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WATERLOO LUTHERAN SEMINARY

ABORTION LAW

A Theological Perspective

A THESIS

SUBMITTED TO THE FACULTY
IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF
MASTER OF DIVINITY

BY

DAVID BURNS

WATERLOO, ONTARIO

MAY, 1970

Readers: Prof. Aarne J. Siirala
Prof. Otto W. Heick
Prof. Ragnar C. Teigen

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David Burns,
Kitchener,
May, 1970.

TABLE OF CONTENTS

	Page
INTRODUCTION	1
Chapter	
I ATTITUDES IN TRANSITION	6
A. The Popular Press and Television	
B. Changes in Protestant Attitudes	
II ARGUMENTS FOR AND AGAINST ABORTION	11
A. Subjective Feeling	
B. The Humanity of the Fetus	
C. Ultimate Claim on the Fetus	
D. <u>Who Suffers the Most?</u>	
III LEGAL CONSIDERATIONS FOR ABORTION	20
A. Danger to the Mother's Life	
B. Danger to the Health of the Mother	
1. Physical	
2. Mental	
3. Social	
4. Economic	
5. Ethical	
C. Eugenic Indications	
D. Over-Population	
V A SURVEY OF CHRISTIAN ATTITUDES TO ABORTION	28
A. The Right and the Left	
B. Who Has Ultimate Claim Upon the Fetus?	
1. Denominational Statements	
(a) The Fetus	
(b) The Father	
(c) The Mother	
2. Individual Theologians	
(a) The Fetus	
(b) The Father	
(c) The Mother	
(d) No one But God	
C. The Contextual or Situational Approach: The Fetus as Value among Values	

	Page
Chapter	
V SOURCES FOR THEOLOGICAL CONCLUSIONS	56
A. Scripture	
B. Natural Law	
C. Contextual Ethics	
VI TOWARDS AN ABORTION LAW	67
A. Every Law Has Theological Implications	
B. One's Position on Abortion Influences the Rights of Postnatal Life	
C. Pluralism Without Permissiveness	
D. Abortion to Protect the Life of the Mother	
VII CONCLUSION	76
APPENDIX I	81
BIBLIOGRAPHY	84

INTRODUCTION

This thesis is the result of several years interest in the question of abortion. Heretofore, I have written letters to the editor of a newspaper, to the editor of MacLean's, and to the Chairman of the House of Commons Standing Committee on Health and Welfare in its study of Bills C-122, C-123, and C-136, which were concerned with contraception and abortion.¹ To write a thesis on the subject is my chance to come to a broader understanding of the problem. From my readings, I have found these outstanding features:

1. Discrepancies in abortion statistics:- The discrepancies are to be found in the statistics of illegal and usually hidden abortions and in legal abortions.

Actually, there can never be an accurate record of illegal abortions and one can hardly expect this to be kept, simply because of their clandestine nature. Estimates may vary tremendously, and one hardly knows whether they include spontaneous miscarriages as well as induced abortions. Somewhere between 100,000 and 300,000 abortions in Canada per year has been recorded. One could safely guess that at

¹MacLean's June, 1968 edition. Letter to the Standing Committee on Health and Welfare is published in the Minutes, p. 632. See next footnote for details of the Committee.

least 40,000 are accomplished per year because that is the figure that the Dominion Bureau of Statistics has for the number of in-patients whose primary diagnosis is abortion. But that number will include spontaneous miscarriages as well as illegally induced abortions. Indeed, while fifty per cent of illegal abortions reported in police files are usually done by the injection into the womb of some septic fluid, very few of those 40,000 hospital cases in the D.B.S. file have septic causes associated with them. If the number of illegal abortions is in the range of tens of thousands, most are not resulting in hospital care.²

Therapeutic or legal abortions have been recorded in some hospitals, but under the pre-1969 law the records were never accumulated for federal statistics. Hence, we are in a quandry as to the number of legal hospital abortions previous to 1969. In terms relative to the 40,000 in-patients, they must be small; the Toronto General Hospital, the second largest hospital in Canada, averaged only 22 per year between 1954 and 1965.³ With the new law, every hospital planning to perform abortions must be accredited or approved and statistics will be kept for examination of the minister of health in each province, and from these accurate statistics can be acquired for all of Canada.

²Canada, Parliament, Commons, Standing Committee on Health and Welfare, Bill C-122, Bill C-123, Bill C-136. Minutes of Proceedings and Evidence, House of Commons, 27th Parliament, 2nd sess., 1967. p. 19, 100,000 to 300,000 abortions; p. 515, 40,000 hospital in-patients.

³Ibid., p. 279.

2. The diversity of theological opinion:- It is rather strange to see the great diversity of opinion among Christian theologians on abortion. They can agree that modern genetics and embryology point to human growth as a smoothly developing process from conception, not a pattern with sharply defined stages. But they cannot agree on the beginning of its humanity. Nor can they agree on any other basis by which to consider abortion. Abortion has received a concerted examination by theologians and other professionals only once in recent years, at the International Conference on Abortion, held in Washington in 1967. And, at that Conference, only this amount of agreement was achieved:

God is the creator of man and the author of life; man is created in the image of God; man is the steward of life and not its complete master. By inculcating an inclusive love of mankind, by teaching that life is the gift of God's providence, religion fosters a reverence for life and a respect for its sacredness which encourage at least an attitude of hesitancy toward the act of abortion.⁴

3. A meagre amount of theological study on abortion:- In the books and journals that I read on abortion, theological presentations were never lengthy. I read no book by an academic theologian that dealt exclusively with abortion; there was no thorough study by any theologian. The world awaits its first theological tomb on abortion.

4. The dearth of counselling help for women with unwanted pregnancies:- Churches and secular institutions have

⁴The Joseph P. Kennedy Foundation, The Terrible Choice: The Abortion Dilemma (New York: Bantam Books Inc., 1968), pp. 83-84.

little to offer the woman anxious about her pregnancy. There are homes for unwed mothers, but these are of no use to married women, and they receive the girls usually only after their third month of pregnancy, at a time when the girls have outlived their crisis and have decided whether to seek abortion or to carry on with the pregnancy. Since 1968, however, the situation has improved, with the establishment of "Birthright," a crisis counselling centre for women with unwanted pregnancies. With Birthright, help is as near as the telephone, and its success in Toronto has led to its recent expansion in Montreal and Edmonton, and in some cities in the United States.

These four impressions stand out among many. The reader will note how negative they are; how, indeed, they point to the urgent need for study and action with regard to this serious problem.

This paper attempts to answer the main question of the public debate: What should constitute legal grounds for abortion? It is the central issue raised by the mass media and the central problem of the House of Commons Committee on Health and Welfare in its 1967-1968 hearings. Legal grounds, of course, concern legislatures and judges. Nevertheless, they have theological implications, namely, the value of the fetus and the right to abort it. They deserve the attention of Christian teaching. To this end I shall begin the discussion with attitudes and arguments that are prevalent in the public context. Then I shall work on the problem from

a specifically Christian theological context and try to suggest a law that is theologically sound, and, hopefully, legally tenable.

Before I begin, however, I would suggest that the central practical issue about abortion is not the grounds for making it legal but the means for reducing unwanted pregnancies. And while many may disagree with there being any law, few, if any, would say unwanted pregnancies are a good thing. The law will determine the conditions for legal abortions, it may affect the number of illegal abortions and the total number of abortions (e.g. a strict law will reduce legal and illegal abortions if positive factors like respect for fetal life and counselling agencies for women with unwanted pregnancies are available, too); but social and economic conditions and religious attitudes will play a greater role in determining the rate of unwanted pregnancies and abortions. From a Christian viewpoint, the best law will be that which reflects God's will regarding the value of the fetus and the right to abort it. Having done this, it will suggest guidelines that lead us closer to God's will in the abortion dilemma.

My sources for the essay come from various books and journals, newspaper clippings, the 886 pages of Minutes and Proceedings of the House of Commons Standing Committee on Health and Welfare in its 1967-68 deliberations on abortion, as well as some conversations with persons at St. Monica House, a home for unwed mothers in Kitchener, and associations with Birthright.

CHAPTER I

ATTITUDES IN TRANSITION

With respect to abortion, the psychological mood of the mass media has changed a great deal in the past ten years. Much more is being said openly. Newspapers report abortion procedures in foreign countries, especially in Britain and in the United States. Sweden used to be considered *avante garde* a few years ago because of its abortion laws, but with the heavy caseload of abortion-seekers under the 1967 British abortion law, it looks rather conservative today. Yet British statistics may soon decrease, at least in North American visitors, once New York, Hawaii, and Maryland start to practice their recently revised statutes and pregnant women avail themselves of abortion as they please, as long as the doctors are willing to perform the operation. We have seen in the newspapers articles about fee-splitting between American and British doctors. The American doctors send their patients to the British doctors who perform the operations, and then return them back to the American doctors for post-operation check-ups. We have read about "grand tours" for women who wish to combine a holiday trip in Europe after their abortion in England; and stories of London cabbies picking up girls at the airport and delivering them to abortion clinics. Pictures and stories about such girls

show little ugliness about the operation or discharge from the clinic. The girls are often surprised that the venture was so easy. The ugliness seems to come in the money-grubbing. Guilt and suffering are born within.

Ten years ago, abortion reformers had to face the rejection of the public. They were murder-lovers, butchers of innocent babes. Today, the sophisticated liberal speaks nonchalantly about the need for total repeal, and few persons react. It is interesting to note that while the Globe and Mail has been publishing an average of two items a week on abortion in the past two years, that there have been only a few letters to the editor about abortion. The issue is, apparently, of little concern to most of its readers.

Magazines have taken polls of readers to get their reactions to the abortion debate. In Photo-Journal, a Quebec-based popular magazine, presumably with a majority of Catholic readers, a poll was held at the time of the House of Commons debates on abortion reform (Fall, 1967). At the same time, Good Housekeeping, an American-supported magazine with a reading public of various religious backgrounds held a similar poll. The two surveys compared closely on grounds for abortion except in the cases of the mother being unmarried or the family situation (income, etc.) being unsuitable for another child. In both cases the Quebec (Catholic?) magazine showed a much more liberal attitude.

	<u>Photo Journal</u>	<u>Good Housekeeping</u>
Mother's health threatened	80.2%	84.1%
Unborn child's health threatened	78.3	78.5
Unmarried mother	56.4	15.5
Rape or incest	82.2	85.9
Unsuitable time	50.3	14.6

Though Good Housekeeping is most likely a married woman's magazine, the indication of married women only in the Photo-Journal was still 52.8% for abortion if the mother was unmarried, and 48.8% if the time was unsuitable.¹ Perhaps we should not be surprised at this liberal attitude of Quebec "Catholic" women. Abortion is quite popular in South America too, where the population is predominantly "Catholic." And, Maryland, a traditionally Catholic state, is the second state in the United States to repeal abortion laws.

On March 9, 1970, the Toronto Daily Star newspaper published a Gallop Poll on the following question:

Would you favour or oppose a law which would permit a woman to go to a doctor to end pregnancy at any time during the first three months?

	<u>U.S.</u>	<u>Canada</u>
Favour	40%	43%
Opposed	50%	48%
Undecided	<u>10%</u>	<u>9%</u>
	100%	100%

¹Bill C-122, Bill C-123, Bill C-136, pp. 764-772.

Canadians (and Americans) seem to be slightly more against abortion on demand than they are for it. But, according to the same article, earlier Gallup Polls had shown a strong favour (73%) of Canadians towards abortion when the health of the mother is in danger.

If, as the Gallup Poll indicates, Canadian and American attitudes to abortion are very similar, then perhaps the reasons behind the attitudes are similar. At any rate, Ralph B. Potter, Jr., has made some interesting observations of the American Protestant change in attitude toward abortion and I would suggest, that they tell us a good deal about the attitudes of Canadian Protestants:

The main elements of the abortion issue are not new; zeal for abortion reform is not new; most of the arguments are not new. It is the receptivity of a broad segment of the "Protestant" public that is new.

There are three factors [I could only see two from his writing] to this new receptivity.

(a) A breakdown in old theological certainties about nature, God, and Man which sustained the conviction that nascent life in the womb is, in every circumstance, a gift from God given for the realization of mysterious purpose, and is, therefore, to be respected as inviolable from lawful human interference except in the tragic case in which the life of the fetus is pitted against the life of its mother. . . . Protestants have feared not an "abuse of nature" [as have Roman Catholics] but rather a direct affront to "nature's" God. When a new habit of mind now attributes new life to rotten luck in the practice of contraception rather than to purposeful will of a merciful God, neglect of the countermeasure of abortion becomes irrational and superstitious retreat from the possibility of exercising control of one's destiny. Denial of accessibility to abortion comes to be seen by many as a violation of civic liberty.

(b) There is a dimming of the vision of a Protestant American made to conform to the dictates of Protestant conscience. . . . By devotion to their own principles, i.e. self-determination and the rational control of nature, Protestants are obliged to tolerate a gap between

what is morally condemned and what is legally prescribed. Protestants are confused concerning the moral status of abortion when practiced by Christians. Their confusion is compounded by uncertainty regarding the extent to which the moral judgements of one segment of society should be imposed upon others by legal enactment. The unpleasant aftertaste of Prohibition [of alcohol] lingers on. More and more Protestants acquiesce to the motto "You can't legislate morality."²

To this analysis, I would like to make one adjustment --the fact that Prohibition was never practiced in Canada; and one addition--the growth of contextual or "situation" ethics.

²Ralph B. Potter, Jr., "The Abortion Debate," in The Religious Situation, ed. by Donald R. Cutler (Boston: Beacon Press, 1968), pp. 114-116.

CHAPTER II

ARGUMENTS FOR AND AGAINST GROUNDS FOR ABORTION

A. Subjective Feeling

Let us begin with positions that are held by Christians and non-Christians, positions that do not necessarily reflect any religion. At the extreme "right" of the spectrum are those who assert the inalienable right to life of the fetus. Roman Catholics have expressed this, but so has a militant atheist I know. At the far "left" there is the position that abortions should be on demand; a position that secular humanists often hold and a position held by some Christian theologians (e.g., Joseph Fletcher: "No unwanted or unintended baby should ever be born").¹ And between the far right and the far left are opinions of all shades held by devout Christians and non-religionists alike. Why are persons of divergent religious beliefs able to agree on this matter, while vehemently disagreeing with some who share their religious attitudes? The answer, I think, lies in the fundamental inner feeling we have when we compare human life as an entity of value, with the usefulness of human life as an entity of value. The answer is conditioned by the weight we put on human life when compared with human suffering. I suspect that these attitudes are usually based on subjective feeling. Though we may argue with theological statements and make our

¹Joseph Fletcher, Situation Ethics

arguments sound as though we are looking to the Bible, etc., as the source, the ultimate source may not be the Bible or any other theological source, but our subjective feeling. I suspect that much of the theological wrangling is caused by persons who start from a "gut" feeling and try to build arguments from theology to support this. If so, it is only natural that atheists and theists who have the same subjective feeling will agree with one another.

B. The Humanity of the Fetus

The humanity of the fetus is the most controversial aspect of abortion. If one believes that the fetus is actually human, then one is inclined to be hesitant in aborting it. Other things being equal, those who hold that the fetus is human from the time of conception have the highest regard of all for the fetus.²

On the other hand, if one thinks of the fetus as less than human, one is going to be less concerned with the fetus being preserved and allowed to grow. Why should it have human rights if it is not human? Maybe there are instances in which the life of the fetus may rightly be aborted; instances in which values higher than its life are allowed primacy. The next question is, what is more valuable than that life, even though it is not human? This is the dilemma of those who

²Popular Roman Catholic acceptance of abortion as mentioned on page 8 suggests the authority crisis in the Catholic Church and the greater taboo against contraception by the Church.

would abort the fetus.

Is, then, the fetus human or not? Biologically, the fetus is incipient human life. From conception it has the genetic formation it will have if allowed to grow to maturity. It is not a piece of tissue that has grown from the mother's womb. It is a genetic package sui generis formed by 23 chromosomes of the father and 23 chromosomes of the mother and its relationship to the mother is one of apposition. Apposition does not imply the right of possession but only the right of first consideration regarding the fetus's effect on her body. Being so directly affected by the presence of the fetus, however, we should expect to do everything in our power to help her when the fetus is the cause of her distress. The trouble is that doctors can rid her of the fetus only by killing it in the process, unless, of course, the fetus has reached the age of "viability," or 26 weeks, at which time it may be able to survive outside the womb. Here again, there is still much difficulty because of the baby's vulnerability to disease and premature feeding abilities. If we were to choose a time best suited for the mother's health, we would choose some time before the end of the third month to perform an abortion, when the baby would have no chance of survival.

Though knowledge of embryology points to the fetus as incipient human growth, neither medicine nor any other scientific discipline can conclusively explain the point at which the fetus becomes or is fully human. They can say that the fetus is

not a horse or some other animal because its genetic package is human only. It is "human" in the sense that it is not some other living creature. Other than that, they, and persons of any other discipline are left fumbling for some definition to suit the purposes of their discipline. Theologians might define it as being fully human when it is the "image of God," but God alone knows that with certitude. The Criminal Code defines it for the purposes of law in Section 195:

A child becomes a human being within the meaning of the Criminal Code when it has completely proceeded in a living state from the body of its mother and whether or not it has breathed or has independent circulation or the navel string has been severed.

So far, we have no universal definition for that point in human fetal life where we call the fetus a fully human being. Even if we could find one, there still must be agreement as to whether or not the right of the fetus to life is equal to its mother's right once the fetus has reached that point. Most persons assume that if the fetus is human then it should be allowed the same rights as the mother, an equal opportunity to life. Others do not hold to this view because they do not equate the right to life with being human. They suggest that it is not the least common denominator (being human) that is the ultimate criterion for equal opportunity, but the difference in quality of life. These are not necessarily utilitarian qualities, such as value to the rest of the family; they can be inherent qualities such as maturity and intelligence. And to

those who would hold this position, the risk of health or position to the person (the mother) with these higher qualities is sometimes not worth preserving the life of the person (the fetus) with only the lower qualities of existence.

There is still another argument that the anti-abortionist might use: though the fetus cannot be proven to be fully human, the fact that it is incipient human life should be ranked higher than any qualitative differences. This argument is strengthened by the fact that all post-natal life is given the right to life even though there are great differences in quality: some persons are like mere vegetables, while others are highly intelligent, etc. In answer to this argument an abortionist could reply that we must not just think of human life in terms of physical existence. The human qualities are cultural, non-animal, spiritual or aesthetic elements which go beyond mere existence, and in a case of conflict the barely human fetus should be aborted to prevent the thwarting of the highest qualities in the mother and others who may be affected. They explain that the reason mongoloid idiots, etc., are not killed or allowed to die is because they are never in a conflict of interest with other humans of such magnitude as an unwanted fetus might be. They may also argue that physical death is not to be abhorred so much as spiritual or psychic death or crippling. The termination of relatively insensate

embryonic life is sad, but the mother and family may be burdened economically; if unwed, the mother's career might be interrupted and her parents might be vindictive and unforgiving.

In answer to this, the conserver of fetal life may reply, "But the suffering of mother and others can be healed in time, while the death of the fetus means that it has no further chance." But the objecter might respond, "Maybe the suffering will not be healed. Maybe the unwanted pregnancy is 'the straw that breaks the camel's back' and there is no recovery. Relationships could even get worse."

The point is that one cannot solve the abortion problem by proving the fetus to be human or not human. Being convinced that the fetus should be kept alive and allowed to grow, and being convinced that fetal life is expendable in certain circumstances, are two axiomatic propositions.

C. Ultimate Claim on the Fetus

Another way of looking at the value of the fetus is not in terms of its humanity, but in terms of its value to other persons or God and asking who has ultimate claim upon it. All theologians would say that God has ultimate claim upon it. Some would say that though the fetus is not one of the creatures of the air, sea, or ground over which God gave him jurisdiction in Genesis 1:26-30, he does not warrant the same protection of life as does his mother. From this position they might argue that God's authority has been delegated to man to the point that the value the fetus has to the mother

or to the father or to society is sufficient for man to decide concerning abortion in terms related to them. At any rate, by so arguing, they do so with the same point in view as the person who does not look to God for ultimate authority but uses these criteria as bases of judgement.

D. Who Suffers the Most?

Another important factor is one we have already touched on but have not discussed--the suffering involved. If the suffering the fetus undergoes could be measured on a scale and compared with the suffering of the mother, etc., this might be used by some as a criterion. The one who would suffer the most would perhaps have preeminent rights. Unfortunately, we cannot measure the suffering on either side. We can imagine the suffering of the mother, father, etc., but find it very difficult to imagine the suffering of the fetus because of unknown factors like pain in its nervous system. I raise this "suffering" issue because I think that our imagination of the degree of suffering on both sides plays a large part in the feelings we have about abortion. Gynecologists generally dislike performing abortions perhaps because they think of the woman on the operating table as a clinical subject, but the fetus as a tiny human whose life they are to destroy. Those who do not perform the operation imagine the suffering from the strain and anxiety from the face and words of the mother, and the possible feelings of the fetus who they never see. I have sometimes gotten the impression from those who ask for

abortion on demand that women are unable to tolerate an unwanted pregnancy without frightful consequences. This view can be readily reinforced by conversations with some women carrying a child they do not want. For example, I interviewed nine girls at St. Monica House, the home for unwed girls in Kitchener. All but two of them had seriously contemplated abortion, and two nearly went through with it illegally. Some of the seven that had contemplated abortion were glad they had not, and the rest still wished that they had. Some were finding their pregnancies and the thought of having to bear an unwanted child distasteful enough that if they had the chance again they would seek an abortion. Moreover, they felt it should be available upon demand. This latter group felt that their suffering was not worth the life of the fetus.

The "suffering" issue enters into the legal picture directly. The circumstances usually defined are: danger to the life of themselves (the mother); danger to her health, or certain aspects of her health such as physical, mental, social or economic. Other legal indications are statutory rape (when the girl is under age), incest, and fetal abnormalities. There may not be any suffering on the part of the girl or woman with statutory rape or incest, but if there is it could easily fall under the category of danger to her health. Fetal abnormalities do not affect the woman's health directly, but indirectly impose a burden upon her and the family. Some

argue that abortion of the abnormal fetus is doing the unborn child a favour, and this is an argument for a kind of mercy killing.

I shall discuss these legal considerations in detail.

CHAPTER III

LEGAL CONSIDERATIONS FOR ABORTION

A. Danger to the Mother's Life

This is sometimes qualified by such a phrase as "likely to endanger" or "there is a grave risk" since every pregnancy has the possibility of endangering the life of the mother. What is implied by these phrases is the doctor's judgement that if the fetus is not removed the mother will probably die. If the law of the land allows that only this circumstance makes abortion justifiable, it assumes that the value of the fetus is higher than anything else save the physical life of the mother.¹

B. Danger to the Health of the Mother

In the Canadian and Japanese laws on abortion, "health" is stated with no qualification. In the Japanese situation "health" has been given such an interpretation that it has led to near abortion on demand. In 1966, for instance, there were 1,360,000 live births in Japan and a total of 808,216 abortions legally registered, of which 805,075 were for the "protection of the mother's health." So far, the Canadian law has interpreted narrowly. According to Dr. George Maughan, chief gynecologist and obstetri-

¹Bill C-122, Bill C-123, Bill C-136, p. 871.

cian at Montreal's Royal Victoria Hospital, physicians and surgeons remain conservative about abortion, but psychiatrists have adopted a much more liberal attitude. It is the gynecologist who must perform the operation, he points out, almost to his extreme distaste.² Given willing doctors, however, the number of abortions depends upon the sensitivities of the abortion committee of three or more doctors at each hospital, and upon the persuasive powers of those recommending the abortions to the committee. In Victoria Hospital, London, Ontario, the number of therapeutic abortions have been 135 in 1969, 50 in 1968, and 26 in 1967.³ I have learned from my own doctor that he would have no trouble whatever getting an abortion done at this hospital.

The World Health Organization defines "health" as:

a state of complete physical, mental, and social well-being and not merely the absence of disease.⁴

This definition is obviously a goal to reach, not a minimum standard. But if this was ever interpreted as the norm by which health should be judged, "health" could be used as the reason for abortion on demand. There is every reason to assume that on some abortion committees in Canada this

²George Maughan, "Survey Indicates Rise in Hospital Abortions," Kitchener-Waterloo Record, (March 13, 1970), p. 27.

³Martin Robinson, "Doctors Are Chided for Lack of Support of Birth Control," Kitchener-Waterloo Record (March 26, 1970), p. 42.

⁴Bill C-122, Bill C-123, Bill C-136, p. 408.

interpretation will be approximated, provided, of course, that there are hospital beds to accommodate the women.

I could speak in detail about each of the aspects of health--physical, mental, social and economic. For the sake of this theological paper, I shall speak only briefly.

1. Physical

Danger to physical health usually refers to such factors as fatigue and wear upon the mother, because of a pregnancy occurring too soon after the birth of a child, the hardship of pregnancy itself, extra burdens at home, physical problems like weak kidneys and heart, and general weakness. If the threat to physical health is sufficient it may reach the point of threat to her physical life. The degree of strain bearable is a medical judgement.

2. Mental

Danger to mental health, or psychiatric stress is the most commonly used indication for abortion in Canada. Threats of suicide and postpartum psychosis are typical indications. Depressions of various degrees are sufficient indication for abortion in the minds of some psychiatrists. Mild depression as an indication implies abortion on demand. Obviously, it is very difficult to assess the amount of mental stress a given woman could manage. And these psychiatric indications are made more difficult by the possibility of mental conditions that may follow abortion and which sometimes do not

show themselves for years afterwards. At the present time the Canadian Psychiatric Association is conducting a five year study to gain further understanding about the problem.

3. Social

Social health is the well-being of the mother in social relationships--with her parents, husband or boy friend, other children, and society as a whole. If the girl is unmarried or if the pregnancy results from adultery, the fear of social stigma may be worse or as bad as the actual condemnation that she and her husband/boy friend will have to put up with. In Japan, pregnancies out of wedlock are totally intolerable. Here in Canada, forgiveness and adoption of the baby are often possible. In many Canadian homes, however, social stigma would cause a great deal of stress and from real or imagined pressure many girls would seek abortion. Actually, social health can be understood as a form of mental health and may sometimes be included under that category.

4. Economic

Economic health is the financial well-being of the home in which the baby is to be reared. Poverty and large families often go hand-in-hand, not just because of the lack of contraception, but because of economic irresponsibility or hopelessness. Sociologist, Arturo Chacon, former General Secretary of the Methodist Church in Chile, recently told a group of United Church clergymen that the birth rate in

South America would drop dramatically if the standard of living was raised for the urban and rural impoverished masses of that continent. Contraception is not the first answer for the South American masses. It will be used only as the poor see hope for a rise in living standards. The same could be said of the Indian and Metis poor in Canada. Certainly, one's views on abortion must be related to social indications for it. Until the social circumstances are improved abortions will always be widely sought.

5. Ethical

Ethical grounds for abortion fall under the category of "health of the mother," because they relate to the stress on the mother from criminal assault. Forced rape, however, is the only true assault on the mother. Statutory rape is fornication under age which is assumed to have been done by consent. Incest is also fornication by consent (otherwise the charge would be forced rape). It is interesting to find that adultery, another social crime, is rarely suggested as a possible ground for abortion. The reason, I suspect, is that the advocates of abortion for ethical reasons consider the matter in relation to whether or not the mother "deserves" the pregnancy. In the case of rape and incest, there is a general feeling of pity and a demand for social redress. In the case of adultery, there is a greater feeling of righteous indignation--"She deserves what she got." Mrs. Louise Summerhill, the director of Birthright, a crisis centre for

women with unwanted pregnancies, tells me that the most difficult situations Birthright has to deal with are those resulting from adultery. The guilt and lack of forgiveness in this situation seem to be the most distressing.

C. Eugenic Indications

These are not for the sake of the mother or family primarily, but a type of mercy-killing to prevent unnecessary suffering of the baby after birth. The mother and family would be spared the trouble of looking after it or of giving it up to some retarded children's home, or the like. Having it aborted also prevents the trouble of society providing for it for the rest of its life. The severely subnormal child is looked upon as a human cripple, and by many as sub-human, hardly able to feel or act in any human way and sometimes less sophisticatedly than a primitive animal. In subsistent and primitive societies the severely subnormal child would in all likelihood be abandoned to die just as the subnormal animal would be left to die by its parents. Were food scarce enough in our society, no doubt such "useless" creatures would be allowed to die too.

Until very recently the detection of fetal abnormalities has been impossible. Predictions were made on the basis of statistics. Now we have medical procedures such as amniocentesis, whereby a hollow needle is inserted into the amniotic sac and amniotic fluid is withdrawn. Cells of the fetus found in the fluid can be analyzed so that diseases like RH incompatibil-

ity, hemophilia, and Mongoloid Idiocy can be determined. Radiography can be used to tell harmful placement of the placenta, and electrocardiography can be used to tell fetal heart problems. Direct observation, then, is taking over from statistical guessing.⁵ Furthermore, RH incompatibility can now be prevented by intrauterine blood transfusions; and rubella, a common fetal disease, may soon be prevented by vaccine.

If abortion was legally permitted for eugenic situations, medicine might be dulled in its efforts to find further medical solutions and aids for the handicapped. Furthermore, there is no clear line of demarcation between who is or is not useless or undesirably incompetent, and on the grounds of even slight distortions, young lives could be destroyed.

D. Over-Population

A growing number of people favour abortion as a means of reducing over-population. The present Moderator of the United Church of Canada, Robert McLure, M.D., has performed many abortions on women in India and recommends it as a population reducer. It is not nearly as effective as raising the standards of living, as Arturo Chacon of Chile (page 23), and economist Lady Barbara Ward have suggested. Lady Ward suggests that the reason poor families are

⁵Charles P. Kindregan, The Quality of Life (Milwaukee: The Bruce Publishing Co., 1968), pp. 34-35.

so large in India is because poor farmers need as many sons as possible to look after them in their old age.⁶ Abortion as birth control is medically hazardous. In the Soviet bloc countries abortion has been legally permitted on a wide basis, but the medical hazards of abortion such as premature births in future pregnancies, miscarriages, and perforations of the uterus have been grave enough that two countries, Rumania and Bulgaria, have rescinded the permissive laws and made new ones that restrict abortion to threats to the life of the mother (Rumania), or pregnancy after three or more children, or old age.⁷

It is interesting to note that not all countries suffer from exploding population. Some suffer from under-population. Between the two World Wars, France regressed in population for reasons other than artificial birth control and Abortion. In Sweden, population was so small that it was not until 1939 that abortion was allowed to be legalized.

This ends our discussion of atheological indications for abortion. As we shall see, and have seen in part already, they are not irrelevant to the thinking of clergymen and theologians. In reality, theologians are forced to consider them carefully if they are to make ethical judgements which have useful bearing on actual human situations.

⁶Data from a television programme.

⁷C. Tietze and Sarah Lewit, "Abortion," Scientific American, CCXX (January, 1969).

CHAPTER IV

A SURVEY OF CHRISTIAN ATTITUDES TO ABORTION

A. The Right and the Left

Theological arguments on abortion, like political views, can be divided into right and left positions. Starting with the far right, we find those who believe that abortion is morally indefensible. From there the scale of permissible circumstances moves to threat to the life of the mother, serious threat to her physical health, serious threat to her mental health; then into general physical health, mental health, social health or socioeconomic welfare. Ethical and eugenic reasons may come in anywhere after the threat to the life of the mother. Those who favour abortion as birth control ("on demand") represent the far left. Akin to this spectrum of morality is division of opinion regarding the legal right to make abortion laws. Usually associated with the rightist moral position is the belief that it is the proper function of the state to intervene in the matter of abortion and make laws to prevent harm to the mother, family, medical profession, and society at large. Those who tend toward abortion on demand would usually prefer safeguards only for the medical health of the mother. They may ask the question: "What reason can justify the refusal of the state to grant permission for an abortion?" or the more radical question, "Why

should there be any law?" The right to legislate on abortion is a bigger issue in the United States than in Canada because of the attempt to separate Church and State by the Constitution of the United States. In Canada there is no legal definition of the moral and spiritual powers in terms of law. The problem in the United States is compounded by the fact that abortion laws come under state rather than federal jurisdiction.

Ralph B. Potter, Jr., describes the right and left wing moral positions in the United States:

The rub of the right-wing argument is simple and stark: the condoning of widespread abortion would undermine civilization. The argument is couched in theological terms; it leads, however, to conclusions in the realm of cultural anthropology. There are many distractive bypaths along the route to be traversed in argument. But the constant goal is to convince hearers by whatever arguments carry force in their generation, that the practice of abortion is incompatible with the attainment of man's true humanity.

The profundity of the right-wing argument is its greatest weakness. Many of the injuries described by controversialists on the right take place in a dimension of existence unknown or unexplained by their fellow citizens. Indeed, when the particular "harms" are analyzed closely, they are seen to consist ultimately of a deprivation of a greater good, a good which may transcend the concern of a secular, pluralistic state. Can the prevention of such harm, or the realization of such a good, be considered a valid legislative purpose sufficient to overrule the strong desires of innumerable pregnant women? . . . (p. 123)

Leftists emphasize the high incidence of criminal abortion. Rightists emphasize statistics to diminish the danger gap between hospital and extra-hospital abortions. (p. 124)

Leftists say right wing propaganda encourages guilt in women over abortion. Rightists say psychiatrists don't pick up a lot of the inner anxiety on this. (p. 126)

Leftists would remove the cultural inducement to exhibit the learned response of guilt. Rightists insist that to get rid of guilt you must avoid the occasion for guilt. Absence of guilt in this case is a sign of callousness and spiritual sclerosis. (p. 126)

Rightists claim that abortion frustrates the realization of man's true humanity, though the evidence for this is hard to find. The central claim of the right wing is that abortion is evil because it deprives the mother of the greater good of becoming a mother. [I find this hard to believe and have found no evidence elsewhere of such a claim.] (p. 127)

Is the rejection of abortion rooted in the nature of man or does it derive from a response to the image of man portrayed in the Gospels? The issue cannot be settled by available anthropological data which seem to indicate a general ambivalence towards abortion within societies which differ greatly in the rate of occurrence and the severity of sanctions imposed. (pp. 129-130)

The right wing must indicate a harm the law cannot ignore to a victim the law is bound to protect. . . . To defend public laws against abortion the Christian needs legal arguments derived from the universal norms of natural justice. (pp. 131-132)

Man's worth is not to be assessed according to what he has become through social intercourse or by an estimate of what he may yet become. Rather it is God's labor, his purpose, his economy, which places the price of life so high that no transient human value can serve as compensation. But with the erosion of the theological foundations of the Christian view of man's alien dignity [i.e., dignity from outside], the barriers to abortion built on those foundations are crumbling in the hearts of individuals and the statutes of the states. (p. 150)¹

Distinguishing between right and left wings is largely a matter of emphasis. To the rightist, the value of the fetus has preeminent right over the other or others who may suffer from the unwanted pregnancy. To the leftist, the suffering

¹Ralph B. Potter, Jr., Abortion Debate, pp. 23-50.

of the mother, family, etc., has preeminent right over the value of the fetus. Each side views the law for its purposes. The strict law helps the rightist. A permissive law or no law at all helps the leftist.

Answering the question, "Who has ultimate claim upon the fetus?" is the way that many theologians evaluate the worth of the fetus vis-a-vis the suffering of others. Let us look at the answers given to this question from church denominations and from individual theologians.

B. Who has Ultimate Claim upon the Fetus?

No Christian would deny that God has ultimate claim upon the fetus, just as He has ultimate claim upon nature and the rest of humanity. As our Creator, as the Alpha and Omega of all that is, He has the last and foremost say. Nor would many--I know of none--say that the fetus is of the order of the swimming, crawling, and flying things over which man is to have dominion (Genesis I). Thus, if man has control over the life of the fetus, it is in a relationship something akin to the relationship that he has to his fellow man--as a brother and neighbour. How close this "something" is, I have never heard defined, but as we shall see, it becomes the focus of the whole debate. The question is more than "Am I my brother's keeper?"; it is also, "How far is the fetus whom God has made to become a human my brother?" Is it possible that God does not assume direct responsibility of the fetus to himself alone? Is it possible that he delegates some of

his authority and the right to live or let live upon man, upon for example, no man but the fetus himself, or upon the mother, or upon the father, or upon society as a whole?

1. Denominational Positions

(a) The Fetus is Under Claim to No One But Himself and God:- This is the answer of all those who claim the inalienable right of the fetus to live. The fetus has intrinsic worth and this prevents any one from claiming right over his life in terms of some other person or value. He is to be treated with the same fundamental rights given a born human being. As stated earlier, people of various religious views may hold this position, but it is held mainly by the Roman Catholic Church. It is a position of natural law, i.e. the fetus has the natural right to be allowed to live. The right is not handed to him for merit or position. He has it simply because he is incipient human life. Pope Pius XII explains it this way:

Innocent human life, in whatever condition it is found, is to be secure from the very first moment of its existence from any direct deliberate attack. This is a fundamental right of the human person, which is of general value in the Christian concept of life; and hence as valid for the still hidden life within the womb of the mother as for the life of the already born and developing outside her. . . . Whatever foundation there may be for the distinction between these various phases of the development of life that is born, or still unborn, in profane and ecclesiastical law, and as regards certain civil and penal consequences, all these cases involve a grave and unlawful attack upon the inviolability of human life.²

²"Abortion," The New Catholic Encyclopedia, 1962, I, 29.

Notice the inseparateness of the four factors--human life, the intention of nature, fetal life, the right to live. There is no ambiguity or question about their direct relationship with one another.

It is interesting also how ironclad is the Catholic interpretation of the sin of abortion. It is a sin under canon law only if it results from all of the following factors: if it is intended, i.e. not an accident; if it happens from the deliberate use of means, i.e. not indirectly; if the means are efficacious, i.e. the fetus dies.³ There is a great deal of confidence shown here in man's ability to estimate what is and what is not sin; or what is the most important part of sin; and the ability to summarize and rank it in terms of propositions or statements. The danger is that casuistry, the skill of interpreting conscience, becomes the focal point here--not the fetus, not the mother, not medicine, not the social and economic and spiritual evils behind the suffering.

Perhaps the most important aspect of the Catholic position is the belief that the right to life is not something for humanity to bestow upon the fetus, in law, or out of it, but something that is inherent in the "nature" of things. This separates the Catholics from those who say that God bestows the right directly, and from those who say that the state should be the ultimate judge in the matter.⁴

³Ibid., p. 30.

⁴See Appendix I for the factors involved in the traditional theological elements.

(b) The Fetus's Right to Life is Delegated to the Father:- There is only one clear reference to abortion in the Bible: Exodus 21:22-25:

When men strive together, and hurt a woman with child, so that there is a miscarriage, and yet no harm follows, the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot . . . stripe for stripe.

This passage is part of a larger passage concerned with acts of violence--Exodus 21:12-27. We see in this larger passage that parents are ranked higher than children (verse 17) and freemen higher than slaves (verse 21). Is it any wonder, then, that the fetus is given less regard than his mother, as seen in the quotation above? However, it is the value that the fetus has to the father that ultimately counts. For in the case of "no harm done" (the mother does not suffer) the husband gets the money, and in the case of the death of the mother, the husband receives recompense again. In effect, both the mother and fetus are the property of the husband and justice is done with the husband in mind.

In Islamic law, the fetus is regarded as a possible heir who can have his own heirs, but abortion is performed only with the father's consent.⁵ In modern times, the father, as final arbiter in the matter, is not accepted by

⁵Martin J. Buss, "The Beginning of Human Life as an Ethical Problem," The Journal of Religion, XLVII (July, 1967), 246.

either Christians or Jews. The Jews, however, have made this Exodus passage their proof text and most Jewish theologians regard the fetus's right to life incontestable except on the grounds of threat to the mother's life or health.⁶

(c) The Fetus's Right to Life is Determined by Strain on the Mother:- This is the most popular position of moderate and leftist Christian theologians and Churches. Among Protestant Canadian denominations we can see a gradual shift from relatively conservative or rightist positions to fairly liberal or leftist positions as we move from the Presbyterian to the Anglican to the United Churches.

The Presbyterians recommend abortion "where the mother's physical and mental health are seriously threatened."⁷ The Anglicans recommend abortion on the same grounds, i.e., where the pregnancy involves a "serious threat to the life or health of the expectant mother."⁸ The United Church of Canada officially recommends abortion "when continuance of pregnancy is likely to endanger the mother's life or seriously impair her physical or mental health," but the committee which presented this as part of a brief to the House of Commons Standing Committee on Health and

⁶David Granfield, The Abortion Decision (Garden City: Doubleday & Co., Inc., 1969), pp. 47-49.

⁷Bill C-122, Bill C-123, Bill C-136, p. 392.

⁸Ibid., p. 475.

Welfare gave a more liberal view. One of the members, the Rev. J. Raymond Hord, presented a paper in which he said that the fetus was of accruing value.⁹ Two other members interpreted this to mean value accruing to the mother.¹⁰ In other words, the more the fetus meant to the mother, the more did its value increase. None of the United Church committee disagreed with this interpretation.

2. Individual Theologians

(a) The Fetus is Under Claim to No One But Himself and God:- Roman Catholic theologians usually hold to this view. Since Vatican II, however, more are speaking of moral questions being in the last analysis a question of conscience. If the mother believes that abortion is the moral thing for her, then she may regretfully seek an abortion. Richard A. McCormick, S.J., suggests that the fusion of the soul does not take place at conception, "but rather at some later point, perhaps when the body develops recognizeable human characteristics. "The Catholic Church," he points out, "has never settled the theoretical question definitely; indeed, it is perhaps questionable if this is in her realm of competence." Father R. F. Drinan disagrees, because in the absence of certainty the presumption must be that the fetus is a human person and because, even if the presumption is false the embryo

⁹Ibid., p. 628.

¹⁰Ibid., pp. 603, 610.

"constitutes the necessary material for the infusion of the soul."¹¹ The Canadian Catholic bishops never referred to the infusion of soul theory in their statements to the House of Commons Standing Committee on Health and Welfare, but assumed the modern biological explanation of fetal development; i.e. a "continuing process in the child from the moment of conception to adult age."¹²

(b) The Fetus's Right to Life is Delegated to the Father:- To my knowledge, no theologian has interpreted the right of the fetus to live primarily on its meaning to the father.

(c) The Fetus's Right to Life is Determined by Strain on the Mother:- Ronald M. Green holds to the position of the late 19th Century philosopher W. D. Ross, that morality should be based on prima facie duty to that which one has promised. In pregnancy there is not "an absolute but a prima facie duty to respect the life of the fetus."

Such a duty would constitute a moral claim that could be outweighed by more pressing obligations like the life of the mother, her health, eugenic reasons and rape. . . . Here the locus of ethical concern is not upon obligation to the life of the fetus but rather upon the act of faith-keeping or promise-keeping occasioned by the sexual act. . . . Whenever a woman willingly engages in coitus she, in doing so, makes an implicit promise that in the event of conception she will bear and give life to the fruit of her act

¹¹Kennedy, The Terrible Choice, p. 86.

¹²Bill C-122, Bill C-123, Bill C-136, p. 825. Andre Naud, Professor of Theology, University of Montreal.

even if she has used contraception. . . . This puts the decision primarily on the mother, not on society as a whole, because promise to life is the issue, not life. Society should only require that the woman seek psychiatric help and advice.¹³

I question this as a Christian position. It makes the life of the fetus a matter of paternalism (maternalism?) instead of value on its own--a very degrading position for the fetus. Nevertheless, in an age when honour and duty and responsibility for one's actions are being heeded less and less, it is a good reminder of responsibility to those who just want to "do their own thing" whatever the consequences.

Another theologian who is of this category is Martin J. Buss, Professor of Theology at the Chicago School of Divinity.¹⁴ Buss believes that humanity is a stage reached in the development of the embryo that can be discerned by characteristics that are peculiarly human. These are the characteristics of language. Language is the conditio sine qua non for humanity and the means by which the Word of God is transmitted to man. It is God's addressing the growing life that makes it valuable as a person, nothing intrinsic to itself or to any other person or value. But until the life has reached the stage where it can understand the language of man, it cannot understand the revelation of God. God

¹³Ronald M. Green, "Abortion and Promise-Keeping," Christianity and Crisis, XXVII (May 15, 1967), portions from pp. 109-112.

¹⁴The description on page of the thesis is a summary of Dr. Buss's presentation. Buss, "Beginning of Human Life as an Ethical Problem," pp. 244-253.

speaks his Word through persons and tradition. The fetus cannot understand Him and is therefore less than human and less important than other humans who may be suffering because of him. Some have pointed out that God cannot address the child in the womb and they may point to Jeremiah 1:4f which declares that Jeremiah was "known" while still in the womb. But Buss is arguing that there is a dividing line between the human or language-understanding child and the prehuman. Though God could address Jeremiah as a prehuman, the image of God "can properly represent in man only that selfhood and mastery of its environment which makes him relate to and share in divine creativity" which begins at least at the cultural stage of life where man responds to man in meaningful language.

Having established the beginnings of real humanity, Buss implies that any prehuman life can be aborted as a means of birth control.¹⁵ If questioned on the grounds for abortion he might restrict himself more than he does, but one gets the impression that he holds little concern for prenatal life.

It would seem that the option of voluntary abortion is indicated by a genuine fusion of faith, creative reason, and love. . . . It is in line with biblical tradition not only because of the Bible's eloquent silence on the subject but even moreso because of the Judeo-Christian concern for personal relationships with deity and one's fellow man, which go beyond personal passivity and simple biological existence.¹⁶

¹⁵Ibid., p. 252.

¹⁶Ibid., p. 253.

I see two flaws in his arguments: his identification of the "image" of God as a stage at least as advanced as the ability to respond culturally; and secondly, his attempt to demonstrate the unimportance of prenatal life. The "image" of God does not necessarily begin at any particular stage past conception. Since child baptism is often performed before the child understands language and yet child baptism implies God's prevenient grace, why use cultural or language development as the beginning of the image of God in man? As for the worth of the fetus, I fail to see God having a radical difference in concern for the fetus in comparison with that he would have for the person who is culturally aware.

(d) God Delegates His Authority to No One. He Assumes it Directly:- There are several theologians who look to God alone as the authority. They assume that the fetus is given by God and that he is human in God's sight and that he must be granted the same right to live as his mother. Thus, the only possible reason for abortion would be that case where the life of the mother was in jeopardy because of the fetus within her, and there was no likely way of saving her without aborting the fetus. In such a case, two equal lives in the sight of God must be given as good a chance as possible. If the fetus were under the age of viability, then the choice would be to save the mother. If, on the other hand, the fetus were of the age of viability, then the choice would involve other factors. This approach

is taken by Karl Barth, Helmut Thielicke, Dietrich Bonhoeffer, Paul Ramsey and Graham Scott.

In his Church Dogmatics III, 4, Barth explains his position on abortion:

He who destroys germinating life kills a man and thus ventures the monstrous thing of decreeing concerning the life and death of a fellow man whose life is given by God and therefore, like his own, belongs to Him. He desires to discharge a divine office, or, even if not, he accepts responsibility for such discharge by daring to have the last word on at least the temporal form of the life of his fellow-man. . . . This child is a man for whose life the Son of God has died, for whose unavoidable past in the guilt of all humanity and future individual guilt He has already paid the price. (p. 416)

How can they [the parents] will' the opposite [the death of the fetus]? They can do so only on the presupposition of their own blindness to life, in bondage to the opinion that they must live rather than they may live, and therefore out of anxiety, i.e. out of gracelessness and therefore godlessness. (p. 420)

Human life is not something enforced but permitted; i.e., it is freedom and grace. (p. 418)

In his grace God can will to preserve the life which He has given; and in His grace He can will to take it again. Either way, it is not lost before Him. Men cannot exercise the same sovereignty in relation to it. . . . Trained in the freedom which derives from the grace of God, they can choose and will only one thing--they can desire only its life and healthy birth. . . . In the sense of a guiding line the one exception is the balance of one life against the other. . . . [in which case] the calculation and venture must take place before God and in responsibility to Him. (p. 422)¹⁷

Up to this point, Barth has been adamant in his restrictions. In his small print, however, he mentions an ex-

¹⁷Karl Barth, Church Dogmatics, III, 4 (Edinburgh: T. and T. Clark Publishers, 1961).

ception which, in my mind, has a withering effect on the strength of his presentation. He states:

It does not follow, however, that any doctor is generally and radically guilty of transgressing the command of God, though he may expose himself to legal penalty, if he thinks he should urge a socio-medical "indication". . . . For occasionally the command of God may impose a judgement and action which go beyond what is sanctioned by the law.¹⁸

Why Barth should be suddenly interested in the socio-medical indication in terms of human law is not clear. Of course, God can order something that is against human law! But why should He order a command that goes against His own law? Barth has just finished driving home the sinfulness of abortion for any reason but the life of the mother. Why does he now say that a socio-medical reason may be permissible? Why didn't he say near the beginning, as he now says in this small print, that the will of God is something we never fully understand, but as a general rule we should permit abortion only in the case of a threat to the mother's life? With this footnote I am left with a confused opinion. I do not know how convinced he is about abortion because I do not know how often he thinks the doctors can urge abortion for a socio-medical indication.

Helmut Thielicke is more consistent than Barth in his ethics on abortion. He follows the same line of reasoning about fetal value being dependent on the gift of God in his book, The Ethics of Sex.

¹⁸Ibid., p. 422, small print.

In pregnancy it is not a question--as it is in the case of contraception--whether a proffered gift can be responsibly accepted, but rather whether an already bestowed gift can be spurned, whether one dares to brush aside the arm of God after this arm has already been outstretched. (p. 227)¹⁹

We are in the realm of God's gifts and God's responsibility and God's judgement and concern. Therefore we look upon the fetus and abortion in the context of tragedy and judgement upon the whole of society as well as on the mother:

The judgement pronounced by the Christian message goes beyond the conception of guilt implied by the penal sentence in several respects:

1. In the sense that it radicalizes the law. The murder does not begin with the active killing (Matt. 5:21ff), nor in the killing of the embryo. It begins rather with the renunciation of the embryo; for here is a person who refuses to say "Yes" to a gift bestowed by God and a responsibility imposed by him. (p. 227)

2. The legal concept of guilt transcended by the spiritual conception that the divine judgement is more merciful than the judgement of men. One sees the guilt of the individual incorporated in a totality of guilt. He turns to others, asking which of them dares to cast the first stone (John 8:7). The total guilt can include the socio-economic situation and would imply a change in the social conditions in this case. . . yet there is no discernable reason that can justify social situations for abortions, including overpopulation. (pp. 229,230)²⁰

The worth of the fetus stems from the order of creation and the order of redemption. From the order of creation we have the growth of the fetus as a miracle actualizing itself. From

¹⁹Helmut Thielicke, The Ethics of Sex (New York: Harper and Row Publishers, 1964). The numbers in brackets at end of quoted paragraphs refer to the page numbers in the book.

²⁰Ibid.

the order of redemption we have the Christ buying him with a price and bestowing upon him an "alien dignity."

This alien dignity expresses the fact that it is not man's own worth--his value for producing "good works," his functional proficiency, his pragmatic utility--that gives him his dignity, but rather what God has "spent on him," the sacrificial love which God has invested in him (Deut. 7:7ff). . . . And this actualization of man's alien dignity which we have emphasized, may well exist at that point where man is still a fetus and has no important pragmatic value or may even be regarded as a burdensome, disturbing "enemy" (unjust aggressor). (p. 231)²¹

He then compares the Reformation concept of the orders of creation with that of Catholicism, showing that his reasoning is not based on Catholic presuppositions.

The Catholic orders of creation presuppose that the Fall represents only an accidental break in the structure of order of creation. . . . One can almost pass over the Fall. . . . Reformation doctrine says that other than the order of marriage and family which are orders of creation, the orders are orders for God to preserve the fallen world. [As for abortion] . . . the conflict between life and life does not occur in the original order of creation and therefore the order of creation cannot provide an answer to the question--whose life, the mother or the fetus's? (p. 236)

Thielicke claims that we cannot find the answer in tradition, but only in the Christ-centred conscience. The mother can volunteer to sacrifice herself or she can ask for mercy on the grounds of quantitative differences.

Caught in the agony of the Fall, we are left to make decisions on this one possibility of abortion in which we know we will sin no matter what we do. How different this explanation is from the confident-sounding casuistry of

²¹Ibid.

Catholic canon law in which direct abortion is worse than both lives dying, simply because the former is against canon law while the latter is not. Thieliicke says, "In either case we cannot decide with strict theological clarity and whatever, we can decide only subject to forgiveness." (p. 245)

The freedom with respect to the medical indication [life of mother] in pregnancy should be understood as costly and not as cheap freedom. Only from this point of view can the quantitative criterion enter into consideration. And even there it enters only when the elemental conflict between the life of the mother and that of the unborn child permits--and not only permits, but then also demands--that a decision be made.²²
(p. 247)

One who is even more fixed in his mind than Barth or Thieliicke is Dietrich Bonhoeffer'. Abortion to him is anathema under all circumstances. "The question whether the life of the mother or the life of the child is of greater value can hardly be a matter for a human decision."²³ He also says that "in cases where it is an act of despair, performed in circumstances of extreme human or economic destitution and misery, the guilt may often lie rather with the community than with the individual."²⁴ I suggest that if he is really concerned with community responsibility, he should be just as concerned that at least one of the two lives be prevented from dying.

²²Ibid.

²³Dietrich Bonhoeffer, Ethics (Glasgow: Fontana Library, 1963), p. 176.

²⁴Ibid., p. 176.

Also included in our list of anti-abortionists is the well-known American ethicist, Paul Ramsey. From what I have read of his writings, I see nothing new to add to the ideas of the three Continental theologians we have just reviewed. I do see, however, a different flavor. Paul Ramsay uses scriptural quotes more freely than the Continental theologians and with them he creates the mood of compassion and loving kindness that God has for man, a mood which implies that the fetus must be very important to him also.

The value of human life is ultimately grounded in the value God is placing on it. Man is sacredness in human biological processes no less than his is a sacredness in the human social or political order. That sacredness consists not in its heart to anybody. What life is in and of itself is most clearly to be seen in situations of naked equality of one life with another, and in the situation of congeneric helplessness which is the human condition in the first of life. . . . It is best not to concentrate on degrees of relative worth we may later acquire. (p. 72)

The Lord did not set his love upon you, nor choose you, because you were already intrinsically more than a blob of tissue in the uterus or greater in size than the period at the end of this sentence; "but it is because the Lord loves you, and is keeping the oath which he swore to your fathers, that the Lord has brought you out with a mighty hand. . . ." (Deut. 7:8) RSV

Before I formed you in the womb I knew you, and before you were born I consecrated you. . . . (Jeremiah 1:5) RSV

O God, You know me inside and out, through and through.

.
Your circumventing presence covers my every move . . .

.
You were present at my very conception.

You guided the development of my unformed members within the body of my mother. Nothing about me, from beginning to end, was hid from Your eyes.

How frightfully and fantastically wonderful it all is!

--Psalm 139:1,5, 12b, 13, 14.

Good Lord, Where Are You?

Thus, every human being is a unique unrepeatable opportunity to praise God. His life is entirely an ordination, a loan, and a stewardship. His essence is his existence before God and to God, as it is from Him. His dignity is an "alien dignity," an evaluation that is not of him but placed upon him by divine degree. . . . It is precisely the little ones who have hardly any human claims who are sought out and covered by his mercy. (p. 74).

It is precisely when all reasonable natural grounds for hope are gone that one needs hope and may hope in God, even as when all hope was gone Abraham hoped on in faith. (p. 75)²⁵

In Graham Scott, a United Church minister, we see a further use of scripture as a basis for theological expression.

The fact is that no where in the Bible can it be said conclusively that abortion is mentioned either in praise or in condemnation. However, it may well be referred to in four instances, namely, Galations 5:20 "idolatry, medicine (sorcery), enmity . . ."; Revelation or Apocalypse 9:21 "nor did they repent of their murders or their medicines (sorceries) or their immorality"; Revelation 21:8 ". . . as for murders, fornicators, medicine-men (sorcerers), idolators . . ."; and Revelation 22:15 "Outside are the dogs and medicine-men (sorcerers) and fornicators and murders. . . ." The Greek words that I have translated medicine or medicine-men are related to our word "pharmacy" and mean at root either poison or medicine. Now one of the jobs of these medicine-men or sorcerers was the procuring of abortions. This is surely at least one of the reasons and perhaps the main reason why this kind of medicine-sorcery was condemned along with murder and promiscuity by the texts. In any case, it is note-worthy that the Didache, an important early second century manual of Christian discipline, specifies: "thou shalt not use magic; thou shalt not use medicine; thou shalt not procure abortion, nor commit infanticide." (2.2)

²⁵Passages quoted, except for Biblical references, are from, Paul Ramsey, "The Morality of Abortion," Life or Death, ed. by Daniel H. Lobley (Portland: University of Washington Press, 1968). The numbers in brackets at end of quoted paragraphs refer to the page numbers in the book.

Then Scott mentions scriptural references in which fetuses seem to be affected by God's presence: Ps. 139:5-16, Job 3:16, the Jeremiah reference (1:5), and the leaping of the babe in Elizabeth's womb when Mary, pregnant with Jesus, came to visit her. Here, Elizabeth called Mary, "the mother of my Lord" (Luke 1:43) which suggests that in the womb, Jesus was truly the human-divine creature He was in later life.

On page 34 of the thesis I mentioned Exodus 21:22-25 as the only explicit reference to abortion. Scott suggests that it not be taken as a proof text.

If all we had were the Old Testament, and of the Old Testament all that we valued were the books of the Law, then this text might be decisive. But Christians cannot ignore the prophets and the psalms which bore witness to Christ, nor can we ignore the distinction between God's law and Moses' law which our Lord made on several occasions, notably in Matthew 19:8. When asked why Moses gave a commandment to give a certificate of divorce to put one's wife away, Jesus said, "For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so." . . . Jesus laid down the moral truth; Moses had not only to lay down truth but to legislate for his society. Therefore, when we seek to learn from the Old Testament, we must beware of mistaking human traditions for God's will.²⁶

The question we immediately ask is, "What grounds have we to say that this Exodus text is a human tradition?" unless we compare the whole passage on human violence from which it is taken, Exodus 25:12-27, with Jesus' words, in Matthew 5:38-48, "You have heard that it was said, 'An eye

²⁶All passages quoted under discussion of Scott are from a mimeographed paper he wrote. Graham A. P. Scott, "A Paper on the issue of Abortion and Bill C-195 in the Light of the Bible and the Canadian Bill of Rights," 9 pp.

for an eye and a tooth for a tooth.' But I say to you, Do not resist one who is evil . . . turn to him the other [cheek] . . . Love your enemies and pray for those who persecute you. . . ." If we do this in proper logic we would say that the person who causes the miscarriage of a woman should be forgiven and left to God's judgement. On the other hand, we would be wrong in assuming that Jesus thought abortion was alright. He did not hammer away at the obvious moral truths about killing life. He usually started from the obvious, the socially accepted, and went on from there. "Unless your righteousness exceeds that of the scribes and Pharisees, you will never enter the kingdom of heaven" (Matt. 5:20). It should be noted that abortion has never been a serious problem for Jews until the last few centuries. Jesus presumably did not speak about it because it was practiced so little, if at all, amongst his people.

C. The Contextual Approach: The Fetus As a Value Among Values

Not all of the Christian positions on abortion focus attention on the question, "Who has ultimate claim on the fetus?" Those who call themselves contextualists or situationalists would rather aim for the answer to another question as their basic goal: "In a given circumstance what values or value should be given highest priority?". Now those referred to in Part B are interested in weighing values too, but unlike the contextualist, they assume that any given fetus must have

the same basic right to live as any other given fetus, just as a given person should have the same basic right to live as another person. That right to them may be less than that of a postnatal human but it is not any less than some other fetus. The contextualist does not see it this way. He does not assume that a given fetus should have the same basic right to live as another fetus. Fetal value is not a constant for all fetuses. Fetal value is a variable along with other variables and every decision about abortion must be carefully thought through as an individual case, even situations where the right decision appears obvious to the theologians in Part B.

There is an illustration of this in the writings of Joseph Fletcher, a contextualist. Fletcher says, "In most situations birth control by prevention is better than abortion,"²⁷ i.e. there may be a situation somewhere where one would be better to forgo contraception and allow abortion instead. To Fletcher, it is not obvious that prevention of unwanted pregnancy is always better than abortion. Now Ramsey, a non-contextualist, thinks that prevention is always better than abortion, and demands an example that would prove the exception.²⁸

Despite their hesitance about working from principles

²⁷Fletcher, Situation Ethics, p. 122.

²⁸Paul Ramsey, Deeds and Rules in Christian Ethics (New York: Charles Scribner's Sons, 1967), p. 220.

in a prescriptive manner, some contextualists can be found to uphold their own values as principles. For instance, Joseph Fletcher declares that the only rule in ethics should be the rule of agape love. What agape dictates should be the determinant. Otherwise, he affirms, the only rule is that there is an exception to every rule. Nevertheless, when speaking about abortion he says at one point, "No unwanted or unintended baby should ever be born," which is as strong a rule as any.²⁹

John C. Bennett, another contextualist, at least regarding abortion, claimed that he was "shocked" that Commonweal, a liberal Catholic journal, should uphold the traditional Catholic dogma on abortion.

This invoking of one law or principle in isolation and without regard to other human circumstances is a harsh and unconvincing form of legalism.

But like Fletcher, he too, makes his own principles. He would advocate legal abortion because of qualitative differences between mother and child, because of fetal abnormalities, and because of his belief that a strict law encourages women to go to dangerous illegal abortionists. Actually, what Bennett wants is a law which will allow persons to choose abortion according to conscience, within the boundaries he suggests.³⁰

²⁹Fletcher, *Situation Ethics*, p. 39.

³⁰John C. Bennett, "Editorial," Christianity and Crisis, XXVII (March 20, 1967). The quotes and references on Bennett are in the two pages of the editorial, pp. 47-48.

The Board of Social Ministry of the Lutheran Church in America (L.C.A.) has published a booklet containing the views of two of its members, Frederick K. Wentz and Robert H. Witmer, though their views are not the official position of the church. They follow a line of thinking similar to Bennett's, i.e. abortion should be allowed within a framework of certain points of stress. "For the Christian conscience the central question is, 'What is God's will at this point of decision'?" The authors believe that God's will can be found best under a number of possibilities which they group together under the heading of "compassionate abortion." This position, "takes seriously the rights of fetal life but gives priority consideration to the needs and circumstances of the pregnant woman, including her present family responsibilities." There are four categories for compassionate abortion: medical, eugenic, humanitarian (rape, incest, pregnancy under 15 years) and socio-economic indications. One could criticize these categories as permissive, but the authors hope for some restraint through the counselling sessions which the mothers have before being allowed abortion. Despite this, abortion appears to depend upon the subjective evaluation of mother and counsellors rather than upon some agreed-upon standard.³¹

The late Raymond Hord, former secretary of the Board

³¹Frederick K. Wentz and Robert H. Witmer, "The Problem of Abortion," Studies in Man, Medicine and Theology (New York: Board of Social Theology, Lutheran Church in America, 1967), pp. 21-24.

of Evangelism of the United Church of Canada was mentioned earlier in the discussion of United Church views. He contended that the fetus should be a matter of subjective evaluation. He explained:

The Christian ethic is not one of perfection but a contextual one where decisions are made in the light of all the circumstances facing us in a given situation. . . . Our United Church brief declares that the foetus which has very simple beginnings has accruing value. . . . We cannot equate the value of the foetus in its early stages with the value of the foetus in its later stages or with the born child. And if an abortion is required it should be performed in the first months of pregnancy, if at all possible.³²

As stated earlier, this "accruing" value was that which it had to the mother as it grew older.

Dr. Hord's thesis was also based upon some other factors--the generosity of nature in producing sperms and eggs, and the fact that one of five abortions are spontaneous. If nature aborts anyway, should we be concerned with the loss of fetal life? Dr. Victor A. McKusic, chief of medical genetics at John Hopkins University cites different but even more compelling statistics for this:

Of every 1,000 fertilized ova--female eggs fertilized by the male sperm--250 never even become implanted in the womb. They just get lost and float away. Another 150 become loosened and lost shortly after implantation, before the woman even knows she is pregnant. Another 100 are lost in spontaneous abortion some time in pregnancy's first 20 weeks. This leaves only 500 that become babies. Ten are still-born. Ninety are either born prematurely or possess birth defects or often both (though premature babies may be quite healthy).³³

³² Bill C-122, Bill C-123, Bill C-124, p. 629.

³³ Victor A. McKusic, "Geneticists Hope to Curb Birthrate of Defectives," Kitchener-Waterloo Record (August 15, 1968), p. 30.

With only fifty per cent fertilized ova ever being born, one could argue that humanity should have at least an equal opportunity as blind and fickle nature to determine which fertilized ova will be born. Moreover, if these little creatures are made in God's image and we humans can do so little to save them, at least in the early stages of growth, should not God be more concerned in saving them? If God allows fifty per cent to die naturally, why should we be so concerned with saving those we do not want?³⁴

In 1970, three states, Hawaii, Maryland, and New York, passed laws that provide for abortion as a matter between doctor and patient. The 2,000 delegate American Protestant Hospital Association upheld the same position on the grounds that "the integrity of the family unit and the institution of marriage is jeopardized, if not destroyed, by unwanted children." The editorial staff of The Christian Century also upheld this view.³⁵

³⁴On the other hand we could argue that the great loss in previable humanity is a challenge to medicine no less important than the challenge of deadly disease. Indeed, because they are in God's image, medicine should attempt to prevent fetal loss with the same vigour it has for preventing disease. A "Save the Embryos Fund" would have as much justification as a "Save the Children's Fund." By research we might not only be able to save more fetuses but also able to provide means for determining sex and other factors. Research is being done for economic reasons on cows and ewes to reduce the rate of failure in their pregnancies. Why should human fetuses be of less concern in terms of pregnancy success?

³⁴Editorial, "Summit Conference on Abortion," The Christian Century, LXXXVII (March 25, 1970), p. 348. The quote from The American Protestant Hospital Association and the statement of the editorial staff of The Christian Century are both found here.

In fairness, neither the American Protestant Hospital Association nor The Christian Century should be identified as purely contextualist in thinking. But these answers to the abortion problem are clearly examples of contextual ethics, where mother and doctor try to estimate the priorities of the situation without recourse to public law.

CHAPTER V

SOURCES FOR THEOLOGICAL CONCLUSIONS

Now that we have seen the positions of churches and individual theologians, we have the task of sorting out a theological answer. I suggest that we first try to establish the sources on which we can base an answer. God, himself, is the prime source. God's will is the right answer. The question is, where do we find it?

A. Scripture

Being of the Protestant tradition, it would be normal for me to look for scriptural sources for direction. I would agree with Graham Scott, however, that there is no proof text. The Exodus passage, if taken alone, implies that the mother is of more value than the fetus, but it is also true that the husband was master of both. The Exodus passage implies that human life is divided in terms of worth in certain circumstances. Since, as Christians, we believe all are one in Christ, we should not feel obligated to follow Old Testament Law where this status difference is made. Like Scott, too, I do not think that the references to "medicines," "sorcerers," or "sorcerys" in the New Testament give us much security. The sorcerer would be involved in questionable practices other than abortion, and which ones the passages refer to we cannot tell by the word "sorcerer" or

"medicine-men."

If scripture is to be relied on, it must be by inference, by passages which tell of the value God has for the fetus and by his general outlook on man. In men like Barth, Thielicke, and Ramsey, we have seen those passages of scripture which speak of God's relation to man in the womb. These passages are brief but mention that God speaks to the pre-natal creature. They say that something goes on or can go on between Him and incipient life. They acknowledge that God cares for the fetus. Other than that they say little. With them we have insufficient evidence for a strong statement.

If we look at the New Testament as a whole and see what Jesus Christ means to man, we might find more evidence by inference. "God so loved the world that he gave his only Son" (John 3:16). This shows how much God cares for man. He gave his best and when God gives his best, then he cares for us infinitely. But does this mean that he cares to the same degree for the fetus? Ramsey thinks it does:

It is precisely the little ones who have hardly any human claims who are sought out and covered by his mercy.¹

When Jesus speaks about gathering Jerusalem around him as a hen would gather her chicks, when he warns, "If any man would cause these little ones to sin it were better that a milestone were hung around his neck and he be thrown into the sea," we have this same tenderness. Young and old, all are the flock

¹Ramsey, Life or Death, p. 74.

of the Good Shepherd.

We must then ask, would he differentiate between the fetus unborn and the little ones who are born? Are fetuses too, part of his flock? If God so loved the world, would he not also love those unborn "lambs"? By inference I believe the answer is "yes." The one who, in Christ, refuses to differentiate between men, women and children, would carry this attitude through to the unborn child. The Christ who died for you and me has died also for those who are in the womb.

Does this mean that we have no right to commit abortion? The answer to this comes from the New Testament doctrine of man's relation to man. Here again we must work by inference. Jesus is not only God's Son, he is our brother, and as our brother, through faith, God adopts us as his sons. As adopted sons we are to be brothers and neighbours to one another in him. "When you have done it unto the least of these my brethern, you have done it unto me." The prenatal infant could be interpreted as one of the least of Jesus' brethren. The infant's blindness and immaturity would then be no barrier to our being neighbour to him. We would have a duty as Christians to bring him into this world and give him the necessities of life. The fact that he is illegitimate or deformed or undesired would not detract from God's concern for him and from his command to be neighbours to him. It would also mean that we should be neighbour to those who suffer from

the unwanted pregnancy. Caught in the guilt of premarital "accident," or coming at a time when the mother is in physical or mental stress, our answer would be to act out what it means to be neighbour to both creatures. With compassion parallel to that which God had in sending his Son, we would try to help the mother bear her suffering. If secrecy or financial help are needed we would provide agencies of concrete help. If she were psychologically disturbed, we would treat her lovingly as a psychologically disturbed person. Because drug therapy is dangerous to the fetus we would probably try other means and help her to accept her child as a precious little person. If her life were threatened, we might abort her so that at least one life could survive. This one case for abortion would be as a last resort, after all medical direction pointed towards its necessity to preserve the life of the mother, after God had been asked to intervene where humanity could not help. If the baby were the result of rape, incest, adultery, or fornication and the mother and father were guilt-ridden (it is not necessarily the case!) we would treat them as anyone else like this. Since the fetus was not the evil we would not try to solve the dilemma by getting rid of it.

Scripture does not give us clear direction about unwanted pregnancy. But it does give a clear picture of God's grace, his power to overcome all things in those who would trust in Him. It commands us to have reverence for human

life. While all pregnancies demand a sacrifice of the mother, and the unwanted pregnancy makes it more difficult to bear, the commandment of God to be neighbour to those in need carries with it the promise of comfort and aid.

Furthermore, there is the promise of forgiveness in the Cross. He bore our grief, our pain, our sin, and overcame them so that he might reconcile us all to Himself, no matter what our trouble. In the sin of promiscuous sex, in the vicissitudes of sexual life in and out of marriage, accident and innocence, passion and selfishness, combine sometimes to produce unwanted pregnancies, prenatal life for whom Christ died. Most wanted children too are not the result of planning, but the result of an "accident." Most wanted children are unwanted sometime during the pregnancy. Most women with undesirable pregnancies learn to love the child when it becomes a baby in her arms. As the old Russian proverb has it: "Two small hands upon the breast, and labour is forgotten."

The agony of pregnancy is with nearly every woman, in morning sickness, bleeding, fatigue. Its being unwanted adds to the burden and may make it look more evil than it is. But, says scripture, all of these can be born in God's grace and human comfort. Scripture commands us to be uncondemning and helpful, acting as though sin has already been forgiven--in our hearts, at least--looking upon the person as one in need.

Scripture offers no proof-text, but it offers a sound outlook for the Christian. It values human life as precious in God's eyes rather than expendable because of primitiveness or weakness; it suggests that we be neighbours to both parties within the context of God's victory over suffering, rather than hand-wringing judges between distressed parties; it offers forgiveness instead of leniency, and it points to confidence in God's love for the weak rather than despair over the immensity of the problem. Finally, it does not say, but it implies that the solution to the unwanted pregnancy lies in other directions--in prevention by responsible sex and support for those who are pregnant.

B. Natural Law

Because we find in scripture only inferences about abortion, we are forced to look beyond it for help in our problem. Because the fetus is a "constant" for the purpose of our ethical discussion, perhaps the problem is one of weighing other factors or "variables" in relation to it. It would be wonderful if we could simply apply a given value to this constant and then merely relate the other values in categories and so devise a set of straightforward moral prescriptions. Unfortunately it is not that easy.

The problem cannot be solved as a mathematical one, but it can be viewed in functional terms. In our survey of Christian and non-Christian attitudes, we have seen the value of the fetus in terms of the mother's life, health, etc,

according to the values given it by mother, society, God, etc. This type of thinking can be called natural law thinking. It hopes to reach universal norms, or, more accurately, it thinks from ideas that it already believes are universal norms.

One does not have to be a Roman Catholic to apply the principle of natural law. In Karl Barth we can see the "natural law" principle at work. While Barth takes great pains in his Church Dogmatics to prove that scripture must corroborate theological thinking, he does not use scripture to corroborate the main axiom of his position on abortion--that the fetus is human. He just states that this is so and then uses scripture to prove how much God cares for the fetus. In his own mind he creates a universal norm, the axiom that the fetus is human.

The other Continental theologians and Ramsey and Scott all do the same. Just as the Criminal Code of Canada defines what is human for its purposes (page of the thesis) so do these theologians state what is human for their purposes.

If we look upon the problem as one of finding a universal norm for treatment of the fetus, we go a long way in solving the problem of abortion, particularly as a legal problem. For once we have established a universal norm, then we can make laws in terms of it.

I have stated that scripture suggests by inference that the fetus is very valuable in the eyes of God. I did

not say that scripture says it is human or prehuman, or human enough. I meant that it was so valuable to God that we should avoid aborting it unless the mother's life was at stake or likely to be endangered. This, I suggest to be a universal norm. It is theological; it avoids the humanity question; it points to solutions which edify all persons concerned; it allows God to have His sovereignty over all prenatal life and to play an important role in its solution; it assumes rightfully that God is Lord of the state which will make the laws on abortion.

C. Contextual Ethics

Contextual or situational thinking is the only type of theological thinking I have found that gives an alternative to the "natural law" approach to abortion.

To a certain extent the contextualists take seriously the New Testament position of being neighbour to one's fellow man. They press for loving one's neighbour in a community context. Because our community or society is pluralistic they sympathize with the desire to let persons decide abortion from their own conscience and not from some external authority such as the church or the state unless they wish to do so. They have a great deal of sympathy for the woman with an unwanted pregnancy and tend to accuse her background, her ignorance of sex, harsh conditions in family and economic life, more than they accuse her. They abhor the back-alley abortionist and the abortion-mill, and strive for clinical settings

with proper maternal care. When she comes for pastoral counselling, the mother is allowed to make up her mind after being shown the alternatives, and, for the most part allowed to have the abortion if she wishes. In short, there is a strong desire to ease her pain and relieve her stress so that she can return to normal activities.

But they also let the value of the pregnancy be a matter of private judgement, in effect, a matter of personal expediency. In this way, they do a poor job in protecting the life of the other neighbour, the fetus. Their neighbourliness is only partial.

Furthermore, they speak with little reference to Christian tradition. They neglect the historical Christian community and its doctrine. They do not emerge from it with new ideas, but speak new ideas in semi-isolation. For this reason, I hesitate to endorse the present prescriptions for abortion laws suggested by the contextualists as serious presentations. I believe that theologians should prescribe only theological answers to theological problems such as abortion when they can give sound presentations from within the theological community. In my view the contextual presentations I have read lack sound roots.

Of course, the abortion problem is difficult for theology because of uncertainties about prenatal life. We can best infer conclusions from our doctrines of man after birth. Therefore, we should not expect an airtight position from the

contextualists, only a better developed position than has been shown so far.

In looking for a strategy for contextual ethics, Edward LeRoy Long, Jr., advocates "an even more contextual contextualism":

Are not certain matters most helpfully and simply handled by laws; others by principles; and still others by the situational approach? If so, then we should call for an even more contextual contextualism, one that refuses to be bound by the "in-principled rejection" of any particular way of formulating or applying Christian norms. Such a flexible, or non-ideological, contextualism would not claim that it alone has the valid contributions of any Christian ethic which bears fruit in neighbour love. If the fruit can be borne by a mature reliance upon rules, modified as necessary by casuistries, let it be respected. If the fruit comes from an idealistic or teleological ethic which handles these matters in terms of basic principles and their application, why cast it away? If the situation requires a contextual response to deal maturely with the contingent and unusual circumstances being encountered, let that be embraced in the freedom of the Gospel without requiring that the resultant way of dealing with the issue become paradigmatic for all Christian living!²

Some time in the future the contextual approach may produce a better approach to the ethics of abortion than an approach that starts out with establishing principles. I suspect, however, that because of the nature of the abortion problem, contextualism would play a more appropriate role as a counselling device. The military divides its fighting roles into two main areas--strategy and tactics. Strategy is the development of an overall plan for action; tactics are the means to be used at the local level in order to work out

²Edward Long, Jr., A Survey of Christian Ethics (New York: Oxford University Press, 1967), p. 312.

the strategy. To solve abortion problems we need strategy based on principles, and we need tactics based from analysis of the specific situation. Contextual ethics is suited for tactics but not for strategy and we should not depend on it alone or primarily in order to solve our problems in abortion.

CHAPTER VI
TOWARDS AN ABORTION LAW

Law 29v

A. Every Law Has Theological Implications

It has been argued that since we live in a pluralistic society, laws should be framed which allow freedom for the expression of all theologies and ideologies. John Turner, the Canadian Minister of Justice, spoke in this vein when he introduced into the House of Commons the Criminal Law Amendment Bill (1968-69) which contained our present abortion law in Canada.

Our response to this bill will depend upon our tolerance and our understanding of the needs of a pluralistic society, a society in which everyone must strive to reconcile his opinion and personal beliefs.¹

It must be understood though, that since abortion has theological implications--the right to destroy prenatal life, and the value of that life--that any law will at least imply a theological position. Therefore, if one tries to "reconcile his opinions and personal beliefs" the answer he arrives at will be just as theological as the one he has forsaken. For instance, if one argues that there should be no law at all regarding abortion, one implies that the question of whether to destroy or preserve a given prenatal life is purely a matter of expediency and the value of that life is estimated only

¹Canada, Parliament, Hansard (House of Commons) 1968-1969, 2nd Session, 28th Parliament, second reading of Criminal Law Amendment Bill, p. 4718.

in terms of what it means to the others involved. If one says that the law should concern itself only with serious threats to the physical health of the mother and should otherwise preserve the fetus, then one places a much higher value on the unborn child. The second answer should not be regarded as more "theological" than the first.

No matter what we say or do not say about abortion, we make theological assumptions. And no matter how liberal or open-minded we try to be we inevitably make restrictive, not permissive theological statements. Suppose we choose to leave the question of abortion to private conscience. Ostensibly we would be letting everybody have his way. But really we would be denying the wishes of all those who want abortion as a matter of public conscience embodied in law. There are those who think of abortion as a matter of private morality, and those who think of it as a matter of public morality. There are those who think of God as Lord over the law, and those who would keep Him out. These positions are more a matter of transforming opinion by sound and right reasoning than reconciling it.

As Christians, we have a duty to make our contribution to the public discussion. We go wrong only if we present bad theology, not Christian theology, and if we, like anyone else, fail to understand the reasons for the agony about this problem. We must aim for a good law, based as closely as possible on the will of God.

B. One's Position on Abortion Influences the Rights of
Postnatal Life

Secondly, the position one takes on abortion strengthens or weakens his argument for the sanctity of postnatal life. If one holds that abortion should be permitted only to protect the life of the mother, one implies that prenatal life is precious, and if prenatal life is precious then postnatal life must be precious too. On the other hand, by postulating permissive abortion one implies that prenatal life has little inherent value and only by technical distinction, with no basis in biology, can one still hold that postnatal life is very precious. As Ralph B. Potter says:

When a fetus is aborted no one asks for whom the bell tolls. No bell is tolled. But do not feel indifferent and secure. The fetus symbolizes you and me and our tenuous hold upon a future here at the mercy of our fellow men.²

It is bad law to try to uphold postnatal human life as inviolable while affording little or no protection to prenatal life. If we do, we live a lie unto ourselves, we mock our laws based on human rights, for we know that the difference between a life born and a life unborn can be as little as the difference in circulatory systems. We know that there is continuity of growth from conception to birth, just as there is a continuity of growth from birth to maturity. We know that fetal life is primitive, helpless, and dependent,

²Potter, Religious Situation, p. 157.

but we also know that babies are totally dependent on parents, and most children are largely dependent on others until sixteen years of age or more. We know that communication between the fetus and mother is very primitive, but we also know that babies are at least a year old before being able to talk. We know that "God-talk" is useless until a child has grasped the meaning of parental love in terms of language, yet we also believe in child baptism where God does something for the child because he is not limited by verbal language. All signs of humanity point to a continuity between prenatal and postnatal life. Why, then, should there be a sudden difference in regard for prenatal life? Because we cannot see the pain or torn limbs or hear any cries? Yes, I think that is as good an answer as any. No one tolls the bell for the fetus because the operation in a hospital is done under anaesthetic and medical personnel are trained to do the job impassively. The fetal remains are put in a paper bag and placed in the garbage. The doctor washes up and the mother is wheeled into the recovery room. Is it murder? Not unless the law says it is, some will say. But what greater right have we to live than that unwanted fetus? Why should one's being wanted ever have anything to do with the privilege of being born? Who says that the state has the ultimate authority over life and death? Who gave this right, if not God? And why does Canada pass a law for the abolition of capital punishment and yet pass another law which allows abortion in cases where a woman's

health is only likely to be endangered; i.e., why is a murderer's life more sacred than a fetal life?

C. Pluralism without Permissiveness

Traditionally, the Christian has claimed that God is Lord over the state. In days of Christendom this was easy to apply to issues such as abortion. In our present religiously heterogeneous era it is objected to by many. Nevertheless the objections can not usurp God from His rightful place and Christians should not feel compelled to give into those who raise objections. We should shamelessly announce that we believe.

For various reasons, perhaps as outlined by Ralph Potter, Jr., earlier in the thesis, the general public attitude has been moving toward a relaxation of abortion laws. It is the people's attitude, not the inherent value of the fetus or a worsening of the suffering of pregnant women that has been changing. I believe that those who press for more liberal therapeutic abortion laws have let the horror of suffering distort their perspective so that they erroneously value the mother's health, or even conscience, over the life of the unborn child, thus placing priority in the wrong place. Furthermore, instead of seeking to relieve the conditions which promote abortion, they would liberalize the law so that inadvertently society becomes abortifacient rather than abortion preventative. Liberalized laws always lead to in-

creased legal abortions without eliminating illegal abortions.³ The cost in hospital beds, maternal care, and the caustic attitude to prenatal life all go up. And meanwhile, we approach a few steps closer to the human degradation of a Brave New World.

People know intellectually that what is legal is not necessarily moral, but in practice may tend to be only as moral as the law demands, especially when under stress. What the law permits does have an effect on what we do. A law on abortion has its own educative value. It has a greater effect if the reasons given are sound and they are explained. If, for instance, we permit abortion on a restricted basis only, and say that this is because the fetus is valuable, we say that persons in general are valuable, and the law will play a role in helping persons to revere all human life. All persons concerned are affected in their attitudes by the law and in the course of decision look to it for guidance.

D. Abortion to Protect the Life of the Mother

I would recommend that abortion should be legally permitted only in the case where a woman's life is threatened by the pregnancy. This could be interpreted to include instances where her health is endangered to the extent that she might die. The value of the fetus is no greater than that of the

³For example, in Czechoslovakia with permissive laws there were 142 known illegal abortions in 1963; 49 in 1964, and 70 in 1965. Those figures compare with 70,546 legal abortions in 1963, 70,698 in 1964 and 79,591 in 1965. Bill C-122, Bill C-123, Bill C-136, p. 870.

mother and she should be permitted abortion when she is threatened by such grave circumstances.

Abortion only on the grounds of threat to the mother's life would be a strict law. It would admittedly cause some women to seek out illegal abortionists. It would raise the cry of "cruelty!" by liberal reformers. It would cause grouchy reaction from those who want their freedom to decide. Many doctors would ignore it. A "reactionary" law as proposed here is out of step with the public mood. In fact, the Minister of Justice has been quoted at the time of this writing as saying that there is no "imminent" proposal to have the abortion laws changed, as though there is such a possibility in the future. With the repeal of abortion laws in three of the United States, liberal reformers in Canada have received added momentum for either liberal interpretations of our present law, or repeal of it on the same grounds. Ironically, it may be the proximity of New York State that could alleviate the pressure, by Canadian women making use of its facilities instead of pressuring for reform here. Whatever the case, the position of this paper is as popular as an attack on "motherhood" (pun intended).

Nevertheless, a study of the experience of abortifacient countries reveals the high price paid for such freedom. If morality will not bring a return to stricter law, the cost of increased gynecological problems and premature births may cause enough abhorrence to reverse the present climate.

Dr. Alan Guttmacher, president of the Planned Parenthood-World Population Association, speaks about creating "abortoriums" for the estimated 50,000 to 100,000 New York City women wanting abortion each year under the new law. How soothing is his statement, "An abortion is one of the simplest and safest of all operations--safer than a routine tonsilectomy," before the New York law has come into effect.⁴ But do we hear such words from Britain after its laws have been in force for two years? Or in the Soviet bloc nations, or in Japan after years of permissiveness? In Britain there is alarm about the health of women who have undergone abortion because of poor sanitary facilities and short convalescence. The doctors who run the clinics get rich quickly and are suspected of caring more for the money than for the patients. In the Soviet bloc nations, Bulgaria and Rumania have made noteworthy restrictions on former permissive laws; and Andras Klinger of the Hungarian Central Office of Statistics reports on the effects of abortion in the European socialist countries: "Its deleterious effect on health is sufficient reason to change the present day situation."⁵ In the same vein, Japanese women members of the Diet have complained about the damage to the health of Japanese women because of wide-

⁴Globe and Mail (April 11, 1970).

⁵Bills C-122, C-123, C-136, p. 675. See page 27 for restrictions on Rumanian and Bulgarian abortion laws.

open abortion laws.⁶

It may be that Canada will have to go all the way and repeal its abortion laws completely before there is a return to stricter ones. In the present climate, this thesis is too late to affect the laws passed in 1969, and most likely too early to receive much attention for conservative reform. In the meantime, I hope that it may be used as part of the evidence that is necessary for more comprehensive and deeper understandings of abortion and its related problems.

⁶I heard this from a Catholic priest home on furlough from Japan.

CONCLUSION

This study has been an attempt to find legal terms for abortion based upon sound theology. Near the beginning I pointed out how the formulation of any law on abortion is dependent upon theological suppositions involved in the value of the fetus and the right to abort it. We found in the course of study that there were two main channels of Christian and logical thinking: thinking based on the answer to the question, "Who has ultimate claim upon the fetus?" and thinking based on the answer to the question, "In a given situation which values should receive priority?". In actual fact, we found that apparent conflict was solved if we used the first question as a basis for "strategic" thinking and the second question for "tactical" thinking. We found that the first question helped us establish principles by which to formulate a law and the second helped us find the answer for a specific situation from the "context" (hence, contextual ethics) of these principles and other factors. The conflict came only when some theologians, such as Fletcher and Bennett tried to deny the validity of principles which they did not like, while wanting to create some of their own.

In formulating the law that I have suggested, we can see both of these questions being answered, not mutually exclusive of one another, but in harmony with one another. In

answering the question about ultimate claim upon the fetus, I suggested by inference from scripture that God alone has ultimate claim on the fetus, and that since He considers the incipient life very valuable, then so should we. In answering the second question about values receiving priority, again by inference from scripture I suggested that we look to the question, "What does it mean to be neighbour?"; the values which come from this should give us the basis for the particular situation.

This results in the conclusion that the removal of the fetus from the mother should take place only when both can survive, which, of course, is not abortion. One cannot be neighbour to the fetus by aborting him. If, however, due to some medical problem of the mother the pregnancy acts as a threat to her life, then she should be allowed to have it aborted, for in this case we are better to be neighbour to one of the two lives than let both of them die.

The law, then, should permit abortion where there is a serious threat to the life of the mother by the pregnancy.

Our discussion ended with this proposition. The law will never be vindicated, however, unless it is accompanied by reforms in related areas. There must be an alleviation of the desire for abortion. To this end I can see three necessary preconditions: a growing reverence for pre-natal life, means for preventing pregnancy except when a child is wanted, and financial as well as counselling help

for women distressed by unwanted pregnancies.

The first of these means a change in human attitudes. It is the most basic, because, I suggest, most abortions take place primarily as a result of moral indifference to the fetus. Karl Barth has said: "The only thing which can help is the power of a wholly new and radical feeling of awe at the mystery of all human life as this is commanded by God as its Creator, Giver and Lord."¹ Ralph Potter, Jr., maintains that words are not enough to achieve this. Deeds, too, are needed.

It is best conveyed by demonstrating respect for life in all its forms through the courage of an institution or an individual to sacrifice wealth and prestige and station in defense of the poor, the aged, the outcast in the ghetto, and the victims of war. Churchmen and theologians must exhibit in their relations with men the same sacrifice of self in love which they have required of mothers menaced by their own offspring.²

Yet, at a time when persons are determined to have as few limits as possible, contraceptive means to prevent unwanted pregnancies are necessary. Too often these days contraceptives fail or are not used properly and pregnancy results, and since the couple thought they were being careful and responsible, they blame the pregnancy on the failure of the contraceptive and feel justified in having an abortion. It is ironical that in promising freedom from unwanted pregnancy, the Pill has apparently helped to create a more permissive climate for abortion. The ideal, I suggest, would be a long term contraceptive for men, lasting from the onset of puberty

¹Barth, Church Dogmatics, III, 4, p. 417.

²Potter, J., Religious Situation, 1968, p. 157.

until the time for the fathering of children in marriage. Following the birth of the desired number of children, the same long-range contraceptive could be used. Until such a drug or device is invented, voluntary sterilization of either the mother or father after the birth of the last desired child would at least reduce unwanted pregnancies in family situations.

The third precondition is becoming more popular. In Denmark there are Mother's Aid Centres to help women distressed with undesired pregnancies. In Sweden there are similar counselling centres. And, since 1968, there has been Birth-right in North America, "where help is as near as the telephone." Unless we can offer a woman help to carry her pregnancy to term and provide satisfactory answers regarding the placing of the child afterwards, she may be too depressed to carry on with the pregnancy.

Finally, without getting engrossed in aspects of the problem beyond the range of this paper, I must briefly suggest some other areas of study. As a theological problem, abortion should not be considered an isolated issue. It is one of several related issues that raise questions about the value of individual human life; issues like euthenasia, capital punishment, population control, feticide, battered babies, killing in war, genetical engineering, organ transplants, test-tube babies, asexual human reproduction from human tissue cultures, and the manipulation of the human mind and other

parts of the body by drugs. In other words, abortion is only one of several issues that raise questions about man's theological justification for manipulating or destroying himself. It would be appropriate for theology to undertake study on these issues so that the conclusions reached on any one are consistent with those reached on the others; i.e. a theology of life under whose umbrella all of these issues might fit.

APPENDIX

THE RELATIONSHIP BETWEEN FETAL HUMANITY AND ITS SANCTITY

In traditional theology it was accepted that when one became a human one should be accorded the rights of humanity. In theological circles the discussion centred around the time at which this took place. Below is an outline of the principle factors in ancient times and the meaning that modern genetics brings to the picture. The outline is a digest of the description given by Paul Ramsey in his speech, "The Morality of Abortion" printed in the book Life or Death, by Daniel H. Lobby.

Creationism:- This is the ancient theological belief that the unique individual soul comes by process of humanization or socialization in interaction with persons around him. He is "created," "infused" into the already existing organism. Those who say that the child becomes human only after he is a personal object or exercises reasons, express the same idea (cf. Buss).

Traducianism:- This is the opposite to Creationism. It is the belief that humanity takes place at conception. The individual is whoever he is going to be from the moment of conception, drawn forth from his parents. To explain identical twins, who are the result of a cleavage of the blastocyst, the cluster of cells formed from the original

fertilized ovum, one has to compromise with creationism because the unique individuality obviously occurs at a time later than conception.

Animation:- In the prenatal development "animation" is the point between conception and birth that is usually taken to be crucial. There are two answers: 1. The moment fetal life becomes an independent source of movement in the womb (it "quicken"); 2. the idea from the word anima (soul) that the soul is the form of the body. Thus fetus animatus = fetus humanus = fetus formatus. This view entails the belief that a living human fetus exists much earlier than either discernible motion or discernible human shape. In theoretical speculation there has never been a certain or unanimous opinion among theologians to the effect that a fetus humanus or fetus animatus begins at the very moment of conception. There has always been a lapse assumed between conception and animation.

Older theologians distinguished between a formed fetus and a quickened fetus, and nutritive, animal and intellectual parts of the soul. But they did not go so far as to say that all this was created and infused at impregnation.

Modern Genetics:- Modern genetics teaches that there are "formal causes," imminent principles, or constitutive elements long before there is any shape or motion or discernible size. Now it can be asserted "scientifically" that who one is, and is to be, is present from the moment of conception.

One may allow this does not necessarily imply that human rights should begin at conception. But one would have to provide himself with some account (perhaps drawn from these ancient accounts) of how by stages or degrees a human offspring approaches sacredness.

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