

Sowing the Wind, Reaping the Whirlwind:
From Frederick Taussig's *Abortion:
Spontaneous and Induced* (1936) to
Warren Hern's *Abortion Practice* (1984)

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IN *Abortion Rites: A Social History of Abortion in America*,ⁱⁱ Marvin Olasky discusses how views about abortion changed during the first half of the twentieth century. One factor was Dr. Frederick Taussig's *Abortion: Spontaneous and Induced*,ⁱⁱⁱ which Olasky calls "the most influential pro-abortion book of the 1930s."^{iv} When prominent abortionist and abortion-rights advocate Dr. Warren Hern published *Abortion Practice*^v in 1984, a reviewer stated that the book would "serve as the yardstick by which all other information on abortion must be measured."^{vi} The two books are separated by almost 50 years. Comparing them shows how drastically things have changed concerning abortion in that relatively short period. Moreover, one readily sees that Taussig helped pave the way for a freedom regarding abortion far beyond what he himself wished.

At a time when abortion was generally prohibited,^{vii} Taussig called for liberalization of the law. He believed existing state laws to be "contradictory,"^{viii} "ridiculous,"^{ix} "antiquated,"^x "unjust,"^{xi} "harsh,"^{xii} and "ofttimes incomprehensible."^{xiii} Taussig's proposed statute would have allowed post-viability abortions to be done by a licensed physician in order to preserve the life or health of the mother.^{xiv} Pre-viability abortions would be allowed if done by a licensed physician in a licensed hospital so long as two licensed physicians attested that the abortion was necessary to preserve the mother's life or health or that it was a case either of physical depletion or moral irresponsibility of the mother.^{xv} "Physical depletion" was defined as "any condition that produces bodily exhaustion predisposing to disease, such as too frequent child bearing,

undernourishment, or excessive family responsibilities.”^{xvi} The “moral irresponsibility” exception covered situations in which the woman at the time of conception “lacked the necessary physical or mental control over her conduct,” such as in cases of rape.^{xvii}

Taussig defended his proposed statute against criticism from those on both sides of the debate. To those who argued that any attempt to restrict abortion by prohibitory laws was futile and would promote the continuance of illegal abortions, Taussig stressed the perils of full legalization, as shown by the experience in Russia, which had legalized abortion in the 1920's.^{xviii} To those who criticized his statute as too liberal, Taussig replied that at least it refuted the extreme position that would legalize abortion in every case of illegitimacy and in cases of desertion and widowhood.^{xix} More importantly, Taussig emphasized that doctors themselves would prevent abuse.^{xx} The statutory two-physician requirement would encourage “a careful survey of the facts” justifying the abortion and would also allow authorities to punish those “unscrupulous” physicians who sought to take advantage of the law’s liberal provisions for financial gain.^{xxi} Taussig in fact hoped that his proposed law, by reducing the number of secret abortions, would gradually eliminate professional abortionists.^{xxii} Similarly, Taussig hoped that the licensed hospital requirement would “prevent the establishment of small private hospitals designed especially for the care of abortion cases.”^{xxiii}

Matters obviously have not worked out in the way that Taussig hoped. I believe he would have been appalled by the current reality concerning abortion as revealed by Dr. Hern’s *Abortion Practice*. Hern’s clinic, the Boulder Abortion Clinic, is an example of just the sort of speciality abortion provider that Taussig hoped to avoid. The book’s chapter on “Legal Aspects of Abortion Practice” shows that the total legalization that Taussig opposed has now occurred. There is no discussion of the permissible legal grounds for abortion; rather, the topics include such issues as spousal consent and parental consent/notice.^{xxiv} Nor is there any indication that Hern himself would in any way attempt to restrict abortion availability. In a passage discussing the difficulties that clinic counselors have with their feelings toward “women who have late second-trimester abortions for no apparent reason,” Hern urges that

counselors remember that their job is to help women implement their own decisions about their lives, “whether the decisions be ‘good’ or ‘bad’ by some or any moral standard, rational or irrational.”^{xxv} To Hern, a woman’s choice clearly is supreme. This extends even to such grounds for abortion as sex selection.^{xxvi}

If Taussig would presumably have been upset with the abortion practice of Dr. Hern, it is tragically ironic that Taussig’s book actually contributed to the legal culture that allows Dr. Hern openly to prosper as an abortionist. First, it provided key support to an assertion that became and remains a crucial element of the pro-choice position—the horrors of the illegal abortion era. Taussig spoke of the “needless wreckage of human lives” resulting from the “scourge of abortion.”^{xxvii} He meant the lives of women. Taussig estimated that from 8,000 to 10,000 women lost their lives each year to abortion, a number that he called “appalling.”^{xxviii} Even though we now know that these numbers were incorrect,^{xxix} they received (as Olasky points out) apparent corroboration for the broader public when a full-page *Time Magazine* review pronounced Taussig’s book to be “‘authoritative.’”^{xxx} Second, even though Taussig’s proposed abortion statute asserted certain limiting grounds, Taussig elsewhere favorably mentioned broader possible justifications for abortion. The concept that has proven to be the most significant in the continuing controversy was Taussig’s contention “that more consideration must be given to the right of women to control their own bodies.”^{xxxi} Third, while purporting to respect the developing child, Taussig used language that opened the door to its wholesale destruction:

Science has swept away any argument as to a vegetative or animate period in the development of the child. We know from incontrovertible evidence...that all the essential factors in [its] development...are determined at the first union of the two sex cells and that life begins then and there. From that very moment...we must, if we are logical, have regard for both ovum and mother. Society, in drawing up its code of right and wrong, must be just to both of them. It must insist that, although the growing embryo is but a shapeless mass of cells, it is not part and parcel of the mother’s body, to be disposed of as she sees fit. Nor, on the other hand, is it fair that the health of the mother or her usefulness in the social order be undermined by the development of this new being whose

existence is so precarious and whose value to the world is relatively of such dubious importance. Potentially, having reached maturity, the mother is the creator of many such human beings, and her life must therefore be given first consideration.^{xxxii}

The devaluation of the preborn evident in Taussig's book reaches its zenith in Hern's. Previous reviews of *Abortion Practice* have stressed this fact. Both William Brennan and Dave Shiflett highlight Hern's reference to the preborn child as a "fetoplacental unit" whose relationship with the mother can best be understood "as one of host and parasite."^{xxxiii}

Brennan calls this comparison a "malignant metaphor," a phrase he also uses to describe Hern's defining pregnancy as a disease.^{xxxiv} Brennan also recounts the chillingly clinical way in which Hern discusses various problems with removing the skull of the aborted child.^{xxxv}

Hern's discounting of preborn life goes beyond even what Brennan and Shiflett have mentioned. In the preface to his book, Hern describes the context of abortion as involving "a woman, who is a person; the physician, who is a person; and a system of medical care."^{xxxvi} The developing child is non-existent in Hern's thinking. Consider his discussion of those late second-trimester amnioinfusion abortion methods that sometimes result in live births. Rather than asking the obvious question (Does not a live birth suggest a human being who should not be killed?), Hern instead views "signs of fetal life on expulsion" as a technical problem that plagues midtrimester abortion.^{xxxvii} He views saline as more advantageous than other infusion agents because it reduces the probability of signs of fetal life.^{xxxviii}

Hern reacts in the same way to the fact that abortion clinic staff struggle with the repugnance of the dismemberment required for second trimester abortions. Rather than considering the implications for the status of fetal life, Hern again complains about the existence of a technical problem.^{xxxix} Hern reports, undoubtedly with considerable pride, a way to ease the situation. If urea is infused into the uterus prior to dilation and evacuation, the procedure can generally be accomplished with "minimum effort" because of the "[f]etal maceration" caused by the urea.^{xl} With the fetal tissues "significantly softened," dismemberment

and removal become “easy.”^{xli} In passing, Hern tells any staff experiencing stress that they should stiffen their spines. He believes that it is in challenging situations like this that one substantiates one’s commitment to the supremacy of women’s choice.^{xlii}

One should not be surprised that Hern, a professional abortionist, has an extreme disregard for preborn life. But to see this callousness so matter-of-factly displayed in an acclaimed “how to” abortion manual nonetheless is a chilling experience. Regrettably, such experiences are all too common in this era of abortion rights. Consider, for example, the opinion of the United States Supreme Court in *Stenberg v. Carhart*,^{xliii} which considered Nebraska’s partial-birth abortion ban. It is fitting that the majority opinion cites Hern’s book,^{xliv} for the Court employs Hern-like language, as when the phrase “instrumental disarticulation”^{xlv} is used to refer to one abortion technique in which the fetus “dies just as a human adult or child would: it bleeds to death as it is torn limb from limb.”^{xlvi} Moreover, the Court declares partial-birth abortion, which millions believe borders on infanticide,^{xlvii} to be constitutionally protected. The mantle of “constitutional right” is thrown over a procedure that to describe is to condemn: “the fingers and feet of the fetus are moving prior to the piercing of the skull; when the scissors are inserted in the back of the head, the fetus’[s] body, wholly outside the woman’s body and alive, reacts as though startled and goes limp.”^{xlviii} What better evidence could there be that our society is now reaping the whirlwind from decades of denigrating the value of fetal life?

NOTES

i. This paper is a revised and annotated version of a talk with a different, but similar, name that I gave at the Conference. The chief change occurs in the concluding paragraph, which now refers to the Supreme Court’s decision in *Stenberg v. Carhart*, 120 S. Ct. 2597 (2000), a case that had not been decided at the time of my presentation.

ii. Marvin Olasky, *Abortion Rites: A Social History of Abortion in America* (Crossway Books 1992).

iii. Dr. Frederick J. Taussig, *Abortion: Spontaneous and Induced: Medical and Social Aspects* (St. Louis: Mosby, 1936).

iv. Olasky, *supra* n.2, at p.261.

v. Dr. Warren M. Hern, *Abortion Practice* (J.B. Lippincott Co. 1984). I will refer to the 1990 Reprint by Alpenglo Graphics, Inc.

vi. Dr. Laurence A. Reich, Book Review, 311 *New Eng. J. Med.* 1062 (18 October 1984).

vii. Most states recognized a life of the mother exception and a few added an exception for the mother's health. See Taussig, *supra* n.3, at pp.428-33.

viii. *Ibid.*, p.29.

ix. *Ibid.*

x. *Ibid.*, p.396.

xi. *Ibid.*, p.404.

xii. *Ibid.*, p.449.

xiii. *Ibid.*

xiv. *Ibid.*, 444. Taussig used the phrase "intent to produce premature birth" to describe post-viability abortions. See *ibid.*, pp. 443-44.

xv. *Ibid.*

xvi. *Ibid.*, p.443. Taussig labeled abortion in such circumstances as the exercise of preventive medicine and argued that preventing disease was wiser than its cure. *Ibid.*, p.321.

xvii. *Ibid.*, pp.443-44.

xviii. *Ibid.*, pp.445, 396. The chief perils experienced in Russia were a deterioration in maternal health and an increase in repeat abortions. *Ibid.*; see pp.413-14, 419-20.

xix. *Ibid.*, p.448.

xx. Today, when the abortion decision is touted as a woman's unfettered choice, it is surprising to reread *Roe v. Wade*, 410 U.S. 113 (1973). The abortion right is expressed more in terms of a doctor's right to exercise medical judgment than

a woman's right to decide. Ibid., pp.163-66. This focus on the doctor's role was clearly foreshadowed by Taussig.

xxi. Ibid., p.321; see *ibid.*, p.444.

xxii. Ibid., p.444.

xxiii. Ibid., p.445.

xxiv. See Hern, *supra* n.5, at pp.257-58.

xxv. Ibid., p.89.

xxvi. Ibid., p.85.

xxvii. Taussig, *supra* n.3, at p.29.

xxviii. Ibid., p.28.

xxix. Taussig himself soon repudiated them. By 1937, he had reduced the number of maternal deaths to around 8000. Dr. Fred J. Taussig, "Abortion and its Relation to Fetal and Maternal Mortality" in *Am. J. Obstetrics & Gynecology* 33 (April 1937) 711, 712. In 1942 Taussig stated that the conclusions expressed in his 1936 book had been based on "the wildest estimates as to the number of abortions and the number of abortion deaths." *The Abortion Problem* (The Williams & Wilkins Co., 1944, publishing the proceedings of a 1942 conference), p.28. His current position was that one "can positively say there do not occur over 5000 abortion deaths annually in this country" (*ibid.*). Even this figure likely is far too high. Consider, for example, that Planned Parenthood, in a 1991 Fact Sheet entitled *Illegal Abortion: Yesterday, Today, Tomorrow*, states that in millions of illegal abortions occurring between 1845 and 1970, "[t]housands of women died, at least 100 each year" (*ibid.*, p.1).

xxx. Olasky, *supra* n.2, at p.262. (The Time review contained the figure of 10,000 maternal deaths. Time, Mar. 16, 1936, at 52.) Taussig also asserted that "for every woman who dies as a direct result of abortion, several women are disabled, sometimes permanently, or are rendered sterile, or at a subsequent pregnancy suffer from the after effects of the abortion." Taussig, *supra* n.3, at p.28. This quote, as well as the figure of 10,000 women killed each year by abortion, were disseminated widely in a 1937 Reader's Digest article by Margaret Banning. Margaret C. Banning, "The Case for Chastity" in *Reader's Digest* (August 1937) p.3.

xxxi. Taussig, *supra* n.3, at p.390. Taussig also suggests that abortion might be

justified when a pregnancy would interrupt the work of women with “[u]nusual ability in artistic, intellectual and administrative fields” (ibid.).

xxxii. Ibid., pp.400-01. This quote is scary in that it reveals no solid foundation for valuing any human being, much less the preborn. The standard appears to be relative utility. Under this approach, all of us are at risk, especially males, who, unlike women, cannot demonstrate their worth through their capacity to create other human beings. Taussig’s dilemma is that by his cynical attitude toward religion he deprived himself of the only sure basis for valuing human life—sanctity conferred by the Creator. He rejected theology, which he said was bound by dogma, as the arbiter of right and wrong and instead looked to a “purely ethical or moral viewpoint” (ibid., p.400). Taussig thought this necessary because, as shown by previous conflicts between theology and science, when Church doctrines “deal with the material things of life” they are “often at variance with the truth, and block the path of progress and reform” (ibid., p.397).

xxxiii. Dave Shiflett, “Dr. Hern and Mr. Clinton” in *The Weekly Standard* (11 November 1996), p.15; William Brennan, “Nazi-Style Medicine” in *National Right to Life News* (13 September 1984), p.8. See Hern, *supra* n.5, at p.14.

xxxiv. Brennan, *supra* n.33, at p.8. See Hern, *supra* n.5, at pp.3-17. Equally malignant is Hern’s description of pregnancy as “neoplastic,” Hern, *supra* n.5, at p.17, i.e., like a “neoplasm,” which means “a new, often uncontrolled growth of abnormal tissue; tumor.” *Random House Webster’s College Dictionary* (1995), p. 906.

xxxv. Brennan, *supra* n.33, at p.8.

xxxvi. Hern, *supra* n.5, at pp.ix-x.

xxxvii. Ibid., p.123.

xxxviii. Ibid., p.124.

xxxix. See *ibid.*, p.123. If Hern himself totally ignores evidence revealing the humanness of the preborn, he apparently fears that his patients may be unable to do so. Although sonograms are performed on all women believed to be in the second trimester as part of Hern’s screening procedures, *ibid.*, pp.69-70, there is no indication that these sonograms are shown to women prior to their abortions.

When an urea infusion is made to facilitate dismemberment of the fetus in the second trimester, “the presence or absence of fetal heart tones” is ascertained by “a Doppler inaudible to the patient” (*ibid.*, p.145). After the abortion is over, Hern believes “that it is not advisable for patients to view the products of

conception” (ibid., p.304).

xl. Ibid., p.146. Maceration essentially means softening or disintegration due to steeping in a liquid. See *Random House Webster’s College Dictionary* (1995) p.813.

xli. Hern, *supra* n.5, at p.145.

xlii. Ibid., pp.134-35.

xliii. 120 S. Ct. 2597 (2000).

xliv. Ibid., p.2606.

xlv. Ibid.

xlvi. Ibid., p.2624 (Kennedy, J., dissenting).

xlvii. See *ibid.*, pp.2636, 2656 (Thomas, J., dissenting)

xlviii. Ibid., p.2626 (Kennedy, J., dissenting). Justice Thomas believes that this description vividly demonstrates “the resemblance between the partial birth abortion procedure and infanticide” (ibid., p. 2649) (Thomas, J., dissenting). To him, the description alone answers the question of “whether States have a legitimate interest in banning the procedure ... In a civilized society, the answer is too obvious, and the contrary arguments too offensive to merit further discussion” (ibid., pp.2649-50).