

NOTE

GRISEZ ON ABORTION

Two recent statements on the population crisis and responsible parenthood, issued by the Board of Christian Social Concerns of the United Methodist Church, call for the elimination of legal and administrative restrictions on voluntary abortion. They call upon the United Methodist Church to assist the states in removing regulation of abortion from their criminal codes. The decision to have an abortion would be left solely in the hands of the patient and her doctor and would be available on request. It is clear from the context of these statements that they are not just a concession made to a pluralistic society but reflect a moral stance regarding the legitimacy of abortion as a method of population and birth control. This stand is backed up by an explicit affirmation "that the fetus is not a person, but rather tissue with the potentiality, in most cases, of becoming a person, also recognizing that personhood is not possible without physical form."

It was to provide his readers with a background for making a moral and legal assessment of this move to liberalize abortion that Prof. Grisez undertook the book under review here.¹ In it he treats the biological, sociological, medical, legal, ethical, and religious aspects of this multifaceted problem. The reader will agree, I believe, that no significant aspect of the question of abortion has been neglected.

I

Grisez devotes the first chapter of his book to a description of the prenatal development of the human being. Since sperm and ovum are already alive, he prefers to speak of the transmission of life rather than its beginning. The study shows that the total human package is already contained in the fertilized ovum, which is alive and a new individual distinct from both father and mother. Such phenomena as twins and mosaics may present a problem in reference to each other, but there is no question that they are distinct from the original parental gametes. To represent a fertilized ovum, then, as a glob of undifferentiated matter or as a part of the mother is to ignore biological facts.

In his second chapter Grisez considers some sociological aspects of the question of abortion. He devotes himself initially to the question of frequency, particularly in reference to illegal abortions, but he finds this a frustrating study because of the unreliability of statistical

¹ Germain C. Grisez, *Abortion: The Myth, the Realities, and the Arguments*. Washington: Corpus, 1969. Pp. 579. \$12.50.

studies that have been made over the past thirty or forty years. He advises us (and in this he is not alone) that no credence is to be given to estimates of a million or more illegal abortions in the United States annually. He cites a figure of 350,000 for the year 1940, but this includes all kinds of abortions, both spontaneous and induced. His ultimate conclusion is that available data do not give reasonable support to any estimate of the number of illegal abortions, and this seems to be true not only for the United States but for other countries as well.

Contrary to popular belief, Grisez maintains that most illegal abortions are probably performed by physicians. As for their clients, the rate is higher among whites than Negroes, they are more likely to be middle class and educated, married, and not particularly devout religiously. But recent experience with relaxed legislation in England seems to indicate that more single women are taking advantage of legalized abortion. Indications are that most women use abortion as a method of birth control. In some parts of the world, Japan in particular, abortion is a primary method. In the United States and England, however, abortion seems to be a secondary method; contraception is preferred. Studies show that the rate of abortion is highest among those who practice contraception. Originally the Planned Parenthood Federation disavowed any interest in abortion as a method of birth control, but it is presently advocating the relaxation of abortion laws. As a matter of fact, as indicated above, the vast bulk of abortions are sought as a remedy for contraceptive failures. Grisez finds all this an indication that the present movement toward loosening abortion laws is aimed far beyond the limited proposals (if interpreted literally) of the model statute of the American Law Institute toward a broad use of abortion as a method of birth control.

One frequently hears through the news media the charge that five thousand women in the United States die every year from illegal abortions. In his chapter on the medical aspects of abortion Grisez finds no evidence for such a figure, but concludes that the number should be from two hundred to four hundred. As for therapeutic abortions, it has long been known that medical progress has all but eliminated strictly medical indications for this procedure. Grisez adds nothing new to this discussion. For the most part also, there is no agreement among psychiatrists regarding psychiatric indications. Grisez cites the claim of one psychiatrist that few mentally-ill patients are ever helped by abortion and it is difficult to tell beforehand who those few will be. He then takes up the current controversy over the time when pregnancy begins. This controversy has arisen because of the possibility that present contraceptive methods (notably intrauterine devices and so-called

anovulants) may, at least on occasion, prevent implantation rather than conception. Some would not want pregnancy to begin until implantation takes place—an opinion which would conveniently exonerate these methods of any charge of being abortifacient. Grisez insists—and in this he is certainly on the side of tradition—that any interference with the life-giving process after conception must be considered abortion rather than simple contraception. It must be acknowledged, however, that the more the current and future “contraceptives” function as abortifacients, the more impossible it will be practically to calculate the number of abortions.

Grisez then turns to a historical treatment of the views of various religious groups toward abortion. Although he considers several religious positions, he devotes the bulk of the chapter to the teaching of the Catholic Church and her theologians; and here he can certainly find an abundance of available material right down from early Christian times. He discovers that the Christian tradition even from the beginning has been against abortion, and in this it took a stand against the thought and practice of the Roman world in which it originated. Local councils, Fathers, theologians, and canonists opposed abortion unanimously and without exception from the first centuries of Christianity. There is one ambiguous text in Tertullian (*De anima* 25, 4) which Grisez seems to have overlooked and which some authors quote in favor of embryotomy to save the life of the mother; but this interpretation is hardly consistent with Tertullian’s other statements on abortion, and the statement is certainly open to explanation in his favor.

While the opposition to abortion at any stage of pregnancy was unanimous, the question of the time of animation or formation of the fetus was the subject of much discussion. This discussion had its origin in the Septuagint version of the Old Testament (Ex 21:22-25), where a distinction was made between the formed and the unformed fetus in reference to abortion. Only the abortion of the formed fetus was punished as homicide. This was tantamount to saying that only the formed fetus was considered a human being. While the husband of the woman could demand punishment for the abortion of an unformed fetus, it was not on the basis of life for life. Curiously enough, this version of the text differs from the Hebrew text, in which the fetus was not treated as a human being at all. This coincides with the orthodox Jewish position that the fetus is a part of the mother until birth.

There seems to have been no acceptance of the orthodox Jewish position in the Christian community, but the distinction between the animated and unanimated fetus, as Grisez points out, became more and more accepted. He leaves the impression that this distinction was

chiefly of canonical significance (for the purpose of determining penalties), and this was certainly true of the early centuries of Christianity. In the fourteenth century, however, when theologians began to go into the problem of abortion in greater depth, this distinction took on a theological significance as well and was used as the basis for an opinion first advanced by John of Naples, a professor at the University of Paris, allowing for the abortion of an unanimated fetus to save the life of the mother. Grisez adverts to this opinion and names several authors, including St. Antoninus, who accepted it, but he implies that it was never really approved by the Church. He is quite correct if he means by this that there was no explicit endorsement of the opinion by the Church, but I think he would have to admit as well that there was no explicit condemnation of it either. Innocent XI explicitly condemned the opinion that the fetus had no soul as long as it remained in the uterus, as well as the opinion that would allow abortion before animation for nontherapeutic reasons, e.g., to save the reputation of the mother or to protect her from an angry husband or an angry father; but the theory of delayed animation as generally accepted by the Scholastics of the time and the allowance of therapeutic abortion up to that time to save the life of the mother were never condemned. As a matter of fact, to my knowledge there was no explicit condemnation of therapeutic abortion in the Church until the end of the nineteenth century. By this time, however, theories of delayed animation had already given way to the findings of modern biology and embryology. Grisez cites the *Effraenatam* of Sixtus V in opposition to the opinion of John of Naples and his followers, but my impression is that he overinterprets this document. Moreover, the penalties of *Effraenatam* were only in effect for three years. In 1591 Gregory XIV withdrew the censure from contraception and the abortion of the unanimated fetus, limiting the penalty to the abortion of the animated fetus. This does not mean, of course, that the Church was thereby approving either contraception or the abortion of an unanimated fetus as such.

I would also like to say a word in defense of Thomas Sanchez, a Jesuit theologian, who Grisez maintains "advanced a peculiarly lax view concerning the abortion of the non-animated fetus." Grisez accuses Sanchez of allowing the abortion of an unanimated fetus in a situation where "an unmarried girl is likely to be put to death by her family or an engaged girl cannot otherwise avoid foisting someone else's bastard on her husband to be." John Noonan also makes this charge against Sanchez in a recent article on abortion (*Dublin Review*, Winter, 1967-68, p. 323). As far as I can gather from a study of this passage in Sanchez (*De matrimonio* 9, disp. 20, n. 11), these charges are based on

a misreading of the text. It is true that Sanchez followed the opinion of John of Naples regarding therapeutic abortion to save the life of the mother, but this was the only exception he allowed in regard to abortion. And certainly he is never listed by subsequent moralists as holding the opinions attributed to him by Grisez and Noonan.

In spite of these criticisms, one must congratulate Grisez, who is not a theologian, for undertaking the most comprehensive study that has been made as yet of the development of theological opinion regarding abortion. Although I would have appreciated a little more theological precision at times, and although I experienced a little uneasiness with some of the interpretations, I found the study generally satisfactory.

II

After a chapter devoted to the legal history of abortion, Grisez goes on to a discussion of the ethical arguments used by those he opposes to support their position, and then he continues with a discussion of his own views. To Grisez, the basic question is whether the embryo must be considered a human being. He has already given a factual answer to this question earlier in the book when he showed that a new human individual, distinct from the parents, originates with conception, a conclusion not founded in any particular theology but in biological fact. The further question, whether all living human individuals must be considered persons, or whether one should accept a concept of person which excludes some individuals, he considers metaphysical or theological. He examines a number of theories regarding person that would deny personality to some individuals, particularly fetuses, and finds them all wanting.

Even presuming that the fetus is a person, the ethical issue is not completely solved, since it may be argued that even if the fetus is a human person, there are times when it may be sacrificed. He presents a lengthy refutation of both utilitarianism and situation ethics as a justification for abortion and then goes on to explain his own position. Briefly, his own opinion is that life is a basic human good and no one may *directly* choose to destroy it. He bases his stand on an interpretation of Aquinas' justification of self-defense (*Sum. theol.* 2-2, q. 64, a. 7). Grisez does not regard the fetus as an unjust aggressor, but he applies to the problem of abortion the principle of the double effect, which many authors feel is expressed in this passage of St. Thomas for the first time. But it is his own interpretation of this principle that he relies on, since he considers the traditional explanation too restrictive.

Grisez is satisfied with all but one of the conditions traditionally laid down for the application of the double effect. He takes issue with

the condition that the bad effect must not be the means of achieving the good effect since, if it were, it would necessarily fall within the intention of the agent. He maintains that this would be the case only if the good effect is achieved through a subsequent act. If the good effect and the bad effect are both aspects of the same act, even though the bad effect may be the physical cause of the good effect, it will not necessarily enter into the intention. In this way Grisez feels that he can justify therapeutic abortion to save the life of the mother, at least on philosophic grounds. Also, although it is no longer a practical problem, he feels that he can justify craniotomy and embryotomy in this way. He could not justify abortion for a lesser cause, e.g., the health of the mother, but because of a lack of proportion between this good and the death of the fetus. Neither could he justify an abortion in which the direct intention was to dispose of the fetus.

Ultimately, to support his position he falls back on an argument used by some nineteenth-century moralists to justify medical abortion to save the life of the mother. This opinion, which makes a distinction between direct abortion and direct killing, does not consider the death of the fetus in any sense the means to saving the life of the mother. It is the removal of the fetus from the uterus, not precisely its death, that saves the mother. My own candid opinion is that there is more to be said for this approach than for the one which would maintain that one can prescind in intention from a means to an end if both are aspects of the same act. It should be remarked here, however, that the Holy Office did not accept the distinction between direct abortion and direct killing. Also, I would find it a difficult distinction to make in reference to craniotomy and embryotomy.

In his final chapter Grisez moves to the level of public policy to try to formulate a sound legal approach to the problem of abortion. He finds from his study that there has been a development in its treatment of the unborn in property law, torts, and criminal law. In general, the law has moved from a consideration of the fetus as a part of the mother to a concern for it as a person, at first from the time of quickening and later right from the time of conception. Actually, however, the various branches of the law have not been entirely consistent in what they considered a person. Grisez feels that the law should be consistent in this regard and maintains that the only logical position for the law to take is to treat the unborn as a person right from the moment of conception. Given this position, the law would provide due process and equal protection to all the unborn, as allowed to all persons in the Fourteenth Amendment. He does not feel that this would necessarily outlaw all exceptions, but he does think that abortion could never be

justifiable or justifiably excused where the very purpose of the procedure would be to get rid of the fetus.

Grisez is clearly opposed to the relaxation of the law provided in the model statute of the American Law Institute, because as it stands it can be stretched (particularly the clause regarding mental health) to provide for abortion on demand. He is also opposed to Drinan's suggestion that the law withdraw entirely from the area of abortion. Among other reasons, he fears that if the law withdraws entirely from this area, abortion will soon become part of welfare programs for population control.

By way of a very brief conclusion to a very lengthy review, I would not hesitate to recommend this book to anyone interested in becoming knowledgeable in this area. He will certainly find it interesting and profitable.

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