

MEDICAID AND ABORTION

In November 1983, the Secretariate of the Leadership Conference of Women Religious distributed a set of papers touching on various aspects of the case of Agnes Mary Mansour. The packet included two theological papers, one by Charles E. Curran ("The Difference between Personal Morality and Public Policy") and another by this author entitled "The Magisterium."¹ Curran's paper explains the relationship between morality and law with a view to showing that personal morality cannot always be made directly into law. I argued that the statement of the ordinary of the Archdiocese of Detroit (that Mansour's favoring of Medicaid payments for abortion is "contrary to the magisterium") is faulty on two scores: (1) it neglects the difference between a universal moral principle and an application; (2) it implies a notion of the magisterium that calls for uncritical obedience and disallows dissent from ordinary, noninfallible teaching.

Germain Grisez has critiqued both papers.² His substantive criticisms are contained in three points. First, Medicaid payment for abortion is not simply a reimbursement system for poor women. Rather, it is a system for procuring abortions. "Anyone who advocates or supports public funding of abortions . . . wills that abortions be done with these public funds." This "wanting abortions done" is a personal moral act. But "since it is wrong to want abortions done, it is wrong to want them done by means of public funding." For Grisez, the matter of public funding is not an "abstruse problem of application" of a principle, it is simply a straightforward specification of the general principle. This specification is identical with the following specification: "Since it is wrong to want abortions done, it is wrong to want them done by D and C, by saline, or by some other method." Therefore any attempt to justify public funding of abortions is "an argument that some good end justifies an immoral means." In view of this, anyone who attempts to justify public funding "takes a position contrary to that of the magisterium."

Second, Grisez argues that there can be no dissent here. Those who believe a dissenting position is possible overlook the fact that teachings of the ordinary magisterium can be infallibly proposed when bishops in union with the pope propose a teaching "as that to be held definitively."³

¹ The article was published in *Sisters Today* 55 (1984) 462-65.

² Germain Grisez, "A Critique of Two Theological Papers," *Homiletic and Pastoral Review* 84, no. 10 (July 1984) 10-15.

³ *Lumen gentium*, no. 25.

But the grave immorality of direct abortion is such a teaching. As Grisez words it, "Catholic teaching that direct abortion is always gravely wrong has been proposed down the centuries by Catholic bishops in communion with one another and the popes, all teaching authoritatively and agreeing in the same judgment as absolutely binding on every conscience." Therefore no dissent is possible.

Finally, Grisez takes issue with those theologians (e.g., Rahner, Häring, Naud, Curran, and myself) who argue that no. 25 of *Lumen gentium* needs nuancing. This is "question begging, for by it they try to ground their authority in their own opinion and consensus." Even worse, Grisez says of André Naud: "He preempts for himself and theologians who agree with him the claim not only to speak for the Church but to be the Church." And more generally: "Some theologians presume to omit from the Church the pope, the bishops who teach in union with him, the many theologians who firmly reject dissenting theological opinions, and the faithful who continue to try to live by traditional Christian moral teaching."⁴

In summary, then, Grisez asserts that approval of public funding for abortions involves wanting the abortions, and this is wrong; that there can be no dissent, for the immorality of abortion is infallibly taught; that attempts to nuance no. 25 of *Lumen gentium* are presumptuous exclusions of pope and bishops from their true teaching role in the Church.

I wish to offer here a reflection about each of these contentions; for it is clear that all three involve matters of profound theological and pastoral importance.

I

First, does support for Medicaid payments necessarily involve wanting (i.e., approval of) the abortions? This is Grisez's key assertion, repeated many times. Equivalently Grisez is asserting that support for Medicaid funding is unavoidably formal co-operation; for that is the meaning of formal co-operation. This assertion is, I believe, simply erroneous. Public funding of abortion is a form of co-operation; that is true. But to say that it is *necessarily* formal co-operation (as involving "wanting [sc., approving] the abortion") is to misunderstand and misapply the traditional teaching on co-operation by collapsing the distinction between material and formal co-operation. If aiding or contributing to a wrongful deed necessarily involves approval of the deed, there is no difference between material and formal co-operation.

Does the nurse who hands instruments to a surgeon necessarily approve the abortion, or want it done? Not according to traditional analyses.

⁴ One longs for the sunny theological spring when some can state their opposing view without caricaturing in the process.

Does the bankteller who hands over money at gunpoint necessarily approve the robbery and its injustice? Not according to traditional analyses. Does the carpenter who sells a ladder to a thief necessarily want the robbery done and approve it? Not according to traditional analyses. All of the above can be involved in a form of material and, within the species, mediate (not in the wrongful act itself, but in something useful to it) co-operation. Such co-operation is generally wrong but can be justified with a sufficiently grave or proportionate reason, though one need not approve all the casuistry of the past in saying that.

A similar analysis should be used for abortion funding. The matter could be outlined as follows. (1) If one truly wants (i.e., approves) unjustifiable abortions, that is clearly morally wrong. (2) If one approves public funding for abortions, then (a) this *may* involve one in wanting (approving) them; (b) it *need not* so involve the agent. The individual, following the traditional doctrine about co-operation, may believe that there is a proportionate reason for this form of co-operation. That belief may be mistaken, but it is where the focus of the analysis should be. In this sense to approve funding is to do nothing more than to approve the values funding is designed to achieve or, as here, the disvalues it aims to remove (e.g., discrimination vis-à-vis access to medical procedures many believe justifiable).

In other words, if one disagrees with Mansour's support for Medicaid abortion funding—and I do so disagree⁵—it is not because such support

⁵ This judgment is based on the disproportion of disvalues to values. Some of the disvalues I see in public funding of abortion: (1) The appearance of public approval of abortion, a special danger in a culture that confuses morality and public policy. This approval would be associated with the move of abortion from a negative constitutional right to an entitlement. (2) The consequent blunting of sensitivities to the moral evil of abortion. (3) The possible facilitation of and consequent numerical increase of abortion. One must, however, be cautious here. There are studies that indicate that Medicaid funding or its absence, whether at the federal or state level, does not substantially affect the number of legal abortions actually done. People who feel that they need abortion find a way of getting it. Thus Cates concludes: "The data indicate . . . that the Hyde amendment had only a minor impact on Medicaid-eligible women who wanted to terminate their pregnancies. . . . These observations do not support the predictions of either the 'pro-life' groups who hoped abortions to low-income women would be eradicated or 'pro-choice' groups who feared complications from illegal abortion to low-income women would be widespread" (Willard Cates, Jr., M.D., M.P.H., "The Hyde Amendment in Action," *Journal of the American Medical Association* 246 [1981] 1109-1112, at 1112). If the restriction or withdrawal of Medicaid abortion funding would substantially reduce or even eliminate abortions for low-income women, there would be some basis for arguing that those who support such funding "want the abortion." I say "some basis" because a proponent of funding might still argue that funding remains material co-operation, even though of a necessary kind. Though such co-operation is much harder to justify, it need not always involve approval of the facilitated morally wrong action. (4) The perpetuation of abortion as a "solution" to problems to the neglect of its social causes. In my judgment, these and other disvalues *far*

necessarily involves "wanting the abortion," as Grisez contends; it is because there is not a sufficiently grave reason, all things considered, to justify the co-operation involved. Briefly, Grisez misplaces the argument.

To analyze the problem as Grisez does has two significant effects. First, it invalidates the distinction between formal and material co-operation, and thus the entire traditional doctrine on co-operation. Second, it allows him, erroneously in my judgment, to regard approval of public funding as simply an easy specification of a moral rejection of abortion rather than as a complex application in the area of public policy.

II

That brings me to the second point, Grisez's contention that there can be no dissent on this matter and that therefore Mansour's position is "contrary to the magisterium." This assertion is the product of two theses: (1) that funding is simply a specification of a moral teaching, not an application where people of good will can disagree; (2) that this moral teaching is infallibly proposed by the Church. I have dealt with the first point. It is the second assertion that calls for comment here.

Several questions must be put to anyone who argues that the Church's teaching on abortion (as Grisez puts it, "direct abortion is always gravely wrong") is infallibly proposed. First, is the morality of abortion a proper object of infallible teaching? Grisez obviously thinks so, for he writes: "Generally, this teaching on abortion has been proposed as part of the revealed truth that innocent human life ought never to be taken by human authority." There are enormous problems here. First, does the phrase "innocent human life ought never to be taken by human authority" constitute a revealed truth? How does one establish that, especially in its particularities? Second, have popes and bishops proposed their teaching on abortion *as revealed*? What is the evidence for that? *Casti connubii*, in condemning abortion, says that it is "praecepto divino contrarium."⁶

outweigh the values funding of abortions is aimed at achieving. Those who disagree with this judgment would place a greater importance on considerations of fairness and nondiscrimination (between rich and poor) where access to abortion is concerned. However, Cates's data indicates that this emphasis lacks empirical verification. In states with restrictive policies low-income women were not deprived of abortions. They financed them from combinations of personal funds, reduced provider fees, county hospital services, and philanthropic contributions. Whatever the case, the fairness emphasis reflects a recognition that there is pluralism with regard to the moral justifiability of abortion in the United States. This is a dimension of the problem that receives very little attention in Grisez's essay, even when he discusses public policy.

⁶ AAS 22 (1930) 563.

But that is not the same as saying "revealed."⁷ Indeed, in recent national pastorals various episcopates have been at pains to insist that the Church's teaching on abortion is not a specifically religious one that stems from and requires a particular religious faith. Third, it requires a vivid and rather uncontrolled theological imagination to regard as revealed the grave immorality of *direct* abortion, *indirect* abortion by implication (and revelation) being occasionally permitted. These are philosophical formulations, and even their meaning is not all that clear, as Grisez's own reinterpretation of the notion of direct abortion would indicate.

Second, if the Church's teaching on abortion is not revealed,⁸ then there is the possibility that it is so necessarily connected with revelation that the magisterium could not safeguard and expound revelation if it could not teach it infallibly. But what is the evidence for that assertion where abortion is concerned, and indeed direct abortion only? Francis Sullivan, S.J., in his thorough and balanced treatment, found no evidence that such a necessary connection pertains where contraception is concerned.⁹ The same seems true of abortion. At the very least, those who assert such a connection bear the burden of proof.

Third, in order for a teaching of the universal episcopate to be infallibly proposed, it must be proposed as a teaching *to be held definitively*. This means, as Sullivan and Karl Rahner argue, to give an irrevocable assent. What is the evidence that the prohibition of direct abortion has been so proposed? As Sullivan notes, "It is one thing to teach that something involves a serious moral obligation; it is quite another to claim that this teaching is now absolutely definitive and demands irrevocable assent."¹⁰

Finally, Rahner's analysis should operate as a salutary caution against theological overreach here. He notes:

Apart from wholly universal moral norms of an abstract kind, and apart from a radical orientation of human life towards God as the outcome of a supernatural and grace-given self-commitment, there are hardly any particular or individual norms of Christian morality which could be proclaimed by the ordinary or

⁷ Cf. *Gaudium et spes*, no. 50, where the term "divine law" seems clearly to refer to the natural law. It may be said to be divine in origin. But that does not mean revealed in the ordinary usage of that term. Cf. Francis Sullivan, S.J., *Magisterium: Teaching Authority in the Catholic Church* (Ramsey: Paulist, 1983) 138.

⁸ At this point one must wonder about Grisez's understanding of revelation. Cf. Avery Dulles, S.J., *Models of Revelation* (Garden City, N.Y.: Doubleday, 1983).

⁹ Sullivan, *Magisterium* 145.

¹⁰ *Ibid.* 147.

extraordinary teaching authorities of the church in such a way that they could be unequivocally and certainly declared to have the force of dogmas.¹¹

Rahner's analysis would deny the very possibility of infallible teaching where direct abortion is concerned. And it is safe to say that this is a common conviction of theologians.¹²

In summary, then, to rule out dissent on a matter like Medicaid funding for abortion on the grounds that the wrongful character of funding is but an easy specification of an infallibly proposed teaching will not survive theological analysis. Why? Because the Church's teaching cannot be established as infallibly taught in the sense Grisez asserts.

III

Finally, Grisez asserts that theologians like Rahner, Naud, Häring, Curran, this author, *et al.* "ignore the status of the teachings from which they dissent" and go on to claim that "their dissent is justified and that the teaching of Vatican II summarized above [no. 25 of *Lumen gentium* on the ordinary but infallible magisterium] has been nullified by dissenting theological opinion." *Salva reverentia*, they do not "ignore the status of the teachings." They simply disagree—as most would and should—with Grisez that the immorality of direct abortion is infallibly taught by the ordinary magisterium. More generally, they deny that such particular norms are the proper object of infallibility. And if that is the case, then at least in principle dissent is a possibility, a conclusion Grisez denies and uses to invalidate any disagreement with the conclusion that Medicaid funding is morally wrong.

Nor do these theologians argue that "the teaching of Vatican II [on the ordinary but infallible magisterium] has been nullified by dissenting theological opinion." They simply propose, and quite reasonably, a restriction of the object of the ordinary but infallible magisterium. Furthermore, they propose that some aspects of no. 25 of *Lumen gentium* can stand nuancing and improvement. If we deny that possibility, we are attributing to *Lumen gentium* a type of ahistorical perfection we attribute to no other, even infallible, ecclesiastical statement. That is to deny doctrinal development in principle. It is also to deny the historical character of ecclesiastical pronouncements.

In summary, Grisez's critique contains a faulty analysis of the doctrine

¹¹ Karl Rahner, "Basic Observations on the Subject of Changeable and Unchangeable Factors in the Church," *Theological Investigations* 14 (New York: Seabury, 1976) 14.

¹² Sullivan refers to "most of Catholic theologians," "the majority of Catholic moral theologians," "the more common opinion" when he excludes particular norms as a proper object of infallible teaching.

of co-operation, an unsubstantiated claim for infallibility of the Church's teaching on abortion, and an ahistorical absolutism in dealing with the Church's formulation of its own teaching authority.¹³

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¹³ As this note was going to press, there appeared a position paper (*Catholic Standard*, Sept. 20, 1984) by the Pope John XXIII Center for Medical-Moral Research and Education. Some of the reflections offered above would apply to statements made in this position paper. E.g., the paper states: "The universal teaching of this doctrine [direct abortion is always morally wrong] by the Pope and bishops around the world and through the centuries makes it Catholic binding doctrine, and would give reason to hold that it is infallibly true without any formal declaration to that effect." If "infallibly true" means "infallibly taught" (it does not in fact, though it seems to in the position paper), the assertion is subject to the same objections raised against Grisez. Similarly, the position paper rejects "endorsing what is morally wrong in legislation, such as appropriation bills which pay for abortion." As it stands, the assertion is platitudinous. Of course it is wrong to "endorse" what is morally wrong in legislation. But why is legislation to provide abortion funding morally wrong? Because "to approve public funding is to co-operate directly with the doing of abortion." I agree that abortion funding should not be supported, but not because it necessarily involves "direct" co-operation (the word should have been "formal," for direct co-operation and formal co-operation are not necessarily the same), but because the disvalues involved in funding far outweigh the values. In Grisez's terms, the public official might desperately *not* "want the abortion," and indeed all abortions, but might judge the present moment inappropriate for withholding funding. That judgment might be mistaken (and I think it is), but it need not be formal co-operation.