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DEMYTHOLOGIZING ABORTION REFORM

ROBERT M. BYRN*

THREE YEARS AGO, the writer published an article in this Review in opposition to relaxed abortion laws.¹ Since that time, permissive legislation has been enacted in California, Colorado, North Carolina, Maryland,² Georgia,³ and England.⁴ In March, 1968, the Governor's Commission to Review New York State's Abortion Law, of which the writer was a member, recommended a radical relaxation of the New York law,⁵ to which the writer dissented.⁶

Paradoxically, as the abortion movement has gained momentum over the past three years, the reasons for opposing it have become more valid and more urgent. A number of the myths, which formerly underpinned the structure of "reform," have collapsed, and the status of the fetus as a human child has emerged with convincing clarity.

The Legal Myth

One of the principal props of abortion reform is the myth that the fetus has no status in law as a human child. The falsity of the myth may be demonstrated conveniently by following the progress of the decisions in New Jersey, a state which has developed a considerable body of law on the status and rights of the unborn child.

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¹ Byrn, *The Abortion Question: A Nonsectarian Approach*, 11 CATHOLIC LAW 316 (1965).

² For a brief summary of the legislation in these four states, see 3 CR. L. 2135 (1968).

³ See N.Y. Times, Feb. 27, 1968, at 32, col. 8.

⁴ See St. John-Stevias, *Abortion—The English Experience*, 117 AMERICA 707 (1967).

⁵ REPORT OF THE GOVERNOR'S COMMISSION APPOINTED TO REVIEW NEW YORK STATE'S ABORTION LAW (March, 1968).

⁶ MINORITY REPORT OF ROBERT M. BYRN, ESQ., JOHN GRANT HARRISON, M.D., AND MONSIGNOR WILLIAM F. MCMANUS, MEMBERS OF THE GOVERNOR'S COMMISSION APPOINTED TO REVIEW NEW YORK STATE'S ABORTION LAW (March, 1968). (Hereinafter referred to as the MINORITY REPORT).

For many years, New Jersey clung to the rule, first enunciated by Holmes in *Dietrich v. Inhabitants of Northampton*,⁷ that a child has no cause of action against a third person to recover for damages wrongfully inflicted upon it in the womb, on the theory that when the injury was inflicted, the fetus was a vegetating part of the mother and not a separate individual to whom legal duties were owed.⁸

In the 1946 case of *Bonbrest v. Kotz*,⁹ a Federal district court rejected the *Dietrich* rule and permitted a recovery for a pre-natal injury. Said the *Bonbrest* court: "The law is presumed to keep pace with the sciences and medical science certainly has made progress since 1884," and, "From the viewpoint of the civil law and the law of property, a child *en ventre sa mere* is not only regarded as a human being, but as such from the moment of conception—which it is in fact."¹⁰

The pre-natal injury cases decided immediately after *Bonbrest* dealt almost exclusively with injuries to viable children (children in the womb who are capable of existence apart from the mother). It was left for the New York court in *Kelly v. Gregory*¹¹ to bring the law completely in line with modern science *via* its decision that as a matter of law, humanity

is achieved at conception—long before viability. As the unanimous court put it:

We know something more of the actual process of conception and foetal development now than when some of the common-law cases were decided. . . . The complaint here, in alleging that plaintiff was in being in the third month of his mother's pregnancy, alleges a conclusion of fact consistent with generally accepted knowledge of the process.¹²

The effects of *Bonbrest* and *Kelly* were not felt in New Jersey until the 1960 case of *Smith v. Brennan*¹³ when the supreme court of that state held that a child might recover for injuries which he had suffered in the womb before he had reached the stage of viability. The court observed, "Medical authorities have long recognized that a child is in existence from the moment of conception," and, "medical authorities recognize that before birth an infant is a distinct entity, and . . . the law recognizes that rights which he will enjoy when born can be violated before his birth."¹⁴

⁷ 138 Mass. 14 (1884).

⁸ See *Stemmer v. Kline*, 123 N.J.L. 455, 26 A.2d 489 (Ct. Err. & App. 1942).

⁹ 65 F. Supp. 138 (D.D.C. 1946).

¹⁰ *Id.* at 143, 140.

¹¹ 282 App. Div. 542, 125 N.Y.S.2d 696 (3d Dep't 1953).

¹² *Id.* at 543-44, 125 N.Y.S.2d at 697.

¹³ 31 N.J. 353, 157 A.2d 497 (1960).

¹⁴ *Id.* at 362, 157 A.2d at 502. For cases in other jurisdictions, see Byrne, *The Legal Rights of the Unborn*, 41 L.A.B. BULL. 24 (1965). More recent cases include *Torigian v. Watertown News Co.*, 352 Mass. 446, 225 N.E.2d 926 (1967), and *Sylvia v. Gobeille*, 220 A.2d 222 (R.I. 1966). In the *Sylvia* case, it was held that a cause of action exists in favor of a child against a doctor upon an allegation that the child was born with certain physical defects by reason of the doctor's negligent failure to prescribe gamma globulin for her mother during pregnancy, notwith-

In 1964, in the case of *Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson*,¹⁵ the Supreme Court of New Jersey was asked to decide whether the rights of a child *in utero* were violated by his mother's refusal, on religious grounds, to submit to a blood transfusion deemed necessary to preserve the lives of both the mother and the child. Citing *Smith*, the court quite logically found a parity of rights between the unborn and afterborn child; decided that the unborn child is entitled to the law's protection, and ordered the mother to submit to the transfusion:

In *State v. Perricone*, 37 N.J. 463, 181 A.2d 751 (1962), we held that the State's concern for the welfare of an infant justified blood transfusions notwithstanding the objection of its parents who were also Jehovah's Witnesses, and in *Smith v. Brennan*, 31 N.J. 353, 157 A.2d 497 (1960), we held that a child could sue for injuries negligently inflicted upon it prior to birth. *We are satisfied that the unborn child is entitled to the law's protection* and that an appropriate order should be made to insure blood transfusions to the mother in the event that they are necessary in the opinion of the physician in charge at the time.¹⁶

standing his knowledge of the mother's exposure to German measles. The *Sylvia* case spotlights, in particular, the legal untenability of eugenic abortion. The Rhode Island court quite properly held that the human child *in utero* has a right to good medical care when exposed to the dangers of German measles. The abortion advocates would permit the use of German measles as a eugenic justification for the destruction of the child.

¹⁵ 42 N.J. 421, 201 A.2d 537, *cert. denied*, 377 U.S. 985 (1964).

The unborn child's right to life prevailed even over his mother's right freely to practice her religion.

In 1967, the inevitable occurred and the New Jersey Supreme Court was called upon to apply the principle of *Smith* and *Raleigh Fitkin* to a litigation which involved the unborn child's right not to be aborted. *Gleitman v. Cosgrove*¹⁷ was an action for money damages brought by a husband and wife on behalf of themselves and their child, Jeffrey, against two doctors upon an allegation that Jeffrey had been born with grave defects after the defendants had negligently failed to warn the Gleitmans that the attack of German measles, which Mrs. Gleitman had suffered during pregnancy, might result in such defects. The failure to give the warning, it was alleged, deprived the parties of an opportunity to terminate the pregnancy. In affirming the dismissal of the complaint, the majority of the court emphasized the unborn child's right to life:

The right to life is inalienable in our society. . . . We are not faced here with the necessity of balancing the mother's life against that of her child. The sanc-

¹⁶ *Id.* at 423, 201 A.2d at 538 (emphasis added). This decision points up the fallacy of the argument made by some abortion advocates that *Griswold v. Connecticut*, 381 U.S. 479 (1965), renders anti-abortion laws unconstitutional. The right of privacy, expounded in *Griswold* in connection with the conjugal use of contraceptives, has no application to an act, either covert or overt which destroys a human being who "is entitled to the law's protection." Contraception prevents human life from coming into being; abortion destroys a human life in being.

¹⁷ 49 N.J. 22, 227 A.2d 689 (1967).

tity of the single human life is the decisive factor in this suit in tort. . . . It may have been easier for the mother and less expensive for the father to have terminated the life of their child while he was an embryo, but these alleged detriments cannot stand against the preciousness of the single human life to support a remedy in tort.¹⁸

The unborn child's right to life prevailed even over his parents' right not to endure emotional and financial hardship.

I have urged elsewhere that permissive abortion laws deprive the unborn child of the equal protection of the law in contravention of the Fourteenth Amend-

ment of the United States Constitution.¹⁹ That argument is especially demonstrable in the context of the New Jersey cases. For the fetus is at all times to be regarded as a human child,²⁰ possessed of a right to life which is not only sacred and inalienable,²¹ but also superior to his parents' rights to practice their religion and to be free of emotional and financial hardship.²² In other words, he has a right to the law's protection on a par with that of his post-natal brother.²³

Recently, the Supreme Court of the United States defined the characteristics of the "person" to whom the fourteenth amendment guarantees equal protection of the law:

We start from the premise that illegitimate children are not "nonpersons." They are humans, live and have their being. They are clearly "persons" within the meaning of the Equal Protection Clause of the Fourteenth Amendment.²⁴

Unborn children too are "humans, live and have their being." Thus, they are "persons" within the meaning of the Equal Protection Clause of the Fourteenth Amendment," and no public opinion poll, no popular vote, reflecting the currents of the moment rather than the mainstream of thought, can overcome this constitutional hurdle.

The Statistical Myth

Another of the discredited myths of the abortion movement is the assertion that there are 1,000,000 illegal abortions

¹⁸ *Id.* at 30-31, 227 A.2d at 693. A recent, unpublished determination by the California Supreme Court is currently being cited, in opposition to *Gleitman v. Cosgrove*, for the proposition that the unborn child has no legally recognized rights. In *O'Beirne v. Kaiser Memorial Hospital* (Los Angeles Herald-Examiner, Dec. 8, 1967, at A-20, col. 1), the California court denied a husband's petition to restrain his wife from obtaining an abortion. After reviewing accounts of the superior court decision by Judge George H. Barnett and of the supreme court decision, Professor Charles E. Rice has concluded that, "Presiding Judge Barnett considered the case to involve an abortion required to save the life of the mother. He never squarely decided the issue of whether abortion should be allowed if not necessary to save the life of the mother. Therefore, neither his decision nor the peremptory decision without opinion by the California State Supreme Court disturbs the proposition that the unborn child has a constitutional right to be born where an abortion is not required to save the life of his mother." Testimony of Prof. Charles E. Rice before the Governor's Commission Appointed to Review New York State's Abortion Law, quoted in MINORITY REPORT 38-39.

¹⁹ Byrn, *Abortion in Perspective*, 5 DUQUESNE L. REV. 125, 134-35 (1966-67).

²⁰ See text *supra*, at note 14.

²¹ See text *supra*, at note 18.

²² See text *supra*, at notes 16 and 18.

²³ See text *supra*, at note 16.

²⁴ *Levy v. Louisiana*, 390 U.S. — (1968).

annually in the United States, and these may result in as many as 10,000 maternal deaths. The 1,000,000 figure is an extrapolation of several unrepresentative surveys. Actually, recent demographic critiques by Dr. Andre Hellegers,²⁵ formerly Associate Professor of Obstetrics and Gynecology and Lecturer in Population Dynamics at the Johns Hopkins University, Norbert J. Mietus, Esq.,²⁶ a California attorney and Professor at Sacramento State College, and Dr. Herbert Ratner, Director of Public Health at Oak Park, Illinois,²⁷ have discredited these surveys as reliable indicators of the incidence of abortion. Indeed, Dr. Hellegers wrote of one of the surveys (which was based upon case histories of women who attended the Margaret Sanger Birth Control Clinic in New York City between 1925 and 1929), "I doubt that any first year student in an epidemiology course would pass if he attempted to draw conclusions about the United States from such a sample."²⁸ Dr. Hellegers went on to point out that projections from two other less publicized, but no less reliable studies would yield a figure of illegal abortions of between 100,000 and 200,000 annually.

Even this statistic has been challenged, for, using the 100,000 figure, we arrive at a ratio of abortions to live births in the United States of about 1 to 35. Yet

as Dr. Ratner has pointed out, "In Sweden, where abortion is legalized and where abortion has become a cultural pattern, the rate of abortion to live births in 1963 was only 1 to 31. . . ."²⁹ On the other hand, Prof. John T. Noonan of the University of California Law School was able to project a maximum of between 40,000 and 50,000 illegal abortions annually in the United States by basing his computations on a parallel study done in England.³⁰

Demographers are even more outspoken regarding the allegation of 10,000 maternal deaths. Dr. Christopher Tietze, a firm proponent of permissive abortion, has denounced the figure as "unmitigated nonsense" and has estimated the total at closer to 500, based upon known mortality figures.³¹

One begins to see how foolish it is to accept out-of-hand these figures on illegal abortion. One begins to suspect also that in at least a few instances the figures are repeated more for their demoralizing effect than for their accuracy.

Actually, one wonders why these figures are cited at all. Generally, the bills that have been introduced in state legislatures would legalize abortion in case of a prognosis of a substantial threat to the mental or physical health of the mother or the unborn child, or in the instance of a

²⁵ Hellegers, *Abortion, the Law, and the Common Good*, MEDICAL OPINION & REVIEW 76 (May, 1967).

²⁶ N. MIETUS, THE THERAPEUTIC ABORTION ACT 2-11 (1967).

²⁷ Ratner, *A Public Health Physician Views Abortion*, 7 CHILD AND FAMILY 38 (1968).

²⁸ Hellegers, *supra* note 25, at 85.

²⁹ Ratner, *supra* note 27, at 40.

³⁰ Statement (unpublished) of Prof. John T. Noonan, delivered at a hearing conducted jointly by the Assembly Committees on Codes and Health of the New York State Legislature, Feb. 10, 1967.

³¹ Quoted in N.Y. Post, Sept. 7, 1967, at 31, col. 1.

pregnancy resulting from rape or incest. Yet, there is general agreement that enactment of the proposed legislation would not significantly reduce the number of illegal abortions—simply because the vast bulk of abortions are performed for reasons other than those provided in the proposals, *i.e.*, reasons of socio-economic convenience. In fact, the most optimistic prediction I have seen is a reduction of 32,000 from the spurious figure of 1,000,000.³²

The Theological Myth

The abortion movement has found it expedient to isolate the Catholic Church as the only opponent of permissive abortion. This tactic has facilitated the movement's claim that the Church is attempting to impose its own theology on a pluralistic society. Thus the abortion advocates have gained ground by capitalizing on religious divisiveness.

As the abortion debate becomes more profound, the myth of sectarian domination is gradually being dispelled. For instance, the International Conference on Abortion, held at Washington, D.C. in September, 1967, revealed that abortion is not the concern only of the theologians of a single sect. Rather it is an interdisciplinary problem which transcends denominational loyalties and touches life itself.³³ Actually, a significant body of non-Catholic ethical thought in opposition

to abortion has surfaced in the last several years.³⁴ In addition, the opponents of permissive abortion have themselves had occasion to eschew sectarian theology in favor of a broader pluralistic approach. As an example, the minority of the Governor's Commission to Review New York State's Abortion Law rejected the ancient theory of delayed animation as a relevant test of the humanity of the unborn child:

Theological speculations on when the soul enters the body have their place. But . . . the benefit of the doubt is with the human child *in utero*. In a pluralistic society, theorizing about whether ensoulment occurs and human life begins *in utero* when this part of the body or that becomes organized or connected is unacceptable as a measure of human rights. At hearings conducted on the 'Blumenthal' abortion bill during the 1967 session of the legislature, Professor John T. Noonan, Jr. of the University of California Law School (Berkeley) told an Assembly Committee, 'I myself know of only one test for humanity: A being who was conceived of human parents and is potentially capable of human acts is human. By what other test could you prove that an infant of one day was human? . . . We know he is a man because he came of human flesh and is expected at some point to perform a human act, to think a human thought. Can we say less of the human embryo?'³⁵

Certainly, it would be presumptuous for the adherents of any particular religion to claim that they are the only

³² Dr. Edmund W. Overstreet, quoted in N.Y. Times, Apr. 13, 1967, at 15, col. 1 (predicting a total of 40,000 legal abortions, an increase of 32,000 over the current rate of approximately 8,000 a year).

³³ The proceedings of the Conference are digested in THE TERRIBLE CHOICE: THE ABORTION DILEMMA (paperback ed. 1968).

³⁴ See, e.g., Jakobovits, *Jewish Views on Abortion* in ABORTION AND THE LAW 124 (Smith ed. 1967); Drinan, *Abortion—Contemporary Protestant Thinking*, 117 AMERICA 713 (1967).

³⁵ MINORITY REPORT 26.

persons concerned for the well-being and the rights of the unborn. It is even more presumptuous for the abortion advocates to make the claim for them.

The Clinical Myth

It is customary for the abortion advocates to depict an induced abortion in clean, antiseptic and clinical terms. One receives the impression of sterile, bloodless surgery involving no more than the excision of a minute blob of tissue. In fact, the "D. & C." is a traumatic procedure. The cervix is dilated and the fetus is removed with a rake-like instrument called a curette. According to Dr. Alan Guttmacher, "in pregnancies beyond the seventh week, fetal parts are recognizable as they are removed piecemeal."³⁶ At a Planned Parenthood Federation conference on abortion in 1955, induced abortion was referred to as a "mutilating operation."³⁷

Mrs. Jill Knight, a Member of Parliament and a leader of the opposition to the English abortion bill has described the procedure in this way:

Earlier in this speech, gentlemen, I used the phrase 'killing a baby' to describe an abortion . . . for at the stage when abortions are normally carried out, the baby is perfectly formed, with all its limbs quite recognizable. Having been evacuated, it must frequently be destroyed or left to die by

the theatre staff. This is one of the reasons why most doctors and nurses hate abortions. If the 'it's only a blob' brigade saw a tiny aborted child, they would perhaps lose a little of their poise.³⁸

It is little wonder that Dr. Herbert Ratner has condemned induced abortion as "the intrauterine battered child syndrome which we are so opposed to and feel is so cruel when it is extrauterine."³⁹

The Socio-Familial Myth

Perhaps the greatest myth of all is the one which commends abortion, *qua* a technique of birth control, as a benefit to family and society. Quite the contrary, permissive abortion seems to go hand-in-hand with the erosion of family values. Dr. Alan Guttmacher has found a connection between the loosening of family structure and the prevalence of abortion in pre-Christian Rome:

Previous to the conclusion of the second war against Carthage (218-201 B.C.), Rome was an austere and moralistic nation, but after the war its moral fiber weakened. . . . It was at this time that various religious cults arose to legitimize sexual vices. At this time, with the loosening of the family structure and decline of the power of the paterfamilias, abortion flourished.⁴⁰

Dr. C. P. Harrison points to a developing cynicism toward family values in abortion-ridden Eastern Europe,⁴¹ and a

³⁶ Guttmacher, *Techniques of Therapeutic Abortion*, 7 CLINICAL OB. & GYN. 100, 103 (1964).

³⁷ Colloquy between Dr. Iago Galdston and Dr. Alan Guttmacher in ABORTION IN THE UNITED STATES 163 (Calderone ed. 1958).

³⁸ Quoted in MINORITY REPORT 5-6.

³⁹ Quoted in *Id.*, at 20.

⁴⁰ Guttmacher, *The Legal and Moral Status of Therapeutic Abortion*, 4 PROGRESS IN GYNECOLOGY 279, 280-81 (1963).

⁴¹ Harrison, *On the Futility of Legalizing Abortion*, 95 CAN. MED. J. 360, 362 (1966).

similar phenomenon has been observed in Japan where “[t]he easy availability of abortion is said to have undermined relationships between parents and children. . . . The Chief of the Children’s Bureau of the Japanese Ministry of Welfare has stated that children raised in an ‘abortion age’ feel a lack of parental love, and as a result, turn to anti-social behavior and juvenile crime.”⁴² Dr. Robert E. Hemphill expressed concern over the effects of abortion on the family in an article in *The Lancet*:

It is impossible to estimate the effect on the mind of a young girl who learns that her mother has been to the hospital and had a baby ‘taken away.’ To know that such events are not uncommon must be harmful to her character development and to relations within the family.⁴³

These warnings of parent-child alienation and family breakdown have special significance in view of modern American techniques of sex education. The widely hailed book, *Modern Sex Education*, instructs the young reader that, “Human life begins when the head of the sperm cell, which carries the nucleus, unites with the nucleus of the ovum or egg cell. This is called *fertilization* Fertilization of the egg cell is also referred to as *conception*. In other words, it is at this time that a new life is conceived.”⁴⁴ The child cannot fail to know that an abortion destroys a human life.

Human life is at the heart of the abortion debate. As Lutheran Pastor Richard John Neuhaus has written, “How flexible

can we be with regard to abortion is tantamount, I believe, to asking how flexible we can be with regard to taking human life.”⁴⁵

Pastor Neuhaus is correct. Until the present time, we have tolerated abortion as a last resort procedure for preserving human life. We are now asked to sanction the procedure as a desirable means of preserving human happiness by destroying human life. Dr. Harrison put it this way:

If the terms under which abortion is to be legally permitted are not to be concerned solely with those conditions which constitute an immediate threat to the mother’s life, then the legal indications change subtly from the preservation of life to the preservation of happiness and who can best determine what can make her happy but the patient? In other words, if one woman is pregnant and has kidney disease and another is pregnant as a result of some extramarital misadventure, there would be no justification in terms of public benefit for the law to permit the one to preserve her health by abortion and forbid the other to preserve her marriage by the same means.⁴⁶

In short, we must ask ourselves: Are we flexible enough with regard to taking human life to alter the thrust of the law from the preservation of a life that is precious to the destruction of a life that is burdensome?

It is futile to deny the humanity of the life destroyed by an abortion. In almost every area of the law, we recognize that a child is in existence from the

⁴² SHAW, *ABORTION ON TRIAL* 131 (1968).

⁴³ Hemphill, *The Abortion Bill*, *THE LANCET*, Feb. 11, 1967, at 324, 325.

⁴⁴ JULIAN & JACKSON, *MODERN SEX EDUCATION* 27-28 (1967).

⁴⁵ Neuhaus, *The Dangerous Assumptions*, 86 *COMMONWEAL* 408, 412 (1967).

⁴⁶ Harrison, *supra* note 41, at 361.

moment of conception.⁴⁷ This, indeed, is true in almost every area of life. As Pastor Neuhaus wrote:

It is . . . profoundly disturbing to hear many proponents of abortion reform dismiss the question of life in a cavalier manner. Pre-natal life is denigrated as a 'piece of tissue,' 'a woman's mistake,' or 'vegetating unborn matter.' Such language begs the question in a disgraceful manner. Biology and every day life teach us that life is to be understood in continuity with life. As one biologist states it, 'Birth is but a convenient landmark in a continuous process.' Modern medicine is beginning to refine the specialty of fetology, in which it is assumed that the physicians' oath to preserve life and to heal is fully applicable. The casual claim that 'of course' and 'obviously' there is a difference between the fetus and the baby are supported only by the wish for a simple resolution of a troubling problem.⁴⁸

It is hard to see how the enactment of permissive legislation will not result in an unfortunate devaluation of human life. A pregnant woman who buys a book on what-to-do-until-the-baby-comes reads in one that with the union of sperm and ovum, "a new human being is created,"⁴⁹ and in another that the unborn child "is a living striving human being from the very beginning."⁵⁰ Perhaps too, she has been reading in the popular press of the new science of fetology. "The birth of a human really occurs at the moment the mother's egg cell is fertilized by one

of the father's sperm cells."⁵¹ "The perinatal period can be considered the first year of life—the period from conception through the nine months of pregnancy to the end of the first three months of infancy."⁵² "The coming together of egg and sperm to make a new human being is a small miracle."⁵³ "The fetus is an 'unborn human astronaut'; capable of free-floating movement and able to exercise its arms and legs, react to sound, eat and feel pain. . . . Both physicians and mothers are coming to regard the fetus not as a vegetable but as a vital living individual."⁵⁴

Later, when she decides to abort—perhaps because of a prognosis that the child will be born defective—will the woman really be able to black out the memory of what she has read? And what of her husband who picks up a newspaper and on the same page with a report of the progress of abortion bills in various state legislatures, reads that "The Massachusetts Supreme Court says an unborn baby is 'a person' in the eyes of the law and thus has a right to recover damages for wrongful injury."⁵⁵

No doubt, we shall be able to sustain the doublethink for awhile—the child we want is a baby; the one we do not want is fetal tissue—but there will come a time when the fiction is discarded, when we learn to accept, uneasily at first and then with a certain equanimity, the pre-natal

⁴⁷ See text, *supra* at notes 9-23, and see Byrne, *supra* note 14.

⁴⁸ Neuhaus, *supra* note 45, at 410.

⁴⁹ EASTMAN, EXPECTANT MOTHERHOOD 23 (3d ed. 1957).

⁵⁰ MONTAGU, LIFE BEFORE BIRTH 2 (1964).

⁵¹ *The Drama of Life Before Birth*, LIFE, Apr. 30, 1965, at 54 (with illustrations).

⁵² NEWSWEEK, Oct. 25, 1965, at 36.

⁵³ Conniff, *The New Medical Specialty, Fetology—The World of the Unborn*, N.Y. Times, Jan. 18, 1967, § 6 (Magazine), at 41.

⁵⁴ NEWSWEEK, Feb. 26, 1968, at 94.

⁵⁵ N.Y. Times, Apr. 29, 1967, at 14, col. 3.

destruction of a human being for reasons of personal happiness and social utility. This is not the better part of wisdom. Pastor Neuhaus said it well:

Our century has witnessed the demonic consequences of man's distorted definitions of himself along racist, nationalistic and utilitarian lines. Nothing can be taken for granted in terms of society's understanding of human rights. In our valuation of human life to be civilized is to be conservative.⁵⁶

In our jurisprudence all men are endowed with certain inalienable rights but according to abortion proponent, Ashley Montagu, "the embryo, fetus and *new-born* of the human species, in point of fact, do not really become functionally human until humanized in the human socialization process. *Humanity is an achievement not an endowment.* . . . I consider it a crime against humanity to bring a child into the world whose fulfillment as a healthy human being is in any way menaced or who itself menaces the life of the mother or *the quality of the society* into which it is born."⁵⁷ Here, after all is said and done, is the jurisprudence of abortion reform. Is it a boon to family and society? Or did it prove to be a curse in an unhappy experiment in Germany only a generation ago?

Conclusion

The ultimate issue in the debate is whether abortion shall become an acceptable means of solving socioeconomic

problems.⁵⁸ Twenty-five years ago, a United States court provided the answer:

Arguments that abortion should be permitted to avoid social disgrace or poverty or illegitimacy have frequently been made. . . . The performance of an abortion for any of these purposes is so offensive to our moral conception that it does not seem unjust to put on the defendant who has committed an abortion the burden of producing evidence that the act was justified on therapeutic grounds.⁵⁹

Let us not underestimate the social pressures which lead some women to prefer abortion to childbirth. But abortion need not, and must not become the accepted solution to any of our social problems. We do have such alternatives as assistance programs for the socially and economically deprived and for the distressed family of the physically and mentally disadvantaged child. Perhaps, after all, abortion is a symptom of deeper social ills, and perhaps, it is toward the uncovering and curing of these ills that we ought to divert all the money, time and energy that we have been expending on promoting and opposing abortion.

⁵⁸ That there no longer exist any medical grounds for abortion, see, e.g., Donnelly, *Are There Medical Indications for Abortion?*, 52 J. MED. SOC. OF N.J. 112 (1955); Heffernan & Lynch, *Is Therapeutic Abortion Scientifically Justified?*, 19 LINACRE Q. 11 (1952). I have explored "therapeutic abortion" as social engineering in the articles cited *supra* at notes 1 and 19, and in *The Anatomy of Abortion Reform*, REPORT, August, 1966, at 21; *Abortion—The Future In America*, 117 AMERICA 710 (1967).

⁵⁶ Neuhaus, *supra* note 45, at 410.

⁵⁷ *Letter to the Editor*, N.Y. Times, Mar. 9, 1967, at 38, col. 5 (emphasis added).

⁵⁹ *Williams v. United States*, 138 F.2d 81, 83 (D.C. Cir. 1943).