Testimony of
United States Catholic Conference
on
Constitutional Amendment Protecting Unborn Human Life
before the
Sub-Committee on Constitutional Amendments
of the
Senate Committee on the Judiciary

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On repeated occasions during the past ten years the National Conference of Catholic Bishops has spoken on the security of life, the right of each individual to life, and on the morality of abortion. Perhaps the most succinct expression of these repeated statements is contained in the Second Vatican Council's *Pastoral Constitution on the Church in the Modern World*, addressed to all mankind:

"For God, the Lord of life, has conferred on men the surpassing ministry of safeguarding life - a ministry which must be fulfilled in a manner which is worthy of man. Therefore from the moment of its conception life must be guarded with the greatest care, while abortion and infanticide are unspeakable crimes". [no. 51]

"Furthermore, whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as sub-human living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others

of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are a supreme dishonor to the Creator." *[no. 27]*

These statements of the Council, and the many that have been issued by the National Conference of Catholic Bishops, have enunciated two central themes:

1. The right to life is a basic human right which should be protected by law.

2. Abortion, the deliberate destruction of an unborn human being[1], is contrary to the law of God and is a morally evil act.

In regard to the first point, the right to life is a basic human right, proclaimed as such by the Declaration of Independence and Constitution of the United States, and also by the United Nations Declaration of Human Rights. But human life cannot be considered merely as an abstract notion, for human life always exists in a human being. Thus, it is the life of each specific, individual human being that must be protected and sustained, and the responsibility falls equally on society and on individual persons within society.

As for the second point, we wish to make it clear that we are not seeking to impose the Catholic moral teaching regarding abortion on the country. In our tradition, moral teaching bases its claims on faith in a transcendent God and the pursuit of virtue and moral perfection. In fact, moral teaching may frequently call for more than civil law can dictate, but a just civil law cannot be opposed to moral teaching based on God's law. We do not ask the civil law to take up our responsibility of teaching morality, i.e., that abortion is morally wrong. However, we do ask the government and the law to be faithful to its own principle -- that the right to life is an inalienable right given to everyone by the Creator.

We also reject the argument that opposition to abortion is simply a Catholic concern. The state abortion laws of the 19th century, although highly prohibitive, did not represent Catholic morality.[2] The proposed statute of the American Law Institute, a model on which some state laws were revised in recent years, did not represent Catholic morality. The rejection of liberal abortion laws in North Dakota and Michigan, by 78 and 62 percent vote of the people in a public referendum, cannot be attributed to Catholic moral teaching, since in both states the Catholic population is less than 30 percent.

Furthermore, in a religiously pluralistic society, government is not expected to formulate laws solely on the basis of the religious teaching of any particular Church. In the formulation of law, though, it is appropriate that the convictions of citizens, and the principles from which they are derived, be taken into consideration. There are certain principles of morality taught by the various Churches that are part and parcel of the legal tradition of American society. In our country, religious leaders are increasingly compelled to present a moral argument in regard to legislation.
Such was the case in regard to civil rights, to anti-poverty legislation, and to other instances of the violation of human rights.

The abortion decision is a complex web of many factors -- social, personal, cultural, emotional, religious, etc. In its opinions in *Roe v. Wade* and *Doe v. Bolton*, the Court overstepped its authority and made some apodictic moral pronouncements. Morality was definitely imposed; the Court's own morality -- based on inaccuracy and error. That the Supreme Court would presume to usurp the role of moralists and ethicians is telling cause for moral teachers to clearly articulate their position -- that is, their reasons and the bases of their reasons for legally protecting the unborn.

We appear here today in fulfillment of our considered responsibility to speak in behalf of human rights. The right to life -- which finds resonance in the moral and legal tradition -- is a principle we share with the society and the one that impels us to take an active role in the democratic process directed toward its clear and unequivocal articulation.

The Supreme Court of the United States has denied protection of the right to life to the unborn, and the most realistic way to reverse that decision of the Court is to amend the Constitution of the United States. Thus, we place before this Committee our testimony in behalf of an amendment that will establish that the unborn child is a person and is entitled by law to the protection of the inalienable right to life, a right accorded by the Constitution to every human being in this nation.

In this testimony we wish to address the following points:

I. The Human Dignity of the Unborn Child
II. The Protection of Human Rights in Law
III. The Right to Life of the Unborn in the Context of American Law
IV. A Review of the Court's Opinions in *Roe v. Wade* and *Doe v. Bolton*

I. The Human Dignity of the Unborn Child

Newly conceived human life should be reverenced as a gift from God and from nature. The dignity of the unborn child is neither conferred nor taken away by any man or woman or by any government or society. That dignity is rooted in an objective individuality that inherently tends toward the openness and transcendence men commonly call personhood.

The developing unborn child has increasingly been an object of study of a variety of empirical sciences, such as genetics, biology and fetology. The scientific evidence thereby accumulated should form an integral part of the human assessments that any man or any government makes regarding the reality and worth of the unborn child.

Life's Beginnings

It is an accepted biological fact that human life begins at fertilization. Subsequent to the Supreme Court's abortion decisions the noted fetologist, Dr. Landrum B. Shettles,[3] submitted a public letter to the *New York Times* (February 14, 1973) in which he accused the Supreme Court of denying the truth about when life begins. The doctor stated in part:

"Concerning when life begins, a particular aggregate of hereditary tendencies (genes and chromosomes) is first assembled at the moment of fertilization when an ovum (egg) is invaded by a sperm cell. This restores the normal number of required chromosomes, 46, for survival, growth, and reproduction of a new composite individual.

"By this definition a new composite individual is started at the moment of fertilization. However, to survive, this individual needs a very specialized environment for nine months, just as it requires sustained care for an indefinite period after birth. But from the moment of union of the germ cells, there is under normal development a living, definite, going concern. To interrupt a pregnancy at any stage is like cutting the link of a chain; the chain is broken no matter where the link is cut. Naturally, the earlier a pregnancy is interrupted, the easier it is technically, the less the physical, objective

encounter. To deny a truth should not be made a basis for legalizing abortion."

Such conclusions, the doctor noted, were based "on twenty years' work in this field, apart from any known religious influence."

The Supreme Court has ruled that the unborn child does not deserve the full protection of society's laws until the time of birth. Yet, some years ago *Life* magazine, in a special feature on the unborn child, stated:

***"*The birth of a human life really occurs at the moment the mother's egg cell is fertilized by one of the father's sperm cells.*"*[4]**

The remarkable advances in modern times in the sciences of embryology, fetology and genetics have dispelled many ancient falsehoods about the nature of life in the womb -- that in its early stages of development the embryonic human life possesses an inert plant-like character, or that the male sperm determines the make-up of the child while the mother only passively nurtures the child, or that male children develop faster than female children, etc.

Dr. H .M. I. Liley,[5] the New Zealand pediatrician, has cogently expressed the marked effect the advances in biology have had on the traditional notions of life in the womb:

"Because the fetus is benignly protected, warmed and nourished within the womb, it was long thought that the unborn must have the nature of a plant, static in habit and growing only in size. Recently through modern techniques of diagnosing and treating the unborn baby, we have discovered that little could be further from the truth.

"The fluid that surrounds the human fetus at 3, 4, 5 and 6 months is essential to both its growth and its grace. The unborn's structure at this early stage is highly liquid, and although his organs have developed, he does not have the same relative bodily proportions that a newborn baby has. The head, housing the miraculous brain, is quite large in proportion to the remainder of the body and the limbs are still relatively small. Within his watery world, however (where we have been able to observe him in his natural state by closed circuit x-ray television set), he is quite beautiful and perfect in his fashion, active and graceful. He is neither an acquiescent vegetable nor a witless tadpole as some have conceived him to be in the past, but rather a tiny human being as

independent as though he were lying in a crib with a blanket wrapped around him instead of his mother."[6]

Evidence from Genetics

Genetics tells us that at fertilization a new human individual begins. A standard text book on genetics gives the following technical explanation:

"A human being originates in the union of two gametes, the ovum and the spermatozoon. These cells contain all that the new individual inherits organically from his or her parents. The hereditary potentialities present in the fertilized ovum are unfolded, as cell divisions succeed each other, in an environment first prenatal and then postnatal, free to vary at all stages within narrow or wide limits. The child, and finally the adult, is what he is at any time during his existence because of the hereditary constitution which he originally received, and the nature of the environment in which he has existed up to that time."[7]

The newly conceived life is human because it is from human parents and it is alive in a distinctively human way because, unlike the sperm and ova that, unfertilized, necessarily die, the fertilized ovum has the ability from within itself to reproduce itself and, if no untoward events occur, it will develop through the various embryonic and fetal stages to birth. The fertilized ovum represents a full human genetic package of 46 chromosomes. While half of these chromosomes is derived from each of the parents, the newly conceived life differs genetically from its parents as a unique combination of genes.

Biologically every living being is assigned to only one species, e.g., *Homo sapiens*, regardless of its developmental stage. Such species differentiations are genetically determined. "Its [a living being's] designation [to a species] is determined not by the stage of development, but by the sum total of its biological characteristics -- actual and potential -- which are genetically determined. However, if we say it [the fetus] is not human, i.e., a member of *Homo sapiens*, we must say it is of another species. But this cannot be."[8]

The mysteries of life being revealed to us by genetics should not be underestimated. We are told that a single thread of DNA (Deoxyribonucleic acid, the chemical material of which the information-carrying material or genes are composed) from a human cell contains information equivalent to six hundred thousand printed pages with five hundred words on a page. Such

stored information at conception has been estimated to be fifty times more than that contained in the *Encyclopedia Britannica*.[9] Dr. Hymie Gordon, Chief Geneticist at the Mayo Clinic, comments on the genetic facts:

". . . . from the moment of fertilization, when the deoxyribose nucleic acids from the spermatozoon and the ovum come together to form the zygote, the pattern of the individual's constitutional development is irrevocably determined; his future health, his future intellectual potential, even his future criminal proclivities are all dependent on the sequence of the purine and pyrimidine bases in the original set of DNA molecules of the unicellular individual. True, environmental influences both during the intra-uterine period and after birth modify the individual's constitution and continue to do so right until his death, but it is at the moment of conception that the individual's capacity to respond to these exogenous influences is established. Even at that early stage, the complexity of the living cell is so great that it is beyond our comprehension. It is a privilege to be allowed to protect and nurture it."[10]

The wonder evoked by life's beginnings does not abate during the subsequent development of the unborn child. Fertilization is followed by three basic biological activities: cell division, growth, and systematic and orderly differentiation of the various parts of the embryo to form the organ systems.[11]

Scientists and researchers caution that our empirical knowledge regarding the world of the developing child is dependent upon the scientific methods and accumulated results of today.[12] The data is fragmentary. Nonetheless, we can anticipate greater and not less empirical verification of the humanity of the unborn child in the future. As the fetologist, A. W. Liley notes, "Most of our studies of foetal behavior have been later in pregnancy, partly because we lack techniques for investigation earlier and partly because it is only the exigencies of late pregnancy which provide us with opportunities to invade the privacy of the foetus."[13]

The traditional understanding of the fetus as a "passive, dependent, nerveless, fragile vegetable,"[14] is understandable because the only serious students of the fetus were embryologists and physicians concerned with childbirth. "The accoucher was concerned primarily with mechanical problems in delivery, so that the only aspects of the foetus which mattered were the presenting part and its diameters in relation to the diameters of the birth canal . . . . The

embryologists studied dead, static tissue and attempted to deduce function from structure . . . ."[15]

The question of scientific methodology reaches to the question of prejudice and misconception. The humanity of the unborn child is sometimes demeaned with abusive descriptive terms.[16] The distinctly human features of the unborn child possess an alien character as compared to the comfortable and familiar world of the adult. From the perspective of the various scientific disciplines Dr. A. W. Liley remarks:

". . . In the present century, many disciplines have extended their interests to include the foetus, but in fields from surgery to psychiatry the tendency has been to start with adult life and work backwards -- knowing what the adult state was, one worked back to what seemed a reasonable starting point to reach that goal. Therefore, in fields from physiology and biochemistry to education and psychology, there has grown up the habit of regarding the foetus and the neonate as a poorly functioning adult rather than as a splendidly functioning baby."[17]

Early Fetal Development

From fertilization the child is a complex, dynamic, rapidly growing individual. At seven to nine days after fertilization implantation in the uterine wall begins.[18] By the end of the first month, the child has completed the period of relatively greatest size increase and physical change of a lifetime. A primary brain is present and the heart, though incomplete, is pumping the child's own blood with a regular pattern.

From the beginning of the second month the external features of the child take on distinctly human appearances. As one commentator states:

"By the end of the seventh week we see a well-proportioned small-scale baby. In its seventh week, it bears the familiar external features and all the internal organs of the adult, even though it is less than an inch long and weighs only 1/30th of an ounce. The body has become nicely rounded, padded with muscles and covered by a thin skin. The arms, only as long as printed exclamation marks, have hands with fingers and thumbs. The slower growing legs have recognizable knees, ankles and toes [references cited]. Shettles and Rugh describe the child at this point of its development as a one-inch

miniature doll with a large head, but gracefully formed arms and legs and an unmistakably human face [reference cited]."[19]

The brain is now sending out impulses that coordinate the function of the other organs. Reflex responses are present as early as forty-two days. The brain waves have been noted (EEG) at forty-three days.

After the eighth week no further primordia will form. Until adulthood, when full growth is achieved somewhere between twenty-five and twenty-seven years, the changes in the body will be mainly growth and gradual refinement of working parts.[20]

In recent years a variety of photographs have visually documented the human development of the unborn child. The most famous of these are the Nilsson photos.[21] However, such photos, striking evidence that they are, are generally pictures of embryos and fetuses that have died. The eight week old fetus presents an unmistakable human being with blunt features and extremities.[22] As Dr. Paul E. Rockwell, Director of Anesthesiology at Leonard Hospital in Troy, New York reports, a fetus of eight weeks, while actually alive, appears to be perfectly developed. It is death which superimposes the bluntness of appearances.

"Eleven years ago while giving an anesthetic for a ruptured ectopic pregnancy (at two months gestation) I was handed what I believe was the smallest living human being ever seen. The embryo sac was intact and transparent. Within the sac was a tiny (approx. 1 cm.) human male swimming extremely vigorously in the amniotic fluid, while attached to the wall by the umbilical cord. This tiny human was perfectly developed, with long, tapering fingers, feet and toes. It was almost transparent, as regards the skin, and the delicate arteries and veins were prominent to the ends of the fingers.

"The baby was extremely alive and swam about the sac approximately one time per second, with a natural swimmer's stroke. This tiny human did not look at all like the photos and drawings and models of 'embryos' which I have seen, nor did it look like a few embryos I have been able to observe since then, obviously because this one was alive!

" . . . When the sac was opened, the tiny human immediately lost its life and took on the appearance of what is accepted as the appearance of an embryo at this age (blunt extremities, etc.)."[23]

The Life of the Unborn Child

The notion that the developing child is part of the mother like the tissue of a maternal organ has been thoroughly disproven. The unborn child is not only independently alive, growing and active, but it is now thought to be "very much in command of the pregnancy."[24] Perhaps even from the preimplantation stage,[25] the fetus guarantees the endocrine success of pregnancy, and thereby induces all manner of change in maternal physiology to make the mother a suitable host, e.g., stops menstrual flow so that blastocyst can implant in the uterine wall. The fetus single handedly solves the homograph problem; determines the length of pregnancy; determines which way he will lie in pregnancy (seeks position of comfort) and which way he will present in labor; and he is not entirely passive in labor.[26]

The fetus exhibits a complex of behavioral characteristics. The fetus demonstrates a cyclic pattern of drowsiness and activity; is responsive to pressure and touch; evidences pleasurable and bitter taste reactions; swallows, an activity which probably provides nourishment; sucks his thumb; responds to external light; is startled by sudden noises. The fetus also exhibits pain responses. Dr. A. W. Liley comments:

"The foetus responds with violent movement to needle puncture and to the intramuscular or intraperitoneal injection of cold or hypertonic solutions. Although we would accept, rather selfishly, that these stimuli are painful for adults and children and, to judge from his behaviour painful for the neonate, we are not entitled, I understand, to assert that the foetus feels pain. In this context I think Bertrand Russell's remark in his *Human Knowledge, its Scope and Limitations* rather apt -- he relates 'A fisherman once told me that fish have neither sense nor sensation but how he knew this he could not tell me.' It would seem prudent to consider at least the possibility that birth is a painful experience for a baby. Radiological observation shows foetal limbs flailing during contractions and if one attempts to reproduce in the neonate by manual compression a mere fraction of the cranial deformation that may occur in the course of a single contraction the baby protests very violently. And yet, all that has been written by poets and lyricists about cries of newborn babies would suggest that newborn babies cried for fun or *joie de vivre* -- which they never do afterwards -- and in all the discussions that have

ever taken place on pain relief in childbirth only maternal pain has been considered."[27]

The fetus begins moving limbs and trunk from about eight weeks. However, it is normally not until the 16-22 week period before the mother perceives such movement. Historically this phenomenon has been called "quickening," and it was identified as the time at which the fetus becomes an independent human being possessed of a soul. It is now apparent that "quickening" is a function of maternal perceptions. "Quickening is a maternal sensitivity and depends on the mother's own fat, the position of the placenta and the size and strength of the unborn child."[28]

In a speech at a medical convention Dr. Liley, addressing the question of the personality of the fetus, stated:

". . . We may not all live to grow old but we were each once a foetus ourselves. As such we had some engaging qualities which unfortunately we lost as we grew older. We were physically and physiologically robust. We were supple and not obese. Our most depraved vice was thumb sucking, and the worst consequence of drinking liquor was hiccups not alcoholism.

"When our cords were cut, we were not severed from our mothers but from our own organs -- our placentae -- which were appropriate to our old environment but unnecessary in our new one. We do not regard the foetal circulatory system, different as it is from the child's or adult's, as one big heap of congenital defects but as a system superbly adapted to his circumstances. We no longer regard foetal and neonatal renal function, assymetric as it is by adult standards, as inferior, but rather entirely appropriate to the osmometric conditions in which it has to work. *Is it too much to ask therefore that perhaps we should accord also to foetal personality and behaviour, rudimentary as they may appear by adult standards, the same consideration and respect*?" (emphasis added) [29]

The perception of the humanity of the unborn child is embedded in a variety of human contexts, scientific, medical, legal, artistic, etc. A full personal response to the various contexts is required in a well-ordered society:

"Response to the fetus begins with a grasp of the data which yield the fetus' structure. That structure is not merely anatomical form; it is dynamic -- we apprehend the fetus' origin and end . . . . Seeing, we are linked to the being in

the womb by more than an inventory of shared physical characteristics and by more than a number of made-up psychological characteristics. ***The weakness of the being as potential recalls our own potential state, the helplessness of the being evokes the human condition of contingency. We meet another human subject."***[30] **(emphasis added)**

The Valuation of Unborn Human Life

Honesty compels us all to admit that in the abortion debate the question of when human life begins is not the central issue in dispute. Rather, the main question is: how should society value the unborn human life that is present? Even this broader question, however, should be rooted in a lively cognizance of the reality of the life being valued. Often, however, this valuation process is characterized by a schizophrenia that denies, distorts or dismisses as "mere fact" the reality of the unborn life being assessed so as to advance other particular values.

An editorial in the September, 1970 issue of *California Medicine* (the official journal of the California Medical Association), accepting as necessary fact what it calls the ongoing demise of the traditional Western ethic that "has always placed great emphasis on the intrinsic worth and equal value of every human life regardless of its stage or condition," acknowledged that "human life begins at conception and is continuous whether intra- or extra-uterine until death." At the same time the editorial defended the quite common denial of this fact as part of the strategy whereby the "new ethic" would gradually replace the traditional ethic.

"The process of eroding the old ethic and substituting the new has already begun. It may be seen most clearly in changing attitudes toward human abortion . . . . Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a *curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were* not often *put forth under socially impeccable auspices.* It is suggested that this schizophrenic sort of subterfuge is necessary because while a new ethic is being accepted the old one has not yet been rejected." (emphasis added)

The value of the individual human life no longer possesses an inalienable character that gives rise to such procedural rights as due process and equal protection. Individual worth is, under the "new ethic," to be determined by the vision of "a biologically oriented world society." In this new world in which "hard choices will have to be made with respect to what is to be preserved and strengthened and what is not," it is the medical profession that possesses the greatest competence and expertise to provide leadership for us all.

Parallels between this editorial and the Supreme Court rulings on abortion are disturbing. The Supreme Court effectively denied the "well-known facts of fetal development" (*Wade*, p. 41) by consigning them to the realm of speculation and theory: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer" (*Wade*, p. 44). Having avoided a full and open discussion of the question of the objective humanity of the unborn child, the Supreme Court ruled, on moral grounds, that life *effectively* begins under the law no earlier than viability "because the fetus then presumably has the capability of *meaningful* life outside the mother's womb" (*Wade*, p. 48--emphasis added). The fetus is perfectly viable *in utero* and only a disease process or attack renders it non-viable.

When the objective reality of individual human life is either denied or reduced to simple factuality, those values that men commonly perceive to flow from the personal transcendence that inheres in the individual (e.g., an inalienable right to life, liberty, pursuit of happiness) are replaced by other values ("meaningfulness," "a biologically oriented world society") that tend to possess a high degree of arbitrariness, caprice, or personal or group bias.

The concept of "meaningfulness" espoused by the Court as the criterion for determining whether any value should be attached to the unborn child raises the specter of the "life devoid of value" ethic that was operative in the genocide and euthanasia programs of Nazi Germany. That ethic is reputed to have been nurtured since the early 1920's by a significant part of the legal and medical professions of Germany.[31] Both the *California Medicine* editorial and the Supreme Court decisions place heavy reliance on the medical profession to exercise judgments that extend beyond their area of medical competence.

On August 7, 1972, Dr. Walter Sackett, a Representative to the Florida legislature, testified before a U.S. Senate Committee on the topic of death with dignity. At that time Dr. Sackett approvingly quoted a statement made to him by a medical director of a Florida hospital for the care of the severely mentally retarded, to the effect that 90% of the 1500 mentally retarded now in two Florida hospitals should be allowed to die. Dr. Sackett invoked the cost-benefit model. The money now used to care for these severely retarded individuals could be more usefully diverted to other causes.[32]

Culturally our society has moved from limited abortion to abortion-on-demand, and now, it appears our society is moving to limited euthanasia and limited elimination of the mentally retarded. A reasonable man must ask: what are we doing? Where are we going?

Perhaps this is the moment that we should seize to reflect on the immediate past history of Western civilization, lest the words of George Santayana apply to us: "Those who do not remember the past are condemned to relive it." The Supreme Court, by denying the right to life to the unborn child, has rent the fabric of human law whereby the inherent worth of every man is recognized. Such an error, attacking the foundation of human society, must be remedied by amendment to the government's Constitution.

II. The Protection of Human Rights in Law

Debates about the relationship of law to morality are complex. It is our purpose simply to point to certain fundamental principles which must be incorporated into the legal ethic of any just society.

First of all, there has been a growing awareness throughout the world that the protection and promotion of the inviolable rights of man are essential duties of civil authority, and that the maintenance and protection of basic human rights is a primary purpose of law.

Throughout the 20th century there has been a growing recognition of basic human rights by the United Nations and by individual countries. There has also developed an acute awareness that the human rights of minorities are most easily overlooked or ignored because most often they cannot articulate their claims. Furthermore, there has been a continuing realization that human rights are not subject to distinctions of race, age, sex or national

heritage. Rather, they are universal rights of all men and women which are inherent in the nature of man and are the basis of human dignity.

But human rights give rise to duties and to responsibilities, both in the person who possesses the right, and the society of which he is a part: Freedom to exercise one's human rights is qualified by responsibility to society or to another person. For the sake of order, society must have a way to adjudicate apparent conflicts of rights. Thus, a well ordered society establishes laws that will promote and protect human rights, maintain order among persons, and promote the good of all. As Justice Holmes indicated, the First Amendment's guarantee of free expression does not permit a person to yell "fire" in a crowded theater.

The existence of human rights and the fragility with which they are maintained places a claim on society to provide bulwarks of protection for individuals. A society committed to justice, equality and freedom must establish a system of law that protects the rights of each person while maintaining order and promoting the common good. This principle was declared by our founding fathers in the Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

Also, the United Nations Declaration of Human Rights affirms as a guiding principle that:

". . . it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ...."
and the Declaration proclaims that:
"Everyone has the right to life, liberty, and security of person."

Finally, speaking to a world that welcomed his moral leadership, Pope John XXIII in the great encyclical, *Pacem in Terris*, asserted that:
"Any human society, if it is to be well-ordered and productive, must lay down as a foundation this principle, namely, that every human being is a person, that is, his nature is endowed with intelligence and free will. By virtue of this, he has rights and duties of his own, flowing directly and simultaneously from his very nature.

"These rights are therefore universal, inviolable and inalienable. [no. 9]
". . . Every man has the right to life, to bodily integrity, and to the means which are necessary and suitable for the proper development of life. [no. 11]

"It is generally accepted today that the common good is best safeguarded when personal rights and duties are guaranteed. The chief concern of civil authorities must therefore be to ensure that these rights are recognized, respected, coordinated, defended and promoted, and that each individual is enabled to perform his duties more easily. For 'to safeguard the inviolable rights of the human person, and to facilitate the performance of his duties, is the principal duty of every public authority.'" [no. 60]

As citizens of this Republic, and as religious leaders within it, we are compelled to speak to society and to motivate people in behalf of the rights of individuals. The scientific evidence confirms that unborn human beings are members of the human race. Thus, we, as religious leaders, have a grave responsibility to call for laws that will protect the right to life of the unborn. We also see a duty to urge a legal-political order founded on justice and truth that will protect and maintain the rights of all men. The social encyclicals of the modern era, the teaching of the Second Vatican Council, and the encyclicals and writings of Pope Paul VI on world development, justice and peace are directed to that very end.

Anyone who retreats from the discussion of moral questions, or pleads noninvolvement when it comes to establishing a just social order by means of law and public policy, may well be failing in his responsibilities as a citizen.

It must also be understood that law plays the role of teacher. In some cases, the law teaches that certain actions are good and should be encouraged. In other cases, it teaches that certain actions are wrong or dangerous for society, and should be discouraged, and even prohibited. Increasingly, in a world in which ideas are readily available and rapidly disseminated, the law cannot

remain silent without thereby failing to protect human values. This is especially true in regard to the right to life. Unless the law expresses a commitment to safeguarding the lives of all, it teaches that life itself is a nebulous value, and one that can be denied. In regard to the right to life of the unborn child, the Supreme Court has denied any value to that life during the first six months of its existence in the womb and assigned only a relative value during the last three months. And on the Court's sliding scale, the value of the life of a viable fetus that can easily survive with ordinary care is second to the right of privacy, socio-economic factors, health factors, or the age of its mother. For practical purposes, the unborn child is often the victim of maternal convenience or the individual physician's opinion that the mother may be physically, emotionally or economically taxed by child care.

III. The Right to Life of the Unborn in the Context of American Law

Those measures designed to correct, through constitutional amendment, the violence inflicted upon the Constitution and upon our entire jurisprudential ethic by the decisions of the United States Supreme Court in *Roe v. Wade* and *Doe v. Bolton* deserve to be supported from the perspective of developing American law regarding the rights of the unborn child.

The opinion of the Supreme Court removing all legal protection for the unborn child is regressive. Our legal tradition has shown a steady and increasing concern to protect and extend the rights of the unborn child. As one legal expert observed: "The progress of the law, in recognition of the fetus as a human person for all purposes, has been strong and steady and roughly proportional to the growth of knowledge of biology and embryology."[33] If the unborn child can inherit, be compensated for pre-natal injuries, can be represented by a guardian, can have his right to continued existence preferred even to the right of the mother to the free exercise of her religion as in the blood transfusion cases, and enjoy other such rights, then the law would be schizophrenic to allow the unlimited destruction of that child.

From the Code of Hammurabi, discovered in 1901 and dating back to the third millennium B.C., until the present, civilized nations have prohibited abortion. In some cases the law sought to curb promiscuity, in some cases it sought to protect women from medical quackery. But the law also sought to protect the right to life of those members of society who were least capable of protecting themselves. Thus, the United Nations Declaration of the Rights of

the Child, ratified in 1959, proclaimed that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

The Declaration of Independence, the document which establishes this country as a nation, declares that all of us are "created equal" -- it does not state that we are born equal, nor that we achieve equality after we have been in our mother's womb for three months, or six months, or after we are capable of "meaningful existence," but that we are "created equal" and endowed by our Creator with the right to life. The *Bill of Rights*, a document contemporaneous with the Declaration of Independence, states flatly that we may not be deprived of life without due process of law. In order to understand the violence done to the Constitution by these decisions of the Supreme Court, then, it is only necessary to appreciate the fact that the Court placed a penumbral right -- the right to privacy which is nowhere mentioned in the Constitution but has been enunciated by the Supreme Court -- over an explicit right, the right to life itself, which is one of the most important guarantees which the Constitution expresses.

The infliction of any misinterpretation upon the Constitution threatens each of us in that particular area which has been so misinterpreted. For example, a misinterpretation of the Free Exercise Clause as it applies to one religion adversely affects all religions; or a misinterpretation of the right of an alleged criminal to be free from unwarranted search and seizure, adversely affects the right of all citizens to be free from unwarranted searches and seizures. So too, then, does a misinterpretation of the Constitution guarantee that none of us may be deprived of life without due process of law threaten the fundamental right of life which each of us supposedly possesses.

Unborn children, by any reasonable biological standard, must be viewed as growing, functioning, living human beings. The decisions of the Supreme Court in *Roe v. Wade* and *Doe v. Bolton* effectively remove an entire class of human beings from the protection of the Constitution and sanction the destruction of these human beings without any semblance of due process. The Court's gratuitous comments extending the protections of the Constitution only to those who, in the Court's words are "capable of meaningful existence" or who are persons in the "whole sense" pose obvious threats to other classes of citizens. It is the violence done to the Constitution and our entire legal ethic by these decisions that require an immediate excision of this misinterpretation from the body of American law.

These are the more obvious points in the Court's opinions. The opinions deny the personhood and the legally protected rights of the unborn. The Court has also established a climate of permissiveness in regard to abortion. The Court has set the stage for society -- or government -- to decide that some lives are "devoid of value," are lacking in "meaningfulness," or are unworthy of protection because their continuation is a threat to the convenience of others. The Court has also set the stage for a possible coercive use of abortion by government. By citing *Buck v. Bell* in an approving fashion, the Supreme Court gives support to an expansion of government control of reproductive rights for social reasons. The Court places itself in the tradition of justifying the violation of individual human rights for social ends, rather than requiring a greater commitment of society to find solutions to these problems that are in accord with human dignity.

The simple fact is that abortion ends the life of a human being. It is an unprecedented gesture to place the penumbral right of privacy, nowhere mentioned in the Constitution, over the right to continued existence which the same Constitution explicitly protects. These opinions do violence to the Constitution and are reminiscent of the infamous decision in *Dred Scott v. Sanford*.

IV. A Review of the Court's Opinions in *Roe v. Wade*, *Doe v. Bolton*

Until January 22, 1973, the life of the unborn human being in the womb of his or her mother was protected by state laws, and by the judgments of many state and federal courts throughout the United States. On that date, the United States Supreme Court struck down the abortion laws of Texas and Georgia, and in a wide-ranging opinion, ended this nation's long tradition of legally protecting unborn human life. We have already stated our rejection of the Court's opinions, and we herewith provide some of the salient reasons for that rejection.

1. ***The unborn child is not considered a person as the Fourteenth Amendment understands the term and is therefore not entitled to constitutional protection for his/her right to life.***

In attempting to justify this position, Justice Blackmun acknowledges that the personhood of the unborn child rests on two questions: (1) the definition of person in the language and meaning of the Fourteenth Amendment, and (2)

when human life begins. Blackmun answers the first question by admitting that "the Constitution does not define 'person' in so many words" (*Wade*, p. 41). Citing a series of places where the term "person" is used in the Constitution, Blackmun concludes that "none indicates, with any assurance that it has any possible pre-natal application" (*Wade*, p. 42). The Justice also cites an absence of case law indicating that the fetus is a person within the meaning of the Fourteenth Amendment (*Wade*, p. 41). Finally, he states that the Supreme Court "inferentially" held that the unborn child is not a person in *U.S. v. Vuitch* (*Wade*, p. 43). No one of these explanations proves conclusively that the unborn ever was -- or must be -- excluded from personhood within the meaning and language of the Fourteenth Amendment. One of the major criticisms of the Court's opinions in *Wade* and *Bolton* is their unexplained inconsistency in adopting an evolutionary concept of the Constitution on one point, i.e., that the holding is consistent "with the demands of the profound problems of the present day" (*Wade*, p. 50) and a static view of the Constitution on the personhood issue -- "all this . . . persuades us that the word 'person' as used in the Fourteenth Amendment does not include the unborn" (*Wade*, p. 43).

Justice Blackmun, in his analysis, ignored two other questions pertinent to his opinion. Is it clear beyond a doubt that the Fourteenth Amendment excludes the unborn as a person, and can the constitutional meaning of person under the Fourteenth Amendment be read to include the unborn? An historical reading of the views of the framers of the Fourteenth Amendment indicates that they equated the terms "person," "human being" and "man." Moreover, they situated their understanding of these terms in the Declaration of Independence that "all men are created equal." The reference to creation, which was understood to mean a divine act prior to birth, raised no question in their minds.

Moreover, the law can declare certain beings -- inanimate as well as animate -- to be persons, as was admitted by U.S. Supreme Court Justice James Wilson, one of the framers of the Fourteenth Amendment. Finally, the argument has been made that inanimate objects be accorded legal rights, and specifically that trees be recognized as persons."[34]

Justice Blackmun admits that his observations concerning the personhood of the unborn child in law are not conclusive, and thus he takes up the question of the beginning of human life. In his investigation of this point he ignores the impressive and unchallenged scientific evidence on the existence of human life

from conception; he misreads and erroneously misinterprets the Roman Catholic teaching on the matter (*Wade*, p. 45); he admits that "we need not resolve the difficult question of when life begins" (*Wade*, p. 44); he leans to the position that "life does not begin until live birth" (*Wade*, p. 44); and he concludes that "the fetus, at most, represents only the potentiality of life" (Wade, p. 46). The conclusion is not substantiated by the evidence, and it establishes a new term -- "the potentiality of life" -- that is not supported by the empirical evidence on when life begins.

It is difficult to pay credence to such fallacious reasoning, but it is tragically unjust to deny the most fundamental human right to all unborn children forever on such ambiguous and spurious grounds.

2. ***The woman's so-called "right to privacy" takes precedence over the child's right to life and safety. According to the majority, the abortion decision is primarily a medical decision, but one in which the woman's personal interests are extensive and determining. The doctor's decision to perform an abortion should be "exercised in the light of all factors -- physical, emotional, psychological, familial, and the woman's age relevant to the well-being of the patient."***

The majority opinion begins its discussion of privacy with the blunt assertion that "(T)he Constitution does not explicitly mention any right of privacy" (*Wade*, p. 37). Moreover, the Court disagrees with the contention "that the woman's right is absolute" (*Wade*, p. 38). Without offering any compelling proof, the Court nonetheless elevates a penumbral right to the status of a fundamental right. Yet mindful of the legal quicksand on which the privacy doctrine rests, the Court attempts to salvage some control by qualifying the personal right to privacy with a compelling state interest. Having already denied personhood to the unborn, locating a state interest is difficult. So the Court seizes upon protection of the woman's health and the protection of "potential life" after viability.

However, marriage and childbearing have always been recognized as matters deserving state interest and state support. Thus we have a wide variety of health programs to provide pre-natal, childbirth, and post-natal services to mother and child. These include nutritional care for both mother and child, and HEW has provided AFDC benefits on behalf of the unborn child throughout pregnancy.

Moreover, the question of abortion necessarily involves the relationship between the mother and her unborn child. In fact, medicine, psychology and anthropology confirm that this is a highly important relationship in regard to the development of personality. But this relationship creates rights and duties, which, although they may change in the course of time, actually perdure while both remain alive.

Finally, in basing the opinions on the nebulous right of privacy, the Court entrapped itself in a maze of logical inconsistencies in regard to the mutual responsibilities of the woman and her doctor. The majority asserts that the right of privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy" (*Wade*, p. 38). However, her right to obtain an abortion is dependent on medical consultation, because "the abortion decision is inherently and primarily, a medical decision, and basic responsibility for it must rest with the physician" (*Wade*, p. 50). Thus, according to the majority opinion, the woman has a right to abortion, but cannot effectuate that right without medical consultation. After consultation, at least during the first trimester, she may obtain the abortion at any time, at any place, from any person regardless of whether that person is a doctor. Since "basic responsibility for it [the abortion] must rest with the physician" (*Wade*, p. 50), presumably the physician can be sued if harm befalls the woman. Never before has any Court or any legislature given such a broad grant of power and responsibility to physicians, but this unprecedented grant also reduces the physician to consultant and scapegoat at the very same time.

3. *The state may not establish any regulations that restrict the practice of abortion during the first three months of pregnancy. A woman, who in consultation with her physician decides that abortion is advisable, may obtain the abortion free of any interference by the State.*

In granting this unlimited power to abort to women during the first trimester, the Court necessarily denies the accumulated scientific evidence on the growth and development of the unborn child. As indicated above this scientific testimony leaves little doubt that the fetus is human, and that the fetal stage of development is but one phase of a continued existence beginning at conception and terminating at death. Death may occur at age one or at any other chronological point, or it may occur prior to birth. It is the same human being who dies, no matter when.

In holding that the decision to have an abortion must be left completely to the woman and her doctor during the first three months of pregnancy, the Court permits the abortion to be performed by anyone, and in any place. Thus the Court allows precisely what everyone -- including those who endorsed liberal abortion laws -- have continuously rejected, i.e., easily available abortion performed by non-medical personnel outside medical facilities.

4. ***The state may establish some guidelines to protect the health of the woman who decides on an abortion during the second three months of pregnancy.***

This concession of the Court is empty, since medical evidence has already proven that second trimester abortions are risky, and that complications during the first eight weeks are also quite high. The Court's concern about the second trimester skirts the almost universal finding both in foreign countries and in the United States, that prior to and after abortion, psychological problems persist.

There is another point that the Court chose to ignore in its tripartite division of pregnancy. During the first 18 months of the abortion-on-request law in New York, Dr. Jean Pakter, director of the New York City's Bureau of Maternity Services and Family Planning reported that more than 60 of the legal abortions resulted in the birth of a fetus that showed some signs of life. Two of the fetuses survived, and one was living healthily with its mother at the time of the report, while the other was still in the hospital. Since the New York law prohibited abortion after 24 weeks, the Court is faced with establishing a legal structure that permits, indeed encourages, the death of some children who could otherwise have survived.

5. ***After the point of viability, which the Court designated as between the 24th and 28th weeks of pregnancy, the state may manifest a concern in "the potential human life of the fetus." The state may then establish laws to protect fetal life, unless the abortion is necessary for the life or health of the mother. Presumably, this covers anything from a serious threat to the mother's life to a late-term abortion for mild depression, anxiety, or "the distress for all concerned associated with the unwanted child."***

Once again the Court has held out protection to the unborn on the one hand, and taken it away with the other. The terms "viability," "potential life," and "compelling" lead us into a quagmire of vagueness.

The Court's opinion asserts that the "potentiality of human life" is present at "viability." According to the Court, "(V)iability is usually placed at about seven months (28 weeks), but may occur earlier, even at 24 weeks" (*Wade*, p. 45). In reality, given our constantly expanding knowledge of obstetrics, and our scientific technology for meeting problems during pregnancy, the fetus is viable throughout the pregnancy so long as its environment is not disturbed and so long as it is not the subject of attack.

Moreover, the Court settles on one earmark of viability -- age of the fetus -- whereas medicine refers to age and weight of the fetus as earmarks.

The Court has coined the term "potentiality of human life" (*Wade*, p. 49), but has neither defined the terms adequately nor given criteria for judging its existence. Since potentiality is a relative term, it is also present during the first and second trimester, and is not conditioned on viability.

6. ***Perhaps most important was the manner in which the Court evaluated unborn human life. The unborn child is viable when it is "capable of meaningful life" outside its mother's womb. Further, even the viable child prior to birth is not a person "in the whole sense." Thus the Court has set a precedent whereby the right of life is no longer inalienable but is subject to governmental and societal judgments regarding its meaningfulness and quality.***

These concepts, "meaningful life" and person "in the whole sense," are in fact value judgments which the Court leaves cloaked in ambiguity. It was such concepts that Nazi Germany used in justifying euthanasia and other eugenic controls when they designated certain lives as "devoid of value."

Moreover, we are already being visited with the monstrous results of the Court's immoral ideology. Forty-three deformed infants were allowed to die in a major university medical center rather than face lives devoid of "meaningful humanhood." A doctor who commented on the matter said that withholding surgery -- and sometimes ordinary nurturing care -- from children born with defects is a common practice in hospitals throughout the country.

Finally, Nobel Laureate Dr. James Watson, has suggested that children should be declared persons three days after birth to allow time for their parents to decide whether the child's life should be maintained.

These examples magnify the tragic error of the Court's reasonings in *Wade* and *Bolton*. These opinions of the Court express value judgments and moral judgments that are beyond the Court's area of jurisdiction. They must be corrected by the passage of a constitutional amendment to protect the unborn.

V. Proposal for a Constitutional Amendment

As Americans, and as religious leaders, we have been committed to a society governed by a system of law that protects the rights of individuals and maintains the common good. As our founding fathers believed, we hold that all law is ultimately based on Divine Law, and that a just system of civil law cannot be in conflict with the Law of God. The American system of constitutional law has proven to be a workable system of law, and one that has generally responded to the delicate balancing between defending the common good and human rights on the one hand, and according a due enjoyment of personal freedom on the other.

But a system of law, to be just and equitable, must respond to new challenges. A static system of law runs the risk of failing to provide protection for human rights, and it soon degenerates into a system of regulatory controls, rather than a system of justice. The administration of law is a function of government and in the American system, the establishment of laws and the election of government officials is based on the democratic process. Once any government or system of law does not acknowledge the rights of man or violates them, it not only fails in its duty, but its orders completely lack juridical force.

The opinions of the Supreme Court in *Wade* and *Bolton* deny the basic principles of the Constitution, and refuse appropriate legal protection to the unborn child. The Court's opinion is absolute and universal; the unborn have no recourse or appeal.

After much consideration and study, we have come to the conclusion that the only feasible way to reverse the decision of the Court and to provide some constitutional base for the legal protection of the unborn child is by amending the Constitution. Moreover, this is a legal option consistent with the democratic process. It reflects the commitment to human rights that must be at the heart of all human law, international as well as national, and because

human life is such an eminent value, the effort to pass an amendment is a moral imperative of the highest order.

The so-called "states' rights" approach to the amendment is unacceptable. It is repugnant to one's sense of justice to simply allow as an option whether the states within their various jurisdictions may or may not grant to a class of human beings their rights, particularly the most basic right, the right to live. Further, by its action the United States Supreme Court has removed the unborn child from protection under the U.S. Constitution, and thereby the Court has raised the abortion issue to the level of a federal question. Federal constitutional rights, improperly, but substantially denied, must be substantially affirmed.

We are aware that a number of Senators have sponsored or cosponsored specific proposals. We wish to commend their efforts and to place before this Committee our own convictions. Moreover, we understand that these hearings are to assist the Sub-Committee on Constitutional Amendments in formulating precise language that will be brought to the Committee on the Judiciary, and ultimately will be placed before the full Senate.

At this time, we wish to articulate the values that we believe should be encompassed by an amendment, and we hope to provide a more detailed legal memorandum at a later date.

Thus, any consideration of a constitutional amendment should include at least the following points.

1. Establish that the unborn child is a person under the law in the terms of the Constitution from conception on.

2. The Constitution should express a commitment to the preservation of life to the maximum degree possible. The protection resulting from there should be universal.

3. The proposed amendment should give the states the power to enact enabling legislation, and to provide for ancillary matters such as record-keeping, etc.

4. The right to life is described in the Declaration of Independence as "unalienable" and as a right with which all men are endowed by the Creator.

The amendment should restore the basic constitutional protection for this human right to the unborn child.

VI. Conclusion

Law constitutes a fundamental and indispensable instrument in making it possible to build up a more just and loving society. Only the law, in conjunction with a broadly conceived program of education, can effectively extend the horizons of democracy and civil rights to include explicit and full protection for the rights of the unborn child.

It has taken a century for the promises held out by the Thirteenth and Fourteenth Amendments to the Constitution to begin to bear fruit in our present society. However long the road before us in securing effective recognition of the civil rights of the unborn child, we must begin now with what is the necessary first step, the enactment by Congress of an appropriate constitutional amendment.

However, we do not see a constitutional amendment as the final product of our commitment or of our legislative activity. It is instead the constitutional base on which to provide support and assistance to pregnant women and their unborn children. This would include nutritional, pre-natal, childbirth and post-natal care for the mother, and also nutritional and pediatric care for the child through the first year of life. Counseling services, adoption facilities and financial assistance are also part of the panoply of services, and we believe that all of these should be available as a matter of right to all pregnant women and their children. Within the Catholic community, we will continue to provide these services through our professional service agencies to the best of our ability to anyone in need.[35]

NOTES

[1.] Abortion is defined as the expulsion of the fetus prior to viability. Some authors use the terms "feticide" for the destruction of the fetus prior to viability, and "infanticide" for the post-viability, late-term abortion.

[2.] These laws were placed on the books as a consequence of a very determined effort by the American Medical Association. They cannot be traced to the political influence of Catholics, but were enacted by a political system in which Catholics had little part.

[3.] Cf. Robert Rugh, Ph.D., Landrum Shettles, Ph.D., M.D., with Richard Einhorn, *From Conception to Birth: the Drama of Life's Beginnings* (New York: Harper & Row, 1971).
[4.] "Drama of Life Before Birth," *Life*, April 30, 1966.
[5.] Dr. H. M. I. Liley is a pediatrician. She has collaborated in studies of the unborn with her husband, Dr. A. W. Liley, who perfected the intra-uterine transfusion.
[6.] H. M. I. Liley, *Modern Motherhood* (New York: Random House, rev. ed., 1969), pp. 26-27.
[7.] J. A. F. Roberts, *An Introduction to Medical Genetics*, 3rd ed. (London: Oxford University Press, 1965), p. 1, as cited in Germain Grisez, *Abortion: the Myths, the Realities, and the Arguments* (New York: Corpus Books, 1970), p. 6.
[8.] Roland M. Nardone, "The Nexus of Biology and the Abortion Issue," *The Jurist* (Spring, 1973), p. 154.
[9.] R. Houwink, *Data: Mirrors of Science* (New York: American Elsevier Publishing Co., Inc., 1970), pp. 104-190, as cited in Bart T. Heffernan, M.D., "The Early Biography of Everyman," in *Abortion and Social Justice*, eds. Thomas W. Hilgers and Dennis J. Horan (New York: Sheed and Ward, 1972), p. 4.
[10.] Hymie Gordon, "Genetical, Social and Medical Aspects of Abortion," *South African Medical Journal* (July, 1968), pp. 721-730, as cited in Heffernan, p. 5.
[11.] Nardone, p. 153.
[12.] Andre E. Hellegers, M.D., "Fetal Development," *Theological Studies*, (March, 1970), p. 9; Nardone, pp. 154, 157; Anne McLaren, "The Embryo," in *Embryonic and Fetal Development*, eds. C. R. Austin and R. V. Short, Reproduction in Mammals, Vol. 2 (London: Cambridge University Press, 1972), p. 5.
[13.] "The Termination of Pregnancy or Extermination of the Foetus," Professor A. W. Liley, a speech delivered November 18, 1970.
[14.] Albert W. Liley, "The Foetus in Control of His Environment," in *Abortion and Social Justice*, eds. Thomas W. Hilgers and Dennis J. Horan (New York: Sheed & Ward, 1972), p. 27.
[15.] Ibid.
[16.] Cf. Philip Wylie, *The Magic Animal* (New York: Doubleday, 1968), p. 272, who describes the fetus as "protoplasmic rubbish," a "gobbet of meat protruding from a human womb," as cited in William E. May, "Abortion as Indicative of Personal and Social Identity," in *The Jurist* (Spring, 1973), p. 209. Such terms as "fetus fetish" and "blob of protoplasm" sometimes appear in debate.

[17.] A. W. Liley, "The Foetus as Personality," *Aust. N.Z.J. Psychiatry* (1972), p. 349.
[18.] Some question whether individuality is not irreversibly established until several days after fertilization, perhaps the blastocyst stage of development. This questioning is prompted by such phenomena as twinning and recombination or by studies on the manner in which the genetic material of the primary cell is activated. However, the scientific data on these matters is still fragmentary with the result that interpretations are necessarily quite speculative. Although scientists investigate the question of individuality in the context of irreversibility, the known norm that individual human life originates at fertilization should be the basis of law.
[19.] Heffernan, pp. 6-7.
[20.] The above material, descriptive of human development from fertilization to eight weeks, is summarized in large part from Heffernan, pp. 4-7.
[21.] Lennart Nilsson, Alex-Ingelman-Sundberg, and Claes Wirsen, *A Child Is Born* (New York: Delacorte Press, 1966).
[22.] Nilsson, p. 81.
[23.] *Albany Union Times*, March 10, 1970, p. 17, as cited in Robert M. Byrn, "Abortion-on-Demand: Whose Morality?," *Notre Dame Lawyer* (Fall, 1970), pp. 8-9.
[24.] A. W. Liley, "The Foetus as a Personality," *Aust. N.Z.J. Psychiatry* (1972), p. 350.
[25.] Heffernan, p. 3.
[26.] Most of the descriptive material of this section is taken from A. W. Liley, "The Foetus as a Personality."
[27.] Ibid., 351-352.
[28.] H. M. I. Liley, *Modern Motherhood*, pp. 37-38.
[29.] A. W. Liley, "The Foetus as a Personality," p. 355.
[30.] John T. Noonan, Jr., "Responding to Persons: methods of moral argument in debate over abortion," *Theology Digest* (Winter, 1973), p. 302.
[31.] Frederic Wertham, M.D., *A Sign for Cain: An Exploration of Human Violence* (New York: Paperback Library, 1966), pp. 133-186. In 1920 a jurist and psychiatrist published in Leipzig an influential and popular book, *The Release of the Destruction of Life Devoid of Value*, in which they advocated that the killing of "worthless people" be legally permitted. "The concept of 'life devoid of value' or 'life not worth living' was not a Nazi invention, as is often thought. It derives from this book . . . . This [that the authors of the above book were acknowledged intellectual leaders] illustrates the presupposition, that violence does not usually come from the uncontrolled

instincts of the undereducated, but frequently is a rationalized policy from above" (pp. 157-158).

The gas ovens in Nazi Germany were first used by the German medical profession in late 1939 to kill four unsuspecting, cooperative mental patients (pp. 150-151). This initial experiment successfully grew into a well-organized health program that was first directed at mental patients [estimated at least 275,000 killed by 1945 -- p. 155], but was expanded to include unnumbered of the elderly, the crippled, including crippled children, war wounded, etc. The techniques of death developed in the mental hospitals were transferred to the concentration camps for use in the political program of genocide (pp. 176-177).

For a fuller discussion of medical ethics in its modern cultural context, cf. Charles Carroll, "Medicine without an Ethic," *The Journal of the Louisiana State Medical Society* (September, 1972), pp. 313-320 [an expanded version of this article is reproduced in *Abortion and Social Justice*, pp. 249-266].

[32.] *Death With Dignity: An Inquiry into Related Public Issues*. Hearings before the Special Committee on Aging, U.S. Senate, 92nd Congress, 2nd session. Part I -- Washington, D.C., August 7, 1972, pp. 29-32.

[33.] David Louisell, "Abortion, the Practice of Medicine and the Due Process of Law," 16 *U.C.L.A. Law Review* (1969), p. 324. Cf. also John T. Noonan, Jr., "The Constitutionality of the Regulation of Abortion," *The Hastings Law Journal* (November, 1969), pp 51-65.

[34.] Justice William O. Douglas in *Sierra Club v. Morton*, 405 U.S. Reports, 1972, 727.

[35.] Resolution of the National Conference of Catholic Charities, November 3, 1970.

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