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IS ABORTION A RELIGIOUS ISSUE? AND WHAT IF IT IS?

Christianity, which has rendered all men equal before God, will not be loath to see all citizens equal before the law. But by a strange concurrence of events, religion finds itself enlisted for the moment among the powers democracy is overturning, and it is often brought to reject the equality it loves and to curse freedom as an adversary, whereas by taking it by hand, it could sanctify its efforts.

Alexis de Tocqueville, *Democracy in America*

The purpose of this article is to examine whether abortion may be regarded as a religious issue, and what legal and political effects it creates under the American constitutional system assuming that it may be regarded that way. By asking if abortion is a religious issue I mean the following problem: are attitudes toward abortion shaped exclusively by religious convictions? That question certainly occurs on the one side of the abortion debate, namely among those who believe abortion should not be a lawful practice. Putting the question in this way still does not make it clear enough, as one may ask about the factor deciding if abortion *really* is a religious issue: is it the proportion of people drawing the conclusion as to the improperness of abortion from religious beliefs among all those who are convinced that abortion should not be a lawful practice, or is it the lack of some final conclusive argument against abortion (or general ignorance about the existence of such an argument among pro-life sympathizers) that is not dependent on religious beliefs?

The popular assumption is that people absolutely excluding abortion as a lawful method are overwhelmingly informed by their religious beliefs. That may

be true. But this conviction often goes further, to the point that there is no way of proving the humanity of an (early) fetus apart from drawing conclusions from religious beliefs. As one such statement explains: "most pro-life activists would concede that the fetus, especially in the early stages of its development, is not *self-evidently* (I repeat: not *self-evidently*) a human person; that there very well may be an element of religious belief that informs their conviction that human life begins at the moment of conception"[1]. That may also be true. But does it necessarily indicate that one *cannot* prove the humanity of the (early) fetus apart from through religious arguments? I intend to show that there is no necessary dependence of the pro-life argument on religious beliefs.

Is abortion a religious issue?

Of course, I am not the first person to attempt to prove this. Vast scientific evidence exists showing that the human embryo is not only a human being but also a human person (or just human[2]), and I will rely on this. The ignorance, prevalent in the times when the constitutionality of abortion was decided on by the Supreme Court and for many years later, about the physical nature of the (early) fetus, is today no longer so widespread. Most people realize that the (early) fetus is something more than "a collection of cells"[3]; however, even today some pro-choice advocates repeat that argument. All the same, most Americans accept abortion under some circumstances[4] . These circumstances are very different and do not allow those Americans to be ascribed to one, unitary category. Nonetheless, the quantity of people convinced that the fetus does not deserve the same legal protection as people already born is enormous. There certainly is a commonly shared conviction that there exists some *essential* difference between already-born and not-yet-born human beings. The possibility of such a difference existing shall be scrutinized here.

In order to understand the pro-life position with regard to the beginning of life one must properly grasp the process that happens during fertilization, when the sperm and ovum cease to be and create a *distinct* organism with its own process of growth and development. That process includes the lining up of the maternal and paternal chromosomes at syngamy. The gametic cells are oriented toward *uniting* with each other, and their life expectancy is very short. In contrast, the new entity they create by combining with each other, an embryo, is a comple-

[1] J. K. Fitzpatrick, *A Pro-Life Loss of Nerve*, "First Things", December 2000, p. 35 [original emphasis].

[2] I owe to Professor John Ray of Xavier University the observation that "human person" is a pleonasm surprisingly often repeated by Catholics, who usually believe that every human *is* a "person".

[3] For the first time in history most Americans in a Gallup poll identified themselves as "pro-life" on the issue of abortion.

[4] According to the same poll. 23% of Americans questioned in the same poll said that abortion should be legal under any circumstances, 22% were of the exact opposite opinion.

tely new *self-sustaining* organism with a *unique* genetic code and life expectancy in the order of decades[5]. The fertilization process thus marks the creation of a new human life.

The human embryo is certainly a member of the human species, thus it is human being. Three factors are conclusive here. First, the embryo is from the very beginning of its life distinct from any cell of its mother or father. Second, it possesses the characteristic genetic makeup of a human being. Third, it is a complete organism, yet one whose many functions are not yet developed. "Unless severely damaged or denied or deprived of a suitable environment, an embryonic human being will, by directing its own integral organic functioning, develop himself or herself to the next more mature developmental stage, i.e., the fetal stage. The embryonic, fetal, child, and adolescent stages *are just that* – stages in the development of a determinate and enduring entity – a human being – who comes into existence as a single-celled organism (a zygote) and develops, if all goes well, into adulthood many years later"[6].

The above argument may be supported by the metaphysical argument about the nature of the (human) organism. There is an ontological priority of the (human) organism over its constituent parts. "The organs and parts of the organism, and their role in actualizing the intrinsic, basic capacities of the whole, acquire their purpose *because* of their role in maintaining, sustaining, and perfecting the *being as a whole*. This is in contrast to a thing that is not ontologically prior to its parts, like an automobile, cruise ship, or computer". Thus organisms "may lose and gain parts, and yet remain the same thing over time"[7]. This helps us to grasp the distinct ways humans (organisms) and things come to be. If things may change their nature by losing their parts, this means that in order for them to come to be, all (or at least the essential) parts must be combined with each other. That is an *artificial* process. By contrast, humans (organisms) come to be at the very beginning of their existence[8].

Still, many will not be convinced that this is so simple. They look at the embryo (or imagine it) and do not see the *human* in it. However, "the question is not what the organism looks like, but what it *is*"[9]. When deciding about the lawfulness of abortion many people do not really ask themselves the question about the *nature* (*essence*) of the fetus, but rather listen to some prejudices or erroneous judgments that can easily be refuted. One popular position is that an embryo cannot be regarded as a new human being until the point at which it is implanted in the wall of the uterus. Up to that point many embryos die without the action of other people. But the mere fact that people die more often at a particular stage of their development

[5] See: R. P. George, C. Tollefsen, *Embryo. A Defense of Human Life*, New York 2008, p. 38–42.

[6] *Ibidem*, p. 50–51 [original emphasis]. For further comments see: *ibidem*, p. 119–122.

[7] F. J. Beckwith, *Defending Life. A Moral and Legal Case Against Abortion Choice*, New York 2007, p. 50 [original emphasis].

[8] *Ibidem*, p. 134.

[9] H. Arkes, *First Things. An Inquiry into the First Principles of Moral and Justice*, Princeton 1986, p. 364 [emphasis added].

does not mean that they are less human or deserve less protection. What's more, many of these entities dying during the first week are *not* really embryos (new human beings) because the process of lining up of gametes went wrong (the new entity does not have all three features that are conclusive for human nature) and the mother's organism resolves that "problem" just by preventing them from further development. That and many other inconsistencies[10] in the pro-choice way of thinking create very weak arguments to support the thesis that there is an essential difference between the embryo/fetus and adult humans.

A much more profound reason for rejecting the strong legal protection of every human being is to be found in the conviction that only human beings that possess "consciousness" are "people", therefore deserve full legal protection. That argument is itself feeble and potentially dangerous – if "consciousness" is to be understood as self-awareness of acts performed by every being, many children and even some adults would have to be regarded as lacking that feature and therefore as non-people[11]. But the roots of such a position reach much deeper to the dualist philosophy of Plato, Descartes and Locke, separating the soul or mind from the body. According to that position the bodily unit is only a kind of career for a *true self* that is to be found in a spirituous entity. But there are some serious problems with the dualist position, pointed out excellently by George and Tollefsen. First of all, it is a counter-commonsense experience making us think that we are unitary beings. But much tougher arguments against dualism can be found. First, the subject of mental acts and that of bodily acts are the same entity. Second, "any view that conceives of the person as an entity separate from the biological organism requires deeply problematic metaphysical claims in describing what the relationship is between the two substances, one organic, one personal". Third, dualism is incoherent because a person trying to argue from a dualist position has nothing stable to assert it to be true of. The correct position, according to George and Tollefsen, is animalism, the view that we are both bodily and personal units and it is not logically possible to separate these two realities from each other. There is no space here to develop that argument in more detail, but one may easily find it in the book by the two above-mentioned authors[12].

This short abstract of the dispute between animalists and dualists introduces us to a much more fundamental dispute: between partisans of ethics based on natural law and partisans of utilitarian and consequentialist ethics. These two modern kinds of ethics avoid the question of what the (early) fetus really is and assume that "the principle of equality requires that the suffering be counted equally with the like suffering – insofar as rough comparisons can be made – of any other being"[13]. Since (early) fetuses are not capable of suffering and developed humans are, utilitarian

[10] *Ibidem*, pp. 406–410.

[11] *Ibidem*, p. 374.

[12] See: R. P. George, C. Tollefsen, *op. cit*., p. 57–82.

[13] P. Singer, *Practical Ethics*, Cambridge 1993, p. 57.

and consequentionalist ethics require that entities that are not capable of suffering be sacrificed for the good of those who are. That includes not only abortion but also embryo experimentation. But this kind of ethics cannot be reconciled with modern political morality based on human rights and dignity of every person, "for it treats the greater good, a mere aggregate of all the interests or pleasures or preferences of individuals, as the good of supreme worth and value, and demands that nothing stand in the way of its pursuit. The utilitarian thus cannot believe, except as a convenient fiction, in human rights, or in action that may never be done to people, regardless of the consequences"[14].

In contrast natural law ethics is founded on the assumption that "human fulfillment – the human good – [is] variegated"[15]. The human nature is too complex to fit in one simple utilitarian model of pursuing happiness or pleasure as summed among all people. Humans are animals, but rational animals. They are individuals, but also social. All of that is not present in utilitarian thought. In the theory of natural law, the question of the nature of entities is the central one. And if the nature (essence) of adults and (early) fetuses is the same then natural equality requires that they have the same *natural* rights. And "if we remove natural rights, we would convert all rights into rights of positive law. With that subtle shift, we would have removed, in effect, the very logic and substance of rights. For what we call rights then are simply the things declared to be right by the opinion that is dominant in any place. In that event, the rights enacted into law are merely rights that a majority is willing to confer. But what the majority may confer, the majority may also remove when it no longer strikes the majority as right or convenient"[16].

Problems with natural law…

Certainly the first problem with natural law ethics is that its main supporter nowadays is the Catholic Church, one of the most hated institutions among academic scholars and the liberal media. That is no proof that natural law is based on religious belief – natural law and (Catholic) religion are *only* mutually compliant. But this fact gives a useful tool for those who either do not understand or pretend not to understand that fact, in attacking both natural law ethics and the Catholic Church.

However, there are more problems with natural law ethics, and the main factor that creates them is the modern liberal political legitimacy model, especially as described by John Rawls and his successors (i.e. Stephen Macedo). The central claim of John Rawls' *Political Liberalism* is that every policy in a liberal state must be guided by "reasoned" arguments that are "widely accepted". This seemingly obvious position is a kind of trap for natural law ethics, and ultimately promotes only

[14] R. P. George, C. Tollefsen, *op. cit*., p. 93–94.

[15] *Ibidem*, p. 98.

[16] H. Arkes, *Natural Rights and the Right to Choose*, Cambridge 2002, p. 31.

those views that are intrinsically liberal. It is thus, so to speak, a *materially* liberal rule, and not a *formally* liberal one.

Revealing of natural law requires enormous intellectual effort, so most people stops at the level of Church commandments or popular convictions with their roots in natural law. This is the great weakness of natural law theory, and liberals often use it for their own purposes. Rawls, Macedo and others are "apparently trying to establish a 'Catch-22' situation for natural law theorists. If they do not put forward a powerful and intellectually sophisticated argument for their positions regarding political life and moral issues, then they fail the requirement of reason per se. Their positions become nothing more than popular prejudices, the 'unreasoned populism' criticized in *Liberal Virtues*. If, on the other hand, natural law theorists do provide powerful and intellectually sophisticated reasons for their positions, then ipso facto they are going beyond the limit of public justification, because their arguments become too complicated and controversial. 'Public reason' is serving as that ever-convenient cat-o'-nine-tails that can be dragged out as soon as the argumentative going gets tough. In fact, the more sophisticated the natural law argument, the easier it becomes to dismiss it for not being 'publicly accessible'!"[17]

It is worth noting here that proponents of pro-choice arguments often use language rooted in metaphysics and ontology, however they are usually not eager to admit that fact[18] because it is one of the main grounds why they see the language of the pro-life side as illegitimate in liberal public discourse. For this reason we should perhaps ask rather if the real problem is with natural law theory…

…or with modern (Rawlsian) liberalism?

That is for many reasons plausible. First of all it is flawed on its own terms. As George and Wolfe indicate, "is it sufficient that [reasoned and widely accepted] arguments be 'acceptable' to people on the basis of what we [call] 'inarticulate knowledge'? If the answer is 'no' – that is, if more developed and articulate knowledge is required – then the liberal public reason doctrine is utopian, at best. As such, it is simply unfit to govern political affairs in a world inhabited by actual human beings. If, however, the answer is 'yes' – that is, if arguments can be considered publicly accessible even if they can be widely accepted only on the basis of inarticulate knowledge – then, contrary to what Macedo supposes, natural law arguments meet the standard of public accessibility"[19]. By "inarticulate knowledge" George and Wolfe understand a kind of moral knowledge that (almost) everyone possesses but (almost) no one can explain, that is: killing people is wrong (they are thus, so to

[17] R. P. George, C. Wolfe, *Natural Law and Public Reason*, [in:] *Natural Law and Public Reason*, ed. R. P. George, C. Wolfe, Washington 2000, p. 65–66.

[18] F. J. Beckwith, *op. cit*., p. 52–54.

[19] R. P. George, C. Wolfe, *op. cit*., p. 57.

speak, precepts of natural law "written on the heart"). If inarticulate knowledge is *not* to be excluded from public discourse, then natural law seems to be on an equal footing with liberalism, so the doctrine is not *materially* liberal any more. If inarticulate knowledge is to be excluded, then the whole structure seems to justify society ruled by *experts on morality*. That may not necessarily lead to the loss of *formally* liberal features, but certainly it is not *democratic* liberalism any more.

We see, thus, that political liberalism as understood by Rawls or Macedo is not conclusively reasonable. But is it just? That is even more dubious: "the legitimacy principle, as stated and understood by Rawls, is itself illegitimate, unreasonable, and uncivil. It is illegitimate because it censors truthful and reasonable public discourse and – worse – prohibits individual recourse to correct principles and criteria for practical judgment, in relation to fundamental political question, without any coherent, principled reason for the prohibition. It is unreasonable because it restricts public deliberation and individual public action precisely on those matters where it is the most important to be correct, i.e., where people's fundamental human rights are at stake, and above all where the question is *who* it is who has the fundamental rights our constitution and politics is concerned with; *who* are the persons for whose sake we have our law"[20].

Political order that prevents a pursuit of the Truth as guidance for law on the basis that not everybody would agree on the outcome of such a pursuit cannot be regarded as just; after all what is more important: popular agreement or right decision?

Of what importance is this for the abortion question? Rawls or Macedo's positions exclude a natural law position on abortion; what's more, they even seem to exclude any attempt to find an answer to the question about the nature of thing decided, namely the nature of the (early) fetus, because any answer cannot be "widely accepted", at least not in American society. But that is obviously odd. "Precisely because the issue is fundamental – going to the question of who is to count as a member of the human community whose rights must therefore be respected and protected – it would seem important for any nation to settle its law and public policy on the subject of abortion in accordance with the best moral judgment of its policymakers and citizens"[21] and not in accordance with artificial and arbitrary legitimacy rule.

After all, "why should the child a week before birth be subject to the uttermost *coercion* of being destroyed at someone else's 'balancing of values', 'ordering of values', or sheer whim? The public reason of the United States, as manifested in the loquacious judgments of its Supreme Court, has after a quarter of a century uttered not a sentence that even appears intended to offer a rational response to that question.

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[20] J. Finnis, *Abortion, Natural Law, and Public Reason*, [in:] *Natural Law and Public Reason*…, p. 81 [original emphasis].

[21] R.P. George, *In Defense of Natural Law*, New York 1999, p. 318.

The response, rather, is of the form: 'We are in charge; *these* are the human beings we have chosen, or now choose, to protect and *those* are not'"[22].

The modern change in attitude toward abortion marks a great change within the political order itself. As Harvey Mansfield noted, political order used to be founded on the separation of *natural* and *civil* rights. "Natural rights are the rights on which civil society is founded; civil rights are the ones it secures"[23]. Natural rights are those which adhere to the human because of his or her nature (according to the Declaration of Independence these are the right to life, liberty and the pursuit of happiness). It was in order to fulfill those rights that the Constitution was established. However, the Constitution secures civil rights that are more numerous and specific than natural rights. The move from natural to civil rights was accomplished by the consent of citizens and protected by the "right of consent to government". But "today rights are not distinguished as natural and civil because humans are understood fundamentally as changing, historical beings rather than natural beings with a fixed definition. When rights are defined historically, they are in practice impossible to distinguish from wants"[24]. The want to have an abortion becomes the right to have an abortion, and numerous experts on morality work hard in order to justify that. But the "right of consent to government" is being lost.

What if abortion is a religious issue?

As we have seen, "the argument on abortion is grounded finally in principled reasoning, the kind of reasoning that could be understood on its own terms without any appeal to religious faith or personal beliefs. The moral case against abortion is treated frivolously, falsely, if it is treated, at the threshold, as a problem of legislating, for other people, on the basis of 'religious beliefs' or merely 'personal opinions'. That argument is usually employed as a 'stopper', to end arguments by forestalling them"[25]. Of course, this is not a rare case.

One example may be Justice John Paul Stevens' concurring opinion in the highly fractured decision in the *Webster* case. In that case the Supreme Court was supposed to decide if Missouri state law, prohibiting use of public facilities and public employees to perform abortions that were not necessary to preserve the mother's life, was constitutional. The preamble of this act contained a statement controversial for many: "the life of each human being begins at conception". The Supreme Court held that the preamble had not been applied in any concrete manner for the purposes of restricting abortions, and thus did not present a constitutional question. But Justice Stevens was not satisfied with the ruling, so he wrote: "I am

[22] J. Finnis, *op. cit*., p. 87 [original emphasis].

[23] H.C. Mansfield, *America's Constitutional Soul*, Baltimore–London 1993, p. 182.

[24] *Ibidem*, p. 184.

[25] H. Arkes, *Natural Rights*…, p. 84–85.

persuaded that the *absence of any secular purpose* for the legislative declarations that life begins at conception and that conception occurs at fertilization makes the relevant portion of the preamble invalid under the Establishment Clause of the First Amendment to the Federal Constitution. This conclusion does not, and could not, rest on the fact that the statement happens to coincide with the tenets of certain religions, or on the fact that the legislators who voted to enact it may have been motivated by religious considerations. Rather, it rests on the fact that *the preamble, an unequivocal endorsement of a religious tenet of some, but by no means all, Christian faiths, serves no identifiable secular purpose*. That fact alone compels the conclusion that the statute violates the Establishment Clause"[26]. His opinion contains two claims that are important for us. First, there are no other justifications for the conviction that "the life of each human being begins at conception" apart from religious ones. That is simply not true. Second, morality derived from religious beliefs cannot be a basis for secular law because it violates the Establishment Clause of the First Amendment. Let us have a closer look at that argument.

The dispute about the meaning of the Establishment Clause of the First Amendment is one of the most serious of the disputes about proper interpretation of the American Constitution. One of the sides prefers strict separation of churches and the state, to the extent that excludes every religious opinion from the public square. Religion remains a strictly private affair. One of the main supporters of this claim is Martha Nussbaum, who believes that separation is necessary for preserving equality among religious believers. As she wrote: "Our tradition sought to put religion in a place apart from government, in some ways and with some limits, *not* because we think that it has no importance for the conduct of our lives or the choices we make as citizens, but for a very different reason. Insofar as it is a good, defensible value, the separation of church and state is, fundamentally, about equality, about the idea that no religion will be set up as *the* religion of our nation, an act that immediately makes outsiders unequal. Hence separation is also about protecting religion – minority religion, whose liberties and equalities are always under pressure from the zeal of majorities"[27]. From that point of view statement of any branch of government supporting any claim regarded as religious is strictly prohibited. But calling that "tradition" seems to be an exaggeration, as it started to be a dominant opinion in the second half of the twentieth century.

However, there are also other views. One of the advocates of the view that government may shape its policy taking inspiration from religiously grounded opinions is Michael Perry: "Although the non-establishment norm that is constitutional bedrock for us forbids government to bestow legal favor on a church – for example, by privileging membership in the church – it does not go so far as to for-

[26] Justice Stevens, concurring in *Webster v. Reproductive Health Services*, 492 U.S. 566–567 (1989) [emphasis added].

[27] M. C. Nussbaum, *Liberty of Conscience. In Defense of America's Tradition of Religious Equality*, New York 2008, p. 11–12 [original emphasis].

bid government to make a political choice, including a political choice disfavoring conduct, on the basis of a moral belief *just in virtue of the fact that the moral belief is, for those making the choice, religiously grounded*"[28]. A little further on, Perry clarifies his position: "deciding whether to disfavor conduct (at least partly) on the basis of the belief that it is immoral, one or more legislators – even a majority of them – may answer the question of whether the conduct is in fact immoral on the ground or grounds in which *they* have the most confidence, in which *they* place the most trust, and then make their choice accordingly. In particular, they may do so whether or not the ground (or grounds) is religious – and, so, even if it *is* religious"[29]. That does not mean that their choice may not be unconstitutional, but not on those grounds.

A similar position is sometimes accepted even by pro-choice advocates, like Lawrence Tribe, who writes: "The values reflected in the constitutional guarantees of freedom of religion and political expression argue strongly for the inclusion of church and religious groups, and of religious beliefs and arguments, in public life". In order to support his claim Tribe quotes another liberal and pro-choice advocate, the late Justice Brennan: "religionists no less than members of any other group enjoy the full measure of protection afforded speech, association and political activity generally"[30]. This short insight in the dispute does not rule which position is the correct one, but at least it shows that treating religious guidance for policy choices is not necessarily unlawful under the American constitutional bedrock.

But we may look at this problem from a different angle. Apart from the constitutional perspective, the cultural-political perspective also matters. We live in a world in which the distinction of the private and public sphere is being blurred and at the same time their harmony is being lost. Let's skip the reasons for that and concentrate on the effects. On the one hand it is (was?) believed that limited government, the central claim of (traditionally) liberal political thought, requires a basic distinction between state and society, being itself an extension of distinction between body and soul (or, as it is today named, "self"). The problem arises when the dominant part of society (the majority) wants to use the state to rule over the whole society, and leads to a blurring of that distinction[31]. This often happens in the cases of very controversial problems, such as abortion. On the other hand, in (post-) industrial societies, as the late Fr. Richard Neuhaus put it, people are "forced to live schizophrenically in several different worlds. Moving between worlds, we take off and put on different selves, until we are no longer sure which is the true 'self'. We do not feel at home anywhere, least of all in unrelieved privacy when we are most

[28] M. J. Perry, *Under God? Religious Faith and Liberal Democracy*, Cambridge–New York 2003, p. 25 [original emphasis].

[29] *Ibidem*, p. 31 [emphasis added].

[30] L. H. Tribe, *Abortion. The Clash of Absolutes*, London–New York 1992, p. 116. Brennan's statement excerpted from his concurring opinion in *McDaniel v. Paty*, 435 U.S. 618, 641 (1978).

[31] H. C. Mansfield, *op. cit*., p. 102–104.

completely by ourselves, whoever that may be. Nor are we at home in the public arena where, in order to gain admittance, we are told to check our deepest beliefs at the door"[32].

If the majority (or those who claim they form the majority) act to impose their secular rule claiming that any religious belief is prohibited in the public sphere, the alarm should be raised, not simply because religion is endangered, but because the public (defined secularly) is being shaped in the authoritarian way. In other words, "attention must be paid to the political; not because everything is political but because, if attention is not paid, the political threatens to encompass everything"[33]. Neuhaus took that threat very seriously. In Tocqueville's manner, he believed that wherever citizens withdraw to the private sphere the state comes in to fill an empty space and take control over it. "When the democratically affirmed institutions that generate and transmit values are excluded, the vacuum will be filled by the agent left in control of the public square, the state. In this manner, a perverse notion of the disestablishment of religion leads to the establishment of the state as church"[34]. That new form of authoritarianism (he sometimes even called it "totalitarianism") seemed to him even "worse than the first, and the new mystification worst than the first, because they claim for themselves the virtue of freedom. In Orwell's 'Newspeak', war is peace and slavery is freedom. The slavery that claims to be freedom is the most desperate form of slavery, because it has subsumed into itself the idea of emancipation"[35].

The emancipation process leads to liberation of the individual self from every authority. However, since an individual is too weak to get through that process by him- or herself, he or she needs help that is lavishly offered by the modern secular state. One of the first enemies of the emancipated self is religion. But in the modern secular state traditional religions, with a strong system of obedience toward moral obligations, are excluded simply on the basis of being *religions*[36]. However, "when recognizable religion is excluded, the vacuum will be filled by *ersatz* religion, by religion bootlegged into public space under other names"[37]. That will be the form of official secular religion of the state.

The full circle has been made. The main cause that led to the establishment of a limited government was the fear of officially recognized religion being a recipe for religious intolerance. But the *full* accomplishment of that process leads to the establishment of the new kind of intolerance – secular intolerance. In order to secure limited government, a true balance between society and state, or body and soul,

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[32] R. J. Neuhaus, *The Naked Public Square. Religion and Democracy in America*, Grand Rapids 1986, p. 28.

[33] *Ibidem*, p. 30.

[34] *Ibidem*, p. 86.

[35] *Ibidem*, p. 254–255.

[36] An excellent examination of these views was provided by J. Hitchcock, *The Enemies of Religious Liberty*, "First Things", February 2004.

[37] R. J. Neuhaus, *op. cit*., p. 80.

should be reestablished. "If government is to remain limited, individuals must be able to rule themselves, at least to some extent, and to do this, religion – which reminds us of the importance of our souls – might seem indispensable"[38]. But this means that individuals must be able to reconcile private and public lives, so religion, being one of the most important factors shaping it, may not be absolutely excluded from public life.

The most important "battlefield" between religion and state is culture, being itself somewhere between state and society. "Religion and politics meet at many points, but most critically they meet at the point of culture-formation. […] Were politics only the quest for personal and institutional power, there would be little contest between church and state. The state would win hands down, for it alone has the distinct advantage of being able to call in the police. As the regime in Poland, to cite one example, should understand, power that is exercised in contradiction to culture is very fragile. It depends overwhelmingly, sometimes exclusively, upon coercion. It is not legitimate power; that is, it is not morally legitimate. It may have sounded realistic at the time, but in truth it was extraordinarily naive of Stalin to ask, 'How many divisions does the pope have?'"[39] Partisans of secular state argue that religion should be excluded from or limited in culture-formation because it is to divisive factor. But an insight into American history shows that religion may hardly be perceived as the main divisive factor among the American people[40].

So, let us once more indicate that "politics is in large part a function of culture. Beyond that it is our assumption that at the heart of the culture is religion"[41]. Politics and religion are thus, so to speak, inseparable. Applying this to the abortion debate it is necessary to underline that it was not "religionists" who wiped the abortion consensus off the face of the earth. This was done by those who repeated that "everything is political" and "private is political". And then they made an attempt to exclude religion absolutely from politics because religion prevented them from reaching *their political* goals. That mere fact should be enough to understand that the religiously minded should be allowed to speak in the political world as the requirement for political *equality*. But one may say even more. This is not only just. This is even necessary for preserving the modern political model of limited government and respect for *every* person. One may say that "the essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another. But to believe this it is necessary to believe in God"[42].

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[38] H. C. Mansfield, *op. cit*., p. 104.

[39] R. J. Neuhaus, *op. cit.*, p. 132–133.

[40] M. J. Perry, *Under God?...*, p. 40–41.

[41] R. J. Neuhaus, *op. cit*., p. 27.

[42] M. J. Perry, *Toward a Theory of Human Rights. Religion, Law, Courts*, New York 2007, p. 17.

That might be too strongly stated. The natural law gives a powerful argument to that without any recourse to religion. But for upholding popular belief in the infinite importance of every human being this is certainly true.

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Religious freedom in American public life is diminishing. Those who would like to supplant religion from public life gain more and more power, and with the current president, Barack Obama, they have an additional guarantee that their concept will be secured. But the most important institutional player in this field, the Supreme Court, seems to have been on their side for about 50 years. Certainly since the *Abington* ruling (1963, Bible reading in public schools) in which "religious freedom is set over against religious observance". And "when religious freedom *is* set over religious observance it tends to become the same thing as secularism"[43]. For the American nation, a nation that had its formative moment in the Declaration of Independence which explicitly confirmed religious motivations, this is a rather curious development. "How strange that the citizens of a nation whose birth was rooted in belief in a Creator God should now be told that it is, at best, 'bad taste to bring religion into discussions of public policy'"[44].

Abortion is not necessarily a religious issue, although it is often perceived as if it were. And the American experience in treating the issue of abortion is an excellent example of the threats that occur in modern liberal democracies when discussing controversial public policies that strongly divide citizens. The attempt to treat the pro-life position as an essentially religious position, denying an equal footing for those who are willing to protect life from the moment of its conception on the grounds that their position cannot be "widely accepted", is an assault on the democratic principle of political equality. And the attempt to supplant religious arguments from the process of formation of public policies is an assault on the most basic liberal tenet – limited government. That is certainly not a happy prospect for the future.

[43] R. J. Neuhaus, *op. cit*., p. 101–102 [emphasis added].

[44] M. J. Perry, *Under God?...*, pp. 124–125. The quotation excerpted from R. Rorty, *Philosophy and Social Hope*, New York 1999, p. 168–169.