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Seegers Lecture

PUBLIC REASON, ABORTION, AND CLONING

JOHN FINNIS*

I. INTRODUCTION

Every society, liberal or illiberal, takes a public stand on the question whether abortion is or is not a form of criminal activity. If that question were left to private judgment, people who judge it homicide would be entitled to use force to prevent their fellow citizens engaging in it (just as they are entitled to use force to prevent infanticide, or sexual intercourse between adults and 8-year-old children).

The need for the law and public policy to take a stand has become more and more obvious for two reasons. The first has to do with the standard purpose of abortion, as that term is commonly used: to end the life of a fetus/unborn child. As Jeffrey Reiman argues in his new book, *Critical Moral Liberalism: Theory and Practice*,¹ the right to abortion which he is interested in defending, and which many others are interested in having, is a right which would be *negated* if it were reduced to “[a woman’s] right to expel an unwelcome fetus from her body, and only to end its life if necessary for the expulsion.”² The right which Reiman and so many others defend is the right precisely to kill the unwelcome fetus. The significance of this is made clear by the second reason: unborn children who are welcome, and who are thought to be in danger, can nowadays be the beneficiaries of elaborate therapeutic attentions. From a month or so after conception, their condition, their individual appearance and characteristics, their every movement, can be clearly seen and followed on the ultrasound screen; their medical problems can be and

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1. JEFFREY H. REIMAN, *CRITICAL MORAL LIBERALISM: THEORY AND PRACTICE* 190 (1997).

2. Reiman goes on to say that unless the right to abortion includes the right to get the fetus dead:

As early as a living fetus can be safely and easily removed from a pregnant woman, her right to abortion might be transformed into a duty to provide extrauterine care for her expelled fetus. If (when!) medical technology pushes this point back towards the earliest moments of pregnancy, *the right to abortion will disappear entirely*.

Id. (emphasis added).

very frequently are attended to in much the same way as after their birth. Medical practitioners engaged in such activities routinely say and think that they have two patients. And it is obvious to everyone that any medical practitioners who took advantage of this sort of opportunity to kill an unborn child (without the request of the mother), pursuant to some private policy of (say) killing Jews or the children of atheists, would be ethically and should be legally liable to some plausible charge of homicide or something savoring of homicide (say, the "great misprision" of abortion—as the seventeenth and eighteenth century textbooks of English and therefore American criminal law put it).³ Minimally, any society, liberal or not, in which the difference between the unborn, the partially born, and the newborn is, for practical purposes, no more (and no less!) than the difference between being (wholly or partly) inside and outside the mother's body must, and will, publicly regulate the ways in which medical practitioners and others deal with the unborn (or partially born), and particularly those dealings which by intention or negligence result in the death of the unborn (or partially unborn).

Interestingly, much the same conclusion must be reached (I shall argue) about proposals to engage in initiating the life of an unborn person by cloning.

II. JOHN RAWLS, PUBLIC REASON, AND THOMAS AQUINAS

The term "public reason" has recently been introduced into political theoretical discourse by John Rawls, and he chooses to illustrate his use of the term by reference to the issue of the regulation of abortion. Rawls's remarks about abortion do not, perhaps, show his work to best advantage. But it will be worth making our own exploration of the question of whether "public reason" is a concept or nest of concepts worth adopting into legal and political theory, using abortion and/or cloning as test cases whenever our exploration would be advanced by carrying out a test.

3. As Reiman says, "it is so natural to us to think this way," namely, of the fetus "as a personlike victim—which is a moral status that a not-yet-existing fetus lacks." *Id.* at 195. This in turn is tightly linked to the assumption, which Reiman grants and perhaps even concedes, that "the being that traverses the span from conception to death is a self-identical individual. That is a more or less natural extension of the common belief that a human being from birth to death is a self-identical individual—the one named by its proper name." *Id.* at 194.

I should say at the outset that the attractions of the term “public reason” have not been much diminished for me by the discovery that Rawls’s own usage (as almost everyone agrees) is confused and arbitrary. “Public reason” seems to me quite a good phrase for summarily conveying the gist of several features⁴ of classical political thought as expounded by (say) Thomas Aquinas:⁵

(1) The proper function of the state’s law and government is limited. In particular, its role is not (as Aristotle had supposed) to make people integrally good but only to maintain peace and justice in inter-personal relationships.⁶ In this respect, the public realm, the *res publica*, is different from certain other associations such as family and church, associations which, albeit with limited means, can properly aspire to bring it about that their members become integrally good people. As Rawls says, “public reason” is contrasted not with “private reason”—“there is no such thing as private reason”⁷—but with the ways of deliberating appropriate to all nonpublic associations, i.e., all associations other than the political community.⁸ The deliberations of the political community as such—that is, of its rulers, including voters, as such—proceed in the appropriate way only if they are concerned to determine those requirements of justice and peace which Aquinas regularly names “public good.”⁹

4. To the three I mention, I might add:

Any activity is to be pursued in a way appropriate to its purpose. . . . One sort of academic disputation is designed to remove doubts about *whether* such-and-such is so. In disputations of this sort you should above all use authorities acceptable to those with whom you are disputing. . . . *And if you are disputing with people who accept no authority, you must resort to natural reasons.*

THOMAS AQUINAS, QUODLIBETAL QUESTIONS IV q. 9 a. 3c (emphasis added).

5. See JOHN FINNIS, *AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY* (1998).

6. Aquinas argued:

[K]ings are constituted to preserve inter-personal social life (*ad societatem vitam inter homines conservandam*); that is why they are called ‘public persons’, as if to say promoters or guardians of public good. And for that reason, the laws they make direct people in their relationships with other people (*secundum quod ad alios ordinantur*). Those things, therefore, which neither advance nor damage the common good are neither prohibited nor commanded by human laws.

THOMAS AQUINAS, *OPERA OMNIA*, vol. 14, p. 46* col. 1. See also THOMAS AQUINAS, *SUMMA THEOLOGIAE I-II* q. 96 a. 3c; q. 98 a. 1c; q. 100 a. 2c. [hereinafter *SUMMA THEOLOGIAE*].

7. This needs qualification if and only to the extent that there are private revelations from God. So the Catholic faith claims that its own teaching is a matter of public reason, inasmuch as it is a matter of public, not private revelation. See the claim made in Peter’s preaching in Jerusalem (*Acts* 2:22), in Paul’s in Athens (*Acts* 17:31), and SECOND VATICAN COUNCIL, *LUMEN GENTIUM* § 25 (1964), translated in *VATICAN COUNCIL II* 381 (Austin P. Flannery ed., 1975).

8. JOHN RAWLS, *POLITICAL LIBERALISM* 220 (paperback ed. 1996) [hereinafter *RAWLS, POLITICAL LIBERALISM*].

9. See FINNIS, *supra* note 5, at 226.

(2) In determining and enforcing the requirements of public good, the state's law-makers and other rulers (including voters) are entitled to impose as requirements only those practical principles which are accessible to all people whatever their present religious beliefs or cultural practices. These are the principles (*communia principia rationis practicae*)¹⁰ called in the tradition "natural law," on the understanding that they are "natural" because, *and only because*, they are rational—requirements of being practically reasonable—and thus accessible to beings whose nature includes rational capacities.

(3) The central case of government is the rule of a free people, and the central case of law is coordination of willing subjects by law which, by its fully public character (promulgation),¹¹ clarity,¹² generality,¹³ stability,¹⁴ and practicability,¹⁵ treats them as partners in public reason.¹⁶

III. POLITICAL LIBERALISM AND PUBLIC REASON: RAWLS'S UNCIVIL AND UNREASONABLE THESIS

The central tenet of Rawls's construct "Political Liberalism," in his 1993 book *Political Liberalism*, is "the liberal principle of legitimacy."¹⁷ Political questions which concern or border on constitutional essentials or basic questions of justice will be settled fully and properly only if settled by principles and ideals that *all* citizens "*may reasonably be expected to endorse*"—such principles and ideals are named by Rawls "public reason(s) and [public] justification."¹⁸ The whole point of the principle of legitimacy is to rule out as illegitimate, in a certain context, certain principles and ideals and in general *theses*, even though they are or may well be true—i.e., to rule them out on grounds completely distinct from their falsity or their unreasonableness judged "comprehensively."¹⁹

10. SUMMA THEOLOGIAE I-II q. 94 a. 4c.

11. *Id.* at I-II q. 90 a. 4c.

12. *Id.* at I-II q. 95 a. 3c (laws lacking clarity in expression [*manifestatio*] are harmful).

13. *Id.* at I-II q. 96 a. 1.

14. *Id.* at I-II q. 97 a. 2c.

15. *Id.* at I-II q. 95 a. 3c (*disciplina conveniens unicuique secundum suam possibilitatem*).

16. Aquinas thus pointed to all the main features of the Rule of Law. See LON L. FULLER, *THE MORALITY OF LAW* 242 (1969).

17. RAWLS, *POLITICAL LIBERALISM*, *supra* note 8, at 137.

18. *Id.* at 137 (emphasis added); see also *id.* at 217.

19. Very often Rawls states the principle of legitimacy expansively, so that it outlaws not only using public coercive power on certain (i.e., nonpublic) grounds, but also outlaws the appeal to such grounds in all political discussion (at least of constitutional essentials and matters of basic justice) even on the part of those who wish to resist that sort of use of public power. *Id.* at 138, 153, 214-15. This expansion seems to me inevitable, for if the legitimacy principle sieved out political theses only when and because they demand the use of public power (as Rawls often suggests when setting up his legitimacy principle and trying to make it palatable), it would in many cases result only in

Rawls's formulations of the legitimacy principle are remarkably ambiguous. When one says of a thesis, "all may reasonably be expected to endorse it," is one predicting the behavior of people or assessing the rational strength of the thesis? Does one mean that reasonable observers will agree that practically all citizens *will* (or at least *are likely to*) endorse it? Or does one make a judgment about the grounds, evidence or reasons for and against the thesis and thus about the (un)reasonableness of any refusal to endorse it?

There is evidence in favor of the predictive, external-viewpoint reading. For example, Rawls says of a particular thesis that, even though it may be true, "reasonable persons *are bound to differ uncompromisingly*" about it.²⁰ The phrase "are bound to" seems fairly clearly (though it too is elusive!) to be in the predictive mode, not the mode of speech of someone assessing the thesis itself as reasonable or unreasonable.²¹

But the external-viewpoint interpretation obviously entails a particularly gross form of veto, by majorities or indeed by minorities. So it is not too surprising that there is also plenty of textual evidence in favor of a normative,

a grotesque free-for-all of private power. Take abortion: one thesis says that public power should be used to prevent the aborting of (say) healthy children in healthy mothers; if we reject that as illegitimate just because it seeks the use of public power, we still confront the thesis of those who say that public power should be used to prevent abortion rescuers who seek to use their private power to stop the killing of fetuses just as they would try to stop the killing of infants; if we rule out this thesis because it too seeks to harness public power, we are left with a sheer power struggle between the abortionists and the rescuers. And as a matter of fact, quite appropriately Rawls's own discussion of what theses are legitimate in relation to abortion makes no reference to the use of public power, but only to the substantive facts and political values (life, equality, nature of early as opposed to late pregnancy, and so forth: *id.* at 243).

20. *Id.* at 138 (emphasis added). Note, incidentally, the tension between Rawls's approval of "uncompromising" refusal to endorse certain religious opinions, here, and his statement earlier that "[p]olitical liberalism starts by taking to heart the absolute depth of th[e] irreconcilable latent conflict" which is introduced when a salvationist, creedal, and expansionist religion "introduces into people's conceptions of their good a transcendent element not admitting of compromise." *Id.* at xviii. In reality, a "transcendent element not admitting of compromise" is in no way peculiar to such religions.

21. Notice: if reasonable persons are differing about this thesis *uncompromisingly*, they must think that their own position endorsing or withholding their endorsement from it is correct. If they are modest objectivists, they will each hold that under ideal epistemic conditions—"favourable conditions of investigation" and reflection (JOHN FINNIS, *FUNDAMENTALS OF ETHICS* 64 (1983), citing David Wiggins, *Truth, Invention and the Meaning of Life*, 62 *PROC. BRIT. ACAD.* 331 (1977))—reasonable people would agree with their affirmation (or denial); for (i) that is entailed by the ordinary concept of truth which modest objectivists simply unpack, and (ii) that is also the presupposition on which people engage in reasonable debate with each other (assuming that they are not mere propagandists willing to use any and every rhetorical device to win non-rational endorsements of the theses for which they are "arguing"). (So this quasi- (ideal case) prediction, unlike Rawls's apparent prediction of disagreement, is really based upon a normative, internal assessment of the rational grounds for endorsing (affirming) or denying the thesis.)

internal-viewpoint of Rawls's own legitimacy principle, such that "can reasonably be expected to endorse" thesis *X* is to be read as signifying a *judgment on the sorts of grounds* there are for endorsing or denying *X*.²² Particularly interesting is the passage where Rawls finally faces up to "rationalist believers" in a "comprehensive religious or philosophical doctrine" who "contend that their beliefs are open to and can be fully established by reason" and are "so fundamental that to insure their being rightly settled justifies civil strife."²³ Having curiously suggested that this view is uncommon—when actually it is (in some form) the claim of the entire central tradition of natural law theory in philosophy and theology—Rawls interprets the rationalist believers' claim as a denial of "what we have called 'the fact of reasonable pluralism.'"²⁴ But their claim could not be a *denial* of that "fact" unless the so-called fact of reasonable pluralism is in the same logical field as the rationalist believers' claim that their beliefs can be fully established by reason. And Rawls's recipe for dealing with the rationalist believers is to claim, not that others do not in fact agree with them, but rather that they are "mistaken" in thinking that their beliefs can be "publicly and fully established by reason"²⁵—a claim that cannot reasonably be made by Rawls without looking, in what I call an internal, normative way, at the merits of the rationalist believers' arguments as arguments.

So much then for the radical ambiguity of Rawls's principle of legitimacy. What are Rawls's grounds for putting it forward in any of its possible senses?

The principle of legitimacy and the limits or guidelines of public reason "have the same basis as the substantive principles of justice."²⁶ That is, they would be adopted by the parties in the Original Position, because those parties would be failing their responsibility as trustees for everyone who has to live under the principles they adopt in the Original Position, unless they adopted the

22. Consider the following passages from *Political Liberalism*. In the first, Rawls says, [I]n discussing constitutional essentials and matters of basic justice, we are not to appeal to comprehensive religious and philosophical doctrines—to what we as individuals or members of associations see as the whole truth— . . . [but to] the plain truths now widely accepted, or available, to citizens generally.

RAWLS, *POLITICAL LIBERALISM*, *supra* note 8, at 224-25 (emphasis added). In the second, Rawls says,

[E]ach of us must have, and be ready to explain, a criterion of what principles and guidelines we think other citizens . . . may reasonably be expected to endorse along with us . . . Of course, we may find that actually others fail to endorse the principles and guidelines our criterion selects. That is to be expected[!].

Id. at 226-27.

23. *Id.* at 152-53.

24. *Id.* at 153.

25. *Id.*

26. *Id.* at 225.

principle that the application of the substantive principles be “guided by judgment and inference, reasons and evidence that [everyone] can reasonably be expected to endorse.”²⁷

So the legitimacy thesis stands and falls with the “political constructivism” employed in Rawls’s famous 1971 book, *A Theory of Justice*.²⁸ So it falls. That book rests on a fallacious or undefended claim. It proposes that we recognize as principles of justice those, and only those, principles which would be adopted in a hypothetical Original Position, behind a “veil of ignorance,” an artificial ignorance and risk-aversion supposed to be characteristic of the hypothetical parties who are to choose those principles of justice which will apply, outside the Original Position, in the real world. We can accept that principles which *would* be chosen in the Original Position would be equal and free from bias. But we cannot assume, as Rawls simply does assume, that principles which *would not* be chosen in the Original Position are therefore not principles of justice in the real world in which we may judge them without being hampered either by the Original Position’s veil of ignorance about theoretical and practical truths, or by a degree of risk aversion which, if not unreasonable, is at best only one reasonable attitude among other, often less-risk-averse, attitudes.²⁹

Political Liberalism is a vast elaboration—and perhaps to some extent is intended as a defense—of *A Theory of Justice*’s basic strategy and postulate of ignorance of value (i.e., thin theory of the good and “thick veil of ignorance”³⁰), a device whose entire motivation is to ensure that: (i) the Original Position construct will yield principles in line with Rawls’s settled political opinions (what he calls the “acceptable conclusions” which a “model of practical reason” such as the Original Position must fit on pain of being revised or even abandoned altogether³¹); and (ii) that Rawls will not have to offer a defense of those opinions against the criticism that they ignore or contradict certain truths about human good.

Does *Political Liberalism* offer any further and more satisfactory defense of the legitimacy principle’s exclusion of “nonpublic” truths and reasons from one’s public discussion and one’s individual act of “voting on the most

27. *Id.*; see also *id.* at 62.

28. JOHN RAWLS, *A THEORY OF JUSTICE* (1971) [hereinafter RAWLS, *THEORY OF JUSTICE*].

29. See, e.g., JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 108-09 (1980); John M. Finnis, *Legal Enforcement of Duties to Oneself: Kant v. Neo-Kantians*, 87 COLUM. L. REV. 433, 435-36 (1987).

30. See RAWLS, *POLITICAL LIBERALISM*, *supra* note 8, at 24 n.27.

31. *Id.* at 96 and n.8.

fundamental political questions”?³² It seems not. No doubt Rawls intends a defense in his remarks about “reasonable pluralism,” the “ideal of democratic citizenship,” and “civility.” However, all these simply assume what needs to be shown: that it is uncivil and undemocratic to propose to one’s fellow citizens theses (on matters of fundamental justice) which one regards as true and established by evidences or reasons *available* to any reasonable person *willing to consider them* in an open-minded way—notwithstanding that, *de facto*, very many people do reject them.

Moreover, the legitimacy principle, as stated and understood by Rawls, is itself (I shall argue) illegitimate, uncivil, and unreasonable. It is illegitimate because it censors truthful and reasonable public discourse and—worse—prohibits individual resort to correct principles and criteria of practical judgment, in relation to fundamental political questions, without any coherent, principled reason for the prohibition. It is unreasonable because it restricts public deliberation and individual public action precisely on those matters where it is most important to be correct, i.e., where people’s fundamental human rights are at stake.

Consider the example which Rawls himself brings forward to illustrate how his legitimacy principle works out in practice—in his remarks about one of the most important of the “fundamental political questions” currently debated: abortion.³³ Here his legitimacy thesis makes him claim (in effect) that one not only will be mistaken but will moreover be violating one’s duties of democratic citizenship if one reasons, for example, in the following way:

Every human being is entitled to an equal right to life;³⁴ unborn children, even in the first three months of their life, are human beings (as any medical textbook shows); therefore unborn children are entitled to the protection of the law against being deliberately killed even in the first three months of their life; and so I should vote for a law or constitutional amendment which recognizes that right.

Having asserted (by implication) that anyone who argues in such a way is not only mistaken but also antidemocratic (and having explicitly claimed that such a person subscribes to a doctrine which would be cruel and oppressive even if it allowed exceptions for rape and incest), Rawls adds that any comprehensive

32. *Id.* at 216.

33. *Id.* at 243 n.32.

34. Bizarrely, this right is not one of Rawls’s “principles of justice,” and so anyone who asserts it (as in numerous Bills of Rights, though not *directly* in the antique United States one) is asserting a comprehensive, not a political, doctrine!

doctrine which supports that reasoning “is to that extent unreasonable.”³⁵ So he asserts not merely that pro-life arguments on the abortion question are mistaken, but that they could not possibly be grounds for political action such as voting. And he claims to be able to say all this without publicly discussing the comprehensive doctrine(s) he condemns, and without shouldering the responsibility of saying where the error in the reasoning about abortion lies. Instead of joining in the rational debate about abortion, he side-tracks and short-circuits it by simply *declaring* that “all reasonable people can be expected to agree” that healthy, mature women have the right to kill their child during the first three months of his or her unborn life and probably for longer.³⁶ So the legitimacy principle has an effect exactly the opposite of what Rawls clearly intended: it generates a kind of incivility of its own—heat instead of light.

Rawls’s legitimacy principle is a distorted and unwarranted analogue of a genuine principle of public reason, namely: fundamental political, constitutional, legal questions ought to be settled according to *natural right*, i.e., to principles and norms which are reasonable, using criteria of evidence and judgment that are available to all. One reason why he overlooks this alternative is that in thinking of the tradition, he clearly supposes that liberalism—in the first instance, the comprehensive liberalism of Hume and Kant, and then his own “political” liberalism—differentiated itself from the tradition by adopting two views: (1) that knowledge of how we are to act is accessible to every person who is “ordinar[il]y reasonable and conscientious” *rather than* “only to some, or to a few (the clergy, say)”; and (2) that the moral order required of us arises “in some way from human nature itself,” say by reason, together with the requirements of our living together in society, *rather than* “from an external source, say from an order of values in God’s intellect.”³⁷ He seems completely unaware that what I shall call *the tradition* in fact rejected these as false contrasts and so embraced precisely the positions he thinks characteristic of liberalism: moral knowledge is available or accessible to all and arises in some way from human nature and reason and the requirements of social living.

Where the tradition parts company with Rawls is in relation to his “fact of reasonable pluralism/disagreement.” When Rawls says, “It is unrealistic—or worse, it arouses mutual suspicion and hostility—to suppose that all our differences are rooted solely in ignorance and perversity, or else in the rivalries for power, status, or economic gain,”³⁸ the tradition of natural law theorizing says, “Let’s distinguish.” There are many reasonable differences which arise from differences of sentiment, of prior commitment, and of belief about likely

35. *Id.*

36. *Id.*

37. *See id.* at xxviii.

38. *Id.* at 58.

future outcomes. In such cases, there is no uniquely correct opinion, though there are many incorrect opinions. But in relation to some matters, including at least some matters of basic rights, there are correct moral beliefs, accessible to all (even to those who *in fact* reject them). In relation to such matters, differing opinions can only be rooted in ignorance or some sub-rational influence, and it is mistaken—though this of course needs to be shown, by rational argument—to say that there is more than one “fully reasonable”³⁹ or “perfectly reasonable”⁴⁰ belief. If by “*perfectly reasonable though erroneous belief*” Rawls means a belief which is held without subjective moral fault in respect of the forming of it, I would say that that is an important category of *de facto* beliefs but one which would better be called, not “perfectly reasonable”—which it quite clearly is not!—but “inculpably erroneous,” blamelessly mistaken or, in one traditional idiom, “invincibly ignorant.” Public reasoning should be directed to overcoming the relevant mistakes, and public deliberations should be directed to avoiding them in practice—not pre-emptively surrendering to them.

Of course, a “liberalism of fear”⁴¹ is sometimes or even quite often warranted. It can often be morally reasonable to refrain from enforcing basic human rights, for fear of provoking a war which one cannot win or which will impact unfairly, as most wars do, on the weakest.

The Rawlsian version of public reason is, as I said, particularly unreasonable because its demand—that moral truths and complicated (“elaborate”) factual questions⁴² be excluded from public discourse and deliberation—is made *only* in relation to the most important questions of justice, such as whether it is acceptable to kill your unborn child at your choice, or acceptable to base our nation’s defense policy on a plan to, under certain conditions, incinerate an enemy’s civilian population with the side-effect of poisoning half or more of the people of bystander nations. Such matters are apparently to be remitted to hunches or “judgments” untested by public political discourse about matters of principle or fact. That means they are remitted to the *status quo* established by sheer power of numbers or influence, a *status quo*—under-pinned by abortion on demand and anti-civilian nuclear deterrence—with which Rawls happens, it seems, to be well satisfied “on balance.”

39. *Id.*

40. *Id.* at 24 n.27.

41. *See id.* at xxvi n.10.

42. *Id.* at 225.

IV. PUBLIC REASON AND THE CHILD: RAWLS, THOMSON, AND THE COURT

Still, much remains to be said in favor of the underlying concern which gives both *A Theory of Justice* and *Political Liberalism* an initial plausibility and an appeal which survives the recognition that their central arguments are fallacious. That concern is the concern to avoid *bias*, unfairness between persons, violations of the Golden Rule. In the introduction to the paperback edition of *Political Liberalism*, and his more or less contemporaneous article "The Idea of Public Reason Revisited,"⁴³ Rawls gives a new prominence and a new formulation to a principle intended to make full sense of the demand that voting and other political determinations be made only by or on the basis of "public reasons." This principle is the "criterion of reciprocity: our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions."⁴⁴ It is indeed the *source* of the liberal principle of legitimacy,⁴⁵ and thus of the conception of public reason defended by Rawls. The reciprocity criterion's role "is to specify the nature of the political relation in a constitutional democratic regime as one of civic friendship."⁴⁶ And it is itself the expression, or an immediate entailment, of the "intrinsic normative and moral ideal" without which "political liberalism" and Rawls's "political conception of justice" would fail to count as a moral conception at all (and thus would fail to be available to guide anyone's conscientious deliberations as a voter or other participant in governing). This ideal, Rawls says,

can be set out in this way. Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation *over generations*, they are prepared to offer one another fair terms of social cooperation (defined by principles and ideals) and they agree to act on those terms, *even at the cost of their own interests in particular situations*, provided that others accept those terms. For these terms to be fair terms, citizens offering them must reasonably think that those citizens to whom such terms are offered might also reasonably accept them.⁴⁷

This ideal, with its corresponding normative requirement, seems broadly reasonable. So we can ask how it bears on the situation of children.

43. John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765-807 (1997) [hereinafter Rawls, *Public Reason*].

44. RAWLS, *POLITICAL LIBERALISM*, *supra* note 8, at xlvi.

45. *Id.*

46. *Id.* at li.

47. *Id.* at xliv (emphases added).

Would it be consistent with justice, with civic friendship, with fairness and the criterion of reciprocity to adopt a scheme in which infants and children unwanted by their parents could be reared for the purposes of satisfying the desires of pedophiles by being fed up to the age of sexual desirability in circumstances (including euphoric drugs) such that their eventual fate was entirely concealed from them, and on condition that after a sufficient period of use for sexual services they would be killed painlessly, without warning, while they slept? This is not a question of exegesis of Rawls's or anyone else's texts ("Does 'citizen' mean adult citizen?" "What does 'across generations' really mean?" "Are the parties to the criterion of reciprocity more narrowly defined than the parties to the Original Position?"). The question is one of substance, and the answer to it is clear enough.

Rawls himself seems plainly to accept that infants and children get the benefit of the criterion of reciprocity: "The fundamental political relation of citizenship . . . is a relation of citizens within the basic structure of society, *a structure we enter only by birth* and exit only by death . . ." ⁴⁸ The dealings of adults with infants and children must satisfy the criterion of reciprocity, ⁴⁹ even when doing so is "at the cost of their [the adults'] own interests in particular situations"; such dealings cannot be justified by the plea that children are not the equals of adults and *these* children will never enter the circle of free and equal citizens because we will kill them before they do and before they realize what we have done, or will do, to them.

This being so, the question arises why Rawls draws the boundary of justice, fairness and reciprocity at *birth*. This question does not seek to settle the rights of the mother over and against the unborn child. It is just the question of how it could be rational to think that the child just before birth has no rights (no status in justice, fairness, reciprocity) while the child just after birth has the

48. *Id.* at xlv (emphasis added).

49. See also, very clearly, RAWLS, THEORY OF JUSTICE, *supra* note 28, at 509:

[T]he minimal requirements defining moral personality refer to a capacity and not to the realization of it. *A being that has this capacity, whether or not it is yet developed, is to receive the full protection of the principles of justice.* Since infants and children are thought to have basic rights (normally exercised on their behalf by parents and guardians), this interpretation . . . seems necessary to match our considered judgments. Moreover, regarding the potentiality as sufficient accords with the hypothetical nature of the original position, and with the idea that as far as possible the choice of principles should not be influenced by arbitrary contingencies. Therefore it is reasonable to say that those who could take place in the initial agreement, were it not for fortuitous circumstances, are assured equal justice. (emphasis added)

Well said.

rights of a citizen free and equal to other citizens.⁵⁰ Why should the child a week before birth be subject to the uttermost *coercion* of being destroyed at someone else's "balancing of values" or "ordering of values" (if not sheer whim)?

The public reason of the United States, as manifested in the loquacious judgments of its Supreme Court, has after a quarter of a century uttered not a sentence that even appears intended to offer a rational response to that question. The response, rather, is of the form: "We are in charge; *these* are the human beings (and other entities, such as corporations) we—by our Constitution—have chosen, or now choose, to protect and *those* are not." Save in its phrasing, the United States Supreme Court's neglect of its responsibility to offer public *reasons* has been as truculent as that.⁵¹ (This refusal has been made possible partly by the position of minority Justices such as Justice Antonin Scalia, who for clearly inadequate reasons would leave to the states the fundamental question of who is and who is not entitled to the protection of the United States Constitution's guarantees against deprivation of life without due process of law.) The failure of public reason in action is made all the more obvious by the position of the German Constitutional Court, which has repeatedly held—albeit without following through consistently—that the constitutional right to protection of life is enjoyed by the unborn human being from the time of conception.

Rawls says that the outcome of the vote on the abortion question "is to be seen as reasonable provided all citizens of a reasonably just constitutional regime sincerely vote in accordance with the idea of public reason."⁵² The decisive votes on this question have been conducted among the fifteen or so Justices involved in *Roe*,⁵³ *Webster*,⁵⁴ and *Casey*.⁵⁵ Do the pro-abortion votes of

50. As Jeffrey Reiman says (though with his own intent!), a decent moral-political theory "must remain open to the possibility that as-yet-unrecognized forms of unjustified coercion may be discovered and that new rights"—he means legal, recognized rights—"may be needed to defend freedom against them." REIMAN, *supra* note 1, at 1.

51. The open unreasonableness is encapsulated in the statement by the Court in *Roe v. Wade* that "We need not resolve the difficult question of when life begins," followed by statements and rulings which presuppose and indeed assert that before birth the child's life is merely "the potentiality of human life." 410 U.S. 113, 159-62 (1973). The same pretense of agnosticism is maintained in *Planned Parenthood v. Casey*:

[Abortion] is an act fraught with consequences for others: for the woman . . . ; for the persons who perform . . . ; for the spouse, family and society which must confront the knowledge that these procedures exist[!], procedures which some deem [!] nothing short of an act of violence against innocent human life; and, depending on one's beliefs, for the life or potential life that is aborted.

505 U.S. 833, 852 (1992).

52. RAWLS, POLITICAL LIBERALISM, *supra* note 8, at lvi.

53. *Roe v. Wade*, 410 U.S. 113 (1973).

54. *Webster v. Reproductive Health Servs.*, 492 U.S. 490 (1989).

these citizens satisfy the requirement of being cast “sincerely . . . in accordance with the idea of public reason,” in Rawls’ restrictive sense of that term? I cannot think of any evidence that they were.⁵⁶ The anti-abortion arguments they faced were founded squarely on claims about the human and personal nature and status of the unborn, i.e., about the absence of any significant difference between unborn and newborn. Those claims, none of them more controversial than the rival claims about the moral rights of privacy or liberty, are not substantially addressed, even for a sentence or two, in any of the pro-abortion judgments in those cases. Addressing them would not have involved moving from public to non-public reason. A doctrine which says (as Rawls and the pro-abortion Justices say) “children must be treated as equal to adults in basic constitutional rights applicable to their situation from the day of their birth” is no less “comprehensive” and no more “public” than one that says “children must be treated as equal to adults in basic constitutional rights applicable to their situation even before birth.”

By pointing to an argument by Judith Jarvis Thomson, Rawls in his recent work⁵⁷ tries to give the status “reasonable” to pro-abortion views which are in fact unreasonable. Thomson’s Rawlsian argument runs:

First, restrictive regulation [of abortion] severely constrains women’s liberty. Second, severe constraints on liberty may not be imposed in the name of considerations that the constrained are not unreasonable in rejecting. And third, the many women who reject the claim that the fetus has a right to life from the moment of conception are not unreasonable in doing so.⁵⁸

55. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

56. And I heard on the radio a set of remarks in which the speaker, said by the BBC to be Justice Powell, explained that his vote in *Roe v. Wade* was cast on the basis of what he felt he would want for his daughter if she were pregnant. This is in line with remarks made by Justice Powell in 1979 in an interview with Harry M. Clor, which seem utterly indifferent to the demands of the criterion of reciprocity:

The concept of liberty was the underlying principle of the abortion case—the liberty to make certain highly personal decisions that are terribly important to people It is difficult to think of a decision that’s more personal or more important to a pregnant woman than whether or not she will bear a child.

DAVID J. GARROW, *LIBERTY AND SEXUALITY: THE RIGHT TO PRIVACY AND THE MAKING OF ROE V. WADE*, 576 (1994). Like the Court’s opinion in *Casey*, which on the point in issue says little more but in many more words, this is simply a diaphanously veiled appeal to power regardless of questions of justice. It is difficult to think of a decision that is less merely personal, and more important to another person, than the decision to kill that person.

57. RAWLS, *POLITICAL LIBERALISM*, *supra* note 8, at lvi n.31; *see also* Rawls, *Public Reason*, *supra* note 43, at 798 n.80.

58. Judith Jarvis Thomson, *Abortion*, 20 *BOSTON REV.* 11, 15 (1995).

The whole point of this argument, as Thomson makes clear, is to gain its conclusion *without contesting* the central anti-abortion claims that unborn children have a right not to be intentionally or unjustly killed and a right to the equal protection of the laws against homicide.⁵⁹ The argument fails to meet its objective. *In the admitted absence of an argument to show that in these precise respects the unborn are in different case from (say) the newly-born*, the position of the many women who reject the claim that the fetus has a right to life is indeed unreasonable. The fact that these many women, or some of them, are otherwise reasonable in no way establishes that this position of theirs is reasonable or in accordance with public reason. As Rawls says, just as "a comprehensive doctrine is not as such unreasonable because it leads to an unreasonable conclusion in one or even in several cases,"⁶⁰ so a person is not disqualified to the description "a reasonable person" just because she adopts an unreasonable position in one or even several cases (especially cases which so obviously engage her self-interest or other special emotional sources of bias).⁶¹

Having claimed that a majority decision which authorizes the free killing of the unborn "is to be seen as reasonable" and "binding on citizens by the majority principle," even if it is fallacious and erroneous and is thus a denial of basic justice, Rawls goes on to make several claims about anti-abortion citizens (prejudicially called by him "Catholics"):

- [1] [T]hey need not exercise the right of abortion in their own case.
 [2] They can recognize the right as belonging to legitimate law and therefore [3] do not resist it with force. [4] To do that would be unreasonable: it would mean their attempting to impose their own comprehensive doctrine, which a majority of other citizens who follow public reason do not accept.⁶²

None of these four claims is reasonable. Claim [1] reveals the negligence which passes itself off as public reason on Rawls's side of the debate. The anti-abortion citizens are claiming, with some good arguments, that abortion is rather like slave-owning: a radical, basic injustice imposed on people deprived of the protections of citizenship. The response, "You free citizens need not exercise the

59. *Id.* at 14-15.

60. RAWLS, *POLITICAL LIBERALISM*, *supra* note 8, at 244 n.32.

61. Moreover, the fact that the three-step Thomson-Rawls argument is "clearly cast in the form of public reason" does not entail that it is reasonable: "[W]hether it is itself reasonable or not . . . is another matter. As with any form of reasoning in public reason, the reasoning may be fallacious or mistaken," *id.* at lvi n.32, in relation to an argument attributed to "Cardinal Bernadin." Step (3) of the Thomson argument equivocates on "are unreasonable."

62. *Id.* at lvi-lvii; see also Rawls, *Public Reason*, *supra* note 43, at 787 n.57, 798-99.

right to [own slaves] [abort your children] in your own case, so you can and must recognize our law as legitimate as it applies to the rest of us," seems to me derisory.

Claim [2] assumes that "the majority principle" is binding even when the majority authorize gross injustice, and even when they do so without attempting to show that it is consistent with the principle or criterion of reciprocity. Does anyone believe that Rawls himself accepts this assumption in relation to injustices which engage his sympathies?

Claim [3] switches without warning into the descriptive mode. The interesting question, however, is whether there is *good reason* not to defy the law which penalizes the use of reasonable force to rescue the unborn from their killers. I can think of only one plausible reason to exclude such defiance as a conscientious option for those whose vocations are consistent with such an undertaking: that to attempt forcible rescue would generally, in present conditions, be to launch a civil war. That resultant in itself does not settle the argument. But (as I indicated above, in my remarks about the liberalism of fear) a condition for justly launching war is that one have some prospect of winning it, and that condition is not, in present circumstances, satisfied.

Claim [4] again depends on an arbitrary and unwarranted premise: that those who enforce their view that a *newborn baby* must be treated as equal to adults in basic rights (or who imprison pedophiles) *are not* imposing their own "comprehensive doctrine," whereas those who insist that the baby a day before birth is entitled to the same forcible protection *are*. Of course, this sort of selective inattention to the strongly substantive and controversial character of self-styled liberal theories is very characteristic of such theories; we see it, for example, in the claim that "the right of a woman to control her body" is "undisputed" (and therefore trumps the disputed right of the unborn child to live) when in reality the alleged right of the woman is manifestly disputed and was never accepted by any state until the Supreme Court overthrew the abortion laws of every state (and indeed it is not a right accepted even by the Supreme Court to this day). This sort of inattention often leads to outright self-contradiction, as when people say that arguments about the use of public force must never appeal to what has intrinsic value, but only to what people subjectively prefer, and then offer to justify this "principle of subjective preference" by arguing that self-governance is intrinsically valuable and/or is a necessary condition of a good—i.e., an intrinsically valuable—life!

V. PUBLIC REASON AND ABORTION

The public “public reason” of the United States (and other such nations) presents, as I have said, an extraordinary spectacle: blank refusal to state any reason justifying the dramatic, radical, total difference in the moral and legal status of the baby inside and the baby outside the womb—the same baby on perhaps the same day. The wider “public reason” which includes the philosophers and others who offer to guide public deliberation on the abortion question presents a different but analogous spectacle. There is an immense literature claiming to justify the right to abortion, i.e. (we recall), the right to expel the fetus with intent to kill it. But this has two striking features. First, there is in this pro-abortion literature no consensus on the nature of the unborn child, nor on the question of when the conceptus becomes human or a person or otherwise entitled to a right to life, nor on any other major metaphysical or moral question involved. There is no “overlapping consensus” except in the result: women are to have some opportunity to destroy their unborn children. And second, there is almost complete inattention to the substantial scholarly literature presenting the opposing position,⁶³ a consensus which denies the abortion right on the basis that the conceptus has the nature and rights of a human person from conception.⁶⁴

The silence of public “public reason” about the justification for denying to the unborn the basic equality rights acknowledged in the newly-born is easy to explain. The prospects for producing such a justification are faint indeed. For any such justification will have to have abandoned the one real basis of human equality and equality rights: namely, the fact that each living human being possesses, *actually and not merely potentially*, the *radical capacity* to reason, laugh, love, repent, and choose *as this unique, personal individual*, a capacity which is not some abstract characteristic of a species, but rather consists in the unique, individual, organic functioning of the organism which comes into existence as a new substance at the conception of that human being and subsists until his or her death whether ninety minutes, ninety days, or ninety years later—a capacity, individuality and personhood which subsists as real and precious even while its operations come and go with many changing factors such as immaturity, injury, sleep, and senility. Human beings are not just “values,”

63. Two good examples: GERMAIN G. GRISEZ, *ABORTION: THE MYTHS, THE REALITIES, AND THE ARGUMENTS* (1970); PATRICK LEE, *ABORTION AND UNBORN HUMAN LIFE* (1996). See also Robert P. George, *Public Reason and Political Conflict: Abortion and Homosexuality*, 106 *YALE L.J.* 2475 (1997).

64. The asymmetry is far-reaching. Scholars opposing the abortion right labor through the myriad confused and diverse arguments for abortion (or abortion and infanticide) rights, and publish careful, well-documented critiques. Scholars favoring abortion (or abortion and a right to infanticide) seem for the most part to invent the positions they offer to refute, and display little or in most cases no awareness of the arguments actually advanced by defenders of the unborn.

as Reiman imagines when asking why we do not think the number of people should be maximized; rather, they are persons each incommunicably, non-fungibly individual in this peculiar, *deep* way, and so entitled, one by one, to be respected.

(Is belief in the reality and value of personhood, understood in the way that I have just summarized, to be called "religious"? It is rather a belief that results from a close attention to the solidity and depth of this universe and its various constituents, the kind of close attention which is the *cause* of religious beliefs—and also of good science—rather than a mere resultant of them.)

Once one has decided not to base equality rights on the real personhood which is instantiated in the unborn as well as the born, one will be reduced to grounding them on some factor which is not coextensive with membership of the human race and which is lacked by newborns, infants, and some mentally handicapped persons. But drawing the circle around (say) sane adults and non-infant children, on the basis that they have self-awareness and concern for self, will then prove as groundless as drawing it around all and only the born. Reiman's efforts to work with self-awareness and self-concern as the basis for a right to life make this fragility manifest. (I leave to one side his half-hearted effort to show that there is some reason for "protecting infants' lives" even though no infant—on Reiman's account—has any right to life, deserves to live, or is worthy of our respect.)⁶⁵ For if my right to be respected (that is, to be counted in the reciprocity criterion; not killed; etc.) depends upon my being aware of and concerned to continue my existence, why should I not be killed suddenly and without warning? Reiman responds that "the loss to an aware individual of the life whose continuation she is counting on, is a loss . . . that remains a loss, a frustration of an individual's expectations . . ." ⁶⁶ But this will not do. If a sleeping individual is killed without warning, there is at no time any *individual with frustrated expectations*, and at no time any *individual suffering from a loss*. Searching around for an entity which undergoes this loss and frustration, Reiman doubles up the entities in play:

Once a human being has begun to be aware of her life, that life unfolds before a kind of inner audience that has an expectation of its continuation, an affective stake in living on. This expectation persists until the audience shuts down for good—even if, before that, the audience dozes off from time to time. We defeat this expectation even

65. Reiman offers to explain why "we" think it is wrong to kill infants, but has nothing to say which could show the immorality of the attitudes of someone who does not "love infants" (but only perhaps two or three infants) and thinks it is not wrong to kill infants (at least infants not loved in particular by anybody particular). REIMAN, *supra* note 1, at 202-03.

66. *Id.* at 197.

if we kill a temporarily sleeping or comatose individual who has begun to be aware of her life.⁶⁷

But this doubling up gets Reiman nowhere. When the sleeping individual is killed without warning, the alleged audience, too, is simultaneously “shut down for good.” So the plain fact remains that there is never anyone (actor or audience) of whom we can rightly say “this individual has some defeated expectations.” Reiman is just equivocating⁶⁸ on “defeated expectations”; *when someone has them*, they are a cause or kind of misery and often the resultant subject-matter of injustice. Looking at the expectations, as Reiman invites us to do, we can see that, in the case I am considering, there never are any defeated expectations. First, there are *X’s undefeated* expectations, and then, a moment later and forever after, *nothing* in the way of expectations, defeated or undefeated. There is no change in *X’s* subjective awareness; as happens with modern anaesthesia, that awareness simply ceases, without any awareness of its cessation.

Reiman’s entire discussion of the unborn and the early infant is, then, a timely warning that the right to life, respect, justice, and equality loses its intelligibility and its rational claim on conscientious deliberations and choices, once it is uprooted from the foundations which were everywhere acknowledged as a matter of public reason until the unprincipled will to private power (“subjective preference,” “choice”) closed down public reason on the abortion question.

VI. PUBLIC REASON AND CLONING

When we turn to the question of making people by cloning, we can see that the will to private power, which may well eventually close down public reason if not headed off at the pass, is the will of the research scientist, of the dealers in marketable new commodities, and of potential parents. Or rather of the quasi-parental donors of the body cells with which new human beings may, it now seems, be able to be brought into being without using even the sex cells, let alone the sexual act, of any man or woman. Cloning, as Paul Ramsey pointed out a generation ago, is a matter of asexual reproduction; biologically speaking, the fact that it is copying is only an implication of that fact. In the technique used to produce Dolly the sheep, the husk of a female sex cell was used, plus the body cell of another sheep; but male sexuality has simply disappeared from the production process, except insofar as it was involved some time in the pre-cloning past, in the procreation (that is, the sexual generation)

67. *Id.* at 198.

68. This is not the occasion to deal with the other arguments in his chapter, but I should say that many of them seem to me to fail by equivocation.

of the donor (or some ancestor of the donor) of the now-to-be-cloned body cell. The human being produced by cloning is a twin—a “delayed genetic twin”—of the quasi-parent (donor) whose body cell has been used to produce the clone.

The child—the embryo—thus produced will be, of course, a fully human being, as incommunicably unique a person as any ordinary twin or, indeed, as any other person. But the circumstances of his or her generation by production will dramatize something already to be found, if less dramatically, in all generation of children by *in vitro* fertilization (IVF).⁶⁹ This feature of the generation of children by IVF was identified with care by the lay philosophers who carried out the analysis⁷⁰ which, along with two other quite different though complementary analyses, was adopted by the Catholic Church and appears more than once at the heart of the Church’s judgment, articulated in the document *Donum Vitae* in 1987, that generating children by IVF is always wrong even in the more or less mythical “ideal case” where their life is guaranteed against the quality-control in fact practiced by IVF technicians.

Germain Grisez gives a short, philosophical account of this analysis in his great work on moral theology:

What exactly is the act of *in vitro* fertilization? It is not an act of sexual intercourse open to new life but a technological act resulting, when successful, in the production of a new human individual. It precisely aims at supplying someone with a baby by bringing a possible baby into being, and the choice of *in vitro* fertilization precisely is to (try to) produce a baby by this procedure. So, to choose to bring about conception in this fashion inevitably is to will the baby’s initial status as a product.

How do moral principles apply to this act? Products as such are assigned their meaning and value by the human makers who produce them and the consumers who use them, and so the status of any product as such is subpersonal; This initial relationship, of those who choose to produce babies with the babies they produce, is inconsistent with, and so impedes, the communion which is appropriate in any relationship among persons touching on their basic goods.⁷¹

69. PAUL RAMSEY, *FABRICATED MAN: THE ETHICS OF GENETIC CONTROL* 64 (1970).

70. See Catholic Bishops’ Joint Committee on Bio-Ethical Issues, *In Vitro Fertilisation and Public Policy* (London, Catholic Information Services, May 1983) (evidence submitted to the Government Committee of Inquiry into Human Fertilisation and Embryology).

71. 2 GERMAIN G. GRISEZ, *LIVING A CHRISTIAN LIFE* 267 (1993).

At this point, Grisez quotes some relevant sentences from *Donum Vitae* which conclude: "Such a relationship of domination is in itself contrary to the dignity and equality that must be common to parents and children."⁷²

Grisez then continues his philosophical reflection:

Of course, those who choose to produce a baby make that choice only insofar as it is a means to an ulterior end. They may well intend that the baby be received in an authentic child-parent relationship, in which he or she will live in the communion befitting those who share personal dignity. If realized, this intended end will be good for the baby as well as for the parents. But, even so, the choice to produce the baby is the choice of a bad means to a good end, because the baby's initial status as a product is subpersonal. The significance of this status is most clear when the laboratory's defective products are discarded and its surplus products used for lethal experiments.⁷³

In his evidence to the National Bioethics Advisory Commission on Cloning Human Beings, Gilbert Meilaender deployed essentially the same argument in relation to this new, still partly hypothetical way of generating human persons technologically:

[W]hatever we say of [other reproductive technologies], surely human cloning would be a new and decisive turn on this road. Far more emphatically a kind of production. Far less a surrender to the mystery of the genetic lottery which is the mystery of the child who replicates neither Father nor Mother but incarnates their union. Far more an understanding of the child as a product of human will.⁷⁴

The Commission's report notes that Meilaender made it clear to them that he "would have gotten off the train" of reproductive technology long before it reached cloning.⁷⁵ And surely rightly. The issue—which Meilaender and others elaborated to the Commission with more richness and subtlety than I can here convey—is at bottom the same, I have argued elsewhere, as that involved in even the most benevolent and beneficent forms of slavery.

72. *Id.* (quoting CONGREGATION FOR THE DOCTRINE OF THE FAITH, INSTRUCTION ON RESPECT FOR HUMAN LIFE IN ITS ORIGIN AND ON THE DIGNITY OF PROCREATION (*Donum Vitae*) Pt. II. B.5 (1987)).

73. 2 GRISEZ, *supra* note 71, at 267-68.

74. NATIONAL BIOTETHICS ADVISORY COMMISSION, CLONING HUMAN BEINGS: REPORT AND RECOMMENDATIONS OF THE NATIONAL BIOETHICS ADVISORY COMMISSION 76 (1997) (quoting Meilaender's testimony to the Commission on Mar. 13, 1997).

75. *Id.* at 52.

It is the issue of equality in dignity—an equality compromised in these technological choices and procedures much more subtly, of course, than in the barbarism of death-intending abortions, but compromised and violated nonetheless. As the unborn child has a right not to be made the object of such an intention to kill, so it has the right not to have been conceived, brought into being, *as a product*. The right avails, in moral truth if not in positive law and practice, whether the technique is straightforward IVF, or the cloning of embryos by “twin fission,” or the cloning of *adult* sources by the envisaged procedures which aroused the President to appoint a Commission whose report deals only with this last kind of procedure and therefore leaves the nettle of principle ungrasped.

The right to equality in being brought into life, and the right to equality in the face of the threat of being killed, are of course one and the same right in two applications. And the applications come together, and the right is doubly violated, in the practice of experimenting lethally on test-tube babies, whether for the purpose of perfecting existing IVF techniques, or for discoveries in “pure science,” or for bringing into being and beginning to perfect a new technique such as cloning from the cells of more or less grown-up human beings. All are violations of the principle of reciprocity which lies near the foundations of a comprehensively reasonable political public reason.