

PUBLIC FUNDING OF ABORTIONS AND ABORTION COUNSELING FOR POOR WOMEN

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ABSTRACT

This essay tries to show that commonplace economic, ethico-religious, anti-racist, and logical-consistency objections to public funding of abortions and abortion counseling for poor women are quite weak. By contrast, arguments appealing to basic human rights to freedom of speech, informed consent, protection from great harm, justice and equal protection under the law, strongly support public funding. Thus, refusing to provide abortions at public expense for women who cannot afford them is morally unacceptable and rationally unjustifiable, despite the opinions of former Presidents Reagan and Bush, the more conservative members of the Supreme Court of the United States, the current Congress, and the majority of the American people.

Governmental funding for abortions, included as “pregnancy related services” in President Clinton’s 1994 health care reform package, was a major obstacle to its enactment and contributed significantly to its defeat in the fall of 1994. Opposition to public funding for abortions is led by conservative religious groups. In 1993 the American Council of Catholic Bishops, and in 1994 the Southern Baptist Convention, both of which otherwise strongly endorse health care reform, said that they would absolutely oppose any bill that provides public funding for abortions. Recent polls show that a substantial number of Americans oppose abortions for poor women funded by the government (Carlson, 1989; Salholz et al., 1989). Paradoxically, most Americans approve of abortions where necessary to save the pregnant woman’s life and health, where she is raped, where the fetus has serious defects, where the family cannot afford a child, where the woman is unmarried, and where the doctor agrees—but not where essential for the woman’s career, where the baby is the wrong sex, or where abortion is being used as a repeated means of birth control (Kelley, 1991; Cook, Jelen, and Wilcox, 1993). Indeed, depending upon state of residence, between 43% and 57% of us say that abortion should be legal, as it is now; and far more approve of abortion with additional limited restrictions like parental notification and parental consent for minors. (Cook, Jelen, and Wilcox, 1993). Majority disapproval of public funding has been constant since the mid 1970s (Segers, 1980). Why is there so much public support for legal abortion but not for public funding of it? Are the arguments commonly given for and against public funding sound? It is illuminating to consider these questions in historical perspective.

In 1977, Representative Henry Hyde (R) of Illinois sponsored and the Congress passed the Hyde amendment, which almost completely eliminated federal funding for abortions. Between 1981 and 1993, federal funds were provided to pay for abortions for poor women only when the mother’s life was endangered; but none paid for abortions involving rape, incest, or grave

fetal defects. A poll taken in 1989 showed that 84% of Americans believe that the government should pay for abortions when needed by rape victims who cannot afford to pay (Strickland, 1992). In 1993, federal policy was expanded to cover funding abortions resulting from rape and incest, (Daley and Gold, 1993), again as a result of an amendment to a spending bill sponsored by Rep. Hyde (Rubin, 1993). During this period of time, mainly in thirteen states, taxpayers were paying for abortions at the state level for these and other reasons. In 1992, federal funds paid for only 267 abortions at a cost of \$332,000; but the states paid for 202,185 abortions costing nearly 80 million dollars (Daley and Gold, 1993). Many states refuse to provide funds for abortions at public expense. In its 1989 decision in *Webster v. Reproductive Health Services*, the Supreme Court upheld the authority of Missouri to forbid abortions in state facilities and by state employees. In 1992, abortion funding policy in thirty seven states and the District of Columbia paralleled the highly restrictive policy of the federal government (Daley and Gold, 1993).

Under the Reagan and Bush administrations during the 1980s, the issues of abortion and public funding for it were polarized along party lines. Despite these developments, many Democrats today oppose the legalization of abortions and public funding for them, and many Republicans (e.g., Barbara Bush) support them. Recent Democratic Party standard bearers and platforms support abortion and public funding while recent Republican heads and platforms oppose it. It was not always so. In 1972, George McGovern, Richard Nixon's opponent, held that the states, not the federal government, have sole jurisdiction over abortion. President Carter clearly opposed abortion personally; but he wanted abortions to remain legal for at least the first thirteen weeks of pregnancy. Both Presidents Ford and Carter opposed federal funding for abortions. Presidents Reagan and Bush made the anti-abortion position a matter for partisan conflict during the 1980, 1984, 1988, and 1992 campaigns, and Democrats gladly assumed the opposition (Daynes and Tatlovich, 1992).

In 1988 the Bush administration turned its attention to public funding for abortion counseling. In that year, the four thousand or so family planning clinics that received funds under Title X of the 1070 Public Service Act were prohibited by the Department of Health and Human Services from either discussing abortion as a method of family planning or referring patients to clinics that perform abortions (Annas, 1993).

In October, 1989, President Bush vetoed a bill that would have provided Medicaid funded abortions for poor women who are victims of rape or incest, though he supported such abortions for women who are wealthy enough to pay. He also vetoed legislation funding abortions for military women abroad and allowing the District of Columbia to use local tax funds to pay for abortions for poor women. Under the Reagan administration, family planning clinics receiving any federal funds were forbidden to discuss the abortion option with patients; and this policy was supported by and continued during the Bush

administration. In October 1990, this policy of mandatory silence was challenged before the Supreme Court in the case of *Rust v. Sullivan*. On May 23, 1991 the court issued a decision in *Rust v. Sullivan* that upheld the administration's "gag rule" by the close vote of 5 to 4. On Nov. 19, 1991, a measure passed by congress to overturn this "gag rule" failed by twelve votes in the House of Representatives to override President Bush's veto.

President Clinton finally revoked the "gag rule" by administrative order on Jan. 22, 1993, the anniversary of the 1973 *Roe v. Wade* decision; and abortion counseling for poor women is now allowed in federally funded family planning clinics (Rubin, 1993). Clinton's administration also opposes and vigorously contests the ban on using public money to fund abortions, but it has not succeeded in ending that ban. On June 30, 1993, by a vote of 255 to 178, the House of Representatives voted again to ban all federal funds for abortion except to save the life (but not the health) of the pregnant woman, and under circumstances of rape or incest. Nearly a fourth of the first term Democrats voted against public funding for abortions. President Clinton wanted to include abortion coverage in his package of health care benefits, but failed to get this through Congress. The new Republican congress that took office in 1995 has done and will do everything it can to eliminate public funding for abortions and abortion counseling. In June, 1995, the House of Representatives passed an appropriations bill that forbids women in the military to have abortions in military hospitals even if they pay for them; and attempts will be made in the House to cut off Medicaid funds for abortions for poor women who have been raped or who are victims of incest and to eliminate funds for abortion counseling (Tumulty, 1995). Public funding for abortions and abortion counseling are clearly among the hottest political issues of our time. Curiously, conservatives who object to the use of public funds for abortions seldom if ever protest the use of a portion of their private or group medical insurance premiums to pay for abortions! Yet, if they purchase medical insurance, their insurance dollars may pay for the intolerable things that they refuse to support with tax dollars.

Even though we suspect that politics often has little to do with rationality, let us examine the most influential reasons for their antagonism given by opponents of publicly funded abortions and abortion counseling. Then we will explore reasons that can be given to support them and try to determine which reasons are the most defensible.

Many other contributors to this volume have discussed objections to abortion as such, and I have done so elsewhere (Edwards, 1989; Edwards and Graber, 1988). Since there is no definitive case against abortions and a strong case can be made for them, and since they are clearly legal, present discussion will be limited to considerations that pertain directly to public funding of abortions and abortion counseling for poor women.

I. THE CASE AGAINST PUBLIC FUNDING

Familiar objections to public funding are grounded in appeals to economic cost-effectiveness, ethico-religious freedom, anti-racism, and logical consistency. They include: (1) the economic argument affirms that a policy of public funding would not be cost-effective, that it would cost taxpayers too much money, (2) the ethico/religious argument claims that persons who strongly oppose abortions on ethico-religious grounds should not have to pay taxes to support them, (3) the genocide objection declares that publicly funded abortions are motivated by racial genocide, since so many poor women who benefit from a policy of public funding are black or belong to other ethnic minorities, and (4) the inconsistency objection contends that a liberal defense of legal abortions is logically incompatible with a liberal defense of abortion funding at public expense. An uncommon argument against public funding based on a narrow libertarian view of justice will be examined and rejected later in connection with the argument from justice for public financing.

A. The Economic Argument

Some critics affirm that public funding for abortions and abortion counseling are just too inefficient or expensive. This argument covers public funding for all abortions, and it is even applied occasionally to the extreme circumstances of rape and incest. In October, 1989, Congressman John Duncan from Tennessee explained his opposition to federal funding of abortions in circumstances of rape and incest by saying that "People forget that the federal government is broke. There are only a certain amount of dollars we can spend on poor people, and it should be spent on basics such as food and housing" (Powelson, 1989). How sound is the economic argument? Is it really cheaper for government to provide a child with basics such as food, housing, education, and so forth, than it is to pay for aborting a fetus?

The economic argument blatantly miscalculates the relative costs to the public of paying for abortions versus supporting the upbringing of children of poor parents from birth to adulthood. In his dissenting opinion to the *Beal v. Doe* case in 1977, Supreme Court Justice William Brennan, Jr. noted that

The State cannot contend that it protects its fiscal interests in not funding elective abortions when it incurs far greater expense in paying for more costly medical services performed in carrying pregnancies to term, and, after birth, paying the increased welfare bill incurred to support the mother and child (Supreme Court, 1977, at 453).

Hard facts clearly support Justice Brennan's view. Jacqueline D. Forrest and Susan Singh show that "For every government dollar spent on family planning services, . . . an average of \$4.40 is saved as a result of averting (short term)

expenditures on medical services, welfare and nutritional services” (Forrest and Singh, 1990). Long term savings from family planning services, including honest and thorough counseling, are immensely greater than the costs of abortions.

During 1992, early abortions performed at state expense to save the life of the mother, or for rape, or incest were reimbursed at rates ranging from \$59.50 in Pennsylvania to \$547.00 in Louisiana (Daley and Gold, 1993); and 90 percent or more of all abortions are performed in the first trimester. Early first trimester abortions are usually available for around \$300.00, but delays increase costs and risks. First trimester abortions averaged \$296.00 in 1993, up from \$251 in 1989. At twenty weeks, the cost in 1993 was \$604.00 at non-hospital clinics, and at 20 weeks, the cost was \$1,067.00. Fees may be as high as \$2,500.00 at 16 weeks and \$3,015.00 at 20 weeks at non-hospital facilities (Henshsaw, 1995). Yet, these cost, if borne by taxpayers, are mere pittance compared to the thousands of dollars per child that taxpayers must spend over the long run if poor women are forced by the state to have unwanted children. In 1987, the average bill for childbirth alone was \$4,300.00 (Gold et al., 1987). In 1990, the cost for routine childbirth was \$7,831.00 (Consumer Reports, 1990); and the costs keep rising. Abortions cost only a tiny fraction of the price of prenatal care, hospital and doctor bills for childbirth, other medical expenses, welfare and Medicaid payments for 18 years or more (usually more if the cycle of poverty is not broken), public education for each child, and so on. The narrow libertarian view of justice to be examined and rejected later would provide none of these benefits (abortion included) to the poor; but many of our public policies are not and should not be so narrowly libertarian.

Current estimates indicate that it easily can cost several hundred thousand dollars to raise a child from conception to adulthood. In 1990, the minimal cost of rearing a child by a husband and wife was \$86,100 for families making less than \$29,900, \$120,150 for families making between \$29,900 and \$48,300, and \$168,480 for families making more than \$48,300. These figures do not include the costs of prenatal care, childbirth, or a college education (Waldman, 1992). There is no good reason to believe that these costs are significantly lower when paid by taxpayers. Clearly, the economic argument *for* publicly funded abortions and abortion counseling is far stronger than the economic argument *against* them. As we will see, justice also demands that poor women have effective access to abortions. In this area, the demands of justice and those of economics are in perfect accord.

B. The Ethico/Religious Argument

Most reflective persons, including most Americans, believe that opponents of abortion, whether themselves or others, should not be forced to pay taxes to support governmental policies to which they have strong ethico-religious

objections. Even if they do not oppose abortion themselves on religious or ethical grounds, they believe that others who do object should not have to pay for them, that being forced to pay is blatantly incompatible with their moral and religious rights. In 1980, President Carter said that he opposed federal funding for abortions because it did not "...seem right to me for the Federal Government to collect taxes from those who have deep religious feelings against abortion and use that same tax money to finance abortions" (Daynes and Tatlovich, 1992). The ethico/religious argument against abortion and public funding for abortion counseling is quite commonplace. For example, James T. McHugh, explaining "A Catholic Moral Perspective," wrote in 1994 that

The National Conference of Catholic Bishops has long opposed government-sponsored and government-funded family planning programs on the ground that government should not place a seal of approval on behavior that many consider morally objectionable. Furthermore, government should not require Church-sponsored agencies to provide, nor citizens to pay for, services that are considered morally offensive (McHugh, 1994).

The Majority of Americans are opposed to the pro-choice position, that is, abortion on demand. Many, if not most, are motivated by religious or ethical convictions. When the government adopts a policy compelling all citizens to accept, participate in and financially support activity that is morally and ethically onerous, the government then adopts a policy that compromises the free exercise of religious belief (McHugh, 1994).

Unfortunately, this initially appealing objection is fraught with difficulties. Legally, it was repudiated in 1982 by the Supreme Court in *United States v. Lee*, where it affirmed that "religious belief in conflict with the payment of taxes affords no basis for resisting the tax" (Corns, 1991).

But the most obvious difficulty with the ethico-religious objection is that in the real world tax policy just is not like this at all and is never likely to be. The cold reality of taxation is that almost all of us are forced by the state to support policies which are fundamentally unacceptable to our consciences and/or religious convictions. For example, those who had powerful ethico-religious objections to the war in Vietnam, or to the more recent Persian Gulf War, and complained about being taxed to support a policy to which they had conscientious objections, still had to pay taxes. In actual practice, conscientious objection was no excuse. Today, taxes must be paid by those who have strong ethico-religious objections to the waste and short sighted miscalculations involved in Star Wars, nuclear proliferation, chemical or biological weapons, government-backed environmental desecration, pork barrel waste, and so forth. Adamant non-smokers who believe that the human body should not be defiled (or slowly murdered) by smoking because it is the temple of God have paid taxes under duress for decades to subsidize tobacco farming, storage, and inspection. Vehement vegetarians, including those who believe that God loves all living things and wills that we live as non-destructively as possible, are forced to pay taxes for massive public subsidies for the meat

and dairy industries, for cheap grazing rights on public lands, and for hunting, fishing, and trapping on public lands. Taxes paid unwillingly by Jehovah's Witnesses support blood transfusions for Medicare and Medicaid patients. Christian Scientists and other members of religious sects who believe that God is the only legitimate physician pay taxes that support human physicians, hospitals, medical research, and the whole medical establishment. Ethical and/or religious conscientious objectors and pacifists conscientiously oppose spending massive quantities of public funds on the military and on the industrial complex that supports it; yet, they are forced to pay taxes that support them. Through Medicare and Medicaid funding of their services, taxes paid by fanatical pro-abortionists support Catholic hospitals that refuse to perform abortions. Environmentalist pay taxes that support innumerable government programs and projects that are inimical to their ideals, and anti-environmentalists do the same. Government is seldom perfectly consistent about anything! Even conservatives must pay for other things to which they have ethico-religious objections besides abortion. Many conservatives oppose contraception, sincerely believing that it violates God-given natural laws; but \$645 million public tax dollars were spent in 1992 for contraceptive services like contraceptive implants and oral contraceptives; and more than \$138 million tax dollars were spent for tubal ligations and vasectomies (Daley and Gold, 1993). Many conservatives who oppose sex education in the public schools are also forced to pay taxes that fund it. Are we prepared to terminate funding for all these services just because many liberals, moderates, and/or conservatives sincerely object to using their tax dollars to pay for them?

Most Americans are probably not prepared to terminate public funding for innumerable public policies and benefits just because some people are irreconcilable opposed to them on religious or ethical grounds. Yet, it must be emphasized that the protests of taxpayers with ethico-religious objections to abortion are no more justified than the objections of those who oppose any other governmental enterprise on ethico-religious grounds; logically, if one must go, all must go. Legally, the ethico-religious objection is totally unrealistic and unconstitutional; at present our laws and courts allow neither sweeping ethico-religious exemptions from taxation nor the elimination of innumerable governmental activities to which many citizens have fundamental ethico-religious objections.

Most conservatives are perfectly willing to compel taxpayers to pay, against their most fundamental convictions, for governmental subsidies for religious and parochial schools and for indirect subsidies through tax exemptions for churches and church businesses and investments. Such tax breaks result in higher taxes for all taxpayers, or for a higher national debt, with interest being paid by all taxpayers. Taxpayers subsidize all tax exemptions—often against their ethical and/or religious wills.

Without realizing it, conservatives who oppose public funding for abortions have opened Pandora's box! They seem to expect a very selective and self-serving application of the principle that there should be no public financing of programs to which citizens object on moral and/or religious grounds. Unfortunately, a selective application of the principle of no governmental programs where there are fundamental ethico-religious objections violates the constitutional (and moral) requirement of equality under the law. If we eliminate one public program that is ethico-religiously objectionable to some citizens, we will have to eliminate them all. It is unjust to deny public funding for abortions for ethico-religious reasons without denying all public funding for any public project to which *anyone* has ethico-religious objections. Formal justice requires that like situations be treated alike.

No-funding policy for abortions and abortion counseling is not religiously or ethically neutral. It defiles the religious convictions of Americans who believe that God forbids the violation of fundamental rights to justice, freedom of speech, relevant medical information, and personal choice on highly controversial religious or metaphysical issues (like whether the fetus is a person). Although abortion was not a burning issue for them, and was certainly not prohibited by them, many founding fathers of America regarded all basic human rights as God-given. Thomas Jefferson, the philosopher of the American Revolution, affirmed in the *Declaration of Independence* that all persons are "endowed by their Creator certain unalienable rights;" and that governments are instituted among men to secure these rights. Jefferson frequently tied human rights, especially the right to liberty, to religious beliefs. He asked in his *Notes on the State of Virginia*: "...Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God?" (Lipscomb and Bergh, 1903). Through the centuries, innumerable Americans believed that basic human rights are God-given, Divinely sponsored; and many Americans believe this today. In "My Country 'Tis of Thee," we sing to "our Father's God...Author of liberty..." Pro-choice advocates defend the right to abortion, and public funding for it, as grounded in more fundamental rights to privacy, liberty, and equality of opportunity. To the extent that these basic human rights are involved, logic requires those who believe that God supports basic human rights to extended their theological perspective to abortion rights, even if they not previously made the conceptual connection. Denying funding to the poor for abortions and abortion counseling may thus merely pit the firm conviction that God endorses abortion rights and public financing of abortions for the poor against the firm conviction that God opposes them. If public policy in a free society ought to be neutral toward highly controversial religious convictions, present no-funding policy fails miserably.

Can religious norms be transformed into purely secular morality by replacing "God forbids (or supports) public funding of abortions for the poor" with the

more secular “Public funding of abortions for the poor is morally wrong (or right)?” Attitudes toward abortion are not always tied to theistic belief; and some citizens regard their positions on abortion as moral, not religious. The Supreme Court now treats ethical conscience as essentially religious, at least for taxation purposes (Wenz, 1992); but most of us think that there is a difference. If public policy ought at least to avoid complicity with *moral* evil, no-funding policy again fails. While avoiding complicity with the alleged evils of abortion, it entails complicity with the evils of injustice and the denial of women’s rights.

C. The Argument from Racism and Genocide

Some critics suggest that public funding of abortions for the poor would express policies of racist genocide or eugenic quality control because a white protestant majority would be dispensing abortions to black or other religious and ethnic minorities. (Craven, 1972; Grey, 1989; Turque, 1989). Representative Henry Hyde (R), Illinois, who does not endorse it, voiced this position on the floor of the House of Representatives in June, 1993 (Ball, 1993). During a heated debate in House, Representative Cynthia McKinney, a black Democrat from Georgia, said that the Hyde amendment’s denial of public funding for abortions “is nothing, but a discriminatory policy against poor women who happen to be disproportionately black.” Hyde responded: “We tell poor people, ‘You can’t have a job, you can’t have a good education, you can’t have a decent place to live...I’ll tell you what we’ll do, we’ll give you a free abortion because there are too many of you people, and we want to kind of refine, refine the breed.’” Hyde’s remarks were not well received (Rubin and Zuckman, 1993)! However, when the final votes were in, a majority of Representatives again said “no” to public funding for abortions “on demand” (although no pregnant woman ever has an abortion for such a vague reason—or non-reason).

The genocide objection might have some point if all poor pregnant women in America were black or belonged to ethnic minorities, but this simply is not so. Proportional to their numbers in the population as a whole, abortion rates are higher for non-whites than for whites (Henshaw, 1987); but in whole numbers, far more whites than blacks receive abortions. In 1981, for example, approximately 240,000 blacks had abortions, but 580,000 whites had them (Rodman, Sarvis, and Bonar, 1987). Many white Anglo-Saxon protestant women are pregnant and poor; and publicly funded abortions would be just as much available to them as to anyone else.

Morally, genocidal eugenic programs are clearly wrong. They are forced upon minorities against their will, without their informed voluntary consent. However, merely making publicly funded abortions available never forces *any* woman to have an abortion for some other person’s purposes, especially the

eugenic purposes of an oppressive racist majority. A pregnant woman in America can always refuse the offer or choose to have an abortion only and always for reasons of her own and significant others who are close to her. Making rights or opportunities available never forces them upon anyone; always, they may be waived or rejected, even by the poor.

Refusing to fund abortions for the poor is much more likely to express racism than not finding them. Many poor women are indeed black, as Representative McKinney and many others note. Before abortions were legalized in 1973, poor black women found it much more difficult than socially influential whites to obtain abortions. Before *Roe v. Wade*, upper and middle class women, mostly white, could get legal and safe hospital abortions by persuading a psychiatrist to certify in writing, for a fee, that they would commit suicide if not given an abortion (Adler et al., 1992); but this way around the law was not open to most black women. In Georgia “the legal abortion rate for single white women in 1970 was twenty-four times greater than the rate for single black women” (Rodman, Sarvis and Bonar, 1987). When abortions were finally legalized, blacks freely and gladly took full advantage of the opportunity to obtain medically safe abortions.

Before *Roe v. Wade*, dangerous “back alley” abortions were performed on a disproportionate number of black women; and when physicians (usually white) reluctantly agreed to give abortions to black women, they were frequently “presented with a ‘package deal’—the physician would agree to do the abortion if the women would agree to be sterilized. Compulsory sterilization was not an isolated occurrence” (Rodman, Sarvis and Bonar, 1987). Historically, racism has been expressed much more clearly in restricting than in expanding reproductive choices for black women.

Polls show that blacks actually disapprove of abortions more than do whites, but when these numbers are broken down into relevant sub-headings, it turns out that older black males and females disapprove much more than do older white males and females; but among women of childbearing age—those who must actually bear the burdens of unwelcome pregnancies and unwanted children—there is no significant difference at all between blacks and whites (Lynxwiler and Gay, 1994). The real difference is with respect to *availability*, not just in the negative sense that abortions are legal, but in the positive sense of being able to afford them. Rodman, Sarvis, and Bonar indicate that as a result of the legalization of abortion in 1973 “the issues of limited access, coercive, treatment, and family planning as black genocide—although they have not disappeared—have receded into the background;” and . . . “earlier cries that family planning was black genocide have been drowned by cries to maintain access to contraceptive and abortion services” (Rodman, Sarvis and Bonar). Today, black women have 31.1% of all abortions, while composing 14% of women between ages 15 and 44; by comparison, white women have

61.3% of all abortions while being 81.2% of the women in that age group (Henshaw and Kost, 1996).

For poor women who belong to racial minorities, access to abortion depends on public funding; and the Hyde amendment's prohibition of Medicaid funding is the major obstacle. The impact of the Hyde amendment on poor women of all races has been enormous; in 1977, federal funds paid for 294,600 abortions, but in 1992 they paid for only 267 (Daley and Gold, 1993). When the Hyde amendment was challenged in the Supreme Court in the *Beal v. Maher* case in 1977 and *Harris v. McRae* in 1980, the court decided by a majority of one "that a woman does not have a constitutional entitlement to financial assistance for an abortion" and that prohibitions of Medicaid funding "do not violate the due process clause or the equal protection clause of the Fifth Amendment" (Daley and Gold, 1993). The four judges who dissented in the five to four *McRae* decision clearly disagreed.

Rodman, Sarvis, and Bonar indicate that:

The moral and political clash over Medicaid-funded abortions has ridden roughshod over poor women. As Justice William Brennan, Jr. said in his 1977 dissent, the court showed "distressing insensitivity to the plight of impoverished pregnant women." And Justice Harry A. Blackmun, in his dissent, found the majority opinion—telling the "indigent and financially helpless" woman to "go elsewhere for her abortion"—almost reminiscent of 'let them eat cake' (Rodman, Sarvis and Bonar, 1987).

In his dissent to the *McRae* decision, Justice Thurgood Marshall noted that denial of Medicaid funding has an enormous impact on blacks and wrote that "Even if this strongly disparate racial impact does not alone violate the Equal Protection Clause... at some point a showing that state action has a devastating impact on the lives of minority racial groups must be relevant" (Annas, 1988). Racism denies public funding for abortions; anti-racism provides choices.

D. An Inconsistency of Rationales for Legal Abortions and Public Funding

Some critics of governmental funding of abortions charge that there is a logical inconsistency between the principles to which pro-choice liberals appeal to justify the legalization of abortions on one hand, and public funding for them on the other (Callahan, 1977, Segers, 1980, Arkes, 1980, Kelley, 1991). As Mary Segers put it,

With respect to the values of privacy and liberty, then, I am suggesting that prochoice arguments for the legality of abortion are inconsistent with their arguments for Medicaid funding of abortions. Further, I suggest that this weakness or inconsistency reflects a more general tension between nineteenth-century, individualistic, laissez-faire liberalism and twentieth-century, post—New Deal, welfare-state liberalism. The former conceives society as an aggregate of isolated individuals who seek freedom from the intervention and intrusion

of others, while the latter envisions society as an organic community of interdependent, interrelated persons whose freedom is made possible through mutual assistance and cooperation (Segers, 1980).

Segers is just as critical of the consistency of pro-life conservatives as of pro-choice liberals. She points out that

In the case of abortion, each side's rationale for opposing or defending abortion is inconsistent with its argument for opposing or advocating public funding of the abortions of poor women. Prochoice advocates resort to a libertarian, individualistic ethic to justify the legalization of abortion, yet appeal to a cooperative, communitarian ethos to justify Medicaid funding. Right-to-life advocates stress equality and equal rights in their approach to abortion, but give priority to individualistic libertarian rather than egalitarian concerns on the funding issue (Segers, 1980).

Let us concentrate on the alleged inconsistency in the pro-choice position. It is difficult locate and identify the contradiction, if there is one, that lurks in the distinction between various forms of liberalism. An inconsistency is a logical contradiction; it involves asserting both a proposition, *p*, and its negation, not *p*.

The inconsistency that Segers has in mind involves the concepts of liberty or privacy, understood as "independence of and freedom from the control of others—government and society" (Segers, 1980, p. 281). Applied to legalized abortion, the right to privacy means that government and society should not interfere with (i.e., pass a law that obstructs) pregnant women's choices to have or not have abortions. Their choices should be independent of and not controlled by government and society. The inconsistency also involves the concept of public assistance—that government and society should help poor women to carry out their decisions to abort (Segers, 1980). But what exactly is the inconsistency?

Obviously, 1 and 2 below are not logically contradictory propositions. (For simplicity, I will write simply of government rather than of government and society.)

1. Government should not pass laws that obstruct pregnant women's choices to have an abortion.
2. Government should help poor women carry out their decisions to abort.

These propositions do not contradict one another. Of course, 1 is inconsistent with 3 below; and 2 is inconsistent with 4 below; but pro-abortion advocates definitely repudiate 3 and 4. These are the views of their conservative opponents.

3. Government should pass laws that obstruct pregnant women's choices to abort.

4. Government should not help poor women carry out their decision to abort.

Perhaps the contradiction lies elsewhere and can be exposed by a deeper level of analysis. Segers suggests that the contradiction may lie in the following claims (Segers, 1980).

5. Abortion is a private decision, since abortion affects only the pregnant woman's own body.
6. Abortion is not a private decision, since abortion destroys the body of another human being (the fetus).

It is true that propositions 5 and 6 are inconsistent; but this does not expose an inconsistency in the position of pro-choice advocates, who do not affirm both 5 and 6. Some, but not all, pro-choice advocates subscribe to 5; but 6 is the view of pro-life advocates. This means only that the pro-choice position contradicts the pro-life position—to no one's surprise. But the pro-choice position is not inconsistent with itself.

Let us try once more to find the contradiction. Perhaps it lies somewhere in the theoretical foundations of laissez-faire versus welfare-state liberalism; but even this seems to involve only a difference of emphasis, not a logical contradiction. Propositions 7 and 8 below are contradictory; but if 7 really captures the view of extreme real laissez-faire liberals, which is doubtful, it is definitely not the view of today's pro-abortion advocates (as Segers concedes).

7. Government should protect *only* negative rights and liberties (i.e., it should protect citizens from harm or interference); but it should *never* provide positive assistance and benefits.
8. Government should not protect *only* negative rights and liberties; it should also provide *some* positive assistance and benefits—e.g., Social Security, Medicaid, Medicare, public schools, public libraries, grants and loans for college students, public roads, and so on.

Welfare-liberals who accept 8 clearly recognize a domain of privacy in which government should protect citizens from harm and interference; but they affirm that government should do more; in some domains, government should provide positive assistance and benefits. This position is not self-contradictory, for no one really affirms both 7 and 8. Good parents protect the negative freedom of their children to choose their own careers; but, if able, they then financially support the vocational training or college education required for those careers. Respecting and not interfering with the privacy, independence, and autonomous choices of others in some areas of life is in no way

incompatible with positively assisting the realization of those private choices. The same is true for government. Our federal government allows college students to choose their own college but then supports their choices, if they are needy, with Pell Grants and government-backed loans. This involves no logical inconsistency whatsoever, and neither does legalizing abortions and giving aid to poor women who freely choose to have them.

II. THE CASE FOR PUBLIC FUNDING

A. Spending Public Funds on Morally Offensive Programs

Should governmental assistance and positive benefits ever be conferred at public expense when some citizens regard these public policies as morally offensive? When, if ever, should citizens be taxed to support governmental programs that are fundamentally incompatible with their basic moral values? Let us consider four possible answers: first, never; second, compromise; third, when might makes right; fourth, avoiding the dilemma.

Never Do It!

Prominent philosophers like John Rawls, Thomas Nagel, Robert Nozick, and Mary Segers find this answer very appealing. Rawls says that “There is no more justification for using the state apparatus to compel some citizens to pay for unwanted benefits that others desire than there is to force them to reimburse others for their private expenses” (Rawls, 1971). Thomas Nagel says that “when we force people to serve an end that they cannot share, and that we cannot justify to them in objective terms, it is a particularly serious violation of the Kantian requirement that we treat humanity not merely as a means, but also as an end” (Nagel, 1987). Similar views are expressed by Robert Nozick (Nozick, 1974). Concerning public support for legal rights, Mary Segers says that a

...legal right the exercise of which is to be publicly funded must not be the object of deep-rooted fundamental controversy. In a pluralistic society such as ours, consensus or at least the lack of dissensus exists concerning childbirth and contraception; however, there is fundamental disagreement about the morality and legality of abortion, let alone about the propriety of public funding of abortions (Segers, 1980).

Segers’ criterion for public funding of benefits is thus lack of dissent, or put more positively, complete social agreement. She thinks that public funds should be spent only on social programs that are completely uncontroversial; her examples are: childbirth and contraception.

But wait! Is public support for childbirth and contraception services for the indigent really morally inoffensive to all? As for childbirth, many conservatives and non-conservatives now advocate denying funds to welfare mothers to support children conceived and born while on welfare—partly to save taxpayers money, but mainly because many people of all races believe that it is morally wrong to create, encourage, and endlessly perpetuate a vast class of persons who are totally dependent on government for subsistence, especially when they make little or no effort to become self-supporting, tax-paying citizens.

As for contraception, the lack of dissensus cited by Segers is astonishing in light of the fact that she was addressing a partly Catholic audience at Notre Dame University, people who knew perfectly well that the Catholic Church officially finds contraception, and public support for it on both a national and international level, to be morally offensive. Consider the Vatican's opposition to international support for abortion expressed so vehemently at the International Conference on Population and Development held in Cairo, Egypt in September, 1994 (Burke and Marlow, 1994). In practice, of course, American Catholics use contraception (and support the legal availability of abortions) just as much as American Protestants (Greeley, 1990; Kelly, 1991). Catholics also have 37.4% of the abortions performed in this country, even though Catholic women make up only 30.9 % of women ages 15 to 44; by contrast Protestants have 37.4 % of the abortions while composing 53.9% of the women in this age group (Henshaw and Kost, 1996). But some Catholics (the top episcopal leadership, but not most rank and file priests, if Andrew Greeley is right) sincerely subscribe to the official position of the church and strenuously object to spending their taxpayer dollars to support contraception. Unanimous agreement on policies supported by taxation is not as easy to come by as Segers assumes. The rights of small minorities are no less important than the rights of larger minorities.

Practically everything that government does is so fundamentally offensive morally and/or religiously to some citizens that it would be impossible to justify it to them. If public funds derived from taxation should be spent only on matters that are totally uncontroversial and that conflict with no one's fundamental values, all of the following (and then some) will have to go—or never be funded in the first place. Government will be unable to fund or give tax breaks for

1. wars like those in Vietnam and the Persian Gulf
2. subsidies for tobacco farming, storage, inspection, and program administration
3. subsidies for the meat and dairy industries
4. cheap grazing rights on public lands
5. hunting, fishing, and trapping on public lands

6. blood transfusions for Medicare and Medicaid patients
7. any services by physicians, hospitals, medical researchers, and the whole medical establishment
8. the military-industrial complex
9. Medicare and Medicaid services at Catholic hospitals
10. governmental subsidies for religious and parochial schools
11. deduction of contributions to churches from income taxable income
12. exemption of church property, businesses, and investments from taxation
13. sponsorship of "obscene" artistic and literary productions
14. contraceptive services for the poor
15. sex education in the public schools
16. medical experimentation on human embryos
17. police protection for beleaguered abortion clinics and personnel
18. unrestricted abortion counseling for poor women
19. abortions (a) to save the life of the pregnant woman, (b) where the pregnant woman's physical health is seriously endangered, (c) where the pregnant woman's mental health is seriously endangered, (d) where the fetus is seriously defective, (e) where the pregnancy results from incest, (f) where the pregnancy results from rape, (g) where pregnant woman already has all the children she wants and can afford, (h) where the pregnant woman is an unmarried minor, (i) where the pregnant woman's career is endangered, (j) where the baby is the wrong sex, (k) where abortion is used repeatedly as a means of birth control, and so on.

If we are unwilling to sacrifice all of the above, what then should be done when public funds go to support programs and policies that some citizens find fundamentally offensive? What options are open?

Compromise

Where an irreconcilable ethico-religious conflict over spending public funds exists, perhaps citizens should compromise; but can the irreconcilable be reconciled? Compromise involves giving something to get something. Concerning abortion, can liberals (or conservatives) give up some fundamental values for the sake of other fundamental values without losing their moral integrity altogether? And what exactly should each concede?

In 1981, George Sher argued that with the legalization of abortions, conservatives have already given up so much that it would be unreasonable to ask them to give up even more through government funding of abortions (Sher, 1981). However, it can be argued that the *Roe v. Wade* decision is itself a compromise in which liberals and conservatives both give something to get

something. Liberals get abortions for any reason for the first two trimesters of pregnancy. Conservatives get significant protection for fetuses during the third trimester, and they are permitted to live out their convictions in their own lives without being forced by the state (as in China) to have abortions against their will. They can act out their convictions in their own lives, but they cannot use the power of the state to force upon others their metaphysical or religious views about the nature of and the onset of personhood (Edwards and Graber, 1988).

Who should give in on the issue of public funding for abortions and abortion counseling? Perhaps all sides should make concessions when they realize that public funding for programs that many regard as fundamentally immoral extends far beyond abortion. Consider again the preceding list of nineteen projects that government would be unable to fund if no fundamentally immoral (from some point of view) projects are to be publicly funded. Both conservatives and liberals will favor many if not most, but not all, of these items. Both sides have too much to lose by eliminating them all, so perhaps they should be willing to search for compromise solutions. When all is said and done, it may be practically necessary to endure the payment of public funds for some controversial policies that we oppose in order to obtain public support for the many that we favor.

Even though fundamental values and ways of life clash, as they often do in a pluralistic world, each side must reluctantly give something in order to get something, which is the way compromise works. To make compromises of fundamental values work in practice, politicians, voters, and judges who agree to do so would have to commit themselves never to vote against a government program merely because some citizens, themselves included, find it morally objectionable. This commitment would be extremely difficult to enforce, however, since they could still vote against any programs on other grounds. Yet, there is an ethics of compromise (Benjamin, 1990).

Fight It Out

Perhaps, after all, political might makes right in a democracy. If legitimacy through unanimity is totally unrealistic, and if no reasonable compromises are forthcoming, the clash of irreconcilable moral perspectives may simply degenerate into a power struggle. Thomas Nagel, who regards unanimity, at least on value fundamentals, to be essential for a legitimate social and political order (Nagel, 1987, 1991) is sufficiently pessimistic (or realistic) to believe that "legitimate government will not always be possible" (Nagel, 1991). Nagel explains that

One cause of this situation is the conflict between systems of value so opposed that the adherents of each not only think the other completely wrong, but they cannot accord the

others freedom to act on their values without betraying their own. The issue of abortion may have this character: Some people may be unable to accept the legitimacy of a system which prohibits it, and others may be unable to accept the legitimacy of a system which permits it (Nagel, 1991).

Nagel remarks that "If there is no solution that no one could reasonably reject, neither party to the conflict can be reproached for trying to impose a solution acceptable to him but unacceptable to his opponent" (Nagel, 1991). Thus, when fundamental values and ways of life conflict, contending parties must simply fight things out in the political arena, including the legislatures and the courts, as long as the fight is conducted within the framework of the rules and values of democratic government.

The "fight it out" option should not be confused with literally "fighting things out" by bombing, burning, or defacing abortion clinics and murdering physicians who perform abortions. After all, if abortion clinics can be bombed and torched, so can Catholic (and other conservative) churches; and if doctors who perform abortions can be gunned down, so can priests, bishops, ministers, and any activists who campaign against abortion. In Louisiana in October of 1994, a husband whose wife was patronizing an abortion clinic took a shot at an anti-abortion demonstrator (Associated Press, 1994). In 1995 and 1996, fanatical racists burned many black churches, and fanatics can be found to support almost any cause. It is greatly advantageous to both pro-life and pro-abortion partisans that they be committed to living together and solving problems peacefully in a pluralistic democratic social order; so our fights over abortion should be political, not physical.

A "fight it out peacefully" strategy is frequently used to resolve otherwise unresolvable moral conflicts in the political arena. At present, liberal proponents of legalized abortion are political winners, but liberal proponents of public funding for abortions are losers. Said another way, conservative opponents of legalized abortion are losers, but conservative opponents of public funding for them are winners. Neither group is very happy, in part perhaps because they sense that dangers lurk ahead. In the future a liberal tide would take everything away from conservatives; and a conservative tide would take everything away from liberals. The risk of losing everything is run where democratic political might makes right.

Democratic might makes right also breeds hypocrisy. Conservatives who complain so bitterly about being forced to pay for detested abortions often campaign vigorously for public financing of parochial Catholic and conservative Protestant or Jewish schools, either directly or through student vouchers, in the face of determined ethical and religious opposition by innumerable citizens who are deeply committed to separation of church and state.

Finally, the democratic might makes right strategy offers no answer to Nagel's charge that forcing people (losers) to serve ends they cannot share treats them merely as means, not as ends in themselves. When all is said and done, democratic might makes right is merely the tyranny of the majority.

Avoiding the Dilemma

Finally, conflicts over public funding under conditions of fundamental disagreement might be resolved by passing between the horns of the dilemma. Perhaps government program and policies that some citizens find fundamentally offensive could be funded only by supporters, while non-supporters are permitted to withhold or redirect the percent of the tax that would otherwise fund their nemesis. Such a tax policy would doubtless be complex to administer; but it is worth considering.

Should ethico-religious exemptions from or redirections of taxation be allowed if some feasible way to do it can be found? Even if it would be an administrative nightmare, democratic governments are morally required do very complicated things at times for the sake of morality. Perhaps our tax code could be drastically changed (again) to allow taxpayers either to withhold or to redirect the percentage of their taxes that otherwise would support programs that they find ethically or religiously insupportable. Withholding would place great financial stress on government and encourage tax dodgers to escape taxation by appealing falsely to conscience; but allowing taxpayers to redirect a percentage of their taxes away from objectionable causes, while paying in full what they owe, would avoid these difficulties. Fictional persons like corporations would not be allowed to redirect, lest the wealthy exercise too much control over public spending for deeply controversial public policies. Only individual taxpayers could redirect. Corporate taxes would be applied to the whole governmental budget, as at present. If corporate taxes are redirected, this would have to be in proportion to the convictions of their shareholders.

Redirection would be relatively simple and easy to administer if abortion were the only publicly supported cause involving irreconcilable moral differences; but it is not. To implement a Tax Redirection program, congress and other governing bodies, perhaps advised by ethics committees, would have to construct an official list (no easy task) of *all* government sponsored causes that some taxpayers find seriously objectionable on moral or religious grounds (like the nineteen items previously given). Nothing clearly unconstitutional could appear on the list. When the program is initiated, this list would be included for several years along with other income tax forms distributed to taxpayers. In following years, the list could be sent regularly to previous users, to new taxpayers, and to anyone else who requests a copy from the IRS.

Federal and state legislatures (where relevant) would approve budgets that include recognized ethico/religiously contentious items, then determine what percentage of an annual budget would fund them adequately. Dissatisfied taxpayers could check “no” boxes on Tax Redirection Forms, thereby directing that the relevant percentage their tax dollars not go to support things they find highly offensive like the military, the meat and dairy industries, abortions (broken down into sub-classes, as above), abortion counseling, Medicare and Medicaid support of sectarian hospitals, and so on, just as we can now check (or not) a box directing that a dollar go to support presidential elections. My colleague, Mary Lenzi, points out that this would be like allocating contributions to specific charities in annual pledges to United Way, as we now do. On a Tax Redirection Form, however, “yes” would be assumed; taxpayers could only vote “no.”

A “no” response to any item would redirect a taxpayer’s dollars away from objectionable, and toward acceptable, governmental programs. Actual funding, partial funding, or no funding, of highly contentious causes would be determined directly by taxpayers themselves, not by heavily lobbied politicians who have sold their souls. If enough taxpayers say “no” to any item, it would be unfunded, or only partly funded. Redirection would not be mere “smoke and mirrors,” for taxpayers really would pay only for programs that they support. Without sufficient public backing, highly problematic programs would not be funded.

Those who raise the “smoke and mirrors” objection probably do not want *anyone’s* taxes to pay for programs that *they* find offensive. Once exposed, this position immediately loses its plausibility and its moral high ground.

My colleague, Dwight Van de Vate, suggests that the sincerity of would-be tax redirectors could be authenticated if they were required to pay an extra small fee, say \$10.00, for every “no” answer given by those in the lowest tax brackets, with fees being graduated upwards as income levels increase. These fees would pay for administration of the Tax Redirection program; and anything left over would go to legislatively approved projects. A little ingenuity could make it work!

How would taxpayers be affected by such a change? Some will take no interest in redirecting their tax dollars. By default, everything on the list of contentious causes would be funded if everything on the Tax Redirection Form is left blank, or if it is not returned to the IRS. The availability of redirection would likely inspire surprisingly many disgruntled citizens and taxpayers to take a renewed interest in democratic self-government and to participate in lively discussions of socially divisive public policy issues. The overwhelming majority of American citizens are now so alienated from government that they no longer vote in elections and deeply resent paying taxes; but they would likely become deeply involved with public policy issues if they knew they could actually control how some of their tax dollars are spent. Democratic self-government itself could be reanimated!

Abortions for poor women is only one of many public policy issues that Americans are loathe, on ethical and/or religious grounds, to support. Under existing no funding policies, the ethico-religious convictions of resolute pro-choice taxpayers are repressed; and pro-life advocates are favored. Redirection would allowed pro-lifers to avoid paying for abortions for poor women, but publicly funded abortions and family planning would still be available—and paid for by sincere supporters. A large number of Americans, 57 percent according to a poll taken in 1989, (Carlson, 1989; Family Planning Perspectives, 1989), oppose prohibiting public spending on abortions and presumably would be willing to pay taxes for them. Some of those willing to pay would only support abortions to save the life of the mother; others would include abortions for rape and/or incest; and others would gladly finance abortions to prevent the extreme hardships involved in being forced by the state to have unwanted children, and so on. (Salholz, et al., 1989). Some supporters would consider the hardships of being an unwanted child resulting from a state-coerced pregnancy (Raymond, 1989; David, et al., 1988).

Redirecting taxes might be cumbersome, but it would provide public funding for abortions, counseling, and family planning services without forcing non-supporters to pay for these things against their will. Predictably, enough supporters to foot the bills would check the pro-abortion boxes. By allowing opponents of public financing to redirect a relevant percentage of their taxes, while still funding abortions and family planning services with the taxes of supporters, government could allow pro-life taxpayers to avoid complicity with evil as they see it, while not forcing pro-choice taxpayers into complicity with what they see as injustice and wrongdoing. No taxpayers would be treated merely as a means. Abortions and counseling for the poor would be provided only by those who favor them.

Is the case for public funding more rational and justifiable than the case against it? Appeals to economics, religion, racism, and logical consistency do not defeat the case for public funding. Do any considerations make a plausible positive case for public funding? Public funding for abortion counseling is supported by moral arguments from the right to freedom of speech and the right to informed voluntary consent. Public funding of abortions for poor women is supported by arguments from the right to societal protection from grave harm, and the right to justice.

B. Arguments for Public Funding of Abortion Counseling for the Poor

The Right to Freedom of Speech

In the professional setting (and elsewhere) the right to freedom of speech is guaranteed by the First Amendment to the United States Constitution. Freedom to communicate is both a moral and a legal right. This right was

negated for ideological reasons by the no-talk policy of the Reagan and Bush administrations. Medical professionals working in hospitals and clinics receiving federal funding were forbidden to tell women about the availability of abortion as a medical option, even though abortion was and is unquestionably legal under *Roe v. Wade*. They were required to say that they provide pre-natal care, but they could say nothing about abortion.

The majority opinion in the 1991 *Rust v. Sullivan* Supreme Court decision upheld the “gag rule” on the grounds that Congress has the authority to attach conditions to the expenditure of public funds, and thus may deny funds to family planning facilities like Planned Parenthood that *voluntarily* accept such funds under lawfully enacted restrictions. This defense of the “gag rule” is gravely flawed, however; for no restrictions are lawful that clearly conflict with constitutionally guaranteed rights such as the First Amendment right to freedom of speech. As conservative columnist James J. Kilpatrick noted, “...Congress may not impose conditions in violation of the Constitution, and that is what Sullivan’s gag rule amounted to. Physicians cannot be compelled to abandon their right of free speech when they enter a federally subsidized facility. They cannot be told what not to say” (Kilpatrick, 1991). Freedom of speech may be restricted where there is a legitimate compelling state interest, but the interest served by the “gag rule” was merely that of the conservative anti-abortion agenda.

The Right to Informed Voluntary Consent to or Refusal of any Medical Procedures

This right is legally assured under existing court decisions. This moral right has been incorporated into our laws. Legal and philosophical discussions of the topic agree that consent cannot be informed unless relevant alternatives are discussed (Lidz, et al., 1984; Edwards and Graber, 1988; Bullis, 1992; Hebert, 1990). Conservative no-funding policy prohibited discussion of the highly relevant option of abortion for pregnant women. It clearly violated their right to informed voluntary consent and was a serious intrusion by the state into doctor-patient relationships. In the 1976 *Planned Parenthood v. Danforth* case, the Supreme Court insisted that the abortion decision must be made “with full knowledge of its nature and consequences,” and that “it is imperative that a woman be advised of the options available, and the physical and psychological ramifications of choosing a particular course of action” (Supreme Court, 1976). Thus, the right to an abortion, which presupposes informed voluntary consent, itself requires access to adequate medical information about abortions. Unless relevant counseling is given, physicians working with pregnant women commit malpractice and are open to being sued (Bullis, 1992). Of course, both abortion and adoption are highly relevant options for pregnant women; but informing women about one of these does not preclude informing them about the other.

C. Arguments for Public Funding of Abortions for the Poor

The Right to Societal Protection from Serious Harm

This right (including harm to physical and mental health) is widely recognized and acted upon by our society. *Roe v. Wade* recognized a societal duty to protect the health of a pregnant woman during the second trimester of pregnancy. The main purpose of most moral and legal rights is to protect individuals from harm. During the 1980s, federally mandated ignorance effectively denied women the right to avoid the harms that befall them when forced by the state to have unwanted children. Also, poverty effectively denies many women this right.

To this, a seemingly powerful objection may be raised, however. The objection concedes that poverty may deny women effective access to many other rights that protect from harms, such as the right to read whatever they wish (as long as it is not blatantly pornographic—whatever that is), and thus to avoid the evils of and consequent upon ignorance; but surely it does not follow that the state should buy books and magazines for poor women with public funds. Again, poverty may deprive poor women of their right to own a car, something desperately needed to make a living and raise themselves out of the evils of poverty; but surely government has no legal or moral obligation to buy cars for poor people. Is the right to an abortion significantly different from the right to read or to own a car essential for work? Are not rights to read and to necessary transportation essentially negative rights, meaning that society should not prevent their exercise, but not affirmative rights requiring society to provide the benefits of those rights?

Consider first the reading analogy. Yes, there are extremely important differences between effective access to books and magazines and effective access to abortions. For one thing, reading materials are relatively inexpensive and are readily available from many sources such as friends, relatives, or public libraries financed by taxpayers' dollars. By contrast, abortions are prohibitively expensive for impoverished women. They are not readily available from family and friends; but lack of access may drive poor women to cut rate "back alley" strategies, as they did before 1973. More importantly, no public institutions may provide poor women with abortions (except for rape, incest, and to save their lives) under political policies presently supported by a majority of members of Congress; but public libraries are readily available to supply poor women with books and magazines.

Something similar is true of access to transportation, at least in most urban environments. Not having a car for work purposes is more immediately burdensome economically than not having access to books and magazines (assuming that adequate education and training already exist). However, our society recognizes this and spends billions of taxpayers' dollars at federal, state,

and local levels on public transportation systems so that poor people (and anyone else) may get to work. Denying funds for abortions is like taking away all funds for libraries and public transportation. There are no explicit constitutional guarantees of access to libraries, public schools, public transportation, or abortions; but we often recognize moral and legal rights that are not expressly mentioned in the Constitution; and the 9th Amendment insists upon it.

Where lack of access to benefits essential for worthwhile living is sufficiently burdensome, we usually try to provide these benefits to poor people. Because we believe that they have moral rights to these benefits, we convert them into legal rights. Medicare, Medicaid, and universal health care coverage, for example, are supported by an overwhelming majority of the American people—even if most do not want to bite the bullet and pay the bills. Actually, we are already paying in indirect and inefficient ways for basic health care coverage for poor people who are not eligible for Medicaid. Taxpayers directly subsidize emergency room services, psychiatric hospitals, and mental health centers for the poor; and hospitals pass along the costs of indigent medical care to paying clients, including insurance companies, and to us, their customers. Conscience will not let us turn all poor people away from emergency rooms and other sources of health care just because they cannot pay. Most of us acknowledge that untreated illness and injury can be too burdensome to bear, and that but for the grace of God, we could be in indigents' shoes. Also, but for the grace of God, we could be poor and pregnant. Denial of effective access to abortions is extremely burdensome to poor women, just as complete denial of access to all basic health care would be.

For poor women, having unwanted children is excessively burdensome physically, socially, emotionally, and economically. Affluent women who are ineligible for Medicaid readily appreciate these burdens, for they themselves have abortions to avoid them. If having an unwanted child caused no grave hardships, affluent women would have no abortions. Yet, they do.

Studies show that most women have abortions for more than one reason. The most prevalent are: having a baby would interfere with work, school, or other responsibilities; women could not afford to have a child, or they do not want to be a single parent; they are unready for the responsibility of parenthood; they do not want others to know that they have had sex or are pregnant; they have all the children they want, or they have grown-up children; their husbands or partners want them to have abortions; the fetuses have serious health problems and birth defects; the women have serious health problems; or they are victims of rape or incest (Torres and Forrest, 1988).

In his dissenting opinion on the *Beal V. Doe* case in 1977, Justice Thurgood Marshall wrote that:

An unwanted child may be disruptive and destructive of the life of any woman, but the impact is felt most by those too poor to ameliorate those effects. If funds for an abortion are unavailable, a poor woman may feel that she is forced to obtain an illegal abortion that poses a serious threat to her health and even her life. . . . If she refuses to take this risk, and undergoes the pain and danger of state-financed pregnancy and childbirth, she may well give up all chance of escaping the cycle of poverty. Absent day-care facilities, she will be forced into full-time childcare for years to come; she will be unable to work so that her family can break out of the welfare system or the lowest income brackets. If she already has children, another infant to feed and clothe may well stretch [her] budget past the breaking point. All chance to control the direction of her own life will have been lost (Hebert, 1990).

Obviously, the burdens of unwanted pregnancy and children are greatly compounded in instances of rape or incest. President Bush understood this; but he believed that poor women should bear such burdens, while rich women need not, because aiding poor victims of rape or incest only adds evils to evils. Before being chosen as Ronald Reagan's running mate in 1980, George Bush was a moderate on the abortion issue; but as Vice President he adopted the conservative agenda and supported the legality of abortion only if the woman's life was endangered, and for pregnancy resulting from rape or incest. He openly disagreed with President Reagan, who consistently refused to make exceptions for rape or incest and who argued that the rape exception in California "literally led to abortion on demand on the plea of rape" (Daynes and Tatlovich, 1992). Reagan here showed himself to be out of touch with reality; studies show that only about 2% of rape victims give false reports of rape—a rate comparable to lying about other crimes (Strickland, 1992). In 1989, an even more conservative President Bush vetoed a bill that would have expanded abortion funding to cover rape and incest in the District of Columbia (Corns, 1991); and in 1992, he ran on a Republican platform that would have abolished all abortions—no exceptions (McGurn, 1993). So did Bob Dole in 1996, but not without protest.

Contrary to former President Bush, the failure to assist poor women who want abortions intensifies moral evil by failing to prevent immense personal hardship for poor women. Not providing poor women with the means to avoid unwanted babies is comparable in its negative impact to not providing any publicly funded education to children in poor families, or to denying all medical care for indigents. Formal justice requires that persons in relevantly similar circumstances should be treated in similar ways and that they be treated differently only where there are important relevant differences. With respect to burdens imposed by unwanted children, relevant differences between poor and affluent women are not equal; the physical, psychological, economic, and social burdens on the poor are much more severe. This should entitle them to much greater consideration.

Of course, our society could do much more to lessen the burdens of pregnancy for poor women and tip the balance for some women from unwanted to wanted pregnancy. We could provide poor women with day care services and job training; and we could significantly increase stipends for child support. However, these and other ways of bolstering “family values” would require increased taxes and “big government,” both repudiated by most of today’s conservatives.

We all know that children from poor families greatly need and want education and will be irreparably harmed unless more affluent members of society provide it to them. That we do not prohibit poor people from educating their children at their own expense is not enough, for we know that the job would not be done that way. We should also recognize that both poor and prosperous women would be seriously harmed if forced to have unwanted children, the former by lack of knowledge or means, the latter if we again adopt repressive laws like those which prevailed before 1973. This seems to be likely under the Republican controlled congress that assumed power in January of 1995 and will dominate the congress of 1997. If repressive laws that would force affluent as well as poor women to have unwanted children are morally unacceptable, then being forced by ignorance and poverty to have unwanted children is also morally unacceptable. Poor women can afford to pay neither for much needed and wanted counseling and abortions nor for the education of their wanted children. Wealthier taxpayers must pay these bills. That only the well-to-do should have effective access to abortions is just as detrimental as that they alone should have effective access to education. Noting that most but not all legal rights are negative, Lawrence Tribe compares government’s refusal to fund abortions with refusing to spend taxpayer’s dollars to provide legal counsel to the poor, or to end slavery (Tribe, 1985).

The Right to Distributive Justice

This provides one of the strongest moral reasons for making publicly funded abortions available to poor women. Distributive justice prescribes that the rights, benefits, and burdens of society should be fairly allocated. It is unjust, unfair, that affluent women should have effective access to abortions and that poor women should not. The formal legal right to abortion is empty, ineffective, and worthless to any woman who lacks the funds to pay for it and who is constrained by poverty to have unwanted children. As John Rawls contends, while it is important that distributive justice provide formal assurances that persons will have the liberty to advance their basic ends, it is also essential that these liberties have equal practical worth for all (Rawls, 1971). If our laws provide equal protection for all against great harm, then they should provide the means to abortions for poor women who want them. Former Senator Birch Bayh was right: “A right without the ability to use it is absolutely worthless”

(Hebert, 1990). Poverty and mandated ignorance deny poor women equal protection under the law and make it impossible for them to avoid the excessive burdens imposed by unwanted pregnancy and children.

In 1973, the majority of Supreme Court justices ruled in the *Doe v. Bolton* decision that it is no more discriminatory for the state to refuse funding for abortions to the poor than it is to refuse to pay for the education of children in private schools, while funding public schools. But analogies can be very deceptive; and as George J. Annas notes: "This analogy is...misleading. A pregnant woman desiring an abortion does not have the choice between a "free" one at a public hospital and a "paid" one in a private hospital. Her choice is between trying to raise the money for an abortion, legal or illegal, or having her child" (Annas, 1988). Justice Brennan, dissenting in the *Doe v. Bolton* case, remarked that "This disparity in funding by the State clearly operates to coerce indigent pregnant women to bear children they would not otherwise choose to have, and just as clearly, this coercion can only operate on the poor, who are uniquely the victims of this form of financial pressure." Despite the ruling of the majority of Justices, Annas contends, not funding abortions for the poor clearly violates the equal protection standard, and "Since the opinion affects only the rights of the poor and minorities, the case can be read as saying that the majority of the United States Supreme Court believes that the rights of this group are less worthy of protection than the rights of the economically advantaged" (Annas, 1988). All violations of equal protection under the law are unjust.

Some theories of justice impose only purely formal and negative obligations not to interfere with equal rights to life, liberty, security, property, privacy, education, opportunity, and so on. A narrow libertarian view of justice requires only that we abstain from depriving persons of such essential goods, but it sees no injustice in failing to provide the means to them. According to this Libertarian view, justice requires only that we not kill others unjustifiably, but no injustice is done if we let them starve to death. Libertarian justice requires that we not prevent parents from educating their children if they can afford it, but no injustice is done if we fail to provide public education to children of either the rich or the poor. Justice requires that we not deprive others of the means to obtain food, shelter, medical care, and other essential goods necessary to meet their basic needs and avoid great harms, but it involves no affirmative duty to supply these benefits at public expense.

Most thoughtful Americans recognize that injustice may be done by omission as well as commission, that society as prosperous as ours cannot allow the truly needy to starve, to be homeless, or to lack basic medical care and the means to meet their basic needs and avoid great personal harms. Much more than mere self-interest underlies the attraction of universal health care coverage and social safety nets like Social Security and welfare programs. We may sincerely disagree about who is truly needy, about how far basic needs

extend, and about the cost-effectiveness of social programs; but most reflective persons do not resent helping others in great need in the name of justice, to say nothing of compassion. Compassion as well as justice would do at least as much; and many if not most of us are both compassionate and fair-minded.

James Sterba contends that all prominent contemporary theories of justice (including the libertarian, to its own surprise) require societies to provide their members with the means necessary to avoid great personal harms and meet basic needs (Sterba, 1988). Sterba claims that it is unreasonable to expect poor people to sit idly by and suffer great personal harms without taking matters into their own hands, and that all prominent theories of justice, including the libertarian, must concede this much.

Poor women who are desperate to avoid unwanted children react to their predicament in a variety of ways. Around five percent of them have cheaper but extremely unsafe and life-threatening self-induced or illegal abortions (Corns, 1991), as many women did before 1973. According to Rodman, Sarvis, and Bonar, when abortions were illegal,

Blacks and the poor turned disproportionately to nonmedical, unskilled abortionists for dangerous and illegal abortions. This led to higher rates of maternal mortality due to abortion. . . . The black maternal mortality rate for abortion, between the years 1940 and 1970, ranged from about 2.4 times to 9 times higher than the white rate (Rodman, Sarvis, and Bonar, 1987.

Between 18% and 38% of women eligible for Medicaid carry their unwanted pregnancies to term (Corns, 1991). Most poor women eventually get a legal abortion after a delay of from two to three weeks, which usually makes the abortion much more expensive and, as Carol Corns indicates, “could have serious physical consequences for the pregnant woman” (Corns, 1991). According to Corns,

almost half (44%) of the indigent women surveyed financed their abortions at least in part with money intended for basic living expenses (food, clothing, and shelter), incurring personal and family hardships as a result of their decisions. The cost of an abortion at the clinic used in the study averaged 66% of the indigent women’s monthly household income after rental payments (Corns, 1991).

Corns does not say where the others get their money for safe legal abortions; but according to Mary C. Segers,

Some indigent women are able to secure abortions at reduced charges from doctors, clinics, and some hospitals. . . . Still other women attempt to raise funds for abortions, with varying results. Some of these women spend so much time trying to gather the funds that by the time they have the desired abortion, they are in the second trimester of pregnancy and the abortion is much more complicated and expensive (Segers, 1980).

Doubtless, some of the money comes from friends or relatives; but much of it may come from resorting to desperate measures like selling drugs or engaging in theft or prostitution. Some women still resort to unsafe "back alley" abortions, or to self-abortions. In March, 1994, a woman in Florida shot herself in the stomach after being denied public funding for an abortion. She was later charged with murder because the severely wounded fetus lived for a few days after being removed (Raspberry, 1994).

Income available to indigent women comes in most cases from the federal government through welfare programs. Most money for legal abortions for the poor comes from this source. Corns explains that "an abortion typically costs about two-thirds of her monthly welfare payment" (Corns, 1991). So, taxpayers are actually paying (indirectly) for abortions after all! If conservative taxpayers really want to insure that *no* public funds are used for abortions, they must cut off *all* welfare payments to pregnant women and their already existing children. Are they, are we, really willing to go that far? To what extremes would impoverished women then resort? Is not public funding for abortions for the poor the lesser of all these evils?

III. SUMMARY

Basic human rights to freedom of speech, informed consent, protection from great harm, justice, and equal protection under the law, strongly support public funding of abortion counseling and abortions for poor women. Commonplace economic, ethico-religious, anti-racist, and logical objections to these policies are quite weak. Thus, refusing to provide abortions at public expense for women who cannot afford them is morally unacceptable and rationally unjustifiable, despite the opinions of former Presidents Reagan and Bush, the more conservative members of the Supreme Court of the United States, the current Congress, and the majority of the American people.

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