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# EXPLORATIONS

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## A Critique of Abortion Rights

RICHARD STITH

I find it surprising that most people I know on the left favor the rights to abortion mandated by the Supreme Court's *Roe v. Wade* decision.<sup>1</sup> The arguments my friends make in support of these rights seem to me an extreme version of the same liberal individualist ideology they elsewhere attack. At the same time, little or no attention is given by them to developing distinctively socialist answers to abortion questions. Such an acceptance of liberal premises is doubly odd in that, as I will argue, internal contradictions among these premises preclude any consistent solution to the abortion controversy, while a return to communitarian starting points would make possible a coherent public treatment of abortion.

In early 1973, the U.S. Supreme Court in *Roe v. Wade* largely privatized the choice to have an abortion. In the first trimester, abortion may not be limited by the state even for the sake of the health of the pregnant woman, or the life of the fetus. In the second three months of pregnancy, abortion may be limited for the sake of maternal health, but still not for the sake of fetal life—"mother" and "maternal" are words the Court frequently uses to refer to the pregnant woman. And even in the last months before birth, no public interest in the now "viable" fetus is sufficiently compelling to justify protecting its life at the cost of the mother's "health," which is broadly defined to include psychological and familial "well-being."<sup>2</sup> In support of its holdings, the Court indicates that, even in this last trimester, it does not know

<sup>1</sup> 93 S. Ct. 705 (1973).

<sup>2</sup> The Court states, "If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period except when it is necessary to preserve the life or health of the mother." *Ibid.*, p. 732. Note that the state may permit *all* post-viability abortions destructive of fetal life, and *must* permit those done for the sake of maternal health. The broad definition of "health" to include psychological and familial well-being is given in the companion case, *Doe v. Bolton*, 93 S. Ct. 739, 746 (1973), to which *Roe* on p. 733 directs the reader.

whether life has begun. It treats the unborn only as "potential" human life throughout the nine months of pregnancy.<sup>3</sup>

My argument is divided into two parts. In the first, I construct a model of liberalism from which the most common arguments for and against a position such as *Roe v. Wade* can be derived. But debate is futile within the liberal paradigm, I argue, because it both requires and makes impossible an answer to the question of which entities are to be considered persons.

If we begin instead with a model of community and solidarity, the need to answer the question of personhood becomes even more urgent than under liberalism. But satisfactory answers also become more likely because socialism, unlike liberalism, can provide ultimate *concepts* (including a concept of person) that articulate the aims of a given human community.

**T**he political paradigm I here call "liberal" is one shared to some degree by everyone in the United States, with the exception of a few socialist radicals and a few religious conservatives. On the other hand, it may well express the entire political attitude of no one. I do not mean to argue for either of these assertions. I rely instead on shared perceptions of a ubiquitous way of thought that provides many of the justifications offered for abortion rights.

Resentment against interference by others in one's personal pursuits while perhaps not the ultimate origin of liberalism, is an adequate starting point for the construction of this paradigm. This resentment can legitimate a claim to noninterference only to the degree to which it denies the objectivity of all values, or at least of all enforceable duties. It is only if others have no right to interfere, in order to make me do my duty, that I am at liberty to do as I like. This "right to be let alone" is not itself defeated by skepticism for it is founded not on the assertion but on the elimination of value.

Included within the "right to be let alone" must be the "right to let alone"—what might be called the right to abandon others. An enforceable duty to aid other people, as a point of departure, would already justify a great deal of interference in my personal life and would weaken the skeptical arguments necessary to combat the assertion of further duties (say, to myself or to nonpersonal or suprapersonal entities).

<sup>3</sup> Even in "the stage subsequent to viability," the *Roe* Court concedes a state interest only in "the potentiality of human life." *Ibid.*, p. 732. The Court calls the fetus variously "potential life" (pp. 725, 727), "prenatal life" (p. 728), "potential human life" (p. 730), "the potentiality of life" (p. 731), "fetal life" (p. 732), and "the potentiality of human life" (pp. 731, 732). It also notes the "theory" or "belief" of some that "life begins at conception or at some other point prior to live birth" (p. 725), but argues that it "need not resolve the difficult question of when life begins" (p. 730). One gathers from all this that the Court does not know whether life (in the sense of "human life") exists prior to birth, although its potentiality does (in the form of "prenatal" or "fetal" life).

But skepticism alone cannot secure the right to be let alone in the strong sense in which others not only have no right to intrude upon me but also have a duty not to do so. For the latter, liberalism implies a contract: it presumes that I am bound by the agreements I would need to make with others in order to secure their respect for my private sphere of life.

Such an appeal to the authority of contract is, to be sure, a retreat from the original near-absolute skepticism posited as the basis of the liberty to be let alone. Even if such contract talk is meant only for public consumption and is secretly mocked, it still provides for the first time an articulated common good by which all things are to be judged in public. But note how formal and hollow a good it is: the actual substantive objects of desire remain wholly private; only the rules and limits securing their pursuit have interpersonal validity.

Indeed, in order to determine the terms of the contract, skepticism about the objectivity of values must now be supplemented by cynicism concerning their pursuit. For who can know what contracts might be made among a group of self-sacrificing idealists? Only if we imagine that all desires are really, if secretly, for self-satisfaction can we begin to discern a necessary contractual content.<sup>4</sup>

Liberal skepticism and cynicism do not apply only to values. The factual terms of the social contract must be interpreted wholly functionally (that is, given whatever meaning is most useful) in order to satisfy the desires that originally led to their articulation. Of course, this functionalism is in constant tension in the short run with the need for legal certainty in order to facilitate private planning. But in the long run for the state to search for the objective meaning of a term used in the social contract would make no sense if a new definition could increase the total amount of resources available for the satisfaction of desires. Non-personal being is of no concern to liberalism except insofar as it makes itself available as a resource for the satisfaction of private desires. The liberal world is divided into only two categories, persons and resources, and the second exists only in order to be devoured by the first.

Liberalism thus imagines a set of isolated persons interested in using available resources for their own self-satisfaction. By means of a prudential calculus of the contracts that such a group would enter, private rights (particularly property rights) are proclaimed whose furtherance is the only common good and so the sole object of the quite limited power of the state.

According to the model sketched above, most of life remains private. Only insofar as private interests require does resource management become a matter of public concern, via the social contract. But there is one kind of entity that is necessarily within the public sphere: persons themselves. The existence of the

<sup>4</sup> This liberal ideology is no doubt a facade for the domination of some over others. My purpose in this article, however, is to attack liberal ideals, not liberal practice. For criticism of some of the practical uses of abortion rights, see e.g. Elizabeth Moore and Karen Mulhauser, "Pro and Con: Does Free Abortion Hurt the Poor and Minorities?" *In These Times*, February 28, 1979, p. 18.

contracting parties must be a public concern in enforcing *any* kind of contract. So it would seem that abortion cannot be made a private matter unless fetuses are not included in the concept of a person.

Liberalism has struggled mightily to refute this last statement, to argue that abortion rights are not contingent on the non-personhood of fetuses. Some academics have sought to extend liberalism's fundamental right to abandon others to include the right of pregnant women to abandon fetal persons.<sup>5</sup> They point out that current legal and moral doctrine usually imposes only very mild, if any, duties to strangers—and certainly nothing like the nine months of blood nourishment and discomfort that a pregnant woman undergoes for the sake of an anonymous fetus. Therefore, unless she has consented (contracted) to host the fetus, she may abandon it by means of abortion—even if it is fully a person.

This is a very strong argument within the liberal paradigm. Many obvious counter-arguments—such as that such reasoning would also relieve parents of any extensive postnatal support obligations to unplanned children—may fail because they may be founded not in liberalism but in remnants of preliberal ideas still extant in our law. Other responses are stronger, though perhaps a bit technical. For example, an abortion is frequently more than simply an omission of aid: it often involves both a positive lethal act and a lethal intent (an intent not only to remove the fetus from the womb but also not to end up with a live child). As such it is unprecedented in our traditional lists of liberal rights to abandon other persons.

To my mind, however, the principled reason why this way of avoiding the fetal personhood issue fails is that it is not compatible with liberal social contract theory. If we already were persons when we were still in our mothers' wombs, then we would include a fetal right to life in the contract terms even if it were uniquely burdensome. Suppose, for example, that we all knew that we would by turns have to go through nine months sometime in the future in a small portable state in which we could survive only if we were in constant bodily contact with some unshrunk person in the one-half of the population that had, say, type "O" blood. If we did not know our own blood type, we would surely agree to impose a duty on the "O" people to carry us in exchange for our promise to carry others in turn if we found out we were "O"'s. Indeed, even if we already knew ourselves to be "O" people, I submit that almost all of us would want to secure our own lives despite having to bear what would average out to be two others. Basic liberal notions of self-interest and reciprocity would thus yield a right to life for putative fetal persons clearly incompatible with *Roe v. Wade*.

<sup>5</sup> For a moral argument along these lines, see the influential piece by Judith Jarvis Thompson, "A Defense of Abortion," *Philosophy and Public Affairs* 1, no. 1 (1971): 47–66. Similar legal arguments were raised most recently by Professors Lawrence Tribe and Donald Regan before the U.S. Senate Subcommittee on the Constitution on October 5, 1981, and November 12, 1981, respectively. See "Constitutional Amendments Relating to Abortion," Hearings, Vol 1, 97th Congress, Serial No. J-97-62 (Washington: Government Printing Office, 1983), pp. 97–100 and 555–639.

The Court's own approach in *Roe* to fetal personhood is more extreme than that outlined above. Instead of focusing on the right to abandon others, which at least seeks to preserve liberal notions of the equality of persons, the Court extends the private rights of some to incorporate the very being of others. It implies in a number of ways that even if the unborn were persons, in the sense of having moral rights, they would still be treated as private maternal property as far as public law is concerned. A number of the precedents appealed to by the Court are based on ideas of autonomous parental control of children who are not disputed to be persons. More importantly, the *Roe* opinion decides that fetuses are not constitutional persons *prior* to even considering whether or not they are morally persons (the latter question being identified by the Court as the "question of when life begins," no doubt because of the general popular assumption that all living humans are moral persons.<sup>6</sup> In other words, the Court assumes that there may be living human persons who are not taken into account publicly as such, i.e., are not given the rights of "persons" in our Constitution. Ironically, it makes this assumption in the process of interpreting the very constitutional amendment, the fourteenth, which might be thought to have its *raison d'être* in the preclusion of such a disjunction of moral and legal personhood.

Further: when the Court turns to the question of moral personhood, it requires that an unborn child in even the ninth month of gestation be considered no more than a "potential life," while another child born prematurely in the eighth month is taken by our law to be an actual life, i.e., a moral and legal person. But the unborn child is *more* developed here than the born one. The only advantage held by the latter are location *ex utero* and mode of oxygenation. Our fact and value practices do not recognize either of these differences to be reasons for concluding that an entity with more than functional value has just come into existence.<sup>7</sup> So no one who considers the newborn a person can coherently doubt that the child still located in the womb is equally a person, no matter what development he or she may think to be a physical prerequisite of personhood. (I presume that religious arguments, which

<sup>6</sup> That is, most people do not distinguish the question of when human life begins from the question of when personhood in a moral sense begins. For example, a Gallup survey in 1975 found that 58 percent of women thought life begins at conception and 51 percent thought that the unborn is a person from conception. Judith Blake, *Population and Development Review* 3, nos. 1 and 2 (1977): 54.

<sup>7</sup> A *Chicago Tribune* story ("The Doctor's Dilemma," Sunday, August 15, 1982, Section 12, p. 1) on infants who survive abortion illustrates the difficulty of using location to determine existence:

Consider the paradox: One moment the fetus is in the womb and the medical team is on a path aimed at killing it. It's legal, and it's what the mother wants. And then the next moment the fetus is outside, unexpectedly squirming and kicking, and the team is expected to do an about face and try to save it.

"It's like landing a jet plane," says Dr. Thomas Kerenyi, one of the nation's preeminent authorities on abortions. "You're supposed to throw everything into reverse, and do the exact opposite of what you were doing. It's schizoid...."

might be wholly disconnected from physical developments, are here out of order.) Therefore, the Court is again shown to carry liberalism to the perverse extreme in which it constitutionalizes private control of those we know to be persons.

Liberalism has here swallowed itself. It is inconsistent to say that persons are the starting points from which all conclusions about the nature of the social contract are to be drawn and also to say that some persons may be treated as a property-like resource of little more than private concern. Nor can this contradiction be overcome by reading the Court to assert that moral personhood begins at birth. Such a claim cannot help because, again, no principled difference between fetuses and newborn infants can be specified. Even more: not only is there no higher principle from which a decision to draw a line at birth could be derived (which makes the exclusion of the unborn from personhood an arbitrary one) but the criterion selected for demarcation of the two classes (i.e., location) is not one that can be so used consistently with its other uses.<sup>8</sup> The problem with *Roe* is not so much that its concept is unprincipled, but rather that it has no concept at all that coheres with ordinary language and thought. For a pre-Civil War liberal to argue that black people are moral persons when they are above the Mason-Dixon line, but not when they are below, would be to give no fixed content to the concept of personhood at all, but rather to claim that personhood may be defined and redefined *functionally* for the sake of furthering the interests of the white majority in economic prosperity and political peace.<sup>9</sup>

Without a principled concept of personhood from which the exclusion of blacks or nearly-born fetuses could be derived, the refusal of liberals to consider such entities to be full contracting partners means that liberalism has destroyed its

8 Nor would the Court have done much better had it stuck with "viability" as the beginning of moral and legal personhood. Viability in the sense of the ability to live outside the womb is, like birth, a characteristic not so much of the fetus as of its environment. An infant viable in New York may not be so in Appalachia. Again, none of us are viable naked at the north pole, but someday all nondefective zygotes may be viable *in vitro* from conception.

The common idea that nonviable fetuses are not yet persons may come from an unconscious confusion of such extrinsic nonviability (the inability to survive in certain environments) with intrinsic nonviability (the inability to survive in any environment). We use the latter concept when we speak of nonviable embryos, meaning ones that cannot survive even in the womb.

9 As in this hypothetical example, functionalism in *Roe*, *op. cit.*, is largely an inference from the lack of any other basis for the line drawn. However, *Roe* does sound functionalist when it declares that "theory" about life's beginning must defer to the "rights of the pregnant woman" and when it hints at the relevance of "population growth, pollution, poverty, and racial overtones." (pp. 708-709).

Garrett Hardin, the population controller, has been more explicitly functionalist: "Whether the fetus is or is not a human being is a matter of definition, not fact; and we can define any way we wish. In terms of the human problem involved, it would be unwise to define the fetus as human (hence tactically unwise ever to refer to the fetus as an 'unborn child')." "Abortion or Compulsory Pregnancy?" *Journal of Marriage and the Family* 30 (1968): 250-251. Hardin is quoted in the course of a general discussion of the functionalist approach to when life begins by Daniel Callahan, *Abortion: Law, Choice, and Morality* (New York: Macmillan, 1970), pp. 391-392.

own foundation. No matter what rights liberals may still accord to persons, the admission that the definition of who is a person can be unprincipled and incoherent means that these rights may be withdrawn at any time if it furthers the interests of concern to those with power over interpretation. For example, can we have any confidence that a Court which is willing to ignore the existence of infants just prior to birth will have any qualms about doing the same for infants just after birth—if they are severely handicapped,<sup>10</sup> or for some other reason are not able to offer a “good bargain” to the adult members of society? It remains true that basic rights are unlikely to be lost by those of us who are useful to those with power or are strong enough to defend our own rights. But if liberalism retreats from its original moral insistence that the interests of all persons be taken into account to a merely prudential suggestion that a contract among the strong would be convenient for the strong, then it has surrendered the only *moral* reason for such agreements to be honored even among the strong.

In short, what has happened in *Roe v. Wade* is that the legal and/or moral concept of “person” has been treated just as liberalism treats all other concepts, as redefinable when necessary to maximize private satisfaction. A contradiction arises because persons most logically antedate the social contract and so cannot be ignored or defined away by it.

Yet liberalism would likewise have been discredited had the Court attempted to develop a principled answer to the personhood question—for the reason that these principles could not have been liberal ones. Liberalism’s political genius is its ability to treat conflicting interpretations of fact or value as though they were conflicts of interest to be ironed out at an imaginary bargaining table. It starts with a set of self-interested persons and works out a hypothetical, though binding, contract among them. But it has no way of determining which entities are to be considered persons. To do so on the basis of others’ interests is impermissible, as argued above, but it has no other way to decide. It cannot know, for example, whether animals have rights any more than it can know whether fetuses do. It has no access to publicly valid or objective ideas in the realms of fact or value, for these have been negated by the skepticism necessary to defeat liberalism’s opponents who might use such concepts to question the results of the social contract.

<sup>10</sup> Or, by analogy to our first interpretation of *Roe*, handicapped newborns could remain persons but control of them could be privatized. This is the tack taken by J. Goldstein, A. Freud, and A.J. Solnit, *Before the Best Interests of the Child* (New York: Free Press, 1979), pp. 91–101. Parental autonomy in refusing lifesaving care would be absolute unless the state could show *inter alia* a societal consensus that the child had “a chance for normal healthy growth or a life worth living” (p. 92). In a society that discriminated against the handicapped, this might be hard to prove, particularly in the case of a handicapped minority child. Others argue for a kind of “private” right of medical experts to do as they see fit with severely harmed or handicapped persons. See *Newsweek* March 21, 1983, p. 52. These different approaches are analyzed in J.A. Robertson, “Involuntary Euthanasia of Defective Newborns.” *Stanford Law Review*, 27(1975):213–269.

One way or another, then, liberalism founders on abortion. If *Roe* stands, liberalism's willingness to treat some persons as property, or (viewed in the second way) arbitrarily to exclude some entities from personhood, destroys its moral authority. Yet if the Court were to reverse *Roe* and to decide in a principled fashion who is really a person, it would necessarily be taking into account more than the private self-interests of persons, and so would eliminate the moral authority of liberalism over its political opponents.

**A** model of socialist community, for use as a reference point in the remainder of this article, can be founded on the negation of the liberal "right to let others alone." Socialism can be seen to posit an original duty to carry for the good of others equally with one's own. Clearly, there can be no original "right to be let alone" here. From the very beginning one owes oneself to others.

This communitarian starting point is incompatible not only with a primordial sphere of private freedom, but also with the value skepticism necessary to secure that private sphere. For if public choices about human needs and human fulfillment are to be made, there must be ideals available that have more than individual subjective validity. For example, if we may not leave education and health care to private market mechanisms, then we must affirm the public validity of the values of education and health. And, similarly, we cannot permit these concepts to have their content privately stipulated, for this would preclude their being the objects of public planning.

Nor is socialism necessarily cynical about motivation. Although it need not be naive concerning the private class- or self-interests that may motivate action, it is not *committed* to cynicism in the way in which the need for a calculus of reciprocal private satisfaction requires that liberalism assume all contracting parties are self-interested. Because it is committed to the achievement of objective public goods rather than private satisfaction, socialism can understand and encourage individual commitments to these same goals.

Yet even in a postulated fully-developed socialism, where economic and political revolution has been able wholly to destroy our sense of separate self-interests, there would remain the need for a coordinating state (a "soviet" or "council" in a participatory polity). To require everyone to meet everyone else's needs at all times would be duplicative and counterproductive. Therefore, socialist community requires an allocation of roles either by custom, which is not possible in times of change, or by the state. Each person owes as much of herself or himself as needed to the state, which in turn has the task of using the resultant pool of talents for the sake of each person's fulfillment.

Such community cooperation should be sharply distinguished not only from liberal contracts, the purpose of which is to give as little as possible to others, but also from altruism or self-sacrifice. Unlike fascist communities, socialist ones do

not ask anyone to sacrifice herself for the sake of others or for the sake of an abstract ideal. Rather, each is called upon to further the good of all, herself included. The kind of association forever on the way to this end is properly called one neither of reciprocity nor of altruism but rather of *solidarity*.

Insofar as one person's duties can be argued indirectly to entail another person's rights, we can easily speak of socialist rights—such as the rights to education and to health. But note that these rights are positive and substantive, not rights against interference with the hollow form of freedom. Since these rights are also the goals the whole community is directed toward, there is no sense of inherent conflict between the rights of some and the aims of others.

All this is not to say that a given community may not decide that group or individual autonomy is a necessary means to human fulfillment, or even a part thereof. But the ethos of socialist freedom is not that of liberalism. For example, decision making might well be decentralized under socialism, so that parents would for the most part have discretion in the care of their children. But they would feel themselves to be delegates of the community and would apply standards to a large degree publicly articulated. The private liberty of parents to control their children arbitrarily would be absent. Again, even if individual autonomy is in itself a necessary part of human flourishing (e.g., because fulfillment requires thinking and some kinds of thinking are possible only in the presence of choices), the feel of freedom would be different. If I take time out from my family—to pursue whatever pleases me—at the urging of a spouse who loves me and wishes to see me fulfill myself, this liberty of choice is not of only personal concern. Even in my whimsical personal enjoyments, I am acting with and for my spouse. Contrast this freedom with the same behavioral content negotiated as part of a marital “contract.” Socialist solidarity does not preclude liberty, but it does preclude the strident self-centeredness we often associate with rights to private autonomy.

Like other goods, the good of new life is a matter of public concern and responsibility in such a community. It is inconceivable that any socialist society would privatize the production of life itself.

Concern for the fulfillment both of parents and of children would, of course, result in a radical sharing of the burdens of child-rearing and, to the degree possible, of child-bearing. At the same time, women in such a community would have no virtually absolute or *a priori* right to refuse to contribute to the common good of children. (Similarly, “O”-blood type people could be called upon to carry their miniature neighbors, even in the absence of anticipated reciprocity.) Insofar as women have unique capabilities needed by the community (i.e., the capability of nurturing very early life), they can be called upon in unique ways. A right like *Roe*'s would not be part of the original principles (or “constitution”) of such a society.

Of course, one cannot know that a socialist community would be “pro-life.” It would not make abortion a merely private matter, but it might make a public decision to promote rather than to forbid some or all abortions—say, if there were a genuine danger of overpopulation.

I would not wish to guess the precise balance that a given community might strike weighing these and many other concerns. Abortion might well be left to public debate and changeable legislation. Concern for reconciliation might make most communities hesitant to enforce rigid criminal law prohibitions, but I would not claim further knowledge of what loving and thinking women and men would decide.

Instead, I want only to argue that one factor going into such public decisions ought to be a principled concept of personhood. Whatever substantive legal position may be reached, such decisions should eschew the arbitrary anticonceptualism implicit in *Roe*'s pretending not to know whether being located in a womb makes an entity not actually alive.

Even more than liberalism, socialism must answer the question of who is a person, since it does not have the option of abandoning any person who exists. The academic and judicial arguments summarized above to the effect that even if the fetus is a person, we have no duty (or even right) to protect it are antithetical to a sense of solidarity with the unborn.

At the same time, unlike liberalism, socialism does not contradict itself in answering this question. It is not committed to the fact and value skepticism that stops liberalism from generating the principled definition of personhood it needs as a starting point. Socialism must constantly make conceptual judgments about the fulfillment of human life. It must also be able to decide for whose fulfillment it is aiming. This argument is not necessarily pro-conceptus, but it is pro-concept.

Yet surely, it will be said, socialism cannot be properly more conceptualist than liberalism. I have argued previously that, although in the short run liberalism is conceptualist in order to provide rigid formal rules within which private planning can take place, in the long run liberalism must forsake its own legalism when its merely instrumental concepts interfere with maximum private satisfaction. Socialism, by contrast, has historically been opposed even to the initial conceptualist trappings of liberalism, both because they obscure its actual instrumentalism and because they are used to preclude direct consideration of the common good. How can socialism, then, ever be pro-concept?

The answer, it seems to me, is that socialism must indeed avoid reifying instrumental legal concepts (such as "property" or "contract"). Although such concepts may at times provide a temporary legalistic buffer against arbitrary power, they must not be permitted to legitimate the present order. At the same time, *some* concepts must exist in order for reason to resist tyranny. I suggest that socialists should replace liberal formal concepts not with nothing, but with concepts of the substantive *ends* toward which we hope to move. Only if we can search for and hold to concepts of "education" or "health"—or "peace" or "democracy" or "*personhood*"—can we offer principled objections to the present direction of things.

Even in a socialist community concepts will remain important, unless the day comes when perfect stability and perfect sharing of values make planning unnecessary. Quite apart from the danger of tyranny, the need to maintain critical theory in

order to guard against serious mistakes by those in power requires that, say, war not peace be redefinable as peace (in 1984 fashion). There is just no way to pursue a goal that has no content. It is well and good to say that most concepts are to be defined functionally, but there still must be some things for the sake of which these concepts are useful. If "person" is to be defined functionally, for whom is it to function?

The sharing of concepts, moreover, itself promotes community—not only in the sense of increasing our trust of each other but also in the sense of letting us *think together*. Surely, among other things we may share, public reason is an important bond. But our public law is literally unthinkable if it is conceptually incoherent at its deepest level. We cannot even argue together about abortion if anything and nothing may be called a person.

**AUTHOR'S NOTE:** Extensive comments by Bill McBride, Paul Brietzke, Burke Balch, and my sister Rebecca Stith helped me very much. I wish the blame could be spread among us all, but I am afraid none of them clearly endorsed my arguments.