

NOTES

ABORTION AND THE DUTY TO PRESERVE LIFE

Abortion and the Roman Catholic Church, by Susan Teft Nicholson, is a critique of the position the Roman Catholic Church has taken on abortion.¹ The second part of this criticism is based on the assumption that for Roman Catholicism the fetus is a human being right from conception and that this is key to the whole Catholic position on abortion.² The author maintains that even if one accepts this assumption, the teaching of the Roman Catholic Church is indefensible, at least in regard to therapeutic abortion, abortion after rape, and abortion of seriously defective children. Whether she would like to make any other exceptions she does not say, but if one followed her logic to its conclusions, it would be difficult to rule out other exceptions.

BEGINNINGS OF HUMAN LIFE

Before discussing her argument proper, one has to question Nicholson's assumption that the Roman Catholic position is that the fetus is a human being right from the moment of conception. She concedes that this has not always been the position of the Church, but claims that it is the Church's present teaching. It is quite true that many Catholics and theologians (including myself) defend this position, and that from the middle of the seventeenth to the middle of the twentieth century it became and continued to be the prevailing opinion; but the Church itself has never taken an official stand on the presence of human life in the fetus from the moment of conception.³

In the seventeenth century the Church did indeed condemn the opinion

¹ Knoxville: Religious Ethics, Inc., 1978.

² The first part of this monograph is a critique of the Church's condemnation of abortion as a "sin of sex." The reader will find in this part considerable animosity toward the Catholic tradition, more than he may feel comfortable with in a scholarly publication. One who knows and respects this tradition may also find it offensive. I have chosen to bypass this part of the monograph, largely because I did not want to get bogged down in correcting the simplifications and misstatements I found there. This would have been very space- and time-consuming, and not very rewarding. The author, moreover, used only secondary sources, so a critique might have developed into a critique of these sources. I decided it would be more profitable to confine myself to the second part of the monograph.

³ Vatican II, in the document on the Church in the Modern World, bypassed the question of the time of infusion of the human soul by using the expression "from the moment of conception" (Responsum 101a). See Herbert Vorgrimler, ed., *Commentary on the Documents of Vatican II* 5 (Freiburg: Herder and Herder, 1969) 243. The recent *Declaration on Procured Abortion* (Vatican City: Typis Polyglottis Vaticanis, 1974) no. 13, note 19, leaves aside the question of the time of infusion of the human soul, stating that there is no unanimous tradition on this point and that disagreement still exists.

that the fetus is not infused with a human soul until birth.⁴ One can legitimately conclude from this that the Church considered the fetus a human being while still in the womb. But one cannot conclude from it to teaching that the human soul was infused at conception. It is inconceivable that the Church at that time would have condemned the Aristotelian and Thomistic opinion that the human soul was not infused until the fetus was formed. This position had been accepted in Church practice for several centuries and at the time of the above condemnation was still widely held. One must admit that the distinction between the formed and unformed fetus was dropped from the penal law of the Church in the middle of the nineteenth century, but it would be a mistake to interpret this as reflecting Church teaching.⁵ Church legislation is frequently based on the common convictions of the times. In dropping the distinction, the Church was reflecting what was then the more recent thinking about the time of animation in very much the same way it was reflected in civil legislation in the Western world, including the United States.⁶

One can grant that today, as in the past, the Church would look upon later abortions as homicide. But its condemnation of abortion has never been linked to teaching about the time of infusion of the human soul. It is a mistake, then, to claim that this is key to its position on abortion. In one sense, however, although they were not considered homicide in the strict sense, early abortions were always related to homicide. As Tertulian said, "He is a man who will be a man . . .," and it does not make any difference when you take his life. He referred to early abortions as anticipated homicide.⁷ Others spoke of preventive and imperfect homicide, etc. St. Thomas spoke this way even in connection with interfering with the generative function.⁸ He did not condemn it, as some charge, because it involved some unnatural use of the faculty. As he said, this might not be wrong at all, like walking on one's hands. What made it seriously wrong was that it involved interference with the faculty for the transmission of life. It was not as bad as actually destroying human life, that is, homicide, but to him it would have to be classified right after it (*secundo loco*). It is quite safe to say, then, that although early abortions might not have been classified as homicide in the strict sense, in the eyes

⁴ *Bullarium Romanum* 8 (Rome, 1734) 81, Trigesimo quinto.

⁵ ASS 5 (1869) 298. This was done during the pontificate of Pius IX.

⁶ It was at this time that the distinction based on "quickening" began to disappear from English and American law. Initially, "quickening" was related to the Aristotelian and Thomistic notion of the time of animation (with a human soul) and was identified with the formation of the fetus, but in English and American law it somehow became associated with the mother's experience of fetal movements within her—which took place at a later date and was often ambiguous.

⁷ *Apologeticum* 9, 8 (CSEL 64, 25).

⁸ *Summa contra gentiles* 3, c. 122.

of the Church they were closely related to it. Right from the time of conception the fetus had a human destiny, and this made it sacred.

CHURCH AND THERAPEUTIC ABORTION

Nicholson admits that progress in medical science has all but eliminated the need for therapeutic abortion (and craniotomy). This makes the discussion of that particular problem largely theoretical. But one cannot rule out an occasional need for such abortion, however rare it may be, and so the discussion may have some practical bearing.

In beginning her discussion, Nicholson says that although many people may think this, the Catholic Church does not outlaw all therapeutic abortion; it allows some and condemns others. There is some truth to this statement. The Church does allow what are sometimes called indirect abortions to save the life of the mother. But whether these should be called therapeutic abortions can be seriously questioned. The abortion in the cases allowed is not really the *therapy*. The therapy is the removal of some diseased organ (e.g., a cancerous uterus). It would seem more accurate to limit the term "therapeutic abortion" to those cases in which the abortion is the therapy. It is not quite true, then, to say that the Church allows some therapeutic abortions. What it has allowed are abortions incidental to other therapy.

The author presents four cases of therapeutic abortion (in her sense of the term). They are pretty much the classic cases which authors have used for illustrative purposes for many years: the cancerous (pregnant) uterus, the ectopic pregnancy, the pregnant woman with a serious heart disease, and the case where craniotomy is called for to deliver the fetus. She recognizes the fact that the last case is not really a case of abortion, but uses it because the problem is the same. She says rightly that Catholic theologians have traditionally allowed the removal of the cancerous (pregnant) uterus, and the pathological (pregnant) fallopian tube; they have not allowed abortion to solve a heart problem or craniotomy to solve a delivery problem threatening the life of the mother. Nicholson explains the difference in solutions by the principle of double effect. She spends some time explaining this principle and the conditions for its application, and then reaches the conclusion that in the cases presented the crucial condition is that the act from which the two effects follow must be good or at least indifferent. She feels that all the other conditions of the principle are fulfilled in all four cases. I would tend to agree, at least basically, with this analysis.

At this point, however, she reduces this condition to a requirement that the treatment be "standard." If it is standard treatment, the act is good or at least indifferent; if it is not, it is bad. She then describes standard treatment as that in which the death of the fetus results from

medical treatment employed to modify life-threatening situations which can occur apart from pregnancy, and which if they did would call for similar procedures. I am not sure that this distinction between standard/nonstandard treatment adds any clarity to the discussion, but in making it she gives a good measure of importance to a rule of thumb which theologians sometimes use to distinguish "direct" from "indirect" abortions. The rule is that if the treatment would be given to a nonpregnant woman, it can be considered permissible. I am afraid that she has been distracted from the main issue by this rule. The main issue is whether the abortion itself is the therapy or whether something else (removal of a cancerous uterus, etc.) is the therapy. The rule is simply meant to be an aid in making this judgment.⁹ At any rate, she finds the rule morally irrelevant. The fact that the surgery would be done even where no pregnancy existed makes no difference. The truth is that in this case the uterus is pregnant and the fetus is removed just as effectively as it is in the abortions the Church condemns. In both cases the fetus dies. If the Church is going to condemn some therapeutic abortions, then it should condemn all; otherwise it is inconsistent.

DIRECT AND INDIRECT KILLING

To understand the Catholic position and the basis for the distinction it makes between direct and indirect abortions, it might be helpful at this time to offer a little background. Questions of life and death have always exercised Catholic moralists and theologians. They have always subscribed to the commandment "Thou shalt not kill!" On the other hand, they have always been aware that it is impossible and unreal to expect to prevent all deaths resulting from one's actions. If the obligation extended to this, there would be very few things a person could legitimately do. As St. Augustine said, one could not plant a tree or put windows in a house.¹⁰ Someone might hang himself from the tree or fall out of the window and kill himself. How does one, then, observe the precept regarding killing and lead a normal life? The biblical book Deuteronomy offers an example which throws some light on the subject.¹¹ It presents the case of a man who was chopping down a tree when the head of his axe fell off and killed a man passing by. Was the man who was chopping down the tree responsible for killing the passer-by? The assumption in the Scriptures was that he was innocent and should be given asylum. Later theologians discussing this and similar cases argued that as long as what he was doing was licit and there was no neglect on his part, a man would not be

⁹ The rule provides a way of testing whether the abortion is the therapy or only something incidental to the therapy.

¹⁰ *Ep. 47, Ad Publicolam* (PL 33, 187).

¹¹ Deut 19:1-7.

responsible for any death that occurred as the result of his act.¹² So one would not, for example, have to forgo cutting down trees in the future for fear of taking another's life.

Nicholson might well complain that this analogy is far from the case of indirect abortion under discussion. But it does make it clear that one cannot conclude to wrongdoing simply from the fact that someone's death results from one's actions. In the Deuteronomy case the other person's death was obviously not intended; it was not even foreseen, at least *in individuo*. Over the centuries theologians began to consider cases in which the killing was foreseen, and even with certainty. They were still able to see a distinction between these cases and one in which the life of another person was intentionally taken. Admittedly, killing which is foreseen and certain comes closer to intentional killing than that which is not foreseen or at least not certain; but these theologians can still see a distinction and think that it makes a difference. It is still the distinction between killing which is intentional and killing which is not intentional but results from an otherwise legitimate act. It was precisely to work out the morality of situations involving such evil effects that the principle of double effect was devised. Ultimately, if she does not want to accept this basic distinction, Nicholson will be faced with a very circumscribed field of activity.

This is the distinction that Catholic theologians have applied to abortion to separate out those that were intentional from those that were incidental to some kind of therapy. If it was the removal of the fetus itself that solved the mother's problem, it was considered intentional and a violation of the precept not to kill. If, however, the means of saving the mother's life was not the removal of the fetus but the removal of a diseased organ, the removal of the fetus was not considered intentional, and hence forbidden, killing, but the unavoidable result of a perfectly legitimate procedure. Catholic theologians do, of course, demand a greater reason for removing a pregnant uterus than a nonpregnant uterus, and so they are not overlooking the pregnancy, as Nicholson seems to imply. What they are saying is that there is a morally relevant distinction between removing a cancerous uterus (although pregnant) and removing a fetus. Nicholson perhaps may feel that these theologians have gone too far, and may want to argue that the abortion in some of these cases is really intentional. But if she accepts their assumption, she can hardly question the distinction they make or accuse them of inconsistency. They are perfectly consistent in making the distinction they make between the four cases she presents. In two of the cases the abortion is incidental to

¹² For the traditional formulation of the norm, see St. Thomas, *Summa theol.* 2-2, q. 64, a. 8.

the therapy; it is therefore not intentional. In the other two the abortion or destruction of the fetus is the therapy; it is therefore intentional and a violation of the precept.¹³

ABORTION AFTER RAPE

Having satisfied herself that the principle of double effect cannot be used to make morally relevant distinctions between abortions to save the life of the mother, Nicholson drops the subject for the time being and takes up abortion after rape. She will find in this discussion material relevant to the discussion of therapeutic abortion and eventually return to it.

Her general thesis is that the Catholic claim that it gives the fetus the same protection that is given the child after birth is not true. She makes the charge that Catholics give the fetus more protection than they give a person after birth. The assumption seems to be that it is wrong to do this. We will not examine the assumption, but only the charge. In establishing her position regarding rape, she uses Judith Jarvis Thomson's hypothetical case of the dying but unconscious violinist who has been attached to a sleeping person by a third party.¹⁴ Without the life support the violinist gets from this person he would die. Thomson argues that since he was connected to the violinist without his consent, the support person has no obligation to continue this support and may legitimately be disconnected. Nicholson accepts this position and argues from it that there are circumstances in which it is morally permissible to kill an innocent human being.

Catholic theologians would probably agree that the support person is under no obligation to continue this support, but would undoubtedly want to address Nicholson's interpretation of the case as an example of a situation in which it is permissible to kill an innocent person. They might not be so willing to concede that that is a case of killing rather than letting die. But even if they were to grant this, they would still feel that the use of the word "innocent" here is somewhat ambiguous and could be misinterpreted. When Catholic theologians condemn killing an "innocent" person, they are using the term in its basic meaning, *non-*

¹³ The kind of consistency Nicholson is calling for could be achieved in one of two ways: either condemn all abortions to save the life of the mother or allow all of them. Nicholson would undoubtedly prefer the latter. Some Catholic theologians are willing to do this, although not on the basis of her argument. The only point we are making here is that the distinction Catholic theologians have traditionally made between intentional and incidental abortion is a morally relevant one, even though a death occurs just as inevitably in the latter as in intentional abortion. The alternative to accepting this distinction is an intolerable limit on human activity.

¹⁴ "A Defense of Abortion," *Philosophy and Public Affairs* 1 (1971) 47-66.

nocens. What it means in this sense is that it is wrong to kill another person unless he is engaged in unjust aggression. They are not using the word "innocent" in the sense of "not guilty." Self-defense against unjust aggression is permissible even though it may result in the death of the aggressor and even though the aggressor may not be guilty (because he is insane or drunk or unconscious). In allowing the support person to disconnect himself, what they are allowing is self-defense against unjust aggression. They are not allowing the killing of a person who is innocent in the sense that he is not an aggressor. So they would not agree that the violinist case is an example of a situation in which it is permissible to kill an innocent person in the sense of the general condemnation. They would consider the violinist an unjust aggressor, even if only a material aggressor, and allow the support person to defend himself against the attack even though it might mean the life of the aggressor. Without this clarification Catholic theologians would not feel at all comfortable with Nicholson's interpretation of the case.

Nicholson admits that there is one big difference between the violinist and the pregnancy-after-rape case: the ovum belongs to the mother; but she maintains that this makes no difference. She illustrates her position with a case in which a fertilized ovum is artificially implanted in the mother without her knowledge. Since it was her ovum, there would be a genetic relationship there. According to Nicholson, however, everyone would agree that under the circumstances the mother would have no obligation to support the fetus even though genetically related to her. She then applies this to the fetus who is the product of rape. If one wants to be consistent, he should allow the abortion of the fetus, that is, the termination of its life support by the mother. In response to this argument, Catholic theologians would undoubtedly deny the parallel between the violinist case or the implanted-fetus case with the rape case, but this will be discussed more thoroughly in dealing with Nicholson's response to objections against her thesis.

RESPONSE TO OBJECTIONS

Nicholson applies herself then to responding to certain objections that might be made against her thesis. The first is that there is a difference between an abortion and removing the life supports of the violinist; it is the difference between killing and letting die. Nicholson considers both to be cases of killing, but she is willing to describe abortion as killing and removing life supports as letting die. She seems to feel that those who want to make this distinction want to show that in the rape case the implantation was not a human effort to keep the fetus from dying (as was

hooking up the support person to the dying violinist).¹⁵ Since the violinist was already dying when he was hooked up, it would be easier to refer to unhooking him as letting him die. The same could not be said of the rape case. Nicholson falls back on her analogy with the artificially implanted fetus to clarify the relationship. The fetus is clearly implanted in this case to save its life, and so one could say that an abortion would involve *letting the fetus die*. Nicholson argues then that even if one wants to regard abortion in this case as letting die and abortion after rape as killing, the moral judgment should be the same. She does not find it plausible that one judge the former to be permissible, the latter impermissible.

Catholic theologians have traditionally considered abortion killing, but they would tend to agree with Nicholson that the distinction between killing and letting die may not be all that relevant in these cases. They would see the basic question here one of unjust aggression. And if there is unjust aggression, they allow even killing. I think they would agree that in the case of the violinist there is unjust aggression, even though it is only material in his regard; he is in no way guilty. There would also seem to be unjust aggression in the implantation of the fetus without the knowledge and will of the mother. But Catholic theologians have always maintained that although a pregnancy occurs after rape, the fetus itself cannot be considered an unjust aggressor—even a material aggressor. One may want to question this position, but given the fact that these theologians held it, one can hardly accuse them of being inconsistent. They would certainly be inconsistent if they held that the fetus was an unjust aggressor and then forbade abortion. In this case they would also and obviously be giving the fetus more protection before birth than they would give to someone who was an unjust aggressor after birth.

Is their position that the fetus is not an unjust aggressor a defensible one? I think there are good and solid reasons for it. If the rapist himself had brought about the fertilization of the ovum and its implantation, the parallel with Nicholson's case would be closer, and one could argue that the fetus was an unjust aggressor. One might even be able to make a case if pregnancy automatically followed intercourse, which set into motion a series of causes that would inevitably result in pregnancy. In this situation it would be easier to look upon the pregnancy as the continuation of

¹⁵ The distinction between "killing" and "letting die" does not depend on whether the patient was already dying. It depends more on whether the agent really causes the death of the patient. Even if the patient was already dying, one might still kill him by injecting an air bubble into his circulatory system. Whether an act is killing or letting die, therefore, depends on what the agent does, not precisely on the status of the patient. It is because abortion causes the death of the fetus that it is considered killing.

aggression. But given the fact that other causes intervene, and that the incidence of pregnancy after rape is so minimal, it becomes less plausible to consider the pregnancy a continuation of the aggression. If a pregnancy occurs after rape, it is due to a coincidence of causes over which the aggressor would have no control. In reality (if one can argue this way at all), it might be easier to show that the fetus is more of a victim than an aggressor.

Nicholson thinks that a second objection to her thesis might come from the parental relationship between the fetus and the mother in the rape case. This would make it different from the violinist case and might found an obligation to support the fetus. Nicholson argues that the mother cannot be considered a parent according to ordinary norms, and hence denies any parental obligation. Catholic theologians would more likely consider the raped woman as mother or parent of the fetus, but would not look upon this as pertinent if the fetus was really an aggressor. Even if one is attacked by a son or daughter (after birth), one has the right to defend oneself. So a genetic relationship with the fetus would not preclude the right of the mother to defend herself. But even if the fetus is not an aggressor, the basic obligation according to Catholic theologians would still not be parental. It would be the obligation of any human being not to take the life of another human being. The parental relationship would add a new dimension, making it parricide rather than homicide, but it would not be the basis of the original condemnation.

The third objection Nicholson deals with stems from the obligation that falls on one who finds an abandoned child to come to its assistance. If one has such an obligation to a child after birth, why not before birth? The issue here is simply the obligation one has in charity to help another in need if this can be done without great hardship. Nicholson concedes an obligation to help an abandoned child under these circumstances, and even over a long period of time, if no one else is available. But she does not admit the parallel with the rape case. Providing bodily life support is quite different from feeding. The general obligation to provide minimal assistance to one in distress does not require that one be hostess to a parasitical physical relationship.¹⁶ The latter involves an invasion of one's body. Catholic theologians would agree with Nicholson that if the obligation were simply one of charity, the mother in a rape case might not be

¹⁶ If one could substantiate unjust aggression, one might be able to justify considering the fetus resulting from rape a kind of parasite. Nicholson, however, seems to look upon all fetal relationships to the mother as parasitical. This leaves the impression that pregnancy is a disease caused by the presence of some foreign body in the mother which is undermining her health. This attitude overlooks completely the teleology of the woman's generative organs. The uterus is made to carry a fetus. When it does so, it is fulfilling its function; it is not playing the role of victim.

obliged to continue support of the fetus if it became a severe burden. But they have always rested their stand on the assumption that abortion involves more than just failing to relieve fetal need. They have considered it killing, and therefore a violation of justice rather than charity.

Nicholson's basic approach in dealing with abortion is that it is essentially a termination of life supports. She is willing to consider this killing, but to her it is a special type of killing. It differs from killing which does not involve such termination but is accomplished in some other way. It is easier to take this approach if one is dealing with abortions in which the fetus is removed before viability in much the same way it would be removed or delivered after viability. There may seem to be no attack on the fetus itself and, in appearance, it may look like nothing more than termination of life supports. But D & C and saline methods of inducing abortion clearly involve more than this; they are really destructive of the fetus. This is the fourth objection Nicholson thinks might be raised against her thesis. She makes a concession here in favor of a fetus already viable; she does not allow destructive methods in these cases unless no conservative method is available. But if the fetus is not viable, and hence will not survive anyway, it does not make any difference to her whether the method of inducing abortion is conservative or destructive. Ultimately, what she seems to be saying is that if there is no longer an obligation to conserve a life, it is all right to take it. Catholic theologians have never accepted such a principle whether before or after birth. They have never agreed, for instance, that if it is permissible to turn off a respirator, it is all right to inject an air bubble into the person's circulatory system, or take a gun to him—even if he is not going to survive.

In concluding the discussion of abortion after rape, it should be mentioned that Nicholson does not condone intending the death of the fetus. What she argues for is termination of life supports, not intending death. She admits, however, that many raped women really want the death of the fetus. Catholic theologians would not consider not intending death a redeeming feature, except perhaps in a context of self-defense.

From this lengthy discussion it should be clear that Nicholson's charge that Catholic theologians give the fetus (at least in the rape case) more protection than they do the child after birth has no valid foundation. The charge would be valid only if Catholic theologians agreed that the fetus was an unjust aggressor and then rejected abortion. Since they do not, there are no grounds for any charge of favoritism. Nicholson may not agree with the position these theologians take, but she can hardly charge them with favoring the fetus or giving it protection they do not give to the child after birth. They give the fetus the same protection they would give any innocent person before or after birth.

THERAPEUTIC ABORTION

Nicholson continues to make use of the violinist case in pursuing her argument for therapeutic abortion. To tighten up the analogy, she supposes that the woman's own child has been attached to her and that she has agreed to this. If a life-threatening situation arises for the mother in these circumstances, Nicholson argues that the mother is not obliged to continue the life supports even if they will save the child but at the expense of her own life. She then goes on to show that Roman Catholic theologians would also have to admit this according to their distinction between ordinary and extraordinary means. If they allow parents to forgo means that are too expensive, they would certainly have to allow forgoing means that involve a threat to the mother's life. Although she does not say this, I presume she would allow the use of a destructive means to achieve this goal, if there was no other way for the mother to save her life, or if the child would die anyhow.

She applies all this to abortion and concludes that if Roman Catholic theologians want to be consistent, they must allow this too in a life-threatening situation. She repeats the proviso made in the rape case that if the fetus is viable a destructive procedure would not be allowed unless it was the only way of saving the mother's life or if the fetus would die anyhow. She is aware too that the analogies do not cover the craniotomy case; the problem there is not simply one of terminating life supports. It is one of blockage, and the solution (at least in part) was a destructive one for the fetus. But she words her norm in such a way that it will cover this case as well. What it comes to is this: in a life-threatening situation a mother has no further obligation to the fetus; she may do whatever is necessary to remove the threat.

As in the rape case, Nicholson rests her whole argument on the obligation to preserve life and its limits. Again, it is not that she denies that killing occurs in these cases, especially where destructive methods are used. Her position is rather that if one's obligation to preserve life ceases, killing is permissible. The distinction between killing and letting die becomes irrelevant. To her, the only time killing is wrong is when it is not associated with legitimate termination of assistance or with the obligation to preserve life.

If Roman Catholic theologians accepted Nicholson's analysis of the fictitious case she presents and the analogy with abortion, they would certainly be inconsistent in not allowing therapeutic abortion. It is safe to say that even if they accepted her moral analysis of the case itself, they would deny the parity with abortion. They have never been willing to look upon abortion as termination of life supports. Neither have they been willing to look upon it solely in terms of the mother's obligation to preserve the life of the fetus. So they would deny the parity also with the

case of the parent failing to rescue her child from a burning building. They have always distinguished between the obligation to preserve life and the obligation not to take a life, and they have always identified abortion with taking a life. It is for this reason that they condemned it. It is for this same reason also that they condemn what is sometimes called active euthanasia. Even in a situation in which it is permissible to remove life supports, it is wrong to take the life of the dying person. Nicholson can arrive at her conclusion only by collapsing the obligation not to kill into the obligation to preserve life. Catholic theologians would find this unacceptable. They have never subscribed to the norm that where there is no obligation to assist, it is all right to destroy. The only principle they accept is: if there is no obligation to assist, it is permissible to terminate assistance.

Nicholson keeps insisting throughout her monograph that the killing that takes place is basically a termination of life supports by the mother, and that therefore it can be reduced to the obligation of the mother to preserve the life of the fetus. She claims that Catholic theologians have failed to attend to this aspect of the problem. Presumably, this failure accounts for their refusal to allow therapeutic abortion. It is quite possible, and understandable, that the theologians consulted by the author did not discuss abortion in terms of the obligation of the mother to preserve the life of the fetus. But many theologians have dealt with this aspect of the problem. As far back as the sixteenth century, Gabriel Vasquez, a Jesuit theologian, allowed the use of treatments (bloodletting, hot baths, etc.) aimed at relieving some ailment of the mother, arguing that the obligation to preserve the life of the child would not prejudice the use of such treatment when necessary to preserve the mother's life.¹⁷ Lugo, another Jesuit theologian, took up the same case and argued explicitly that the mother need not forgo life-saving treatment to preserve the life of the fetus.¹⁸ But both of these authors had already ruled out induced abortion or treatment aimed at abortion to save the mother's life. The mother's obligation to preserve the fetus was a secondary consideration; it became pertinent only after it was clear that the treatment under consideration was not aimed at abortion or killing the fetus. Once they were satisfied that this was not the case, the only thing standing in the way of such treatment would have been the mother's obligation to preserve the life of the fetus. And all were agreed that if the mother's life was at stake, this obligation would cease. So these authors and their followers dealt both with the obligation not to kill and with the obligation to preserve the life of the fetus, but as distinct obligations. The latter obligation did not become a consideration until it became clear that

¹⁷ *Opuscula moralia, De restitutione* 3, par. 1, dub. 7, n. 27 (Lyons, 1631).

¹⁸ *Disputationes scholasticae* 6, d. 10, s. 5, n. 131 ff. (Paris, 1868).

intentional abortion was ruled out. As already indicated, what is new in Nicholson's approach is not the appeal to the limits of the obligation to preserve the life of the fetus, but the collapsing into it of the duty not to kill. Catholic theologians have never been willing to do this.

There were some Catholic theologians in the nineteenth century who argued for therapeutic abortion, and even for craniotomy or embryotomy. One finds a defense of therapeutic abortion to save the life of the mother in the works of Gury, at least those editions annotated by Ballerini, and in Lehmkuhl. There is an appeal in Gury-Ballerini to the limits of the obligation to preserve the life of the fetus, but this was only after they had argued that therapeutic abortion did not involve direct killing.¹⁹ They claimed that in therapeutic abortion the doctor did nothing more than he would have done at birth: deliver the child; this was a good or at least indifferent act. These theologians would not allow a destructive procedure, since this was direct or prohibited killing. They maintained that previous theologians outlawed therapeutic abortion as such because all the methods used were destructive. It was because this was no longer the case that they were arguing for their opinion. Lehmkuhl stated very clearly that where the mother's life was at stake, the obligation to continue to support the fetus would certainly cease.²⁰ But, he continued, the difficulty is that abortion involves more than this. He himself tried to show that if it was done, for instance, by puncturing the amniotic sac, it would not be an attack on the fetus itself, and hence not direct killing. He refused to allow any direct attack on the fetus, such as took place in craniotomy.

Those who argued for craniotomy or embryotomy were not able to take advantage of the arguments of the above authors, since these were obviously destructive procedures. They argued rather that the fetus in a life-threatening situation is an unjust aggressor (material), and that

¹⁹ *Compendium theologiae moralis P. Ioannis P. Gury, S.I., et auctore recognitum et annotationibus A. Ballerini, S.J., locupletatum* (7th ed.; Rome, 1882), "De quinto praecepto," no. 402, adnotationes 382-84. These authors dealt with a case in which the alternative was the death of both mother and fetus. They referred to the procedure as *acceleratio partus* (premature delivery) rather than abortion, to emphasize the fact that no attack was made on the fetus itself. The fetus was simply moved from a place in which it could not continue to live to a place where it could not survive. They argued that the procedure was justified because it saved the life of the mother, and although it shortened the temporal life of the fetus, the shortening was only minimal and there would be greater assurance of the eternal welfare of the fetus (since baptism could be administered more certainly). Their opponents considered the procedure lethal (direct killing). They compared it to taking a dying man from his bed and throwing him into a river or into a fire—a medium in which he could not survive. They also compared it to putting a person into a sealed room from which all the oxygen had been removed.

²⁰ *Theologia moralis* 1 (Freiburg: Herder, 1883) 499-500. After the condemnation of this opinion by the Holy Office, Lehmkuhl retracted it. See *Editio nona* (1898) 501-02.

therefore the mother could defend herself even if this meant taking the life of the fetus.²¹ Another argument they used was that in these cases craniotomy or embryotomy was not wrong because the death of the fetus was not intended—only the life of the mother. They were arguing on the basis of the norm St. Thomas set down for self-defense, even though they did not consider the fetus an unjust aggressor. To apply the norm to this case, they had to extend its use to innocent people (i.e., nonaggressors).²²

There is, then, on the part of those who argued in favor of craniotomy and therapeutic abortion, as well as those who opposed these procedures, a recognition of the fact that the basic question is whether they constitute killing the fetus. Once this question was answered, the mother's obligation to preserve the life of the fetus either lost its significance (if intentional killing was involved) or else proved no obstacle (if intentional killing was not involved). This may well have been the reason that recent authors mentioned by Nicholson did not refer to this aspect of the problem.²³ But since they never considered abortion just a termination of life supports, Catholic theologians can hardly be accused of inconsistency if they did not resolve the abortion problem on that basis. Nor can they be accused of favoring the fetus (in comparison with the child after birth). Favoritism or discrimination can be charged only when people are treated differently without justifying reason. It would apply here only if Catholic theologians admitted that abortion was nothing more than a termination of life supports and then condemned it before birth while allowing it after birth.

EUGENIC ABORTION

In the final chapter Nicholson goes on to the defense of abortion of defective fetuses. In order to ease her task, she limits herself to cases where this is done in the interests of the fetus. She will not assume the burden of defending abortion for familial or societal reasons. She sees a difference, however, between eugenic abortion and those she previously defended, since in eugenic abortion the mother intends the death of the child. She feels that this intention can be justified in this case, since, at least as far as she wants to defend this kind of abortion, it is done in the best interests of the child. In the previous two cases she would not allow it, since those abortions were rather in the interests of the mother. But she argues from analogy in this case just as she does in the previous cases.

²¹ E.g., Daniele Viscosi, *L'Embryotomia* (Naples, 1879). For a fuller treatment of this subject, see John R. Connery, S.J., *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola University Press, 1977) 225-83.

²² *Summa theol.* 2-2, q. 64, a. 7.

²³ Recent Catholic theologians have tended to look upon saving the life of the mother (good effect) more as a proportionate reason to balance the loss of the fetus (bad effect) rather than as an *excusing cause* limiting the mother's obligation to preserve the life of the fetus.

Here the analogy is with a person who has been told that he will die unless he submits to treatment and surgery that will remove or destroy arms, legs, and nerve tissue, leaving him with a normal life-expectancy but completely helpless, blind, deaf, etc. He judges that he has no moral obligation to undergo such treatment even though his life is at stake. He also judges that he could make the same decision for his four-year-old daughter if she were in a similar position. But suppose he is confronted with a newly born son who is delivered with the same handicaps. He would like to make the same decision and have his son removed from the incubator.

According to Nicholson, Catholic theologians would agree with the first two decisions but not with the third. They would point out that in the first two decisions death was only foreseen, not intended, as the consequence of the decision. In the third, death was intended, since it was precisely by death that a long life of suffering was avoided.

It is not at all clear why death had to be intended in the third decision and not in the first two decisions, but even if it was, Catholic theologians would not have considered it the real issue. The real question was whether incubation in this case could have been considered extraordinary means. Unfortunately, Nicholson simply bypasses this aspect of the case. Catholic theologians who would rule out removing the fetus from the incubator in the third case would do so because they would consider incubation, at least if it was short-term, an ordinary means of preserving life. And they would do this even if death was not the intention. But even if the case was different and they allowed the child to die because the means of saving his life were genuinely extraordinary, they would still deny the parallel with aborting a defective fetus. They would again fall back on the distinction between the obligation to preserve a life and the obligation not to take a life, and on this basis would deny the analogy between the two cases.

CONCLUSION

To conclude briefly, although perhaps repetitiously, Nicholson has failed to show up any inconsistency in the approach Catholic theologians have taken traditionally to the three cases of abortion she discusses. The alleged inconsistencies were based on an assumption which Nicholson makes but which Catholic theologians never accepted: that the moral problem was limited to the obligation to preserve the life of the fetus. Catholic theologians have always regarded the problem of abortion as one of taking a life and have never felt that this could be reduced to that of preserving life. They can hardly be accused of inconsistency, then, if they do not judge the morality of abortion on the latter basis. They would be inconsistent only if they accepted Nicholson's analysis of abortion and

then condemned it. One can deny, too, that they give more protection to the fetus than to the child after birth. They have always refused to look upon birth as a moral dividing line, whether in favor of the born or the unborn. If different judgments are made, the basis for the difference is not whether the child is born or unborn; it is whether the case involves taking or preserving a life. Nicholson may not like this position, but Catholic theologians would be no more willing to collapse the obligation not to kill into the obligation to preserve life than they would be to convert the obligation to preserve life into the obligation not to kill, condemning every failure to preserve life as killing.

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