

PHILOSOPHY



**Defining Life**  
by Steven Goldberg

The morality of abortion is entirely a matter of definition: is the fetus a person or not? The definition—whether derived from millennia of religious tradition or from individual analysis and subjective choice—both generates and justifies the intense emotions that are given free rein when fact is irrelevant.

There is no logical or empirical way to demonstrate the superiority of either definition, that of the fetus as a person or as a nonperson. Nor is there any way to demonstrate the superiority of either of the impulses that lie behind them—a tradition-rooted identification with the fetus; or an identification with the pregnant woman, defended analytically and pragmatically. These differences manifest themselves in different premises, each of which is both impervious to attack and incapable of logically or scientifically persuading the other side. Nonetheless, once you accept one of the definitions, you are committed to a specific position on the permissibility of abortion.

Let us assume that no one is willing to argue for the routine killing of normal, innocent persons. Then, if the fetus is defined as a person, there is nothing more to say. Abortion, so defined, is an extermination of persons, one that would (morally, though per-

haps not legally) justify almost any response capable of stopping a massacre.

If, on the other hand, the fetus is defined as a nonperson, there is nothing more to say. Abortion, so defined, is a purely personal act that would (morally, though perhaps not legally) justify almost any response capable of stopping an intolerable intrusion on personal freedom.

The various attempts to get around the problem of definition all fail on the grounds of irrelevance. If the law defines the fetus as a person, then a law outlawing abortion is no more a law codifying “a matter of religion” than is the law against murder the same as “Thou shalt not kill.” From a legal viewpoint, an act is “a matter of religion” only to the extent that it is not a “matter of law.”

A law outlawing abortion is no more a law against a private decision than is a law preventing a slaveholder from defining a black man as a nonperson one against a “private decision” of the slaveholder; a decision is “a private decision” or “a matter of conscience” only to the extent that it is legal.

Of course, a “legal illegality” is a contradiction in terms, whether the supposed mitigating consideration be privacy or conscience. An act can, of course, be moral but illegal, but the act cannot be defended in terms of legality. This is true even when, as in the cases of conscientious objectors, and rape victims who want an abortion, the law recognizes exceptions. To the extent that the law recognizes an exception, there is no conflict; to the extent that the law does not recognize an exception, the law cannot, by definition, recognize the exception.

A law against abortion is not a legal infringement of “a woman’s right to her own body” because an abortion law recognizes no such right; if it did it would be a self-negating law. Moreover, even on a moral level, the concept of “a woman’s right to her own body” is merely obfuscatory; assuming that the right of normal, innocent persons to live takes precedence over

any noncapital right, “a woman’s right to her own body” supposes the fetus to be a nonperson, in which case neither “a woman’s right to her own body” nor any other justification for abortion is required.

The mutilation of pregnant women and other horrors associated with illegal abortion are capable of nauseating anyone worthy of being called “human”; they are not, however, capable of justifying abortion when the fetus is defined as a person. For—assuming the easily-demonstrated fact that the total of women and fetuses killed when abortion is legal is far greater than when abortion is illegal—even the horrors of illegal abortion cannot justify what is, to one who defines the fetus as a person, murder on a much greater scale.

There are many powerful, pragmatic arguments for the legalization of abortion (for example, those concerned with overpopulation). Howev-

**THE CHILD ABUSE  
'CRISIS':**

**FORGOTTEN FACTS AND  
HIDDEN AGENDAS**

An air clearing analysis of one of the most misunderstood and controversial issues facing Americans today.

Send for a copy(s) of this remarkable report by sending this coupon and \$2.50 each (includes postage & handling) to: Special Issue Offer, The Rockford Institute Center on The Family in America \* 934 North Main Street \* Rockford, IL 61103.

**SPECIAL ISSUE ORDER FORM**

Enclosed is \$ \_\_\_\_\_ for \_\_\_\_\_ copies of The Child Abuse 'Crisis'

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

The Rockford Institute Center on The Family in America  
934 North Main Street \* Rockford, IL 61103

4/89

er, even these are incapable of overcoming the problem of definition; to one who defines the fetus as a person, pragmatic considerations no more justify abortion than they justify infanticide. To one who defines the fetus as nonhuman, no moral justification is needed. Incidentally, it is not true that legalization of abortion would be less complicated if only those intimately involved—i.e., women—were to decide the issue. The overwhelming number of surveys on abortion indicate either that men favor legalization *more*, or that there is no statistical difference in the attitudes of the sexes. Indeed, this is what one would expect if one is guided by observation, rather than ideology; when an unmarried woman gets pregnant, more often it is her sexual partner who wants her to get an abortion. But even if women did favor abortion more strongly, this would be irrelevant to the validity of any argument or position.

One wishes that science could help solve the moral and legal questions. But it is in the nature of science and of moral and legal questions that science cannot help here. Science can (to an extent) determine the empirical properties of the fetus: at what age brain activity begins, at what point sentience becomes possible, when the fetus can survive if removed from the pregnant woman, and the like. But science cannot comment on whether any given property meets the (inherently subjective) definition of person. If one person believes that being a “person” begins at conception, another when brain activity begins, a third at the point of sentience, and a fourth with the capability of independent survival, of what use is scientific evidence?

No one likes the fact that the most important of all moral issues is unsolvable. But whatever one might like or dislike, all moral questions are, like this one, unsolvable once one has cleared away all fallacy and error, exposing the root subjective disagreement of emotions and values and the difference of definition they generate. The question of abortion cannot be solved. It can merely be settled, by force or by its modern equivalent—democratic vote.

*Steven Goldberg is a professor of philosophy at City College, New York.*

## LAW



Jeannie Berg

## Crime and Capital Punishment

by Betsy Clarke

“Missouri doesn’t have a death penalty,” a former prosecutor remarked to me last Christmas. He was wrong, as he well knew. The Revised Statutes of Missouri specifically allow for capital punishment. But as a practical matter, the man was right. At the time he spoke, Missouri had not put a person to death since 1965, even though around 65 persons reside on the state’s death row. In January, however, George “Tiny” Mercer came to rest at last on a gurney in the nondescript surroundings of a Jefferson City prison. He was the first person this state has executed by lethal injection, and the first person Missouri has executed in

more than 20 years. Mercer had survived on death row for almost a decade. Prison officials had prepared to execute certain inmates four other times between October and January, to no avail; the rest of the condemned have managed to stay alive with strategically filed appeals, writs, motions, and so forth.

Pro-death penalty forces may reasonably wonder what the point is of bothering with death penalty statutes. Execution is too infrequent to be a deterrent to others, and too distant from the crime itself to seem retributive or principled. Only 11 criminals were executed in 1988, though more than two thousand are condemned to death. Furthermore, US Supreme Court decisions indicate the situation will not change.

Nonetheless, these statutes have benefits that are often overlooked—benefits that even anti-death penalty partisans should acknowledge. These statutes streamline the administration of justice and keep dangerous criminals off the streets longer than would be likely without them. The reason? Death statutes encourage guilty pleas and other deals. Though casual with the lives of others, murderers have a great fear for their own. Therefore, they sometimes plead guilty to the most serious charges to save their lives. Just recently, Robert Berdella, a homosexual mass murderer in Kansas City, pleaded guilty to six homicides in exchange for his life. He will never be paroled. Another Missourian pleaded guilty to two murders to avoid his execution, and received life in prison without parole as well. Both plea bargains were reached under the specter

## LIBERAL ARTS

### ON PUNISHMENT

As he went through Cold-Bath Fields he saw  
a solitary cell;  
And the Devil was pleased, for it gave him a hint  
for improving his prisons in Hell  
—Samuel Taylor Coleridge

Men are not hang’d for stealing horses, but that horses may not  
be stolen. Whenever a knave is not punished, an honest man is  
laughed at.

—Halifax