

## PAST CHURCH TEACHING ON ABORTION

The title assigned to this seminar meeting is sufficiently general to allow us to do most anything we desire with it. Let me mention briefly some of the possibilities, and then single out one as that most likely to lead to meaningful discussion within the time available. Three words in the title suggest varying lines of development.

1. *Past*. The word "past" is very general. It could, for example, refer to the immediate past (the last fifty years or so), the more remote past (the last five hundred years), the very remote past (from the earliest beginnings). It could also refer globally to the entire two thousand year history of Christianity.

Whatever segment of history one chooses to define the word "past," it is important to advert to the general theological significance of the word. The Christian past represents neither a blueprint with all the answers nor a bad dream. It rather functions as the stuff of our communal memory of Christian experience.

That is to say that a man is a person only in relation to other persons. Therefore, in some sense he is also a knower only in relation to other knowers. The communal character of knowledge is even clearer from the point of view of Christian ontology. Being in Christ is being in a community. Assumption into Christ is assumption into the whole Christ, His body and His people. Thus it is axiomatic that the community of believers is the extension of the Incarnation, that the actions wherein we initiate into, fortify, restore, intensify the Christlife, are at once Christ's actions and actions of the community. Now if we cannot exist in isolation as Christians, neither can we know in isolation. Our shared knowledge is concerned with the *magnalia Dei*. But since it is *men* who are in the process of being conformed to Christ, since we extend and intensify this conformity by *human* actions, and since the Christ to whom we are conformed is the *Godman*, our shared knowledge, under the guidance of the Spirit, involves and will lead to a growing sensitivity to human values. This fine sensitivity is a communal possession; its application, extension,

and growth are communal experiences. And precisely because the Christian community is an historical people, these experiences are historical experiences.

The word "past" forcefully reminds us that our reflection on contemporary problems is that of a living and growing community, and one therefore which is privileged to share the experience and reflection—the wisdom—of the past. The Christian experience implies a dynamic continuity of value-judgments. To forget this would represent a failure in Christian empiricism. Thus, while formulations from the past are not totally adequate to contemporary problems, our judgments cannot hope to remain Christian and reliable unless they maintain radical continuity with the past.

2. *Church*. In the title this is a terribly ambiguous term. It could refer, first of all, to the documents of the official and universal magisterium. Secondly, it could refer to earlier local conciliar documents, or even to present episcopal statements. Thirdly, it could refer to those theological currents which have contributed to and are formative of the *vivens magisterium*. Fourthly, it might be accepted as referring to the actual practice of Christians reflecting the receiving community's understanding of the gospel demands as applied to this area. Taken in this sense it would suggest treatment of the edicts of Christian emperors, liturgical books, penitential practices, etc.

3. *Teaching*. The answer to the question "what has the Church been teaching?" demands a distinction between two levels: the level of the abiding message, the level of its formulation. I do not mean to suggest a separation of these two levels. The formulation is assuredly rooted in and a product of the basic message. But it is also a product of history, the answer to a question framed in a distinct cultural moment. That is why formulations must be constantly re-examined and re-worked.

Carlo Huber, S.J., has recently put the matter as follows: "General changes in how people experience this world and speak about it, necessarily have very deeply felt repercussions on religious language and may cause a lot of trouble—as they do! Nevertheless, Christianity has found the way time and time again to safeguard its message precisely by saying it anew, by reconnecting it with the changed language of man. In this context it may be important to point out that

most heretics became heretics by their refusal to accept a new language, a new formula, by their sticking to an old one, just repeating it."<sup>1</sup> In other words, it is only by constantly re-examining our formulations that we can hope to remain true to the abiding message. The history of theological reflection is, from one point of view, the history of a process of purification of language. By this same token the creative work of purification and reformulation is the only way to protect and sustain the living magisterium. Theological literalism—espoused on the grounds that anything else attacks magisterial authority—is a genuine threat to the *vivens magisterium*. For literalism, by identifying formulation with abiding message, threatens to cut the magisterium adrift from the abiding message.

I take this distinction between formulation and abiding message to be an obvious one. The history of theological reflection amply demonstrates it.<sup>2</sup> The Church in council (Vatican II) explicitly stated it: "The deposit of faith or revealed truths are one thing; the manner in which they are formulated without violence to their meaning and significance is another."<sup>3</sup>

Our title, therefore, suggests a great number of ways in on the subject of abortion. Because much of the early historical work has been done by others<sup>4</sup> and because meaningful discussion is our immediate purpose here, I shall outline some remarks that can be gathered under three titles: (1) recent formulations of the magisterium; (2) three contemporary challenges of these formulations; (3) some concluding reflections.

#### RECENT FORMULATIONS OF THE MAGISTERIUM

John Noonan has pointed out that magisterial teaching since the late 19th century has moved in three successive stages on the subject

<sup>1</sup> Carlo Huber, S.J., "Speaking About God in a Secular World." *Ido-c*, April 21, 1968, p. 5.

<sup>2</sup> I have suggested an application of this distinction to abortion in *America*, 117 (1967) 716-719.

<sup>3</sup> Cf. *The Documents of Vatican II*, ed. Walter M. Abbott, S.J., New York, 1966, p. 268, n.62.

<sup>4</sup> Cf. John T. Noonan, "The Catholic Church and Abortion," *The Dublin Review*, 241 (1967-8, Winter) 300-345. See also the detailed study of abortion by John R. Connery, S.J. now in the process of publication.

of abortion: decisions by Roman congregations, papal teaching, affirmation by pope and general council.<sup>5</sup> In the latter two categories some of the most important statements are the following.

(1) *Pius XI*. "As to the 'medical and therapeutic indication' to which, using their own words, We have made reference, Venerable Brethren, however much we may pity the mother whose health and even life is gravely imperiled in the performance of the duty allotted to her by nature, nevertheless what could ever be a sufficient reason for excusing in any way the direct murder of the innocent (*directam innocentis necem*)? This is precisely what we are dealing with here. Whether inflicted upon the mother or upon the child it is against the precept of God and the law of nature: 'Thou shalt not kill.' The life of each is equally sacred, and no one has the power, not even the public authority, to destroy it."<sup>6</sup>

(2) *Pius XII*. "Now the child, even the unborn child, is a human being in the same degree and by the same title as its mother. Moreover, every human being, even the child in its mother's womb, receives its right to life *directly* from God, not from its parents, nor from any human society or authority. Therefore, there is no man, no human authority, no science, no 'indication,' whether medical, eugenical, social, economic or moral, that can show or give a valid juridical title for a deliberate and direct disposing of an innocent human life—which is to say, a disposition that aims at its destruction either as an end in itself or as the means of attaining another end that is perhaps in no way illicit to itself."<sup>7</sup>

*Pius XII*. "This principle holds good both for the life of the child as well as for that of the mother. Never and in no case has the Church taught that the life of the child must be preferred to that of the mother. It is erroneous to put the question with this alternative: either the life of the child or that of the mother. No, neither the life of the mother nor that of the child can be subjected to an act of direct suppression. In the one case as in the other, there can be but one obligation: to make

<sup>5</sup> Noonan, *loc. cit.*, 339. Noonan's use of the word "exceptions" to describe the case of ectopic pregnancy and the case of the cancerous uterus is very misleading. (Cf. Noonan, p. 343)

<sup>6</sup> *AAS* 22 (1930) 563.

<sup>7</sup> *AAS* 43 (1951) 838-9.

every effort to save the lives of both, of the mother and of the child."<sup>8</sup>

(3) *Vatican II*. "Furthermore, whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or willful self-destruction . . . all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury. Moreover, they are a supreme dishonor to the Creator."<sup>9</sup>

"For God, the Lord of life, has conferred on men the surpassing ministry of safeguarding life—a ministry which must be fulfilled in a manner which is worthy of man. Therefore from the moment of its conception life must be guarded with the greatest care, while abortion and infanticide are unspeakable crimes."<sup>10</sup>

"Everyone should be persuaded that human life and the task of transmitting it are not realities bound up with this world alone. Hence they cannot be measured or perceived only in terms of it, but always have a bearing on the eternal destiny of men."<sup>11</sup>

When these and other pertinent magisterial documents are studied carefully, recent Church teachings on abortion can be summarized in the following assertions (lifted verbatim, wherever possible, from the documents themselves).

(1) So far as his being and essence are concerned, man has been created for God, and for no other creature. [*AAS* v.43, p. 838]

(2) Every human being has the right to life immediately from God. [*Ibid.*, 838]

(3) The infant is human, is "man" even though it be not yet born, to the same degree and through the same title as the mother. [*Ibid.*, 838]

(4) Innocent human life, in whatever condition it is found, is withdrawn from the very first moment of its existence from

<sup>8</sup> *AAS* 43 (1951) 857.

<sup>9</sup> *The Documents of Vatican II*, p. 226-27.

<sup>10</sup> *Ibid.*, 255-256.

<sup>11</sup> *Ibid.*, 256.

any deliberate direct attack. [*Ibid.*, 857, 839] This is a fundamental right of the human person. [*Ibid.*, 857]

(5) Hence any direct attempt on innocent human life is immoral [*Ibid.*, 857, *AAS* v.32, 533-4] whether it is undertaken as a means or an end. [*Ibid.*, 838] Indirect abortion can be licit when a good of great value is at stake ["quale è la vita," *Ibid.*, 859]

(6) Direct abortion is direct killing of the innocent. [*Ibid.*, 857, 859; *AAS* v.22, p. 563]

(7) Even though there may be some foundation for distinguishing various phases of development of life still unborn, all direct attacks involve an attack on the inviolability of human life. [*Ibid.*, 857]

(8) This thesis is one of the essential foundations of conjugal morality and social morality in general. [*Ibid.*, 857] It is one of the basic laws without which men cannot live together in safety. [*Ibid.*, 839]

(9) This has been the constant teaching of the Church ["Insegnamento costante della Chiesa," *Ibid.*, 857]

This teaching is the precipitate of a great deal of discussion and casuistry over the centuries. The work of Noonan and Connery reveals the existence of a whole spectrum of positions on abortion. For example: (1) the language of some theologians spoke of three types of abortion: prevention of conception, abortion of an inanimate fetus, abortion of an animated fetus. (2) Others stated that all interventions into the life-giving process are homicide. (3) Others concluded that evacuation of a non-animated fetus was permissible to save the mother's life; for an inanimate fetus is not a human being. (4) Others countered that abortion even of an inanimate fetus was immoral, whether as imperfect homicide or a misuse of *semen conceptum*. And so on, with many qualifications, counter-arguments, hesitations, obscurities related to the scientific information available at the time and the theological categories in vogue. But as time went on the qualifications diminished and the obscurities vanished one by one to the point where the doctrine outlined above became settled Catholic teaching.

I see three characteristics or qualities in this teaching. First of

all, it developed and was nuanced merely as an application of a more general teaching, or at least hand in hand with it,—the immorality of the direct killing of innocent human life. For instance, *Casti Connubii* insisted that public authority must protect the life of the innocent “idque eo magis quo minus ii, quorum vita periclitatur et impugnatur, se ipsi defendere valent inter quos primum sane locum tenent infantes in visceribus maternis abdit.”<sup>12</sup> Secondly, the teaching is presented with uncommon strength and insistence. *Casti Connubii* states that the direct killing of the innocent in abortion is “praecepto divino contrarium.” Pius XI sternly reminds public authorities that, if they fail to protect innocent human life and allow it to be killed, God is their judge and is a vindicator of the blood of the innocent. Pius XII declares that direct killing of the innocent is contrary to the natural and divine positive law.<sup>13</sup> He urges doctors and nurses to defend and protect “the defenseless and still hidden life of the child, supporting your action with the force of the Divine Commandment ‘Thou shalt not kill.’”<sup>14</sup> Direct aggression against innocent human life is “one of the basic laws without which men cannot live together in safety.”<sup>15</sup> Thirdly, the teaching is presented without qualification. It is seen as an absolute.

#### THREE CONTEMPORARY CHALLENGES TO THESE FORMULATIONS

Here I should like to present for discussion the recent writings of three friends and highly respected colleagues: Paul Ramsey, William Van der Marck, O.P., James Gustafson.

1. *Paul Ramsey*. Anyone familiar with moral literature will acknowledge the fact that Paul Ramsey is a sensitive and perspicacious ethicist. As James Gustafson notes, Ramsey’s voluminous writings “have introduced a note of rigor into Protestant ethics that was too often absent.”<sup>16</sup> His thought on abortion merits the high

<sup>12</sup> AAS 22 (1930) 564.

<sup>13</sup> AAS 43 (1951) 838.

<sup>14</sup> *Ibid.*, 839.

<sup>15</sup> *Ibid.*, 839.

<sup>16</sup> James Gustafson, “A Christian Approach to the Ethics of Abortion,” *The Dublin Review*, 241 (1967-8, Winter) 346.

seriousness which he himself has given to his subject. Both his general rejection of abortion and his use of what we might call traditional Catholic categories put him very close to Catholic thought.

Ramsey's analysis begins with the insistence that all must adopt what he calls the "rule of practice" contained in the distinction between direct and indirect abortion.<sup>17</sup> He regards this rule of moral practice as "both a logical and charitable extension of ethical deliberations impelled by respect for the equal sanctity of both the lives that are in mortal conflict and both of whom one wants to save." Ramsey fully understands, appreciates, and accepts the difference between a direct and indirect abortion. He states this distinction in terms of the primary thrust and the secondary thrust of an action. This manner of formulation could be troublesome but Ramsey's main insistence is that the meaning of an action cannot be reduced to the motives of the agent.

After stating the traditional distinction, Ramsey turns to the case of mortal conflict between mother and non-viable nascent life: "In cases in which both will die together unless the mother's life is saved by an act of direct abortion, does the person who secures or performs this operation do something *wrong* that good may come of it?" Ramsey's answer: "I think not." He then turns to what he calls "justifiable direct abortion" precisely to justify it. His analysis is in two stages.

First, it is not sufficient arbitrarily to assert that direct abortion is the right action to be performed and then fix one's attention on the results of such conduct, on the life that is saved by this means. "The goodness of this result was never in question. No one doubts that the action in question respects the sanctity of the mother's life. The question that was raised, and the question every Christian must face, is whether direct abortion is not in every way incompatible with any remaining regard for the sanctity of the nascent life."

Secondly, Ramsey turns to the direct abortion itself. The first thing to be said of it is that the *motives* of the agent need not be and should not be any different from one's motives toward the mother.

<sup>17</sup> Paul Ramsey, "The Sanctity of Life," *The Dublin Review*, Spring, 1967, 1-21.

"To want to save her it is not necessary for him to *want* the death of the fetus. In fact, the death of the fetus can be and should be radically *unwanted*."

Ramsey next turns to the intentionality and direction of the act itself. In this instance of mortal conflict, "the intention of the action and in this sense the direction of the action is not upon the *death* of the fetus, any more than are the motives of the agent." Ramsey sees the intention or thrust of the action as upon the *incapacitation* of the fetus from doing what it is doing to the life of the mother. The fetus is being incapacitated from materially aggressing upon the life of the mother. Thus, Ramsey concludes, the agent need not *want* the death of another human being, nor by his action does he *intend* this.

Ramsey's analysis could raise the following questions. First of all, he speaks of abortion in the mortal conflict instance as a "direct act of killing nascent life." It seems to me that the very inherent logic of his analysis should lead him to conclude that we are not dealing here with a direct killing. For if the agent does not *want* (remote motivation) fetal death, and need not *intend* it in this instance, do we not have the very definition of an indirect killing? Ramsey should conclude, therefore, that not every direct abortion is a direct killing. [A further question occurs here. May one "incapacitate" another *usque ad mortem* if no injustice is involved? In other words, is "incapacitation" a legitimate precision of what is going on where no injustice is involved?]

Secondly, since Ramsey persists in regarding the abortion as a direct killing, he is forced to face the objection that he is countenancing the direct killing of *innocent* life. He admits that the child is innocent but rejects the categories of innocent-guilty as insufficient for the determination of what killing is morally tolerable, what not. His rejection is made somewhat easier by what appears to be a key misunderstanding of traditional teaching. The proper polarity in Catholic thought is not innocent-guilty, but innocent-unjust (even if only materially so). The warrant for taking life in self-defense is not mere material aggression, nor formal guilt, but *unjust aggression*. In other words, it is precisely the element of objective injustice which allows one to resist aggression by direct force. Ramsey cannot, of

course, say this since the fetus he is allowing to be killed directly is clearly not unjust. Therefore, he must expand the category from materially (at least) unjust aggression to material aggression.

The question this stimulates is the following: does not such an expansion create enormous problems? It means that in theory I am morally empowered to resist forcefully any "aggressive" act, even if the aggressor is pursuing a genuine right. Consequently, it seems to me to constitute a serious undermining of the just war theory of which Ramsey has written so splendidly. That is, it seems to empower a nation to resist forcefully (incapacitate) whether the aggressor is bringing force to bear justly or unjustly, whether he is, for example, simply recovering his own goods and territory or not. In doing this, does not Ramsey's expansion ultimately erase the distinction between a just defense and an unjust one, a just cause and an unjust cause?

The categories of innocence and injustice may not exhaust the acts of morally tolerable homicide. But if we abandon the notion of injustice altogether, we are in serious trouble. And has Ramsey not done just this? And, as noted, this abandonment would seem to be unnecessary; for the whole thrust of his argument is that we are not dealing with a direct killing.

2. *William Van der Marck, O.P.* Where Ramsey has attempted to work within traditional categories, Van der Marck approaches the question of abortion (and many other questions) by a radical critique of the traditional categories and methodology.<sup>18</sup> His entire treatment is anchored in the notion of intersubjectivity. Because this is so, his understanding of intersubjectivity should be given here at length.

The fact that human action is intersubjective means that it necessarily has consequences favorable or detrimental to the mutual relationship of the persons concerned. To state this more directly, intersubjectivity is a form of either communication or the disruption of communication; it is a form of either community or the destruction of community. When we now speak of act and consequences, of act and effect, of means and

<sup>18</sup> William H. Van der Marck, O.P., *Toward a Christian Ethic*, 1967, Westminster: Newman Press, esp. 48 ff.

end, we are, in the first place, not speaking of something that happens *now* and has results, consequences, or effects, or that achieves an end *later*; rather, we are speaking of a particular corporeal action that, precisely as a human act, has immediate implications with respect to the relationship between subjects.<sup>19</sup>

Now the essential meaning of the words "good" and "evil" is simply a qualification of these implications, effects, consequences. In other words, it is only a qualification of the human content of the act. Good and evil, he insists, refer to the success or failure of intersubjectivity, "and for this reason there cannot be any question of good and evil unless there is first a question of intersubjectivity; furthermore, we may speak of good and evil only to the extent that we speak of intersubjectivity." Van der Marck feels that the disease with traditional moral theology is that it began to maneuver among categories of good and evil before it touched intersubjectivity. Thus, traditional theology would characterize something as a means and a bad one prior to consideration of intersubjectivity. For example, it would say that to have children is good, but artificial insemination is a bad means to it.

Van der Marck does not deny the usefulness of the categories object-circumstances, means-end; they have, he concedes, an imposing record of useful service. "The reality itself, however, is much more important than categories and the tools they provide, and when we do gain an insight into the reality itself, these categories and other ways of approach will themselves become more intelligible." Thus Van der Marck sets out to criticize the category in light of the reality.

What is the reality of man? Man is both corporeal and intersubjective. "Corporality qualifies man under all aspects in which he coincides with and forms part of the non-human world." Intersubjectivity, on the other hand, points him out in his human uniqueness. Now if this is true of man, it is true of his action also. Therefore the most fundamental thing to be said about human action is the distinction between corporeity and intersubjectivity. Human action is

<sup>19</sup> *Ibid.*, 61.

a reality which is wholly corporeal, yet we see its uniqueness only when we view it as intersubjective.

A few examples offered by Van der Marck may throw light on his analysis. The physical, bodily reality of killing can be, as an intersubjective reality, murder, waging war, administering the death penalty, self-defense, suppressing insurrection and so on. Taking something from another can be intersubjectively stealing, borrowing, satisfying dire need, repossessing one's property. Removing a non-viable fetus from the womb can be intersubjectively abortion (murder), removal of the effects of rape, saving the life of the mother and so on. Van der Marck feels that too often the reality of action is identified with one single form of intersubjectivity to the total exclusion of others. Why? Because the qualification "good" or "bad" is derived from the corporeal act as such, the physical act, in spite of the explicitly made distinction between *esse physicum* and *esse morale*. The criticism he levels against traditional manuals of moral theology is this: "That the same material, bodily act may possibly have a *different* intersubjective significance is something that, in principle, lies outside of its field of vision." Or again: "Intersubjectivity as a factor is simply ignored."

After noting the importance of intersubjectivity to the determination of the meaning of an action, Van der Marck turns to the categories of means and end. Means is related to end in the same way as corporeity is related to intersubjectivity. That is, just as intersubjectivity is the ultimate determinant of *human* action, so the end is the ultimate determinant of *human* action. "For example, termination of pregnancy could be called 'means,' and intersubjectivity would be indicated by 'end,' whether it be murder, removal of the effects of rape, or saving the life of the mother."

This same analysis is applied to the categories of act and intention. "Act refers to the whole action as a physiological reality, while intention refers to the same action, but precisely as human and intersubjective." Summarily, then, intersubjectivity demands special consideration before we can speak about good and evil, for "what is material in human action is able to be intersubjective in the most diverse and varied of ways."

Van der Marck has offered a subtle, intriguing, and very fruitful

analysis of human action in terms of a more basic category: corporeity-intersubjectivity. Certainly what he calls "intersubjectivity" plays a crucial role in determining the significance of human action, hence its basic moral quality as good or evil. Recently I wrote: "Moral norms are nothing more than generalizations upon the meaning or significance of an action. And moral significance is determined by relationship to personal value."<sup>20</sup> Unless I am mistaken, this is saying the very same thing Van der Marck has said but in different words.

The question raised by Van der Marck's analysis is not, then, whether intersubjectivity is the basic determinant of the significance of action. It is the problem of the application of the categories corporeity-intersubjectivity to the categories of means-end and act-intention, and the implications of this application.

First of all, the application itself. Means and end, Van der Marck says, are formally, not materially distinct. They are related to each other just as corporeity and intersubjectivity. Therefore, it is the end which contributes decisive human meaning to action. This is true, it seems, with regard to those "effects" which are rather the immediate implications of one's activity than genuine, later-on effects. Van der Marck is aware of this distinction. For in writing of means-end, act-effect, he says: "When we now speak of act and consequences, of act and effect, of means and end, we are, in the first place, not speaking of something that happens *now* and has results, consequences, or effects, or that achieves an end *later*; rather, we are speaking of a particular corporeal action that, precisely as a human act, has immediate implications with respect to the relationship between 'subjects.'"<sup>21</sup> Therefore, he does distinguish "later-on effects" from immediate implications." It is these latter which are only formally distinct from the action and which give human significance to my action.

But how does one make this distinction in practice? Perhaps "saving the life of the mother" is not a "later-on" effect, but an "immediate implication" of the action giving it its basic human descrip-

<sup>20</sup> "The New Morality," *America* 118 (1968, June 15) p. 771.

<sup>21</sup> Van der Marck, *loc. cit.*, 61.

tion and meaning. But Van der Marck has given us no satisfactory criterion for distinguishing the two. In other words, I think a case can be made for saying that terminating pregnancy to save the mother is actually not a means-to-end act. Van der Marck should have attempted to show why in this instance we are not dealing with a true means at all, but with the immediate intersubjective implications of an act which define its basic human meaning. If one fails to do this, then any intended effect can be grouped under title of end and be said to specify the act in its human meaning.

For example, why cannot emptying the uterus of a non-viable fetus be called at times "relief of psychic pain" or "saving and increasing income"? Paul Ramsey has adverted to this problem in his discussion of Joseph Fletcher. Ramsey notes that there are some actions whose true description (what I am doing) can be re-described or elided into the doing of the intended consequences. Thus instead of saying that I am "singing a song" we can say "entertaining a group of people" or even "helping the war effort." Instead of saying "omitting to eat" we can say "dieting" or "observing Lent." However, there are other actions whose description cannot be drawn from the intended effects. Thus the gassing and killing of Jewish babies cannot be redescribed as "promoting medical science." Citing Eric D'Arcy, Ramsey rightly insists that "for some significant sorts of action . . . there is a cutoff point between the physiological description of the action and the consequentialist (or intentional) description of the action, which must be observed if we want to characterize correctly the actions we are talking about."<sup>22</sup> It is this cutoff point which is not clear in Van der Marck.<sup>23</sup> And it is this cutoff point which is

<sup>22</sup> Paul Ramsey, *Deeds and Rules in Christian Ethics*, New York: Scribners, 1967, p. 196.

<sup>23</sup> Van der Marck has made some suggestions in the direction of a cutoff point if I understand him accurately. He suggests that the meaning-giving capacities of intent are "powerfully narrowed and determined by the social milieu." (60) That is, since intersubjectivity is a form of either communication or disruption of communication, it is only "in virtue of language which is current in our own milieu and which we have learned, and learned to use, from our earliest years are we able, in fact, to achieve any intersubjectivity and communication." (59) Here intersubjectivity is *achieved* in human action; it is not exactly something which exists or resides in, or is an implication of human action. By saying that we can only communicate within certain accepted and

precisely the practical problem. For only when I am clear on it can I legitimately redescribe emptying the uterus of a non-viable fetus from abortion to mother-saving.

Secondly, there are the implications of the aforementioned application of intersubjectivity-corporeity to end-means in the case of emptying the womb of a non-viable fetus. Even if one establishes a satisfactory cutoff point for the difference between "later-on" effect and "immediate implication," what is the proper assessment of these "immediate implications"? To re-describe emptying the womb of a non-viable fetus as "destroying or removing the effects of rape" could be a rather hasty way of depersonalizing the fetus. The most immediate, obvious, irrevocable implication of this emptying process is the death of the fetus. Our language dare not disguise this fact. To be consistent intersubjectivity must include all the subjects and the fetus is certainly a subject. We may characterize the action as "removing the effects of rape" but the question remains: is this morally appropriate when these effects are a person?

3. *James Gustafson.* The writings of James Gustafson command the respect of anyone familiar with them. Gustafson is a man not only of sensitivity and learning, but one who can appreciate a position not his own. It is safe to say that his approach to abortion represents that of many others.

Gustafson characterizes traditional Catholic teaching—and this would have to apply to its papal formulation—as having several

recognized forms, that the language spoken limits the possibilities of intersubjectivity, is Van der Marck not identifying *meaning* with *perceived meaning*?

This raises the whole question of cultural pluralism and its relation to the analysis of the human act. There is, it would seem, a difference between the meaning a community gives to an act and the meaning the act has outside the cultural limits of that community. A community or culture can fail to recognize the immediate implications of its activities. It can be more or less blind to the real significance of its actions and its language may only reflect this limitation. Otherwise, for example, slavery would only be slavery to those who recognized it as such and spoke of it as such. There is still room, I believe, after investigation and exploration of the significance of common forms of behavior in a certain culture for criticism of these forms. Therefore, does "social language" provide a totally adequate limitation for the meaning-giving capacities of human intent and purpose?

salient features.<sup>24</sup> It is an argument made by an external Judge, along a juridical model, which confines the relevant data largely to the physical, in an overly rationalistic way and in a manner too exclusively conened with the woman and physician in isolation (from other relationships and responsibilities). Gustafson's criticisms are careful. Where balancing counterstatements are called for, he generally makes them. For instance, he admits that when all is said and done, "something of the stance of the external judge is necessary." Similarly, even though he believes Catholic teaching has confined the relevant data largely to the physical, he admits that where abortion is concerned the physical does indeed have a primacy.

After detailing his own criticisms, Gustafson presents an alternate way of working, "how I would go about making and justifying my moral judgment pertaining to it (abortion)." He first presents a concrete instance and will reproduce it here since a grasp of his method will be clearer if we proceed in this manner.

The pregnant woman is in her early twenties. She is a lapsed Catholic, with no significant religious affiliation at the present time, although she expresses some need for a "church." Her marriage was terminated by divorce; her husband was given custody of three children by that marriage. She had an affair with a man who "befriended" her, but there were no serious prospects for a marriage with him, and the affair has ended. Her family life was as disrupted and as tragic as that which is dramatically presented in Eugene O'Neill's *Long Day's Journey into Night*. Her alcoholic mother mistreated her children, coerced them into deceptive activity for her ends, and was given to periods of violence. Her father has been addicted to drugs, but has managed to continue in business, avoid incarceration, and provide a decent home for his family. The pregnant woman fled from home after high school to reside in a distant state, and has no significant contact with her parents or siblings. She has two or three friends.

Her pregnancy occurred when she was raped by her former husband and three other men after she had agreed to meet him to talk about their children. The rapes can only be described as acts of sadistic vengeance. She is unwilling to prefer charges

<sup>24</sup> James Gustafson, "A Christian Approach to the Ethics of Abortion," *The Dublin Review*, Winter, 1967-8, 346-364.

against the men, since she believes it would be a further detriment to her children. She has no steady job, partially because of periodic respiratory illnesses, and has no other income. There are no known physiological difficulties which would jeopardize her life or that of the child. She is unusually intelligent and very articulate, and is not hysterical about her situation. Termination of the pregnancy is a live option for her as a way to cope with one of the many difficulties she faces.<sup>25</sup>

Gustafson states two possible extreme reactions to this instance: compliance with the standard rule about abortion, and the highly permissive attitude which states that what one feels right is right. His own position, he says, moves between these extremes. First, as to method, Gustafson notes the qualities of the relationship between the woman and the moralist. It must be an interpersonal one of mutual confidence and empathy where each is open to the other. The moralist's first duty is to understand, not to judge or prescribe. He should acknowledge the woman's liberty of conscience and not immediately offer authoritative answers. His basic task is to help the woman objectify her situation, that is, see it from other perspectives than those she brings. "He is to call to her attention not only alternative courses of action with some of the potential consequences of each (including violation of civil law), but also the value of life and those values which would have to be higher in order to warrant the taking of life." Briefly, then, his task is to bring the predicament into the light of as many subjective and objective considerations as his competence permits.

Gustafson next turns to what we might call the content or substance of his decision. He identifies the salient features to be reckoned with as medical, legal, financial, spiritual and emotional, moral. He then rightly points out that a moral decision is not just a matter of belief, principles and logic, but includes a basic perspective which accents certain values, shadows others. This basic perspective is informed and directed by certain fundamental attitudes toward God and toward the nature of human life. These attitudes color one's interpretation and judgment.

Having said this Gustafson insists that neither woman nor

<sup>25</sup> *Ibid.*, 351-352.

moralist enters this situation unarmed and without principles. Predicaments like this have happened before. Therefore, "one's conscientious moral interpretation can use those generalizations that have emerged out of the past for illumination and for direction. They may present values or principles so universally valid that the present decision, if contrary to them, must be *justified* as a clear exception." These principles Gustafson sees as three: (1) life is to be preserved rather than destroyed; (2) those who cannot assert their own rights to life are especially to be protected; (3) there are exceptions to these rules. He lists as possibilities: medical indications making therapeutic abortion morally viable; pregnancy as the result of sexual crime; when the social and emotional conditions do not appear to be beneficial for the well-being of the mother and the child.

Gustafson then gives his own decision in the instance mentioned above: "(a) If I were in the woman's predicament I believe I could morally justify an abortion, and thus: (b) I would affirm its moral propriety in this instance."

The question raised by Gustafson's analysis is this: after having stated the need to *justify* the exceptional instance, has he clearly done so? How is an exception to be justified? Gustafson has said that there are "values which would have to be higher in order to warrant the taking of life." What are those values? Where human life is at stake, an exception is morally tolerable only because values higher than human life are involved. Gustafson has said a great deal about the complexity of the decision. He has stated that there are "several values which are objectively important, but which do not resolve themselves into a harmonious relation to each other." In order to make a decision to take human life and justify this decision, one has eventually to assert a hierarchy of values. Or again, the taking of human life without such an assertion of a hierarchy of values is itself an assertion of a hierarchy of values. If human life remains the dominant value in the situation described, it is hard to see how abortion is justified. If human life does not remain the dominant value, then what values take precedence?

The abiding burden of Catholic teaching seems to be this: there are indeed other values in these and similar situations, but ultimately

the dominant value remains the good of human life. Equivalently this teaching insists that the primacy of the person can only be preserved in abortion situations if it is extended to all persons. Gustafson concedes that his decision is not one which logic alone can defend. "It is a human decision, made in freedom, informed and governed by beliefs and values, as well as by attitudes and a fundamental perspective." The problem, however, that his analysis suggests is: what more precisely are these values? Only then do we know whether they have truly justified the decision. Or in Gustafson's words: if the moral decision involved also includes a basic perspective which accents certain values, shadows others, is it not the precise task of theological ethics to explain how this accenting, this shadowing is not arbitrary? Perhaps Gustafson has actually done this and I have missed the point of his argument. But that is what we are there to discuss.

#### SOME CONCLUDING REFLECTIONS

Here, then, we have three respected moralists challenging some aspect of past church teaching on abortion. One (Ramsey) attempts to narrow the category of direct killing. Another (Van der Marck) attempts to realign the relationship of means to end, or to suggest a more accurate way of assessing what is truly a means. A third (Gustafson) probes into all factors of the moral judgment to discover values which create the possibility of an exception to the traditional norm. We are here to discuss the success of these efforts. At this point I must apologize if the necessary brevity of presentation failed to represent the thought of these men accurately. There is consolation in knowing that all of these monographs are available in print and that the appropriate adjustments can be made by wiser and more sensitive readers.

There are two concluding suggestions I should like to propose.

First, the burden of the Church's formulation. Could we possibly understand the formulations of the recent magisterium as follows: it is not clear how one retains basic minimal respect for nascent life when he performs a direct abortion? Obviously such an assertion is implicit in magisterial documents. I am rather asking: can the recent

formulations be restricted and reduced to this assertion? Such a reading would not alter the practical conclusions, but only relativize them. That is, a different experience of this world and consequently a different language might make it clear how one retains basic minimal respect for nascent life when he performs what we now call a "direct abortion." I do not believe that this is what the popes meant to say. But could it be a defensible analysis of what they said must mean?

Secondly, the sharpening of categories. History reveals a constant sharpening and delimiting of the category of abortion. The development was controlled by the categories of thought and scientific information available at the time. Contemporary formulations are the precipitate of this development process. As such, they are only the best we have. They hinge on two concepts: *direct* and *innocent*. Now it would seem that *innocent* is concluded from the injustice involved in war, aggression, and capital offenses. That is, certain recognized injustices defined the category of innocence. The conclusion: it is morally tolerable to kill directly only where injustice is involved. Therefore, abortion is seen as an act whose basic moral quality is determined within the justice-injustice category.

If, however, one distills from the three examples of morally tolerable killing a more general *ratio* (sc., that behind justice-injustice is a more general category, sc., *higher personal value*), then abortion as a form of forbidden killing might be recognized as that not justified by the hierarchy of personal value.

Our constant theological effort is to isolate and formulate the malice of forbidden theft, forbidden lying, forbidden sterilization and so on. We must do the same for abortion; otherwise we are in no position to understand what "direct killing of the innocent" really means. It would seem that no reading of Church teaching can be accepted which eliminates on principle this necessary theological task. And for this reason our constantly expanding understanding of reality and the reworking of our categories in light of this growth cannot be read as an attempt to change Church teaching. It is an attempt only to purify it, even if this attempt is clumsy and perhaps leads us to an honest mistake.

A final caution. One of the difficulties of asking a theological

question is the atmosphere in which it is raised. We are an abortifacient society. Hence anyone who attempts to probe the Church's teaching to seek greater enlightenment can seem to be playing into the hands of extremists. That such is not the case *de facto* we can simply take for granted. But it would be irresponsible to proceed in total unconcern for the uses to which our deliberations could be bent.

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