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Abortion: Part XV

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has been and continues to be called into question — and I am not satisfied that sufficient consideration has been given to this crucial point. It would appear to require considerable clarification. I think that there will be a tendency for the government to train and hire physicians for the provision of health care (real or imagined) if the profession as a whole doesn't accept the concept of "right to health care". Graver evils (personal, financial, medical, etc.) partially alluded to by Dr. Griffin could, however, conceivably flow from such intervention.

Finally, but very importantly, it has been left to Father McCorry, S.J., to bring into the conscious awareness of the physician a concept of his, the physician's "charisma"; that he possesses a spiritual as well as a scientific gift of healing — a gift which takes on double meaning and importance in our present developing understanding of what it means to be a human person. Thus, ultimately it is a Pauline charity which is called upon to reign supreme in the physician's breast; a physician's charity which will necessarily recognize and overlook all the annoying foibles and failures of human nature and which will make available health care to those in need to the limits of the physician's own total health.

Abortion — Part XV


The campaign to sell liberal abortion to the people of the United States and to the people of Massachusetts is well organized, well coordinated and well financed. The presentation is based upon error, half-truths, myths, exaggerated statistics, personal opinion, an ignoring of fact and reality, poor logic, inconsistency, ridiculous conclusions. The proponents of liberal abortion prefer to appeal to the emotions and sympathies of people, while they forsake reason; they choose to concentrate on the expectant mother — her personal ideas and opinions, her mental and physical health, her wanting or not wanting the child, her ability to afford and care for the infant, her decision as to how many children she will have, her right not to the birth, her control over her own fertility — to the almost complete exclusion of the unborn fetus and his rights. They discuss the subject just as if the fetus did not exist, just as if he did not possess real human life and did not have a right to be free from an attack upon his life; just as if he did not have a right to live and to be born.

Even when the pro-abortionists speak of the unborn child, it is always in reference to the mother. They consider the unwanted child but always in terms of the mother having no obligation to give birth to a child she doesn't want. They discuss the possibility of an infant being born handicapped or retarded but always with a concern for the inconvenience and the added burden that this defect will place on the mother, who must care for him.

Those who oppose a change in the current statutes are not without feeling, understanding, sympathy and compassion for the mother and her special problems and difficulties but they do not feel that abortion, which is the deliberate termination and
Does it not seem strange and is not inconsistent that, at the very moment, that so many millions of people are criticizing the war in Vietnam precisely because it involves the destruction of human life, a campaign is being mounted to legalize abortion, which involves the destruction of innocent human life? At least in the war, death is not intentional but accidental; in abortion, death of the fetus is deliberately intended, inevitable and premeditated. Yet we never forget -- no infant ever escapes alive; the death rate for the unborn child in abortion is 100 percent.

The most basic, fundamental and important consideration and question in the entire discussion of abortion is the status of the fetus -- does it possess real human life from the very moment of conception? If it is, then abortion -- which is the intended and deliberate destruction of the human life that violates the inalienable and constitutional right of that defenseless, innocent human life to be free from aggressive assault and attack, to have its life respected and maintained and, above all, violates its inherent right to be born. In those circumstances, abortion could never be justified no matter what seeming and apparent good might be gained by terminating the pregnancy.

Yet, the proponents of liberal abortion just will not discuss this very essential and necessary subject of the presence of human life in the fetus. They attempt to ignore it, think it, or pass over it because they realize that, if it is brought out in discussion, the real, actual human life is present from conception, their position, of advocating abortion as a solution for personal, physical, psychiatric, emotional, economic or social problems at the expense of the life of the unborn, is very considerably weakened. They realize that their position is weakest at the most important juncture -- the very core and substance of the entire discussion -- and do not wish to reveal this vulnerable area. But is this an honest approach?

There is obviously something wrong with a program when its proponents are unwilling to discuss the important, necessary and essential matters connected with it and become annoyed and embarrassed when, in spite of their objections and protests, these subjects are considered.

It is interesting to note that the supporters of liberal abortion have never presented any evidence or proof that would indicate that human life is not present in the fetus from the moment of conception. One would expect that, if such evidence existed, they would be most happy to produce it. Since no proof is presented, it is logical and proper to presume that none exists.

The most that can be obtained from them in any discussion on the status of the fetus is myth and personal, subjective opinion. This is not good enough and will not suffice when the developing sciences of genetics, embryology and fetology provide hard facts and solid information that contradict and disprove their myths and personal opinions. The proponents of liberal abortion should be aware that they cannot argue against facts; that personal opinions, which contradict proven facts, are worthless and completely devoid of any probative value.

In any discussion of the fetus, the advocates of liberal abortion state that they do not choose to accept the presence of human life. In their opinion, they consider that the fetus is only a conglomeration of cells and tissue; that the fetus is only an appendage adhering to the uterine wall and can be excised and disposed of just like any appendix; that the fetus has no independent existence separate from and independent of the mother; that human life does not begin to exist until the actual birth; that during the period of pregnancy the fetus possesses only potentially human life; that born life is essentially different from unborn life.

That the fetus is only a collection of cells and tissue and that the fetus does not have an independent existence apart from the mother are myths that may have had some validity in the distant past when scientific information was almost non-existent but they certainly cannot be considered respectable or responsible conclusions today when tremendous strides have been made in the sciences of genetics and embryology and a new science has developed, which treats of the special problems of the fetus -- fetology -- and the findings of these sciences contradict the myths and opinions.

That the fetus does not have actual human life until it is born has built-in problems and raises questions for which there are no satisfactory answers or solutions. If a fetus has no real human life during the entire period of pregnancy and receives human life only when it is actually born, then there obviously must be some process or procedure that converts the potential life into actual human life as the fetus escapes...
through the uterine cervix and passes through the vaginal canal on its trip to the outside world. But, unfortunately, science knows of no life-activating process or life-endowing procedure that comes into play during the uterine contractions that propel the fetus into the world.

Also, if it is contended that human life begins only at birth, what of this very curious situation: if the child is born prematurely after seven months of pregnancy, it will be considered to have human life at the completion of seven months but if it continues for a full term of nine months, the very same fetus would not be considered to have actual human life during the last two months of intrauterine existence and would receive human life only at the end of nine months. Such a position is ridiculous!

What evidence exists to warrant the conclusion that human life exists in the fetus from the very moment of conception? Everyone admits that there is life in the fetus from the very beginning because there is growth, movement, development, movement. The important question is what type of life the fetus possesses.

Every species has been endowed by nature with cells and each cell contains a certain number of chromosomes. Every cell of the same species has exactly the same number of chromosomes. This is a constant pattern that is essential for life in the species. The chromosome enumeration for the human cell is generally accepted as being 48 for both man and woman; 24 having been provided by the mother and 24 by the father.

If a chromosomal study were to be made on the fetus, it would be discovered that each cell had a double set of chromosomes with a total number of 48. This identifies the cell as belonging to the human species exclusively. There is no possibility that, with this number, it could belong to a lower form of life and that the processes of development attain to the level of human life at the time of birth. Doctor Herbert Ratner, a Public Health Director in Oak Park, Illinois, has stated: "Modern science regards the embryo as a human being from the moment that the male sperm fertilizes the female ovum to form a 'zygote'... We have rejected the theory that the embryo passes through a subhuman stage in the womb.

Therefore, the life that is within the fetus from the very moment of conception is and must be human life and this conclusion is drawn from ap- proved and recognized objective scientific data and does not depend upon a personal, subjective opinion that could be subject to bias or prejudice.

Doctor William T. O'Connell, a Boston obstetrician and gynecologist, has reviewed the work of twenty-four embryologists over a period extending from 1908 up to 1964. All of these scientists had investigated and researched ova or eggs that had been released a very short time prior to their study of them. By means of all of this available information, Doctor O'Connell concludes that the embryologist "has had to depend on the fact that the start of human life begins with the union of the sperm and ovum, followed by a growth and development that follows a sequential pattern that is constant. If we accept the premise that such growth is constant, then we must agree that there is no one particular moment in the development of an embryo when it becomes a non-living, non-human substance into a living human being."

Doctor O'Connell very clearly establishes that human life begins at conception and not at birth and that, during pregnancy, the human life is actual and real — not merely potential: "The embryo from the moment of conception shows the characteristics of a living, human being: organization, growth and metabolism. If these characteristics are present in the earliest studied embryos, then the embryo must be considered as a living, human being."

The renowned embryologist, Avery, has described the human life-span of man as beginning with fertilization and continuing in a long, unbroken chain of constant growth and development until birth is reached. After birth, there is further growth from infancy through childhood, adolescence, adulthood and these are followed by old age and death. In short, there is an unimpeded, continuous process of constructive growth and development from fertilization to age 26 years.

Since the human life of the newborn infant, the child, the adolescent, the young adult, the adult and aging person is essentially the same human life as possessed by the fetus, then there is no basis or foundation for any distinction between born life and unborn life as far as the human life possessed by both is concerned. It is dishonest, arbitrary and unwarranted to make such a distinction merely to attempt to justify doing to the unborn life what would not be dared to be done to born life — the termination and destruction of his life. Since there is no essential difference between unborn life and born life — they are equal — there is a discrimination in favor of born life and against unborn life when the life of the latter is allowed to be destroyed by abortion and the destruction of the life of the former is not tolerated; this is clearly a violation of the "equal protection" clause of the fourteenth amendment.

It is under the "equal protection" clause of the Constitution that discrimination against the negro was ruled to be an unjust violation of his basic rights as a citizen and it was in virtue of this same clause that civil rights legislation was passed and became the law of the land. Once it is established that a negro man is equal to a white man in every respect as to his person and his rights, it is a violation of the rights of the negro not to accord him the equal protection of the law and not to give him the same rights, privileges, opportunities that are made available to the white man.

From this evidence, it is clear that birth is not the beginning of human life. Birth is merely that happening or that point in time when human life, which began in fertilization or at the moment of conception, has grown, developed and matured to the point where it can successfully live outside the mother. Birth is merely the bridge between life in the womb and life in the outside world. If what is born is actual human life, then scientists can find no period of time during pregnancy when this human life had it's beginning except at the moment of conception. Therefore, real human life exists from the very moment of fertilization throughout every day and week of pregnancy.

Professor Ashley Montagu of Columbia University states: "The basic
fact is simple: Life begins, not at birth, but at conception. This means that a developing child is alive not only in the sense that he is composed of living tissue, but also in the sense that from the moment of his conception things happen to him... Even though he may be only two weeks old, and he looks more like a creature from another world than a human being... he reacts. In spite of his newness and his appearance he is a living, striving human being from the very beginning.6

A biophysicist at the Lawrence Radiation Laboratory in Berkeley, California has noted: "Certain landmarks can be noted in the continuous transition from single cell to complete human individual... but none represents a point in development where biological form and function of the individual human are suddenly added."5

The eminent geneticist, J. A. F. Roberts, has described the development of human life as a continuing process: "A human being originates in the union of two gametes, the ovum and the spermatocyte. These cells contain all that the new individual inherits organically from his or her parents. The hereditary potentials present in the fertilized ovum are unfolded, as cell divisions succeed each other, in an environment first prenatal and then post-natal, free to vary all the stages within narrow or wide limits.7

Doctor Herbert Ratner concludes: "From the moment of zygote formation, the characteristics of a highly individuated human organism are established by the intimacy and combination of the genes, chromosomes and cytoplasm contributed by the parental human egg and sperm. This includes not only sex but a whole spectrum of human traits, both external and internal, organic and functional."8

In presenting the most recent developments in fetology, Jane C. G. Coniff in the New York Times Magazine points out that "by five or six days after conception the human embryo has grown to about 300 cells. By eight (8) weeks the fetus is recognized as human with limbs, heart and other organs. Even though he may be only two weeks old, and he looks more like a creature from another world than a human being... he reacts. In spite of his newness and his appearance he is a living, striving human being from the very beginning.9

Doctor Arnold Gesell, founder of the Clinic of Child Development at Yale University, states that "mental growth is a process of behavior patterning" and points out "even in the fish bud stage, when the embryo is only four weeks old, there is evidence of behavior patterning: the heart beats. In two more weeks slow back and forth movements of arms and legs appear. Before the twelfth week of uteri n life the fingers flex in reflex grasp.10 It is clear that from the earliest stages of child psychologists, it can be said that this process of mental development, which characterizes the ten year old child, or the one year old, also characterizes the embryo who is only one month old.

If one views, from books on Developmental Anatomy, (e.g. Arey, 7th Edition, 1965, W. B. Saunders Co.) actual photos of a developing embryo, beginning at the sixth (6th) week of intrauterine life, it is absolutely impossible for any right-minded person to deny that a human with human life is really and actually present. It is totally irresponsible for any individual to say that a pregnant woman can make up her own mind as to whether or not she considers human life is present from the beginning of her pregnancy. The presence of human life is not a matter of opinion; it is not a state of mind; it is not an attitude; it is not a matter of conscience or religious belief; it is an undeniable fact.11

All of this scientific information is the basis for the conclusion of Doctor Herbert Ratner: "By the time a woman knows she is pregnant and by the time the average abortion is arranged, we are not dealing with a small mass of cells. We are cutting out arms and legs, heart and brain. This is truly an intrauterine battered child syndrome.12

In summary, valid scientific research clearly and unmistakably demonstrates that human life begins and exists at fertilization or conception. From the very moment that the sperm and ovum meet, a new human life begins with a built-in genetic determination which determines, from the very beginning, the sex, the body structure and frame, the color of skin, hair and eyes and all other hereditary characteristics. From the very beginning, the fetus or embryo is as separate and distinct from the mother as a child already born. From conception, there is life and the life is human life - the growth and development of the fetus is not from a lower form of life to a higher form of life but rather an orderly form of continuous, unbroken maturity of human life. By four (4) weeks, there is evidence of a heartbeat; by six (6) weeks, there appears back and forth movements of arms and legs; by eight (8) weeks, there is an identifiable sex and a functioning brain and before twelve (12) weeks, there are reflex paroxysms of the fingers. These are the periods within which most abortions would be performed.

In the light of this scientific information, which is readily available for any interested person, it is impossible to explain how any honest, truthful, open-minded, properly motivated, unbiased and unprejudiced individual could ever make a statement that human life does not exist prior to viability or to birth or that the presence of human life has never been established or proved or that the presence of human life is doubtful or...
that the fetus or embryo has only a potentially human life.

The potentiality only exists with reference to the future - to life outside the womb as a born infant, as a child, as an adolescent or as an adult because all of these are in the future when compared to the yet unborn fetus but the life of the embryo is real, actually existing human life. The human life of the born infant, the child, the adolescent, the young adult, the middle aged person, the aging individual is only a continuation in further stage of development of the human life of the fetus and is substantially and essentially the same human life which is enjoyed by the unborn fetus - as far as the essence of human life is concerned and, therefore, the life of the embryo cannot be called merely potential human life; it must be termed accurately and exactly what it is - actually existing human life.

The signs of existing human life in the fetus are not potential: the organization, change and metabolism are not potential; the arms, legs, body, head, face are not potential; the heart beat is not potential; the hereditary characteristics - sex, color, size, etc. - are not potential; the behavior patterns, the back and forth movements of arms and legs, the reflex grasps of flexed fingers are not potential. All of these signs of human life are real and actually existing and only one logical conclusion can be drawn: that the human life, which they demonstrate, manifest and signify, is also really and actually existing.

It is ridiculous to compare, as proponents for liberal abortion do compare, the potentiality for human life in the sperm and in the oocyte prior to their being joined, with the potentiality of fetal life to become human life at viability or at birth.

The sperm and ovum have an actual life that is particularly fitting for the existence but each of these has a further potential to become human life after an individual ovum has been impregnated by an individual sperm. The fetus, which results from the process of fertilization, is real, actually existing human life but what befits its uterine existence but the fetus also has a potential to live outside the uterus, when it has developed sufficiently, and to become a time, an infant, a child, an adolescent, an adult, an elderly person. The potentiality to become something else in time does not and cannot argue against a fetus having real human life within the uterus. In fact, if the fetus did not have actual human life, it could never become an infant, a child, an adolescent or an adult because viability and/or birth does not give human life. The only time when human life could be given is at fertilization.

It is just as ridiculous to say that an infant does not have human life because it is not yet a child, an adolescent or an adult and as only potentiality to become a child, an adolescent or an adult, as it is to say that a fetus does not have actual human life because it has not yet been born. An infant has actual human life while it enjoys the potentiality of becoming a child, an adolescent or an adult. Its enjoyment of actual human life as an infant is not contradicted by or made impossible by its potentiality to become a further development of the same essential human life. Both life is just a further growth and development of unborn life; both have the same essential substantial human life and no real distinction can be drawn between them as far as the element and factor of human life is concerned. Born life is not any more real just because its existence is visible in the concrete, tangible form of an infant, a child, an adolescent or an adult. The hidden human life of the unborn is not any less real just because it cannot be observed.

Another objection raised against fetal life being human life is the fact that the fetus, in its unborn state, is dependent upon its mother and true human life should be independent and self-sustaining. Let us investigate in what matters, in what manner and to what extent a fetus is dependent upon its mother for existence, growth, development and survival. It would appear that the unborn relies on his mother only for nutrition and evacuation of wastes; he is completely independent of his mother in all other - his heart beats on its own; he breathes on his own; his blood circulates on its own; the formation of individual organs and the over-all growth and development is automatic and entirely independent of any contribution by the mother. The fetus is dependent upon the mother for very little.

Also, let us compare the unborn fetus to a born infant with reference to dependence. Everyone accepts the fact that a born infant has human life and yet who is more dependent than a newly-born child: he depends on his mother or on someone to be fed, to be washed, cleaned and bathed; to be changed and dressed. An infant is far more dependent than a fetus and, yet, the infant is considered by everyone to have human life. Therefore, dependency cannot be an accurate measure, guideline or criterion for judging the presence or absence of human life.

A further attempt to discredit the position that human life is present in the fetus from the moment of conception throughout the period of pregnancy and before viability or birth is set forth in the objection that a fetus cannot think, know, make judgments, make free choices, demonstrate love, manifest compassion - all activities of a being with human life.

This present writer would like to ask how much ability a newborn infant - who is accepted by everyone as having human life - has to know, to recognize, to identify, to be aware, to evaluate, to analyze, to think, to judge, to choose, to have insights, to possess perceptive knowledge, to love others, to experience compassion and sympathy - all manifestations of human life. The answer is that the one day, the one week, the one month old baby can do none of these things. Yet, he is considered by everyone as having human life. Thus, the presence or absence of these abilities to act humanly cannot be the yardstick by which one judges the presence or absence of human life.

In fact, only the maturing process enables the born child to develop these capacities. Probably the first ability that appears is that of awareness, recognition and identification. Then, a sensitive and tactile type of knowledge becomes present. Only, after several years, can a younger make simple choices. Abstract type of knowledge would come only in the fifth or sixth year. The age of reason is usually presented as the seventh year, when
the child is considered capable of recognizing right and wrong and becomes responsible for his simple choices. Serious abstract intelligence, accompanied by an appreciative, critical, analytical and evaluative type of knowledge and the ability to make seriously responsible judgments and competent decisions is found only in the young mature adult.

The development from the self-love of an infant and child to the generous, out-going selfless love of the adult, which would include a compassion and a sympathy for others, requires at least two decades to accomplish.

The being with human life is not a perfect and fully mature human person at birth. This process of growth and development requires twenty or more years. Therefore, it is as ridiculous to expect full humanness in the fetus as it would be to expect full humanness in the new-born, who is recognized, without question and beyond all doubt, as having true human life. The presence or absence of complete human maturity cannot be the criterion by which the presence or absence of human life can be judged.

In summary, everyone accepts the fact that a born infant has human life — whether it is born after seven months of gestation or nine months of gestation; there is no evidence that the process of delivery or birth or the process of becoming viable endows human life on a fetus, which did not previously possess human life; the distinction between a viable and non-viable fetus and between a born infant and an unborn fetus is arbitrary, cavalier and capricious as regards the presence of human life; that science, which certainly recognizes the presence of human life in the new-born, can point to no time between conception and birth, when human life begins and, therefore, it is reasonable to assume that human life begins from the moment of conception particularly because there is life from the time of fertilization, there is no evidence that a lower form of life ultimately develops into human life and there is evidence of human activity very early in pregnancy; that sophisticated techniques can now detect a heartbeat at four weeks, movements of arms and legs by six weeks, an discernible sex and a functioning brain by eighth weeks and reflex grasps fingers before twelve weeks; that a very special, particular, specific life is conceived at fertilization with already built-in hereditary endowments — sex, color, size, contour, form etc. that the human life, present in the fetus from the moment of conception, is a moment of birth, is exactly, substantially and essentially the same human life that is found in the born infant, child, adolescent and adult and that the same respect, with reference to inviolability of that life and freedom from direct assault and intentional destruction, must be rendered to the innocent, defenseless unborn fetus as is given to the born; that there is no responsible place for mere personal opinion with reference to the absence of human life in the fetus when such opinion is contradictory to observable and proven scientific facts.

Our legal jurisprudence recognizes that human life exists in the unborn fetus: several state constitutions include the embryo in the legal definition of a person; our courts recognize the right of the unborn child to inherit, to be supported by its natural father, to sue for injuries sustained while in its mother's womb, to be compensated, under the wrongful death statutes, if it dies by reason of an accident in which its mother was involved, to have blood transfusions and the right to force the mother to have blood transfusions, even against her will or her conscientious and religious beliefs, if these are necessary to save its life, to assure its safe delivery and to assure that it will be born alive and, finally, the unborn fetus has been declared by the courts as a proper recipient of benefits under the Workmen's Compensation Laws.13

Since preparing these original articles, some recent interesting cases and jurisprudence have been discovered.

On February 26, 1970, Justice Condlisis J. Moyhnan, a Superior Court Judge in the State of Massachusetts, rendered a most forceful decision with reference to the presence of human life from the moment of conception and with reference to the responsibility of the state to protect human life wherever and in whatever form it is found:

"There is no factual basis for any claim that the present purpose of the statute (sic abortion statute) is to give legal effect to any particular religious viewpoint or that in its operation the statute does have that effect... The interest of the state in protecting what it considers to be human life would appear to be at least as substantial as any interest in maintaining Sunday as a day of rest... the Commonwealth asserts that the state has a justifiable and overriding interest in protecting the mother or fetus and that the desire of the woman must be subordinated to this public interest. The basic question posed is whether the Legis-
that the mother should be aborted and the remaining two physicians concluded that the pregnancy should not be terminated. The result was that no abortion was performed and the infant was born with serious physical and mental handicaps.

The infant, Rosalyn Stewart, sued the hospital through her father, Robert Stewart, alleging that she was born with birth defects "which were either caused or which could have been prevented by the defendant," had it acted prudently; that the birth defects were caused by the defendant's negligence and malpractice; that the defendant was negligent in "failing to carry out the indicated and necessary therapeutic abortion."

The Court ruled that there was no proof to substantiate the allegations of the plaintiff that her defects were caused by the defendant or that they could have been prevented by the hospital. The decision concluded "the proof showed that the only way the infant could have been spared being born with birth defects was not to have been born at all."

In investigating the right of the plaintiff infant not to have been born at all rather than to have been born with defects, the Court quoted extensively from and relied heavily on the findings of the New Jersey Supreme Court in the Gleitman v. Cosgrove case and accepted them. The Court also referred to two cases in which the Plaintiffs alleged the crime of "wrongful life" because they were born illegitimate; Zepeda v. Zepeda and Williams v. State of New York.

Justice Beckinella quotes from the Williams case: "To uphold the present claim would be to say that being born out of wedlock in itself gives the right to damages and that the damage include compensation for the (supposed or possible) disadvantages of illegitimate birth. . . . Impossibility of enfant remaining this suit comes not to man from difficulty in measuring the alleged damages as from the absence from our legal concepts of any such idea as a 'wrong' to a later-born child caused by permitting a woman to be violated and to bear an out of wedlock infant. If the pleaded facts are true, the State was grievously negligent to the mother, and as a result, the child may have to bear unfair burdens and have many other sons and daughters of shame and sorrow. But the law known no cure or compensation for the policy and social reason against providing such compensations at least as strong as those which might be thought to favor it. Being born under one set of circumstances rather than another or to one pair of parents rather than another is not a such wrong that is cognizable in court."

"The Supreme Court of Kings County took cognizance of the Zepeda case where the complaint of an illegitimate son in suing his father "for the deprivation of his right to be a legitimate child" was dismissed."

Justice Beckinella, writing for the Supreme Court of Kings County, concluded: "This Court has reached the conclusion that the first cause of action must be dismissed. There is no remedy for the only facts proved by the plaintiff in support of the cause of action. The three decisions referred to above demonstrate that there is no remedy for having been born under handicap, whether physical or psychological when the alternative to being born in a handicapped condition is not to have been born at all. To put it another way, a plaintiff has no remedy against a defendant whose offense is that he failed to consign the plaintiff to oblivion. Such a cause of action is outside our system of jurisprudence."

The Court's finding was consistent with others. "The hallmark of our law of torts is to compensate individuals who have suffered a diminishment of their facilities, temporarily or permanently, as a result of a defendant's carelessness. The gravity of a defendant's wrong is measured by the extent to which his conduct has put the plaintiff in a handicapped condition. The ultimate wrong that can be committed is to cause another person's death. It would be the antithesis of these principals to require the defendant hospital to respond in damages to the infant plaintiff because it did not prevent the infant's birth."

The Supreme Court of Kings County, New York, in making the above finding, recognized the presence of human life in the fetus because the judges spoke of abortion as the causing of another person's death and it also recognized that the right to life or life itself is a basic and fundamental value to be preferred to the quality of life without or normal and without physical handicaps or mental defects.

A decision of the Colorado Supreme Court declared, on August 5, 1969, that a fetus is considered a "child" under the statute relating to paternity and support. The statute in question defines a "child" as a person under eighteen years of age unless the contrary is shown. The purpose of the statute is to provide a means to establish accurately the identity of a child's father, so that the responsibility for the child's support can be determined and support ordered. The father's responsibility for support includes necessary expenses incurred by the mother in connection with the pregnancy and confinement. "Child" should be construed as including an unborn child in order to accomplish the legislature's intended objective. To construe "child" so as to exclude an unborn child would permit the father of an unborn child to evade his responsibility for support by withdrawing at any time prior to the child's birth."

The insurance company sought a declaratory judgment that it could not be considered responsible for any judgment that might be entered against the mother in this wrongful death action; the reason offered was that the policy excluded coverage for bodily injury to any member of the family of the policyholder residing in the same household as the policyholder. The mother and father contended that "family" and "household"
were identical terms and that 'family' referred to a social unit and not to a biological unit. The insurance company countered by stating that, in accordance with the parents' argument, the unborn child was not a separate person and, therefore, not a member of a family, the very basis for bringing an action to recover for injuries sustained by an unborn child, was necessarily precluded.

The Court declared that the insurance company was not liable for the wrongful death of the stillborn child because the child is to be considered a member of the family and household of the father and mother and within the class excluded from coverage.

A very interesting case was decided recently by the United States Court of Appeals for the Fifth Circuit. It concerns a man and woman who were not, in fact, married but the man, working in a distant city, visited the woman on weekends. She was pregnant by this man and he was killed a short time after the conception had occurred. The right of the child, when born, to receive social security insurance benefits, based upon the earnings of the father, would depend on whether the father was considered to be living with or contributing to the support of the child at the time of his death.

"The Court held that the unborn child was living with the father, even though the father paid only irregular weekends visits to the mother. ... The Court relied heavily on the fact that the mother and father considered themselves to be living together, and that their lack of a day-to-day relationship was due to the distance of the father's work and the couple's lack of money."17 The Court's decision recognized the humanity of the child: "Medically speaking, Donna was viable from the instant of conception onward. In action for damages could have been brought in her behalf for injuries she might have received prior to birth. When the deceased wage earner can be said to have for his weekend visits as fact living with both child and mother."

In California, a man was charged with so severely beating his wife that she was carried to the hospital, where she was pronounced dead and he was charged also for the death of the child. His attorney argued that the law does not consider an unborn child a human being. On September 19, 1969, the District Court in Sacramento, California, held unanimously that it is murder to kill an unborn child would be capable of living if born prematurely. The Court stated: "We are satisfied that a fetus which has reached the stage of viability is a human being for the purposes of California homicide statutes."

While there is not yet a unanimity among the various jurisdictions as to whether a fetus must be viable before it has a right to recover for injuries sustained, the direction of most courts is markedly clear: a fetus need not be viable. In a leading case, Justice Curtis of the Pennsylvania Supreme Court determined that "viability is the little to do with the basic right to recover. The real catalyst of the problem is the current state of medical knowledge as to the separate existence of the fetus." On this principle, Justice Bok allowed recovery for the injuries sustained when a fetus was only one month old.

Commenting on the guidelines of "viability" as related to the right of a fetus to recover for prenatal injuries, Noonan remarks: "There are additional reasons for not making viability the dividing line in the treatment of the child in the womb as a person. One is that the perfection of artificial fact of incubation may make the fetus viable at any time: it may be removed and artificially sustained. Experiments with animals already show that such a procedure is possible. This hypothetical extreme case relates to an actual difficulty: there is considerable elasticity to the idea of viability. Mere length of time is not an exact measure. The viability of the fetus depends on the extent of its anatomical and functional development. The weight and length of the fetus are better guides to the state of its development than age, but weight and length vary. Moreover, different racial groups have different rates at which their fetuses are viable. Some evidence, for example, suggests that Negro fetuses mature more quickly than Caucasian fetuses. If viability is the norm, the standard would vary with race and with many individual circumstances."

In referring to two cases, in which the Courts balanced the right of the mother to hold her conscientious conviction and to carry out her religious belief against the allowance of a blood transfusion and the right of an unborn child to receive a blood transfusion, the Court ruled that the right of the unborn to live and be born was to prevail over the religious rights of the mother, Noonan observes: "It is noteworthy that in both cases the Supreme Court of the United States declined to review the decision denying the mother's right to permit the abortion of her child."

"It seems to be evident that if the courts hold that the interest in the life of the child is above that of even the right of a woman to practice her religion, the right of the child is above every other right of the mother except her right to life itself. In the case where a choice must be made between the life of the mother and the life of the child, the state is incapable of forcing the choice, and the ordinary rules of self defense come into play. Where the interest of the mother is less than that of life, the child's fundamental right to life has been respected."

"Given this recognition of the constitutional right of the child in the womb to protection, it seems established by analogy that to remove the protection of the criminal law from the child in the womb would be itself an unconstitutional act. The abortion rights cases have established that for the government to fail to protect a class is itself an unconstitutional denial of civil rights. As the Fifth Circuit said, 'there was a time when the denial of equal protection of the laws was confined to affirmative acts, but the law now is that culpable official inaction will constitute a denial of equal protection' (Lynch v. United States, 189 F.2d 476, 479 (1951))."

"The child in the womb is capable of having only one civil right - the right to life itself. To deny that right by depriving him of safeguards against those who would take it from him is an unconstitutional invasion of his right. As the Supreme Court of the United States declared in holding unconstitutional a statute which permitted the permanent sterilization of certain persons, 'there is no redemption for the individual whom the
law touches' (Skinner v. Oklahoma, 316 U.S. 535, 541 (1942)). If the civil right of the child in the womb is stripped from him, there is no recompense for him if his destruction is then effected."

Why would the law and the courts recognize and grant these rights to an unborn child unless there were evidence and a conviction, certain beyond reasonable doubt, that real human life was present in the unborn from the moment of conception?

Would there not be a serious contradiction within the sphere of law itself if the civil arm of the law would grant benefits to an unborn fetus, which are only granted to those possessing human life, because there was a preponderance of evidence to indicate the presence of real and actual human life in the unborn fetus and to have the criminal arm of the law declare that an unborn fetus can be intentionally and deliberately destroyed by abortion at the whim of the mother, with or without cause – maybe only to satisfy her wish or convenience – because there was no indication of actual human life in the unborn fetus?

After having reviewed the law in the above mentioned categories, this present writer reached the following conclusion: "It is inconceivable that a law that recognizes fetal life as human life from the very moment of conception, accepts the fetus as a human person, endowed with many legal rights – not the least of which is the right to be born and to be allowed to grow and develop without interference –, a law that assumes a responsibility to grant to unborn life that equal protection and due process of law, which is guaranteed to all life and is made available to born life, – it is inconceivable that such a law would advocate or dare, by statute or revision, to allow the arbitrary taking and extinguishing of unborn life merely to preserve the health, personal appetite or convenience of the mother or to avoid the birth of retarded or physically defective children or to provide a remedy for felonious interference with." 2

In summary, science clearly indicates that there is human life in the fetus from the moment of conception; that the human life is actual and not merely potential and exists from the moment of conception throughout the entirety of the pregnancy; that the fetus with its intrinsic human life exists separately and independently from the mother and is merely added to her as an appendage that the unborn life, being actual, real human life is substantially and essentially the same human life as enjoyed by the new born, the infant, the child, the adolescent and the adult is that a difference and a distinction cannot be established between that life and birth is a greater value than the quality of that life.

Legal jurisprudence generally recognizes that the viable fetus has human life, is a human person, a child of the mother and father, entitled to support even as a fetus, a member of the family and household and, as such, has the rights of a human being and a human person. Many jurisdictions that have had occasion recently to consider the problem of the fetus' rights, have abandoned the any guideline of viability and recognize that the fetus has human life and is a human person from the very moment of conception and impregnation. This is the direction in which jurisprudence is clearly moving.

Commentators have observed that the guideline of viability fluctuates, is not tangible and should not be used to determine when human life begins with reference to the enjoyment of legal rights.

Jurisprudence has stipulated that a mother does not have the sole judgment as to whether or not she will allow a child within her to be born, even when her religious beliefs and conscientious decisions are involved; that the life of her unborn is to be preferred over every good and right of the mother with the one exception of her right to her own life; that the right of her unborn to be born is to take precedence over any mental anguish or trauma that the mother might suffer by reason of giving birth to the child.

Further, jurisprudence has settled conclusively that the right of the unborn to life and birth is a greater value than the quality of that life. Appellate Courts have found that the right of a fetus to be born is to be respected even though that fetus may be born damaged – even when the physical handicaps or the mental defects are severe and permanent. Tribunals have also decided that, at law, there is no right of the unborn not to be born because, if born, he would suffer socially and/or psychologically from the stigma of illegitimacy; that there is no such thing as an "unborn" or the right to recover for damages sustained by not having been born well. The right to life is recognized in the law; the right to the quality of life has no such standing.

FOOTNOTES
7. Kindregan, p. 257
15. N.Y.L.J., December 5, 1968, Supreme Court, Kings County.
16. 49 N.J. 22.
Letters To The Editor...

Dear Rev. Reich:

I have read your article entitled “Personal Growth: Up-Dating the Natural Law”, in the February, 1970 issue of Linacre Quarterly.

As a physician, I would be expected to read and many articles, particularly those pertaining to my profession, and I do. Therefore, at this time, I wish to tell you that I think that your article can be classified as not ridiculous and absurd play on words that I have ever read. It is without a doubt the worst display of nonsensical rhetoric and jumprope semantics that I have ever seen.

What in the world are you attempting to do Reverend Reich? Is it possible that you dislike the Natural Law, that you would like to kill it, in principle and practice, but do not have the “guts” to say so in so many words? As an alternative, it seems to me that you are trying to “talk it to death” with articles such as you have written. It would appear to me that you are doing your best to make any concept of the Natural Law, so confusing, so nonsensical, so unusable and so complex that it could never be applied to the simplest of human events without being selected to scorn and condemnation and ridicule. If it is your desire and attention to so muddy the waters in the understanding and application of the Natural Law, and if you do it with malice aforethought, all I can say is “May the good Lord be merciful to your soul!”

It is obvious that the attacks on the Natural Law have been stimulated by the fact that the Natural Law is, and remains to be, the real road block to the Catholic Church’s acceptance of deliberate contraception as permissible. Pope Paul expressly referred to the Natural Law as a strong factor in his reasoning. Yet you and many others would like to remove, eliminate or by you this road block and thus make the use of contraceptives morally acceptable. (Please do not think that I would not find it easier to practice medicine and Gynecology if I could morally prescribe contraceptives). And so you argue and debate at ethereal levels in an effort to evade the obstacle.

But let me reduce the problem to a simple statement of every day facts.

1. God created everything for a purpose, (His purpose.)

2. When humans, with our finite minds, can determine God’s purpose, when creating a specific act or organ - then we are obliged to use that act or organ in the way God desired when he created it. (This is so simple, it actually makes sense.)

3. The sex organs and the sex act were created by God to make procreation possible. This is a prime end of these organs and acts. It may not be the only prime end in humans, but it is not out ranked by any other end anywhere.

4. Therefore, when human beings deliberately thwart the sex organ or acts and prevent them from achieving the end for which they were created, (if pregnancy is possible in any given situation) then a human is simply telling God — “I’m not going to let you achieve your desired end!”

5. Therefore, deliberate contraception is always morally wrong, because it deliberately thwarts God’s specific desire!

This may seem to be terribly dull to you, but believe me, Rev. Reich, it is basically sound. It outlines the whole problem that you are trying to eliminate or discolor beyond recognition by articles such as yours.

I cannot get over the flights of forceful thinking outlined in your presentation. I can almost hear some of your colleagues when they read your presentation, saying to themselves, “Poor ol’ Warren is off again in a flight to the wild blue yonder!”. Come on Rev. Reich, get down to earth and act like a rational human being.

Truly,

Walter A. Reiling, M.D.
Dayton, Ohio