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[Book Review of] *A Private Choice, Abortion in America in the Seventies*, by John T. Noonan, Jr.

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ecumenical delegation to the Papal Inaugural Mass. He notes the new Pope's "openness and understanding of all the problems of married people and the family." He adds a note of confidence: "I feel sure that with him the Church is going to know a renewal of faith in the openness and fidelity of the great tradition."

This is a small book physically, but a mighty one, invaluable to all who are truly concerned with the family and with ethical and effective regulation of births.

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A Private Choice, Abortion in America in the Seventies

John T. Noonan, Jr.

Free Press, New York, New York, 1979. 224 pp., $11.95.

This book not only summarizes the legal history of the entire abortion controversy in America in the seventies, but it also presents the basic evidence one must consider to take a stand on the whole question. It does this in only 192 pages, divided into 21 chapters called "Inquiries."

The first five Inquiries discuss the Supreme Court's *Abortion Cases*. The next 11 give a political and legal history of the abortion controversy, explaining where abortion got its political support, how its proponents and the press masked the "liberty" of abortion with legend, and how the "liberty" so expanded that its proponents forced the active cooperation of all in the abortion act. In the last five Inquiries, Noonan explains exactly what abortion is — the killing of human beings — and he proposes a solution that might "limit" the "liberty" of abortion.

Noonan explains with succinctness why the decision in *The Abortion Cases* conflicts with the Constitution. The Constitution insists that certain natural rights of individuals and families antedate the existence of the state. The state must *recognize* these rights, but it cannot *create* or destroy them, this truth being the *raison d'etre* of the Bill of Rights. But in *The Abortion Cases*, the Supreme Court, in effect, made every right depend on the state's, or its own, will by arrogating to itself the power to establish who is and who is not a legal person. Though the Court claimed to abstract from the question of the unborn's personhood, actually it determined that the unborn were to be treated as nonpersons. If the Court, and not the natures of things, determines who is and who is not a legal person, then *every* right depends on the Court's will. The abortion decision implicitly separates the whole system of laws and rights from any criterion outside the will of the rulers.

Justice Blackmun tried to ground the "right of abortion" in a right of privacy, claiming such a right of privacy was included in the "liberty" guaranteed by the Fourteenth Amendment: "Nor shall any State deprive any person of . . . liberty . . . without due process of law." The key phrase here is "due process of law." Blackmun merely begs the question when he implies that the state abortion laws were not "due process." He might as well have said, "This law was not due process because it 'deprived a liberty without due process'." For Blackmun's argument to work, he had to assume that the state could have no "compelling interest" to limit the liberty of pregnant women. But for *that* assumption to

work, he had to assume that the unborn were not persons, the precise question he claimed to ignore.

A major point of Noonan's book is that the "liberty" of abortion is intrinsically dynamic. Because the controversy involves the basic concepts of human nature and human responsibility, the pro-abortionists want, and in a sense need, more than official neutrality. They will settle for nothing less than open approval and universal cooperation.

The mere legality of abortion was therefore not enough. The pro-abortionists demanded that government finance the exercise of this "liberty," even though the government finances the exercise of no other traditional, real liberty, such as of speech or of religion. Government does not buy printing presses or build churches for the poor. Supposedly, humanitarian concern for the poor motivated the demand for funding. Yet no one objected when the same Supreme Court ruled also that states can refuse welfare assistance to the fifth child of a mother on welfare: government must finance the poor's "right" to abortion (if pro-abortionists get their way), but not the poor child's right to eat. How "humanitarian" is a government that says, "We will help you, but first let us abort your children"?

The expansive tendency of the abortionist movement explains why pro-abortionists sought court orders to force private hospitals to turn over facilities for abortions (p. 84); why a federal court ruled that certain private hospitals receiving federal money must permit elective abortions (p. 209, n. 14); why Harriet Pilpel, Planned Parenthood's general counselor and ACLU's vice-chairman, argued that doctors with religious scruples about abortion might be practicing "sectarian medicine;" why state colleges have forced students to finance abortion through insurance funds, and when the students refused, tried to expel them; why medical schools screened their students according to their beliefs on abortion (p. 84); and this expansive tendency explains why the Supreme Court assaulted the internal structure of the family, and ruled that states cannot require parental consent or notification for an abortion on a minor, or consent of the father for an abortion on his wife (pp. 90-95).

Noonan also explains well the biological facts proving the humanity of the unborn, and the gruesome details of abortion operations proving that abortion is literally the knifing, poisoning or suffocating of the unborn baby.

While his explanation of the problem and his history of how it arose are sound and to the point, his solution is insufficient. Noonan favors a so-called "States' Rights" amendment as opposed to a "Mandatory Human Life" amendment. The difference is that a "States' Rights" amendment would only give states the power to protect unborn life, but would not require them to do so; a "Mandatory" amendment would define that the unborn are human persons, and require that the states give the unborn (as well as the aged) equal protection of homicide statutes.

Noonan has two principle objections to a "Mandatory" amendment. His first is that it is too difficult to pass. He seems almost hopeless about the task.

But this objection holds only if a "States' Rights" amendment is acceptable to begin with. And it is not, for the simple reason that it is opposed in principle to the pro-life cause itself. The whole controversy hangs on whether the government, federal or state can determine by its own will that a class of human beings is not persons deserving protection of the law. The "States' Rights" amendment would answer that states can do just that. No matter how it is worded, the "States' Rights" amendment gives the power o. life and death to the states. It concedes to the states the power to ignore the natural rights of the unborn. The "States' Rights" amendment would not be a partial victory for the unborn; it would be their utter defeat.

The moral tone of American society is definitely tending toward the acceptance of abortion; we live in an anti-baby culture. If a "States' Rights" amendment were enacted, and some states outlawed abortion while others permitted it, the

greater public pressure would be toward relaxing the surviving abortion statutes. Legalized abortion, with no chance of another constitutional amendment to stop it, would be the end result.

Noonan's second objection to a "Mandatory" amendment is that it "would work a substantial change in duty and power within our federal system of government" (p. 184). The "Mandatory" amendment would give to the federal government basic powers which have traditionally belonged to the states. This objection seems to be the most serious in his own eyes; it is the one most emphasized.

To this I reply that such considerations pale in significance before the question of whether the government is to kill or not kill human beings. The entire nation wades in the blood of unborn babies, and Noonan is worried about the "correct" distribution of governmental power according to the framers' intentions!

Besides, a "Mandatory" amendment would not upset the distribution of governmental power. The amendment would not itself be a criminal statute, but would enjoin that the protection of existing homicide statutes be applied to the unborn. This is certainly appropriate to the Constitution.

I cannot help thinking Noonan takes this position partly because he underestimates how serious the situation is. Throughout the book, sometimes by the language he chooses, he seems to bend too far in trying to be polite to the opposition. For example, on p. 161 he claims that while abortion is accurately called "killing," those who call it "murder" exaggerate its gravity. In the legal sense, of course, abortion is not murder; but *morally*, abortion certainly is murder, the direct taking of innocent human life. Noonan's book, as a whole, seems to treat abortion as only a minor derailment in America's journey toward manifest destiny. In truth, America's destiny may be Auschwitz; America is already there with abortion, and euthanasia might be next. In this situation extreme politeness is incongruous; and to be aginst abortion, if not merely "personally," but still merely "statewise," is insufficient. Noonan is against abortion. But his strategy is an unacceptable compromise.

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Catholicism and Modernity

James Hitchcock

Seabury Press, New York, N.Y., 1979.

This scholarly and perceptive book is perhaps the best of a succession of books written in an analysis of the great dislocation and loss of identity which have occurred in the Catholic Church since Vatican II. Although most of the documents of that much discussed council would convey a continuity with the rich traditions of 2,000 years of Catholic thought, they remain largely unread. The great post-conciliar upheaval brought what amounted to a giant non-sequitur to those traditions. The leaders of the ersatz reform claim sanction from Vatican II but they are guilty of the fallacy of *post hoc ergo propter hoc*.

Professor Hitchcock analyzes the elements of the current crisis with a style that is both controlled and persuasive. Reform in the Church has meant traditionally that men would be changed by religion, not religion by men. Following Vatican II, however, various spokesmen for the Church have declared that the Church's