

**RESISTING THE WEST: THE CLINTON ADMINISTRATION'S
PROMOTION OF ABORTION AT THE 1994 CAIRO
CONFERENCE AND THE STRENGTH OF THE
ISLAMIC RESPONSE**

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"When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

"The question is," said Alice, "whether you *can* make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master—that's all."¹

"Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the lawgiver, to all intents and purposes, and not the person who first spoke or wrote them."²

INTRODUCTION

Who makes the law, and who decides what the law means? For modern lawyers, the true riddle is not in the actors' identification, but whether these are different questions involving different actors, or instead the same question involving the same actors. For theologians, however, the question may even signify the dividing point between God and man. And until quite recently,

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1. LEWIS CARROLL, *THROUGH THE LOOKING GLASS* (1871), *reprinted in* COMPLETE WORKS OF LEWIS CARROLL 196 (1936).

2. WILLIAM B. LOCKHART ET AL., *CONSTITUTIONAL LAW, CASES, COMMENTS, QUESTIONS* 1 (6th ed. 1986) (quoting Bishop Hoadly's sermon preached before the King, March 31, 1717).

in most of the world (regardless of culture), the jurist wrestling with the issue would have also been a theologian, or at least a moralist.³ In the seventeenth century Western world, law and God were not yet divorced, and although the marriage was not entirely happy, it was considered stable. Indeed, secular society's rise and revitalization in the West falls hard upon the jurist's own recent tumble from divine grace. The Eastern concept of law as the perfect expression of the will of God has been under siege for many centuries, and its defeat in modern Western eyes seemed certain and complete. The infamous crusades, a prolonged continental war of Christianity, two world wars, and a bloody, stalemated Asian conflict point to an intercine Western struggle that necessarily held (as a pivotal precept) that victors made law as men, and divined law's meaning as well. The victors' unchallenged power to usurp God's authority and reap these and other spoils made the point obvious, and religion's role in defining law and its meaning was gradually diminished accordingly. In place of the religious empire or state arose a Godless leviathan that rules the West today, tolerant only of those faiths that eagerly accommodate themselves to the state's political authority, tolerant only of religion as an airy, ideological exercise, and physically manifested in forms as obscure (and yet inexplicably controversial) as a pledge of allegiance or a prayer to open parliament.⁴

This view is inherently flawed. Religion has always been and continues to be, everywhere, more of a force than these pale acknowledgements. Although some in the United States propose that the legally-mandated practice of tolerance, democracy's lauded trademark, transcends its ordinary political value and rises to the level of a state religion, this is not the way of much of the world.⁵ The Western world view that relegates religion solely

3. In western Europe, for example, scholars such as Hugo de Groot (better known as Grotius) and Gentili are considered the fathers of modern-day international law. But in their own time, their fame rested largely on their work as moralistic theologians. Ironically, Thomas Moore, a famous and well-respected lawyer in his day, is now perceived mostly as a religious moralist (most famously for his fatal advice to Henry VIII regarding his ability to divorce Catherine of Aragon and marry Anne Bolyne). Yet even in societies labeled as primitive or animistic, shamans and elders perform similar roles involving a blend of justice determination and interpretation of divine will.

4. In clarification, I do not mean to say that the United States is the "Godless leviathan," although it is the predominant Western power in the world today. The role of religion in U.S. society has always fluctuated and is often under siege, but remains very real to the citizens who practice their faiths. What I am referring to here is a more abstract *zeitgeist* that rejects the governing role of religion in citizens' daily life, relegating it to the hodge-podged realm of "privacy," where it keeps curious company with the issues of family, sex, birth control, and abortion—all of which are undeniably aspects of daily life. While such privacy "laws" protect the rights of Muslims to *practice* their faith in the West, the idea that Muslims would be ruled by *shari'a* in their daily lives is unacceptable to the United States and other secular powers. In this light, it is not so much that the United States is a "Godless" leviathan as it is a "lawless" one. Of course, to Muslims, there is no difference; where would one be left without God or His laws? Hence, the Ayatollah Khomeini's appellation of the United States as the "Great Satan" is an unflattering but not imperfect metaphor. Perhaps "Animal Farm" is a better appellation, more befitting the dictum of Seyyed Hossein Nasr that "[m]an is in absolute need of religion without which he is only accidentally human." SEYYED HOSSEIN NASR, IDEALS AND REALITIES OF ISLAM 24 (1967).

5. For the view that tolerance is the overriding moral value in the United States, see David A.J. Richards, *Sexual Autonomy and the Constitutional Right to Privacy: A Case Study in Human Rights and the Unwritten Constitution*, 30 HASTINGS L.J. 957 (1979) (address by David A.J. Richards at New York University School of Law's 1992 Jurisprudence Colloquium); David A.J. Richards, *Unnatural Acts and the Constitutional Right to Privacy: A Moral Theory*, 45 FORDHAM L. REV. 1281 (1977). One writer goes

to the realm of the personal is a product of centuries of Western paganism (what Edward Luttwak calls "Enlightenment prejudice")⁶—that harsh mixture of "classicism, impiety, and science" washed down with a heavy dose of the belief that "free will" equals intelligence and religious belief indicates stupidity and superstition.⁷ The West, incurably ethnocentric, ignores at its peril the revitalization of religion in the rest of the world. States inevitably last a long time, and civilizations even longer, but religion *endures*. Although all states have basic things in common (such as a defined area, population, and the capacity to engage in political relations with other states), the Islamic states are distinctive actors; they are both living fossils—curiosities of a time long past—and the shape of things to come, for they are religious states—more theocracies than democracies, despite the factor of popular elections—where the word of God has retained its vitality.⁸ Within the borders of these states, Muslims may live their lives faithfully, as Islam embraces every aspect of their daily being.

It is this aspect of Islam—its all-pervasiveness—that purportedly alarms the West. Yet even most secular states recognize religion in some way as a guiding force in the lives of all men.⁹ Religion is a force which secularism seeks to perpetually weaken, to bend to political compromise and accommodation. Judaism has been forced to make such compromises with ruling

so far as to proclaim that the U.S. Constitution actually "forbids state action that has no purpose other than moral standard-setting." Peggy Cooper Davis, *Changing Images of the State: Contested Images of Family Values: The Role of the State*, 107 HARV. L. REV. 1348 (1994). Other scholars expand this claim to include international politics, and assert that democratic governments are the only legitimate forms of governance, and that a democracy cannot be a "true" democracy without declaring its obeisance to tolerance of all kinds of behavior. See, e.g., Gregory H. Fox & Georg Nolte, *Intolerant Democracies*, 36 HARV. INT'L L.J. 1 (1995). But on a world-wide basis, this position is waning, even in the United States. In fact, groups that promote tolerance as the superior moral value feel more than threatened by the rise of religion and "family values" in the United States; they consider themselves under siege. See, e.g., DAVID CANTOR, *THE RELIGIOUS RIGHT: THE ASSAULT ON TOLERANCE & PLURALISM IN AMERICA* (1994). Cantor's work is a good example of the kind of ironies that arise among religious groups in the United States whose purpose is not religious at all, but political. Subsidized by the Jewish Anti-Defamation League (ADL), Cantor is critical of the U.S. grass-roots campaign to return prayer to public schools, subsidize private religious education, and promote "pro-family Christians' control" of the Republican Party. *Id.*

6. Edward Luttwak, *The Missing Dimension, in RELIGION, THE MISSING DIMENSION OF STATECRAFT* 8 (Douglas Johnston & Cynthia Sampson eds., 1994).

7. PETER GAY, *1 THE ENLIGHTENMENT: AN INTERPRETATION; THE RISE OF MODERN PAGANISM* 8 (1966).

8. See generally RELIGION IN THE MIDDLE EAST: THREE RELIGIONS IN CONCORD AND CONFLICT (A.J. Arberry ed. 1969).

9. The West is marked by periods of alternately openly brutal and subterfuge conflict between church and state. Pronounced points of this struggle were the Enlightenment and the French Revolution, which seemed to result in the state's total victory over faith by way of erecting an altar supposedly for the worship of that human commodity scarcer even than faith—reason—and ushered in secularism's latest interregnum. Ironically, the subsequent complementary rises of both communism and fascism involved the supposed "defeat" of religion, for which adherents substituted the worship of the state in lieu of a Marxist Utopia or Nazi *Nibelungenlied*. This practice, however, belied the fact that the replacement secular ideology imposed by the state in religion's stead "must be imposed continually" and does not satisfactorily substitute religion's "opiate" social function. See Barry Rubin, *Religion and International Affairs, in RELIGION, THE MISSING DIMENSION OF STATECRAFT, supra* note 6, at 20-34. If religion is indeed an opiate, however, then it is also addictive, and people cannot help but desire it in some form or another. "Thus," observes Rubin, "Ayatollah Ruhollah Khomeini provided a better aphorism than Marx when he commented, 'The masses are naturally drawn to religion.'" *Id.* at 21.

elites for millennia. The advent of Reform Judaism has made such compromises fairly painless for states' citizens, although the inevitable result is that faith is weakened. This has not been the case with observant Jews, however, who refuse to assimilate. Observant Jews are not simply part of a distinct kinship group or ethnically "Jewish." They are Jews who observe the Laws of Moses in their daily lives. However, in their own eyes, they do not live in a truly Jewish state. Observant Jews *live* their religion piously but privately, even in their own state of Israel.¹⁰ The secular world is largely shut off from the vibrant religious life of the Jewish home, private rabbinical study, and synagogue as traditional Judaism becomes more and more privatized.

The conscientious Western Christians seem less isolated in their daily lives, perhaps because there are simply more of them around. Nevertheless, they too have reached an accommodation with secular society, although their choice is more schizophrenic because Christian communities are more open and less isolated than Jewish ones. While observant Jews actively build communities apart from other faiths, Christians have fewer laws to obey and so feel more free to adapt themselves to the secular world, although the compromise is always imperfect. Christians see themselves as "citizens of two kingdoms," one secular and profane, and one otherworldly and holy.¹¹ But with one foot in each world, Christian "dual" citizens are stuck in a perverse situation; absent vows of poverty, the burdens of ordinary Western living require them to spend six days a week in the first world. Most Christians ideally want to have their cake and eat it, too—to stay an active part of each distinct world—but the distinct laws of the secular and religious world are often in conflict. How, then, to free themselves from the responsibilities of the first world to live fully in the latter? This is particularly true in democracies, where every election requires Christians to choose a ruler who is necessarily very much at home in the first world and reticent about his life in the second. Christians must acknowledge God's laws, but are compelled by a democratic religiousless system to obey secular laws that may force them to go against their religious beliefs.¹² At the same time, a

10. See J.J. Petuchowski, *Judaism Today*, in 1 RELIGION IN THE MIDDLE EAST: THREE RELIGIONS IN CONCORD AND CONFLICT, *supra* note 8, at 3-58; Norman Bentwich, *Judaism in Israel*, *id.* at 59-118.

11. Kenneth S. Kantzer, *A Creed for Christian Citizens (Editorial)*, 39 CHRISTIANITY TODAY, Sept. 11, 1995, at 15.

12. Hence, it was typical, but not at all surprising, that Geraldine Ferraro ran afoul of the Vatican during her historic but unsuccessful candidacy for Vice President of the United States. See generally Kurt Anderson, *For God and Country: An Emotional Issue Arises: Where is the Wall Between Religion and Politics?*, TIME, Sept. 10, 1984, at 8; *Catholic Bishops Link Policy, Morality*, FACTS ON FILE WORLD NEWS DIGEST, Aug. 17, 1984, at 605-C1. Specifically, Ferraro not only claimed that the Catholic Church's teaching on abortion was "divided," but that she could be an observant Roman Catholic and still uphold a woman's "right" to abortion: "I don't believe in abortion, but I can't impose my belief" on others. Jane Perlez, *Mrs. Ferraro for Vice President*, N.Y. TIMES, Dec. 23, 1983, at A14. New York's Roman Catholic Cardinal O'Connor (then archbishop) did not hesitate to point out that Ferraro had misrepresented Roman Catholic views on abortion: "Pope John Paul II has said the task of the Church is [to] reaffirm that abortion is death." *O'Connor Critical of Ferraro Views*, N.Y. TIMES, Sept. 9, 1984, at A1. O'Connor also pointed out that Ferraro's dichotomy was religiously impossible, especially for Catholic politicians—and that abortion remained a grave sin that no Catholic could condone despite its

faithful Christian could not doubt that "God will hold us accountable for all the bad [man-made] laws we fail to speak out against."¹³ At the same time, the failure to raise that religious voice against "bad" laws is very much a part of negotiating successful strategies for living in the secular world. Those religious individuals who do speak out against laws they believe are wrongful find their views often cursorily dismissed as tainted by superstition or lacking intellectual rigor on the basis of their religious quality. Indeed, the moral and political compromises made by Judaism and Christianity as the price of religious survival in a secularist society are simply not possible for true Islam, which Muslims see as an inherently coherent, rational, and self-contained wholistic system of utmost moral integrity. It cannot come as a surprise that they view Western attempts to disembowel Islamic fundamentalism as not only utterly incomprehensible, but a matter of life and death for the Muslim community.

If Nazi Germany proved anything, it is that a state is only as morally good as the moral average of the citizens within its borders. While religion

secular legality: "I don't see how a Catholic in good conscience can vote for a candidate who explicitly supports abortion." George Lardner, Jr., *Cuomo Urges Wider Political Debate of Religion*, WASH. POST, at A5. See also Sam Roberts, *Cuomo to Challenge Archbishop Over Criticism of Abortion*, N.Y. TIMES, Aug. 3, 1994, at A1. Indeed, the Catholic Church considers such a view grounds for excommunication. Bishop James Malone of Youngstown, Ohio, president of the U.S. Catholic Conference and head of the United States' Roman Catholic bishops, concurred: "The implied dichotomy—between personal morality and public policy—is simply not logically tenable." David E. Anderson, UPI, WASH. NEWS, Aug. 9, 1984. By the middle of August 1994, Ferraro tried to squelch the growing furor by clamping up about how she would square her religious beliefs with her politics, which included support of abortion: "Again, I'm not going to discuss that [my position on abortion] with you. My religion is very, very private." *Excerpts from Interview with Ferraro on Campaign Plane*, N.Y. TIMES, Aug. 14, 1984, at A21. Other Democratic politicians claiming to be Catholic scrambled to her defense. Mario Cuomo vouched: "I don't think it's good that society aborts its young, but for a public official, the question is where you draw the line between the beliefs you hold personally and those you pursue in public policy." Kenneth L. Woodward, *Politics and Abortion: "Family Issues" Play in the Race for the White House*, NEWSWEEK, Aug. 20, 1984, at 66. The New York Times editorialized that religion in the modern age was simply irrelevant— "What matters in Presidents are human values, moral values, not religious affiliation or baptism." *Enough of "Holier Than Thou" (Editorial)*, N.Y. TIMES, Aug. 2, 1984, at A22. The Catholic Church held firm. Archbishop Law of Boston responded pointedly: "I certainly don't think the separation of church and state is meant to inhibit the practice of religion." Fox Butterfield, *Archbishop of Boston Cites Abortion as "Critical" Issue*, N.Y. TIMES, Sept. 6, 1984, at B13. "The alarming fact is that during the past 11 years over 15 million human beings have been aggressively and willfully put to death in our nation with the sanction of the law. To evade this issue of abortion under the pretext that it is a matter pertaining exclusively to private morality is obviously illogical." *Id.* Nor was Law above using his considerable influence to derail candidates who supported abortion: "I don't want to be a political boss," Law declared, "but I hope our statement will influence everyone who hears it." *Id.* In response to the Democrats' claims that the Catholic Church was inflating the abortion issue at the expense of other pressing matters such as nuclear arms, the New England Bishops issued a blunt statement: "While nuclear holocaust is a future possibility, the holocaust of abortion is a present reality." *Id.* The person who most clearly defined the real parameters of the controversy, however, was neither the church nor the state, but the everyman in the street, in a letter to the editor of the *New York Times* at the height of the controversy: "Opposition to abortion is not a religious belief. It is one of many moral issues which the Catholic Church has taken a stand on—as have other faiths and other groups with no Catholic connection." Alfred G. Boylan, *Of Ferraro, Cuomo, and Moral Issues Confused with Dogma (Letter to the Editor)*, N.Y. TIMES, Sept. 9, 1984, at D24. "[I]f one honestly believes in the moral rectitude of a cause, one should not cravenly use religion as an excuse for inaction." *Id.* The Republicans raised other issues impugning Ferraro's honesty and moral dichotomy. See, e.g., *MacNeil/Lehrer Newshour: Ferraro Disclosure* (PBS television broadcast, Aug. 20, 1984). Following her defeat at the polls, her son John Zacarro, Jr., who had been active in her political campaign, was arrested and found guilty of being a small-time cocaine dealer.

13. *MacNeil/Lehrer Newshour: Ferraro Disclosure* (PBS television broadcast, Aug. 20, 1984).

in the West is sometimes seen no differently than a matter of personal taste—say, a preference for Chinese food over Italian, or “You say potato, I say ‘potahto,’”—morality and ethics require more than simple tolerance. Tolerance of what? It is one thing to tolerate beliefs never put into practice—one is never confronted with behavior that might be offensive, destructive, or indecent; one is only aware of some form of abstract reasoning. But tolerating a belief (or the individual’s right to believe in the belief) is not the same as recognizing the belief itself as a moral or ethical *value*—that’s a different thing. And societies do have such values, at least, successful ones do—those that don’t become anarchies and collapse. Nor is pluralism a bar to such values; but pluralism requires a baseline, since some things should neither be tolerated nor done, such as torture or genocide, regardless of cultural relativism. Morality and ethics, essential to the social survival kit, require standards—a baseline—which are achievable and determined; in order to work, the expected standard must be known and communicated to all, and it must not be impossibly high to maintain. Morality and ethics also require social trust, whether from culture or religion, or both, and it is this trust that provides the basis for civil society. The failure of the United States to recognize and understand the pervasive role of religion in everyday life causes crises of trust both within and without its borders, and this breakdown will cause U.S. foreign policy to fail in ways that will destabilize communal identity both at home and abroad,¹⁴ encourage international political instability,¹⁵ and create national security dilemmas.¹⁶ U.S. failure to recognize the rights of the pious faithful to actively *live* their religion on a daily basis can only result in the destruction of those individual liberties the secularists themselves prize so highly.¹⁷

14. The United States’ failure to grasp the theology and history of various religious groups in Lebanon is a case in point. See Rubín, *supra* note 9, at 24-26. See also Yoakim Moubarac, *The Lebanese Experience and Muslim-Christian Relations*, in *THE VATICAN, ISLAM, AND THE MIDDLE EAST* 219-42 (Kail C. Ellis ed., 1987).

15. The Iranian revolution is a classic example of an intrastate change arising out of modernism’s conflict with religion, with enormous consequences for both its own region and the energy-dependent world as a whole. See Rubín, *supra* note 9, at 26-28.

16. While the Pan Am Lockerbie incident was shocking and did involve the deaths of U.S. citizens, no part of the crime took place on U.S. soil. Moreover, while the United States and Britain have blamed diverse Muslim groups (Iranians, Iraqis, Syrians, and Libyans) at various times for the air bombing, and brought a complaint against Libya to the U.N. Security Council which secured a demand for the surrender of the alleged Libyan citizens, the United States has failed so far to produce any hard evidence of Muslim involvement—even for the families of the dead passengers. However, the bombing of the World Trade Center is a case in point. See John Aloysius Farrell, *Bombing Shakes U.S. Sense of Security; Fear of Terrorism Resurfaces*, ARIZ. REPUBLIC, Feb. 28, 1993, at A1; *Blast Rocks Trade Center; Terrorists May be to Blame*, WASH. TIMES, Feb. 27, 1993, at A1. *Id.* See also *infra* note 17 and accompanying text. The World Trade Center bombers were allegedly Muslims led by a blind religious Muslim cleric from a Jersey City mosque—a far cry from the kind of sophisticated, areligious terrorism the United States is familiar with (although usually not first-hand), such as the Red Brigades, Bader Meinhoff, or even the FALN. Other violent incidents in the United States such as the attack on the Branch Davidian Compound in Waco, Texas, led by the U.S. Bureau of Alcohol, Tobacco, and Firearms have religious elements that scholars in the United States have consistently failed to address.

17. For example, the U.S. Omnibus Counterterrorism Act of 1995 establishes a system of fines and prison terms for anyone “supporting” any organization named by the acting U.S. President as “terrorist.” See Jane Hunter, *Anti-Terrorism Order Worries Muslims; U.S. Presidential and Congressional Policies*, 31 NAT’L CATH. REP., Mar. 31, 1995, at 5. Reminiscent of the Old English Court of Star Chamber, the

This Article examines the Clinton Administration's policies toward Islamic states' development in light of the 1994 Cairo conference on global population issues. It is my opinion that the Clinton Administration promotes abortion and sterilization (which includes both permanent and temporary methods of birth control) to third world women as an allegedly necessary price for accumulating wealth and national stability and, quite ridiculously, bettering their individual "health."¹⁸ Although the real reasons for the Clinton Administration's agenda remain obscure, the agenda's promotion of abortion reflects a well-established program promulgated by established radical feminist groups in the West, and fuels popular fears that failure to recognize abortion as an international human right will lead to increased sexual oppression¹⁹ and even to genocide,²⁰ starvation,²¹ military security

Act also provides for a special court to order the deportation of aliens without letting them see the classified evidence against them. *Id.* While drafted in response to public insecurity over American "weakness" in the face of several terrorist incidents, the Act would allow the FBI to conduct otherwise-prohibited investigations of political activity. *Id.* The very presence of the word "omnibus" should raise democratic eyebrows. The Act is susceptible to a broad interpretation that can only spell trouble for the religious faithful. Muslims are naturally concerned that the Act will be used against them on the basis of their Islamic beliefs, which may sometimes be necessarily "political." See, e.g., *The Omnibus Counterterrorism Act of 1995 and the Comprehensive Terrorism Prevention Act of 1995: Hearings on S. 390 and S. 735 Before the Subcomm. On Terrorism, Technology and Government Information of the Senate Judiciary Comm.* (May 4, 1995) (statement of Robert S. Rifkind, President of the American Jewish Committee); Equally in point is the kind of knee-jerk racism so evident in self-proclaimed "terrorism expert" Steven Emerson's televised pronouncement on the night of the 1995 Oklahoma City bombing (before the bombers had been identified as white militia U.S. citizens): "This was done with the intent to inflict as many casualties as possible. That is a Mideastern trait." See Robert I. Friedman, *One Man's Jihad: Bombing in Oklahoma City, Oklahoma*, 260 *THE NATION* 656 (1995). Emerson's earlier statement that "terrorists pose a substantial threat to the values and enduring interests of the United States, and civilized society in general" may or may not be true. However, if one combines it with Emerson's claim on CNN's *Crossfire* news show that "[t]he F.B.I. considers radical Islamic extremists on American soil to be the number-one domestic national security threat, period," then one has the recipe for enormous tragedy and civil strife. *Id.* *Terrorism in the United States: The Nature and Extent of the Threat and Possible Legislative Responses: Hearings Before the Senate Judiciary Comm.* (Apr. 27, 1995) (statement of Steven Emerson). Indeed, despite eye-witness-based sketches of two men who hardly looked as though they were of Middle-East extraction, special interest groups moved quickly to incorporate the Oklahoma City bombing into their middle eastern pantheon. One can only conclude that the United States is simply not willing to deal fairly with Muslims, either within the United States or without. See Robert J. White, *Are Islamists America's Enemies? Saying Yes is Both Easy and Wrong*, *STAR TRIB.*, Feb. 19, 1995, at A27; Daniel Pipes, *The Paranoid Style in Mideast Politics; From the Gulf War to Somalia, Fear of a Sinister Uncle Sam*, *WASH. POST*, Nov. 6, 1994, at C1; James Phillips, *The Changing Face of Middle Eastern Terrorism*, *HERITAGE FOUND. REP.* (Oct. 6, 1994). Abortion advocates claim that anti-abortion dissenters are "terrorists," and that the Act should be used to fine and imprison people whose only crime is to be devoutly religious and convinced that abortion is wrong. *Counter-Terrorism Legislation: Hearings Before the House Judiciary* (June 12, 1995) (statement of Gregory T. Nojeim), Legislative Counsel of the American Civil Liberties Union). The Act potentially defines "terrorism" as any forcible blocking of an abortion clinic, and could implicate churches and religious groups as aiders and abettors of "terrorism." *Id.* See also Rad Sullee, *Oklahoma City Tragedy; Anti-Terrorism Proposal Spurs Fears of Attacks on Civil Liberties*, *HOUS. CHRON.*, Apr. 26, 1995, at A11.

18. The difference between permitting abortion to actually save the mother's life and allegedly improving her general "health" was recently debated in the U.S. Senate, see Helen Dewar, *Senate Votes to Ban Rare Procedure for Late-Term Abortions; Broad Exemption to Protect Woman's Life, Health Rejected*, *WASH. POST*, Dec. 8, 1995, at A1.

19. See *Global View: Interview with Joseph Speidel, President of Population Action International*, (CNN television broadcast, Aug. 27, 1994) [hereinafter *Interview with Joseph Speidel*].

20. See Robert Kaplan, *The Coming Anarchy: How Scarcity, Crime, Overpopulation, Tribalism, and Disease are Rapidly Destroying the Social Fabric of Our Planet*, *ATLANTIC MONTHLY*, Feb. 1994, at 44. For a comparative overview, see Charles C. Mann, *Many is Too Many? Population Growth*, *ATLANTIC MONTHLY*, Feb. 1993, at 47.

problems,²² and threats to democracy and global prosperity²³—in short, the end of the world as we in the West understand that world to be.

I. THE DECLINE IN THE WEST OF THE WORD OF GOD

In the religious world of the three great monotheistic religions of Judaism, Christianity, and Islam²⁴ that dominate much of the world today, unrestricted abortion could never amount to an international human right. To assert such a thing implies a universalism of abortion as a necessary good that does not, and has never, existed, other than in the feminist imagination. One might seek to explain it as the triumph of man's laws over God's laws. For the religious, such laws certainly represent a surrender to the material, secular world. However, obvious answers to the question of the Western decline of law as God's will are deceptively simple, because the three great monotheistic religions still regard law as being given by God and received by man through chosen intermediaries such as angelic messengers and prophets, and that all would be well enough if man would only follow without question the ten or so rules that God insists upon as a precondition to man's worship of Him.²⁵ Here, semantics apply in the strongest sense, since God's legislation need not (and usually does not) reflect the popular "will" of his people, regardless of whatever physical or political state in which they live their earthly lives.²⁶

The few rules for keeping the world at peace and leading a Godly life

21. Stephen Budiansky, *10 Billion for Dinner, Please*, U.S. NEWS & WORLD REP., Sept. 12, 1994, at 57.

22. State Dep't Regular Briefing (Jan. 11, 1994) (remarks of Tim Wirth) available through FED. NEWS SVC. [hereinafter Tim Wirth Remarks].

23. See Warren Christopher, Address at the Kennedy School of Government, Harvard University, (Jan. 20, 1995), FED. NEWS SERV. [hereinafter Warren Christopher Address]. But see Virginia Abernathy, *Optimism and Overpopulation; Population Control in Developing Countries*, ATLANTIC MONTHLY, Dec. 1994, at 84.

24. Although all three are technically religions of the East, where they find their complementary origins, their spread has been to the West. The Western tradition defines itself as "Judeo-Christian" rather than Islamic, although the numbers of pious western Muslims grow daily. Although Islam was geographically confined from the West through warfare and strict prohibitions, Islam has recently made significant inroads into the West's religious and cultural landscape. See DANIEL PIPES, *IN THE PATH OF GOD: ISLAM AND POLITICAL POWER 203-80* (1983). Part of this is due to the Western "liberal" Kantian vision of an increasingly interrelated world, and part of it is also due to the increased Muslim self-confidence encouraged by the great oil boom of the 1970s. *Id.* at 281-330.

25. See HAMILTON A.R. GIBB, *STUDIES ON THE CIVILIZATION OF ISLAM 4-6* (1962); James A. Bill and J.A. Williams, *Shi'i Islam and Roman Catholicism: An Ecclesiastical and Political Analysis*, in THE VATICAN, ISLAM, AND THE MIDDLE EAST, *supra* note 14, at 69-105.

26. Hence, it is no accident that in communist states such as the former U.S.S.R. and the former German Democratic Republic, abortion was freely available without restriction and paid for by the state as a "health care" right. Abortion, which had never been legal in Germany before its division (except for a brief period under Hitler when the fetuses of Jewish women were forcibly aborted) became a significant issue during its recent reunification. Cuba, a last Marxist bastion, uses abortion liberally as a form of birth control.

(or in Islam, walking the straight path),²⁷ regardless of any other political

27. Prayers for guidance to the “straight way” and the “right path” appear early in the *Qur’an*. *Sura* I.6 implores God: “Show us the straight way.” God reveals the straight way to man through both high and low means—enlightenment, prayer, and even childish parables. See THE HOLY QUR’AN: ENGLISH TRANSLATION OF THE MEANINGS & COMMENTARY (Abdullah Yusuf Ali trans. & comment., 1993) [hereinafter THE HOLY QUR’AN]. *Sura* II.26 and 27 explain:

26. Allah disdains not to use
The similitude of things,
Even of a gnat as well as
Anything above it
Those who believe know
That it is truth from their Lord;
But those who reject Faith say:
“What means Allah by this similitude?”
By it He causes many to stray,
And many He leads into the right path,
But He causes not to stray,
Except those who forsake (the path),
27. Those who break Allah’s Covenant
After it is ratified,
And who sunder what Allah
Has ordered to be joined,
And do mischief on earth:
These cause losses (only) to themselves.

Id. at *Sura* II.26, 27.

As both verses indicate together, although God is the ultimate cause of all things, man’s straying from the “right path” can only occur from man’s own choice to forsake God’s plan for him. The reference to “Allah’s Covenant” is profoundly significant, and will be discussed at length *infra*. Notes Ali:

The mention of the Covenant [in verse 27] has a particular and general signification. The particular one has reference to the Jewish tradition that a Covenant was entered into with “Father Abraham” that in return for Allah’s favours the seed of Abraham would serve Allah faithfully. But as a matter of fact a great part of Abraham’s progeny were in constant spiritual rebellion against Allah. . . . The general significance is that a similar Covenant is metaphorically entered into by every creature of Allah: for Allah’s loving care, we at least owe him the fullest gratitude and willing obedience. The Sinner, before he darkens his own conscience, knows this, and yet he not only “forsakes the path” but resists the Grace of Allah which comes to save him. That is why his case becomes hopeless. But the loss is his own. He cannot spoil Allah’s design. The good man is glad to retrace his steps from any lapses of which he may have been guilty, and in his case Allah’s Message reclaims him with complete understanding.

Id. at 13 n.45.

Christianity and Judaism also recognize the importance of walking on God’s path. For example, the *Bible’s Book of Isaiah* describes the signs of the coming of the Messiah as not just simply incidents of the miraculous, but the revelation to man of the right road:

Then the eyes of the blind shall be opened, and the ears of the deaf unstopped; then the lame shall leap like a deer, and the tongue of the speechless sing for joy. For waters shall break forth in the wilderness, and streams in the desert; the burning sand shall become a pool, and the thirsty ground springs of water; the haunt of jackals shall become a swamp, the grass shall become reeds and rushes. A highway shall be there, and it shall be called the Holy Way; the unclean shall not travel on it, but it shall be for God’s people; no traveler, not even fools, shall go astray. No lion shall be there, nor shall any ravenous beast come up on it; they shall not be found there, but the redeemed shall walk there. And the ransomed of the Lord shall return, and come to Zion with singing; everlasting joy shall be upon their heads; they shall obtain joy and gladness, and sorrow and sighing shall flee away.

THE BIBLE, *Isaiah* 35:5-10.

premises or institutions, are common to all three faiths and are in fact not really rules at all, capable of being bent or broken, but Commandments; they must be obeyed.²⁸ Commandments are pronouncements directly from God Himself, and are not the product of any rabbinical or priestly tradition, nor are they subject to human revision or interpretation in and of themselves.²⁹

My purpose of making comparisons between the *Qur'an* and the *Bible* is not to imply that there is no fundamental difference between Judaism, Christianity, and Islam—that would be untrue! Although monotheistic, each faith is unique. My purpose is to simply point out the complementary sources of authority for religious belief in law as setting the standard for, and ultimately controlling, moral behavior.

28. See THE BIBLE, *Deuteronomy* IV:1-2 (emphasis added), which explains that God communicated His Commandments first to Moses, who then delivered them to his followers in the wilderness of Transjordan, saying:

Now, Israel, listen to the statutes and laws which I am teaching you, and obey them; then you will live, and go in to occupy the land which the Lord the God of your fathers is giving you. *You must not add anything to my charge, nor take anything away from it. You must carry out all the commandments of the Lord your God which I lay upon you.* (emphasis added).

29. See *supra* note 28. In fact, both the *Old* and *New Testaments* and the *Qur'an* contain dire warnings against any alteration by man of God's will. *Sura* II.159 and 174-76 interpret such alteration as a rejection of faith and, implicitly, also a rejection of Islam's higher morality, which God will not let pass unpunished:

159. Those who conceal
The clear (Signs) We have
Sent down, and the Guidance
After We have made it
Clear for the people
In the Book,—on them
Shall be Allah's curse.
And the curse of those
Entitled to curse,—
174. Those who conceal
Allah's revelations in the Book
And purchase for them
A miserable profit,—
They swallow fire into themselves
Naught but Fire;
Allah will not address them
On the Day of Resurrection,
Nor purify them;
Grievous will be
Their Chastisement.
175. They are the ones
Who buy Error
In place of Guidance
And Torment in place
Of Forgiveness.
Ah! what boldness
(They show) for the Fire!
176. (Their doom is) because
Allah sent down the Book
In truth but those who seek
Causes of dispute in the Book
Are in a schism
Far (from the purpose).

THE HOLY QUR'AN, *supra* note 27, at *Sura* II.159, 174-76; See also THE BIBLE, *Deuteronomy* XXVIII 15-68.

For all three faiths, it is not the Commandments that need reform, but man's nature. This view is especially strong in Islam. As the Islamic scholar Seyyed Hossein Nasr explained:

Certain modernists over the past century have tried to change the *shari'ah* . . . with the aim of incorporating modern practices into the Law and limiting the functioning of the *shari'ah* to personal life. All of these activities emanate from . . . spiritual weakness vis-a-vis the world and a surrender to the world. Those who are conquered by such a mentality want to make the *shari'ah* conform to "the times," which means the whims and fancies of men and the ever-changing human nature which has made "the times."³⁰

Some form of God's Commandments appear in all three faiths as an enduring promise or Covenant. In Judaism, God's promise led to the creation and protection of the ancient Jewish state. God instructed Moses to tell his people:

You have seen with your own eyes what I did to Egypt, and how I have carried you on eagles' wings and brought you here to me. If only you will now listen to me and keep my covenant, then out of all peoples you shall become my special possession; for the whole earth is mine. You shall be my kingdom of priests, my holy nation.³¹

After the people told Moses, "Whatever the Lord has said we will do,"³² God revealed His Commandments (the Written Law, or Pentateuch)³³ to them through Moses:

1. You shall have no other gods but Me.
2. You shall not worship any graven images.
3. You shall not take the name of the Lord your God in vain.
4. You shall keep the Sabbath holy.
5. Honor your father and your mother.
6. You shall not commit murder.
7. You shall not commit adultery.
8. You shall not steal.
9. You shall not bear false witness against your neighbor.
10. You shall not covet your neighbor's house, you shall not covet your neighbor's wife, his slave, his slave-girl, his ox, his ass, or anything that belongs to him.³⁴

30. NASR, *supra* note 4, at 117.

31. THE BIBLE, *Exodus* 19:4-6.

32. *Id.* at 19:8.

33. Jewish tradition asserts that God gave Moses two messages on Mt. Sinai, the Written Law (Pentateuch) and the Oral Law. The Oral Law explains the Written Law and sets forth the methods for its interpretation. A similar dichotomy exists in Islam with the *Qur'an*, which is the written law source received directly from God, and a mixed oral and written tradition of *hadith* and *sunna* of the Prophet Mohammed that also serves as a source of law. See also PIPES, *supra* note 24, at 30.

34. THE BIBLE, *Exodus* 20:1-17.

In return for the Jews' obedience to these laws, God sent an angel to guide them out of the wilderness to the promised land, and made several specific promises guaranteeing both defense and prosperity:

If only you will listen to his [the angel's] voice and do all I tell you, then I will be an enemy to your enemies, and I will harass those who harass you. My angel will go before you and bring you to [your enemies], and I will make an end of them. . . . Worship the Lord your God, and He will bless your bread and your water. I will take away all your sickness out of your midst. None shall miscarry or be barren in your land. I will grant you a full span of life.³⁵

Sura II of the *Qur'an* also refers to God's guidance of man as a sacred Covenant:

2. This is the Book;
In it is guidance, sure, without doubt,
To those who fear Allah;
3. Who believe in the Unseen,
Are steadfast in prayer,
And spend out of what We
Have provided for them;
4. And who believe in the Revelation
Sent to thee,
And sent before thy time,
And (in their hearts)
Have the assurance of the Hereinafter.
5. They are on (true) guidance,
From their Lord, and it is
These who will prosper.
6. As to those who reject Faith,
It is the same to them
Whether thou warn them
Or do not warn them;
They will not believe. . . .
27. . . . Those who break Allah's Covenant
After it is ratified,
And who sunder what Allah
Has ordered to be joined,
And do mischief on earth:
These cause losses (only) to themselves.

Sura II also elucidates God's promise of guidance, from which will follow all good things, as revealed to Adam after his expulsion from the Garden:

35. *Id.* at 23:20-26. Less profound but similar wording can be found in international development *compromise* underlying most International Monetary Fund lending agreements.

38. We said: "Get ye down all from here;
And if, as is sure, there comes to you
Guidance from Me," whosoever
Follows my guidance, on them
Shall be no fear, nor shall they grieve.
39. "But those who reject Faith
And belie Our Signs,
They shall be Companions of the Fire;
They shall abide therein."

The *Qur'an*, in *Sura* II.63, also recognizes the divine nature of the *Old Testament's* Covenant between God, Moses, and the Jews:

63. And remember We took
Your Covenant
And We raised above you
(The towering height)
(Of Mount Sinai)
(Saying): "Hold firmly
To what We have given you
And bring (ever) to remembrance
What is therein:
Perchance ye may fear Allah."

Apart from specific Covenants such as these, and others entered into by Muslims, including the two Covenants of Aqaba and the Pledge of Hudaibiya,³⁶ in Islam every Believer has implicitly entered into a Covenant with God. *Sura* LVII.8 proclaims:

What cause have ye
Why ye should not believe
In Allah?—And the Apostle
Invites you to believe
In your Lord, and has
Indeed taken your Covenant
If ye are men of faith.

Moreover, in both the *Bible* and the *Qur'an*, God espouses the Commandments as part of His plan for man, His creation.³⁷ The Commandments are simply received from God—they are not negotiated or the results of any compromise. As such, they are God's unique expression of His Own will, and cannot be corrupted or tampered with until God Himself decrees otherwise. In order for the Commandments to work as intended—to

36. For the Covenants of Aqaba (or Akaba), see I THE ENCYCLOPAEDIA OF ISLAM 227-28 (1913). For the Pledge of Hudaibiya, see II THE ENCYCLOPAEDIA OF ISLAM 328-29 (1927). Although some scholars emphasize the political nature of these agreements, the overall facts indicate that they were either imbued with religious significance by the Prophet (Peace be upon him) or subsequently came to acquire religious significance.

37. See ERWIN I.J. ROSENTHAL, JUDAISM AND ISLAM 119-20 (1961). See also Wilfred C. Smith, *Faith as Tasdiq*, in ISLAMIC PHILOSOPHICAL THEOLOGY 96, 106-07 (Parvis Morewedge ed. 1979).

guide man—God requires but one thing from man: his perfect obedience, which implies both the mystery of faith and the willing surrender of the self.³⁸ Obedience to God's Commandments must necessarily override all competing laws, even the national laws of one's own state, and especially conflicting international norms, including "human rights." At the very least, a religiously-conscious individual would have to deeply question why he would be required to obey a law that conflicted with God's Commandments. To do so strikes at the very heart of the religiousness of being. Indeed, it is the living out of the Commandments in ordinary, daily life that creates the process of personal verification that transcends mere faith and proves the truth and perfection of God's living Word, "both for oneself and for the society and world in which one lives."³⁹ Through the intervention of St. Paul, Christianity has deviated somewhat from this path (although Jesus himself never did) by the idea that obedience to the law is not as important as pure faith. Muslims and observant Jews, however, know that without actual practice of God's law in fulfillment of His plan, mere faith in God, without more, can never be enough.⁴⁰ Even Jesus proclaimed in his

38. Although some religious scholars differentiate Christianity (on its Paulist emphasis on faith alone) from Judaism and Islam (which emphasize good deeds and right ways of being), see PIPES, *supra* note 24, at 36-38, this focus is premised on St. Paul's rejection of the *Roman civil* law as controlling of Christian conduct, along the lines of Jesus' dictum to "render to Caesar what Caesar is due, and render to God what is due to God." THE BIBLE, *Matt. 22:21*. Islam rejects this double life: "Islam never gave unto Caesar what was Caesar's. Rather, it tried to integrate the domain of Caesar itself, namely political, social and economic life, into an encompassing religious world view." NASR, *supra* note 4, at 95. In Islam, submission may be more important than faith. *Sura XLVII.14* of THE HOLY QUR'AN, *supra* note 27, explains the difference, and how even those of shaky faith can enter a form of God's grace through obedience to the law alone:

The desert Arabs say,
"We believe." Say, "Ye
Have no faith; but ye
(Only) say, 'We have submitted
Our wills to Allah.'" *For not yet has Faith
Entered your hearts.
But if ye obey Allah
And His Messenger, He
Will not belittle aught
Of your deeds: for Allah
Is Oft-Forgiving, Most Merciful.*

39. Smith, *supra* note 37, at 106.

40. St. Paul was right to recognize that without faith, practice becomes little more than empty gesture or mere custom. But without practice, faith, ever so much a function of the personal mind of the believer, will die with the physical death of each individual. Indeed, even conservative Jewish scholars agree that it is the "strict adherence to traditional Judaism [and its observance of God's law that] has contributed more than any other factor to the survival of Judaism and the Jews." ROSENTHAL, *supra* note 37, at 51. Clearly, the same can be said of any religious group. Daily religious practice inevitably builds a strong religious identity as well as a moral consciousness peculiar to that religion. This is why secular states seek to weaken their own citizens' religious beliefs and corresponding community ties, even when this causes an overall social decline. This decline is seen by secularists as the necessary price of tolerance—the overriding value. Internationally, secularists see similar intrastate social declines in the name of tolerance as not only desirable, but necessary. Attempts to apply humanistic international law spawn inane dictums such as "power exercised as a function of religious belief is bad and undemocratic," and "tolerance and politics exercised in place of religion are good." Seemingly, the only good democracy is a religiously dead one. See, e.g., Fox & Nolte, *supra* note 5.

Sermon on the Mount:

Do not suppose that I have come to abolish the Law and the prophets; I did not come to abolish, but to complete. I tell you this: So long as heaven and earth endure, not a letter, not a stroke, will disappear from the Law until all that must happen has happened. If any man therefore sets aside even the least of the Law's demands, and teaches others to do the same, he will have the lowest place in the kingdom of heaven, whereas anyone who keeps the Law, and teaches others to do so, will stand high in the kingdom of heaven.⁴¹

Later, Jesus instructed his followers: "If you wish to enter into life, keep the Commandments of Moses."⁴² This hardly reflects St. Paul's cry to rush the barricades and abandon the Law. At one point, Jesus did simplify God's Law, condensing the Ten Commandments into two—one for each set of five—the first pertaining to the relationship between God and man, and the second outlining basic social, earthly behaviors. When asked which Commandment was the most important, Jesus replied:

Love the Lord your God with all your heart, with all your soul, and with all your mind. This is the first and greatest Commandment. And the second is like unto it. "Love your neighbor as yourself." On these two Commandments hang all the Law and the prophets.⁴³

Nor does God allow his creatures any kind of popular "vote." Adultery is a good example of the wisdom of God's policy of human disenfranchisement.⁴⁴ In the *Bible's* Ten Commandments, adultery is considered a terrible, evil act; indeed, the injunction against adultery follows directly after the prohibition of murder.⁴⁵

The United States is popularly considered a Judeo-Christian society; passages from the *Bible* are regularly invoked by jurists, politicians, and even popular writers, and a majority of U.S. citizens has spent some time engaged in *Bible* study. Most such persons are aware that the *Bible* forbids adultery. Nevertheless, various U.S. state legislatures have decriminalized adultery,

41. THE BIBLE, *Matt.* 5:17-19.

42. *Id.* at 19:17.

43. *Id.* at 22:37-40.

44. In Islam, adultery is called *zina*, and means sexual intercourse between a man and a woman not married to each other. It is immaterial whether it is the Western idea of adultery, where at least one of the parties is a married person (in Anglo-American common law, if both parties are each married to others, then their act is called "double adultery"), or simple fornication, where both parties are unmarried. In Islam, both adultery and fornication are equally grave. Both forms of *zina* are considered as species of social corruption; however, Islam recognizes nuances in their social consequences. For example, fornication between the unmarried may be a breakdown of self-control that may be repaired by encouraging chastity, diverting attentions through noble actions or exercise, or by allowing early marriage, whereas adultery "has a disastrous effect on domestic peace and Islam is very particular about this peace." SAYYED QUTB, *ISLAM AND UNIVERSAL PEACE* 33 (3d ed. 1983).

45. Indeed, adultery is sandwiched in between murder and stealing, implying that it is a less serious sin than the former, and more serious than the latter. Generalists disagree, and contend that the sequential order is meaningless, and all three are equally abhorrent.

and few states anymore consider it an important factor in divorce disputes.⁴⁶ In fact, adultery has been significantly eliminated as a ground of marital fault in many U.S. jurisdictions through the adoption of “No-Fault” divorce statutes. Even so, eradication of state-imposed criminal and civil penalties for adultery does not lessen its grave sinfulness in God’s eyes, according to all three faiths.⁴⁷ Nor does it alter the fact that adultery, far from being a harmless expression of “natural desires” between consenting adults, is recognized even in the West as a sign of individual, social, and even national

46. The decriminalization of adultery is said to reflect changes in social mores, and is seen as necessary to prevent the law from lapsing into desuetude and hypocrisy. However, even U.S. jurists admit that the acceptance of adultery as a normal social convention has encouraged divorce and is a significant factor in the destruction of the nuclear family. See Robert L. Plunkett, *Vow For Now; Harmful Effects of no-Fault Divorce*, 47 NAT’L REV. 48 (May 29, 1995); *Surge in ‘No Fault’ Divorce and its Spreading Impact*, U.S. NEWS & WORLD REP., July 25, 1977, at 76. Islam goes one step further and avers, “Wherever adultery is tolerated, the foundations of that society are already crumbling.” QUTB, *supra* note 44, at 33.

47. “Zina [adultery] is a very grave sin and not compatible with belief.” IV THE ENCYCLOPAEDIA OF ISLAM 1227 (1934). *Sura XXIV* elucidates both the penalties and restrictions applicable to the act:

2. The woman and the man
Guilty of fornication,—
Flog each of them
With a hundred stripes:
Let not compassion move you
In their case, in a matter
Prescribed by Allah, if ye believe
In Allah and the Last Day:
And let a party
Of the Believers
Witness their punishment.

3. Let no man guilty of
Adultery or fornication marry
Any but a woman
Similarly guilty, or an Unbeliever,
Nor let any but such a man
Or an unbeliever
Marry such a woman:
To the Believers such a thing
Is forbidden.

Some Islamic scholars assert that the *Qur’an’s* prohibition of *zina* was “revealed little by little so as to be easily acceptable to the new converts to Islam who were steeped in the vice of *zina* during the Days of Ignorance.” ABDUR RAHMAN I. DOI, *WOMEN IN SHARI’AH (ISLAMIC LAW)* 118 (2d ed. 1989). Doi specifically alludes to *Sura IV.15*, which he describes as “the first revelation” about *zina*:

If any of your women
Are guilty of lewdness,
Take the evidence of four
(Reliable) witnesses from amongst you
Against them; and if they testify,
Confine them to houses until
Death do claim them,
Or Allah ordain for them
Some (other) way.

Doi then moves to verse 16, which refers to men and which he describes as the “second revelation.” *Id.* The commentator Abdullah Yusuf Ali disputes this interpretation, however, and avers that “lewdness” means not *zina* but “unnatural crime between women [i.e., homosexuality], analogous to unnatural crime between men in verse 16 [which follows].” THE HOLY QUR’AN, *supra* note 27, at 183, n.523. Ali’s interpretation seems to be the accurate one. See also THE BIBLE, *Deuteronomy* 22: 22.

degeneracy. "Some people aren't comfortable talking about divorce and adultery," noted former Education Secretary William Bennett, "but it seems to me that we have to talk about them. They are before us, and they have great consequences."⁴⁸ Western psychology diagnoses adulterous behavior as usually an indication of profound emotional disturbance.⁴⁹ The West also acknowledges that adultery throws individual marriages into crisis,⁵⁰ leads to spousal alienation,⁵¹ disrupts the family unit,⁵² and erodes the moral fabric of society,⁵³ because at adultery's core is an intimate deception

48. William R. Mattox, Jr., *Split Personality: Why Aren't Conservatives Talking About Divorce?*, 73 POL'Y REV. Summer 1995, at 50. Adultery, which divides the marital couple and may lead to divorce, is "strongly linked to negative outcomes for children." *Id.*

49. See generally Lawrence Kubie, *Psychoanalysis and Marriage: Practical and Theoretical Issues in NEUROTIC INTERACTION IN MARRIAGE* (V. Einstein ed., 1956); FRANK PITTMAN, *PRIVATE LIES: INFIDELITY AND THE BETRAYAL OF INTIMACY* (1989, paperback 1990); see also ROSALIND MILES, *LOVE, SEX, DEATH, AND THE MAKING OF THE MALE* (1991).

50. See HARVILLE HENDRIX, *GETTING THE LOVE YOU WANT* (1988). Despite French protests to the contrary, while a wife may choose to tolerate her husband's infidelity (along the lines of the columnist Ann Landers' query, "Are you better off with him or without him?"), even the tritest of Western pulp oracles confirms that a husband's knowledge of his wife's adultery is no joke: "Whether your affair was a momentary diversion or a passionate emotional involvement, whether it was pay back for a long-ago dalliance of his or even an experiment . . . whether it was about sex and nothing else or about the culmination of the deepest friendship you've ever had—your marriage is in serious trouble." Dalma Heyn, *The Affair: What to Do When You Get Caught*, COSMOPOLITAN, Aug. 1995, at 154.

51. Eastern-rite Christian canon law held that adultery "creates an impediment to marriage, a principle which has only left traces in Sunni law but has been retained in 'Twelver' Shiite and in Ibadi (Khariji) law." JOSEPH SCHACHT, *AN INTRODUCTION TO ISLAMIC LAW* 21 (1964). Christianity, which views marriage as a sacrament and hence indissoluble, traditionally approached the issue of marriage and re-marriage of adulterers with great caution. Because the laws of marriage and divorce are made easy in Islam, there is little reason to tolerate adultery, which represents a grievous breach of trust between spouses as well as disobedience to God. In Islam, adultery is severely punished and hence must be proven by four witnesses, who can describe the act and the physical appearance of the accused's genitals in some detail. See THE HOLY QUR'AN, *supra* note 27, at *Sura XXIV.2*. If a complaining spouse lacks four witnesses, *Sura XXIV.6-9* provides for an alternative means of proof by both spouses' testimony and oaths that is uniquely reflective of the fragile intimacy of the marital relationship. Ali's annotation states that

The case of married persons is different from that of outsiders. If one of them accuses the other of unchastity, the accusation partly reflects on the accuser as well. . . . Suppose a husband catches a wife in adultery. In the nature of things four witnesses—or even one outside witness—would be impossible. Yet after such an experience it is against human nature that he can live a normal married life. The matter is then left to the honour of the two spouses. If the husband can solemnly swear four times to the fact, and in addition invoke a curse on himself if he lies, that is prima facie evidence of the wife's guilt. But if the wife swears similarly four times and similarly invokes a curse on herself, she is in law acquitted of the guilt. If she does not take this step, the charge is held proved and the punishment follows. In either case the marriage is dissolved, as it is against human nature that the parties can live together happily after such an incident.

THE HOLY QUR'AN, *supra* note 27, at 1004, n.2960.

52. See Frank Pittman III, *Beyond Betrayal: Life After Infidelity*, PSYCHOL. TODAY, May 1993, at 32. But see Joann Ellison Rodgers, *Addiction: A Whole New View*, PSYCHOL. TODAY, Sept. 1994, at 32 (proposing that the urge to commit adultery has a physiological hormonal basis); Robert Wright, *Our Cheating Hearts: Devotion and Betrayal, Marriage and Divorce—How Evolution Shaped Human Love*, TIME, Aug. 15, 1994, at 44 (asserting that adultery is a natural human behavior, based on non-human primate studies). For an explanation of the healing and transcendent role of religion in reforming such allegedly "normal" behavior, see *infra* text accompanying note 83.

53. See Nicholas Davidson, *Life Without Father: America's Greatest Social Catastrophe*, POL'Y REV. Winter 1990, at 40.

which, left unchecked, destabilizes the order of the larger community.⁵⁴ Western evolutionary biological theorists hypothesize that it may even lead to murder.⁵⁵ But one need not be a scientist or psychological expert.

54. Although it does not always result in divorce and can sometimes end in forgiveness and reconciliation, adultery often does end acrimoniously in divorce; and divorce leads to a family breakdown, which leads to a new series of unstable relationships, especially for the children raised in such homes. See, e.g., Laura Sessions Stepp, *Torn Between Two Parents: For Children of Divorce, a Redefining of Family and Self*, WASH. POST, Dec. 14, 1995, at A1. According to Stepp, one out of three children in the United States today lives "away from one parent either because of divorce or because their parents never married." This is a dramatic increase over a twenty-year period, when the figure was one in eight. Originally, sociologists thought such children were better off after divorce, especially if the parents fought. However, Princeton sociologist Sara McLanahan found that these children were twice as likely to drop out of high school, not finish college, or be unemployed, compared with children who lived with both parents. *Id.* And this is "as true for children in middle- and upper-class homes as well as for children on welfare." *Id.* Because of the parents' unstable personal lives, there is no true head of the household. According to McLanahan, "A boyfriend comes in and goes out. A stepfather comes in and goes out. A grandmother comes in but doesn't stay 18 years. It's not just this one event, the divorce. It's a whole series of changes that contribute to the uncertainty." *Id.* Fania Ortega, a mother of two daughters who left them when she divorced their father, said she expected "my girls to go to college and work" before marrying because "you have to know who you are before you can be of any use to anyone." *Id.* For Ms. Ortega, family is not "the most important thing. Also important is respect for yourself, your friends, honesty, integrity, communication, religious beliefs." *Id.* By Ms. Ortega's reasoning, one might never acquire sufficient self-knowledge to get married, considering that the search for identity (at least in the West) is usually life-long. And Muslims would scratch their heads in wonder at Ms. Ortega's belief that values such as honesty, integrity, and religion are somehow split off from one's family life. What is being produced here is a generation of young adults who will be aware of crucial relationship values such as truth ("I'm definitely more picky," one girl said of how her parents' divorce had changed her. "One lie changes everything."), but too emotionally crippled to establish the intimacy required to build a treasured family life. *Id.* Most feel that by postponing marriage, or "living together," they can avoid their parents' mistakes. But this may mean less marriage ("These days, it's so iffy. I don't know," said Ms. Ortega's daughter of marriage), and inevitably fewer offspring. *Id.*

55. Criminological homicide studies in the United States suggest that "blood kin may be relatively immune from lethal violence in the United States, given the high frequency and intensity of interactions among relatives," whereas a disproportionate number of homicide victims are the killers' spouses. Martin Daly & Margot Wilson, *Evolutionary Social Psychology and Family Homicide*, 242 SCIENCE 519, 519 (1988) (citing W. WILBANKS, *MURDER IN MIAMI* (1984)); Martin Daly & Margot Wilson, 84 AM. ANTHROPOLOGY 372 (1982). Sociologists have long concurred that men generally take a proprietary view of women and their reproductive capacity, and among spouse killers, studies "indicate that the husband's proprietary concern with his wife's fidelity or her intention to quit the marriage led him to initiate the violence in an overwhelming majority of cases, regardless of whether it was the husband or wife who ended up dead." *Id.* at 521 (notes omitted). Successful couples survive these odds and become like blood relatives to each other through their mutual human reproduction. However, their union can be fatally disrupted through the intervention of adulterous relationships with others as well as the offspring from previous unions. Explain Daly and Wilson,

By cooperative rearing of joint offspring, mates in a species with biparental care forge a powerful commonality of interest analogous to that existing between blood relatives. Indeed, the genetic interests of an exclusively monogamous pair coincide even more closely than those of blood relatives. However, two considerations act against the evolution of perfect harmony in mated pairs: (i) the possibility of extra-pair reproduction [i.e. adultery] and (ii) the partners' nepotistic interests in the welfare of distinct sets of collateral kin [i.e., biological children versus stepchildren].

Id. at 242.

Religion embraces this evolutionary model. Although all three monotheistic faiths abhor murder and assert that killing is wrong, all three recognize that marriage is essentially an institution of reproductive alliance which entails mutual obligations between spouses for successful child-rearing, entailing rights of sexual access and subsequent legitimization of progeny through sexual exclusivity. All three faiths acknowledge that sexual proprietariness has the potential for coercive violence that may end in homicide. In fact, in Islam, if the husband kills the guilty adulterous couple *in flagrante delicto*, he is not liable to punishment. See IV ENCYCLOPAEDIA OF ISLAM, *supra* note 47, at 1227. Judaism and Christianity recognize similar "crimes of passion."

Although none of the three faiths advocate infanticide, scientists recognize that child homicides often

Frankly, anyone who can read, whether it be the tabloids, *Anna Karenina*, or the *Bible*, knows that adultery and murder walk hand-in-hand.⁵⁶ The *Qur'an* concisely reflects these Western sociological and scientific findings in *Sura XVII.32*:

32. Nor come nigh to adultery:
For it is an indecent (deed)
And an evil way.

The commentator Abdullah Yusuf Ali's annotation here is especially enlightening:

Adultery is not only shameful in itself and inconsistent with any self-respect or respect for others, but it opens the road to many evils. It destroys the basis of the family: it works against the interests of children born or to be born; it may cause murders and feuds and loss of reputation and property, and also loosen permanently the bonds of society. Not only should it be avoided as a sin, but any approach or temptation to it should be avoided.⁵⁷

The *Bible's* book of *Deuteronomy* makes a similar finding that adulterers are actually enemies of society itself: "When a man is discovered lying with a married woman, they shall both die, the woman as well as the man who lay with her: You shall rid Israel of this wickedness."⁵⁸ Although the traditional penalties for adultery are harsh, especially in Islam,⁵⁹ the undeniable social havoc adultery wreaks justifies more than the passive

reflect that a parent is sometimes unwilling to invest in a newborn if he doubts that the offspring is the putative parent's own (although fathers can sometimes be fooled about paternity). See RICHARD D. ALEXANDER, *DARWINISM AND HUMAN AFFAIRS* (1979). Thus, it cannot be doubted that adultery poses a primarily significant and biologically-determined threat that may result in the death of the adulterer, adulteress, or any suspect progeny.

56. Adultery and consequential murder were, in fact, the sins of the Biblical King David. In Tolstoy's novel *Anna Karenina*, when Anna reveals her adultery, the first thought of both Anna's male lover and her husband is the same: wondering whether they will have to fight and be killed in a duel with each other. More recently, we have the case of Susan Smith, the young mother who drowned her two small children after her wealthy lover advised her that they would be an impediment to their future relationship. Her eventual confession revealed a tangled web of adultery and murder. See *Road to Judgment*, *NEWSWEEK*, Aug. 7, 1995, at 20. Sexually molested by her stepfather before age 16, Smith had continued a consensual sexual relationship with him "just weeks before the murders." *Id.* Both she and her husband, the children's father, were each involved in adulterous relationships outside their marriage at the time she murdered her children. See Elizabeth Gleick, *Sex, Betrayal and Murder; As Her Trial Begins, Her Hometown Grapples With the Fallout From Susan Smith's Tangled Emotional History*, *TIME*, 17, 1995, at 32.

57. THE HOLY QUR'AN, *supra* note 27, at 703, n.2215.

58. THE BIBLE, *Deuteronomy* 22:22.

59. The origins of stoning to death appear to be from Judaism. See ABDUR RAHMAN I. DOI, *supra* note 47, at 118-20, 267. See also A.J. WENSINCK, *A HANDBOOK OF EARLY MUHAMMADAN TRADITIONS* 221-22 (1927). The *Qur'an* itself counsels "lashing" in public (see *Sura XXIV.2*), so as to deter similar behavior. And the number of Islamic executions is increasing. See James Bruce, *No Shortage of Work for Saudi Executioners*, 2 *JANE'S INTELLIGENCE REV.*, Oct. 1, 1995, at pointer 8. Most executions today are of foreigners for murder and drug smuggling, the latter not mentioned in the *Qur'an*, but extended by analogy pursuant to a 1987 ulema of senior Islamic scholars.

response that has evolved in the West.⁶⁰ Indeed, some Western sociologists agree that virtue and civic order “cannot survive without the bitter medicines of punishment, fear, guilt, shame, stigma, ostracism and repression. Our complex natures are wayward and irresolute. Society must inflict pain on our moral failures, and frighten us into behaving well.”⁶¹

It is interesting that although modern Christianity strongly emphasizes the speedy and painless forgiveness of sinners in lieu of punishing them, the *Bible* indicates that Jesus had no short-hand answer for sins, which he listed as “fornication, theft, murder, adultery, greed, maliciousness, deceit,

60. Lax punishment for socially harmful conduct in the West is a product of the European Enlightenment. See Michael Elliott et al., *Crime & Punishment: Should America Be More Like Singapore?*, NEWSWEEK, Apr. 18, 1994, at 18 (comments of Prof. David Rothman on the merits of public punishment). The philosophes’ original general rejection of religion in general, and Judaism and Christianity in particular, combined with their remarkable campaign to abolish torture. See PETER GAY, *THE PARTY OF HUMANITY: ESSAYS IN THE FRENCH ENLIGHTENMENT* 97-108, 130 (1964). This has led to a perverse misinterpretation of their views, to the end that criminals are seen as having little free will over their own conduct, but are rather victims of society. Moreover, a harsh penalty alone does not provide a logical reason for taking harmful, wrongful, and socially dysfunctional behavior entirely out of the realm of delict. Rather than say that adultery is no longer wrongful or harmful (when the contrary is admittedly true), one should simply re-examine the cultural appropriateness of the punishment in light of the socially deleterious affect of the delictual behavior, given the overall structure of each individual state. To many western states (except the United States, which has maintained a system of capital punishment), the Islamic penalties for adultery (which may include lashing, exile, and stoning) are simply unacceptable in principle. While public displays of human sexuality in both “natural” and deviant forms have acquired certain legal protections in the West and, in some circles, are even considered to be “art,” Islam takes a different view that is linked inextricably to the preservation of public order:

[I]f the act [of *zina*] was accomplished in the presence of four witnesses [as required in the *Qur’an*], the judgement is that public order has been seriously offended. Whether legitimate or not, it is always improper for the sex act to take place in public. That is why Islam reveals the most severe attitude against offenders of public order and morality. We suppose that, if such a thing occurred in the street of the capital of a civilized country, where complete sexual liberty is allowed, passers-by would have taken upon themselves to lynch the performers, even before the case could be laid before a court. Such people would be treated like beasts, and their lives would not deserve any more respect.

DOI, *supra* note 47, at 122 (quoting the Saudi Arabia Delegation’s remarks at the conference on Muslim Doctrine and Human rights held in Riyadh, March 23, 1972).

Islamic scholars acknowledge the severity of *zina*’s penalties, but point out that it is legally difficult to prove *zina* in Islam and that, in any event, the punishment inhibits social chaos:

[P]unishment by stoning has remained what it always was, cruel in principle, but extremely rare in practice. But, through the very ruthlessness of this provision, Islam has prevented dislocation of the family and confusion with respect to paternity.

Id. at 123. As one Islamic scholar concluded:

It is better in a society where the fear of God is enough to prevent both crime and punishment, thus securing integrity of the family and happiness of the married couple, to prescribe a strict religious penalty in this matter, rather than rely on a secular legislation which does not provide any similar penalty, but does not instil in man any fear of God either, and which, by the same token, causes many to lose the sense of the family. there inevitably follow offenses to social dignity, and encouragement to crimes of the most dreadful and varied kinds, whereas, in Muslim countries, where God is openly revered, and His Law sincerely enforced, nothing comparable happens.

Id. at 124, (comment of His Excellency Dr. Dawalibi). See also QUTB, *supra* note 44, at 33-36.

61. Dennis O’Keefe, *A Society Sans Virtue and Order*, WASH. TIMES, Dec. 6, 1995, at A21 (reviewing THIS WILL HURT: THE RESTORATION OF VIRTUE AND CIVIC ORDER (Digby Anderson ed., 1995)).

sensuality, envy, blasphemy, arrogance, [and] an obtuse spirit,"⁶² the last one being defined by at least one scholar as "the narcissism that refuses to admit one did wrong and the inertia that finds it too much effort and embarrassment to go back to the first wrong turn and start over."⁶³ Thus, although modernity has dispensed with acts of contrition, Jesus himself clearly required an affirmative deed or good act for redemption instead of a mere thought requesting abstract forgiveness from God, rather than from the earthly party who has been wronged. During the third, fourth, and fifth centuries, the Christian Church would give forgiveness for the sins of murder, idolatry, and adultery only once, so some people saved up their sins for their deathbeds, to improve their chances of entry into heaven (assuming that they would be lucky enough to die in their beds). But many Christians, less confident in a peaceful death with attending clergy, did penance during their lifetimes for sinful conduct and the Church often ordered that the penance be publicly performed: "These penances, which could be imposed for decades or even an entire lifetime, included exclusion from the military, from public office, and from most of society. The penitent was often required to wear rags and ashes."⁶⁴

People who defend adultery as a liberal "freedom" or urge its decriminalization often point to how Jesus saved the adulterous woman from being stoned by telling the crowd, "Whoever of you is without sin, cast the first stone."⁶⁵ When the crowd dropped their stones and dispersed, Jesus looked up and asked the woman, "Has no one condemned you?" She replied, "No one, sir." But the true moral of the story is not Jesus' intimidation of the crowd, nor is it that no one is morally fit to punish, hence no one could cast the first stone. Rather, it is the one-time, graceful forgiveness of a severe sin, along with a low-keyed but unambiguous warning that forgiveness is not the same as condoning the conduct. To say that Jesus' refusal to condemn adulterers establishes the normality of adultery is absurd. The true moral is in Jesus' reply: "Nor do I condemn you. You may go. But from now on, avoid this sin."⁶⁶

The more one studies the social wisdom expressed by God's Will as revealed in the *Bible* and the *Qur'an*, the more one wonders why men would seek to tamper with divine revelation at all. The *Pentateuch*, the *Golden Rule*, and the *shari'a* are laws for living an orderly life and for keeping the peace; they are simple, unambiguous, and promote the public welfare when the public follows them. But for believers and cynics alike, the determination of who enforces the word of God often determines whether human

62. THE BIBLE, *Mark* 7:21-22.

63. William J. O'Malley, *The Moral Practice of Jesus*, AMERICA, Apr. 23, 1994, at 8.

64. Mary Smalara Collins, *Are Your Confessions Doing Any Good?*, U.S. CATH., Oct. 1994, at 14.

65. THE BIBLE, *Luke* 7:36-50. The actual right of killing an unfaithful wife usually is that of the husband. Anthropologist Susan Fraser estimates that of the forty-eight societies she studied, twenty-six gave the husband the option of killing an unfaithful wife. See generally SUZANNE G. FRAYSER, *VARIETIES OF SEXUAL EXPERIENCE: AN ANTHROPOLOGICAL PERSPECTIVE ON HUMAN SEXUALITY* (1985).

66. THE BIBLE, *LUKE* 7:36-50.

obedience will be forthcoming. Does one follow the directives of one's rabbi, priest, or *Imam*, or the dictates of the Los Angeles Police Department? And practicalities of the modern age make even more demands because the selection of the person who makes the law of states on earth, and who imbues this earthly law with meaning. This has a social significance that transcends mere secular considerations, colors the moral social tapestry, and decides whether that tapestry will be knotted or unravelled. Perhaps these questions are really not about law at all, but about power. The Islamic scholar Chibli Mallat cites both these quotes in his work on the *shari'a*⁶⁷ as "a guiding perspective" on this precept:

In the widest acceptance of government, the quintessential constitutional question is about who ultimately holds the power to say what the law is. In view of the centrality of the *shari'a* in the definition of an Islamic state, this issue represents the essential problem of contemporary Islamic law.⁶⁸

This "essential problem" is not unique to the *shari'a*, but is typical of the international legal system, especially for those states which are members of the United Nations. Apart from the limited jurisdiction of the International Court of Justice (ICJ) and its frequently ethereal subject matter, international law as the law of the world community does not always correspond to realities of national governance, and the uncertainty of our times demands that one ponder the broader picture. National courts, knowingly and unknowingly, pronounce on international law as well as the laws of other states all the time. The effect of such rulings within the individual state is obvious, but what is the effect of national courts' interpretations of law on *other* states? More disturbingly, can the non-state machinations of Non-Governmental Organizations (NGOs) and other non-state actors legally *bind* states?⁶⁹ The issue of the universal application of individual states' abortion laws, as applied to international law and development, raises these questions in a way that is unsettling, urgent, and profound.

This power struggle between different international actors on the issue of abortion highlights the differences between truly secular states and Islamic

67. CHIBLI MALLAT, *THE RENEWAL OF ISLAMIC LAW: MUHAMMAD BAQER AS-SADR, NAJAF AND THE SHI'ITE INTERNATIONAL* 79, 214 nn. 1 & 2 (1993).

68. *Id.* at 79.

69. Recent works have further defined NGOs into PINGOs (public interest NGOs) and BINGOs (business and industry NGOs). See generally GEOFF TANSEY & TONY WORSLEY, *THE FOOD SYSTEM: A GUIDE* (1995). Although this Article refers only to NGOs, the fact is that both PINGOs and BINGOs were manipulative actors at the 1994 Cairo Population Conference. PINGOs represented mostly western women's rights groups and non-Vatican religious factions, and BINGOs represented pharmaceutical and chemical companies manufacturing contraceptive medications and devices. The significance of these NGOs is highlighted by the fact that the actual source of funds for the Cairo Conference was never revealed with any specificity. See *U.N. Conference on Population and Development in Cairo: USIA Foreign Press Center Briefing* (Aug. 30, 1994) (statement attributed to a "Senior Administration Official") [hereinafter *Remarks of a Senior Administration Official*]. In fact, Clinton Administration officials were intentionally evasive when questioned about funding sources. See *Funding of the United Nations Programs: Hearing Before the Foreign Operations Subcommittee of the House Appropriations, Comm.* (May 5, 1994) (statement of Tim Wirth) [hereinafter *Funding of the United Nations*]; Tim Wirth Remarks, *supra* note 22.

states, and has resounding repercussions for the entire international legal order. Partly, the differences lie within the model of the Islamic state itself, which on one level rejects the statist paradigm of the classical decolonization model (the “received” state) in favor of an Islamic utopia, “a union of all Muslim countries in a single entity.”⁷⁰ But even apart from the dream of Pan-Islamism, all truly Islamic states (and those who aspire to create them) proceed from a single common definition: The Islamic state is a state ruled by Islamic law, the *shari’a*, and this precept is “the matrix of state theory in Islam.”⁷¹ The Imam Ruhollah Khomeini has defined Islamic government as “rule by sacred law.”⁷² All efforts by man to change the *shari’a* are not only heretical, but futile and doomed to failure because Muslims see their obedience to God’s Commandments as a guarantee of peace and prosperity in both this world and the next. Said Seyyed Hossein Nasr of the *shari’a*,

It is the norm for the perfect social and human life and the necessary basis for all flights of the spirit from the periphery to the Centre. To live according to the *shari’ah* is to live according to the Divine Will, according to a norm which God has willed for man.⁷³

But not everybody lives this way. Given the present reality of the “received” state and the international state system, “it might well be,” as Mallet suggests, “that the *shari’a* is incapable of articulating a discrete theory of international law which is properly Islamic.”⁷⁴ As long as sovereignty operated to exclude states from interfering in one another’s domestic affairs, Islamic states were, in most respects, free to ignore those aspects of international law (that recently made by man rather than by the divinely ordained classical school), incompatible with Islam (received by man directly from God through Muhammad, His Prophet (peace be upon him)). Now, however, the rise of the “new” international legal order and its current focus on human rights, democracy, and the erosion of state sovereignty has presented a challenge to Islam and placed Muslim states in an unsolvable dilemma. In the case of the Clinton Administration’s assertion of abortion as an international human right, Islamic states correctly perceive themselves to be under attack; more significantly, the Clinton Administration has announced that the United States will no longer consider the rule-based system of state sovereignty, as set forth in Article 2.4 of the United Nations Charter, as controlling. Speaking on the issue of abortion as an international human right, President Clinton’s personally-appointed U.S. State Department

70. MALLAT, *supra* note 67, at 24. This Islamic utopia “would resemble the great Islamic empires of the historical tradition: the existing nation-states should vanish before a central Islamic supra-authority which would be responsible for taking over the fate of the Muslim community, the *umma*.” *Id.*

71. *Id.* at 25.

72. Thus did Khomeini declare, after the March 30, 1979 referendum establishing Iran as an Islamic republic, that the election had ushered in “a government of God.” MICHAEL M.J. FISCHER, *IRAN: FROM RELIGIOUS DISPUTE TO REVOLUTION* 220 (1980).

73. NASR, *supra* note 4, at 118.

74. *Id.*

official, Tim Wirth, warned, “[A] government which is violating basic human rights should not hide behind the defense of sovereignty.”⁷⁵ Although the Clinton Administration was not clear about how it would seek to impose or defend this new “basic human right” of abortion, trade sanctions, the impairment or severance of diplomatic relations, and even some form of limited military intervention would certainly be possible options. One cannot be therefore surprised that, to religious people of all nationalities, the United States appears to be the “Great Satan.”

II. ISLAM AGAINST THE WEST?—THE UNDERLYING STRUGGLE

It is my contention that Clinton’s international abortion advocacy transcends shallow political agendas, and reflects a fundamental struggle between separate and distinct ancient, but newly powerful forces. The prevalent opinion that this contest is “a clash of civilizations”⁷⁶ or an unbridgeable divide between “East and West” is too reflexive of passe cold war ideology to be useful, nor does it accurately describe the true nature of the conflict.⁷⁷ Neither is the struggle one between old, established religions (such as Islam and Catholicism, which are alleged to stubbornly resist laissez-faire economic development, social “evolution,” and the empowerment of women) and the modern, secular world of techno-states. Rather, the confrontation is between the primeval pagan forces of animistic nature worship that are re-emerging after more than a millennia of repression (and newly reflected in the licentiousness so typical of the modern West),⁷⁸ and

75. See John Leo, *Playing Hardball at Cairo*, U.S. NEWS & WORLD REP., Sept. 19, 1994, at 26.

76. See Samuel P. Huntington, *The Clash of Civilizations?*, FOREIGN AFF., Summer 1993, at 22.

77. Moreover, the implied geographical distinction is a misnomer that covers a multitude of cultural variation. A classicist, for example, would consider the modern East-West divide as an inevitable, cultural-evolutionary divergence stemming from the late Roman Empire’s collapse into “the Greek-speaking East and the Latin-speaking West.” DELACY O’LEARY, *ARABIC THOUGHT AND ITS PLACE IN HISTORY* v-vi (1968).

78. Paganism is elusive of definition, see generally ROBIN LANE FOX, *PAGANS AND CHRISTIANS* (1986), and may be more aptly described by stating what it is not; specifically, it is not one of the three great Abrahamic faiths. That being said, however, paganism is susceptible of a myriad of different descriptions. Eighteenth-century Europe can be characterized by two unique pagan ideologies—the Enlightenment (see supra notes 6, 7 and accompanying text), and a competing Germanic ideology. That of the Enlightenment was rather neatly described, albeit through a rosy lens and without mention of its rejection of God, by the literary scholar Peter Gay:

To call the Enlightenment pagan is to conjure up the most delightfully irresponsible sexual license: a lazy, sun-drenched summer afternoon, fauns and nymphs cavorting to sensual music, and lascivious paintings, preferably by Boucher. There is some reality in this fantasy: the philosophes argued for a positive appreciation of sensuality and despised asceticism. . . . Rousseau had masochistic tastes which he apparently never gratified; Hume had an affair in France; young Benjamin Franklin “fell into intrigues with low women” and fathered an illegitimate son; Diderot wrote a pornographic novel to keep a mistress in the style to which she hoped to become accustomed; La Mettrie, a glutton, died at the Prussian court shortly after eating a spoiled game pie, thus giving rise to the delicious rumor that he had eaten himself to death; Voltaire had a passionate, prolonged affair with his niece—one of the few well-kept secrets of the eighteenth century.

GAY, *supra* note 7, at 8-9.

the efforts at imposing a more humane and orderly civilization through the civilizing structure of spiritual enlightenment from the East, as elucidated in the complementary religions of "the Book"—the great monotheistic faiths of Judaism, Christianity, and Islam.⁷⁹ Contrary to popular opinion, the secular West is *not* the blood heir to these esteemed traditions of civilizing religion, despite Constantine's propitious conversion. The secular West's true roots lie much deeper, and more directly run to the masculine pagan mystery cults that spawned the Greco-Roman line of history.⁸⁰

Although the oldest traditions worshipped an earthy, voluptuous mother-goddess and acknowledged her awesome procreative powers, the later pagan mystery cults of Ancient Greece (cradle of Western philosophy, art, and science) and Rome (avowed birthplace of law, public administration, and engineering) focused largely on men. Apart from the worship of some female archetypes and a few minor priestess cults, most Greco-Roman cults worshipped boys as objects of desire and predominate archetypes of beauty⁸¹; priestly cults afforded real power to males.⁸² In paganism, sex was combined with cruelty and both were incorporated into divinity.⁸³ The

The Germanic paganism would be instantly recognizable today by any Wagner enthusiast:

[The] Germanic ideology [was] a strange mixture of Roman Catholic, primitive Greek, and folkish Germanic notions—a kind of Teutonic paganism. Its inspiration was the Nibelungenlied, not Virgil's Aeneid; German folk songs, not Horace's Odes. Sometimes the benevolent critic, more often the implacable adversary of the Enlightenment, this Teutonic paganism (quite as much as traditional Christian doctrine) was to become a formidable rival to the mediterranean paganism of the philosophes.

Id. at 9, n.1.

79. THE HOLY QUR'AN, *supra* note 27, at Sura III.3-7.

80. No scholar can deny that although the evolution of what we today call "the West" was a complex process, the culture of modern Europe and the Americas "derives from that of the Roman Empire, itself the multiple resultant of many forces, amongst which the intellectual life of Hellenism was most effective, but worked into a coherent system by the wonderful power of organization, which was one of the most salient characteristics of that Empire." O'LEARY, *supra* note 77, at v-vi. This system was modified by seventeenth-century Europe and was subsequently revitalized and modernized, but it still retains its basic pagan character. See GAY, *supra* note 7, at 256-321.

81. See generally Nicole Loraux, *Herakles: The Super-Male and the Feminine*, in BEFORE SEXUALITY: THE CONSTRUCTION OF EROTIC EXPERIENCE IN THE ANCIENT GREEK WORLD 21, 27 (David M. Halperin et al. eds., 1990). Throughout Greek history, ancient homoerotic myth found physical expression in everyday life (and Freud would claim that it continues so today). For example, as Zeus carried off Ganymede for ravishment, so in Dorian Crete would revelers in male social organizations "carry off a beautiful boy." WALTER BURKERT, GREEK RELIGION 261 (John Raffan trans. 1985). See also EVA C. KEULS, THE REIGN OF THE PHALLUS: SEXUAL POLITICS IN ANCIENT ATHENS 277-87 (1985).

82. See ELAINE FANTHAM ET AL., WOMEN IN THE CLASSICAL WORLD 230-34 (1994).

83. *Id.* at 290-93. Many of the Greek and Roman pagan mysteries involved group sexual intercourse, frenzied dancing, hysteria, and transvestitism, and maiden and other forms of sacrifice, reflecting Burkert's dictum that "[o]rgies and death are close neighbors. Thus, ritual itself serves in the process by which the group perpetuates its existence through death." WALTER BURKERT, HOMO NECANS: THE ANTHROPOLOGY OF ANCIENT GREEK SACRIFICIAL RITUAL AND MYTH 61-72 (orig. publ. 1972, transl. Peter Bing 1983). Indeed, "[s]acrificial killing is the basic experience of the 'sacred'." *Id.* at 3. It is perhaps this grip on death—the Freudian usurpation of the Greek sense of thanatos—that the three great monotheistic faiths seek to overcome. In Greek mythology, such sacrifice occasionally involved infants, and had complex and devastating repercussions which provided the crux of pre-Freudian parables. But on a mystic level, they also showed that such incidents of infanticide provoked a very great, unmanageable evil. One such incident is the Feast of Thyestes, whose brother Atreus slaughtered Thyestes' infant sons and served them up to him for dinner, in order to gain advantage in a dynastic struggle. *Id.* at 103-05. "This dreadful sacrifice stirred the powers of the cosmos: the sun reversed its course." *Id.* at 105. In

focus of the pagan mystery cults was not on female procreative powers, but on Dionysian energy, as expressed in sexual energy, ecstasy, hysteria, transvestism, promiscuity, and violence—all very much recognized social signposts of our uncertain times today.⁸⁴ By the fourth century, Greek society had become irreversibly degenerate in ways we can easily recognize. It was a culture so rarified, so focused on accumulating individual wealth, so besotted with male athleticism, and its population so perfectly balanced through infanticide, that Greek women became completely marginalized.⁸⁵ The birthrate, always ascetically low, began to irreversibly decline.⁸⁶ As Polybius wrote of second century B.C. Greece,

In our own time the whole of Greece has been subject to childlessness and shortage of population, owing to which cities have become deserted and the land has ceased to yield fruit, though there have been neither continuous

addition to murder, unwitting cannibalism, and irredeemable pollution, adultery and murder rear their ugly heads as well; Atreus acted partly out of vengeance for his wife Aerope's adultery with Thyestes, and Atreus ended the affair by hurling her into the sea. *Id.* Thus are infanticide, adultery, and murder dramatically played out endlessly in the pagan world view. The three great faiths seek to break this Dharmic stranglehold on man. In this light, as Sayyed Hossein Nasr points out, "Man is in absolute need of religion without which he is only accidentally human." NASR, *supra* note 4, at 24. Burkert suggests that "[t]hose . . . who return to religion for salvation from . . . aggression are confronted with murder at the very core of Christianity—the murder of God's innocent son; still earlier, the Old Testament covenant could come about only after Abraham had decided to sacrifice his child. Thus, blood and violence lurk fascinatingly at the very heart of religion." BURKERT, *supra* at 1-2. Burkert correctly reveals the mystery element inherent in all forms of religious sacrifice, but he ignores the important dogma accompanying it—that God stayed Abraham's hand and Isaac was *not* in fact sacrificed, and that Christianity claims Jesus's death to be the *last* "holy and living sacrifice." The purpose of Jesus' sacrifice was manifold, but one important element was so that man could turn away from evil ever afterwards, trusting in the new covenant with God through Jesus' body and blood (signified by bread and wine). Jesus died not only so that man could be "saved," but so that man could rise above his sinful condition. Christianity tirelessly promotes this one-time revelation as the beginning and the end. Islam differs in that it asserts that man is *always* in need of revelation, or else he risks returning his sinful nature. And one sinful person not only leaves victims in their wake but invites others to join them in a slow but steady change until society progressively also becomes evil. This is why infanticide, adultery, and murder are to be resisted by each and every individual through their own devotion to God and, if committed, severely punished, regardless of their "naturalness" to the human condition.

84. See generally JOHN LUKACS, *THE PASSING OF THE MODERN AGE* (1970). In his 1970 study of U.S. adolescents, Lukacs noted dolefully, "They are not a futuristic generation; far from it: their occasional (and usually verbal) wish to destroy existing institutions is accompanied by their unwillingness to look forward into the future. The grim idiocy of their intellectual categories, and their humorless indulgences in promiscuity, anarchy, drugs, suggest those primitive fears." *Id.*

85. Although classicists disagree on the actual rate of infanticide usually accomplished through exposure, Golden argues that Athenians practiced female infanticide at the rate of ten percent or more. M. Golden, *Demography and the Exposure of Girls at Athens*, 35 PHOENIX 316-31 (1981). Although classical scholars may discount the social and demographic effects, sex-selective abortion and infanticide are seen by modern scientists as having significant consequences. Demographers warn that the "high preference for sons in China deserves scholarly attention, ethical and moral concern, and governmental initiatives." S. Tuljapurkar, N. Li & M.W. Feldman, *High Sex Ratios in China's Future*, 267 SCIENCE 874 (1995). Also of concern is the "masculinization" of births in India, Bangladesh, and South Korea, where ultrasound and amniocentesis has made sex-selection abortion almost a standard medical procedure. See generally SEX SELECTION OF CHILDREN (N.G. Bennett ed., 1983); Pradip K. Muhuri & Samuel H. Preston, 17 POP. DEV. REV. 415 (1991); Mridua K. Chowdhury & Radheshyam Bairagi, *Sex Preference and Fertility in Bangladesh*, 16 POP. DEV. REV. 749 (1990); Monica Das Gupta, *Selective Discrimination Against Female Children in Rural Punjab, India*, 13 POP. DEV. REV. 77 (1987).

86. POLYBIUS, *THE RISE OF THE ROMAN EMPIRE* 537-38 (Ian Scott-Kilvert trans. 1979). Admonishing his own society, Polybius continued: "The cause of this situation was self-evident and the remedy lay within our own power." *Id.* at 538. Nevertheless, infanticide persisted as a predominant factor in Greek society. See PETER GARNSEY, *FAMINE AND FOOD SUPPLY IN THE GRAECO-ROMAN WORLD; RESPONSES TO RISK AND CRISIS* 63-68 (1988).

wars nor epidemics. For as men had fallen into such a state of pretentiousness, avarice and indolence that they did not wish to marry, or if they married, to rear children born to them, or at most as a rule only one or two of them, so as to leave these in prosperity and bring them up to waste their substance, the evil rapidly and insensibly grew. For in cases where of one or two children the one was carried off by war and the other by sickness, it is evident that the houses must have been left unoccupied, and as in the case of swarms of bees, so that by small degrees cities became resourceless and feeble.⁸⁷

Greek society, for all its apparent Western perfection, could not survive the demographic rigors of extended warfare, and died out.⁸⁸ Conquering Rome absorbed its dregs, but unlike Greece, Rome's very existence was predicated on extended warfare, and its first cult was not paganism per se, but an administrative cult of the state as embodied in law, religion, and politics.⁸⁹ Caesars, as living men, came to be deified one at a time, and at first they bridged important emotional gaps in the national consciousness that carried the growing Roman populace from republic to empire.⁹⁰ Later, however, this stability was sacrificed through the obsessive worship of manly beauty and the deification of homosexuality. Unlike ephemeral Greece, which seemed to quietly implode and then gradually fade away, mighty Rome overexpanded its territory by burgeoning, endless conquest, became culturally decadent, and rejected all procreative values.⁹¹ Late Roman laws attempting to outlaw adultery, abortion, and infanticide attest to Roman society's failed effort to save itself from extinction.⁹² Although it augmented its citizenry through its absorption of conquered foreign populaces, its own native birthrate became disproportionately male, and finally fell into a precipitous decline from which it never recovered.⁹³ Despite many disruptions, Judaism's population enjoyed a high birth rate and was a hardy

87. POLYBIUS, *supra* note 86, at 537-38.

88. While demographers correctly state that Greek society did not completely disappear (as a population might, through an epidemic of disease that wiped out most fertile individuals and women of childbearing years), it did properly "die" through the reduction of its numbers and corresponding force of its culture and ability to defend itself from other competing populations. See GARNSEY, *supra* note 86.

89. For an elucidation of its complexity, see FOX, *supra* note 78, at 39-42.

90. As Sayyed Hossein Nasr notes, "Roman Law also possessed a religious colour in the Roman religion itself, and the function of 'The Divine Caesar' was to establish order on earth through this law." NASR, *supra* note 4, at 95.

91. This had not always been so: "[M]arital love was the Roman's most precious ideal, for which everyone had a nostalgic feeling." PIERRE GRIMAL, *LOVE IN ANCIENT ROME* (Arthur Train, Jr. trans. 1980). However, Romans regularly limited their families largely through abortion and infanticide usually through exposure. Notes Suzanne Dixon, "The right of the father to expose a newborn baby, particularly if he suspected its paternity, remained the strongest aspect of his 'right of life and death' (*ius vitae necisque*) over his children, and . . . gave way only gradually to the changing ideology of Christianity. Laws against infanticide and exposure were introduced in the fourth century, but their confirmation by Justinian in the sixth century shows the persistence of the economic pressures and social assumptions behind the practice." *Id.* at 22. See also Mireille Corbier, *Divorce and Adoption as Roman Family Strategies, in MARRIAGE, DIVORCE, AND CHILDREN IN ANCIENT ROME 47-78* (Beryl Rawson ed., 1991); KEITH HOPKINS, *2 DEATH AND RENEWAL: SOCIOLOGICAL STUDIES IN ROMAN HISTORY* (1983).

92. See GILLIAN CLARK, *WOMEN IN LATE ANTIQUITY: PAGAN AND CHRISTIAN LIFESTYLES 35-6, 46-50*.

93. See generally RODNEY STARK, *THE RISE OF CHRISTIANITY* (1996).

survivor, while Christianity emerged from Rome's collapse revitalized and invigorated as a collective Christendom more recently recognized by college students as "Western civilization" or, more simply, "the West."⁹⁴ Yet, powerful aspects of both Greek and Roman paganism—the driving force behind Western culture—would survive and flourish in Europe, especially in the fine arts of painting, sculpture, and literature.⁹⁵ The more hedonistic forms of Platonic philosophy were soon revived, and with them came a callous, compulsive homoeroticism that marginalized women both in fact and in law.⁹⁶

The Renaissance marked paganism's open reemergence in the West, and none of the established religions of the Book was able to contain its force.⁹⁷ But even that flowering of science and philosophy had a distinctively ancient pagan quality. The philosophes themselves were strongly motivated by a peculiar but enduring dialectic. Classicism manipulated as a sword slicing through the binding constraints of Christianity and of all general religion, so

94. See O'LEARY, *supra* note 77, at 261-74.

95. But see Malcolm Oxley, *The Medici and Gozzoli's Magi: Benozzo Gozzoli's "The Procession of the Magi" Friscoes*, 44 HISTORY TODAY 16 (1994). Oxley avers that Florentine scholars, although "not adverse to flirting with paganism at various levels . . . enjoyed nothing so much as point up links between pagan thinking and Christianity." *Id.* Oxley vividly illustrates his point by analyzing the Italian painter Gozzoli's friscoe "Procession" which illustrates the Magi visit to the newborn Christ and was commissioned by Mancilio Ficino, a wealthy Florentine Platonist:

The Magi . . . were, after all, pagan priests and astrologers, probably priests of the Persian dualist religion, Zoroastrianism. Yet they are present at a great Epiphany, a point in time where God, true 'reality', reveals himself to the work in the person of His Son. Even pagan priest spot the Platonic point, that the Incarnation is a worldly event of the senses which reveals the true nature of the godhead. It is The Epiphany.

The story of the Magi is thus also a neo-Platonic revelation uniting pagan thought and religion with Christian truth.

96. For an explanation as to how this marginalization actually occurred in Ancient Greece and carried over into later Western traditions, see PAGE DUBOIS, *SOWING THE BODY: PSYCHOANALYSIS AND ANCIENT REPRESENTATIONS OF WOMEN* (1988). By the time of Plato, women were being literally written out of intellectual life. Although Page quotes the French philosopher Derrida and then criticizes his interpretation, both Derrida's quote and Page's critique illustrate how Greek society had virtually abandoned the female. Page asserts that

Derrida describes what he sees as the exclusively masculine Platonic lineage of philosophy, a phallogocentric model of philosophical discourse where the inheritance of dialectic passes patrilineally, from father to son. Derrida says:

It is all about fathers and sons, about bastards, unaided by any public assistance, about glorious, legitimate sons, about inheritance, sperm, sterility. Nothing is said of the mother, but this will not be held against us. And if one looks hard enough . . . one might be able to discern her unstable form, drawn upside-down in the foliage, at the back of the garden.

Although Derrida's reading is brilliant and illuminating, it is . . . blind to its own phallogocentrism to the extent that it fails to acknowledge Plato's desire to appropriate maternity to the male philosopher, to incorporate into the portrait of the philosopher the very metaphors traditionally used to represent the female in classical culture.

Id. at 170-71. In contrast, early Christianity had "promoted liberating social relations between the sexes and within the family," and gave women more status than in Roman society. STARK, *supra* note 93.

97. See ERNST CASSIRER, *THE PHILOSOPHY OF THE ENLIGHTENMENT* 134-96 (Fritz C. Koelin & James P. Pettegrove, trans. 1951). See also GAY, *supra* note 7, at 256-321, 358-419.

that one would finally come upon modernity as the “truth” as one might come suddenly and unexpectedly, but with great effort, upon a clearing set deeply within a forest after thrashing through miles of wooded glen. And yet each individual philosopher remained a complex intermingling of classicism, religion (even though critical of it), and modernity. Even Rousseau, an avowed deist, managed to tell Voltaire, “All the subtleties of metaphysics will not make me doubt for a moment the immortality of the soul or a beneficent providence. I feel it, I believe it, I want it, I hope for it, and I shall defend it to my last breath.”⁹⁸ The Enlightenment provided only the briefest break in paganism’s power. Because the Enlightenment’s reliance on science and logic (which seemed at first to answer the mysteries of nature which had been the pagan cults’ focus but actually only provoked even darker, new mysteries) could not be grasped by a largely untutored populace, paganism slipped back into the Western psyche through Romanticism, and has never left us since.⁹⁹ It reveals itself cautiously in Rousseauian obsessions with individual liberty and self-fulfillment, mostly expressed by outbursts of aimless but rampant human sexuality.¹⁰⁰ As in Ancient Greece and Rome, the ultimate value of this modern unbridled human sexuality lies solely in its purely recreational expression, rather than in any desire to contribute to the establishment of social community through family life or even the more basic responsibility of species replication. Through a fatuist distortion of democratic-based “freedoms” and the lack of will to punish deviant behavior, the West is facing not only decline through de-population, but the destruction of its own basic structure.¹⁰¹ Present-day secularism

98. GAY, *supra* note 60 (citing CORRESPONDENCE GENERALE 324 (Theophile Dafour & Pierre-Paul Plan eds., 1924-34)).

99. Indeed, the Romantic Movement and the Industrial Revolution arose at the same time, around 1800.

100. See generally ERNST CASSIRER, THE QUESTION OF JEAN-JACQUES ROUSSEAU (Peter Gay trans. Peter Gay 1954). See also GAY, *supra* note 7, at 7-10; PETER GAY, THE PARTY OF HUMANITY 134-46, 211-68 (1964).

101. See Charles Trueheart, *Toronto Teacher Stirs Freedom Debate; Homosexual Teacher Suspended After Revealing Work as Prostitute*, WASH. POST, Dec. 11, 1995, at A20. This article profiles the conduct and comments of Gerald Hannon, a Canadian journalist and part-time writing teacher at Ryerson Polytechnic University. Hannon, a practicing pedophile, first rocked his community by insisting “that relationships between men and boys could be beneficial, citing a recent conversation with a 54-year-old man who was still grateful for having had such [a sexual] experience when he was 9.” *Id.* Initially, the university and the “journalism community” saw Hannon’s statements as a protected exercise of his freedom of speech. This support did not waiver even when Hannon claimed to be a professional male prostitute: “Apparently emboldened by his new status as a crusader for academic freedom, Hannon . . . said that he supplemented his teaching and writing income by advertising sexual services in newspaper ads. ‘My niche is men who find older men attractive,’ said Hannon, who is 51.” *Id.* Although prostitution is legal in Canada, pedophilia is a crime, and the Canadian press, while waxing long and poetically about freedom of speech, has neglected to interview any concerned parents of young children who may not subscribe to Hannon’s own opinion of the harmlessness of his sexual proclivities. The inability of concerned Canadian citizens to protect their young children from celebrities like Hannon and his *cause celebre* was aptly summed up by Michiel Horn, a Canadian historian of academic freedom: “He [Hannon] desires to be a martyr, to confront people with the fact that he is a deviant and what are you going to do about it?” *Id.* The response of the Canadian press was to criticize the university for ultimately suspending Hannon, whose reinstatement is extremely likely. Wrote the *Toronto Sun*: “Gerald Hannon’s mistake . . . was to have ‘a controversial idea in an institution that doesn’t welcome them.’” *Id.* Another Canadian paper, the *Globe and Mail*, went so far as to write defensively that “Hannon is a man of ethics—not everybody’s ethics, but consistent ethics nonetheless—and sees no reason to hide his

encourages sexual recreation without possibility of pregnancy as a means of social "fulfillment," if not as an end in itself, for both men and *women*, which is a significant difference between ancient times and now. Although some sociobiologists theorize that abortion and infanticide are in some instances successful *male* reproductive strategies,¹⁰² the female is always guaranteed to perpetuate her own genes through successful live births. Unless the fetus itself is somehow defective, a live birth is always a necessary precursor of the female's genetic survival.¹⁰³ Therefore, pregnancy and childbearing are almost always in a woman's evolutionary interest.

private identity. If his detractors are successful, hiding will be the only option left for those with controversial views." *Id.*

102. See generally INFANTICIDE: COMPARATIVE AND EVOLUTIONARY PERSPECTIVES (Glenn Hausfater & Sarah B. Hardy eds., 1984); Sarah B. Hardy, *Infanticide Among Animals: A Review, Classification and Examination of the Implications for the Reproductive Strategies of Females*, 1 ETHOLOGY AND SOCIOBIOLOGY 13-40 (1979). According to one writer who synthesized various scientific papers on infanticide, Hardy's work indicates that male-instigated infanticide is not "a pathological aberration," but "an 'adaptation'-an evolved strategy. By killing their stepchildren the males would halt the females' milk production and so bring forward the date on which the mother could conceive once more." MATT RIDLEY, THE RED QUEEN: SEX AND THE EVOLUTION OF HUMAN NATURE 213 (1993). This view about male-instigated infanticide certainly seems to be valid for certain primate groups. Toshikazo Hasegawa & Mariko Hiraiwa-Hasegawa, *Sperm Competition and Mating Behavior*, in THE CHIMPANZEE OF THE MAHALE MOUNTAINS: SEXUAL LIFE-HISTORY STRATEGIES 115-32 (Toshisada Nishida ed., 1990); R.I.M. DUNBAR, PRIMATE SOCIAL SYSTEMS (1988); Richard W. Wrangham, *The Significance of African Apes for Reconstructing Human Social Evolution*, in THE EVOLUTION OF HUMAN BEHAVIOR: PRIMATE MODELS 51-71 (Warren G. Kinzey ed., 1987); JANE GOODALL, THE CHIMPANZEE OF GOMBE: PATTERNS OF BEHAVIOR (1986). Other animal groups such as lions (B.C.R. Bertram, *Social Factors Influencing Reproduction in Wild Lions*, 177 J. OF ZOOLOGY 463-82 (1975)), rodents, (F.S. vom Saal & L.S. Howard, *The Regulation of Infanticide and Parental Behavior: Implications for Reproductive Success in Male Mice*, 215 SCIENCE 1270 (1982)) and some birds (S.T. Emlen, N.J. Demong, & D.J. Emlen, *Experimental Induction of Infanticide in Female Wattled Jacanas*, 106 THE AUK 1,7 (1989)). Moreover, some recent statistics suggest that human males may similarly use infanticide as a reproductive strategy to change themselves from stepfathers into true, biological fathers. See MARTIN DALY & MARGO WILSON, HOMICIDE (1988), which points out that human stepchildren are sixty-five times more likely to die than children living with their biological parents. See also Anne-Marie Ambert, *Being a Stepparent: Live-in and Visiting Children*, 48 J. MARRIAGE FAM. 795 (1986); L. Messinger, 2 J. MARRIAGE FAM. COUNSELLING 193 (1976). However, Ridley disputes the validity of this observation to the larger evolutionary theory by pointing out that Daly and Wilson's cases include older children, and not just suckling infants. RIDLEY, *supra* at 215. However, as Ridley himself points out elsewhere in his work, this discrepancy may reflect simply the longer period of human gestation and infancy, as well as the popular desire to give one's child the best of everything. *Id.* at 218, 243-44. In all events, the evolutionary paradigm discussed by Daly and Wilson remains unshaken, and its conclusion becomes clearer: The chances of a child's survival increase as its reproductive value to its genetic parents increases with its own age. See Daly & Wilson, *supra* note 55, at 521-22. Hence, "Parents are expected to be more willing to incur costs on behalf of offspring nearer to maturity and to be more inhibited in the use of dangerous tactics when in conflict with such offspring. Filicide rates are thus predicted to decline with the child's age. . . ." *Id.* at 522, citing P.H. PRESSLEY, 35 EVOLUTION 282 (1981); M. ANDERSSON, ET AL., 28 ANIM. BEHAV. 536 (1980); T.L. Patterson, et al., 7 BEHAV. ECOL. SOCIOBIOL. 227 (1980).

103. A live birth alone, however, does not guarantee a female's genetic survival. For this, her offspring must live long enough to mate and breed offspring of their own, and so on. Because of the tremendous costs involved in not only bringing a fetus to term but in rearing an infant, however, it can be argued that abortion and infanticide may have a genetic value for women as well. See generally Duncan Maxwell Anderson, *The Delicate Sex: How Women Threaten, Starve, and Abuse One Another*, 7 SCIENCE 42 (Apr. 1986). Notes Sam Wasser, Professor at the University of Washington's School of Family Medicine:

[I]f a kid dies or isn't healthy, she's [a woman] wasted a lot of time. If [environmental or social] conditions are bad now, it's better to shut down and wait for a better time. A lot of healthy women have trouble conceiving and keeping a pregnancy when things in their environment aren't really right.

Id.

Women's supposed "liberation" challenges this evolutionary theory considerably, but the gauntlet is a wave of misguided emotion spurred by feminist myth rather than a reasoned intellectual position based on scientific realities. Modern secular societies now view birth-giving and child-rearing as gender-biased occupations that limit women's social potential to become financially and emotionally "independent" of "patriarchal" society. Although something of a caricature, the Western entertainer Madonna's televised remarks during a recent interview with Forrest Sawyer are typical of the Western feminist viewpoint on pregnancy, work, and men:

Forrest Sawyer: Do you feel this notorious biological clock?

Madonna: Absolutely.

FS: Yeah? What time is it, then?

M: It's—time!

FS: You mean pretty much now?

M: Yeah, but now I have to do this movie.

FS: And then after the movie?

M: After the movie, I'm going to put a couple of ads in the *New York Times*, *Village Voice*. Who knows who's going to apply for, you know, the fatherhood gig.¹⁰⁴

But even if one were to concede that all societies are patriarchal or that this had some operative legal meaning for women (and any such argument would be necessarily vague), so what? What alternatives are feminists offering that make any sense? Matriarchy? That is a situation which exists in very few places on the planet—at least the planet I am living on! Feminists have yet to show how women are generally better off or that their position improves dramatically in a manless world, or a dual world in which women live independently of men. Moreover, the feminists' obsession with the rejection of marriage and with the promotion of abortion as the predominant issues of their mission to equalize the sexes deserves close scrutiny; if modern life has proven anything, it is that women without men lead rather fractured lives. In fact, most women without men live in unremitting poverty, as U.S. welfare statistics show daily.¹⁰⁵ Those women living without men who rise above the poverty line are frequently themselves actually dependent upon other family members to provide basic shelter and daily needs; usually, such women with children (sired by the men

104. *Primetime Live: Interview of Madonna* (ABC television broadcast, Dec. 13, 1995) (transcript # 432-2).

105. See, e.g., Davidson, *supra* note 53, at 40. D.A. Dawson & V.S. Cain, 187 VITAL & HEALTH STATISTICS OF THE NATIONAL CENTER FOR HEALTH STATISTICS (1990) 1-12.

whom feminists assure them they do not need) live in dependency with *their* parents.¹⁰⁶ They do not live in anything like a glorious matriarchy. Nor does the availability of abortion in the West change this scenario.¹⁰⁷

The curiously primal but misguided nature of this feminist reasoning is illustrated in typical fashion by one Missy Mullinax, a 20-something feminist from Agnes Scott College attending a pro-abortion rally, who explained why she was there: "I think the patriarchy sucks. I've always been afraid that abortion restrictions would return."¹⁰⁸ Moreover, when sexual intercourse either outside or without benefit of a marital relationship results in pregnancy, feminism switches its focus from the evil patriarchy to the fetus itself. In the more magnanimous feminist vision, both male and female "independence" is seen as sorely threatened by the fetus itself, a "rightless" collection of human cells whose social status metamorphizes from an innocent life in utero, worthy of protection, to one of an unwanted biological invader.¹⁰⁹ Thus, rather than being seen as the natural, if not always inevitable outcome of sexual intercourse, pregnancy is now popularly thought of as either an "accident" which oppresses the woman and undermines her social potential, or as a wily feminine "trick" used to "trap" a man into an incomprehensibly unforeseen fatherhood. The fetus itself becomes an unplanned, unwanted malicious aggressor, leaching impermissibly on the woman's body. Thus, the fetus becomes a wrongdoer, and the mother becomes the feminists' favorite type of being—a "victim."

Francis Kamm, a philosopher and professor at New York University School of Law, examines the "malicious aggressor" feminist argument in an enlightening way:

Suppose that a malicious aggressor deliberately attached himself to you for no reason but to impose on your body for nine months. Would it be permissible to kill him, purely on grounds of self-defense if this were the only way to free yourself? Presumably, it would be.¹¹⁰

The same would be true if the malicious aggressor imposed himself for only three months, or made even a less onerous imposition on one's body; "for example, he might want to be dragged along beside you. It would still be

106. Davidson, *supra* note 53, at 40.

107. See *Report of the Centers for Disease Control (1993)*, 42 MORBID. MORTAL. WKLY. REP. 733-37 (1993) (indicating that in 1990, the overall birth and pregnancy rates for U.S. teenagers exceeded those of most developing countries). The true problem in the United States is obviously not the availability of abortion, but the encouragement of adolescents to engage in sexual intercourse without marriage, which results in single parenthood for women. See C. Murray, *The Coming White Underclass*, WALL ST. J., Oct. 29, 1992, at A14. While one may argue that using birth control would decrease the chance of pregnancy, the teenage years are characterized by a gross lack of personal responsibility, making pregnancy more likely than not.

108. Bob Dart, *500,000 Rally in Support of Legal Abortion*, ATLANTA J. & CONST., Apr. 6, 1992, at A1.

109. See FRANCES M. KAMM, *CREATION AND ABORTION: A STUDY IN MORAL AND LEGAL PHILOSOPHY* 53, 78-123 (1992).

110. *Id.* at 53.

permissible for you to kill him in order to stop him from deliberately imposing on you in these ways."¹¹¹ Kamm argues similarly in the case of "a morally innocent nonactive threat," (or a non-malicious aggressor) contending that "it would be right to impose burdens on the threat rather than on the potential victim to stop the bodily imposition."¹¹² But in applying this feminist theory to real pregnancy, Kamm retains her common sense. A fetus doesn't think for itself in a conscious way; it cannot be a malicious aggressor—at least, not until it is born and lives long enough to develop a personality, in which case, it might become a malicious aggressor, or something else.

Kamm points out that pregnancy is the natural outcome of sexual intercourse between a man and a woman, and as such is "the 'normal' use by . . . one person [the fetus] of another person's body [the mother's], but the attachment of the [malicious aggressor] . . . is not such a normal use."¹¹³ Moreover, unlike the malicious aggressor, "the fetus did not exist in need of being attached to you before being in your body, as it did not exist at all."¹¹⁴ Kamm emphasizes that "the fetus is made for the womb; it is a womb-resident by nature. But the same cannot be said of the [malicious aggressor] in relation to your body."¹¹⁵

Thus does modern feminism lead us down a treacherous path of what seems like only a nasty dose of brutal reality and harsh logic, but is in fact a twisted Freudian by-way of reasoning so paranoid and skewed as to be almost demented. While the ancient Greeks gave much to both East and West, feminists have embraced the worst that most rarified and unique society had to offer—Medea's merciless murder of her children. The re-emergence of paganism and its feminist hybridization is only half the story, however. Modern life in the West has led to a fatal division between men and women that far transcends their original eviction from the Garden. The words commonly used to describe this great divorce are both tragic and telling, and indicate a degeneracy that belies mere metaphor: "The war over the family," or "the battle between the sexes," or "the terror of intimacy" indicate, in the words of the German sociologist Ulrich Beck, "the deep insecurity and hurt with which men and women confront each other in the everyday reality of marriage and family (or what is left of them)."¹¹⁶ This sexual division has a dual, almost schizophrenic quality arising out of an "unbalanced mixture of everything—sexuality, affection, marriage, parenthood, work, profession, inequality, politics, and economics"—and is underscored by physical ironies.¹¹⁷ Women's "liberation" seeks to render

111. *Id.*

112. *Id.*

113. *Id.* at 98-99.

114. *Id.* at 84.

115. *Id.* at 99.

116. ULRICH BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* 103 (Mark Ritter trans. 1992).

117. *Id.*

women “equal,” but can succeed in this only through rendering women effectively sterile, so that, untroubled by pregnancy and child-rearing, they can be more like men. This is both bio-genetic and social suicide! As Beck points out,

The ascription of the gender characteristics is the basis of the industrial society, and not some traditional relic that could easily be dispensed with. Without the separation of male and female roles there would be no traditional nuclear family. Without the nuclear family, there would be no bourgeois society with its typical pattern of work and life. The image of the bourgeois industrial society is based on an incomplete, or more precisely, a divided commercialization of human labor power. Total industrialization, total commercialization and families in the traditional forms and roles are mutually exclusive.¹¹⁸

Advancement toward a world-wide system of total equalization of men and women actually precipitates the coming social collapse:

The universalism of the market fails to recognize even its own, self-delineated taboo zones and weakens the ties of women to their industrially produced “status fate” of compulsory housework and support by a husband. With that, the biological harmonization of reproduction and production as well as the division of labor within the family become fragile, gaps in social protection for women become visible, and so on. . . . [W]hat must be settled are the personalized contradictions of an industrial society that has also destroyed the foundations of [men and women’s] ability to live together through its reflexive modernization and individualization.¹¹⁹

Although modern technology can release men and women from their gender-determined roles as husbands and wives and fathers and mothers, this “freedom” leads inherently to its own contradiction. Any other alternatives are too limited for heterosexuals. Although tolerated in the West, homosexuality based on heterosexual alienation is a social response that is doomed to biological failure in terms of reproduction, and celibacy is both rare and similarly a biological failure. Although promiscuity may have had some biological utility in the past,¹²⁰ promiscuity today leads only to disease and death.¹²¹ It is therefore inevitable that the more modernity dilutes traditional social relationships, the more men and women will seek the traditional out.

Notes Beck:

118. *Id.* at 104.

119. *Id.* at 104-05.

120. See Kim Hill & Hillard Kaplan, *Tradeoffs in Male and Female Reproductive Strategies Among the Ache*, in HUMAN REPRODUCTIVE BEHAVIOR: A DARWINIAN PERSPECTIVE 277-305 (1988); Sarah B. Hardy, *Empathy, Polyandry, and the Myth of the Coy Female*, in FEMINIST APPROACHES TO SCIENCE (Ruth Bleier ed., 1986); L. Benshoof & R. Thornhill, *The Evolution of Monogamy and Concealed Ovulation in Humans*, 2 J. OF SOC. & BIOLOGICAL STRUCTURES 95, 95-106 (1979).

121. See King K. Holmes, *Human Ecology and Behavior and Sexually Transmitted Bacterial Infections*, 91 PROC. NAT’L ACAD. SCI. USA 2448-55 (1994); see also REPRODUCTIVE TRACT INFECTION: GLOBAL IMPACT AND PRIORITIES FOR WOMEN’S HEALTH (A. Germaine et al. eds., 1992).

[P]eople are driven into bonding in the search for happiness in a partnership. The need for shared inner life, as expressed in the ideal of marriage and bonding, is not a primeval need. It grows with the losses that individualization brings as the obverse of its opportunities. As a consequence the direct route from marriage and the family usually leads, sooner or later, back to them—and vice versa.¹²²

Thus does feminism plant the seeds of its own destruction. The problem is, however, that feminism will in fact destroy its own society first before traditional society can flower again. Islam sees this clearly, and intends for Muslims to survive. Islam works for this survival in a myriad of ways that often seem at odds against the West, and truly, this is so, because Islam sees the West as inevitably doomed to decline and destruction, given the course it has chosen. For example, Western feminists and even Eastern feminists resent Islam's centering of women on family and the home, resent the Qur'anic injunctions to dress modestly and cover one's hair, and resent the cloistering of women from men outside their family circle. Yet any honest Western woman must acknowledge how totally unprotected she is from sexual abuse and licentiousness in public education, in the workplace, and in the general public. The "protection" encouraged by Western feminists is played out in an ironic fashion that fools no one. Western women have established their "right" to walk around virtually naked (bare-breasted, at least) in public; conversely, any suggestive remark on their remarkable physical appearance made in the course of their employment by any colleague may be immediately actionable in a court of law on the basis of sexual harassment. Thus, in the West, the empress may in fact walk about without any clothing on at all, and if anyone is so bold as to remark on the inappropriateness of this, they are speedily punished. One would laugh at the sheer oddness of it, if only the situation were not so completely perverse.

The *Qur'an* clearly establishes the equality of men and women in matters of religion. However, it is more accurate to say that in Islam, sexual equality is simply a meaningless concept. Islam could never regard men and women as the same, when they are very different beings. Islam sees men and women as "not competing but as complementary."¹²³ Some scholars explain the complementariness as each sex representing half the being of God, and heterosexual love being the fulfillment of communion with the sacred.¹²⁴ It is in fact this feminine uniqueness that Islam protects and encourages. Women are not equal, but necessarily different; acceptance of this biological reality is a religious act, in the way that all reality is religious for Muslims. As such, rules and customs are not only religiously significant, but are inherently religious; performing them willingly shows an awareness of man's obligation to please God, who would order nothing that was not

122. BECK, *supra* note 116, at 105.

123. NASR, *supra* note 4, at 112.

124. See SEYYED HOSSEIN NASR, *TRADITIONAL ISLAM IN THE MODERN WORLD* 47-58 (1987).

good. In this light, the cloistering of women need not be repressive but protective. Muslims assert that it prevents unwanted and harmful male attentions such as harassment and rape; it may reduce the incidence of adultery or fornication, thereby reducing questions of true paternity, illegitimacy, and out-of-wedlock births, while at the same time preserving the marriage and its family unit. Moreover, Islam frees women from the demeaning Western process of having to search for a mate. There are few "lonely singles" in Islam. A woman need not accept the husband chosen for her by her family, but there are good points to this familial role that are usually disregarded or overlooked by the West. Seyyed Hossein Nasr explains:

She does not have to display her charms and make the thousand and one plans through which she hopes to attract a future mate. The terrible anxiety of having to find a husband and of missing the opportunity if one does not try hard enough at the right moment is spared the Muslim woman. Being able to remain more true to her own nature she can afford to sit at home and await the suitable match. This usually leads to marriage which being based on the sense of religious duty and enduring family and social correspondence between the two sides is more lasting and ends much more rarely in divorce than the marriages which are based on the sentiments of the moment that often do not develop into more permanent relationships.¹²⁵

Contrary to Western beliefs about Islam, Muslim women are not forbidden to work outside their homes, provided that they can still care adequately for their homes, they have no young children who need their attention, and their husbands agree. They should also choose an appropriate type of work which will not violate any Qur'anic injunctions. For example, any work with infants or small children would probably be viewed as permissible, and in keeping with a woman's true nature. Employment which would involve a woman being around numerous men outside her family circle would similarly be inappropriate, and discouraged. If the family needs the woman's income for its survival, however, nothing in Islam would prevent the woman from working. But the idea of sacrificing a cared-for family life to simply earn money with which to acquire material things that one does not really need is foreign to Islam, and it is discouraged because it destroys the traditional life Muslims prize so highly.¹²⁶ For example, taking a six-week "maternity leave" in Islam and then returning to work without one's child would be rather incomprehensible, even in a poor family. Children have the right to be suckled for two years, and this is the duty of the mother if she is able. Most likely, she cannot do this comfortably in an

125. NASR, *supra* note 4, at 112-23.

126. Western psychologists and sociologists have established that working women are more likely to engage in sex outside of their marriages. See, e.g., Mary Loftus, *Frisky Business; Romance in the Workplace*, 28 PSYCH. TODAY 34 (March 1995); Andrew Greeley, *Marital Infidelity*, 31 SOCIETY 9 (May 1995).

office—whether she is a lowly secretary or a mighty corporate president—so necessarily, she remains at home with her child. How is this in any way a degradation? Babies come into the world and need to be nursed. What could be more normal? While Western women depend on formula and paid caretakers or, in many cases, reluctant relatives and even resentful “boy-friends”, this path is not necessarily the healthiest for the baby. For example, baby formula often lacks essential nutrients, and in many areas of the world, water-based formula would likely be contaminated, resulting in high rates of infant illness and mortality.¹²⁷ Breast feeding and outside child-care may also have complex epidemiological consequences that are not yet fully understood by science.¹²⁸ To the West, abortion appears to be a short-cut solution to these and other complicated social problems.

Modern technology perversely contributes to the evolutionary decline by rendering pregnancy as a “problem” easily solved through abortion. According abortion and infanticide the dubious status of “rights” peculiar only to women sets the stage for the tragedy of feminist-inspired genetic suicide.¹²⁹ Species replication is, in fact, discouraged and ultimately thwarted in the modern world through abortion and infanticide.¹³⁰

Paganism today functions as a shield against the starkness of modernity, which seems to stretch out endlessly before “New Age” man like a flat and barren plain. Paganism, in many respects, is New Age man’s resistance to the empty void of his own future, described so aptly as simply “space”. Space and its existential dimension—a denseless void understood properly by perhaps only a handful of physicists—is the only thing left for New Age man to fear. It is the empty unknowable, the great beyond. It is like death, if not death itself, but more mysterious, more terrifying. And so man seeks to either resist it by aspiring to live forever,¹³¹ through the most dramatic of

127. See Myron M. Levine & Orin S. Levine, *Changes in Human Ecology and Behavior in Relation to the Emergence of Diarrheal Diseases, Including Cholera*, 91 PROC. NAT’L ACAD. SCI. USA 2390-94 (1994); See also Jack Newman, *How Breast Milk Protects Newborns*, SCI. AMER., Dec. 1995, at 76.

128. See Sergio Stagno & Gretchen A. Cloud, *Working Parents: The Impact of Day Care and Breast-Feeding on Cytomegalovirus Infections in Offspring*, 91 PROC. NAT’L ACAD. SCI. USA 2384-2389 (1994).

129. In the United States, for example, until quite recently, men have been denied “standing”—or legal competence—to enjoin a woman, even their own wife, from procuring an abortion.

130. Throughout this paper, the terms “abortion” and “infanticide” refer to intentional, procured termination of fetal and infant life, respectively, rather than to spontaneous and natural pregnancy termination and infant mortality from non-intentional causes.

131. As an individual, rather than through his genetic descendants. Although ancient myth and folktales such as vampires (and even modern morality tales like Dorian Gray) portray the immortal ones as irretrievably lost to evil and doomed to incurable loneliness and alienation, religions of the *Book* stress the importance of each individual’s genetic survival through procreation. Thus, adoption is forbidden in Islam and discouraged in Judaism. In both these societies, blood and family ties were sufficiently strong so that it would be highly unlikely that a child would be completely orphaned, and that no blood relative could be found to care for the child. However, in Christianity, the pagan Roman practice of adopting orphans in place of siring one’s own genetic offspring came to be seen as an act of charity. See CLARK, *supra* note 92, at 49-50; BOSWELL, *THE KINDNESS OF STRANGERS: THE ABANDONMENT OF CHILDREN IN WESTERN EUROPE FROM LATE ANTIQUITY TO THE RENAISSANCE* 115-16 (1989). Adoption’s altruistic qualities, however, are plainly open to challenge. One need only review the current case law on contested adoptions in the United States to see that nongenetic “parents” invest a fair amount of personal ego into the adoption process that has little to do with the best interests of the adopted child, who typically has at least one living genetic parent.

medical interventions to which pure science has been virtually enslaved, or by populating it with interesting beings like “aliens.” But as in ancient times, the void needs to be propitiated. Ancient paganism provided this through the mechanism of violent, unrestrained sex and the offering of living human sacrifices. Modern life offers much of the same.¹³²

In both Greek and Roman societies, abortion and infanticide, especially of female children, were so widespread that they were considered cultural hallmarks of those civilizations.¹³³ These homicidal practices have remained markedly entrenched in Western civilization, mostly through the rubric of a rights-based social system reflected in a passive medical community, and an egotistic jurisprudence that values individual freedom over all forms of being. While most Western states agree that infanticide is a form of homicide and is usually punishable by law, societies that purport to value all human life have to ask themselves how much difference a few months makes.¹³⁴ How much difference is there between intentionally killing a newborn child—even one only a day old—and aborting a three month, six month, or nine month-old fetus?¹³⁵ Specifically, pregnancy lasts forty weeks and is commonly divided into thirds, called “trimesters.”¹³⁶ The most common medical procedure for second-trimester abortions is called “dilation and evacuation,” in which a physician dilates the woman’s cervix and uses medical instruments to break up the fetus and remove its parts.¹³⁷ After the twentieth week of pregnancy, abortion becomes more complicated as the fetus becomes more viable. Specifically, third trimester abortions employ a procedure called “partial birth abortion,” whereby the physician widens a woman’s cervix and, guided by ultrasound, grasps the fetus’ leg with forceps. He then pulls the fetus’ leg into the birth canal and then delivers the fetus legs-first until only its head remains in the woman’s uterus. The physician then crushes the fetus’s skull or, alternatively, jams closed scissors into its skull and inserts a suction tube which sucks out its brain, causing the skull to collapse, and allowing the head to pass through the cervix.¹³⁸ Of the 1.5 million legal abortions performed in the United States each year, the National Abortion Federation, (which represents

132. See generally LUKACS, *supra* note 84.

133. See EVA C. KEULS, *THE REIGN OF THE PHALLUS* 110-12, 146-47 (1985); MARY R. LEFKOWITZ & MAUREEN B. FANT, *WOMEN’S LIFE IN GREECE AND ROME* 57, 87, 91, 94-95 (1982, 2d ed. 1992).

134. The Federal Republic of Germany’s Constitutional Court asked as much in its first abortion decision, which maintained the illegality of abortion on demand, despite challenges from feminist groups that pregnancy interfered with the mother’s right to life and integrity of her person.

135. See John E. Yang, *House Votes to Outlaw Abortion Procedure*, WASH. POST, Nov. 2, 1995, at A1.

136. See generally J.W. WILLIAMS *OBSTETRICS* (N.J. Eastman & L.M. Hellman eds., 1966).

137. *Id.* See also J.W. HUFFMAN, *GYNECOLOGY AND OBSTETRICS* (1962).

138. See Yang, *supra* note 135, at A12. The anti-abortion group National Right to Life published a series of vivid drawings illustrating each step of the procedure which elicited emotional responses from both sides of the U.S. abortion debate but are nevertheless true and accurate depictions of the partial birth abortion procedure. See *What the Nurse Saw (adv.)*, WASH. POST, Dec. 5, 1995, at A15. The drawings and a description of the procedure are also available on the Internet. See *National Right to Life Home Page* <http://www.nrlc.org/nrlc>.

abortionists and abortion centers, estimates that about 450 are done in this manner.¹³⁹ "Most Americans think abortion is legal only in the first three months of pregnancy," notes Douglas Johnson, legislative director for the National Right to Life Committee.¹⁴⁰ However, Johnson avers that "abortions happen a lot later" than the public thinks "and involve naked brutality toward a living baby."¹⁴¹ Ironically, such action is illegal when done to a live, non-human animal: "You wouldn't take a coyote, a mangy raccoon and treat an animal this way," contended U.S. House Judiciary Committee Chairman Henry J. Hyde (R. Ill.).¹⁴² Pointing out that the human fetus would be a protected life if only its *head* were outside its mother's body, U.S. Rep. Charles T. Canady (R. Fla.) averred: "The difference between the partial birth abortion procedure and homicide is a mere three inches."¹⁴³

It is the prohibition of infanticide and the discouragement of abortion, infanticide's second cousin, that distinguish Judaism, Christianity, and Islam from competing pagan traditions which, in their sanitized modern form, are presently grouped under the curious rubric "secular society." These pagan traditions have become entrenched in secular societies through a political process that defines them as "rights" and "freedoms."¹⁴⁴

III. ISLAMIC VIEWS ON INFANTICIDE AND ABORTION

The conflict of the pagan traditions with Islam cannot be more basic than on the issues of infanticide and abortion. The three faiths forbid both of these, although abortion varies in its degree of wrongness. Infanticide is particularly abhorred in Judaism, Christianity, and Islam, all three of which regard children as a divine blessing. Still, infanticide is widely practiced in virtually all cultures, sometimes directly through homicide, or more subtly through neglect and child abuse.

Anthropologists have gleaned at least three sets of circumstances in which infanticide is alleged to be common, acceptable, or even obligatory: (1) Doubt that the infant is the parent's own genetic child; (2) indications of offspring unhealthiness or defectiveness; and (3) biological and geophysical reasons such as food scarcity, lack of spousal or other social support, and competition for scarce resources and parental energy and attention from older

139. Yang, *supra* note 135, at A12. The alternative method is to induce actual labor by administering hormones or injecting saline solution into the uterus, which kills the fetus and forces the uterus to contract and expel it. *Id.*

140. Julia Duin, *Senate Nears Vote on Ban of Gruesome Late-Term Abortions*, WASH. TIMES, Dec. 6, 1995, at A7.

141. *Id.*

142. See Yang, *supra* note 135, at A12.

143. *Id.*

144. Much ado in the West is also made of Islamic "oppression" of the individual's "freedom of speech," which in the West includes not only actual opinion or political speech, but erotic writings, erotic art, and the degenerative form of these—pornography—which have become broadly accepted and tolerated as necessary social foibles.

children.¹⁴⁵ Islam rejects these sociobiological practices as a rationalization of evil, and the *Qur'an* specifically prohibits infanticide based on perceived physical necessity, a widespread practice in pre-Islamic Arabia.¹⁴⁶ *Sura XVII.31* states unambiguously,

Kill not your children
For fear of want: We shall
Provide sustenance for them
As well as for you:
Verily the killing of them
Is a great sin.

The Islamic scholar Al-Ghazali explains that the perpetuation of humankind through procreation is part of God's plan, and "divine legislation made the killing of children and the burying [of girls] alive an abomination, for they [such acts] were forbidden for the fulfillment of existence."¹⁴⁷ While sterilization is generally disapproved of, as it is an alteration of and hence, a physical interference with, God's natural creation, limiting the number of children conceived through birth control is not forbidden in Islam, but may be practiced only with the wife's permission, since she has the right to bear children and fully enjoy natural sexual intercourse.¹⁴⁸ The ancient practice of coitus interruptus, or the man's withdrawal of his penis before actual ejaculation into the womb, was accepted by the Prophet, who explained that, regardless of man's actions, there is not a soul whose existence God has decreed but who will exist.¹⁴⁹ Even Al-Ghazali, whose opinion on the permissibility of coitus interruptus is far from a model of clarity, concurs that birth control used out of "fear of excessive hardship on

145. See ALEXANDER, *supra* note 55. See also Daly & Wilson, in INFANTICIDE: COMPARATIVE AND EVOLUTIONARY PERSPECTIVES, *supra* note 102, at 487-502; L. Minturn & J. Stashak, 17 BEHAV. SCI. RES. 70 (1982); M. Dickman, 6 ANNU. REV. ECOL. SYS. 107 (1975).

146. The pre-Islamic Arabs practiced female infanticide by burying their newborns alive. The commentator Ali notes that

The Arabs were addicted to female infanticide. In a society perpetually at war a son was a source of strength whereas a daughter was a source of weakness. Even now infanticide is not unknown in other countries for economic reasons. This crime against children's lives is here [in *Sura XVII.31*] characterized as one of the greatest of sins.

THE HOLY QUR'AN, *supra* note 27, at 785 n.2214.

147. ABU HAMID AL-GHAZALI, MARRIAGE AND SEXUALITY IN ISLAM (Madelaine Farah trans. 1984).

148. See LEILA AHMED, WOMEN AND GENDER IN ISLAM (1992).

149. See Al'Ghazali's elucidation of a hadith of the Prophet:

A man came to the Prophet and said, "I have a bondmaid who is our servant. . . . I do have intimate relations with her, but I am undesirous that she should conceive." He [the Prophet] replied, "Have coitus interruptus if you wish; for she shall receive what has been destined for her." The man was absent for some time, then he came back to him [the Prophet] and said, "The bondwoman is pregnant." He replied, "I told you that she will receive what has been destined for her."

AL-GHAZALI, *supra* note 147, at 113.

account of numerous offspring” is not prohibited.¹⁵⁰ In this way, birth control becomes a means of “guarding against the excessive pursuit of gain and against the need for resorting to evil means.”¹⁵¹ Al-Ghazali points out that although “perfection and virtue ensue from dependence on and faith in God’s guaranty which is expressed in His words, ‘No creature is there crawling on the earth, but its provision rests on God,’¹⁵² the fact is that, sadly, some people cannot rise to this high standard of faith and practice.¹⁵³ This moral lapse is lamentable and displeasing to God, but it is not forbidden: “Falling short of the apex of perfection, and abandoning what is preferable is not a criminal act.”¹⁵⁴ Man is wise to consider the consequences of all his actions, including procreation, and Al-Ghazali admits that “we cannot say that taking consequences into account as well as preserving possessions and hoarding them are prohibited, even though they are contrary to dependence [on God].”¹⁵⁵ And, altogether, using birth control to limit family size may even strengthen faith, especially if children are viewed as a hardship, “because encountering fewer hardships is an aid to religion [faith].”¹⁵⁶ Al-Ghazali was adamantly against using birth control as a form of sex-selection, which he likened to female infanticide, but concluded that birth control was preferable to abandoning marriage altogether out of a reluctance to procreate daughters, highlighting his dictum: “Our sunna is the pursuit of the more preferable deed.”¹⁵⁷

[F]ear of having female children . . . would be an evil intention if marriage or coitus are to be abandoned on its account; a person would be guilty of the intention but not of abstinence from marriage and coitus; so likewise in coitus interruptus.¹⁵⁸

Adultery resulting in the production of illegitimate offspring complicates Islam’s prohibition against infanticide, but it does not contradict it. In one *hadith*, a pregnant woman proclaimed herself an adulteress and subject to the punishment of lashes and stoning, but the Prophet Muhammad (Peace be upon him) stayed her punishment until she had given birth and weaned her child.¹⁵⁹ Thus, even a child whose parentage is suspect and whose mother is a condemned adulteress is entitled to the same treatment as legitimate infants—to be carried through a full-term pregnancy, and then suckled for a

150. *Id.* at 111.

151. *Id.*

152. *Id.* citing THE HOLY QUR’AN, *supra* note 27, at Sura II.6.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.* at 112.

158. *Id.*

159. FAZLUL KARIM, 2 AL-HADIS 538-40 (1939). *But see* MAULANA MUHAMMAD ALI, THE RELIGION OF ISLAM 556-57 (1990), which implies that this *hadith* may be apocryphal.

period of two years, after which the baby should be weaned. All children in Islam are entitled to be suckled for the first two years of their lives, regardless of their legitimacy. *Sura XXXI.14* provides:

And we have enjoined on man
 (To be good) to his parents:
 In travail upon travail
 Did his mother bear him,
 And in his years twain
 Was his weaning: (hear
 The command), Show gratitude
 To Me and to thy parents:
 To Me is (thy final) Goal.

Islam condemns infanticide in the most scathing terms, for, far from recognizing child-killing as a "right" or even acceptable custom, Islam lists female infanticide (*wa'd*) as one of the warning signs heralding the end of the world:

1. When the sun
 (With its spacious light)
 Is folded up;
2. When the stars
 Fall, losing their lustre;
3. When the mountains vanish
 (Like a mirage);
4. When the she-camels
 Ten-months with young,
 Are left untended;
5. When the wild beasts
 Are herded together
 (in human habitations);
6. When the oceans
 Boil over with a swell;
7. When the souls
 Are sorted out
 (Being joined, like with like);
8. When the female (infant),
 Buried alive, is questioned—
9. For what crime
 She was killed;
10. When the Scrolls
 Are laid open;
11. When the Sky
 Is unveiled;
12. When the Blazing Fire
 Is kindled to fierce heat;
13. And when the Garden
 Is brought near;—
14. (Then) shall each soul know
 What it has put forward.¹⁶⁰

160. THE HOLY QUR'AN, *supra* note 27, at *Sura LXXXI.1-14*.

This Meccan *Sura* is called *Takwir*, or *The Folding Up*. According to the accompanying annotations in *The Holy Qu'ran*, translated by Abdullah Yusuf Ali (1993), verses 1 through 13 are conditional clauses, and verse 14 is the substantive clause. Ali's annotations explain that at the end of the world, "nature's processes as we know them will seek to function, and the soul will then know by self conviction the results of its actions."¹⁶¹ Verse 4 refers to both Arab property and pet, the camel, "and the most precious camel was the she-camel just about to be delivered of her young. She would in normal times be most sedulously cared for. But when all our landmarks of this life vanish, even she would be left untended. Nothing would then be as it is now."¹⁶² The female infanticide described in verses 8 and 9 is considered a crime not only against the child's person and against society, but against God (the Most Gracious, the Most Merciful). Ali comments:

In this world of sin and sorrow, such unjust suffering is caused, and innocent lives sacrificed, without a trace being left, by which offenders can be brought to justice. A striking example before the Quraish was female infanticide [notes omitted]. The crime was committed in the guise of social plausibility in secret collusion, and no question was asked here. But in the spiritual world of Justice, full questions will be asked, and the victim herself—dumb here—will be able to give evidence, for she had committed no crime herself. The proof will be drawn from the very means used for concealment.¹⁶³

Just as U.S. law protects a woman's "right" to an abortion through a veil of privacy, Islam correctly recognizes that infanticide goes undetected not through privacy but through "concealment"—secrecy, and one must ask itself whether, at their hearts, these are truly different concepts.

Nor can abortion be a condoned practice in Islam, which considers human procreation to be one of the most important actions an individual can take to show his love for God and obedience to God's will. Although not entirely prohibited in Islam, the notion of abortion as an unencumbered female "right" is, at best simply wrong; at worst, it is a defiance of God's will, and is proof of a shocking lack of trust in God's wisdom and goodness. And although sexuality is a protected area of privacy in Islam, abortion could never be merely an issue of a woman's "privacy," for although a woman might deceive her family and husband, she cannot deceive God (the Most Gracious, Most Merciful), Who sees all things:

8. Allah doth know what
Every female (womb) doth bear,
By how much the wombs
Fall short (of their time
Or number) or do exceed.

161. *Id.* at 1904 n.5969.

162. *Id.* at 1905 n.5973.

163. *Id.* at 1906 n.5977.

Every single thing is with Him
in (due) proportion.¹⁶⁴

Abortion is not only displeasing to God, it is also a rejection of His laws and a rejection of life's greatest mysteries:

3. It is He Who sent down
To thee (step by step),
In truth, the Book,
Confirming what went before it;
And He sent down Law
(Of Moses) and the Gospel
(Of Jesus) before this,
As a guide to mankind,
And He sent down the Criterion
(Of judgment between right and wrong)
4. Then those who reject
Faith in the Signs of Allah
Will suffer the severest
Penalty, and Allah
Is Exalted in Might,
Lord of Retribution.
5. From Allah, verily,
Nothing is hidden
On earth or in the heavens.
6. He it is Who shapes you
In the wombs as He pleases.
There is no god but He,
The Exalted in Might,
The Wise.¹⁶⁵

In Islam, procreation is an act inextricably tied to marriage. All sexual acts outside the marital relationship are forms of fornication, and are strictly prohibited. Sexual acts considered to be deviant in Islam, including both homosexual and heterosexual sodomy, are forbidden even between married couples.¹⁶⁶ These rules, combined with Islam's system of severe punishments for extra-marital fornication, lead to the strong implication that most births will be desired, supported by an existing family structure, and will be of legitimate offspring. According to Al-Ghazali, "To bring forth a child is a four-faceted intimacy which is the original reason for encouraging it even after being safeguarded against excessive desire, so that no one wants to meet God as a celibate."¹⁶⁷ First, by having children, one "conform[s] to the love of God" by perpetuating mankind and showing trust in God's Covenants

164. *Id.* at Sura XIII.8.

165. *Id.* at Sura XII.3-6.

166. See AL-GHAZALI, *supra* note 147, at 107-08.

167. *Id.* at 53 (citations omitted).

with man.¹⁶⁸ Procreation is the continuation of God's creation from Adam. According to Al-Ghazali, "The aim is to sustain lineage so that the world would not want for humankind."¹⁶⁹ To refuse to marry and procreate effectively spits on God, causing "the loss of lineage, perpetuating its existence from Adam, generation upon generation, thus ending with him. Therefore, he who refrains from marriage cuts off continuous being from himself [back] to Adam and dies childless with no descendants."¹⁷⁰ Moreover, for Al-Ghazali, to procreate is a natural expression of God-given sexual desire common to all persons—it is a good way of being: "Even the eunuch who cannot be expected to have an offspring still desires it, in the same manner that a bald man desires to have the blade pass over his head in emulation of others and in keeping with the precedent of the righteous progenitors."¹⁷¹ One also "earns the love of the Prophet" by increasing the ranks of faithful Muslims.¹⁷² Children also serve as a mystic link as invocers of blessings and intercessors between their parents and God.¹⁷³ To pass from this world, intentionally without issue, is incomprehensible to Muslims.¹⁷⁴

As already set forth above, the *Qur'an* enjoins man to procreate;¹⁷⁵ it also unambiguously promotes life and its preservation.¹⁷⁶ Killing a human

168. *Id.*

169. *Id.*

170. *Id.* at 56.

171. *Id.*

172. *Id.* at 57.

173. *Id.*

174. To this end, infertility treatments and even *in vitro* fertilization are accepted by some Muslim jurists, but the use of surrogate sperm, donor eggs, and surrogacy are not (even though technically Hagar, mother of Ishmael and slave of Abraham, was effectively a surrogate). See ABDUL FADL MOHSIN EBRAHIM, ABORTION, BIRTH CONTROL, AND SURROGATE PARENTING: AN ISLAMIC PERSPECTIVE 54-65 (1989). These artificial methods of procreation raise Qur'anic issues of adoption (which is forbidden in Islam) and would put the child's true paternity in question, giving rise to the possibility of forbidden marriage between blood relatives of varying degrees. *Id.*

175. *Id.*

176. See THE HOLY QUR'AN, *supra* note 27, *Sura* IV.92, which admonishes, "Never should a Believer kill a Believer"; according to Ali's notation, "Life is absolutely sacred in the Islamic Brotherhood." *Id.* at 242 n.611. *Sura* II.178 provides that the penalty for murdering a fellow Muslim is death:

178. O ye who believe!
The law of equality
Is prescribed to you
In cases of murder.

Id. at *Sura* II.178. Here, murder requires an intentional killing; an unintentional killing, due to mistake or accident, would not be subject to capital punishment. *Id.* at 75 n.183. But even outside the Believing community of Islam, Muslims abhor unnecessary killing. While the Ten Commandments are not copied into the *Qur'an* (although Islamic commentators recognize them as the Laws of Moses, and therefore distinct from the Laws of Abraham), *Sura* XVI.90 states similar laws in general but positive terms:

Allah commands justice, the doing
Of good, and liberality to kith
And kin, and He forbids
All indecent deeds, and evil
And rebellion: He instructs you

being will be severely punished in both this life and the next, and killing living children is considered an evil act having dire consequences for mankind generally.¹⁷⁷ The *hadith* imply that people who commit infanticide will be severely punished in the hereafter, and the Prophet (Peace be upon him) made no exception even for his own family—not even for his own mother.¹⁷⁸ When the Prophet (Peace be upon him) was converting the Beni Jo’fi, a Yemeni tribe who were forbidden to eat the heart of any animal, he met with the tribe’s chief, Keis, and his brother. As a sign of their willingness to accept Islam, the Prophet required them to eat a roasted animal heart, which Keis did, albeit with a trembling hand. Keis then inquired of the Prophet (Peace be upon him) about whether Keis’s late mother had been delivered into Paradise: “Our mother Mulieka was full of good deeds and charity; but she buried a little daughter alive. What is her condition now?” The Prophet (Peace be upon him) replied, “The burier and buried both [are] in hell.”¹⁷⁹ This reply angered the brothers, who stormed off, muttering that they could not imagine how anybody would follow a man who not only made them eat animal hearts, but said that their beloved mother was burning in hell. The Prophet (Peace be upon him) called the men to come back, saying “Mine own mother, too, is there with yours.”¹⁸⁰ The Prophet himself protected the life of the unborn fetus when he postponed the stoning to death of the adulterous woman, indicating that the fetus has a legal existence under the *shari’a* independent of the mother who carries it.¹⁸¹ From this sequential reasoning, Islamic scholars find that Islam regards all

That ye may receive admonition.

Id. at Sura XVI.90. Ali comments that “everything that is recognised as shameful, and everything that is really unjust, and any inward rebellion against Allah’s Law or our own conscience in its most sensitive form” is to be avoided. *Id.* at 760 n.2127. This would certainly include murder (forbidden specifically in the Ten Commandments, see *supra* note 34; see also Sura XVI.123-124 & n.2159).

Sura XXV.68-69 prohibits wrongful killing more specifically:

68. Those who invoke not,
With Allah, any other god,
Nor slay such life as God
Has made sacred, except
For just cause, nor commit
Fornication;—and any that does
This (not only) meets punishment
69. (But) the Chastisement on the Day
Of Judgment will be doubled
To him, and he will dwell
Therein in ignominy. . . .

Id. at Sura XXV.68-69. As Ali notes, the injunction against taking life is qualified: “‘except for just cause’: e.g., in judicial punishment for murder, or in self-preservation. . . .” *Id.* at 1052 n.3128.

177. See *supra* text III. ISLAMIC VIEWS ON INFANTICIDE AND ABORTION.

178. SIR WILLIAM MUIR, THE LIFE OF MOHAMMAD, FROM ORIGINAL SOURCES 466 (revised by T.H. Weir, 1923).

179. *Id.*

180. *Id.*

181. KARIM, *supra* note 159.

human life as sacred and that abortion is "blameworthy."¹⁸² In Islam, a spontaneous miscarriage is a sad event, even if the will of God, but abortion "on demand," pursuant to human will alone, is a crime.

According to Al-Ghazali, abortion and infanticide are not separate and distinct acts, but constitute stages of a crime against an already existing person, the gravity of which increases with the age and quality of personhood acquired by the fetus:

The first stage of existence is that the sperm should lodge in the uterus, merge with the fluid of the woman, and become thus receptive to life; to interfere with this process constitutes a crime. If it develops into an embryo and becomes attached [a fetus], then the crime becomes more serious. If the spirit is breathed into it and the created being takes form, then the crime [of abortion] becomes more serious still. The crime is most serious after the fetus is born alive [then buried if it is a girl].¹⁸³

Like Al-Ghazali, most Muslim jurists believe that life begins at fertilization, and abortion is thus permitted only if the mother's life is severely compromised.¹⁸⁴ Other Muslim jurists do debate on when life begins and, therefore, when abortion would become a grave criminal act. The very Arabic word for fetus (*janin*) means "that which is veiled or covered,"¹⁸⁵ and the *Qur'an* generally refers to *janin* as the procreated being in the mother's womb, regardless of its state of development.¹⁸⁶ The *Qur'an* refers to man when created as "hidden" in the womb from all except our mothers and God, upon whose deliverance we depend. Clearly, our physical end is in death, but our physical beginning is in the womb in our "hidden" state, rather than with our birth, when the contents of the womb spill out and are revealed to all:

Verily thy Lord is ample
In forgiveness. He knows
You well when He brings
You out of the earth,
And when ye are hidden
In your mothers' wombs.¹⁸⁷

Other scholars, including the Muslim jurist Al-Shafi'i, hold that the legally-protected fetus stage arrives sometime after conception and some physical development with identifiable human characteristics such as fingers,

182. See generally Mohamed Mekki Naciri, *A Survey of Family Planning in Islamic Legislation, in MUSLIM ATTITUDES TOWARD FAMILY PLANNING* 129, 129-45 (Olivia Schiefflin ed., 1973).

183. *Id.* at 143.

184. See Sherifa Zuhur, *Sexuality*, in *ENCYCLOPEDIA OF ISLAM* 35-37 (John L. Esposito, ed. 1995) at 36. See also EBRAHIM, *supra* note 174, at 67-68, 89-93.

185. EDWARD WILLIAM LANE, *ARABIC-ENGLISH LEXICON* (1955).

186. See THE HOLY QUR'AN, *supra* note 27, at *Sura* LIII.32; see also EBRAHIM, *supra* note 174, at 73.

187. THE HOLY QUR'AN, *supra* note 27, at *Sura* LIII.3.

nails, and eyes, as distinct from less identifiable embryonic conditions such as *al-mudghah* (the chewed lump) and *al-alaqah* (something that clings).¹⁸⁸ However, the *Qur'an* also refers to "another act of creation" in *Sura XXIII.13*, which is thought by some scholars to signify the ensoulment of the fetus, and these jurists interpret *janin* to mean what exists in the womb after ensoulment takes place—a procreated human being.¹⁸⁹ This view is complemented by two *hadith*; one states that organ differentiation occurs forty nights after fertilization, and the other states that ensoulment of the fetus takes place 120 days after conception.¹⁹⁰ The common scholarly consensus is that after its ensoulment (whether one believes this to come with conception, or sometime afterwards), the fetus becomes a human person and thus, abortion of it is homicide with all attendant penalties.¹⁹¹

Its legal personality thus established, the *shari'a* thus accords the fetus the right to life—the right to be carried safely in the womb, to be born, to be weaned, and to live as long as God permits. Thus is the sentence of the pregnant woman condemned to death postponed until birth and weaning are completed. The legal personality of the fetus as a human being with rights is further established through the *ghurra*: Anyone who causes an abortion or a willful act causing a miscarriage must *pay to the fetus* (through its natural heirs, had it lived) a penalty called a *ghurra*.¹⁹² The *Shafi'i* school of Islam instructs Muslims to cut open the belly of a pregnant woman who has died, in order that her fetus might be given a chance to live.¹⁹³ Islam accords the fetus several other rights unique from Western systems. For example, the fetus has a right that any inheritance it may be entitled to during gestation be preserved while it is in the womb.¹⁹⁴ Its shares of inheritance are determined after its live birth on the basis of its sex.¹⁹⁵ In the event it is stillborn, the fetus will not inherit.¹⁹⁶

As a physically-incompleted being but a complete soul, the fetus has a right to a "good" name, whether a full-term birth or stillborn or miscarried.¹⁹⁷ According to Al-Ghazali, "The Prophet said, 'You will be called on the Day of Judgment by your names and the names of your fathers; so let

188. See YUSUF AL-QARADAWI, *THE LAWFUL AND THE PROHIBITED IN ISLAM* (1980).

189. *Id.*

190. MUSLIM IBN AL-HAJJAJ AL QUSHAYRI, 4 *SAHIH MUSLIM* 1391-92 (Abdul Hamid Siddiqi trans., 1976).

191. *Id.* at 201.

192. SCHACHT, *supra* note 51, at 124, 186.

193. ABDUL FADL MOHSIN EBRAHIM, *ABORTION, BIRTH CONTROL, AND SURROGATE PARENTING: AN ISLAMIC PERSPECTIVE* 76 (1989).

194. SCHACHT, *supra* note 51, at 124.

195. *Id.* at 119.

196. *Id.*

197. See AL-GHAZALI, *supra* note 147, at 115. Compare this dignified and compassionate, life-affirming practice with the ways such sad events are handled in the West, where miscarried fetuses are usually abandoned unnamed by their parents, and disposed of like ordinary waste products. See Ian Hargreaves, *Why We Took Our Baby's Life*, *SUNDAY TELEGRAPH LTD.*, Dec. 10, 1995, at 5.

your names by good.”¹⁹⁸ Al Ghazali elaborated that “the miscarried fetus will cry out after its father on the Day of Judgment saying, ‘You have destroyed me and left me without a name.’”¹⁹⁹ As to whether it might not be possible to correctly name the child if its sex were unknown, Al-Ghazali explains that according to scholars, one must then choose a name “that might apply to both, like Hamzah, Amarah, Talhah, and Utbah.”²⁰⁰ The fetus is also entitled to a burial even if it is stillborn or miscarried.²⁰¹ Babies who die before uttering a cry are ceremonially bathed, named, wrapped in a white cloth, and then buried.²⁰² The only difference between the burial of a born human being and that of a stillborn or miscarried fetus is that no prayer is said for the latter.²⁰³

Islam knows the concept of therapeutic abortion, but interprets it far more stringently than does the West. For example, the *Hanafi* scholars permit abortion up to 120 days after conception, but only in the following situations: (1) If a physician legitimately fears that the pregnant mother’s life is in danger and the situation can only be corrected if she terminates the pregnancy; (2) If the pregnancy may result in causing a disease to the mother; and (3) if a second pregnancy severely reduces the mother’s ability to lactate while her infant is completely dependent upon her milk for survival.²⁰⁴ Although before the fourth month of pregnancy the mother’s life takes precedence over the fetus, this changes after ensoulment, which gives the fetus a right to life equal to that of the mother.²⁰⁵ In genuine cases of emergency where the mother’s physical life is threatened, the *shari’a* recommends Al-Ghazali’s maxim of “the pursuit of the more preferable deed,” or choosing the lesser of the two evils.²⁰⁶ Rather than being unable to choose and losing both lives, the *shari’a* gives preference to the mother’s life, since she is the origin of the fetus and, unlike the fetus, is already established in the earthly life and a pillar of her family, with duties and responsibilities (presumably with parents, a husband, a home, and even other children to care for).²⁰⁷ The *Qur’an* does not require the mother to sacrifice her life for that of her child, nor should other children already *in being* suffer. To the contrary, *Sura* II.233 is specific on this point:

198. See AL-GHAZALI, *supra* note 147, at 115.

199. *Id.* citing the Teachings of Abdal-Rahman b. Yazid b. Muawiyah.

200. *Id.*

201. MUHAMMADAMIN IBN UMAR IBM ABIDIN, 2 HASHIYAT RADD AL-MUHTAR ALA AL-DURR AL-MAKTAR 228 (1979).

202. *Id.*

203. *Id.* For examples of prayers said for the death of children, see CONSTANCE E. PADWICK, *MUSLIM DEVOTIONS: A STUDY OF PRAYER-MANUALS IN COMMON USE* 283-84 (1961, 2d ed. 1996).

204. See MUHAMMAD SA’ID RAMADAN AL-BUTI, *TAHID AL-NASL* 96-99 (1976). As noted elsewhere, *Sura* II.233 provides that the child has the right to be suckled for two full years. See *THE HOLY QUR’AN*, *supra* note 27, at *Sura* II.233. The term can only be shortened by the parents’ mutual consent, and then equitable alternative arrangements, such as a wet nurse must be made.

205. See AL-QARADAWI, *supra* note 188, at 202.

206. AL-BUTI, *supra* note 204.

207. See AL-QARADAWI, *supra* note 188, at 202.

233. No soul shall have
A burden laid on it
Greater than it can bear.
No mother shall be
Treated unfairly
On account of her child,
Nor father
On account of his child.
An heir shall be chargeable
In the same way.

The religions of the Book have, in fact, done much to preserve human infant life and restore women to their former apex as forces of creation. In various complementary ways, all three faiths pay homage to women's biological destiny and undeniable, inimitable power—that of creating life from the briefest of physical unions with a man. Judaism traces tribal descent through the mother—defined as a passive role only to someone who has never witnessed the squalid act of giving birth, the miracle of which can be augmented by still more miracles, such as that bestowed by God upon the matriarch Sarah (Abraham's wife) who gave birth to their son Isaac despite the fact that she was quite elderly and Abraham himself was 100 years old.²⁰⁸ Christianity sanctifies virtually all women through the veneration of Mary, recipient of the Holy Ghost and mother of Jesus Christ, whom most (but not all) Christians consider to be the Paulist personification of God on earth.²⁰⁹ Christianity places even lesser women on lofty pedestals, women such as the Magdalene (whose occupation before she met Jesus is in dispute, but she was far from the contemporary Marian ideal), and a myriad of lesser saints.²¹⁰ Islam accepts the miracle of Mary's virginal conception.²¹¹ The most typically Islamic passages are verses 34 and 35 of *Sura XIX*, which

208. THE BIBLE, *Genesis* 21:1-7.

209. As *infra* text accompanying note 211 points out, Islam holds that this view is mistaken. See *Sura V*, which declares,

Christ the son of Mary
Was no more than
A Messenger; many were
The messengers that passed away
Before him.

THE HOLY QUR'AN, *supra* note 27, *Sura V*.75. In Islam, God is indivisible. *Sura V* specifically rejects the Christian concept of the Trinity:

They do disbelieve who say:
Allah is one of three
(In a Trinity): for there is
No god except One God.

Id. at *Sura V*.73. For an interesting account of how *mullahs* debate the divinity of Jesus and Mary, and Christian concepts like the Trinity, see FISCHER, *supra* note 72, at 1-3.

210. It is popularly held that the Magdalene was a prostitute, but some Christians find this blasphemous.

211. See THE HOLY QUR'AN, *supra* note 27, at *Sura XIX*.20-22, 34-37. The *Qur'an* does, however, reject the divinity of Jesus. *Id.* at *Sura V*.18.

combine to acknowledge the Virgin Birth as a simple expression of faith in God's perfect will:

34. Such (was) Jesus the son
Of Mary: (it is) a statement
Of truth, about which
They (vainly) dispute.
35. It is not befitting
To (the majesty of) Allah
That He should beget
A son. Glory be to Him!
When He determines
A matter, He only says
To it, "Be," and it is.²¹²

However, Islam especially celebrates the everyday miracle of the mundane, every woman's biological uniqueness. The *Qur'an* says at Sura III,

35. Behold! a wife of Imran
Said: "O my Lord! I do
Dedicate into Thee
What is in my womb
For Thy special service:
So accept this of me:
For Thou hearest
And knowest all things."
36. When she was delivered,
She said: "O my Lord!
Behold! I am delivered
Of a female child!"—
And Allah knew best
What she had brought forth—
"And is not the male
Like the female.
I have named her Mary,
And I commend her
And her offspring
To Thy protection
From the Evil One,
The Rejected."²¹³

Ali's annotations indicate that the woman of Imran (Hannah, both descendant of the priestly house of Imran, father of Moses, and wife of Imran of the same house) had expected a male child, whom she intended to dedicate to Temple service. Although female children could not be so dedicated under Mosaic law, Ali explains that Hannah "had Faith, and she

212. *Id.* at Sura XIX.34-35.

213. *Id.* at Sura III.36:
And nowise is the male
Like the female.

knew that God's Plan was better than any wishes of hers."²¹⁴ However, the middle of verse 36 makes clear that all female children, far from a curse of lineage, are an intentional gift from God:

And Allah knew best
What she had brought forth—
And nowise is the male
Like the female.

The Prophet Muhammad (Peace be upon him) is said to have taught that a well-cared-for daughter would bring her father fortune and facilitate his passage from hell to heaven.²¹⁵ The scholar Al-Ghazali discouraged parents' preference of children based on sex; his *Etiquette of Having Children* declares,

[O]ne should not be overjoyed with the birth of a male child, nor should he be excessively dejected over the birth of a female child, for he does not know in which of the two his blessings lie. Many a man who has a son wishes he did not have him, or wishes that he were a girl. The girls give more tranquility and [divine] remuneration, which are greater.²¹⁶

Al-Ghazali also quoted from the Prophet and scholars on the gift from God of daughters, and on the rewards for raising them well and treating them with compassion and understanding:

[T]he Messenger of God said, "[w]hen a man brings an extraordinary present [turfah] from the market to his family, it is like bringing them a charitable gift (sadaqah) which he places among them. Let him give the females before the males, for whoever brings joy to a female is like crying out of fear of God, and he who cries out of fear of God will be safeguarded by God from the Fire." Abu Hurayrah related that the Prophet said, "[w]hoever has three daughters or sisters and tolerates their hardships and ordeals, God will bring him into Paradise for having shown mercy toward them." A man asked, "How about one?" And he said, "Even one."²¹⁷

Islam further acknowledges woman's innate physical predisposition for bringing new life into the world. *Sura IV* is entitled *Nisaa*, or *The Women*:

1. O mankind! reverence
Your Guardian-Lord,
Who created you
From a single person,
Created, of like nature,
His mate, and from them twain
Scattered (like seeds)

214. *Id.* at 150 nn. 375, 377, and 151 nn. 377, 378.

215. AL-GHAZALI, *supra* note 147, at 113-14.

216. *Id.*

217. *Id.* at 115.

Countless men and women;—
 Reverence Allah, through Whom
 Ye demand your mutual (rights),
 And (reverence) the wombs
 That bore you): for Allah
 Ever watches over you.

Ali's annotation must be noted in its entirety:

Among the most wonderful mysteries of our nature is that of sex. The unregenerate male is apt, in the pride of his physical strength, to forget the all-important part which the female plays in his very existence, and in all social relationships that arise in our collective human lives. The mother that bore us must ever have our reverence. Sex, which governs so much of our physical life, and has so much influence on our emotional and higher nature, deserves—not our fear, or our contempt, or our amused indulgence, but—our reverence in the highest sense of the term. With this fitting introduction we enter on a discussion of women, orphans, and family relationships.²¹⁸

Islam also requires men to protect women's status. The *Qur'an* specifically says,

34. Men are the protectors
 And maintainers of women,
 Because Allah has given
 The one more (strength)
 Than the other, and because
 They support them
 From their means.
 Therefore the righteous women
 Are devoutly obedient, and guard
 In (the husband's) absence
 What Allah would have them guard.²¹⁹

Moreover, men must protect women at the risk of losing their very lives and burning forever in a hellish hereafter. The *Qur'an* says,

14. But those who disobey
 Allah and His Messenger
 And transgress His limits
 Will be admitted
 To a Fire, to abide therein:
 And they shall have
 A humiliating punishment.²²⁰

In stark contrast, Western feminism, far from achieving the liberation of

218. THE HOLY QUR'AN, *supra* note 27, at 205 n.506.

219. *Id.* at Sura IV.34.

220. *Id.* at Sura IV.14.

women, has duped women into sacrificing their own fertility on the altar of Pan. Feminism has, in fact, achieved circuitously the original aim of paganism, which hermaphroditized men, through the desexualization of women by affirming paganism's pursuit of sexuality as an end in itself. In this light, Western feminism has distorted Islam, which is far from the ascetic, restrictive faith that feminists proclaim it to be. Islam understands and accepts the human longing for sexual fulfillment as a unique part of human nature, but insists that it take place solely within the marital relationship.²²¹ Within this limitation, sexual fulfillment for both husband and wife is viewed as the ideal state of affairs. Notes Al-Ghazali in his *Etiquette of Intimate Relations*,

Once the husband has attained his fulfillment, let him tarry until his wife also attains hers. Her orgasm (inzal) may be delayed, thus exciting her desire; to withdraw quickly is harmful to the woman. Difference in the nature of [their] reaching a climax causes discord whenever the husband ejaculates first. Congruence in attaining a climax is more gratifying to her because the man is not preoccupied with his own pleasure, but rather with hers; for it is likely that the woman might be shy.²²²

In Islam, it is a husband's duty to satisfy his wife sexually.²²³ Sexual needs are understood and may be satisfied, and not all sexual acts need be towards procreation. Although intercourse during a woman's menstruation is forbidden in the *Qur'an*,²²⁴ other forms of sex during menstruation are not. In the privacy of one's home and within the bounds of marriage, Muslims may enjoy sex "anytime they please."²²⁵ According to Al-

221. There can be little doubt that, health-wise, this restriction protects both men and women, but more especially women. For example, women, not men, can get cervical cancer, a potentially sterilizing and fatal disease that science now believes is caused by the papillovirus—the same virus that causes genital warts—passed to the woman through contact with the male penis. Having multiple sexual partners significantly increases the incidence of virtually all sexually-related illnesses. Moreover, men are far more likely than women to pass along sexually-transmitted diseases such as HIV to a heterosexual partner. If one is married and presumably sexually exclusive within the parameters of marriage (even if a husband has more than one wife, as Muslims are permitted to do), one's chances of becoming infected with a sexually-transmitted disease and infecting others are greatly reduced. Moreover, Islam has advocated sexual restraint in tandem with good hygiene since at least the eleventh century, which is both a simple courtesy to one's spouse as well as an act which safeguards the health of both spouses:

If the husband wishes to have intimate relations with one [wife] after having had coitus with another, then he should wash his genitals first. If he has nocturnal emission, then he should not have intercourse before washing his genitals or urinating.

See AL-GHAZALI, *supra* note 147, at 108.

222. AL-GHAZALI, *supra* note 147, at 107 (internal citations omitted).

223. *Id.*

224. See THE HOLY QUR'AN, *supra* note 27, at Sura II.222.

225. Sura II.223 states,

223. Your wives are
As a tilth unto you;
So approach your tilth
When or how ye will;
But do some good act

Ghazali,

The words of the Almighty state, "so go to your tilth as ye will" [Kor. 2.223]; that is, anytime you please. He [the husband] may achieve emission by her hand and can enjoy what is concealed by the loincloth (izar) short of coitus. The woman should cover herself with a loincloth . . . during menstruation. This is one of the rules of etiquette. He may partake of meals with the woman during her period of menstruation; he may also sleep beside her, etc. He should not avoid her.²²⁶

As such, Islam recognizes that sex is a form of communication between husband and wife that is both necessary and special, and is therefore deserving of social protection. Islam does this by discouraging fornication and adultery, and encouraging marriage. The ideal spousal relationship itself is seen as a joyful oasis in an otherwise often-taxing world. So normal and encouraged is the marital sex life in Islam that it is permitted even during *Ramadhan*:

187. Permitted to you,
On the night of the fasts,
Is the approach of your wives.
They are your garments
And ye are their garments.²²⁷

The commentator Abdullah Yusuf Ali explains this verse, describing husbands and wives as each other's garments to imply spousal duties of "mutual support, mutual comfort, and mutual protection, fitting into each other as a garment fits to the body."²²⁸ Islamic scholars concur in the Prophet's dictum that "the most perfect of believers in faith are those who are the finest in manners and most gentle toward their wives."²²⁹ Although normal daily life will always result in disruption of perfect spousal harmony, "[d]alliance, jesting, and playfulness add to the toleration of offense; for these delight the hearts of women."²³⁰ Islam encourages the Muslim

For your souls beforehand. . . .

Id. at *Sura* II.223. Ali comments on the meaning of this *sura*:

Sex is not a thing to be ashamed of, or to be treated lightly, or to be indulged to excess. It is as solemn a fact as any in life. It is compared to a husbandman's tilth; it is a serious affair to him: he sows the seed in order to reap the harvest. But he chooses his own time and mode of cultivation. . . . He is wise and considerate and does not run riot. . . . [E]very kind of mutual consideration is required, but above all, we must remember that even in these matters [of sex] there is a spiritual aspect. We must never forget our souls, and that we are responsible to God.

Id. at 96 n. 249.

226. AL-GHAZALI, *supra* note 147, at 107-08.

227. THE HOLY QUR'AN, *supra* note 27, *Sura* II.187.

228. *Id.* at 77 n.195.

229. AL-GHAZALI, *supra* note 147, at 96.

230. *Id.* at 95.

husband "to be like a child in his family," despite his natural arrogance and "harshness."²³¹ Despite all this, Islam recognizes that spousal discord is very much a fact of marital life. Although domestic violence is frequently decried in the West as a sign of evil social patriarchy, Islam accepts that some physical interaction, while not desirable, is perhaps inevitable. As such, the *Qur'an* permits men to beat a disobedient wife "lightly."²³²

In return, the *hadith* and scholarly accounts are full of detailed and often surprising (if not uproarious!) accounts of wives who talked back or hit back, or even hit first. Even the Prophet himself was what the Western world would call a victim of domestic abuse! Notes Al-Ghazali, "[i]t was also related that one wife hit the Prophet in the chest, so her mother scolded her. The Prophet said, 'Leave her alone; they [wives] do worse than that.'"²³³

At the same time, real physical spousal abuse is discouraged in Islam. Al-Ghazali explained this at some length:

[One of] the last commandments that the Prophet left [was] . . . "Fear God; fear God as concerns your women for they are like putty in your hands, that is, captives. You have taken them as a trust from God, and intimate relations with them was made lawful through the word of God."

231. *Id.* at 96.

232. See THE HOLY QUR'AN, *supra* note 27, *Sura* IV.34. To be properly understood, this verse should be read in its entirety:

34. . . . As to those women
On whose part ye fear
Disloyalty and ill-conduct,
Admonish them (first),
(Next), refuse to share their beds,
(And last) beat them (lightly);
But if they return to obedience,
Seek not against them
Means (of annoyance):
For God is Most High,
Great (above you all).

Id. Ali observes that although the *Qur'an* permits a husband to administer "some slight physical correction . . . Imam Shafi considers this inadvisable, though permissible, and all authorities are unanimous in deprecating any sort of cruelty, even of the nagging kind." *Id.* at 220 n. 547. The next verse provides for the creation of a family council if all other measures fail:

35. If ye fear a breach
Between them twain,
Appoint (two) arbiters,
One from his family,
And the other from hers;
If they seek to set things aright,
Allah will cause
Their reconciliation:
For Allah hath full knowledge,
And is acquainted
With all things.

Id. at *Sura* IV.35. Notes Ali, this is "An excellent plan for settling family disputes, without too much publicity or mud-throwing, or resort to chicaneries of the law. . . . The arbiters from each family would know the idiosyncracies of both parties, and would be able, with Allah's help to effect a real reconciliation." *Id.* at 220 n.549.

233. AL-GHAZALI, *supra* note 147, at 95.

The prophet also said, "If a man is tolerant of his wife's bad manners, God will grant him the same recompense that He granted Job for his affliction; whoever tolerates the bad manners of her husband, will be granted by god the same recompense. . . ." Know ye that good conduct with her does not mean not harming her, but rather enduring harm from her in the face of her fickleness and anger in emulation of the Prophet; for his wives used to talk back to him, and on occasion one would leave him for the whole night.²³⁴

Although political "equality" of men and women has been achieved in the West through the gender-neutral practice of voting, Western "sexual" equality has come to pass only through making women despise marriage and family life, repress their own natural fertility, and destroy its ultimate product through abortion rather than suffer the slightest inconvenience. For the liberated, sterilized modern woman, the womb that so defined her sex has become a useless appendage, like an appendix. Feminist "liberation" has not empowered women, but has simply made them more and more like men. And it has done this in a way that is chillingly, coldly modern; Pan's altar is not a pitted stone slab in a wooded glen, but a stainless steel surgical table on which all evidence of women's mystery, her ability to bring invisible sperm and egg into a physical life form, is scraped out,²³⁵ cut out,²³⁶ or sucked out,²³⁷ bagged, and trashed. Western women have not been liberated so much as sterilized.

IV. POPULATION GROWTH AND THE "PROBLEM" OF DEVELOPMENT

I assert that modernity is only a cloak for an older game of power and propitiation that is always expressed as the need to control ancient forces of nature, of fertility and death, through the sacrifice of living things (be they born or unborn children, virgins, swarthy warriors, or hooped animals), orchestrated in an environment of open, unleashed sexual frenzy and constant subliminal sexual stimulation. These orgies of blood, semen, and death continue to be performed in the secular west today, albeit in the dubious names of science and "development," which has come to mean little more than the unceasing accumulation of wealth, to be used by a select few solely to acquire the ornaments of the material world, and perpetuate the survival of a rotting elite that fears the generational infusion of its own life-blood.

Although Judaism and Christianity have also played significant roles, Islam is the one main religion which makes no bones about its status within a state. Islam embraces all things, including statehood. Unlike Judaism and Christianity, which have passed through periods of great statism but have now lapsed into subconscious backwaters (often hypnotically acted out as

234. *Id.* at 94. See also *infra* text accompanying note 231.

235. Called dilation and curettage.

236. Called hysterectomy.

237. Called suction curettage.

little more than a Saturday morning bagel and perfunctory Sabbath worship, although Israeli Zionism and Orthodox Judaism need to be separately considered as a still-viable force), Islam is a real threat to pan-paganism, as expressed in modern secular Western society. Islam makes no bones about its mission, which is to impose order, restraint, humanity, and morality on the West's ongoing bacchanalia. The West seeks to counter Islam, alternatively by either questioning the source of its authority (which, being God Himself, the Most Gracious, the Most Merciful, is a fundamental blasphemy that Westerners are slow to grasp),²³⁸ or by frightening people, equating Islam with terrorism, and warning that this conflict will bring civilization as we know it, if not the world itself, to an end. The Clinton Administration has gone to great lengths to disarm Islam's vital force for change, by attempting to relegate it to the shallow depths of ethnic meals and habitual "high holidays" worship plowed by Judaism and Christianity,²³⁹ or else by equating Islam with death and destruction, with crime and uncontrolled mayhem:

[T]he United States does not have any quarrel with the religion of Islam; indeed, we respect it and we have many—share many—of the same fundamental values. But where you come to radicalism and extremism that prevents the operation of government and is involved in terrorism and killing, of course that needs to be resisted.²⁴⁰

This superficially conciliatory statement is typical of several such remarks made by the Clinton Administration indicating a willingness to "tolerate" some aspects of Islamic practice as long as it is confined to the sphere of "privacy." And yet a careful reading between the lines of U.S. policy positions clearly indicates that the Clinton Administration has "a quarrel" with Islam. The following exchange between a journalist and David

238. See, e.g., SYED MUZAFFAR-UP-DIN NADVI, *MUSLIM THOUGHT AND ITS SOURCE* 4 (2d ed., 1946):

In the Exoteric form of reasoning, we keep on affirming a cause for every phenomenon we come across or think about, and then ascertaining a cause for that cause and so on, until we reach a cause which has no cause for its existence. This self-existing cause is called God. In the Esoteric method of reasoning, we go on eliminating each and every phenomenon which is faulty or dependent, until we arrive at an existence that is free from all defects and that holds its own. This perfect and independent being is called God.

Id.

For the Muslim, God is All-Encompassing Power—much more than a disembodied presence, an abstract idea or merely a source of inspiration. Christians recognize this when they refer to God as "The Almighty," and yet without true belief or understanding, modernity shamefully relegates this acknowledgement to a few hymnal references.

239. Although both these religions have a legal order which survives in some form today (i.e., canon law), in the eyes of the modern state, such orders function as cultural or historical ideologies rather than laws. Israel is technically a religious state which observes religious Jewish law, but most other states whose populations encompass Jewish groups do not incorporate Jewish religious law into their national laws. Similarly, the Vatican is technically a religious state, although the vast majority of Roman Catholics do not live there. Islam faces similar challenges from some Muslim states, especially those which reject that PanIslamic utopian paradigm. See MALLAT, *supra* note 67, at 25.

240. Warren Christopher Address, *supra* note 23.

Shinn, Director of the State Department's Office of East African Affairs, on U.S. diplomatic relations with Sudan provides a convincing case in point:

Q: What is it that Sudan is doing that's objectionable?

Shinn: Sudan has, for some period of time, supported organizations like Abu Nidal, that has provided sanctuary for, provided safe houses for, and in a few cases, provided training for organizations like Hamas, Abu Nidal, Hezbollah, and Palestinian Islamic Jihad. That is our concern. . . .

Q: Well, what do you peg their motives on to that, and why was Sudan—what's their reason for doing this?

Shinn: I can only—I can only guess at what their motives might be, and I think it's an ideological kind of thing. They have a government in Sudan today which is—I would label as a fundamentalist kind of government which is supportive of some of the organizations that while we label them terrorist, they wouldn't label them as terrorist, perhaps. Only the Sudanese could answer that question. But I think they see these organizations in a very different light than we do, and I think it's related to their fundamentalist—their support for Islamic fundamentalism.

Q: [A] number of officials over the last year have gone to great lengths to say that they had no bone to pick with fundamentalism per se. You seem to be indicating that there is something about fundamentalism itself that troubles this administration, particularly in Sudan. Now, is that a North African phenomenon or is something throughout North Africa and the Middle East and the Central Asian Republics?

Shinn: Now, let me be very clear. I don't mean to imply that we have a problem with fundamentalism per se, but if that particular kind of fundamentalism is supportive of groups that we perceive to be terrorist and have strong evidence to that effect, then we are troubled, but it's not the issue of their being fundamentalist or not being fundamentalist, it's what they do to implement their kind of fundamentalism.²⁴¹

At the same news conference, Melissa Wells, Presidential Special Envoy to Sudan, gave her own views to the effect that Islam was very much a diplomatic problem, at least for her portfolio, and that the Clinton Administration aims to promote secular societies over religious ones:

Q: What is the north doing to enforce fundamentalism on Christians in the south?

Wells: “. . . I mean, the issues would be a constitution: What does it say about religion? Are there guarantees to the people who live in the country? And then the key thing—because when you're talking about *shari'a*, the Koran, I mean, they don't separate—I mean, they see the state and society as one. Now, what are you going to use as legislation? Okay? I haven't got the answers for you, but the fact is that they're talking about it.

241. David Shinn, Remarks Made During State Department Regular Briefing (Aug. 18, 1994) FED. NEWS SERV.

Q: But you're not saying they're negotiating a—

Wells: We're not negotiating—

Q: —Creating a plurlaistic society.

Wells: We're not negotiating yet. This is the first time. There are no other governments that have done this.

Q: Would you say they're considering the possibility of making their society a pluralistic one?

Wells: I'd like to think that. That's what I'm pushing and I'll be doing it again when I go to Khartoum.

Q: Would you say that was an accurate statement?

Wells: That what?

Q: That they are considering making their society pluralistic?

Wells: Well, they've made some very interesting comments to me, I mean, outside of the negotiations when I was in Khartoum. And of course I keep badgering them, if they're going to be—overcome their isolation, they have to give—there's no way that you can have a united Sudan and not have an accommodation, a solution on the issue of religion and the state.²⁴²

U.S. Secretary of State Warren Christopher likened Islam to a leeching parasite that could be curbed only by large doses of materialism:

[T]hat kind of extremism, that kind of radicalism feeds best, perhaps it feeds only at all on great misery, great economic woe. I think one of the reasons the United States is promoting economic development around the world is to try to ensure that the people of the world have a better life and feel less need to reach out for the kind of extremist, radical solutions that are involved here.²⁴³

I dispute these contentions This alleged "extremism" or "radicalism" on which the U.S. Secretary of State could not place a name is the "issue of Islam as a socially turbulent phenomenon."²⁴⁴ To name a thing is to acknowledge it, to give it life, power, and a certain dignity. Even though Secretary Christopher hesitated to make this endowment, Islam's general social forms are legion: Militant Islam, resurgent Islam, radical Islam,

242. *Id.*

243. Warren Christopher Address, *supra* note 23.

244. MALLAT, *supra* note 67, at 1. *But see* Judith Miller, *Faces of Fundamentalism: Hassan al-Turabi and Muhammed Fadlallah*, FOREIGN AFFAIRS, Nov.-Dec. 1994, at 123. ("While Turabi [Sudan's leader of the Muslim Brotherhood] credits Iran with having 'Islamized revolution,' he also argues that Iran's misfortune was that Islam came to power through revolution, a violent process that leaves a deep stain.")

revolutionary Islam, and Islamic fundamentalism, among others.²⁴⁵ Although Islam incorporates a basic ideology of justice and equality, the proponents of renewed Islam address their appeals for social revolution not through a need for material gain, but directly through their belief in the rightness of Islamic law itself—the *shari'a*, defined by Khumaini as “the ensemble of conditions and rules revealed in the *Qur'an* and the *Sunna*.”²⁴⁶ Islam’s perceived threat to the West is quite real to societies in which religion has degenerated into shallow holiday celebrations of Christmas and Hannukah and is no longer a source of unity and strength.²⁴⁷ The Clinton Administration’s alleged desire “to integrate the rich and wonderful spiritual heritage of Islam with the demands of modern states and the conflicts that must be reconciled in peaceful ways” reveals the West’s hope to emasculate Islam, to turn it into just another comfortable, commercial holiday.²⁴⁸ It is my position that if the United States proceeds along this course, it will be in

245. See JOHN L. ESPOSITO, *THE ISLAMIC THREAT: MYTH OR REALITY?* 7-8 (1992). Esposito avers:

I regard “fundamentalism” as too laden with Christian presuppositions and Western stereotypes, as well as implying a monolithic threat that does not exist; more fitting general terms are “Islamic revivalism” or “Islamic activism,” which are less value-laden and have roots within the Islamic tradition. Islam possesses a long tradition of revival (*tajdid*) and reform (*islah*) which includes notions of political and social activism dating from the early Islamic centuries to the present day. Thus I prefer to speak of Islamic revivalism and Islamic activism rather than of Islamic fundamentalism.

Id. at 8. (footnotes omitted).

246. See MALLAT, *supra* note 67, at 72 (quoting KHUMAINI, HUKUMA at 41).

247. Actually, such societies are easily threatened by any organized religion whose followers are committed to its practice, as opposed to a purely perfunctory form of practice. See, e.g., Abigail Van Buren, *Dear Abby: Daughter's Faith Studies Worry Mom*, WASH. TIMES, Dec. 6, 1995, at C11, in which a nonobservant Jewish mother laments her daughter's conversion to Catholicism: “Dear Abby: Four years ago, my 100-percent Jewish daughter (now 29) married a practicing Catholic her age. We are not religious, but we observe all the Jewish holidays.” *Id.* When told by her daughter of her plans to convert to Catholicism in light of her adoption of a child, her mother claimed to be shocked and surprised: “Abby, it was like being struck by lightning. She said she would still celebrate the Jewish holidays with us and nothing would change.” *Id.* But quite clearly, the mother correctly perceives that something very fundamental has in fact changed, and that her daughter may be attending Jewish holiday parties but is now worshipping God through Catholicism.

Is the adopted child Jewish? the mother asked *Dear Abby*. The very fact that the mother is inquiring through a syndicated newspaper column rather than through her rabbi is telling by itself. Devout holiday practice in the West obviously does not include rabbinical counseling. However, any reader of Jewish law can give the answer. If the child is the natural child of a Jewish mother, then the child is Jewish. If the child later converts to Judaism, the child is of course considered a Jew. If the child is baptized and educated in the Catholic faith, then the child will be a Catholic Christian. In Catholicism, it is the adoptive father's duty to do this under threat of excommunication, in accordance with canon law. Needless to say, the two faiths of Judaism and Catholicism are hardly compatible when placed in the same brain as forms of religious truth, since Catholicism can hardly be separated from its Christianity, and it is the rejection of Jesus' divinity that virtually defines modern Judaism. The mother's plea that her daughter “raise the child in both religions and then let her choose” is the kind of addled reasoning that plagues religion in America, where every aspect of life is supposed to reflect a “free-choice” democratic system—even for gurgling infants—rather than hierarchical authority based on parental choice. Even Islam's dictum that there can be no compulsion in matters of religion does not mean that there can be no religious education or religious training. People as adults will come to faith or not, but no faith would reject parents' right to educate their own child within the faith they themselves have chosen—the dilemma arises when each spouse actively professes a different faith from the other. What the mother is really saying here is that her daughter should hold dual *holiday celebrations* (the mother's idea of a religious practice) and then “let the child choose” a favorite *holiday*—a fairly meaningless exercise.

248. Building a Better Future in Africa: Remarks from the White House Conference on Africa; U.S. DEP'T OF STATE DISPATCH, July 4, 1994.

error. It will also lose an important opportunity to learn something about how ethical societies with strong religious foundations should behave towards one another.

Although it assigns stern punishments to bad behaviors, the *shari'a* is "the typical product of an ethical society."²⁴⁹ It is based mostly on the religious intuitive experience of the Prophet Muhammad (Peace be upon him), who received the divine message directly from God Himself (the Most Gracious and Most Merciful), and then transmitted these divine revelations to mankind. The *shari'a*'s impact on Muslim daily life is both transcendent and profound. As the orientalist Hamilton A.R. Gibb explained,

[T]he law itself, the Sharia, defined once and for all the constitution of the Muslim Community. The Sharia to the Muslim stands for all that the Constitution stands for in the United States of America and more. It established norms for all Muslim.²⁵⁰

Therefore, I liken the current growing spread of Islam to the *period* of European Enlightenment (rather than the Enlightenment itself), a unique but still controversial historical period in which certain grasped truths not only illuminated social behavior, but wrought dramatic changes. Common to both the Enlightenment and the current Islamic revival is an ability to wring substance from the historic past, except that in Islam, appreciation of certain Hellenic traditions, such as logic, philosophy, and higher mathematics, do not incorporate the kind of unrestrained paganism of the Enlightenment that so plagues the West today. Muslims are beginning to come to terms with their past and renew their sense of self through their faith in God and hope in the future—even a future that seems to be little more than an earthly power struggle. Muslims are coming to terms with their place in the world, not only through religious belief, but through study—a vehicle which has long been both a pleasure and a duty. In Islam, religious belief and veneration of God need not be sacrificed in the name of science; Islam encourages the pursuit of scientific knowledge and its application to daily life, and does not find scientific knowledge to be incompatible with religious belief.²⁵¹ Moreover, in Islam, there is no true division when it comes to higher learning: "All knowledge [even scientific knowledge] is religious knowledge. There is no sacred and no profane."²⁵² Islam does not shy away from the reality of science, but it will take its time to muse on, and prepare for, science's incorporation into society. And such incorporation must necessarily go hand-in-hand with self-discipline and vision. Although Islam readily acknowledges man's individual power to choose between good and evil, right and wrong, Islam resists the notion of man having a free and

249. GIBB, *supra* note 25, at 198.

250. *Id.* at 200.

251. See NADVI, *supra* note 238, at 1-4.

252. IMAD-AD-DAN AHMAD, SIGNS IN THE HEAVENS: A MUSLIM ASTRONOMER'S PERSPECTIVE ON RELIGION AND SCIENCE 149 (1992) (emphasis added).

unrestricted will in the sense of God having delegated to man full powers over life and death on earth. Man must always be restrained by God's commandments. The rampant, unleashed destruction of the French Revolution may find its parallel in Islamic movements like the Iranian Revolution; but even revolution has its limits. The Enlightenment's deification of reason and its focus on man as God, a humanist's perception of the gift of science has no application in Islam. The Imam Ja'far-as-Sadiq declared that

[T]o affirm such a principle would destroy all the human foundations of morality, and give to all human beings absolute licence (sic) in the indulgence of their animal propensities; for if each individual is vested with a discretion to choose what is right and what is wrong, no sanction, no law can have any force.²⁵³

Inherent in the struggle between paganism and the three great faiths of monotheism is the awareness of the West's cultural pervasiveness. Muslims are especially mindful of how far Westernization of the whole world has proceeded, especially through the influence of television. While this may have wrought some benefits in technology for Islamic states, Muslims are also acutely aware of how decadent the West has become—sexually licentious, crime-ridden, disease-ridden, and drug-addicted—and the West's decline fills Muslims with fear, fear that if the West's influence extends through the Islamic world unchecked, Islamic states will become similarly degenerate and decline. Muslims, even those in the most repressive states, see evidence of the West's social decline on Cable News Network (CNN) shows and the NBC "Superchannel" every day. Westerners take this cultural media "sharing" as evidence of the ordinary Muslim's interest and desire to *emulate* his Western counterpart, but this view is erroneous and not a little delusional. It is true that Muslims know a lot about Western culture, but this is not the same as wanting to *be* Westernized. Muslims drink Coca-Cola (the United States' national drink), they know about O.J. Simpson (the United States' national obsession), and even though *mullahs* disapprove, they may even be aware of moronic television shows like *Baywatch*. But the West makes a serious error in thinking that this curiosity and attraction about Western "civilization" proves Freud's theory of the narcissism of little differences. Islam will take what it wants from the West—it has always done so—and will freely incorporate it into its culture. It will take vaccine and electricity, chemotherapy and computer technology, Ford pickup trucks and washing machines, but it will forcefully reject those elements of the cultural package that it views as decadent, and it will aggressively protect the Muslim way of life even if this seems to lead back to "underdevelopment." Islamic societies may purchase the car, but they put on the brakes when they see the most precious aspects of their being threatened through Western feminism,

253. NADVI, *supra* note 238, at 16-17 (quoting AMIR ALI, SPIRIT OF ISLAM).

socialism, communism, conservatism, or liberalism, and then development seems to come to a screeching halt. Yet Muslims contend that this ability to stop—to “go back in time” or to “regress” (always the criticism of the West)—is the very thing that will save them. And it is not so much the stop and go that will provide the safeguard as it is the Muslim’s knowledge of *where* he is going (to be closer to God) and *how* he is getting there (by driving on the *right road*). This “stop and go” logic is best illustrated by Islam’s handling of modern science. Notes Islamic scholar Imad-ad-Dean Ahmad, “The impression that scientific knowledge is unlimited is exhilarating. However, if it is not limited by moral conscience, the exhilaration is heightened by an undercurrent of terror.”²⁵⁴ In Islam, the awesome power of science is balanced by *Tawhid*—the belief in the oneness of God, Islam’s most fundamental precept. *Tawhid* “has its corollary in physical science, the belief that the laws of nature, properly understood, reveal the hand of a single creator.”²⁵⁵ Islam would aver, far more quickly than any Western culture, that simply because something is scientifically possible does not mean that it is therefore good for society. Some things simply should not be done. Evil discovered should be left untouched.

But some things clearly *should* be done as part of God’s plan, and Islam views the pursuit of knowledge as not merely a right of all individuals, but as a duty.²⁵⁶ Abstractly speaking, Islam views the pursuit of knowledge as a form of direct communication with God. Learning and study are not only good, they are part of God’s divine plan. The same is true of development. God is willing to guide people to a better life, but God requires that the people concerned actually desire development themselves. The *Qur’an* states that

11. For each (such person)
There are (angels) in succession,
Before and behind him:
They guard him by command
Of Allah. Verily never
Will Allah change the condition
Of a people until they
Change what is in themselves . . . ²⁵⁷

However, the issue of economic development does present an area in which Islam may be vulnerable to valid criticism from the West, but not for Warren Christopher’s reasons. Islamic economics’ theoretical foundations “tend to dabble in generalities and to err in a lack of rigour”²⁵⁸ that prevents them from being well-understood by the West and even within Islam

254. AHMAD, *supra* note 252, at 148.

255. *Id.* at 89.

256. *Id.* at 21-22.

257. THE HOLY QUR’AN, *supra* note 27, at 605-66, *Sura XIII.11*.

258. MALLAT, *supra* note 67, at 111.

itself. That Islamic scholars of economics focus their work on *Ibn Khaldun* is, according to Chibli Mallat, "the sign of the apparent dearth of material from which to draw an Islamic theory of economics."²⁵⁹

Some scholars claim that those bemoaning the ephemeral, seemingly incomplete nature of Islamic economics entirely miss the point—Islam incorporates no "science" of economics per se, but only *a right way of economic being*; Islam "shows the way to follow in the economy, and does not explain the way economic events occur."²⁶⁰ There is only God's will, of which what we call "the economy" is clearly a part. Likewise, economic "events" occur through God's will, and any imbalance is from man's failure to obey God's commandments. To the extent that man is directly involved, it is as an instrument of God's perfect justice. Islam could never view economics as a series of immutable "laws" determining "events" untempered by ethical considerations, but rather sees it in equitable terms of economic justice (*al-'adala al ijtima'iyya*) determined by the conscious and voluntary human behavior that corresponds to the *shari'a*²⁶¹ and includes the payment of *zakat*,²⁶² the prohibition of *riba*,²⁶³ the sanctity of contracts²⁶⁴ and

259. *Id.*

260. *Id.* at 121.

261. *Id.* at 121-22.

262. See generally FARISHTA G. DE ZAYAS, 1 THE LAW AND PHILOSOPHY OF ZAKAT (1960). Commonly considered a form of taxation legislated by the *shari'a*, *zakat* also implies spiritual generosity and nobility in action. See NASR, *supra* note 4, at 108, 117. However, the latter does not mean that *zakat* is a charitable "donation given by the rich to the poor who must be grateful for it. . . . It is either ignorance or malice to consider *zakat* as a charity instead of a universal due." Qutb, *supra* note 44, at 66-67. *Zakat* had fallen into desuetude except as a voluntary charitable contribution, but Muslims are seeking to restore its mandatory character. See SCHACHT, *supra* note 51, at 105, 206. Indeed, the *Qur'an* requires those who would practice "righteousness"—who would be Muslims—to give not only charity, but public assistance. *Sura* II.177 explains the difference between formalistic religion, and what is expected of Muslims:

177. It is not righteousness
That ye turn your faces
Towards East or West;
But it is righteousness—
To believe in Allah
And the Last Day . . .
To spend of your substance,
Out of love for Him,
For your kin,
For orphans,
For the needy,
For the wayfarer,
For those who ask,
And for the ransom of slaves;
To be steadfast in prayer,
And give *zakat*. . . .
Such are the people
Of truth, the God-fearing.

THE HOLY QUR'AN, *supra* note 27, at *Sura* II.177.

263. See QUTB, *supra* note 44, at 63; SCHACHT, *supra* note 51, at 12, 145-46. *Riba* is broadly defined as "unjust enrichment." *Id.* at 145. The *Qur'an* forbids Muslims from "eat[ing] up property" among fellow Muslims and others:

And do not eat up

the protection of private property.²⁶⁵ Muslims as individuals undertake a whole range of economic actions stretching from the mundane to the complexly international, affecting countless millions of others.²⁶⁶ But their business and economic lives, like their personal lives, should be ruled by the *shari'a*.

Part of the Islamic view of the "problem" of economics in Islamic development is that the non-Islamic world impiously resists God's will. Economics has its own "laws" independent of God's laws, and the Islamic world is correctly pious but not yet sufficiently enlightened to sufficiently obey God's will for the economy. For Islam, the "laws" of Western economics often conflict in fundamental and seemingly irreconcilable ways with the *shari'a*. For example, the payment of interest (*riba*) on loans is prohibited by the *shari'a*.²⁶⁷ Naturally, this prohibition of a very basic Western banking practice poses a conflict in multilateral financing projects.²⁶⁸ Islamic banks must therefore lend "either on some other basis of return to the lender, or on very low interest rates compared to the interest rates and other financial charges used by Western commercial banks."²⁶⁹ Although such practices bring the Middle Eastern bank in compliance with *shari'a*, the competitive disadvantages are obvious. Theories of a general system of Islamic economics and more specialized systems such as banking and investment are evolving, however.

Prior to the 1973-74 "oil shock," most Middle Eastern states' national finances, including reinvestment of petro funds, had been handled largely by

Your property among yourselves . . .
With intent that ye may
Eat up wrongfully and knowingly
A little of (other) people's
property.

THE HOLY QUR'AN, *supra* note 27, at *Sura* II.188.

264. *Sura* II.177 exhorts Muslims "[t]o fulfil the contracts Which ye have made." THE HOLY QUR'AN, *supra* note 27, at *Sura* II.177. See also SCHACHT, *supra* note 51, at 22, *Sura* II.177.

265. QUTB, *supra* note 44, at 61-62. *Sura* IV.32 declares private property to be from God:

32. And in no wise covet
Those things which Allah
Hath bestowed His gifts
More freely on some of you
Than on others: to men
Is allotted what they earn,
And to women what they earn:
But ask Allah of His bounty.
For Allah has full knowledge
Of all things.

266. See, e.g., Anne Reifenberg, *Saudis Maneuver to Enhance Oil Income; OPEC Turns to Refining, Marketing Ventures in Asia*, WALL ST. J., Dec. 6, 1995, at A14.

267. A.O. Adede, *Legal Trends in International Lending and Investment in the Developing Countries*, II RECUEIL DES COURS 11, 112 (1983).

268. *Id.* citing Karsten, *Islamic and Financial Intermediation in 29 INT'L MONETARY FUND STAFF PAPERS* 108 (1982); see also Cooper, *A Calculator in One Hand and the Koran in the Other*, EUROMONEY (Nov. 1981).

269. Karsten, *supra* note 270, at 112.

Western commercial banks.²⁷⁰ *National* Middle Eastern banking arrangements were initially conducted solely on the basis of national ethnicities. Indeed, after the 1967 Arab Summit in Khartoum, the Arab Fund for Economic and Social Development (AFESO) was set up for financing economic and social development projects in "Arab" states only, as "an Arab League institution for the Arabs."²⁷¹ However, Pan-Arabism proved a fragile unifying force when compared with Islam, and Middle Eastern banking soon focused on Islam as a preferred common denominator.²⁷² For example, while the Islamic Development Bank (IDB) has some non-"Arab" members, from its inception the IDB's purposes were limited to assisting Islamic Conference members.²⁷³ However, some Islamic development banks transfer capital to generally needy states, especially those in Africa, as a form of *zakat*, or charity.²⁷⁴ The process was speeded up by the growth of OPEC, which enabled Middle Eastern OPEC members to establish their own national and multilateral financial institutions (including regional development banks) to invest their petrodollars.²⁷⁵ When these funds diminished in the 1980s, the "Arab" banks moved their investments from large bank deposits and real estate holdings in the West to smaller, local development projects in their own and neighboring states.²⁷⁶ The aim of such regional projects is "to foster economic development and social progress of member countries and Muslim communities individually as well as jointly in accordance with the Shariah."²⁷⁷

Two seminal works by the late Iraqi *Shi'i* scholar Muhammad Baqer as-Sadr, *Iqtisaduna* and *Al-bank al-la ribawi fil-Islam*, have significantly contributed to their formulation. According to Sadr, as interpreted by Mallat,

Islam disagrees with the capitalist outlook because it considers that nature has ample resources for mankind, and with the socialist outlook in that the problem resides not "in the forms of production, but in man himself."²⁷⁸

The concepts of labor and need are central to modern Islamic economics, which sees the unjust (but not necessarily unequal) distribution of wealth as the major threat to social order. Sadr explains:

270. See *The Role of Middle East Financial Institutions*, in INT'L LAW 205 (R.S. Randell ed., 1980).

271. Adede, *supra* note 267, at 109.

272. In fact, the distinction between "Arab" and non-Arab is largely a false one. See His Excellency Salah El Dine Tarazi, *La Solution des Problemes de Statut Personnel Dans le Droit des Pays Arabes et Africains*, 1 RECUEIL DES COURS 345, 359-96 (1978).

273. *Id.*

274. See Adede, *supra* note 267, at 110-11.

275. *Id.* at 108-112.

276. *Id.* at 108-09.

277. *Id.* at 109 (quoting Article I of the Agreement creating the Islamic Development Bank in 1974).

278. MALLAT, *supra* note 67, at 119 *citing* MUHAMMED BAQER AS-SADR, *IQTISADUNA* 307 (1977).

Labour is a primary tool of distribution from the standpoint of ownership. The person who works in nature reaps the fruit of his work and possesses it.

Need is a primary tool of distribution as the expression of a human right which is essential in life. Islamic society recognizes and supplies essential needs.

Property is a secondary tool of distribution, by way of commercial activity which Islam permits within special conditions which do not conflict with the Islamic principles of social justice.²⁷⁹

In this light, population growth or decline as a natural phenomenon of itself is neither good nor bad for the economy, but is the will of God (the Most Gracious and Most Merciful). People are not something to be artificially controlled, especially not for the "good" of the economy, and they are more than labor (a mere resource). Working in the world is a way of being, and it is the fulfillment of God's will for those who are able to work. Workers are entitled to the fruits of their labor in conjunction with the *Qur'anic* commandments on *zakat*, for Islamic justice demands that Islamic people share. Sadr explains further:

In Islam, labour is the cause of the worker's appropriation of the commodity, and not the cause of the commodity's value. For when the labourer extracts a pearl, he does not thereby confer value to the pearl, but he possesses it by this very work [of extraction].²⁸⁰

Economic "problems" arise not from bad scientific interpretation or too few workers, all taking too much or too little pursuant to some anonymous, unanswerable "law," but from man's own intervening inattention, or greed and selfishness. According to Sadr, as cited by Mallat, in Islam, need "is an essential component of distribution, which is regulated by the moral principle of 'general insurance and social solidarity in the Islamic society.'"²⁸¹ In Islam, people are not labor; rather, *labor* is something that people (God's special creation) *do*, in addition to other things. Such laboring people are not commodities. They are God's creation, through which the world survives:

1. O mankind! Fear
Your Guardian-Lord,
Who created you
From a single Person,
Created, out of it,
His mate, and from them twain
Scattered (like seeds)

279. *Id.* at 121.

280. *Id.* at 120.

281. *Id.*

Countless men and women;—
 Fear Allah, through Whom
 Ye demand your mutual (rights),
 And (be heedful) the wombs
 (That bore you): for Allah
 Ever watches over you.²⁸²

I further contend that not only is there nothing inherent in Islam that would preclude economic development with a population unchecked by abortion, but that Islam's anti-abortion stance is reasoned, sound, and anything but religiously irrational. Moreover, it is very close to the Vatican's view on population growth. As Michael Novak, a theologian at the American Enterprise Institute explained,

The crisis is not a population crisis. What's wrong with abortion is you are killing the cause of the wealth of nations. As Pope John Paul II said, people create wealth. They create wealth more than they consume it, and they do so when the system is one that liberates their capacities to do this. Countries that do that, even if they have very large populations, are quite prosperous. Japan is one instance, Hong Kong, Singapore, South Korea, Taiwan. These countries have moved rapidly out of poverty, and they do very well. People are the cause of the creation of wealth. They're not the problem. The problem is a repressive economic system.²⁸³

The Catholic Church and Islam's discouragement of abortion does, however, conflict with the Clinton Administration's policy on abortion as a fundamental human right—a policy that has been kept largely secret from the general public and, when publicly discussed in international forums, is framed in a manner that is calculated to mislead. This kind of deceptive behavior is addressed in the *Qur'an* itself, which a Clinton Administration official would do well to read and take to heart:

189. It is no virtue if ye enter
 Your houses from the back:
 It is virtue if ye fear Allah.
 Enter houses
 Through the proper doors:
 And fear Allah:
 That ye may prosper.²⁸⁴

In the words of the commentator Abdullah Yusuf Ali, "If you enter a society, respect its manners and customs. [And] if you want to achieve an object honourably, go about it openly and not by a back door."²⁸⁵ This the Clinton Administration failed to do in Cairo.

282. THE HOLY QUR'AN, *supra* note 27, at *Sura* IV.1.

283. MacNeil/Lehrer *News Hour: Papal Pressure* (PBS television broadcast, Sept. 7, 1994) [hereinafter *Papal Pressure*].

284. THE HOLY QUR'AN, *supra* note 27, at *Sura* II.189.

285. *Id.* at 79 n.203.

V. CLINTON AND THE CAIRO CONFERENCE

One of the Clinton Administration's earliest foreign policy aims was to entrench the practice of abortion in both U.S. domestic law and, more broadly, in international law as an "international human right" and a "fundamental right of all women."²⁸⁶ In support of this agenda, the Clinton Administration sought to link abortion to the "empowerment" of women, ostensibly through health services and education, as a necessary part of an overlying policy of third world development.²⁸⁷ This was a direct reversal of earlier U.S. policies. In 1984, the U.S. delegation sent by President Ronald Reagan told the 1984 international population conference in Mexico city that population was "neutral as a variable" in global development.²⁸⁸ The United States then asserted that free enterprise and privatization could promote sufficient development to enable developing states to support their expanding populations.²⁸⁹ The Reagan Administration's delegation not only assisted in drafting language specifically excluding abortion as a family-planning method, but it announced that the United States would no longer fund the International Planned Parenthood Federation (IPPF) and the United Nations Fund for Populations Activities (UNFPA) because some of their clinics performed abortions.²⁹⁰

No later than his second day in office, in January 1992, President Bill Clinton issued an executive order repealing the 1993 Helms Amendment, which had dammed the flow of funds to IPPF and UNFPA.²⁹¹ Clinton's executive order effectively surrendered \$75 million to Planned Parenthood from the U.S. Agency for International Development over a five-year period.²⁹² Thereafter, total U.S. funding for international population programs jumped dramatically to \$595 million for the fiscal year 1994, "a figure," noted one journalist, "that the [Clinton] administration would like

286. See John Leo, *supra* note 75. This language appeared in the March 1994 State Department cables sent out by Timothy Wirth, discussed *infra* text. See Remarks of Madeline Albright, in *Funding of the United Nations*, *supra* note 69.

287. Kim Murphy, *U.S. Population Team Has Changed Jerseys in last Decade; Growth: At '84 Conference, the Reagan Administration Said Expanding Numbers had no Bearing on Development. Now Washington has Led the Way to Adoption of Strategies for Curbing Population Boom*, L.A. TIMES, Sept. 14, 1994, at A9.

288. *Id.*

289. *Id.*

290. *Id.* In fact, both these organizations have been described as "two of the world's most powerful population control organizations." Amrit Wilson, *Breeding Difficulties; Population Control Policies*, NEW STATESMAN & SOC'Y, Sept. 2, 1994, at 20. Both were the main organizers of the ICPD. According to one writer, in 1994 "the annual U.N. budget for UNFPA [alone] is \$5 billion." Brian Robertson, *Uncle Sam, The Population-Control Bully? U.S. Agenda at Cairo Questioned*, WASH. TIMES, Aug. 26, 1994, at A8.

291. See NPR Weekend Edition: *Clinton Opens Door to World Population Control Support* (NPR radio broadcast, Jan. 23, 1993).

292. John M. Goshko, *Planned Parenthood Gets AID Grant; Award Ends Long Ban on Funding Abortion-Related programs Overseas*, WASH. POST, Nov. 23, 1993, at A12.

to see keep going up."²⁹³

But it was never clear to the interested public exactly where the money for the new population programs was coming from, or where it was going, or who was in charge of it. When questioned on exactly this point, Wirth was evasive:

Well, I mean, this is the—the population program is run out of AID, and we run the interference for that. It's not—you see, we don't have—the programs run out of our bureaus are the refugee program, and . . . the narcotics program. . . . You know, the major population program, and that runs out of AID—a lot of the—some of the narcotics program does as well; these are administered by AID—it's really a combination of the two if you look at it. . . . We are supporting a whole lot of united—a whole variety of United Nations activities. There are—it's very hard to say there is not a defined budget that is just a budget. Much of this is in the United Nations. Much of it goes through AID. And the two biggest parts of it—counter-narcotics and refugees—outside of population, we manage ourselves. Okey-dokey. Well, thank you all very much for coming.²⁹⁴

The policy decision to revitalize abortion may not have been entirely the work of Democratic party fringe groups. In 1993, then-U.S. Secretary of Defense William Cheney had reported to President Bush and the U.S. Congress, "Failure by the western nations to promote stability in Africa could result in disruption in the production and distribution of strategically important resources and could reduce access to facilities important to regional contingencies."²⁹⁵ Cheney was undoubtedly referring to concerns of U.S. international security, and the fact that African states produce 90 to 100 percent of four minerals vital to U.S. industry—platinum, manganese, chromium, and cobalt.²⁹⁶ Since "stability" cannot be maintained through use of military force, except through U.N. Security Council authorization, it may be that the United States chose to create "stability" by slipping into Africa through the "back door" of population control, through which the targeted states could be pressured, by development and other financial enticements, into "maintaining the status quo, under which advanced capitalist countries control the world's resources and labour power."²⁹⁷

For whatever reason, after his election, Clinton picked up Cheney's African population hot potato and targeted sub-Saharan Africa; in this, he was supported by Joseph Speidel, President of the NGO Population Action International, who claimed that population growth there is a ticking bomb:

Well, sub-Saharan Africa—it's the worst. The average number of children

293. Brad Knickerbocker, *U.S. Assuming Major Role at Cairo Population Talks*, CHRISTIAN SCI. MONITOR, Aug. 31, 1994, at 1.

294. Tim Wirth Remarks, *supra* note 22.

295. See Wilson, *supra* note 290, at 20.

296. *Id.*

297. *Id.*

there is about six, whereas in—when you look at the entire less-developed world, which includes China—it's 3.6, so you can see there's a very big difference. Sub-Saharan Africa as a whole is doubling in size about every 2.5 years, so that is a very rapid growth rate.²⁹⁸

This position has not gone unchallenged. Although sub-Saharan Africa was targeted by the Clinton Administration for population control, the fact is that its population density is extremely low; for example, Botswana has only 2.23 people per square kilometer compared to 230 per square kilometer in the United Kingdom.²⁹⁹ Moreover, China's coercive and compulsory birth-control and abortion programs—all being done in the name of health and development—have been bolstered through the killing of baby girls and the slow genocide of ethnic population groups such as Tibetans. China's nightmare is hardly a program for states to emulate. And yet it could have been very much a part of President Bush's much-heralded "New World Order." Alex de Sherbuinin observed that the West's "control of third-world populations interlocks with, and provides, the long-term regulator for very many of the recent economic and political initiatives in Europe and the U.S., all of which aim at a situation where capital is mobile and labour immobile."³⁰⁰

The momentum against sub-Saharan Africa and the rest of the breeding world did not begin with Clinton. In fact, U.S. spending on population control had grown to almost \$3 billion a year by the 1980s, and in addition to money lent by the United States directly for population control activities, the World Bank was conditioning many of its ordinary development loans on the implementation of population control programs.³⁰¹ But up to then, the United States had not openly advocated abortion on demand as a third world cure-all, and certainly had not promoted abortion as an international human right. This changed when the Clinton Administration came to power.

President Clinton made no bones about his interest in Africa, which he openly though artlessly discussed as an important aspect of U.S. security: "I do believe Africa matters to America. . . . And I know my child's and my grandchildren's future depends upon reconstructing the environmental and social fabric of that continent. I know that."³⁰² Vice-President Gore elaborated more specifically, plucking the popular heartstrings of altruism, democracy, and interested voter-constituents, against the collapse of communism:

This Administration wants to help. In part, our interest in Africa arises out

298. *Interview with Joseph Speidel, supra* note 19.

299. *See Wilson, supra* note 290, at 20.

300. *Id. citing* Population Reference Bureau for the Pew Charitable Trust's Global Stewardship Initiative—Alex de Sherbuinin, *Population Issues of Concern to the Foreign Policy Community* (October 1994).

301. *Id.*

302. *Building a Better Future in Africa, supra* note 247.

of a vision of foreign policy enunciated by the President during the campaign and much of this year. It is a three-pronged vision: One that seeks to promote democracy, promote prosperity, and promote our own national security in an age when the Berlin Wall has been dismantled and people are casting ballots in the Kremlin. Our interest in Africa arises, as well, from our passionate belief in the common bond of humanity and from the fact that both this President and Vice-President speak for 25 million Americans whose roots are in Africa.³⁰³

But both executives left the dirty work to U.S. Secretary of State Warren Christopher, who had to put all their lofty language together with the U.S. decision to promote abortion not only as an international human right, but as a necessary environmental and security safeguard against global catastrophe. In a pointed reference to Rwanda, Christopher decried Africa's "horrible ethnic violence and bloodshed" and, although he mentioned but neglected to name precisely its "root causes," he elaborated that he was concerned with all aspects of "the problem" for which abortion—to be promoted at the Cairo Conference—was a likely solution:

[e]specially [with] the interlocking crises of environmental degradation, unsupportable population growth, and disease. If we fail to confront these scourges now, more lives will be wasted. When the Cairo population conference convenes in September, the United States will lead in global efforts to address too-rapid population growth.³⁰⁴

Islamic scholars were not unmindful of the fact that the United States views Middle Eastern oil—lifeblood of the West—as an equally strategic resource. It had clearly not been for humanitarian reasons alone that the United States had gone to war against Iraq's Saddam Hussein in 1990, but because Saddam Hussein had threatened nearby oil fields. Islamists were well-aware that development donations from the West were not done out of sincere generosity for the good of the less wealthy, but for essentially selfish reasons of interest, and always came with a hefty cultural price tag attached:

The interests of donors cannot be said to rely on pure human intentions for helping the development, but to reduce the risk of unemployment, civil disturbances and extreme income inequalities which could and can cause problems such as migration, terrorism, epidemics and growing hostility towards developed countries. In analyzing the European reaction to the low levels of American aid and giving the rationale for spending on international order, Joseph Nye says: "[I]n a world of transnational interdependence, international order can hurt, influence or disturb the majority of people living in the United States." It is interesting to note that the rise of fundamentalism in general is often attributed to the income inequalities and this also constitutes a further threat perceived by developed countries.

303. *Id.*

304. *Id.*

This approach, when thought in the context of liberal democracy and fierce campaign against fundamentalisms, gives certain clues for the industrial world's new path for shaping the political economies of the underdeveloped world. In Nye's words, "We [the U.S.] want to promote liberal democracy and human rights where we can do so without causing chaos. The reason is obvious: Liberal democratic governments are less likely to threaten us over time."³⁰⁵

Domestically, Clinton took equally aggressive steps to promote pro-abortion policies. He appointed Dr. Jocelyn Elders, a strong advocate of birth control, as Surgeon General,³⁰⁶ and he spoke out in favor of clinical trials for the nonsurgical abortion drug RU-486.³⁰⁷ In 1993, Clinton issued an executive order to lift a 1988 ban on abortions at military hospitals overseas, allowing military facilities to perform abortions at patients' expense.³⁰⁸

Next, Clinton appointed a special task force to study international population issues as part of his Council on Sustainable Development.³⁰⁹ Clinton also lost no time in creating a new State Department post for "global affairs" into which he installed Tim Wirth, a Colorado Democrat loyal to Clinton who had just lost his re-election bid to the Senate.³¹⁰ Wirth, who had also been a board member of a Colorado Planned Parenthood chapter

305. Address by Savas Safak Barkcin, Planning Expert, State Planning Organization of Turkey, entitled *Political Implications of Development Rhetoric and Assistance in the New World Order: Lessons and Prospects for the Muslim Countries* (presented at the Workshop on Islamic Political Economy in Capitalist Globalization Process, Universiti Sains, Penang, Malaysia) (Dec. 12-14, 1994) (internal citations omitted).

306. *White House Briefing: Appointments to the Clinton Cabinet*, Dec. 24, 1992. Clinton's appointment of Dr. Elders, who called herself "the condom queen," was controversial from the start. See Assoc. Press, *Marijuana Use, Condom Distribution; Clinton Surgeon-General Choice Favors Both*, THE RECORD, Dec. 20, 1992, at A20. The day before Clinton's inauguration, Elders attacked the Roman Catholic Church at a pro-abortion rally in Little Rock, Arkansas: "Look who's fighting the pro-choice movement," she shouted, "[a] celibate, male-dominated church." Catholic voters, who had helped to turn the election in Clinton's favor, were outraged, and Elders was later forced to apologize to Archbishop Keeler of Baltimore in writing. See Carl M. Cannon, *U.S. Catholics Becoming Disillusioned With Clinton*, BALTIMORE SUN, Sept. 12, 1994, at A1.

307. *RU-146 Abortion Pill: Hearings Before the Regulations, Business Opportunities and Technologies Subcommittee of the House Small Business Comm.* (May 16, 1994). For Clinton's views on RU-486 as a presidential candidate, see Dan Balz & Edward Walsh, *Clinton Close to Decision on Ticket*, WASH. POST., July 8, 1992, at A1. Despite his victory at the polls, not all U.S. citizens were pleased with his stance. Specifically, Gov. Casey complained that the Clinton Administration "promoted the abortion drug, RU-486, in a very coercive way, which I've never seen the Food and Drug Administration ever do before. Calling in private enterprise companies and bludgeoning them until they agree to license a drug whose safety and efficacy remains in doubt, by the very agency which later, down the road, must pass on that application as to the safety and efficacy of this drug." See Robert Casey, Address made during a National Press Club luncheon, (May 11, 1993), REUTERS TRANSCRIPT REP. In a move that he would mimic at the Cairo conference, Clinton included funding for RU-486's development as part of his overall national health care package. See Bob Ringham, *Chicago Dems Give \$1 Million to Clinton*, CHI. SUN-TIMES, July 29, 1992, at A3.

308. In May 1995, the U.S. House National Security Committee voted to restore the ban as part of the Defense Department's reauthorization bill.

309. *Sustainable Development, Printing, Chemical Industries Targeted for Eco-Efficiency Projects by Council*, BNA NAT'L ENV'T DAILY, Apr. 19, 1994.

310. At the U.S. State Department, this office is known as the "department of population." See Murphy, *supra* note 287, at A9.

prior to his appointment,³¹¹ lost no time proclaiming that his mentor President Clinton believed that women “everywhere” should have “access” to safe abortions.³¹² Wirth acknowledged that the Clinton Administration’s promotion of abortion was a dramatic change in U.S. foreign policy.³¹³ He also claimed that “our commitments on population” are “top priority for everybody” in the U.S. government.³¹⁴ He described the purpose of his mission somewhat obscurely as “to conserve what many would call God’s creation,” and identified high birth rates as causing problems for “our national security, population, environment, counter-narcotics, terrorism.”³¹⁵ Although Wirth did not elaborate on what each problem had to do with the other, he linked them inextricably to population control, including counter-narcotics and terrorism.³¹⁶

The sole *raison d’être* for the creation of Wirth’s new post seems to have been preparing the Clinton Administration’s pro-abortion agenda for the United Nations global population conference at Cairo, Egypt, in September 1994.³¹⁷ Not surprisingly, Wirth headed the U.S. delegation.³¹⁸ Wirth crowed that the Cairo Conference would be the Clinton Administration’s “centerpiece” for 1994: “That will be for population what Rio was for the environment.”³¹⁹ To emphasize the Clinton Administration’s emphasis on reduced population size as a key factor in increased economic development, the meeting was formally captioned as the International Conference on Population and Development (ICPD).³²⁰ Throughout the conference, and continuing today, the Clinton Administration has lobbied long and hard to have population growth blamed for a myriad of recent ills, including “environmental degradation . . . and the mass movement of refugees,” causing U.S. Secretary of State Warren Christopher to link population growth even to problems of U.S. national security: “[P]roblems like that [population growth] now pose immediate threats to emerging democracies and to our global prosperity.”³²¹ U.S. Undersecretary Wirth concurred even more vividly: “Current conflicts [in Rwanda, Haiti, and the Mexican State of Chiapas] offer a grim foreshadowing of the anarchy that could engulf more and more nations if we fail to act.”³²²

Conference delegates from developing states were puzzled by the Clinton

311. See Robertson, *supra* note 290, at A8.

312. See Hobart Rowen, *\$100 Million More for Family Planning* (editorial), WASH. POST., June 24, 1993, at A19.

313. See Tim Wirth Remarks, *supra* note 22.

314. *Id.*

315. *Id.*

316. *Id.* See also Wirth’s statement on sources of funding, *supra* text accompanying note 293.

317. Robertson, *supra* note 290, at A8.

318. *Id.*

319. Tim Wirth Remarks, *supra* note 22.

320. See Murphy, *supra* note 287, at A9.

321. Warren Christopher Address, *supra* note 23.

322. Knickerbocker, *supra* note 293, at 1.

Administration's efforts to link population decline with advanced economic development, however. Noted Leonardo Casco, a Honduran delegate, "It was a surprise to see that in a document that's supposed to deal with population and development, out of 89 pages only six deal with development."³²³

Nevertheless, Warren Christopher crowed that the ICPD was "historic" and "restored American leadership of the critical issues of population and development."³²⁴ Wirth gushed that the United States' promotion of abortion contributed to "a sense of electricity and excitement on the floor. Dozens of delegates came over [to me] and said, 'Welcome back to humanity; welcome back to the world.'"³²⁵ One can only wonder at Christopher's self-laudatory comments in the face of so many facts to the contrary. In fact, at Cairo, the Clinton Administration proved itself to be composed mostly of liars and opportunists, if not word-wise mugwumps who sought mainly to confuse and obfuscate important issues of fertility, of the role of women and families in modern times, of even life and death. Rather than encouraging an open international debate on the issue of abortion, sterilization, and other population-reducing measures, the Clinton team, trailed by Clinton apologists, substituted enlightened statecraft with a smokescreen that fooled nobody.

Despite the fact that the anti-abortion stance of the Vatican and most Islamic states was obvious, the Clinton Administration formulated its program from the start as though this significant opposition meant nothing. Wirth's support of ICPD's abortion agenda was indefatigable, and the Clinton Administration's pro-abortion policy was unequivocally clear. Cecilia Acevedo Royals, president of the Washington-based National Institute of Womanhood, was present at the preparatory meetings preceding the ICPD, and observed: "Tim Wirth was boasting that they [the U.S. delegation] were going to get universal access to abortion; they were saying there was going to be an international right."³²⁶ In May of 1993, Wirth informed an ICPD preparatory meeting: "The U.S. government believes the Cairo conference would be remiss if it did not develop recommendations and guidance with regard to abortion. Our position is to support reproductive choice, including access to safe abortion."³²⁷

The following October, Wirth cabled all U.S. diplomatic posts around the world to say that "family planning and related reproductive health services, including safe abortion," would be "stressed" by the United States delegation at Cairo.³²⁸ In March of 1994, pursuant to Wirth's direction,

323. Robertson, *supra* note 290, at A8.

324. *Id.*

325. Murphy, *supra* note 287, at A9.

326. *Id.*

327. *Id.*

328. George Archibald, *U.N. Summit's Value Questioned; Senate Panel Drill State Official on U.S. Ideological Thrusts*, WASH. TIMES, June 5, 1996, at A3.

the U.S. State Department sent out "immediate action cables" to all U.S. embassies in preparation for the ICPD at Cairo, Egypt, instructing the embassies to inform their host governments that "the United States believes that access to safe, legal and voluntary abortion is a fundamental right of all women" and was "the priority issue for the United States."³²⁹ This last cable warned that "the United States would exert its influence through 'senior level diplomatic interventions' with international assistance agencies such as the World Bank and the International Monetary Fund to 'advance U.S. population interests.'"³³⁰ The cables caused a thunderstorm of discord, not only with the Vatican, but with many other countries where unrestricted abortion, "on demand," is not a legal medical procedure, including within the United States itself. "Is the [Clinton] Administration trying to impose American feminist ideology on a resistant third world?"³³¹ The liberal *National Journal* crowed a confirmation: "The population debate, in short, has become a showcase for the internationalization of what used to be called the feminist movement."³³²

The United States' emphasis on abortion is fairly puzzling from a strictly legal point of view since, as Cecilia Acevedo Royals of the National Institute of Women observed: "Almost every single one of the [Latin American countries has a right-to-life charter," and many more states, such as Ireland and Germany, have similar constitutional provisions; other states, including Muslim states, have strong legal and cultural prohibitions."³³³ The real impetus behind the Clinton Administration's liberal agenda was obvious from the start:

The social and sexual ethics of [the] Cairo [conference] is that of the liberal Western elite, for whom "satisfying" sex lives (meaning, "what I find satisfying") have become a human right, for whom "couples" have replaced marriages, and above all, for whom the only norm of family life is that there is none. These profound denials of the patterns that have shaped our own societies, and that are precious in many nations, are the basis of a new colonialism, which at Cairo received a well-deserved slap in the face.³³⁴

Although hard for even the most anti-Western Muslim cleric to imagine, the "new" definitions of "family" promoted by the United States—"the family in all its forms"—could call forth bizarre scenarios that made abortion on demand look like a tame issue. One need not even offer an explanation, but only a title, of a work by a feminist legal scholar, to show what curious future awaits the West: *Gay Men Creating Families Through Surro-Gay*

329. Leo, *supra* note 75, at 26.

330. Robertson, *supra* note 290, at A8.

331. Leo, *supra* note 75, at 26.

332. Dick Kirschten, *Women's Day*, 26 NAT'L J. 1016 (1994).

333. Robertson, *supra* note 290, at A8.

334. Nigel Cameron, *Cairo's Wake-Up Call; 1994 United Nations Population Conference and Christian Values-Editorial*, CHRISTIANITY TODAY, Oct. 24, 1994, at 20.

*Arrangements: A Paradigm for Reproductive Freedom.*³³⁵

The Clinton Administration's promotion of abortion as a fundamental human right was ultimately checked in large part by the unwavering criticism of the Vatican, which was supported in its pointing to the emperor's nakedness by various Islamic states.³³⁶ Stung by the Vatican's persistent criticisms and the revelation of Clinton's foreign policy towards the third world as decidedly un-American and discriminatory against racial, ethnic, and religious groups, if not fundamentally satanic, the Clinton Administration sought to cloak its obvious embracement of abortion. It claimed that it had never said what it had in fact clearly said, and that even if it had, what it said was not what it meant, although it staunchly contended that the verbatim wording of its abortion directive could be subject to any interpretation, to mean anything, by anyone. Proving conclusively that language is "often a great cheat,"³³⁷ the Clinton Administration felt safe in making this logically spurious and linguistically fatuous defense of its promotion of abortion because of its curious, almost Kafkaesque manipulation of textual language, in which it used several policy documents to inter-define and re-define the meaning of certain specific words with more general words so as to render them synonymous, such as "abortion" with "health care," and "right" with vague words like "choice" and "access."³³⁸ First, the Clinton Administration, through Secretary Wirth, disingenuously denied that it had ever defined abortion as a human right. When the Clinton Administration talked about abortion, Wirth disingenuously explained, "We're not talking about a new right; we're talking about, in our language, access. And it's access to the full range of reproductive health care services, that's what we're talking about."³³⁹ When questioned specifically about his March 1994 "action cable" which said unambiguously, in perfect English, that "abortion is a fundamental right of all women," Wirth blamed the controversy on poor word choice:

We did not—if we had to do it all over again, I mean, that particular paragraph was not as artfully written as it might have been. I mean we were not aware of the fact that this would create the kind of firestorm and misinterpretation as to what we meant. We were talking about access and

335. See Maria J. Hollandsworth, 3 AMER. UNIV. J. OF GENDER THE LAW 183 (1995) (Ms. Hollandsworth calls the surrogate offspring sired by artificial "matings" of homosexual men and lesbian women as "gaybies."). *Id.* at 186.

336. State Dep't Regular Briefing (Aug. 31, 1994) (statements of Tim Wirth with Mike McCurry) [hereinafter Wirth & McCurry].

337. PETER MERE LATHAM, 1 COLLECTED WORKS ch. 138.

338. Wirth & McCurry, *supra* note 336.

339. *Id.* Since health care is not yet considered a "right" under current U.S. law, and principles of equal protection would require that it be an "equal" right of both men and women, one is still left wondering what the U.S. State Department was talking about. Ironically, current U.S. law only recognizes *privacy*, and not abortion, as a right per se. Abortion is included in the constitutional "penumbras" under the larger umbrella of privacy rights pursuant to *Roe v. Wade*, so either Wirth did in fact go "too far" in his cables and statements, or else has a profound misunderstanding of U.S. law on the subject. Both possibilities seem to be undesirable qualities in appointed government officials.

other people thought it was a capital-R, universal human right. I wouldn't say it was a matter of going too far, it was a matter of just sort of not understanding, you know, what kind of perception there would be of that language, and we have since clarified that and very much appreciate the input and the kind of constructive engagement on that kind of clarification.³⁴⁰

Seeking to de-emphasize the Vatican's concern over the promotion of abortion in the final document, Wirth stressed that the Vatican had in fact agreed with much of the draft language, implying that what remained in dispute was not very important. Noting that the United Nations places disputed wordings of draft instruments in brackets, Wirth pointed out that "Less than 8 percent of this document is bracketed. So there has been an enormous amount of work done and consensus reached on just about every issue."³⁴¹ Wirth alleged that "those items that are bracketed or still in disagreement are threefold: the issue of adolescents, the issue of women's reproductive health care services, and the issue of abortion."³⁴² Wirth clearly sought at this point to sever abortion from the "reproductive health care services package," but by his own admission, this was technically impossible: "abortion" was clearly part and parcel of women's "health care":

The third issue upon which there will probably not be agreement at the Cairo conference will be how to deal with the abortion question. One hundred and seventy-two out of 189 countries who participate at the United Nations allow abortion in some form. Some allow the full range of access to abortion, others do so when the health of the mother is endangered, others do so in the case only of rape and incest. It varies all the way across the board. *It had been our proposal, and that of—with Colombia, in the spring of 1994, that we deal with the abortion issue as part of the reproductive health care services package. . . .*³⁴³

Indeed, the Clinton Administration's equation of sterility to "health" infuriated several women delegates. Fumed Elida Solorzano, head of the Nicaraguan delegation said: "You can go to our health centers. You can't find antibiotics, but you can find condoms, pills, and IUDs."³⁴⁴ Kenyan pediatrician Margaret Ologo concurred: "We are running out of vaccine. We have no syringes, no needles, no sulfa drugs, no penicillin, yet our Family Welfare Centers never lack birth-control supplies."³⁴⁵ The Honduran delegate Leonardo Casco decried Honduras' "terrible shortage of basic medicines—things like penicillin and antibiotics—but you can find the

340. *Id.*

341. *Id.*

342. *Id.*

343. *Id.* (emphasis added).

344. John Michael Waller, *Bella's Babies*, AM. SPECTATOR, Apr. 1995, at 48.

345. *Id.*

cabinets full of condoms, pills and IUDs.”³⁴⁶ In fact, Western feminists have admitted that for “third world women,” many of whom are Muslim, abortion is not a true concern—for a chilling reason:

Whether in campaigns for equal rights or for special rights such as the right to abortion, western feminists have sought guarantees from the state that, as far as is physically possible, they will be placed in the same position as men. This quest does not always have the same attraction for nonwestern women. For example, *the western feminist preoccupation with a woman's right to abortion is of less significance to many Third World women because population-control programs often deny them the chance to have children.*³⁴⁷

The use of “choice” as a synonym for “right,” and “health care” for “abortion,” was employed strikingly by other Clinton officials such as Brian Atwood, Administrator of the U.S. Agency for International Development (AID), who, somewhat incredibly, initially denied that the Clinton Administration considered abortion to be a family planning method at all, but rather a “health” matter:

We have never used abortion as a method of family planning. Our family planning programs are designed to give choice to women, and this is a very pro-choice administration. We believe that we should maximize the choices that women have around the world. We also believe that in principle they ought to choose whether or not they would have an abortion, but that's a separate matter. We have taken the position as an administration that abortion ought to be safe, legal, and rare. And, indeed, in many of the countries in which we work, including Russia and . . . Romania, women have an average of some seven to 10 abortions during their lifetime. This is very dangerous to them. *It's a health problem, and we are treating it as a health problem.* We would like to increase our support for family planning programs in countries such as that in order to make abortion less utilitarian for women who care about controlling the size of their family. So that is, I think, an important aspect of this. I think that . . . we will see these two issues as very separate issues and that we do not need to use abortion as a method of birth control. Indeed, it's a very poor method of birth control.³⁴⁸

Nevertheless, in his later responses to a reporter's query about “the religious versus secular debate” on abortion, Brian Atwood candidly acknowledged that “abortion” was indeed a key aspect of the Clinton Administration's “family planning” program. Atwood admitted that the Administration favored using the general words “family planning,” instead

346. Robertson, *supra* note 290, at A8.

347. Hilary Charlesworth, Christine Chinkin, and Shelley Wright, *Feminist Approaches to International Law*, 85 AMER. J. INT'L L. 613 n.40, citing C. Bulbeck, *Hearing the Difference: First and Third World Feminisms* 3-6, paper delivered at Women's Studies Conf., Univ. of Melbourne, Sept. 1990 (Oct. 1991) (emphasis added).

348. Brian Atwood, Address to the USA Today International Newsmaker Breakfast (Aug. 30, 1994) (emphasis added) (available in FED. NEWS SERV.).

of the more specific kinds of “plans” or methods the phrase encompassed, i.e. abortion, with which the Vatican and most Islamic states would never agree:

We believe very strongly that the availability of family planning services has a much more immediate impact on the problem [of population growth] than anything else. There may be people who disagree with that point of view, but we don't think that that is going to be an obstruction to getting a document that people can agree with, because we can use words like family planning services and be somewhat ambiguous about what that means.

A lot of people can embrace their own understanding. That is traditional in any international negotiation—the art of creative ambiguity. People can read a document any way they wish.³⁴⁹

These Clinton officials' twisting of plain meaning had a decidedly plebeian but powerful source—non-governmental organizations (NGOs), some of which constituted prominent Clinton constituency groups. In her August 5, 1994 mass-mailed letter, the U.S. feminist politician Bella Abzug set forth her group's ICPD game plan in the linguistic synonym codes that Clinton officials mimicked perfectly throughout the actual conference:

We have a heavy agenda and collectively we can build support to remove the brackets on language which supports women's perspectives on population and development, as well as continue our struggle for sexual and reproductive rights and health which is at the core of our agenda.³⁵⁰

Although not representing any particular state, Bella Abzug's letter makes quite clear that the real source of the feminist NGOs' power was self-interested *government officials*:

Many NGOs will focus on activities in the NGO Forum to network, strategize and build an agenda for the future, while a smaller number of accredited NGOs will have access to the governmental negotiations in the conference center. Our strategy, therefore, is to divide work and maximize power for our common advocacy work. *Our sisters who are on government delegations will, no doubt, be key allies in carrying the Women's Caucus concerns onto the floor advocacy work.*³⁵¹

Nothing, however, could be more telling than the comments of Joseph Speidel, president of the NGO Population Action International, which averred the Clinton Administration's hidden agenda to promote abortion as an international human right disguised as a “health issue” on no less a public forum than CNN:

349. *Id.*

350. Letter from Bella Abzug (Aug. 5, 1994) (available on the INTERNET Cairo Conference file).

351. *Id.* (emphasis added).

Joseph Speidel: "Well, I think you've listed most of the places where there's an impact. First of all, the basic human right to control your fertility, to have the number of children you want, is constrained."

Ralph Begleiter (CNN World Affairs Correspondent): "You haven't even mentioned the word 'abortion' yet. It's not going to be in the Cairo document—in the Cairo conference, is it?"

Joseph Speidel: "It will be there. It's focused as a public health issue."³⁵²

And if this ruse failed, there were even more useful synonyms, tied quite shamelessly to poor women in poor states who, the Clinton Administration airily assumed, could be forced to sacrifice their fertility in the name of materialism. Atwood admitted that "an integrated approach to development . . . will enable us to take a much broader approach to the population growth problem."³⁵³ Although the Clinton Administration sought to persuade the have-nots that low birth rates led to the accumulation of wealth, Atwood acknowledged that it was really wealth, in the most pitiable form of a meager handout, that was being dangled in front of third world women to persuade them to sterilize themselves or abort their pregnancies so that they might be able to go to a doctor, send their surviving daughters to elementary school, enter the public work-force in some vague esteemed or exalted fashion, or bring surviving children to a doctor:

It isn't just family-planning services. It's also a lot of programs that affect women's lives, that should have an impact on population growth. It's an emphasis on girls' education. It's an emphasis on maternal health care. It's an emphasis on child-survival. It's an emphasis on micro-enterprise, wherein poor women are given an opportunity to have a job with dignity.³⁵⁴

Rather than simply pursuing such laudatory development aims as desirable ends in themselves, the Clinton Administration tied them to abortion and sterilization by funding them through auxiliary programs linked to family planning agendas. Having had the front door slammed shut to legal abortion on demand, the Administration sought to "come in through the back door by emphasizing that illegal abortions were unsafe and cause many deaths, and therefore countries have an obligation in making abortion safe. The result is that they have to make them legal, because how can a government regulate something that is illegal?" Cecilia Royals explained.³⁵⁵ Leonardo Casco added: "They were using wording in order to confuse." Instead of clearly saying "abortion," the United States delegation suddenly

352. *Interview with Joseph Speidel, supra* note 19.

353. Kim Murphy, *U.S. Population Team Has Changed Jerseys in Last Decade*, L.A. TIMES, Sept. 14, 1994, at A9.

354. Murphy, *supra* note 287, at A9 (quoting Brian Atwood).

355. Robertson, *supra* note 290, at A8.

started substituting vague euphemisms like “reproductive rights,” “fertility regulation,” and even “health.” Casco avers: “We kept asking ‘Do these terms mean abortion on demand?’ and Dr. Sadik [a Pakistani physician who is executive director of UNFP] wouldn’t answer.”³⁵⁶ Dr. Nafis Sadik’s choice of words confirmed Royals’ claim of intentional cryptology. Citing the supposedly unacceptably high numbers of “maternal deaths caused by abortion . . . [w]e have sought to place the issue of abortion firmly in the context of women’s health and well-being.”³⁵⁷

Wirth sought to defuse the dispute over abortion by characterizing the issue as a superficial matter of semantics—“anesthetizing negotiation over U.N. language.”³⁵⁸ There was no abortion controversy, Wirth soothed, only a difference of perspective, and he was actually grateful to the Vatican for pointing this out:

So, these are the kinds of things where language like “the family” and all its forms or “right” can mean some things to some people and other things to other people, and you have to be very careful about that in drafting. So we’ve worked very closely with the Catholic Church. I use those [words] as two examples where they’ve been very helpful to us in better understanding, you know, what you see depends on where you sit and how they perceive that language.³⁵⁹

Remarks attributed to an unidentified Clinton “Senior Administration Official” point more cryptically to a crude attempt by the Clinton Administration to deceive other Cairo delegations who disputed their stand on abortion in the final document:

Dave McIntyre (German Press Agency Reporter): “[Y]ou mentioned that there may have—that offending phrase may have to be worded slightly differently in the final document. So I take it that you are indicating there’s some room for compromise here in the majority position to the countries that are opposed [to] that section.”

Sr. Admin. Official: “Yeah, let me put it this way: You could read the document in many ways.”³⁶⁰

The Vatican however, was not to be swayed. George Weigel, a papal scholar at the Ethics and Public Policy Center, directly contradicted the anonymous U.S. official’s implication on international television:

Frank Sesno (CNN Reporter): “Yes or no—compromise on abortion in Cairo?”

356. *Id.*

357. Kirschten, *supra* note 332, at 1018.

358. Leo, *supra* note 75, at 26 (quoting Tim Wirth).

359. *Id.*

360. Remarks of a Senior Administration Official, *supra* note 69.

George Weigel: "Doesn't look like it could happen, or, in the Holy See's view, should happen."

Frank Sesno: "Sounds like a no. Thanks very much."

George Weigel: "You're welcome."³⁶¹

Indeed, no matter how many euphemisms the Clinton Administration employed for abortion, the Vatican could not have agreed to even the vaguest, most indeterminative language, simply because it knew that the subject was abortion; and this would not change, no matter how many incautious readers of the ICPD document were duped into thinking otherwise.³⁶² In keeping with his administration's emphasis on appearances of reality as opposed to reality itself, President Bill Clinton himself met briefly with Pope John Paul II in June 1994 to discuss their mutual positions on the ICPD. When Clinton subsequently alleged that he and the Pope had come closer together in their views, the Vatican facetiously responded that if Clinton was being truthful, then he must have changed his mind.³⁶³

In truth, the Vatican agreed with Clintonites that abortion raised international human rights issues, but the Vatican saw these rights not in terms of women's rights and empowerment issues, but rather as the rights of conceived but unborn children, lives in being but still in utero. Noted papal scholar George Weigel, "[T]his is not a question of Catholic doctrine versus the world. It's a question of a basic human right, which the Church believes is the right to life of all human beings from the moment of conception. . . ."³⁶⁴

Catholic priests sought to clarify the Vatican's position for the areligious world. Father Richard McBrien, professor of theology at the University of Notre Dame, adopted a balancing test that would be familiar to any secular constitutional law scholar:

I mean, abortion from the Catholic point of view is immoral, is an innocent human life at stake as well as the rights of women. They have to be balanced, and it's a very difficult issue in a pluralistic society and, indeed, in a pluralistic world.³⁶⁵

Even in a world of myriad beliefs, Catholicism proved itself to be astonishingly durable, managing even to isolate the Clinton Administration

361. *Papal Scholar Analyzes Church's Stand in Cairo: Interview with George Weigel, Ethics and Public Policy Center* (CNN television broadcast, Sept. 7, 1994) (transcript #675-3). [hereinafter *Interview with George Weigel*].

362. Or, in the immortal words of former U.S. President George Bush, "You can put a sign on a pig and say it's a horse, but it's still a pig." Adam Clymer, *Bush Assails 'Quota Bill' at West Point Graduation*, N.Y. TIMES, June 2, 1991, at A32.

363. See Waller, *supra* note 344, at 48.

364. *Interview With George Weigel*, *supra* note 361.

365. *Papal Pressure*, *supra* note 283.

in its own hemisphere. At a pre-ICPD summit of sixteen Latin American states, fifteen affirmed their national, officially pro-life policies.³⁶⁶ The lone dissenter was Cuba's Fidel Castro.³⁶⁷

But the debate stretched beyond the simple dogma of obedient Catholic belief the Vatican expected from its faithful. That the Vatican was now "in the unusual position of actually being to the right of even a country like Iran" was simply irrelevant to the Vatican.³⁶⁸ As Michael Novak, a theologian at the American Enterprise Institute explained, morality could not be so readily sacrificed in the name of wealth, even at the urging of the President of the United States. If abortion is the price of development (and the Vatican hotly disputed this point), then that price is simply too high, the cost too grotesque:

As the world's foremost spokesman on human rights, Pope John Paul II is trying to speak to initiatives being very much neglected, namely the rights of unborn children, very helpless ones. And on this primary moral issue, he is obliged to take a stand no matter what the popularity of the stand, no matter who supports him or who doesn't support him. A hundred years from now, I think people will look back on the practice of abortion with a certain horror, when they will look and see actually what was done. And at that time, I think the Pope wants it understood that his voice was loud and clear for a crucial issue as we enter the 21st century.³⁶⁹

Catholic Bishop James McHugh unequivocally stated that Clinton's pursuit of an international policy of abortion on demand would "be a powerful incentive to American Catholics to walk away from the Democratic party, as well as the Clinton Administration."³⁷⁰ Although harshly criticized for mingling affairs of church and state in polite secular society, Bishop McHugh's champions disputed the criticism that his threats to sacrifice the traditionally democratic Catholic vote were "bad politics."³⁷¹ As a result of the Cairo Conference, prominent U.S. Catholic citizens found themselves surprised and offended by the Clinton Administration's vociferous promotion of abortion and also by a string of virulently anti-Catholic remarks. Faith Mitchell, a State Department official working under Wirth in Clinton's new Office of Population Policy, claimed that Catholic opposition to the conference "has to do with the fact that the conference is really calling for a new role for women, calling for girl's education and improving the status of women."³⁷² Catholics complained that not only

366. See Robertson, *supra* note 290, at A8.

367. *Id.*

368. See *Papal Pressure*, *supra* note 283 (remarks of Sister Maureen Fiedler).

369. *Papal Pressure*, *supra* note 283 (remarks of Michael Novak).

370. *Id.* Indeed, the Catholic church had used its influence with voters to open discussion among Catholics specifically and Christians in general on Geraldine Ferraro's views on abortion, and this influence proved decisive to Mondale and Ferraro's defeat. See *supra* note 12.

371. See Cannon, *supra* note 306, at A1.

372. *Id.*

was her remark bigoted, but it showed that Ms. Mitchell was woefully ignorant of the fact that the Catholic Church educated more girls than any other private institution in the United States.³⁷³

Unmitigating, staunch criticism was perhaps the only way to respond to the Clinton Administration's tortured war of words. Stated Novak, "[I]f you know the vagueness of UN language and the code words, the secret history that all of this has, it's not bad politics, just as it's not bad morality to make the world stop and think."³⁷⁴

The Clinton Administration's actions spoke even louder than their confusing words. Nobody prepared to question abortion was welcomed at Cairo, and Clinton Administration officials did not hesitate to use their considerable powers of state to silence those critical of its pro-abortion policies. Keith Tucci, a U.S. citizen, ordained minister, and avowed abortion foe, had obtained a press pass from his local paper, the Cabarrus County News of North Carolina, to attend the Cairo conference.³⁷⁵ Because of his active participation in Operation Rescue, an NGO that encourages women to carry their pregnancies to term rather than abort them, Tucci was recognized in Cairo by another U.S. citizen, a female member of the National Organization for Women (NOW) delegation, who threatened to have him removed from the conference.³⁷⁶ According to Tucci, the NOW delegate pointed him out to Undersecretary Wirth, who ordered U.N. security agents to seize Tucci and deliver him to the Cairo police.³⁷⁷ After his expulsion from the conference, Egyptian police held Tucci under guard at an airport hotel, pending deportation, on a false accusation that Tucci was connected with the murders of two abortionists in Florida.³⁷⁸ The feminists' charge against Tucci was clearly fatuous, since Florida police had immediately arrested Paul Hill, a local leader of the antiabortion group Defensive Action, about 500 feet from the clinic where the shootings occurred, and Florida law enforcement authorities issued no warrant for Tucci's arrest.³⁷⁹ Tucci was only released after U.S. Representative Christopher H. Smith (R., NJ) and U.S. Ambassador Ned Walker held an emergency meeting with Egyptian Foreign Minister Amr Moussa, who agreed to let Tucci remain in Egypt and re-join the conference.³⁸⁰

Much ado was made over the Vatican's alliance with Islamic states in

373. *Id.*

374. *Papal Pressure*, *supra* note 283.

375. See John Waller, *Pro-Life, Writers Cite Harassment at Conference*, WASH. TIMES, Sept. 10, 1994, at A1.

376. *Id.* See also John Waller, *Congressman, Ambassador Help Win Release of Pro-Lifers*, WASH. TIMES, Sept. 11, 1994, at A9 [hereinafter *Congressman*].

377. Waller, *supra* note 375.

378. See William Claiborne, *Two Killed at Clinic in Florida; Radical Abortion Foe Charged in Shootings*, WASH. POST, July 30, 1994, at A1.

379. *Id.*

380. Waller, *Bella's Babies*, *supra* note 344, at 48. See also Waller, *Congressman*, *supra* note 376, at A9.

order to defeat the Clinton Administration's pro-abortion efforts, even by self-proclaimed Catholics. Sister Maureen Fiedler, a spokeswoman for the anti-Vatican group Catholics Speak Out, contended that "[W]hat underlies the Vatican's opposition to Cairo is really its fear of the equality and the empowerment of women world wide, and I think that's the basis of the unholy alliance that was made at least for a time with the Muslim fundamentalists."³⁸¹

In fact, the Clinton Administration considered any expressed moral reservation about abortion as a sign of religious fanaticism, and it feared the alliance it saw forming between the Vatican and Islamic states. Although Egyptian President Hosni Mubarak, whose state is a major recipient of U.S. foreign assistance, found himself in the awkward position of hosting the ICPD in Cairo, he nevertheless publicly affirmed that the Egyptian delegation would not support any measure that violated the *shari'a* or any Islamic precept.³⁸² Several Islamic states and states with large Roman Catholic populations refused to send delegations,³⁸³ and several more reduced their delegations.³⁸⁴ Even Egyptians, eager to showcase what they described as their nation's "victory" over Islamic Militants, had second thoughts about the wisdom of hosting ICPD. One senior Egyptian official recalled worriedly that, at the 1984 U.N. population conference in Mexico, "some people took off their clothes and walked [naked] in the streets. That would not be nice for an Islamic country."³⁸⁵

In response, the Clinton Administration sought to discredit Islam early on by implying that the governments of most Islamic states would willingly and eagerly subscribe to Clinton's abortion agenda, but for their fears of terrorist reprisals from Muslim and other religious "fanatics":

I think in some cases there was a decision that domestically they [Islamic states] couldn't deal with it politically, and so I think some countries are very nervous. . . . And some people are very nervous. And I think they are unnerved a bit by some of the comments of some of the fundamentalists on all sides of this.³⁸⁶

Indeed, Cairo's vulnerable security was a well-anticipated issue. Islamic clerics openly admitted that the conference would probably provoke domestic violence. "What do you expect?" one Egyptian sheik asked a reporter. "We, as Muslims, refuse this conference," he explained. "There are articles in it [the draft convention] that are against the Islamic sharia [religious law].

381. *Papal Pressure*, *supra* note 283.

382. See John Lancaster, *Population Conference Tests Egypt's Rulers; Mubarak Seeks to Show Country's Stability, but Islamic Groups Threaten Protests, Attacks*, Sept. 3, 1994, at A13.

383. Iraq, Lebanon, Lichtenstein, Monaco, Saudi Arabia and Sudan boycotted the conference. *Id.*

384. *Id.* One of these states, Bangladesh, not only reduced its delegation, but its prime minister cancelled her plans to attend. See *infra* text accompanying note 397.

385. Lancaster, *Population Conference*, *supra* note 382, at A13.

386. Remarks of a Senior Administration Official, *supra* note 69.

We are against these issues of homosexuals, abortion and the ultimate freedom of women, which will allow for the expansion of immorality in the streets."³⁸⁷

The Western press gave its gravest attention to threats made by Islamic groups to disrupt the ICPD and attack its participants. According to Reuters News Service, the militant Islamic Group had faxed them a warning:

The group, as it starts a new round of operations, urges all foreigners not to come to Egypt during the coming period for the sake of their lives. The group advises all foreigners taking part in the licentiousness conference known as the population conference that . . . they are putting themselves in harm's way.³⁸⁸

Indeed, militants seeking to topple Mubarak's government had sporadically attacked foreign tourists and, just prior to the fax, had fired on a bus carrying eleven Spanish tourists, killing one fourteen-year-old boy.³⁸⁹ The subsequent reaction of the Egyptian government to one tourist's murder went well beyond the parameters of the U.N.'s Convention of Human Rights. To tighten security, Mubarak took draconian measures, arbitrarily arresting thousands of Egyptians and executing several dozen militants.³⁹⁰ To ensure that ICPD delegates could conduct their discussions in a liberal atmosphere, Egyptian Interior Minister Hassan Alfi proclaimed that street demonstrations would be prohibited during the conference and that security forces would monitor "all suspicious activities aimed at stirring up popular opinion."³⁹¹

But militants and extremists were not the only groups in Egypt offended by the ICPD's agenda. Cairo's Al Azhar University, the most prominent and highly-regarded center of Islamic learning in the world, denounced the conference and condemned its proposed draft instrument as offensive to Islam.³⁹² Al Azhar University scholars warned specifically that the draft sought to reverse basic Islamic precepts and condoned extramarital sex and abortion on demand.³⁹³ Shortly thereafter, several prominent Egyptian lawyers sought to stop the conference by a court restraining order, claiming that "The Mission of the government is to protect morals. Hosting this conference . . . is an insult to all Muslims." Their suit, although dismissed, made its point. The Egyptian Islamic newspaper *As Shaab* characterized the conference as part of "suspicious campaigns which America, western

387. Lancaster, *supra* note 382, at A13.

388. John Lancaster, *Islamic Militants Warn U.N. Population Conference Forum*, WASH. POST, Aug. 28, 1994, at A18.

389. John Lancaster, *Islamic Militants in Egypt Attack Tour Bus, Killing Spanish Teen*, WASH. POST, Aug. 27, 1994, at A13.

390. Lancaster, *supra* note 382, at A13.

391. *Id.*

392. *Id.*

393. See John Tagliabue, *Vatican Seeks Islamic Allies in U.N. Population Dispute*, N.Y. TIMES, Aug. 18, 1994, at A1.

countries and Israel carry out to promote birth control in Muslim countries.”³⁹⁴ Iran’s Deputy Foreign Minister Mohammad Hashemi Rafsanjani, the brother of President Hashemi Rafsanjani, gave the Vatican Iran’s “full endorsement” of its anti-abortion position on the ICPD document. The Iranian Foreign Minister added,

The future war is between the religious and the materialists. Collaboration between religious governments in support of outlawing abortion is a fine beginning for the conception of collaboration in other fields.³⁹⁵

The Libyan government, through its news agency *Jana*, confirmed that it condemned the U.N. conference document in conjunction with the Vatican.³⁹⁶ Although Bangladesh sent a reduced delegation, its Prime Minister Khaleda Zia declined to attend the Cairo conference at the urging of Bangladeshi Islamic professors, who cautioned that the ICPD’s proposals “will encourage adultery, abortions and perverse sexuality,” and asked that the Prime Minister show her support for Islamic views by staying away.³⁹⁷

VI. THE ROLE OF ABORTION IN THE DECLINE OF STATES

In the spirit of Islam, which encourages scientific progress, we first examine the scientific basis of Clinton’s policy to tie abortion and other methods of population control to “sustainable” development. The purported necessity of this policy was presented as an obvious given, based mostly on vague allegations of environmental need, but no traditional scientific evidence linking population decline to increased wealth and environmental enhancement was ever offered by any Clinton Administration official. In fact, mainstream scientists and population experts were, curiously, *not* consulted by Clinton Administration officials, and were conspicuously absent from the Cairo conference. University of Maryland economist and population scholar Julian L. Simon complained in a New York Times Op-Ed piece that the United Nations Population Fund “carefully prevented mainstream population economists from participating.”³⁹⁸ The most “scientific” pronouncement supporting Clinton’s agenda was made by an unidentified “Senior Administration Official,” who claimed that

If you look at sort of the world over the last 2,000 years and you sort of look at the way the curve goes, I think it’s fair to say that until about the Second World War you had, you know, what looks like virtually no real increases. I mean, you had increases in population; you went up to a billion people, but nothing like the increase in the last 30 or 40 years

394. *Id.*

395. *Id.*

396. *Id.*

397. *Bangladesh Leader Cancels Plans for Cairo Conference*, WASH. POST, Aug. 28, 1994, at A18.

398. Julian L. Simon, *The Population Distraction*, N.Y. TIMES, Aug. 21, 1994, at D15.

where we're now at about almost 6 billion people and projected to go to 9 billion in large part because, of course, as you get more people and more people reproduce, I mean, the picture just gets bigger and bigger.³⁹⁹

Moreover, even if the Clinton Administration had been able to articulate an argument of environmental necessity to justify its promotion of abortion (although in fact, it never did so), this would not necessarily give rise to a "right" of abortion. Given the fact that the world's great religions of Judaism, Christianity, and Islam, as well as the laws and cultures of many states, all prohibit, or discourage and condemn, abortion in varying degrees, the source of authority which inspired the Clinton Administration's unique and unimitated heralding of abortion as a fundamental human right was never clearly revealed, except perhaps in the hubristic pronouncements of various Clinton officials (if not from Clinton himself), who equated abortionism with all things "American," and therefore implicitly valuable, legitimate, and good. Claimed U.S. Representative David R. Obey (a Wisconsin Democrat),

[F]irst of all, this country [the United States] itself believes that access to safe and legal abortion is a fundamental right. And it's been reaffirmed . . . very recently by this [the U.S.] Supreme Court. So there's no doubt that that's a right we have here in the United States, and if we say that we believe it for people all around the world, it seems to me that that is simply a reflection of our policy at home.⁴⁰⁰

Thus, Rep. Obey attempted to legitimize abortion by equating it with the great inspirational Lockean, democratic-philosophical abstractions of "life, liberty, and the pursuit of happiness." Yet Obey was factually wrong on every point he raised. Anyone who reads a daily newspaper knows that the citizens of the United States are deeply divided on the issue of abortion. A 1993 popular opinion poll showed that 70 percent of U.S. citizens did not want abortion services included in Clinton's proposed national health care program. Many citizens consider abortion immoral, and even those who refuse to consider the ethical dimensions don't want taxpayers' money used to pay for the practice.⁴⁰¹ Pennsylvania Governor Robert Casey summed up the views of many such constituents handily:

[H]ealth care is vital, we all want to see it happen, we've been supporting that effort, but please, please, pretty please, don't include abortion services in the national health care program.

399. Remarks of a Senior Administration Official, *supra* note 69.

400. See Remarks of U.S. Rep. David R. Obey (D-WI), in *Funding of the United Nations*, *supra* note 69.

401. See, e.g., Robin Toner, *Political Memo: Abortion and the health Plan; Hard Questions in Both Camps*, N.Y. TIMES, Oct. 22, 1993, at A20; Robin Toner, *Political Memo; Middle Ground on Abortion Shifting into Terra Incognita*, N.Y. TIMES, July 15, 1993, at A1; Robin Toner, *Political Memo; Success Spoils Unity of Abortion Rights Groups*, N.Y. TIMES, Apr. 20, 1993, at A18; Robin Toner, *Clinton Would End Ban on Aid to Poor Seeking Abortions*, N.Y. TIMES, Mar. 30, 1993, at A1; Robin Toner, *Anti-Abortion Movement Prepares to Battle Clinton*, N.Y. TIMES, Jan. 22, 1993, at A1.

The American people don't want it. It is politically unwise, and I believe wrong as a matter of principle. Because aborting is not part of the healing arts, by definition. . . . Because that is part of a societal revulsion against what's going on in this country. Democrats, Republicans, independents—a lot of people out there, millions of people feel as I do on this issue.⁴⁰²

Moreover, the U.S. Supreme Court's position, as evidenced in its landmark opinion of *Roe v. Wade*, is far from a model of clarity, nor does it or any of its progeny support Rep. Obey's claims.⁴⁰³ In *Roe v. Wade*, the Court said nothing that would secure abortion as a "fundamental right," let alone an international human right. In fact, it stated unequivocally that if a fetus were a constitutional person, abortion would be impermissible.⁴⁰⁴ The Court's opinion makes clear that any "right" to abortion is, in fact, *derived* from another "right"—that of "privacy"—which, far from being "fundamental," is only *implied* in the U.S. Constitution (especially through the Fourteenth Amendment).⁴⁰⁵ The U.S. Supreme Court stated unambiguously that the right of privacy, even if it could be analogized as a right of autonomy over one's physical body, was far from "absolute"; such a "right" is "not unqualified and must be considered against important state interests in regulation."⁴⁰⁶

Rep. Obey also falsely implied that his view was the view of the U.S. Congress and reflected legitimate foreign policy objectives. Other representatives were quick to voice their concerns that the United States was wrongfully "openly advocating abortion around the world."⁴⁰⁷ One congressman noted, "That [abortion] should not be, in my opinion, part and parcel of U.S. policy. . . . [Y]our views are not necessarily shared by all members of Congress."⁴⁰⁸ Nor does this caveat apply solely to foreign policy considerations. In fact, as a matter of national law, both the U.S. Congress and the Senate are as divided on abortion as the general U.S. populace on whose votes these politicians depend.⁴⁰⁹

VII. ABORTION AND THE SHRINKING OF THE WEST

The "West," geographically considered to be non-Communist Europe and, by historical extension of conquest, the Americas, has frantically pointed to Catholicism and Islam as forces ready to plunge the world into the abyss of darkness and superstition, when in reality, the opposite is true. While abortion and sterilizing methods of birth control may result in some

402. Governor Robert Casey's Address, *supra* note 307.

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

404. *Id.* at 156.

405. *Id.* at 153. *See also* KAMM, *supra* note 109, at 14.

406. *Roe*, 410 U.S. at 154.

407. *Funding of the United Nations*, *supra* note 69.

408. *Id.*

409. *See* Yang, *supra* note 135, at A1.

"planned pregnancies" and limit family size, these practices will ultimately reduce the potential economic and military power of populations in developing states, and will potentially alter the natural ethnic and racial balance of the world, so much to the point that some societies may simply disappear. Abortion has this genocidal effect, although it is not generally discussed as a point of public policy. Indeed, one of the distinguishing hallmarks of Western states is their irreversible population declines, eased only by the necessity of immigration from more populous states. Prior to World War I, France's population had been so reduced as a result of a combination of birth control, infanticide, and abortion that its own statisticians "prophesied darkly that in half a century the nation would be dead."⁴¹⁰ By 1912, population experts determined that Germany's birth rate has also declined precipitously, although this had been "disguised, . . . owing to a decline in the German death rate and in emigration. . . ."⁴¹¹ More importantly, they recognized that the birth rate decline was "becoming a universal [to the West] not a merely local phenomenon."⁴¹² According to a 1906 essay in the *London Times*,

About the main facts no dispute exists. For some thirty years or so a general and progressive diminution of natality—that is, the number of children born in proportion to population—has been recorded in all Western nations for which records are available. It is by no means evenly distributed or proceeding everywhere at the same rate, nor is it shared by every locality; but every country as a whole exhibits the same change in some degree. The following figures, showing the fall in the 'birthrate,' which means the number of births to 1,000 of the population, between 1876 and 1901, will sufficiently illustrate the movement:—United Kingdom, from 34.8 to 28.0; England and Wales, 36.3 to 18.5; German Empire, 40.9 to 35.7; Prussia, 40.7 to 36.2; Sweden, 30.8 to 26.8; Switzerland, 33.0 to 29.1; Austria, 40.0 to 36.9; France, 26.2 to 22.0. The fall appears to have set in as a general and progressive movement about the year 1876, which forms the high-water mark of recorded birth-rates in most European countries.⁴¹³

From the outset, late nineteenth and early twentieth century observers realized that the western birth rate decline would have weighty consequences for the entire world:

It seems to be one of those vast, slow, silent movements which pass almost unperceived at the time, but are more potent to shape the destinies of mankind than war or policies which look so much more important to a near vision.⁴¹⁴

410. *The Dwindling Population of France*, 17 REV. OF REVIEWS 336 (1898) (quoting Jacques Bertillon).

411. Walter E. Weyl, *Depopulation in France*, 195 N. AM. REV. 343, 352 (1912).

412. *Id.* at 353.

413. *General Decline of Human Fertility in Western Nations*, 40 CURRENT LITERATURE 295, 295 (1906).

414. *Id.* at 295.

Although this almost world-wide drop was obvious in itself, the reasons for the birth rate decline at first appeared obscure. Initially, people assumed that certain "races" had simply exhausted their procreative resources, as did aging orchard trees, the withered limbs of which no longer bore fruit.⁴¹⁵ More medically-based explanations faced the dilemma presented by modernism and the social freedoms being exercised through new notions of democracy (such as the growing emancipation of women), and suggested that alcohol consumption, smoking, and venereal disease had induced sterility on a massive scale, leading to a decline in the birth rate.⁴¹⁶ For a while, scientists speculated that "the increasing stress of life" caused sterility (a strikingly contemporary hypothesis), although by 1911 this explanation was considered "clearly inadequate."⁴¹⁷ Other abstruse explanations correctly incorporated factors of industrialization, the entry of women into the work force, and increased social mobility along class lines into a plausible explanation, but laid the blame for the birth decline rather modestly on the failure of workers to *marry*.⁴¹⁸

But marriage was not the problem. What had plunged the Western birth rate into its precipitous, irreversible decline was intentional family limitation through the use of contraceptives, fueled by nineteenth century technological innovations such as the vulcanization of rubber in the 1840s and the synthesis of drugs in the 1880s,⁴¹⁹ and by abortion and infanticide. History shows that, contrary to the Clinton Administration's claims that birth control will decrease the incidence of abortion, just the opposite is true. To illustrate this point, we will examine the population of France, a Catholic state whose society was secularized by a bloody revolution and whose population decline resulted in its loss of empire, power, and prestige before the decline of any other Western state.

In nineteenth-century France, as the mechanics of birth control became better-known and more acceptable, especially among the upper classes, who were always emulated, abortion became increasingly acceptable among women of all classes in the nineteenth century "as a back-up method of birth control."⁴²⁰ Abortion's popularity also increased with physicians' increasing willingness to perform them, and with the adoption of medical technolo-

415. See Sir Robert Giffen, *Decline in Rate of Growth of Population*, Address on Economic Science and Statistics Before the British Association, in 52 SCI. AM. SUPP. 21633 (1901).

416. *Id.*; Charles Franklin Emerick, *Is the Diminishing Birth Rate Volitional?*, 78 POP. SCI. MONTHLY 71, 78 (1911). One scientist commented skeptically on the use of "intoxicating liquors" as causing sterility: "The fertility seems to be greatest in those countries and among those classes where they are most freely used." John S. Billings, *The Diminishing Birth Rate in the United States*, 15 FORUM 467, 475 (1893).

417. Emerick, *supra* note 416, at 78.

418. See Frederick A. Bushee, *The Declining Birth Rate and its Cause*, 63 POPULAR SCI. MONTHLY 355, 357-59 (1903).

419. JAMES WOYCKE, BIRTH CONTROL IN GERMANY 4, 36 (1988).

420. Angus McLaren, *Abortion in France: Women and the Regulation of Family Size 1800-1914*, 10 FRENCH HIST. STUD. 461, 462 (1978).

gy and practices that made the procedure safer than it had been in the past.⁴²¹ Technically, the Hippocratic oath forbids abortions which were traditionally considered the province of the midwife, wise woman, or even witch. The oath is explicit, equating abortion with murder and suicide: "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortive remedy."⁴²²

In fact, abortion on demand was then illegal in France, although the French custom of therapeutic abortion to preserve the life of the mother in childbirth was well established. The French *Academie de Medecine*, repeatedly asked for a ruling on whether the life of the mother or the fetus should be saved, had always left the decision of inducing a miscarriage to the treating physician.⁴²³ The alternative was Caesarian section, which was a fine and dramatic medical operation on the rare occasions when it worked, inasmuch as it saved two lives, but choosing it over safely inducing a miscarriage "required closing one's eyes to the staggering death toll the operation entailed."⁴²⁴ By 1850, the mother's right to survive over her fetus had become fully recognized by most physicians, whose increasing success with safe, uneventful abortions made the medical practice, even when not actually therapeutic, more generally acceptable.⁴²⁵ Abortion became even more "medicalized" through the acceptance of psychiatry as a science, in which individual mental "health" became almost synonymous with physical health, and with it came the argument that the description "therapeutic" had to apply to psychological as well as physical needs.⁴²⁶ The growing notion of individual rights over those of society and the state stretched the definition of "therapeutic" beyond its traditional medical parameters.

By the 1860s, abortion in France had become not just a widespread medical practice, but an "industry."⁴²⁷ Physicians found themselves competing in the "reproductive health care" business with midwives, pharmacists, herbalists, nurses, the woman's own (usually female) friends, and even her relatives.⁴²⁸ Nevertheless, abortion "on demand" had been outlawed pursuant to Article 317 of the French Civil Code, and despite its

421. *Id.*

422. CODES OF MEDICAL ETHICS, OATHS, AND PRAYERS: AN ANTHOLOGY 19-20 (Lewis Penahl Bird & James Barlow eds., 1989).

423. McLaren, *supra* note 420, at 471.

424. *Id.* citing J.L. BAUDELOQUE, TWO MEMOIRS ON THE CAESARIAN OPERATION 10-11 (John Hull trans., 1801).

425. *Id.*

426. Sigmund Freud himself commenced his studies in physiology and neurology at the University of Vienna in 1873, establishing the connection between mind and body being entitled to similar therapeutic treatment. See Peter Gay, *Sigmund Freud: A Brief Life*, in SIGMUND FREUD, CIVILIZATION AND ITS DISCONTENTS x-xiv (James Strachey trans. 1961) (1930).

427. McLaren, *supra* note 420, at 472 citing Dr. Ambroise Tardieu, *Etude medico-legale sur l'avortement* 5 (5th ed., 1898).

428. *Id.* at 473 n.51.

widespread nature, it was a criminal act. Pregnant women who availed themselves of the abortion "underground" ran the real risk of being blackmailed.⁴²⁹ By the end of the nineteenth century, however, abortion had evolved into an accepted "social practice,"⁴³⁰ and Article 317 was under constant challenge from neo-Malthusians, feminists, socialists, and even some doctors who were concerned that illegal abortions had put women's health in jeopardy. More cynically, some physicians also wanted to stamp out their non-medical competition.⁴³¹

And the competition was fierce. Although reported statistics are suspected of being inflated because of the strong political implications surrounding abortion and the French nationalists' concern about France's plummeting birth rate, in 1884, physicians estimated that the number of French abortions was equal to the number of live births.⁴³² A review of medical reports for the first decade of the twentieth century reveals astonishing statistics:

Delbert stated in 1902 that 7 per cent of all women hospital patients were recovering from self-induced abortions, Dr. Doleris quoted the figure of 17.7 per cent, and by 1913 Balthazard raised it to 30 per cent. . . . In 1906 Dr. Lacassagne claimed that in Lyon the ratio was ten thousand abortions to nine births. Robert Monin estimated that one hundred thousand miscarriages were induced in Paris each year. For the nation as a whole, the figure was put at one hundred fifty thousand by Balthazard, one hundred eighty-five thousand by Prevost and five hundred thousand by S. du Moriez.⁴³³

The French themselves despairingly called the 1890s the decade of their "depopulation,"⁴³⁴ and endlessly pondered their own "decadence."⁴³⁵ In a last-ditch effort to stem the sterile tide engulfing them, the French undertook some remarkable programs aimed at increasing their national birth rate, which led to significant improvements in medicine and public health, and reduced France's shockingly high infant mortality.⁴³⁶ Following

429. *Id.* at 477.

430. McLaren, *supra* note 420, at 466 citing Dr. F. Brochard, *La verite sur les trouves* 98-99 (1876).

431. Indeed, physicians had lobbied successfully for legislation restricting midwives from performing all but the most mundane of deliveries, so it was not surprising that these women supplemented their meager incomes by performing illegal abortions. And the medicalization of abortion had a built-in safety valve; if the illegal abortion became complicated, or were left unfinished, or if infection set in, the medical treatment then acquired a therapeutic quality. The woman would then usually end up seeing a physician anyway, knowing that his Hippocratic oath compelled him to treat her, and that they would both be protected by his vow of professional secrecy. McLaren, *supra* note 420, at 476. The Hippocratic oath states, "What I [the physician] may see or hear in the course of treatment or even outside of the treatment in regard to the life of men, which on no account must be spread abroad, I will keep to myself holding such things shameful to be spoken about." CODES OF MEDICAL ETHICS, OATHS, AND PRAYERS, *supra* note 422, at 19.

432. See McLaren, *supra* note 420, at 479.

433. *Id.* at 479.

434. France, *Population by Census of 1896*, 11 Q. J. OF ECON. 325, 826 (1897).

435. See Note, *The "Decadence" of France Again*, 29 REV. OF REVIEWS 739 (1904).

436. See M. HEWITT, *WIVES AND MOTHERS IN VICTORIAN INDUSTRY* 139 (1958).

investigations into France's high infant mortality rates by the Minister of the Interior in 1862 and by the French Academy of Medicine in 1867, France enacted the *Loi Roussel* in 1874, an edict which required that all children farmed out to wet nurses to be registered and regularly examined.⁴³⁷ In 1892, France established its first prenatal clinic,⁴³⁸ and a milk dispensary for infants was opened the following year.⁴³⁹ In Paris, clean cow's milk for infants was made available at low cost to mothers unable to breastfeed.⁴⁴⁰ All of this led quickly to the promulgation of the French Public Health Law of 1902, which gave local authorities some police powers to investigate conditions in places of high infant mortality.⁴⁴¹ Although subsequently imitated by other Western states, when first created by France, this law was unique in the world.

However, the French were well-aware that their population decline was not a result of high infant mortality, but arose from personal choice involving the use of birth control, abortion, and infanticide. In defense of pregnancy and large families, there arose a curious institution known as the *Alliance Nationale pour l'accroissement de la population francais*,⁴⁴² and a nationalistic, almost cultist, pronatalist literature. Both the organization and the writings it spawned were the brainchild of Emile Zola, who was both a founding member of the National Alliance and the author of an extraordinary novel about French fertility, entitled *Fecondite*.⁴⁴³

The National Alliance was blatantly pronatalist, and openly equated pronatalism with militarism: "It is just as much every man's duty to contribute to the perpetuity of his country as it is to defend it."⁴⁴⁴ The National Alliance described its membership as including "all French people who care for the future of their country,"⁴⁴⁵ and warned that French people who refused to have children had "forgotten" a "moral truth," which had to be "inculcated in them" through a "*programme*" for remedying the depopulation of France.⁴⁴⁶ This "*programme*" consisted mostly of the imposition of punitive fines, which the Alliance incorrectly called a "tax payment"⁴⁴⁷ on parents who had less than three children:

A family, to be acquitted of the tax, should rear at least three children. It

437. *Id.*

438. *Id.*

439. *Id.*

440. *Id.*

441. H. MONOD, *LA SANTE PUBLIQUE* (1904). See also A.L. Shapiro, *Private Rights, Public Interest, and Professional Jurisdiction: The French Public Health Law of 1902*, 54 *BULLETIN OF THE HISTORY OF MEDICINE* (1981).

442. National Alliance for the Growth of the French Population [hereinafter the National Alliance].

443. See generally EMILE ZOLA, *FECONDITE* (Ernest Alfred, Vizetelly trans. 1900) (1899).

444. Bertillon, *supra* note 410, at 676.

445. *Id.* at 672.

446. *Id.*

447. *Id.* at 676.

takes two children to fill the place of the parents, and there should be a third in addition, for one in three families, on the average, will have no children. Hence the family which does not rear three children will fail of imposing sufficient sacrifices upon itself for the future of the nation. It is free to do this, but should pay damages for it.⁴⁴⁸

The National Alliance also proposed a sliding scale of punitive fines for virtually all French citizens, married or not, whom they viewed as having an “infertile” lifestyle, in order that the national treasury not show a loss through exempting fertile families from taxation.⁴⁴⁹ It also recommended that family fecundity be encouraged through “instituting special honors and marks of esteem for the fathers and mothers of numerous children,” ranging from gold medals to monetary awards.⁴⁵⁰

Paul Leroy-Beaulieu, a leading French writer, commented in 1912 that instead of tax incentives, the state should pay families a “bounty” of 500 *francs* outright for every third child and every subsequent one, half being paid within one month of the birth and the balance a month thereafter.⁴⁵¹ Leroy-Beaulieu also recommended that the right to hold public office or public functions be reserved to parents of at least three children.⁴⁵² More tellingly, Leroy-Beaulieu proposed that the state should establish that “a normal family must include at least three children.”⁴⁵³ Although intellectuals outside France labeled Leroy-Beaulieu’s views as conservative, he was taken seriously “as an economist and editor of note, and a man of peace and balanced views. It is startling to hear from a man of his type that actual ‘depopulation or denationalization’ threatens France, and that in ten years’ time if nothing is done, it will be too late to apply any remedy.”⁴⁵⁴ In Leroy-Beaulieu’s view, men and women were equally to blame, and compulsive thrift was not the real reason for the birth rate decline, but rather “egotism, vanity, love of leisure, the passion for amusement, the spread of religious skepticism and agnosticism.”⁴⁵⁵ Women “shirk[ed] responsibility more and more” and men were “even more timid, selfish and anti-social.”⁴⁵⁶ Leroy-Beaulieu’s verdict was unequivocal, and as damning an indictment of his French countryman as even a modern-day *mullah* could deliver.

However, none of these measures (and no little amount of alarmist complaining) detracted from abortion’s pace, and its toll was staggering. After publication of the French census results in May 1912, French

448. *Id.*

449. *Id.* at 677.

450. *Id.* at 679.

451. *France’s Alarming Population Problem*, 46 REV. OF REVIEWS 240-41 (1912).

452. *Id.* at 241.

453. *Id.* at 240.

454. *France and the Birth Rate*, 68 CHAUTAUQUAN 258, 258-59 (1912).

455. *Id.* at 259-60.

456. *Id.* at 260.

newspaper editorials proclaimed a day of national mourning for the passing of a great nation.⁴⁵⁷ French journalists described the birth decline “by such terms as ‘deplorable,’ ‘profoundly desolating,’ ‘extremely disquieting,’ ‘lamentable,’ and ‘dolorous.’ The prevailing tone of their comments was as if the country had experienced some great calamity or had suffered a national bereavement.”⁴⁵⁸

Less than a month before the outbreak of World War I, U.S. medical commentators viewed the 1913 French birth rate statistics with profound alarm. No lower total of births had ever been registered, indicating a growing yearly loss of 200,000 potential French citizens since 1875.⁴⁵⁹ After World War I, the national statistics for France referred to as many as three hundred thousand to five hundred thousand abortions yearly.⁴⁶⁰ The only thing abortion reduced in France was the rate of infanticide, which had previously soared with the closing of the foundling homes in 1830.⁴⁶¹ Previously, France had reduced infanticide by abandoning new-born infants in foundling homes, called the *tours*—after the turntable door design that allowed a mother to deposit her infant without being seen.⁴⁶² In 1815, 84,000 infants were so abandoned but alive; by 1833, the number of these unwanted children had risen to 127,000.⁴⁶³ The French had always understood that the *tours* were the social safety net for poor unmarried women. As the socialist Francois Vidal averred,

The *tours* have been closed and the poor mother, the working class girl, has been left with no other course than abortion or infanticide. In our sad society many mothers have bewailed their fecundity, and more than one, in thinking of the future which awaits her newborn, has broken its head on the cobbles or strangled it with maternal hands in order to save it from life, save it from prostitution.⁴⁶⁴

However, French economists attributed the increase in abandoned children not to increased illegitimate births, but to a growing use of the *tours* by *married* women who wanted to keep family size small. There was a movement to close the *tours* during the July Monarchy in 1830 to prevent its use by married women. This resulted in incidents of abortion—the alternative to abandonment and infanticide—among unmarried women rising to “an unheard of frequency, almost a habit.”⁴⁶⁵ Unlike infanticide or abandonment, both of which meant carrying a fetus to term so that a

457. James W. Garner, *The Decreasing Population of France*, 85 POP. SCI. MONTHLY 247 (1914).

458. *Id.*

459. Note, *Scientific Notes and News*, 40 SCIENCE 164 (1914).

460. *Id.* at 479 n.78.

461. *Id.* at 464-65.

462. *Id.* at 464.

463. *Id.* at 464.

464. *Id.* at 465 citing FRANCOIS VIDAL, *DE LA REPARTITION DES RICHESSES* 285 (1846).

465. *Id.* at 466 citing DR. F. BRORCHARD, *LA VERITE SUR LES ENFANTS TROUVES* 98 (1876).

woman's pregnant condition would eventually become known, a successful abortion could eradicate all traces of pregnancy before a woman's condition evidenced itself publicly, thus preserving her "honor."⁴⁶⁶ It therefore logically followed that married women with undesired pregnancies would soon avail themselves of abortions in increasing numbers to similarly safeguard their "honor," especially since the increased medical safety of the abortion procedure had made the act seem less criminal. And this they did, so much so that more children were aborted than were born. One cannot blame the Germans for France's defeat as a great power in two World Wars. France finished itself, with the help of busy abortionists and a clientele unrestrained by any sense of ethics, mercy, or even of God.

CONCLUSION

A stone, remarked Sayyed Hossein Nasr, has no choice but to fall.⁴⁶⁷ Its heaviness is its essence, and this is its nature. And in falling, it obeys the law of gravity, which is part of the will of God.⁴⁶⁸ The stone cannot do anything else. It is this unquestioning obedience created by its very nature that makes the stone Muslim—an expression of the will of God.⁴⁶⁹

Man can be like the stone and be Muslim, doing the thing that God expects of him—what God has commanded—and exercise a contrary will (sometimes called a free will, erroneously), that leads him away from God. The tragedy is that this same exercise of will cannot lead us back. The road away has been the road of the West for the last two centuries. It is not the right road and the way is not straight. It is a treacherous path, shadowed by personal egotism and a lack of hope in the future. Bad times are on the rise, warns the Clinton Administration, unless we make abortion on demand an international human right. This is a clarion call that needs to be examined carefully. If the Clinton Administration's claims are true, and only through abortion and infanticide can we preserve the environment and our international security, then we are certainly sitting on the edge of the end of the world. There is simply no place to go if this is true. It is a herald of the last days, the end of history, and like the stone, we can simply drop off this precipice and tumble out of sight. If untrue, we must act swiftly to correct a dangerous, delusional feminist fantasy that borders on the satanic. This is our choice. We can persist on traveling the crooked road we have followed either in error, pride, or both, or we can exercise our will and straighten our paths. In a dynamic society that still values truth and human life, and has not been completely corrupted by promises of material wealth today in exchange for our souls tomorrow, the choice should be easy, and will make

466. *Id.*

467. NASR, *supra* note 4, at 28.

468. *Id.*

469. *Id.*

all the difference in the world.

POSTSCRIPT

I first became aware of the international dynamics of the abortion debate in 1991, while studying German and international law at New York University. I pursued my interest in the ethics of abortion in study with Professor Robert Gurland, of New York University's philosophy department, and combined it with my strong interest in population history. It is my theory that the rise of modernity, especially what we would call the modern state system, took place simultaneously and symbiotically with the invention and mass production of synthetics, the increased use of birth control methods, and the medicalization of abortion, especially in Europe. It is most unfortunate for mankind that the rise of the modern age was propelled by two vicious and catastrophic world wars that have resulted in an almost universal desensitization to human suffering and a shocking devaluation of human life. Only in this kind of setting could it be proposed that abortion—an ethically questionable practice in the most functional of societies—arise to the level of an international “human right.”

At the same time, I had also begun studying Islamic law—the *shari'a*—at New York University. although this course was merely introductory, I was fascinated by the idea that certain modern states could base their legal structure on a system they believed had been delivered to them from God, and that this system unambiguously condensed and forbade abortion on demand. I immersed myself in a study of the *Qur'an*, Islam's holy book, for several years. At Johns Hopkins University School of Advanced International Studies, where I was working on my doctorate in international law, I was fortunate enough to be educated in the relationship between the *Qur'an*, economics, and population development by Professor Imad-Ad-Dean Ahmad. It was through Professor Imad's guidance that I authored this article.

By this time, I was teaching at Temple University School of Law as an Abraham Freedman Graduate Teaching Fellow and Lecturer in Law. In 1996, the school honored me by allowing me to teach an introduction to Islamic Law, something usually attempted only by Muslim (I am Episcopalian).

With President Clinton's recent re-election, the struggle between what Professor Ajami calls, “the post-Christian West” and the Islamic states will undoubtedly continue. I urge all who are interested in this struggle at any level to enter the debate, from whatever side. To enter the debate rather than engage in international bullying or violence is not only to prove one's faith in the viability of modern democracy, but it is a command from God to “enter houses through proper doors.” One need only knock for the door to be opened unto them, as it has been to me.