

rights of property. It would not be surprising to anyone, I trust, if the goal of America were found to be the promotion of commerce through the protection of property. Of course, Madison's claim is not sufficient to make it so. We would wish to consider the history of distributive justice in America. Having done that, however, I suppose we would find that the Madisonian formula would fare very well indeed.

**LIFE IN THE BALANCE: EXPLORING THE ABORTION CONTROVERSY.** By Robert N. Wennberg.<sup>1</sup> Grand Rapids, Mich.: William B. Eerdmans Publishing Co. 1985. Pp. xi, 184. Paper \$7.95.

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It may sound odd to say this about a discussion of a topic as grim and contentious as abortion, but Robert Wennberg has written an extremely agreeable book, a model of philosophical method. Professor Wennberg is an accomplished enough philosopher to be unafraid of writing clearly, and of admitting that every position on abortion, including his own, will be unsatisfying in some way. Simply as exposition and a display of intellectual flexibility, *Life in the Balance* is quite superior to Michael Tooley's 1984 book, *Abortion and Infanticide*, the only comparable survey of the abortion issue by a philosopher working in the analytic tradition.

Wennberg devotes most of this book to arguing that the developing fetus has a right to life. Crucial to the articulation of his case is Wennberg's well-taken insistence that the question "Does the fetus have a right to life?" be distinguished from the question "Is the fetus a person?," where a *person* is "a being who possesses the developed capacity to engage in acts of *intellect* (to think, to use language, etc.), acts of *emotion* (to love, to hate, etc.), and acts of *will* (to make moral choices, to affirm spiritual ideals, etc.)." What Wennberg dubs the "actuality thesis," that only beings that are actually persons have a right to life, is a substantive moral thesis in no way implicit in the concept of a right to life. Actualism, construed as a substantive moral thesis, does have the advantage of resolving the abortion issue very cleanly: since the cerebral functioning of even a very late term fetus is insufficiently integrated to create per-

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sonhood, it is all right to kill them. Wennberg rejects the actuality principle and its quick solution to the abortion problem because actualism also sanctions infanticide, the ten-minute-old neonate being no more a "person" in the strict sense than he was eleven minutes earlier.

Wennberg opts instead for the "potentiality principle," according to which a being has a right to life if it "*will naturally and in due course develop into a person.*"<sup>3</sup> The potentiality principle gives the intuitively correct answers about neonates, infants, children, the reversibly comatose and normal adult humans in dreamless sleep (they all have a right to life), and it implies that a fetus, also a potential person, has a right to life. However, the potentiality principle is itself dogged by counterintuitive consequences, although none so serious as infanticide. The congenitally severely retarded and the irreversibly comatose are not potential persons, yet they too are ordinarily regarded as possessing a right to life. Wennberg meets these puzzle cases by making potentiality work in tandem with the "overflow principle," according to which the right to life is possessed by anything that is very much like actual or potential persons, a condition met by the severely retarded and irreversibly comatose. Wennberg finds this principle at work in the respect normally shown to corpses, as it may also be in the ordinary person's great unwillingness to dismember dolls or stick a pin in the eyes of a photograph of his children. But if potentiality is too narrow in one direction, it seems too wide in another, conferring on newly created zygotes the same right to life as that possessed by human adults.

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3. Wennberg explains "a human organism has a 'natural' potential for personhood" as "it is possible for it to develop into a person without the necessity of outside intervention to invest it with new latent properties." This definition is unsatisfactory. Once the male has ejaculated into the female, no further intervention is required for a fertilized ovum to come into existence if conditions within the vagina suffice for one of the sperm in the ejaculant to reach the unfertilized ovum. Does this make the spatially discontinuous object consisting of the unfertilized ovum and the sperm vectoring toward it (the kind of thing philosophers call a "Goodman object") a potential person? Obviously, too, the fertilized ovum will not develop into a person without nurturance, but, says Wennberg, "this is required to sustain the organism in its growth rather than to invest it with a growth principle it does not already possess." I do not find this distinction intelligible. An organism will develop in some environments and fail to develop in others; talk further of potentialities is otiose. I suspect that, like many people, Wennberg imagines the "natural" development of an organism as a sort of inertial path the organism would take if left to itself, free of environmental constraints—much as the inertial path of a physical object is the path it would take if uninfluenced by external forces. But the analogy is misconceived: while a physical object can in principle be unaffected by external forces, an organism cannot even in principle develop in no environment at all. The empirical core of the concept of "naturalness" is the course of an organism's development in a certain *distinguished* environment, namely the environment within which the organism's genetic cohort evolved; see Levin, *FEMINISM AND FREEDOM* (1986); *On the Ascription of Functions to Objects*, 6 *PHIL. SOC. SCI.* 227-34 (1976); *Why Homosexuality is Abnormal*, 67 *MONIST* 251-83 (1984).

Now, as Wennberg recognizes, some people will take this consequence as precisely the right account of zygotic entitlement, therefore supporting rather than disconfirming the potentiality principle. Wennberg finds the consequence implausible, as will many readers, and to block it he deploys the “gradualist theory”: the right to life comes in degrees, increasing as the potentiality for personhood approaches personhood itself. Zygotes enjoy a weak right to life, human adults the strongest possible right to life, and fetuses a strong but not maximal right to life. Wennberg realizes that the resulting structure—gradualistic potentialism plus overflow—is ad hoc to the point of being ramshackle, but he contends with considerable justice that it accommodates more of our ordinary intuitions than any competing structure.

## I

This repeated appeal to ordinary moral intuition brings us to the question of Wennberg’s criteria for assessing moral principles. He is greatly concerned that his conclusions be at least consistent with scripture—a concern not shared by this reviewer—but his ultimate test is coherence with ordinary moral judgments. Thus, while it is easy to rout defenders of abortion who inconsistently abhor infanticide, Wennberg recognizes that philosophers like Tooley and Peter Singer, who rigorously accept both abortion and infanticide, are more difficult opponents. In the end, Wennberg rests his rejection of infanticide, and with it actualism, on “the deeply held moral convictions of most people.”

Stated thus nakedly, Wennberg’s test is apt to seem arbitrary and biased toward moral conservatism. It isn’t—but before saying a word in its behalf, let me mention one distortion to which it is liable, and against which Wennberg may not take sufficient care. Ordinary, unphilosophical evaluations must be distinguished from ordinary, unphilosophical *reactions*; moral theories seeking to capture the principles implicit in everyday moral reasoning must accommodate the former, but need not accommodate untutored and probably partially instinctive attractions and aversions. In particular, Wennberg’s defense of the overflow principle seems to slur this point. No doubt we all do feel a measure of respect for human remains—the country would have been appalled had NASA treated the remains of the *Challenger* astronauts as so much more debris—but do we really think that corpses have a *right* to respect? Pictures of people are also “closely associated with persons,”<sup>4</sup> and this asso-

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4. Wennberg’s formulation of the overflow principle.

ciation no doubt explains your reluctance to gouge the eyes of pictures of your children, but is this because we think a photograph has a right to remain un mutilated? Do dolls have a right not to be dismembered? It seems more likely that the resemblance between people and their portraits makes it psychologically difficult to mutilate portraits and no more. If so, the overflow principle is not a report of our considered moral judgments, and cannot be used to supplement the potentiality principle to help it over counter cases. To be sure, besides eliciting repugnance, killing the congenitally severely retarded would be judged to be wrong, but the overflow principle must be refined considerably before it captures this judgment.

On how general moral theories are to be assessed, it has been clear since Hume's *Treatise* and Kant's *Grundlagen* that values do not inhere in things themselves in the way that traces of minerals do. And not only are moral principles unproveable in the way scientific or mathematical principles are proven, it is not even clear just what it is that moral judgments lack insofar as they may be said to lack objectivity or truth.<sup>5</sup> Your only leverage when trying to turn someone to your way of thinking on a practical matter is to convince him that your way of thinking is implicit in other commitments he himself already feels he must make. The same is true *mutandis* when your audience is some indefinite group or society in general.

Ad hominem moral reasoning as it is ordinarily practiced may seem to leave morality suspended in thin air, but the alternatives amount to moralizing in a vacuum. Ethical revisionists defending infanticide, animal rights, obligations to deny oneself for the sake of the starving in far-away lands, among other positions at odds with the settled opinions of their culture,<sup>6</sup> frequently complain that the ad hominem method stacks the deck against them, since *of course* conventional, hidebound morality will reject their transvaluations out of hand. Revisionists suggest that what they are arguing for are, precisely, new principles—which is all very well, until someone

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5. Moral principles are imperatives and no adequate account exists of what a veridical imperative—or, therefore, a falsidical imperative—might be. The whole problem of moral objectivity is one of the most bewildering in philosophy. The present reviewer is persuaded that the only hope for reconciling the logical facts with objectivistic intuitions lies with Kant's idea that certain commands have "real authority" not because of the intrinsic quality of the acts they command, but because a rational will which defied these commands would fall into conflict with itself. However, absent a workable version of the Kantian idea, and given the inappropriateness of the scientific method in ethics, all moral argument must be, in practice, ad hominem.

6. Curiously, it is often the very same philosophers who urge a greatly enhanced humaneness toward animals and an unlimited right to abort fetuses. One such philosopher urges the replacement of animals in medical research by aborted fetuses, on the grounds that simply discarding fetal remains is a waste of good tissue.

asks how these new principles are themselves to be justified. Not by their consistency with heterodox decisions about particular cases, surely: *that* was the very question-begging procedure from which the revisionist demanded liberation. By their sheer logical consistency? But if all it takes to justify a moral position is entailment by some consistent general principle, all moral positions, including those the revisionist would find hideous or ludicrous, are justified. One can argue that dusting furniture is immoral in virtue of the general right of dust-motes to remain where air currents deposit them. Should one point to the conflict between equity for dust-motes and common sense, the revisionist cannot consistently join the attack. In practice, indeed, revisionists reason like everyone else—they try to show that infanticide, animal rights or extraordinary efforts to help the starving are commanded by principles already implicit in convictions presumed to be shared with their audience.

It is critical to Wennberg's argument that infanticide is wrong, and Wennberg attempts to show this by noting that anyone likely to join the contemporary conversation about abortion thinks infanticide is wrong. Granted, this does not prove that infanticide *is* wrong, and one may worry that from a purely theoretical point of view Wennberg has really proven nothing. This is obviously so in the sense in which all appeals *ad hominem* are ill-taken, but in another sense it does not matter. The reader who disapproves of infanticide, and cannot think of a difference he considers significant between late-term fetuses and neonates, will find himself unable to approve of abortion. From his point of view, Wennberg's argument is as good as apodictic.

Being the only method of moral reasoning whatever, *ad hominem* appeal to prior commitments is a *fortiori* the only method for dealing with abortion. Yet, it should be noted, reproduction is so different from other factors that have shaped human morality as perhaps to be in some measure beyond even this final court of appeal. For where do moral commitments come from? To sharpen the question by understanding moral approval to be an unconditional readiness to reinforce,<sup>7</sup> why do societies reinforce the types of

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7. It is often pointed out, in objection to analyses of moral discourse which emphasize its directive character, that people commonly pass moral judgments on historical events beyond their powers to affect. Why does anyone feel critical of the Katyn massacre if it is no longer possible to encourage Stalin not to commit it? There is no anomaly in historical judgment if moral approval is a *readiness* to reinforce, which may be triggered with greater or lesser intensity by different stimuli. Disapproval of the Katyn massacre is akin to the muscle contractions experienced by a passenger in an automobile who sees an obstacle in the road and "steps on the brake."

behavior they do? Clearly, a group must reinforce—and encourage each of its members to reinforce—those behaviors which enhance the likelihood of the group's surviving and transmitting its values to the next generation. A society whose moral code does not reinforce behavior that enhances group fitness will be at a disadvantage when competing with a group whose code does, and will normally disappear. A society's members may individually obey its code because they believe it to be of divine origin, or self-evidently correct. The code itself may reflect the contributions of local revisionists. But a code will become entrenched only if it enhances group solidarity.<sup>8</sup>

Not all preconditions for social existence are the concern of morality, however. There have to be people if there are to be societies, but for the most part societies rely on biological impulses for new members. People do not need encouragement to copulate. Until very recently, it would have been inefficient and redundant for society to encourage mothers to nurture their children. That part of morality which does concern reproduction serves primarily to curb the male's anarchic desire to copulate with as many females as possible. Morality is a technique for averting and resolving strains liable to disrupt ongoing groups and has relatively little to do with the biological basis of human existence; it evolved to deal with what goes on between adult human beings, not with biological ultimates. In particular, the processes of fetal development and birth are quite remote from the universe of morality, and it is not clear how the rules of the moral universe can be extrapolated to them. Try to extrapolate we must, since it is the only game in town, but it is to be anticipated that any moral analogy between abortion and anything else will be forced and artificial, and unhelpful at critical junctures. This expectation is borne out by the final twenty-five pages of *Life in the Balance*.

## II

The reader of this review has probably assumed by now, as did its author up to page 150 of *Life in the Balance*, that Wennberg is carefully and honestly presenting a not unfamiliar case against legalized abortion. In fact, the penultimate chapter of *Life in the Balance* defends legalized abortion in terms so sweeping as to lead the

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8. Some values, like warlikeness, confer group fitness in some environments only, while others, like honesty, confer group fitness in virtually all environments. Also, readiness to reinforce some group-fitness-enhancing behaviors, especially those adaptive in all environments, are by now probably part of the human genetic program. The offspring of individuals endowed with such a readiness, being more likely than the offspring of individuals lacking such a readiness to be reared in a stable society, are more likely to reach sexual maturity.

reader to forget that Wennberg thinks there is something wrong with abortion.

The heart of Wennberg's defense is the individual's sovereignty over his own body. No one has a right to make one person put his body at the disposal of another, so in particular the other members of society have no right to use the law to make a pregnant woman let her fetus use her body. If I understand Wennberg correctly, he does believe a pregnant woman should indeed help her fetus to term, especially if her pregnancy is a result of intercourse voluntarily undertaken, but such generosity cannot be forced from her. Wennberg recognizes that her right to deny the use of her body to her fetus entitles her only to evict her fetus, not to kill it—it is one thing to oust an unwanted houseguest by forcing him to leave, knowing he will die in the storm ranging outside, quite another to oust him by shooting him and dumping his body. Abortion procedures in which the abortionist induces labor by first killing the fetus are therefore impermissible, and Wennberg apparently believes that such procedures should be illegal.<sup>9</sup> Wennberg also recognizes that a pregnant woman will retain a right only to transfer her fetus to an artificial womb if and when such devices become available, and not to leave her fetus in environments in which it is more vulnerable—just as a man who can conveniently show an unwanted guest to the door may not defenestrate him. These admittedly important caveats aside, Wennberg's position is the one encapsulated by the bumper-sticker appeal to “a woman's right to her own body.”

What is most curious about this position, in view of Wennberg's route to it, is that the right to life of the fetus has become irrelevant to both the legality *and the moral propriety* of abortion. For if abortion is only the refusal of the pregnant woman to help her fetus stay alive, the woman (or her medical surrogate) who aborts her fetus in no way transgresses the fetus's right to life. Why Wennberg has taken such pains to establish a fetal right not to be killed when he will defend the legalization of abortion on the grounds that abortion is not killing, is something of a mystery.<sup>10</sup>

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9. “What follows is not that the mother can't disconnect herself from the son but that a procedure for disconnection that does not involve killing him first must be followed. The implication for abortion would be that procedures that also share this restriction must be used.” Unfortunately, Wennberg does not say whether he intends the “must” here to mean “must morally” or “must legally.” One might wonder if any abortion procedure really avoids aggressing against the fetus. Wennberg mentions hysterectomy, the induction of labor by exogenous prostaglandin, and the induction of labor by severing the umbilical cord. Do I avoid aggressing against you if I cut off all the air to a room you are trapped in?

10. After rereading the relevant sections of *Life in the Balance*, I am confident that Wennberg quite sensibly uses “A has a right to life” to mean “It is wrong to kill A”; see especially pages 100-101, 166-67 n.13. He observes elsewhere that the right to abortion does

Wennberg reaches his conclusion via a revised edition of Judith Jarvis Thomson's familiar argument about the woman and the violinist.<sup>11</sup> Professor Thomson asks the reader to imagine a woman waking up one morning to find that the "Society of Music Lovers" has attached her to a famous violinist suffering from a kidney ailment. If the woman lets him remain attached to her for nine months he will live; if she unhooks him he will die. Most people will agree that the woman ought to be legally free to unhook herself. Whether to donate the use of her kidneys to the violinist is nobody's business but hers. But, the argument continues, the fetus is to its host just as the violinist is to the woman kidnapped by the music society. Therefore, anyone recognizing the woman's right to unhook the violinist must also recognize the pregnant woman's right to unhook the fetus.

Wennberg is aware that the two cases as presented are wildly divergent, but before turning to his attempts to align them, two comments need to be made about Professor Thomson's argument in its original form. First, it is a revealing unconscious expression of the feminist attitude toward reproduction: bringing a fetus to term is a Kafkaesque nightmare imposed on a woman by strangers entirely indifferent to her own desires. The point of keeping the woman forcibly attached to a famous violinist is, presumably, that she is being forced to support someone important to *other people* but whose existence may be meaningless to her—the victimized woman may, as the reader semi-consciously registers, be completely indifferent to classical music. Feminists have lately taken to protesting that the man-hating and child-hating of which they were accused in the early years of their movement was all a misunderstanding; anyone who rereads Thomson's original article will see just how accurate that first impression was. Second, while appeal to an absolute right to the disposition of one's body coheres well with other strongly libertarian positions (*laissez faire* in the marketplace, parental autonomy in the education of their children, freedom of private association), this appeal is most commonly made by feminists who are antilibertarian on just about every other issue. Feminists who advocate state-mandated quotas, state-mandated

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not include a right to the use of public funds to purchase an abortion, since the right to abortion is the right not to be interfered with in having an abortion, while the right to public funding is a right to be helped to have an abortion. By parity of reasoning the right not to be killed does not include a right to be helped to stay alive, and it must be assumed that Wennberg recognizes this. If I have somehow misread Wennberg and he does believe a right to life entails a right to be helped to stay alive, abortion so patently invades this more inclusive "right to life" that all of Wennberg's arguments for legalizing abortion immediately break down.

11. See Thomson, *A Defense of Abortion*, 1 PHIL. & PUB. AFF. 47-66 (1971).



comparable worth pay scales, the censorship of "sexist" textbooks in the public schools, laws against "sexually harassing speech" and legal limitations on private association excluding homosexuals, will go on to advocate abortion on the basis of an absolutist libertarianism at odds with every one of those policies. It is remarkable that this inconsistency has not been more widely noted.<sup>12</sup>

Considered in itself, the plight of Thomson's exploited woman differs from that of the unraped expectant woman insofar as the violinist is a stranger, whom the woman has not volunteered to help and whose dependency on her is not her doing. Wennberg's effort to strengthen the analogy is easily the most and interesting important section of his book. Wennberg has no trouble repairing the first two defects: he stipulates that the violinist is the woman's son, and that she has volunteered for the hookup. Wennberg also wisely stipulates that the hookup is much less onerous than the one Thomson describes, but he inexplicably retains the proviso that the parasite is a violinist. As noted, this proviso serves only to carry along the feminist assumption that women have no special feelings toward their babies, and its equation of a fetus with a dependent adult (for the typical famous violinist is an adult) muddles Wennberg's argument at its most delicate point.

This point is reached when Wennberg attempts to inject the mother's responsibility for the dependency of her son:

Let us suppose that a violinist is unconscious and dying, with only a few hours to live, and that the only thing that can save him is a serum made by fluids produced by his mother's body. Let us suppose that his mother takes the initiative, produces the serum, and has it applied to the violinist, with the result that he is cured of the disease that otherwise would have killed him. Let us now suppose, however, that this serum is a mixed blessing, that although it saves the violinist from dying of the disease he had contracted, it also produces a dependency upon the use of the woman's body such that if her body is not periodically available to him for nine months he will die.

In saving her son from certain death by a deadly disease, the woman does much the same thing for him that she had done in conceiving him in the first place. In both cases had she not acted . . . her son would not now exist. And in both cases, because she *does* act, her son receives biological life and becomes dependent upon her body for a period of time . . . . [I]n the one instance the woman brings into existence a person that did not previously exist, whereas in the other instance she grants an already existing but moribund person a second lease on life, but this does not appear to constitute a significant moral difference . . . .

I also think that most people would agree that it would be wrong to force her to remain connected if she wished it otherwise . . . .

The imperfections in Wennberg's analogy remind the reader,

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12. For a fuller discussion of why feminism wars with personal liberty, see M. LEVIN, *FEMINISM AND FREEDOM*, *supra* note 3.

once again, that the only state remotely like pregnancy is pregnancy. Wennberg must assume, to preserve the analogy, that the other was fully aware before agreeing to donate the serum that her son might become addicted to it if it saved him, just as a woman is fully aware when consenting to intercourse that any fetus that may result will be dependent on her. Wennberg should also say that such occurrences as he describes are commonplace, and that most women in the course of their lives routinely act so as to make intimates dependent on sera from their bodies. I suspect that Wennberg would squirm a bit at having to say that the violinist's mother should still be free to withhold the serum, but he probably would stand his ground.

But even extended in this way, Wennberg's argument seriously misrepresents the responsibility of the pregnant woman for her fetus's dependency on her. Creation makes more difference than Wennberg supposes; in initially saving her son, the violinist's mother does something quite different than she did in conceiving him. For although the violinist's mother creates a dependency by giving her son the serum, her son's original kidney problem was presumably not her fault. Independently of her, her son was on a trajectory toward death when she first intervened. If she reneges on her agreement about the serum, her son will be no worse off than he would have been, had his mother never offered to help him in the first place. That is why his mother's subsequent withdrawal of the use of her body can plausibly be construed as a failure to save, rather than killing. If you catch a vase that has fallen from a window, hold it for a second, and then drop it, you are arguably not liable for damages, because the vase owner's property ends up in no worse shape than it would have been had you never interceded. However, if the vase was on its original trajectory to destruction because of you, you are properly liable. Releasing the vase is not a mere failure to save it, if you were the one who threw it out the window. In general, the agent who initiates a causal chain may be obligated to intercede. By the same principle, the agent can be legitimately forced to make whole any damage he causes in the course of interceding. Frisbees are unique among missiles in that they can be outrun by their throwers. Suppose I launch an explosive frisbee at your head. Clearly, I can be *forced* to intercept it—I will face much stiffer charges if I don't catch it than if I do, and I won't be able to plead that I merely failed to save you. Suppose too that the only path I can take to intercept the frisbee carries me over your foot, and my stepping on your foot somehow makes you dependent on my body for nine months. I should most certainly not be free to deny you the use of my body, for without it you will be

much worse off than you would have been had I never intervened in your life.<sup>13</sup> We might say in case like this that I am completely responsible for your dependency.

So there is an important difference between the relation of a pregnant woman to her fetus and the relation of the violinist's mother to her addicted son: the fetus, which did not exist before becoming dependent on its mother, was not already on a trajectory toward death when his mother first intervened. However, the relation of the pregnant woman to her fetus is also unlike that of the frisbee thrower to his target. The fetus, which did not exist before becoming dependent on his mother, was also not on a trajectory toward a state preferable to death when his mother first intervened. Since nothing can be done to what does not exist, the conceiving woman does not *make* her fetus dependent on her, hence she is not responsible for her fetus's dependency in the way the violinist's mother is, nor is she completely responsible for her fetus's dependence. All that can be said is that the mother is responsible for there being something dependent on her.

Only by examining other test cases involving creation is it possible to decide whether this sort of responsibility for dependence justifies enforcement of assistance. Here are three cases which suggest that the mother's failure to sustain her fetus *is* killing and hence legitimately preventable. The remoteness from reality of the first two is perhaps another reminder that the only thing remotely like pregnancy is pregnancy itself.

1) You can will vases into existence, but only in mid-air. After you will a vase into existence it obeys natural laws, so its continued existence depends on your catching it. Since the vases you create would not have existed at all but for your intervention, it makes no sense to say that they would have been tougher had you never intervened; therefore, you do not make the vases you create fragile. You are, however, completely responsible for there being a fragile vase when you create one, and even though it makes no sense to ask what fate would have awaited one of your vases had you never created it, it does seem that the shards on the floor are *your doing* if you fail to catch a vase you create. Are you a vase-breaker? Well, suppose someone has agreed to buy one of your vases for \$5,000, with the understanding that he has to pay if something happens to the vase after you create it, so long as you are not the one

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13. As this example shows, the killing/letting die distinction is logically posterior to, and cannot be used to decide, what actions can and cannot be prevented by force. I kill you by failing to catch the frisbee because I am obligated to catch it; it would be a confusion to say that I am obligated to catch it because failure to do so would be killing rather than letting die.

who destroys it. You will a vase into existence with your hands at your sides, watch it smash, and demand payment from your patron. Surely no court would require that he pay up—which means that, in the eyes of the law, you smashed the vase. Similarly, you would have killed any living thing you created high in the air and failed to catch. Were you able to create a potential person in mid-air at will, you would violate its right to life if you let it fall. Such are the consequences of complete responsibility for the existence of a dependent thing.

2) Many theists wish to excuse God for man's sinful ways by pointing out that free beings are necessarily prone to sin. God does not make his creatures sinful; that's the way they have to be if they are to have free will. Skeptics unwilling to exempt God reply that it was still up to God whether to create creatures with free will; since he could have refrained from making man altogether, he is completely responsible for the sinfulness of his creatures, even if he did not make his creatures sinful. Therefore, it has been traditionally argued, God has caused suffering, and not merely refrained from preventing suffering, by not curbing the sinfulness of his creatures. The sceptic surely has a strong case.

3) Wennberg, it will be recalled, rightly holds that we should be free to do to newborns what we should be free to do to fetuses. Now, while newborns do not depend on the bodies of their parents in the way fetuses do, they do depend on the bodies of their parents in less direct ways. (The health of nursing infants does depend directly on a substance manufactured by the mother's body, and their lives depend upon it if formula is unavailable.) Suppose a couple put their newborn in a crib, unlock the front door—to allow the baby to seek its own food and to allow strangers to feed it—and do not move from their easy chairs until the baby starves. This would normally be considered murder—but suppose the couple claims that they merely failed to help their newborn. What if the couple went on the offensive and cited their right to the use of their own bodies? How can other people force them to assist their baby? By threatening them if they do not at least fetch some formula from the refrigerator, other people are making the couple use their muscles and metabolize stored carbohydrates just so that someone else may live. By what right does the state put their bodies at the service of their child? Wennberg, for one, has no answer.

All child-support laws make the parental body an indirect resource for the child. If the father is a construction worker, the state will intervene unless some of the calories he expends lifting equipment go to providing food for his children. Philosophers are paid

for spinning arguments out of their neocortexes, and are subject to state intervention if they do not share their pay with their offspring. If I refuse to feed my young children, the state will seize them and use other people's tax money, coercively collected, to feed them. To be sure, the courts will not force a parent to donate bone marrow to his dying child, but such cases involve an unusual dependency upon the parent's body, as do the Wennberg-Thomson cases. Our moral intuitions respond to their unusualness. Such cases obscure society's willingness to back by force the expectation that parents will meet their children's ordinary need for food and clothing by the ordinary process of metabolizing stored carbohydrates. If serum transfers were a standard phase of reproduction, mankind would have evolved tolerance for the coercion of serum from parental bodies.

The present reviewer has no quarrel with libertarianism—he would like to see it applied to affirmative action, comparable worth, civil rights and other items on the feminist agenda—but it must be understood somewhat differently for children than it is for adults. Children, infants, and fetuses are too dependent on others and too little capable of reasoned choice for coercible obligations toward them to end at nonaggression. While the ordinary person may not have carried his inquiries as far as the metaphysics of creation, he intuitively understands that to fail to care for a totally dependent being you created is to harm it.

The impulse to hurt people who neglect their children is an essential part of the mores of any society that hopes to survive. It may possibly have enhanced inclusive fitness when mankind was evolving and gotten itself selected into our genes. Considering how deep this impulse runs, it is perhaps surprising that a writer as thoughtful as Wennberg should make the legality (and morality) of abortion turn on abstruse metaphysical issues about causation. After all, in past decades, when the libertarian sentiment was much stronger in the United States than it is now and a person's "right to his own body" was otherwise axiomatic, abortion was deemed entirely beyond the pale. Wennberg himself seems worried about the replacement of this attitude by the current "abortion mentality," which sees abortion as a morally neutral convenience to be used by a woman whenever she feels like it. The turning point, I suspect, was the moment sexual egalitarians became convinced that biology was unfair. Egalitarians were scandalized that sexual intercourse should be riskier for a woman than for a man, and outraged by the assumption (which they regarded as a social artifact) that it would be the woman who cared for the infant she bore. Abortion was thus

seen by egalitarians not as a hitherto unrecognized affirmation of libertarian values, but as a way to "liberate" women from childbirth and motherhood. We will have to wait and see whether the consequent devaluation of the unique female biological role has liberated women or set them adrift. But in any case that is the way the issue of abortion has evolved in the United States during the last third of the twentieth century. Feminists and their juristic allies who appeal to a woman's right to her own body do not characteristically base this appeal on the killing/letting die distinction; they seem willing to allow that abortion is killing, but hold that the woman's right to her own body justifies it. Admirable as is Wennberg's philosophical craftsmanship, and accurate as is his pinpointing of the conceptual abortion issue as fetal right to life versus libertarian values, the pith of the abortion debate actually raging today is the fetal right to life versus certain notions of sexual equality.

**THE SUPREME COURT AND CONSTITUTIONAL DEMOCRACY.** By John Agresto.<sup>1</sup> Ithaca: Cornell University Press. 1984. Pp. 167. Cloth, \$25.00; paper, \$7.95.

*David E. Engdahl*<sup>2</sup>

In small compass, this book sets new bearings for exploration of the judicial role in a polity at once claiming democratic postulates and constitutional restraints. The author finds defective both in theory and in consequence not only the thesis of judicial supremacy over constitutional doctrine, but also the counteractive thesis that popular opinion or democratic actions should control the constitutional opinions of courts. Dr. Agresto endorses judicial independence—including a vigorous independence in exercising the function of judicial review; yet judicial supremacy troubles him as much as attempts to restrain the judiciary.

It seems not quite accurate to call his "a middle path"—even though Agresto himself uses that metaphor. That expression connotes compromise in quest of repose, accommodating divergent views. Rather than repose, Dr. Agresto points a course of continuing, creative conflict. "What is needed," he suggests,

is a way . . . to keep democracy, constitutionalism, and judicial review in a supportive and complementary relationship to one another; that is, to keep the tension in balance, not to resolve it. . . .

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