

THE ROAD TO ROE: CULTURAL CHANGE AND THE GROWTH OF ACCEPTANCE OF ABORTION PRIOR TO 1973

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WHEN ABORTION EMERGED as an issue in the 1960's, those who arose to combat the movement first to "reform" and then to repeal the existing abortion laws were struck by two facts: first, that there was controversy over abortion at all—that the protection of fetal life was not a settled and unquestionable social guarantee—and second that this novel and shocking movement seemed to have strong allies in the mass media and in the professions and that it was the opponents of abortion rather than the proponents of its greater accessibility who bore the burden of proof and the stigma of eccentricity and extremism.

For decades no public controversy of any consequence had ever disturbed the widely held belief that abortion was a terrible crime which took an innocent life and which was sharply different from birth control. Indeed an official of the leading organization advocating birth control had carefully distinguished its cause from that of abortion and had referred to it as the taking of a life.ⁱ Suddenly there was a demand for expanded "therapeutic" abortions, a demand which quickly became transformed into a call for unrestricted access to abortion, "abortion on demand" as one early proponent called it.ⁱⁱ

The sympathetic treatment of this demand in the media, both print and electronic, and the support which it secured from prominent public leaders, seemed inexplicable to abortion's opponents. These opponents felt like a city's defenders, who upon being awakened by the sound of attack discovered that the foe already held most of the city's key positions and that important allies were suddenly enemies. Any attempt to write a history of the pro-life movement must come to an understanding of two things: the source of this widespread support for ready access to abortion and the fact that the discovery of the existence of such support was a shock to abortion opponents. A history of the right-to-life movement must be set in a number

of contexts, and one of these is the process by which what came to be called "pro-choice" forces emerged as a powerful and well-connected element in American society. The character of the right-to-life movement was shaped in large measure by the social circumstances of its birth, and the nature of its opposition was a particularly significant part of those circumstances. Before we ask then about the pro-life movement we must ask, why a pro-choice movement? When and why did it arise, and how did it come to have such powerful friends?

The argument of the following paper is easily summarized: the roots of the pro-choice movement lie much further back in the American past than the 1960's. While that turbulent decade saw forces which triggered the abortion controversy and which aided its speedy triumph, the crucial—and in many respects deeply contradictory—changes in attitude which were the necessary precondition for change had much deeper roots. Where can we find an adequate account of this transformation?

We could begin by turning to the accounts prepared by pro-choice historians. Several are available, but in essence the story they tell is this: throughout history abortion was a long-standing, widely practised and widely accepted means by which women attempted to control their reproductive lives, which encountered a significant campaign to restrict it only in the 19th century. This campaign had some elements of moral concern for the rights of the fetus but was primarily part of a move by doctors to enhance their professional status. It was also part of a move to increase the birth rate of white middle class women, in part because of racist fears of immigrant birth rates but even more because of a fear of women who were not subject to male power. Moreover, the restriction of abortion was an expression of hostility to women and can only be understood in the context of gender relations and a profoundly anti-feminist backlash.

This tale, with variations, can be found in James C. Mohr's *Abortion in America: The Origins and Evolution of National Policy*,ⁱⁱⁱ Carroll Smith-Rosenberg's "The Abortion Movement and the AMA, 1850-1880,"^{iv} and more recently and exhaustively in Janet Farrell Brodie's *Contraception and Abortion in Nineteenth Century America*.^v Brodie argues that techniques of both abortion and contraception were widely available after the middle of

the century and that little distinction was made by the public between the two. She makes a strong case for holding that the availability of contraceptive information and indeed the dramatic plunge in the birth rate of native-born whites over the course of the century serve to indicate that birth limitation was being practised. She repeats the Smith-Rosenberg line that the AMA's anti-abortion crusade was "hostile to women and to the power that control of reproduction promised (or threatened) to give them."^{vi}

The repressive regime created in the 19th century was unable to cope with changes in medical practice in the 20th century and was incompatible with the movement of women into the workforce after World War II. Kristin Luker, in her widely cited work, *Abortion and the Politics of Motherhood*, argues that as the medical grounds for therapeutic abortions shrank with improvements in medicine, a crisis arose within medical circles over the definition of "therapeutic":

So long as some abortions *could* save the physical lives of women, professional pressures kept "strict constructionists" from watching their colleagues (at least those in good standing) very closely to see that their abortions actually *did* save lives. But as abortions necessary to save lives became a medical rarity, one pillar of the medical profession's support for abortion began to crack. The "strict constructionists" began to look forward to the day when abortions would never need to be performed. But neither they nor their "broad constructionists" colleagues fully appreciated just how deep the divisions between them really were.^{vii}

She argues as well that the large scale entry of married women into the workforce after the 1940's created an increasing demand for control over reproduction, as an unplanned pregnancy's serious impact on work and career became apparent.^{viii}

A recent and extremely important pro-choice study of the origins of abortion restrictions and their impact up to *Roe v Wade* is Leslie J. Reagan's *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973*. Reagan, unlike Mohr, grants no morally good intentions to the doctors who led the movement to end abortion in the 19th

century: "Periods of anti-abortion activity mark moments of hostility to female independence."^{ix} Her coverage of abortion practice during the period after the 19th century laws were passed is divided into four eras. The first, from 1880 to 1930, begins with the criminalization of abortion in all States to the Great Depression, a fifty-year period "heavily marked by continuity," when "abortion was widely accepted and practised in women's homes and in the offices of physicians and midwives." During this period, however, "a crackdown on abortion occurred between 1890 and 1920 as specialists in obstetrics renewed the earlier campaign against abortion."^x The 1930's are the next period, when abortion became "consolidated in medical hands and more visible."^{xi}

She argues that the period after 1940 saw an increased repression of abortion, both through a tightening of the rules regarding therapeutic abortion and through a crackdown on illegal abortions. "The suppression of abortion in the decades immediately preceding *Roe v. Wade* was unique in the history of abortion. That repressive system, and its deadly results, played a crucial role in producing a movement to legalize abortion. The abortion-rights movement arose out of the deteriorating conditions of abortion and the frustrations of both women and physicians."^{xii} But "the oppressiveness of the postwar years alone did not produce a movement to legalize abortion"; rather, it "developed at a time when many in the Civil Rights and anti-war movements mobilized for radical change."^{xiii}

The movement to end abortion controls was thus an expression of a desire to return to "normal" practice: women had always sought abortions and regarded them as legitimate but were now facing unprecedented obstacles. The opponents of this abortion reform could best be understood as the analogues of the anti-feminist and reactionary forces who had created the laws in the first place. This interpretation of abortion-law history focuses on an allegedly disrupted tradition: reform is seen as a return to an interrupted past in which abortion had been widely accepted and widely available. Accordingly, this history of the abortion-rights movement stresses the individuals and groups who arose in the 1960's to "restore" this putative right, and since it is seen as a restoration, not a revolution, little attention is paid to its deeper roots.

The work of this group of historians is not without its merits and does add

to our knowledge of why and how a pro-choice movement came to be. Reagan's work in particular has contributed considerably to our understanding of how abortion restrictions actually operated over the last century, and thus provides a valuable background to the emergence of an abortion-rights movement in the 1960's. As mentioned earlier, the work of pro-choice scholars has also suggested the connection between women's workforce participation and the demand for access to abortion. David Garrow, among others, has made clear the connection between the birth-control movement and the legitimization of abortion. Further, these scholars have noted the impact of population-control beliefs on the movement to make abortion more accessible, although they do not dwell on the connection.^{xiv} A pro-choice historian of contraception, James Reed, in *From Private Vice to Public Virtue: The Birth Control Movement and American Society Since 1830*, has suggested a deeper root of the acceptance of abortion, insofar as the history of contraception provides an analogue:

In retrospect, the emergence between 1915 and 1921 of a movement to legitimize and spread contraceptive practice might be viewed as a logical, if not inevitable, response to one source of tension in the sex lives of socially ambitious Americans. The essential cultural prerequisite for the success of the American birth control movement was the secularization of society or the celebration of material well-being and pleasure exemplified by the growth of the advertising industry. The progressive rationalization of human relationships in an industrial society was leading toward the acceptance of human sexuality as a means of individual expression divorced from any large social necessity or religious purpose.^{xv}

Most of all, however, the work of these pro-choice historians provides us with a good picture of the activities of the abortion-rights activists in the decade of the 1960's. This is particularly true of David Garrow's massive and tendentious tome, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade*^{xvi} and of Suzanne Staggenborn's *The Pro-Choice Movement: Organization and Activism in the Abortion Conflict*.^{xvii}

This focus on the 1960's (and the relative inattention to the larger transformation of American society in the decades preceding that period) is consistent with the theme of a restored tradition—how, after a century, women fought for a return to a long accepted right to abortion. The theme of continuity is explicit in Mohr's account: he argues that the Supreme Court, in its decision on *Roe* was saying in effect that:

Americans would come to recognize the anti-abortion laws of the late 19th century as the real aberrations in the history of their nation's abortion policies and realize that the *Roe* guidelines represented an attempt by the Court to formulate a modern version of the older, though ultimately more appropriate, abortion policies of the past, in the wake of a concerted, though ultimately inappropriate, attempt to impose criminal prescription as the national norm.^{xviii}

...it seems entirely possible that the foregoing book will come to be seen as an examination not of the origins and evolution of America's "normal" or "usual" abortion policies, but rather of how the single greatest period of interruption, or deviation from the norm, came about.^{xix}

What this approach does not do is to recognize, let alone to explain, the very real revolution in abortion policy undertaken in the 1960's and the way in which it represented not a return to an older tradition but a radical discontinuity, not just with the immediate past, but with several millennia of tradition. The discontinuity is this: even if one accepts without reservation the claim that prior to the 19th century laws there was an unrestricted "right" to abortion prior to "quickening" (a claim which is dubious at best), it is also the case that abortion after quickening was forbidden, and that this arose from a concern for human life.^{xx} Indeed the less stringent attitude to abortion prior to quickening was the result of the belief that human life was not clearly present prior to fetal movement. It is inappropriate to use the word "abortion" in its modern sense to describe those pre-quickening pregnancy terminations precisely because while we know that they were (in objective fact) abortions, they were not perceived

as such by those performing or undergoing them. The claim that the acceptance of pre-quickening terminations in earlier centuries can thus be used as justification for abortion today is insupportable. More importantly, the modern pro-choice movement does not limit itself to a call for a return to a right to terminate an early term fetus. It calls for a right to abort all fetuses at any point in the pregnancy for any reason the mother finds sufficient. The practices and beliefs of an earlier period can provide no support for an unlimited right to abortion. There is clearly a radical discontinuity here.

The story told by pro-choice historians does not recognize or explain this discontinuity. Their failure to deal with the discontinuity, however, makes it impossible for them to understand how truly radical the pro-choice movement was, and it simultaneously makes it impossible for them to understand the nature and role of the pro-life movement. Since abortion-rights advocates cannot recognize that the pro-life movement is much closer to the long-standing tradition of Western society than they are, they must instead force the movement into what is clearly an utterly inadequate explanatory framework: an anti-feminist backlash by those opposed to gender equality. This interpretation of the movement is wrong, or at best only marginally correct, but the interpretive framework used by pro-choicers leads even otherwise able scholars to accept it.

By contrast, I would suggest the following: the 19th century laws against abortion were passed with so little difficulty or debate precisely because they did, to a substantial degree, reflect the moral understanding of the community, namely, that ante-natal life deserved protection. Mohr suggests, to the contrary, that these laws changed rather than reflected public opinion.^{xxi} But it seems unlikely that a change of such magnitude could have occurred if it were not based on a substantial moral consensus. Of course, abortions continued to be practised after the change in the laws, and many were slow to accept the elimination of the quickening distinction, but overwhelmingly abortion was seen as wrong because it did attack human life. At the base of the 19th century crusade to outlaw all abortions lay two assumptions: one was that human life had an absolute value. Secondly, it was assumed that it was only necessary to demonstrate that human life was a continuous process, from conception onward, in

order to validate the claim of the early fetus to full humanity. Once the old "quickening" distinction had been discredited, it seemed obvious to the physicians leading the attack on abortion that the nature of the entity was the same, whether one week after conception or fifty years after: it was a human being, which, while admittedly of different size and capabilities, was still in its very nature human. James Mohr touches on both of these points in his account of the 19th century attack on abortion:

The nation's regular doctors, probably more than any other identifiable group in American society during the 19th century, including the clergy, defended the value of human life as an absolute.^{xxii}

...19th-century physicians knew categorically that quickening has no special significance as a stage in gestation. Hence it is not difficult to grant the genuineness of their uneasiness over the continued use of what they regarded as an unimportant, almost incidental, occurrence during pregnancy to distinguish between legal life and legal non-existence in cases of assault against a fetus.^{xxiii}

While these views were held with particular intensity by physicians, they were clearly consistent with the dominant philosophical presuppositions of the society, for otherwise they would not have achieved such relatively easy victories throughout the country. It must be stressed that these are in fact *philosophical* presuppositions: the absolute character of the human right to life (which for almost all in society was anchored in the belief that it was conferred by a transcendent God, not by society; that it is a right "endowed by their Creator," as the Declaration of Independence has it) and the belief that the category of "human" was biological, not separate from "human person" and not a social construction. These presuppositions were reflected deeply rooted and rarely articulated metaphysical and epistemological beliefs.

The widespread persistence of these beliefs was manifested in the fact that when a right-to-life movement arose in the 1960's, most of its efforts were directed at making precisely these points to the public: the focus on

showing the continuity of fetal development was a continuation of the 19th century physicians attack on the quickening distinction. There was this crucial difference: in the 19th century the right-to-life argument could count on the concurrence of the public, or at least the absence of vocal opposition, because the habits of thought and philosophical assumptions of the physicians were almost universally held in society. By the mid-20th century they were not. That pro-lifers were taken aback by this development is a striking reflection of the degree to which American society had split asunder on its understanding of basic words and concepts. Almost inevitably those on both sides of this cultural divide tended to see their opponents as either obtuse or wicked, or possibly both.

The various explanations of why abortion advocates came to prevail—structural changes in women's lives and employment, the acceptance of birth-control and of the sense that control of fertility was a right, population anxieties, the civil-rights and anti-war movements, the youth culture of the 1960's, able leaders and particular events (such as the Finkbine case) are all inadequate to explain the rapid and complete success of the call for an unlimited right to abortion. (As the controversy over the proposed ban on partial-birth abortions has made clear, the right being asserted was to unlimited abortion.) No one factor, of course, is enough to explain the origins of the pro-choice movement and the reasons for its success, but one crucial factor is rarely elaborated by pro-choice historians. James Mohr's remarks about a growing regard for the "quality" of life as opposed to biological life itself gets close to doing so when he writes about:

...an increasing concern in the 20th century for what was called the quality of life, as distinguished from biological life itself as an absolute. When medical research developed the technological capacity to maintain biological life in an otherwise inanimate human body, for example, more and more Americans had to wrestle with the question of whether all forms of life, technically defined, are worth the social, emotional, and financial costs of maintaining them.^{xxiv}

The radical shift at the root of abortion's triumph is not just the

relativization of human life implied in the "quality of life" argument, but more deeply the changes in Western thought which saw, in general, the waning of the assumptions behind the 19th century attack on abortion. While there is a great deal more to the story than this, it is the contention of this paper that the rise and triumph of the pro-choice movement cannot be understood outside the larger, revolutionary transformation of fundamental patterns of thought over the last century and a half.

Over the course of decades, from the 19th century to the 1960's, the intellectual framework which permitted and indeed required the beliefs that the human right-to-life was a transcendently anchored absolute and that the category of "human" was independent of social definitions of "person" began to fade, first for the intellectual elite and then for a widening circle of the public. It is not possible here to trace in detail the process by which philosophical beliefs of 19th century Americans lost the allegiance of a large part of the intellectual elite. Clearly, in America as elsewhere in the Western world, the revolution which was both (in part) caused and exemplified by Darwinism played a crucial role. A classic expression of this change was given by John Dewey:

In laying hands upon the sacred ark of absolute permanency, in treating the forms that had been regarded as types of fixity and perfection as originating and passing away, the *Origins of Species* introduced a mode of thinking that in the end was bound to transform the logic of knowledge, and hence the treatment of morals, politics, and religion.^{xxv}

Bruce Kuklick's *The Rise of American Philosophy* has examined the early years of this transformation in detail and he makes clear that for America's intellectual elite Darwinism spelled the death of existing philosophical beliefs—in particular for the (until then) dominant school of Scottish common-sense realism.^{xxvi} The story of the intellectual revolution which ensued in field after field has often been told, as in Morton White's *Social Thought in America: The Revolt Against Formalism*, and it is the indispensable context for understanding the transformation in American abortion attitudes.^{xxvii}

The new philosophical climate made much less plausible the assertion

that even in its early stages a fetus was fully human, whatever its appearance, and was entitled to the same absolute protection as any other human. Indeed such a belief came to seem to many not just incomprehensible, but perverse. Eventually it appeared that it was an irrational assertion best lumped under the heading of "religion."

While this trend undermined the fetus's claim to rights, another trend was underway which paradoxically elevated some other rights claims into absolutes. As Mary Ann Glendon has noted, claims to rights under the Constitution have increasingly been made in absolute terms, including (and most notably) in regard to abortion.^{xxviii} The woman's absolute right to privacy in this matter overrode all other concerns and created the situation in which the fetus, deemed not to be a person under the Constitution, had no effective rights in any abortion-decision, whereas the woman had absolute rights. The oddity of this situation, when viewed in comparative perspective in the light of other Western countries' experiences, has received Glendon's searching criticism.^{xxix}

This erosion of an absolute right to life and the consequent belief that no claims could be made on behalf of the fetus which were not limited by the social circumstance, in conjunction with the absolutizing of previously limited rights under the Constitution, is one of the most striking and paradoxical features of the events which led to the current triumph of the pro-choice cause. The pro-choice historical accounts of the triumph of their cause do not address it, however. That the weakening—indeed negation—of the idea of fetal rights has to be explained as an historical process is not recognized. Implicit is the assumption that no one had ever really believed in fetal rights. This is, I would submit, inaccurate, but such a belief of necessity leads to the conclusion that those who speak of fetal rights must be hiding other motives, since they could not really believe in them.

Why is it not clearly acknowledged that both the idea of the "human" and beliefs about the origins and nature of human rights have substantially changed in the last century? A tentative suggestion may be advanced here. Perhaps it is because the American polity is based on documents—such as the Declaration of Independence—and on a rhetoric of innate and absolute human rights, which assume the continued vitality of the older philosophical beliefs. If it is held that all humans are from birth fully equal

regardless of age, race, or ability but that before birth—even one second before birth—they are not entitled to the protection of the law, both human rights and the very definition of "human" may be taken as social constructions. This apparent tension between the liberal creed and the defense of abortion has drawn the attention of liberals such as Nat Hentoff.^{xxx}

As noted above, pro-lifers insisted on making arguments based on the older view of inherent, inalienable rights, and of a comprehensive definition of "human," based on a traditional set of philosophical understandings. These views could not be attacked unless one was willing to call into question the basis of American liberalism as it was understood by a majority of the public. Radicals might be willing to do so, but others were not, not even to themselves. The right-to-life movement was in large measure a campaign to preserve a traditional understanding of rights, an understanding still shared by many Americans. It could not, however, be attacked, or even understood, as such, so it had to be interpreted and attacked on other grounds: as itself hostile to the rights tradition—thus the claims that it was a repressive movement opposed to gender equality. To say this is not to suggest a deliberate campaign of misrepresentation, but rather that the abortion debate raised issues of the deepest character, going to the heart of American politics and society and that its full implications were rarely recognized by its participants.

This account of the rise of the pro-choice movement has mentioned the work of pro-choice historians and has argued that they do not give an adequate basis for understanding the phenomenon. When that more comprehensive account is written, some very useful material can be found in two books by the pro-life scholar, Marvin Olasky. First in his *The Press and Abortion, 1838-1988*,^{xxx} and then in his *Abortion Rites: A Social History of Abortion in America*,^{xxxii} Olasky makes it clear that the anti-abortion consensus of the 19th century began to become unstuck quite early in the 20th century. He maps this change, which was a slow and subtle one, through an exhaustive and detailed review of press coverage of the topic. It is clear from his account that it was in the elite press, such as *The New York Times*, that the acceptance of abortion first became apparent.^{xxxiii} This is consistent with the suggestion made here that the

mindset receptive to abortion first appeared to the educated elite and only gradually spread to wider sections of society.

A history of the pro-life movement will find that it arose in part from a defense of traditional understandings of the nature of human rights and of the idea of the "human." It was thus not a radical, deviant, or pathological phenomenon, as suggested by its opponents and some of its interpreters, but rather was within the mainstream of American history and American society. While its opponents certainly commanded considerable power and prestige, they did not command the support of the majority of Americans. Instead the public was deeply divided, with a majority clearly neither fully pro-life nor pro-choice. The abortion controversy is thus the clearest example of the profound philosophical differences which lie at the root of the "culture wars" of contemporary American society.^{xxxiv}

NOTES

i. In 1959 Planned Parenthood Federation of America's Medical Director, Mary Calderone, declared that "abortion is the taking of a life" and "explicitly eschewed any call for legal change." David Garrow, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v Wade* (New York: Macmillan, 1994) p.280.

ii. The phrase was used by Garrett Hardin in 1963. See Garrow, p.295.

iii. James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy* (New York: Oxford Univ. Press, 1978).

iv. In Carroll Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America* (New York: Alfred A. Knopf, 1985) pp.217-44.

v. Janet Farrell Brodie, *Contraception and Abortion in Nineteenth Century America* (Ithaca: Cornell Univ. Press, 1994).

vi. Brodie, p.272.

vii. Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley: Univ. of California Press, 1984) p.55.

viii. Luker, p.117.

ix. Leslie J. Reagan, *When Abortion Was a Crime: Women, Law, and Medicine in the United States, 1867-1973* (Berkeley: Univ. of California Press, 1997) p.14.

x. Reagan, pp.14-15.

xi. Reagan, p.15.

xii. Reagan, p.216.

xiii. Reagan, p.217.

xiv. Reagan, pp.230-31.

xv. James Reed, *From Private Vice to Public Virtue: The Birth Control Movement and American Society Since 1830* (New York: Basic Books, 1978) p.62.

xvi. See note 1 above.

xvii. Suzanne Staggenborn, *The Pro-Choice Movement: Organization and Activism in the Abortion Conflict* (New York: Oxford Univ. Press, 1991).

xviii. Mohr, p.258.

xix. Mohr, p.259.

xx. There is a very large literature which discusses this issue from a pro-life perspective. See, for example, John Connery, S.J., *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola Univ. Press, 1977); John Noonan, "An Almost Absolute Value in History" in John Noonan, ed., *The Morality of Abortion: Legal and Historical Perspectives* (Cambridge: Harvard Univ. Press, 1970) pp.1-59; Michael J. Gorman, *Abortion and the Early Church: Christian, Jewish and Pagan Attitudes in the Greco-Roman World* (Downers Grove: Intervarsity Press, 1982); John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982* (Cambridge: Cambridge Univ. Press, 1988); Clarke D. Forsythe, "The Effective Enforcement of Abortion Laws Before *Roe v. Wade*" in Brad Stetson, ed., *The Silent Subject: Reflections on the Unborn in American Culture* (Westport:

Praeger, 1996) pp.179-227; Clarke D. Forsythe, "Homicide of the Unborn Child: The Born Alive Rule and Other Legal Anachronisms" in *Valparaiso Law Review* 21/3 (1987) 563-629; Robert M. Byrn, "An American Tragedy: The Supreme Court on Abortion" in *Fordham Law Review* (1973); Robert Destro, "Abortion and the Constitution: The Need for a Pro-Life Protective Amendment" in *California Law Review* (1975); James Witherspoon "Re-examining *Roe*: Nineteenth-Century Abortion Statutes and the Fourteenth Amendment" in *St. Mary's Law Journal* 17 (1985); John D. Gorby, "The 'Right' to an Abortion: The Scope of Fourteenth Amendment 'Personhood' and the Supreme Court's Birth Requirement" in *Southern Illinois University Law Journal* (1979) 1-36; Joseph Dellapenna, "The Historical Case Against Abortion" in *Continuity* 13 (1989) 59-83; Joseph Dellapenna's "The History of Abortion: Technology, Morality and Law" in *University of Pittsburgh Law Review* 40/3 (1979) 359-428. I have discussed this issue in "The Historical Roots of the Pro-Life Movement: Assessing the Pro-Choice Account" in J. Koterski, ed., *Life and Learning V* (Washington, D.C.: University Faculty for Life, 1996) pp.350-83.

xxi. Mohr, p.262.

xxii. Mohr, p.36.

xxiii. Mohr, p.165.

xxiv. Mohr, p.252.

xxv. John Dewey, *The Influence of Darwin on Philosophy* (Bloomington: Indiana Univ. Press, 1965 [1910]) pp.1-2.

xxvi. Bruce Kuklick, *The Rise of American Philosophy: Cambridge, Massachusetts, 1860-1930* (New Haven: Yale Univ. Press, 1977).

xxvii. Morton White, *Social Thought in America: The Revolt Against Formalism* (Boston: Beacon Press, 1957 [1949]).

xxviii. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991).

xxix. Mary Ann Glendon, *Abortion and Divorce in Western Law* (Cambridge: Harvard Univ. Press, 1987).

xxx. A characteristic statement of this view can be found in "Dred Scott,

Abortion, and Jesse Jackson" in *The Village Voice* (Feb. 21, 1989), reprinted in *The Human Life Review* 15/2 (1989) 104-08. He argues for the parallels of the abortion issue with that of slavery, in each case working within a framework of inherent rights.

xxxi. Marvin Olasky, *The Press and Abortion, 1938-1988* (Hillsdale: Lawrence Erlbaum Associates, 1988).

xxxii. Marvin Olasky, *Abortion Rites: A Social History of Abortion in America* (Wheaton: Crossway Books, 1992).

xxxiii. *Ibid.*, pp.270-71.

xxxiv. The analysis offered here is similar to that given in the book which made the phrase popular, *viz.*, James Davison Hunter's *Culture Wars: The Struggle to Define America* (New York: Basic Books, 1991). See esp. pp.43-46.