

ANSWERING THE ARGUMENTS FOR ABORTION RIGHTS Part I

By *Francis J. Beckwith*

The Appeal to Pity

Abortion has become the most divisive political and social issue in late twentieth century America.

When the Supreme Court ruled that the state of Missouri was within its constitutional rights to enact abortion restrictions (*Webster v. Reproductive Health Services*, 1989), it moved the debate from the realm of the federal judiciary into the lap of the legislative process. It is now possible for other states to enact similar and even more restrictive legislation. This, of course, makes a candidate's stance on abortion rights much more important in the electoral process, since his or her view on abortion can now make a practical difference in terms of what laws will be enacted if he or she is elected. And, since our judiciary has become more conservative, it is apparent that the abortion rights movement has the most to lose if the issue returns to the courts. Thus the arguments for abortion rights are being put forth in the political arena with greater vigor and hotter rhetoric than ever before.

It is also apparent that pro-life spokespersons and political candidates have, for the most part, responded inadequately. They have either toned down their pro-life position, caved in to the opposition, or permitted the pro-choice movement to control the terminology and framework of the debate.¹

It is my hope that this four-part series will help to reverse this trend by providing a rigorous intellectual defense of the pro-life position — helpful to policy makers, political consultants, pro-life leadership, and ordinary Americans.

In this first article, after briefly explaining what it means to be pro-life and discussing why abortion on demand is legal in America, I will present and critique those arguments best classified as appeals to pity. The second article will deal with more appeals to pity, appeals to tolerance, and arguments from *ad hominem* ("attacking the person"). In articles three and four I will present the pro-life case for the full humanness of the unborn from the moment of conception. Article four will conclude with answers to some common questions about the pro-life position.

Of course, not every defender of abortion rights holds to all or any of the arguments that will appear in this four-part series. Some of the more sophisticated defenders of abortion rights eschew much of the popular rhetoric and defend their position on other grounds. But since most people will come into contact with these arguments in both the popular media and pro-choice literature, it is necessary that they be carefully analyzed.

WHAT IS PRO-LIFE?

The pro-life position is subject to somewhat varying formulations. The most widely accepted and representative of these can be defined in the following way: The unborn entity is fully human from the moment of conception. Abortion (narrowly defined) results in the intentional death of the unborn entity. Therefore, abortion entails the intentional killing of a human being. This killing is in most cases unjustified, since the unborn human being has a full right to life. If, however, there is a high probability that a woman's pregnancy will result in her death (as in the case of a tubal pregnancy, for example), then abortion is justified. For it is a greater good that one human should live (the mother) rather than two die (the mother and her child). Or, to put it another way, in such cases the intent is not to kill the unborn (though that is an unfortunate effect) but to save the life of the mother. With the exception of such cases, abortion is an act in which an innocent human being is intentionally killed; therefore, abortion should be made illegal, as are all other such acts of killing. This is the pro-life position I will be defending in this series.

Some people claim to be both pro-life and pro-choice. This is a ploy taken by politicians, such as Nevada Senator Richard Bryan and New York Governor Mario Cuomo, who appear absolutely petrified to take a stand on the abortion issue. They usually say, "I'm personally against abortion, but I don't object to a woman who wants to have one if she believes it is the right thing to do."

The problem with this statement is that it doesn't tell us the reason *why* the politician claims to be personally

against abortion. Since most people who are against abortion are so because they believe that the unborn are fully human and have all the rights that go along with such a status, we would expect that if the politician were personally against abortion it would be for the same reason. But this would make the politician's personal opposition and public permission of abortion somewhat perplexing, since the assumed reason why he would be personally against abortion is the same reason why he *should* be against publicly permitting it, namely, that an entity which is fully human has a right to life.

After all, what would we think of the depth of an individual's convictions if he claimed that he was personally against the genocide of a particular ethnic group (e.g., the Jews), but he added that if others thought this race was not human, they were certainly welcome to participate in the genocide if they so chose? What I'm getting at is simply that the nature of some "personal" opinions warrants public actions, even if these opinions turn out to be wrong, while other opinions (e.g., one's personal preference for German chocolate cake) do not. Thus, it makes little moral sense to claim that one is both pro-life and pro-choice.

WHY ABORTION ON DEMAND IS LEGAL IN AMERICA

It is important that the reader understand the current legal status of abortion in America. There seems to be a widespread perception that the Supreme Court decision *Roe v. Wade* (1973) only permits abortions up to 24 weeks, and after that time only to save the life of the mother. This false perception — fueled in large part by groups supporting abortion rights — is uncritically accepted by the media. The fact is that the current law does not restrict a woman from getting an abortion for practically any reason she deems fit during the entire nine months of pregnancy. In order to understand why this is the case, a brief history lesson is in order.

In *Roe*, Justice Harry Blackmun divided pregnancy into three trimesters. He ruled that aside from normal procedural guidelines (e.g., an abortion must be safely performed by a licensed physician), a state has no right to restrict abortion in the first six months of pregnancy. Thus a woman could have an abortion during the first two trimesters for any reason she deemed fit, whether it be an unplanned pregnancy, gender selection, convenience, or rape. In the last trimester the state has a *right*, although not an *obligation*, to restrict abortions to only those cases in which the mother's health is jeopardized. In sum, *Roe v. Wade* does not prevent a state from allowing unrestricted abortion for the entire nine months of pregnancy if it so chooses.

Like many other states, the state of Nevada has chosen to restrict abortion in the last trimester by only permitting abortions if "there is a substantial risk that the continuance of the pregnancy would endanger the life of the patient or would gravely impair the physical or mental health of the patient."² But this restriction is a restriction in name only. For the Supreme Court so broadly defined "health" in *Roe's* companion decision, *Doe v. Bolton* (1973), that for all intents and purposes the current law in every state except Missouri and Pennsylvania (where the restrictions allowed by *Webster* have been enacted into law) allows for abortion on demand.

In *Bolton* the court ruled that "health" must be taken in its broadest possible medical context, and must be defined "in light of all factors — physical, emotional, psychological, familial, and the woman's age — relevant to the well being of the patient. All these factors relate to health."³ Since all pregnancies have consequences for a woman's emotional and family situation, the court's health provision has the practical effect of legalizing abortion up until the time of birth — if a woman can convince her physician that she needs the abortion to preserve her "emotional health." This is why the Senate Judiciary Committee, after much critical evaluation of the current law in light of the court's opinions, concluded that "no significant legal barriers of any kind whatsoever exist today in the United States for a woman to obtain an abortion for any reason during any stage of her pregnancy."⁴ A number of legal scholars have come to the same conclusion, offering comments and observations such as the following:

In actual effect, *Roe v. Wade* judicially created abortion on demand in the United States.⁵

The concept of "health," as defined by the Supreme Court in *Doe v. Bolton*, includes all medical, psychological, social, familial, and economic factors which might potentially inspire a decision to procure an abortion. As such, "health" abortion is indistinguishable from elective abortion. Thus, until a more narrow definition of "health" is obtained, it may not be possible to limit effectively the number of abortions performed.⁶ After viability the mother's life or *health* (which presumably is to be defined very broadly indeed, so as to include what many might regard as the mother's convenience...) must, as a matter of constitutional law, take precedence over...the fetus's life...⁷ (emphasis in original).

It is safe to say, therefore, that in the first six months of pregnancy a woman can have an abortion for no reason, but in the last three months she can have it for any reason. This is abortion on demand.

Those who defend abortion rights do not deny this disturbing fact but often dismiss it by claiming that only one percent of all abortions are done in the last trimester. There are several problems with this statistical dismissal. First, the fact that third-trimester abortions are permitted for nearly any reason and that unborn children are left unprotected is significant in itself regardless of whether a small percentage of total abortions has taken place during this time. Second, since there are about 1.5 million abortions per year in the U.S., it follows that 15,000 (or one percent) of them are done in the third trimester. This means that 1,250 of them are performed every month (about 40 a day). This is no insignificant number.

ARGUMENTS THAT APPEAL TO PITY

When one fallaciously argues by appealing to pity, one is arguing that certain actions should be permitted or tolerated out of pity for those performing them (or those on whose behalf they are done), when in fact the basis for showing them pity is not a legitimate basis for the action. For example, a woman who argues that she should not receive a parking ticket because her child was crying and she took her child to a candy store to cheer her up is fallaciously appealing to pity.⁸ The following abortion rights arguments are textbook examples of such appeals to pity.

Argument from the Dangers of Illegal Abortions

Anyone who keeps up with the many pro-choice demonstrations in the United States cannot help but see on pro-choice placards and buttons a drawing of the infamous coat hanger. This symbol of the pro-choice movement represents the many women who were harmed or killed because they either performed illegal abortions on themselves (i.e., the surgery was performed with a "coat hanger") or went to unscrupulous physicians (or "back-alley butchers"). Hence, as the argument goes, if abortion is made illegal, then women will once again be harmed. Needless to say, this argument serves a powerful rhetorical purpose. Although the thought of finding a deceased young woman with a bloody coat hanger dangling between her legs is — to say the least — unpleasant, powerful and emotionally charged rhetoric does not a good argument make.

The chief reason this argument fails is because it commits the fallacy of *begging the question*. In fact, as we shall see, this fallacy seems to lurk behind a good percentage of the popular arguments for the pro-choice position. One begs the question when one assumes what one is trying to prove. Another way of putting it is to say that the arguer is *reasoning in a circle*. For example, if one *concludes* that the Boston Celtics are the best team because no team is as good, one is not giving any reasons for this belief other than the conclusion one is trying to prove, since to claim that a team is the *best team* is exactly the same as saying that *no team is as good*.

The question-begging nature of the coat-hanger argument is not difficult to discern: only by assuming that the unborn are not fully human does the argument work. If the unborn are not fully human, then the pro-choice advocate has a legitimate concern, just as one would have in overturning a law forbidding appendicitis operations if countless people were needlessly dying of both appendicitis and illegal operations. But if the unborn *are* fully human, this pro-choice argument is tantamount to saying that because people die or are harmed while killing other people, the state should make it safe for them to do so.

Even some pro-choice advocates, who argue for their position in other ways, admit that the coat hanger/back-alley argument is fallacious. For example, pro-choice philosopher Mary Anne Warren clearly recognizes that her position on abortion cannot rest on this argument without it first being demonstrated that the unborn entity is not fully human. She writes that "the fact that restricting access to abortion has tragic side effects does not, in itself, show that the restrictions are unjustified, since murder is wrong regardless of the consequences of prohibiting it..."⁹

Although it is doubtful whether statistics can establish a particular moral position, it should be pointed out that there has been considerable debate over both the actual number of illegal abortions and the number of women who died as a result of them prior to legalization.¹⁰ Prior to Roe, pro-choicers were fond of saying that nearly a *million* women every year obtained illegal abortions performed with rusty coat hangers in back-alleys that resulted in *thousands* of fatalities. Given the gravity of the issue at hand, it would go beyond the duty of kindness to call such claims an exaggeration, because several well-attested facts establish that the pro-choice movement was simply lying.

First, Dr. Bernard Nathanson — who was one of the original leaders of the American pro-abortion movement and co-founder of N.A.R.A.L. (National Abortion Rights Action League), and who has since become pro-life — admits that he and others in the abortion rights movement intentionally fabricated the number of women who allegedly died as a result of illegal abortions.

How many deaths were we talking about when abortion was illegal? In N.A.R.A.L. we generally emphasized the drama of the individual case, not the mass statistics, but when we spoke of the latter it was always "5,000 to 10,000 deaths a year." I confess that I knew the figures were totally false, and I suppose the others did too if they stopped to think of it. But in the "morality" of the revolution, it was a useful figure, widely accepted, so why go out of our way to correct it with honest statistics. The overriding concern was to get the laws eliminated, and anything within reason which had to be done was permissible.¹¹

Second, Dr. Nathanson's observation is borne out in the best official statistical studies available. According to the U.S. Bureau of Vital Statistics, there were a mere 39 women who died from illegal abortions in 1972, the year before *Roe v. Wade*.¹² Dr. Andre Hellegers, the late Professor of Obstetrics and Gynecology at Georgetown University Hospital, pointed out that there has been a steady decrease of abortion-related deaths since 1942. That year there were 1,231 deaths. Due to improved medical care and the use of penicillin, this number fell to 133 by 1968.¹³ The year before the first state-legalized abortion, 1966, there were about 120 abortion-related deaths.¹⁴

This is not to minimize the undeniable fact that such deaths were significant losses to the families and loved ones of those who died. But one must be willing to admit the equally undeniable fact that if the unborn are fully human, these abortion-related maternal deaths pale in comparison to the 1.5 million preborn humans who die (on the average) every year. And even if we grant that there were more abortion-related deaths than the low number confirmed, there is no doubt that the 5,000 to 10,000 deaths cited by the abortion rights movement is a gross exaggeration.¹⁵

Third, it is simply false to claim that there were nearly a million illegal abortions per year prior to legalization. There is no reliable statistical support for this claim.¹⁶ In addition, a highly sophisticated recent study has concluded that "a reasonable estimate for the actual number of criminal abortions per year in the prelegalization era [prior to 1967] would be from a low of 39,000 (1950) to a high of 210,000 (1961) and a mean of 98,000 per year."¹⁷

Fourth, it is misleading to say that *pre-Roe* illegal abortions were performed by "back-alley butchers" with rusty coat hangers. While president of Planned Parenthood, Dr. Mary Calderone pointed out in a 1960 *American Journal of Health* article that Dr. Kinsey showed in 1958 that 84% to 87% of all illegal abortions were performed by licensed physicians in good standing. Dr. Calderone herself concluded that "90% of all illegal abortions are presently done by physicians."¹⁸ It seems that the vast majority of the alleged "back-alley butchers" eventually became the "reproductive health providers" of our present day.

Argument from Economic Inequity

Pro-choice advocates often argue that prior to abortion being legalized, pregnant women who did not go to unscrupulous physicians or "back-alley butchers" traveled to foreign nations where abortions were legal. This was an option open only to rich women who could afford such an expense. Hence, *Roe v. Wade* has made the current situation fairer for poor women. Therefore, if abortion is prohibited it will not prevent rich women from having safe and legal abortions elsewhere.¹⁹

This argument is fallacious: it *assumes* that legal abortion is a *moral good* which poor women will be denied if abortion is made illegal. But since the morality of abortion is the point under question, the pro-choice proponent assumes what he or she is trying to prove and therefore begs the question.

One can think of a number of examples to better understand this point. To cite one, we would consider it outrageous if someone argued that the hiring of hit men to kill one's enemies should be legalized, since — after all — the poor do not have easy economic access to such "professionals."

In the abortion debate the question of whether abortion entails the death of a being who is fully human must be answered *before* the question of fairness is even asked. That is to say, since equal opportunity to eliminate an innocent human being is rarely if ever a moral good, the question of whether it is fair that certain rich people will have privileged access to abortion if it becomes illegal must be answered *after* we

answer the question of whether abortion in fact is *not* the killing of an innocent human life. For it is not true that the vices of the wealthy are virtues simply because the poor are denied them.

Argument from Population, Poverty, and Financial Burden

Some pro-choice advocates make much of both the use of abortion as a means of population control and the financial and emotional burden a child may put on a family. It is argued that in such situations abortion is justified. Along the same lines, a number of pro-choice advocates argue that if abortion is forbidden, then the poor will keep producing more children to draw more welfare. Hence, in addition to pity, there is an economic incentive invoked in this appeal.

Beyond pointing out that the so-called "population explosion" is an economic and not a people problem,²⁰ there are several fundamental moral problems with this argument. First, it does not really support the pro-choice position that abortion is a fundamental right the pregnant woman can exercise for any reason she deems fit during the entire nine months of pregnancy (*see above*). If this argument is successful it only establishes the right to an abortion in the cases of overpopulation, poverty, and financial burden, and *not* "for any reason the pregnant woman deems fit."

Second, like the other arguments we have examined, this one also begs the question. That is, only if the pro-choice advocate assumes that the unborn poor are not fully human does his or her policy carry any weight. For if the unborn poor are fully human, the pro-choice advocate's plan to eliminate overpopulation and poverty by permitting the extermination of the unborn poor is inconsistent with his or her own ethic of personal rights. Thus, the question of aborting the unborn poor, like the points brought up earlier, hinges on the status of the unborn.

Furthermore, if the unborn are fully human, then this is also a good argument for infanticide and the killing of all humans we find to be financially burdensome or emotionally taxing. Therefore, only by assuming that the unborn are not fully human does the pro-choice advocate avoid such horrendous implications. Thus, in order for this argument to work, the pro-choice advocate must beg the question.

This is not to say that the human race may not reach a time in its history at which overpopulation becomes a problem so severe that it must significantly curtail its birthrate. At such a time it would be wise to try to persuade people either to willingly use contraceptive devices or to practice sexual discipline. If such a tactic does not work, then forced sterilization may be a viable — albeit desperate — option, since it does not entail the death of the unborn. In any event, if the unborn are fully human, abortion is not a solution to population problems even in the most dire of circumstances. Hence, the real question is whether or not the unborn are fully human.

Underlying this type of pro-choice argument is a fundamental confusion between the concept of "finding a solution" and the concept of "eliminating a problem." For example, one can eliminate the problem of poverty by executing all poor people, but this would not really solve the problem, since it would directly conflict with a basic moral truth that human beings should not be gratuitously exterminated for the sake of easing economic tension. This "solution" would undermine the very moral sentiments that ground our compassion for poor people — namely, that they are humans of great worth and should be treated with dignity regardless of their predicament. Similarly, one can eliminate the problem of having a headache by cutting off one's head, but this is certainly not a real solution. Therefore, the argument of the pro-choice advocate is superfluous unless he or she can first show that the unborn are not fully human and hence do not deserve to be the recipients of our basic moral sentiments. Baylor University philosopher and bioethicist Baruch Brody comments:

In an age where we doubt the justice of capital punishment even for very dangerous criminals, killing a fetus who has not done any harm, to avoid a future problem it may pose, seems totally unjust. There are indeed many social problems that could be erased simply by destroying those persons who constitute or cause them, but that is a solution repugnant to the values of society itself. In short, then, if the fetus is a human being, the appeal to its being unwanted justifies no abortions.²¹

This is not to minimize the fact that there are tragic circumstances with which our society is all too familiar, such as the poor woman with four small children who has become *pregnant by her alcoholic husband*. But once again we must ask whether or not the unborn entity is fully human, for hardship does not justify homicide. In such cases, those in the religious and charitable communities should help lend financial and

emotional support to the family. And it may be wise — if it is a case of extreme hardship — for the woman to put her baby up for adoption, so that she may give to others the gift of parenthood.

Argument from the Deformed and Mongoloid Child

Since it is now possible to detect through amniocentesis and other tests whether the unborn entity will turn out to be physically or mentally handicapped,²² some pro-choice advocates argue that abortion should remain a choice for women who do not want to take care of such a child. Another reason cited for advocating the aborting of the defective unborn is that it is better for such children never to be born rather than to live a life burdened with a serious mental or physical handicap. There are several problems with this argument.

First, this argument, like many of the appeals to "hard cases," does not *really* support the pro-choice position — the position that abortion is a fundamental right the pregnant woman can exercise for any reason she deems fit during the entire nine months of pregnancy (*see above*). In other words, if this argument is successful in showing that abortion is justified in the case of a woman pregnant with a deformed or Mongoloid fetus, it only establishes the right to an abortion in such cases, *not* "for any reason the pregnant woman deems fit."

Second, like many of the pro-choice arguments, this argument begs the question by assuming that the unborn entity is not fully human. For if the unborn are fully human, then to promote the aborting of the handicapped unborn is no different morally than promoting the execution of handicapped people who are already born. But such a practice is morally reprehensible. Are not adults with deformities human? Then so too are smaller people who have the same deformities. In fact, pro-choice advocates Peter Singer and Helga Kuhse, who argue for their position in other ways, admit that "pro-life groups are right about one thing: the location of the baby inside or outside the womb cannot make such a crucial moral difference...The solution, however, is not to accept the pro-life view that the fetus is a human being with the same moral status as yours or mine. The solution is the very opposite: to abandon the idea that all human life is of equal worth."²³ Although I do not agree with this conclusion, and will argue against it in this series, Singer and Kuhse make an important observation: the question is not whether a handicapped individual is born or unborn, but whether handicapped human life should be protected equally with healthy human life.

Third, it is amazingly presumptuous for mere human beings to say that certain other human beings are better off not existing. Those who make such judgments concerning the handicapped seem to assume that handicapped persons cannot live meaningful and even happy lives. However, this assumption is false. Former Surgeon General C. Everett Koop, who worked for years with severely deformed infants as a pediatric surgeon at Philadelphia's Children's Hospital, commented that "it has been my constant experience that disability and unhappiness do not necessarily go together."²⁴ He continues:

Some of the most unhappy children whom I have known have all of their physical and mental faculties, and on the other hand some of the happiest youngsters have borne burdens which I myself would find very difficult to bear. Our obligation in such circumstances is to find alternatives for the problems our patients face. I don't consider death an acceptable alternative. With our technology and creativity, we are merely at the beginning of what we can do educationally and in the field of leisure activities for such youngsters. And who knows what happiness is for another person?²⁵

This is not to deny that there are tragedies in life and that having a handicapped child is often a difficult burden to undertake. But I think it is important to realize that if the unborn entity is fully human, homicide cannot be justified simply because it relieves one of a terrible burden. Though it may be hard to accept, I believe the following principle is fundamental to correct moral reasoning: *it is better to suffer evil rather than to inflict it.*²⁶ If this moral precept were not true, all so-called moral dilemmas would be easily soluble by simply appealing to one's own relief from suffering. But in such a world the antidote would be worse than the poison, for people would then have a right to inflict suffering on another if it relieved them of their own. This would be morally intolerable.

Moreover, it should not be forgotten that a handicapped child can give both society and the family into which it has been born an opportunity to exercise true compassion, love, charity, and kindness. It is an assault upon our common humanity to deny our capacity to attain virtue in the presence of suffering.

Fourth, for obvious reasons many handicapped people are vehemently opposed to this argument. In fact,

there is not a single organization of handicapped people that is on record in favor of abortion of those who may be handicapped. Surgeon General Koop cites the following letter, which appeared in the *London Daily Telegraph* (8 Dec. 1962) at a time when European newspapers were seriously discussing the use of abortion as an effective means by which to avoid the birth of children who became defective *in utero* due to their mother's use of Thalidomide (a tranquilizer used by European women in the 1950s and 1960s but never approved by the FDA for sale in the U.S.):

Trowbridge Kent

Dec. 8, 1962

Sirs:

We were disabled from causes other than Thalidomide, the first of us two having useless arms and hands; the second, two useless legs; and the third, the use of neither arms nor legs. We were fortunate...in having been allowed to live and we want to say with strong conviction how thankful we are that none took it upon themselves to destroy us as useless cripples.

Here at the Debarue school of spastics, one of the schools of the National Spastic Society, we have found worthwhile and happy lives and we face our future with confidence. Despite our disability, life still has much to offer and we are more than anxious, if only metaphorically, to reach out toward the future.

This, we hope will give comfort and hope to the parents of the Thalidomide babies, and at the same time serve to condemn those who would contemplate the destruction of even a limbless baby.

Yours faithfully,

Elaine Duckett,
Glynn Verdon,
Caryl Hodges.²⁷

Fifth, if there were a negative correlation between happiness and handicap, it would seem natural to find more suicides among the handicapped than the general public. But the opposite is the case. Professor Krason points out that "no study...has found that handicapped persons are more likely than non-handicapped persons to want to be killed or to commit suicide." Citing a study of the late Dr. Hellegers, Krason writes that "of 200 consecutive suicides at the Baltimore Morgue...none had been committed by people with congenital anomalies."²⁸

A society whose ethic asserts that certain preborn human beings forfeit their right to life simply because they have a certain physical deformity or mental handicap is a society that will inevitably see those who have already been born with the same features as having lives "not worth living."

The chilling logic of this conclusion was played out in a real-life situation in 1982. That year, Infant Doe, an Indiana newborn who was born with Down's syndrome and correctable spina bifida, was permitted to die at the request of her parents who asked the attending physician to withhold food and water from the infant. This parental decision was upheld by an Indiana court. Since her spina bifida was correctable by surgery, if Infant Doe had not been "retarded," there is no doubt that the parents would have requested the necessary surgery. So it was not the spina bifida that killed Infant Doe, but parents who neglected her simply because she had Down's syndrome. While commenting on this case, columnist George Will writes about his own son, Jonathan, a Down's syndrome citizen:

When a commentator has a direct personal interest in an issue, it behooves him to say so. Some of my best friends are Down's syndrome citizens. (Citizens are what Down's syndrome children are if they avoid being homicide victims in hospitals.)

Jonathan Will, 10, fourth-grader and Orioles fan (and the best Wiffle-ball hitter in southern Maryland), has Down's syndrome. He does not "suffer from" (as newspapers are wont to say) Down's syndrome. He suffers from nothing, except anxiety about the Orioles' lousy start. He is doing nicely, thank you. But he is

bound to have quite enough problems dealing with society — receiving rights, let alone empathy. He can do without people like Infant Doe's parents, and courts like Indiana's asserting by their actions the principle that people like him are less than fully human. On the evidence, Down's syndrome citizens have little to learn about being human from people responsible for the death of Infant Doe.²⁹

Finally, abortion is sometimes justified by pro-choicers by appealing to certain extreme cases in which the entities in the womb are so genetically abnormal as to be arguably nonhuman.

For example, the teratoma is simply a tumor with some human genetic material that has gone awry. Sometimes it may contain hair, teeth, skin, or even fingers, but it is not an unborn human entity and does not have the inherent capacity to develop under any conditions into a human infant. The teratoma is part of the woman's bodily tissue and is not a separate human individual.³⁰

More difficult is the case of the anencephalic baby. According to the *American Medical Association Encyclopedia of Medicine*, anencephaly is the "absence at birth of the brain, cranial vault (top of the skull), and spinal cord. Most affected infants are stillborn or survive only a few hours." Anencephaly occurs "due to a failure in development of the neural tube, the nerve tissue in the embryo that eventually develops into the spinal cord and brain." A woman can know early in pregnancy that she is carrying an anencephalic baby "by measurement of *alphafetoprotein*, by *ultrasound scanning*, and by *amnio-centesis*..."³¹

We may or may not be dealing with human beings in the case of anencephalic babies. Citing the work of Professor Germain Grisez, Krason argues that "there are two ways we may view the 'anencephalic monster,' depending on when the abnormality originates." One way, "when the abnormality or the genetic certainty of it is present from conception, is to view the organism as human in its conception, but incapable of developing beyond a few hours, a few days, or a few weeks." He argues "that in such cases, especially if the specifically human genetic pattern is greatly transformed, we may not consider the concept a human individual."³²

Relying on Grisez, Krason writes that when the abnormality develops some time after conception we could view the anencephalic as we would an individual who has had his head blown off by a shotgun. "Such a person is human and remains such until he dies." Since "the anencephalic originated as a human and developed normally up to the point when the neural tube failed to close...he thus can be viewed as a human being, albeit a damaged one, whose abnormality will cause his death shortly after birth, like the gunshot-wounded person will die a short while after his wound."³³ A damaged human is not a *nonhuman*.

It should be remembered, however, that the anencephalic is a "hard case," and cannot be used to justify the vast majority of abortions that involve the killing of *healthy* unborns for any reason the pregnant woman deems fit. Furthermore, the argument from the apparent nonhumanness of the anencephalic implicitly admits what is the main contention of the pro-life position, namely, that unborn human beings should not be killed.

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NOTES

¹ See Fred Barnes, "Republicans Miscarry Abortion," *The American Spectator* 23 (January 1990):14-15.

² *Nevada Revised Statute*, 442.250, subsection 3.

³ *Doe v. Bolton* 410 U.S. 179, 192 (1973).

⁴ Report, Committee on the Judiciary, U.S. Senate, on Senate Resolution 3, 98th Congress, 98-149, 7 June 1983, 6.

⁵ John Warwick Montgomery, "The Rights of Unborn Children," *Simon Greenleaf Law Review* 5 (1985-86):40.

⁶ Victor G. Rosenblum and Thomas J. Marzen, "Strategies for Reversing *Roe v. Wade* through the Courts," in *Abortion and the Constitution: Reversing Roe v. Wade through the Courts*, ed. Dennis Horan, Edward R. Grant, and Paige C. Cunningham (Washington, D.C.: Georgetown University Press, 1987), 199-200.

⁷ John Hart Ely, "The Wages of Crying Wolf: A comment on *Roe v. Wade*," *Yale Law Journal* 82 (1973):921.

⁸ John Nolt and Dennis Rohatyn, *Schaum's Outline of Theory and Problems of Logic* (New York: McGraw-Hill Book Co., 1988), 172.

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