

## 76 The Catholic Legacy and Abortion: A Debate

Daniel C. Maguire and  
James T. Burtchaell, C.S.C.

In February of 1987 the theology department at the University of Notre Dame sponsored a major debate on abortion. The debaters in what was locally referred to as a "heavyweight bout" were James Tunstead Burtchaell, C.S.C., and Daniel C. Maguire. Father Burtchaell is a professor of theology at Notre Dame, a former provost of the university, and the author of *Rachel Weeping: The Case Against Abortion* and other books. Professor Maguire is a professor of theology at Marquette University, a past president of the Society of Christian Ethics, the author of *The Moral Choice* among other works, and an active critic of official Catholic teaching on abortion. The proposition Burtchaell and Maguire debated was: "*Recent developments and reflection provide authentic reasons to reconsider the virtually total Christian disapproval of abortion.*"

### Daniel C. Maguire

In the 1980s, when the abortion issue has been most acrimonious and mischievous in church and state, honest debate is the only way to get this

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abortion bone out of the Catholic throat so that we can get on to more important pro-life issues.

There are more important pro-life issues. Forty-two thousand children die daily due to lack of basic nourishment and medicine. There are now some four tons of TNT stockpiled for every head on the planet. The number of heads on the planet may reach 8.5 billion by the year 2025, with 7 billion of them being in the third world. The problems of Ethiopia are but preview of the havoc of hunger to come unless reason and justice replace militarism and greed. Meanwhile, the arms race is poised to move into outer space, leaving the earth in a state of terminal peril.

Still, the abortion debate must get on. This debate between Burtchaell and myself is important, regardless of what Burtchaell and I say. This debate implies that the issue is debatable. If the absolute negative position on abortion were clear, there would be no need to debate it. There are no pro and con debates on the morality of rape. Abortion is an open question since, as John Connery, S.J., says, "not enough time has elapsed to provide a test of current opinions." Furthermore, Catholic bishops, while pressing for a no-abortion amendment to the Constitution, have said they are not trying to force Catholic dogma into law, but to appeal to the public on the basis of reason. It is precisely on the basis of reason that Protestants, Catholics, Jews, and others disagree, and so we must reason together about our agreements and disagreements. There is no one infallible view on abortion and we do well to debate the fallible.

It may disappoint some who come to feast on conflict that Burtchaell and I are not in total disagreement on abortion. We agree in three ways: First, both Burtchaell and I are pro-moral-choice on abortion. In his book, *Rachel Weeping*, Burtchaell writes: "Save for the rare, rare instance when it is a moral threat to a mother's life to carry her child to birth, there is no abortion that is not the unjust taking of another's life because it is a burden to one's own." Pronouncing this exception "rare, rare" is, of course, an empirical, first-world judgment. Bishop Francis Simons, former bishop of Indore, India, says such cases are not at all rare in the third world. Thus Burtchaell is approving of a lot of direct abortions. He has admitted a class that has many members. In so doing, he departs

from the Vatican theology of abortion as, of course, do I when the circumstances warrant it.

Second, neither Burtchaell nor I is pro-abortion. Indeed, only a sadist could be "pro-abortion." Abortion is a negative value at best. In Utopia, it would be almost uncalled for. This is a matter of common sense. One would not say of a woman who had a fulfilling family and professional life, that it was a pity she had not had an abortion to lend a touch of completion.

Third, both Burtchaell and I object to the idea of "abortion on demand." I object because the term is a sexist ellipsis. The phrase implies a verb, *demand*, and an object, *abortion*, but it tellingly omits the subject, *woman*. This is significant because woman is often missing in the conservative analysis of abortion. I further object to the expression "abortion on demand" because a woman should not have to demand that to which she has a moral right. Burtchaell, it would seem, is for un-abortion on demand imposed on women. There we do not agree, and so there are grounds for debate. Basically, Burtchaell and I differ because he stakes out a definitive and apodictic position on abortion before the witness of women has been heard and evaluated in Catholic theology.

This is a major problem in conservative Catholic theology on abortion. By saying that all abortions are immoral, a stinging judgment is delivered on one to two million American women and forty to fifty million women worldwide who decide each year for abortions. The absolutist position allows for only three judgments of these women: (1) They are evil since they knowingly choose objective evil. (2) They are ignorant, and are thus excused from subjective guilt. (3) They are excused by insanity. There is no gentle alternative. We should await the newly emerging witness of women on abortion before sealing off the issue in ways that indict all or most women who make these crisis choices. This is a call for modesty, not a call to justify all abortion decisions.

I also find Burtchaell ecumenically insensitive on this issue. He seems to take no account of the broad disagreement with his simplistic position found among mainstream Protestants. The General Board of the American Baptist churches, U.S.A., said in 1981 that the decision for abortion may be morally made "when all other possible alternatives will lead to greater destruction of

human life and spirit." Abortion, they continued, must be a matter of "responsible, personal decision." The American Friends Service Committee said in 1970 that "it is far better to end an unwanted pregnancy than to encourage the evils resulting from forced pregnancy and childbirth." The General Convention of the Episcopal Church in 1982 listed serious threats to the mental or physical health of the woman, deformation of the fetus, and rape and incest as reasons making abortion "permissible." The General Assembly of the Presbyterian Church affirmed in 1983 the *Roe v. Wade* decision of the Supreme Court and said the "principle of inviolability can be applied" only when the fetus is viable. The General Synod of the United Church of Christ said "every woman must have the freedom of choice to follow her personal religious and moral convictions concerning the completion or termination of her pregnancy." They also called for public funding for abortion. The United Methodist Church in their General Conferences in both 1976 and 1984 listed a number of cases when "the path of a mature Christian judgment may indicate the advisability of abortion." The Lutheran Church in America, at its Biennial Convention in 1970, said that "on the basis of the evangelical ethic, a woman or couple may decide responsibly to seek an abortion."

A number of Jewish groups have offered similar witness, including the American Jewish Congress, B'nai B'rith Women, the Central Conference of American Rabbis, the Union of American Hebrew Congregations, and the National Council of Jewish Women. It is simplistic and arrogant to treat all of these relatives in faith as insensitive defenders of murder or irresponsible abortion. The Second Vatican Council said the ecumenical dialogue should "start with discussions concerning the application of the Gospel to moral questions." Such discussions have barely begun and Burtchaell and others would bar the door by brandishing obnoxious analogies that compare persons with nuanced views of abortion to defenders of the Nazi Holocaust and racism.

The heart of this debate is the question: is the anti-moral-choice position on abortion *the* Christian and Catholic view? Are the Catholic bishops correct when they refer to the "clear and constant" teaching of the church on abortion? My answer is

negative to both questions. There is no "clear and constant" teaching on abortion, and Catholic moral theology and Christian ethics generally have been pro-moral-choice ever since we started looking at the circumstances of abortion. Since, as Teilhard de Chardin said, nothing is intelligible outside its history, let us look to the history of abortion theology in the Christian church. In doing this, I will often refer to the work of John Connery. I do this for several reasons. To begin with, he holds the most conservative position on abortion since he, unlike Burtchaell and me, allows *no* exceptions. Thus I cannot be accused of bringing in a witness who shares my position. More importantly, Connery's book, *Abortion: The Development of the Roman Catholic Perspective* (Loyola, 1977) is the most important modern Catholic book on abortion. Since its publication ten years ago, it has not had the influence it deserves. I do not say Connery would agree with all my interpretations of his work. I also do not say his book is all one needs for a historical study of this issue. However, Connery's anti-moral-choice conclusions are based on his ecclesiology, not on his historical research, and that research has pro-moral-choice implications that have not been mined.

Before treating the Jewish prelude to Christian thought on abortion, Connery advises us that "the Christian attitude toward abortion will be in general continuity with the tradition of the Jews of the pre-Christian and early Christian era."

No text in the Bible discusses abortion in the terms of our debate today. The only reference in the Hebrew Bible to abortion is in Exodus 21:22 which speaks of accidental abortion. Connery says the text shows that "the fetus did not have the same status as the mother in Hebrew Law." That is certainly true. The text also suggests that the key issue was the rights of the father to progeny; he could fine you for the misdeed, but he could not claim "an eye for an eye" as he could if a person such as the woman had been killed. Thus the biblical witness on abortion.

The Roman and Stoic position from which Christians would borrow freely, stressed the rights of the *paterfamilias* and that there was no soul until birth. The Jewish Talmud taught that the fetus was a part of the mother. The Mishnah says you can kill the fetus to save the mother since it

is not a child until born. Josephus criticized abortion because it "diminishes the multitude." There is no evidence of a Christian revolution against these views or for them.

In the absence of scriptural support, the modern absolutists on abortion turn to the earliest Christian writers. What they find is that those few writers who mention abortion without elaboration were opposed to it, but not as homicide. No distinctively Christian position on abortion is in evidence. Indeed, there is no theology of abortion at all, according to Connery, since he says that does not begin on the subject until the thirteenth century. (I would place that beginning in the fifteenth century.) It violates historiography and the canons of literary criticism to say that *the* Christian viewpoint on abortion starts in the early church and floats clearly and constantly through the ages.

*The Didache*, discovered in 1875, was not a shaper of our tradition, but it is a favorite of the anti-moral-choice faction. It seems to be the product of an isolated Christian community in Syria and it draws on Jewish sources. It offers no textual evidence of discontinuity with Jewish views on abortion. Neither does *Pseudo Barnabas*, which also had Jewish roots. Athenagoras brought up abortion in his defense against cannibalism. This is not the setting of our debate. Clement of Alexandria opposed abortion as a cover-up for fornication. We do not know what views he held on other cases since he did no theological ethics on the subject. Cyprian was concerned about the case of a man kicking a woman in the stomach until she aborted. That is a bad idea, but it is not our debate. It is text-proofing and patristic fundamentalism to pretend these texts contain, even in germ, the modern negative absolute position on abortion.

Most important of the early writers is Tertullian. In his *Apologetica*, he seems to take the Jewish position on animation at birth. Elsewhere, he inclines to the Greek view that the fetus is ensouled when sufficiently formed *in utero*. Again, eclecticism and variety. Tertullian is important on another count. He addressed what we would call craniotomy and called it a "necessary cruelty." Connery concedes that Tertullian "does use expressions which might imply a justification of the procedure in his mind." It seems that the first primitive theology on abortion is open to moral choice.

A number of fourth- and fifth-century writers adopted the Greek idea of delayed animation. Early abortion in this view would not be homicide. Augustine said that the early fetus will perish like the sperm does. It will not rise with us at the resurrection of the dead. (Neither, he assures us, will the sperm, for which we can all be grateful.) The Council of Elvira's oft-cited canons may not refer to abortion at all, and the Council of Ancyra gives lesser punishments for abortion than for homicide. These documents influenced the Penitentials which dominated the moral scene from the sixth to the eleventh centuries.

In sum, let it be said that the sparse references to abortion in the first twelve hundred years of the Christian era are set in this context: (1) All occurred before the beginning of any formal theology on abortion. (2) They rose from a period of ignorance of the processes of generation, the ovum having been discovered only in the nineteenth century. (3) They came at a time of underpopulation. (4) They came in a time of notable sexism and negativity to sexuality. (5) Abortion was often condemned as a violation of the procreative nature of sex and not as murder. As Susan Teft Nicholson says, it is "misleading" in the terms of our public debate "to maintain that the Roman Catholic church has always condemned abortion." Sometimes abortion is called homicide, but so too are contraception and sterilization, suggesting that a dominant concern was sex used non-procreatively. It is fallacious and disingenuous to say that Christian teachers always condemned abortion without saying on what grounds they did so and without saying whether one accepts and argues from those same grounds today. At least the Vatican is consistent: it applies the natural law argument that sex is intrinsically procreative and rules out homosexuality, sterilization, and birth control.

The thirteenth was not the greatest of centuries for the theology of abortion. Small wonder Connery finds it "disappointing." Albert the Great revealed the central concern (which was for sex as necessarily procreative) by saying that sterilization is more damaging than abortion. Thomas Aquinas, in his entire *Summa*, has no articles on abortion at all. He only mentions the subject in answering two objections, one on accidental

abortion and one on killing a woman to baptize her fetus. (Thomas said that was not to be done.) Elsewhere Thomas accepted the idea of delayed ensoulment. The thirteenth century did not share today's obsession with abortion.

Real analytical theological ethics of abortion began in the fifteenth century. Two Thomists set the tone for what would become common opinion into the eighteenth century. Antoninus, the archbishop of Florence, and John of Naples allowed early abortions of unanimated fetuses partly because of the perceived need for baptism and also for fear for the life of the woman from a late abortion, given the crude state of surgery then. These writers allowed probability as the basis for judgment whether or not the fetus was animated, giving the benefit of the doubt, in effect, to the woman. They did this even though they believed that baptism was necessary for salvation. This presaged the modern contention of scholars like Carole Tauer that the *dubium facti* of animation was equivalent to a *dubium juris*, in the language of later Probabilism, thus justifying some abortions as moral. The opinion approving direct early abortion became common in the church and was used in confessional practice.

The sixteenth century brought the influential Antoninus de Corduba into abortion theology. He said that if medicine of its nature is conducive to the health of the woman, even if it causes the abortion of an animated fetus, it may be used. The mother had a "prior right"; her health was more important than the life of the fetus. Thus bathing, bleeding, purgatives, or pain-killers could be used even though they were abortifacient. His language lacks the precision of early twentieth-century moral theology, but he clearly used a very broad reading of "saving the woman's life." It is hard to see the treatments he discusses as being a matter of life and death. Certainly, you could not kill a person just to save yourself from pain or to get your bowels moving. Corduba expanded the discussion.

Jesuit Thomas Sanchez, who died in the early seventeenth century, said all his contemporary theologians justified early abortions to save the woman. He introduced the idea which had much resonance that the fetus may be a quasi-aggressor. As Connery says: "Anyone who reads his text can hardly doubt that he is speaking of what later

authors will call direct abortion." Catholic theology was struggling with the complexities of this issue and not succumbing to the panacea of a simplistic negative absolute.

After Sanchez, other theologians argued that the fetus is a kind of unjust aggressor at times . . . or that the fetus is not a formal but a material aggressor like an insane person, and that even causes like the woman's reputation might at times be enough to justify early, direct abortions. These Catholic theologians were allowed to debate the issue freely and they did not believe like men (they were all men) who possessed a factotum principle that would solve all or almost all abortion questions.

In the mid-nineteenth century, *Revue Théologique* published an essay in which it was argued that an abortion could be performed to save a woman four or five months pregnant if she would bleed to death without the abortion. The Holy Office had already declined to solve such a case even though several of its members favored the abortion. The Jesuit Ballerini of the Roman College justified therapeutic abortions by using a novel distinction between the acceleration of the birth with the resultant death of the fetus, and direct attacks on the fetus. Another Jesuit, Augustine Lehmkuhl who died in 1917, allowed the death of the animated fetus to save the life of the woman, and he called this a probable opinion. As was admitted at the time, this was direct abortion intended as a means. Lehmkuhl said the fetus could be assumed to have surrendered its right to life just as a person can give up a lifejacket to a friend.

The nineteenth-century debates on craniotomy also showed more flexibility than the anti-moral-choice partisans today. In 1869 the Sacred Penitentiary referred a questioner on a craniotomy case to the "well-tested and reliable authors" (*auctores probati*: a term that is usually mistranslated "approved authors") for an answer. This, in effect, invoked the tradition of Probabilism for what is virtually infanticide. Even two editors of the Vatican's *Acta Sanctae Sedis* defended direct killing through craniotomy, as did a number of other theologians.

At the end of the nineteenth century, the Vatican changed its mind on these matters and tried to impose cloture on theological discussion. Here,

of course, we leave moral theology and philosophy and enter ecclesiology. The ecclesiological question is: do the Vatican dicasteries possess a supernatural talent to see through and beyond the empirical complexities of these issues and are they endowed with the exclusive power to reach beyond theology and philosophy to irrefragable absolutes that are immune to informed dissent? The primitive ecclesiology that affirms such tendentially magical power bears burdens of proof that cannot be met.

As these debates arrived into the twentieth century, we can see that they had not achieved a high level of clarity. Even the critical category "direct/indirect," which still dominates the conservative position today, was a greased pig that could not be tied down. In 1932, Gregorian University's Arthur Vermeersch marked out three different meanings of "direct/indirect," and the meanings have multiplied since Vermeersch. Those who say that the "clear and constant" Catholic teaching is that you may never directly terminate fetal life are standing on a loose philosophical plank. And it is a *philosophical* plank, not a given of faith.

The abortion debate in our day has taken on an intensity it never before had. It also has a new breadth for Catholics with Vatican II's recognition of the truly ecclesial nature of Protestant communions and with the arrival of laity and women into theology. It becomes even more inaccurate to speak of *the* Christian view. This is not to say that clerical theologians have not paid some dues on the issue. On the occasion of the Vatican attack on Charles Curran, hundreds of theologians internationally declared his work well within the perimeters of Catholic orthodoxy. He justifies abortion "to save human life" or for values "commensurate with human life." These commensurate values could be grave threats to the psychological health of the woman and extreme socio-economic conditions. Richard McCormick, who is widely seen as a moderate in moral theology, finds Curran's position "very close" to his own and adds that abortion can be justified by other values "consistent with our assessment of the values justifying the taking of extrauterine life." Now, as ever, there is no one Christian view of the morality of abortion.

The negative absolutists on abortion say that the personhood question has been settled by mod-

ern embryology. This is a strange departure since the tradition has always maintained that there is something transcendent about personhood, something spiritual called a "soul" by the ancients. The mystery here cannot be settled by a materialistic and scientific analysis. The efforts to do so reveals the theological emptiness of the absolutists.

What comes close to being "clear and constant" in the tradition is the theory of what is called "delayed animation," or "ensoulment." For nineteen hundred years, the early conceptum was not seen as a person. Opinions have run the full gamut from conception to puberty! The Greek view of ensoulment in forty to ninety days was dominant, but the jurist Baldus and some of the Louvain theologians like John Marcus said the rational soul did not arrive until birth.

Significantly, there were and are no funerals for miscarriages. The Holy Office in 1713 forbade baptism of a fetus that was not well formed. St. Alphonsus Liguori spoke as a traditionalist when he said: "Some are mistaken who say that the fetus is ensouled from the first moment of its conception, since the fetus is certainly not animated before it is formed." The prestigious *Catechism of the Council of Trent* said that if Jesus was animated at conception it was a miracle because "in the natural order, no body can be informed by a human soul except after the prescribed space of time." Dominican H. M. Héring said in 1951 that the theory of delayed animation still had strong Catholic support "especially among the philosophers, who are wont to investigate the matter more profoundly than the moralists and the canonists." As Professor Carol Tauer says, if one were to argue for the presence of a rational soul, "there is better positive argument available for animals like mature dolphins than there is for human zygotes, morulae, and blastocysts."

The most intelligent way to be anti-abortion is to look to the causes of unwanted pregnancies. Too often in the past we looked only at the woman with the crisis pregnancy, not to hear her, but to stone her, picket her, excommunicate her, and call our work pro-life. We should look rather to the causes that bring women to the clinic door and attack those rather than the woman.

I would list sexism as the first cause of un-

wanted pregnancies. Sexism is the belief that women are inferior, and how do you make love to an inferior? Carelessly and casually. This yields the hostile inseminator syndrome. It is hostility to enter a woman's body sexually taking no account of the fact that you may thereby be entering the next century. In terms of Christian hope, the implications may be eternal.

Poverty brings women to the clinic door, since poverty breeds chaos and despair and these breed unwanted pregnancies. In this light, the military budget can be seen as a major abortifacient in our society. The largely useless budget which sucks \$35 million an hour, twenty-four hours a day out of our economic veins, causes social decay with its yield of unwanted pregnancies.

The surprised virgin syndrome leads to unwanted pregnancies. This is the inability to admit that the relationship is nearing the point where it could get sexual and that moral choices are called for. Counselors are told that "it just happened," but that is not candid since the onset of sexual ardor is noticeable.

The cult of romantic love produces unwanted pregnancies. The couple in the movie who tumble into bed for the final denouement are not to be interrupted for contraceptive indignities. The sacred exigencies of romantic love must be honored whatever the cost to the woman. And there are other social evils that contribute to unwanted pregnancies: the lack of sex education, the religious ban on contraception, and the negative attitudes toward sexuality that lead to eruptive sex.

Christians might best imitate the apostle Paul who, when he wrote to the sexually rambunctious Corinth, where abortion could have been no stranger, produced an epic song of love. The Judeo-Christian treasure houses a notion of love that could lead to more respectful relationships and more reverent sexual mores and fewer and fewer women at the clinic door.

As the abortion debate continues, I hope it would be freed from noxious and insulting analogies. The Holocaust imagery, used by Burtchaell and others, is repulsive in this context. It is offensive for Jewish people and other victims to be compared to blastocysts, embryos, and fetuses. It is especially galling when this is done by Catholics who, as a church, were not distinguished in their resistance to the real Holocaust. Slavery is another

false analogue that equates pre-personal with personal life. And, once again, Catholics in this country were not in the forefront of the fight against slavery or for civil rights. Such analogies do not encourage the reasoned discourse that the problem of abortion needs.

### James Tunstead Burtchaell

The men and women who first tried to follow the risen Jesus were Jews. They were not entirely unprepared for the moral demands this would make on them. The Christian road followed terrain already familiar to Jewish moral teaching. Infidelity was to be avoided in all its forms: adultery, incest, and idolatry. Believers were never to take crafty advantage of others, by perjury or sorcery or usury. And they were to restrain themselves from all violence, whether drunkenness, gossip, or murder. This ethical standard rests as firmly on rabbinical teaching as on the New Testament, which shows what a direct lineage there is from Hellenistic Judaism to early Christianity.

In the Sermon on the Mount Jesus invites his followers to go even further along this Way. It was not enough to spare your neighbor's life; you must not even hurl insults at him. If adultery was wrong, then so was lustful intent. And there was scant advantage from being a person of your sworn word if you were a chiseler whenever you were not under oath. Yet even this prophetic summons to a righteousness higher than that of the scribes and Pharisees would have found strong endorsement in many of the better synagogues around Judaea.

Christian moral doctrine showed its direct descent from Jewish ethics. It was ironic, then, that its great breakaway point of departure would be from one of the teachings Christians and Jews most closely shared. Both synagogue and church taught that authentic religion meant coming to the aid of women and children deprived of breadwinners, and of the indigent and the refugee aliens. Nothing could be more traditional for a Jew or more fundamental for a Christian than this ancient commitment to provide for the widow, the orphan, the pauper, the stranger. Yet it was precisely here that the young Christian community found a distinctive vigor and vision, and set

forth from its mother's house on a moral journey of its own.

The alien and the pauper, the widow and the orphan, classic beneficiaries of preferential sustenance since Sinai, were suggestive to the Jesus people of four other forlorn categories that they must safeguard: the enemy and the slave, the wife and the infant — unborn or newborn.

The resident alien had to be guaranteed shelter, for he dwelt within the national enclosure of the land and trusted its people. But the Christian was bidden to go far beyond protecting the nearby alien. He was charged to cherish the distant enemy. He had heard it said that he must love his neighbor and hate his enemy. Jesus told him he must love his enemy even at the risk of receiving hatred from both his countrymen and his enemy. He was to set no more bounds to his bounty than the Father who lavished sunshine and rainfall on all fields alike. His pattern was the Lord Jesus who had loved to the death those who betrayed and denied and deserted and condemned and crucified him.

The poor were always a special charge on the Christian's conscience. But their endless needs suggested another, even more vulnerable, group. For those "in the Lord," no one was any longer to be demeaned as mere property of another. Even slaves had to be dealt with as brothers and sisters in the Lord.

Every man was to join in supporting the wives his fellow believers had left behind as widows. But now he was startled to be told that he no longer had a male's freedom of choice to dismiss his own wife. Jesus' rejection of divorce affected men and women differently, since only husbands had previously been free to reject their partners. Now women could no longer be chosen and then discarded by their men. Both alike must now be faithful throughout life, if they loved and married in the Lord.

There were four radical, prophetic imperatives that the new Christian faith set before those who would live in the Spirit and fire of Christ: four disconcerting duties that would distance them from Jews and Romans alike. First, the command to love their enemies struck down forever their exclusionary allegiance to a single race or nation. Second, the command to acknowledge slaves and masters as brothers and sisters condemned slavery to a long and sullen retreat, and ultimately to ex-

unction. Third, the command that husbands and wives were to pledge an equal fidelity was a first yet crucial rejection of the corruption of men and women by their respective domination and acquiescence. These were thunderclaps of moral exclamation that bound the small and scrappy new fellowship to make the purpose of their lives the liberation of those most at a loss.

And there was a fourth point of radical conversation, for there was a fourth group of victims they had to embrace: Beyond the children orphaned by their parents' deaths were those still more helpless children whom their parents slew themselves.

Early Jewish law seems to have regarded the unborn as paternal property. A monetary indemnity was due to the father from anyone who caused his wife to abort. By the time of Jesus some Jewish circles were ready to see the fully formed fetus as a protectable human being. But abortion law was scanty and ambiguous. Roman law in the same era offered no protection against either abortion or infanticide, both of which were within the prerogatives of the male head-of-household. Neither tradition offered a protection for infants reliable enough to suit the first Christians, and they soon stated their own conviction which was to the point.

The most ancient Christian document we possess, besides the New Testament, is called *The Didache, The Instruction of the Twelve Apostles*. Already in this first-century catechism, the obligation to protect the unborn and the infant was included within the roster of essential moral duties:

You shall not commit murder, you shall not commit adultery; you shall not prey upon boys; you shall not fornicate; you shall not deal in magic; you shall not practice sorcery; you shall not murder a child by abortion, or kill a newborn; you shall not covet your neighbor's goods . . . (*Didache* 2:2-3).

In a later passage the instruction describes what it calls "the way of death":

It is the path of those who persecute the innocent, despise the truth, find their ease in lying . . . those who have no generosity for the poor, nor concern

for the oppressed, nor any knowledge of who it was who made them; they are killers of children, destroyers of God's handiwork; they turn their backs on the needy and take advantage of the afflicted; they are cozy with the affluent but ruthless judges of the poor; sinners to the core. Children, may you be kept safe from it all! (5:2).

The Greek is as straightforward as my translation, bluntly choosing words like "kill" (*apokteinein*) and "murder" (*phoneuein*). Its word for abortion, *phthora*, means, literally, "destruction," and the one destroyed is called "child," *teknon*, the same gentle word used in the final sentence to address the readers themselves.

Shortly before or after the turn of the second century, the *Letter of Barnabas* repeats the *Didache's* injunction against abortion and infanticide in virtually the same words, and laments that they destroy small images of God (*Barnabas* 19:5; 20:2).

Early in the second century the Christian movement had achieved momentum enough to arouse antagonism in Roman society. Some of the most articulate writers of that age were apologists defending their fellow Christians against libel. And one of the slanders that outraged them most was the rumor that Christians slew infants to obtain blood for their eucharistic rites. It was a particularly galling lie, precisely because protection of the young had become such a Christian priority. These apologists did not conceal their contempt for the surrounding pagan society which was willing to destroy its young by choice. Minucius Felix, a Roman attorney of African origin, states the contrast angrily.

There is a man I should now like to address, and that is the one who claims, or believes, that our initiations take place by means of the slaughter and blood of a baby. Do you think it possible to inflict fatal wounds on a baby so tender and tiny? That there could be anyone who would butcher a newborn babe, hardly yet a human being, who would shed and drain its blood? The only people capable of believing this is one capable of actually perpetrating it. And, in fact, it is a practice of yours, I observe, to expose your own children to birds and wild beasts, or at times to smother and strangle them — a pitiful way to die; and there



are women who swallow drugs to stifle in their womb the beginnings of a man on the way — committing infanticide even before they give birth to their infant (*Octavius* 30:1-2).

The same rumor was challenged by Athenagoras of Athens. How could Christians be accused of murder when they refused even to attend the circus events where humans perished as gladiators or as victims of wild beasts? Christians consider, he wrote, that even standing by and tolerating murder was much the same as murder itself. He then continues:

We call it murder and say it will be accountable to God if women use instruments to procure abortion: how shall we be called murderers ourselves? The same person cannot regard that which a woman carries in her womb as a living creature, and therefore as an object of value to God, and then slay the creature that has come forth to the light of day (*Embassy for the Christians* 35).

Tertullian, perhaps the most eloquent of the second century apologists, repeatedly opposed the teaching of the Stoics that children are not yet alive in the womb, and that their soul is given them at birth. Arguing from philosophical more than biological grounds, he insisted that the body and soul grow together from the beginning.

We have established the principle that all the natural potentialities of the soul with regard to sensation and intelligence are inherent in its very substance, as a result of the intrinsic nature of the soul. As the various stages of life pass, these powers develop, each in its own way, under the influence of circumstances, whether of education, environment, or of the supreme powers (*De Anima* 38:1; see also 37).

Abortion, he said, was not only homicide, it was parricide: the slaying of one's own flesh and blood.

With us, murder is forbidden once for all. We are not free to destroy anyone conceived in the womb, while the blood is still being absorbed to build up the human being. To prevent the birth of a child is simply a swifter way to murder. It makes no

difference whether one destroys a soul already born or interferes with it on its way to birth. It is a human being and one who will be a human being, for every fruit is there present in the seed (*Apologeticum* 9:8; see also 9:4-7).

Even in the case of a child whose uterine position makes birth impossible, when Tertullian would accept dismemberment to save the mother's life, he bluntly says the child is being "butchered by unavoidable savagery" (*De Anima* 25:4).

These are statements Christian apologists were making to outsiders. Among themselves, abortion continued to be reviled as a procedure unthinkable for believers. Clement of Alexandria, perhaps the leading theologian of the second century, wrote:

If we would only control our lusts at the start, and if we would refrain from killing off the human race born or developing according to the divine plan, then our entire lives would be lived in harmony with nature as well. But women who resort to some sort of deadly abortion drug slay not only the embryo but, along with it, all human love [*philanthropia*] (*The Pedagogue* 96).

Early in the next century Hippolytus of Rome condemned bishop Callistus for his readiness to encourage marriage, legal or otherwise, between affluent women and lower-class or slave-class men. Such unions, he observed, had only tended to encourage abortion.

Women who pass for believers began to resort to drugs to induce sterility, and to bind their abdomens tightly so as to abort the conceptus, because they did not want to have a child by a slave or lower-class type, for the sake of their family pride and their excessive wealth. Look what abuse of duty this lawless man has encouraged, by inciting them both to adultery and to murder. And after such outrageous activity they have the nerve to call themselves a Catholic church! (*Refutation of All Heresies* 9:12:25).

These forthright voices from the first and formative Christian years, all argued that the destruction of the child — unborn or newborn — is infamy for those who follow Christ.

Now I call your attention to five facts, five aspects of that early Christian conviction, which we should note and take to heart. First, the repudiation of abortion was not an isolated or esoteric doctrine. It formed part of an obligation by all believers to protect the four categories of people whom they now saw as peculiarly exposed to the whim and will of their fellow humans: the slave, the enemy, the wife, the infant — unborn or newborn. These were at great risk, as were the four traditional protégés: the poor, the alien, the widow, the orphan. And this fourfold obligation was preached across the full expanse of the church: from Carthage to Egypt and up into Syria, then across Greece and in Rome.

Second, this was not a program simply for the more strenuous. It was presented as the imperative agenda for the church, the test for all discipleship. Believers were warned away from abortion as they were from adultery, murder, greed, and theft. The four Christian innovations were offered as the classic new signs of authenticity. If theirs was not a community where Jew and Gentile, man and woman, slave and free could show forth as one, then it failed to be Christian. That was their test.

Third, though these exhortations show a sensitive and compassionate sympathy for the victims, their principal moral concern is for the oppressors. It is the husband that bullies his wife whose person dwindles even more sadly than hers. The master or mistress who abuses the slave sustains an injury even greater than what the slave experiences. It is the mother who eliminates her son that Clement cares about, because she must destroy her *philanthropia* as well, her love for humankind, in order to do it. The disease of character that follows from exploitation of others was seen, in Christian perspective, to be more hideously incapacitating than the worst that befell victims. It could be a death far worse than death. Even when they enter the contemporary dispute over the ensoulment of the unborn, these writers dismiss it as a quibble when it comes to abortion: it is the same ruthless willingness to eliminate unwelcome others that shows itself in the slaying of the unborn, the newborn, or the parent. In truest Christian perspective, it is the oppressor who is destroyed.

Fourth, these writers knew well that any true protection of the helpless and exploited calls for

a stable empowerment, so that those same people will not continue to be victimized. This means that the Christian moral agenda demands a price. Oppressors must give up their advantage. It little matters whether the advantage was seized purposefully or inherited unwittingly. There is suffering to be accepted by those in power if the disadvantaged and helpless are to be afforded true protection.

But there is a further sacrifice to be made. The victims must accept suffering as well. The price they must pay — if they are to be Christians — is that they must forgo resentment and hatred. Empowerment cannot be grasped as the means to take revenge or, still worse, as the way to begin to be an exploiter oneself. The victims must gaze directly upon those who have taken advantage of them, and recognize them as brothers and sisters who themselves may have been pressed by distress of one kind or another. So there is no moral accomplishment possible unless reconciliation extends the hand of fellowship across the battleline of suffering. There will be heavy and sometimes bitter things to accept if hatred is to be extinguished, and not merely aimed in a new direction.

Fifth, we must note that this was a rigorous duty presented to our Christian ancestors. The light was dazzling, and they often preferred to draw back into the cover of darkness. They and we have sinned against that light. Christians continued to relish and even to justify hatred against their enemies. They did not set the slaves free. Women were not welcomed into full and equal status. And parents continued to destroy their young.

Every person interested enough to follow this debate is aware that we live in an extraordinary age. Four great movements have stirred us round the world: (1) a movement for world peace that is more than a weariness of war; it is making bold and positive ventures towards the reduction of enmity and distrust; (2) a movement for the relief of bondage of every sort; freedom from slavery and from racial subjection, dignity for the worker, status for the migrant; (3) a movement for equality of women and a more integrated companionship with men, so that family and work can be humanized for each and for both together, and (4) a movement to rescue children from abortion,

infanticide, infant mortality, and every sort of neglect and predatory danger.

In the trough of some of the most genocidal carnage and oppressive bondage and degradation of women and slaughter of innocent children, our era may be unusual in the readiness of some to listen to that bold and visionary Christian age whose teaching I have held up to your minds and memories.

Each of these movements is bent on empowerment. If the exploited do arise and claim their rightful places, will they take power like Spartacus or Robespierre or Pol Pot? Or will they take power like Mahatma Gandhi and Nelson Mandela . . . like Jesus? Christians may make the difference. This fourfold phalanx of conscience on the march is only partly Christian in origin. But I say that Christians will mean much to these movements of grace, and these movements must mean much to us.

We, possibly more than others, must immediately recognize that these various struggles are in alliance with each other. None can be pitted against another. The United States, for instance, must never imagine that enmity between nations will be subdued if our neighbors are in bondage to us. Enslavement and enmity must both vanish. Likewise, the movement of enhancement for women will never be furthered by making their children expendable. In America today abortion is said to involve a conflict of rights, a conflict of interests between women and their children. A Christian must hold suspect any human right which must be guaranteed by another human's elimination.

Another Christian contribution will be to tell all those who stand to lose power that it is in their highest interest to do so. For they have truly withered under the weight of their exploitative advantages. To say this to them with any credibility, we must first be utterly persuaded that oppressors suffer an even more tragic injury than their victims. Are you really ready to believe that the staff of Auschwitz perished in a worse tragedy than those they exterminated? Do you mourn more for the two thousand or so abortionists in America than for the eighteen million or so infants they have efficiently butchered? Were you more dismayed about Bull Connor than about Martin Luther King, Jr.? Or if you do believe that, can you

say believably that you care for the mothers who destroy their unborn children, for they stand to lose even more than do their tragically destroyed offspring.

There is another characteristic Christian insight needed in the abortion struggle. We must see and say how often it is that women who victimize their children are themselves handicapped by never having enjoyed control over their own lives. They are victims . . . even though they are victims who destroy others.

How often it is that some helpless group is savaged by aggressors who have themselves been victims. They are survivors of outrage, and they now seek to relieve their stress and suffering by turning on others who are weaker still. Victims exploiting victims.

What is the background of parents who abuse and batter their children? A childhood of violence, incest, contempt. Victims lashing out at victims.

And who are aborting their daughters and sons today? Women and men who are alienated, abused, poor, who are at a loss to manage their own lives or intimacies. Victims destroyed, destroying victims.

Hate them — hate any victimizers — and you are simply cheering on the cycle of abuse and violence. Suppress your rage well enough to look closely and humanely at drug dealers, at rapists, at pathological prison guards, and you may see it there too: the same pathetic look of the battered spirit, preying on others wantonly.

Women who are desperate or autistic enough to destroy their children are among society's most abused victims. We owe them every help. But a truly compassionate support could never invite them to assuage their own anger by exterminating those more helpless still. It is by breaking the savage cycle of violence that victimization is laid to rest.

When you grasp the uplifted hand to prevent one injured person from striking out at another, you must do so in love, not in anger, for you are asking that person to absorb suffering rather than pass it on to another. And, to be a peacemaker, you must be as ready to sustain as you are to restrain. One must be more than just to accept injustice, yet deal out justice.

Our belief is in a Lord who was the innocent

victim of injustice. Yet he caught the impact of that injustice in his own body, his own self. He deadened it and refused to pass it on, he refused to let the hatred go on ricocheting through humankind. If we truly follow him we are committed to doing the same. And the truest test of that faith is whether we have the gumption to share it with others, with those who are treating others unjustly, but especially with people who are victims. We must prevail upon them to let us help them catch the impact of their distress in their own bodies, and in our own selves alongside theirs, without permitting the cycle of violence to carry on.

The fire of Pentecost rapidly enflamed the Christian community to a sense of what it was about. These Christians were in so many ways an observant Jewish movement: in their worship, their hopes, their moral way of life. But in two great matters they burst forth as men and women possessed by a new Spirit. They witnessed to the Resurrection: Jesus, at whose unjust execution they had been inert and disengaged, was risen to power as Messiah and Lord. That was the first great matter.

The second was like it. They too had been raised to unexpected power, and they stated with vehemence that they would no longer be passive before affliction. That determination was embodied in the entirely distinctive and innovative moral commitment to befriend the enemy, to embrother the slave, to raise up the wife, and to welcome the child. Their own lives were at stake, for these Christians believed that they would perish in their persons if they proved nonchalant about the suffering of any of these most vulnerable brothers and sisters. They rushed to their task, for many others' lives depended on them: the lives of those so powerful they could crush others without noticing; and the lives of their victims — unnoticed, undefended, even unnamed.

The revolt against abortion was no primitive and narrow dogma that a more sophisticated church has now outgrown. It was in the very center of the moral life by which the church first defined itself before the Lord and before the world. We have not yet approached it, and some speak of having surpassed it. Those first disciples who revered every unwanted child, born or

unborn, would have been stupefied by the sight of their own children in the faith gainsaying this or any of that fourfold commitment. Were we to forswear the hated enemy, the enslaved laborer, the subjected woman, or the defenseless infant, and do that in his name, Christ would have died in vain.

In this debate we are asking whether recent developments and reflection give us authentic reasons to reconsider what the *Didache* and Athenagoras and Tertullian and our other ancestors in faith held to be essential. I say to you we have never had more reasons to reconsider their teaching. And I say that their teaching has never rung more defiantly as the prophetic call of Christ.

### Maguire

John Courtney Murray used to say that disagreement is a rare achievement. We have achieved it in this debate. Burtchaell finds his position on abortion "in the very center of the moral life by which the church defined itself." The theological record does not support this simplistic contention.

Our differences are primarily methodological. Burtchaell designates the *Didache*, Athenagoras, Tertullian, and others as his "Scripture" since Scripture does not support his position. The difference is not that he goes to these texts and those of us who differ with him do not. The difference is that he finds in these texts what is not there. You cannot extract from words like *teknon* or *trucidatur* a revolution of consciousness on abortion. This kind of text-proofing and ignoring of the *Sitz im Leben* would not be tolerated in biblical exegesis.

What Burtchaell does is not good ethics. He wants to find an ideal in various disparate texts and leap from there to very practical conclusions in ethics that apply transculturally and transtemporally. James Gustafson and others have long warned of this temptation to avoid homework by rushing from perceived ideals to simple conclusions. Aquinas says that "human actions are good or bad according to their circumstances," and that moral life is marked by "*quasi infinitae diversitates*." The tough part of ethics is the circumstantial analysis in which we confront these *diversi-*

tates. Burtchaell would spare us this by claiming to find an ideal that solves all (or almost all) abortion cases for all time.

Moral meaning does not just come from ideals. It is also housed in principles and it is incarnate in the circumstances of flesh and life. The moral decision is born at the interstices of all these sources of moral meaning. Burtchaell purveys a perceived ideal and then rushes to a conclusion that binds all kinds of people in all kinds of circumstances. I find in this approach the seeds of fanaticism. Even the old Penitentials that dominated Catholic thought for centuries were more capable of making distinctions where there were differences. They could allege that adultery was more serious than abortion. They tried for some sense of differentiation in their analysis of reality. Burtchaell fails here.

Burtchaell also assumes, what the Christian tradition did not, that the human embryo is a child, a baby, a person. Fifty-one percent of all abortions are done before the embryo has become a fetus. Even the Vatican, which is not shy in these matters, has not tried to settle the ensoulment question. Burtchaell is more dogmatic than the tradition which recognized doubt and gave the woman the benefit thereof.

Burtchaell would put all abortions, except the ones he approves of, in the category of butchery and murder. That makes forty to fifty million women butchers and murderesses every year. That is a sweeping judgment of a huge part of humanity, the feminine part, and the implications of that judgment, as I have said, are sexist.

In his opening statement, Burtchaell said many beautiful things beautifully. At times, I wished I could be entirely on his side. Our paths part when we come to the thorns of conflict situations where I find him guilty of oversimplification. Burtchaell dismisses Probabilism which theologians use to justify some abortions. The *doubt of fact* on embryonic and fetal personhood has been treated as a *doubt of law*; the basic assumptions of Probabilism were used even before the theory was formulated.

In conclusion, I return to my keynote positions that neither of us is pro-abortion. We would both like to see conditions which would make abortion less likely. We differ in our sense of the tragic possibility that those conditions are not always present.

## Burtchaell

Professor Maguire points out that he does not read the Christian record as a constant support for the moral imperative against abortion. He is correct. The record of the church is no more honorable in its pursuit of that early commitment than it is in support of the early commitment to make slaves truly brothers and sisters. Nor would we want to use the history of the church to vindicate its failure to pursue its early insights regarding even companionship between women and men. On the contrary, there has been a great slumbering denial, turning of the back on these convictions.

Professor Maguire also says that in Utopia abortion would be almost unnecessary. I do not think it is our task to frame ethics for Utopia. Nor do I think that Jesus was asking people to be just only when the world settled down to being just in return. Anyone who agrees to accept injustice without retaliating knows that she or he is not following a utopian ethic. *All* of these characteristic Christian moral imperatives require a readiness to do the good and lifegiving thing because one is determined to *do* justice, not merely because one can count on *receiving* justice.

"Are the many women who have committed abortion evil?" Professor Maguire asks. Are the many men who bullied them into it evil? Are the many men who aborted them evil? Those who have recounted their experiences to me deplore beyond anything else in their entire lives the destruction of their own children. I have known them to have carried this sadness for weeks, months . . . as long as sixty years. It was I who found myself trying to draw them away from the conviction that they must be evil, trying to draw them into a resolve that now they must turn and offer their lives to other helpless people who needed them. It was not I who was pointing the finger at them, but they who seemed to have sensed that people who do evil things to others wither. We all carry around the scars and handicaps and disablements of the advantage we have taken of others from time to time. I think it is entirely specious and sentimental to say: "So many have done it." So many have done a lot of things.

Lastly, I must disallow my opponent's use of Probabilism. Professor Maguire knows very well, for he is a well enough trained professor of ethics,

that the tradition which developed the theology of Probabilism absolutely vetoed its use in any matter like abortion. Probabilism says that where there is confusion — legitimate, objective confusion — among goodminded people without a conflict of interest about the requirements of moral obligation, then you may follow a lenient course except when that more permissive choice might do harm to another, in which case you may not follow a probable opinion but must pursue the safer course. You may not go out and fire off your 30.06 rifle in the woods at every sound behind a bush. Indeed, when there is doubt, and when injury might follow, all benefit of doubt accrues to the potential victim. Therefore the doctrine of Probabilism would say: until the question of personhood of the unborn at various stages is resolved, all benefit of doubt goes to the potential victim.

## 77 Respect for Life in the Womb

Address to the Medical  
Association of Western  
Flanders (April 23, 1977)

Paul VI

Modern medicine is becoming more and more remote from the uninitiated because both its techniques and its language have become so complicated. At the same time, however, the high scientific level every physician should attain must not be allowed to overshadow or lessen that sense of the human reality and that attention to persons which have always characterized the medical profession and been the source of its greatness.

In the matter of medical ethics, we wish to insist once again on the foundation of everything else, namely, an unconditional respect for life from its very beginnings. It is important to understand why this principle, so essential to every civilization worthy of the name, is today being challenged and why we must firmly oppose what is being improperly termed a "liberalization."

The Catholic Church has always regarded abortion as an abominable crime because unqualified respect for even the very beginnings of life is a logical consequence of the mysteries of creation and redemption. In our Lord Jesus Christ every human being, even one whose physical life is utterly wretched, is called to the dignity of a child of God. That is what our faith teaches us.

Every Christian must draw the necessary con-

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