

Abortion: Finding Common Ground

Life is sacred but it isn't simple. December's issue of Downside Up focused on *Roe v. Wade*, the Supreme Court decision which has become the centerpiece of the abortion controversy. That issue stressed two basic points: (1) *Roe* is not the radical women's reproductive rights ruling which both ends of the political spectrum portray it to be. With little attention to the pregnant woman herself, it attempts to balance the primarily medical need for an abortion in certain circumstances against the "interest of the State" in "the potentiality of human life." (2) By portraying *Roe* as an abortion-on-demand ruling, the vociferous extremes have rallied their troops and raised lots of money but in the process cut the ground out from under the vast majority of the population whose perspective lies closer to the compromise *Roe* actually was. This month's article argues for common ground between the two extremes.

Neither the practices of Western Civilization nor the text of the Constitution represent major obstacles to a fresh approach. Since *Roe*, advances in technology have made pregnancy more easily avoidable, detection of pregnancy earlier, and abortion safer. The primary barrier to common ground for most Americans lies with the Fundamentalist, so-called Christian, Right which now appears to rule the Republican Party and seeks to impose by law on all Americans its extremist anti-abortion agenda.¹ What they are all about is not, in fact, the sacredness of life, but a long, deep and abiding hostility to women and to sexuality which pervades Western Civilization and American culture as well as Roman and Fundamentalist Christianity. This hostility lies just beneath the surface of their so-called "pro-life" agenda to legally ban all or most all abortions.

It is time to draw a line on the extremism of the Right and let go of the absolutism of the Left. With 84% of the population accepting the legality of abortion in some circumstances and 95% of all abortions taking place before "quickening" in the fifth month of pregnancy, common ground is available. It is time to frame our own values recognizing the complexity of human rights and human choices. It is time for a better approach to abortion focusing on support for strong and healthy families in a strong and healthy economy and society. It is time for our country to invest in a comprehensive national program of education and contraception to reduce abortions, recognition of intercourse as the rape it mostly is for unmarried teenage girls, promotion of abstinence which acknowledges the legitimacy of sexual feelings and thoughts of young people, universal health care, and economic support for families.

It is time to find common ground on which the vast majority of Americans can stand and resolve the bitter issue of abortion.

1. The common term for religious extremists today is "Fundamentalist" or "Fundamentalism" but, to historians of religion, this term refers to a specific, highly rationalist, Protestant movement of the late nineteenth and early twentieth centuries in the United States. In the past I have deferred to my colleagues' perspective and used the term "Evangelical" or "Evangelicals" as my catch-all for right wing so-called Christianity. Yet far from all Christians who claim the evangelical tradition share the right wing view of abortion or politics. Again the word has been captured by the Right. The root meaning of "evangelical" represents a focus on the four Gospels telling of the Good News of Jesus, an emphasis on salvation by faith, and preaching over ritual. Jim Wallis of the social justice magazine, Sojourners, considers himself an evangelical. For the political context in which I write, I will probably continue to use "Fundamentalist."

Revisiting Roe: The Constitution, History, and the Law

Suppose a state or the federal government set up a National Organ Transplant Institute with the power not just to decide who had the highest priority for an organ from a person who had just died – what more or less happens now – but whether an organ could be transplanted from one person to another without the former’s consent. It would be very pro-life. Organs would be transplanted from dead people who didn’t need them anymore to living people for whom it was a matter of transplant or death. There is a lot to say for such a program.

I don’t, however, have to make the example include almost dead people or people with little prospect of long-term use of an organ to make my point. The whole country would come unglued. I don’t think it would take the Supreme Court more than a second or two to discover a “right of privacy” “unenumerated” in the Constitution to prevent such action.² Nor if it were a state that passed the law and it only covered transplants to and from people within the state would the Court have much trouble deciding that it still fell within the rights of the federal government under the interstate commerce clause to “proscribe” such activity.

The whole barrage from the Right condemning “activist” courts and calling for “strict interpretation” of the Constitution is baloney, hypocrisy. It is about issues, not Constitutional interpretation. It depends on whose ox is gored. The Left is just as bad as the Right. There is nothing in the Constitution which speaks to abortion just as there is nothing in the Constitution which speaks to organ transplants: no one in that time could conceive of what medical technology has made possible today. The Constitution has to be interpreted for today with a good faith effort to understand its principles and intent. That’s the kind of document it is: written deliberately without lots of details and with the understanding that Congress would implement those principles.

To argue, as last month’s Downside Up did, that *Roe* is no clarion call for a “woman’s right to choose” is not to say that it is merely a compromise, that it offers no foundation for a women’s right to choose and no common ground upon which to build a national consensus. Although the “right to privacy” the Court affirmed in *Roe* has been sharply criticized from the Right and undermined in *Planned Parenthood v. Casey*,³ I find it readily discernible in the first ten amendments to the Constitution, our Bill of Rights.

The right of privacy is that right of our citizenry, so often proclaimed in theory but ignored in fact, to be left alone without government interference in our personal and private affairs. It is there in the First Amendment’s freedom to practice our religion without government “establishment” or “prohibit[ion].” It is there in the rarely mentioned Third Amendment banning the quartering of soldiers in people’s houses. It is there in the Fourth Amendment’s right of the people “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” It’s there in the Ninth Amendment’s declaration that “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

² See Downside Up, December 2005.

³ See Downside Up, December 2005.

Today, some liberal as well as conservative commentators regard the right of privacy as well as other arguments in *Roe v. Wade* to be shaky Constitutional ground for the decision and wish abortion itself had been left to the political process. I might agree with the latter, rather hypothetical, point, but compared to other extrapolations the Supreme Court, both liberal and conservative, has made from the “strict” or “literal” meaning of the Constitution, a right of privacy strikes me as small stuff indeed.⁴

In any case, *Roe* has much more to say to us in our search for common ground:

(1) There is no definitive cultural basis in the Western tradition for considering zygote, embryo, or fetus a “person.” Justice Harry Blackmun, in his majority opinion for the Court, summarizes this perspective, including:

“It is undisputed that at common law, abortion performed before “quickening” -- the first recognizable movement of the fetus in utero, appearing usually from the 16th to the 18th week of pregnancy -- was not an indictable offense...

“Although Christian theology and the canon law came to fix the point of animation at 40 days for a male and 80 days for a female, a view that persisted until the 19th century, there was otherwise little agreement about the precise time of formation or animation. There was agreement, however, that prior to this point the fetus was to be regarded as part of the mother, and its destruction, therefore, was not homicide...

“[It is] doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.

“There has always been strong support for the view that life does not begin until live birth. This was the belief of the Stoics. It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. It may be taken to represent also the position of a large segment of the Protestant community”⁵

(2) The State should take no action to interfere with or prevent abortions before the end of the first trimester: Related to (1), the Court’s point here was that abortion had only recently been criminalized at all in most states. The writers of the Constitution, the Bill of Rights, and the Fourteenth Amendment had no concept of pre-birth personhood. Even where abortion was considered illegal before the late 19th century, it was not until the fetus had “quickened” during the second trimester.

(3) The life and health of the mother is an indisputable exception to any proscription of abortion: Even the Texas statute which *Roe* overturned allowed abortion to save the life of the mother. To assert a higher value for a baby⁶ yet unborn over a mother who has lived, developed a personality, struggled with all the ups and downs of growing up, and already has around her, in most cases, a set of family relationships,

⁴ I have long considered the most blatant example to be a rightist Court’s finding that the 14th Amendment’s guarantee of rights to African Americans as “citizens” and “persons” applied to corporations! Now George Bush has topped that by deciding that some vague definition of “war” justified abrogation of the Constitutional requirement “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

⁵ <http://www.tourolaw.edu>)

⁶ “Baby” is the good old-fashioned general or colloquial term for the embryo/fetus. “Unborn child” is the most spectacular success of the Right’s reframing of the issue.

is way out of the mainstream of American values in a society where 65% of the people would not overturn *Roe* as it stands now.⁷

That the anti-abortion extreme, including the Republican Party platform, opposes any exceptions to a ban on abortion, even for rape, incest, and the life of the mother, is the red flag waved in our faces telling us we have to look behind the façade of “pro-life” to explain the fanaticism of their position.⁸ The explanation lies in Western Civilization’s misogynistic tradition and the Romanization of the Christian church after Jesus’s death.

Western Civilization: A Misogynistic Tradition

There is in Western society, and most societies, a long, deep, and abiding history of misogyny – hatred of women. Muslim societies today do not so much distinguish themselves from us by their open and often legal discrimination against women as they reflect the same tradition more extremely. Most obvious are the endless stories from Adam and Eve and Helen of Troy through The Scarlet Letter to popular TV shows and movies telling of the women who don’t just commit, but cause men to commit, evil, from eating the forbidden fruit to starting wars to robbing banks.⁹ “I did it for you, darling.” For the sin of Eve, the Bible condemns all women for all time to the pain of childbirth, the reason why even women who did not have sex outside marriage were denied anesthesia in childbirth long after anesthesia became available.

Essential to the misogynistic tradition is the temptress. Eve, who gave in to the Devil and tempted Adam into the same sin, is the original. Their punishment was to be aware of their own nakedness and know good and evil. (Genesis 3) Far worse is Salome seducing Herod into giving her the head of John the Baptist. Absurdly, these stories are the foundation of discrimination not only in Islamic societies but our own. Muslim women must have their bodies covered up because we men cannot contain our sexual urges. The logical thing to do would be to restrain the men who are so morally weak they cannot control themselves. But since men have historically held power in society, it is women who are restrained. The victim is punished. Pakistani tribal leaders punish a man for adultery by gang raping his sister. A Muslim woman in Africa who commits adultery is stoned to death. Men are not dishonored by raping women; they are dishonored by their women being raped by other men.

This is not the Christianity of Jesus. He had an extraordinary relationship with women. He grew up in a (ancient Hebrew) society where men were not even supposed to talk with women in public but he did it all the time. Many of his closest followers were women and one of the most famous stories about him is his stopping a group of men from stoning a woman to death for adultery: “Let him who is without sin cast the first stone.”

As is so often the case with the so-called Christianity of the religious Right, it harkens back more to the vengeful slice of Judaism which Jesus was rejecting than to Jesus himself. It exhibits a misogyny which must be understood if we are to

⁷ Nancy Benac, St. Augustine Record, 11/13/05, p. 10A, reporting on a 2005 by the Pew Research Center for the People and the Press

⁸ http://www.issues2000.org/Archive/2004_GOP_Platform_Abortion.htm

⁹ All of which, strangely, conveys men as the weaker sex, unable to maintain moral standards, in fact submissive to women’s objectives, real and imagined.

gauge the Right’s extreme hostility to abortion – and birth control. Its Christian roots lie in the Romanization of Christianity following Jesus’s death.

Romanizing and Patriarchalizing Christianity

The original followers of Jesus, including Mary Magdalen (Mary of Migdal or, more commonly in English, Magdala), never intended to create a new religion outside Judaism. Instead they sought to transform Judaism according to Jesus’s teachings. When they failed to do so, Peter and then, especially, Paul, began to look outside Judaism for converts to a new religion among people of Greek and Roman heritage. This explains why later Gospels emphasized Jews rather than Romans as responsible for Jesus’s death: they didn’t want to antagonize the people they were trying to convert. In the end, the Jesus sect became a distinct and separate gentile religion.¹⁰

In 325, the Council of Nicaea substantially settled the question of what kind of church Christianity would be.¹¹ It would be a Roman church, dominated by men in a hierarchical structure paralleling Roman political subdivisions. The Roman Emperor, Constantine, called the Council because he wanted his church to settle the differences that roiled his empire in a sea of conflict. At Nicaea, the bishops decided which texts out of 80 or more were in the canon and which were out. It may have been that the Gospel of Mary (Magdalen) was already suppressed and/or lost by 325, but it was, in any case, definitely out of the new Roman “canon.”¹²

One does not have to accept the entire gospel according to Dan Brown¹³ to interpret the ensuing 1700 years of the Roman church as an intermittent propaganda war on women. Hand in hand as it glorified Mary, the virgin mother, it denigrated Mary, the strong and independent disciple who stood by Jesus as he died on the cross, to whom Jesus first appeared after his death, and whom the early church referred to as “the apostle to the apostles.” Theresia Saers, author of The Alabaster Jar: seeing the Gospel through the eyes of Mary Magdalen, notes that in the 6th century, Pope Gregory I declared that the woman identified as Mary Magdalen in the Gospels was the “same woman known as Mary of Bethany and also the unnamed sinner mentioned in Luke 7, 36-50.” Since the ‘sin’ of Luke’s unnamed woman was prostitution, Mary of Migdal “became identified as a prostitute.”¹⁴

I refer to the “war on women” as “intermittent” because Mary Magdalen retained, well into the middle ages, an important, even exalted, place in the Roman Church. Indeed, “the prominence of Mary Magdalen ... posed the threat of sanctioning a leadership role for women in the Church.” But “as Christianity became institutionalized along increasingly patriarchal lines,” the place of Mary of Migdal

¹⁰ Proseletization is as much a political as a religious activity. Success requires adaptation to different cultures. Romanization also explains why later Gospels introduce the virginity of Jesus’s birth and Jesus as a “god” he never claimed to be. For some great history of all this, read John Dominic Crossan, Jesus: A Revolutionary Biography and other writings.

¹¹ Standard church history emphasizes that the most important result of Nicaea was articulation of the idea of the Trinity, declaring Jesus of the same “essence” as God and squelching the Arian “heresy” that he was only human and not of the same essence. The Trinity is not in the Bible. It was conjured up to solve a political problem for the Roman Emperor.

¹² It was rediscovered first in the 5th century, then found in a Cairo antiquities market in 1896, and finally published in 1955.

¹³ You have read The Da Vinci Code and Angels and Demons, haven’t you?!

¹⁴ The Roman Catholic Church has officially retracted this characterization but it lives on in the assumptions and psyches of most Christians. <http://www.womenpriests.org>

gradually declined.¹⁵ At the same time, Mary the mother of Jesus, whom all could accept was a virgin upon conception, was elevated to perpetual virginity and Biblical references to Jesus’s brothers and sisters interpreted to refer to children of an old Joseph who was married before. Finally, Jesus became the perfect man because he resisted womanly seduction and never married.¹⁶

Downgrading Mary Magdalen opens the way to barring women from the priesthood, the virginity of Mary the mother of Jesus makes her the perfect woman because she never enticed men into the sin of having sex, and the celibacy of Jesus justifies the celibacy of the priesthood. In fact, popes married and had children through the Middle Ages and “artificial” birth control – that is, preventing conception other than by abstention and thus having sex without the pain of childbirth – was banned only when it became more readily available after the vulcanization of rubber – for condoms – after the Civil War. Beginning in the 1870’s, a Protestant United States passed the Comstock Laws banning birth control and the Catholic Church initiated a series of increasingly insistent condemnations from Pope Leo XIII’s 1880 Encyclical, Arcanum Divinae Sapientiae, on Christian marriage, to Pope Paul VI’s 1968 Humanae Vitae. With his emphatic reiteration of church doctrines against birth control and women priests, Pope John Paul II reinforced the Marianist movement, virtually deifying Mary the virgin who never had sex.

The National Abortion Rights Action League (NARAL) may be wrong in its portrayal of *Roe v. Wade* as a women’s rights Supreme Court decision, but it is correct in arguing that abortion, like contraception, is a women’s rights issue.

Abortion and the Soul: Fundamentalist Meets Catholic

Fundamentalists as a general religious category are those people who believe that (1) God’s Word is to be found in only one text, or set of texts, (2) that text has only one true interpretation, often referred to as the “literal” interpretation, (3) they alone know what that one correct interpretation is, and (4) out of this knowledge comes their right, indeed their duty, to impose that interpretation on everyone else, often with no limit on the means. In the United States, Fundamentalism is nowhere more evident than on the extreme wing of Protestantism with regard to abortion. The hierarchy of the Catholic Church is similarly fundamentalist in its views on abortion, sex, and sexuality.

What both Fundamentalists and the Catholic hierarchy agree on is that personhood or, in Catholic doctrine, “ensoulment,” begins at conception before even what the medical community would call pregnancy -- when the fertilized ovum attaches itself to the uterine wall. This position justifies their mutual opposition to Plan B, the “morning after pill” which can prevent attachment as well as ovulation and fertilization. Other people believe that abortion is wrong even at this early stage. What distinguishes the Fundamentalists who make up the vociferous 13 – 15% of the population on the extreme right of the abortion debate is that they want to

¹⁵ <http://witcombe.sbc.edu/davincicode/magdalen-gospels-church.html>

¹⁶ It is far more likely that Joseph, the itinerant carpenter, got Mary pregnant out of wedlock and then married her – as has been a common practice throughout time in numerous societies. They were both young and had several more children. Jesus’s celibacy is as implausible as his mother’s. It requires far less of a stretch to believe that, like all good Jews, he was married, Mary of Migdal was his wife, and the wedding at which he turned water into wine was his own. See Bruce Chilton, Rabbi Jesus.

impose their view by law on everyone else, many of them going so far as to support a ban abortion even to save the life of the mother.¹⁷

Given the vehemence of the Fundamentalist position, it is surprising to realize that, as Justice Blackmun explained in *Roe v. Wade*, ensoulment at conception has only recently become Christian doctrine, even in the Catholic Church. Indeed, there is a reason why both Catholics and Fundamentalists aren't found often citing the Bible in their opposition to abortion, even to contort meaning as they do in denouncing homosexuality. It is the same problem they have with the Constitution: there is nothing in the Bible about abortion. “Thou shalt not kill” begs the question by assuming the personhood they are trying to argue. Again as Justice Brennan said, Jewish tradition, like mainline Protestant tradition, understands life as beginning at birth. The Fundamentalists have elevated abortion to the litmus test of Christian faithfulness, yet Jesus, a Jew, is not recorded as ever having spoken of it.

The Fundamentalists are left with no historic foundation and the Catholic Church without much of one. Just as the church's “war on women” was intermittent and Mary of Migdal retained considerable status in the church well into the Middle Ages, attitudes towards abortion were in fact more flexible before the modern era. Greco-Roman influence supported abortion well into pregnancy. St. Augustine (5th century) adopted and St. Thomas Aquinas (13th century) preserved the Aristotelian/Greek/Roman notion of “delayed ensoulment,” the idea that the embryo acquired a soul later in pregnancy. As Blackmun noted, ensoulment allegedly occurred after 40 days for males and 80 days for females! Not until the second half of the 19th century, at the same time the church was coming down firmly against artificial contraception, did Pope Pius IX officially drop the idea of delayed ensoulment.¹⁸

The simultaneous banning of contraception as well as abortion further highlights the misogyny underlying the Fundamentalist-Catholic alliance. At the same time as the pope was banning birth control as well as dropping delayed ensoulment, a Protestant Congress and Protestant state legislatures in the United States were banning birth control with “Comstock laws” like that *Griswold v. Connecticut* overturned 90 years later. (See end of above section.) Although Fundamentalists as a group no longer support a legal ban on birth control, they vehemently oppose sex education and insist on abstinence as the only acceptable form of birth control for unmarried women and men. And the Catholic Church continues its miserable definition of sex and marriage as only for procreation.¹⁹

¹⁷ The Catholic Church's official position is very limited, to the point that killing the fetus is forbidden even if it means that the fetus as well as the mother will die. Only under the Doctrine of Double Effect does the church concede to abortion, that is when the purpose of a procedure is to save the life of the mother and the death of the embryo/fetus is a result of that procedure. Even fewer Catholics support this position than refuse to use artificial birth control. The 13 – 15% extreme on the right I am talking about includes some people who would accept a more flexible basis for abortion and perhaps not just to save the life of the mother. (<http://www.pollingreport.com/abortion.htm>; http://www.religioustolerance.org/abo_hist_c.htm)

¹⁸ http://www.religioustolerance.org/abo_hist_c.htm See Jean Porter, Professor of Theology at Notre Dame, “IS THE EMBRYO A PERSON? Arguing with the Catholic traditions,” Commonweal, Feb 8, 2002. <http://www.pfaith.org/catholic.htm>

¹⁹ Bizarrely, the fundamental Biblical basis for the Catholic ban on birth control is actually Onan's “spilling his seed” rather than, as required by Jewish law, completing copulation with his dead brother's wife so his brother would have heirs. (Genesis 38: 8-10; <http://www.catholic.com/thisrock/1990/9011fea1.asp> and http://www.catholic.com/library/Birth_Control.asp) Talk about contorted or “activist” interpretations!

The point here is not that the Fundamentalists are wrong or that Fundamentalists and Catholics should not be allowed to practice their beliefs. The point is that the Fundamentalists’ extreme opposition to abortion is (1) not based on some eternal truth dating back several millennia, (2) not based soundly in the Bible, (3) held to by only a small percentage of the population, (4) much more reflective of hostility to women and to sexuality than derived from moral authority, and (5) therefore completely inappropriate for legislation imposed on all Americans. The whole thing seems more appropriate for a psychologist’s couch than a political movement.

The Psychosis of Sexuality

Original sin is woman’s, the original sinner a woman. She compounded her sin by causing the original man to commit the same sin.

Women’s first punishment is the pain of childbirth, but suppressing their sexuality – and men’s – requires yet stronger measures. Women – and men – must be made to see abstention from sexuality as the ideal, as with Adam and Eve in the Garden before they knew their own nakedness and thus good and evil. Jesus, the son of God, or God in human form, must be, by example, celibate. His mother must be a virgin, even after conception, and the sensual woman who poured oil on Jesus’s head and feet a prostitute. Sexuality must be confined to procreation, the clergy celibate like Jesus, women only have sex to bear children, and women be banned from church leadership – except among other exclusively celibate women (convents).

Women in secular society must be suppressed to the point of invisibility. They must cover their bodies. They must be ruled over by men. It goes without saying that they cannot hold important places in society any more than in the church. And if their sin and their sexuality are not yet sufficiently suppressed, they must be suppressed by violence. It is in this tension between women’s expression and women’s suppression that women are abused, beaten, and often raped. As professionals who study rape persistently note, rape is not about sex; it is about domination. It is about domination in the household and it is about domination in the larger society. Out of their anger and frustration, husbands beat and rape their wives. Throughout all history down to this day, what armies of men do to punish their enemies, is to rape their wives and daughters, brutally.

Built into this is the underlying assumption that evil is women’s fault – be it war and death, or job loss and frustration. She is the sinner. This is why, until only the last few years in some states, the burden of proof in rape cases has been on the victim to prove her innocence. Her sexual life has been the focus of the few trials that took place – few not only because conviction was difficult but also because few women wanted to subject themselves to such interrogation. Forget it if she ever had sex outside marriage. She might have a chance if she looked like an innocent virgin – and could prove it. Under US law, the burden of proof is always, technically, on the prosecution, but even today, in practice, the trial turns largely on a jury’s perception of the woman. Did she really say “no”? Was she really a “loose woman”? While the defendant’s record cannot be used against him, the woman is forced to display hers. Culturally, she is presumed guilty – and thus he, innocent.

It is all this history, this mythology, of sin, hatred, and discrimination, fear and punishment, suppression and restriction, which underlies and goes a long way to explain the Right’s opposition not only to abortion but to artificial birth control. Protection of life is an arguable position and the political tactic the Right has chosen to promote its agenda. But if they really believed in life, they would support

universal prenatal care and universal health care for children. Their lack of support for these programs appears hypocritical – because they argue for life – but is consistent in that their opposition to abortion and artificial birth control is actually founded in their misogyny. It is one thing to accept sexuality, even birth control, within marriage. To allow unmarried women to avoid the God-given consequences of sexuality is anathema. The notion of women’s “reproductive rights” is incomprehensible

These are the beliefs which explain why abstinence is the only acceptable means of birth control for unmarried people and men like Governor Jeb Bush of Florida will do anything they can to force young, unmarried girls to carry their pregnancies through to term.²⁰ These beliefs underlie the Republican Party’s resistance to even the life or health of the mother as a justification for intact dilation and extraction (dubbed by anti-choice advocates, “partial birth abortion”).²¹

American attitudes towards sexuality are, I would say, so screwed up that, when push comes to shove, in the guts of an awful lot of Americans, masturbation is a sin worse than rape, certainly worse than sex outside marriage. We can’t even talk about masturbation. Almost all girls and boys in puberty masturbate frequently. It is normal. For one person alone, it provides sexual release while harming no one. It is the perfect companion piece to abstinence from intercourse. It carries no risk of sexually transmitted disease; it doesn’t cause pimples or fry the brain. What do you think those Puritan teenagers bundling together in 17th century Massachusetts were doing? Do you really think they never removed the board between them?²² We ought to put it in the forefront of a battle against abortion. Yet, it has taken me weeks to get up the courage to write about it even for Downside Up, and most readers probably remember well what happened when Joycelyn Elders, Bill Clinton’s surgeon general, proposed encouraging it.

Elders is the most honest person who has ever served in government. There is no such thing as a sexual drive for intercourse. The drive is for sexual release, climax, not intercourse. But masturbation is deviant. Sex outside marriage is only immoral. If any more evidence were needed of the absurdity of sexual taboos in American society, one need look no further than the recent pedophile scandals in the Catholic church. Yet I have yet to see, in this regard, much of a discussion of how the scandal plays out in regard to either the sexual history of Christianity or the issues of celibacy, homosexuality, and masturbation.

We dress our daughters like whores, fill our televisions with every kind of sexual exotica, and, at our local drug store checkout, display magazine covers with women in various stages of undress.²³ But we cannot talk about safe and sane sex.

²⁰ See Downside Up, December, 2005

²¹ <http://www.news.findlaw.com/hdocs/docs/abortion/2003s3.html>

²² I cannot find the reference, but I vividly remember a study that was done of 17th century Massachusetts births and marriages where it was found that some 20% of all first-borns were born less than nine months after the marriage. And these were the Puritans! As with Joseph and Mary, pregnancy has long been the reason to get married.

²³ CSI, the first of the current rage of crime scene investigation shows, is based in Las Vegas and mirrors all the images of decadence we are accustomed to assume about that city. I will never forget shopping with my wife for a dress to give my six-year old granddaughter. In J C Penny no less. We had to buy the dress from L L Bean.

Accepting Difference; Drawing the Line on Fundamentalists

Amidst the furor of the battle over abortion, those who accept abortion in some or all circumstances need also to accept that there is a basis for the extreme anti-abortion position: a belief that the human soul comes into being at conception. They should even admit that there are times when it is appropriate for a near-unanimous society to impose by law a moral standard on everyone in that society. Criminal penalties for theft and murder are the most obvious. Until recently, assisted suicide has been similarly prohibited. But there is no consensus even close to any of this on abortion.

I would not be surprised if there were more polls by more organizations on abortion than any other subject. The questions asked are equally numerous and varied. Many are available for review at www.pollingreport.com/abortion.htm. As best as I can summarize them, some 13 – 15% of the American people think abortion should be “illegal in all cases” or “only permitted to save the woman’s life.” This is the core of anti-abortion extremists who seem to have so much influence in the Republican Party right now. Another 27 – 33% would make it “illegal in most cases” but specifically exempt rape, incest, and the health or life of the mother. Some 40% think it should be “legal in most cases” and some 17% think it should be “legal in all cases.” For what it is worth considering common knowledge of the decision, some 65% of Americans would not overturn *Roe v. Wade*, meaning, I figure, they oppose a general ban on abortion or support abortion in general.

With the vast majority of Americans against them, extremist anti-abortion forces have long worked to re-“frame” the issue their way.²⁴ Framing is about convincing people of your position by talking about it in ways that they will accept and endorse. Sometimes it’s only framing: Anti-choice groups have framed abortion by personifying the fetus: they call abortion “murder” and the “victim” an “unborn child.” They have moved on to “pre-born babies” and “unborn patients.”

Sometimes framing is propaganda, at best a distortion of truth: Archer, Daniels, Midland does this when it promotes itself as the company that “is feeding a hungry world” despite the fact that the huge subsidies it receives contribute substantially to world hunger in the first place. Showing photos and ultra-sounds of six-month fetuses when 90% of all abortions are of first trimester embryos and fetuses smaller than my thumb is propaganda.²⁵ What an incredible coup to get an entire country to change its language such that a woman carries in her womb, no matter for how short a time, not a zygote, an embryo, or a fetus but a full-fledged person who just happens to be very small and “unborn.”

Sometimes framing is lying. Calling a proposed law to allow increased air pollution a “Clear Skies Initiative” is lying. “Abortion stops a beating heart” lies by conveying that the heart starts to beat at conception when it does not until the fifth week.

All this framing of abortion as a pro-life issue conceals the reality of hostility to women and women’s rights. “Plan B” demonstrates the point. Plan B is an emergency contraceptive to use in case a woman’s contraceptive fails, she has had unprotected sex, or she has been the victim of rape or incest. Also called the

²⁴ For a discussion of framing, see George Lakoff, Don’t Think of the Elephant, and the November and December issues of Downside Up.

²⁵ Some 90% of all abortions take place during the first trimester, about 9% during the second, and only 1% during the third. Twenty-five per cent of pregnancies end in miscarriages. (www.religioustolerance.org); The Alan Guttmacher Institute, PRCH & Guttmacher, © 2005; and many other sources)

“morning after” pill, it works to prevent pregnancy by inhibiting ovulation, fertilization, and implantation. Fifty per cent of all fertilized eggs already fail because the zygote does not implant in the uterine wall. Catering to his far-right constituency, George Bush’s political appointees in the Food and Drug Administration have twice undertaken an extraordinary intervention in the FDA administrative process to block its availability over the counter. Catholic hospitals don’t make it available for victims of rape and incest.

As Anna Quindlen notes in her July 11 Newsweek column, “Now Available: Middle Ground” (p.74), there is no mention of Plan B on the home page of the National Right to Life Committee “perhaps” – I would say “definitely” – because “the nation’s most influential anti-abortion group knows that Americans may have a hard time finding a profound moral dilemma in a pill taken just a day or two after unprotected sex.”

What’s wrong here is not rejection of abortion on religious grounds nor that some people reject abortion as a personal choice. These people constitute a much higher percentage of the population than 13 – 15%. What’s wrong with the 13 – 15% is their trying to impose their religious beliefs by law on everyone else. I can think of nothing to say to them. I would seek common ground with the remaining 84% of the population which accepts abortion in at least some circumstances. Once people realize that 95% of all abortions already take place before “quickening” in the fifth month of pregnancy, I think most of those who think it should be “illegal in most cases” will find their concerns resolved. With a viable political center now available, even the absolutists on the Left might find their concerns ameliorated.

In Search of Common Ground: Framing Our Values

It is not enough to reject the extremists on the anti-abortion Right. Relieved of the burden of defending a *Roe v. Wade* which never existed, we can work with the real *Roe* towards common ground for the American mainstream. We can frame our values in a positive way which is both honest and sensible for the vast majority of the American people.

Reducing the number of abortions is a worthy goal for our society. There are too many. In the Western industrialized world, only Australia appears to have a higher rate than we. The best way to address this problem is to reduce the percentage of unintended pregnancies, which are 48% of all pregnancies. We can also address reducing abortions by increasing the percentage of unintended pregnancies which end in births, currently 40%.²⁶

When pregnancy occurs and abortion is necessary, it should be as early as possible, it should be a choice, and it should be for reasons of health and humanity, not money. Some women get abortions because they cannot afford another child. As some states have restricted abortion, other women don’t get an abortion because access is too far away or too costly, especially for the poor and the young. A balanced program which invests our nation’s resources in strong and healthy individuals and strong and healthy families will reduce abortions by reducing pregnancies and assure that those abortions which occur do so as a result of well-considered choices.

²⁶ See “An Overview of Abortion in the United States,” Alan Guttmacher Institute, PRCH & Guttmacher, © 2005, for this and other abortion data talked about below.

Changing the Behavioral Framework of Sex and Sexuality: Unintended pregnancies are “most likely to occur among teenagers, unmarried women, black and Hispanic women, and women with low incomes.”

I would start by declaring all pregnancies of unmarried children under 18 to be the result of statutory rape. There is no difference here between rape and incest. No girl under 18 has intercourse unless she has been coerced – socially, psychologically, or physically -- or is a victim of abuse. No girl under 18, no matter how physically developed, is emotionally mature enough for a deep and sharing relationship any more than she is to raise a child.²⁷ Hormones and brains are far too haywire. This is the purpose of current statutory rape laws. The only problem with most of them is that they define statutory rape by too young an age.²⁸

I know that this proposal sounds terribly radical, even unfair. What about a 16 year old boy and girl? My purpose here is not to fill our courts with rape cases. It just isn't going to happen anyway. My purpose is to redress the imbalance that already makes most women too afraid to bring rape charges: because they end up on trial instead of the rapist. Every male of whatever age just has to know that sex with a female under 18 is no more consensual than sex between a boss and an employee or a teacher and a student. The man/boy had better be darn sure that the sex is about a loving relationship because all it will take to be convicted is a complaint from the girl and the evidence of one DNA test on one pubic hair or one sperm cell.

The corollary to a firm statutory rape law is education and abstinence coupled with acceptance and promotion of contraception and masturbation. The United States has a high rate of abortion because we have a high rate of unintended pregnancies and we have a high rate of unintended pregnancies because we neither educate our children about sex and sexuality nor make contraception readily available. Advances in technology have vastly improved our ability to prevent ovulation, fertilization, and implantation. We should promote them. Since 53% of women, married and unmarried, who have unintended pregnancies were trying to use contraception effectively, contraception is no panacea, but ranting on about abstinence alone is not education. Education about sex and sexuality includes the physical and psychological risks, the importance of mature decision-making, and contraception as well as abstinence.²⁹

Education also includes encouragement of masturbation, but I say this having no idea how to start that conversation. As rational, necessary, and important as it is, it appears to be way outside the mainstream of what American society is willing to consider. Perhaps the American Medical Association could start such a conversation.

²⁷ I make no apologies for my traditionalist belief in the spiritual significance of intercourse shared mutually between two mature individuals committed to each other in a loving relationship. The capacity of all boys (and most men) for such a relationship is even less -- a quantum level less -- and everyone knows it!

²⁸ Though I do not favor marriage for children under 18 and the failure rate of such marriages is spectacular, I would exempt sex within marriage from a statutory definition of rape. I would also count oral sex as rape because I believe that girls who engage in it, like intercourse, would not do so if they were not already victims of domination and lack of self-esteem, even if not victims of rape/incest.

²⁹ As the issues of this article primarily affect young women who bear all the burden of pregnancy and most of the burden of contraception, it ignores the most effective birth control strategy -- male sterilization by vasectomy. This would be the method of choice for men, and women, who no longer want any children.

Technology and Early Term Abortions: If the first step in reducing unwanted pregnancies is to change our behaviors to reduce pregnancies, the next step is to take advantage of changes in technology which have made possible safer and earlier abortion. In 1987, 71% of the women who had abortions after 16 weeks did so because they did not realize they were pregnant.³⁰ Ninety per cent of abortions already take place during the first three months of pregnancy. Only 0.08% of abortions occur after 24 weeks, 1.4% after 20 weeks, and 4.3% after 15 weeks. With new pregnancy tests making possible choices about abortion far earlier in pregnancy – indeed within hours and days of conception and fertilization -- we can push back even further the percentage of late abortions.

With so much more time to work with, there surely has to be some place between conception and birth where our society can find a balance between the mother and the “potentiality of life.” Given that 65% of Americans already accept *Roe*, most Americans have already found the anti-choice extremists out of bounds. It does not seem unreasonable to leave to the State, as *Roe* does, a legitimate role in balancing the “potentiality of life” against the mental and physical health of the mother for the less than 5% of abortions now occurring after “quickening” in the 16th week or later. This would include consideration of rape and incest where it may take longer than four months for the victim to be able to come forward. Jeb Bush should not be allowed to get away with delaying a legal abortion but if he does, a later abortion should be legal. At the same time, some women will have to take to term babies they decide after four months they don’t want. Sometimes, it may be necessary to terminate a pregnancy in the third trimester. Things go wrong, mistakes happen, and sometimes there are no good solutions.

Investing in Strong and Healthy Families: Almost as many unintended pregnancies result in births (40%) as in abortions (47%). Strong and healthy families can increase the percentage of births. Strong and healthy families can be of many types, single parent and parents of the same sex, as well as so-called “traditional” two generation families.³¹ What is important is that society takes responsibility for supporting families as another important way, besides education, contraception, and abstinence, of reducing abortions. A national investment in universal health care would be best. Universal health care for all women of child-bearing age and all children would be a good start.

A strong, full employment economy would be great. Child care support and payments to families with children would help a lot.³² We are getting towards universal pre-schools. Why not universal child care for non-employed as well as employed mothers and fathers so the former too can lead more sane lives. How can the Fundamentalists not support that?! (Yeah, I know, because they also oppose government social programs.) Why not universal child care education to help people who choose to have children raise them better. It is good that we provide earned income credits for the working poor but that leaves out the poor who, usually, can’t work.

³⁰ In my and my wife’s day the doctor had to examine the woman’s cervix and it was easily three months or more before anyone was sure a woman was pregnant.

³¹ I would say that the truly traditional family is a multi-generational extended family.

³² Most European countries provide additional financial support directly to families with children. The French have recently increased payments to encourage more births.

What I am talking about is an investment in a healthy society. That such an investment will require taxes is not a “burden” as the anti-tax nuts like to call it, but an opportunity to build a better future at a time when we are actually investing less and less in our human infrastructure. That we cannot afford the spending is outrageously untrue. The Republicans have demonstrated by tax cuts for the super-rich, the Iraq War, Congressional pork barrel, and corporate subsidies that if the objective is important enough, spending has no bounds. The savings in crime, emergency hospital costs, state care of children, and lost work hours would far exceed the direct dollar outlay. I just can’t see why spending \$100 billion a year to take care of families and children doesn’t trump spending it to kill Iraqis.

It is not inconceivable that my proposal for strong families in a strong society would lead to people choosing to have more children. For environmental and resource reasons, I am not sure that I really want that but it sure beats a society with millions more unwanted children growing up in an environment of poverty and/or abuse. There is no ground left to hold in advocacy of a society without any legal restrictions on abortion. Nor is there any place for blind and mindless imposition of a legal ban on all abortions. We need to envision something better. It is an appropriate agenda of real but difficult choices for a free people.