Abortion and Religious Freedom

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Frederick S. Jaffe contends that the Hyde Amendment's restriction of federal funding for abortion represents an unconstitutional violation of the separation of church and state by imposing a predominantly religious dogma on a secular and pluralistic society (see "Enacting Religious Beliefs in a Pluralistic Society," Hastings Center Report, August 1978.)

In the legislative and policy debate, abortion has become primarily a religious issue because opponents [of abortion] insist that the only pertinent question is: when during gestation does "human life" begin?...Opponents of abortion have largely succeeded in limiting the debate to this single issue and precluding serious consideration of any other aspects of the complex human question of abortion. This framing of the issue is primarily (not only) a religious matter, stemming, as Daniel Callahan has observed, from the Catholic tradition. (p. 14)

Jaffe believes that the supporters of the Hyde Amendment are entitled to their opinion regarding the personhood of the fetus but that they have an obligation to understand the religious origin of their opinion and to appreciate the consequences of enacting their religious dogma into law. Since science cannot show that the fetus becomes a person at conception, "this belief can only be based on religious values, or metaphysical values that are religious in nature if not in expression." (p. 14)

A belief could be distinguished as primarily religious by such criteria as the following: (1) it is part of the doctrine of religious groups; (2) it is legitimated in religious and transcendental terms; (3) its principal exponents are associated with religious groups, as are the majority of its adherents; (4) individuals are formally taught the belief mainly through religious institutions; (5) the principal organizations supporting legislation embodying the belief are either religious institutions or closely allied organizations that draw a large part of their funds, cadres, constituency, and advocacy networks from the religious groups; and (6) advocacy for the belief is dominated by religious references and symbols. (p. 15)

Jaffe maintains that the movement against abortion meets these requirements.

The Right-to-Life campaign has all the trappings of a religious crusade, complete with crosses, rosaries, and exhortations to religious duty. The fact that this belief is also shared by some philosophers not formally associated with religious groups, as well as some non-believers and adherents of religions that teach differently, does not vitiate the strength of the congruence, nor does the fact that many individual Catholics have obtained legal abortions and, to judge by the polls, seem not to accept Church doctrine. (p. 15)

Since the view that life begins at conception is primarily a religious doctrine, it is an appropriate basis for legislation only to the extent that the religion is shared by the populace. But, according to Jaffe, this religious consensus does not and cannot exist. Because there will continue to be irreconcilable differences among believers and nonbelievers, "pluralism and religious freedom entitle them to hold and be respected for those views." (p. 16)

The failure to respect this tradition of pluralism has resulted in disruption, violence, deterioration of intergroup relations, and distortion of the political process.

Consequences of this sort are inevitable when religious groups seek enactment of their deeply held beliefs, which are rejected, with equal intensity, by others. Religious groups and individuals have the same rights to express their convictions, and persuade others of their correctness, as other groups and individuals. But laws embodying religious beliefs can be enacted only when the beliefs are very broadly shared. When there are irreconcilable differences on issues of morality, it is impermissible in a pluralistic society—legally or as a matter of prudent policy—for legislatures to enact into law one set of beliefs and impose them on those who conscientiously believe otherwise.

...Pluralism asserts that religious freedom and mutual toleration are, of necessity, higher values for law and public policy than the particular beliefs over which there is conscientious disagreement, because the alternative is to enshrine into law and policy one group's version of Truth and to force others to act contrary to their consciences. (p. 15)

Jaffe concludes by drawing an analogy between abortion and artificial contraception: Just as it would be impermissible for the government to impose one doctrine regarding contraception on the general populace, so too would it be wrong in the matter of abortion. "Under this neutral policy, government neither prohibits nor mandates contraception but provides it to those who want it and are eligible for publicly funded health and social services." (p. 16)

These lengthy quotations demonstrate the thrust and tone of Jaffe's article. It is impossible to cover all of the striking points raised by Jaffe without reproducing the whole article. Four brief comments may be made:

First, it is true that the abortion issue has produced a disruption of the political process. This is no doubt unfortunate, but it is also unfortunate that Jaffe neglects to provide any explanation of why such disruption was made inevitable. In particular, Jaffe fails to mention the 1973 Wade and Bolton decisions which many constitutional scholars believe to be among the most ill-advised and poorly reasoned decisions the Supreme Court has ever issued. Even a believer in Jaffe's doctrine of pluralism might be able to appreciate the criticism of a 7-2 majority's imposition of a rather extreme position regarding the permissibility of abortion on a complex and diverse constituency represented by the president and executive departments, the U. S. House and Senate, the fifty governors and state legislatures, and thousands of counties and municipalities.

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Second, Jaffe has committed the rather common error of supposing that the Church holds an official position regarding the time of ensoulment. The most recent official statement on abortion, the "Declaration on Procured Abortion" issued by the Congregation for the Doctrine of the Faith (1974), reads in part:

This declaration expressly leaves aside the question of the moment when the spiritual soul is infused. There is not a unanimous tradition on this point and authors are as yet in disagreement. For some it dates from the first instance, for others it could at least precede implementation. (note #19)

The Church claims no special competence to decide the issue. What the Church does teach is the moral principle, that "it suffices that this presence of the soul be probable [i.e., one for which good though not conclusive philosophical reasons can be adduced] in order that the taking of life involve accepting the risk of killing a human being, who is not only waiting for, but already in possession of his or her soul." (note #19) Thus, the fundamental teaching of the Church here is by no means a position which "can only be based on religious values, or metaphysical values that are religious in nature if not in expression." Rather, it is quite obviously an exclusively moral principle to the effect that in questions of reasonable doubt it is morally unjustified to act on the assumption that what is being killed is not a person. This teaching does not even appear to be based on any metaphysical doctrine regarding the time of ensoulment. Jaffe's confusion, and it is a common one, results from the mistaken assumption that the only reason one can have for opposing the killing of the fetus is the belief that what is being killed is a person.

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Third, Jaffe's article may contribute to the further deterioration of intergroup relations, for he clearly seems to imply that the claims of the anti-abortionists are not really moral assertions at all and thus that their claims to moral objectivity and universality are without foundation. Thus, their position need not be assessed on its own merits in the way in which truly moral assertions ought to be assessed. Rather, the Catholic is requested to reflect on the nonmoral basis for his belief and to cease his attempts to impose his particular religious opinions on others. But a further problem is created for the non-Catholic. If the Catholic is confused about the nature of his position, the non-Catholic must be duped by an alien organization and dogma into taking the position he does. Not only does the non-Catholic have no right to impose his beliefs on others but in a sense he does not even have a right to hold those beliefs because their only justification requires a basis which he himself does not share.

Fourth, one might direct a tu quoque at Jaffe and request that he himself consider the social implications of using his own principle of pluralism as a basis for social policy. One striking feature of Jaffe's argument is that it could have been used in the 1850's by an advocate of slavery against the attempt of the abolitionists to impose their personal view regarding the human status of the black man on American society. The case could be made that their belief met all six of the conditions that it claims to speak to the unaided reason of morality; abortionists have no weight at all. It is part of the anti-abortionists' case that the claim to moral objectivity and universality of a group's beliefs is a basis which public consensus has been achieved; under such a pluralistic policy, government would neither mandate slavery nor prohibit it but rather would provide legal protection for those who wish to exercise their religious consciences by owning slaves.

BioNews-An Ethical Focus

Gene Transplantation

FACT: The successful laboratory production of human insulin using recombinant DNA technology was announced September 6th by Genentech, Inc. and City of Hope National Medical Center. Stanford University reported a month and a half later (October 19, 1978), that Professor Paul Berg and his associates had succeeded in using recombinant DNA techniques to transfer a functioning human cell gene of one species into another mammalian cell species. In this instance, rabbit beta hemoglobin molecules were synthesized in African green monkey cells which had received the rabbit gene that directs the synthesis of the beta chain of rabbit hemoglobin.

COMMENTARY: Treating genetic disease by the replacement of a defective gene seems to be the most radical method (or radical in the sense of getting down to the very roots of the problem). At the same time, before the technique can be utilized for the management of certain genetic diseases, some very great technical hurdles would have to be negotiated. Gene replacement techniques would have to be employed in the earliest stages of embryological development. If such be the case, the isolation of the embryo in an in vitro environment would likely be required. On the assumption that the embryo resulted from a natural conception and that the embryo would be returned to its mother's uterus, then, apart from considerations of risk, the Church's teaching does not strictly prohibit such action. The assumption, of course, is that the purpose of the gene transfer is to correct a grave defect of structure/function which would provide sufficient benefits to warrant the danger to which the infant and the mother would be exposed.

However, another problem looms in the immediate future. Granted, a series of animal experiments would first take place, but eventually gene transfer experiments would have to involve human genes

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