

# ABORTION

*Theological, Legal, and Medical Aspects*

A

Report

of the

Commission on Theology and Church Relations



# ABORTION: THEOLOGICAL, LEGAL, AND MEDICAL ASPECTS

## Prefatory Note

Few problems confronting contemporary society are more crucial than that of abortion. The question has become acute, on the one hand, because it has arisen within the context of what has been called a sexual revolution. On the other hand, abortion as such has taken on certain critical dimensions of its own because some very radical changes have been advocated by various groups and even incorporated in state laws dealing with this matter.

Any serious discussion of this issue involves not only theological but also legal and medical considerations. The guidelines offered herewith, therefore, come in three parts. The Commission on Theology and Church Relations has chosen to organize the present materials in such a way as to have the theological principles stated first. Legal and medical considerations follow thereafter and in that sequence.

All three sections are agreed on the point that non-therapeutic abortion is wrong.<sup>1</sup> Within the general context of this unanimity, however, certain divergences appear. These are primarily differences in nuances, arising in large part out of the fact that the three professions of theology, law, and medicine diverge in both the nature and the measure of their respective involvement in this issue.

The present document is relatively short, considering the complexities of the question. This brevity derives from the conviction that men who are motivated by love of God and faith in Jesus Christ do not need a detailed set of rules to follow slavishly. Nor do they expect the Biblical revelation to provide a specific regulation on every conceivable facet of an ethical problem. Instead, they seek to inquire into the general principles given in the Word whereby they can make their own decisions and judgments on the problems of life as they arise.

## I. Theological Aspects

Men were created to live in response. To that end they were endowed with the faculty of willing. The decisions and judgments they make are to reflect God's intent and desire.<sup>2</sup> Nevertheless, disobedience to their Creator has been their basic choice. As a result, human life is broken, and existence is scarred. Confusion and misdirection are the common lot of men everywhere. Even the Christian, who accepts the benefits of God's revelation, is confronted with uncertainty and ambiguity in the exercise of choice. In this situation, the major objective of the church's guidance in the matter of

<sup>1</sup> A therapeutic abortion is one that is done "to safeguard the health or life of the patient, or to prevent the birth of a severely crippled, deformed or abnormal infant." Cf. *Journal of the American Medical Association*, 205, 7 (Aug. 12, 1968), 519.

<sup>2</sup> The importance of human decision-making is frequently emphasized in the so-called wisdom literature of the Old Testament. Cf., e. g., Prov. 12:20, 25; 14:10; and 14:17.

making ethical decisions is to develop individuals who have both the desire and the capability for choosing responsibly, especially in those very complex areas where God's will is not explicitly set forth.

Where there is a clear directive in God's revealed Word, right and wrong come as sharp alternatives. There is no ambivalence, for example, in the statement of Jesus that "everyone who is angry with his brother shall be liable to judgment" (Matt. 5:22). That word of the Lord leaves men no choice except to obey or to refuse.

Most problems of life, however, do not come that simply. They require evaluation and judgment. Abortion is such an issue. A right choice in this matter can be made only by weighing the factors involved in a given case on the basis of valid and enduring principles. Four such principles are especially pertinent.

### 1. *Life Is a Gift from God*

The first of these is that life is a gift. It comes into being by an act that shares in the creative powers of God Himself.<sup>3</sup> There is a great deal of discussion as to the precise moment at which incipient life becomes a human being; yet in terms of potentialities, it is generally agreed that life begins when fertilization takes place. The first origins of *individual* human life are thought to be established at the time of the blastocyst, which occurs about a week after fertilization.

That life in the womb must be thought of in terms of personal being is a point made clear by such passages as Exodus 21:22-24, where the law of retaliation is made to apply in cases of injury to a mother or a child in her womb or to both; and Jeremiah 1:5, which speaks of the consecration of the prophet before he was born. The evangelist Luke, moreover, describes how the unborn baby in Elizabeth's womb leaped for joy at Mary's greeting (Luke 1:41), thereby responding in the manner in which all men are expected to react to God's presence.

### 2. *Human Beings Are Created for Eternal Life*

Nascent life is of special value before God. Like every other human life it is designed to inherit eternal life.<sup>4</sup> That is the second of four major considerations to be kept in mind in evaluating the question of abortion. In a formal sense, such new life stands in enduring relationship to its Creator, whose will it is that His creatures live in His presence both now and forevermore. The beginning of human life may not, therefore, be cut short at will without risking the danger of distorting God's will.

At the same time, nascent life enjoys no independent

<sup>3</sup> See, for example, Ps. 139:13 and its parallels; see also Acts 17:25.

<sup>4</sup> See, for example, Ps. 139:16; Gal. 1:15; 1 Tim. 2:4.

existence. It is completely dependent on the maternal life that surrounds and sustains it. Accordingly, a conflict may develop between two destinies, so intimately linked. Incipient life may become a threat to the life of the mother. In that case, a choice needs to be made; and its primary thrust must be to save that life which is already in existence as a fully developed human being. The latter takes precedence over the former because maternal life has come into being for fulfillment and not for a death which can be prevented — in this case, by emergency action. Under such circumstances, abortion is the indirect and unfortunate consequence of an action undertaken to preserve life.

### 3. *Human Life Is Created for Fulfillment*

Fulfillment is the third factor to weigh in reaching a proper decision in the matter of abortion.<sup>5</sup> The attainment of a fuller life, however, is not derived from a concern for convenience or a desire for comfort or self-centered pleasure. Not wanting to be a mother does not provide a proper justification for deciding to have an abortion. Fulfillment is often found in sacrifice for another human being and in trusting the God for whom no price came too high in the task of redeeming mankind by His Son. The possibility or even the likelihood that a child-to-be-born will be a financial burden is not of itself sufficient reason for choosing to abort incipient life. Even very grave psychiatric considerations do not of themselves offer a justifiable ground for deciding on an abortion.

Instances of rape and incest create very special problems, requiring pastoral counseling of the most sensitive kind. Individuals trapped in such situations, with their attendant tragedy and heartache, deserve the best in guidance within the context and on the basis of the major guidelines set forth in Scripture.

### 4. *Life and Death Belong to the Province of God*

The fourth guiding principle is that life and death belong to the province of God.<sup>6</sup> Therefore, no person has a right to extinguish human life by a decision of his own, made apart from general precepts that express God's will.

The commandment "Thou shalt not kill" was given specifically to forbid murder, that is, killing with hatred or malice aforethought.<sup>7</sup> It is hardly proper, therefore, to make a direct application of this commandment to every act of abortion, since no hatred or malice may be involved in a given case. Nevertheless, it must be kept in mind that life comes into being as a special creative act of God, and no gift of His can be either rejected or destroyed with impunity. Any decision on the issue of abortion must take this last point with utmost seriousness.

<sup>5</sup> Jesus came that man "may have life, and have it abundantly." (John 10:10)

<sup>6</sup> The apostle Paul was well aware of this; cf. Phil. 1: 21-24.

<sup>7</sup> Note the words of Jesus in Matt. 5:21-23.

Where a mistake in judgment has been made, a Christian continues to live and serve in full assurance of forgiveness. However, the abiding availability of divine pardon suffers flagrant abuse whenever it is taken for granted and used as a basis for violating the cardinal principles relating to the preservation of incipient life. But even flaunting God's will and abusing His grace are forgiven to those who repent of such sins and accept the pardon offered in Jesus Christ.

## II. Legal Aspects

Lutherans committed to taking Scripture seriously regret the hastening drift toward drastic relaxation of legal restraints on the practice of abortion. We see in it yet one more example of the growing disposition of an increasingly secular society to resolve moral dilemmas on pragmatic considerations of public policy rather than on transcendent religious imperatives. Persuaded that abortion, except in extraordinary circumstances, transgresses the divine command against the taking of human life, we prefer to see the preservation of such legal proscriptions as are consistent with Scriptural injunctions on the point, and we hope for revision of legal codes that violate Scripture's teaching, until they are brought into conformity with God's Word. We accept, as Christian citizens, the duty to make every legitimate effort to persuade our countrymen, Christian and non-Christian alike, to this position.

The gradual shift in the public philosophy, however, seems almost certain to lead in the country at large to sweeping "liberalization" or even the repeal of laws that prohibit the artificial termination of pregnancy that has progressed to some specified term. When, in a self-governing society committed to popular sovereignty, the point is reached at which the principal surviving support for a given law is the *religious* credo of a minority or a diminishing majority, it must regretfully be concluded that the law has lost its title to public authority. Few will question the abstract constitutional and legal right of the people to substitute for existing laws a policy of official permissiveness on the part of the state with respect to abortion. But it does not follow that a particular form of abortion will be less sinful once public laws against it have been softened or withdrawn. Recent experience (notably that following the enactment of such legislation in New York) prepares us to expect that the "legalization" of nontherapeutic abortion will substantially increase its incidence. Human frailty, always eager to exculpate itself, will pretend to see in the relaxation of state controls a sort of official endorsement; but it may well be doubted that persons hitherto restrained from this sin by the interdictions of law were more "moral" while they were in that case than they are when they commit the sin once the laws against it are repealed. They were desisting for the wrong reasons in the first place; they justify their newly "legalized" conduct for the wrong reason in the second.

No sincere Christian assumes that the mere fact that

not one of the Seven Deadly Sins,<sup>8</sup> against which the fathers of the church warned, is forbidden by law makes these transgressions less heinous. Nor does the fact that only two of the Ten Commandments — those forbidding killing and theft — are explicitly and effectually embodied in American law<sup>9</sup> render the others less binding on all men. They derive their authority from the express commands of God Himself, not from publicly determined rules of law, enforceable in the civil courts. No one would seriously suggest, however, that the several states enact legislation subjecting all violators of all the Commandments to publicly imposed penalty. The case for legislative enactment of the commands against killing and stealing is clear enough, for civil order is impossible without them. But for the rest, the chief sanctions are religious — and indeed higher than public sanctions — but because they are primarily religious rules and lack the formal sanction of the public will, they are quite properly omitted from the statutes and the common law.

If, in a very real sense, the withdrawing of legal sanctions against nontherapeutic abortion will make those who commit or consent to it no less sinful than they were when they were inhibited only by the fear of prosecution, it is even more certain that the change in the laws will not alter the Christian's conduct with respect to nontherapeutic abortion. "Legalization" will place no one under new positive compulsions; it will only remove older prohibitions. Legal-abortion laws are by their nature not the sort of laws that one can "violate"; they are only the sort that one can elect not to avail himself of. They may, alas, tempt those who are not under the liberating influence of the Gospel to succumb to a sinful propensity to which they formerly, for the wrong reasons, feared to yield.

The Christian will continue to desist, for permissive legislation never cancels his responsibility to obey the will of God revealed in the Scriptures. For him, personally, new laws would make no difference. His path, as heretofore, will be illuminated by God's Word. But because the proposed permissive legislation would cause non-Christian brothers to stumble, the Christian will continue to hope that the laws will reflect the teachings of Holy Scripture on this issue; and if they must be revised in deference to popular sovereignty, he will redouble his efforts to bring his unregenerate neighbor into the blessed and emancipating captivity of the Gospel.

### III. Medical Aspects

It will be useful, first of all, to examine the American Medical Association's position on abortion, as expressed by its House of Delegates on June 25, 1970:

WHEREAS, Abortion, like any other medical procedure, should not be performed when contrary to the best in-

<sup>8</sup> Usually listed as Pride, Avarice, Anger, Gluttony, Lust, Envy, Sloth; though in some medieval writings Gloominess (*tristitia*) or Languid Indifference (*acedia*) or both are substituted for one or two of the last mentioned.

<sup>9</sup> There are, to be sure, also a few feeble rebukes to adultery and mendacity and, in some jurisdictions, to profaning the Sabbath or the name of God.

terests of the patient, since good medical practice requires due consideration for the patient's welfare and not mere acquiescence to the patient's demands; and

WHEREAS, The standards of sound clinical judgment, which together with informed patient consent, should be determinative according to the merits of each individual case; therefore be it

*Resolved*, That abortion is a medical procedure and should be performed only by a duly licensed physician and surgeon in an accredited hospital after consultation with two other physicians chosen because of their professional competency, acting only in conformance with standards of good medical practice and within the Medical Practice Act of his State; and be it further

*Resolved*, That no physician or other professional personnel shall be compelled to perform any act which violates his good medical judgment. Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally-held moral principles. In these circumstances good medical practice requires only that the physician or other professional personnel withdraw from the case so long as the withdrawal is consistent with good medical practice.

The AMA's Judicial Council has expressed the following opinion on the foregoing statement:

The Judicial Council is charged with interpreting the Principles of Medical Ethics as adopted by the House of Delegates of the AMA. The Principles of Medical Ethics of the AMA do not prohibit a physician from performing an abortion that is performed in accordance with good medical practice and under circumstances that do not violate the laws of the community in which he practices.

In the matter of abortions, as of any other medical procedure, the Judicial Council becomes involved whenever there is alleged violation of the Principles of Medical Ethics as established by the House of Delegates.<sup>10</sup>

State laws diverge greatly in the restraints they impose on the practice of abortion. These vary from New York State (where abortion may be performed in a hospital by a licensed physician at the mere request of the mother) to Arkansas (where abortion is permitted to preserve the physical or mental health of the mother, or to prevent birth of a child with grave physical or mental defect or deformity, or when pregnancy is a result of rape or incest), to Missouri (where abortion is permitted only to preserve the life of the mother or that of her child), to Pennsylvania (where, without exception, willful or unlawful abortion is defined as a crime).

On entering the practice of medicine, a physician takes the Hippocratic Oath, the second section of which affirms:

The regimen I adopt shall be for the benefit of my patients according to my ability and judgment, and not for their hurt or for any wrong. I will give no deadly drug to any, though it be asked of me, nor will I counsel such, and especially I will not aid a woman to procure abortion.<sup>11</sup> Whatsoever house I enter, there will I go for the benefit of the sick, refraining from all wrongdoing or corruption, and especially from any act of seduction, of male or female, of bond or free. Whatsoever things I see or hear concerning the life of men, in my attendance on the sick or even apart therefrom, which ought not to be noised abroad, I will keep silence thereon, counting such things to be as sacred secrets.

The Christian physician, like the non-Christian phy-

<sup>10</sup> This statement and the previous resolution were received in a communication from the offices of the American Medical Association, Chicago, Ill.

<sup>11</sup> A majority of physicians understand this as a reference to nontherapeutic abortions.

sician, is bound by the first sentence of that solemn pledge: "The regimen I adopt shall be for the benefit of my patients according to my ability and judgment, and not for their hurt or for any wrong." In addition, the Christian physician is guided by the Biblical revelation of the nature and effects of sin, while the non-Christian physician is not. The latter may therefore openly advocate abortion for any reason whatsoever, as in the state of New York, without being aware of the full moral dimensions of his position.

In spite of these considerations, the Christian physician must often make a decision in situations where his choice is between the lesser of two evils or sins. To some problems there are no right answers except that one course of action may be less reprehensible than another. A physician is trained to deal with pathology, and this precludes an ideal or desirable prognosis. Instead he usually seeks for his patient the best functional result that medical procedures may provide. He seeks the solution that is most likely to help a poor situation. Sometimes this is the case when the denying or recommending of abortion is the issue he faces.

The Christian physician can in some circumstances accept and actually recommend abortion under proper medical supervision, as for example, when the life of the mother is threatened by pregnancy. It should be mentioned, however, that such cases are relatively rare.<sup>12</sup> Especially difficult is the question of the prescribing of abortion as a response to suspicions that an abnormal child may otherwise be born. Such cases are extremely rare, for the majority of such pregnancies will produce normal children.<sup>13</sup>

Equally distressing is the problem of prescribing abortion for psychiatric reasons. Valid psychiatric reasons for abortion occur so rarely as to be statistically negligible; given present-day therapy, the prognosis for the mother is normally excellent.<sup>14</sup> Even so, there will

<sup>12</sup> See *Shrinking Non-Psychiatric Indications for Abortion* (New York: Julian Press, 1954), and S. Goodmaker, *The Case for Illegal Abortion* (Berkeley, Calif.: Diablo Press, 1965), p. 95.

<sup>13</sup> See *Journal of the American Medical Association*, 204, 12 (June 17, 1968), 1153 ff.

<sup>14</sup> Meyre Sim, M. D., Chairman of the Department of Psychiatry, Birmingham University, Birmingham, England, so indicated in his 1970 American College of Obstetrics and Gynecology Lecture, entitled "Psychiatric Reasons for Abortion." See also "Abortion," an editorial in the *California Journal of Medicine*, Sept. 1970, p. 1.

no doubt always be persons who believe that they are the exceptional instances. Such individuals will require very special attention and counseling on the basis of the principles set forth in these guidelines and such other precepts as may apply to the specifics of a given situation.

### Conclusion

Ethical decisions call for the most competent application of both the ability to make judgments and the willingness to be guided by the principles derived from the revelation of God's will. To that end men have been endowed with reason. They are expected to use this gift for purposes of making choices on given issues. In making up their minds, however, they must be guided by more than human calculations. In the matter of abortion this means that such alleged dangers as overpopulation and dire predictions of an impending shortage of food are not decisive, since such estimates and projections may suffer from the fallibility inherent in any human enterprise.

This is not to suggest that ethical guidance offered by the church sets out to ignore or to denigrate competent judgments made by professional persons on the specific issues under consideration. What it does indicate is that God is still the Lord of history and that He can and often has upset human calculations. In the process of ethical decision-making, therefore, persons will be well advised to give greater weight to basic principles set forth in Scripture than to conclusions reached only at the hand of man's reckoning.

Living as Christians calls for trust and obedience toward that God who, through Word and Sacrament, offers man salvation in His Son, Jesus Christ, and who reveals His will for man in Holy Scripture. Holy Scripture does not present us with a detailed set of regulations for abortion and many other complex ethical problems. It does, however, offer principles of enduring validity and authority. Responsible ethical living therefore calls for making personal choices on the basis of validly established principles rather than following a detailed set of regulations in a servile way. Accordingly, these guidelines are intended to set forth those principles of God's revelation that should guide individuals in making decisions and judgments on the question of abortion as a theological, legal, and medical problem.

