knew that he did not know. He had knowledge; he did not claim to have wisdom. He knew he was not *wise*. That is a wholly different affair and is not self-contradictory. All forms of skepticism are logically self-contradictory, nuance as we will.

All talk about rights, about right and wrong, about justice, presupposes this principle that we really know what some things really are. We cannot argue about anything at all—anything real, as distinct from arguing about arguing, and about words, and attitudes—unless we accept this principle. We can talk about feelings without it, but we cannot talk about justice. We can have a reign of feelings—or a reign of terror—without it, but we cannot have a reign of law.

4. We Know What Human Beings Are

Our fourth principle is that we know what we are. If we know what an apple is, surely we know what a human being is. For we aren't apples; we don't live as apples, we don't feel what apples feel (if anything). We don't experience the existence or growth or life of apples, yet we know what apples are. *A fortiori*, we know what we are, for we have "inside information," privileged information, more and better information.

We obviously do not have total, or even adequate, knowledge of ourselves, or of apples, or (if we listen to Aquinas) of even a flea. There is obviously more mystery in a human than in an apple, but there is also more knowledge. I repeat this point because I know it is often not understood: To claim that "we know what we are" is *not* to claim that we know *all* that we are, or even that we know *adequately* or *completely* or *with full understanding* anything at all of what we are. We are a living mystery, but we also *know* much of this mystery. Knowledge and mystery are no more incompatible than eating and hungering for more.

5. We Have Human Rights Because We Are Human

The fifth principle is the indispensable, common-sensical basis for human

rights: We have human rights because we are human beings.

We have not yet said *what* human beings are (e.g., do we have souls?), or *what* human rights are (e.g., do we have the right to "life, liberty, and the pursuit of happiness"?), only the simple point that we have *whatever* human rights we have because we are *whatever* it is that makes us human.

This certainly sounds innocent enough, but it implies a general principle. Let's call that our sixth principle.

6. Morality Is Based on Metaphysics

Metaphysics means simply philosophizing about reality. The sixth principle means that rights depend on reality, and our knowledge of rights depends on our knowledge of reality.

By this point in our argument, some are probably feeling impatient. These impatient ones are common-sensical people, uncorrupted by the chattering classes. They will say, "Of course. We know all this. Get on with it. Get to the controversial stuff." Ah, but I suspect we began with the controversial stuff. For not all are impatient; others are uneasy. "Too simplistic," "not nuanced," "a complex issue"—do these phrases leap to mind as shields to protect you from the spear that you know is coming at the end of the argument?

The principle that morality depends on metaphysics means that rights depend on reality, or what is *right* depends on what *is*. Even if you say you are skeptical of metaphysics, we all do use the principle in moral or legal arguments. For instance, in the current debate about "animal rights," some of us think that animals do have rights and some of us think they don't, but we all agree that if they do have rights, they have animal rights, not human rights or plant rights, because they are animals, not humans or plants. For instance, a dog doesn't have the right to vote, as humans do, because dogs are not rational, as humans are. But a dog probably does have a right not to be tortured. Why? Because of what a dog *is*, and because we really know a little bit about what a dog really is. We really know that a dog feels pain and a tree doesn't. Dogs have feelings, unlike trees, and dogs don't have reason, like humans; that's why it's wrong to break a limb off a dog but it's not wrong to a break a limb off a tree, and that's also why dogs don't have the right to vote but humans do.

7. Moral Arguments Presuppose Metaphysical Principles

The main reason people deny that morality must (or even can) be based on metaphysics is that they say we don't really know what reality is, we only have opinions. They point out, correctly, that we are less agreed about morality than science or everyday practical facts. We don't differ about whether

the sun is a planet or whether we need to eat to live, but we do differ about things like abortion, capital punishment, and animal rights.

But the very fact that we argue about it—a fact the skeptic points to as a reason for skepticism—is a refutation of skepticism. We don't argue about how we feel, about subjective things. You never hear an argument like this: "I feel great." "No, I feel terrible."

For instance, both pro-lifers and pro-choicers usually agree that it's wrong to kill innocent persons against their will and it's not wrong to kill parts of persons, like cancer cells. And both the proponents and opponents of capital punishment usually agree that human life is of great value; that's why the proponent wants to protect the life of the innocent by executing murderers and why the opponent wants to protect the life even of the murderer. They radically disagree about how to apply the principle that human life is valuable, but they both assume and appeal to that same principle.

8. Might Making Right

All these examples so far are controversial. How to *apply* moral principles to these issues is controversial. What is not controversial, I hope, is the principle itself that human rights are possessed by human beings because of what they are, because of their being—and not because some other human beings have the power to enforce their will. That would be, literally, "might makes right." Instead of putting might into the hands of right, that would be pinning the label of "right" on the face of might: justifying force instead of fortifying justice. But that is the only alternative, no matter what the political power structure, no matter who or how many hold the power, whether a single tyrant, or an aristocracy, or a majority of the freely voting public, or the vague sentiment of what Rousseau called "the general will." The political form does not change the principle. A constitutional monarchy, in which the king and the people are subject to the same law, is a rule of law, not of power; a lawless democracy, in which the will of the majority is unchecked, is a rule of power, not of law.

9. Either All Have Rights or Only Some Have Rights

The reason all human beings have human rights is that all human beings are human. Only two philosophies of human rights are logically possible. Either all human beings have rights, or only some human beings have rights. There is no third possibility. But the *reason* for believing either one of these possibilities is even more important than which one you believe.

Suppose you believe that all human beings have rights. Do you believe that all humans beings have rights *because they are human beings*? Do you

dare to do metaphysics? Are human rights "inalienable" because they are inherent in human nature, in the human essence, in the human being, in what humans, in fact, *are*? Or do you believe that all human beings have rights *because some human beings say so*—because some human wills have declared that all human beings have rights? If it's the first reason, you are secure against tyranny and usurpation of rights. If it's the second reason, you are not. For human nature doesn't change, but human wills do. The same human wills that say today that all humans have rights may well say tomorrow that only some have rights.

10. Why Abortion is Wrong

Some people want to be killed. I won't address the morality of *voluntary* euthanasia here. But clearly, *involuntary* euthanasia is wrong; clearly, there is a difference between imposing power on another and freely making a contract with another. The contract may still be a bad one, a contract to do a wrong thing, and the mere fact that the parties to the contract entered it freely does not automatically justify doing the thing they contract to do. But harming or killing another against his will, not by free contract, is clearly wrong; if that isn't wrong, what is?

But that's what abortion is. Mother Teresa argued, simply, "If abortion is not wrong, nothing is wrong." The fetus doesn't want to be killed; it seeks to escape. Did you dare to watch *The Silent Scream*? Did the media dare to allow it to be shown? No, they will censor nothing except the most common operation in America.

11. The Argument From the Nonexistence of Nonpersons

Are persons a subclass of humans, or are humans a subclass of persons? The issue of distinguishing humans and persons comes up only for two reasons: the possibility that there are nonhuman persons, like extraterrestrials, elves, angels, gods, God, or the Persons of the Trinity, or the possibility that there are some nonpersonal humans, unpersons, humans without rights.

Traditional common sense and morality say all humans are persons and have rights. Modern moral relativism says that only some humans are persons, for only those who are given rights by others (i.e., those in power) have rights. Thus, if we have power, we can "depersonalize" any group we want: blacks, slaves, Jews, political enemies, liberals, fundamentalists—or unborn babies.

A common way to state this philosophy is the claim that membership in a biological species confers no rights. I have heard it argued that we do not treat any other species in the traditional way—that is, we do not assign equal

rights to all mice. Some we kill (those that get into our houses and prove to be pests); others we take good care of and preserve (those that we find useful in laboratory experiments or those we adopt as pets); still others we simply ignore (mice in the wild). The argument concludes that therefore, it is only sentiment or tradition (the two are often confused, as if nothing rational could be passed down by tradition) that assigns rights to *all* members of our species.

12. Three Pro-Life Premises and Three Pro-Choice Alternatives

We have been assuming three premises, and they are the three fundamental assumptions of the pro-life argument. Any one of them can be denied. To be pro-choice, you *must* deny at least one of them, because taken together they logically entail the pro-life conclusion. But there are three different kinds of pro-choice positions, depending on which of the three pro-life premises is denied.

The first premise is scientific, the second is moral, and the third is legal. The scientific premise is that the life of the individual member of every animal species begins at conception. (This truism was taught by all biology textbooks before *Roe* and by none after *Roe*; yet *Roe* did not discover or appeal to any new scientific discoveries.) In other words, all humans are human, whether embryonic, fetal, infantile, young, mature, old, or dying.

The moral premise is that all humans have the right to life because all humans are human. It is a deduction from the most obvious of all moral rules, the Golden Rule, or justice, or equality. If you would not be killed, do not kill. It's just not just, not fair. All humans have the human essence, and, therefore, are essentially equal.

The legal premise is that the law must protect the most basic human rights. If all humans are human, and if all humans have a right to life, and if the law must protect human rights then the law must protect the right to life of all humans.

If all three premises are true, the pro-life conclusion follows. From the pro-life point of view, there are only three reasons for being pro-choice; scientific ignorance—appalling ignorance of a scientific fact so basic that nearly everyone in the world knows it; moral ignorance—appalling ignorance of the most basic of all moral rules; or legal ignorance—appalling ignorance of one of the most basic of all the functions of law. But there are significant differences among these different kinds of ignorance.

Scientific ignorance, if it is not *ignoring*, or deliberate denial or dishonesty, is perhaps pitiable but not morally blameworthy. You don't have to be wicked to be stupid. If you believe an unborn baby is only "potential life" or

a "group of cells," then you do not believe you are killing a human being when you abort and might have no qualms of conscience about it. (But why, then, do most mothers who abort feel such terrible pangs of conscience, often for a lifetime?)

Most pro-choice arguments, during the first two decades after *Roe*, disputed the *scientific* premise of the pro-life argument. It might be that this was almost always dishonest rather than honest ignorance, but perhaps not, and at least it didn't directly deny the essential second premise, the *moral* principle. But pro-choice arguments today increasingly do.

Perhaps pro-choicers perceive that they have no choice but to do this, for they have no other recourse if they are to argue at all. Scientific facts are just too clear to deny, and it makes no legal sense to deny the legal principle, for if the law is not supposed to defend the right to life, what *is* it supposed to do? So they have to deny the moral principle that leads to the pro-life conclusion. This, I suspect, is a vast and major sea change. The camel has gotten not just his nose, but his torso under the tent. I think most people refuse to think or argue about abortion because they see that the only way to remain pro-choice is to abort their reason first. Or, since many pro-choicers insist that abortion is about sex, not about babies, the only way to justify their scorn of virginity is a scorn of intellectual virginity. The only way to justify their loss of moral innocence is to lose their intellectual innocence.

If the above paragraph offends you, I challenge you to calmly and honestly ask your own conscience and reason whether, where, and why it is false.

13. The Argument from Skepticism

The most likely response to this will be the charge of dogmatism. How dare I pontificate with infallible certainty, and call all who disagree either mentally or morally challenged! All right, here is an argument even for the metaphysical skeptic, who would not even agree with my very first and simplest premise, that we really do know what some things really are, such as what an apple is. (It's only after you are pinned against the wall and have to justify something like abortion that you become a skeptic and deny such a self-evident principle.)

Roe used such skepticism to justify a pro-choice position. Since we don't know when human life begins, the argument went, we cannot impose restrictions. (Why it is more restrictive to give life than to take it, I cannot figure out.) So here is my refutation of *Roe* on its own premises, its skeptical premises: Suppose that not a single principle of this essay is true, beginning with the first one. Suppose that we do not even know what an apple is. Even

then abortion is unjustifiable.

Let's assume not a dogmatic skepticism (which is self-contradictory) but a skeptical skepticism. Let us also assume that we do not know whether a fetus is a person or not. In objective fact, of course, either it is or it isn't (unless the Court has revoked the Law of Noncontradiction while we were on vacation), but in our subjective minds, we may not know what the fetus is in objective fact. We do know, however, that either it is or isn't by formal logic alone.

A second thing we know by formal logic alone is that either we do or do not know what a fetus is. Either there is "out there," in objective fact, independent of our minds, a human life, or there is not; and either there is knowledge in our minds of this objective fact, or there is not.

So, there are four possibilities: 1) The fetus is a person, and we know that; 2) The fetus is a person, but we don't know that; 3) The fetus isn't a person, but we don't know that; or 4) The fetus isn't a person, and we know that. What is abortion in each of these four cases?

In Case 1, where the fetus is a person *and you know that*, abortion is murder. First-degree murder, in fact. You deliberately kill an innocent human being.

In Case 2, where the fetus is a person and you *don't* know that, abortion is manslaughter. It's like driving over a man-shaped overcoat in the street at night or shooting toxic chemicals into a building that you're not sure is fully evacuated. You're not sure there is a person there, but you're not sure there isn't either, and it just so happens that there is a person there, and you kill him. You cannot plead ignorance. True, you didn't know there was a person there, but you didn't know there *wasn't* either, so your act was literally the height of irresponsibility. This is the act *Roe* allowed.

In Case 3, the fetus isn't a person, *but you don't know that*. So abortion is just as irresponsible as it is in the previous case. You ran over the overcoat or fumigated the building without knowing that there were no persons there. You were lucky, there weren't. But you didn't care; you didn't take care; you were just as irresponsible. You cannot legally be charged with manslaughter, since no man was slaughtered, but you can and should be charged with criminal negligence.

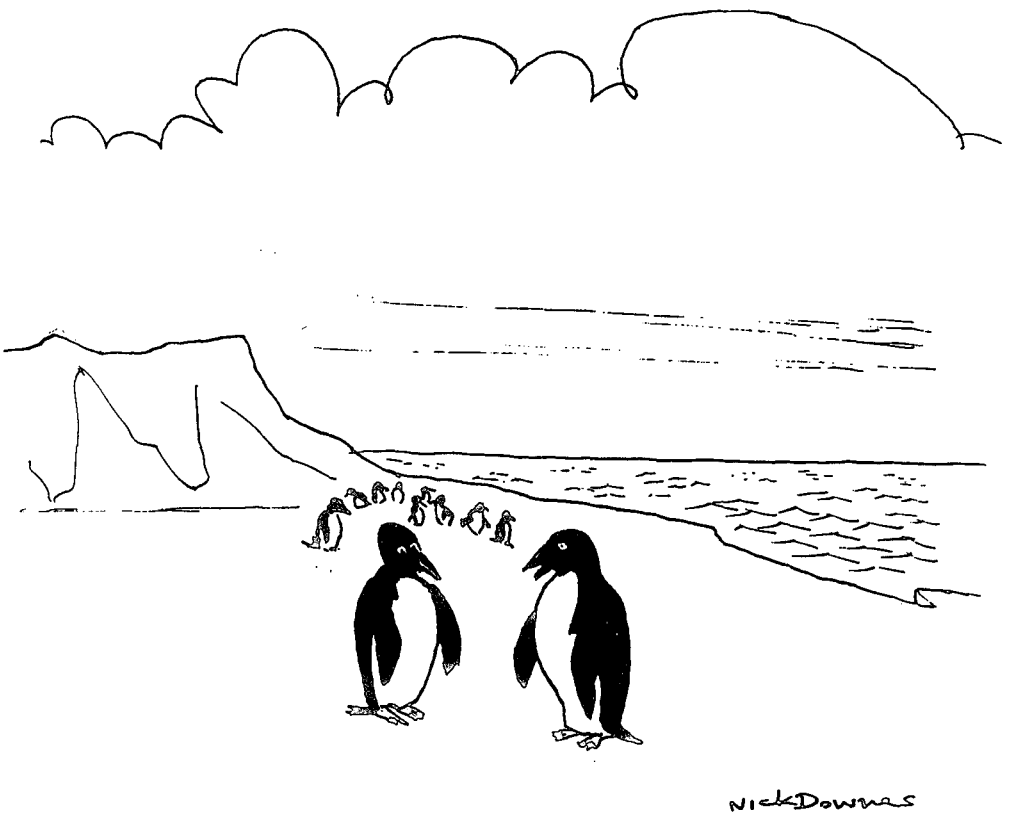
Only in Case 4 is abortion a reasonable, permissible, and responsible choice. But note: What makes Case 4 permissible is not merely the fact that the fetus is not a person but also your knowledge that it is not, your overcoming of skepticism. So skepticism counts not for abortion but against it. Only if you are not a skeptic, only if you are a dogmatist, only if you are certain that there is no person in the fetus, no man in the coat, or no person in the building,

may you abort, drive, or fumigate.

This undercuts even our weakest, least honest escape: to pretend that we don't even know what an apple is, just so we have an excuse for pleading that we don't know what an abortion is.

One Last Plea

I hope a reader can show me where I've gone astray in the sequence of 13 steps that constitute this argument. I honestly wish a pro-choicer would someday show me one argument that proved that fetuses are not persons. It would save me and other pro-lifers enormous grief, time, effort, worry, prayers, and money. But until that time, I will keep arguing, because it's what I do as a philosopher. It is my weak and wimpy version of a mother's shouting that something terrible is happening: Babies are being slaughtered. I will do this because, as Edmund Burke declared, "The only thing necessary for the triumph of evil is that good men do nothing."



"WHAT DO YOU MEAN 'IS IT A RENTAL?'"

Bioethics:

The Fifth Column in Catholic Institutions

Wesley J. Smith

Affirming the sanctity of human life and accepting all persons as being of equal inherent moral worth is the pillar of Western civilization. Providing optimal care to each patient regardless of the seriousness of his or her illness or disability is the essence of a doctor's duty under the Hippocratic Oath. But now, these fundamental principles—the keys to the practice of moral medicine—are under unremitting assault by proponents of a movement within moral philosophy known as bioethics.

The bioethics movement preaches a "new medicine" in which some people have greater moral worth than others and in which the young and vital are given greater access to medical resources than are the aged, debilitated, and dying. Rejecting traditional Western beliefs in the sanctity and equality of all human life, contemporary bioethics is fundamentally utilitarian, either expressly or implicitly based on outcomes. Indeed, the movement denigrates Hippocratic values as paternalistic and disdains the sanctity-of-life ethic as an archaic vestige of our religious past. Such beliefs have consequences: thanks in large part to bioethics, the weakest and most vulnerable among us are in danger of becoming *personae non gratae* in a medical system that increasingly places its conception of "quality of life" ahead of the sanctity of life itself.

For the last thirty years the Catholic Church has been a bulwark against the encroachment of the new medicine through its adamantine commitment to the sanctity of life and to the first-do-no-harm principle of the Hippocratic Oath. Indeed, Catholic medical ethics requires physicians to give the greatest commitment to the very patients that bioethics disdains. According to the Ethical and Religious Directives for Catholic Health Care Services, issued by the National Conference of Catholic Bishops, "Catholic health care should distinguish itself by service to and advocacy for those people whose social conditions put them at the margins of our society and makes them particularly vulnerable to discrimination." Among those whom the Bishops highlight for special protection are the elderly, the person with an incurable disease, and "in particular, the person with mental or physical disabilities," who,

Wesley J. Smith, an attorney for the International Anti-Euthanasia Task Force, is the author of *Culture of Death: The Destruction of Medical Ethics in America*, just out from Encounter Books.

regardless of the cause or severity of the condition, "must be treated as a unique person of incomparable worth, with the same right to life and to adequate health care as all other persons."

Obviously, there is a wide gulf between secular bioethics and the Catholic approach to medicine. But now, there is a growing challenge to the Church's traditional medical ethics from a fifth column of Catholic medical ethicists and even priests who want to remake Catholic medicine in the image of more secular bioethics. "You can certainly see the influence [of these advocates] in certain Catholic publications," John Haas, President of the National Catholic Bioethics Center, told me. "Indeed, the thinking of some Catholic bioethicists has become so distorted" that their advocacy amounts to "crass utilitarianism dressed in Catholic clothes."

Two articles on bioethics in the July-August 2000 *Health Progress* bear out Haas's warning. *Health Progress* describes itself as the "official journal" of the Catholic Health Association of the United States, an umbrella organization for most of the nation's Catholic hospitals. This is the last place one should read articles explicitly rejecting the sanctity and equality of life. But "Rationing, Equity, and Affordable Care" by the influential secular bioethicist Daniel Callahan, and "Time for a Formalized Medical Futility Policy," co-authored by a priest/bioethicist, the Rev. Peter A. Clark, and an attorney, Catherine M. Mikus, are just that. Indeed, apart from their weak attempts to get around Catholic ethical impediments to the policies they espouse, there is little to distinguish their writings from articles routinely published in secular bioethical journals.

Daniel Callahan is a pioneer in the bioethics movement, the co-founder of the bioethical think tank The Hastings Center. He has written that the key factor in the remarkable success of bioethics was its ability to "push religion aside." At the same time, he has managed to maintain his standing as a Catholic expert on ethics-related issues writing frequently in Catholic periodicals.

Callahan is the nation's foremost proponent of health-care rationing. He has written several books dealing with the issue, the latest being *False Hopes: Why America's Quest for Perfect Health Is a Recipe for Failure*, in which he promoted the notion of a "sustainable" medical system. In order to achieve that goal, he wrote, draconian limits would have to be imposed on medical research, and resources for treatment for both acute and chronic cases would be constrained to the point that doctors would be required to deny beneficial treatment to some patients. The money thereby saved would be used to expand medical coverage (such as it would be) to the currently uninsured and to fund public-health education programs.

Callahan claims that both market and socialized systems of health-care

financing are failing economically because neither is based on the principle of sustainability. His radically non-Catholic solution? We must stop thinking about the health of individuals and instead take a "population perspective." "It is socioeconomic conditions and good public health programs that decisively determine the health of populations," he asserts, "not the provision of medicine and healthcare." Thus Callahan advocates casting aside "the Hippocratic tradition with its patient-centered values, the Christian tradition with its respect for individual dignity, and the reigning American (and Western) liberal individualism." In place of these traditions he would establish a "just" and rationed health-care system in which "public health" would form "the broad base" of the pyramid and high-technology medicine "the narrow tip." In other words, we would redirect much of our medical resources away from treating the sick and disabled in order to fund public-health bureaucracies.

Callahan's reliance on public-health education as the foundation of his health-care system seems rather naïve given the track record of such programs. After all, despite intense publicly and privately funded education efforts, people continue to contract HIV at the sustained rate of about 40,000 per year, teenagers still take up smoking, and people form ever-longer lines at fast food counters. Callahan knows this but instead of rethinking his reliance on public-health education, he points the finger of blame for our continued poor habits at the general availability of medical care. Health education efforts are "less likely to succeed," he writes, as long as the public "continues to believe that strenuous efforts to live a healthy life are not really necessary since medicine is there to rescue us from our folly when our bodies at last succumb to the indignities our behavior has visited upon them."

Rationing would force us into leading healthful lives. "The escape valve of last-minute [medical] rescue" would no longer be available, Callahan asserts. Sustainable healthcare would send "a clear message" that medicine will not "save you from yourself." In other words, in a system of sustainable medicine, you had better not eat butter because the heart bypass operation that is denied may be yours.

Callahan fails to mention that any attempt to implement his rationing system would inevitably become a power-based enterprise, the very antithesis of the Catholic approach to medicine. We witnessed this phenomenon at work when Oregon decided to ration access to its Medicaid program. A rumble broke out when early versions of the plan placed treatment for late-stage AIDS very low on the rationing priority list—meaning that in all likelihood AIDS patients on Medicaid would be denied life-extending treatment. Outraged

AIDS activists mobilized politically to block this provision. When the dust settled, all Oregon AIDS patients on Medicaid were entitled to receive care. However, other groups of dying people did not fare as well. For example, curative treatment for late-stage cancers with less than a 5 percent survival rate past five years is not covered by Oregon Medicaid even though these treatments can often give the patient several more months or years of life.

Imagine the free-for-all if the U. S. government seriously proposed Callahan-style rationing: it would be the multiple-sclerosis families versus advocates for the mentally ill; prostate-cancer patients versus breast-cancer patients; ACT UP versus the AARP. Those groups which have political muscle or enjoy widespread public sympathy and acceptance would come out ahead, while people who either are disdained by the wider community or lack the means to organize effectively would be the losers.

We may hope that the rich heritage of individualism in the United States will make Callahan's efforts to create a bureaucratically rationed medical system a quixotic quest. Would that the same were true of Futile Care Theory, a relatively new bioethics concept that would give doctors the right to refuse life-sustaining treatment to patients whose lives they believe to be not worth living. As reported in the *Journal of the American Medical Association* and other professional publications, for the last several years hospitals throughout the country have quietly promulgated futile-care protocols. Like Napoleon crowning himself emperor, they grant themselves the right to decide who lives and who dies. Demonstrating how seriously the bioethics fifth column has already distorted Catholic medical ethics, some Catholic hospitals have formally instituted futile care protocols:

◦ The Alexian Brothers of San José: In 1997, the Alexian Brothers instituted a futility protocol that identifies specific maladies for which *any* medical treatment or medical testing (other than comfort care) shall be deemed "inappropriate." Among these conditions are "irreversible coma, anencephaly, permanent dependence on intensive care to sustain life, terminal illness with neurological, renal, oncological or other devastating disease, [and] untreatable lethal congenital abnormality."

Any doctor who wishes to provide care to these patients at Alexian Brothers must make a written request. To enforce the policy, protocol encourages staff members to snitch on doctors who they believe are providing treatment behind the administrators' backs. Should the patient or family insist that treatment continue, the dispute is to be resolved quasi-judicially by the hospital ethics committee. To prevent families from circumventing an adverse ruling—say, by finding another doctor within the hospital—the protocol

prevents *any* physician from providing care that the committee has denied.*

• The Mercy Systems Futile Care Policy: In their article in the same issue of Health Progress in which Callahan wrote, Fr. Peter Clark and Catherine Mikus reported that they had helped craft a futility policy for the Mercy Health Systems of Philadelphia. Tellingly, although Mercy is a Catholic institution, the new Mercy policy is virtually the same as that put in place by secular bioethicists for many Houston-area hospitals, as described in a 1996 article in the *Journal of the American Medical Association.*

Unlike the Alexian Brothers protocol, the Mercy policy does not explicitly list maladies for which wanted treatment is to be denied. Rather, a bureaucratic process is established by which a decision to unilaterally cut off treatment (again, other than comfort care) can be made when a patient refuses to accept a doctor's recommendation against continuing treatment. The first step in the process is mediation by the hospital ethics committee. If the committee can't achieve a consensus between the doctor and the patient or family, the matter is brought before a quasi-judicial administrative body called the Institutional Interdisciplinary Review Board (IIRB). If the IIRB orders the treatment terminated, there is no appeal. Moreover, as at Alexian Brothers, even if a doctor is found who is willing to provide the "futile" treatment, he or she will be barred from doing so in the entire Mercy system.

In both protocols, once a formal ruling against further treatment has been made, the family's only options are to acquiesce, find another hospital willing to admit the patient (a highly unlikely scenario for the patients in question), or obtain a court order forcing the hospital to continue treatment. The last option is the one most feared by futilitarians, which is why there is such a push in bioethics to promulgate formal futility protocols. Indeed, Clark and Mikus assert, protecting the doctors and the hospital from litigation is precisely the point of the enterprise: the pre-established rules would help doctors "to fashion a strong defense" by demonstrating that they have not violated their institution's "standard of care." This is blatant bootstrapping: we get to refuse wanted care because we said in advance that we could. But considering that judges and juries are loath to gainsay doctors, it is likely to be effective, leaving desperate patients and families literally nowhere to turn.

Futile-care policies directly contradict Catholic moral teaching concerning end-of-life care. Indeed, the Bishops identify "omissions" that are intended to cause death—certainly the point of futility protocols—as a form of euthanasia, an act unequivocally forbidden by Catholic moral teaching. Clark and Mikus try to get around this by claiming that futile-care policies are

* Alexian Brothers of San Jose recently was sold to Columbia HCA, a for-profit hospital chain.

actually "for the patient's benefit" because the treaments in question are "often burdensome for the patient and medically inappropriate because . . . they fail to achieve the desired physiological effect." This assertion begs at least two questions: Desired by whom? What is "the desired physiological effect"?

Neither secular nor Catholic medical ethics requires doctors to provide care that has no physiological effect. To use an extreme illustration, no doctor should accede to a patient's demand for an appendectomy to cure an earache because the desired treatment would have no benefit whatsoever. If refusing such care were all that medical futility was about, there would be no controversy. But neither the Mercy nor the Alexian Brothers policies (nor similar secular protocols) define medical futility in this manner.

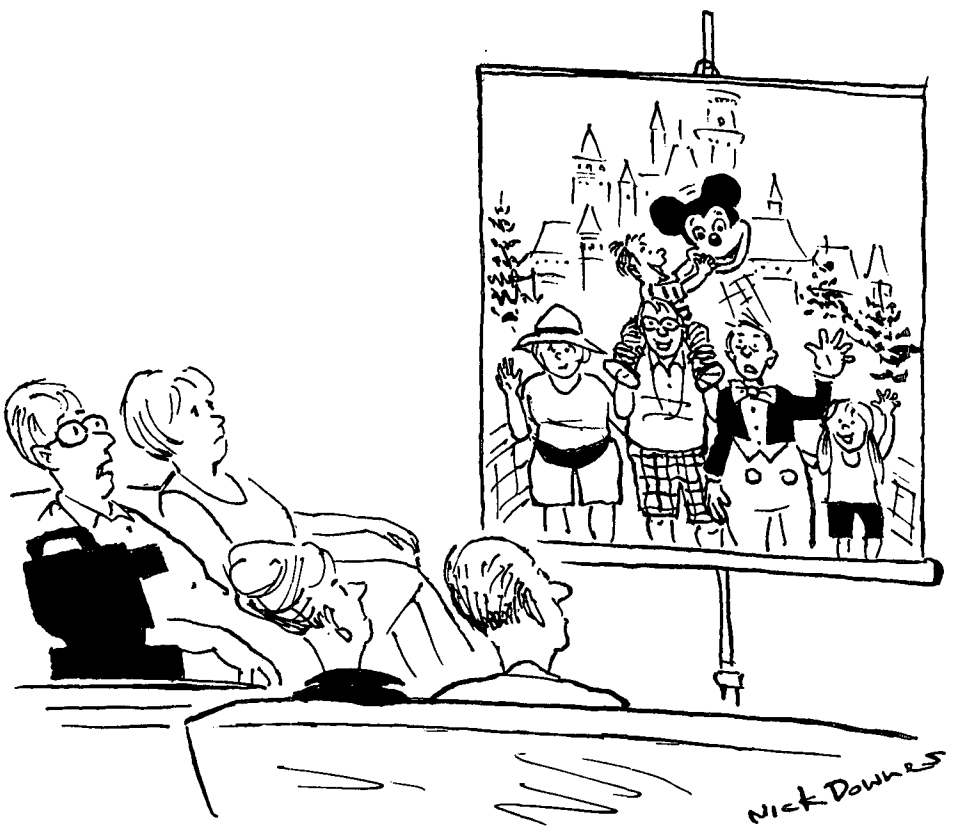
So what are we talking about? Treatment that sustains the patient's life, but which in the minds of futilitarians provides a quality of life that is unacceptably poor and thus not worth the money it costs. For example, the Alexian Brothers policy holds that doctors should generally deny medical treatment other than comfort care to people in persistent vegetative states (PVS). Tube feeding is counted as medical treatment rather than comfort care. What is the purpose of tube feeding? To sustain the life of the body, which brings us back to what is meant by the term "desired physiological effect." If tube feeding of PVS patients is futile, it is not because the treatment provides no physiological effect but because the effect is not wanted. Why is it not wanted? Because it means the patient will continue to require care. Thus it isn't the treatment that is considered futile; it is the *patient.*

To get around this snag, the authors equate the treatments in question with the Catholic concept of "extraordinary care," writing that while Catholic moral doctrine requires ordinary care always to be provided and accepted by patients, "extraordinary interventions" are "morally optional." This misses (or deliberately ignores) an essential point of the Catholic moral teaching as enunciated by the Bishops: that *it is the patient* (or family) who has the option to refuse life-sustaining treatment in desperate cases. Doctors, bioethicists, or hospital committee members do not have the deciding vote: they can neither force care upon the unwilling nor refuse care that is wanted.

Having successfully implemented their futility policy in the Mercy System, the authors "now plan to meet with leaders of Philadelphia's other Catholic hospitals, hoping to persuade them to adopt Mercy's process-based approach to medical futility." Let us hope they have received a chilly reception. If the lives and autonomy of the most ill and disabled among us can be undermined in Catholic hospitals, where will they be respected? Utilitarian

bioethicists who typically disparage Catholic approaches to these issues would seize the opportunity and argue that if Futile Care Theory is okay with the Catholics it must be acceptable for the rest of us. Cynic that I have become, I believe that is the very point of the fifth-column exercise.

Church leaders have been sound in promulgating Catholic doctrine on medical ethics but slow to recognize the threat from within. They must now act swiftly and diligently, to the point, if necessary, of prohibiting renegade institutions from using the word "Catholic" in their names. There is still time to preserve the concept of sanctity of life, with all that that implies. But if the fifth column is not rooted out, its penetration of Catholic institutions will continue, and before we know what happened the new medicine will rule triumphant.



"HERE'S WHERE THINGS GOT UGLY."

APPENDIX A

[*The following article is reprinted with permission of* The Weekly Standard *(October 23, 2000; © News America Incorporated). Mr. Bottum is the* Standard*'s Books & Arts editor.*]

The Pig-Man Cometh

J. Bottum

On Thursday, October 5, it was revealed that biotechnology researchers had successfully created a hybrid of a human being and a pig. A man-pig. A pig-man. The reality is so unspeakable, the words themselves don't want to go together.

Extracting the nuclei of cells from a human fetus and inserting them into a pig's egg cells, scientists from an Australian company called Stem Cell Sciences and an American company called Biotransplant grew two of the pig-men to 32-cell embryos before destroying them. The embryos would have grown further, the scientists admitted, if they had been implanted in the womb of either a sow or a woman. Either a sow or a woman. A woman or a sow.

There has been some suggestion from the creators that their purpose in designing this human pig is to build a new race of subhuman creatures for scientific and medical use. The only intended use is to make animals, the head of Stem Cell Sciences, Peter Mountford, claimed last week, backpedaling furiously once news of the pig-man leaked out of the European Union's patent office. Since the creatures are 3 percent pig, laws against the use of people as research would not apply. But since they are 97 percent human, experiments could be profitably undertaken upon them and they could be used as living meat-lockers for transplantable organs and tissue.

But then, too, there has been some suggestion that the creators' purpose is not so much to corrupt humanity as to elevate it. The creation of the pig-man is proof that we can overcome the genetic barriers that once prevented cross-breeding between humans and other species. At last, then, we may begin to design a new race of beings with perfections that the mere human species lacks: increased strength, enhanced beauty, extended range of life, immunity from disease. "In the extreme theoretical sense," Mountford admitted, the embryos could have been implanted into a woman to become a new kind of human—though, of course, he reassured the Australian media, something like that would be "ethically immoral, and it's not something that our company or any respectable scientist would pursue."

But what difference does it make whether the researchers' intention is to create subhumans or superhumans? Either they want to make a race of slaves, or they want to make a race of masters. And either way, it means the end of our humanity.

You can't say we weren't warned. This is the island of Dr. Moreau. This is the brave new world. This is Dr. Frankenstein's chamber. This is Dr. Jekyll's room. This is Satan's Pandemonium, the city of self-destruction the rebel angels wrought in their all-consuming pride.

But now that it has actually come—manifest, inescapable, real—there don't seem to be words that can describe its horror sufficiently to halt it. May God have

mercy on us, for our modern Dr. Moreaus—our proud biotechnicians, our most advanced genetic scientists—have already announced that they will have no mercy.

It's true that Stem Cell Sciences and Biotransplant have now, under the weight of adverse publicity, decided to withdraw their European patent application and modify their American application. But they made no promise to stop their investigations into the procedure. We simply have to rely upon their sense of what is, as Mountford put it, "ethically immoral"—a sense sufficiently attentuated that they could undertake the design of the pig-man in the first place. The elimination of the human race has loomed into clear sight at last.

It used to be that even the imagination of this sort of thing existed only to underscore a moral in a story. When our ancestors heard of Vlad the Impaler's wife bathing in the blood of slaughtered virgins to keep herself beautiful, they were certain it was a bad thing. When they were told fairy tales of an old crone fattening children to suck the health from them, they knew which side they were supposed to take. When they read of Dorian Gray's purchase of eternal youth, they understood that the price he paid was his soul.

But we live at a moment in which British newspapers can report on 19 families who have created test-tube babies solely for the purpose of serving as tissue donors for their relatives—some brought to birth, some merely harvested as embryos and fetuses. A moment in which *Harper's Bazaar* can advise women to keep their faces unwrinkled by having themselves injected with fat culled from human cadavers. A moment in which the Australian philosopher Peter Singer can receive a chair at Princeton University for advocating the destruction of infants after birth if their lives are likely to be a burden. A moment in which the brains of late-term aborted babies can be vacuumed out and gleaned for stem cells.

In the midst of all this, the creation of a human-pig arrives like a thing expected. We have reached the logical end, at last. We have become the people that, once upon a time, our ancestors used fairy tales to warn their children against—and we will reap exactly the consequences those tales foretold.

Like the coming true of an old story—the discovery of the philosopher's stone, the rubbing of a magic lantern—biotechnology is delivering the most astonishing medical advances anyone has ever imagined. You and I will live for many years in youthful health: Our cancers, our senilities, our coughs, and our infirmities all swept away on the triumphant, cresting wave of science.

But our sons and daughters will mate with the pig-men, if the pig-men will have them. And our swine-snouted grandchildren—the fruit not of our loins, but of our arrogance and our bright test tubes—will use the story of our generation to teach a moral to their frightened litters.

APPENDIX B

[Dr. James Le Fanu, a general practitioner in London, is also a prolific writer. The following commentary first appeared in the Dec. 2, 2000 issue of The Tablet, *the international Catholic weekly. (Reprinted with permission of* The Tablet, *London, UK.)]*

Blinded by Science

James Le Fanu

Some time in the very near future, Parliament will decide whether to permit human cloning. There can be no doubt what the verdict will be. The scientific heavyweights of the Royal Society, the statutory quangos—the Human Fertilisation and Embryology Authority, the Human Genetics Commission and the powerful Nuffield Council on Bioethics—have, after due consideration, all reached the same conclusion. The potential therapeutic benefits are so great, there is no alternative—cloning must be legalised. And MPs taking their cue from so unanimous a consensus of expert opinion will vote accordingly.

There will, as always, be pockets of resistance from the pro-lifers, but their arguments "naught availeth us" when set against the claims of, for example, Professor Martin Gardner of the Royal Society, that up to ten per cent of the population—six million people—could benefit.

And who are these six million potential beneficiaries? There are many illnesses where tissues are damaged or cannot repair themselves—like Alzheimer's or Parkinson's that affect the brain, wasting disorders of the muscles like motor neuron disease, damaged cartilage in arthritis, or the loss of insulin-producing cells resulting in diabetes. The obvious, indeed ideal, solution would be somehow to replace these damaged tissues with normal functioning ones, and this is where human cloning comes in.

Take a single cell from a sufferer of one or other of these conditions and remove its nucleus. The nucleus—which contains a full set of the patient's genes—is then inserted into a fertilised human egg to make an embryonic clone. This will divide and divide again to form first a small ball of cells and then a flat disc which after 12 days will fold in on itself to form a rudimentary brain and spinal cord. Beyond this stage the "test tube" embryo cannot survive because it lacks a blood supply that can only be provided from implantation in the wall of the womb. But a certain type of cell from the embryo—stem cells—that will eventually form many different types of tissue can, if removed at this stage, continue to grow for a considerable period.

The trick then is to induce these stem cells to change into nerve, muscle or cartilage cells, whereupon you have a fully compatible replacement for the patient's damaged tissue. Thus those with Alzheimer's will regain their memory, and those with Parkinson's will walk again. Arthritic patients will regain their mobility and diabetics can throw away their insulin syringes. The same technique, it has even been claimed, could be used to grow whole organs so those who may require it can be transplanted with a cloned version of their own kidney, heart or lung.

This, it must be presumed, is the scenario Professor Gardner envisages in calculating there will be six million potential beneficiaries of cloning. It is certainly the one echoed by Labour's Yvette Cooper in the adjournment debate in the House of Commons last week where she outlined the scope of therapeutic cloning as "replacing lost heart muscle, repairing nerve cells lost through Parkinson's and strokes, replacing insulin-producing cells and changing the outcome of spinal cord injury and multiple sclerosis."

Put like this, then, as another Labour MP Eric Forth observed in the debate, "the moral dimension can apply in either direction." Certainly there may be a moral case against on the grounds that it involves "the exploitation of human embryos as a tool for other ends," but that can be countered by the moral case in favour—the imperative, wherever possible, "to minimise human suffering." This notion of the moral equivalence of the two sides of the debate will no doubt be the deciding factor for any waverers, who will proceed to vote in favour of the legalisation of cloning.

The only conceivable counter-argument that might persuade them otherwise would be to show that the claims of therapeutic benefit are a scientific fairy story—and how does one do that? Surely it is not possible to predict what future scientific research might reveal?

But it is not so. There is an almost direct historical parallel between the current debate over cloning and the controversy over human embryo experiments 15 years ago. Then, too, the heavy divisions of the scientific establishment insisted that experiments were indispensable for future progress in the battle against disease, and in particular that a ban would "condemn future generations to suffer 4,000 inherited diseases which could be eliminated." Then, too, the moral arguments of the opponents were portrayed as condoning the perpetuation of unnecessary human suffering. "The worst inhumanity will be to prevent such research," argued the *Independent* in a leading article, as it would help "tackle severe chromosomal and genetic defects."

In my position as editor of a medical journal, I was a ringside observer of this debate, attending conferences, talking to protagonists from both sides and reading many background scientific papers. But my suspicions were aroused by a document produced by a group of scientists under the aegis of the Royal Society. This set out the many potential benefits that would result from embryo experiments—not just the prevention and treatment of genetic diseases but also in improving the success rate of *in vitro* fertilisation (IVF), developing new techniques of contraception, providing new avenues for cancer research and much else besides.

Now these are all very desirable goals, but it forcibly struck me as being not at all obvious that experiments on human embryos were the means by which they could be realised. Some could more easily be studied by investigations of the embryos of other species or on human cells from other sources or on foetal tissue obtained in other ways, such as following miscarriage.

These suspicions were, albeit unintentionally, confirmed from a most unlikely

source—the science journal *Nature*. The editor, John Maddox, in an article published in 1985 predictably argued against a ban but went on to observe that "there seems at present something of a dearth of serious proposals for investigations that would make sense." He therefore encouraged readers to submit ideas that he could publish as part of the campaign in favour of experimentation. No proposals of sufficient quality to merit publication were ever submitted.

This, of course, made no difference to the outcome and, predictably enough, the attempt to ban embryo experiments was defeated. Thirty groups of scientists from around the country applied for the necessary licence from the HFEA but 15 years on none of the anticipated benefits has materialised—nor is there any longer a suggestion they might do so. Why should this be?

It might seem self-evident that studying the human embryo when it is little more than a bunch of cells must somehow be relevant to a better understanding of genetic diseases. But this is not the case. Genetic defects may certainly be present from the earliest stages of human development but they are also present in every cell of the adult as well. You don't need embryos to study genetic diseases.

Further, as the annual reports of the HFEA reveal, most of the projects could just as easily have been carried out on early embryos from other species. There are a couple of exceptions. First, the scope of IVF has been widened to include those couples where the failure to conceive is due to the husband's low sperm count. This can now be corrected by injecting a single sperm directly into the female egg which is reimplanted once fertilisation has occurred. This, however, is a logical practical extension of the technique of IVF and so cannot really be described as an "experiment."

Secondly, much has been made of the procedure of pre-implantation diagnosis where couples at risk of having a child with a genetic disorder conceive *in vitro*. Their embryos are then screened, and any with the genetic abnormality are discarded, leaving only the normal ones to be implanted. This could be described as "preventing genetic disease" but it is very costly and the chances of a successful pregnancy resulting are very low. It has only been attempted 100 times in the last decade across the world.

Looking back after 15 years, the vast hiatus between the putative and realised benefits of human embryo experiments now seems more readily explicable. The Royal Society was determined not to concede the precedent that certain types of scientific investigation should be prohibited. So they blinded the public with science, drawing up a shopping list that included everything they could think of that might have anything to do with embryonic development—genes, chromosomes, implantation, contraception and so on. They then claimed, deceitfully, that these issues would be clarified by human embryo experiments.

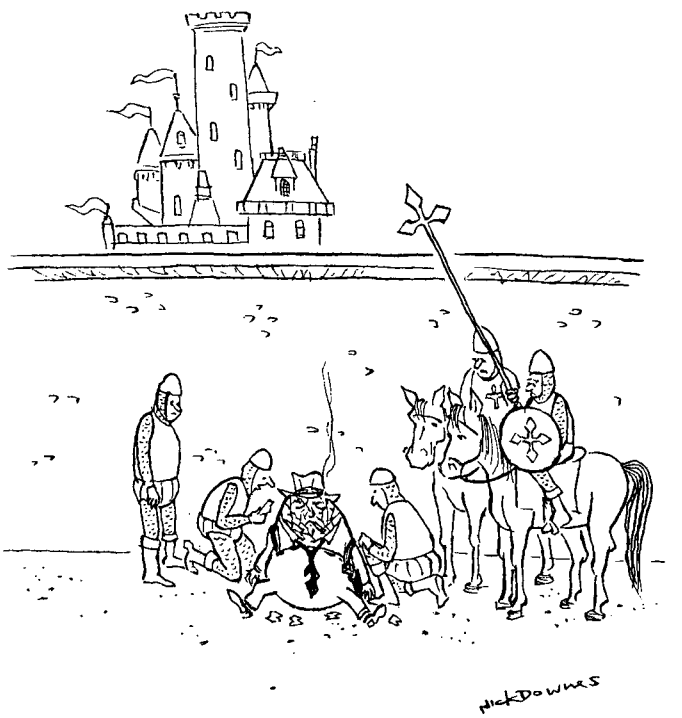
And they are playing precisely the same trick with human cloning. Note the extravagant claims made on its behalf, except that whereas before the promise was of eliminating 4,000 inherited diseases, we now have a different shopping list—

indeed, therapeutic cloning would seem to be the answer to virtually any disease one cares to mention. But can we reliably induce the transformation of stem cells into forming the desired types of tissue? No, we cannot. Have the relevant animal experiments been done to show it is at least theoretically feasible? No, they have not. Are human clones the only source of stem cells? No, they are not: adult tissues also contain stem cells that are mobilised for self-repair. Were it possible to create new tissues, do the techniques exist by which they can be induced into taking over the function of damaged tissue? No, they do not. Is it vaguely conceivable that cloning could produce replacement organs for transplantation? No.

And so history is all set to repeat itself as the public, yet again "blinded by science," is misled into believing that human cloning is a viable practical technique to "minimise human suffering."

The Royal Society's advocacy has little to do with real science and everything to do with good publicity for scientists. It conveys three important messages—that scientists are very clever, that they are committed to making the world a better place, and that they alone have the means to deliver human salvation where disease and suffering will be abolished, the blind will see and the lame will walk.

This only matters, of course, if one believes the human embryo in some way commands respect and so should not be tampered with or experimented on without good reason. This is a matter of personal judgment but it is worth noting that the early human embryo is the most complex and profoundly mysterious biological phenomenon in the universe.



"HARD-BOILED"

APPENDIX C

[The following article is reprinted with permission of The Weekly Standard *(Sept. 11, 2000; © News America Inc.). Mr. Carnahan is a freelance writer in Washington, D.C.]*

The Rise of "Bastard Nation"

And the threat to adoption

Ira Carnahan

When Jane Doe No. 1 decided to place her baby for adoption in 1961, she was promised her decision would be kept confidential. That's what the law said in Oregon, where her baby was born, and that's what her doctor, a nun, and the attorney handling the adoption assured her too. Jane, 21 and unmarried, gave up her baby and went on with her life. By 1998 she had a husband and four kids, none of whom knew about her other child.

That soon threatened to change. An Oregon adoptee named Helen Hill, working with an activist group called Bastard Nation, launched a campaign to throw out the state's laws shielding the names of mothers who place children for adoption. Such laws aren't fair to adoptees, they argued. "You can't cut a human being off from knowledge of their roots," Hill said. "It's a really inhumane thing to do."

Hill and Bastard Nation campaigned hard for the "open records" initiative. Oregon voters responded, approving it in November 1998 with 57 percent of the vote. Shortly after, Jane and several other anonymous birth mothers filed suit. "Having kept this secret from my family and community these many years, disclosure of confidential information would be worse for me now than it would have been at the time that the events occurred," Jane wrote in an affidavit.

"The events surrounding the child's birth and my decision to place her for adoption in 1961 were among the most difficult and emotionally painful I have ever experienced," she explained. "If that confidential information is released, I will have absolutely no control over its use and publication to other persons, including my husband and children."

Too bad, the courts declared. In a string of rulings, which the U.S. Supreme Court recently let stand, judges held that the promises made to mothers giving up babies weren't legally binding and that the mothers have no right to privacy. And so the Oregon Health Division is now mailing out thousands of formerly sealed birth certificates.

Encouraged by its success in Oregon, Bastard Nation is looking to change the law in other states. In Alabama, the governor recently signed an open-records bill modeled on Oregon's and in Tennessee, an open-records law recently went into effect. In Delaware, a law opening birth certificates with some limits took effect last year. And in Washington State, Bastard Nation and other activists are gearing up for an open-records initiative in 2001 like the one in Oregon.

Founded in 1996, Bastard Nation doesn't believe in compromise. It opposes laws already on the books in most states that promote contact between birth mother and child when both want it, but that give birth mothers the option to withhold

release of their names and other identifying information. Such laws are unacceptable, declares a group publication called the Basic Bastard: "Any legislation that provides for less than access on demand, without compromise, is a violation of the basic right to equal protection under the law as guaranteed by the Fourteenth Amendment to the U.S. Constitution."

To advance its agenda, the group publishes the Bastard Quarterly, which provides "a forum for Bastard Nationals to express themselves." An essay by one of the group's founders proclaims: "In Bastard Nation, adoptees have found a voice. We are loud, powerful and ready to demand justice in the form of open records. The Era of the Bastard has arrived."

Bastard Nation's rhetoric and tactics resemble those of gay activist groups such as Queer Nation and ACT UP. Take the protest the group held last year in front of the D. C. headquarters of the National Council for Adoption, whose founding president, William Pierce, is the leading defender of the confidentiality of records. "Clad in black T-shirt and emblazoned with a bright gold logo called a 'spermburst,' the Bastard Nation protesters chant 'Willie P, Willie P, why are you afraid of me?'" the *Washington City Paper* reported. "On Bastard Nation political buttons, his exaggeratedly scraggly face is depicted with a diagonal rubout line across it. He was hung in effigy at a previous rally . . . 'We shall put this beast in chains and shall vanquish him utterly,' roars Marley Greiner, the self-described 'founding foundling' of Bastard Nation."

Greiner, the executive chair of Bastard Nation, refers to mothers as "breeders," spells America with a "k," and signs her postings to Internet chat rooms "by all means necessary." Yet she blames the ugliness of the adoption records debate squarely on the other side. "I personally think that Bill Pierce has made civil discourse on adoption almost impossible in this country today," she says.

Pierce, an avuncular 64-year old former executive at the Child Welfare League of America, begs to differ. "What you're dealing with are very, very clever propagandists," he says. "They are quite skillful." That skill comes through on Bastard Nation's website (*www.bastards.org*) and in the way the group seeks to frame the adoption records debate. It's not about balancing birth mothers' and adoptees' interest, or assessing the effect of opening records on the number of adoptions. No, it's a simple matter of civil rights.

"We feel that humans have a fundamental right to their identity, and that the government should not be putting up impediments to keep people from accessing their own vital records," says Ron Morgan, who lives in San Francisco and is one of three members of Bastard Nation's executive committee. "We feel that it's a civil right for us to access them."

Bastard Nation members also talk a lot about their pride and dignity. The group's mission statement declares, "We have reclaimed the badge of bastardy placed on us by those who would attempt to shame us; we see nothing shameful in having been born out of wedlock or in being adopted." But this defiant stance seems a bit

odd. No one today, after all, suggests that adoptees should feel any shame. The question is whether adoptees' birth mothers ought to be stripped of their confidentiality even though they were promised they wouldn't be.

In arguing they should be, adoptee-rights activists make a number of dubious claims. One is that adoptees need the names of their birth parents so that they can obtain vital medical background information. This claim appeals to the public. The truth, though, is that Oregon and other states already provide for the release of medical information when needed, without disclosing the mothers' identity if she wishes to remain anonymous. To be sure, the release of information often isn't as easy or complete as it could be. But the obvious solution is to improve the system of release; there's no need to compromise birth mother's confidentiality.

Another claim, often repeated by journalists, is that nearly all birth mothers want to be contacted, so not opening birth records is denying the wishes of the many to satisfy the desires of a reclusive few. But that appears untrue. While the precise percentage isn't clear, Pierce suggests at least one-third of birth mothers don't want personal contact, as revealed by their responses when contacted by state-authorized intermediaries in Oregon, prior to the new law, and in Florida.

The most controversial claim of adoptee-rights activists is that abolishing confidentiality won't lead more women to seek abortions. Pierce says that's absurd. "It's a no-brainer," he says. "Put yourself in the position of a young woman. All you have to do is look at countries where they do not allow, in essence, any privacy for adoption and they allow privacy for abortion like Japan, and you find almost no adoptions and you find abortions are almost universally the option of choice. Because a choice which is not private is no choice at all."

That's not just Pierce's view. Jeremiah Gutman, former chairman of the American Civil Liberties Union's privacy committee, has written that a pregnant woman "may be inclined to bring the pregnancy to term rather than secure an abortion, but, if she cannot rely upon the adoption agency or attorney and the law to protect her privacy, and to conceal her identity for all time, her choice to go the abortion route may be compelled by that lack of confidence in confidentiality."

Nonsense, replies Bastard Nation. As evidence that ending confidentiality won't lead to more abortions, the group cites below average rates of abortion in Kansas and Alaska, which have long had open birth records. But the fact that abortion rates are below the national average in these two states is not a surprise, given their demographics. If, instead, we compare the abortion rate in Kansas with the rates in nearby states where the demographics are similar, we find that Kansas's rate is well above average. Such statistical points aside, it is striking that Bastard Nation and other adoptee-rights groups, whose ranks are filled with ardent defenders of abortion, have no patience with a privacy argument on behalf of women who place babies for adoption.

Why? Because it would limit adoptees' rights. And that won't do. "The underlying principle of the adoption movement is the determination to be free of those

limitations that have not been imposed on non-adopted citizens," declares an article on Bastard Nation's website. "The issue is whether adoptees are to be allowed to emancipate from chattel-child status into autonomous adults, or are they to continue to be infantilized by the ongoing control of the State and agency, birth parents and adoptive parents?"

Not all adoptees who seek open records are so militant. While those who are politicized talk about their rights, the unpoliticized talk about their wounds. One man wrote recently in the *Oregonian*, the state's largest newspaper, "As an adoptee, I have been drifting, lost, most of my life." He was, he said, "driven unconsciously to solve the riddle of my blood."

This notion of blood and biology as central to identity runs deep in adoptee-rights rhetoric. "One's biological history is as much a part of the essential self as limbs or senses," argues an article on the Bastard Nation site. "To be deprived of knowledge of one's origins and ancestry is to be maimed as surely as to be deprived of limbs or sight." It is one of the oddities of the adoption records debate that the typically left-leaning advocates of open records stress the importance of genes and blood, while advocates of sealed records, who are often on the right, have little use for such talk.

While Bastard Nation's main interest lies in opening adoption records, the group is also moving into other areas. The most prominent is opposition to so-called safe haven laws which allow mothers who would otherwise abandon newborns in dumpsters or alleys instead to drop them off, no question asked, at designated centers, where the children can then be placed for adoption. Such laws are sweeping through state legislatures, and Bastard Nation is appalled. While the group raises several objections, the one that most obviously explains its interest in the issue is its claim that safe haven laws "obliterate the identity rights of the abandoned child." The group condemns the laws—intended to prevent infant deaths—for "lifting entirely the obligation to collect and record any identity information, in contravention of the widely recognized human right to an identity."

While Bastard Nation likely won't have much success with this argument, the prospects for open adoption records look brighter. In fact, with the rise of "open adoption," in which birth parents, adoptive parents, and adoptees keep in contact, the number of birth parents requiring confidentiality is falling. E. Wayne Carp, a historian of adoption at Pacific Lutheran University in Tacoma, Washington, suggests too that opening records probably won't sharply reduce the number of children placed for adoption since the number of children put up for adoption in the United States is already low. "I would say if we look out at the adoption picture now it could hardly get fewer," he says. "The numbers have been shrinking without open records as it is. It's a remarkable figure that almost 98 percent of women who give birth to children out of wedlock keep them now," he says, "It's unbelievable, but they do."

Even if the further weakening of adoption isn't Bastard Nation's goal—and

they say it isn't—this might be an unintended effect. Pierce, of the National Council for Adoption, points abroad as a warning of what could happen here. In 1975, England and Wales moved from confidential records to open records. Since then the annual number of adoptions of children under age one has plummeted from 4,548 to just 322 in 1995, a 93 percent decline. "The data are clear and unequivocal," Pierce says. "Infant adoption is a relic in England and Wales."

Could the same thing happen here? It's hard to say. In England and Wales, the number of adoptions was already falling when records were unsealed. It's clear too that the number of adoptions is shaped by many factors, of which the law is just one. Yet it's hardly farfetched that ending confidentiality could lead fewer women to place babies for adoption. Within the next few years, we are likely to find out.

APPENDIX D

[*This article first appeared in Salon.com, at* http://www.Salon.com. *An online version remains in the Salon archives. Reprinted with permission. Dr. Diller, the author of* Running on Ritalin: A Physician Reflects on Children, Society, and Performance in a Pill, *practices behavioral pediatrics in Walnut Creek, California.*]

Just say yes to Ritalin!

Lawrence H. Diller, M.D.

Public school administrators, long the enthusiastic adherents of a "Just Say No!" policy on drugs use, appear to have a new motto for the parents of certain tiny soldiers in the war on drugs: "Medicate or Else!" It is a new and troubling twist in the psychiatric drugs saga, in which public schools have begun to issue ultimatums to parents of hard-to-handle kids, saying they will not allow students to attend conventional classes unless they are medicated. In the most extreme cases, parents unwilling to give their kids drugs are being reported by their schools to local offices of Child Protective Services, the implication being that by withholding drugs, the parents are guilty of neglect.

At least two families with children in schools near Albany, N.Y., recently were reported by school officials to local CPS offices when the parents decided, independently, to stop giving their children medication for attention-deficit hyperactivity disorder. (The parents of one student pulled him from school; the others decided to put their boy back on medication so that he could continue at his school.)

Meanwhile, class-action lawsuits were filed earlier this month in federal courts in California and New Jersey, alleging that Novartis Pharmaceuticals Corp., the manufacturer of Ritalin, and the American Psychiatric Association had conspired to create and expand the market for the drug, the best known of the stimulant medications that include the amphetamines Adderall and Dexedrine. The suit appears to be much like another lawsuit brought against Novartis in Texas earlier this year.

As a doctor with a practice in behavioral pediatrics—and one who prescribes Ritalin for children—I am alarmed by the widespread and knee-jerk reliance on pharmaceuticals by educators, who do not always explore fully the other options available to deal with learning and behavioral problems in their classrooms. Issues of medicine aside, these cases represent a direct challenge to the rights of parents to make choices for their children and still enjoy access to the public education they want for them—without medication. These policies also demonstrate a disquieting belief on the part of educated adults that bad behavior and under-performance in school should be interpreted as medical disorders that must be treated with drugs.

Unfortunately, I know from the experience of evaluation and treating more than 2,500 children for problems of behavior and school performance that these cases represent only a handful of the millions of Americans who have received pressure from school personnel to seek a "medical evaluation" for a child—teacher-speak

for "Get your kid on Ritalin."

Most often, evaluations are driven by genuine concerns first raised by a teacher or school psychologist. But too frequently the children are sent to me without even a cursory educational screening for learning problems. With a 700 percent increase in the use of Ritalin since 1990, parents have been repeatedly told that their kids probably have ADHD and that Ritalin is the treatment of choice. More and more often, the parents who buck this trend are being told they must put their children in special restricted classrooms or teach them at home.

Patrick and Sarah McCormack (not their real names) came to my office in a panic last year because a school wanted them to medicate their 7-year-old son. Sarah tearfully explained that the principal and psychologist at Sammy's school in an upscale Bay Area town were absolutely clear that the first-grader should be on Ritalin. An outside private psychologist who had previously tested Sammy did not find any learning problems but concluded that he had ADHD and was defiant of authority. She suggested medication. The school psychologist, in his report on Sammy, was straightforward in recommending "psychopharmacological therapy" for the child.

The McCormacks were told, in no uncertain terms, that unless Sammy's behavior changed, he would be transferred to a special class for behavior-problem children at another school or the McCormacks would have to consider alternatives to public education like home schooling.

Patrick and Sarah had few problems with their son at home, though they conceded he was a "handful" and sometimes had problems getting along with other children. They deeply valued his outgoing personality and feared that Ritalin would change him. They also worried about the immediate and long-term side effects of the drug. They acknowledged that Sammy struggled at school but felt school personnel had not done enough and were using the wrong approaches with their kid. They hoped he could continue at the neighborhood school where he had made friends despite his problems. They wanted my opinion and support for their point of view at the school.

When I met Sammy in my office, he was full of life and reasonably focused, chatting at length about activities at home and at school. Though he was in first grade, he could read at a fourth-grade level. I got a better picture of his problems when I met him with his parents. When they were there he acted impulsively, getting up and down from his seat and moving about the room when we tried to have a family conversation. Sammy regularly interrupted his parents and bossed them around, especially Sarah.

His lack of respect troubled me, but I felt optimistic that Sammy could be successful without medication, especially after I spoke with his teacher. She was more positive about him than others who had reported on his conduct at school. She felt he had made progress in her classroom but still wondered how she could help him better stay on task. She was open to ideas. I suggested that Sammy be immediately rewarded for good behavior and given chips for finished work that could be

exchanged for prizes at the end of the day. She was comfortable with giving him tangible consequences for not meeting her expectations.

I suspect that medication would probably help with Sammy's self-control, but, as I told the McCormacks, it was not absolutely necessary. I told them that children of Sammy's age never become addicted and that the drug's effects on his behavior would last only four hours per dose. But it was more important that they work on their parenting, and I referred them to a counselor. I couldn't say for sure whether changes at home and school would make the difference for Sammy, but I certainly felt it was up to the parents to decide on the medication. I said I would support their decision either way.

A year later the McCormacks returned, frustrated and embittered. Sammy had a very good end to first grade, but second grade with an unsympathetic, unyielding teacher had been disastrous. The principal and school district were now insisting that Sammy be on medication if he was to stay in a regular third-grade classroom. The school said it "could not meet the child's needs within the regular classroom setting without medication." He was disrupting the classroom. Other parents had complained about his behavior. A one-on-one-aide assigned to Sammy had not worked. Sarah thought the aide was nothing more than a snitch who regularly recorded Sammy's misdeeds for the principal.

If the family refused to give Sammy medication, the boy would be transferred to a different school, a bus ride from their home, to be in a special class with four other "disturbed" children. They could also home-school him or challenge the school's decision in a hearing. Ultimately they could go to court, but a final decision could take years—by then Sammy might be in middle school. The parents were loath to move Sammy to a new school. However, they still were against using medications with their son.

Families like the McCormacks, who reject medication and face a loss of access to conventional public school classrooms, are increasing in numbers. In May, I testified before a congressional subcommittee hearing on ADHD and Ritalin organized by several congressmen who had received letters from distressed parents by their local schools to medicate their children. The pressure has become so intense in some areas that resolutions urging teachers to restrain from recommending medical evaluations and Ritalin for students are under consideration in several states. One passed recently in Colorado.

Yet even as the issue of parent's rights is being considered in some areas, the stakes have dramatically increased in others, where schools are seeking the intervention of CPS to get parents to medicate their kids. It is no longer simply an issue of which school or which class a child will attend. Instead, some parents are being threatened with the possibility of losing custody of their children if they refuse to comply with suggested treatment for an alleged medical condition.

Many doctors and educators would agree that withholding medication can be viewed as a form of child abuse or neglect. Dr. Harold Koplewicz, vice chairman

of the New York University Child Study Center, said on "Good Morning America" last month that he felt a CPS referral was justified when a family refused to medicate a child for whom a diagnosis of ADHD had been made by an experienced evaluator. "Ritalin is simply the best treatment for this disorder," he said.

I can't agree. It is true that the courts have ordered medical intervention when a child's life is threatened. Judges have overruled the wishes of Christian Scientist parents not to give antibiotics to children who face life-threatening infection. Similarly, blood products have been given to children in surgery over the objections of Jehovah's Witnesses. But those situations are quite different from ones in which ADHD is diagnosed and Ritalin is prescribed, according to Dolores Sargent, a former special education teacher now practicing family law in Danville, Calif.

"ADHD children and families do not face immediate life-threatening situations," she says, "and ADHD continues to be a 'disease' with multiple causes and no definitive markers. It's unlikely any decision that insists on the use of Ritalin for ADHD could withstand a court challenge."

The existence of effective alternative treatments makes any forced decision to medicate children against parents' wishes both legally and ethically shaky. Yet, the willingness of some CPS workers to pursue families unwilling to dose their children shows how strongly entrenched medication for behavior problems in children has become in our country.

A local CPS office cannot demand that a child be medicated—yet—but it can ascertain whether a child is safe in his or her parents' home. Legally, CPS can alert parents that their child's uncontrolled behavior, which puts the child at significant risk of abuse at home, must change. If they feel this advice is not being taken, the agency can remove children from their homes.

What seemed to be overlooked in this simplistic, and seemingly convenient, way of dealing with hard-to-handle kids is that alternative strategies to medication exist, from family counseling to short-term respite care. The perceived superiority, rapid onset and inexpensive nature of Ritalin make it a very attractive choice for school administrators, who may pressure parents of students who threaten to drain their beleaguered schools of time or money. As more and more families opt for the Ritalin fix, it becomes easier to insist that other families in similar situations try the drug, even though these families may not want their kids to take stimulants.

I still prescribe Ritalin, but only after assessing a child's school learning environment and family dynamics, especially the parents' style of discipline. But I continue to ask questions about Ritalin in a country where we use 80 percent of the world's stimulants. I have no doubt that Ritalin "works" to improve short-term behavior and school performance in children with ADHD; however, it is not an equivalent to substitute for better parenting and schools for our children.

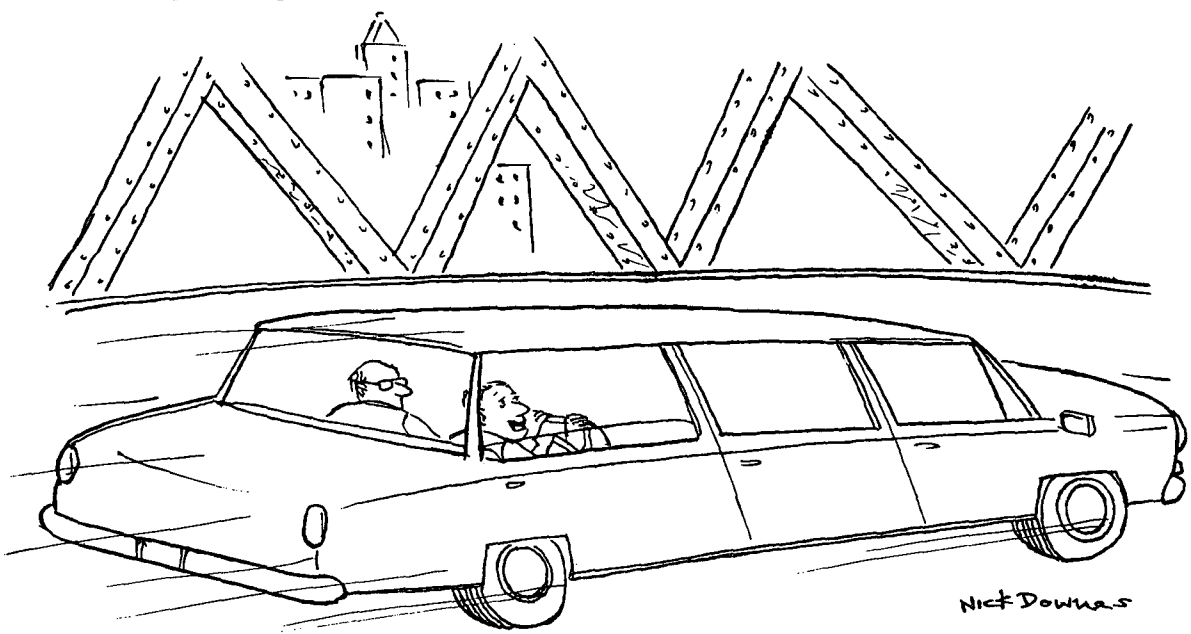
I was surprised to see Surgeon General David Satcher quoted recently as saying that he believes Ritalin is underprescribed in our country. I participated in last week's Conference on Children's Mental Health sponsored by his office and found

that Ritalin is thought to be both underprescribed *and* overprescribed, depending upon the community being assessed and its specific threshold for ADHD diagnosis and Ritalin treatment.

Data shows, for example, that African American families use Ritalin at rates one-half to one-quarter of their white, socioeconomic peers. Asian-American youth are virtually absent in statistics for Ritalin use. I happen to believe that Satcher's comments were intended for these communities and, ironically, will not have any impact on them. Instead, I think, his statement will have perverse impact on white-middle-and-upper-middle class families. In some communities, Ritalin use among boys in this group is as high as one in five.

After much agonizing, Sammy's parents decided to put him in a special education class rather than give him Ritalin and, for the moment, things are going well for him. But they plan to move from the Bay Area, largely because of Sammy's school experience.

With 4 million children taking Ritalin in America today, there are undoubtedly millions of other parents struggling with the decision of whether to medicate their children. The McCormacks' story demonstrates the dilemmas and pressures many of these families face. Proponents of drug treatment for children's behavior problems applaud those parents who choose Ritalin to improve their children's experience. But civil libertarians—and doctors like me—worry about the specter of more families being forced against their will to put their children on psychiatric medication. These families, and their right to make choices for their children, deserve our support and protection.



"I FIND THAT WITH JUST THE RIGHT COMBINATION OF ANTI-DEPRESSANTS, I CAN LAUGH ALL THE WAY TO THE BANK."

SUBSCRIPTIONS AND BOUND VOLUMES

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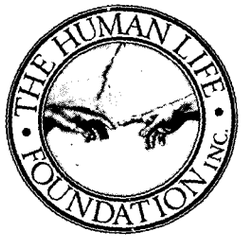
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