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ARTICLE

CONTRACEPTION AS A MASK OF PERSONHOOD

CHARLES E. RICE*

I. MASKING PERSONHOOD WITH THE LAW

Sometimes you can learn something by teaching Torts. In my case it happened with the *Palsgraf*[1] case and John Noonan did it. When we reached *Palsgraf*, I always discussed with the class Professor Noonan's analysis in *Persons and Masks of the Law*.[2] "In this book, in reaction to rule-oriented writers," he wrote,

> I seek to distinguish persons from masks. But it would be a travesty of what I believe to suppose that law could exist without rules. . . . A chief difficulty to understanding . . . is the presence of masks, formed by rules and concealing the persons. . . . By masks . . . I mean ways of classifying individual human beings so that their humanity is hidden and disavowed.[3]

Judge Andrews summarized the facts in *Palsgraf*:

> Assisting a passenger to board a train, the defendant's servant negligently knocked a package from his arms. It fell between the platform and the cars. Of its contents the servant knew and could know nothing. A violent explosion followed. The concussion broke some scales standing a considerable distance away. In falling, they injured the plaintiff, an intending passenger.[4]

Mrs. Palsgraf lost as a matter of law in the Court of Appeals, and Chief Judge Cardozo wrote the opinion. Professor Noonan thinks she lost because her humanity was covered by the abstract persona, the mask, of an "unforeseeable plaintiff." He did not accuse Cardozo of misapplying the rule of law he used, but of myopia in selecting the rule that would govern:

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1. *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928).
2. John T. Noonan, Jr., *Persons and Masks of the Law* (Farrar, Straus & Giroux 1976).
3. *Id.* at 19.
4. *Palsgraf*, 162 N.E. at 101-02 (Andrews, J., dissenting); Noonan, *supra* n. 2, at 112.

> If . . . a judge, as he pondered these facts, was uncomfortable with reaching a result of no liability, then the enlargement of his focus would mean, perhaps, that he would select a different rule. At no point could the judge act without using a rule. Exercising his option to select a rule, . . . he would act less blindly the more conscious he was that he was acting as a person, using his "own eyes," and affecting other persons.[5]

Among the Noonan passages I would discuss with the class was his observation that Cardozo's abstract and

> [s]evere impartiality led . . . to the aspect of the decision which seemed least humane: the imposition . . . of "costs in all courts" upon Helen Palsgraf. Under the New York rules . . . costs were, in general, discretionary with the court. . . . In practice, the Court of Appeals tended to award costs mechanically to the party successful on the appeal. . . . [C]osts in all courts amounted to $350, not quite a year's income for Helen Palsgraf. She had had a case which a majority of the judges who heard it . . . thought to constitute a cause of action. By a margin of one, her case had been pronounced unreasonable. . . . The effect . . . was to leave the plaintiff, four years after her case had begun, the debtor of her doctor, who was still unpaid; her lawyer, who must have advanced her the trial court fees at least; and her adversary, who was now owed reimbursement for expenditures in the courts on appeal. Under the New York statute the Long Island could make execution of the judgment by seizing her personalty. Only a judge who did not see who was before him could have decreed such a result.[6]

I suspect that the first-year law students profited, as I know I did, from Noonan's dramatization of the extent to which abstractionism obscured the reality of Helen Palsgraf. Judge Cardozo could have seen her, not as an abstraction to which no duty was owed by the railroad, but as a ticketed invitee to whom it had a duty to compensate for injuries caused by its instrumentality in the course of its business.

II. Masking Personhood with Abortion

Professor Noonan in his career applied his insistence on the recognition of personhood beyond the academic analysis of tort theory. He has been a prominent critic of *Roe v. Wade*,[7] the twentieth century's leading example of judicial concealment of a person behind a mask of abstract, and in that case lethal, nonpersonhood. In *Roe*, the Supreme Court acknowledged that if the unborn child is a "person" whose life is protected by the Constitution, the case for abortion "collapses, for the fetus' right to life

5. Noonan, *supra* n. 2, at 142-43.
6. *Id.* at 144.
7. 410 U.S. 113 (1973).

would then be guaranteed specifically by the [Fourteenth] Amendment."[8] The Court declined to decide whether the unborn child is a living human being. Instead, it ruled that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."[9] Whether or not he is a human being, the unborn child is therefore not a "person." The ruling is the same in effect as a decree that an acknowledged human being can be excluded from protection of the law by covering his face with the mask of nonpersonhood.[10] "The liberty established by *The Abortion Cases*," Professor Noonan wrote, "has no foundation in the Constitution of the United States. It was established by an act of raw judicial power."[11]

"[L]aw," Noonan wrote, "can operate as a kind of magic. All that is necessary is to permit legal legerdemain to create a mask obliterating the human person being dealt with. Looking at the mask—that is looking at an abstract category created by the law—is not to see the human reality on which the mask is imposed."[12] Professor Noonan accurately saw *Roe* as an exemplar of the jurisprudence of Hans Kelsen, according to which

> there is nothing intrinsic in humanity requiring persons to be legally recognized as persons. . . . [T]here is no reality that the sovereign must recognize unless the sovereign, acting through the agency of the Court, decides to recognize it. . . . Kelsenite logic permits the judges at the apex of a system to dispense with correspondence to reality.[13]

Professor Noonan stressed that the objections to *Roe* are founded in reason as well as in faith:

> Even with the fetus weighed as human, one interest could be weighed as equal or superior: that of the mother in her own life. . . . Since 1895, that interest was given decisive weight only in the two special cases of the cancerous uterus and the ectopic pregnancy. . . .
>
> The perception of the humanity of the fetus and the weighing of fetal rights against other human rights constituted the work of the moral analysts. But what spirit animated their abstract judgments? For the Christian community it was the injunction of Scripture to love your neighbor as yourself. . . .
>
> The commandment could be put in humanistic as well as theological terms: Do not injure your fellow man without reason. In these terms, once the humanity of the fetus is perceived, abor-

8. *Id.* at 156-57.

9. *Id.* at 158.

10. *See generally* Noonan, *supra* n. 2, at ch. 2 (where Professor Noonan explores the use of such masking to legitimize slavery).

11. John T. Noonan, Jr., *A Private Choice: Abortion in America in the Seventies* 189 (The Free Press 1979).

12. John T. Noonan, Jr., *The Root and Branch of* Roe v. Wade, 63 Neb. L. Rev. 668, 669 (1984).

13. *Id.* at 671, 675.

> tion is never right except in self-defense. When life must be taken to save life, reason alone cannot say that a mother must prefer a child's life to her own. With this exception, now of great rarity, abortion violates the rational humanist tenet of the equality of human lives.[14]

Reason, however, has its limits. "Only in terms of a destiny that transcends death," wrote Professor Noonan,

> can the full measure of human personhood be taken. Only as images of God can the full dignity of human persons be acknowledged. Lawyers must deal with the common good. It is the common good, not of animals, but of persons whose spiritual characteristics make transcendent, nonmaterial values part of the good that the law must preserve. Hence, not only the preservation of order, but the preservation of human dignity became part of that legal enterprise.[15]

As he did with *Palsgraf*, Noonan rightly saw *Roe* as a masking of the nature and destiny of the human victim of abortion. The only coherent basis for the assertion of transcendent rights of a human being against the State is that he or she is an immortal being, made in the image and likeness of God with an eternal destiny that transcends the State. Every State that has ever existed, or ever will exist, has already gone out of business or will do so some day. But every human being who has ever existed will live forever.

Palsgraf is a plaything for established as well as aspiring academics. It is not a culturally decisive case. But the entitlement of every human being to protection of his right to life as a person is essential for any civilized culture. "[T]he foundation on which all human rights rest is the dignity of the person."[16] As Noonan emphasized, that dignity necessarily mandates recognition of the person's right to life.

Legalized abortion, because it is lethal and the victim is helpless and innocent, is perhaps the most egregious example of the denial of legal personhood by the masking of humanity. It is a mistake, however, to focus on abortion as if it were itself the problem rather than a symptom of basic cultural developments. Culture, as well as law, can mask reality.[17] "Law and culture," as Francis Cardinal George put it,

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14. John T. Noonan, Jr., *An Almost Absolute Value in History*, in *The Problem of Abortion* 9, 14 (Joel Feinberg ed., 2d ed.,Wadworth Publg. Co. 1984).

15. John T. Noonan, Jr., *A Catholic Law School*, 67 Notre Dame L. Rev. 1037, 1042 (1992).

16. Pope John Paul II, *Ecclesia in America*, No. 57 (Jan. 22, 1999) (available at http://www.vatican.va./holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_22011999_ecclesia-in-america_en.html).

17. In *Persons and Masks of the Law*, Professor Noonan accurately described the masking of personhood, not only in legal rules but in the culture that supported those rules and that was in turn affected by them. The children of slaves, for example, inherited their slave status, because of "[t]he concept of property. . . . The slave's child was the product of property already owned and belonged to the owner of the mother, just as the offspring of a mare belonged to the owner of the mare." Noonan, *supra* n. 2, at 40. That legal rule, or mask, was reflected in the culture which

> stand in a complex dialectical relationship. . . . Law contributes massively to the formation of culture; culture influences and shapes law. Inescapably, inevitably, law and culture stand in a mutually informing, formative and reinforcing relationship. . . . When it comes to abortion and other sanctity of life issues, we should not suppose that our choice is between reforming the law and working to change the culture. We must do both.[18]

III. MASKING PERSONHOOD WITH THE CONTRACEPTIVE ETHIC

Any search for the causes of the masking of personhood by legalized abortion must include consideration of the dominance of the contraceptive ethic which entails a masking of the nature of the person and the nature of conjugal relations. A contraceptive society requires abortion as a back-up and many "contraceptives" cause early abortions by preventing implantation of the developing human being in the womb.[19] The Pill brought about the cultural separation of sex from marriage, leading to what Francis Fukuyama called "The Great Disruption" in the relation between men and women.[20] The sexual revolution, made possible by effective contraception, embodies the secular, relativist and individualist premises of the 1960s. "[T]he introduction of widespread contraception use in the 1960s," wrote anthropologist Lionel Tiger, "caused [a] revolutionary break between men and women. It put biological disputes at the center of our national life . . . and placed into question existing moral and religious systems that focused on controlling sexual behavior."[21]

Abortion is the taking of life while contraception is the prevention of life. But, as Pope John Paul II asserted in *Evangelium Vitae*, "contraception and abortion are often closely connected, as fruits of the same tree."[22]

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supported it. In *Huckleberry Finn*, "Aunt Sally asks Huck if the explosion of a steamboat has injured anyone. Huck replies, 'No'm: killed a nigger.' Aunt Sally observes, 'Well it's lucky because sometimes people do get hurt.'" *Id.* at 11.

18. Francis Cardinal George, *Law and Culture*, 1 Ave Maria L. Rev. 1, 9, 10 (2003).

19. *See* Gina Kolata, *Without Fanfare, Morning-After Pill Gets a Closer Look*, 150 N.Y. Times, § 1, 1 (Oct. 8, 2000); Tamar Lewin, *A New Technique Makes Abortions Possible Earlier*, 147 N.Y. Times § 1, 1 (Dec. 21, 1997).

20. Francis Fukuyama, *The Great Disruption: Human Nature and the Reconstruction of Social Order* 101-03, 120-22 (The Free Press 1999).

21. Lionel Tiger, *Nasty Turns in Family Life*, U.S. News & World Rpt. 57 (July 1, 1996).

22. Pope John Paul II, *Evangelium Vitae*, No. 13 (Mar. 25, 1995) (available at http://www.vatican.va/edocs/ENG0141/_P7.HTM).

It is frequently asserted that *contraception*, if made safe and available to all, is the most effective remedy against abortion. The Catholic Church is then accused of actually promoting abortion, because she obstinately continues to teach the moral unlawfulness of contraception. When looked at carefully, this objection is clearly unfounded. It may be that many people use contraception with a view to excluding the subsequent temptation of abortion. But the negative values inherent in the 'contraceptive mentality'—which is very different from responsible parenthood, lived in respect for the full truth of the conjugal act—are such that they in fact strengthen this temptation when an unwanted life is conceived. Indeed, the pro-abortion culture is especially strong precisely where the Church's teaching on contraception is rejected. Certainly, from the moral point

Professor Noonan acknowledges that "[t]he teaching of *Humanae Vitae* is a given of Catholic doctrine."[23] But he interprets that teaching to prohibit contraception only for four days a month, during the usual time when the woman is fertile.[24] The Magisterium of the Church, it need hardly be said, does not agree.[25]

The point here is not to analyze Professor Noonan's personal view on contraception. It is rather to suggest not only that the cultural acceptance of contraception contributed to the legalization of abortion, but also that it involves a moral and cultural masking of the reality of the person comparable to the judicial masking in *Roe* and even in *Palsgraf*. One's view of contraception depends on one's view of the nature of the human person. The contending views are those of Pope John Paul II, as expositor of the Magisterium, and the prevailing culture. The teaching of the Church on contraception is but one element in its positive, hope-filled teaching on the nature of the human person as gift. The contraceptive ethic, in contrast, places a mask of biologism and individualism over the face of the person, treating him (or her) as an isolated, autonomous individual of the Enlightenment rather than as an *imago dei* who finds fulfillment only in the total gift of self.

Contraception, in the teaching of the Magisterium, is wrong for three reasons:

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of view contraception and abortion are *specifically different* evils; the former contradicts the full truth of the sexual act as the proper expression of conjugal love, while the latter destroys the life of a human being; the former is opposed to the virtue of chastity in marriage, the later is opposed to the virtue of justice and directly violates the divine commandment 'You shall not kill.'

But despite their differences of nature and moral gravity, contraception and abortion are often closely connected, as fruits of the same tree. It is true that in many cases contraception and even abortion are practi[c]ed under the pressure of real-life difficulties, which nonetheless can never exonerate from striving to observe God's law fully. Still, in very many other instances such practices are rooted in a hedonistic mentality unwilling to accept responsibility in matters of sexuality, and they imply a self-centered concept of freedom, which regards procreation as an obstacle to personal fulfil[l]ment. The life which could result from a sexual encounter thus becomes an enemy to be avoided at all costs, and abortion becomes the only possible decisive response to failed contraception.

The close connection which exists, in mentality, between the practice of contraception and that of abortion is becoming increasingly obvious. It is being demonstrated in an alarming way by the development of chemical products, intrauterine devices and vaccines which, distributed with the same ease as contraceptives, really act as abortifacients in the very early stages of the development of the life of the new human being.

Id. (emphasis added).

23. John T. Noonan, Jr., *Natural Law, the Teaching of the Church, and the Regulation of the Rhythm of Human Fecundity*, 25 Am. J. Juris. 16, 16 (1980).

24. *Id.* at 34, 36-37; John T. Noonan, Jr., *The History of Contraception: Seven Choices*, in *The Contraceptive Ethos* 3, 10-11, 13 (Stuart F. Spicker et al. eds., D. Reidel Publg. Co. 1987).

25. *See e.g.* Pope John Paul II, *Heroism in Marriage*, 28 The Pope Speaks 356, 356-57 (1983) (discourse delivered September 17, 1983)[hereinafter Pope John Paul II, *Heroism in Marriage*]; Pope John Paul II, *Familiaris Consortio*, No. 32 (Nov. 22, 1981) (available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio_en.html) [hereinafter Pope John Paul II, *Familiaris Consortio*].

First, "*The two dimensions of conjugal union*, the unitive and the procreative *cannot be artificially separated* without damaging the deepest truth of the conjugal act itself."[26]

Second, contraception makes man (of both sexes) the ultimate arbiter of whether and when human life shall begin. "When . . . through contraception," said Pope John Paul II,

> married couples remove from the exercise of their conjugal sexuality its potential procreative capacity, they claim a power which belongs solely to God: the power to decide in *a final analysis*, the coming into existence of a human person. They assume the qualification not of being cooperators in God's creative power, but the ultimate depositaries of the source of human life. In this perspective, contraception is being judged, objectively, so profoundly unlawful as never to be, for any reason, justified. To think or to say the contrary is equal to maintaining that in human life situations may arise in which it's lawful not to recognize God as God.[27]

Third, and most directly related to the masking of the nature of the person, contraception denies that human fulfillment in marriage is achieved through the total gift of self. Contraception frustrates the total mutual self-donation that ought to characterize the conjugal act. "When couples, by . . . contraception," wrote Pope John Paul II,

> separate these two meanings that God the Creator has inscribed in the being of man and woman and in the dynamism of their sexual communion, they act as "arbiters" of the divine plan and they "manipulate" and degrade human sexuality—and with it themselves and their married partner—by altering its value of "total" self-giving. Thus the innate language that expresses the total reciprocal self-giving of husband and wife is overlaid, through contraception, by an objectively contradictory language, namely, that of not giving oneself totally to the other. This leads not only to a positive refusal to be open to life but also to a falsification of the inner truth of conjugal love, which is called upon to give itself in personal totality.[28]

The communion of the spouses in marriage is modeled on the communion of the divine persons in the Trinity. "Being a person means striving toward self-realization . . . which can only be achieved '*through a sincere gift of self*.' The model for this interpretation of the person is God himself as Trinity, as a communion of persons. To say that man is created in the

26. Pope John Paul II, *Letter to Families*, No. 12 (1994) (available at http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_02021994_families_en.html) (emphasis in original) [hereinafter Pope John Paul II, *Letter to Families*].

27. Pope John Paul II, *Heroism in Marriage*, *supra* n. 25, at 356-57 (emphasis in original).

28. Pope John Paul II, *Familiaris Consortio*, *supra* n. 25.

image and likeness of God means that man is called to exist 'for' others, to become a gift."[29]

"Contraception," observed Archbishop Charles Chaput of Denver,

> is the equivalent of spouses saying: "I'll give you all I am—*except* my fertility; I'll accept all you are—*except* your fertility." This withholding of self inevitably works to isolate and divide the spouses, and unravel the holy friendship between them . . . maybe not immediately and overtly, but deeply, and in the long run often fatally for the marriage. . . . The covenant which husband and wife enter at marriage requires that all intercourse remain open to the transmission of new life. This is what becoming "one flesh" implies; complete self-giving, without reservation or exception, just as Christ withheld nothing of himself from his bride, the Church, by dying for her on the cross. Any intentional interference with the procreative nature of intercourse necessarily involves spouses' withholding themselves from each other and from God, who is their partner in sacramental love. In effect, they steal something infinitely precious—themselves—from each other and from their Creator.[30]

"[C]ontraception," Archbishop Chaput continued,

> distorts the essence of marriage: the self-giving love which, by its very nature, is life-giving. It breaks apart what God created to be whole: the person-uniting meaning of sex (love) and the life-giving meaning of sex (procreation). Quite apart from its cost to individual marriages, contraception has also inflicted massive damage on society at large: initially by driving a wedge between love and the procreation of children; and then between sex (i.e., recreational sex without permanent commitment) and love.[31]

It is not too difficult to see the causal relation between the acceptance of contraception and various current disorders of family and life. As William J. Kenealy, SJ, told the Massachusetts legislature in 1948, "If a person can violate the natural integrity of the marital act [by contraception] with moral impunity, then I challenge anyone to show me the essential immorality of any sexual aberration."[32] An extended discussion of this point would be beyond the scope of this essay. It is relevant, however, to mention briefly some respects in which it is fair to regard current legal developments

29. Pope John Paul II, *Mulieris Dignitatem* No. 7 (1988) (available at http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_15081988_mulieris-dignitatem_en.html) (emphasis in original); *see also* Pope John Paul II, *Letter to Families*, *supra* n. 26, at Nos. 6, 8; Pope John Paul II, *Evangelium Vitae*, *supra* n. 22, at No. 99.

30. Archbishop Charles J. Chaput, OFM Cap., *On Human Life*, Catholic World Rpt. 56, 59-60 (Oct. 1998) (a pastoral letter) (emphasis in original).

31. *Id.* at 61.

32. William J. Kenealy, SJ, *Contraception—A Violation of God's Law*, 46 Catholic Mind 552 (1948) (an address to the Joint Committee on Public Health of the Massachusetts General Court at a public hearing on House Bill No. 1748 on April 8, 1948).

as caused, or at least influenced, by the cultural acceptance of the contraceptive masking of the reality of the person.

If, through contraception, you claim the right to act as the arbiter of when life begins, it will be no surprise if you eventually claim the right to act as the arbiter of when life shall end, through suicide or euthanasia as well as through abortion. Lionel Tiger notes that with the advent of the pill:

> the emphasis on women's autonomy was applied to abortion. The pill should have made abortion less necessary. But many women continued to have uncontracepted sex and got pregnant, and the men in their lives fled from them. . . . As happens frequently, technology (contraception, in this case) has generated an unexpected result: more abortions, more single-parent families, more men abandoning their role of being good providers and a higher divorce rate.[33]

The contraceptive ethic also implicitly accepts the premise that there is such a thing as a life not worth living—in that case the life of the child whose existence is prevented by contraception. Whether a life is worth living will be determined according to utilitarian calculations, with respect to the elderly infirm, the "vegetative," the retarded and the handicapped, as well as the inconvenient unborn. Since 1973 at least 40 million potential wage earners have been eliminated by surgical abortion in the United States.[34] Who will support the rising proportion of elderly and infirm?[35]

The contraceptive society cannot say that homosexual activity is objectively wrong without denying its own premises. If sex has no inherent relation to procreation, and if man, rather than God, is the arbiter of whether and when it will have that relation, and if the promotion of a moral consensus is no longer a sufficient justification for legal restrictions on sexual choices,[36] why may not Freddy marry George and Erica marry Susan? Or why not let Freddy marry George *and* Erica *and* Susan?

Pope Paul VI, in *Humanae Vitae*, warned that contraception would cause women to be viewed as sex objects, that:

> man, growing used to the employment of contraceptive practices, may finally lose respect for the woman and, no longer caring for her physical and psychological equilibrium, may come to the

33. Tiger, *supra* n. 21, at 57.

34. *See* Bruce Bartlett, *Population Shortfalls*, Wash. Times A16 (April 3, 2000); Allan Carlson, *The Depopulation Bomb: Why Europe is Dying and Why the United States and Australia Could Follow*, The Fam. in Am. 4 (Aug. 2001).

35. *See* John D. Mueller, *The Socioeconomic Costs of* Roe v. Wade, 13 Fam. Policy 1, 2 (Mar. – Apr. 2000); Natl. Right to Life, *Over 40 Million Abortions in U.S. Since 1973*, http://www.nrlc.org/abortion/aboramt.html (accessed Oct. 9, 2002).

36. *See Lawrence v. Tex.*, ___U.S.___, 123 S. Ct. 2472 (2003).

> point of considering her as a mere instrument of selfish enjoyment, and no longer as his respected and beloved companion.[37]

You can validate this prediction any night of the week on prime-time television. Like contraception, pornography is the separation of sex from life and the reduction of sex to an exercise in self-gratification.

According to the natural moral law and the Ten Commandments, sex is reserved for marriage, and marriage is permanent, because sex is inherently connected with procreation and the natural way to raise children is in a marriage. But if, through contraception, we claim the power to decide whether sex will have anything to do with procreation, why should we have to reserve sex for marriage? The contraceptive culture puts the heavy responsibility on women and makes it difficult for them to say "no" to their exploitation as objects of use. If sex and marriage are not intrinsically related to new life, marriage loses its reason, in principle, for permanence. It tends to become a temporary alliance for individual gratification—what Pope Paul VI called "the juxtaposition of two solitudes."[38]

In vitro fertilization (IVF) is the flip side of contraception. IVF achieves procreation without sexual union, while contraception seeks to take the unitive without the procreative. As a byproduct of IVF, spare embryos are frozen and used for later implantation in the mother or in other women. And they are used for experimentation, as objects of utility.[39] Or they are flushed down the drain.

Human cloning also shares the basic premises of contraception. The 1987 *Instruction on Bioethics* said that "attempts . . . for obtaining a human being without any connection with sexuality through . . . cloning . . . are . . . contrary to the moral law, since they are in opposition to the dignity both of human procreation and of the conjugal union."[40] Human cloning would confirm the status of woman as an object of utility, an impersonal egg bank. It is futile, however, to try to put the brakes on cloning, as on abortion or euthanasia, without restoring the conviction that God, and not man, is the arbiter of when and how life begins and ends.

These phenomena require a reassessment of contraception. It is worth recalling here that it was not until the Anglican Lambeth Conference of 1930 that any Christian denomination ever said that contraception could

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37. Pope Paul VI, *Humanae Vitae,* No. 17 (July 25, 1968) (available at http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html).

38. Pope Paul VI, *Conversations with Pope Paul VI*, McCall's 93, 138 (Oct. 1967).

39. *See* Richard Doerflinger, *Destructive Stem-Cell Research on Human Embryos*, 28 Origins 769, 771-73 (Apr. 29, 1999). For information on stem-cell research, contact American Bioethics Advisory Commission, c/o American Life League, P.O. Box 1350, Stafford, VA 22554, (540) 659-4171.

40. Congregation for the Doctrine of Faith, *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation*, § I, No. 6 (Feb. 22, 1987) (available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).

ever be objectively right.[41] Editor James Douglas of the London Sunday Express responded that "Lambeth has delivered a fatal blow to marriage, to motherhood, to fatherhood, to the family and to morality."[42] One year later, the Federal Council of Churches endorsed, in accord with Lambeth, the "careful and restrained" use of contraceptives. A Washington Post editorial stated in response:

> It is impossible to reconcile the doctrine of the divine institution of marriage with any modernistic plan for the mechanical regulation or suppression of human birth. The church must either reject the plain teachings of the Bible or reject schemes for the "scientific" production of human souls. Carried to its logical conclusion, the committee's report if carried into effect would sound the death-knell of marriage as a holy institution, by establishing degrading practices which would encourage indiscriminate immorality. The suggestion that the use of legalized contraceptives would be "careful and restrained" is preposterous.[43]

IV. CONCLUSION

As Professor Noonan has emphasized, the abortion culture represented by *Roe* is based on a caricature of human nature. A "Kantian cult of morally autonomous human personhood"[44] finds expression in the "Mystery Passage" of *Planned Parenthood v. Casey*,[45] which the Court reaffirmed in *Lawrence v. Texas*: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."[46] In this culture of autonomy, marriage is merely "an association of two individuals."[47] The family, like marriage, becomes merely a contractual arrangement, the sexual and numerical composition of which is a matter of choice. The legal developments here reflect a masking of the true nature of the human person, the family and the conjugal act, as that nature is affirmed in the Catholic tradition.[48] Those developments cannot be adequately understood apart from the cultural acceptance and legal endorsement of the contraceptive ethic.

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41. Charles A. Selden, *Lambeth Bishops Back Arbitration For All Peoples*, 80 N.Y. Times 1 (Aug. 15, 1930) (continued on page 10).

42. *Britain is Stirred by Bishops' Views*, 80 N.Y. Times 5 (Aug. 17, 1930).

43. Editorial, *Forgetting Religion*, Wash. Post 1, § 2 (Mar. 22, 1931).

44. Hugh Barbour, O. Praem., *Pro-Lifers and the Psalmist's Curses*, Chronicles 14, 16 (June 2003).

45. 505 U.S. 833, 851 (1992).

46. ___U.S.___, 123 S. Ct. 2472, 2481 (2003).

47. *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972).

48. *See generally* Pope John Paul II, *Letter to Families*, *supra* n. 26.