

only if our remedies go as deep as the causes: to the human heart. Here one must agree with what Harvard's Ralph Potter wrote 15 years ago: "Only the example of sincere regard for others can rekindle the conviction that all life is sacred and bound together in mystery so that the death of the least diminishes each."³⁴

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THE "SEAMLESS GARMENT": LIFE IN ITS BEGINNINGS

Abortion

The pressure of an election year has created for the recent moral literature on abortion a double shift in context. One movement has been from the discourse of scholarly journals to the transmission and interpretation of political and episcopal statements by daily news media, the religious press, and semipopular journals of political and social commentary. This shift has no doubt to do with the fact that an object of the discussion of abortion in 1984 was to communicate and persuade quickly. If not openly polemical, recent contributions have been pragmatic, activist, and exhortative.

A second and related movement has been away from discussion of the ethics of abortion decisions to discussion of how public policy regarding abortion should be handled. Formulation of norms and exceptions regarding abortion has given way to argument about coherent and incoherent ways of relating such norms to political discourse, and to political and legal realities. Those Catholic candidates for office who have declined to take a position in favor of a reversal or constriction of the 1973 Supreme Court decisions permitting elective abortion have not, by and large, stated firmly that they are committed to the availability of abortion. Instead, they express hesitancy to use public office as an avenue of interference in the abortion choices of others. Attention has shifted away from the intrinsic merits of the cases for and against abortion to the implications of holding broadly formulated norms ("Abortion is a moral evil") for involvement in politics—whether as candidate, voter, or religious teacher. Thus the literature is often a better example of ethics as practice than as theory. It represents a direct and deliberate attempt to change not just the understanding and evaluation of moral issues but, more immediately, the political and legal realities which facilitate or inhibit specific moral decisions.

Certainly the centerpiece of the Catholic debate has been the inclusion of abortion in the "seamless garment" metaphor of Cardinal Joseph

³⁴ Ralph Potter, "The Abortion Debate," in *Updating Life and Death* 85-134, at 130.

Bernardin's "consistent ethic of life." In fact, the metaphor might be best understood as directed to a convincing presentation of the Church's abortion teaching.³⁵ Bernardin's original lecture at Fordham takes as its point of departure the linking of nuclear war and abortion in the 1983 "peace pastoral" of the Catholic bishops, and cashes in on the capital accumulated after the generally favorable reception of the pastoral. As Bernardin remarked to the National Right to Life Convention, the linking of a range of "sanctity of life" issues has become not only "tactically correct" but "morally necessary."³⁶ Strategically, Bernardin can assume relative episcopal consensus and leadership on nuclear war, the arms race, and deterrence. Having earned the respect of political "liberals" in these areas, he appeals to the same constituency for support on abortion. On the other side, he calls to the prolife movement to enhance the ethical solidity and political persuasiveness of its commitment to end abortion by extending that commitment to the arms race, capital punishment, and other social and economic affronts to "human dignity."³⁷ He intends to engage and enlarge the "moral imagination"³⁸ of all participants in the debate so that they will "see"³⁹ the needs and rights of all persons, and arrive at heretofore unrecognized common ground.

As Bernardin stressed in his Woodstock Forum talk at Georgetown, the Christian moral vision of life is an "analogical" one:⁴⁰ it neither equates nor hierarchizes the various life issues, but sharpens moral and intellectual perception of all by insisting on the relations among them, and between personal moral commitment and a broad-based social policy. Since abortion is crucially linked to justice issues such as poverty, the Catholic position must join "the right to life to the promotion of a range of other rights: nutrition, health care, employment, and housing."⁴¹

Key elements of the Bernardin addresses are the necessity to establish an atmosphere of respectful discourse; the conviction that abortion is a common moral and philosophical issue, not an exclusively religious one;

³⁵ Cardinal Joseph Bernardin, "Toward a Consistent Ethic of Life," Fordham University, Dec. 6, 1983, *Origins* 13 (1983-84) 491-94; "Enlarging the Dialogue on the Consistent Ethic of Life," St. Louis University, March 11, 1984, *Origins*, *ibid.* 705, 707-9; "A Consistent Ethic of Life and the Abortion Issue," National Right to Life Convention, Kansas City, June 7, 1984, *Origins* 14 (1984-85) 120-22; "Religion and Politics: The Future Agenda," Georgetown University, Washington, D.C., Oct. 25, 1984, *Origins*, *ibid.* 321-23, 328.

³⁶ "A Consistent Ethic and Abortion" 121.

³⁷ In *Commonweal* 111 (1984) see the editorial, "Abortion, Politics, and the Bishops," 164-65; Mary Meehan, "The Bishops and the Politics of Abortion," 169-73.

³⁸ "Enlarging the Dialogue" 708, and "A Consistent Ethic and Abortion" 122.

³⁹ "Religion and Politics" 326.

⁴⁰ *Ibid.* 325.

⁴¹ *Ibid.* 326.

the conviction that it is a matter of civil rights and social justice amenable to legislative regulation; the belief that there exists no consensus in America favoring permissive abortion policy; the notion that moral principles should have practical, social consequences; the conviction that civil law ought to be the object of critical assessment and, if necessary, of change.⁴² Revising the "seamless garment" ethic in light of the theology of John Courtney Murray, Bernardin expects political candidates to be committed to diminishing both the arms race and the pervasiveness of abortion,⁴³ even while fulfilling the requirement that elected officials act within the existing law, and even if therefore at a somewhat gradual pace.

The reception and interpretation of Bernardin's ethic have generally been appreciative, but not without qualification or dispute.⁴⁴ His fellow bishops have not unanimously endorsed parity among the life issues up for consideration. In particular, some moved immediately prior to the 1984 elections to accentuate the urgency of the abortion issue. The statement of Boston's Archbishop Bernard Law that abortion is the predominant right-to-life issue because it is a "reality" while a nuclear holocaust remains a future "possibility"⁴⁵ was rapidly echoed in the Labor Day statement of the New England bishops, who concluded that abortion is "the critical issue of the moment."⁴⁶ The president of the U.S. Catholic Conference, Bishop James Malone of Youngstown, differed, stating that both nuclear war and abortion deserve "special emphasis."⁴⁷ Twenty-three bishops associated with Pax Christi repudiated the moral decisiveness of the potential/actual distinction, noting not only that the arms

⁴² On many of these points, see Mary Mooney, "Abortion: A Religious Issue?" *Linacre Quarterly* 51 (1984) 53-59; P. J. Riga, "Equal Protection of the Laws and the 14th Amendment: Value or Humanity?" *ibid.* 176-80. A well-developed philosophical position is Joseph Boyle, "A Catholic Perspective on Morality and Law," *Journal of Law and Religion* 1 (1983) 227-40.

⁴³ See also Bishop James Malone, U.S. Catholic Conference Statement on Politics and Religion, Aug. 9, 1984, *Origins* 14 (1984-85) 163: "We reject the idea that candidates satisfy the requirements of rational analysis in saying their personal views should not influence their policy decisions; the implied dichotomy—between personal morality and public policy—is simply not logically tenable in any adequate view of both."

⁴⁴ Among objections to Bernardin are John R. Connery, "A Seamless Garment in a Sinful World," *America* 151 (1984) 5-11; Patrick Riley, "What Catholic Vote?" *Homiletic and Pastoral Review* 84, no. 8 (May 1984) 16-19.

⁴⁵ Archbishop Bernard Law, "The Right to Life and the Logic of the Declaration of Independence," Knights of Columbus convention, Denver, Aug. 7, 1984, *Origins* 14 (1984-85) 185.

⁴⁶ Statement of New England Bishops on the Responsibilities of Citizenship, Sept. 5, 1984, *Origins*, *ibid.* 217-18.

⁴⁷ Bishop James Malone, "The Bishops and Partisan Politics," USCC Statement, Oct. 14, 1984, *Origins*, *ibid.* 289, 291.

race perpetrates a *present* crime against the poor, but also that action against a nuclear holocaust can be effective only if undertaken in anticipation of the event.⁴⁸ One outspoken critic of abortion and of the nonmilitancy of Catholic politicians, Archbishop John O'Connor of New York, eventually expressed fundamental agreement with Bernardin's notion of consistency, even while focusing his own remarks on abortion.⁴⁹

Bernardin's call is addressed in a special manner to Catholic candidates for elective office and to legislators, since it entails an appeal to influence abortion policy in the direction of greater coherence with the Church's evaluation of abortion ethics. This appeal is not premised so much on the obedience of politicians to the episcopacy as on their presumed sensitivity to the reasonableness of the bishops' argument that abortion is a violation of the civil rights of the fetus. The qualified resistance of, for example, Democrats Mario Cuomo and Geraldine Ferraro was expressed not as a refutation of the moral argument but as an exploration of the conditions necessary for morality to be the object of just and successful legislation. At least three possible conditions emerge: (1) a public consensus about the desirability of legal regulation; (2) the compatibility of proposed legislation with the constitutional framework; and (3) the likelihood that a proposed law will not produce more injustice than its absence, a consideration which includes the feasibility of the law's just enforcement. Of the three, the last condition has been the minor note, though it has not gone unremarked.⁵⁰ The presupposition that elected officials have a moral as well as legal obligation to uphold all existing laws is generally granted by both bishops and politicians, though it has been questioned.⁵¹ It has also been acknowledged that there may exist legitimate disagreement about how best and most effectively to translate moral conviction into public law.⁵² Such disagreement is

⁴⁸ Statement of 23 U.S. Bishops on the Scope of Moral Issues in the Political Realm, Oct. 22, 1984, *Origins*, *ibid.* 311. See also Editorial, "Will This Election Be Our Last?" *Commonweal* 111 (1984) 515-17; Gordon C. Zahn, "Casting a Vote for Life," *America* 151 (1984) 337-39.

⁴⁹ Archbishop John J. O'Connor, "Human Lives, Human Rights: The Abortion Issue," Cathedral High School, N.Y.C., Oct. 15, 1984, *Origins* 14 (1984-85) 291-301.

⁵⁰ See O'Connor, "Human Lives" 298. David Carlin insists that the likely consequences of proposed antiabortion legislation be examined carefully. Would a less restrictive abortion prohibition be more successful *in practice* than a more restrictive one? ("Abortion, Religion, and the Law," *America* 151 [1984] 356-58).

⁵¹ O'Connor cites the Sacred Congregation of the Faith's *Declaration on Abortion*: "... One can never obey a law which is in itself immoral. ... Nor can one take part in a propaganda campaign in favor of such a law or vote for it. Moreover, one may not collaborate in its application" ("Human Lives" 300).

⁵² Malone represents the USCC in stating: "we realize that citizens and public officials may agree with our moral arguments while disagreeing with us and among themselves on the most effective legal and policy remedies" ("Partisan Politics" 291).

rooted partly in differing assessments of the existence or accessibility within present laws of avenues toward change. Most controversy arises in regard to the aggressiveness with which the politician is expected to assert opposition to the law and an intention to seek what may be an unpopular modification.⁵³ Must a politician object strenuously to a law, suspecting that a consensus in his or her favor is nonexistent? Must a consensus about a policy exist before a change is sought and enacted? Is the first obligation of the officeholder, or even the citizen, to seek a specific change, or is it to shape a prior consensus?

The speeches of New York's Governor Mario Cuomo at Notre Dame and St. Francis College, Brooklyn, have been a watershed for discussion of the role and obligations of the Catholic politician in general and of the relation of a public moral consensus to the legislation of abortion decisions in particular. Although his first address falls short of a clear analysis of whether evaluation of the life taken in abortion is a religious or public matter, Cuomo's second address construes abortion more directly as a human-rights issue.⁵⁴ Cuomo's contributions: (1) He brings to the surface the problem of a consensus regarding abortion in a pluralistic society by asserting his own position that statutes and laws in a democracy must be preceded by consensus.⁵⁵ (2) He rightly emphasizes that even when there is unanimity in moral evaluation, there may be lack of agreement on the best political strategies and legislative goals with which to embody it publicly.⁵⁶ (3) Perceiving absence of consensus on legal prohibition of abortion, he reaches toward a consensus on the necessity and preferability of making resort to abortion unnecessary and undesirable. He urges that positive alternatives to abortion be provided, including financial and social support for pregnant women and their children, and the education of "young men" in responsibility for "creating and caring for human life."⁵⁷ (4) He demands quite legitimately that

⁵³ This has been addressed widely: Bishop James Malone, USCC Statements, Aug. 9, 1984 (n. 9 above) 163, and Oct. 14, 1984 (n. 13 above) 291; Archbishop John Quinn, "The Several Meanings of 'Religion and Politics,'" Yale Club of San Francisco, Sept. 5, 1984, *Origins* 14 (1984-85) 222; N.E. Bishops' Statement 222; Rep. Henry Hyde, "Religious Values and Public Life: The Issue of Abortion," Notre Dame Law School, Sept. 24, 1984, *Origins*, *ibid.* 270; O'Connor, "Human Lives" 297, 300; Bishop Howard Hubbard, Statement in Reply to Mario Cuomo, Sept. 14, 1984, *Origins*, *ibid.* 304; Joseph A. Califano, Jr., "Moral Leadership and Partisanship," *America* 151 (1984) 164-65.

⁵⁴ Mario Cuomo, "Religious Belief and Public Morality: A Catholic Governor's Perspective," University of Notre Dame, Sept. 13, 1984, *Origins* 14 (1984-85) 236-37; "National Consensus and Lawmaking: The Abortion Issue," St. Francis College, Brooklyn, Oct. 3, 1984, *Origins*, *ibid.* 303.

⁵⁵ "Religious Belief" 236; "National Consensus" 302.

⁵⁶ "Religious Belief" 238.

⁵⁷ *Ibid.* 239-40.

more specific and substantive proposals for legal changes be entered into the debate. As he puts it, no consensus will be marshaled by mere loud exhortation, nor behind a "vague call for a constitutional amendment or a 'new law.'"⁵⁸ Precisely whose province it is to formulate specific legislation is another question.

Is it the case that a consensus favoring some curtailment of the present wide liberty to abort is both absent and essential to policy change? Cuomo's double affirmative is disputed. While Cardinal Bernardin asserts the absence of a consensus for abortion choice both before and after the 1973 Supreme Court decision,⁵⁹ Archbishop Quinn believes that we have not even achieved consensus on whether abortion is a "public issue" subject to law or a "private issue" best left to conscience.⁶⁰ *Commonweal* editorializes: "Is there not some point, at least in the later development of fetal life, after which we as a society could agree that abortion is to be disallowed? Are there not some difficult circumstances upon which we might agree that it be permitted?"⁶¹ David Carlin expresses similar skepticism that solid public opinion is really in favor of "abortion on demand" at any time during pregnancy, and for whatever reason.⁶² Representative Henry Hyde sees the public role differently than Cuomo. Hyde argues that "No consensus was demanded before adopting the Civil Rights Act of 1964 or fair-housing legislation" and concludes strongly: "The duty of one who regards abortion as wrong is not to bemoan the absence of a consensus against abortion, but to help lead the effort to achieve one."⁶³ Former Secretary of HEW Joseph Califano points out, however, that the public executive can either enforce laws which are in effect or resign. If he or she chooses the latter, an effective Catholic voice might be removed from the public-policy arena entirely.⁶⁴

One resource in the development of episcopal positions on both the morality of abortion and the relation of abortion ethics to civil legislation has been a relatively uniform tradition regarding not only the moral character of abortion but also the proper mode in which to analyze its morality and to argue its relevance to public policy. Recent magisterial formulations of this tradition include not only the more individual-centered documents on sexuality, family, and medical morality, but also the modern papal social encyclicals. These use a "natural law" framework

⁵⁸ "National Consensus" 303.

⁵⁹ "A Consistent Ethic and Abortion" 120.

⁶⁰ "Meanings of 'Religion and Politics'" 222.

⁶¹ "Will This Election Be Our Last?" 517.

⁶² David R. Carlin, Jr., "Patchy Garment: How Many Votes Has Bernardin?" *Commonweal* 111 (1984) 423. See also O'Connor, "Human Lives" 301.

⁶³ "Religious Values" 268, 270.

⁶⁴ "Moral Leadership" 165.

to address the mutual rights and duties of persons, the constitution of the common good by rightly ordered observance of moral interrelationships, and the answerability of social relations to legislative and judicial governance. The existence of this common tradition has been both an advantage and a disadvantage for the American episcopacy as it has tried to make a coherent and convincing case to the electorate and its representatives. On the positive side, the tradition not only furnishes a common basis for discourse within the Church, but has given ecclesiastical representatives a platform from which to appeal for the agreement of "reasonable" persons, and thus to transcend the constraints of strictly "religious" discourse. But it has also made possible, and even common, "shorthand" references to key premises in the prolife argument. Salient among these is the premise that the unborn human is a "human life" in a sense sufficient to clothe it in the garment "sanctity of life." Clearly this is a premise on which the "consistent ethic of life" depends. Some contenders simply assert that a human life from conception has the moral status of an infant, or apply language to the fetus which communicates that assumption; Hyde speaks in defense of the "preborn baby."⁶⁵ O'Connor contemplates the possibility of disagreement with this description, but construes alternative definitions of abortion simply as removing "pieces of tissue" or "putting babies to death."⁶⁶

Both O'Connor and Law move in the direction of an argument in favor of full fetal rights by appealing to scientific and medical evidence that *life* begins at fertilization. Indeed, Law anticipates the development of a consensus that the fetus is a "human person" precisely on the basis of "modern medicine."⁶⁷ Certainly the physical constitution, potential, appearance, and development of life in its earliest stages are relevant to the moral status of the fetus. But to cite factual, descriptive evidence is not in and of itself to reach a universally convincing argument about the dignity and rights of the entity described. What is called for is not only a clear endorsement of a philosophical position on the status of the fetus, but also a nuanced, concentrated, and critical development of the arguments supporting that position. There are at least three options: (1) At conception there are present the characteristics necessary and sufficient to constitute "a human life in the full sense," "a human being with equal rights," "a person," etc.⁶⁸ (2) Even if it is not possible to establish the

⁶⁵ "Religious Values" 303.

⁶⁶ "Human Lives" 293.

⁶⁷ "The Right to Life" 184.

⁶⁸ A challenging effort to address the philosophical and moral issues involved in defining "personhood" is Ronald M. Green's "Toward a Copernican Revolution in Our Thinking about Life's Beginning and Life's End," *Soundings* 66 (1983) 152-73. Green demonstrates that both "life" and "death" are evaluative, moral categories, not simply biological ones,

constituents and moment of "full" humanity, the conceptus must always be regarded as *absolutely* immune from direct destruction.⁶⁹ (3) Diverging from the recent magisterium: the fetus, whether a "person" or not, may be destroyed directly in dire circumstances and/or before a certain stage of development, e.g., threat to maternal life, or evacuation of uterine contents immediately after rape. The bishops in their several statements have been less than clear about which of these positions is being adopted, about whether or to what extent the bishops themselves disagree about the defensibility of these positions and about the arguments they would adduce in favor of any one of them. Inadequate explication of the fundamental steps in the prolife abortion argument can only lend to the impression that the weight of the bishops' position is suspended from religious authority instead of publicly defensible warrants. Bernardin's exposition at Georgetown of the thought of John Courtney Murray establishes a commitment to give episcopal teaching firm theological roots and to continue "civil" (in both senses) discussion of "life ethics" and policy.

Finally deserving of comment is the effort of Msgr. Harry J. Byrne to set abortion, and the bishops' abortion politics, in a broader social and theological context. Byrne perceptively defends the thesis that "The church, undoubtedly unwittingly, has weakened its prolife representations by its general insistence on the patriarchal nature of society and of the church, and by its specific inclusion of abortion in the same category with contraception, divorce and other sexual issues."⁷⁰ It should be recognized that the Church teaches with varying degrees of authority on the principles of sexual morality (as on the principles of just war) and that not all of its beliefs "are properly actionable politically." Byrne stresses that abortion should not be associated too closely with "other sexual issues," since it is properly a "life issue" and thus a matter of public policy. Moreover, the abortion case must be presented convincingly in light of "women's liberation," to which a hearing must be given "for reasons both of justice and of strategy." Noting that Catholic women are "deeply hurt" by practical and symbolic exclusion, he recommends to the Church that it come to terms "enthusiastically" rather than "grudgingly" with the "inexorable social revolution" toward women's greater partici-

and argues that fully equal personhood or inviolability does not begin until birth, even though prenatal life may still merit protection. His arguments are the *sorts of arguments* to which more attention is due.

⁶⁹ See Carol A. Tauer, "The Tradition of Probabilism and the Moral Status of the Early Embryo," *TS* 45 (1984) 3-33, discussed below.

⁷⁰ Harry J. Byrne, "Abortion and Contraception: Apples and Oranges," *America* 151 (1984) 273. See also Phyllis Zagano, "The Church and Abortion, Perception and Reality," *Commonweal* 111 (1984) 173-75.

pation in society and Church.

If one occasionally is led to wonder why, after such prolonged and extensive debate of the issues, abortion-choice proponents and opponents remain unconvinced by one another, Byrne gives clues. As feminist authors on both sides point out, discussants come to the abortion forum with other commitments and values.⁷¹ Abortion is seen as one in a network of issues interrelated in crucial ways.⁷² The establishment of a consensus on abortion may depend on a consensus on several other values, such as the value of all life; the importance of the quality of life; and the ways, both obvious and subtle, in which our society denigrates the lives and moral status of human beings in its own midst, and beyond its perimeters but not its influence. If the Bernardin "garment" can genuinely engage abortion antagonists so that a new and shared moral vision somehow is wrought, then hope for a consensus may become plausible.

Some scholarly articles about the *ethics* of abortion also have appeared. A relatively new element in Roman Catholic discussions is the attempt to situate abortion and other moral issues in a biblical context rather than the standard "natural law" one. Michael Duffey draws on the theology of "storytelling" (and Stanley Hauerwas) to argue that the practice of abortion is not consistent with the regard for children embodied in the biblical narratives.⁷³ A Jewish theologian and philosopher, Ronald M. Green, reminds us that biblical accounts and even specific moral injunctions are not always amenable to straightforward interpretation, and that "biblical" ethics can vary. He concludes that there is a strain in biblical and talmudic teaching which would favor abortion, not only to save the mother from harm but also to avoid genetic defects.⁷⁴

Catholic authors who offer justification for some abortions tend to concentrate on "borderline" cases, while not necessarily denying the

⁷¹ Sidney Callahan and Daniel Callahan describe a project which they organized at the Hastings Center to bring together "prolife" and "prochoice" women in dialogue about the different *values* which ground their positions ("Breaking through the Stereotypes," *Commonweal* 111 [1984] 520-23). Papers contributed by the participants resulted in *Abortion: Understanding Differences* (New York: Plenum, 1984). One of the prochoice participants, Kristin Luker, also produced *Abortion and the Politics of Motherhood* (Berkeley: University of California, 1984), a sociological analysis of the values and world views which support activists on both sides of the issue.

⁷² See Margaret O'Brien Steinfels, "Consider the Seamless Garment," *Christianity and Crisis* 44 (1984) 172-74.

⁷³ Michael K. Duffey, "Abortion and the Christian Story," *Linacre Quarterly* 51 (1984) 60-69.

⁷⁴ "Genetic Medicine in Jewish Legal Perspective," *Annual of the Society of Christian Ethics: 1984* (distributed by the Council on the Study of Religion, Wilfrid Laurier University) 249-71.

value of the conceptus. Having established “a presumption in favor of deformed individuals,” Hubert Doucet allows that abortion may be permissible in an instance such as anencephalism, since the offspring has no chance for survival.⁷⁵ William Daniel, S.J., argues similarly that since the anencephalic fetus will never become viable, premature inducement of labor to avoid grave burden to the mother can be justified. If pregnancy is terminated by “separation from the mother” rather than by “physical destruction,” the action can be justified as indirect killing, equivalent to the removal of a life-support system.⁷⁶

Another angle on the abortion dilemma is to question the certitude with which unborn life can be regarded as human in the full sense from fertilization. This line of thought has significant consequences for reproductive technologies and the research associated with them (to which I shall return below). The “moral status of the early embryo” is considered in a carefully constructed and complex article by Carol Tauer.⁷⁷ Tauer compares the arguments in the Vatican’s 1974 *Declaration on Abortion* to traditional probabilistic methods. She argues that the *Declaration* treats doubt about the full human status of the embryo as a “doubt of fact,” since it adduces the tradition’s rule that even probable opinions in favor of liberty cannot be followed when human life is at stake. Tauer asserts to the contrary that the conclusion of the *Declaration* relies on an interpretation of a “doubt of fact” which is inconsistent with the tradition of probabilism, since “fact” traditionally has denoted an empirically verifiable state of affairs. While the origin and development of the embryo are empirically observable, its ontological and moral status are not and continue to be disputed. Tauer’s thesis is that doubt about the embryo’s status is more like a doubt of law than a doubt of fact, and thus may be resolved in favor of a solidly probable opinion. She supports this thesis with examples and in several steps, which I will summarize as follows: (1) A doubt of law, like the doubt about embryonic status, is about the truth of a “theoretical” (as distinct from empirical) proposition, i.e., what God commands or the moral law demands. (2) Theoretical doubts are relevant to morality when and because they are significant for the application of moral laws. (3) The doubt over the status of the embryo (its time of “ensoulment”) is a doubt about a nonempirical proposition relevant to the scope of the law “Thou shalt not kill.” (4) Thus, like doubts of law, it can be resolved in favor of liberty. Tauer

⁷⁵ “Le diagnostic prénatal: Interprétation culturelle et réflexions éthiques,” *Laval théologie et philosophie* 40 (1984) 31–48.

⁷⁶ William Daniel, S.J., “The Anencephalic Fetus and Termination of Pregnancy,” *Australasian Catholic Record* 61 (1984) 65–74.

⁷⁷ “The Tradition of Probabilism” (n. 69 above) 3–33.

offers examples of cases in which moral theologians have so resolved doubts about the embryo's status.

Tauer's argument seems to hinge on redescribing what she calls doubts of "theory" as doubts of law rather than of fact. The main evidence for so doing is examples from the tradition demonstrating its presumption that "facts" are empirical. Even if Tauer is right in her assessment of the tradition, a basic question is whether the more appropriate *conceptual* classification of ontological or so-called "theoretical" propositions should not be "fact" rather than "law," even if the latter is the category into which they fit in traditional usage. After all, ontological assertions are claims about what "really" is the case, even if not empirically confirmable. If ontological assertions are assertions of facts of some sort, then a further question: Ought one simply and more directly to challenge, first, the narrowness of the traditional (empirical) conception of a "fact," and, second, the absolute prohibition of resolving a doubt of fact regarding life in favor of a solidly probable (or even more probable) negative hypothesis?⁷⁸ At the very least, Tauer has shown the tenuousness of some principles the tradition viewed as clear, distinct, and logically coherent. As a result, some degree of doubt is cast on the certainty with which some of its ostensibly deductive conclusions have been proposed. This suggests that the limits of some standard methods and principles ought to be acknowledged even as their genuine helpfulness is appreciated. More specifically, Tauer has demonstrated that there exist some problems and inconsistencies in magisterial analyses of abortion, and that these require revision. Hers is a stimulating article which deserves and no doubt will receive further serious attention.

Reproductive Technologies

A point at which "sex" issues and "life" issues do coalesce is innovative technologies of reproduction, particularly those which create or subsequently manipulate life outside the womb. The varieties and possibilities of laboratory reproduction challenge ethical analysis. They include artificial insemination by husband (AIH) or donor (AID); *in vitro* fertilization (IVF), in which donor gametes may be used; "surrogate" motherhood, in which a woman more like a surrogate wife is inseminated with the semen of a man whose partner is infertile; the transfer of the resulting embryo to the womb of the infertile woman able to carry a child; the implantation of an embryo conceived *in vitro* in the womb of a woman who is not its

⁷⁸ For a refutation of the applicability of probabilism to abortion, see Thomas J. O'Donnell, S.J., "Commentary on Abortion Article," *Linacre Quarterly* 51 (1984) 11-13 (originally published in the *Medical Moral Newsletter* 20/9). O'Donnell reacts with some fervor against a widely noted article by Daniel Maguire, "Abortion: A Question of Catholic Honesty," *Christian Century* 100 (1983) 803-7.

genetic mother; and the freezing of embryos for future use or to avoid the difficult process of synchronizing the menstrual cycles of donors and recipients.⁷⁹

Key moral issues are: (1) whether the artificial separation of sexual intercourse and conception is justifiable at all; (2) if so, whether a third (fourth, fifth) party may be introduced into the reproductive process via donation of sperm, ovum, womb, or embryo; (3) in such a case, how "parenthood" is to be defined, particularly when a contract to collaborate leads to a dispute; (4) whether the alternative methods of conception have any negative physical, psychological, or social impact on the offspring (including "spare" embryos resulting from the fertilization of several ova in a single attempt to initiate a pregnancy, and embryos which are frozen); and, if so, (5) whether research on the improvement of techniques is morally permissible when it necessitates the manipulation of embryos destined not to survive, and perhaps created expressly for experimentation.

Needless to say, these will not all be discussed here. As my point of departure, I will take the report of the British Government's Warnock Commission,⁸⁰ which considered "human assisted reproduction," including the use of embryos in research. I will focus on two moral *problems*: the use of donors and the status or rights of the embryo. Perhaps more importantly, I will highlight some elements in the process of moral *reasoning* represented by this and other literature. Succinctly put, the most significant moral difficulties arise in relation to the involvement of more than two persons in procreation, and in the manipulation of embryos for others' ends. The nature of these difficulties and their precise relevance to moral evaluation are hard to define. In addition, both of these practices are gathering increased social and legal support, but the reasons, if not hard to specify, are at least not formulated very well. Salient "reasons" in favor seem to be *de facto* acceptance and the anticipation of significant practical benefits for many.

Discussion of reproductive technologies resembles the debate on abortion in that both are motivated by a strong pragmatic, public-policy interest. Government committees in Australia have studied IVF and the use of frozen embryos in an extensive IVF program in Melbourne. The

⁷⁹ For scientific and social background in popular language, see *Time* cover story "The New Origins of Life," by Claudia Wallis (124, no. 11, Sept. 10, 1984, 46-53). For an extremely helpful, balanced overview of those aspects of the new techniques which present the most urgent moral questions, see an unsigned editorial, "Warnock: Clarifying the Issues," *Month* 246 (1984) 4-6.

⁸⁰ Report of the Committee of Inquiry into Human Fertilisation and Embryology of the Department of Health and Social Security, Chairman: Dame Mary Warnock DBE (London: Her Majesty's Stationery Office, 1984). Additional citations will be made in the text by reference to the sections and subsections into which the Report is divided.

Subcommittee on Investigations and Oversight of the Committee on Science and Technology of the U.S. House of Representatives has solicited testimony regarding the ethical and legal implications of IVF and embryo transfer.⁸¹

Introducing its recommendations, the Warnock Committee describes law as "the embodiment of a common moral position" (6.), and claims not to base its position on "moral feelings" alone but on "moral reasoning," i.e., "to *argue*" its positions (2.). The authors generally proceed by giving evidence against, then in favor of, each technique, after which they define their own position. They give basic, though not necessarily unqualified, approval to all but surrogate motherhood. The most frequent supporting warrants are appeals to accepted present practice and to expected benefits. It is not explained why these considerations should have priority over others, nor are they set within any philosophical framework which would show their adequacy.

For instance, the Committee considers against AID the argument that it introduces a third party "into what ought to be an exclusive relationship" and that this "is held to be morally wrong in itself" (4.10). Without discussion of what it would mean for an act to be "wrong in itself" or whether that is a notion that makes sense and has weight, the Committee proceeds to a pragmatic and consequence-oriented refutation. AID is not adultery because it is not so regarded in law and because the mother has no personal contact with the father (4.10). ("Adultery" is not defined.⁸²) Other influential considerations are that AID does not necessarily constitute a "threat" to the marriage, "harm" to the child, or genetic "risks" to future generations (4.11-13). Positively, AID is seen by users as "a positive affirmation of the value of the family," provides a "very much wanted" child, and is not physically dangerous (4.15). "Moreover the practice of AID will continue to grow . . ." (4.16).

IVF is defended on parallel grounds, though it is allowed that those who object on the basis of either "fundamental principles" or "consequences" will choose to avoid it as "a question of individual conscience" (5.6). It is mentioned that embryos which "have potential for human life" are created, only to be allowed to die (5.7). But after the observation that this is the "only method" by which some can have "a child that is

⁸¹ See George J. Annas, "Redefining Parenthood and Protecting Embryos: Why We Need New Laws," *Hastings Center Report* 14, no. 5 (Oct. 1984) 50-52.

⁸² An exchange in *Revue des sciences religieuses* concerned the problem whether or to what extent AID is an intrusion in the unity of the couple. The general context was the attempt to interpret specifically Christian notions of marriage and parenthood, the dignity of the person, and the significance of modern technology. A special focus was the definition of "adultery." See articles by J.-M. Aubert, 55, no. 4 (1981); J.-L. Clement, 57, no. 3 (1983); and Aubert, 57, no. 4 (1983).

genetically entirely theirs" (5.9), the conclusion is asserted that "IVF is an acceptable means of treating infertility" (5.10). Egg and embryo donation, with or without donor semen, are accepted in a similar manner, with the provision (substantially unargued) that the transferred embryo is to be regarded as the offspring of "the carrying mother" (7.4); reference is made to embryo donation as "prenatal adoption" (7.3).

Surrogacy is one of the few possibilities on which the Report reaches a negative. Since the moral objections regarding third-party intervention have been set aside previously, the decisive factor appears to be that, at least in England, "the weight of public opinion is against the practice" (8.10). Interestingly, we are told later that to use a uterus as an "incubator" is "inconsistent with human dignity" and that the mother-child relation is "distorted by surrogacy" (8.11). Finally, "That people should treat others as a means to their own ends, however desirable the consequences, must always be liable to moral objection," especially "when financial interests are involved" (8.17). Why these considerations of intrinsic morality, rights, and respect for persons and for the meaning of certain natural relations have decisive influence here but not in regard to embryos, ovum donors, and sperm donors is not clarified.⁸³

Treating human embryos and research, the authors find that "the more generally held position" is that the rights of the embryo are not absolute (11.15) and that infertility research "could not have taken place" without the use of embryos (11.18). The Committee members limit such research to 14 days, citing this as the period prior to human individuation. They remain divided on whether it would be appropriate to generate embryos specifically for the purpose of research. A dissenting and better-articulated minority report recommends against all experimentation, as well as against destruction of "spare" embryos, on the view that the embryo "has a special status because of its potential for development to a stage at which everyone would accord it the status of a human person" (Appendix B.3).

Paul Ramsey's disappointed advice to the Committee carries a prophetic note: "I respectfully express the hope that the Committee will be initially prepared to say 'Never' to a number of things that are now

⁸³ The issues are joined more pointedly in the *Hastings Center Report* (13, no. 5 [Oct. 1983]) by John A. Robertson ("Surrogate Mothers: Not So Novel after All," 28-34) and Herbert T. Krimmel ("The Case against Surrogate Parenting," 35-39). While Robertson argues that the ethical and legal problems of surrogacy are not much different from, and can be resolved in the same way as, adoption and artificial insemination, Krimmel contends that surrogacy differs from adoption. The former is not only "quasi-adultery" but involves the intentional creation of a child for the purpose of transferring it to someone else's custody, which is immoral. See extended letters to the editor and authors' responses in "Correspondence," *HCR* 14, no. 3 (June 1984) 42-44. See also George J. Annas, "Surrogate Embryo Transfer: The Perils of Parenting," *ibid.* 25-26.

being done or proposed that are now proximately possible to be done, and not merely to things that may be only remotely possible. Remote possibilities are soon proximate, and soon done."⁸⁴

Prior to the Warnock Report's appearance, important series of exchanges on IVF and especially on the status of the embryo took place in the British journals.⁸⁵

A symposium in the *Journal of Medical Ethics* began with an expressly utilitarian argument by Peter Singer and Deane Wells in favor of both IVF and research use of "early embryonic material."⁸⁶ Singer and Wells argue for IVF on the grounds that the normatively "human" is to be judged "teleologically" or with reference to ends, rather than with reference merely to what occurs in nature. As noticed by their commentator, G. D. Mitchell,⁸⁷ they do not develop criteria that would define the ends of humanity or the relation, if any, they ought to have to what occurs "naturally." Their arguments on the nature of the human embryo are more direct. They appeal to the "brain activity" criterion of death and to the fact that society does approve certain practices which it would not if the embryo were taken to be a "person." A strongly contrary philosophical position is argued by Teresa Iglesias, who proposes that the human embryo must at all times be given the respect and protection due any other human being. A crucial premise is that its "internal potential to develop into an adult" is "an *actually present capacity*."⁸⁸

Stimulating a debate in the *Month*, Gordon Dunstan reports on separate submissions of Catholic physicians and of two groups of Catholic bishops, all of whom argue that donorship is to be repudiated and the

⁸⁴ "The Issues Facing Mankind," in *The Question of In Vitro Fertilization: Studies in Medicine, Law and Ethics*, Evidence to the Government Inquiry into Human Fertilization and Embryology from the Society for the Protection of Unborn Children (London: SPUC Trust, 1984) 23. See also Richard M. Zaner, "A Criticism of Moral Conservatism's View of In Vitro Fertilization and Embryo Transfer," *Perspectives in Biology and Medicine* 27 (1984) 200-212. Zaner takes on Hans Tiefel, Leon Kass, and Paul Ramsey, concluding that the "desire" to have a child is "genuine" and "nontrivial," and is appropriately remedied by IVF.

⁸⁵ In the *Month*, see G. R. Dunstan, "Catholics and the Warnock Inquiry," 245 (1983) 405-7; Editorial, "Warnock: Clarifying the Issues," 246 (1984) 4-6; J. M. Finnis, "IVF and the Catholic Tradition," *ibid.* 55-58; Nicholas Coote, "Genetics: Choices in Public Policy," *ibid.* 80-81. In the *Journal of Medical Ethics*, see Editorial, "In Vitro Fertilisation," 9 (1983) 187-88; Peter Singer and Deane Wells, "In Vitro Fertilisation: The Major Issues," *ibid.* 192-95; G. D. Mitchell, "In Vitro Fertilisation: The Major Issues—A Comment," *ibid.* 196-99; Teresa Iglesias, "In Vitro Fertilisation: The Major Issues," 10 (1984) 32-37; G. R. Dunstan, "The Moral Status of the Human Embryo: A Tradition Recalled," *ibid.* 38-44; M. D. Kirby, "Bioethics of IVF—The State of the Debate," *ibid.* 45-48; B. F. Scarlett, "The Moral Status of Embryos," *ibid.* 79-81.

⁸⁶ "In Vitro Fertilisation" 193-94.

⁸⁷ "A Comment" 196.

⁸⁸ "In Vitro Fertilisation" 36.

embryo protected.⁸⁹ The doctors, but not the bishops, support AIH and IVF with the spouses' gametes. In an unusual but perhaps prudent move, they also make specific recommendations of legal safeguards with regard to those techniques which they do not support morally, e.g., AIH and donor IVF.⁹⁰ Dunstan objects to the absolute protection claimed by the Church for the embryo from conception, citing variation in Christian history and in canon law.⁹¹ John Finnis, lay philosopher and member of the Bishops' Joint Committee on Bioethical Issues (for the episcopal conferences of Scotland, England, and Wales), responds by highlighting the consistency of Christian condemnation of destruction of the human embryo or fetus even if not fully developed, and by disputing the breadth of any permissiveness that actually may have existed.⁹² Also in reply to Dunstan, Nicholas Coote, former secretary of the second group of bishops to testify, the Social Welfare Committee of the Bishops' Conferences of England and Wales, stresses that the SWC was concerned with what is certainly a, if not the, key policy question in both abortion and embryo research: "how to legislate when there is lack of moral consensus." "If you do not all agree over when life begins, can you not, nevertheless, try to agree on giving some protection to the embryo and the foetus?"⁹³

Such questions will surely continue to focus the U.S. debate. In testimony before the House, both Donald McCarthy and Richard McCormick express misgivings about donorship in procreation and about nonprocreative uses of the embryo.⁹⁴ McCormick in particular addresses the reality of pluralism by calling for more ecumenical discussion of the "values at stake" in relation to the person, or "dimensions of human

⁸⁹ Dunstan, "Catholics and Warnock" 405-7. Without repudiating artificially-assisted reproduction between spouses, Westminster's Cardinal George Basil Hume, O.S.B., stated after the release of the Warnock Report that donor methods and experimentation on embryos "conflict with basic principles of Catholic morality." In particular, he noted the teaching, "supported by modern scientific knowledge," that from conception there exists "a new life" and "process of continuous growth" deserving of protection (*Origins* 14 [1984-85] 147).

⁹⁰ "Warnock and the Catholic Doctors" (the text of "The Doctors' Submission"), *Month* 246 (1984) 163-66.

⁹¹ "Catholics and Warnock" 406, and especially the lengthy treatment with extensive direct citations of historical materials in "Moral Status of the Embryo."

⁹² Finnis, "Catholic Tradition" 55-58.

⁹³ Coote, "Public Policy" 77-78.

⁹⁴ Donald McCarthy, "Ethics and Embryo Rights," *Origins* 14 (1984-85) 174-76; Richard A. McCormick, S.J., "Procreative Technologies," *ibid.* 172-74. See also LeRoy Walters, Statement on Ethics and In Vitro Fertilization, testimony before the Subcommittee on Investigations and Oversight, Committee on Science and Technology, U.S. House of Representatives, Aug. 8-9, 1984. Walters tries to circumvent the issue of consensus by proposing a "procedural" solution, i.e., a committee to review all embryo-research proposals to determine whether each "seeks important knowledge that cannot be gained in any other way."

flourishing” to be affected by procreative technologies. These include “the meaning of the family; the meaning of self-identity; the meaning of sexuality and marriage; the sanctity of individual human life.” In both ethical and public-policy discussion, it is important to consider both the consequences of technologies, “whether they will dissipate our respect for persons,” *and* whether each possibility is “in itself an act of disrespect.” Different assessments of these issues in relation to reproductive technologies make for the present ethical pluralism and thus for a more difficult public-policy task. Even given uncertainty about the precise status of the embryo, McCormick urges that significant respect is due in view of its potentiality and that to deprive it of that respect is to risk serious “erosion of respect for human life” in general.⁹⁵ The difficulty, of course, is in determining exactly what practical limits that “respect” will involve, given uncertainty and disagreement about its grounding and extent.

McCormick reaches for agreement on the basis of a “basic ethico-prudential judgment,” “a safeside moral rule of prudence against the slide to abuse.”⁹⁶ In so defining the judgment, he indicates the importance both of proceeding cautiously when the moral character of specific acts is unclear and of taking into account in the moral evaluation of such acts the social ramifications of their institution as practices. McCormick would not prohibit marital IVF, albeit some embryos do not survive the process; but when social risks are added to the possibility of unjust treatment of the conceptus, he disapproves embryo research, donor methods, surrogate motherhood, embryo freezing, and their commercialization. His suggestion demonstrates that if any consensus about IVF (or abortion) is to be achieved before every ethical unclarity is resolved, then that consensus will of necessity be limited to the middle ground, probably provisional, and not susceptible of universally persuasive “proof.”

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PASTORAL ON WAR AND PEACE: REACTIONS AND NEW DIRECTIONS

1984 turns out to be neither the year of totalitarian terror foreseen by Orwell nor the occasion for nuclear Armageddon. Instead, it has seen the re-election of Ronald Reagan, who offers to the voters both a continued military buildup and renewed arms-control negotiations. Despite the protests of the European peace movement and numerous denunciations by religious bodies, the initial deployment of Pershing 2 and cruise missiles has occurred without major difficulties for the authorities of NATO. Some observers may conclude that it is as if *The Challenge of*

⁹⁵ “Procreative Technologies” 174.

⁹⁶ *Ibid.*