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## A Review of the March, 1970, *Theological Studies*; Abortion Issue\*

Vitale H. Paganelli, M.D.

It is probable that during the next five years this most recent quarterly edition of the highly respected, Jesuit-published review of theology will become a widely quoted reference on the subject of abortion.

An attempt is made, therefore, to bring the volume to the attention of all Catholic physicians with an interest in the abortion problem, the most critical and controversial medical-ethical problem of our times. General discussion which will certainly follow wider dispersion of the views held by the six essayists of this volume will influence both the Catholic and the non-Catholic thinking for many years on a wide range of disciplines affected by the topic.

It is essential that in reading this volume each essay be well digested. Although I have taken pains to twice read thoroughly the approximate 175 pages, (and the more important and/or difficult passages, a half-dozen times or more) I am certain that in the final analysis that further re-reading will be required to keep the plethora of historical, sociological, philosophical and legal theories, facts, opinions and

\*See reprint of Joseph T. Mangan's "The Wonder of Myself" from *Theological Studies* on p. 166

other perspectives clearly and accurately in mind.

The volume consists of six essays. The first and shortest is by Dr. Andre Hellegers, Professor of GYN at Georgetown University Hospital and gives a brief and accurate description of the modern understanding of human embryology. It also introduces the concept of "capacitation", i.e., the chemical change which occurs in the sperm when treated by an identified substance in the uterus of the tube and which improves the ability of the sperm to fertilize the ovum. This function has been assumed but not yet proved to exist in the human species.

The second essayist, Professor George A. Williams a Protestant, is Professor of Divinity at Harvard University and Chairman of the Department of Church History in the Harvard Divinity School. His knowledgeable and detailed paper in two sections first brilliantly reviews the development of Christian and Orthodox Jewish thought on abortion in the light of the available scientific knowledge of the time. He then proposes a solution for a modern political management of the problem in a pluralistic society based

on his own newly conceptualized theory of a "Sacred Condominium". (Cfr. below).

There follows then four essays by well known Jesuit thinkers, viz., Frs. Joseph Donceel (Louvain and Fordham), John Milhaven (Woodstock-in-New York), Joseph Mangan (Loyola of Chicago) and Robert Drinan (Boston College). Finally the symposium closes with a review of the recent book, *Abortion*, by Germain C. Grisez. Father John Connery (Loyola of Chicago) is the reviewer.

It will come, I think, as a moderate shock to most Catholic physicians that the first two Jesuit authors clearly favor a theory which would allow in certain very circumscribed situations the moral licitness of performing an abortion on an early (non-hominized) embryo or fetus. Having said this it remains necessary to emphasize that the essayists who favor this position, viz., Williams, Donceel and Milhaven, labor mightily to delineate the acceptable circumstances for performing this procedure the most important of which relate to the point in embryological time at which hominization (ensoulment) of the fetus is thought to occur.

In an essay founded primarily on identification with scriptural texts and secondarily but very effectively supported by scientific and philosophical discussion, Father Mangan upholds the current magisterial position of the illicitness of a directly intended abortion under any circumstances.

Drinan's position which has been previously published and is widely known and quoted suggests deleting abortion laws from the state statutes. The author while expressing his personal abhorrence for the act of abortion clarifies with political, pragmatic and societal arguments the reasons he deems it necessary to hold this view in

a pluralistic society. Primary among these is that by so doing the state is stripped of a power to make a life-death decision over the fetus, a decision he would obviously prefer to have in the hands of the progenitors.

Briefly summarized this represents the essential content of the volume. For the reader with little or no interest in the classic Aristotelian, Thomistic and Scholastic arguments, the reading will be a bit heavy in parts of William's, Donceel's and Milhaven's papers.

Momentarily I would first return to Professor Williams' paper. His proposed theory of a "Sacred Condominium" makes certain presuppositions which the author fails unfortunately to detail and to substantiate sufficiently. The basic principle of the condominium theory (page 57 and again page 73) is that a co-sovereignty of authority exists over the unborn fetus which is equally shared by the state and the progenitors of the fetus. In the application of the theory and depending on circumstances, the two parties either individually or jointly may make a judgment regarding the fate of the individual fetus following appropriate legal, medical, theological and sociological counsel.

A considerable body of opinion and information, theological as well as legal, etc., exists supporting the univocal sovereignty of the parents with regard their children, born or unborn. According to the latter theory, the state may acquire only a temporary sovereignty over such children and that in very limited circumstances, namely, when the parents act as an unjust aggressor toward the child or via the principle of subsidiarity, when the parents invite the state to provide services, etc., for the child which they themselves cannot provide. Professor Williams skirts a direct confrontation with this argu-

ment and simply elaborates the basic principles of his theory without lengthy discussion of possible objections.

The basic argument developed by the three aforementioned authors who support the licitness of very early abortion in certain circumstances relates to their opinion that a fetus does not become a human person until it is capable anatomically and presumably physiologically of accepting God's intervention in the act of ensoulment, (hominization). Without stating a specific intrauterine date of this occurrence, they suggest that the criterion relate to the development of an embryologically completed central nervous system (CNS). Only at this anatomical fetal state is there present the capability of accepting the rational soul.

The theory, not in fact new, originally was articulated by Aristotle with an assist from earlier philosophers. It visualizes a progressive, stepwise ensoulment of the human person first by a vegetative soul (for growth and reproduction) then by a sensitive soul (for perception) and finally by a rational human soul for intellection. Admitting that the zygote contains all the genetic materials necessary to program a total human being, these same authors prescind from this consideration in favor of a theory which has been held intermittently and for varying reasons by theologians both before, since and including Aquinas. This theory of the delay in hominization until such time as the embryological CNS is organically elaborated depends in its validity entirely upon the philosophic-scientific distinction of whether, in the zygote with its already completed genetic complement of material, the CNS can be said to have real and completed being (existence).

In Aristotelian terms is it actually or merely potential entity? Again the same theory hold that it is only potential and that until it is formed actually (as over against present fetal organ system professor Helleger earlier stated between the eighth and twelfth uterine week, the deposited rational soul cannot take place and therefore no human person so called exists.

It is of passing interest to note that not only was Thomas Aquinas in error in assuming a sex-related time difference in hominization between the male (40 days) and the female (80 days) but it is also highly likely that neither the physician-scientist or the theologian were aware that fertilization took place fully 15 days after the onset of menses. Hominization at the anatomy of the fetus were not well related. Therefore, Thomas' "40 days" really represents a 25 day gestation, or a pregnancy that was in progress and remains even now barely cognoseable.

As earlier noted, Father Mangan takes the opposite and ecclesiastically accepted position, viz, that the human soul is placed at the time of fertilization is completed. He argues that at this time there exists in the completed genetic pattern an actual rather than potential) CNS and therefore a being capable of accepting a rational soul. He admits that he cannot explain what happens if this very early conceptus goes on within a week after fertilization to form an identical twin, i.e., at what point and how would the second soul be created? He throws this problem into the providence of God. Similarly, he is unable to present a completed theological explanation for ensoulment for the problem of cloning.

CNS, as gote, an existing authors present into an (entially) which Pro occurs with intra- of the place and properly As noted, Mangan's discussion is posed in more fideistic terms. None the less again in my opinion, his argument will be found by most physicians to be more scientifically tenable. He acknowledges that necessarily the determination of the precise point in time at which God chooses to create the individual soul is a theological speculation. Reason and embryology indicate for him, however, that with the re-establishment of the diploid number of chromosomes, a new and distinct individual is now present who was not previously present. Since the possibility and the probability then exists that in the normal and usual course of events a totally human person (biologically, metaphysically, medically, legally, and theologically) will come into existence, then this diploid zygote must be treated theologically as a human person until such time at least as science proves unconditionally the absence of a human person.

All authors are agreed that the problem ultimately will have to be resolved by defining more precisely what the essence of the human person (being) is. Father Donceel suggests that the definition will be a synthesis of a theologic, philosophic and medical-scientific knowledge. Once can fervently concur with this suggestion of a need for a cooperative effort among the related disciplines.

In conclusion, I would like to interject my own thought and questions into the dialogue. Understanding why Scholastics, following Aristotle subdivided human ensoulment into three distinct events (acts), i.e., the separate positing in time of a vegetative, sensitive and rational soul, I am less clear in understanding why they have insisted that man *must* progress through the first two states before he could reach the third. Is it not possible that there is deposited (by a single combined

human-Divine act) in the diploid zygote with its genetic reality a single soul with a triple threat capability? To be certain it has to be admitted that even if the human person represents a progression from the vegetative to the sensitive soul, etc., ultimately in the completed state, the rational soul still must have the fullness of the earlier vegetative and sensitive souls since the totality which is the completed human person hylomorphically understood, is obviously equally capable of biological growth, physical sensation and self awareness. Why not all capabilities in one soul in one cooperative act? Is there not truly a "Sacred-Creative Condominium" at play here which demands that man having freely initiated the action of creation is then no longer at liberty vis-a-vis with God to unilaterally terminate it? If one assumes the validity of the theory of "Delayed Hominization" and the licitness of prehomitized abortion, then it becomes difficult philosophically and theologically to understand procreation as a cooperative act freely entered into by both God and man. It seems to me, admittedly as much ill-at-ease in philosophical waters as Father Donceel stated that he is in scientific waters, that Thomas' concept of hylomorphic man must suffer by virtue of this over-emphasis given to man's participation in the condominial arrangement for the creation of new human life.

I would like to pose still another theological question. Some of the authors of this panel have questioned what would follow, if admitting prompt hominization (ensoulment) a very early almost menstrual abortion occurred, then would every menses have to be conditionally baptized and if not, why not? I in turn, would like to ask does this differ as a theological problem from that encountered in the problem of the death of an unbaptized

but fully hominized (by the definitions found in this volume) fetus, newborn, or infant and if so, how?

I probably fall into Milhaven's Classicist, "Type A" epistemologic mentality, formed as I was by Georgetown's Toohey, Foley and McFadden in the middle forties and by my own continuing predilection for the classical scholastic axis of Aristotle-Thomas and Maritain. From this predominately rationalist mentality, I candidly admit that not only do I hold the absolute inviolability of innocent human life but also the inviolability of that living tissue, the gamete, which constitutes the vehicle for transmitting this same life. Indeed, particularly as a physician, I hold a certain phenomenological reverence and respect for "life" in any form as that utterly and unspeakably mysterious gift of the creator with which I am given the privilege of cooperating. Cannot a respect for "life" be the irreducible

ground for discussion in a pluralistic society and if secular society rejects this must we not continue to develop our own integral humanism (Maritain) in this fundamental and absolute value?

I am appropriately impressed by the technological competence of my research colleagues who have chemically analyzed and to some extent synthesized the DNA molecule. I do not believe, however, that in so doing, they have defined or elaborated "life" which is somehow different than a biochemical construction even though it may have some of the qualities of living tissue.

In any event, this volume of *Theological Studies* provokes considerable thought and question and in addition to well written essays includes numerous excellent references on the subject under discussion. Father Burghardt, S.J., editor of *Theological Studies* deserves a share of the credit for pulling this volume together.

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