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Book Review of The Morality of Abortion: Legal and Historical Perspectives, edited by John T. Noonan

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The Morality of Abortion: Legal and Historical Perspectives


The lead article in the present book is written by the editor himself, John T. Noonan, Jr. In it he traces the history of theological opinion and Church teaching regarding abortion. This history reveals an almost absolute condemnation of abortion stemming right from apostolic times. The qualification “almost” is added because of a theological opinion which was considered probable by a number of theologians and which allowed for the abortion of an unanimated fetus when necessary to save the life of the mother. This opinion originated in the early fifteenth century and continued to attract attention until theories of delay in abortion began to gain way to advances in biological knowledge. In her own teaching the Church never made any explicit exception for therapeutic abortion but neither did she explicitly condemn it in any absolute way until the end of the nineteenth century. By this time theories of delayed abortion were no longer considered tenable by most theologians.

Noonan's historical summary is followed by three articles addressing abortion as a moral and legal issue. Paul Ramsey, who always has something valuable to say (but does say it clearly), makes some very pertinent points that are frequently overlooked in the whole abortion debate. Ramsey himself, although a Methodist, has always been quite close to traditional moral theology, so his position on abortion would be much closer to the Catholic doctrine than that of the Board of Social Concerns of his own Church, which recently called for the removal of legal controls on abortion on the grounds that the fetus is only tissue.

James Gustafson, the author of the next article, is also a Protestant but more in the Protestant tradition than Ramsey. Unlike Ramsey, he would not start with the traditional principle that direct killing of the innocent is wrong. He begins from the more flexible principle that life is to be preserved rather than destroyed, but while he admits that the fetus deserves special protection, he does allow for exceptions to this rule. He applies his norm to a case of pregnancy resulting from rape. After a detailed consideration of all the circumstances of the case, he finds that the scales of value are tipped in favor of abortion. Briefly, while Gustafson considers the life of the fetus an important value, he thinks it may be outweighed in exceptional cases by other values or combinations of value. But after all is weighed and decided, the choice of abortion is not for Gustafson an altogether happy one; it is nothing better than a lesser evil. He compares it with taking life in warfare, although he concedes that the defenseless fetus will be taken “less justly” and “more mournfully.” My impression is that underlying this somewhat tragic approach is the Protestant problem with the inevitability of sin.

Bernard Haring presents the Catholic viewpoint on abortion. While he does not think that the severe judgment of the Catholic Church on abortion, repeated in Vatican II, although not irrefutable, will change substantially, he thinks that it may be open to a certain process of refinement. His feeling is that if the existence of our doctrine were carefully distinguished from less certain aspects, one might hope for more basic agreement with Protestant theologians, who differ with us only on the hard cases. But he cautions the reader that the tentative suggestions he makes in this regard are only his own opinion and not to be followed in practice. He is able by and with the traditional approach to the solution of abortion cases which is based on the distinction between direct and indirect abortion. Although Haring's approach would not go much further in allowing abortions he does feel that it is less artificial. Briefly he would allow a direct abortion in a situation where the fetus would die anyway. He would argue to this from the premise that the malice of abortion consists in an attack on the right of the fetus to live. In a case where the fetus would die anyway if the doctor failed to save the mother's life, Haring does not think that he truly deprives it of its right to life. This is not, of course, a new argument and it has been considered by his opponents many times before. Most authors have not been willing to grant that a person who is going to die in the near future loses his right to life, or at least his right not to be deprived of life.

In a few instances Haring unfortunately charges other theologians with opinions they do not hold. For example, he is not able to say (but does not say it clearly), makes some very pertinent points that are frequently overlooked in the whole abortion debate. Ramsey himself, although a Methodist, has always been quite close to traditional moral theology, so his position on abortion would be much closer to the Catholic doctrine than that of the Board of Social Concerns of his own Church, which recently called for the removal of legal controls on abortion on the grounds that the fetus is only tissue.

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legislation to highly permissive legislation. The first scheme prohibits all abortion except to save the life of the mother; the second is more permissive but still limits legal abortion to certain well-defined categories; the third is the most permissive allowing abortion whenever it is performed by a licensed physician. In practice, of course, there are many variations of these three models but in general the rationale behind them ranges from almost exclusive emphasis on the rights of the fetus to exclusive emphasis on the rights (so-called) of the mother to control her fertility. Finnis also calls attention to the fact that even the most restrictive legislation can give way to liberal practice due to interpretation. This was substantiated years ago by a study of the incidence of therapeutic abortion in American hospitals by Samuel Cosgrove, M.D. At a time when all the states had restrictive legislation Cosgrove found a variation in practice that ran from 1 abortion to 55 admissions to 1 abortion to 16,000 admissions. Only a very broad interpretation of the meaning of therapeutic abortion could account for the frequency of these abortions in hospitals with high ratios.

Finnis himself leans away from the third scheme, which he feels devaluates fetal life totally. He agrees that in theory this scheme seems best fitted to eliminate illegal abortions but he finds that in practice there is little evidence of this. Anyone who has read Callahan’s defense of highly permissive legislation will find a valid challenge to this position in Finnis’ article. Although the latter does not state his own preference explicitly, his sympathies are clearly with the first model.

The final chapter, the work of the editor and David Louisell, raises the constitutional question regarding abortion legislation. Is it constitutional for the state to regulate abortion? Is it constitutional for the state not to regulate abortion. The authors examine all the charges against the constitutionality of abortion legislation (e.g., vagueness, violation of privacy, discrimination, right to determine family size, etc.) and find them all wanting. It becomes quite clear from this discussion that the case against the constitutionality of abortion legislation is not a strong one. The authors then go on to discuss the opposite question: would it be unconstitutional to remove abortion legislation from the books? The authors argue that it would be at least inconsistent with the law to protect the property rights of the fetus, its right to support from its parents, its right to damage from third parties, and not protect its right to life. They argue also that removing all protection from the life of the fetus would surely have to beclassed as a discriminatory act. A long series of court decisions supports the contention that when the government withdraws protection from one class of people it discriminates against that particular class. Such discrimination obviously violates constitutional guarantees of equal rights.

One can hardly do complete justice to a book of this kind even in a longer review, but I think it should be obvious from what has been said that this would be a very valuable book for one who wanted to become knowledgeable in this particular area. He may not want to agree with everything that is said, particularly on the moral level, but it will be very much worth while for him to know the limits the conscientious people outside the Catholic Church will set to abortion. And the treatment of the legal issues will be especially helpful to anyone concerned about the present movement to relax abortion laws. One has to admit that it is a very balanced and prudent discussion of all the facets of this complicated problem.

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