Photo: Cathy Rasmey

of reducing the number of abortions, not outlawing them as unjust in themselves. Just as drunkenness, which is immoral, ought not be legislated against because of its immorality, but only because of the consequences which impose an intolerable and unjust burden on society, so too with abortion, if it is considered exclusively or primarily as an immorality. The purpose of regulating and restricting drunkenness is to reduce the quantity of consequences imposing an unjust burden on society. So, too, with abortion regulations. Their end would be a reduction in the "number" of abortions in order to reduce possible violation of the interests of "interested" parties. Thus, as Bernardin argues, what will happen to the old if we allow abortions to continue? Or, as others have argued, abortion might kill or already might have killed the discoverer of AIDS. The society, and not the victim of abortion, is the center of attention.

A third conclusion of abortion considered as a moral and religious issue is to relegate it to the Church and the Church to the "private" sphere, thereby in fact excluding the unborn child from the public sphere of justice. The catchy slogan, "Keep your rosaries out of our ovaries" is in its own way an eloquent and pithy summary of the principle. The demand for the separation of Church and State seems justified in as much as the care for the moral condition of the agent of abortion is not something that can be demanded of the state. With such a demand, however, the right to life of the victim is further removed from the Constitution, its proper place in the civil order. Once again, with Governor Cuomo, one has absolved the "sinner" in advance and ignored the victim of injustice.

The pro-choice bias at work

How does Weigel's and Kristol's justification of their proposal to the Republican Party reflect the bias dictated by the "pro-choice" position? There are several diagnostic keys.

THE DEMAND FOR THE SEPARATION OF CHURCH AND STATE SEEMS JUSTIFIED IN AS MUCH AS THE CARE FOR THE MORAL CONDITION OF THE AGENT OF ABORTION IS NOT SOMETHING THAT CAN BE DEMANDED OF THE STATE.

Abandoning the right to life

1. Perhaps the first and most important clue is their remarks on the language of "rights." They are quite correct in that the "rights talk" of our age has absolutized rights in a historically unprecedented way. Yet they are ambiguous in saying that "our principled moral defense of the right to life has to be complemented by a new political emphasis on responsibilities. . ." in building an America in which "every unborn child is protected in law and welcomed in life." The insistence on responsibilities should, in their minds, cut the ground out from under the feet of the opposition which is happy to fight on grounds of a "clash of rights." But the "language of responsibility" [e.g., the moral responsibility to not get drunk] can leave us without a leg to stand on, for there are responsibilities which are not grounded in the rights of another. Nor is the "language of protection" clear, for as we have seen, some want a "compassionate" America in which spotted owls and snail darters are also "protected." It is imperative to ground any protection of the unborn in justice, and that means in their right to life. Weigel and Kristol talk of both the inalienable right to life and of justice in their essay, but when most needed, this language abandons them. If the unborn really have an "inalienable right to life," then it is senseless to speak of a "clash or rights," as if the other side had any ground to stand on. For there can be no clash of rights between the right of an unborn human being and some other "rights," only a clash between a right to life and the will do deny it for whatever reason. Shifting simply to the language of responsibilities, concedes what the other side claims as rights and appeals simply to the high sense of a culture which protects and welcomes life.

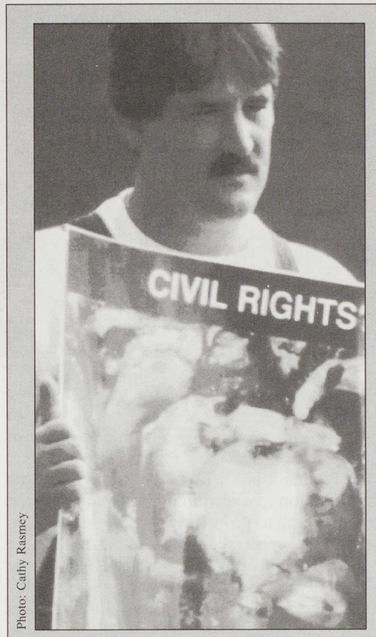
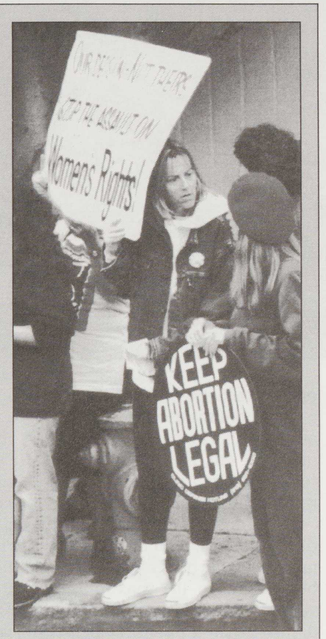


Photo: Cathy Rasmey

THERE CAN BE NO "CLASH" BETWEEN AUTHENTIC RIGHTS. THERE CAN, INDEED, BE A CLASH OF CLAIMS. . . THE PROPER RESPONSE IS TO DENY THE UNJUST CLAIM AND TO AFFIRM THE AUTHENTIC RIGHT.



Why protect and welcome life? Here too, the just claim to life, i.e., the right to life of the victim may go ignored. In fact there can be no "clash" between authentic rights. There can, indeed, be a clash of *claims*. The legal positivism of modern culture has redefined every *claim* as a right. The proper response is to deny the unjust claim and to affirm the authentic right. But as Dworkin has noted, the "pro-life" side often uses the rhetoric of "rights" but abandons it in practice.

The shift to "responsibilities" has practical consequences. It allows "responsibilities" to be restricted to the moral sphere where they become a reminder and an invitation to the formation of a kinder and gentler society. It becomes an appeal to those who want to join us in the formation of a compassionate America. And it may forbid the recourse to force, even the kind of force implied in legislative sanctions.

Regulating the abortion industry

2. A second important indicator of the operative premise (reflecting the bias dictated by the "pro-choice" position) in Weigel's and Kristol's position is the proposal to "regulate the $500-million-a-year abortion industry." Later in their essay they say, "We have no doubt that the unborn child has an inalienable right to life." As noted above, they propose going beyond "rights talk" to an emphasis on "responsibilities." But it seems that even the affirmation of an "inalienable right to life" plays no role in their proposal and their arguments. For if there really is a inalienable right to life, and if we have no doubts about it, how can one regulate an industry that takes that life? Is it permissible to regulate something that is intrinsically unjust? The very willingness to regulate an activity is a concession of a right to that activity.

Dworkin was absolutely right. The "pro-life" side has become involved in, and the Weigel-Kristol proposal calls for, a commitment to an activity that in practice recognizes a right to abortion, however much it may deny one in theory.

What if the regulations of "informed consent" and "parental consent" are fulfilled? A commitment to regulation implies a commitment to legislative protection for the woman and "her abortionist."

Respectable alternatives

3. A third key to understanding the encroachment of "pro-choice" premises into "pro-life" thought is the use of the language of "alternatives." Weigel's and Kristol's proposal "urges that alternatives to abortion be made more widely available." And, the proposal commends the "pro-life" movement for its "voluntary activism to provide alternatives to abortion."

One of the marks of contemporary culture is the prevalence of a moral relativism. Homosexuality is an "alternative" lifestyle. Abortion is a "choice." Immoral and unjust behavior cannot objectively be an alternative choice as compared with moral and just behavior. The libertine culture of the age neutralizes the dimension of morality and justice simply by insisting on the language of alternatives and choice. When the "pro-life" rhetoric accepts the same language, it concedes legitimacy to each of the "alternatives" presented for "choice." Abortion is an alternative; pro-lifers simply have to provide other alternatives.

The injustice to the victim of abortion is masked by the language of alternatives, especially since what is recommended is "voluntary activism to provide alternatives." But this is the very thing that the ''pro-choice" forces insist on: voluntary activism providing alternatives rather than legal constraint eliminating choices. The Weigel-Kristol proposal is hardly a challenge, much less an intellectually vigorous challenge to the moral relativism espoused by the opposition. It appears, rather, to be a capitulation. Regardless of the rhetoric of an America in which "every unborn child is protected in law and welcomed in life," it appears that every unborn child is indeed a "choice," simply an "alternative."

Curbing abortions

4. The somewhat less than rigorous consistency with the rhetoric of "every unborn child protected by law" is shown by the proposal's call to "curb the incidence of abortion." The proposal ends with the ex-