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The Social, Theological and Biological Context of Abortion: 10th Anniversary Reflections on *Roe v. Wade*

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In the context of a service of song, scripture and prayer through which we have passed together, I propose as the text of my message the words sung by Father Carey Landry, director of the Institute for Life Studies in Berkeley:

Does a mother forget her baby? Or a woman the child within her womb?
Yet even if these forget, yes, even if these forget, I will never forget my own
(Isaiah 49:15).

This is the version from the Greek Bible, the *Septuagint*, translated by Jewish scholars in Alexandria before the birth of Jesus. The Hebrew text is a bit less precise, but the fact that Alexandrian Jews would have turned the Hebrew into the Greek concern of the mother for the child within her is itself substantive testimony to the theme we treat here.

As a Protestant minister and church historian, I would not have been presented by the sponsoring Institute for Life on this occasion if I were primarily a biologist. Yet I trust you will allow me to give more than a mere rehearsal of familiar genetic and embryological facts.

When I reread *Roe v. Wade*, I was struck by the fact that Jane Roe is the fictitious name of a woman, Norma McCorvey, who was raped on a dark road in Texas. But her pseudonym is suggestive. In the realm of fish, her name means eggs which, when ejected seasonally, are fertilized in the prodigal thousands by the milt of males.

One of the ineffaceable memories of my life is of walking early one spring morning toward a pond from which the winter's ice had just disappeared. As I approached, the rising sun shed intense morning gold upon that pond rimmed with male and female goldfish slithering on their sides amid and above sodden autumn leaves in an ecstasy of simultaneous ejection and fertilization. Their gilded scales, with white underbellies here and there exposed, gave that mirror of morning-stillness blue a vibrant frame.

From fish to human families, the Creator has toiled in the wondrous evolution of procreation toward the eventual interiorization of this life ecstasy of creation/procreation until it eventually would be consummated within the body of the female mammal. It is true that some tropical fish and also sharks are viviparous. The bellies of female guppies, for example, swell and release scores of newborn fish in danger of their own parents, as well as of other kinds of fish and other predators. There are several kinds of fish so specialized that after the external fertilization, the male takes the young carefully into his mouth for brooding and protection. Through these and other marvelous means, some fish, especially the small species, have contrived to produce fewer eggs and less milt and still survive.

But everyone knows that these procreational resorts of a small percentage of fish are only superficially analogous to mammalian development of the fetus in the womb. As with fish, there are mammalian ova and a specialized kind of milt, spermatozoa,* which also have half the chromosomes of the somatic cell and even of the ovum before it has undergone the halving process, meiosis.

This process for the generic egg is called specifically oogenesis; for the spermatogonium, spermatogenesis. The technically accurate term for the counterpart of the sperm is ootid or ovum. Those of us not familiar with the details of modern genetics may be unaware that the primordial cluster of generic cells from which sperm and ova derive (on a monthly basis in a woman), have the same number of chromosomes as somatic cells, namely 46, and that only after meiosis in several phases do the sperm and ova of 23 chromosomes, the haploid generation, make their periodic appearance, the sperm much more numerous than the mensually available ova. The mammalian sperm in

*Following the common usage of physicians and also that of *Linacre Quarterly*, *sperm* is henceforth used for the singular and the plural of what is technically the (haploid) spermatozoon (plural: spermatozoa). Its female counterpart is the (haploid) ootid, in this article called *ovum* (plural: ova).

particular are capable of a simple though short life of their own, swimming like diminutive pollywogs *through the uterus* up into the Fallopian tube. The outer fringes of the funnel-like distal end of this tube — and there are two such tubes — are open to the body cavity. At some risk, the ovum descends from the oviduct through body tissue toward that same receptive funnel. The sperm is chemotropically guided toward the ovum to form the zygote, a cell of the full complement of 46 chromosomes (hence the *diploid* generation), but with a random assortment of genes in the chromosomes from the sperm and the ovum. The zygote develops the blastocyst, then the *morula*, a cluster of undifferentiated cells, 32 or 64 in the cluster. For the male component of the zygote, the descent into the uterus represents a *second* visit.

At this point, we pause to marvel at the biological problem that had to be solved by mammalian reproduction in the primordial urge of protecting progeny, thereby reducing the number necessary for the perpetuation of the species and making the individual members of a species also less dependent on the vagaries of an external environment. The problem is that the haploid sperm and, to a somewhat lesser extent, the diploid zygote represent foreign bodies in the female, ever in danger of rejection of sperm and zygotes.

Amphibians managed to move beyond fish to internal fertilization, but with the rather quick expulsion of their fertilized eggs. Occasionally, quite inventive ways of taking care of the externally hatched young were developed. In some frogs, for example, the internally fertilized ova might be expelled and immediately placed in skin sacs on the back of the female for protection, to grow through the pollywog stage in the fluid therein.

Further Advances

The next great advances were made by reptiles and then birds: internal fertilization in the intestine and the formation of a shell around each zygote which protects it from the pressure of the female's body and the other fertilized eggs growing within it. The shell also inhibits the female reptile or bird from ejecting the eggs as chromosomatically foreign bodies until such time as the fertilized eggs develop a sufficient shell to be incubated externally in the sand under the sun or under the warm feathered body of the female bird or, in some cases, both parents.

The next great advance was made by marsupials, an order of mammals without a placenta. Again with internalized fertilization by copulation, the resultant diminutive young extrude themselves from their mother and, on their own, climb toward the pouch, whence the name of the order. The pouch functions at once as an external uterus in the sense of a protective enclosure, while the young marsupials suck

as true mammals from the teats on the warmer side of that pouch. We can extrapolate from what we know of the more primitive semi-mammalian egg-laying platypus and surmise that the first marsupials, now extinct, would have only had milk oozing from the proximate skin of the pouch without benefit of teats.

The ultimate advance in the creative drive to enable the mother to protect progeny was the development of the placenta, a marvelous structure. There could be no fossil of the first mammalian placenta sloughed off as afterbirth, but it is the ultimate reproductive achievement that made possible the profusion of mammalian life with relatively limited progeny and with bodily maternal protection during gestation and with a bond built up for parental care and even training of the young. In the highly structured wolfpack, usually only the lead wolf and his mate copulate. The other pack members become completely involved in the life of the one litter of cubs who find their places as they grow into the wolf society.

Before making further reference to such refinements of the drive to enhance the care of offspring, we must understand the placenta, the complexity of which has only recently been understood in the context of the evolution of the reproductive process I have been summarizing. In order to achieve the maximal protection of the young, the mammalian placenta evolved partly out of the tissue of the zygote-turned-morula. The fetal half of the placenta, derived from the trophoblast as developed by the zygote, has the same diploid cells as the embryo from which it was functionally divided off in the process of implantation in the uterus. That process itself bestirs the uterus to develop a counterpart placenta (the decidua) which, in the case of human females, covers the whole interior of the womb, but is most swollen with tissue and blood vessels right opposite the umbilical cord. With its two arteries and one vein, the cord is *wholly* a development of the embryo.

The two blood systems are never in direct contact during gestation. That is the histochemical miracle of the placenta. The placenta belongs partly to the mother, partly to the embryo. Fetologically, it is therefore incorrect to say that the life in the developing amniotic sac belongs to the mother's body or is part of her body. It is precisely because even the placenta is not wholly of her body that the life growing within the mother is not ejected as foreign. It is quite probable that what are called natural abortions are most often rejections by the pregnant female of embryos in early stages which are created by two sperm which have penetrated a single ovum. Consequently, they are inviable in more than one sense, the more important being that they have twice as many male chromosomes as they should and that is more than the decidual or maternal half of the placenta can cope with. Such a mismating would, in any case, be monstrous and the provision is there for its often unnoticed rejection prompted by the

mother's inner receptors sensitive to something exceeding the norm. It is a marvel, further, that there are so relatively few ectopic implantations, such as in the abdominal cavity, in the Fallopian tube, or in parts of the womb, strategically difficult at the moment of parturition.

The miracle of the reproductive cycle of mammalian life was unknown to the Stoics and other philosophers and to Thomas Aquinas who followed Aristotle on fetology with its successive ensoulments.

All these ancients were adduced by the Supreme Court in *Roe v. Wade*, almost as if to obfuscate the biological facts well known when the Court ruled. The extraordinary role of the placenta to prevent the rejection of a foreign body and thus to enhance the steady biological drive toward ever-enhanced protection of fewer progeny within the protective body of the mother had become known, in contrast, perhaps only a decade before the Court ruling. That women contributed genetic material equal to that of the male was known for a biological certainty only in the first quarter of the 19th century, although some ancient physicians and some Christian thinkers, like Tertullian, insisted that what they saw in the countenances of their offspring and recognized in their traits was as much from the mother as from the father. But the regnant theory from antiquity to almost modern times was that the male seed bore the distinctiveness of the offspring who was simply nurtured on what, in ignorance, was called the menstrual blood. The microscopic realm of chromosomes and the electronically perceived realm of the genes was unknown to the majority of the physicians, philosophers and lawmakers cited by the Court in *Roe v. Wade*.

Appearance of Scholarship

Though the decision has the appearance of scholarship, it is as if a decision by the same Court about nuclear warfare or nuclear plants should summarize the history of astrology and alchemy to reach a verdict on whether a state like California or South Carolina can respond to the fears of its citizens and interpose itself with respect to an unsafe nuclear plant despite the federal monopoly over the regulation of nuclear power. In *Roe v. Wade*, the Court almost perversely mingled ancient and medieval fetology with modern biological testimony to come up with needlessly imprecise language about what science respecting reproduction was certain, namely, that the ovum and sperm are unusually potent units of animal or human life and that when conjoined as zygote, they represent genetically complete human life. One should not yet say a human being. The development in the womb is for two months called an embryo and thereafter, is technically the fetus, with fraternal twinning possible from the first

embryonic stage. From the end of the first trimester, the fetus or multiple fetuses display clearly recognizable human traits, including gender, and evidence motion as yet undetectable by the pregnant mother.

The Court alleged that most American statutory laws restrictive of abortion, beginning in Connecticut in 1821, were enacted primarily in the interest of the mother's health and safety, not that of the child she carried. Yet the Court drew perhaps inadvertent attention to the fact that a tightening of the state laws in the course of the 19th century seems to have stemmed from the effect of the American Medical Association committee's report on criminal abortion in 1859, which had arrived at fresh ideas about the fetus in its wondrously *early* formation. This committee demanded that "exploded medical dogmas" (e.g., about quickening, etc.) be discarded in the light of what was becoming ever clearer to physicians, namely, "the existence of the child before birth, as a living being" (*Roe v. Wade*, VI, 6). But the Court inexplicably swerved from this early glimpse by the specialists of that age into fetological reality and instead, persisted in arguing (1) that the whole problem of when human life begins remains confusing, and for the zygote/embryo/fetus they used such terms as "at least potential life" (VIII, 3rd reason) and insisted on the uncertainty as to "when life begins" (IX,B) and (2) that the laws against abortion had been primarily directed at protecting the mother, not the child within her, despite the fact adduced that the British statutory law, Lord Ellenborough's Act of 1803, had distinguished the penalty for the abortion of a quick fetus as death and that for the abortion of an unquickened fetus as a felony punishable by something less than death (VI, 4). This basic law, even if excessively harsh in the penalties attached to two degrees of abortion, became influential in the formulation of the Connecticut statute without a death penalty attached. Yet the British law and the American state laws following it were said by the Court to have been motivated by three reasons: (1) upholding "Victorian" morality for women (Victoria, the Court should have known, did not begin to rule until 1837, exactly 33 years after Ellenborough's Act); (2) "protecting pregnant women," and (3) only hesitatingly, "the State's interest — some phrase it duty . . . in protecting prenatal life" (VII). Here follows the previously cited clustering of phrases on the alleged uncertainty about "the beginning of prenatal life."

The Court drew three inappropriate conclusions from the very materials it had itself adduced. The justices should have remembered when they last examined a bean to be planted in a hill, even if it was back in their boyhood. We shall continue in ordinary speech to call such beans from a packet or box "seeds." We all know, however, that the white bean, when planted, is not like an ovum or a sperm. It is a fetal bean bush. Its first pale yellow pair of leaflets, the cotyledon,

needs only moisture and soil to send down the root and so send up the split nutritive halves of the bean burgeoning with life. From our present biogenetic perspective, the white bean is thus a diminutive fetal bean bush independent of the pod and the mother plant whence it came during pollination the summer before. That "mother" no longer even exists, for, like so many plants, beans and peas are annuals and live for one season. In contrast, acorns are "fetal" oaks which, when grown up, live long and even come to overshadow all but a small percentage of the prodigally produced annual supply of acorns, potential successors in the forest.

Moved into Botanical Realm

I have moved into the botanical realm to show as vividly as possible what is meant by the diploid generation of life. It is only with the larger so-called seeds that, with the naked eye, we see what biologists refer to as "the alternation of generations." What we call seeds — peas, beans and acorns — already belong to the diploid generation, having been formed from the juncture of pollen and ovule of the haploid generation wherein the life units have half a set of chromosomes, to be fused in fertilization by insects, the wind or other means.

The Supreme Court could not be expected to make an excursus into botany and biology. But we who regard its ruling on the rights of the mother over or against the fetus as morally wrong need the reinforcement of the awareness of the evolutionary history antedating any legal history. This groping legal development is as but a second in the eons of groaning and travail of the created order by which ever-increasing maternal, then societal and religious and, finally, legal protection have come to be accorded the human offspring.

The preserved umbilical cord of Pharaoh, held high on a staff in the forefront of the Egyptian hosts to signify his presence, is said to be the origin of the battle flag and then of national flags. The placenta, as afterbirth, though disposed of in hospitals as waste, rather than as catalogued tissue, has its place in anthropological practices. As unsightly as is the umbilical cord, it should nevertheless also be held aloft, at least symbolically, as the bloody banner of life's victory over sheer prodigality. It has led to the nurturing, loving protection of the "unviable" unborn and the helpless neonates on the part of the mother (and often of both parents) and in the case of human society, protection by customs, institutions and finally, its law.

King Solomon did not know anything about chromosomes or the marvelous placenta which makes it possible to carry precious but genetically "foreign" life in the mother's womb. But Solomon was wise and was also a judge. Two harlots were brought to him, wrangling. Each had given birth to a child. Though one had suffocated

hers by lying on it in the night, each claimed the living child. After ascertaining the circumstances and claims of the two and professing not to know who had the proper claim, Solomon pretended to order that, by a sword, the babe be divided equally between the two claimants.

The sacred text of I Kings, 3:26 continues: "Then the woman whose son was alive said to the king, because her *heart yearned* for her son, 'Oh, my lord, give *her* the living child, and by no means slay it Then the king answered and said, 'Give the living child to the first woman . . . she is its mother.'" In the Hebrew, the phrasing is literally, "because her womb (*racham*) grew hot for her son."

This primordial emotion, common to the fearless tigress defending her cubs no less than to the Hebrew harlot giving up her child to save it, is a source of mercy — womb-mercy — which spreads from women to the whole of a society. In Scripture, womb-mercy is even ascribed to God. The "bowels of divine mercy" is a transposition in an older English of the Hebrew word for the womb. The same Semitic term for womb-mercy is behind the heading of the two attributes of God in every Sura in the Koran (save one: Allah the *Merciful*, the *Compassionate*). How remarkable that patriarchal societies and their religions would find in the mother's primordial feeling for the child in and from her womb the ultimate human way of verbalizing God's mercy. How long will avant-garde women, even in their rightful concern for liberation, in appropriate social shackles, nevertheless continue to deny something so fundamental to *their* very being, so biologically fundamental to womanhood/motherhood, that womb-mercy seems to have been transferred from them, in the evolution of emotions, also to men and even ascribed by Jews, Christians and Muslims to God? And there are counterparts of this etymology and ascription in other religions as well.

We turn from this unconventional excursion into the vast bio-evolutionary context of the drive to protect and nurture offspring to the theological context necessarily kept to a minimum in the Supreme Court decision which cannot allow more than natural theology at most, not revealed theology or confessional ethics, to be decisive. Yet religion in *Roe v. Wade* was almost imperceptively used against fetal human life and almost wholly in favor of the pregnant woman. By this I mean that the injunction against abortion in the Hippocratic Oath was indirectly disposed of when shown to have had a religious origin, specifically in Pythagoreanism. Although Pythagoreanism held to the transmigration of souls, this word was not used. The embryo was regarded simply as ensouled or "animate" from the start (VI, 2). That the physicians of Christian societies took over the Hippocratic Oath and that it was professed by graduating doctors of all confessions or none in the lifetime of doctors still practicing, was unnoticed by the Court.

The Stoics cited by the Court must be considered no less religious than philosophical and their doctrine that human life begins with the taking of the first breath after birth (VI, 2: IX, B) could be useful in the momentum being built up for the primary concern of the Court — the pregnant woman. It did not find it apposite to mention the fact that the same Stoics also believed in the legitimacy and even nobility of suicide, in contrast thus to the Pythagoreans on two points, and hence to the whole Hippocratic School, not simply to the Hippocratic Oath. As broad as the justices conceived their mandate to be, the Court again adduced sources tendentiously: ancient philosophers as religious (Pythagoreans) when it suited the purpose and *only* as philosophers (the Stoics) when it served their preconceived end.

The Court deftly concealed its satisfaction in building further momentum by adducing the doubly male chauvinist fetology of Aristotle, according to which the mother provides only the nurturing blood for the male seed and, alas, the female “embryo” (the modern sense is more restrictive than the ancient) takes 80 days to acquire its animal soul in contrast to the mere 40 days for the evidently brighter male “embryo.” The Court noted that this fetology was taken over by Thomas Aquinas (VI, 3, IX, B). This is about as far as the Court dared to cite in the text any individual theological figure, except as it mentioned “the Jewish faith,” “the position of a large segment of the Protestant community” and “Catholic dogma until the 19th century” (IX, B), all to devastating effect for the fetus, but apposite for an almost preconceived outcome in favor of the female — the protection of the woman’s right over what goes on in her body. Apparently the Court was willing to let only ancient and remote religions affect its decision: “Ancient religion did not bar abortion” (VI, 1), it observed, and then allowed three modern forms of modern religious traditions in the United States to be noticed when favorable to the Court’s premeditated finding: the major tradition in modern Jewry; mainline Protestant denominations fully engaged in the sexual and the women’s rights revolution; and the papal Magisterium through the 19th century (without precise reference to the 1879 bull of Leo XIII, *Aeterni Patris*, whereas Thomas, Doctor Ecclesiae since 1567, became pre-eminently authoritative, alas, with Aristotelian fetology and the three successive animations).

It is not that these last three allusions are incorrect. And those of us who deplore the Court’s decision in favor of “Jane Roe” pregnant, with almost no argument mounted for the fetus (cf. VII, 2; VIII, XI, 1c) even to be judicially struck down, must acknowledge that, given the complexity of electron-micrographic discoveries within the mysterious darkness whence we all emerged, we who are pro-life might better not have insisted that the conceptus was legally a person. The haploid ovum, fertilized by the sperm to become the zygote near the distal funnel of the Fallopian tube, destined in the uterus to create out

of itself the fetal placenta and related membranes penetrating the uterine wall, is not yet a person.

Anyone familiar with the history of Christian doctrine knows that *persona*, anciently-used Latin for each of the three divine Hypostases (the more philosophical Greek term as a Latinized plural) and then for the incarnate second person in two natures, Jesus Christ, knows that classically *persona* came to be transferred from the dramatic stage to law, to grammar, and then to personages in certain roles, then to the divine persons and only in the long course of history, by a kind of democratization of the person of Christ, applicable to every Christian and from there to everyone.

It was probably too much to have expected that "person" in the Reconstruction amendments to the Constitution would be construed in defense of the fetus as a legal person. Before these amendments, slaves had been counted as three-fifths of a person each, for calculating representation in Congress from the slave states. And while the amendments eliminated slavery in principle, for a long time the key term was constitutionally developed to protect artificial, corporate and juridical persons. Yet before Jan. 22, 1973, I myself was among the civil libertarians who said that the Court could quite appropriately construe the fetus as a person, on the analogy of the extension of plenary rights to former slaves and on the precedents building up in tort decisions relating to the fetus. But there was surely no budding of this idea anywhere in the decision.

Need Religious Insights

We who espoused the right to life of the unborn, who were pro-life, should have worked not with "mistaken and exploded medical dogmas," outmoded legal precedents, not with outmoded ancient philosophies, not even with theology, but with modern microbiology, our principal ally. We need, however, the insights of religion and the precedents of communities of faith living by revealed injunctions and truth to motivate us in fighting for the valid and fair interpretation, at law and in the legislature, of the extraordinary findings of the genetics and fetology which belong wholly to our 20th century.

Insofar as theology is a motor for our behavior in the public domain of enacted law and judicial decision as in the private domain of personal behavior, we must be clear among ourselves on three problems which are present even among those of us who, in varying degrees, oppose abortion: Jews, Christians and some humanists — of these, alas, all too few.

Jews, with what Christians call the Old Testament and with centuries of interpreting it in the Talmud and in later responsorial literature and ethical treatises and customary law, while traditionally

opposed to abortion (note the intensification of this in the cited alteration of a text in the Septuagintal passage of Isaiah above), have had a view of the beginnings of personal human life different from Christians using the same Testament. Christians differ also among themselves as to whether Scripture alone is sufficient guidance in such an issue as abortion. Conservative Protestants would prefer to base their arguments wholly on the Bible. Catholics supplement Scripture by tradition and the papal Magisterium on an issue as difficult as which scientific moderns are better informed on the biological facts than the ancients. Many who are either Jewish or Christian of whatever persuasion feel that appeal to Scripture or Scripture and tradition is valid as far as personal motivation for personal conduct is concerned, but not valid as the basis of argumentation in the public domain.

The Old Testament, the Bible of Jews, has a number of places where the psalmist or the prophet refers to life in the womb, but necessarily determinative for Jews is the account of the creation of man in Genesis 2:7: "Then the Lord God formed man of dust . . . and breathed into his nostrils the breath of life; and man became a living being." Then came the commentary thereon in the Oral Law (Mishnah) eventually believed to have been given to Moses, and in the Gemara (the rabbinic commentary on the first part of the Mishnah). This Yahwist version on the origin of life could be combined with the Elohist version, Genesis 1: "Then God said, 'Let us make man in our image,'" but the effect of the two passages on Hebraic and Jewish fetology to the present is to define a living child somewhat like the Stoics, that is, after its birth and first breath, regardless of how conservative Jews might have been (Orthodox Jews to the present) about the preciousness of that life being formed in the womb.

But the passage in Genesis 2 has not been fetologically determinative for Christians, partly because Jesus was for them the new or second Adam (I Cor. 15:45), an account of whose divine origin in the womb of the Virgin Mary became paradigmatic, strengthened by the account of John the Baptist greeting Jesus by leaping within the womb of his mother, Elizabeth, when Mary approached (Luke 1:41-44). There are indications in the New Testament that abortion was abhorred, for example, in the use of *pharmakeia* and cognates and in such a context as to suggest an evil drug. But it is not necessary to belabor these places, for the opposition of early Christians to abortion is well documented in writings contemporaneous with those like the epistle to Barnabas and the Didache. This is not the place to rehearse the history of Christian attitudes toward abortion in different eras and different regions and confessional traditions, except for two remarks.

The first concerns the ever more important role of the Virgin Mary in the theology and piety of Christianity in all the great schisms of Christendom — Catholic, Orthodox and other Eastern traditions.

Protestants, who renounce the mediatorial role of the Virgin have, at most, a vestigial Marian doctrine, if any. And women's liberationists — Protestants and some Catholics, too, among them — feel that Mary has become a symbol of "male-chauvinist theological subordination of women" even as she herself is exalted as Queen of Heaven. In the present context, opponents of abortion and others should know what was at stake when she was proclaimed Mother of God (Theotokos) at the Third Ecumenical Council at Ephesus in 431 against the Nestorians. The biological knowledge of the ancient world in which this council struggled for clarity held, for the most part, that the male seed alone shaped the internal nature and external contours of the fetal child "nurtured on menstrual blood," the mother's only contribution. On this human analogy, some Christians both at Ephesus and at the Fourth Ecumenical Council at Chalcedon in 451, held that the Child conceived by the Holy Spirit of God was not fully human or the bearer only of the divine epiphany. These two councils together, therefore, were saying theologically and, more specifically, christologically, that Jesus was *fully* human and that Mary was the Mother of the Redeemer, that *contrary to both the science and the popular belief of the day*, Mary contributed the human "seed" so that her Son as one person in two natures, human and divine, was fully human in body, mind and will *because of her*. Feminist theologians are wrong in disparaging Mary as a paradigm of submission. Her exaltation was the way the ancient Church safeguarded the complete manhood of Jesus.

Theories of Soul's Origin

The second historic remark is related to that same scientific/popular "genetics"/fetology of that age. Following are three theories of the origin of the soul held by various Christians in that age: (1) pre-existence and embodiment as a kind of fall into the material world as a trial, (2) creation ad hoc and infusion at some point in fetal development, and (3) traducianism. Only the last view understood body and soul as together at once from conception and, by coincidence, understood also that there was, in some sense, "a female seed" as the counterpart of semen, although it could only be postulated, never observed. Tertullian of Carthage (d. ca. 220), a married theologian, the father of Latin theology in the sense of having coined its basic terms, was a traducianist.

Martin Luther, in reviving indirectly the traducianist view of Tertullian, when he thought he was being faithful to Augustine's discussion of Tertullian, contributed to the development of enhanced sensibility to the right of protection of the fetus, ensouled, according to Tertullian and Luther, from the moment of conception and deriving its traits from the "seeds" of both parents.

By quoting mainline, present-day Protestant views on abortion, the justices were overlooking the fact that the restrictive state laws of the 19th century had been put in place mostly by Protestant legislators under the influence of Protestant physicians and lawyers, as well as preachers and theologians, and that the shift in this grouping came very swiftly and relatively recently. When we look at the theological context of the *Roe v. Wade* decision we may note some *religious* factors as well as the so-called secular and often quite disparagingly-used humanistic factors. These were part of the groundswell which caused the Court to go so far beyond what the case called for.

In mainline Protestantism, referred to by the Court as sympathetic with its emerging decision, there had been a swift erosion of the single most important doctrine of classical Protestantism, itself the reprimand and, indeed, intensification of Augustinianism in the 16th century with respect to predestination or to the decrees of election and reprobation. Today, mainline Protestant theologians in the United States have been facing the cumulative implications of Darwinian, Marxist, Freudian and kindred psychological determinism, along with the genetic, psycho-chemical and socio-biological determinism, the latter just beginning to show its impact on Protestant theologians and denominational leaders at the time of the decision. The doctrine of predestination had once imparted a certain dark dignity even to the reprobate, for *ex professo* he and the elect differed not at all from each other in merit or rather, in demerit, both culpable because of the sin of Adam and Eve. They differed only in their eternal destinies because of God's inexplicable and admittedly arbitrary grace shown to the elect few.

In the decade of *Roe v. Wade*, that whole edifice of classical Protestantism had long since been partly dismantled or had even collapsed of itself for most Lutherans, many Calvinists in the mainstream denominations, and for probably all Anglicans. It should be added that predestination also does not feature in the sermons of the largely Protestant electronic church of the extreme right, nor in the biblical colleges and denominations linked to the beamed message of reprimanded morality and chauvinistic patriotism. With the loss of a high sense of predestination, there had also come, among mainline Protestants, a weakening in the grasp on the traditional eschatological details and for some theologians in these denominations, even an extinction of belief in personal immortality with only a vague and remote sense of Christ's second advent and the general resurrection and last judgment. In such a context, concern for the living mother and her fleeting sovereignty over self and her fulfillment in this knowable present life had become swiftly pervasive among men, no less than women, among worshipers in the pews, no less than among the pastors and their theological professors. Variants of the social gospel, including the liberation of the racially downtrodden and the incompletely enfranchised women, had

pressed to the margins or possibly in some cases replaced the good news that in Christ, Christians have not only some sense of an eternal quality in the present life through grace, but also a foretaste of a consummation of grace in eternity.

This shift in soteriological emphasis, along with growing anxiety about the degree to which persons even in the Church and in a democracy are free with or without grace amid the evident predeterminisms of modalities never imagined or surmised by Luther or Calvin made Protestants *determined* to show their freedom in the limited area of birth control and family planning, ever more tolerant of perhaps only early abortion as a means thereto. In any case, the drive to enjoy the superficial freedom from having too many children or from the burden of any offspring at all in wilfully childless marriages, blinded these prevalingly college-educated mainline Protestants to the facts of biological laboratories and science columns in their papers and periodicals which spread before their eyes fetal facts which would have deepened even further in an Aristotle or an Augustine, in a Thomas or a Luther the sense of the mystery of all life and particularly of human life from conception to death. The sense of mystery of an afterlife would have been made more, rather than less, plausible in the scientific revelations of the spirituality of matter itself at the subatomic level of the play of points of energy in space as relatively remote from each other as stars in the galaxies.

Have Entered Context of Decision

With these sharp comments about the radical displacement of theological concerns, particularly in mainline Protestantism, we have already entered the social context of the decision in *Roe v. Wade*. About the psycho-dynamics of this decision, we know more perhaps, than about any other, at least in terms of pre-trial activities of groups favorable to leniency in abortion and of those opposed. We also have indirect but compelling accounts of the interchamber motivations leading to the formal deliberations of the Burger court. It would be of little interest on this sad commemoration to have surmises of a non-jurist much further removed from the original scene than those who have already written, except for him to remark here that in the institutionalized drive for demonstrating independence of even a conservative court from a conservative president who had made clear his opposition to abortion, the justices were disposed to show they could be "liberal" on some issues. That is part of the psychodynamics of the Court. Of more interest to you from me as a historian would be some reflections on the larger American social and socio-political and, indeed, cultural context — cultural in the sense of the unarticulated presuppositions and overt achievements of the American variant of the North Atlantic civilization.

Probably in the United States only a few legal specialists on the federal republic of Germany's constitution were aware of how West Germans had reacted with detailed new safeguards to the horrendous activities, not only of the Nazi government, but also of the medical and legal professions, perhaps even more than of the Wehrmacht officers in the whole range of German atrocities which we call the Holocaust. A recent article, indeed, is entitled "The Medicalization of Auschwitz." Among these safeguards embodied in the new German constitution were restraints on human experimentation and abortion. It was to members of the American medical community that the grisly performance of its erstwhile German colleagues was most unsettling. Yet American medicine had acquired information of value from the macabre experimentations of the Nazis on a scale of enormity unparalleled in history and also from long-held secret experiments by the Japanese on none other than American prisoners of war. It is often said we become like the enemy. We oppose.

Despite the many past great decisions where the Court gained its eminence by opposing the majority of the population on some issue, in *Roe v. Wade* the Court heeded what it considered the regnant view and discounted, as culturally vestigial, the spokespersons of what would eventually become the near tidal wave of reaction in the self-styled Moral Majority and in persistent Catholic opposition to abortion. Even the dissenting Justice Rehnquist's opinion made no use of pro-life argumentation and documentation and centered it in an intra-constitutional problem of the transposition of the "compelling state interest" test from one clause to another in the 14th amendment, which would at best be only preliminary to placing the human fetus's right to life on a par with that of the mother.

In retrospect, to be fair to the Court precisely in terms of the larger social context in which its members as citizen-observers are necessarily a part, we acknowledge that the country and therefore, the Court, found itself in the prophase and anaphase in the meiosis of American society, to carry over terms from reproductive biology to the American body politic, in four overlapping revolutions: (1) the black civil rights movement; (2) the pro-life recoil from an inadequately legitimated war against civilians; (3) the sexual revolution with respect to the sudden and almost universal shift in the mores of the youth, which brought turmoil to all homes and perhaps particularly to the homes of generally liberal and conventional people, including those with college degrees in the liberal arts and sciences; and (4) the women's liberation movement. A fifth revolution came largely after the Court's decision — the movement for homosexual rights.

Of the first four revolutions, the most complicated for society and hence for the court, was women's liberation, because inherent in it were at least two feminist ideals, sometimes upheld by the same feminist, more likely held by sometimes shrill opposition in the same

movement. The first ideal was of the woman as distinctive — her insight, achievement, value system, indeed her contribution to the whole of civilization too long suppressed or marginalized. The other feminist ideal was the essential equality of men and women in work and in most other respects except for the reproductive function. The latter had a strong component of professional concern for equality in jobs from factory to fire-fighting. The first was not wholly incompatible with an updating of the earlier maternal ideal and its service-oriented analogues (nuns, nurses), but the second feminist liberation ideal contains in itself only a partly differentiated fourth ideal (see below).

Earlier Causes Suppressed

Since such earlier feminist causes as plenary legal and political rights had been long surpassed except for those symbolized by the ERA, the area of struggle in 1973 was the realm of jobs and professions and positions of authority. A fourth "ideal," feminist, was then the exact opposite of the traditional "maternal" norm, namely, the equality of men and women in the workaday world up to the unwillingness of women to bear children. The fight for equal compensation had become so intense by the time of *Roe v. Wade* that many a woman felt she had to be freed of the potential encumbrances of her gender to compete with men for the same positions and to be equal to men in the consequences of sexual activity. This is the sense of the phrase "control over her own body." Abortion became a means of that control to make a woman the virtual equal of a man in sexual life. (In the past, abortion had been resorted to mostly because of supernumerary progeny or because of the shame of illegitimacy.) Hence contraception and abortion were high on the agenda of this fourth type of feminist. Moreover, this position was taken not without some altruistic concern for the underprivileged.

Women of all economic classes had been involved in the civil rights movement and had consciousness-raising experience in the collaboration of whites with blacks for civil rights, while the whites saw the degree to which rural and ghetto black women were often disadvantaged by supernumerary children who suffered from diminished care from a working mother who was often the sole support for her family. White women took notice also of the consequent lower educational achievements of black children on a national average. The final phase of the civil rights movement and the beginnings of the modern feminist thrust were competitive. White women inadvertently intercepted the flow of some energy and national attention from the incompleting civil rights movement. Feminists of type two thought, however, that they could make common cause with blacks and the poor in general by advocating what they thought would spell a measure of relief for poor women and what for themselves, as profes-

sionals in various fields, would mean approximate man-likeness for however long a woman should choose not to have children.

The sexual revolution fed into women's willingness to espouse as something feminine that which is expressly *not maternal*. In the meantime, the civil rights revolution had made it appear to most black spokespersons for the poor that equal access to contraception and safe abortion was a way to equalize the poor and the rich in a moral zone which held clear promise of economic and educational advantages for the poor.

We have already indicated how mainline Protestant leadership, partly in its generally courageous espousal of civil rights, women's rights and problems of the poor had, in this case independently of these causes, lost several theological bases for the opposition to abortion — the atrophy of the doctrine of predestination, the contextualization of New Testament ethical standards, a recognition that all religions, including Christianity, had too long sanctioned the subordination of women to men in church and society.

Besides all this, there was the wholly spurious claim which, to be sure, was not allowed to be part of the argument of the Court, though it was in the mind of the justices, too, namely that a concern for the new life in the womb was a confessional, in the language of the Constitution, a "sectarian" preoccupation, not universal, thus allegedly challenging the principle of the separation of church and state.

Besides the known pressure groups working directly or indirectly on the Court in 1973, there was a natural civil libertarian coalition of the poor, the blacks, feminists of two or three types, sexual liberationists, and mainline Protestant and almost all Jewish religious leadership in religion, medicine, psychiatry, social work, law, education and economics waiting expectantly for a "liberal" decision. I say this as a Protestant liberal and a sometime member of the executive committee of the Massachusetts Civil Liberties Union. I am still concerned with civil liberties, but to be born is a fundamental freedom. And I am profoundly distressed, as a civil libertarian, that the weakest and most inarticulate being, the unborn, with its genetic code fixed and needing only time to become one of us, was not heard or really even heeded in the Court 10 years ago, only the pregnant mother.

It is my hope on the 10th anniversary of *Roe v. Wade* that women, feminists in the lead, will eventually tell us what those unwitting male chauvinists, King Solomon and Aristotle, understood even better than feminists of type one, namely, that a major source of mercy in human societies, the emotion of pity and the yearning to give succor, the capacity for disinterested friendship, arose not in the mind of the male nor in the hearts of men and women, but in the primordial umbilical relationship between mother and offspring which leaves its permanent reminder at the center of our bodies.

It should be the constant sign that the generations are literally bound together by that cord of two red arteries and one blue vein, created out of the diploid tissue of the morula, in part, alien to the mother's system, but drawing nutriment and oxygen from the mother, without the two blood systems ever coming into direct contact. The miraculously evolved placenta made mother and offspring physically and emotionally closer than lover and beloved can ever become, even in ecstasy, for the mother and offspring are united also in sorrow — Rachel weeping for her children.

Perversions, Aberrations

There have been perversions and aberrations of this bond in all times and climes. Mothers in the Bible are recorded as having committed cannibalism in famine. Men demanded that their women fling their firstborn into the maw of Moloch. Medea, ferocious in her conjugal rage, is not alone in ancient Greek literature, slaying her own offspring to spite and sicken her alienated spouse. The Roman *pater familias* held the right of life or death over not only the child in the womb, but also the child as infant or even as youth. But the seat of mercy was the womb. Feminists, surely among the most ethically sensitized groups in contemporary society in other respects, must again become, as it were, queens of Sheba, the worthy equals of wise Solomon. They must do this not by denying in themselves what he knew from observation, not by succeeding to the ancient prerogatives of the *pater familias* as sole sovereign over the human life generated within them, but true to their deepest femininity and plenary rights as feminists even of type two, by acknowledging in the light of reproductive evolution that the whole of creation groaned in travail to make possible what every female mammal and no male mammal can do: conceive, foster, protect and bring forth new human life from within herself. The present stance of many feminists, carrying instinctively, emotionally more conserving women with them with their "body control" rationale (euphemistically "pro choice") will one day be seen in retrospect as a temporary psycho-emotional mutation in the larger evolutionary context of the feminine psyche *legitimately* clamoring for equality of rights and responsibilities in all areas where another human life is *not* placed in jeopardy.

There is still time for women to ponder what they have done and what has been legitimated by the Supreme Court in their alleged best interest. But they should be warned that society is at peril. The quality of mercy, to the extent to which it pervades society, is replenished in each generation as women bring forth life from the earth. They not only bring forth a child, but they have invisibly and collectively in each generation suffused that quality of mercy by which men and

women are said to be like God, the merciful, the compassionate, the Creator of heaven and earth, after Whose image and likeness He created them male and female.

The Elohist did not know that the 23rd chromosome in man and in woman is gender-determinant. This chromosome is of two shapes: a cross represented by X and a relatively much smaller shape like the Hebrew letter *ayin*, represented conventionally by a Y. The chromosome for female gender is XX and for a male, XY. It has only recently been discovered that while in birds the basic form from which the female is adapted is male, the basic body pattern in mammals is female and from that the male is adapted. In Hebrew, *ayin* means the perceptive "eye."

Women are not only procreative but are actually more nearly normative as to what the human being is. Where is the image and likeness of God in human beings, and when is that countenance of mercy lifted up upon us? It is where the weak or defenseless are protected. It is when pregnant mothers say yes to life. It is when the institutions of society fully recognize that even as God is rich in mercy, so may we be likewise.

Roe v. Wade cannot be the final, constitutional word of a humane and enlightened society. The unborn, increasingly protected and individually beloved, progressively protected by the sanctions of religion and law, must be heard in a greater court than Solomon's. It must be a court which will not threaten to use the sword of sovereignty to divide child from mother, mother from mercy, but will cut away "the exploded dogma" of a temporarily blinded guild of constitutional craftsmen to clarify at law what is clear to the biologist's and the geneticist's eye. A child is given, though it be very small, its first precarious nesting place in the folds of maternal tissues beyond the uterus, a sign of God's own embodied mercy toward us.

In the exercise of that quality, unstrained, may we be "like God."

* * * * *

Author's note: As the foregoing is a lecture altered as an article, I gathered some titles of works which have influenced me. I begin, however, with earlier writings of my own: "Religious Residues and Presuppositions in the American Debate on Abortion," *Theological Studies*, XXXI (March, 1970), pp. 10-75 (on the ethical model therein proposed allowing for a very limited number of abortions, see *The Morality of Abortion*, ed. by John T. Noonan, Jr. [Cambridge: Harvard University Press, 1970], pp. 146-171, where I distinguish from the Christian ideal what can be enforced in the public domain); "The Democratization of a Near Constant [Ideal] in History," foreword to *Abortion and Social Justice*, ed. by Thomas W. Hilgers and Dennis J. Horan (New York: Sheed and Ward, 1972), pp. ix-xix; "Safer Footing than Blind Reason Stumbling without Fear: Reflections on Bioethics in our Civic, Religious, Historical, Professional Context," *Bioethics and the Law*, ed. by Leonard J. Nelson, III (Grand Rapids: Eerdmans, 1983).

The Hippocratic Oath and Modernizations of, the Decision of *Roe v. Wade*, and many other documents can be found annotated in *Ethics in Medicine: Historical Perspectives and Contemporary Concerns*, ed. by Stanley Joel Reiser, Arthur J. Dyck and William J. Curran (Cambridge: MIT Press, 1977). Other articles include *The Placenta and Fetal Membranes*, Claude Villee (Baltimore: Williams and Wilkins, 1960); *Abortion and the Early Church*, Michael J. Gorman (Downers Grove, Ill.: Intervarsity Press, 1982); "Medicalized Killing in Auschwitz," *Psychiatry*, XLV (Nov., 1982), pp. 283-297; *Changing Attitudes of the Protestant Clergy Toward Abortion* (to appear), Wilson Yates; "Mercy as a Universalized, Non-Utilitarian Component in an Emerging Environmental Ethic," G. H. Williams, *Ecological Ethics*, ed. by John Voss and Robert Nash (Cambridge: American Academy of Arts and Sciences, 1984); *The Brethren [of the Burger Court]*, Bob Woodward and Scott Armstrong (New York: Simon and Schuster, 1979); *West German Abortion Decision: A Contrast to Roe v. Wade with Commentaries*, special issue of *The John Marshall Journal of Practice and Procedure*, IX:3 (Spring, 1976), pp. 551-695; *Where Are We Now?: The Supreme Court Decisions Ten Years After Roe v. Wade*, Educational Publications of Americans United for Life, no. 17 (Chicago, 1983).

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