

## **Background Notes for Framing Pastoral Responses to Catholic Politicians Within the Context of the Politics of Abortion**

All official Catholic positions relating to the politics of abortion are ultimately based on an evaluation of the morality of abortion. This evaluation can be stated as follows:

abortion involves the direct killing of innocent human life and therefore is objectively evil and absolutely prohibited.

Given this simple formulation, some important observations and distinctions are typically appended. These usually include the distinction between direct and indirect killing, the definition of human life, the definition of innocent human life and the scope of absolute prohibition. We shall consider each in turn.

### **Direct and Indirect Killing**

Within the Catholic definition of abortion as “the direct killing of innocent human life”, a key word is “direct”. There is a distinction in Catholic moral theology that permits the “indirect” killing of a fetus to save the life of the mother. In practice this is limited to two cases, i.e., a cancerous womb and a tubal pregnancy.

In these circumstances, the removing of the uterus or the infected tube are the direct causes or means of the cure of the mother. The death of the fetus is permitted as an indirect result of this action. This action is justified in Catholic moral theology according to the principle of double effect which can be stated as follows:

When from a licit act there immediately follow two effects, one good and the other bad, and the good outweighs the bad, it is licit to intend the good and permit the evil. So both the intention and the act itself must be good; further, the evil effect cannot cause the good effect and the good effect must outweigh the bad effect.

In applying this principle to the case of the cancerous womb, the act of removing the cancerous womb is a licit (good) act in itself. One effect that follows is good, the womb and its cancer are removed, thus saving the life of the woman. The other effect is evil because in the process the fetus is also removed and dies. However, the good effect is judged to outweigh the evil effect (both would die if nothing was done). Furthermore, the intention to save life of the mother is good. So the good is intended and the evil is permitted. Finally, the death of the fetus is not the cause of the good effect. So it seems to fit the principle of double effect.

## **The Definition of Human Life**

The current Catholic position defines human life as beginning at the moment of conception. Science can support this position. Modern biology has made a strong, if not definitive, case for the position that human life begins at the moment of conception.

All human life begins at fertilization with a single cell generated by the sperm cell of the father and the egg cell of the mother. The twenty-three chromosomes of the male sperm pair up with the twenty-three chromosomes of the female egg and a new, distinct human life, with its own distinct chromosome pattern comes into existence. Thus, this new entity cannot be properly biologically defined as “part of the mother’s body”. After this moment of fertilization, nothing essential to the definition of human life is added from the outside. All that is observable is a continuous process of development throughout life. Human life is never static, it is always changing.

However, some moralists and scientists have raised two important questions: 1) Granted that distinct human life does in fact begin at conception, can this human life accurately be defined as “individual human life” and/or “personal human life” within the first 14 days after conception? 2) And if it could be demonstrated that human life at a certain stage of development is not yet “individual” and/or “personal”, does this form of human life have all the rights and dignity afforded to human life that *is* judged to be individual and personal? Further, if this human life is judged to have rights and dignity that are less than human life that is judged to be individual and/or personal, can they always be judged to be higher in value than the values involved in the judgment to have an abortion in certain circumstances?

What is the basis for such questions? They are based on a critical examination of the first 14 days of human life which suggests that a distinction can be made between human life, individual human life and personal human life.

### **Individual human life**

While granting the fact that human life begins at conception, within the first 14 days following conception biologists note two phenomena that may throw some doubt as to whether or not we can rightly refer to this developing human life as “individual human life”. These are: the phenomenon of twinning and the process of spontaneous abortions.

1) Twinning -- After fertilization, two things can happen which give cause for consideration. Up until the 14th day, twinning may occur - identical twins from the same egg, fraternal from two eggs. (For this discussion, identical twins are the focus.) During these initial 14 days, the embryo has not yet developed a “primitive streak,” the precursor to a backbone. Once a backbone develops, the embryo can no longer split and become twins, and will grow as a single being. In a sense, the case could be made that during the first 14 days the cells have not yet “decided” to become an individual.

Therefore, some are suggesting that perhaps in these circumstances, while human life is certainly present, we cannot speak yet of “individual” human life. Of course, even if this is a valid distinction (not proven), the question remains whether or not *human life* as opposed to *individual human life*, provides us with a distinction that has any impact concerning the morality of abortion.

The possibility of twinning poses another problem for certain historical strands of Catholic theology based on the Aristotelian-Thomistic theory of hylomorphism. This philosophical tradition uses the Greek philosophical terms *hylo* (matter) and *morph* (form). According to this theory, the “matter” (the body) is informed by the “form” (the soul) and this results in an individual human life. However, a tradition that holds to the immediate “implantation” of an immortal, spiritual, indivisible soul, thus creating an individual human person, may have some explaining to do when this “matter” informed by this indivisible, immortal “form”, actually divides into two, or three or more individual, personal human lives.

Some “answers” to this phenomenon include one made by Germain Grisze who suggests that we might “think of identical twins as *grandchildren* of their putative parents, the individual that divided being the true offspring, and the identical twins children of that offspring by atypical reproduction” (“Abortion: the Myths, the Realities, the Arguments” p.25).

This situation is further complicated by a rare phenomenon in which twins or triplets may be recombined or rejoin. In this instance, the hylomorphic theory might be challenged to offer an explanation for the disappearance of one or more souls without the death of any fertilized egg or the continued existence of a soul that no longer has any relationship to a corresponding body.

2) Spontaneous abortions -- When focusing on the first 14 days after conception, another problem for certain strands of Catholic theology arises from the current estimation by embryologists that from 25% to 50% of all blastocysts perish either before or some time soon after implantation -- or as some say, they are “naturally aborted”.

This creates a problem for a position that considers human life from conception onward to be human life in the fullest sense. While Catholic theology no longer teaches that unbaptized infants cannot be saved or that they are consigned to the state of “Limbo”, it is still difficult to imagine a natural process that would exclude nearly one-half of all human beings from reaching some form of human maturity.

It also raises the potentially important question of why there is such a process in the human body. Perhaps this process is part of a natural functioning in which the body is designed to detect and eliminate deformed human life. If so, in theological terms, is it possible that spontaneous abortion is in some sense part of the creative will of God?

In his book, *From Chance to Purpose: An Appraisal of External Human Fertilization*, the

embryologist Clifford Grobstein suggests that there is a natural process in humans

to cope with a surprisingly high percentage of ‘damaged’ eggs...most of those eliminated disappearing prior to implantation, and most of the rest being aborted shortly after implantation. Abortuses show a considerably elevated frequency of chromosomal abnormalities compared with those found in infants at term, suggesting that process of spontaneous abortion screens out abnormal embryos. The screening is not complete, since infants at term show a significant frequency of various defects, among which are chromosomal abnormalities, anatomical irregularities and more subtle biochemical deficiencies.

If the possibility that certain forms of human life are, in fact, naturally rejected by the body because they would have resulted in deformed fetuses, then when this presumed “natural process” of spontaneous abortion fails, it could be argued that the elected abortion of severely deformed fetuses could be seen as actually aiding a natural process, a process within the creative will of God.

The Catholic tradition would respond in this way. Even if spontaneous abortion is a natural process of the detection and expulsion of deformed human life, the presumed “failure” of this natural system would not allow humans to intervene and abort defective fetal life. Innocent human life does not forfeit its dignity and right to life because it is judged to be deformed.

We may experience deformed human life entering the human community in a variety of ways - birth defects, accidents, disease, mental illness and perhaps even the failure of the “process of spontaneous abortion”. However, the human community does not have the right to kill the insane, or those terribly mangled in auto accidents, or those crippled by disease or those who come to us deformed at birth. Just the opposite. These unfortunate members of our human family are to be respected, loved and nurtured.

**Personal human life** -- The next question concerns the non-observable, and thus philosophical, determination of when this human life becomes a person or when the human soul is present. Let it be said quite simply, no adequate determination has been made. Neither scripture, nor the official teaching of the Church, nor science gives a clear cut answer. There is also a problem of a definition of what constitutes a human person as opposed to an individual human life and the ramifications of that designation.

In the 1974 *Declaration on Abortion* from the Congregation for the Doctrine of the Faith the statement is made that the fertilized egg “would never be made human if it were not human already.” However, in a footnote, the Congregation mentions that there is an ongoing debate among Catholic theologians concerning the time of ensoulment.

The official Catholic position was also carefully outlined in a 1987 document, *Donum Vitae* (the Gift of Life), issued by the Vatican’s Congregation for the Doctrine of the Faith

(CDF). It reads: “The human being is to be respected and treated as a person from the moment of conception; and therefore from that same moment his rights as a person must be recognized, among which in the first place is the inviolable right of every innocent human being to life.” (I.1)

However, in *Donum Vitae*, there is also found the following qualification about the presence of *personal human life* in the early embryo:

Certainly no experimental datum can be in itself sufficient to bring us to the recognition of a spiritual soul; nevertheless, the conclusions of science regarding the human embryo provide a valuable indication for discerning by the use of reason a personal presence at the moment of this first appearance of a human life: how could a human individual not be a human person? *The Magisterium (teaching authority) has not expressly committed itself to an affirmation of a philosophical nature (italics added)*, but it constantly reaffirms the moral condemnation of any kind of procured abortion. (3.1)

Therefore, the Church does not have an authoritative philosophical position concerning the precise time when we can speak of the presence of personal human life (ensoulment). However, it asserts the long standing moral tradition which states: when there is a doubt of fact concerning a vital issue, such as the presence of personal human life, the safer course must be followed. In other words, there is a moral requirement to act on the presupposition that individual, personal human life is present from conception.

For example, when a person is hunting deer and he/she sees something in the brush that may be a deer or may be another hunter, the person is morally obliged to follow the safer course and not shoot, because the possibility of injury or the death of a human being is at stake. In the case of abortion this means that we must act, until we are certain the opposite is true, as if there is true individual, personal human life from the moment of conception.

The lack of certainty concerning the moment of ensoulment is also related to historical theories of delayed animation within the Catholic tradition. The theory of delayed animation was proposed by St. Thomas Aquinas as a conclusion resulting, in part, from the theory of hylomorphism adopted from Aristotelian philosophy. According to this theory, St. Thomas concluded that human “ensoulment” is a process over time.

As noted above, the theory of hylomorphism holds that all material substances are made up of two co-principles - matter and form. In humans the matter is the body and the form is the soul. However, St. Thomas noted that theory of hylomorphism also states that matter must first be properly “disposed” to receive its form. In other words, until there exists a truly human body (matter), there can be no human soul (form) present.

Without the insights of modern biology, Thomas understood human life as passing through three states - vegetative, animal and finally human. Thus he held that true human

life went through three stages of ensoulment - a vegetative soul, a sensitive animal soul and then a rational human soul. Following Aristotle, he held that the male fetus is ensouled at forty days while the female at ninety. Thus while St. Thomas, as Tertullian, Augustine and Jerome before him, considered abortion unacceptable at all times, they did not consider it homicide in the early stages of pregnancy.

Mainly because of its faulty biological assumptions, Thomas' theory of delayed animation has long been held in disrepute in by Catholic philosophers and theologians. Thus, the view of a distinction between "unensouled and ensouled fetuses" placed in Canon Law by Gratian in the 12th century was removed from Canon Law in 1869. Before 1869 the penalty for aborting an ensouled fetus was excommunication. While the abortion of an unensouled fetus was considered a serious sin, no canonical penalty was imposed. The current Catholic consensus is reflected in the words of the *Encyclopedia of Catholicism*: "In its (the Church's) authoritative teaching, it leans to the view that the soul is infused into the zygote at the time of conception."

However, this theory of delayed animation is again being reexamined by some Catholic theologians and philosophers. These scholars are identified as the "developmental school". They argue that while early embryonic human life is deserving of respect, it does not gain the moral status of person until there has been sufficient development. The theological basis for this view is grounded on the theological writings of some of the most important theologians of the 20th century and include such names as Bernard Haring, Karl Rahner, Joseph Donceel, Richard McCormick, John Mahoney and Margaret Farley.

**Summary** -- After giving consideration to the phenomenon of twinning, the high rate of spontaneous abortions and the lack of philosophical certainty about the process of "ensoulment", some scientists and moral theologians are proposing that, although at fertilization a new genetic package (a "human package") is brought into being within the confines of one cell, this anatomical fact may not necessarily mean that all of the genetic material in it becomes crucially activated at that point, or that final, irreversible individuality has been achieved, at least in the initial 14 day period.

Therefore, some have made the distinction between 1) human life that is undifferentiated, non-individual and thus doubtfully personal and 2) human life that is individual and reasonably presumed to be personal. They have concluded that it seems highly questionable to attach the term "person" to a being whose individuality is still unsettled and for whom there is about a 50% chance of not making the transition to implantation and survival (birth).

While these observations about the early period of human life may give rise to some doubts about the presence of individual human life, certainly after the successful implantation of the blastocyst it would seem to be biologically arbitrary to choose a point in the continuum (fetal heart beat, quickening, viability, or birth) and say this is now individual human life.

While the philosophical question of the definition and presence of personal human life has not been definitively answered, Catholic moral tradition still invokes the imperative that the safer course must be followed. Thus, the human life that exists from the moment of conception must be presumed, in practice, to be personal.

### **Innocent Human Life**

The term “innocent” is also important, since Catholic moral tradition sanctions, as a last resort, the killing of human beings, in self-defense. Self-defense is not limited to individuals, but includes just wars and in limited circumstances capital punishment. In these circumstances, the human life which may be killed is not judged to be “innocent”. Moral innocence is judged to be lost when human beings engage in criminal acts threatening the innocent lives of other human beings and become “unjust aggressors”. (However, in a preemptive war the determination of who should be labeled the aggressor is often difficult to determine.)

Catholic moral theology has also argued that the principle of self defense, combined with the principle of double effect, can accept as morally neutral the killing of subjectively innocent persons as “collateral damage” in wartime, e.g., bombing a city held by enemy forces even though some innocent civilians may be present. However, this is a highly disputed position among Catholic moralists given the advent and use of atomic warfare (Japan in World War II) and the general conditions of modern warfare which many judge to go beyond the traditional criteria used in the “just war” theory.

In addition, within the Catholic position some subjectively innocent persons (the insane) may be killed when engaged in objectively criminal acts requiring self defense to the point of taking a life. Therefore, in the abortion debate, some argue that if the physical or mental health of the mother is threatened by the presence of the fetus, the fetus has become an “unjust aggressor”, albeit not subjectively guilty, as in the case of the insane attacker.

Actually the cases are not the same, because in the case of the insane attacker, while there is no unlawful intention, there is, nevertheless, unlawful conduct. The fetus, however, is not engaged in any unlawful conduct and could not change its activity even if it were conscious. Therefore, it forfeits none of its rights under the law, at least according to this principle.

Note: The moral classification of human life as “innocent” or “non-innocent” introduces a wider moral concept than simply considering the independent value of one human life against the independent value of another human life. In other words, the taking of human life, in the instances of aggression mentioned above, is allowed in view of the *circumstances* (unjust aggression) and not simply on a consideration of the undisputed independent value of the human lives involved.

In contrast, a total pacifist position holds that, *regardless of the circumstances*, the

independent value of each human life cannot be violated. This position holds that one human being can never take the life of another human being *no matter what the circumstances*. Catholic moral theology does not require a pacifist position, not because it judges some human life valuable and some human life not valuable, but because it places the independent value of human life within a wider context of a certain set of circumstances, i.e., aggression. Given this set of circumstances, the act of killing another human being is considered morally acceptable by expanding the focus from the isolated physical act of killing and placing it within a wider set of circumstances - self defense from aggression.

In light of these considerations, some have criticized the Catholic position on abortion because it considers *only* the independent value of the life of the fetus and does not allow for any consideration of a possible wider “circumstantial context” - rape, incest, health, etc. - where other important human values and rights are at stake. Critics then ask: If a wider circumstantial context can be employed in the case of the “unjust aggressor”, why is this not allowed or at least considered in the abortion context?

This note has been added to indicate that this wider approach of a consideration of circumstances in the decision to take human life and not simply the narrow consideration of the physical act of taking human life, is not without precedent in the Catholic tradition. This raises the question of whether or not other values, e.g., protection against forced pregnancies, might be added to self defense when considering the moral value of taking fetal human life by including the circumstantial context of rape and incest. Just as in the case of self defense from an unjust aggressor, the principle of the independent value of human life - the sanctity of life - is not challenged, but placed within a wider circumstantial context where it is not considered an absolute value relative to all other values, e.g., self defense.

Therefore, Catholics should be able to appreciate that those who disagree with the Catholic position on abortion may do so while accepting, (as Catholics do), that each human life has independent value, but that human life can be killed given certain circumstances, (as Catholics do), even when Catholics may disagree that any such justifiable circumstances apply to the act of abortion.

### **The Scope of Absolute Prohibition**

The issues surrounding the definition of human life outlined above may prove to be a challenge to certain strands of traditional moral theology. Therefore, some moralists are now saying that these unresolved issues place into a real doubt the theory of immediate animation (ensoulment) and would admit of a real distinction between human life and individual human life allowing the possibility of some change in judgment as to what constitutes abortion or, at least, the moral status of abortion in the early stages of development. For them such things as the IUD (inter-uterine device or “loop”) and some anti-zygotic drugs, which are both believed to be abortifacients, acting after fertilization, but before implantation, could be morally acceptable in certain circumstances.

Some also argue that if the lining of the uterus were removed by a D&C within 7 days after intercourse, e.g. in rape cases, perhaps the destruction of individual, personal human life is not at stake. This judgment would also apply to the so-called morning after pill that prevents implantation and those pills which prevent the production of hormones which inhibit menstruation. Certainly, human life is being destroyed, but it may not be individual human life or personal human life in the full sense, thus not a human person with all the rights and dignity which that designation entails.

If it is indeed possible to make a distinction between “human life” and “individual human life” (not yet proven), the question remains as to the moral significance of terminating “human life” as opposed to terminating “individual human life”. Some authors have suggested that while “individual human life” ought to be regarded as sacred and thus inviolable, pre-embryonic “human life”, while worthy of respect is not sacred and therefore not absolutely inviolable. The implications of this respect have not been fully determined.

In light of all the issues raised, some have questioned whether or not the destruction of developing human life in the first 14 days before implantation can properly be defined as the “direct killing of innocent human life” and thus within the scope of absolute prohibition as defined in the context of Catholic moral theology. *This is not a conclusion, but a question.*

One final consideration about the scope of absolute prohibition within the context of direct abortion. This is the case of the rare circumstance in which a direct abortion is required to save the life of the mother. Certain moral theologians from the 14th to the 17th century, arguing against the traditional prohibition of abortion to save the life of the mother, held that it was permissible to abort an unformed or unanimated fetus to save the life of the mother. This was argued on the grounds that the intended effect was to save the life of the mother and that the fetus could be considered an unjust aggressor on the life of the mother.

This position was finally condemned by the Church in the 19th century and this condemnation was reaffirmed by Pope Pius XII in the encyclical *Casti Connubi* (1930) and Pope Paul VI in *Humane Vitae* (1968). The two exceptions of indirect abortion, tubal pregnancy and removal of a cancerous womb, were retained.

The debate has not ended, however, and direct taking of a fetus to save the life of the mother has been defended even by the conservative Catholic moralist, Germain Grisez on the grounds that the death of the fetus is not intended in the preservation of the mother’s life. The intention to save the life of the mother has also been defended in a statement by the Belgian bishops in 1973:

In the case -- today fortunately quite rare due to the progress of science -- where the life of the mother and that of the child are in danger, the Church,

concerned to meet this situation of distress, has always recognized the legitimacy of an intervention, even it involves the indirect loss of one of the two lives one is attempting to save. In medical practice it is sometimes difficult to determine whether this misfortune results directly or indirectly from the intervention. This latter (intervention), from the point of view of morality, can be considered as a whole. The moral principle which ought to govern the intervention can be formulated as follows: since two lives are at stake, one will, while doing everything possible to save both, attempt to save one rather than allow two to perish. (“Declaration des eveques belges sur l’avortment”, *Documentation Catholique* 70 (1973) 432-38).

The same point is made in the statement of Bishop Josef Stimpfle of Augsburg : “He who performs an abortion, except to save the life of the mother, sins gravely and burdens his conscience with the killing of human life”. This statement and the position of the Belgian bishops has been defended by the prominent Catholic moralist Richard McCormick. Taking the life of the fetus to save the life of the mother is also defended by other Catholic moralists on the principle of choosing the lesser to two evils.

### **Summary**

This “background” paper has attempted to briefly outline some of the nuances in issues surrounding the moral status of abortion. It is designed to aid in the evaluation of the various moral and political positions taken by Catholic politicians in an attempt to formulate an appropriate pastoral response to each of these positions.

Catholic theology and especially Catholic moral theology is in a constant state of dialogue. Many moral positions stand the test of time, while others do not. Slavery was once defended by Catholic theologians, but was finally condemned in the 19th century. Religious liberty was not seen as a human right for centuries, but was finally declared a basic human right by the Second Vatican Council in the 20th century. The dialogue will continue.

### **A Final Note**

In framing any pastoral response to positions taken by Catholic politicians, it is important to note that, typically, Catholic politicians do not differ from the official Church on the fundamental moral issue that grounds the official Catholic position on abortion - the direct killing of innocent human life. They differ on matters of fact, not morality.

The two main “matters of fact” that can be seen as problematic by highly moral Catholic politicians are these: 1) the determination of when individual, personal human life is present in the period from conception to birth and 2) the practical, prudential, political judgment about what coercive legislation is appropriate to deal with the abortion issue.