

# THE ABORTION DEBATE: AN EPISTEMOLOGICAL INTERPRETATION

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**I**RRISPCTIVE OF the intrinsic merits or demerits of any position, the abortion debate going on in the United States is a disaster. In setting influential Americans against each other, it absorbs the energy of men who otherwise would be working together, meeting the needs of society. The suspicion and rancor it engenders passes over to other areas where co-operation is called for. The witness of the Church to the world becomes for many a testimony of its inhumanity, since this is the only way they can interpret its official stand on abortion.

The debate shows no sign of waning. True, the debaters represent a spectrum of views, and some intermediate positions could come to a consensus on practice. True, hospital regulations and state legislation, in force or proposed, reflect a working compromise between the extremes: not all direct abortion is prohibited, but only under certain conditions is it permitted. Nevertheless, the men who man the extreme positions see no way to modify their moral assessment of abortion, either a condemnation of all direct abortion or a ready justifying of abortion for relatively minor reasons. Consequently, many feel bound not to relent their efforts until all public restrictions on abortion are removed,<sup>1</sup> and many feel bound to resist every proposal of liberalization

<sup>1</sup> According to the *New York Times*, in the last year or two a growing number of lawyers and judges have been predicting that the Supreme Court will recognize the constitutional right of an American woman to have an abortion, or that the courts will declare the nation's antiabortion laws unconstitutional on less sweeping grounds, but with the same results. When, on Nov. 10, 1969, Federal District Judge Gerhard A. Gesell ruled that the District of Columbia's abortion law, already more liberal than the law of most states, was unconstitutionally vague and probably an unconstitutional infringement of woman's private rights, the decision "illuminated a remarkable shift in attitudes towards abortion laws in two years. Opponents are now demanding abolition rather than reform; they are using litigation rather than legislation to get it; and they are coming to view abortion as a fundamental right that should be available to women who are poor and single as well as those who are well-off and married" (Fred P. Graham, "Abortions: Moves to Abolish All Legal Restraints," in "The Week in Review," *New York Times*, Nov. 16, 1969, p. 9). I have been informed that in one state, where a relatively strict law is in force, it will be proposed in the next session of the legislature simply to repeal the law.

as a step on the way towards permitting abortion on demand.<sup>2</sup> The prospect is of a bitter, costly tug of war over the years.<sup>3</sup>

The rhetoric of the debate illustrates the seriousness of the deadlock. Most public statements entrench and fortify positions that do not face the other side. Those favoring abortion plead for freedom of conscience, although they know that the antiabortionists agree with them on its value and place in civil society.<sup>4</sup> The abortionists would not recognize the freedom of conscience of a woman to beat her child to death, and they know that their opponents regard abortion as essentially the same as that. The antiabortionists, in turn, ring the changes on the evil of

<sup>2</sup> John Noonan insists that the actual choice, practical and historical, now facing American lawmakers is "between resisting the pressure for any change or, alternatively, permitting, in one guise or another, abortion on demand." A compromise such as a law tailored to meet permissively cases of rape, incest, and mental instability is in fact "a major step . . . towards abandoning the state's right to protect the fetus." For those "who accept the essential humanity of the fetus," "there can be no compromise, no tolerance, no easy acceptance of legislation which destroys the most basic of human and civil rights for a class of children" ("Amendment of the Abortion Law: Relevant Data and Judicial Opinion," *Catholic Lawyer*, Spring, 1969, pp. 133-34). Mary Rosera Joyce, reviewing David Granfield's *The Abortion Decision*, agrees with the policy he urges: "It would be naive," he says, "for anyone to think that the compromise passage of a moderate abortion bill will do more than temporarily delay the fight for free abortion." However, in order to avoid extreme permissiveness, those who are opposed to abortion ought to work for legislative *amendments* on a lenient statute when its enactment is inevitable, in order to contain its harm as much as possible" (*National Catholic Reporter*, Oct. 15, 1969, p. 9). A recent *America* editorial urged: "Above all, Catholics must see for themselves and persuade others that the uterine person, the embryo, has inalienable human rights, chief of which is the right to live. This truth must be held to with tenacity during the long months of public debate ahead" (Mar. 1, 1969, p. 240).

<sup>3</sup> Although his analysis of the situation differs in part from mine, Robert Drinan, too, affirms its critical nature: "It is painfully clear that Catholics confront in the abortion issue an agonizing question of public policy which could divide Catholics, weaken ecumenical relations and place Catholics and the Church in the years and decades ahead either in the position of having sinned by the use of its prestige and power against the sincerely held convictions of non-Catholics and non-believers or as a group which failed by silence to speak up when misguided men and women changed the law to permit the extermination of undesirable and unwanted human beings. It seems self-evident that this challenge is unique in American Catholic experience, that it is awesome and that it is inescapable. Hopefully it is a challenge which, unlike any previous challenge, will arouse the minds and consciences of American Catholics to original, creative thought on a legal-moral problem of incalculable significance" ("Catholic Moral Teaching and Abortion Laws in America," *Proceedings of the Twenty-third Annual Convention of the Catholic Theological Society of America*, June 17-20, 1968, p. 130).

<sup>4</sup> E.g., Mrs. N. Lorraine Beebe, State Senator of Michigan, arguing for a more liberal abortion statute and replying to critics' statements that abortion was tantamount to murder: "You do not have the right to impose your morals or religious convictions on us. We have religious freedom in this country" (*New York Times*, June 13, 1969).

infanticide and genocide, although they know their adversaries are not lacking in appreciation of this evil, especially since some of them lost family and friends in Nazi camps.<sup>5</sup> The rhetoric of the debate, therefore, evidences a despair of communication. One seems to speak or write only to hearten with the moral pathos of the cause those who agree, but might be tempted to flag in their efforts.

Whatever be the reason that most of the rhetoric bypasses the precise point of disagreement, it does make clear, by implication and occasionally by express statement, what the point is. Is abortion essentially the same kind of thing as infanticide or genocide or whatever civilized people today recognize as murder? More centrally, is the human fetus essentially the same kind of being as the born child or adult? It is not the only issue in the debate. Robert Drinan and Andre Hellegers, among others, have pointed out that important legal and medical questions can be taken up in abstraction from this question concerning the nature of the fetus.<sup>6</sup> But it is the affirmative answer to that question (which at least the philosophers would call a philosophical question) that compels the conscience of most opponents to abortion.<sup>7</sup> And it is the presupposition of a negative answer that frees the

<sup>5</sup> E.g., Richard John Neuhaus, "The Dangerous Assumption," *Commonweal*, June 30, 1967, p. 412, as well as Joyce and Noonan in the articles cited above.

<sup>6</sup> Both men have written and spoken extensively to this effect: e.g., Andre E. Hellegers, "Law and the Common Good," *Commonweal*, June 30, 1967, pp. 418-23. One thesis of Robert Drinan, if ever widely accepted, would ease a good deal of the debate, rendering less true what is described in the following sentence above in the text: "If there is one thing which should be clear from the foregoing and from the state of the question regarding abortion and the law in America it is that there is no such thing as a 'Catholic position' on the jurisprudence of abortion laws. Catholics are free to advocate any of the three options available,—strict legal prohibition of abortion, the Model Penal Code, or abortion on request" (*art. cit.*, p. 129). "It is submitted that episcopal statements going beyond the morality of abortion and entering into the question of jurisprudence or the best legal arrangements are inappropriate intrusions in a pluralistic society by an ecclesiastical official who wrongly assumes that he can pronounce on a legal-political question a moral and uniform position of his Church" (pp. 124-25). Cf. also "The Right of the Foetus to Be Born," *Dublin Review*, Winter, 1967-68, pp. 365-81.

<sup>7</sup> For example, in 1967, members of the American hierarchy publicly opposed relaxation of abortion laws on the grounds of "a person's right to live" (Bishop Francis J. Green of Tucson), of "the right of innocent human beings to life . . . sacred and inviolable" (the bishops of New York's eight Catholic dioceses, led by Francis Cardinal Spellman), of the recognized immorality of "murder" (Richard Cardinal Cushing of Boston) (*Catholic Messenger*, Feb. 16, 1967, p. 1). Richard McCormick, S.J., characterizes recent teachings of the magisterium (of Pius XI, Pius XII, and the Second Vatican Council): "First of all, it developed and was nuanced merely as an application of a more general teaching, or at least hand in hand with it,—the immorality of the direct killing of innocent human life." "Secondly, the teaching is presented with uncommon strength and insistence." "Thirdly, the teaching is presented without qualification. It is seen as absolute" ("Past Church

conscience of most abortionists to ignore any rights of the fetus and concentrate on the needs of the mother and society in general.<sup>8</sup> The public debate with its present dimensions would collapse if either side began to doubt its answer to this question.

Identifying the parting of the ways after which it becomes impossible, logically and psychologically, to rejoin paths or even to hear each other does not yet make sense of what is going on in the debate. Why does most of the rhetoric simply presuppose a negative or affirmative answer to the fulcral question of the nature of the fetus, offering no arguments nor even discussing the question? Why do those who do address the question argue as if the opposite answer to theirs were clearly untenable?<sup>9</sup> Why do those who oppose abortion in the name of "the essential humanity of the fetus" generally ignore the ambiguity of the term "humanity," making no effort to establish the sense in

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Teaching on Abortion," *Proceedings of the Twenty-third Annual Convention of the Catholic Theological Society of America*, June 17-20, 1968, pp. 136-37). In the preceding pages McCormick presents some important statements by pope and council and summarizes these and other pertinent magisterial documents.

<sup>8</sup> E.g., in his presidential address to the Convocation of Canterbury, the Archbishop of Canterbury, Dr. Arthur Michael Ramsey, suggested that the line at which abortion was legalized should be drawn to cover cases where there was risk to the life or mental or physical health of the mother. He said that the "absolutist" position virtually equating abortion and infanticide could not be held today. Although the human fetus was sacred, he said it was unreal to identify a fetus with a human life; one was the prelude to the other (Reported by the *Catholic Messenger*, Feb. 2, 1967, p. 1).

<sup>9</sup> E.g., "Only one weighty objection to abortion remains to be discussed, and this is the question of 'loss.' When a fetus is destroyed, has something valuable been destroyed? The fetus has the potentiality of becoming a human being. A human being is valuable. Therefore is not the fetus of equal value? This question must be answered. It can be answered, but not briefly. What does the embryo receive from its parents that might be of value? There are only three possibilities: substance, energy, and information. As for the substance in the fertilized egg, it is not remarkable: merely the sort of thing one might find in any piece of meat, human or animal, and there is very little of it—only one and a half micrograms, which is about a half of a billionth of an ounce. The energy content of this tiny amount of material is likewise negligible. As the zygote develops into an embryo, both its substance and its energy content increase (at the expense of the mother); but this is not a very important matter—even an adult, viewed from this standpoint, is only a hundred and fifty pounds of meat!" (Garrett Hardin, "Abortion—or Compulsory Pregnancy?" *Journal of Marriage and the Family*, May, 1968, p. 250). Prof. Hardin refutes with equal ease the contention that the "information" might be "precious." The first step of his reasoning is an unsupported assertion simply denying the traditional position that there is in the embryo something besides his three possibilities, namely, the principle of human life that makes a human being a human being. Hardin, I am sure, is familiar with the traditional position, and knows what he is doing in the article. But it is curious inasmuch as it is typical of what one calls the "dialogue" or "debate" concerning abortion.

which the fetus is "human"?<sup>10</sup> Why do abortionists, premising that the fetus is not a human person, not face the next and crucial question: how does one determine when the former becomes the latter?<sup>11</sup> Why is it that those who do not fail to do any of the above, who in a sincere, intelligent, informed manner go into the question, still disagree radically on what the fetus really is?<sup>12</sup> And yet the pertinent empirical data is limited and undisputed—what is not the case of most questions dividing Americans today, e.g., concerning the Vietnam war, various sexual behavior, law and order, responsibility of whites to blacks, etc. Those who affirm and those who deny that the fetus is a human person accept the same data of the sciences concerning it and use the same data to justify their affirmation or denial. A pretty puzzle, if it were not tragic.

Perhaps a psychological analysis or sociological survey might better solve the puzzle and explain the abortion debate. The following pages offer an epistemological explanation. The working hypothesis carrying along the explanation is suggested by words of Cardinal Newman:

<sup>10</sup> "Here the testimony of Dr. Arnold Gesell, founder of the Clinic of Child Development at Yale University, is of particular significance. In a chapter entitled 'The Nature of Mental Growth,' Dr. Gesell points out that from the point of view of a psychologist, 'mental growth is a process of behavior patterning.' He continues: 'even in the limb 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 limbs appear. Before the twelfth week of uterine life the fingers flex in reflex grasps'" (Noonan, *art. cit.*, p. 125, identifying the excerpt as Gesell, *The First Five Years of Life* [1940] p. 11). It is to this testimony (along with a similar one by a fetologist) that Noonan presumably is referring when he concludes: "If you choose to resist all pleas and pressures for change [i.e., to permit legally more abortion], you will have the consciousness that you are acting in accordance with what is the converging testimony of those who have studied the womb both physiologically and psychologically" (p. 134). Noonan, like Hardin, may well be able to justify, in terms of the limits and purpose of the article, this presentation of the nature of the fetus. But for anyone who in advance disagreed with their position or had doubts about it, their treatments could only be noncommunicative or misleading. (Noonan has, I understand, gone more extensively into the question in a recent issue of the *Natural Law Forum*.)

<sup>11</sup> Hardin simply presupposes that the potential value of the fetus becomes actual at birth: "The *expected* potential value of each aborted child is exactly that of the average child born" (p. 250; italics his). He reasons: "Analysis based on the deepest insights of molecular biology indicates the wisdom of sharply distinguishing the information for a valuable structure from the completed structure itself" (p. 251). But how does one determine when the information becomes the completed structure? His own analogy of blueprint and finished house would raise this question, I would think.

<sup>12</sup> E.g., at the International Conference on Abortion, held at Washington, D.C., Sept. 6-8, 1967, sponsored by the Harvard Divinity School in co-operation with the Joseph P. Kennedy Foundation. Cf. the report of Richard A. McCormick, *America*, Sept. 23, 1967, pp. 320-21.

The fact remains that in any inquiry about things in the concrete, men differ from each other, not so much in the soundness of their reasoning as in the principles which govern its exercise, that those principles are of a personal character, that where there is no common measure of minds, there is no common measure of arguments.

The first principles are hidden for the very reason they are so sovereign and engrossing. They have sunk into you, they spread through you; you do not so much appeal to them as act upon them.<sup>13</sup>

Newman is advancing an epistemology that would explain all ethical debates. The abortion debate would be unusual only in that the disagreement cannot be easily ascribed to a difference in more general moral principles expressly appealed to or in the empirical data accepted, and that therefore, knotted mysteriously about the nature of the human fetus, it illustrates pre-eminently how principles of a hidden, personal character govern the moral convictions of the mind.

But how does one find hidden principles? In *Present Position of Catholics in England* Newman underscores the influence of the group in forming the principles on which the individual judges and acts. One epistemological method, therefore, of discovering the principles at work would be to see whether the moral stance of an individual on one question were part of a pattern of moral positions that he has with a given group.<sup>14</sup> It would appear to be the case in the abortion debate. Debaters for each side have noted that those disagreeing with

<sup>13</sup> Rev. John Whitney Evans, in a letter to the editor, *America*, Aug. 16, 1969, p. 79. Fr. Evans attributes the first passage to *Grammar of Assent*, the second to *Present Position of Catholics in England*. The words "the first principles are" are not part of the direct quotation.

<sup>14</sup> William Van der Marck, O.P., *Toward a Christian Ethic* (Westminster, Md., 1967) pp. 2-4, offers an epistemology of ethics that would justify this method. "Ethics" can mean, in the first place, "that complex of norms concretely in force in a particular community; it is the social language in actual use." It can mean, secondly, "a reflection upon, or science about the significance, various aspects, and implications of human actions, laws, norms, and the like." As reflective science, "it will aim, first of all, at an insight into all human activity, not being concerned with the particular how, or where, or according to what ethos this activity takes place. Secondly, this sort of ethics will extend its reflection to the actual ethos of a particular community, seeing in it a specification of the general ethical phenomenon." To the two aims correspond the two divisions of the science of ethics, "general" or "fundamental," and "particular" or "special." "The actual community, and thus also the concrete ethos, comes before any reflexive attempt to establish the concrete ethic and, all the more so, comes before any establishing of the fundamental ethic. In other words, neither the concrete ethic nor the fundamental ethic is normative, unless and insofar as they are taken precisely to be the formulation and expression of the ethos proper to the community—an ethos which, besides finding expression in actual behavior and conditioning, is transmitted in definite formulas. Not ethics, but ethos and thus the community itself establish norms."

them on the morality of abortion tend to have a peculiar constellation of positions on the taking of human life, so peculiar that the one side finds the constellation of the other difficult to understand and even inconsistent.<sup>15</sup> It is recognized, I believe, that at least two general mentalities are operative and opposed in the debate, whatever other trends of thought are also represented.

Mentality A prohibits unconditionally all direct abortion, just as it prohibits unconditionally all other direct killing of an innocent person.<sup>16</sup> Mentality B does not prohibit unconditionally all direct abortion, just as it does not prohibit unconditionally any kind of killing.<sup>17</sup> Mentality A permits, under certain conditions, the indirect killing of an innocent person, e.g., a dying patient or a wartime civilian. It permits, under certain conditions, the killing of unjust persons, e.g., attackers or convicted criminals. Mentality B permits, under certain conditions, direct and indirect killing of innocent and unjust. But in comparison with mentality A, mentality B permits much less widely certain kinds of killing, e.g., capital punishment or killing of wartime civilians or even war itself.<sup>18</sup>

What are the principles determining the two ethical constellations?

<sup>15</sup> E.g., "My feeling is that when we are becoming so sensitive about capital punishment, and are even debating whether wars are a proper instrument of public policy; when we're sensitive in so many areas to human life, to overlook this innocuous unprotected area just because it's invisible and inside the mother is to be retrogressive" (George H. Williams, professor at the Harvard Divinity School, *New York Daily Column*, Mar. 2, 1969, p. 2, quoting Williams' remarks in a discussion broadcast by CBS the same day). Cf. the "Statement" of Lawrence Cardinal Shehan of Baltimore, Archbishop Patrick O'Boyle of Washington, and Bishop Michael Hyle of Wilmington, Mar. 6, 1967: "Admittedly there are good and sincere people of other convictions who do not believe that an unborn child is human, or who believe that even if human it has no rights before birth, or that it is permissible to violate the right to life of the unborn when that right appears to conflict with another's welfare. . . . Indeed the increasing preoccupation with reverence for human life (e.g., proposed abolition of capital punishment) is clearly at variance with these beliefs." At the close of the article I will discuss this "inconsistency" of permitting abortion and opposing capital punishment and war.

<sup>16</sup> Mentality A is found conspicuously in the Roman Catholic tradition and has found technical expression in the works of moralists such as John Ford, Gerald Kelly, Thomas O'Donnell, and Henry Davis.

<sup>17</sup> Mentality B is found conspicuously in the ethical thinking of many "liberals" and "situationists."

<sup>18</sup> Concerning the same trio of questions, abortion, capital punishment, and war, the antiabortionists draw the charge of inconsistency. The abortionists cannot understand how they exalt the value of human life in the face of abortion, and when the discussion turns to the Vietnam war or the executions of certain criminals, they rather easily find reasons to justify the killing. The limits of the article prevent an adequate presentation of this position, but I believe it can be shown (as I will attempt to show for the opposing side) to be an organically consistent one. Cf. n. 15 above.

One principle of mentality A is not hidden: human life is sacred and inviolable. But the full meaning of the principle is hidden. The sacred "inviolability" of this patient excludes that I take his life in mercy killing; it does not exclude that I take it through a bombardment of the whole military installation. The former is a "violation" of his life; the latter is not. Moralists of mentality A do not see eye-to-eye *why* the sacred inviolability of human life does not exclude killing in capital punishment, defense against unjust aggression, and various forms of indirect killing.<sup>19</sup> The life of the convicted criminal or the would-be thief or the wartime civilian is no less human nor is his dignity as a human person inferior. It must, therefore, also be partly hidden to possessors of mentality A why the humanness of the life *does* exclude unconditionally other types of killing (such as abortion), no matter what good would result from them for men. This does not mean that mentality A is inconsistent or arbitrary or that any of its positions are false. It does, however, point to one of the hidden principles mentality A "does not appeal to, but acts on," and raises the question what the principle precisely is.

It is significant that what the principle of the inviolability of human life does prohibit is not per se something that would fall within the experience of the victim and those who knew him. If I kill directly an innocent wartime civilian, I violate his life. If I kill him indirectly, and under the conditions required by the principle of the double effect, I do not violate his life. But his experience may be the same: perhaps a moment of terror, a second of physical pain, the cessation of love, hate, and all the interpersonal relationships he had with those about him. Their experience, too, on losing him would not, on the whole, be different if they knew he had been killed indirectly rather than directly. What results in his and their experience plays no part in determining whether or not the killing was an offense against the inviolability of human life.

<sup>19</sup> For example, the obstacle course the moral theologians have to run in connection with capital punishment requires that they justify the killing by the state of certain criminals, but that they condemn the killing by the state of any innocent person, no matter how necessary for the essential ends of the state, and that they condemn the killing by a private person of any criminal, no matter how necessary or useful it be. It is not surprising that the justification of capital punishment offered by one moralist varies from, and even conflicts with, that of another. Cf., e.g., the article on "Todestrafе" in the earlier and more recent edition of the *Lexikon für Theologie und Kirche*; Thomas Aquinas, *Sum. theol.* 2-2, q. 64; the commentary on this question by P. Spicq in the *Revue des jeunes* edition, pp. 212-13; de Lugo, *De iustitia*, disp. 10, sect. 2, 56-75; cf. sect. 4, 102-10; Hürth-Abellan, *De praeceptis* 2, 46-50; Noldin-Schmitt-Heinzel 2, *De praeceptis*, pp. 301 ff.; Davis 2, *Precepts*, p. 151; "Punishment, Capital," *Dictionary of Moral Theology*, ed. P. Palazzini (Rome, 1962).



On the other hand, in dealing with cases of killing where the inviolability of human life does not come into play, mentality A takes into consideration the experience of the man to be killed and of those who knew him. The moralists dispute about the title justifying killing such as war or capital punishment or defense against aggression, but they agree that no killing can be justified unless it is a necessary means to a given good and unless the good outweighs the concomitant evil. They regularly assess the evil in the light of the experiential consequences.<sup>20</sup>

Mentality B differs essentially from mentality A. It has no principle of the inviolability of human life, at least not in the sense of mentality A. In every case submitted for ethical analysis, mentality B focuses spontaneously and exclusively on what would occur, in the short or long run, in the experience of the beings involved. It sees no need for another focus to come to sound moral decision.<sup>21</sup> But the contrast of the two mentalities is even more striking in those cases where both consider the experiential consequences to be decisive for the moral judgment, e.g., the experiences of the dying in war and those they leave behind in comparison with the experience of those who, the war being won, will live in a non-Communist, free country. Or the experience of the men in death row and the experience of people in a society where the death penalty deters criminals. There will, of course, be disagreement about the experiential consequences themselves. What will be, in fact, the experience of the South Vietnamese people if they win the war? What is, in fact, the effect of the death penalty on would-be killers? Significant for our epistemological inquiry, however, is that mentality B consistently registers a far greater evil in the actual dying of individuals than mentality A does, even when they both agree on the facts. The difference is impossible to verbalize or conceptualize, I believe, but it is equally impossible not to observe it in present-day discussions. It is evident that the ongoing

<sup>20</sup> E.g., according to reputable classical moralists, the pain and suffering a dying patient is undergoing can change what would normally be "ordinary means" of keeping him alive into "extraordinary means" and therefore make licit the discontinuance of the means and the allowing the patient to die immediately. Cf. Thomas J. O'Donnell, S.J., *Morals in Medicine* (2nd ed.; Westminster, Md., 1960) pp. 61-74.

<sup>21</sup> This is basically the methodology employed, I believe, by James Gustafson in "A Christian Approach to the Ethics of Abortion," *Dublin Review*, Winter, 1967-68, pp. 346-64, though I am not sure Gustafson would agree. Certainly, his approach to abortion shows how one can approach the question without the principle of absolute inviolability of human life in the traditional Roman Catholic sense, and with a heavy reliance on experience both of men in general and of this woman in particular, without proceeding along lines of an uncritical utilitarianism.

casualties in Vietnam morally disturb and weigh down some Americans more than others—to such an extent that the charge of sentimentality is not infrequently heard. This sensitivity, or oversensitivity, to the evil of death in human experience leads many of mentality B to condemn in fact, if not in principle, all war and capital punishment. What human good can outweigh this evil?

That the operative principles of mentality B are in part hidden is evidenced by the difficulty of its possessors in meeting the charges of inconsistency. As the inviolability of human life for mentality A, the presuppositions of mentality B are so “obvious” that they have not come to be conceptualized in a way satisfactory to the whole group, but neither does the group feel the need to do so. They cannot see the need of explaining why their position does not lead to justifying infanticide or genocide, and, when driven to essay an explanation, usually find themselves incapable of doing so. The difference between fetus, on the one hand, and born child and adult, on the other, is so obvious that one cannot say why it is. Similarly, the evil of wartime death or criminal execution is so obviously enormous to them that they cannot, and feel no need to, articulate it for those who take the evil less seriously.<sup>22</sup> As Martin Heidegger, among others, has insisted, some of the most significant elements of a man’s view of life he never puts in words, because he cannot do so. They are too deeply part of his whole way of viewing things for him to be able to dislodge them for conceptual analysis.

The epistemology of Heidegger, stressing as it does the metamorphosis of human thought in succeeding epochs, encourages a further hypothesis: the attitudes of mentality A and mentality B on the taking of human life are organic growths of two more fundamentally different mentalities, the classical or Hellenistic-medieval and the modern. In the abortion debate, it is not merely two ethics facing each other, but the world views of two epochs, two cultures, one on the way out, one on the way in. The times are analogous to those when the barbarian mentality was destroying, assimilating, and transforming the Roman.<sup>23</sup> Or perhaps an apter analogy would be what would be happening if the culture of the Australian aborigines were evolving into a culture similar to the Aztec. That the struggle between the Hellenic and

<sup>22</sup> Some may find this an excessively benign interpretation of silences of abortionists. The interpretation in part is born of respect acquired in dialogue for the intelligence and moral seriousness of abortionists and in part is grounded in the historico-philosophical analysis of the concluding part of this essay.

<sup>23</sup> This is said without implying that modern culture is, like the barbarian, a lower one than the one it is succeeding.

modern-world outlooks dominates our times, particularly in Christian milieus, is a familiar thesis.<sup>24</sup> The contention of the present essay is that it is what is really happening in the abortion debate.

Both the modern mentality and the classical (and for all I know, the mentality of every culture) center on human experience. The experience that primarily concerned the classical mentality was not the this-worldly experience of the ordinary human individual. Where the mentality took Platonic, Neoplatonic, Augustinian, or any of the medieval forms, all human events were evaluated according to the degree man moved towards the beatifying vision after death, or perhaps in rare ecstasy possessed it now.<sup>25</sup>

The Stoic held no hope for an afterlife. Yet the experience central to his outlook was not located in the this-worldly life of the individual, but in the good of the species brought about by the all-ruling wisdom of God. Traditional Christian sexual morality arises out of this perspective.<sup>26</sup> Contemporary Catholic ethicists who cite Thomas Aquinas endorsing, with Aristotle, human experience and its relativities as the matrix for the formation of specific moral principles can adduce no example of sexual morality where Aquinas practices such an empirical relativism.<sup>27</sup> Moral principles deduced from the conjectured wisdom

<sup>24</sup> One thinks, e.g., of themes of John Dewey or Leslie Dewart.

<sup>25</sup> Cf. "La norme morale," in A. Sertillanges's *La philosophie morale de saint Thomas d'Aquin* (Paris, n.d.) pp. 11-13.

<sup>26</sup> E.g., for Thomas Aquinas, "It appears that the boundary between sexual norms of natural law and sexual norms of divine positive law is not precisely observed. In fact, one might ask whether the sexual norms of natural law are not simply placed here on the same level as positive law and treated as such: they are the law that serves the common good and therefore knows no exception" (Josef Fuchs, *Die Sexualethik des heiligen Thomas von Aquin* [Cologne, 1949] p. 175). Fuchs believes that in certain passages Thomas is appealing to divine positive law as complementing and determining natural law, but that often the distinction between the two seems to be denied. In either case, the perspective is that of the legislator ordering towards the common good. Cf. Aquinas, *De malo*, q. 15, a. 2, ad 12: "The act of generation [unlike the act of nourishing oneself] is ordered to the good of the species, which is the common good. But the common good is subject to ordering by law. . . . [Therefore] to determine of what sort the act of generation should be does not pertain to anyone, but to the legislator, to whom it belongs to order the propagation of children. . . . But law does not consider what can occur in a particular case, but what has usually happened suitably. Therefore, although in a particular case the intention of nature can be saved in regard to the generation and rearing of the child, still the act is disordered in itself and a mortal sin." Cf. my "Moral Absolutes and Thomas Aquinas," in *Absolutes in Moral Theology?* ed. Charles Curran (Washington, 1968) pp. 154-85.

<sup>27</sup> Daniel C. Maguire, "Moral Absolutes and the Magisterium," in *Absolutes in Moral Theology?* pp. 75-77. Maguire writes: "Thomas' realism about the nature of ethics is an extraordinary insight which has never had sufficient impact on Catholic moral theology." Neither did it ever have sufficient impact on Thomas' moral theology. Cf. the passage from *De malo* in n. 26 above. In *Summa contra gentiles* 3, 125, *sub fine*, Thomas recognizes that to any law there can be exceptions working against the common good, but

of a divine legislator planning the common good have to be absolute. All laws are, of themselves, absolute. If the legislator wants an exception or qualification, he must make it into a statute.

Modern man did not begin to part ways with classical ethics when he began to discard moral absolutes, but when he began to lose the view that an otherworldly destiny and/or the wisdom of the divine legislator determined what was concretely good and obligatory for him. As in many movements, the essence of the modern mentality is strikingly visible in its beginnings, even though it soon shed the concrete form it first took. What is man? A new kind of answer begins to arise: "Description de l'homme. Dépendance, désir d'indépendance, besoins." "Condition de l'homme. Inconstance, ennui, inquiétude."<sup>28</sup> "But what then am I? A thinking thing. What is that? It is what doubts, understands, affirms, denies, wills, refuses, imagines also and feels."<sup>29</sup> Neither Pascal nor Descartes said anything new. What is new is that they are grounding all human account of man on what they are saying, namely, on what they find disclosing itself within an individual's experience in this life.

Descartes's label, "clear and distinct idea," and his pervasive geometrism never spread widely, but he identified what remains as the principal source of modern understanding: "I call that perception clear which is present and open to the attending mind, just as we say those things are clearly seen by us which, present to the onlooking eye, move it sufficiently, openly, and strongly."<sup>30</sup> Descartes's example of a very clear but not distinct idea is "where one perceives some great pain."<sup>31</sup> When one reads "And I call that perception distinct which, when it becomes clear, is so detached and separated (*praecisa*) from everything else that it contains in itself absolutely nothing else except what is clear," one recognizes the beginning of a story whose mid-twentieth-century chapter could be entitled "Phenomenology and Logical Analysis."<sup>32</sup>

A culture is shared by people of every level, but can find clear,

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that it is up to the legislators to grant the dispensation—in the case of the divine law, the divine legislator. The chapter of mine referred to in n. 26 presents Thomas' treatment of the cases he finds in Scripture of legitimate exception to moral laws, particularly laws concerning human life, sexuality, and property.

<sup>28</sup> Blaise Pascal, *Pensées*, 126 and 127 (Br.).

<sup>29</sup> Rénatus Des Cartes, *Meditationes de prima philosophia*, p. 28 (A.T.); cf. p. 34.

<sup>30</sup> *Principia philosophiae* 1, 22; t. 8, p. 13, cited by Etienne Gilson, in his edition and commentary of Descartes's *Discours de la méthode* (3rd ed.; Paris, 1962) p. 201; my translation.

<sup>31</sup> *Ibid.* 1, 46; t. 8, p. 22, cited by Gilson, p. 203.

<sup>32</sup> *Ibid.* 1, 45; t. 8, p. 222, in Gilson, *loc. cit.* For the sense of *praecisa*, cf. *Med.*, p. 27, l. 13.

abstract expression in the words of philosophers, whose role is to "grasp the mind of the times in concepts." Descartes and Pascal, like Sartre and Husserl and Dewey, express the mind of all moderns.<sup>33</sup> Modern Western man has become increasingly preoccupied, even obsessed, with his this-wordly experience, brooding over it, attempting to read it in order to understand what he is and who he is, suspecting any thesis about man that cannot be verified in experience. One could adduce nonphilosophical evidence for this contrast of classical and modern mentality: e.g., the art and literature of the last hundred years versus the popular Gnostic and mystery religions of Hellenistic times and the images in medieval cathedrals. But the contrast of the two mentalities in regard to experience, and the other contrasts about to be listed, are, I believe, generally recognized. I am bringing them together to illuminate the abortion debate and, incidentally, other ethical disagreements of today.

In the seventeenth century, too, there appeared a shortening of focus in ethics, analogous to, and undoubtedly influenced by, the current of anthropology exemplified by Descartes and Pascal. Following Dietrich Bonhoeffer, many Christians of the second half of the twentieth century ring the changes on Grotius' "even if there were no God."<sup>34</sup> In fact, Grotius' ethics signals the emergence of an autonomous, secular ethics, unprecedented in the West and still dominant today, namely, one where the specific moral principles are worked out in abstraction from the existence of God. The ethics of Hobbes and Francis Bacon, like Grotius professed theists, are in the same current.<sup>35</sup> The trend, though not so pronounced, is seen in the Scholasticism of the period, which had its influence on Grotius.<sup>36</sup>

<sup>33</sup> The five, like modern philosophers in general, have their differences in describing this primal context of all man's knowledge, nor do all prefer the word "experience" to designate it. But with the five, as with most modern philosophers, it is some form of direct and aware union of concrete subject and concrete reality grasped; for further understanding, the intellect can only probe and illumine the given union.

<sup>34</sup> "...etiamsi daremus... non esse Deum..." (*De iure belli et pacis libri tres*, Prolegomena 11, cited by Heinrich Rommen, *The Natural Law* [St. Louis, 1947] p. 70).

<sup>35</sup> Vernon J. Bourke, *History of Ethics* (New York, 1968) pp. 131-35. Bacon makes his bow to religion, and Hobbes does profess a crude version of the theological approbative theory, but in their essential and operative epistemology of ethics God plays no part.

<sup>36</sup> Cf. Bourke, *op. cit.*, pp. 121-22; Viktor Cathrein, S.J., *Moralphilosophie* 1 (Freiburg, 1911) 194-95. Most of the Scholastics of the period were merely emphasizing that to measure the basic goodness or badness of an act, human nature sufficed as a norm, and no reference to God was requisite. They admitted that to recognize the full and binding goodness of an act, one had to know there was a pertinent divine law, although the law, in turn, could never go contrary to the natural goodness and badness of the act. Cer

The concentration on man's this-worldly experience, studied in abstraction from the existence of God, forged the new patterns of ethical thought. But to understand the historical process and its outcome, several other agents must be noted. In the seventeenth century, too, scientists are beginning to experiment. They start to approach nature not to record its doings and profit from them, but to see what they can do about it and get out of it. Nature is no longer a finished vessel, whose fixed nature one must respect and the intent of the potter. Nature, no matter what shape it has, is clay to be broken and remolded responsibly and creatively, to one's heart's desire. A perfect example of the clash of the classical and modern mentalities precisely in their approach to nature is the recently departed contraception debate.

Another agent in the creation of the new concrete ethics is the concern for "the common man." The classical mentality of the West is second to none in recognizing the dignity of every individual man and every individual life. The dignity, however, was seen to surface in this-worldly experience only for a minority: the hero, the virtuous man, the sage, the mystic, the saint, the priest and nun. The dignity, therefore, of the individual life of the common man lay outside this-worldly experience, in his metaphysical nature imaging God, his history's being governed by loving divine providence, and his destiny with God after death. Each human life is a drama, but the average man escapes tragedy and makes his life a success if he reaches the end sufficiently obedient to God to still be in His favor. For the success and greatness and dignity of an ordinary human life, relatively unimportant were terrestrial happiness, richness of experience, clarity and depth of understanding, quality of motives, maturity of decision, degree of love.

In focusing exclusively on the this-worldly experience of the individual and making complete abstraction from God, the modern mind would seem to be trapped in a cul-de-sac in its efforts to establish the dignity of the common man and the drama of his life. The absorption with clear analysis of experience and the growing appreciation of the power of the sciences should have led back to Greek rationalism, an exaltation of the intellectual and a depreciation of the terrestrial life of the common man. With the Enlightenment, it did. But opposing

tain Scholastics of the late sixteenth and early seventeenth century went further, held that right reason could fully determine natural law, even if God did not exist or was not considered. Particularly influential was Gabriel Vasquez, *Commentariorum ac disputationum in Primam secundae s. Thomae* 2, disp. 150, c. 3, 22-26. Cf. Bourke, *op. cit.*, p. 152; Cathrein, *op. cit.*, pp. 394-95.

forces were at work, eventually obtaining the upper hand and lapidary expression by Rousseau and Kant.

Kant himself has vividly expressed his admiration for an indebtedness to Rousseau. It is to Rousseau that Kant owed his "belief in the common man." In a marginal note to the essay on the beautiful and sublime, he noted during this period: "I am myself by inclination a seeker after truth. I feel a consuming thirst for knowledge and a restless passion to advance in it, as well as satisfaction in every forward step. There was a time when I thought that this alone could constitute the honor of mankind, and I despised the common man who knows nothing. Rousseau set me right. This blind prejudice vanished; I learned to respect human nature, and I should consider myself far more useless than the ordinary working man if I did not believe that this view could give worth to all others to establish the rights of man." I *learned to respect human nature*: this central fact constituted the inspiration for that central concern with ethics which stands at the heart of Kant's fully developed system. Too frequently has Kant been considered primarily from an epistemological viewpoint, and his *Critique of Pure Reason* has been put into the center of things. The re-establishment of ethics as the central human concern is the real core of Kant's philosophy. This, in turn, explains why Kant could become the philosopher of peace *par excellence*. Rousseau stimulated Kant's thought immeasurably by directing the sharp scalpel of his analysis to the realm of the "inner experience."<sup>37</sup>

Kant and Rousseau discovered the nature, and therefore the dignity, of every man in a manner analogous to Newton's discovery of the whole universe. As he through outer experience, they through inner experience marked out the law ruling the interior life of man, i.e., his autonomy or "freedom," man as self-legislating and self-creating, and thus legislating and creating for all men as persons and ends in themselves. The vision still dominates the modern mind. The vision moves some, like Sartre and Nietzsche, in the opposite direction to Kant's and Rousseau's, namely, to despise the large number of men who in bad faith and weakly huddling together fail to exercise their freedom or even admit that they have it. Certainly, to discern the concrete form this freedom takes in the life of the ordinary man, to see to what extent and in what way he creates himself, is extraordinarily difficult. Much of the research of contemporary behavioral sciences and much of contemporary art attempt this discernment of spirits, yielding a picture of man and his self-creation more fleshed out and more pessi-

<sup>37</sup> Carl J. Friedrich, *The Philosophy of Kant. Immanuel Kant's Moral and Political Writings* (New York, 1949) pp. xxii-xxiii. The passage of Kant is in *Fragmente* (ed. Hartenstein 8, 264). The translation is Cassirer's as presented in *Rousseau, Kant, Goethe*.

mistic than Kant's and Rousseau's. Nevertheless, reverence for and love of this freedom, be it ever so tiny a spark, engenders the concrete ethics of the modern mind. It is what one respects unconditionally in a man. It is what one feels responsible to create and let grow in oneself and others.

The modern mind, therefore, sees man and his life, human good and human evil, by focusing principally on: (1) what is revealed in his experience of this world, (2) as the experience would be even if there were no God, (3) as it is shaped, or can be shaped, by man's technological power, (4) as it occurs in the lives of ordinary men, (5) as it is created by the unique self of the man, by his ongoing self-creation or freedom that is "I," by the creative interaction with "Thou."

The five elements, artificially abstracted and crudely expressed as they are above, operate not as premises of explicit reasoning, but as hidden principles energizing and directing the reach and grasp of the modern mind. They have brought about well-known shifts of moral sensitivity from medieval to modern times, e.g., to torture, freedom of speech, the sexual pleasure of married couples, war (What pontiff before the twentieth century cried "No more war!"). They have brought about new moral concerns and achievement, which, though they fall far short of what should be, go far beyond anything in the same area in medieval times: rehabilitation of alcoholics, drug addicts, the deaf and the dumb and the blind, stroke victims, etc., easing of emotional disturbance through psychiatry, psychology, and counseling, improving of labor and leisure of the working class, organized caring of the aged, the sick poor, the unemployed and their families, assurance for the accused of just treatment by police and courts, combating of racial and religious prejudice, economic aiding of developing nations, etc. It is not evidence that the modern mind is more moral than the classical, and the question is an idle one. But these and other examples of new moral sensitivity and action form a piece and illustrate the single eye of modern man: his resolute focusing on the this-worldly experience of the individual, his refusal or inability to look elsewhere to downstage that experience, his sense of responsibility for making and remaking this experience and for helping the individual do the same.

The focus makes clear why the modern mind sees vividly and reacts strongly to the experience of persons going knowingly to death in the war zone or in death row. It makes clear why for it there is no comparison between a fetus for which there is no sign of experience and a baby already in the process of experientially developing its unique per-



sonality and humanness in reaction to the persons around it.<sup>38</sup> There is, without doubt, a problem of "drawing the line" exactly where the experiential self-creating begins. The modern mind does neglect the problem and will have to face it some day. But to say there is a problem of drawing the exact line is not to say that there is a problem of indicating times when the reality is evidently on one side of the line or the other. The same problem is faced and responsibly met by both classical and modern mentality in determining when a human person becomes a corpse, especially in the necessity of transplanting organs before it is too late. At both the beginning and the end of human life, when there are positive reasons for doubt, the presumption must stand for there being present a living person.

A focus of this sort, whether classical or modern, is never intellectual insight alone, but involves will, emotions, imagination, language, etc., and therefore multiplies the difficulty of debate or dialogue. Abstractly speaking, one can agree to define any word in any way. But a word like "humanity," for example, stands for so much concrete lived involvement of the whole person who has one mentality, that he cannot use it meaningfully in the sense of one having the other mentality and thus cannot understand what he is saying. But if one avoids loaded terminology, perhaps an antiabortionist could come to some understanding why the modern focus, sketched in the five elements listed above, reacts as it does when confronted with the death of a fetus, whether it be by miscarriage or stillbirth or indirect abortion permitted by the classical tradition or by direct abortion. The reaction will usually be at least a little sad. There might have been this unique person, but there never will be. The reaction will often be quite sad. These parents wanted the child to be born and live with them in love; the child would have been fortunate in life and love; the common creating by the parents had progressed so far, only to come to naught. Or the reaction can be one of moral anger or disgust: the child did not come to be simply and only because a child was not wanted.

<sup>38</sup> John Noonan seems to be criticizing this view, as advanced by some participants at the International Conference on Abortion sponsored by the Harvard Divinity School in Washington, D.C., Sept. 8-10, 1967. He writes: "This distinction is not serviceable for the embryo which is already experiencing and reacting. The embryo is responsive to touch after eight weeks and at least at that point is experiencing" ("Abortion and the Catholic Church: A Summary History," *Natural Law Forum*, Spring, 1969, p. 127). Noonan's concept of experience is one with which I am not familiar. It is not the philosophic or humanistic one that involves consciousness or awareness. It simply does not follow from physical response to touch (whether the response be of plant, fetus, or human adult) that there is psychological awareness of the touch or response. In fact, the human adult is normally unconscious of many of his reflex reactions to stimuli.

But in no case can the modern mentality react to the death of a fetus as it does to the death of a human person. To choose examples from the newspapers: the death of Dwight Eisenhower or John Kennedy, of a neighbor's son in Vietnam, of a young couple in a head-on collision, of a drug addict hanging himself in prison. The reaction can range from acceptance and grateful, admiring farewell to a numb refusal to admit that it happened. But it has little in common with the reaction, painful though it may be, to the death of a fetus.

If the above analysis of the modern mind and its necessary view of abortion were correct, what would follow? At least two practical conclusions. The position of abortionists in our society could be seen as an inseparable component of a total outlook, held by many people and to be with us for a long time. There is no reason to doubt that people who have this outlook share in universal human weakness and, like the rest of men, will show themselves at times hypocritical, superficial, selfish, choosing the easy way out. But their position on abortion arises organically out of their strength, a responsible, intelligent, moral synthesis that has served the nation well, whatever be its limitations and drawbacks. The laws of the nation should treat these men with their views as a mature segment of a pluralistic society. The law should not prohibit their carrying out their basic moral convictions.

The second practical conclusion could be drawn by certain Christians, particularly Roman Catholics, who do not see their way clearly in the matter of abortion. A Catholic internist, knowledgeable in traditional Catholic morality, told me that when abortion is medically called for because of the treatment required for an organ, he refers the woman to a Jewish colleague. A religious superior, who has never publicly endorsed abortion, phoned recently for information to aid a young woman of his acquaintance to obtain an abortion. Would either have acted this way if they believed abortion was murder? And yet they do not feel free to act more positively. I would suggest that many Roman Catholics of the present historical juncture are ethically schizophrenic. They have two opposing mentalities, classical and modern, and are torn between them and tend to compromise. Abortion is far from being the only question where this occurs. They welcome much of contemporary insight, abandoning classical theses on the intrinsic evil of contraception, on the superiority of Christian celibacy to Christian marriage, on the necessity of "restoring the order of justice" by capital punishment, on the acceptability of torture, on the value of Latin in the liturgy, on the importance of freedom of conscience, etc., etc. They do not seem to appreciate that these are not isolated changes of opinion, but that in making them they are acting

out of and nurturing a new mentality that can only move vitally to new stances on other questions, such as abortion. Recognizing the new mentality as a whole for what it is may aid them to decide whether to open peacefully to accepting it as a whole or resolutely to reject it as a whole. Putting new wine in old bottles renders disservice to God and country.