

## CHAPTER IV

# *RELIGIOUS VIEWS OF ABORTION*

### Primitive Religion

Though it is impossible to discover what religious attitudes our prehistoric ancestors may have had toward abortion, we do have some evidence of religious attitudes of some contemporary primitive societies. A brief look at them suggests what may have been common attitudes in the ages prior to the development of western civilization.

In a few places abortion plays a part in what appears to be a religious or magical rite. Among the Achewa of Nyasaland, abortion was induced in order that the fetus might be incorporated into the foundation of a furnace to be used in making tools.<sup>1</sup> The natives of Formosa also aborted for religious reasons, not as part of ritual, but because it was considered sinful to bear children before a certain age. In the same culture, the child was not considered a full person until it was given a name at two or three years of age, and infanticide before that age was unpunished.<sup>2</sup>

Some tribes practice abortion for what seem to be religious reasons, but may in fact be religious rationalizations of purely pragmatic purposes. For instance, among the Jivaro tribe of Ecuador, a woman who bathes in a river is thought to become subject to impregnation by a demon, which results in a monster birth. Also the second of a pair of twins is considered the offspring of a demon, and is killed. Since abortion is practiced when there is danger of a monster birth, there seems to be a religious motive—the avoidance of children of demons.<sup>3</sup> But obviously, once the practice of abortion under such conditions is established, a woman need only be careless about bathing in order to have a socially approved ground for abortion.

Religious and magical practices also play a role in causing abortion. In most cases the magic is straightforward, and not especially interesting—charms, spells, magical acts. A couple among the Muria of Burma were reported to have sought abortion from a tribal god, with prayer, fasting, and sacrifice.<sup>4</sup> The underlying theory seems to have been that the god was responsible for maintaining tribal integrity, which would have been violated

by the particular birth. Religious practices to prevent undesired miscarriage are found in many places; only one place, Hawaii, had a god for causing abortion. The "idol" or image of the abortion-god apparently was an actual instrument of abortion.<sup>5</sup> Thus religion and surgery blended in a unique way!

In the fragmentary reports concerning primitive societies, only a few indicate religious or supernatural sanctions against abortion. In some groups—e.g., the Arapaho American Indians—it was feared that aborted babies would sooner or later get revenge on their mothers, by returning to kill or harm them.<sup>6</sup>

Animistic religion tends to regard abortion as a direct attack on the vital principles of nature. Among some of the Eskimo, for example, a woman who had a premature birth was believed to exude a vapour which would affect others, including seal hunters, thus driving the seals away. "A guilt is handed to" a seal that does not successfully avoid contamination. The seals are considered to be "fingers" of Sedna, the mother of sea mammals. Thus, a contaminated seal gives Sedna a sore finger.<sup>7</sup>

Various societies believed that abortion causes drought. A typical example was found among the Ba-Thonga, a Bantu tribe of South Africa, where a rite of purification was used. The rite included animal sacrifice, dancing and incantation, and a purification ceremony involving young girls pouring water. The searing heat was felt to emanate directly from the graves of infants, and so water was poured over these graves to "extinguish" them.<sup>8</sup>

Among the Lepchas, a Himalayan people, abortions and stillbirths were believed to be the work of the devil. They felt that an extension of his death-dealing activity to others had to be prevented, so thorny branches were waved over the parents and an animal, and the latter was offered as a sacrifice.<sup>9</sup>

The Rhadé Moi of Indochina believed that the ghosts of aborted children could communicate with Aé Dié, the Master of the Universe, who would, at their request, send misfortunes to mankind. The ghosts were addressed in prayer: "You, genii of the ghosts of aborted fetuses, you to whom rice has not been offered, to whom water has not been given, for whom the fire has not been stoked, you who were left in the orchid of the brác tree, don't get angry."<sup>10</sup>

Most relevant reports from primitive societies seem to reveal in one form or another a sense that abortion is a dangerous violation of the sacred. Retribution by the aborted themselves, by nature, or by a god may be feared. Prayer, sacrifice, and rites of purification may be employed to repair the damage and forestall the danger arising from abortion.

#### Vedic Religion

It is unnecessary for our purposes to make a general survey of the attitudes of non-western religions toward abortion. But the ancient source books of Indian religion, the Vedas, are of interest for they may well represent an

early formulation of the attitudes from which western religious views of abortion developed. Not that these very writings, in their present form, necessarily influenced western thought. But common cultural traditions, recorded nowhere in the west, may be found in these ancient sacred books. The Vedic and other books considered here are not accurately dated. Perhaps the Atharva-veda is prior to 1500 B.C., the law codes are 500 B.C. or later, and other works fall between. But no two authorities seem to give even nearly similar sets of dates for the various works.

In the Atharva-veda the following passage appears: "On Trita the gods wiped off this sin, Trita wiped it off on human beings; hence if Grâhi (attack of disease) has seized thee, may these gods remove her by means of their charm! Enter into the rays, into smoke, O sin; go into vapours and into the fog! Lose thyself on the foam of the river! Wipe off, O Pushân, the misdeeds on him that practiseth abortion!"<sup>11</sup>

This passage is explained by the translator in the following way. Trita was created as a scapegoat for the gods. But she did not carry the guilt which had been placed upon her; instead she unloaded it on someone else who, being already guilty, was a fit scapegoat. In later literature the story is elaborated with many variants, in each of which the details differ. Yet the general idea is that guilt is passed from one to another in an ascending order of wickedness. Pushân is a god of wayfaring, hence of those who are lost on their way.<sup>12</sup> Here he assumes a role derivative from his role of protecting lost travelers: protecting sinners, for they have lost their way in life. He takes away the disease which is a symbol of guilt, dissolves the guilt itself in vapour. But even a god has to put guilt somewhere, so he is asked to "wipe it off" on the person who practices abortion. The implication is that abortion is the greatest possible sin; guilt for it cannot be expiated.<sup>13</sup>

Why was abortion held in such horror?

One reason is that there existed in these early times an intense sense of the continuity of life from parents to children. The Aitareya-Âranyaka, a writing later than the Vedas but still very ancient, states that when the father "commits the seed to the woman, then he (the father) causes it to be born. That is his first birth." Emergence from the womb is a second birth; death is a third. The seed is gathered from the father's whole body and he bears it within him as self within his self. Deposited in the mother it becomes part of her self, and so does not harm her. The mother nourishes the self of her husband now within herself; the father, in caring for his wife and fulfilling his duties to the child, raises up his own self. Later the child, being the self of his father, can take his place and do all good works in his stead.<sup>14</sup>

Another reason for the horror of abortion is found in the Atharva-veda itself: "Within the womb Prajâpati is moving: he, though unseen, is born in sundry places. He with one half engendered all creation. What sign is there to tell us of the other?" Prajâpati is the creator, the lord-of-progeny, the principle of living things and of the order of nature.<sup>15</sup> The phrase, "with one

half," refers to daylight. Prajâpati engenders life in the light of day. But he also works in the mysterious darkness of night and of the womb.<sup>16</sup> Thus abortion is seen as a violation of the creative power.

The Aitareya-Âranyaka writer develops this idea by drawing an analogy between the person (*purusa* = "he who sleeps in the womb") and the cosmic Self, which is knowledge, for which the entire physical universe is a uterus from which Brahman (the ultimate principle) steps.<sup>17</sup>

Still another source throws further light upon the ancient vedic attitude toward abortion. In the *Satapatha-Brahmana* an explanation is given of the reason why one should not eat the flesh of cow and ox. The cow and the ox "doubtless support everything here on earth"—they are symbols of mother earth, the nourisher. For this reason the gods have given cattle the vigor of all other animals. Eating the flesh of cattle, therefore, is symbolically "an eating of everything, or, as it were, a going on to the end"—the limit of destructiveness. A person who eats cattle meat would therefore very likely be punished by reincarnation "as a strange being" about whom there is "evil report, such as 'he has expelled an embryo from a woman,' 'he has committed a sin' . . ."<sup>18</sup>

To arouse horror in regard to the eating of cattle, this practice is assimilated to abortion; the line of argument takes for granted the wicked reputation of the abortionist. The analogy between eating cattle and abortion also rests on the understanding that abortion destroys the fruit of the seed, gathered from the father's whole body, representing all that he has eaten. Both abortion and the eating of cattle violate a *source*, a principle in which all the potentialities of life are united symbolically or in concentrated form. Thus both acts tend toward "going on to the end," to the ultimate destruction of life.

This same attitude can be traced through later writings. The *Anugîtâ* presents a kind of mythical embryology. A man, being incarnated, takes a body of a type proportionate to his merits, in the womb of an appropriate mother. Because the man is an immaterial self,

though he obtains a body appertaining to the Brahman, he is not attached anywhere; hence he is the eternal Brahman. That is the seed of all beings; by that all creatures exist. That soul, entering all the limbs of the foetus, part by part, and dwelling in the seat of the life-wind, supports (them) with the mind. Then the foetus, becoming possessed of consciousness, moves about its limbs. As liquefied iron being poured out assumes the form of the image, such you must know is the entrance of the soul into the foetus.<sup>19</sup>

We shall see that the ideas of ensoulment, formation of the body, and animation will also be linked in Christian thought. Most interesting here, however, is the relationship of this passage to abortion, which also in this book is regarded as a great sin: "One who drinks spiritous liquors, one who kills a *Brâhmana*, one who steals, one who destroys an embryo, one who violates the bed of his preceptor, is released from that sin only by penance well performed."<sup>20</sup> The sin can now be expiated by appropriate penance. Though this book still

tends to think of embryonic life as somehow "the seed of all things," a certain rationalism in the clear-cut doctrine of reincarnation has lessened the horror of abortion. The author has perhaps left behind the more primitive sense of sacredness of the vedas, and is close to the mentality of the *Bhagavadgîtâ*, for which the body is mere clothing of the self, which "is not killed when the body is killed," because the true self is impassible.<sup>21</sup>

The compilations of laws continue the condemnation of abortion in the later Hindu tradition. *Vasishtha* ranks abortion with the murder of a husband or a learned *Brâhmana*; only these acts make women outcasts, while adultery and other serious sins can be expiated by penances.<sup>22</sup>

*Baudhâyana* treats abortion as a cause for divorce, and ranks it among other sexual sins within marriage.<sup>23</sup> Perhaps the very fact that abortion is not set apart in this collection suggests that it is not regarded with the old horror. After all, a codifier of laws does not include among causes for divorce types of act that seldom happen.

In the *Institutes of Vishnu*, abortion as such is not considered to be one of the worst crimes. Certain types of incest have assumed this position. Next are killing or stealing gold from a *Brâhmana*, drinking liquor, and committing adultery with a guru's wife. Abortion is only subsequently ranked with these high crimes, and only then if the embryo is of unknown sex.<sup>24</sup> Girls no longer rank equally with boys, as was the case in earlier times, when no such distinctions were drawn.

The *Laws of Manu* considers abortion as a cause of impurity; libations shall not be offered to women who drink liquor, live with many men, kill their husbands, join a heretical sect, or cause abortion.<sup>25</sup> A penance for abortion is indicated only for "destroying the embryo (of a *Brâhmana*, the sex of which was) unknown."<sup>26</sup> Here only males of the highest caste are given protection, and the ancient horror of abortion as such seems to have faded in this legalistic code.

If the *Laws of Manu* was written around the time of Christ, *Nârada* was compiled several hundred years later. Abortion is still considered wrong, but now it is an injury that the woman commits against her husband. A wife who wastes all her husband's property, makes an attempt on his life, or induces abortion, is to be banished from the town.<sup>27</sup> Thus the rejection of abortion, once based upon ultimate religious attitudes, has become a mere legalism of domestic relations.

#### Zoroastrian and Egyptian Sources

One religious development outside the Hindu tradition deserves our close attention. It is the Zoroastrian legislation in the part of the *Zend-avesta* called "*Vendîdâd*." This religious movement was a reform of the Iranian religion that ultimately derived from the same cultural tradition as the Vedas. The Zoroastrian reform was in effect at the time of the Jewish exile; the thought of the

Zend-avesta influenced the west, even though the book in its present form may not have been edited until after the time of Alexander the Great.<sup>28</sup>

The paragraphs dealing with abortion are truly remarkable. All cases are systematically treated. Each begins: "If a man come near unto a damsel, either dependent on the chief of the family or not dependent, either delivered unto a husband or not delivered, and she conceives by him . . ." The alternatives include all possible marital conditions; it is as if we were to say: "If a man rapes a woman, seduces her, or gains her consent to intercourse, and whether she be single or married . . ."

The first case considered is if the woman, "from dread of the people" uses commonly available drinks to "produce in herself the menses, against the course of nature." The sin is on her. The second case is if the guilty couple, with the same motivation, "destroy the fruit in her womb." The text suggests mechanical or instrumental interference. In this case "the murder is on both the father and herself; both the father and herself shall pay the penalty for wilful murder." The third case is if the man sends the woman to an "old woman" for abortifacient drugs. Here a more advanced pregnancy seems to be under consideration. The man says: "Cause thy fruit to perish!" and she causes her fruit to perish; the sin is on the head of all three, the man, the damsel, and the old woman."

A positive program is outlined to take the place of forbidden abortion. The man who is responsible should support the woman until the child is born; if he fails to do so, "it lies with the faithful . . ." But if the girl dies due to lack of help, the man "shall pay the penalty for wilful murder."<sup>29</sup>

These regulations seem remarkably sophisticated; it is startling to find them placed alongside similar laws protecting pregnant bitches. The penalties for violation were severe—two hundred stripes. The penalty for manslaughter was only ninety.<sup>30</sup>

To make sense of the outlook involved, one must understand that life and death as such were looked upon as dividing good and evil. Life came from the good principle, death from the evil. The dualism of matter and spirit found in Manichaeism was not present in its Zoroastrian source. In the Zend-avesta, sexual relationship and procreation are not condemned, but rather held in honor. However, killing is a concession to the evil principle, unless it be the killing of some deadly or disease-causing animals, such as snakes, that were considered to embody the wicked principle.<sup>31</sup> Abortion, therefore, is condemned with a conviction that is truly religious in its origin and significance. Here we seem not far separated from the ancient Vedic outlook, which regarded abortion as an interruption in the continuum of life and the work of Prajâpati, the lord of life.

Another possible remote source of the Judeo-Christian attitude toward abortion is to be found, surprisingly enough, in ancient Egyptian thought. A hymn to the sun-god Aton, attributed to Pharaoh Amen-hotep IV, dates from

the fourteenth century before Christ. That was around the time the Israelites left Egypt.

This hymn attributes the creation of living things, and providence over them, to Aton. In regard to embryonic life, the hymn says:

Creator of seed in women,  
 Thou who makest fluid into man,  
 Who maintainest the son in the womb of his mother,  
 Who soothest him with that which stills his weeping,  
 Thou nurse (even) in the womb,  
 Who givest breath to sustain all that he has made!

Here we see expressed the belief that Aton prepares the male and female contributions to new life and then nurses and nourishes that life in the womb. The unborn is not only alive; it has feelings which must be soothed. The poem also makes clear the belief that although breathing begins only at birth, Aton somehow supplies the breath of life even before birth, just as he does to chicks in the egg.<sup>32</sup>

#### The Old Testament

Compared with the rich treatment of abortion in the Vedic and Zoroastrian writings, the Old Testament is poor in relevant materials.

Only one passage explicitly touches on abortion, and this passage concerns spontaneous abortion incidental to a quarrel:

If, when men come to blows, they hurt a woman who is pregnant and she suffers a miscarriage, though she does not die of it, the man responsible must pay the compensation demanded of him by the woman's master; he shall hand it over, after arbitration. But should she die, you shall give life for life . . . (Ex 21:22-23).<sup>33</sup>

The context of this passage is a section of the law which expands upon the prohibition of homicide to deal with crimes involving blows and wounds that cause harm short of death or that lead to death only incidentally. The requirement that a man who negligently causes a spontaneous abortion pay compensation indicates that the act is considered harmful. The loss of the unborn child is a *loss*, a damage to the pregnant woman and hence a harm to the woman's "master." But the death of the unborn itself apparently was not regarded as unintentional homicide, for the penalty for that was laid down as "life for life." By implication, the unborn was not considered an individual having a life regarded as human.

But it would be rash to conclude from this passage and from the Old Testament's silence concerning the procuring of abortion that intentional abortion is approved or favored by it.

In the first place, the Old Testament, considering reality very concretely, tends to expand the conception of *life* to include all of the positive values of

living. Death, by contrast, is the paradigm and symbol of every disvalue. A striking example of this attitude is in Deuteronomy. After summarizing the entire code, the lawgiver calls attention to the choice which must be made—to accept the law or to reject it: “See, today I set before you life and prosperity, death and disaster” (Dt 30:15). To love God and to obey him is to choose life; to stray from God is to perish.

Choose life, then, so that you and your descendants may live, in the love of Yahweh your God, obeying his voice, clinging to him; for in this your life consists, and on this depends your long stay in the land which Yahweh swore to your fathers . . . (Dt 30:19-20).

Life was regarded as the highest good; death as the worst evil. This outlook finds its expression in the account of the fall in Genesis. Eve, tempted by Satan to eat the forbidden fruit, cites a divine threat: “You must not eat it, nor touch it, under pain of death” (Gn 3:3). Satan reassures her on this score. But after the fall, Yahweh tells man he must now face the prospect of returning to the dust from which he came, and the fruit of the “tree of life” that would prevent this fate is denied to man (Gn 3:19-22).

Thus God, who creates life, is the lord of life and of death. In the “Song of Moses” Yahweh says: “See now that I, I am he, and beside me there is no other god. It is I who deal death and life” (Dt 32:39). The power over life is a chief sign of God’s unique lordship. In creating, God not only fashions the cosmic order but each kind of living thing, including finally man, who is fashioned from the dust of the earth in the image and likeness of God, who, like the Egyptian Sun-god Aton, gives life by breathing: “Then he breathed into his nostrils a breath of life, and thus man became a living being” (Gn 2:7).

Following the fall of Adam, Genesis describes a course of degeneracy that terminates in the deluge. The first step in this downward course is Cain’s killing of Abel (Gn 4:4-16). Abel’s blood “cries out” to Yahweh from the ground on which Cain has spilled it (Gn 4:10-11).

After the deluge, God renews his covenant with mankind, giving Noah and his sons dominion over the earth. But two limitations are laid down. In using animals for food “you must not eat flesh with life, that is to say blood, in it” (Gn 9:4). Even the blood of animals is sacred, because that blood is identified with their life, which is a gift of God. From this conception there is only a short step to the practice of blood sacrifice, in which the life of animals is offered as sacrifice to him who is lord of life.

The second limitation on man’s dominion is more important: “I will demand an account of every man’s life from his fellow men. He who sheds man’s blood, shall have his blood shed by man, for in the image of God man was made” (Gn 9:5-6). Cain’s question, “Am I my brother’s keeper?” receives an affirmative answer. The shedding of man’s blood is absolutely forbidden, except when it is done as a punishment. The reason for this special protection of human life is the special status of man made in the image of God. For as



Yahweh is a "living God" (Jos 3:10; 1 S 17:26, 36; 2 K 19:4, 16), unlike the idols worshipped by heathens, with dignity and with power to defend his rights, so man has dignity and is given the authority to defend human life by punishing killing.

In this context, the commandments of the decalogue must be understood. In an expanded form, they inculcate reverence for God and respect for the rights of other men. The prohibition of killing (Ex 20.15; Dt 5.18) becomes one specific command, clearly intended in the context to protect innocent life. For life comes from God; long life is a promised reward for piety toward one's parents, who transmit the divine gift of life to their children. And out of respect for life flow the moral requirements concerning sexual activity, by which life is transmitted, and concerning property, by which life is nourished and protected.

In addition to this Old Testament attitude toward innocent life, another reason for not regarding its silence about intentional abortion as approval of the practice is to be found in the Old Testament attitude toward children.

Children are consistently regarded in the Old Testament, not as a nuisance nor as an epidemic, but as a blessing. The first blessing on man was: "Be fruitful, multiply, fill the earth and conquer it" (Gn 1:28). The original blessing is renewed in the covenant with Noah (Gn 9:7). This is not so much a duty as a gift, for the blessing of fecundity also is bestowed on the fish and the birds (Gn 1:22).

To the patriarchs God promised abundant seed. To Abraham: "Look up to heaven and count the stars if you can. Such will be your descendants" (Gn 15:5). Lacking any such concept as unending happiness in a life after death, the hope of the Old Testament is closely linked to the immortality achieved through descendants. Thus the promise to Abraham is renewed—to Isaac (Gn 26:4, 24), to Jacob (Gn 32:12), and to the Israelites who choose to obey the law (Dt 30:16).

On the other hand, sterility is shameful and is a great cause for sorrow. The wives of Abraham (Gn 11:30), Isaac (Gn 25:21), and Jacob (Gn 30:22-23) all suffered from the curse of sterility, and in each case divine favor overcame barrenness. In Deuteronomy, the promise that accompanies the law is explicit:

Listen to these ordinances, be true to them and observe them, and in return Yahweh your God will be true to the covenant and the kindness he promised your fathers solemnly. He will love you and bless you and increase your numbers; he will bless the fruit of your body and the produce of your soil, your corn, your wine, your oil, the issue of your cattle, the young of your flock, in the land he swore to your fathers he would give you. You will be more blessed than all peoples. No man or woman among you shall be barren, no male or female of your beasts infertile. (Dt 7:12-14)

Thus children are looked upon as a gift of God and as a particular reward for faith in him. Sons are the reward for which the faithful man may hope. He who fears the Lord and follows his paths is promised a wife like a fruitful vine

in the courtyard of his house and sons like shoots round an olive tree (Ps 128:1-3). "Sons are a bounty from Yahweh, he rewards with descendants" (Ps 127:3). Hence, they cannot be regarded as a personal achievement; God gives them to "his beloved as they sleep" (Ps 127:2).

The suggestion that God is at work within the womb, while not explicit in the most ancient books of the Old Testament, nevertheless is compatible with their view of sterility and childbearing. And in the Psalm just cited, this conception seems to be present. It is certainly present explicitly in other books of the Old Testament.

Job, for example, says of slaves and maidservants: "They, no less than I, were created in the womb by the one same God who shaped us all within our mothers" (Jb 31:15). Isaiah, discoursing on the glory of God, begins by recalling the moment at which each of his hearers was personally touched by the finger of the creator: "Thus says Yahweh, your redeemer, he who formed you in the womb: I, myself, Yahweh, made all things . . ." (Is 44:24).

For Isaiah, this divine intervention even before birth implied more than mere general creative activity on God's part. Rather a personal relation was established between God and the person unborn: "Yahweh called me before I was born, from my mother's womb he pronounced my name" (Is 49:1). Even before his birth, Isaiah was prepared for his prophetic mission by God "who formed me in the womb to be his servant" (Is 49:5). Jeremiah expresses the same idea: "The word of Yahweh was addressed to me, saying, 'Before I formed you in the womb I knew you; before you came to birth I consecrated you . . .'" (Jr 1:5).

In this concept God knows the person before he begins to be, God gives being by "forming in the womb," and God "calls" or "consecrates" the person before his birth. The explicit articulation of this set of ideas is not found before the prophets. Yet implicitly we find these ideas present already in Eve's exclamation upon the birth of Cain: "I have acquired a man with the help of Yahweh" (Gn 4:1).

One of the most striking biblical expressions of the conviction that the unborn child is formed by God is found in the second book of Macabees. Although this book is not in the Hebrew canon, it certainly represents the thought of some substantial part of the Jewish community not long before the time of Christ. In this book is a touching account of a mother who encouraged her seven sons to undergo martyrdom for their religious faith. Among her words of encouragement she says:

I do not know how you appeared in my womb; it was not I who endowed you with breath and life, I had not the shaping of your every part. It is the creator of the world, ordaining the process of man's birth and presiding over the origin of all things, who in his mercy will most surely give you back both breath and life, seeing that you now despise your own existence for the sake of his laws. (2 Mac 7:22-23)

Thus the origin of man from God is linked to a destined new life which will overcome death itself.

Among a people who considered life the paradigm of value, who regarded it as a gift of God and entirely subject to his dominion, who considered all blood somehow sacred, who especially protected innocent life, who regarded children as a blessing and sterility as a shame, who accepted the concept of God's creative power at work within the womb forming the person, who even could believe in a personal relationship between God and the child yet to be born—among such people the practice of inducing abortion was extremely unlikely to find a foothold. Thus the silence of the Old Testament about induced abortion rather indicates that legislation against abortion was unnecessary than that abortion was tacitly approved.

This conclusion agrees with that of A. E. Crawley: "Foeticide is not referred to in the Mosaic law. The omission is one indication, among many, of the intense regard felt by the Jewish people for parenthood and the future of their race."<sup>34</sup>

#### Traditional Jewish View

Rabbi Immanuel Jakobovits, since 1966 the Chief Rabbi of Great Britain, who has made a thorough survey of traditional Jewish sources concerning abortion, has pointed out that the comparative silence of the scriptures continues in the codes and rabbinic responsa through the middle ages. The reason was not that abortion was unknown—the contrary is evidenced both by pagan literature and by medical writers—but that it never became a practice in Jewish society.<sup>35</sup>

The Talmud, an authoritative compilation of the Jewish law and of writings on it, contains only one reference to therapeutic abortion:

If a woman is in hard travail, one cuts up the child within her womb and extracts it member by member, because her life has priority over its life; but if the greater part of it was already born, it may not be touched, since one does not set aside one life for [the sake of] another.<sup>36</sup>

This passage is from the mishnah, the basic text of the Talmud. The mishnah embodies an oral tradition that dates to pre-Christian times, though it was compiled only around the early centuries of the current era.

This passage obviously contains the seeds of controversy. On the one hand, it admits that a live child in the womb may be cut up; on the other, the general principle is laid down that one life may not be sacrificed for another. And the boundary set to delimit the operation of the two considerations is the mere fact that "the greater part of it" was or was not already born.

Some talmudic authorities (during ancient times) accordingly wondered why the child might not be killed even in the final stage of birth, on the ground that it can be regarded as if it were an aggressor in pursuit of its mother. One answer is that the mother is then "pursued by heaven"—i.e., the danger is an

act of God rather than the fault of the child. But before the child sees the light of day he is not yet a "soul"—i.e., a person with the inviolable right to life.<sup>37</sup> Discussion of this problem is complicated, however, by diverse interpretations. Another solution is that the principle of pursuit is not really applicable in this case since the distinction between pursuer and pursued is unverifiable.<sup>38</sup>

Yet Maimonides (medieval) appealed to the "pursuit" argument to justify even early abortion. Subsequent rabbinic discussion brings out the fact that although the unborn child is not regarded as a person with full rights, it is considered human enough to make its unjustified destruction a moral offense, even if not a strict violation of the law.<sup>39</sup>

This argument reveals an essential hidden assumption in the traditional Jewish view—the idea that nascent life is legally "more or less" inviolable. Before labor begins, the child is considered by most, though not by all, of the ancient talmudic sources to be part of the mother. At this stage the mishnah itself provides that a pregnant woman guilty of capital crime may be executed, merely in order to spare her the agony of suspense.<sup>40</sup>

Once labor begins, but before the "greater part" of the child has emerged, the child is no longer considered to be part of the mother, yet its life is not equally inviolable. The child may be sacrificed if it threatens the mother.

A further ramification was introduced by the view that an infant dying during the first thirty days of life is considered a stillbirth, on the theory that it was not viable or it would have survived. Working from this view, rabbinic responsa (authoritative answers to issues about the law) from the seventeenth century onward have tended generally to allow a certain preference to be given to the life of the mother even after the "greater part" of the child has emerged. But this is only in the exceptional case when otherwise both mother and child will die.<sup>41</sup> The direct killing of a child even in his very first day of life is considered murder and held liable to punishment as such.<sup>42</sup>

Finally, a child born after a pregnancy which has certainly extended for the full term, or else thirty days after birth, is considered to have proved its viability. Such a child has full human rights in every respect and its life is not to be sacrificed even for the preservation of many other lives. For just as with adults, the child's full right to life now implies a transcendent value.<sup>43</sup>

From this tradition there clearly follows a very receptive attitude toward any genuine therapeutic abortion. According to Rabbi Jakobovits, a genuine threat to the life of the mother must be present. Yet

such a threat to the mother need not be either immediate or absolutely certain. Even a remote risk of life invokes all the life-saving concessions of Jewish law, provided the fear of such a risk is genuine and confirmed by the most competent medical opinions.<sup>44</sup>

Moreover, the threat may be psychological as well as physical.<sup>45</sup>

From this position one might infer that traditional Jewish views would also accept the abortion of probably defective children or of children conceived through illicit intercourse. However, this inference is not necessarily accurate.

Rabbi Jakobovits, whose scholarly study we have cited, argues in another place that abortion because of defect should not be permitted, for Jewish law does not recognize defect as a factor compromising the right to life. He reveals considerable concern that the principle employed here is not limitable to the unborn. Even the killing of unborn defectives is tantamount to murder, for where life is at stake, its preservation must always by given the benefit of the doubt.<sup>46</sup>

The same author, again concerned about ulterior implications of relaxed laws, rejects abortion as a solution to moral and social problems. He argues that laws which defend society must not be abolished because of hardship in particular cases. Moreover, arguments for abortion based on the consequences of forbidding it are not considered cogent—e.g., the child unwanted before its birth is often loved when it is four or five years old. Where social conditions create hardship for the innocent, Rabbi Jakobovits argues for liberal policies of public aid. But where individual irresponsibility is the cause of hardship, the disciplinary function of law requires that no easy way out be permitted.<sup>47</sup>

With regard to this last point, Rabbi Jakobovits concludes:

The exercise of man's procreative faculties, making him (in the phrase of the Talmud) "a partner with God in creation," is man's greatest privilege and gravest responsibility. The rights and obligations implicit in the generation of human life must be evenly balanced if man is not to degenerate into an addict of lust and a moral parasite infesting the moral organism of society. Liberal abortion laws would upset that balance by facilitating sexual indulgences without insisting on corresponding responsibilities.<sup>48</sup>

In sum, a conservative and learned representative of the Jewish tradition regards therapeutic abortion as acceptable, for the life of the mother—including even indirect threats to her health until the final stage of pregnancy—is regarded as having rights prior to those of the child. On the other hand, where the mother's life is not at all at stake, this Rabbi remains faithful to traditional sources by taking a strong stand in favor of life, the amelioration of bad social conditions, and personal sexual self-control.

Another Jewish scholar, Rabbi Isaac Klein, has reviewed much the same material and come to fairly similar conclusions. Abortion is not murder, but the tradition allows only genuine therapeutic abortion because a potential life is destroyed.<sup>49</sup>

But the concept of "therapeutic abortion" may be more or less strictly interpreted. Rabbi Klein reports a responsum of Rabbi I. J. Unterman, present Chief Rabbi of the Ashkenazic community of Israel. Rabbi Unterman rejected abortion for a woman who contracted German measles in pregnancy; he accepted therapeutic abortion only if the life of the mother is *directly* threatened, as in the case dealt with in the mishnah.<sup>50</sup>

Rabbi Klein himself, however, follows a less strict school of thought. In the last stages of pregnancy, only a direct threat to the life of the mother can be accepted as justification for abortion. In earlier stages, however, any direct or indirect threat to her life or to her physical or psychological health would be sufficient reason. Abortion would be permitted in cases of thalidomide babies, rape, and the like not because the fetus is denied inviolability altogether, but because such a pregnancy threatens the mother's health. Recognizing the elasticity of this concept of therapeutic abortion, Rabbi Klein requires that the facts must be established by medical evidence—i.e., there must be some positive grounds for judging that there is a threat to health.<sup>51</sup>

Besides the authoritative expressions of the traditional Jewish view found in the Hebrew scriptures and rabbinic teaching, we must note one other historically important source of Jewish thought regarding abortion. It is the writing of Philo, a Greek-speaking Jew who lived at Alexandria at the time of Christ.

The Jewish people had been dispersed outside Palestine by the turmoil of previous centuries. A large community existed at Alexandria, a leading intellectual center of the time. This group had a Greek translation of the biblical scriptures—the “Septuagint.” Philo was learned in Greek philosophy; his work is not an authority in Jewish law but is of theological and apologetic value, for he explained and defended the Jewish religion making use of the Greek language and forms of thought.

For Philo murder is not merely an injustice to one's fellow; it is primarily a sacrilege—that is, a violation of what pertains to God. For man, by his very rational nature, is godlike, being made in the image of God. For this reason, Philo concludes that every murderer must himself be put to death.<sup>52</sup> Here Philo echoes the covenant with Noah: “He who sheds man's blood, shall have his blood shed by man, for in the image of God man was made” (Gn 9:5-6).

Coming to the question of infanticide, Philo begins by paraphrasing the rule of Exodus (21:22-23) concerning abortion, but Philo's version is different in several important respects:

If a man comes to blows with a pregnant woman and strikes her on the belly and she miscarries, then, if the result of the miscarriage is unshaped and undeveloped, he must be fined both for the assault and for obstructing the artist Nature in her creative work of bringing into life the fairest of living creatures, man. But, if the offspring is already shaped and all the limbs have their proper qualities and places in the system, he must die, for that which answers to this description is a human being, which he has destroyed in the laboratory of Nature who judges that the hour has not yet come for bringing it out into the light, like a statue lying in a studio requiring nothing more than to be conveyed outside and released from confinement.<sup>53</sup>

The most important difference between Philo's statement of the law and that found in the Hebrew scripture is that Philo makes the increase in penalty—from fine to capital punishment—depend upon the condition of the

fetus. If the fetus is unformed, the punishment is a fine; if it is sufficiently developed to be recognizably human, the punishment is death. Exodus, by contrast, made the increase of penalty depend on the effect on the mother, a factor Philo does not mention at all, just as Exodus does not mention the stage of fetal development.

The explanation of this discrepancy is to be found in part in the fact that the Greek ("Septuagint") translation of the scriptures, which was used by Philo, replaced Hebrew expressions signifying "no harm" and "harm" (implicitly, to the mother's life) with Greek expressions signifying "not fully formed" and "fully formed" (implicitly, referring to the condition of the child).<sup>54</sup>

We should notice that both the Hebrew and the Septuagint Greek versions of Exodus 21:22-23 had antecedents in ancient near-eastern codes of law. The Code of Hammurabi (about 1700 B.C.) includes six provisions to govern cases in which a seignor strikes another seignor's daughter, a commoner, or a slave causing a miscarriage. In all three sorts of cases the penalty is increased if the woman dies, and nothing is said about the stage of fetal development. In the first type of case, the guilty seignor's daughter must die in exchange—life for life—but in the other cases a sharply increased fine is due if the woman dies.<sup>55</sup>

By contrast, in the Hittite Laws (about 1500 B.C.) there is no mention of whether or not the woman dies, but a distinction is introduced on the basis of whether the woman was in the fifth or the tenth month of pregnancy. In either case the penalty was a fine, but the principle seems to have been to increase the fine one unit for each month of pregnancy.<sup>56</sup>

Neither version of the text from Exodus exactly reproduces the ancient near-eastern law that it resembles. However, this difference in remote legal sources does suggest that the Greek version of Exodus 21:22-23 did not come about by a mere error of translation. More likely, the Septuagint translators were grasping an opportunity to introduce a variant interpretation that agreed better with current practice in their community or their own conception of justice.

It is important to notice that Philo goes considerably beyond what even the Septuagint text of Exodus suggests. First, Philo gives as the reason for a fine not the loss to the woman's master but both the assault and the interference with the process of human generation. Second, Philo introduces a definite criterion for counting the unborn as human, namely the stage of development at which the embryo becomes *recognizably human*. Third, Philo thinks of the formed but not fully mature fetus as a work which nature has essentially completed—the fetus needs only maturing for life in the world, as a finished statue needs only the right conditions for display outside the studio. The point of this metaphor is not that the fetus is without life—Philo certainly knows that it is alive and growing—but that the fetus gains nothing essential to humanity once it is "fully formed."

From this rejection of abortion, Philo goes on to condemn infanticide in the strongest terms. This practice was prevalent in the pagan world but was certainly regarded as murder by religious Jews. Philo argues that since the law of Moses condemned the abortion of fully formed fetuses, it all the more certainly condemned the murder of infants.<sup>57</sup>

His arguments are interesting. First, killing the infant deprives him of his share in the gifts of nature—esthetic enjoyment, contemplative knowledge, and technical achievement. These Philo regards as the common human birthright in which everyone has a natural right to share.<sup>58</sup>

Second, those who commit infanticide are evidently slaves of lust, for otherwise they would not procreate children only to kill them. Parents committing this crime are especially guilty because they have special responsibility for the infants they kill. The killing is brutal—either done by the killers' own hands or by cruel abandonment. Those who commit such crimes are haters of mankind itself, because if one is merciless to his own flesh and blood, so much more to strangers.<sup>59</sup>

Finally, the killing of infants is particularly inexcusable because they are completely innocent—no quarrel or difference can supply any pretext for the crime: "Not even a false charge can be brought against such absolute innocence."<sup>60</sup>

These arguments of Philo refer immediately to infanticide, but since he has assimilated infanticide to abortion of a formed fetus, all of the arguments must be understood to refer to purposely induced abortions of that sort as well.

In the course of this argument, directed as it is chiefly against infanticide, Philo notes that the most competent theoretical scientists and medical researchers of his time believed that the child remained part of its future mother so long as it adhered to her within the womb. Philo accepts this view as adequate for medical purposes. But he points out that the opinion is irrelevant to infanticide.

No explanation is given of how the law's rejection of abortion is to be squared with the scientific-medical opinion, but Philo does explain that infanticide is murder despite the infant's lack of age—age implies a right to respect based on social status—"since the displeasure of the law is not concerned with ages but with a breach of faith to the race."<sup>61</sup>

In other words, the law rejects infanticide because of its inhumanity. Like all homicide, infanticide is an offense against man, the image of God, not simply a violation of the rights of individuals. Given Philo's conception of wrongful abortion and his criterion of humanity, it follows that his position is that however legitimate for medical purposes the identification of the fetus with its mother, from a legal—that is, ethical and religious—viewpoint, the fully formed fetus must be regarded as a distinct individual with the human right to life.

Philo thus reaches the position that abortion of the fully formed fetus is homicide, a capital offense, by introducing a new criterion for judging when



the life of the human individual begins. The criterion is the empirically discernible stage of fetal development to a recognizably human form. This criterion is not drawn from scientific and medical literature, and it is not in fact found in the Hebrew version of Exodus.

Rabbi Jakobovits, usually so acute, judges Philo "somewhat confused, if not plainly inconsistent." He believes Philo was simply misled by the Septuagint mistranslation, with its Hellenistic background, into accepting a position lacking any sound foundation in Jewish law.<sup>62</sup>

However, I believe Philo was neither inconsistent nor in the least confused. He was simply careful to distinguish between the scientific-medical frame of reference and the legal frame of reference. The latter he regards as controlling in the matter of abortion, because this is a religious and moral question.

Rabbi Jakobovits also refers to another passage in which Philo seems to accept the notion that the unborn child is part of the mother, and to deny that the life of the fetus is on a par with the life of a live-born individual.<sup>63</sup>

But an examination of this passage in its full context shows that Philo is not inconsistent. He is dealing with Mosaic law regarding animal sacrifice, and he extends the law forbidding the joint sacrifice of an animal and its mother to forbid also the sacrifice of a pregnant animal. In this context Philo's purpose is to demonstrate how humane Jewish law is. Hence he does not bother with his distinction between the perfectly formed and the not yet formed fetus. Rather he directly contrasts the Jewish ceremonial law with the pagan practice of human infanticide.

Then, forestalling an objection, he argues that even if the offspring is only living in virtue of vegetative functions, so that its life is not yet that of a new individual on a par with others of its kind, still the offspring is safeguarded because it is ordained to full life. Thus the law restrains the impulse of those who are inclined to wantonly disrupt order.<sup>64</sup>

To complete his argument Philo points out that legislators have accepted this principle implicitly by forbidding the execution of pregnant women in order to avoid the destruction "of the life within the womb."<sup>65</sup> One modern commentator on this passage cites evidence that Egyptian, Athenian, and Roman law included such a provision.<sup>66</sup> Thus Philo effectively proves his point that Jewish law is humane and is so on reasonable grounds—by standards a pagan reader would accept. The whole argument is not concerned with abortion and does not employ Philo's key distinction, which his pagan readers might not have accepted.

Professor Samuel Belkin's scholarly study of Philo's relation to the Jewish tradition supports my interpretation. He holds that the translation of Exodus in the Septuagint version is evidence of existing practice, not only in the Greek-speaking Jewish community of Egypt but also in Palestine.<sup>67</sup>

Moreover, Philo's interpretation has a foundation in authoritative rabbinic teaching of the period, for the unborn child was not simply considered

part of its mother. As I have explained in regard to Philo, Belkin sums up the rabbinic views: "All this shows that although in some respects the Rabbis considered the unborn child, because of its dependence on her for nourishment, a part of its mother, nevertheless it had the legal status of a human being by itself."<sup>68</sup>

Perhaps most important, Belkin shows how the talmudic materials, Rabbi Jakobovits' treatment of which we summarized above, can be interpreted in line with Philo's position. The passage of the mishnah which seems to forbid the execution of a pregnant woman already in labor may be interpreted to forbid execution during the whole latter part of pregnancy prior to actual labor. The argument that the child may be killed as if it "pursued" its mother would be unnecessary unless it were a human life that would otherwise be inviolable.<sup>69</sup>

Even the passage of Genesis (9.6) forbidding murder was interpreted by one Rabbi specifically to forbid abortion: "Whoso sheddeth the blood of a human being who is in a human being, his blood shall be shed."<sup>70</sup> We may doubt the validity of this interpretation of Genesis in the context, but the acceptance of it by Rabbi Ishmael, one of the leading authorities around Philo's time, refutes Rabbi Jakobovits' contention that no one in the orthodox Jewish tradition except Philo and Josephus ever thought abortion deserved a death penalty.

Josephus, a religious faithful Jew, who was something of a political stooge for Rome, living just after Philo's time, was from Palestine, but he also wrote in Greek. In one work he refers to accidental abortion in the same terms as the Hebrew version of Exodus.<sup>71</sup> In a later work, however, he says: "The law orders all the children to be brought up, and forbids women either to cause abortion or to make away with the fetus; a woman convicted of this is regarded as an infanticide because she destroys a soul and diminishes the race."<sup>72</sup> In these passages Rabbi Jakobovits sees inconsistency.<sup>73</sup>

However, a consideration of the context shows that Josephus is not inconsistent. In the earlier work he is compiling elements from the Mosaic law and—though Josephus collects and rearranges the material—he attributes the whole passage to Moses. True to the Mosaic law, purposely induced abortion is simply not dealt with.

In the later work, which was aimed at pagan readers, Josephus is explaining and defending current Jewish laws and customs. Many elements not found in scripture are included. The statement about abortion appears in a section concerned with marriage and the family.

Apparently, the early Israelites did not need a precept forbidding abortion, but by the time of Christ, changed social and cultural conditions led some Jews to practice abortion. Philo and Josephus reflect the reaction which met the new challenge by developing a more sophisticated concept of the beginning of life and by treating the life of the fully formed fetus as an inviolable human life. The main body of authoritative Jewish teaching appears to have developed

a casuistry which depends upon regarding the unborn as "more or less human."

Thus a Jewish thinker of our day can find in his tradition justification for an extremely elastic concept of therapeutic abortion. He can also find a basis for regarding any abortion not justified by a direct threat to the mother's life as infanticide.

We can be reasonably sure of one point. The earliest Christians, who were themselves Jews, did not need to introduce an altogether new outlook in order to see abortion as a form of murder. This view was already in circulation, and it had some claim to be regarded as the authentic Jewish tradition.

#### The New Testament

However, as the first Christians moved out into the pagan world they met a culture which accepted not only abortion but even infanticide. Under Roman law this acceptance was based on the absolute authority of a father over his children. In effect, children belonged to the father almost as if they were property. In the Greek philosophic tradition, individuals were strongly subordinated to the welfare of the community, so that abortion and infanticide could be accepted as a method of controlling population. Neither Roman law nor Greek philosophy recognized that each human being is a person in his own right, a bearer of immeasurable and inalienable dignity. Some humane pagans objected to abortion, especially when it was practiced for mere reasons of convenience and feminine vanity. Also the Hippocratic oath, which outlined the ideals of medical practice, included a rejection of abortion. However, abortion and infanticide were widespread, because there were many reasons parents considered adequate to warrant ending a life which they did not want. They felt no obligation to love a child they did not want since, after all, it was merely an accident of nature, not a child of God.<sup>74</sup>

Christianity did not abandon the concepts of the Hebrew scriptures, but many of these concepts were radically transformed.

Life is still as central in the New Testament as in the Old: "The thief comes only to steal and kill and destroy," Christ says. "I have come so that they may have life and have it to the full" (Jn 10:9-10).

However, the life in question is not primarily physical: "It is the spirit that gives life, the flesh has nothing to offer. The words I have spoken to you are spirit and they are life" (Jn 6:63). Radically this life is Christ himself, the spiritual life of the Word of God, in whom all things had life in the beginning. His life "was the light of men" that could not be overcome by darkness (Jn 1:4-5).

Through the course of the Old Testament the Israelite hope had evolved. In the New Testament this hope is certainly not fixed upon long life and plentiful children. On the contrary, Christian hope is for forgiveness of sins, reconciliation with God, and salvation (Ac 2:38-40). Put affirmatively, the

Christian hopes for God's glory (Rm 5:2) and everlasting life: "If anyone believes in me, even though he dies he will live, and whoever lives and believes in me will never die" (Jn 11:25-26; cf. Tt 1:2).

Lack of physical descendants is accordingly no longer a curse. Christ commends to those who receive the grace a life of sexual abstinence "for the sake of the kingdom of heaven" (Mt 19:12). Paul accordingly instructs the Corinthians that it is good to marry but even better not to do so (1 Co 7:7, 9, 25-28, 34, 38).

But it would be an error to suppose that these developments of Old Testament concepts have set Christians against the values which shaped the negative Israelite attitude toward abortion. Quite the contrary.

For Christians, the spiritual and everlasting life is not merely a thought or a ghostly existence. It is to be lived by men, that is by living bodies, bodies perfected and raised from death (Jn 11; 1 Co 15). The Christian not only hopes to triumph over death by playing for infinitely higher stakes than bodily survival; he also hopes to beat bodily death at its own game (Mt 10:28-31). All of the miraculous cures ascribed to Christ in the New Testament also show the Christian belief that physical life and health are themselves great goods as well as being signs of the everlasting life which is the principal object of hope.

Thus in the New Testament the prohibition of murder is recalled (Mt 15:19; 19:17-18; Rm 1:29; Rv 22:15). And the particularly horrible example of infanticide, Herod's slaughter of the innocents, was marked off by a poignant text from Jeremiah: "A voice was heard in Ramah, sobbing and loudly lamenting: it was Rachel weeping for her children, refusing to be comforted because they were no more" (Mt 2:18; Jr 31:15).

For Christians, God's lordship of life and death remains, but now it is especially vested in Christ. Jesus lays down his own life by his own choice, not simply because of the choice of those who would take it (Jn 10:17-18). Life is Jesus' to give, and his gift cannot be prevented: "I give them eternal life; they will never be lost and no one will ever steal them from me" (Jn 10:28). If this seems merely mystical, the belief that bodily life is included in this gift is stated and certified in the following chapter, where Lazarus is raised from the dead (Jn 11:43-44).

Moreover, for Christians God is more present in the world since the incarnation of the Word. Christ promised to remain with his followers even as he left them (Mt 28:20). This presence was to be accomplished by the sending of the Holy Spirit (Jn 14:26; Ac 2:4). As a result of his coming, Christ himself dwells in the Christian (Rm 8:9-11). Thus St. Paul argues against sexual wantonness that a Christian must have high regard for the dignity of his body, which is united to Christ: "Your body, you know, is the temple of the Holy Spirit, who is in you since you received him from God" (1 Co 6:19).

When Christians read that the kingdom of heaven belongs to little children and infants (Mt 19:13-15; Mk 10:13-16; Lk 18:15-17), that mysteries hidden from scholars and shrewd men are made known to children (Mt 11:25;

Lk 10:21), and that babes in arms are the most certain spokesmen of appropriate divine praise (Mt 21:16), they came to realize that the presence of the spirit is not a function of the maturity of human capacities. The conception of Jesus by the Holy Spirit was altogether unique (Mt 1:18), but the joy with which Elizabeth's infant leapt within her womb when Mary greeted her cousin (Lk 1:40-44) indicates that whether or not "the greater part of" the infant was born would no more inhibit the Spirit of Christ than it did the God of Job, Isaiah, and Jeremiah.

Another factor significantly influencing Christian morality so far as actions affecting others are concerned is the belief that not only the one acting but also the one acted upon must be regarded as a brother, as an (at least potentially) adopted son of God (Rm 8:14-17; Ga 4:1-7). Thus Paul's mode of address to his "brothers" and his effort to formulate Christian social ethics in terms of acting as Christ would act and as one would act toward Christ (Ep 5:21-6:9). The Christian standard set by Christ is a mutual love as self-emptying as his own love (Jn 15:13-14). Thus a Christian reflecting upon abortion could easily find himself thinking: "As you did this to one of the least of these brothers of mine, you did it to me" (Mt 25:40).

Moreover, the New Testament teaches the concept of a divine providence which cares for all things and forestalls any need for self-concern (Mt 6: 25-34; Lk 12:22-31). This providence is not only over the course of things generally, but even over such apparently insignificant matters as the fall of a sparrow and the number of hairs on each person's head (Mt 10:29-30). From such a concept it follows that even the smallest beginning of human life is subject to providence and that the meaning of that life is wrapped in a mystery beyond any mortal's comprehension.

Finally, we must notice that if the New Testament turns attention from natural to spiritual fruitfulness, the former is not left without commendation. St. Paul, perhaps in reaction to false teachings against marriage, asserted that a woman living a Christian life is saved by child-bearing (1 Tm 2:15; 4:3). And Christ himself, arguing by analogy, referred approvingly to the joy of a new mother "that a man has been born into the world" (Jn 16:21).

#### Common Christian Tradition

The earliest Christian moral instruction that we know about (apart from the books of the New Testament) is contained in a document which contrasts "the two ways"—the way of life and the way of death, or the way of light and the way of darkness. This document is incorporated in at least two extant works: *The Didache* (or *Teaching*) of the (Twelve) Apostles and *The Epistle of Barnabas*. Though these works may be of second century composition, "the two ways" is older and was much more widely circulated. "The two ways" was translated into many languages, was known to Church Fathers in the east and in the west, and was still in use centuries after its original composition. Very

likely the Christian document owed a great deal to instructional materials generally in use among Jews; those who became Christians simply adapted the old material.<sup>75</sup>

The *Didache's* version of "the two ways" begins with a longer treatment of the way of life, which is followed by a more summary statement of the way of death. The former is well organized in four chapters. The first is the affirmative Christian ideal, drawn from sources such as the Sermon on the Mount. The second is negative precepts, in the style of the second table of the decalogue. The third is counsels for developing virtuous character and for avoiding dispositions toward vice. The fourth concerns relations to others in institutions such as family, church, and so forth.

Among the negative precepts, we find the following:

You shall not kill. You shall not commit adultery. You shall not give yourself over to the corruption/destruction of boys, nor to fornication (sexual wantonness), nor to theft, nor to making magic, nor to making "potions." You shall not kill the child by corruption/destruction, nor kill it at birth. You shall not covet . . .<sup>76</sup>

The corruption/destruction by which killing a child is forbidden evidently refers to abortion, since infanticide is specifically mentioned next. The corruption/destruction of boys (children) previously forbidden evidently refers to homosexual practices.<sup>77</sup> The making of magic and the making of potions refer to a variety of practices which included sterilizing and abortifacient drugs.<sup>78</sup> St. Paul already had condemned "potions" (Ga 5:20) though the Greek word often is obscurely translated "sorcery" or "witchcraft." Thus, in effect, this very early Christian moral guide has expanded the explicit content of the decalogue to forbid a spectrum of practices ranging from sexual perversion through sterilizing and abortifacient drugs to killing the child before or after birth.

The last part of "the two ways," contains a list of sins which includes making magic and making potions, but omits the sins of corruption/destruction and infanticide. However, near the end of this part is a characterization in biting terms of those on "the way of death":

Loving what is worthless, pursuing payment, merciless to the poor, not caring for the deprived; forgetful of him who made them, murderers of children, corrupters/destroyers of what God has formed, refusers of the needy, oppressors of the afflicted, defenders of the rich, wicked judges of those who have not; sinners without faith and law! My children, keep far from all that!<sup>79</sup>

It is important to notice that in these evidences of very early Christian teaching there is no distinction between "fully developed" and "not fully developed" fetuses as in Philo. Rather, the spectrum of activities condemned is broad enough to include contraception, abortion at any stage, and infanticide. The reference in the last passage cited to "what God has formed" can hardly be taken as a limitation of the prohibition to abortion of fully formed

fetuses, for the expression is wide enough to include homosexual practices as well. Very likely all the sins were regarded as perversions of a divinely established order, and so there was no need to draw lines between one form of corruption/destruction and another.

It is also interesting to notice that in "the way of death" the sins of infanticide and corruption/destruction of what God has formed are included among a series of items castigating social injustices. The author apparently thinks of these practices as related to the selfishness and cupidity for ease and luxury that underlie the continuation of social injustices. Moreover, these sins follow forgetfulness "of him who made them"—the ultimate crimes of killing and corruption/destruction are perpetrated against the helpless and innocent by those who forget that they themselves depend upon the generosity of God.

The *Didache* might be called the first Christian catechism (after the New Testament). Similarly, the *Pedagogus* of Clement of Alexandria (second century) might be called the first systematic moral theology. Presenting Christ as the tutor who attends to the moral formation of his children, Clement organizes and integrates materials from sacred scripture and the living tradition. In his chapter on marital and sexual morality, Clement teaches:

Marriage is the desire to procreate offspring, not the desire to ejaculate semen pointlessly; that is outside the laws and alien to reason. But our whole life would proceed in keeping with nature, if we would but control our desires at the outset and refrain from taking away by vile and vicious techniques the human progeny born by the providence of God. For those women who conceal sexual wantonness (fornication) by taking stimulating drugs to bring on an abortion wholly lose their own humanity along with the fetus.<sup>80</sup>

Clement has of course introduced certain Hellenistic philosophic conceptions—the rational and natural order is invoked. But it is invoked alongside, not as a foundation for, the Christian rejection of abortion as a violation of divine providence, as contrary to divine law, and as destructive of the abortionist's own humanity. Earlier in the same chapter Clement had pointed out that in his procreative role "man becomes like God, because he cooperates, in his human way, in the birth of another man."<sup>81</sup>

Clement introduces another important concept, that of actions absolutely evil:

In a very clear fashion, not in a veiled fashion but straightforwardly, Moses also enunciated the prohibitions: "You shall not fornicate (engage in sexual wantonness), nor commit adultery, nor corrupt boys." This command of the Word we must observe with all our power. It is necessary not to transgress this law in any way; it is necessary not to soften these commandments.<sup>82</sup>

Only the prohibition of adultery is Mosaic; obviously Clement is relying on an expansion of the ten commandments such as the *Didache's*. In referring to these commandments as those "of the Word," Clement distinguishes them clearly from many other counsels and bits of good advice he has gathered from

non-scriptural sources. Just before the passage cited above containing the condemnation of abortion, Clement had placed excesses within marriage in the same category as fornication.<sup>83</sup> Thus, Clement seems to consider such acts absolutely evil, for they are a form of killing, a form of fornication (sexual wantonness), and a form of disrespect for divine providence.

Next we may consider some samples from the early apologists—those who defended Christianity against pagan attacks.

Athenagoras, a second-century Christian philosopher from Athens, addressed a defense of his faith to Marcus Aurelius. Among other charges against Christians was that of cannibalism. Taking as a lever the widespread pagan approval of abortion and infanticide, the apologist argued:

How could we kill a man—we who say that women who take drugs to procure abortion are guilty of homicide, and that they will have to answer to God for this abortion? One cannot at the same time believe that the fetus in the womb is a living being—as such in God's care—and kill one already brought forth into the light.<sup>84</sup>

The argument here again appeals to God's providence on behalf of the unborn to conclude that abortion is wrong. For Athenagoras, the wrong is directly reduced to that of homicide, and the continuity between abortion, infanticide, and the killing of older children and adults is strongly stressed. Of course, Athenagoras is defending Christians against the charge of homicide.

Among the Latin apologists, perhaps none had a clearer and more developed view of abortion than Tertullian. A lawyer who became Christian near the end of the second century, and who later became a heretic, Tertullian nevertheless reflected and developed the Christian attitude toward abortion in the west at the time.

Again answering the charge that Christians practice human sacrifice, Tertullian argues in his *Apology* (a work of his orthodox period):

For us, since homicide is forbidden, it is not even permitted while the blood is being formed into a man to dissolve the conceptus in the uterus. For to prevent its being born is an acceleration of homicide, and there is no difference whether one snuffs out a life already born or disturbs one that is in the process of being born. For he also is a man who is about to be one, just as every fruit already exists in the seed.<sup>85</sup>

For Tertullian, abortion is homicide. He knows a distinction in stages of development, the earliest of which is a process of formation of the embryo by solidification of maternal blood under the influence of the semen. However, he rejects abortion at any stage of development because he regards the developing individual as alive with *human life*, even while it is in the process of coming to be a recognizable human being.

This analysis is confirmed by Tertullian's *Treatise on the Soul*, a work of his heretical period. Here he argues that the soul and body begin and develop together. The pagans themselves regarded the unborn as subject to the provi-



dence of the gods. And the Mosaic law, Tertullian notes following the Septuagint, provides a penalty for abortion:

By this very fact that its form is complete, the fetus in the uterus is a man. For the law of Moses also judged abortion to warrant "life for life," since already it is a case involving a man, since already it is considered alive or dead, since already it has an inscribed destiny, even though it still lives in the mother and for the most part shares her fortune.<sup>86</sup>

Tertullian is not here withdrawing his general condemnation of abortion; in the same chapter he holds that, arising from the contributions of the parents—especially the father—the body and soul begin and develop together. He is merely clarifying the stage when developing human life is properly called "a man." The distinction is drawn in accord with his understanding of the Mosaic law. From a moral viewpoint, Tertullian has the wider principle that "he also is a man who is about to be one."

Minucius Felix, a contemporary of Tertullian, also answers the charge that Christians drink blood and turns to the attack by pointing to pagan infanticide and abortion. Without distinguishing stages of life, he indicates his horror of those who drink potions and thus "commit a parricide before they give birth."<sup>87</sup> In this passage we see once again the link between "making potions," condemned in the *Didache*, and abortion.

Minucius Felix, like Tertullian, was a Roman lawyer. He adopted the word "parricide," which in Roman law was homicide of certain near relatives, to signify infanticide and abortion. Of course, the law would not have taken so severe a view—parricide was one of the most serious crimes in Roman law.<sup>88</sup> However, as Christians, Tertullian and Minucius Felix are not so concerned about social status as they are about each life as a reality with a destiny ordained by God. Hence they regard all members of the family as equal in the fundamental right—the right to live.

Various writers of the third century could be cited to indicate the continuity of the tradition. Among them would be Hippolytus, Cyprian, and perhaps Lactantius. We might also cite the decrees of some local councils which by the early fourth century were beginning to legislate penances, in some cases even permanent excommunication, for abortion. In most of these sources the interest in abortion is rather specialized, however, since it deals with sins related to special cases—involving the clergy or involving adultery.<sup>89</sup>

Undoubtedly the local councils concerned themselves with cases involving adultery because it was only in such cases that the practice was common enough among Christians to legislate about. In this early legislation there is no reference to any distinction between "formed" and "not formed" stages of embryonic development.

In the east by the fourth century the suggestion had been made that the distinction between "formed" and "not formed" was important. An apocryphal work, *The Constitutions of the Apostles*, included an expanded version of

the *Didache*, which gave reasons for the prohibitions. It expanded, "You shall not kill your child by corruption/destruction, nor kill it at birth," the *Didache's* prohibition of abortion and infanticide, by adding: "for everything formed, which receives a soul from God, will if it is done away with be vindicated as one killed unjustly."<sup>90</sup>

Here the appeal to the "formed" condition of the fetus was to provide an argument against abortion; the word for "formed" meant not only superficially shaped, but "endowed with the image of God," for the same word as in Genesis is used here and the text makes a specific appeal to the presence of a soul given by God. However, such an argument could easily be read as providing a limit within which abortion might not be considered as seriously sinful as homicide.

Thus we find St. Basil the Great, one of the greatest eastern Christian Fathers, writing a letter in 374 dealing with the Church discipline to be applied to various sorts of sinners. About abortion, he holds that both the person who gives abortifacient drugs and the woman who takes them are guilty of murder. Of the former he says:

Whoever purposely destroys a fetus incurs the penalty of murder. We do not ask precisely whether it is formed or not formed. For here not only that which would have been born is vindicated, but also the woman herself who prepared her own destruction, since oftentimes women die in such attempts. But to this the fetus destroyed adds another killing, at least if the judgment of those who dare such things is correct.<sup>91</sup>

Here Basil clearly rejects abortion at any stage as murder. However, to make this categorization firm, he appeals to the risk to the mother's life. At the same time, he seems to consider this risk to justify the view that *penalty* for abortion should be that for murder. From a moral point of view, the person who commits abortion intends to kill, and is willing to kill a human being if one is there to be killed.

John Chrysostom, Patriarch of Constantinople (about the end of the fourth century), dealt with abortion not in a legal framework but in a context of exhortation against fathering illegitimate children. He does not distinguish stages of development of the embryo, but condemns as "something even worse than murder" the act which "does not take off the already born, but forestalls its being born." Those guilty of inducing the mothers of their illegitimate offspring to commit abortion are guilty of turning wanton women into murderesses.<sup>92</sup>

In the west, Ambrose, the celebrated Bishop of Milan and spiritual father of Augustine, prepared a series of sermons on the six days of creation (about 375). In speaking of the birds, he drew a moral lesson for his people, pointing out how the birds shelter and protect their young. By contrast, women nurse for only a short time and wealthy women omit nursing altogether. Poor women expose and disown their children—infanticide—Ambrose observes, and adds:

Also the well-to-do, to prevent dividing the estate among many heirs, deny the fetus in the womb and snuff it out in the genital chamber of the womb by parricidal mixtures. So life is taken even before it is given.<sup>93</sup>

What is most significant is that Ambrose goes on to argue that human parents, unlike the birds, violate the equal rights of their offspring. By nature all are equal. The argument against abortion thus blends into an argument against repudiating some children for the benefit of others.

In another context, a commentary on St. Luke, Ambrose warns about the immodest passion which, he thinks, causes sterility. Again he contrasts human beings with animals which refrain from further intercourse once a pregnancy is established:

Human beings spare neither those they have conceived nor God. They corrupt the former and frustrate the latter. It is written: "Before I formed you in the womb I knew you, and in the genitals of your mother I sanctified you" (Jr 1:5). To inhibit your rashness, you are made to notice that the hands of your maker are forming something in the womb into a man. He is at work—and you would violate by your passion the secret of that sacred womb? Either imitate brute animals or respect God!<sup>94</sup>

Here Ambrose may not have in mind efforts intended to procure abortion, but his remarks would apply even more so to such efforts. What is interesting is his use of the passage from Jeremiah and his insistence upon the presence of God working within the womb. To violate the womb is to interfere with the supreme craftsman at his work.

Ambrose's contemporary, Jerome writes a small treatise to Eustochium, a young woman who had pledged herself to virginity, instructing her on the rules of her way of life. Mentioning that some faithless virgins become pregnant and claim they were married to men who had died, Jerome adds:

Indeed others drink sterility beforehand and so perform homicide on what is not yet even a man. Some, when they notice they have illicitly conceived, take poisons of abortion. Frequently they even die themselves and then they are led to hell for the guilt of three crimes: for killing themselves, for infidelity to Christ, and for parricide of their child unborn. These are people who like to say: "To the clean, all things are clean"; my conscience is good enough for me; a heart that desires God is clean. They ask: "Why should I abstain from foods God created to be used."<sup>95</sup>

Here Jerome rejects contraception as well as abortion. The latter he clearly regards as a serious sin, for the virgin's unfaithfulness, her suicide, and the abortion (parricide of the unborn) are each mentioned as distinct reasons for a guilt that leads to hell. Moreover, Jerome has heard of an ethics of the good heart and the individual conscience, and he implicitly condemns such an ethics for the excesses to which it leads.

Jerome also believed that intercourse during pregnancy endangered the child, and he referred to those who disregarded this danger as "lovers" rather than husbands, for they behaved as adulterers would. It is difficult to tell if

the "danger" included miscarriage, for Jerome does not include it when he lists diseases and genital defects he thinks are caused by such untimely intercourse. Yet if intercourse is so strongly forbidden to safeguard the child unborn, clearly it is being regarded as an inviolable individual.<sup>96</sup>

Another passage from Jerome must be noticed, not because of what it actually says, but because of what it was subsequently misinterpreted as saying. Jerome is explaining in a figurative sense a passage of St. Matthew (24:19): "In those days, woe to those who are with child . . ." Jerome thinks the passage means that those whose faith has not "burst forth" in good works are in danger of losing it, "for just as the seeds of generation are gradually shaped in the uterus and are not considered a man until the elements mixed together take on their shapes and articulations," so is such faith, which is easily aborted under stress.<sup>97</sup>

Clearly Jerome is not here making any distinction between stages of development relevant to induced abortion. He is merely saying that a very early pregnancy, such as is easily lost, is not *considered* ("non reputatur") to be a man when there is no recognizable fetus. Moreover, this is in the context of an analogy to faith, a faith which Jerome himself certainly would not have denied to be such from its conception in the mind.<sup>98</sup>

However, we shall see that an amended form of this text played an important role in late medieval canon law and theology. That this should have happened is particularly ironic in view of the fact that Jerome's Latin translation of the Bible, which became the common one in the west, eliminated from Exodus 21:22-23 the reference the Septuagint had introduced to the formed or unformed condition of the fetus.

In fact, when Jerome discusses explicitly the question of the status of souls, he notes that some (including Tertullian, perhaps Lactantius, and some Greek fathers) hold that the soul is passed on and develops with the body. Others (including Origen and some other Greeks) think God created all the souls in the beginning and distributes them into bodies at his own discretion. Others hold that when a body is formed in the uterus, God simultaneously creates and infuses the soul. Jerome says he holds nothing definite on this matter, "but I leave it to God to know what is in fact the case—and to him to whom God chooses to reveal it." Jerome only asserts as certain what the tradition of the Church teaches: that God is the maker of both bodies and souls.<sup>99</sup>

In other words, Jerome does not claim to know enough to exclude the view that souls are passed on from parents to offspring. Whether or not the embryo is to be called "man" before it appears to be such is a question of usage, and this question is not very important for Jerome since he regards both contraception and abortion as serious sins. The distinction between the two was made in practice by the fact that sometimes women took drugs they thought would prevent conception, while sometimes they tried to end an existing pregnancy.

Jerome's younger contemporary, Augustine (354–430) is undoubtedly more important for our problem than any other single Christian author. Augustine touches on every aspect of the matter somewhere in his voluminous works, and his thinking greatly affected subsequent Christian thought and legal practice.

Probably the most important statement of Augustine concerning abortion occurs in a context where he is explaining his view that marriage is of itself good and that it uses sexual desire well—though such desire is not of itself good—for the procreation of children. If someone has intercourse merely to satisfy desire, Augustine considers it a fault, but one pardonable for a married couple, provided they do nothing by evil intent or behavior to prevent procreation. If they do try to block procreation, Augustine considers that their transgression is not pardonable but damnable, and if they never intended any other sort of life together, Augustine holds they are literally living in adultery. In this context he sketches the lengths to which some people go to prevent children:

Having advanced to this point, they are led on to expose the children that are born unwanted. For they hate to keep and bring up those they were anxious not to have. And so when they inflict cruelty on their own offspring, whom they begot against their wills, a shadowy wickedness advances into a wickedness evident in the light of day; by obvious cruelty the concealed is convicted of shameful-ness. Sometimes this lustful cruelty—or cruel lust—progresses to the point that they even obtain poisons for sterility; if these do not work, they somehow snuff out and destroy within the viscera the fetus that has been conceived. They wish their offspring to be cut off before it lives, or if it was already living in the uterus they want it to be killed before it is born<sup>100</sup>

Here Augustine condemns the whole spectrum of acts from birth prevention (probably by withdrawal) through infanticide. He sees all of them as a continuum of acts motivated by a desire for sexual satisfaction without a commitment to the procreation of new life, a continuum which is terminated in the most evident form of violence—exposure of the already born. Short of this extreme are the closely linked procedures of sterilization and abortion—here unbridled desire and the impulse to violence reach a kind of balance. In some sense this behavior best illustrates the excesses to which impulses of lust and cruelty lead, probably because it is more dangerous for the woman than exposure of unwanted children.

However, Augustine contrasts the whole sterilization-abortion-infanticide spectrum—which he aligns with damnable transgressions—with the pardonable fault of seeking mere pleasure in marital intercourse while not rejecting new life. Augustine sees the distinctions between sterilization, abortion, and infanticide; he is aware that sometimes the new life may not have begun. But this point is not important for his moral judgment of the situation.

Apart from the link Augustine thinks he sees between these acts, there is the more direct point that abortion of the fetus already alive is killing a human being.

For Augustine, man is born in the uterus before he is born out of the uterus.<sup>101</sup> The unborn does not simply pertain to the mother, Augustine argues; what is conceived in her is not to be counted as a mere part of her.<sup>102</sup>

But when does human life begin? Augustine is cautious about committing himself on this question. Commenting on the Septuagint version of Exodus 21:22-23, he observes that the Mosaic law does not wish to treat the accidental abortion of an "unformed" fetus as homicide. For Augustine this is an attempt to limit the application of the talionic rule: "life for life." On his own account he speculates that the unformed conceptus might in some way be animated—i.e., that there might be a human life before there is a recognizably human fetus. But the law did not treat the early accidental abortion as homicide because one could not say for certain that there was a living soul in a body lacking in sense, and an unformed conceptus certainly lacked senses.<sup>103</sup>

In another context, Augustine takes up the question of the resurrection. He does not assert, but he is inclined to think, that all who have begun life will rise again, even if they were not developed to the point of being "formed." Here Augustine clearly assumes that life precedes form and that this life is human—and personal—from the beginning. In this same context he asserts that monster births will be raised up too, and both the undeveloped and monsters will receive perfectly developed bodies. Double monsters—Augustine knows of a case—will be two perfect individuals, as they would have been had the twinning process run its course.<sup>104</sup>

In fact, faced directly with the question how the soul arises and when life begins in the body, Augustine declares not only that he does not know but that he doubts the question is susceptible to a human solution. Empirical means of settling the question seem cut off, because no one remembers the beginning of life and the process has not been observed objectively any more than has been the process of nutrition. Augustine is certain each man is created by God, but he pretends to know the details no more than Jerome did.<sup>105</sup>

Augustine is not completely without information concerning embryonic development. He reports in one place the scientific data of his day: the formation of the embryo takes forty-five days. The first six days it is a mucous, then for nine days it changes to blood, which clots in twelve more days. Eighteen days of embryonic articulation follow. Thus at the end of six and one-half weeks, the embryo is formed, and it remains only to grow to viable maturity.<sup>106</sup> In this opinion Augustine apparently was influenced by ancient biological and medical writers including—at least indirectly—Aristotle.<sup>107</sup> From this it appears that Augustine believed the human conceptus to be a person, endowed with an immortal soul, from the very beginning of his life. This life began even before the embryo took on recognizable human form. The Mosaic law did not

regard the abortion of the unformed as homicide, however, because the presence of life and soul could not be proved. From a moral point of view, nevertheless, Augustine rejected all attempts against the unborn with equal severity.

Like his predecessors in the Christian tradition, Augustine believed that even more than human life is at stake when abortion is committed. Man inseminates and woman conceives, "but that a fetus is conceived and is born is a divine work, not a human one."<sup>108</sup> Against those who denied it, Augustine insisted that God is the cause of the birth of each man, and that the human nature each receives—so far as it depends upon God—is good.<sup>109</sup> God does what is good: He forms the body, He gives it life, and He provides it with nourishment.<sup>110</sup>

In speaking in this way, Augustine does not intend some mere myth of an original creation. He insists that God acts in the present, giving the body its reality, its shape, its articulation, and its senses. Nor does Augustine imagine God, in any naive and primitive sense, at work in the womb. God does all this by a transcendent causality which does not exclude but rather embraces the natural, biological process of generation.<sup>111</sup>

Augustine is consistent in maintaining the humanity, goodness, and divine origin of all—even those conceived in unfortunate circumstances. "He makes man in the uterus of a whore . . . and more wonderful still, he sometimes adopts as his own son him whom he forms in the most contaminated womb."<sup>112</sup> Children of adultery as well as of marriage are good, "inasmuch as they are the work of God by whom they are created."<sup>113</sup> Defective children also are good: "For he is born feeble-minded by an accidental defect, but he is created as a man by the work of God." Thus the defective also have a place in providence and a destiny only God knows.<sup>114</sup>

Augustine never suggests that there are any circumstances under which abortion might be approved. In one passage he does describe the operation of embryotomy, but here he seems to be concerned with an already dead fetus, and in any case he does not approve the operation but merely mentions it in the course of an argument aimed at proving that the unborn truly live before birth.<sup>115</sup>

Augustine holds that the prohibition: "Thou shalt not kill," is limited in its meaning to the *unauthorized* killing of human beings. If God directly authorizes a killing—as in the cases of Abraham and Samson—this is treated not as an exception but as something outside the very meaning of the prohibition. Similarly, killing by public authority in warfare or in cases of capital punishment—provided these are in accord with just laws—are regarded as outside the meaning of the prohibition of killing.<sup>116</sup> In one place Augustine suggests that deadly force might be used in self-defense, but the case assumes that one is under immediate attack by a thief.<sup>117</sup> In these teachings it is obvious that Augustine's position was simply an acceptance of the teaching of the Old Testament.

In general, Augustine rejects the idea that circumstances can make an otherwise immoral act into a morally good one. For example, he denies that a laudable desire to raise children for God can justify extra-conjugal sexual relations. Similarly, he holds that the wrongness of a tyrannic party is not justified by the regal benevolence with which the tyrant rules.<sup>118</sup>

Killing is not only wrong when it is done maliciously, but also when it is undertaken through fear of some evil—e.g., when a slave kills a master who tortures him.<sup>119</sup>

Augustine excludes specifically the idea that a good intention, expected good consequences, or a good purpose can justify doing acts that are of themselves evil. One may not rob the rich to help the poor. One may not commit perjury to obtain money for the needy, even if no innocent person suffers. One may not deprive the unworthy of their inheritances by forging wills, even though one thereby gets the funds for urgent good works. One may not commit adultery to get money for the needy, nor to save an innocent man from death, nor to obtain the secrets of a heretical group. If these things were permitted, Augustine argues, all bad acts would become good if they were done for a good reason:

Now, who would say such a thing, except someone intent on subverting every human institution—common morals, laws, and all? For in this way the most criminal deed, the wickedest crime, the most impious sacrilege could be said to be right and just. These things could be done not only with impunity but even with glory. Their perpetrators not only would fear no punishment, they might even expect a reward. That would be the case if once we agreed that what is important in sinful acts is not the *what* but the *why*, that whatever is found to be done for a good reason is not to be held guilty.<sup>120</sup>

In sum, Augustine condemns abortion as a damnable sin. There is certainly a distinct human life before birth, probably even before the fetus is “formed,” which Augustine puts at about six and one-half weeks of pregnancy. The Mosaic law is explained as not having treated the abortion of the unformed as homicide, but Augustine believes moral guilt can extend beyond legal provisions. Certainly one reason for Augustine’s strong rejection of abortion is that he considers it an interference with the work of God, who is active in endowing each person with life and the good of human nature. Augustine’s moral theory does not allow exceptions, because of special circumstances, to moral prohibitions. He regards the authorized killing which was traditionally permitted as something outside the meaning of the prohibition, rather than as an exception to the general rule.

There is one text that was erroneously attributed to Augustine which had a great influence on subsequent thought. The pseudo-Augustinian text is an answer to a question about the soul. Is it passed on from parents to offspring? The author does not wish to admit that the soul is present from insemination, for then many would perish, since often intercourse does not lead to live birth. He therefore says Moses set down the law (Ex 21:22-23) “that he might prove



the soul is not present without the form. And so if it is given when the body is already formed, it is not born in the conception of the body with the derived seed."<sup>121</sup>

After the time of Augustine, perhaps only one other author contributed greatly to laying the foundations of the traditional Christian attitude toward abortion. This was Caesarius, who was Bishop of Arles (503–543), the most influential see in Gaul during a period critical in the solidification of the tradition received from the early Church and passed on to the later middle ages.

In several sermons Caesarius refers to abortion, always in terms of unqualified condemnation. Noting, for example, that some fail in their duty as Christian teachers, Caesarius asks who cannot teach: "No woman may take abortifacient potions, for she should not doubt in the least that she will be tried before the judgment seat of Christ on as many counts as she kills those newly born or just conceived."<sup>122</sup> And Caesarius adds that even if it is a matter of preventing conception, the taking of potions is wrong, because it violates divine providence. Unless the sin is remitted by suitable penance, such a person will be condemned to hell forever. The only proper course for a Christian couple who do not want to have a child, Caesarius concludes, is mutually accepted abstinence.

Again Caesarius raises the question why such practices exist, and he suggests that the motivation is economic. From this point of view the sin argues a lack of confidence in providence, for God can certainly feed and care for those whom he willed to be born.<sup>123</sup>

Summing up all the sources of early Christian teaching, we may note that two motives for abortion are explicitly mentioned: an economic motive and the elimination of illegitimate offspring. The chief method seems to have been abortifacient drugs. Because of this method abortion is closely related to contraception by sterilizing drugs. And because of the danger of the drugs in use, there was a possibility of mortal side effects to the mother.

In the writings of the Fathers of the Church can be found almost all the arguments against abortion subsequently proposed by Christians. Almost none of them argues that abortion is evil because it is dangerous to the mother. Rather, the Church Fathers reject abortion because it is a form of discrimination against some of one's children in favor of others; because it is an inhumane and dehumanizing act; because it is an act in the middle of a spectrum of forms of behavior that express dangerously undisciplined erotic and aggressive impulses; because it is a type of homicide that is especially cruel, since the parents should most especially love and care for the helpless life they have generated; and because it violates the work of God and ignores His providence.

This last point was fully developed in the writings of the Church Fathers. Abortion violates the divine in man, who is made in God's image; it violates the process by which human life is transmitted, a process that is godlike because man cooperates in it with God in a special way; it corrupts/destroys

what God has made, formed, molded; it follows from forgetfulness of God or, at least, from a lack of trust in His providence; it is incompatible with the belief that God cares for the child and will vindicate its life; and it ignores the fact that God has a special destiny appointed for each one He has made, including mental defectives and children born out of wedlock.

For these reasons abortion was considered a serious sin, a damnable crime, an act which, if not repented, would cause eternal damnation. The person who is guilty will have to answer to God and will be tried before the judgment seat of Christ.

We have failed to find any of the authors studied discussing the question of therapeutic abortion. Probably the dangers of abortion rendered therapeutic abortion uncommon. The general attitude toward moral prohibitions, such as the prohibition of abortion, seems to have been that they are not subject to circumstantial exceptions. Jerome has heard of a morality of the good conscience; he rejects it. Augustine asks whether an otherwise evil act can be rendered good by its good consequences—the question of *necessità*. He is emphatic in saying no to this idea, which he considers subversive of all institutions.

Many of the early authors do not mention any distinction between “formed” and “not formed” fetuses. Some mention it only to reject it as irrelevant. Others consider it to have legal validity, but they do not consider the matter very important because all abortion is still a serious sin. Augustine and Jerome do not commit themselves on the issue when the soul is present, and Augustine (as well as Tertullian and possibly others) thinks that life may *precede* the formation of the fetus.

#### The Later Christian Tradition

One might have imagined that in the thousand years after Augustine there would have been some important development in the Christian doctrine concerning abortion. As a matter of fact, there does not seem to have been much development. More theological attention was given to theoretical and dogmatic issues than to moral teachings. The received moral teaching was accepted, preached, and backed up with discipline. Not much seems to have been done to articulate and consolidate the variety of precepts. These norms of Christian life were analogous to the basic tenets of dogma; ecclesiastical practice assumed Christian morality and tried to articulate life in accord with it, just as theology assumed the received faith and tried to articulate a world-view in accord with it.

A careful study of the development of canon law with regard to abortion has been made by Rev. R. J. Huser. One must realize that canon law was not determinative of whether or not abortion was morally wrong and sinful. It always assumed this and proceeded to determine how the Church, as a community, would deal with members guilty of this sin. The continuous legal

tradition is evidence of an absolutely unbroken moral tradition that abortion is a serious sin; canon law never has prescribed penalties for those guilty of venial sins—prayer and good works have always been regarded as sufficient for their remission.

Until the tenth century, canon law tended to follow the common teaching we have seen. Abortion was to be treated as murder, but the penance required was set at ten years, rather than a longer period, probably because ordinary murder involves a greater social disruption. Distinctions between “formed” and “not formed” fetuses were not important. The penalties were expressed in the beginning with regard to women having abortions following adultery, but soon the explicit rules were generalized to all abortion and to cooperators, not only the women themselves.<sup>124</sup>

Meanwhile, outside the framework of canon law, there had developed a different system of penance, the private penance of the penitential books that began in north-western Europe. Monks and missionaries were making practical adaptations of Christian rules to the semi-barbarian peoples of these areas.

The “Irish Canons” (about 675) provide penances for abortion and distinguish between the destruction of the fluid material of a child (three and one-half years penance) and the destruction of flesh and spirit (seven and one-half years on bread and water, in continence).<sup>125</sup> In trying to mitigate the official discipline, the distinction between “formed” and “unformed” fetuses was being seized upon.

An Old Irish Penitential (around 800) indicates even more distinctions. Three and one-half years penance if a conceptus is aborted, seven if it is “formed,” fourteen if the “soul” has entered. There is also a penance if the woman dies—which indicates that cooperators were considered guilty.<sup>126</sup> Here we probably see the notion that there is a significant difference between a fetus that looks human (“formed”) and one that is felt to be alive by its movements (“soul” is present). It would be hard to make sense of the distinction in any other way, when we consider the state of physiological knowledge and the criteria that could have been used.

The Penitential of Theodore, Archbishop of Canterbury (668–690), provides that before forty days of fetal development, the penance will be one year or even less, but after that the penance increases to three years—“they shall do penance as murderesses.” Yet the penance for killing an infant already born is fifteen years, except if the woman is poor, which reduces the penance to seven years.<sup>127</sup> Another penitential ascribed to Bede (around 800) is similar.<sup>128</sup>

By contrast a Burgundian penitential (about 700) provides a three-year penance for intentional abortion and no distinction of stages of development is indicated.<sup>129</sup> Similarly a penitential from Silos in Spain (about 800) treats abortion as homicide, and apparently maintains the ten-year penance of the older canons.<sup>130</sup> Another Spanish penitential of the same period holds that women who take potions shall consider themselves guilty of as many acts

of homicide as those they would have conceived and borne.<sup>131</sup> Here the distinction between stages of development is precluded. Even contraception seems to be treated as homicide.

Finally, there is a penitential (830) which Halitgar, Bishop of Cambrai (France) claimed he had drawn from a Roman source. Here the penance for abortion is the same as the layman's penance for homicide—three years. No distinction of stages of development is given. The older penance of ten years, and the still older penance of excommunication are mentioned, but are not invoked.<sup>132</sup>

What apparently happened is that two distinct directions were followed in the unauthorized improvising that led to the penitentials and the new discipline for remission of sin. In Britain and Ireland, and perhaps elsewhere, much reduced penances were given for very early abortion. It was still considered a serious sin, but it was not considered homicide. In Burgundy, Spain, and Cambrai, however, while the penance may have been softened, no such consideration played a part and the penitentials remained closer to earlier canonical legislation.

Beginning in the tenth century, collections of canon laws began to include some of the material drawn from unauthorized sources. Regino of Prüm (about 900) included a rule (called "si aliquis" from its opening words) which held as homicides all who did anything contrary to generation or conception. At the same time, Regino included a penitential rule that graded penances: one year's penance for killing a fetus less than forty days, three years for killing one over forty days but not "animated," and ten years penance (as for actual homicide) if the fetus was "animated." Burchard of Worms (about 1000) falsely attributes *si aliquis* to a Council of Worms (830). But he also includes the "Roman penitential." And then in an original penitential work he mitigates the three-year penance to one if the fetus is not "animated."<sup>133</sup>

Ivo, Bishop of Chartres (about 1100), does not include *si aliquis* in his *Decretum*. But he introduces Augustine's condemnation of abortion and Augustine's commentary on the Septuagint text of Exodus 21:22-23, which indicated that for legal purposes the killing of the unformed fetus would not be homicide. Ivo also includes the stronger pseudo-Augustinian assertion that the fetus had no soul before it was formed, and Jerome's remark that an unformed fetus is not considered ("reputatur") as *homicide*. The word "homicide" was not Jerome's but "homo" becomes "homicidium" fairly easily, and the slight change served Ivo's purposes.<sup>134</sup>

The next stage of development was the formation of canon law into a systematic discipline by Gratian (about 1140). Using the same texts as Ivo, Gratian is at pains to exclude the abortion of the non-animated (unformed) fetus from the category of murder. He also excludes accidental abortion. The *Glossa Ordinaria* (1215-1245), a commentary on the *Decretum* of Gratian, follows Gratian, and tends to equate "formed," "animated," and "vivified."

Gratian's work and its *Glossa* were very influential throughout the later middle ages.<sup>135</sup>

Pope Gregory IX, in his decretals (1234), which had the force of law for the entire church, included both *si aliquis*, which regarded even contraception as homicide, and a letter (1211) by Pope Innocent III which distinguished the "vivified" from the "non-vivified" fetus. Those commenting on Gregory IX's decretals interpreted this legislation in accord with Gratian and the *Glossa Ordinaria*. The result was that though *all* abortion continued to be regarded as a serious sin, only the abortion of the vivified (formed, animated) fetus was considered murder. The apparent inconsistency between *si aliquis* and this conclusion was dealt with by regarding early abortion (along with any form of contraception), as "quasi murder." No definite criterion of vivification was indicated in this legislation, so the distinction of classical biology came into use. By this, a male embryo receives a soul at forty days of development, a female at eighty.<sup>136</sup>

Meanwhile, Peter Lombard, who later became Bishop of Paris, compiled his *Books of Sentences* (about 1157), which summarized the whole of Christian theology by juxtaposing quotations from the Church Fathers, especially Augustine, and some other sources. Lombard's work was fantastically successful; it became the basic textbook for all the theologians of the later middle ages. By the time of Thomas Aquinas, a century later, everyone becoming a Doctor of Theology had to write a commentary on Lombard, and this remained true for several centuries.

Peter Lombard treated abortion in the context of marriage. He quoted Augustine's condemnation and then asked whether those who procure abortion are homicides or not. The question is settled by the same three texts used by Ivo of Chartres; the genuine text of Augustine, the pseudo-Augustinian text, and the altered text of Jerome.<sup>137</sup>

In this situation it is not surprising that we find no very important treatment of abortion in the great theologians—Albert, Aquinas, Bonaventure, and Scotus. Either the act becomes a homicide in the full sense, if the fetus is animated, or abortion is assimilated to contraceptive behavior, if the fetus is not animated. In any case abortion remains a grave sin.<sup>138</sup>

There is one question discussed by the theologians that throws some light on their attitude toward abortion. Thomas Aquinas' treatment of the question will serve as a sample. He puts the question: "Whether one existing in the maternal uterus can be baptized?"<sup>139</sup> He says no, because the rite cannot be carried out internally and because baptizing the mother does not affect the fetus. Its soul is distinct from its mother's, and the body of a fetus already ensouled ("animatus") is already formed—and so the body also is distinct. Thus Aquinas teaches two points: 1) that the unborn, as soon as it has a soul, is wholly distinct from its mother; 2) there is no spiritual soul in the "unformed" embryo.

In answering related arguments, Aquinas insists that any "interior organ of the mother belongs to her by continuation and material union of part to whole. But a child existing in its mother's uterus belongs to her by a kind of binding together of distinct bodies." At the same time, Aquinas emphasizes that the child in the womb is not subject to human ministrations not merely because of physical impossibility, but because "children existing in their mothers' wombs have not yet come forth into the light, so that they may lead their lives among men." But God may choose to sanctify the unborn, because they "live with him," Aquinas rejoins a long tradition which posits man's first personal relationship to be that with God. As Jeremiah, so all men, are living with God before they see the light of day.

Making the distinction in this way, Aquinas must set a dividing line after which the child may be considered born. He solves this question with a distinction reminiscent of that of the Rabbis. If there is danger of death, the baby's head may be baptized as soon as it emerges. If another part is born and baptized, then if the baby survives, it should be conditionally baptized. The difference between Aquinas' use of this distinction and what we find in the Rabbis is that Aquinas considered the unborn a person in the full sense, though not a member of the human community. The Rabbis, following a conception of personality in which the individual was completely immersed in the social totality, made the beginning of personality depend upon the beginning of life among men.

Finally, Aquinas answers an objection to his view that the child may not be baptized in the uterus. If that is so, the argument goes, if the child may otherwise die unbaptized, a woman should be cut open, the child ripped out, and baptism administered. For one should choose the lesser of two evils, and the bodily death of the mother is certainly less evil than the eternal death of the child. Aquinas replies:

"Evils are not to be done that goods may come about" (Rm 3:8). And therefore a man ought not to kill the mother in order that he might baptize the child. But if the mother is dead and the child is alive in the womb, then the body should be opened and the child baptized.<sup>140</sup>

Here Aquinas rejects killing the mother for what he believed to be the infinitely greater good of the child. It is reasonable to believe he would have consistently applied the principle in all cases where justification is argued for killing the unborn child, even for the welfare of the mother.

The Christian tradition on abortion arose as a reaction to the pagan world, a reaction determined by an evaluation of life in the light of the Gospel. In many respects this tradition was continuous with an authentic wing of the Jewish tradition, as we saw in considering Philo and the *Didache*. Abortion was considered by Christians in relation to homicide and to sexual sins. By a curious process, which was partly influenced by the Septuagint translation of Exodus and partly by the biology of the time, a sharp distinction came to be

made between the abortion of a "formed" or "animated" fetus and that of one not "formed" or "animated." If the fetus was formed, Christian thought considered abortion to be true homicide, although legal penalties might not be the same for such abortion as for killing a live-born individual. Laws have a social purpose, and the unborn are only potential members of human society, although they are true persons, "living with God." If the fetus was not "formed," Christian thought came to regard abortion as a serious sin but not as homicide, for it came to be thought that scripture and science seemed to join in certifying that the unformed embryo was in no sense a person. As we shall see later, this certitude was not to last in the Catholic tradition.

#### The Greek Orthodox Tradition

Because of language difficulties, I have not been able to investigate the modern development among Orthodox Christians of the Greek and other Eastern Churches of the Christian moral tradition concerning abortion. Although the number of American communicants in these Churches is not great, an inquiry into their convictions in this matter could be very valuable, since Orthodox Christians unquestionably bear witness to the modern world of Christian attitudes. Moreover, they bear this witness in complete independence from Rome, and from what many regard as the dogmatism and authoritarianism of the Roman Catholic Church.

In order not to omit altogether the valuable witness of Orthodox Christianity, I therefore sent a letter of inquiry to the administrative office of the Greek Orthodox Archdiocese of North and South America. In response I received (July 1968) a statement which provides the following current expression of the Orthodox Christian tradition:

It has been the position of the Orthodox Church over the centuries that the taking of unborn life is morally wrong. This is based upon divine law which is the most difficult law for man to comprehend for it transcends the boundaries of human frailty due to its source of divine authority. No law is perfect, and man in his diverse interpretations of the law is continually reminded of his human limitations. Even in such basic law as "Thou Shalt Not Kill" we can take no pride in its exceptions which justify war and self-defense, for they serve only to becloud our unceasing efforts toward shaping man in the image of God. This same principle of exception also extends to the unborn child. When the unborn child places the life of its mother in jeopardy, then and only then can this life be sacrificed for the welfare of its mother. To move beyond this exception would be transgressing man's duty in the protection of human life as understood and interpreted by the Orthodox Church.

We are profoundly aware that the discipline of divine law sometimes creates inequities that are difficult for human comprehension to accept, but the eternal values of divine law were not created for a man, but for mankind.

The solution to our vexing problem of an increasing need for abortion does not lie in reinterpreting the law to meet the needs of our present-day morality,

but rather challenges us to find more effective means of living up to the high standards of divine law which is the eternal protector of human life.

We give glory to God for creating man in His image, and we offer humble thanksgiving that in his unending search for knowledge and truth man is proving worthy of this divine gift. With the great advances in human achievement, especially in the realm of medical science, we are fully confident that the welfare of both the born and unborn are being drawn closer to the day when complications of pregnancy and abnormal birth will go the way of many diseases which have been overcome and are now conspicuous by their absence.

In this Greek Orthodox statement we observe the echo of the common Christian tradition, which stresses the dignity of unborn life created in the image of God. We note a stress on the "transcendence" of the divine law—its incomprehensibility to man, because it is the law of God. This stress is somewhat different from what we shall note in the Protestant and Roman Catholic positions.

Finally, we note that the Greek Orthodox position concerning therapeutic abortion is in between most Protestant positions and that of the Roman Catholic Church. For the Orthodox statement regards therapeutic abortion *to save the mother's life* as a morally acceptable, though morally compromising, possibility. Many Protestant Churches appear to condone abortion on broader grounds than this, while the Roman Catholic Church unqualifiedly rejects direct abortion. The meaning of "direct abortion" will become clearer in the section dealing with the Catholic tradition.

#### The Protestant Tradition

Just as there is little specific treatment of abortion in the late scholastics, so we find hardly any reference to it among the great reformers. I have found no study of the topic of abortion in reformation moral teachings, and contemporary Protestants discussing abortion seldom refer to their tradition.

If we look into Martin Luther's works, we find little significant discussion of abortion. In commenting on the story of Onan in Genesis (about 1540), Luther does remark: "Surely at such a time the order of nature established by God in procreation should be followed."<sup>141</sup>

Luther also holds the traditional Christian attitude toward the child as a special work of God: "Even if all the world were to combine forces, they could not bring about the conception of a single child in any woman's womb nor cause it to be born; that is wholly the work of God alone."<sup>142</sup>

Nevertheless, Luther's theology did contribute a new theoretical element to form a distinctively Protestant tradition, but the contribution, so far as I have been able to discover, was never applied by Luther himself to abortion. Luther's doctrine of justification by faith removes the stress previously placed by Christianity on good works, and so perhaps lessens the significance of any absolute criterion of good and evil. Moreover, the attitude that apart from the mercy of God man would in every act be guilty of damnable sin also tends to



make moral evil relative or comparative. Among the possibilities of action there are lesser and greater evils but no unqualified goods. These factors, undoubtedly together with others, led Luther to justify some acts of killing and lying—without recourse to scholastic distinctions—simply by appeal to the greater good to be served.

For example, Luther considers lies which prevent sin and serve others to be virtuous and prudent; only lies that benefit oneself at the expense of others are really sinful lies.<sup>143</sup> This position may or may not be sound, but it is certainly different from the previous Christian view, which was that lying is an act wrong in itself. Similarly, Luther's justification of war does not deny its evil, but argues that warfare is "needful and useful to the world"; he believes that acts of war "are God's works and judgments" and that in the end the unjust "cannot escape God's judgment and sword."<sup>144</sup> Again, I do not argue here whether the position is sound. I only wish to point out that Luther's justification of warfare is quite different from the traditional Christian theories of "justifiable war."

Another aspect of Luther's new attitude toward moral norms is revealed by his tendency to regard law and conscience as antagonistic principles. In case of conflict, Luther says in discussing laws concerning marriage and divorce, "it is the law which must yield and give way, so that the conscience may be clear and free."<sup>145</sup>

If these new attitudes were applied to abortion, it is clear that if he were consistent Luther would not absolutely exclude abortion as immoral, for one would have to compare evils. Also, the existence of laws would not deter someone convinced that his reasons for procuring abortion were conscientious.

John Calvin refers to abortion explicitly but does not discuss it at length. In commenting on the story of Onan, Calvin condemns both contraception (at least, by withdrawal) and abortion. The former practice, he says is "to kill before he is born the child who should be hoped for." The general principle is laid down: "It is a monstrous thing to ejaculate semen voluntarily apart from the intercourse of man and woman." Calvin compares Onan's sin to a "violent abortion of his brother's offspring." He adds, "If some woman expels the fetus from her uterus with drugs, it is considered an inexpiable crime, and rightly so."<sup>146</sup> Thus Calvin considers abortion not only a serious matter, but in some sense "inexpiable." If he meant this literally, he was returning, whether or not he realized it, to the earliest Christian discipline which imposed permanent excommunication as the penalty for abortion.

In commenting upon Exodus 21:22-23, Calvin does not follow the Septuagint but he nevertheless holds that the text is ambiguous whether the penalty of death is imposed if the mother dies or if the child dies. In his judgment, the view that it was not a capital crime to snuff out a fetus "is not lacking great absurdity. For the fetus enclosed in its mother's womb already is a man," and it ought to be especially inviolable there. If it is worse to kill a man in his own house, because he should be safest there, "it ought to be

regarded as much more atrocious to kill a fetus who has never seen the light of day, in the womb."<sup>147</sup>

Calvin remains closer than Luther to the general Christian tradition that some acts are always immoral. In a sermon on the Book of Samuel, Calvin observes that all our acts suffer some stain of evil, and none of them is of itself worthy before God. Calvin believes that God will condone our human lapses because of the grace of Christ. However, this view does not lead Calvin to approve lies told for a good purpose:

Every lie is a sin before God, even though its purpose is not evil. For it is an undoubted principle that God loves truth, and He Himself cannot reject it. And so we do not think we are unspotted by sin, even though we can say in all good faith that no one is harmed or injured by our lie. For, as I said, a lie of its very nature is vicious and to be condemned, because it is contrary to the nature of God. For we know God has taken the name of *Truth* for himself . . ."

Calvin concludes that to make lies right is to mix all contraries: heaven is earth, black is white, light is darkness.<sup>148</sup>

The reformation in England cannot be traced in the work of any single author. A modest inquiry has not revealed much concerning abortion. To the extent that "scholastic subtlety" and "Jesuitical casuistry" became objects of derision, detailed treatment of moral topics became less frequent. As private confession was abandoned, there was less and less reason for precision in moral teaching. Also, of course, scripture played a primary role in moral and doctrinal instruction, and there is little in scripture bearing directly on abortion.

Of course, the literature of the English reformation does reveal an occasional reference. For example, John Donne, in a sermon preached on Easter evening, 1625, referred to Augustine: "The sin of *Er*, and *Onan*, in married men; the sin of procured abortions, in married women, doe, in many cases equall, in some, exceed, the sin of Adultery."<sup>149</sup> Richard Baxter, in his *Christian Directory*, refers to abortion in the context of the shame of prostitution; he regards the act simply as murder.<sup>150</sup>

One important channel for the transmission into English of a strict view of abortion was the work of John Weemse (also spelled "Weemes" or "Weymss") of Lathocker, Scotland, who modestly styled himself: "Preacher of Christs Gospell." Born in 1579, Weemse was educated at St. Edward's. His work, *An Exposition of the Morall Law or Ten Commandments of Almighty God*, was published in London in 1632. Charles I created Weemse prebend of Durham in 1634, and though he died two years later, his work, which shows the influence of Calvin rather than of Luther, won considerable fame and was frequently cited.

Weemse begins his treatise on "murther in generall" with the traditional Christian concept: "It is a great barbarity to put out the life of man who is the workmanship of God." Like a master craftsman who does the important parts of the job himself, God is the cause of man:

It is the Lord that made the mould, and the mothers belly is the shop wherein he moulded man below here; all that he made before he made man were but assaies, or trials, but when he commeth to make man, then he commeth to his consultation, *Let us make man to our image*, therefore he hath a great care that his life be not put out.

It follows that killing man is abusing the image of God. But Weemse interprets the text of Exodus 21:22-23 as protecting the life of a child even before it is “figuratum”—shaped in human form, and argues from this “how precious a thing is the life of man in the sight of God.”<sup>151</sup>

Weemse comments at some length on the passage from Exodus, under the title: “De infanticido, of the killing of an infant in the mothers wombe.” Weemse’s embryology is similar to Augustine’s; the fetus is fully formed in 35–50 days and begins to stir at 70–100 days. The rule of Exodus, according to Weemse, defends both the mother and the child, but reduces the penalty from death to a fine if the fetus is not formed. In a manner reminiscent of Philo, Weemse refers to the formed embryo as “virunculus” or “mannikin.”

Weemse not only appeals to scripture, but formulates anew the touching appeal to a sense of decency:

It is a great crueltie to kill the child in the mothers belly, to kill this innocent in his first mansion, which should have been the place of his refuge; the *tunicle*, in which hee is wrapped in his mothers belly, is called *Shilo*, because (as the Hebrewes say) the young infant should live peaceably in it, in his mothers wombe, as in a place of refuge.

Weemse recalls that scripture is particularly severe about killing people in their own beds, and he argues that the killing of suckling kids is forbidden as a protection of infants.<sup>152</sup>

Weemse’s treatise is evidence that the traditional Christian position regarding abortion would find strong defenders in the Protestant branch of modern Christianity. Another aspect of the development of the Protestant tradition can be discerned in the work of Protestant philosophers. One example will suffice. Samuel von Pufendorf, perhaps the first occupant of a professorship in ethics in Germany, published (1672) a huge work *On the Law of Nature and of Nations*.

In this work I have found only two mentions of abortion, one a quotation with approval of a passage from Pliny condemning men for practicing unnatural vice “while the females have recourse to abortion.”<sup>153</sup> The other is more important. Pufendorf argues that the basis of parental authority is the upbringing of children, and concludes: “It is patent from all this, that the power of the father does on no account extend so far that he can destroy the child while yet unborn, except in case both the mother and the child would otherwise perish.” He also condemns infanticide and adds that though the child derives from its parents “upon conception it attains a like condition with them, at least to the extent that it is capable of suffering injury from a person.” This argument is confirmed from Pliny, and hence primitives who practice abortion are

condemned and Aristotle's proposal of abortion as a method of population control (prior to "animation") is rejected.<sup>154</sup>

Here we see two important points. Conception is used as the point of demarcation; there is no appeal to any distinction between "formed" and "not formed." Second, Pufendorf alludes to the very important exception: for him, abortion is allowable if otherwise the mother and baby would both die. Systematically, his basis for this exception is the general position that in cases of necessity, where two will perish unless one of them does something that causes the other to die sooner than he otherwise would, that act will be justified if there is no desire to cause harm and a positive preference for a harmless way out if there were one.<sup>155</sup> Unfortunately, Pufendorf does not illustrate this by an example of abortion.

In solving this problem, Pufendorf refers back to Antonius Matthaeus (1601–1654), a commentator of Roman law. In Matthaeus, we find a rather well developed treatise on abortion. He discusses whether it is a licit method of controlling population and decides it is not, for if celibates are to be blamed for not giving children to society, how much more those who kill the conceptus before it sees the light. Colonization is proposed as a better solution to population problems.

Against the legal objection that the embryo is part of its mother's insides, Matthaeus invokes the argument of Tertullian and cites the biblical precedent of Onan. But there is a problem with treating abortion as a capital crime—it is very widespread and very frequent, so that every week there would have to be executions.

Finally Matthaeus asks: "What should be said if a mother cannot be saved unless an abortion is done? In that case is it to be allowed as immune from punishment?" The answer, based on Matthaeus' own arguments and classical authors, is a somewhat vacillating "yes." Arguing that when it comes to choosing which to save, people take priority over animals as a matter of humanity and wise over foolish men as a matter of utility, Matthaeus concludes the older takes priority over the younger as a matter of respect. Assuming from Cicero the general preference of parental interests, Matthaeus concludes: "And so if the mother is preferred even to an infant already born, how much more quickly should we assert that of one still to be born?" But then Matthaeus seems to hedge a bit, first by suggesting examples in which the abortion seems an incidental result of bleeding or drugs otherwise necessary, and then by indicating that both lives could be lost. Hence his acceptance of therapeutic abortion is somewhat qualified.<sup>156</sup>

It is important to know something about Matthaeus and his work. He himself, though he lived and worked in the Netherlands and adhered to the local form of Protestantism, was born in Herborn, Germany. He was from a family which included many jurists. His grandfather, Konrad, born in 1519 in Marburg, was a doctor of civil and canon law, an Assessor of Hesse, and probably had become Lutheran when the nobility adopted the new evan-

gel. At any rate Konrad's brother Joachim, who died in 1573, was a churchman in Baden, and he was followed in his vocation by his two eldest sons.<sup>157</sup>

Matthaeus' work in Roman law, *On Crimes*, was so original in its organization and handling of the material that he has been called the "founder of the 'general treatise' of criminal law."<sup>158</sup> The work was printed at least seventeen times, beginning with the Utrecht edition of 1644 and ending with a Pavia edition in 1805.<sup>159</sup> While there are undoubtedly other sources, Matthaeus' treatise unquestionably is an important missing link in the development of the modern Protestant concept of legitimate therapeutic abortion.

From the materials drawn from the Protestant tradition that we have reviewed thus far, we might be tempted to conclude that the Lutheran side of this tradition tended to mitigate the ancient Christian teaching on abortion, while the Calvinist side tended to maintain the received morality in all its force. But the situation is more complicated than we might expect, for we find Lutheran moral theologians of the seventeenth century who took a more rigoristic view of the matter than that espoused even by Roman Catholic moralists of the same period.

The Lutheran theologians in question were academics, members of university faculties, who wrote in Latin and who borrowed freely from their Roman Catholic counterparts. A good example is Johann A. Osiander, whose *Theologia Casualis* was published in 1680.

Osiander develops his treatise on the fifth commandment along traditional lines, stressing that the Old Testament protection of the life of man, as an image of God, is still valid for Christians. The law of love, already promulgated in the Old Testament itself, does not void, but rather concurs with and takes specific shape in the commandment: "Thou shalt not kill."<sup>160</sup>

With regard to the specific question of abortion, Osiander asks: "Whether a pregnant woman can conscientiously take a medicine of which the fetus probably will perish?" The answer is negative, on the ground that this is killing forbidden by God under the fifth commandment. Tertullian's argument about "anticipated homicide" is cited, and it is argued that any doubt must be settled in favor of the unborn, since it is wrong to act with a doubtful conscience. God entrusts the child to the care of the mother; in difficulty, she should rather rely on God's care than to take a possibly deadly drug.

Osiander maintains this position even if the primary tendency of the drug itself and the main intention of the one taking it is the curing of the mother, with risk to the unborn only as an incidental effect that is reluctantly permitted. For a completely spotless conscience must wholly avoid contamination. The consequent death of the unborn is not completely accidental and wholly outside the intent of the one who knowingly takes a drug that might kill it. The norm must stand on the safe side, and that means the side of *not acting with danger of harm*.

Some contemporary Roman Catholic moralists—as we shall see in the next section—made use of a distinction between drugs that specially tended to the destruction of the fetus and those medical treatments that might have been prescribed even if the woman were not pregnant. The distinction between animated and non-animated fetuses also was significant. Osiander, however, rules out any drug or treatment that might cause harm, and he denies that there is any distinction between animated and non-animated fetuses “for there is no such thing as a non-animated fetus.”<sup>161</sup> We shall see the sources from which Osiander most likely derived this last opinion when we consider early seventeenth-century developments in the Catholic tradition’s understanding of embryology.

Osiander completes his treatise on abortion by raising two additional questions. If one doubts whether the fetus is dead, may a pregnant woman take drugs which might harm the unborn if it still is alive? The answer is negative. A doubtful conscience must be resolved in favor of the offspring. But what about cesarean operations? Osiander is not certain about the medical feasibility of the procedure, but his clear statement on the morality of the case is that one may proceed only if there is a solid hope of saving both mother and child.<sup>162</sup>

The Protestant tradition found expression in moral tractates printed in colonial America. An example is a brief reference in a treatise by Benjamin Wadsworth, where abortion is mentioned as an additional mode by which some violate, “Thou shalt not kill.” Poisoners violate the divine command: “And so do those, who purposely endeavor to destroy the life of a *Child in the Womb*, whether the Woman *her self*, or *another*, does it.”<sup>163</sup>

One could cite many other Protestant authors who transmitted the traditional teaching concerning abortion. Yet specific moral teaching was not so characteristic of Protestant Christianity as it was of Tridentine Catholicism. In countries such as Great Britain and the United States, where Protestantism provided the dominant element of social morality, the civil law rather than the treatise of moral theology was the primary mode by which traditional moral norms were communicated.

By the latter part of the nineteenth century, however, the civil law was not proving an effective barrier against the increasing practice of abortion. Concerned Protestants took the occasion to reiterate the traditional doctrine.

Dr. John Todd, D.D., a Protestant divine of Boston, wrote in 1867 that his coreligionists must make a more serious effort to teach the evil of abortion:

There is nothing in Protestantism that encourages or connives at it, but there is vast ignorance as to the guilt of the thing. But in the Catholic church, human life is guarded, at all stages, by the confessional, by stern denuncements, and by fearful excommunications.

For Todd, abortion is “deliberate, cold murder” and incurs the full moral guilt of murder.<sup>164</sup>

In 1869, the Episcopal Bishop of Western New York published a pastoral letter recalling previous warnings "about the blood guiltiness of ante-natal infanticide." These warnings Bishop Cox reaffirmed in solemn terms: "Again I warn you, that they who do such things cannot inherit eternal life."<sup>165</sup>

In the same year, the Presbyterian Convention (Old School) meeting at New York passed a resolution: "that we regard the destruction by parents of their own offspring, before birth, with abhorrence, as a crime against God, and against nature . . ." The resolution goes on to refer to abortion as "murder," to say of those who commit it "except they repent they cannot inherit eternal life," to declare the continued communion of such persons with the church "vile hypocrisy," and to call on preachers and others "that they be no longer silent or tolerant of these things . . ."<sup>166</sup>

Apparently the feeling was spreading at this time that the churches had not been active enough in opposing abortion. We find evidences of this attitude among Protestant laymen practicing the professions of medicine and law.

The medical ethics of abortion had been succinctly stated for British and American physicians in the work of Thomas Percival, which was first published in 1803 and which was the standard work in its field throughout the nineteenth century. Percival regarded abortion permissible if the pelvis is "such as to render the birth of a full grown child impossible or inevitably fatal." But otherwise abortion is absolutely rejected. The argument that the fetus is part of the mother's viscera is false, since it "is now well known to constitute no part of them." Percival refers to Hippocrates, but a more significant source of his attitude toward abortion is revealed when he says:

To extinguish the first spark of life is a crime of the same nature, both against our Maker and society, as to destroy an infant, a child, or a man; these regular and successive stages of existence being the ordinances of God, subject alone to His divine will . . .<sup>167</sup>

Thus the Protestant tradition informed the attitudes of conscientious British and American physicians. It is therefore not surprising to find the medical profession urging the clergy to take the matter more seriously. For example, in an 1869 report to the Pennsylvania medical society, Dr. Andrew Nebinger pointed out that Protestant women sought abortion more frequently than Jewish or Catholic women. He urged the churches to instruct people on three points: that the unborn is human at all stages, that it has a right to life, and that killing it is murder in the biblical sense.<sup>168</sup>

On a larger scale, we find the American Medical Association approving a resolution at its 1871 meeting with a view to fighting criminal abortion and restricting therapeutic abortion within the strict confines of necessity. To aid in this fight, the medical profession called on teachers and professors, and urged state and local medical societies to instruct the clergy about abortion and prod them to actively oppose it.<sup>169</sup>

There was some response from the clergy, but not enough to satisfy other concerned laymen. A notable example of dissatisfaction was John Rogers Bolles, a lawyer and minor poet from an old New England family, who published (1894) a didactic poem of over one-hundred-fifty pages concerning abortion.

I lift my voice in the defense  
Of helpless, speechless innocents . . .

Bolles writes, and he passionately castigates the clergy for dereliction of its duty:

What from the temple do we hear?  
An awful stillness fills the air . . .

and he finds religion itself guilty of the crime. Of those in hell for it, Bolles imagines parents, lawyers, physicians and—deepest of all—preachers. They are silent for fear of popular reaction; they settle for an “experience” of salvation rather than urging the Christian asceticism for which they no longer have adequate faith.<sup>170</sup>

Bolles held a particular antipathy for the Lutheran doctrine of justification by faith alone, which he considered to be one source of the laxity he believed he saw in Protestant preaching regarding morality. In contrast, he credits Catholic teaching:

Honor to whom honor's due,  
Church of Rome, I honor you,  
In that you claim to hold a ban  
Over this soul destroying clan.  
And every church is struck with death  
That suffers it to draw its breath.<sup>171</sup>

These words reflect the bitter disappointment felt by some Protestants as their tradition began to be stifled by a moral practice it had always condemned.

Yet the stifling of the Protestant tradition was a slow process, and only recently have the churches begun officially to approve what they had traditionally rejected. The Lambeth Conference (1930) of the Bishops of the Anglican Church gave cautious approval to contraception but recorded “its abhorrence of the sinful practice of abortion.”<sup>172</sup>

As recently as 1958, a committee of the Lambeth Conference of that year reaffirmed the traditional teaching on abortion:

In the strongest terms, Christians reject the practice of induced abortion, or infanticide, which involves the killing of a life already conceived (as well as a violation of the personality of the mother), save at the dictate of strict and undeniable medical necessity. The plight of families, or, indeed, of governments, trapped in hopeless poverty and over-population, may well help us understand why they think abortion more merciful than the slow starvation which looms



ahead. Still, the sacredness of life is, in Christian eyes, an absolute which should not be violated.<sup>173</sup>

Yet by 1967, the House of Bishops of the Episcopal Church of the United States declared themselves in favor of relaxation of existing laws against abortion. The sanctity of life, rather than being declared an absolute, is now "of paramount concern in Christian theology and teaching," sufficient to rule out "abortions of convenience" but now compatible with the declaration: "We do believe there are considerations that may indicate that a pregnancy should be terminated for the sake of the mother or the child or both."<sup>174</sup>

Going beyond the position taken by the Episcopal Church, the American Baptist Convention in May 1968, adopted a resolution embodying the most radical proposal thus far officially espoused by any large Protestant Church body. The resolution states:

Because Christ calls us to affirm the freedom of persons and the sanctity of life, we recognize that abortion should be a matter of responsible personal decision. To this end we as American Baptists urge that legislation be enacted to provide:

1. That the termination of a pregnancy prior to the end of the 12th week (first trimester) be at the request of the individual(s) concerned and be regarded as an elective medical procedure governed by the laws regulating medical practice and licensure.

The second section of the resolution supports the relaxation of the law to permit abortion after the twelfth week for specified causes—life and health of mother, defect of child, conception by rape or incest—in medical practice. Local churches are encouraged "to provide sympathetic and realistic counseling on family planning and abortion."<sup>175</sup>

Although Baptist churches are congregational in structure and not bound by resolutions of their conventions, and although the American Baptist Convention does not include many of the more conservative independent and southern Baptist congregations, this resolution nevertheless reflected a growing consensus among a significant segment of the Protestant community that abortion is not always immoral, that it may even be acceptable as a method of family planning, and that laws against it should accordingly be relaxed.

This view, as we have seen, represents a reversal of the Protestant tradition. This reversal must be accounted for both by the impact of the social problem of criminal abortion and by the influence of the "new morality" with its emphasis on individual freedom and individual decision.

#### The Catholic Tradition

The Roman Catholic tradition is marked by clear, consistent, comprehensive, and firm teaching against abortion in general. At the same time, certain rather subtle distinctions have been made and used, and it is essential to

understand them. Otherwise it would falsely seem that the general condemnation of abortion has been subjected to "situational exceptions."

Antoninus (1389–1459), a Dominican moralist and Archbishop of Florence, wrote a widely reproduced and reprinted *Confessionale*, or manual for priests hearing confessions. In this work he repeats the traditional condemnation of abortion in a very comprehensive way: anyone who does anything by medication, exertion, or any other method is guilty of the sin, which is classified under homicide. All who cooperate are guilty. The sin is committed whether or not the procedure is effective and whether or not the fetus is animated. The case is reserved to the bishop if abortion occurs and an animated fetus is killed in the process.<sup>176</sup>

At the same time, Antoninus also considered therapeutic abortion in his scholarly treatise in moral theology. Referring to John of Naples, a fourteenth-century theologian, Antoninus reports with approval the opinion that physicians may procure the abortion of a non-animated fetus to save the woman from danger of death in childbirth. If the fetus is animated, Antoninus says there is no sin in withholding medication, for then neither mother nor child *is killed* by the physician. If the fetus is not animated, then though the physician "impedes the animation of such a fetus, he is not the cause of any human being's death, and this good would follow, that he would save the woman from death." In case of doubt about animation, Antoninus maintained one must not give the medication, for he who loves danger will perish in it—that is, the physician giving abortifacient drugs is then risking homicide and so is already morally guilty of it.<sup>177</sup>

Antoninus, in other words, rejects without qualification the killing of any human life. But he thinks that the fetus is not "animated" at the beginning of pregnancy. Only if it is absolutely certain that animation has not occurred does Antoninus permit therapeutic abortion.

One of the most influential works in moral theology was a compilation, in dictionary form, by a Dominican, Silvester Prieras (1456–1523). Under "Aborsu," Silvester presents the standard teaching, but makes an explicit distinction between abortion as homicide, which occurs only if the fetus is animated by a rational soul, and abortion as a sin continuous with contraception, if a merely vegetative or sentient soul is present (in accord with Aristotle's concept of the succession of souls in the embryo).<sup>178</sup> Silvester holds that in cases of doubt, morally one must assume the presence of the rational soul, but for purposes of punishment one may allow the penitent the benefit of the doubt.

Under "Medicus" Silvester accepts the teaching of John of Naples and Antoninus, here also setting the dividing line at the point where the fetus receives a rational soul. And under "Homicidium," Silvester explicitly accepts the old biological theory that the rational soul is present from the fortieth day in the male and from the eightieth day in the female embryo. All abortion after possible animation by a rational soul is again condemned.<sup>179</sup>

The teaching of Antoninus and Silvester was accepted by Martinus Azpilcueta, the "Doctor of Navarre" (1492–1586), a leading canonist of his day and an advisor to Popes on moral and canonical issues. In his widely used handbook for confessors, Martin stressed the guilt of purposely provoked abortion, but also insisted that the same guilt accrued to one who negligently did anything that might cause abortion. Only if abortion followed accidentally from behavior that would not normally be expected to cause it, was it free of guilt.<sup>180</sup> In treating of physicians Martin allows that a physician may give an abortifacient drug if it is necessary to save the mother's life and if after very careful inquiry "the physician does not believe or doubt that the fetus has a rational soul but confidently judges that it does not."<sup>181</sup>

In his advisory opinions, Martin indicates that in practice the Holy See assumed that a fetus had a rational soul after fifty days, and that canonical penalties on all concerned—e.g., a priest advising abortion—were incurred in cases of doubt.<sup>182</sup>

Although leading Dominican theologians of the sixteenth century—e.g., Cajetan, Soto, and Toletus—seem to have had nothing to say about abortion, leading Jesuit writers did devote a treatise to it. Luis de Molina (1535–1600), for instance, in his rather juridical work, states the traditional position, with special attention to legal sanctions, and suggests no exception in the case of therapeutic abortion.<sup>183</sup>

In all of these writers we see an absolute and complete rejection of the abortion of any fetus, unless the physician was confident it was not animated with a rational soul. And the permission of abortion at the very beginning of pregnancy was solely to save the mother's life. In the same period, there were, however, a few Catholic legal advisors proposing a different view. One of them was a doctor of laws, Marianus Socinus, Sr. (1482–1556), who is reported to have suggested that therapeutic abortion might be permitted, and who did not include the usual qualification in his position.<sup>184</sup> Unfortunately, I have not been able to examine Socinus' work itself. It does not appear that any Catholic theologian followed the suggestion of the legal scholars.

At this stage in the development of the Catholic tradition, there intervened two papal constitutions, "Effrenatam" of Sixtus V in 1588, and "Sedes apostolica pia mater" of Gregory XIV in 1591.

Sixtus V was a reform pope and he set out to restore to its full force the early Christian teaching on abortion and also on contraception, for these teachings were widely disregarded. The teaching of the Fathers of the Church and the early canon law are alluded to in the early sections of "Effrenatam," as Sixtus points up the absolute evil of sins against incipient human life.

In describing abortion Sixtus is all-inclusive. He mentions every method he knows, and adds "and other unknown" methods. He includes all who advise or cooperate in the act, directly or indirectly. The mother, regardless of her state or grade, is explicitly included. Sixtus' family had come to Italy from Dalmatia; he uses language reminiscent of Basil, the great eastern Church

Father, to reject as contrary to divine and human law the abortion of an immature fetus "animated and not animated as well, formed or not yet formed."

In all this, the decree of Gregory XIV in 1591 merely reaffirmed what Sixtus had said. The two Popes differed only with regard to canonical penalties. Sixtus hoped to wipe out attacks on incipient life, and so he invoked all the legal penalties of homicide against all abortion and even against contraception. Moreover, he reserved absolution from excommunication to the Holy See. A few years of experience showed that since the severe penalties were not effective, many people were incurring even more serious spiritual harm. Gregory accordingly removed the reservation of absolution to the Holy See, in order that sinners might get to confession. He also reduced to the penalties previously in force the canonical consequences of contraception and of the abortion of a fetus not yet animated.<sup>185</sup>

Neither Pope had mentioned therapeutic abortion. However, no exception had ever been recognized in official teaching, and the terms of "Eufrenatam" were as inclusive and unqualified as possible. The evil of abortion had been reaffirmed in a most forceful way, and the traditional sources had been recalled. The papal teaching was certain to have an important effect.

However, one does not observe any particular effect in the work on the sacrament of matrimony published by the Jesuit Thomas Sanchez (1550-1610) in the first decade of the next century. Sanchez' work is a masterpiece of encyclopedic scholarship, and though it has often been considered too lax on some matters, it nevertheless has retained a respected place in Catholic theology.

Sanchez mentions only a few legal authors as unqualifiedly accepting therapeutic abortion; he rejects this position. He accepts the therapeutic abortion of the non-animated fetus on the ground that there is little chance the fetus ever will live if the mother dies. He cites nine authors who also accept this view.<sup>186</sup>

Sanchez does not consider therapeutic abortion acceptable if there is no imminent danger to the mother's life, "for then the fetus is not an aggressor and danger is not present." However, Sanchez (and apparently he alone in the Catholic tradition) does approve abortion if the fetus is not yet animated and if an unmarried girl is likely to be put to death by her family or if an engaged girl cannot otherwise avoid foisting someone else's bastard on her husband-to-be. A similar case allows measures that would be abortifacient when a woman who has been raped does not yet know whether or not she has conceived. All the arguments to the contrary, Sanchez sets aside as applying to abortion used to hide sin.<sup>187</sup>

In effect, Sanchez assimilates the abortion of the non-animated fetus to contraception. He sees no attack upon incipient life in contraception, but instead rejects it on the ground (peculiar to himself) that uninhibited sexual activity leads to a morally unhealthy fascination with sexual pleasure.<sup>188</sup> San-

chez, therefore, has no firm ground for rejecting abortion of a non-animated fetus, unless the act is accessory to some other sin.

An altogether distinct question, for Sanchez, is whether one may use medical treatments necessary to the safety of a pregnant woman when there is a danger of aborting an already animated fetus. The death of the fetus will be incidental and beside one's intention.

Here a distinction is necessary. Some treatments cure the mother by killing the fetus with poisons, wounding, or blows. This is a capital crime "since they cooperate directly to kill the innocent, which is intrinsically evil." Other treatments are ordered to restoring health by getting rid of infection—as bleeding, drugs for cleansing the uterus, and baths. Such treatments are justifiable on several grounds, the first of which is that the killing of the fetus is indirect. Here Sanchez invokes the authority of Thomas Aquinas, who permitted an act which tended both to defend oneself against an attacker and to result in the attacker's death. "And so why, when the medicine tends both to the safety of the mother and to the death of the aborted fetus" should it not be allowed? Sanchez notes that it should not in one unlikely case: if the mother could give her child a chance for baptism by sacrificing her own chance of medical help, then she should do so.<sup>189</sup>

Sanchez thus advanced a peculiarly lax view concerning the abortion of the non-animated fetus. But his theory of the indirect abortion of the animated fetus—a theory of the precise sort we have seen rejected by the Lutheran theologian Osiander later in the same century—was clear and well developed. One could abort in such a case if and only if four conditions were fulfilled: 1) the safety of the mother was truly at stake; 2) her safety, not the child's death, was the purpose sought by the act; 3) the means themselves tended to cure the mother *otherwise than by causing* abortion; 4) there was no reasonable hope that with delay the child might be baptized.

Most important are the second and third points; indirect abortion for Sanchez truly is a medical procedure that deserves to be called something other than "abortion," for both subjective intent and objective behavior have of themselves a direction other than that to the killing of the child. Clearly Sanchez' examples of the abortion of the non-animated fetus could not meet these strict criteria. What he does not explain is how he squares his peculiar views with the recently reaffirmed teaching of the church, which in Gregory XIV no less than in Sixtus V treated all abortion on a par so far as morality is concerned.

Paul Laymann (1574–1635), another Jesuit theologian, substantially adopts Sanchez' analysis while trying to strengthen the argument in favor of direct abortion of the unformed fetus. Laymann's supporting argument puts great stress on a point Sanchez had mentioned but not much developed: that a fetus that threatened the mother's life might be classed as an aggressor. While Thomas Aquinas had only permitted self-defense that might incidentally cause an attacker's death, Laymann adopted the view that one is justified in directly

killing an attacker who threatens one's life, honor, or liberty if no better method of defense is available.<sup>190</sup>

Leonard Lessius (1554–1623), also a Jesuit and a contemporary of Sanchez and Laymann, took up the question of therapeutic abortion and concluded that while he would not presume to condemn Sanchez' position, he held as "wholly true" the contrary with regard to the abortion of non-animated fetuses. Like Sixtus V, Lessius appealed to the tradition.

But what if both will die? Still one may not abort. Just as one may not hasten the death of the dying, one may not attack incipient life at its beginning. Even ejaculation apart from intercourse is wrong; the non-animated fetus is far nearer to human life. Lessius dismisses Sanchez' peculiar explanation of the evil of contraception: the act is not vitiated by the pleasure, but the pleasure becomes bad because the act is evil.

Lessius denies that the fetus is properly part of the mother at any stage; civil laws which suggest the contrary also refer to the animated fetus. The older authors—John of Naples, Antoninus, and Silvester—speak obscurely, and they seem only to allow indirect abortion. Lessius adheres to this position, unless the fetus itself has become morbid—e.g., when it becomes a mole or malignant tumor. If a woman has a history of difficult labor, then a treatment aimed at curing the condition may be continued even after she becomes pregnant, for though the fetus may abort, this is not directly intended.

Lessius accepts Sanchez' view with regard to the mother's duty to offer her life if there is hope the child may be baptized. In regard to the question concerning when the animation of the fetus occurs, he rejects the great distinction between male and female embryos, and accepts the view that animation occurs at thirty or forty-two days.<sup>191</sup>

Lessius, a Fleming, and much more a follower of Thomas Aquinas than was Sanchez, seems clearly to have accepted the implications of the papal teaching, although he does not explicitly refer to it. He may also have been influenced by the incipient bio-medical discussions concerning the time of animation.

In 1620, Thomas Fienus, a professor of medicine at Louvain, published a bio-medical treatise on the formation of the fetus. Parting company with the received idea that the embryo receives a rational soul only after forty or eighty days of development, Fienus argues that the soul must be infused on the third day. The semen coagulates the menstrual blood in three days; then the rational soul is infused and it organizes the body. Fienus has Galen, Avicenna, Alexander Aphrodisias, Themistius, and Marsilio Ficino as authorities that it is soul which organizes the body; in any case, argument shows that nothing else can do so and that soul is what distinguishes the living and developing from what is not alive.<sup>192</sup>

Everyone agrees, Fienus argues, that *some* soul is present prior to organization, and this is indeed a rational necessity.<sup>193</sup> But why must it be a *rational* soul at the outset? This is precisely what the tradition has denied. Fienus

develops nine lines of argument to this point. In general, he is impressed by the importance of maintaining the specific unity and individual continuity of the developing embryo, of excluding substantial multiplicity in the developed individual, and of avoiding an unnecessary multiplicity of explanatory factors.<sup>194</sup> If one wishes to argue from contrary authorities, Fienus' answer is that Aristotle only assumes a succession of *functions*, not of souls. Moreover, if one is to claim there is no rational soul until there is evident rational function, then the rational soul must be infused at two or three years of age, not at forty or eighty days of embryonic development.<sup>195</sup>

Fienus anticipates the objection that his position conflicts with Exodus 21:22-23, with the Fathers of the Church, and with canon law. He patiently explains the difference between the Greek and Latin versions of Exodus, but accepts the Septuagint as having "great authority in the church." It does not require one to believe that the unformed fetus has no rational soul, but only that it is an incomplete man, while the formed fetus is "perfect man." The Church Fathers are correctly interpreted as leaving the question unsettled.<sup>196</sup> Unfortunately Fienus does not enter into the question of canon law and abortion, but contents himself with obtaining an *imprimatur* declaring that there is nothing in his book contrary to ecclesiastical decrees.

Fienus' radical view stirred up a storm of criticism. A typical reply was a tract by a medical professor, Louis du Gardin, published three years after Fienus' book, attacking it mainly by authorities. Du Gardin appealed to canon law, to the Septuagint version of Exodus 21:22-23, to the Church Fathers, to the regulations concerning baptism, and to the argument that an embryo that did not have a human shape could hardly be made in God's image!<sup>197</sup>

It is important to notice that Fienus (like Paolo Zacchia, whom we will consider next), was not at all influenced by the rationalist theory that the mature individual is preformed in the sperm or the ovum. Fienus, Zacchia, and others were developing against tradition certain possibilities of an essentially Aristotelian theory of embryonic development. This theory and the theories of preformation that developed later in the century were directly opposed to each other.<sup>198</sup> It is sheer accident that both lines of development tended to agree in undermining the old theory of delayed animation.

Beginning in 1620, Paolo Zacchia, a Roman medical writer, published a series: *Medical-Legal Questions*. Zacchia treats both abortion and the question of the time of animation. He realizes that some moral theologians have approved the direct abortion of the non-animated fetus. But Zacchia rejects this view, and expressly accepts the condemnation of Sixtus V as controlling in the matter. Only abortion caused incidentally to a medical treatment having other quite distinct and legitimate ends is acceptable to Zacchia.<sup>199</sup>

On the question of animation, Zacchia adopts a position remarkably similar to that of Fienus: the rational soul is created and infused at conception. Using a version of Aristotelian thought against the main body of tradition, Zacchia urges that the development of the fetus is a continuum, not a series

of stages, and that the soul always must organize the body if development is to be determined from within.<sup>200</sup>

Answering objections, Zacchia argues that the Septuagint version of Exodus is commentary, not inspired text. The dichotomy between animated and non-animated fetuses is maintained by lawyers, Zacchia observes, because they want to distinguish the punishments for abortion. But one can find other grounds for the distinction: early pregnancy is an uncertain fact; the law takes the less strict possibility; later abortion is more dangerous to the mother; and there is a greater destruction when the individual is more developed. The rule has been not to baptize the very early abortion, but that is because there is no sign of life at all.<sup>201</sup>

Zacchia's position apparently did not displease the Holy See, for he was honored in 1644 by Innocent X who conferred on him the title: "General Proto-Physician of the Entire Roman Ecclesiastical State."<sup>202</sup>

Arguments about the baptism of the embryo began almost immediately and reached their climax only after one hundred years, with the publication of Francisco Cangiamila's book, *Embryologia Sacra*. This author recapitulates the tradition concerning abortion, cites Sixtus V, explicitly rejects Sanchez' position with regard to direct abortion, and requires that even indirect abortion be permitted only if there is no hope of bringing the fetus to live birth and baptism.<sup>203</sup>

With regard to the question of animation, Cangiamila reviews the ancient writers and the "modern" preformationist biologists as well as Fienus and Zacchia and their opponents. Answering objections from scripture, the Church Fathers, canon law, and papal teaching, Cangiamila nevertheless remains sceptical of any claim that science has shown man to be present at conception. His conclusion is: "And so the truest judgment still remains that the time of animation is hidden, and knowledge of it is reserved to God the creator and to his spirit."<sup>204</sup> In this situation, both abortion and baptism must be ruled by the presumption that the fetus is animated by a rational soul from the beginning.<sup>205</sup>

While bio-medical writers and theologians were thus struggling to clarify the issue of the time of animation, other authors who held the old position on this issue nevertheless absolutely rejected direct abortion. Outside the theological ranks, an example is found in Alphonso Carranza, a Spanish jurisconsult, who wrote within a decade after Fienus and Zacchia. Carranza knows their works but he rejects the new position; the weight of authority against it is too great.<sup>206</sup>

When he comes to treat procured abortion, Carranza quotes at length from the moral teaching contained in "Effrenatam." With regard to therapeutic abortion, Carranza has heard the opinions of jurists who approve the medical advice of Arabian physicians. In addition to Socinus, he mentions Felinus and Antonius Thesaurus. But Carranza rejects this position and refuses to accept the argument that it is more humane to choose the lesser



evil—to kill the baby for the mother's benefit. Against Sanchez, only indirect abortion of any fetus is to be permitted.<sup>207</sup>

Another line of attack on Sanchez' position developed out of another interpretation of Thomas Aquinas that seems to have originated with Gabriel Vasquez (1569–1649), also a Spanish Jesuit. Vasquez' view, published in 1614, rejected all abortion, even indirect, when it resulted from any *positive* act. Thus one could treat the mother in ways that incidentally and only negatively affected the fetus, for example, by inhibiting its nutrition. But one could not, as Vasquez saw it, do anything that in a direct line of cause-effect relation led to the death of the fetus.<sup>208</sup>

Vasquez did not even mention Sanchez, but Basilius Pontius, an Augustinian at Salamanca who in 1620 published a treatise on marriage comparable to Sanchez', did mention him. In fact, Pontius made an all-out attack, arguing that Sanchez was inconsistent. A fetus that could be destroyed, according to Sanchez, before animation might equally be an aggressor afterward. Consequently, Pontius followed Vasquez in rejecting all direct abortion and in deeming wrong any positive act which by a direct causal chain resulted in the death of the fetus.<sup>209</sup>

The opinion of Vasquez and Pontius may have died a quiet death except that it was taken up by Juan de Lugo, another Spanish Jesuit, who published a work on *Justice and Right* in 1642. Lugo discusses the whole question with remarkable clarity and precision. He rejects Sanchez' peculiar arguments for direct abortion of the non-animated fetus; on Sanchez' own principles abortion is even more dangerous in human hands than the dominion over semen. Lugo clarifies the point that direct abortion includes not only abortion intended as an end, but also abortion as a chosen means. Only when the effect is truly incidental will Lugo consider abortion. Then, if the fetus is not animated, treatments that truly tend to cure the mother apart from the abortifacient effect may be employed if they are really necessary. If the fetus is animated, Lugo accepts the stricter position of Vasquez and Pontius, but even qualifies this with restrictions aimed at the spiritual good of the child, if delay can make its live birth and baptism possible.<sup>210</sup>

Lugo's position was probably the most restrictive any Catholic theologian had taken since the problem of therapeutic abortion first arose. When his work was published in 1642, it was dedicated to Pope Urban VIII, who was so delighted with it that he made Lugo a Cardinal the following year, and frequently consulted him on moral questions. In the next century, Alphonsus Liguori was to refer to Cardinal Lugo as the greatest moralist after Thomas Aquinas.

The same year Lugo became Cardinal, Juan Caramuel y Lobkowitz, a Spanish Cistercian, humanist, sometime warrior, and all-round character was publishing the first edition of his moral theology. For it he was cited to Rome, and later was dubbed by Alphonsus Liguori the "Prince of Laxists." However, Caramuel cleared his difficulties, became a bishop, and published his *Funda-*

*mental Moral Theology* in 1656, with a dedication to and a foreword by Pope Alexander VII.

Caramuel cites the book of Fienus and points out with humor that “the very learned du Gardin” offered against it “many lovely and erudite arguments but no demonstrations.” Besides Fienus was published at Louvain, “a university most learned, most chaste, most pure which does not tolerate erroneous opinions.”

Of course, against Fienus is Joannis Marcus, the Proto-physician of Bohemia. He holds that the fetus has no soul until it is born, and his book also has an *imprimatur*! What is Caramuel’s solution? “I do not wish to upset moral theology,” he answers, so the common opinion of successive animation is to be held. After poking fun at both extremes, he concludes that “whether the physicians like it or not, the common opinion of theologians stands.” While one might push the date of animation a little later than it is usually given to be, since no one knows when it is anyway, various scripture texts from both the Old and the New Testaments prove the child is animated in the womb. The abortion of a not-yet-animated fetus, Caramuel concludes, is essentially the same as contraception, though the degree of wrong may be greater insofar as the life-to-be is nearer to its goal.<sup>211</sup>

At this point, the Holy See once again intervened. In a 1679 decree of the Holy Office, under the authority of Innocent XI, a group of sixty-five propositions was condemned. All of them expressed moral doctrines considered too lax. Among them were:

34. It is licit to procure abortion before the animation of the fetus so that a girl, caught pregnant, will not be killed or dishonored.

35. It seems probable that every fetus lacks a rational soul as long as it is in the uterus, and that it first begins to have one when it is born: and so one must deduce that homicide is not committed in any abortion.<sup>212</sup>

Also in this list were many propositions which suggested in various ways that the end justifies the means. Among these was a proposition of Thomas Sanchez approving the necessary lie.<sup>213</sup>

The censure on the whole list of propositions indicated they were all to be regarded as at least scandalous and practically pernicious. The Holy See forbade the teaching, preaching, or controversial discussion of the condemned propositions. In effect, Catholics were told that neither Sanchez’ most extreme position on therapeutic abortion nor the thesis on animation of Joannis Marcus could be followed in practice. Theologians ignoring the ban on preaching, teaching, and controversial discussion would be, according to canonists of the time, subject to automatic excommunication, absolution from which was reserved to the Holy See.

Again the teaching of the Holy See had a definite effect. Claude La Croix (1652–1714), a Jesuit moralist, expanded a brief summary of teaching on abortion, beginning by citing the condemned propositions. Citing Lessius and

Lugo, he rejected all direct abortion, even of non-animated fetuses. But he also cited Fienus, and concluded that possibly there were no non-animated fetuses. At the same time, agreeing with Antoninus and the other early moralists, La Croix pointed up the obligation to refrain in cases of doubt. With regard to abortion then, La Croix takes a very conservative view—one may only use treatments that really help the mother otherwise than by aborting the fetus, and these may be used only if the safety of the mother is at stake. He also is at pains to exclude the notion that the end justifies the means: even if a whole city could be saved by one direct abortion it would be unjustifiable.<sup>214</sup>

More important than La Croix's work was the very influential moral theology published by the Discalced Carmelites at the College of Salamanca. This unusual work was a collective labor, produced during the fifty years between 1665 and 1715. The work is always clear, well organized, and well balanced. A full treatise on abortion is included under the point: "Whether it is ever allowable to kill the innocent?"

The Salamancans first argue that several common counter-examples—for instance, the sending of citizens to fight or the killing of innocent hostages in capturing a strong point—are not direct killing. Here the innocent die as an unintended side-effect of justifiable acts. On the other hand, against many others, the Salamancans argue that a state may not hand over an innocent citizen to a tyrant, even though the alternative risks the whole community. To give in would be direct cooperation with the intrinsically evil design of the tyrant. Some authors had argued that the state might order the innocent citizen to surrender himself for the common good, and then if he refuses hand him over as punishment. The Salamancans reject this as an effort to justify an evil means by a good end.

Moving to abortion, the Salamancans completely distinguish the legal problem from the moral problem. Each is handled systematically. One may never directly abort the animated fetus. Some say there is justification for directly aborting the non-animated fetus. Citing Innocent XI and reviewing the theological literature, the Salamancans conclude "hardly anything can be defined as certain" about the time of animation.

On the main issue, the Salamancans reject the aggressor argument, dismiss Sanchez' peculiar view of the evil of contraception, cite Innocent XI against Sanchez, and argue that direct abortion even of the non-animated fetus is intrinsically evil, because it attacks incipient human life. One may not prevent the beginning of life by contraception, still less by abortion. Here the Salamancans echo Lessius and Lugo, and cite Tertullian.

However, whatever the stage of pregnancy, a woman may use means directly ordered to her health even if abortion is likely to result. Here the death is indirect, and the Salamancans quietly ignore the even stricter requirements of Vasquez, Pontius, and Lugo. With regard to the mother's duty to avoid medications if there is a hope the child might survive her death and be baptized, the Salamancans refuse to press any strict obligation. In this matter one

is dealing in possibilities and probabilities, and there is no strict obligation for a mother to risk her life for the merely possible spiritual benefit of her child. "On the contrary, she is often obliged to take the medications, when they do not tend directly to the death of the fetus."

As to canon law, the Salamancans hold that the penalties for homicide apply only if the fetus is animated, and this must be presumed after forty days. The wording of Sixtus V's constitution did not indicate clearly whether the pregnant woman herself were excommunicated; she probably need not be absolved. The absolution from excommunication is to be given by bishops and by priests having special faculties for it.<sup>215</sup>

Perhaps the most influential of all Catholic moral theologians was Alphonsus Liguori (1696–1787). Unfortunately, he is more an encyclopedist than a first-rate thinker; his work resembled more the compilation of a canon lawyer than the theological synthesis of a penetrating mind—or community of minds, such as the Salamancans. But Alphonsus' work won fame and widespread use because it was clear, handy, practical, safe, and no more strict than necessary.

On abortion Alphonsus really has nothing new to say. He rejects Sanchez' more extreme positions as less probable and less safe than the contrary and—most important—as irrelevant to actual problems. Alphonsus quotes Hermann Busenbaum, the moralist on whom his own work is an expansion, with approval: "Why take a drug for directly expelling the fetus when one can, and it suffices, to expel it indirectly?" But whatever Busenbaum may have meant, Alphonsus did not mean that the limits of indirect abortion could be stretched to cover all cases. Rather, Sanchez himself, Alphonsus points out, does not allow direct abortion if the danger to the mother is not imminent. Medically, the danger is never imminent in very early pregnancy, unless it arises from a condition other than the pregnancy itself—which can be treated legitimately even if abortion indirectly follows. On the other hand, imminent non-medical danger has been excluded as an excuse by Innocent XI's condemnation.

Alphonsus deals with the problem of the time of animation in the same practical, legalistic fashion. It cannot be at birth, because that has been rejected by Innocent XI. Nor can it be at conception, for that seems to conflict with the Septuagint version of Exodus 21:22-23. For legal purposes, the established rule of forty days for the male and eighty for the female should be followed. Alphonsus does not say how one can tell the difference or what to do in case of doubt.<sup>216</sup>

Alphonsus' treatment still deals with abortion without considering the question of craniotomy and embryotomy—operations which destroyed the infant in order to expedite delivery. Undoubtedly such operations had been performed throughout the ages, but by the nineteenth century surgical technique had sufficiently advanced that many mothers who would otherwise die could be saved by such radical intervention. The cesarean section, while known, was a much more difficult procedure. Thus as early as 1826, Professor

Naegele of Heidelberg read a paper at a medical convention arguing that in childbirth a physician needed and could receive from the mother the right to kill either her or the infant, according to his discretion and the circumstances of the case.<sup>217</sup>

Catholic moralists soon responded to the new situation by extending the traditional ban on direct therapeutic abortion to explicitly include the newly effective operative procedures, so far as they directly destroyed either the mother or the child.

An early example of this reaction is found in the manual of moral theology published by Francis P. Kenrick, Bishop of Philadelphia, in 1841. Kenrick's book seems to have been the first American Catholic work of systematic moral theology; it is studded with references to peculiarly American conditions, laws, and writings.

Kenrick's treatment of abortion is fairly standard; he cites papal teaching and Tertullian. Assuming that some fetuses may not be animated, he nevertheless rejects all direct abortion as an attack upon incipient human life. In dealing with direct abortion Kenrick rejects drugs aimed at it and adds: "Nor is it allowable to cut up the living fetus with instruments so that its parts may be delivered. For this is to kill a human being, which of itself is evil, and so it cannot be allowed even for saving the mother's life."

Kenrick argues that the death of both, if it happens, is a result of natural causes, while the killing of either would incur guilt. However, he does not rest with the moralist's observation that two deaths are better than one murder. He adds a hopeful note on the cesarean section. A mother is not obliged to undergo the operation, but Kenrick believes it offers a hopeful way out if expert surgeons perform the operation in selected cases. Obviously favoring this solution, Kenrick recounts a case of a woman in Philadelphia who has had two cesarean sections, with the mother, a boy, and a girl surviving and well.<sup>218</sup>

In 1869 the Holy See once more acted in a manner that affected Catholic thinking. Reorganizing canon law with regard to censures, Pius IX included among those who incur automatic excommunication "those procuring abortion, if successful," without distinguishing whether the fetus was animated or not.<sup>219</sup> In effect this act endorsed the growing awareness that the old distinction between animated and non-animated fetuses was grounded neither in experimental evidence nor necessary reasons. While the distinction might still be maintained theoretically, the arguments of Fienus, Zacchia, and others finally had their practical effect.

Ten years later, an unsigned thesis appeared in *Nouvelle Revue Théologique* arguing for the immediate animation theory. By this time the human ovum and the phenomenon of fertilization were known. Thus, citing Gregory of Nyssa, the brother of Basil, the author was able to identify the undifferentiated primordial bodily principle, which Gregory clearly described not as a

performed man but as a potentiality for embryonic formation, with the fertilized ovum.<sup>220</sup>

The anonymous author corrects the old misinterpretation of Jerome and Augustine, partly based on pseudo-Augustinian texts.<sup>221</sup> To the authority of Aristotle is opposed the authority of Fienus, Zacchia, and the professors who endorsed the implications of their position. Cangiamila and Pius IX are also brought into play.<sup>222</sup>

After showing that arguments for delayed animation from scripture and the tradition of the church are inconclusive—for none of the sources actually requires this position—the anonymous author proceeds in scholastic fashion to rebut scholastic arguments. At the same time he brings to bear arguments of modern biology—but of nineteenth century biology which is no longer preformationist. Finally, the author alludes for confirmation to the implications of scripture, dogma (the doctrine of Mary's immaculate conception), and the liturgy.<sup>223</sup>

Actually, none of these arguments *proves* that animation is immediate; all the premises were accepted, for instance, by Alphonsus Liguori. The ecclesiastical data now seem to show that animation with a human soul must occur at once only because modern biology had given a clearer meaning to "conception." Everyone now knew that each new individual is characterized by its species in its whole development, and that this development begins when sperm and ovum unite.

At this point, additional theological efforts were made to develop a rationale for therapeutic abortion. The controversy is interesting, but it already has been studied extensively, and so we shall give only a brief summary and refer to other sources for a more extensive treatment.

The theological arguments proposed included the following.

1) The fetus threatening the mother's life is an aggressor, who might be dealt with by the use of force sufficient to protect her life, just as if she were being attacked by any irresponsible (e.g., insane) attacker.

2) The operation, even craniotomy, might be regarded as *indirect* abortion, allowable under the principle of double effect. Some who did not defend craniotomy as indirect abortion, nevertheless held that either the expulsion or removal of a non-viable fetus without actually cutting it could be so regarded.

3) The fetus' right to life is in conflict with the mother's right, which for one reason or another deserves priority. For example, because of the mother's responsibilities, or because the fetus could not be saved in any case, while the mother could. Sometimes it was argued that the fetus' consent to his abortion might be presumed.

4) Such consent might at least be presumed in the case of an ectopic fetus, for unless it is surgically removed while still alive, it is almost certain to die without baptism, while timely surgery will be in the interest of the fetus as well as of the mother, for the only good it can possibly receive in life—baptism—will be provided for it.<sup>224</sup>

The arguments were strongly and plausibly defended in theological journals over a period of a generation. Some of the first of the new defenders of therapeutic abortion were Roman theologians; others were the most outstanding Catholic moralists of the nineteenth century. At the same time, these theologians encountered able opposition from their colleagues.

However, the decisive factor in the controversy again was the intervention of the Holy See. Between 1884 and 1902, a series of replies from the Congregation of the Inquisition (later called, *Holy Office*; now, *Congregation for the Doctrine of the Faith*) clarified the application of traditional Catholic teaching to the new problems.

As late as 1872 the Sacred Penitentiary had not felt it necessary to issue a statement on craniotomy; a question whether such "direct killing" were permissible had only elicited the response: "One may consult accepted moralists, both older and more recent ones, and act with prudence."<sup>225</sup> Perhaps it was felt that the application of accepted principles was too simple to need explanation; moral treatises such as Bishop Kenrick's had settled the matter.

But in the midst of new theological debate, the Congregation of the Inquisition received questions from Bishops and others who wanted clarification, and answers were delivered, sometimes almost at once, but sometimes only after years of study.

In 1884, the Cardinal Archbishop of Lyons elicited a negative reply to the question: "Can it safely be taught in Catholic schools that the operation called 'craniotomy' is allowable, if without it both the mother and child will perish, while allowing it the mother can be saved though the infant will perish?"<sup>226</sup>

In 1889 the Archbishop of Cambrai sponsored a series of questions which proposed many types of cases, including viable and non-viable fetuses, and ranging from induced labor through embryotomy to surgical removal of extra-uterine pregnancies. The Congregation did not reply in detail. Instead it referred to the earlier reply, and stated generally that it was to be read as excluding "any surgical procedure whatsoever that directly kills either the fetus or the pregnant mother."<sup>227</sup>

This reply, it should be noticed, rejects equally the subordination of either life to the other. The clear meaning of the reply is that both lives are inviolable from direct attack. Only confusion or dishonesty could distort this teaching, which has since been maintained consistently, into a preference of the child's life over the mother's.

In 1895 a further question submitted by the Archbishop of Cambrai dealt with the issue whether an immature fetus might be aborted, though it would inevitably soon die, provided it were not actually killed by the operative procedure itself. The Congregation again replied with a simple, "Negative," and a reference to the earlier decrees. This decree was personally approved by Pope Leo XIII, who thus in effect approved the previous decrees as well.<sup>228</sup>

It would be a mistake to try to draw a distinction between the previous decrees, which refer to what may not "safely be taught," and the decree of 1895, which refers to the moral safeness of performing the operations.<sup>229</sup> The Congregation itself incorporated the earlier decrees by reference in the later one.

A further series of questions, submitted by the Bishop of Sinaloa, Mexico, elicited a further response in 1898. The induction of labor to save the lives *both* of the mother and the child is allowable, but abortion is not. A cesarean section as an operation to remove an extra-uterine pregnancy is allowable if care is taken to safeguard the lives of both mother and child.<sup>230</sup>

Montreal theologians asked, finally, whether definitely immature extra-uterine pregnancies might be removed surgically. The reply, in 1902, was in the negative, with reference to the decree of 1898, which required that "serious and opportune provision must be made for the lives of both the fetus and the mother."<sup>231</sup>

None of these decrees dealt with the question of indirect abortion—that is, the killing of the fetus incidental to a medical or surgical procedure otherwise conducive to the mother's health. In effect, this was unquestionably permissible as the theologians had taught. When evidence accumulated that those extra-uterine pregnancies developing in the Fallopian tubes threaten the mother's life not only because of the pregnancy but also because of deterioration of the tube itself, most Catholic moralists came to agree that the removal of such a damaged tube is an allowable procedure. The coincident, though inevitable, death of the embryo is a typical *indirect* abortion. Because a pathology distinct from the pregnancy itself is effectively dealt with by the removal of the damaged tube, the choice to operate need not be a choice to kill the fetus for the mother's benefit.<sup>232</sup>

The Code of Canon Law (1917) contained in a new form the traditional legislative effort on the part of the church to discourage Catholics from becoming involved with abortion. Canon 985 decreed that no one can receive or exercise sacred orders if he participates in a successful abortion. Canon 2350 decreed that all who successfully procure abortion, specifically including the woman herself, are automatically excommunicated; clerics also are deprived of their positions. These provisions add nothing to Catholic moral teaching, for they are only concerned with the effects of the act on one's participation in the Church. However, such penalties do show that the traditional view of abortion was maintained, for canonical penalties are never provided for acts that are not considered seriously evil from a moral viewpoint.<sup>233</sup>

Some have thought that the Catholic *teaching* on the morality of abortion has altered with each change in canon law. This is altogether mistaken. The canon law always has assumed that all abortion is a serious sin. From this assumption it has proceeded variously in different periods to try to discourage Catholics from committing this sin. What the preceding history has shown clearly is that the abortion of the very young fetus was not consistently re-



garded as true homicide from the middle ages until the nineteenth century. But such abortion was still considered gravely wrong, also by canon law.

The speculation of Sanchez and a few other theologians concerning therapeutic abortion of the very young fetus never won the approval of the Church. Instead, under the guidance of the Holy See, such speculation was buried under the weight of opposing theological opinion, which was endorsed by the Church's official teaching. By the time the 1902 response to the Montreal theologians was given, the lines of future Catholic teaching concerning therapeutic abortion were completely drawn. No direct attack on the unborn would be sanctioned. "Indirect abortion" was understood quite strictly, along the lines originally laid down by Sanchez: both the intention or purpose of the one acting and the tendency of the procedure itself must be to some genuine benefit other than that to be gained through the abortion itself. The even stricter concept of Vasquez and others did not remain in twentieth-century Catholic thought, for it was conceded that one might permit the death of the unborn provided that it was a genuine side-effect of a necessary procedure not abortive in itself and not used as a hypocritical disguise for abortion.

The tradition has been embodied in several authoritative documents during the last forty years.

In his 1930 encyclical, *Casti connubii*, Pius XI pointed out that some people advocate abortion on demand, claiming it is a woman's right, while others consider abortion acceptable for a series of indications. Pius holds that the lives of both mother and child "are equally sacred and no one, not even public authority, can ever have the right to destroy them." The arguments some theologians had offered are dismissed, and medical efforts to save both are commended.

Pius XI recognizes the claim of society—population and eugenics—but asserts that "to try to meet the needs on which that claim is based by killing of the innocent is an irrational proceeding, and one contrary to divine law." The good ends sought by society cannot justify means condemned by God.

Governments and legislatures must defend the helpless, especially the unborn.

If the state authorities not only fail to protect these little ones, but by their laws and decrees suffer them to be killed, and even deliver them into the hands of doctors and others for that purpose, let them remember that God is the judge and avenger of the innocent blood that cries from earth to heaven.<sup>234</sup>

Pius XII tirelessly repeated the traditional Catholic teaching. Speaking to physicians and biologists in 1944, he rejected direct killing: "Only God is Lord of the life of a man"—whether embryonic, mature, or senescent—who is innocent of crime.

"The physician has no right to dispose either of the life of the child or of that of the mother. And no one on earth, no individual, no human authority,

can give him the right to its destruction. His office is not to destroy life but to save it." Pius declared these principles to be "fundamental and immutable."<sup>235</sup>

Speaking to surgeons in 1948, Pius declared that human life may not even be risked except for a greater good, or for the saving of life itself. Never may innocent life be suppressed; specifically, direct abortion, even if it is for the life of the mother, is not allowed. The little life has its own high destiny, known but to God.<sup>236</sup>

Speaking to midwives in 1951, Pius XII used the occasion for a more solemn statement of the same traditional teaching. The child's right to life is directly from God; neither any authority nor any "indication" for abortion can abridge that right. The child may not be directly killed even as a means to a good end—e.g., saving the mother's life. Pius recalls the widespread practice "a few years ago" of destroying so-called "life without value"—the allusion is to the Nazi euthanasia programs—and mentions that the Holy See formally condemned this practice in 1940.<sup>237</sup>

Pius adds that social stability depends upon the inviolability of human life. The professional person must therefore defend innocent life, when that is necessary. But even more important is to cultivate the right attitude toward the developing child: "The child, formed in the womb of the mother, is a gift from God, who confides it to the care of its parents."<sup>238</sup>

Less than a month later, the Pope again took up the question of abortion in an address to family-life associations. Innocent human life "from the very first moment of existence" is inviolable to direct attack. Here, formally expressed, is the point that abortion of any human life, however young, is wrong. This inviolability is "a fundamental right of the human person." Pius denies that any legal distinctions of civil or canon law are relevant to the moral issue: every innocent life is *equally* inviolable.

Again Pius restates the traditional teaching concerning direct abortion, and rejects "*either mother or child*" in favor of "*both . . . and*." The implementation of this is for medical technique; where such technique fails, the recourse must be to divine providence, not to the human choice of one life in preference to another.

Pius rejects any attempt to weigh the value of one life against another. The child's life cannot be violated because of the importance, for instance, of the mother of a large family. For if this is done, Pius warns, all life considered to be without value is in danger. Again he alludes to the Nazi practice of euthanasia, and to the Holy See's condemnation of those practices.

Pius XII concludes this treatment of abortion with what is probably the clearest statement of the concept of *indirect* abortion to be found in the entire Catholic tradition:

We have on purpose always used the expression '*direct* attack on the life of the innocent,' '*direct* killing.' For if, for instance, the safety of the life of the

mother-to-be, independently of her pregnant condition, should urgently require a surgical operation or other therapeutic treatment, which would have as a side effect, in no way willed or intended yet inevitable, the death of the fetus, then such an act could not any longer be called a *direct* attack on innocent life. With these conditions, the operation, like other similar medical interventions, can be allowable, always assuming that a good of great worth, such as life, is at stake, and that it is not possible to delay until after the baby is born or to make use of some other effective remedy.<sup>239</sup>

Here, Pius has made it very clear that the permissible acts which indirectly kill the unborn (and which we elsewhere called "indirect abortion") are not procedures that would be called "abortion" at all in medical or ordinary discourse. An "indirect abortion" is an act non-abortive in its purpose which only incidentally causes the death of the fetus. Pius also clarifies the condition that must be fulfilled if even such acts are to be considered morally acceptable: there must be grave necessity, no better alternative remedy, and no possibility of delay.

In 1952 Pius XII spoke explicitly concerning "the new morality" or "situation ethics." He interpreted it as an effort to subordinate objective norms of morality to individual conscience, and the value of acts to upright intention and sincere response. Among examples of "the new morality" he mentioned the view that it is sometimes allowable to "interrupt pregnancy." Against the "new morality" Pius argued that the actual deed, not merely the disposition, is morally important and that there are some absolute moral limits, since otherwise the end would justify the means and the deaths of the martyrs would be meaningless.<sup>240</sup>

John XXIII did not add significantly to the teaching of Pius XII. However, in the 1961 encyclical, *Mater et Magistra*, he spoke in the context of the population problem about the "inviolable and immutable laws of God" that govern marriage and the transmission of human life. Taking the dictates of the moral norms for granted, Pope John presented positive considerations against contraception and abortion: "Human life ought to be held by all as something sacred, since even from its origin it presupposes the action of God the creator." To violate this "sacred something" is an offense against God, a degradation of man, and an undermining of the state.<sup>241</sup>

The Second Vatican Council refers to abortion twice in its *Pastoral Constitution on the Church in the Modern World*. The first reference places abortion among crimes against the reverence due to the human person. These crimes include: "homicide, genocide, abortion, euthanasia, and also voluntary suicide," as well as torture, terror, prostitution, slavery, and so on.<sup>242</sup>

The other reference is in the context of a treatment of marriage. Married couples have serious problems, but immoral solutions are not to be offered, and they are really incompatible with genuine conjugal love:

For God, the Lord of life, has committed to men the magnificent office, to be fulfilled in a manner worthy of man, of serving life. Therefore life from conception

on is to be guarded most carefully; abortion and also infanticide are nefarious crimes.<sup>243</sup>

The Council does not make the precise distinctions of Pius XII; evidently it takes these for granted as had John XXIII. The distinction between direct and indirect attacks upon innocent life is not required, because the Council speaks specifically of abortion which, as such, always is a direct attack on innocent life. The only interesting feature of the Council's statements, apart from the contexts in which they occur, is the formal endorsement of the view that abortion *from conception on* is a single crime.

Finally, in July 1968, Paul VI repeated the traditional rejection of abortion. Speaking in the context of his treatment of contraception, the Pope emphasized the link between the love-giving and the life-giving aspects of marriage. He recalled the traditional view that God is Lord of life and that man must submit to, rather than seek to dominate, the divine design for its generation. For human life is sacred.

Therefore, relying on these principles of the human and Christian view of marriage, we must declare once more: the direct interruption of generation already begun, and especially direct abortion, even if done for therapeutic reasons, must be entirely repudiated as a legitimate way of regulating the number of children.<sup>244</sup>

Thus in one overly compact sentence four points were affirmed. First, that any direct interference from conception onwards is forbidden. Second, that only *direct* acts are always forbidden. Third, that therapeutic direct abortion is excluded. Fourth, that any use of direct interference for birth regulation is excluded.

However, this new restatement of the Catholic tradition had hardly been issued when many theologians and some Catholic bishops took issue with the Pope, in virtue of their dissent from his teaching regarding contraception. In seeking grounds to evade this part of the encyclical's doctrine, a new theory of Church authority and of conscience was widely proposed, which opened the way for individual Catholics to set aside any traditional moral precept which they personally considered unsound. How this challenge to the Catholic tradition will be met remains to be seen. Obviously, if the new theory were accepted, not only contraception, but abortion as well, would become acceptable for Catholics who considered such actions legitimate, while remaining condemned by a vacuous official teaching. Such a development would put the Catholic church in about the same position that the Protestant churches were during the latter part of the nineteenth century, when the authority of the tradition lost its force among many members of the churches, and the voice of the tradition was gradually stifled.