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(reviewing Elizabeth Mensch and Alan Freeman, *The Politics of Virtue: Is Abortion Debatable* (1993))

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THE POLITICS OF VIRTUE: IS ABORTION DEBATABLE?. By Elizabeth Mensch and Alan Freeman. Durham, N.C.: Duke University Press 1993. Pp. 268. Paper. \$18.95. ISBN: 0-822-31349-9.

Mensch and Freeman describe their ambitious goal in their Introduction. On abortion, an issue that the authors say has “become intractable,” (2) they want to explore “the possibility of genuine moral debate.” (4) This in itself is a surprising statement in view of the authors’ disclosure that they “have been identified with the left/liberal side of law and politics, a setting in which unquestioning adherence to the pro-choice position has seemed obligatory.” (3) But Mensch and Freeman believe that serious debate is needed because “there is an issue about fetal life that cannot be dismissed by simply invoking ‘reproductive freedom.’” (4) In view of the authors’ further disclosure that they are not affiliated with any particular religious tradition, (3) it is also surprising to learn that they will consider whether an appeal to Christian theological sources can facilitate “mutually respectful dialogue.” (5) From the very beginning, therefore, one has reason to admire the authors, who show intellectual and moral courage by embarking on a journey beyond their own comfort zones. And what a stimulating journey it is! Beautifully written, *Politics* is a cornucopia of exhaustive scholarship and deep insight. While I have some significant disagreements, I consider the book an extraordinary achievement.

The opening chapter establishes “our state of moral confusion” concerning abortion. (13) The authors note that the abortion controversy emerged during a period in which “moral certainty” allowed us to name Nazism and the civil rights movement as, respectively, “perfect examples of villainy . . . and virtue.” (7, 9) That certainty has “surely unraveled” with respect to abortion, as shown by the fact that advocates on both sides “regularly resort to civil rights and Nazi images to affirm the virtue of their side and reveal the villainy of the other.” (9, 10) Pro-life images, however, such as photographs of dead fetuses next to those of Nazi victims, (26) also “serve as an effective antidote” to the pro-choice “ploy of death avoidance.” (14) But the ethical implications of the reality that abortion kills “a developing child” are “complex.” (14) Assessing them will be helped by recourse to theology, because in our culture “questions about life and death, and human responsibility in the face of those mysteries,” cannot be satisfactorily addressed in any other

way. (16)¹

Ensuing chapters take the reader on a fascinating trip through much of the moral and theological history of the twentieth century, as the authors strive “to situate the particular abortion issue in the larger setting of the substantive and institutional role of theology in fashioning or influencing American public morality, especially in the period since World War II.” (5) Mensch and Freeman begin with a close look at two important moral traditions: natural law, “associated primarily with Catholicism,” and “the Protestant ethical tradition associated with Karl Barth and Dietrich Bonhoeffer.” (6) Next, they critique American religion in the 1950s, when a quest for unity transformed the vision of denominational traditions from “bearers of normative realities” to “aids to self-realization, available according to personal preference.” (72) They then contrast Protestant fundamentalism, which stresses “the literal inerrancy of the Bible as the only grounding for an objective Christian truth,” (80) with mainline Protestantism, which in the 1960s became so dramatically secularized (84) that it lost “its distinctive theological voice.” (6) When the breakdown of moral consensus raised puzzling questions about the proper role of churches, including their relationship to state power, the result was a religious schism in which the dividing line was not “[f]amiliar denominational squabbles (even Protestant against Catholic),” but rather “‘old’ (traditionalist) versus ‘new’ (secularist).” (102)

With respect to the abortion issue, the religious secularists seemingly soon prevailed. As demonstrated by two contrasting conferences in the late 1960s, abortion as a question “of *debatable public morality*, with appeals to theological sources regarded as central,” (110) was replaced “by abortion as a question of medical expertise and personal choice.” (109) *Roe v. Wade*² was seen as a powerful symbol of this apparent triumph because its “‘private rights’ formulation of the . . . issue effectively secularized it, rendering moral/religious debate irrelevant for purposes of public policy.” (66, 125) But the symbolism was specious due to *Roe*’s sociological inaccuracy—its “failure to appreciate the potential for serious religious opposition to its

1. The authors believe that the challenge “becomes especially apparent at those points where the boundaries of conventional categories are tested, as with both animals and the unborn.” (16) In support, they cite philosopher John Rawls, who in his *A Theory of Justice* acknowledges his theory’s failure to give an “account of ‘right conduct in regard to animals and the rest of nature.’” (16) Rawls concedes “that a correct conception of [this relationship] would ‘seem to depend upon a theory of the natural order and our place in it.’” (16)

2. 410 U.S. 113 (1973).

authorization of abortion on demand until viability.” (126-127)³ Moreover, *Roe* was politically inflammatory because it “triggered an opposition that would become increasingly absolutist in theologically defending the pro-life position.” (127) Since *Roe* is defended by “an equally absolutist . . . feminism,” (129) the result is polarization. (148) Liberal and moderate denominations might have provided a compromise between these two absolutist positions (134-135) by a “full theological analysis of the two critical questions ‘What should our own moral position on abortion be?’ [and] ‘What should we appropriately expect to be the relationship between our position and state law’?” (135) Instead, they gave a “blank-check endorsement of *Roe*,” thereby forfeiting the opportunity to provide “a distinctive theological voice.” (138, 136) Subsequently, proceeding in a “theologically serious” manner, some of these denominations have expressed more ambivalence about *Roe*. (152) Changes of this type encourage the authors to believe that compromise on abortion might still be possible.

Much could be said about the vast ground that *Politics* covers, but a brief review must be selective. I focus on a variation of the first question the authors would have recommended for evaluation by the liberal and moderate denominations: How are moral assertions to be grounded? The authors’ key contention in this respect is that religious traditions can be discarded only “at our peril.” (157) The authors “dissent from the usual insistence, especially in elite institutional settings, that [in moral debate] theology be relegated to the status of irrational, supernatural, or backward.” (153)⁴ They rightly find this “elitist insistence” ironic for two reasons. First, “the very notions of ‘freedom’ and ‘equality’ so central to Enlightenment moral and political thought [the source of our “secular rationalism”] were historically and philosophically rooted in theology” (153) Second, while religion remains a powerful force, “all three of the great isms of the twentieth century that sought to displace [it] as the source of human meaning . . .—Marxism, Freudianism, and Existentialism—are rapidly fading

3. Due to the open-ended manner in which the Court in *Roe*’s companion case defined “health,” critical to the rule that a state cannot prohibit abortion, even post-viability, when the woman’s health is endangered, there is a compelling argument that abortion on demand is in fact allowed throughout the entire pregnancy. See *Doe v. Bolton*, 410 U.S. 179, 192 (1973). The authors repeat this misinterpretation of *Roe* by characterizing the decision as conferring “an absolute right to abortion—even throughout the *second* trimester of pregnancy” (4) (emphasis added). Ironically, elsewhere they point out another scholar’s error in suggesting that *Roe* restricts abortions primarily to the first trimester of pregnancy. (162 n. 12)

4. One reason for Mensch and Freeman’s dissent is their experience in teaching a course in environmental ethics. They “were forced to confront the limits of . . . conventional sources of moral discourse” and benefited from an “appeal to theological sources.” (2)

blips on the screen of history.” (154)⁵

The authors further establish that theology is a legitimate participant in moral debate by showing the inadequacy of other possible grounds for moral assertions.⁶ One such ground would be consensus.⁷ But premising moral assessments in consensus fails as a methodology because consensus, as long as it lasts, only allows us to “pretend that our moral vocabulary is about ‘something.’” (154) “[W]hen consensus breaks down,” however, “we have nothing to appeal to but rampant and incommensurable subjectivity.” (5) This rejection of consensus initially is somewhat puzzling in view of the authors’ apparent reliance upon consensus as the source of “moral certainty” about the evil of Nazism and the virtue of the civil rights movement. The book’s initial chapter, however, is not an argument that consensus establishes that the Nazis actually *were* evil and that the civil rights movement actually *was* virtuous. Rather, the chapter’s point is that our shared feelings about those two events enable them to serve as powerful rhetorical weapons in other conflicts. (9)⁸ As the authors point out later, the “cultural fact [of

5. The fact that religion persists, of course, does not prove that God actually exists. Edward Wilson argues that man created the notion of God to serve a variety of purposes, including coping with the fear of death and providing overpowering validation to ethical codes that man himself had also created. Edward O. Wilson, *Consilience* 253-257 (Alfred A. Knopf 1998). Significantly, Wilson presupposes that mankind is the product of a naturalistic, evolutionary process. *Id.* at 241. One wonders if his view of the origin of religion would be shaken by biochemist Michael Behe’s compelling argument that naturalistic evolution cannot account for many of the human body’s remarkably intricate biochemical systems. Michael J. Behe, *Darwin’s Black Box* (Free Press 1996). Behe believes that “[t]o a person who does not feel obliged to restrict his search to unintelligent causes, the straightforward conclusion is that many biochemical systems were . . . planned . . . the product of intelligent activity.” *Id.* at 193. This conclusion “flows naturally from the data itself - not from sacred books or sectarian beliefs.” *Id.*

6. One view of moral assertions is that there can be no such grounding. Mensch and Freeman describe the prototypical philosophy class (“Philosophy 101”) at a secular liberal arts college around 1960: “[M]atters moral were largely relegated to the realm of individual subjectivity, and ethical values were understood not as rational and objective, but as a form of ‘emotivism’ disconnected from the [surrounding] factually verifiable, scientifically apprehensible world . . .” (28) They mention as well the philosopher Richard Rorty’s “antifoundationalism,” (144) which abandons “the search for rationally unassailable foundational assertions as an unrealizable fantasy project.” (80) Such skepticism as Rorty’s, (145) the authors believe, not only “raises the specter of pure relativism as to public moral questions,” (144-145) but also seems “to deny the possibility of any ‘public’ dialogue about moral truth at all.” (144) These criticisms apply to the “Philosophy 101” approach as well.

7. Another example discussed is American jurisprudence. One strand, positivism, does not even purport to address questions of morality because “[l]aw [is] simply the command of a particular sovereign in a particular place.” (32) A different strand, the “elaborate conceptual categories of American constitutionalism (like ‘freedom of contract’),” after the assault of the legal realists, was shown to be about nothing “other than the culture of judging.” (30-31)

8. Consider, for example, this passage (which explains the book’s title): “[T]o appropriate to one’s cause the aura of the civil rights movement is to demand the unquestioning allegiance of people of goodwill and conscience The net effect is to elevate one’s cause to a politics of

“shared moral norms”] provides no external, objective reference point from which to judge the moral validity of a particular law or, as with Nazism, a whole legal system.” (33) After all, as Judge Posner has noted, the Nazis believed that *they* were correct.⁹ Who is to say that their consensus is morally inferior to another culture’s (or even the rest of the world’s) opposing consensus?¹⁰

One possible source of a defensible rationale for condemning Nazism is the natural law tradition. It was here that even “liberal intellectuals” turned following World War II for a more firm foundation for ethics. (29) “Natural law’s claim is that a timeless and universal justice is rooted by God in the essential reality of an objective natural order and reveals itself to our careful human reason.” (29) While, since it is premised ultimately in God, natural law obviously is not a secular doctrine,¹¹ the tradition’s assertion is that revelation is not needed to supply substantive content. (35) For example, “a prohibition against genocide can be . . . rooted in an understanding of the nature and purpose of humanity that is accessible to natural reason alone.” (35) If an appeal to reason truly is all that is necessary, then maybe natural law can serve as at least a quasi-non-theological basis for moral judgments. But as Mensch and Freeman clearly demonstrate, it is impossible to separate natural law from its Christian theological foundations, (39, 55-56) including specific scriptural commands. (44-45) Thus, natural law as currently conceived is not an alternative to theology after all.

My main differences with the authors concerning the relevance of Christian theology to moral debate flow from our contrasting starting points. Mensch and Freeman consider Christian theology for the *practical* reason that “much of the pro-life side of the abortion debate is couched in [Christian] theological terms” (5)¹² I am an evangelical Christian who believes that Christian theology is *true*. Their different

virtue rather than of self-interest.” (9)

9. Richard A. Posner, *The Problematics of Moral and Legal Theory* 11 (Harv. U. Press 1999).

10. *See id.* at ix, 9. Mensch and Freeman suggest that even infanticide, “so morally repugnant to most of us,” cannot be labeled as *really* wrong in an absolute sense. (173 n. 36)

11. In a departure from medieval natural law theorists, Grotius (1583-1645) promulgated a version of natural law “wholly premised on Enlightenment rationalism—a secular natural law that would remain true ‘even if God did not exist,’ so great was the capacity of unaided natural reason.” (185 n. 72) The modern natural law theorist Jacques Maritain attacks this “aggressive and self-sufficient Enlightenment conception of reason . . . [that treats] ‘the individual as a god’” (40)

12. The authors elsewhere attribute their focus on Christianity to “the overwhelming presence of Christianity in American culture and the particular Christian character inherent in much of the pro-life position.” (169 n. 26) Recall that the authors inform readers that they are not affiliated with any particular religious tradition. (3)

perspective may explain the authors' failure adequately to explore Biblical teaching on the status of preborn life.¹³ While those not of the Christian faith can immerse themselves in the work of Christian theologians, as the authors do heroically, it is perhaps too much to expect that in evaluating the moral issue of abortion, their starting point and focus would be the same as a practicing Christian's: understanding what the Bible says about the preborn.¹⁴

That Mensch and Freeman do not write from within the Christian tradition also explains another difference. I would accord Christian theology greater significance than the authors do. They believe that theological sources can enrich the debate, making ethical questions "more amenable to nuanced and sensitive treatment . . ." (2) I believe that since Christian theology is *true*, it is the *only* valid source of morals. While this admittedly sounds imperious, it is an inescapable conclusion for the Christian. A key premise of orthodox Christianity is that God is the ultimate source of all truth. It is thus impossible for faithful Christians to believe that moral truth can be grounded otherwise than in God's authority. "God says" defines right and wrong for the orthodox Christian.¹⁵ Moreover, "God as the ultimate source of truth" makes "God says" the source of truth for all people, not just Christians. As the authors themselves recognize, if Christianity is "not 'true' and 'real' in some sense that [can] be taken to be objective, then no amount of talk about values, spirituality, Americanism, love, or human needs [will] rescue Christian theology." (80)¹⁶

13. After characterizing Scripture as "notoriously ambiguous on the question of abortion," the authors cite only one passage, *Deut* 30:15, that they say is often cited by pro-lifers. (17) This verse has at best a very indirect relevance to the abortion issue. It is regrettable that the authors failed to mention the many passages that bear on God's view of life in the womb. *E.g.*, *Psalms* 139:13-16; *Jer* 1:4-5; *Luke* 1:44 (NIV). A thorough examination of what the Scripture teaches on abortion would also have taken into account *Exod* 21:22-25 (NIV), a passage that in some translations appears problematic for pro-lifers.

14. The Bible, of course, speaks to many other issues relevant to the abortion controversy, including the sinfulness of sexual relations outside of marriage (relevant to the problem of unwanted pregnancy), the command to show compassion (relevant to how women with unwanted pregnancies are to be viewed and treated), the command to forgive others (relevant to how women who have had abortions are to be viewed and treated), and the command to value all human life and to forgive our enemies (relevant to how abortionists are to be treated).

15. It is in the Bible that God reveals his will. There obviously are non-Christian conceptions of God. It is equally obvious that it matters tremendously which of the various views of God is correct. This is not the place to argue for the validity of the Christian view. Since *Politics* focuses on the role of Christian theology in the abortion debate, it is appropriate to confine my discussion to the Christian tradition.

16. It is interesting that the authors, who do not profess to believe Christianity to be true, evaluate various individuals and denominations as to whether they adhere sufficiently to the Christian tradition. In the authors' view, those proving sufficiently faithful include John Noonan, (42-45) Francis Schaeffer, (79-81) Karl Barth, (93) Dietrich Bonhoeffer, (93-94) and James

Even though God as He is revealed in the Bible is the only source of moral truth,¹⁷ I do not believe that Christians in public debate can depend upon what the authors call “the theological close-out.” (4) Mensch and Freeman strongly criticize those who would argue by saying, “This is what God says, so shut up and don’t question me about it.” In their view, “by claiming a privileged access to absolute moral truth, such close-outs show a prideful disdain for the complexity of ethical judgment and for the genuine moral concerns of those who may disagree but who are still open to dialogue.” (4-5) To be valuable in public debate, “theological argument . . . must appeal not to privileged authority but to some version of the common good . . .” (5) I understand this passage as a condemnation of a particular mode of discourse.¹⁸ Christians, the authors believe, should frame their arguments in universally accessible language.¹⁹

Viewing the Biblical God as the only grounding for truth does not mean that Christians routinely should attempt through law to impose their God-based morality on all Americans. As the authors note, “[o]ne need not believe in pluralism [as the source of truth] to accept it as a reality constraint.” (221 n. 45)²⁰ Determining the circumstances under

Gustafson. (111-112) Those lacking in faithfulness include the God-is-dead theologians, (94-97) Joseph Fletcher, (107-109) and the Presbyterian Church (USA) in the early 1980s (136-137) (the Presbyterians redeemed themselves in the authors’ eyes by the early 1990s. (152) Such an evaluation reveals the authors’ belief that there is a core content to Christianity that can serve as a standard. But if the core content is not *true*, why does it matter whether or not anyone adheres to it?

17. I do not mean by this that non-Christian individuals or other religious faiths may not have beliefs that coincide with genuine moral truth. My point is that the only legitimate *grounding* for truth is in “God says,” with God meaning the Biblical God. I also believe that we Christians, well aware of our own sinfulness, should have sufficient humility to know that we cannot perfectly apprehend the truth that is found only in Christianity.

18. A non-substantive meaning for “the common good” is also consistent with the authors’ rejection, previously noted, of consensus as a grounding for moral truth. I am somewhat confused, however, by their frequent negative references to theological absolutism in defending the pro-life position. On one occasion, “hostile” is included in the description, (109) which may suggest that here too it is the mode of argument that is being criticized. (83) Many times, however, the authors refer merely to absolutist religious opposition to abortion. (125, 127, 129, 135) The suggestion is that the authors are criticizing absolute opposition per se. If this is what they mean, I disagree. Surely there are some evils (Nazism?) which demand absolute opposition. Christians who believe that abortion is in this category speak no less with “a distinctive theological voice” (something that earns the authors’ praise) than do Christians who feel able to compromise on abortion. (136)

19. If the authors mean as well that Christians should hide their identity as Christians, I do not agree. In addition, as the authors recognize, explicitly theological language may sometimes be necessary. Such occasions could result from “a pluralist reality that . . . render[s] universalism impossible . . .” (5) At other times, “prophetic witness” might be called for. (100-101)

20. I believe that there are also faith-based reasons for opposing legal imposition of faith. See Samuel W. Calhoun, *Conviction Without Imposition: A Response to Professor Greenawalt*, 9 J. L. & Relig. 289.

which resort to State power is appropriate is a complex inquiry,²¹ and *Politics* offers a wealth of information and insight concerning a range of possible approaches. (37-38, 76-77, 115-116, 138-148, 219 note 24)²² These portions of the book were particularly interesting to me, as one who has struggled with defining a standard to guide Christians. Some years ago, in this *Journal*, I proposed a principle of self-restraint for Christians contemplating legislative proposals to implement faith-based precepts—the non-imposition principle.²³ I urged that Christians, before seeking such a law, should carefully evaluate the relative weight of their reasons. Only if secular reasons, standing alone, justified their support could Christians seek the law without imposing their faith.

For a variety of reasons, I am now uncomfortable with the non-imposition principle as originally articulated. A principal one is that I asked Christians to try temporarily to exclude God from their thinking. I now find this notion to be abhorrent. As a Christian, I acknowledge that God is my Creator. God not only gave me life, but He gives me every positive attribute that I have, including my reason. Since God is the source of reasoning ability, it now strikes me as breathtakingly arrogant that I once urged Christians, even if only momentarily, to strip God from their thoughts.²⁴

Even though I still support the concept that religious faith should not be imposed by law, I believe that Christians are justified in seeking laws to prohibit almost all abortions and, in doing so, making no attempt to mask their faith. Novelist Joan Didion recently wrote that the insertion into political debate “of a claim to faith, or to religion, or to ‘the high moral ground,’” is inherently dangerous because “the needs and rights of some citizens might be overridden to accommodate the needs and rights of those holding the high ground.”²⁵ This quote reveals a stunning naivete about the nature of politics, which is nothing if not a process in which some citizens’ needs are always being overridden so that other citizens can achieve their goals. There is no justification for citizens of religious faith to be excluded from this process. As Mensch

21. It will be recalled that this is the second question that the authors would have recommended for evaluation by the liberal and moderate denominations as a step toward avoiding the polarization flowing from *Roe*.

22. Particularly noteworthy is the authors’ warning of the risk of idolatry for churches that too closely depend upon politics. (82, 142)

23. See Calhoun, *supra* n. 20.

24. Moreover, as a Christian I believe that my God-given reason has been corrupted by sin. I thus have no basis for confidence in any reasoning that I do while trying to block God’s influence. Instead, I should always ask God to guide me as I exercise my reason.

25. Joan Didion, *God’s Country*, *The New York Review of Books* 68, 76 (Nov. 2, 2000).

and Freeman argue, it is not as if a *secular* approach to law guarantees neutrality. As shown by the issue of abortion, cleansing the “law of all vestiges of sectarian religious traditionalism and to appeal instead to the supposedly neutral authority of . . . the Constitution . . . [coerces; it is] a non-neutral substitution of one morality for another.” (142)

Didion’s view, however misguided, shows that there are formidable barriers to the authors’ hope that theological discourse can contribute to mutually respectful dialogue concerning abortion. Marvin Olasky’s belief as quoted in Didion’s piece is true: there is “a river of suspicion concerning the role of religion in American society.”²⁶ Despite the challenges, Christian people must still confront the grim reality of abortion: “To abort a fetus is to kill, to prevent the realization of a human life.” (157)²⁷ *Politics* eloquently defends the legitimacy of Christians’ doing so in explicit reliance on their faith. The book thus performs a great service for all those committed to the preciousness of each human life.

Samuel W. Calhoun[†]

26. *Id.* at 68.

27. While the authors believe that abortion takes human life, they do not believe that this in itself brands abortion as immoral or demanding legal restriction. Their use of a tort law example to support this view is unfortunate. They relate John Noonan’s point that automobile negligence law “rests on the assumption that human lives will routinely be taken (in automobile accidents) for the sake of ‘values more highly prized by the society’ than human life, values realized through the facilitation of transportation.” (46, 108) To me, the vast distinction between accidental death resulting from negligence and the intentional killing that is abortion makes the analogy completely inapt. (They do refer to examples of intentional killing, ending a patient’s life (108) and war, (108, 157) but do not discuss either the morality of these killings or whether abortion is similar enough to these two situations to warrant the comparison.)

I also regret the extent to which the authors apparently would depend upon sentiment in evaluating the value of preborn life. They point out that “photographs taken of nineteen-week fetuses are more compelling than those taken at eight weeks, which are in turn more compelling than those of two-week-old embryos.” (15) Such distinctions no doubt reflect normal emotional reactions, but should they drive the determination of when human life should be protected? As the authors point out, John Noonan warns of the danger of relying upon feelings as the criteria for membership in humanity: “[i]f feelings are the key, many slave owners have felt it perfectly moral to abuse and even kill their slaves . . . many Nazis felt no twinge of guilt in exterminating Jews and Poles whom they believed not to belong to the human species . . .” (45) For an illuminating debate on this subject, see James Q. Wilson, *On Abortions*, Commentary 21 (Jan. 1994); Hadley Arkes, *Abortion Facts and Feelings*, First Things 34 (April 1994); James Q. Wilson & Hadley Arkes, *Abortion Facts and Feelings II: An Exchange*, First Things 39 (May 1994).

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